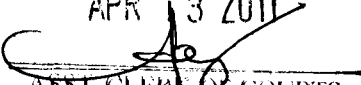


IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

APR 13 2011

ASST. CLERK OF COURTS
REPUBLIC OF MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS)	CRIMINAL CASE NO. 2011-013
)	
)	
v.)	ORDER FINDING GOOD CAUSE AND
)	SETTING TIME FOR ARRAIGNMENT
ALLISTER MANTIERA,)	
)	
Defendant.)	
<hr/>)	

APPEARANCES : Chief Prosecutor Tubosoye Brown
Assistant Public Defender Kerotu Tiba, counsel for the defendant
Allister Mantiera, defendant

JUDGE : Associate Justice James H. Plasman
CLERK : Assistant Clerk of the Courts Hainrick Moore

I. INTRODUCTION

On February 22 and 23, 2011, this matter came before the Court for preliminary hearing on the Republic’s February 8, 2011 Criminal Information charging the defendant Allister Mantiera with the following: Counts 1 – 5, Grand Larceny, in violation of 31 MIRC 137; Count 6, Cheating, in violation of 31 MIRC 138; Count 7, Forgery, in violation of 31 MIRC 130; Count 8, Concealment, Removal or Alteration of Record or Process, in violation of 31 MIRC 111; Count 9, Possession or Removal of Government Property, in violation of 31 MIRC 159; and Count 10, Conspiracy, in violation of 31 MIRC 120.

The court finds good cause to believe the offenses charged in Counts 1 - 7 and Count 10 occurred and that defendant committed them. The court further finds good cause for Count 9 in relation to the documentation for four of the five checks alleged in the count. Count 8 was

dismissed by the prosecution.

The Republic called two witnesses at the preliminary hearing: Candi Leon and Parker Wilson. The defense called none. The Republic offered the following 14 exhibits which were admitted with no objection from the defendant for the purposes of the preliminary hearing:

Government Exhibit 1 - copy of Ministry of Health Purchase Requisition

Government Exhibit 2 - Supplemental Affidavit of Candi Leon

Government Exhibit 3 - copy of the face of government check no. 072579

Government Exhibit 4 - copy of the back of government check no. 072579

Government Exhibit 5 - copy of the face of government check no. 074294

Government Exhibit 6 - copy of the back of government check no. 074294

Government Exhibit 7 - copy of the face of government check no. 074820

Government Exhibit 8 - copy of the back of government check no. 074820

Government Exhibit 9 - copy of the face of government check no. 075334

Government Exhibit 10 - copy of the back of government check no. 075334

Government Exhibit 11 - copy of the face of government check no. 075974

Government Exhibit 12 - copy of the back of government check no. 075974

Government Exhibit 13 - Statement of Allister Mantiera and translation

Government Exhibit 14 - Affidavit in Support of Criminal Information by Lt. Parker Wilson.

The defense offered no exhibits.

Post hearing, the court discovered that the recorder used to record the hearing had broken down. While the hearing record may exist on the recorder's hard drive, it is not currently available to the court or parties. The parties stipulated to allow the court to rely upon its

recollection, based upon notes taken during the hearing, rather than hold the hearing again.

Because of the nature of the charges, involving multiple parties and circumstantial evidence, the court requested post-hearing briefing from the parties on how the evidence showed or failed to show good cause that the offenses charged were committed and that defendant committed them.

II. LEGAL BACKGROUND

Standard of Proof

Article II, Section 4(4) of the RMI Constitution requires, in part, that “In all criminal prosecutions, the accused shall enjoy the right . . . to a prompt judicial determination of whether there is good cause to hold him for trial.” The U.S. Constitution does not contain a similar provision and the U.S. Supreme Court has held that there is no federal constitutional right to a preliminary hearing,¹ although the right is established by rule.² Under federal criminal Rule 5.1, the standard for continuing the criminal proceedings against the defendant is “probable cause.” This standard separates groundless or unsupported charges from prosecutions which merit going forward. “Thus, the preliminary hearing’s primary function is to screen out at this early but critical stage of the criminal process those cases that should not go to trial thereby sparing individuals from being held for trial, and from being unjustifiably prosecuted.”³

In the RMI, the constitutional “good cause” standard for determining whether a defendant shall be held for trial is not defined. The RMI constitution recognizes the “probable

¹*Goldsby v. U.S.* (1895) 160 US 70.

²Federal Rules of Criminal Procedure 5.1.

