

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR PUBLICATION

2014 MAR -5 PM 1:13

BY *PA*
SP DEPT. OF JUSTICE

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

MARK ANTHONY GERARDINO,

Defendant.

Criminal Case No. 13-0096

**ORDER DENYING DEFENDANT'S
MOTION IN LIMINE TO EXCLUDE OR
LIMIT CHARACTER EVIDENCE**

I. INTRODUCTION

THIS MATTER came before the Court on a Motion in Limine to Exclude Prior Bad Acts on February 18, 2014 at 9:30 a.m. in Courtroom 202A. The Commonwealth was represented by Assistant Attorney General Jacinta M. Kaipat. Mark Anthony Gerardino ("Defendant") was represented by Assistant Public Defenders Eden Schwartz and Michael Sato.

On February 5, 2014, the Commonwealth filed a Notice of intent to introduce evidence of other crimes, wrongs, or acts which occurred on March 19, 2013, pursuant to NMI R. Evid. 404(b), 609, and 6 CMC § 1320(d). Defendant objected to the admittance of such evidence via a Motion in Limine and oral argument. On February 18, 2014, the Court ruled in favor of the Commonwealth on this issue in open court and stated that it would issue a written order detailing its ruling.

\\

\\

ENTERED
MAR 14 2014

1 **II. APPLICABLE LAWS**

2 “In a prosecution for a crime involving domestic violence or of interfering with a
3 report of a crime involving domestic violence, evidence of other crimes involving domestic
4 violence by the defendant against the same or another person is admissible.” 6 CMC §
5 1320(d).

6 NMI R. Evid. 404(a), on the other hand, states, “[e]vidence of a person’s character or
7 a trait of character is not admissible for the purpose of proving action in conformity
8 therewith on a particular occasion.” NMI R. Evid. 404(b) further states, “Evidence of other
9 crimes, wrongs, or acts is not admissible to prove the character of a person in order to show
10 action in conformity therewith.”

11 NMI R. Evid. 609, which governs “impeachment of evidence of conviction of [a]
12 crime,” has not been raised or argued for the purposes of this motion.

13
14 **III. DISCUSSION**

15 At the outset of this discussion, for reasons discussed below, 6 CMC § 1320(d)
16 allows for the admission of other acts notwithstanding NMI R. Evid. 404. Defendant makes
17 three arguments that evidence of Defendant’s conduct is inadmissible in this case. First, 6
18 CMC § 1320(d) is inapplicable in this case because Defendant and Emely Salvoro (“the
19 Victim”)¹ are not “household members” and Defendant’s acts do not fit the definition of
20 “crimes involving domestic violence.” Second, 6 CMC § 1320(d) requires that there must
21 be a charged crime for the act to be admissible under that section. Finally, in order for
22 Defendant’s act to be admissible, 6 CMC § 1320(d) must be read in harmony with NMI R.
23 Evid. 404 because the Rules of Evidence are given the same status as statutes; therefore, the
24 Rules of Evidence are given the same weight as statutes.

25 \\\

26 \\\

27
28

¹ At this point in the case, Ms. Salvoro is an alleged victim, but, for the purposes of this motion, she is referred to as “the Victim” for clarity and to save time and space.

1 **A. DEFENDANT AND THE VICTIM ARE “HOUSEHOLD MEMBERS” AND DEFENDANT’S**
2 **ACT AMOUNTED TO A “CRIME INVOLVING DOMESTIC VIOLENCE” WHICH MAKES**
3 **6 CMC § 1320(D) APPLICABLE TO THIS CASE**

4 Defendant argues that 6 CMC § 1320(d) is inapplicable to this matter for several
5 reasons. First, Defendant states that 6 CMC § 1320 only applies to crimes involving
6 domestic violence, which must be committed against a household member. (Def. [‘s] Mot.
7 in Limine 4:24-5:2.) This argument implies that the charge of Assault and Battery and
8 Disturbing the Peace do not constitute “crimes involving domestic violence” because
9 Defendant and the Victim are not “household members.” The Court disagrees. The
10 Commonwealth Code defines “domestic or family violence,” in 8 CMC § 1902; “crimes
11 involving domestic violence,” in 6 CMC § 1461; and “household members” in both 8 CMC
12 § 1902 and 6 CMC § 1461.

