

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)
)
 Plaintiff,)
)
 vs.)
)
 CASSIDY SHONIBER,)
)
 Defendant.)
 _____)

CRIMINAL CASE NO. 2021-511

ORDER DENYING MOTION TO DISMISS; SETTING DEADLINE FOR MOTION TO SUPPRESS

Dennis L. Belcourt
Associate Justice

Hearing: March 16, 2022
Decided: August 16, 2022

APPEARANCES:

For the Plaintiff: Quintina Letawerpiy, Esq.
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For the Defendant: Salomon Saimon, Esq.
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HEADNOTES

Criminal Law and Procedure – Falsification; Customs

The additional element of “purpose to mislead a public servant in performing his or her official function” in 11 F.S.M.C. 524, making a written false statement to a public officer, makes 54 F.S.M.C. 264, making an untrue statement to a Customs officer, a lesser included offense thereof. FSM v. Shoniber, 23 FSM R. 629, 631 (Pon. 2022).

Criminal Law and Procedure – Falsification; Postal Service; Public Officers and Employees

An FSM postal clerk is a public official because a “public official” is a person employed to perform a governmental function on behalf of the FSM, or any department, agency, or branch thereof and includes other government employees and because the FSM Constitution contemplates postal services as an FSM government function. FSM v. Shoniber, 23 FSM R. 629, 631 (Pon. 2022).

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COURT’S OPINION

DENNIS L. BELCOURT, Associate Justice:

I. MOTION TO DISMISS

Defendant’s motion to dismiss, filed on January 14, 2022, came before the Court for a hearing on March 16, 2022. FSM Assistant Attorney Quintina Letawerpiy, Esq. appeared for Plaintiff, Federated States of Micronesia. Attorney Salomon Saimon, Esq. appeared for Defendant, Cassidy Shoniber. In addition to Plaintiff’s opposition to the motion, filed on March 9, 2022, Defendant filed a “Notice of Ruling in FSM Civil [sic] Action No. 2021-1503” on May 13, 2022 to alert the Court of a recent trial division ruling that Defendant considered to have possible bearing on this motion.

Relying on FSM v. Edwin, 8 FSM R. 543 (Pon. 1998), the Defendant contends that Counts I, II, and III of the Information should be dismissed because he should be charged under Title 54 rather than Title 11. Additionally, Defendant argues that Count VIII should also be dismissed because the government employee in question is not a “public official” to whom 11 F.S.M.C. 517, the section under which he is charged, applies, arguing that that section is only meant to apply to elected or appointed officials, not the postal clerk who is the alleged victim of Defendant’s threats.

The Plaintiff contends that the Edwin case does not apply to the case at hand, as it involves tax violations by taxpayers while this matter relates to allegations of criminal acts when declaring items at the post office and when threatening a government employee. The Plaintiff maintained that this case was brought to deter the commission of certain offenses rather than to charge the Defendant for the purpose of collecting revenue.

The Plaintiff argues that the government employee in question meets the definition of “public official” in the law.

II. ANALYSIS

Counts I, II, and III

The Court does not find Defendant’s invocation of FSM v. Edwin, 8 FSM R. 543 to be persuasive, as the reasons underlying Edwin’s concerns are not present.

Defendant herein is charged under Title 11 with misstating on customs declarations the contents of

packages of goods he was exporting. Unlike Edwin, the Information in the pending matter does not include other charges under Title 54. However, arguably, such could be a basis for a misdemeanor for under 54 F.S.M.C. 264(1)(c), for willfully making, “in a declaration or document produced to a Customs officer, a statement *that is untrue in any particular.*” (emphasis added). A violation of 54 F.S.M.C. 264(1)(c) is subject to a fine not exceeding \$1,000 and imprisonment of one year.

Instead, Defendant Shoniber is charged in Counts I-III of the Information with having made a “written false statement which he or she does not believe to be true” having a “*purpose to mislead a public servant in performing his or her official function.*” 11 F.S.M.C. 524(1)(a) (emphasis added).

The court in Edwin inferred that Congress, in establishing specific (and significantly lower) penalties for tax violations, intended that provisions in the criminal code (theft and criminal mischief) having a much higher potential penalty for the same conduct would not apply, stating that its decision

must not be read as a blanket statement that a criminal information may only charge violations of one particular code. Instead, it should be viewed in the limited context in which it was issued: a case involving conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) where the government also seeks to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes.

8 FSM R. at 546.

By comparison, the potential penalty disparity between 54 F.S.M.C. 264 and 11 F.S.M.C. 524, while substantial, is half that described in Edwin. Moreover, the national crime described in 54 F.S.M.C. 264 is not the same crime as described in 11 F.S.M.C. 524, the latter including proof of purpose. The additional element of “purpose to mislead a public servant in performing his or her official function” in 11 F.S.M.C. 524, makes 54 F.S.M.C. 264 a lesser included offense thereof. The narrow concern of the court in Edwin that the same conduct could be charged with extreme disparity is not applicable to this case.

Count VIII

Count VIII of the Information charges Defendant with violating 11 F.S.M.C. 517(1)(c) based upon allegations that Defendant threatened to harm Mr. David Kiahd, an FSM Postal Clerk, with purpose to influence said government employee to unlawfully ship betelnut, pepper leaves, and lime through the FSM Post Office. 11 F.S.M.C. 517(1)(c) states that “[a] person commits a crime if he or she threatens harm to any public official with purpose to influence his or her decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding.”

It is Defendant’s position that Mr. Kiahd, who is employed as an FSM Postal Clerk at the FSM Post Office, is not a public official. The Court finds this argument lacking merit. A “public official” as defined under 11 F.S.M.C. 104(12) includes a person “employed to perform a governmental function on behalf of the Federated States of Micronesia, or any department, agency, or branch thereof, . . . [t]he terms include, but are not limited to, . . . other government employees . . .” The Information alleges that Mr. Kiahd was acting as an FSM postal clerk when he was threatened—and the fair import of such allegation is that he was performing a government function. The FSM Constitution contemplates postal services as an FSM government function, see FSM Const. art. IX, § 2(j), and Congress has created the National Postal Service to effectuate that intent, Tit. 39 F.S.M.C. Therefore, under the definition of public official provided, Mr. Kiahd is such. By its clear terms, 11 F.S.M.C. 517(1)(c) applies to Mr. Kiahd.

III. CONCLUSION

Based upon the above, this Court is not persuaded that the remaining Counts I, II, III and VIII against Defendant Shoniber should be dismissed. NOW, THEREFORE, Defendant Shoniber's motion to dismiss Counts I, II, III and VIII is HEREBY DENIED.

Defendant Shoniber at the hearing on this motion requested the opportunity, in the event of denial of this motion to dismiss, to bring a motion to suppress. The Government did not object. IT IS FURTHER ORDERED that Defendant Shoniber may file and serve a motion to suppress no later than September 15, 2022.

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