³*Myers v. Com.*, 363 Mass. 843 (1973) 298 N.E.2d 819

cause” standard for search and seizure purposes⁴ and the definition of “probable cause” has been addressed in countless cases in the United States, and is the subject of decisions here in the Republic.

In light of the stage of the proceedings where “good cause” is at issue, it should be regarded as being no less stringent than the standard of probable cause. The Massachusetts Supreme Court noted “there is a 'large difference' between probable cause to arrest (or search) and probable cause to bind over, 'and therefore a like difference in the quanta and modes of proof required to establish them.’”⁵ In recognition of this difference, the *Myers* Court stated that “the standard of probable cause to bind over must require a greater quantum of legally competent evidence than the probable cause to arrest finds to insure that the preliminary hearing's screening standard is defined in a way the [sic] effectuates its purpose.”⁶ (Footnote omitted) The mode of proof in a preliminary hearing is more stringent than that in a search or arrest, where the determination may be made by the officer on the spot or in an ex parte warrant application proceeding. The procedures for preliminary hearing in the Marshall Islands provide for cross-examination of witnesses and for the introduction of evidence by the defendant in an adversarial proceeding.⁷ In terms of the “quanta” of proof required, the *Myers* court concluded

Since the examining magistrate's determination of the minimum quantum of evidence required to find probable cause to bind over is somewhat analogous in function to the court's ruling on a motion for a directed verdict at trial as to

⁴Article II, Section 3(1).

⁵*Ibid.* at pp. 823-824.

⁶*Myers*, at p. 824.

⁷MIRCrP 5.1(e).

whether there is sufficient evidence to warrant submission of the case to the jury, we have decided to adopt a 'directed verdict' rule in defining the minimum quantum of credible evidence necessary to support a bind-over determination. The examining magistrate should view the case as if it were a trial and he were required to rule on whether there is enough credible evidence to send the case to the jury. Thus, the magistrate should dismiss the complaint when, on the evidence presented, a trial court would be bound to acquit as a matter of law.⁸ (Footnote omitted)

This standard is widely accepted in the United States among states that have preliminary hearings.⁹ The U.S. Supreme Court noted that a “full preliminary hearing of this sort is modeled after the procedure used in many States to determine whether the evidence justifies going to trial under an information or presenting the case to a grand jury . . . The standard of proof required of the prosecution is usually referred to as ‘probable cause,’ but in some jurisdictions it may approach a prima facie case of guilt.”¹⁰

This court believes that the “probable cause” standard based upon the directed verdict rule enunciated by the Massachusetts Supreme Court for preliminary hearing appropriately states the constitutional standard of “good cause” in the Marshall Islands. To the extent this standard is more stringent than the “probable cause” standard for search and seizure, it is consistent with the RMI constitutional distinction between “probable cause” and “good cause.” It is also consistent

⁸Ibid.

⁹“According to a recent study sponsored by the American Bar Association, this 'directed verdict' definition of probable cause is the most common screening standard practiced in other States which have probable cause hearings. See F. Miller, *Prosecution: The Decision to Charge a Suspect With Crime* (ABA study). See also Graham & Letwin, *The Preliminary Hearing in Los Angeles*, 18 U.C.L.A. Law Rev. 636 and American Law Institute. *A Model Code of Pre-Arrest Procedure* (Tent. Draft No. 5) s 330.5(3) (Model Code). '(Probable) cause to hold the defendant for trial exists . . . when the evidence introduced at the preliminary hearing would support a guilty verdict.'” Ibid., at p. 824, f.n. 7.

¹⁰*Gerstein v. Pugh*, 420 U. S. 103, 119 (1975)

with the distinction between the stages of prosecution to which they apply, i.e., probable cause for search and seizure, and good cause for preliminary hearing. The articulation of this standard, although regarded as more stringent than the probable cause standard for search and seizure purposes, should not appreciably affect preliminary hearing practice in the RMI. For the most part, the prosecution has proceeded in such hearings in the past to show a “prima facie” case, which should meet the requirements of the directed verdict rule.