13 8 CMC § 1902(a)(1) states, “[Unless the context otherwise requires, domestic or
14 family violence means,] [a]ttempting to cause or intentionally, knowingly or recklessly
15 causing bodily injury to another family or household member.” 8 CMC § 1902(b) defines
16 “[f]amily or household members” under 8 CMC § 1902(b)(7) and (8) as “[p]ersons who
17 have a child in common” and “[m]inor children of . . . [such] person[s].”

18 Along the same lines, 6 CMC § 1461(a)(1) states:

19 [In this act,] ‘[d]omestic violence’ and ‘crime involving domestic violence’
20 mean one or more of the following offenses . . . or an attempt to commit the
21 offense, by a household member against another household member:

- 22 (A) A crime against the person under Title 6, Division 1, Part 1;²
23 . . . [and]
- 24 (H) Disturbing the peace under 6 CMC § 3101;

25 In addition, 6 CMC § 1461(a)(2)(C) defines “[h]ousehold member” as including “[a]dults or
26 minors who are dating or who have dated.” 6 CMC § 1461(a)(2)(G) and (H) define
27 “[h]ousehold member” as including “[p]ersons who have a child of the relationship; and
28 [m]inor children . . . [of the] relationship.”

² This section includes Assault and Battery.

1 In this case, the alleged act which the Commonwealth wishes to introduce is
2 described as follows, “[o]n March 19, 2013, the Victim . . . informed . . . Defendant . . . that
3 she was ending their relationship. Defendant became angry and threw a hard object at [the
4 Victim] as she ran out the door.” (Commw. Notice 2:4-7.) This scared the Victim.

5 In this case, Defendant and Victim were at one time dating and have a child together,
6 thus, they are family or household members as defined under both 6 CMC 1461(a)(2) and 8
7 CMC § 1902(b). In reaction to the Victim ending the relationship, Defendant threw a “hard
8 object” at the Victim, which caused unlawful bodily harm to the Victim and it was done
9 without the Victim’s consent, in violation of 6 CMC § 1202(a) – Assault and Battery – and,
10 therefore, in violation of 6 CMC § 1461(a)(1)(A).³ Additionally, by throwing the hard
11 object at the Victim, Defendant intentionally attempted to cause, and actually caused, bodily
12 injury to the Victim, in violation of 8 CMC § 1902(a)(1). Thus, Defendant’s act of throwing
13 a hard object at the Victim’s back qualifies as a “crime involving domestic violence” and
14 “domestic or family violence.”

15
16 **B. THE ACT DOES NOT HAVE TO BE A CHARGED CRIME UNDER 6 CMC § 1320(D)**

17 Defendant argues that, to be admissible, the alleged conduct must have been charged
18 as a crime against Defendant. To support this argument, Defendant first states that the plain
19 language of the statute – including the word crimes – supports this position, in other words,
20 an act must be charged to be a crime and only crimes are admissible against a defendant
21 under 6 CMC § 1320(d).⁴ Second, Defendant argues that 6 CMC § 1320(c), another
22 subsection of the same statute, supports his interpretation that crimes must be charged. It
23 states, “[f]or the purposes of this section, the prior conduct referred to in subsections (a) and
24 (b) need not have resulted in any criminal charge or conviction in order to be admissible.” 6
25 CMC § 1320(c). Defendant argues that if the Legislature intended for 6 CMC § 1320(d) to
26

27 ³ Which includes Assault and Battery as “[a] crime against the person under Title 6, Division 1, Part 1.”

28 ⁴ Defendant does not offer any authority supporting his definition of crime or his position that an act must be charged in order to be considered a crime.

1 be included the Legislature would have included it. Because the Legislature did not include
2 it, the Legislature intended “crimes” to mean charged crimes.

3 Though this is a well thought out argument, the Court disagrees. 6 CMC § 1320(d)
4 does not include the term “crimes,” it includes the phrase “crimes involving domestic
5 violence.” This term is defined in the Commonwealth Code as “one or more of the
6 following *offenses*⁵ . . . or an attempt to commit the *offense*[.]” 6 CMC § 1461(a)(1)
7 (emphasis added.) “Offense” is defined as “an act or omission which is punishable by penal
8 sanctions under the provision of this title.” 6 CMC § 103(c). Nothing in the definition of
9 either term requires a conviction, a charge, or even a report of the incident. The Legislature
10 would have drafted 6 CMC § 1320(d) to explicitly apply only to charged crimes or
11 convictions if that had been its intention. Instead, the Legislature drafted 6 CMC § 1320(d)
12 to read, “evidence of other ‘crimes involving domestic violence.’” Thus, the definitions in
13 the Commonwealth Code control this issue.

