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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>COMMONWEALTH OF THE</b>	)	<b>CRIM. CASE NO. 13-0024</b>
<b>NORTHERN MARIANA ISLANDS,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>ORDER DENYING</b>
	)	<b>COMMONWEALTH'S MOTION TO</b>
<b>v.</b>	)	<b>INTRODUCE EVIDENCE UNDER THE</b>
	)	<b>FRESH COMPLAINT RULE</b>
<b>RAY A. AYUYU,</b>	)	
	)	
<b>Defendant.</b>	)	

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**I. INTRODUCTION**

**THIS MATTER** came before the Court on August 6, 2013, on the Commonwealth's motion. Ray A. Ayuyu was represented by Colin Thompson. The Commonwealth was represented by Assistant Attorney General Brian Flaherty. Based on a careful review of the filings, oral argument, and applicable law, the Commonwealth's motion is denied.

Defendant Ayuyu faces charges of sexual abuse of a minor in the second degree, in violation of 6 CMC § 1307(a)(1); and disturbing the peace, in violation of 6 CMC § 3101(a). The Commonwealth moved to introduce testimony concerning statements the alleged victim made to her cousin about the alleged sexual abuse. The Commonwealth asks this Court to apply the common law fresh complaint doctrine to create an exception to the rule of evidence barring hearsay. NMI R. Evid. 802.

**II. LEGAL STANDARD**

In the Commonwealth, the application of common law is governed by statute: "In all proceedings, the rules of the common law. . .as generally understood and applied in the United

1 States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written  
2 law or local customary law to the contrary.” 7 CMC § 3401. Commonwealth courts are only bound  
3 by the common law of the fifty states when there is an absence of controlling written or customary  
4 law to the contrary. *See Mundo v. Superior Court*, 4 NMI 392, 396 (1996); and *In re Buckingham*,  
5 2012 MP 15 ¶ 12. Written law “includes the NMI Constitution and NMI statutes, case law, court  
6 rules, legislative rules and administrative rules, as well as the Covenant and provisions of the U.S.  
7 Constitution, laws and treaties applicable under the Covenant.” *In re Buckingham*, 2012 MP 15  
8 ¶ 12 (citations omitted). Commonwealth Superior Court decisions are not binding on this Court.  
9 *Bank of Saipan v. Superior Court*, 2001 MP 7 ¶ 21.

10 The fresh complaint doctrine is a common law rule that “permit[s] a prosecutor to introduce  
11 evidence of an alleged [sexual assault] victim’s extrajudicial allegations that the crime occurred,  
12 under circumstances where they would otherwise be inadmissible under the hearsay rule.”  
13 *Commonwealth v. Calvo*, Crim. No. 08-6105 (NMI Super. Ct. July 28, 2009) (Order Granting  
14 Government’s Motion to Introduce Fresh Complaint Evidence at 2) (citations omitted). The  
15 doctrine allows the prosecution to introduce this evidence during its case in chief. *Id.* at 3. The  
16 rationale behind the fresh complaint doctrine is that in cases of sexual assault, the victim’s silence  
17 after the assault is presumed to be a prior inconsistent statement, which requires preemptive  
18 rehabilitation by way of evidence that the victim told someone about the assault. *See Dale Joseph*  
19 *Gilsinger, Application of the Common-Law “Fresh Complaint” Doctrine as to Admissibility of*  
20 *Alleged Victim’s Disclosure of Sexual Offense—Post-1950 Cases*, 39 A.L.R.6th 257 (2013);  
21 Kathryn M. Stanchi, *The Paradox of the Fresh Complaint Rule*, 37 B.C. L. Rev. 441, 446 (1996)  
22 (hereinafter “Stanchi”). As such, the fresh complaint doctrine relies on an assumption that jurors  
23 will inherently doubt the veracity of the victim’s testimony in a sexual assault case.