Use of Hearsay at Preliminary Hearing

The RMI follows the U.S. federal courts in not applying the formal rules of evidence to the preliminary hearing.¹¹ Consequently, hearsay evidence is admissible at such hearings. This is not a universal rule. For instance, Massachusetts requires the same rules of admissibility be applied to evidence at preliminary hearings as at trials, reasoning that if the screening purpose of the preliminary hearing is to have meaning, the same rules should apply to both. The argument against application of the formal rules of evidence is set out in a Colorado Supreme Court case. “Moreover, to ensure that incomplete investigations do not result in the dismissal of cases which should be prosecuted, the manner in which a preliminary hearing is conducted has been eased to allow the prosecution every opportunity to prove that probable cause exists. Crim.P. 7(g)(3). Hearsay evidence, and other evidence, which would be incompetent if offered at the time of trial, may well be the bulk of the evidence at the preliminary hearing.”¹²

While hearsay is admissible at a preliminary hearing, there must be some foundation to find that it is reasonably trustworthy to support its admissibility. The body of law relating to

¹¹28 MIRC 1101(c)(2).

¹² *People v. Quinn*, 183 Colo. 245, 250, 516 P.2d 420, 422 (1973.)

“probable cause” provides some guidance for the treatment of hearsay evidence. In the U.S., the chain of cases derived from *Aguilar v. Texas*¹³ and *Spinelli v. United States*¹⁴ suggests that the trustworthiness of hearsay from an unnamed informant, for the purpose of finding probable cause, should be evaluated with reference to two “prongs”: (1) the credibility of the source of information and (2) the reliability of the information reported by the source. Typically if the source of information is a named victim or witness, the credibility of that source will be presumed. The *Aguilar/Spinelli* analysis was modified somewhat by the *Illinois v. Gates*¹⁵ “totality of the circumstances” test, which would allow a shortcoming in one of the “prongs” to be compensated for by a strong showing in the other. As noted above, “good cause” should be regarded as no less stringent a standard than “probable cause.” To the extent “probable cause” determinations require a foundation of trustworthiness of hearsay to be shown, “good cause” should require no less.

III. DETERMINATION OF GOOD CAUSE

Count 1. Grand Larceny.

This count charged the defendant with stealing \$15,661 from the government of the RMI by conspiring with four others, Candi Leon, Nella Nashion, Steve Samuel and David Chin Tung Lin, to create “phony or fake” contracts between the government and Home Special Supply, without the government’s consent and with the intent to permanently deprive the government of that sum of money. The government did not allege that defendant committed all the acts

¹³378 U.S. 108 (1968).

¹⁴393 U.S. 410 (1969).

¹⁵462 U.S. 213 (1983).

necessary to meet the elements of the charged grand larceny, but rather that he was liable through his participation in a conspiracy.

The evidence presented by the government established the existence of the alleged conspiracy, through the testimony of Candi Leon, who described how the co-conspirators worked together to get government purchase requisitions (PRs) and alter them, and create fake invoices and fake quotations in support of the altered PRs. These PRs would be submitted to defendant for entry into the Ministry of Finance system to generate a purchase order which would be processed to create a government check to Home Special Supply. The check would be cashed and the proceeds would be distributed among the co-conspirators, sometimes in cash and sometimes to pay accounts the co-conspirators held with Home Special Supply. Defendant participated by entering the PRs, which he knew to be fake, into the system to generate purchase orders. He benefitted by receiving cash payments for his participation. The elements of a criminal conspiracy were shown. Defendant conspired with others, in that he agreed with the others to a plan or scheme to accomplish a crime, that is, the stealing of money from the government through the creation of fake contracts. Further, he took action to accomplish the crime which was the subject of the conspiracy. Defendant was criminally responsible for the acts of his co-conspirators for actions taken in furtherance of the conspiracy. Alternatively, he may be held responsible as an accessory, or as one who “aids” or “abets”¹⁶ in the commission of an offense against the Republic.

The government must also establish good cause to believe that the conspirators committed the crime alleged in Count 1, that is, stole \$15,661 from the government through the

¹⁶31 MIRC 103(A)(1).

payment of government check number 072579 to Home Special Supply pursuant to a phony or fake contract. This check was specifically identified by defendant in his statement made to the authorities (Government Exhibit 13) where he stated "On the first check #72579 amounts \$15,661.00 Candi Leon gave me \$100.00." The check was specifically identified as part of the criminal transactions conducted by the co-conspirators in the course of their conspiracy to steal from the government.

Even though defendant did not receive the full amount of the check, his participation in the scheme, as either a co-conspirator, accessory, or an aider and abettor, establishes his liability for the full amount, \$15,661.00, which exceeds \$500. The lack of government consent may be inferred from the submission of the fake contract which was the basis of the issuance of check number 072579. The intent to permanently deprive may be inferred from the distribution of the proceeds of the check to the various parties of the conspiracy. Sufficient facts have been shown to establish good cause to believe the offense charged in Count 1 was committed and that the defendant committed it.

