

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTINO RIMUO, ITEMICHY TIMOTHY, )  
 and SIMON "ESSENET" PETER, )  
 )  
 Defendants. )  
 )  
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CRIMINAL CASE NO. 2020-1511

ORDER MEMORIALIZING RULINGS

Larry Wentworth  
Associate Justice

Hearing: February 10, 2021  
Decided: February 10, 2021  
Memorialized: February 19, 2021

APPEARANCES:

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## HEADNOTES

### Criminal Law and Procedure – National Crimes

The Constitution gives Congress the power to define national crimes, and the national government has exclusive jurisdiction over all national crimes, as defined in 11 F.S.M.C. 104(7). FSM v. Rimuo, 23 FSM R. 164, 167 (Chk. 2021).

### Criminal Law and Procedure

A crime is an offense against the sovereign which the government deems injurious not only to the victim, if there is one, but also to the public at large, and which it punishes through a judicial proceeding in the government's name. FSM v. Rimuo, 23 FSM R. 164, 167 (Chk. 2021).

### Criminal Law and Procedure – National Crimes; Jurisdiction – Arising Under; Jurisdiction – Exclusive FSM Supreme Court

The FSM Supreme Court has exclusive jurisdiction over cases in which the national government is a party, and the national government is always the named plaintiff in a criminal case, and, since all national crimes prosecutions are for alleged violations of national statutory law, all national criminal prosecutions are cases that arise under national law. FSM v. Rimuo, 23 FSM R. 164, 167 (Chk. 2021).

### Criminal Law and Procedure – Civil Rights Offenses; Criminal Law and Procedure – National Crimes

Alleged violations of a person's civil rights secured by the FSM Constitution or laws, is certainly otherwise a crime against the FSM, and undoubtedly within FSM Supreme Court jurisdiction. FSM v. Rimuo, 23 FSM R. 164, 167 (Chk. 2021).

### Criminal Law and Procedure – Aggravated Assault; Criminal Law and Procedure – Assault and Battery; Criminal Law and Procedure – National Crimes

Since the Constitution was amended to remove jurisdiction for major crimes from the national government's purview, assault and aggravated assault are mostly in state jurisdiction. The national government retains jurisdiction over crimes such as assault and aggravated assault as national crimes only when those crimes are inherently national in character and defined anywhere in Title 11. FSM v. Rimuo, 23 FSM R. 164, 167 (Chk. 2021).

### Criminal Law and Procedure – Aggravated Assault; Criminal Law and Procedure – Assault and Battery; Criminal Law and Procedure – National Crimes

To be "inherently national in character" an assault or aggravated assault must either be committed in those places where the national government has special jurisdiction, such as the FSM exclusive economic zone, FSM airspace, on an FSM airborne vehicle or watergoing vessel, or on an FSM-flagged watergoing vessel; or be committed under those circumstances where the national government has a special interest, such as a crime committed against a present or former national government public servant in relation to his

or her public service; or committed by a national public servant while engaged in official duties; or involving national government property; or committed against someone trying to participate in a national election. When none of these conditions or circumstances are present, the FSM Supreme Court has no jurisdiction over aggravated assault and assault charges. FSM v. Rimuo, 23 FSM R. 164, 167-68 (Chk. 2021).

Criminal Law and Procedure – Dismissal; Criminal Law and Procedure – National Crimes

Dismissal of aggravated assault and assault charges over which the FSM Supreme Court lacks jurisdiction is without prejudice to any possible prosecution in state court. FSM v. Rimuo, 23 FSM R. 164, 168 (Chk. 2021).

Criminal Law and Procedure – Interrogation and Confession

A defendant's suppressed statement may not be used against him at trial unless the defendant chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Rimuo, 23 FSM R. 164, 168 (Chk. 2021).

