

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2020-503
)	
Plaintiff,)	
)	
vs.)	
)	
NORLEEN OLIVER,)	
)	
Defendant.)	
_____)	

ORDER DENYING DISMISSAL

Larry Wentworth
Associate Justice

Hearing: January 19, 2021
Decided: February 9, 2021

APPEARANCES:

For the Plaintiff: Bulou Alitiana S. Esther Kuridrani, Esq.
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HEADNOTES

Public Officers and Employees

A public official or public servant is any person elected, appointed or employed to perform a governmental function on the FSM's behalf, or on behalf of any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979 or any successor law, in any official function under or by authority of any such agency or branch of government. FSM v. Oliver, 23 FSM R. 148, 151 (Pon. 2021).

Public Officers and Employees

The terms "public official" and "public servant" include the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officers, advisors and consultants, but do not include witnesses. This statutory list is not exclusive because the terms cover "any person elected, appointed or employed to perform a governmental function on the FSM's behalf. FSM v. Oliver, 23 FSM R. 148, 151 (Pon. 2021).

Public Officers and Employees

The "office" of First Lady is not a constitutional office. Nor is it an office created by statute. It is not an office for which a writ of quo warranto will lie to determine the right to hold the office. It is a title that is, or has been, customarily bestowed on or used to honor the President's wife, who is then expected to perform varied social and diplomatic functions on the President's or the nation's behalf. FSM v. Oliver, 23 FSM R. 148, 151 (Pon. 2021).

Public Officers and Employees

A September 13, 2019 Presidential Order not only established an Office of the First Lady with support staff and equipment, as may be established by law, but also assigned her duties to perform charitable and philanthropic service for the benefit of the people – especially women and children – and to engage in social outreach to the less fortunate "in need of support in the areas of social services, community collaboration and cultural enrichment" and to "represent Micronesia in ceremonial functions and engagements, domestic and abroad, relating to philanthropy, arts, and cultural beautification and promotional programs." FSM v. Oliver, 23 FSM R. 148, 151-52 (Pon. 2021).

Public Officers and Employees

The First Lady is a public official or public servant, even though she is not paid, because she is a person employed to perform a governmental function on behalf of the Federated States of Micronesia. She is employed to perform various and numerous (unpaid) governmental functions of a ceremonial, social, or diplomatic nature on the FSM's behalf as set out in a Presidential Order. FSM v. Oliver, 23 FSM R. 148, 152 (Pon. 2021).

Criminal Law and Procedure – Obstruction; Public Officers and Employees

Whether a public official was actually obstructed in the performance of her duties by a car parked in the road is a determination to be left to a trial on the merits. FSM v. Oliver, 23 FSM R. 148, 152 (Pon. 2021).

Criminal Law and Procedure – Obstruction; Public Officers and Employees

Where the First Lady is concerned, it is not required that a specific duty or function must be about to be performed when the obstructing occurs. Certainly, there would be no such requirement if it were the President involved. FSM v. Oliver, 23 FSM R. 148, 153 (Pon. 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On January 19, 2021, the court heard defendant Norleen Oliver's Motion to Dismiss the Remaining Count, filed December 14, 2020, and the Plaintiff's Reply to Defendant's Motion to Dismiss, filed December 28, 2020. On January 21, 2021, the prosecution, with leave of court, filed a copy of the Presidential Order referred to in its December 28, 2020 filing. The Defendant's Response to Submission of Presidential Order was filed on January 25, 2021. The court then considered Oliver's motion to dismiss submitted to it for decision. The court, for the following reasons, hereby denies the motion.

I. BACKGROUND

A. *September 18, 2020 Incident*

The FSM's First Lady, Patricia Edwin Panuelo, has a personal residence (as opposed to her official

residence) in Ipwal, Sokehs. She (and the President) are often there. The First Lady's Ipwal residence is land-locked. Her access to the residence is over a road that crosses private property that Norleen Oliver says belongs to her family. The national government, so as to improve access, funded a project to pave this road. Oliver did not believe that this road-paving project should proceed unless her family was consulted first.

On September 18, 2020, Oliver deliberately parked and locked her private vehicle in the access road, ostensibly to prevent any construction equipment from entering and working on paving the road that day. Oliver then left the area. The FSM Department of Justice was informed that the First Lady was unable to use the Ipwal access road. National police arrived on the scene in the early afternoon. They saw Oliver's vehicle blocking the access road. They spoke to her husband, who told them that Oliver had parked her car there to block the construction project, and then left for town.