Count 4. Grand Larceny.

With the establishment of the criminal conspiracy, the government must establish good cause to believe that the defendant, alone or in concert with others, stole \$19,000 from the government through the payment of government check number 075334 to Home Special Supply pursuant to a phony or fake contract.

There was evidence connecting check number 075334 to the criminal conspiracy. The

primary evidence was that given by Candi Leon in her testimony about Government Exhibit 1.¹⁷ Leon testified that the exhibit was a forged Ministry of Health purchase requisition that she had assisted in preparing, and that she had “whited out” the face and typed in new figures. She further testified that defendant had input the altered PR and generated a purchase order from it. On the face of the document, the total cost was \$19,000 and the vendor was Home Special Supply. The last signed approval, by the Secretary of Finance, was dated “5/20/10.” Government Exhibit 9 is a copy of the front of government check number 075334, in the amount of \$19,000.00, made out to Home Special Supply, dated “5/28/10.” The amount and vendor on the forged PR match the amount and payee on check number 075334. The date of the check was a little more than a week after the final approval on the forged PR. Presumably the government could have run a computer search to directly tie the check to the forged PR. However, for the purposes of a good cause determination for preliminary hearing, there is enough circumstantial evidence from which to infer check number 075334 was issued in response to the purchase requisition forged by the co-conspirators.

The additional elements of the charge may be inferred on the same basis set out in the discussion of Count 1.

Count 2. Grand Larceny.

Having established the existence of the criminal conspiracy of which defendant was a participant, the government must establish good cause to believe that the defendant, alone or in concert with others, stole \$15,689 from the government through the payment of government

¹⁷The exhibit is a copy of the original forged document which was retained by the government for use in other cases. The court examined the original document and saw evidence that it was altered.

check number 074292 to Home Special Supply pursuant to a phony or fake contract. Unlike in Count 1, there was no evidence from one with personal knowledge of the creation of the check or supporting documentation to connect it to the criminal enterprise of the conspiracy. Candi Leon did not mention the check in her testimony. It is not addressed in either her statement (Government Exhibit 2) or defendant's statement (Government Exhibit 13.)

Candi Leon, in her testimony, stated there were five checks issued to Home Special Supply as a result of the efforts of her and the others in her group. Defendant's statement related "I swear to tell the truth that on all 5 check paid out to Home Special Supply total up to \$80,350." While there was no direct evidence from the Ministry of Finance to the effect that there were only five checks made out to Home Special Supply during the relevant period, the government relied upon paragraph 6 of the Affidavit in Support of Criminal Information of Lt. Wilson Parker (Government Exhibit 14) which reads:

That my investigation revealed that through the scheme and methods highlighted in paragraph 5 above, the defendant connived, colluded or arranged with the other conspirators to execute **5** known fake and phony deals on various dates between March 2010 and June 2010 for which **5 checks** were issued to Home Special Supply by the RMI Government, amounting to **\$80,350**.

The government asserted this adequately identified the five checks that are the subject of the five grand larceny counts in the criminal information. The five subject checks add up to \$80,350, which total was confirmed by Candi Leon in her testimony and by defendant in his statement (Government Exhibit 13.) The information related by Lt. Wilson, both in his testimony and affidavit, was basically hearsay, as it was revealed by his investigation. While hearsay is admissible at preliminary hearings, there must be some foundation to indicate its trustworthiness. Lt. Wilson, in regard to the information contained in paragraph 6 of his affidavit, did not indicate

who the source of the information was, why that person should be regarded as credible, and how that person had knowledge of the information to suggest its reliability. Neither of the *Aguillar/Spinelli* prongs of credibility/reliability are addressed. However, the admissibility of this evidence was not challenged by defendant. The affidavit of Lt. Parker was admitted with no objection from the defendant, and no objection was raised to his testimony on this subject.

The government also relied upon paragraph 10(ii) of Government Exhibit 14 which stated that defendant

conspired with his co-conspirators to collect and share RMI Government **check no. 74294** covering **\$15,689.00** issued to Home Special Supply on 4/21/2010. That check is attached herewith as "**Government's Proposed Exhibit No. 3**", and the bank teller showing that it was paid into the defendant's said bank account is attached herewith as "**Government's Proposed Exhibit 3A**".

