

The Plaintiff will have fifteen (15) days to respond to Defendants' Attorneys' Affidavit of Compliance.

The Court's ruling on the remaining pending motions will be deferred pending submission of the affidavit and any response thereto.

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FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA,)	CRIMINAL CASE NO. 2021-1502
)	
Plaintiff,)	
)	
vs.)	
)	
JESS PEDRO and SERENGAW ALAFANSO,)	
)	
Defendants.)	
_____)	

ORDER DENYING DISMISSAL

Larry Wentworth
Associate Justice

Hearing: March 8, 2022
Decided: March 28, 2022

APPEARANCES:

For the Plaintiff:	Jesse S. Mihkel, Esq. Jeffrey S. Tilfas, Esq. Assistant Attorneys General FSM Department of Justice P.O. Box PS-105 Palikir, Pohnpei FM 96941
For the Defendant: (Pedro)	Bethwell O'Sonis, Esq. Office of the Public Defender P.O. Box 814 Weno, Chuuk FM 96942
For the Defendant: (Alafanso)	Tevita T. Muloilagi, Esq. Office of the Public Defender P.O. Box 814 Weno, Chuuk FM 96942
	Timoci Romanu, Esq. Office of the Public Defender P.O. Box 1736 Kolonias, Pohnpei FM 96941

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HEADNOTES

Criminal Law and Procedure – Information

A charging document that sets out the facts that the government believes constitute the crimes charged, and that is signed by two attorneys for the government satisfies Rule 7(c)(1)'s requirements to qualify as an information. FSM v. Pedro, 23 FSM R. 502, 504 (Chk. 2022).

Criminal Law and Procedure – Filings

Because, absent compelling reasons to the contrary, form must ever subserve substance, a document is what it is regardless of what someone chooses to call it or happens to have mislabeled it. FSM v. Pedro, 23 FSM R. 502, 504 (Chk. 2022).

Criminal Law and Procedure – Information

Even when an information is, in one place, mislabeled as a criminal complaint, it is an information satisfying Rule 7(c)(1) and can be used to charge defendants. FSM v. Pedro, 23 FSM R. 502, 504 (Chk. 2022).

Criminal Law and Procedure – Information

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the crime charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions, and defendants cannot reasonably contend that the mislabeling of the information as a “criminal complaint” prevents them from being apprised of the essential facts constituting the crimes charged or hinders them in preparing their defense. FSM v. Pedro, 23 FSM R. 502, 504-05 (Chk. 2022).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – Information

Since an information will not be thrown out because of minor, technical objections which do not prejudice the accused, an information will not be dismissed because it was, in one place, mislabeled as a complaint. FSM v. Pedro, 23 FSM R. 502, 505 (Chk. 2022).

Criminal Law and Procedure – Criminal Intent; Criminal Law and Procedure – Defenses

Defendants may raise and present evidence on their defenses at trial because no defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented, and this includes the defense that the crime charged required a certain intent and that the defendants lacked the necessary intent to commit that charged crime and the defense of necessity absolving the defendants of criminal liability. FSM v. Pedro, 23 FSM R. 502, 505 (Chk. 2022).

Criminal Law and Procedure – Defenses; Criminal Law and Procedure – Dismissal

The mere assertion in a pretrial motion that certain defenses exist and should absolve the defendants of any criminal liability is not sufficient for a dismissal. Evidence must be presented. FSM v. Pedro, 23 FSM R. 502, 505 (Chk. 2022).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On March 8, 2022, the court heard a joint motion by defendants Jess Pedro and Serengaw Alafanso to dismiss this case. Pedro and Alafanso move to dismiss on two grounds: 1) that they are subject to an irregular and defective charge because the charging document is variously labeled “Criminal Information” and “Criminal Complaint” and this creates ambiguity since complaints are governed by Criminal Rule 3 and informations, which must be used to prosecute crimes, are governed by Criminal Procedure Rule 7; and 2)

that this is a frivolous prosecution because, even though they are state police officers, they had not received the proper training to correctly guard a quarantined vessel and only boarded the *Narik Mataw* because it was raining hard and they were seeking shelter.