The national police returned that evening and Oliver's vehicle was still there. At about 6:30 p.m., the police spoke to Oliver, who had returned from town, and asked that she move her vehicle. She refused. After much discussion, Oliver, at around 8:00 p.m., gave one officer her car keys (while still speaking with another officer), and that officer used the keys to move the vehicle nearby. Later, the vehicle was moved to an impound lot.

B. Charge Remaining

On October 2, 2020, the government filed a criminal information charging Oliver with violating 11 F.S.M.C. 701(1), and 11 F.S.M.C. 501(1). On November 12, 2020, the court dismissed the 11 F.S.M.C. 701(1) charge for lack of probable cause. *FSM v. Oliver*, 23 FSM R. 86, 90 (Pon. 2020). The remaining count charges Oliver with obstructing the administration of law or other governmental function, a violation of 11 F.S.M.C. 501(1). Section 501(1) provides that: "[a] person commits a crime if he or she wilfully interferes with, delays, or obstructs a public official in the discharge or attempted discharge of any duty of his or her office."

The Information alleges that Oliver "wilfully obstruct[ed] the First Lady of the FSM Patricia Panuelo from discharging her official duty by inattentively parking her vehicle . . . at a location in Ipwal, Sokehs road." Information at [unnumbered] 3 (Oct. 2, 2020). The Information does not charge Oliver with obstructing the governmental function of paving the access road, although it might have. Nor does the Information charge Oliver with obstructing the President's access to the First Lady's residence, although it could have if the circumstances had been different and the President had sought either ingress to or egress from the First Lady's home, which he often does. Oliver is charged with obstructing the First Lady's access to or from her private residence, thereby obstructing a public official (the FSM First Lady) from discharging her official duties. Oliver contends that this charge must be dismissed because it fails to state a national crime.

II. ANALYSIS

Oliver contends that the Information's allegations do not state a national crime because: 1) the FSM First Lady is not an FSM public official; 2) or if the First Lady is a public official, her access to her private residence was not actually obstructed since her vehicle was able to maneuver around Oliver's parked vehicle; or 3) the First Lady could not have been obstructed from discharging her official duties on September 28, 2020, since the Information does not allege that the First Lady had any particular official duty to perform that day.

A. Whether First Lady Is a Public Official

Oliver first contends that the First Lady is not a public official. For this contention she relies on the

statutory definition of "public official" and "public servant" in the FSM Criminal Code and on the court's previous discussion of the question in an unrelated civil case.

The Criminal Code defines the terms "public official" and "public servant." It provides that:

"Public official" and "public servant" means any person elected, appointed or employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency or branch thereof, or any allottee as defined in the Financial Management Act of 1979 or any successor law, in any official function under or by authority of any such agency or branch of government. The terms include, but are not limited to, the President, Vice President, department heads and other government employees, legislators, judges, law enforcement officers, advisors and consultants, but do not include witnesses.

11 F.S.M.C. 104(12). Oliver points out that the First Lady is not specifically included in this statutory list, although the President is.

The court notes that the statutory list is not exclusive because the terms cover "any person elected, appointed or employed to perform a governmental function on [the FSM's] behalf." The statute specifically states that the list is not exclusive ("include but not limited to . . ."). For instance, the list does not include FSM diplomats, such as FSM ambassadors and consuls, but they are certainly FSM public officials and FSM public servants.

Oliver also directs the court's attention to the court's discussion of the "office" of the First Lady in an earlier civil case, which started as a dispute over who should be recognized as the FSM's First Lady. In that case, the court reasoned that:

The "office" of First Lady is not a constitutional office. Nor is it an office created by statute. It is not an office for which a writ of quo warranto will lie to determine the right to hold the office. It is a title that is, or has been, customarily bestowed on or used to honor the President's wife, who is then expected to perform varied social and diplomatic functions on the President's or the nation's behalf. But the person acting as the First Lady would not necessarily be the President's wife. The President could be without a wife (for instance, widowed or divorced), or his wife could be too infirm to perform those functions, so in either case, the President might likely ask a close female relative to act as First Lady. Or the President might be a woman, in which case her husband would perform those functions, doubtlessly with a different, honorary title. In any case, it would be the President who would let the rest of government know who, if anyone, would be acting as First Lady and performing those social and diplomatic functions.

Panuelo v. FSM, 22 FSM R. 498, 512-13 (Pon. 2020).