While this clearly linked defendant to check no. 74294, it is largely conclusory and hearsay. There was no foundation for determining the basis for the conclusion that the co-conspirators collected and shared that particular check.¹⁸ Again, no objection was raised to the introduction of the exhibit.

Defendant was, of course, under no obligation to object to the admission of evidence. The defense strategy may focus on other aspects of the case. Objection could potentially bring attention to weakness in the prosecution case that defendant intends to exploit at trial. Objection could simply amplify evidence the defendant would prefer to downplay.

While the government's case was built largely on circumstantial evidence and hearsay, the court believes that, taking reasonable inferences in favor of the government, "good cause" has

¹⁸There is also reason to doubt that the check was paid into defendant's bank account, as stated in the affidavit.

been shown that the offense charged was committed and that defendant committed it.

Counts 3 and 5. Grand Larceny.

The evidence supporting these two counts was similar to that supporting Count 2, although with respect to different checks, and consequently the court finds good cause for Counts 3 and 5.

Count 6. Cheating.

The government charged defendant with cheating in relation to the five checks that are the subject of Counts 1-5. As set out above, there was sufficient evidence to find good cause that there was a conspiracy and that the five checks were the subjects of the conspiracy. Sufficient evidence was shown that the five checks were obtained by false pretenses in that the checks were issued based upon fake purchase requisitions. Candi Leon testified that defendant knew the purchase requisitions were fake. The manner of distribution of the funds from the checks once deposited allows an inference of an intent to permanently deprive the owner. The value of the checks was more than \$500, as discussed in relation to the grand larceny charges.

Count 7. Forgery.

There was clear evidence of forgery in relation to the purchase requisition and back up documents from Count 4, relating to check number 74294, from the testimony of Candi Leon. Leon further testified that the co-conspirators similarly forged the back up documents in relation to the other checks. Circumstantial evidence, as related above in the discussion of Count 4, linked the conspirators, including defendant, to the checks which were the subject of Counts 1, 2, 3, and 5, and thus to the forgery of the support documents for each.

Count 8. Concealment, Removal or Alteration of Record or Process.

The statute refers to judicial records or process and the government orally dismissed this count.

Count 9. Possession or Removal of Government Property.

There was evidence from the testimony of Candi Leon that defendant destroyed the back up documentation for four of the five criminal transactions conducted by the conspiracy involving Home Special Supply in the relevant time period.¹⁹ Defendant stated (Government Exhibit 13) that Candi Leon called him about the checks and supporting documents for Home Special Supply and that he “need to pull them off from filing Cabinet because [he was] too involve in the fraud.” He then “pull the supporting document and destroyed them.” Based upon the circumstantial evidence discussed in relation to the grand larceny counts, the court finds good cause to find that this offense was committed and that defendant committed the offense, with regard to the backup documentation for check numbers 072579, 074294, 074820, and 07594. The backup documentation for check number 075334 was not destroyed and the court does not find good cause to believe that this offense occurred with regard to that check.

Defendant has argued that destruction of these back up documents does not constitute “removal” for the purposes of this statute. The court believes that the documents could not be destroyed unless they were removed and finds good cause on that basis. However, defendant may file a motion to dismiss on this basis after arraignment, where the matter may be more fully briefed.

¹⁹The forged purchase requisition (Government Exhibit 1), and supporting documents for the check in Count 4, were not destroyed. While no supporting documents were tendered for Counts 1, 2, 3, and 5, there was no testimony that an appropriate search of the records had been conducted and that no support documents were found.

Count 10. Conspiracy.

The court finds good cause on this count, based upon the findings in the discussion of Count 1 above, where a conspiracy was found to exist and defendant was found to be a part of it.

IV. CONCLUSION


The court finds good cause to proceed to trial on Counts 1 - 7 and Count 10. The court further finds good cause to proceed to trial on Count 9 in relation to the documentation for four of the five checks alleged in the count. Count 8 was dismissed by the prosecution.

ORDER

Based upon the forgoing, it is hereby ORDERED as follows:

1. Good cause being found, arraignment on Counts 1 - 7, Count 9 and Count 10 is set for 2:00 p.m. on April 15, 2011 at the Majuro Court house, at which time the Court will take the defendant's plea, if he is ready to enter a plea, and will schedule further proceedings; and
2. Count 8 of the Criminal Information is dismissed.

Date: April 13, 2011



James H. Plasman
Associate Justice, High Court