Criminal Law and Procedure – Interrogation and Confession

A statement suppressed because the defendant was not given his rights may, if the defendant testifies, be used by the prosecution to impeach the truthfulness of the defendant's testimony because the shield of the defendant's constitutional rights cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances. Because the defendant, having taken the witness stand, is under the obligation to speak truthfully and accurately, the prosecution may then use the usual truth-testing devices of the adversary process, such as introducing evidence of prior inconsistent statements. FSM v. Rimuo, 23 FSM R. 164, 168 (Chk. 2021).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On February 10, 2021, the court heard the parties on the issue of the FSM Supreme Court's jurisdiction over the crimes charged in Counts 4 through 10 and 12 through 15 of the Criminal Information and on defendant Simon "Essenet" Peter's and Artino Rimuo's motions to suppress their statements. This order memorializes the court's rulings from the bench on those matters.

I. PAPERS FILED

On January 19, 2021, Artino Rimuo filed his Motion to Suppress Artino Rumou's Statement, and Simon Peter filed his Motion to Suppress on Altered Grounds Alternatively for Order to Prohibit Introducing Evidence Not Disclosed. On January 26, 2021, defendants Rimuo and Peter each filed a brief on the court's jurisdiction over counts 4 through 10 and 12 through 15 (an issue the court raised sua sponte) and moved for the dismissal of the counts among those that applied to themselves. The government filed its brief on January 27, 2021, as did defendant Itemichy Timothy. No party filed a response to another party's brief, although the government's time to respond was enlarged to February 5, 2021.

II. FSM SUPREME COURT'S CRIMINAL JURISDICTION

Counts 1, 2, and 3 of the Information each charge one of the three defendants, Weno Municipal Police officers Artino Rimuo, Itemichy Timothy, and Simon "Essenet" Peter, with depriving an arrestee of his civil rights on August 19, 2020, thus violating 11 F.S.M.C. 701(1). Counts 4 through 10 and 12 through

15<sup>1</sup> charge each of the defendants, Rimuo, Timothy, and Peter, with various instances of aggravated assault under 11 F.S.M.C. 608 or assault under 11 F.S.M.C. 609, all part of the same of the same event or chain of events involving an arrestee on August 19, 2020. The court raised the issue of whether it, in this case, had jurisdiction over the aggravated assault and assault charges.

The government contends that since the FSM Supreme Court's jurisdiction extends to the whole of the Federated States of Micronesia therefore any crime committed within the FSM that violate its laws could be prosecuted in the FSM Supreme Court and that the FSM Code prohibited both aggravated assault, 11 F.S.M.C. 608, and assault, 11 F.S.M.C. 609. The government further contends that, although the states exercise jurisdiction over aggravated assault and assault, the FSM Supreme Court could also exercise jurisdiction over those crimes under its concurrent jurisdiction.

The Constitution gives Congress the power to define national crimes, FSM Const. art. IX, § 2(p), and the national government "has exclusive jurisdiction over all national crimes, as defined in section 104(7)," 11 F.S.M.C. 103(1). A crime is an offense against the sovereign "which the government deems injurious not only to the victim [if there is one] but [also] to the public at large, and which it punishes through a judicial proceeding in the government's name." 21 AM. JUR. 2D *Criminal Law* § 1 (1998). The FSM Supreme Court has exclusive jurisdiction over "cases in which the national government is a party," FSM Const. art. XI, § 6(a), and the national government is always the named plaintiff in a criminal case.<sup>2</sup> Also, since all national crimes prosecutions are for alleged violations of national statutory law, all national criminal prosecutions are cases that arise under national law. See FSM Const. art. XI, § 6(b).

Alleged violations of a person's civil rights secured "by the Constitution or laws of the Federated States of Micronesia," 11 F.S.M.C. 701(1), is certainly "otherwise a crime against the Federated States of Micronesia," 11 F.S.M.C. 107(4)(a)(ii), and undoubtedly within FSM Supreme Court jurisdiction. Since the Constitution was amended to remove jurisdiction for major crimes from the national government's purview, assault and aggravated assault are mostly in state jurisdiction. The national government retains jurisdiction over crimes such as assault and aggravated assault as national crimes only when those crimes are "inherently national in character and defined anywhere in [Title 11]." 11 F.S.M.C. 104(7)(a)(i). Although both assault and aggravated assault are defined in Title 11 in sections 609 and 608 respectively, the Information's allegations do not place these charges within the Title 11's definition of a crime "inherently national in character."