In support of its contention that the FSM First Lady is a public official, the government submits a copy of the September 13, 2019 Presidential Order Establishing the Office of the First Lady of the Federated States of Micronesia, Assigning Ceremonial Mandate Associated with such Office and Providing Support to Accomplish its Mandate ("Presidential Order"). That Presidential Order¹ not only established an Office of the First Lady with support staff and equipment, as may be established by law, but also assigned her duties to perform charitable and philanthropic service for the benefit of the people – especially women and children

¹ Presidential Orders do not seem to be officially numbered, only dated.

– and to engage in social outreach to the less fortunate "in need of support in the areas of social services, community collaboration and cultural enrichment" and to "represent Micronesia in ceremonial functions and engagements, domestic and abroad, relating to philanthropy, arts, and cultural beautification and promotional programs."

The court can only conclude that the First Lady is a public official or public servant, even though she is not paid.² That is because she is a person "employed to perform a governmental function on behalf of the Federated States of Micronesia." 11 F.S.M.C. 104(12). She is employed to perform various and numerous (unpaid) governmental functions of a ceremonial, social, or diplomatic nature on the FSM's behalf as set out in the Presidential Order. This conclusion mirrors that in Association of Am. Physicians & Surgeons, Inc. v. Clinton, 997 F.2d 898, 903-05 (D.C. Cir. 1993), which held that the U.S. First Lady should be considered a full-time employee of the U.S. government and the functional equivalent of an assistant to the President, even though she was unpaid and not a member of the U.S. public service system.

B. *Whether First Lady Was Obstructed*

Oliver also contends that this charge must be dismissed because some testimony during the October 6-7, 2020 preliminary hearing indicated that sometime on September 18, 2020, a vehicle, presumed to have been the First Lady's, maneuvered around Oliver's parked car and proceed on its way.

The court cannot, at this point, dismiss the remaining charge on this basis. The evidence does not reveal the vehicle's occupant(s) or the circumstances under which the vehicle maneuvered, or whether that maneuver required trespass on property outside the roadway. The court can only note that this is more properly a factual inquiry whose result may thwart the government's attempt to prove this charge beyond a reasonable doubt – that is, to prove that there was, in fact, a willful obstructing of the First Lady.

The court further notes that the government chose to charge Oliver, under 11 F.S.M.C. 501(1), only with obstructing. It did not chose to charge her with interfering with or delaying the First Lady – other possible charges under 11 F.S.M.C. 501(1). This may affect the government's ability to prove this charge beyond a reasonable doubt, but that is a determination to be left to a trial on the merits.

C. *Whether the First Lady Needed to Have a Specific Official Duty That Day*

Oliver also contends that the Information is fatally defective because it fails to allege a specific official duty or governmental function that the First Lady was to perform on September 18, 2020. Oliver asserts that the government must plead a specific official duty that was obstructed. In response, the government argues that the First Lady, like the President, is a public official 24 hours a day, seven days a week, and that it is impossible to separate the times, circumstances, or functions when she is acting as First Lady from those times and circumstances when she may not be.

The First Lady's duties are general in nature and expansively defined. She is available for ceremonial and social functions at any time, and likely often on short notice. The government has not pled in the Information any particular duty or function of the First Lady's that was obstructed that day, and it has not suggested in its opposition any particular duty or function that the First Lady was expected to engage in that

² The First Lady would not be the only unpaid public official in FSM history. Under 55 F.S.M.C. 327(3) (repealed by Pub. L. No. 13-72, § 1, 13th Cong., 5th Spec. Sess. (2004)), members of the Federated Development Authority Board were statutorily given the status of FSM public officials even though, under 55 F.S.M.C. 326(5) (repealed by Pub. L. No. 13-72, § 1, 13th Cong., 5th Spec. Sess. (2004)), the board members were required to serve without compensation.

day. It argues that the First Lady, like the President, is always the First Lady.

The court is not convinced that, where the First Lady is concerned, it is required that a specific duty or function must be about to be performed when the obstructing occurs. Certainly, there would be no such requirement if it were the President involved. The First Lady has no occupation or function other than to act as a ceremonial or social representative of the FSM government in general, and of the President, and his administration, in particular, and, undoubtedly, also as an unofficial adviser to the President. She is a public face of the Panuelo Administration, and, along with the President, probably one of the most public faces of the Panuelo Administration. The court therefore rejects this contention as a ground for dismissal.

III. CONCLUSION

Accordingly, the motion to dismiss is denied. The court will take defendant Norleen Oliver's plea at 10:00 a.m., Wednesday, February 24, 2021, and if a not guilty plea is entered, trial will start immediately thereafter.

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