

FSM SUPREME COURT TRIAL DIVISION

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

ORDER FINDING PROBABLE CAUSE FOR MISDEMEANOR

Larry Wentworth  
Associate Justice

Hearing: October 6-7, 2020  
Decided: November 12, 2020

APPEARANCES:

For the Plaintiff:    Bulou Alitiana S. Esther Kuridrani, Esq.  
                          Josephine Leben James, Esq.  
                          Assistant Attorneys General  
                          FSM Department of Justice  
                          P.O. Box PS-105  
                          Palikir, Pohnpei FM 96941

For the Defendant:    Marstella E. Jack, Esq.  
                          P.O. Box 2210  
                          Kolonia, Pohnpei FM 96941

\* \* \* \*

HEADNOTES

Criminal Law and Procedure – Civil Rights Offenses

Violating 11 F.S.M.C. 701 is a felony. FSM v. Oliver, 23 FSM R. 86, 89 (Pon. 2020).

Criminal Law and Procedure – Obstruction

Obstructing the administration of law or other governmental function, 11 F.S.M.C. 501, is a misdemeanor. FSM v. Oliver, 23 FSM R. 86, 89 (Pon. 2020).

Property – Easements

A right of way or easement can be created by the permission given by a landowner to another for access over his land to the another’s land. FSM v. Oliver, 23 FSM R. 86, 89 (Pon. 2020).

Property – Easements

Generally, an easement holder has the right to improve his or her right of access by paving the

easement so long as the easement holder does not inflict unnecessary injury to the landowner's estate. Befouling an estate's sole source of drinking water would likely be an unnecessary injury to the landowner's estate. FSM v. Oliver, 23 FSM R. 86, 89 n.1 (Pon. 2020).

#### Property – Easements

Someone's long use of an access road could create a prescriptive easement, and when a residence is land-locked, an easement by necessity might also be possible. FSM v. Oliver, 23 FSM R. 86, 89 (Pon. 2020).

#### Criminal Law and Procedure – Civil Rights Offenses; Criminal Law and Procedure – Dismissal

When neither the information nor the accompanying affidavit of probable cause identify the right, privilege, or immunity secured to another by the FSM Constitution or laws, that the accused allegedly deprived the other of, and when none of the rights in the FSM Declaration of Rights or any statutory right would seem to be implicated, the court cannot find probable cause that the accused deprived the other of any civil right, even though the accused's actions seem willful. The court will therefore dismiss the civil rights violation charge. FSM v. Oliver, 23 FSM R. 86, 90 (Pon. 2020).

#### Constitutional Law – Right to Travel

An FSM citizen's right to travel only protects citizens from any governmental restriction on their movement or migration between FSM states, municipalities, and islands. FSM v. Oliver, 23 FSM R. 86, 90 (Pon. 2020).

#### Criminal Law and Procedure – Obstruction

Taking as true the government's allegation that the First Lady is a public official (she often functions as one and her spouse is most certainly one), the government has made out a bare prima facie case that the defendant willfully interfered with, or delayed, or obstructed the First Lady from entering or leaving her private residence, thus impeding her ability to move about and discharge whatever duties she may have as the nation's First Lady. FSM v. Oliver, 23 FSM R. 86, 90 (Pon. 2020).

\* \* \* \*

### COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On October 6-7, 2020, the Chief Justice held a preliminary examination to determine whether there was probable cause to charge defendant Norleen Oliver in this matter. At the hearing's conclusion, the parties were ordered to file written closing arguments and responses. The Chief Justice then reassigned this matter to the undersigned justice. On October 19, 2020, the prosecution filed its Submission of Arguments. Oliver filed Defendant's Closing Argument on October 29, 2020. And on November 2, 2020, Oliver filed her Response to Plaintiff's Closing Argument, and the prosecution filed Plaintiff's Reply to Defendant's Closing Arguments.

I.

On November 4, 2020, the current justice held a telephonic hearing for the purpose of soliciting the parties' advice on: 1) whether a new preliminary examination should be held so that the current judge may hear the evidence on which the parties' closing arguments are based; or 2) whether the current judge should attempt to make a ruling based on the attorneys' filings; or 3) whether the current judge should listen to the audio tape of the hearing and, in conjunction with the written closing arguments, make a decision; or 4) whether the current judge should ask the Chief Justice to reassign the case to himself for the sole purpose

of ruling on the matter he had before him in the hearing he conducted; or 5) if another likely and feasible course of action should be pursued in the light of the circumstances.

The parties agreed on the preferable course of action. They orally advised the court that the current justice should ask the Chief Justice to reassign the case to himself for the sole purpose of ruling on the matter raised before him in the hearing he conducted and, if that was not possible, then the current justice should listen to the hearing's audio tape, and, along with the written arguments, decide the probable cause issue. No third option was suggested. The current justice then consulted the Chief Justice who indicated that he was unable to proceed with the matter.

The current justice therefore listened to the hearing audiotapes, took notes, and studied the written filings. The current justice now feels capable of ruling on whether there was probable cause for the charges against Norleen Oliver.

## II.

The October 6-7 hearing was held, at Oliver's request, to determine whether probable cause existed that she had committed the crimes charged. Probable cause exists 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. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Based on the preliminary hearing testimony and the written filings, the court considers the following facts to be undisputed for the purpose of this hearing.