To be "inherently national in character" the crime must either be committed in those places where the national government has special jurisdiction, such as the FSM exclusive economic zone, FSM airspace, on an FSM airborne vehicle or watergoing vessel, or on an FSM-flagged watergoing vessel, 11 F.S.M.C. 104(7)(b)(i) through (v); or be committed under those circumstances where the national government has a special interest, such as a crime committed against a present or former national government public servant in relation to his or her public service, 11 F.S.M.C. 104(7)(b)(vi) and (vii); or committed by a national public servant while engaged in official duties, 11 F.S.M.C. 104(7)(b)(viii); or involving national government property, 11 F.S.M.C. 104(7)(b)(ix); or committed against someone trying to participate in a national election, 11 F.S.M.C. 104(7)(b)(x). None of the conditions or circumstances in 11 F.S.M.C. 104(7)(b) are present in this case.

The FSM Supreme Court therefore has no jurisdiction over the aggravated assault and assault

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<sup>1</sup> Count 11 was dismissed earlier.

<sup>2</sup> For a possible exception see FSM v. Zhang Xiaohui, 14 FSM R. 602, 609-11 (Pon. 2007) and 19 F.S.M.C. 1307.

charges that were pled. Accordingly, Counts 4 through 10 and 12 through 15 of the Criminal Information were dismissed for lack of jurisdiction, although the factual allegations therein remain a part of the Information as the means by which 11 F.S.M.C. 701(1) was violated. This dismissal is without prejudice to any possible prosecution in the Chuuk State Supreme Court, if one should occur.

### III. DEFENDANTS' STATEMENTS AND MOTIONS TO SUPPRESS

Rimuo and Peter both moved to suppress the statements that they made when interrogated because they were either not given their constitutional rights beforehand or did not waive those rights and because those statements were not produced in response to their discovery requests. On February 5, 2021, the government produced those Chuukese-language statements. The government did not produce any written waivers of rights.

During the February 10, 2021 hearing, the government conceded that the statements of Rimuo and Peter that it produced on February 5, 2021, could be suppressed and that it would prove its case against them with other evidence. The court then ruled that the government would not, as agreed by the parties, be able to introduce any of those statements in its case, but noted that the government could use those statements against the defendant who made them if that defendant testified at trial. Since that struck defense counsel as a novel innovation, the court explains that principle more fully below.

A defendant's suppressed statement may not be used against him at trial unless the defendant chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility.<sup>3</sup> FSM v. Aliven, 16 FSM R. 520, 530 (Chk. 2009); FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008); Chuuk v. Suzuki, 16 FSM R. 625, 630 (Chk. S. Ct. Tr. 2009) (only circumstance in which the government may use a defendant's suppressed statement is if the defendant chooses to testify on his own behalf; the statement can then be used to impeach his credibility). A statement suppressed because the defendant was not given his rights may, if the defendant testifies, be used by the prosecution to impeach the truthfulness of the defendant's testimony because the shield of the defendant's constitutional rights "cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances," since the defendant, having taken the witness stand, is under the obligation to speak truthfully and accurately, the prosecution may then use the usual truth-testing devices of the adversary process, such as introducing evidence of prior inconsistent statements. Harris v. New York, 401 U.S. 222, 225-26, 91 S. Ct. 643, 645-46, 28 L. Ed. 2d 1, 4-5 (1971).

Accordingly, as the parties agreed, Rimuo's and Peter's pretrial statements are hereby suppressed.

### IV. CONCLUSION

Because of the lack of FSM Supreme Court jurisdiction, all of the aggravated assault and assault charges are dismissed without prejudice to any state court prosecution. Furthermore, the government may not use at trial either Simon "Essenet" Peter's pretrial statement or Artino Rimuo's pretrial statement except in cross-examination of the defendant who made the statement if that defendant testifies.

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<sup>3</sup> The court misspoke during the February 10, 2021 hearing and left defense counsel with the impression that, if a defendant's statement was offered by the government to impeach the defendant's testimony during trial, the defendant could again raise the issue of whether he had been given his rights before he made his statement. As just explained above, that is not so.