I. COMPLAINTS AND INFORMATION

Pedro and Alafanso contend that the labeling of the charging document as both an information and a complaint renders it defective and invalid. When the parties in FSM v. Teteeth, 22 FSM R. 438 (Yap 2020) appeared to confuse the terms complaint and information, the court explained the differences thus:

The parties seem to use the terms "criminal complaint" and "criminal information" interchangeably, but these terms are not interchangeable. "Criminal complaint" refers to "a written statement of the essential facts constituting the offense charged" that was "made upon oath before a judicial officer or a clerk of this court." FSM Crim. R. 3. "The principal function of a complaint is as a basis for an application for an arrest warrant." Gaither v. United States, 413 F.2d 1061, 1076 (D.C. Cir. 1969). "No complaint is needed, however, if a more formal determination of probable cause is made first. If . . . an information [has been] filed prior to the arrest, a warrant may be issued on this ground alone." 1 CHARLES ALAN WRIGHT & ANDREW D. LEIPOLD, FEDERAL PRACTICE AND PROCEDURE § 41, at 35 (4th ed. 2008).

A "criminal information" is "a plain, concise and definite written statement of the essential facts constituting the offense charged," that must "be signed by the attorney for the government." FSM Crim. R. 7(c)(1). The information is the charging document. FSM Crim. R. 7(a) ("Offenses shall be prosecuted by information"). And that later charging document "need not be limited to the terms of the complaint." United States v. Cabrera-Teran, 168 F.3d 141, 145 (5th Cir. 1999).

Thus, a criminal complaint could be signed by the arresting officer, see FSM Crim. R. 5(a), with the accused later prosecuted by an information signed by a government attorney.

FSM v. Teteeth, 22 FSM R. 438, 441 n.1 (Yap 2020).

The document initiating this criminal case, is labeled in the caption as a "Criminal Information" and at the start of the text as "Criminal Complaint." The document sets out the facts that the government believes constitute the crimes charged, and it is signed by two attorneys for the government. This charging document therefore satisfies Rule 7(c)(1)'s requirements to qualify as an information. Because, absent compelling reasons to the contrary, form must ever subserve substance, a document is what it is regardless of what someone chooses to call it or happens to have mislabeled it. George v. Palsis, 22 FSM R. 165, 173 (App. 2019); Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018); Mori v. Hasiguchi, 18 FSM R. 83, 84 (App. 2011); Berman v. Pohnpei Legislature, 17 FSM R. 339, 352 n.5 (App. 2011); McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003). Thus, even if the information was, in one place, mislabeled as a criminal complaint,¹ it is an information satisfying Rule 7(c)(1) and can be used to charge Pedro and Alafanso.

An information is sufficient if it contains a plain, definite, and concise statement of the essential facts constituting the crime charged so that the defendant can prepare his defense and so that the defendant can avail himself of his conviction or acquittal as a bar to subsequent prosecutions. FSM v. Kimura, 20 FSM R. 297, 303 (Pon. 2016). Pedro and Alafanso cannot reasonably contend that the mislabeling of the information as a "criminal complaint" prevented them from being apprised of the essential facts constituting the crimes

¹ The court suggests that to avoid any future confusion or waste of judicial resources discussing the point, the government should refrain from using the word "complaint" anywhere in its charging documents (informations) unless referring to an actual Rule 3 complaint or to a victim's statement.

charged or hinders them in preparing their defense.

An information will not be thrown out because of minor, technical objections which do not prejudice the accused. FSM v. Xu Rui Song, 7 FSM R. 187, 189 (Chk. 1995). Therefore, the information will not be dismissed because it was, at one point, mislabeled as a complaint.

II. FRIVOLOUS PROSECUTION

Pedro and Alafonso also contend that dismissal is required because the prosecution is frivolous. They assert that they had not received the proper quarantine protocol training how to correctly guard a quarantined vessel and were not instructed not to approach the *Narik Mataw* or that they could not seek shelter from the weather on the *Narik Mataw*, even if they felt the need to. They contend that they thus had no intent to break the law and that they are only being made scapegoats for their superiors' neglect or omissions.

These contentions are defenses that the defendants may raise and present evidence on at trial because "[n]o defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented." 11 F.S.M.C. 107(2). This includes that the defense that the crime charged required a certain intent and that the defendants lacked the necessary intent to commit that charged crime, see 11 F.S.M.C. 301A(3), or that the defense of necessity absolves the defendants of criminal liability, see 1 CHARLES E. TORCIA, *WHARTON'S CRIMINAL LAW* § 90 (15th ed. 1993); 1 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *SUBSTANTIVE CRIMINAL LAW* § 5.4 (1986).

The mere assertion in a pretrial motion that these defenses exist and should absolve the defendants of any criminal liability is not sufficient for a dismissal. Evidence must be presented. 11 F.S.M.C. 107(2).

III. CONCLUSION AND SCHEDULE

NOW THEREFORE IT IS HEREBY ORDERED that the defendants' motion to dismiss is denied, AND IT IS FURTHER ORDERED that the court will take the defendants' pleas on April 25, 2022, at 10:00 a.m., and if a not guilty plea is entered, trial will follow immediately thereafter.

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