1 **III. DISCUSSION**

2 The Commonwealth has written law concerning the introduction of evidence, the hearsay  
3 rule, exceptions to the hearsay rule, special rules of evidence in cases of sexual assault and child  
4 molestation, and the introduction of prior consistent statements. *See* NMI R. Evid. 412-14,  
5 801(d)(1)(B), 802-04. The fresh complaint doctrine seeks to introduce evidence in a way that is  
6 barred by the Commonwealth Rules of Evidence. At its core, the fresh complaint doctrine is  
7 contrary to written law in the Commonwealth.<sup>1</sup> Accordingly, this Court holds that the fresh  
8 complaint doctrine is inapplicable in the Commonwealth.

9 In support of this decision, the Court notes that the Commonwealth Rules of Evidence are  
10 patterned after the Federal Rules of Evidence, and the Federal Rules do not include a fresh  
11 complaint exception to the hearsay rule. *See CNMI v. Lucas*, 2003 MP 9 ¶ 9 (looking to Federal  
12 Rules of Evidence to interpret Commonwealth Rules of Evidence); *and Tome v. U.S.*, 513 U.S. 150,  
13 154, 156-58 (1995) (testimony from third parties concerning prior consistent statements of the child  
14 sexual assault victim analyzed under Fed. R. Evid. 801(d)(1)(B)).

15 Furthermore, the Court would like to take a moment to recognize the troubling history and  
16 rationale underlying the common law fresh complaint doctrine. The doctrine has its roots in the  
17 “hue and cry” requirement found in early English law that required proof of a crime victim’s  
18 prompt complaint as part of the prosecution’s case. *Stanchi* at 446. This requirement was  
19 abandoned in the mid-1700s for all crimes except rape. *Id.* Although evidence of a prompt  
20 complaint is not a formal element of sexual crimes, the assumption that a “real” victim of sexual  
21 assault would complain immediately has persisted in American law, even in the face of empirical

22 \_\_\_\_\_  
23 <sup>1</sup> There is one published Commonwealth Superior Court order that adopts the fresh complaint doctrine. *Commonwealth*  
24 *v. Calvo*, Crim. No. 08-6105 (NMI Super. Ct. July 28, 2009) (Order Granting Government’s Motion to Introduce Fresh  
Complaint Evidence ). However, the decision of another trial court is not binding on this Court. *See Bank of Saipan v.*  
*Superior Court*, 2001 MP 7 ¶ 21.

1 evidence to the contrary. *Id.* at 459 n. 99. Previously, the Commonwealth Superior Court adopted  
2 the fresh complaint doctrine and implicitly accepted its underlying assumption: “[E]vidence of fresh  
3 complaint. . .is used to respond to the fact finder’s *natural assumption* that if the act complained of  
4 had occurred, and early complaint would have been made.” *Commonwealth v. Calvo*, Crim. No. 08-  
5 6105 (NMI Super. Ct. July 28, 2009) (Order Granting Government’s Motion to Introduce Fresh  
6 Complaint Evidence at 3) (emphasis added and citations omitted). There is no “normal” way to  
7 react to a sexual assault,<sup>2</sup> and victims who do not tell anyone about the abuse should not be placed  
8 at an evidentiary disadvantage compared to those who do. The fresh complaint doctrine reinforces  
9 the false notion that, unless a victim promptly discloses sexual assault, it did not occur. The  
10 doctrine is premised upon a false assumption and has no place in the Commonwealth.

11 **IV. CONCLUSION**

12 Under the Commonwealth Rules of Evidence, prior consistent statements of the victim  
13 witness may be introduced “to rebut an express or implied charge against [the victim witness] of  
14 recent fabrication or improper influence or motive.” NMI R. Evid. 801(d)(1)(B). Because there is  
15 written law that squarely addresses the type of evidence the Commonwealth seeks to introduce  
16 under the fresh complaint doctrine, and because that written law is contrary to the common law  
17 doctrine, the Court **DENIES** the Commonwealth’s motion.

18 **IT IS SO ORDERED** this 9<sup>th</sup> day of August, 2013.

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20  
21 /s/  
22 JOSEPH N. CAMACHO  
23 Associate Judge

24 <sup>2</sup> See *Stanchi* at 471 n.167.