Patricia Edwin is the FSM's First Lady and her personal residence (as opposed to her official residence) is in Ipwal, Sokehs. She (and the President) are there fairly often. The Edwin residence is land-locked. Edwin's access to her Ipwal residence is over a road that crosses someone else's private property. The national government, in the interest of improving the access road, started and funded a project to pave this road.

Oliver's residence is near the entrance to the Edwin access road. The land she lives on, and the land that the Edwin access road crosses, was owned by her late father. Oliver testified that her still-living mother now has a life estate in the land. Oliver considers it as her family land. Oliver pays rent to her mother.

According to Oliver's testimony, when Oliver's father was alive, he gave the Edwins (Largo Edwin in particular) permission to access the Edwin land over the road through his land. The Edwins have used this access road for many years.

On May 28, 2020, Oliver wrote the President a letter, Def.'s Ex. A, about the government-instituted paving project, and expressed her concerns about proceeding with the road improvement project without first consulting with her family and indicating that the project infringed on their "rights as landowners and also on [their] source of drinking water." She did not receive an answer. Sometime around September 17, 2020, construction equipment arrived to work on paving the access road.

On September 18, 2020, Oliver deliberately parked and locked her private vehicle in the middle of the access road, ostensibly to prevent any construction equipment from entering and working on paving the road. Oliver then left the area.

The FSM Department of Justice was informed that the First lady was unable to use the access road to or from her private Ipwal residence. National police arrived on the scene in the early afternoon. They saw

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

III.

On October 2, 2020, the government filed a criminal information against Oliver. Oliver is charged with violating First Lady Patricia Edwin's civil rights when Oliver deliberately parked (and locked) her personal vehicle where it blocked the access road to Edwin's private residence, thus impeding Edwin's access to and from her private home, and violating 11 F.S.M.C. 701. This crime is a felony. Based on these same acts, Oliver is also charged with obstructing the administration of law or other governmental function, thus violating 11 F.S.M.C. 501. This crime is a misdemeanor.

On October 6-7, 2020, the Chief Justice held a preliminary examination to determine if there was probable cause for these charges.

IV.

Based on the facts recited above, the court concludes that Edwin appears to have had and still has a right of way, that is, an easement, over the access road to the land-locked Edwin property. (This is not to be confused with a government easement for a right of way for a public road (and public utilities) for use by the general public.) This right of way or easement would have been created by the permission given by Oliver's father to Largo Edwin for access over his land to Edwin's land.<sup>1</sup> The Edwins' long use of the access road could also have created a prescriptive easement. (And since the Edwin residence is land-locked, an easement by necessity might also be possible, but not enough information is available for the court to consider the likelihood of that.)

V.

Count I charges Oliver with violating 11 F.S.M.C. 701. Section 701(1) of the Criminal Code provides that:

A person commits a crime if he or she willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him by the Constitution or laws of the Federated States of Micronesia

....

11 F.S.M.C. 701(1).

---

<sup>1</sup> Generally, an easement holder has the right to improve his or her right of access by paving the easement so long as the easement holder does not inflict unnecessary injury to the landowner's estate. See 25 AM. JUR. 2D *Easements and Licenses* §§ 94-95 (rev. ed. 1996). Befouling an estate's sole source of drinking water would likely be an unnecessary injury to the landowner's estate.

Neither the information nor the accompanying affidavit of probable cause identify the right, privilege, or immunity secured to Edwin by the FSM Constitution or laws, that Oliver allegedly deprived Edwin of. None of the rights in the FSM Declaration of Rights would seem to be implicated, not even an FSM citizen's right to travel, FSM Const. art. IV, § 12 ("A citizen of the Federated States of Micronesia may travel and migrate within the Federated States."), because that right only protects citizens from any governmental restriction on their movement or migration between FSM states, municipalities, and islands, see SCREP No. 23, II J. of Micro. Con. Con. 793, 800.

Nor is the court aware of any statutory right that might be implicated.

Thus, although Oliver's actions seem willful, the court cannot find probable cause that she deprived Edwin of any right, privilege, or immunity secured to her by the FSM Constitution or laws. Accordingly, the court hereby dismisses Count I of the information.

Count II charges Oliver with violating 11 F.S.M.C. 501, thereby obstructing the administration of law or other governmental function. 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."

Taking as true the government's allegation that the First Lady is a public official (she often functions as one and her spouse is most certainly one), the government has made out a bare prima facie case that Oliver willfully interfered with, or delayed, or obstructed First Lady Edwin from entering or leaving her private residence, thus impeding her ability to move about and discharge whatever duties she may have as the nation's First Lady.

VI.

It is somewhat dismaying that the situation has come to this. Instead of resorting to the self-help of blocking the access road, Oliver could have sought injunctive relief from a court to ensure that the road paving project did not affect the purity and cleanliness of her source of drinking water.

VII.

Since it appears that Norleen Oliver has not yet had a Rule 5 initial appearance proceeding, NOW THEREFORE IT IS HEREBY ORDERED that she shall appear on November 23, 2020, at 11:30 a.m. for that purpose.

\* \* \* \*