

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,) CSSC TRAFFIC CASE NO. 071-2011
)
Plaintiff,)
)
vs.)
)
MARIUS AKAPITO,)
)
Defendant.)
_____)

ORDER DENYING MOTION TO DISMISS

Repeat R. Samuel
Associate Justice

Hearing: April 23, 2013
Decided: April 25, 2013

APPEARANCES:

For the Plaintiff: Charleston L. Bravo
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For the Defendant: Bethwell O'Sonis, Esq.
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HEADNOTES

Criminal Law and Procedure – Information

The test for a particular information's sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge stated therein. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Information

To determine whether an information is deficient, the information and its supporting affidavit must be read together, and allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Akapito, 19 FSM R. 13, 14 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Information

If, when reading the information and supporting affidavit together, it is apparent that there are sufficient facts to give notice to the defendant that he is being charged with allegedly running over a

certain victim, such notice is enough to allow him to prepare his defense. Chuuk v. Akapito, 19 FSM R. 13, 14-15 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Information; Search and Seizure – Probable Cause

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Criminal Law and Procedure – Information; Search and Seizure – Probable Cause

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

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COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice:

Defendant filed a Motion to Dismiss CSSC-TR. Case No. 071-2011, on July 21, 2011. To date, the State has not filed a response. Defendant's motion is based on two theories: (A) Count I to Count II must be dismissed on the grounds that the information fails to state sufficient evidence to show that the defendant's actions were a violation of the law. (B) Count III to Count V should be dismissed since the affidavit fails to state sufficient evidence of probable cause to support the allegations.

DISCUSSION

A. Failure to State the Essential Elements pursuant to Rule 7(c)(1)

An information's fundamental purpose is to inform the defendant of the charges so that he may prepare his defense, and to advise the court of the facts alleged so that the court may determine whether those facts, if proven, may support a conviction, and an information deficient in these respects may be dismissed without prejudice. The test for a particular information's sufficiency is whether it is fair to defendant to require him to defend on the basis of the charge stated herein. FSM v. Sato, 16 Intrm. 26, 28-29 (Chk. 2008). To determine whether an information is deficient, the information and its supporting affidavit must be read together. *Id.* at 29. Furthermore, allegations against the defendant in one count may be incorporated by reference in another count. Chuuk v. Menisio, 15 FSM Intrm. 276, 279 (Chk. S. Ct. Tr. 2007).

Following well settled case law as stated in FSM v. Sato, the information and affidavit must be read together. Thus, when reading Counts I and II simultaneously with the supporting affidavit the court finds such language as in Count I, which states in part: "On June 2, 2011, at about 8:00 p.m. in Neauo Village, Weno Island, Marius Akapito unlawfully and unintentionally caused the death of Rochen Rawit while driving under the influence of intoxicating liquor and/or negligently drove his vehicle when he ran over Rochen Rawit with his vehicle . . ." Information Count I, at 1. When read together with the language from supporting affidavit, which states in part:

I was lead investigating officer in the traffic incident involving Marius Akapito, on June 2, 2011 at about 8:00 p.m., in Neauo Village, Weno Island. The following information are base on two eye witness statements by Remonuch Emanuel and Sapres Ekulon. . . . Sapres Ekulon saw Marius Akapito's vehicle run over Rochen Rawit

Supporting Aff. paras. 3, 4, 15. It is apparent that there are sufficient facts to give notice to the defendant that he is being charged with allegedly running over victim Rochen Rawit and such notice is enough to allow him to prepare his defense.

B. Affidavit Fails to State Sufficient Evidence to Establish Probable Cause to Support the Allegations.

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Wainit, 12 FSM Intrm. 105, 108 (Chk. 2003). A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 77 (Pon. 1985).

According to the Affidavit of Probable Cause submitted by Detective Simon Muety, Muety was the lead investigator in the incident that occurred on June 2, 2011 at around 8:00 p.m. in Neauo Village, Weno Island. The affidavit of Probable Cause includes such statements as:

The following information is based on two eye witness statements by Remonuch Emanuel and Sapres Ekulon that I obtained during my investigation. . . . Remonuch Emanuel got out of Marius Akapito's vehicle and Marius Akapito got back into the vehicle. . . . Sapres Ekilon recognized the vehicle as the black trooper that belonged to Marius Akapito Sapres Ekilon saw Marius Akapito's vehicle run over Rochen Rawit

Aff. of Probable Cause, paras. 3, 4, 10, 14, and 15.

In considering all the facts, the Court finds that Detective Simon Muety had sufficient information to believe that it was more likely than not a violation of the law had occurred involving Defendant Marius Akapito.

THEREFORE, based on the reasons set forth above the Court Finds The Following:

- (1) The Motion to Dismiss Traffic Case No. 071-2011 is DENIED.
- (2) The information demonstrates sufficient evidence to show that the alleged actions, if committed, were a violation of the law.
- (3) The affidavit states sufficient evidence of probable cause to support the allegations.

IT IS SO ORDERED.

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