14 Furthermore, the Court reviewed the Legislature’s notes contained in the
15 Commission Comments under 6 CMC § 1301,⁶ which stated that the general legislative
16 intent under PL 12-82 was to “Correct deficiencies in the current code” and to “provide[]
17 more severe penalties for conduct which is more harmful and offensive to the public safety.”
18 See 6 CMC § 1301 (Commission Comments). The Court interprets this commentary to
19 mean that the Legislature intended to expand the rights of victims under this section.

20 With this in mind, focus is turned to the nature of domestic violence and its relation
21 to the Legislature’s notes. The Legislature intended to include domestic violence in its
22 statutes aimed at providing more severe punishments for conduct that is harmful to the
23 public safety. Because domestic violence sometimes requires evidence of prior occurrences
24 in order to be demonstrated, the Legislature included special code sections (e.g. 6 CMC §

25
26
27 ⁵ Both Assault and Battery and Disturbing the Peace are listed as offenses following section 6 CMC §
1461(a)(1).

28 ⁶ The Comments at the bottom of 6 CMC § 1320 erroneously cross-reference to 1 CMC § 1301 instead of 6
CMC § 1301.

1 1320 or 8 CMC §§ 1901-1951) to allow for the inclusion of prior acts domestic violence into
2 evidence.

3
4 **C. REGARDLESS OF 6 CMC § 1320 FUNCTIONING NOTWITHSTANDING NMI R. EVID.
404, 6 CMC § 1320 AND 404 ARE IN HARMONY**

5 Defendant asserts that 6 CMC § 1320(d) must be read in harmony with NMI R. Evid.
6 404, based upon the Supreme Court's findings in *Commonwealth v. Camacho*, 2002 MP 14.
7 The Court disagrees. *Camacho* dealt with the Rules of Criminal Procedure⁷ and a statute⁸
8 that *specifically recognized the court's authority*. Here, we are concerned with the Rules of
9 Evidence and a statute that *specifically states that Defendant's act "is admissible."* 6 CMC
10 § 1320(d). By stating that "evidence of other crimes involving domestic violence by
11 defendant . . . *is admissible*" (emphasis added), it is clear the Legislature intends for 6 CMC
12 § 1320(d) to function notwithstanding the Rules of Evidence. In light of the language of 6
13 CMC § 1320(d), Defendant failed to persuade the Court that 6 CMC § 1320(d) is subject to
14 NMI R. Evid. 404.

15 Assuming, arguendo, that 6 CMC § 1320(d) is subject to and must be read in
16 harmony with NMI R. Evid. 404 – or that 6 CMC § 1320(d) is inapplicable – the
17 Commonwealth still provided enough of an explanation to support admission of this
18 evidence to show motive. NMI R. Evid. 404(b) states, "[e]vidence of other crimes, wrongs
19 or acts is not admissible to prove the character of a person . . . it may, however, be
20 admissible for other purposes, such as proof of motive." The Eight Circuit has found:

21
22 404(b) [is a rule] of inclusion, permitting admission . . . unless the evidence
23 tends to prove only the defendant's criminal disposition. . . . "[T]he court is
24 vested with broad discretion in determining whether to admit wrongful act
25 evidence. The trial court's determination will [only] be disturbed . . . [if it is]
show[n] that the evidence in question clearly had no bearing upon any of the
issues involved."

26
27
28 ⁷ The CNMI Constitution specifically states that "the chief justice . . . may propose rules governing . . .
criminal procedure."

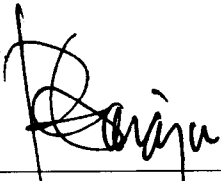
⁸ 6 CMC § 6402(b) states, "[o]nly in the exercise of discretion by a court."

1 *United States v. Street*, 66 F.3d 969, 976 (8th Cir. 1995) (citing *United States v. Callaway*,
2 938 F.2d 907, 910 (8th Cir. 1991). Thus, the Court agrees that under NMI R. Evid. 404(b),
3 Defendant's act from March 19, 2013 – which was noticed – cannot be used to show
4 Defendant conformed with past acts; however, it can be used to establish Defendant's
5 motive to harm the Victim, Defendant's intent to harm the Victim, Defendant's opportunity
6 to harm the Victim, or to establish that Defendant had a plan in place to harm the Victim in
7 response to the Victim "ending their relationship." The March 19, 2013 act is admissible for
8 a wide range of other purposes and, thus, is admissible for those purposes under 404(b).

9
10 **IV. CONCLUSION**

11 Defendant's Motion in Limine to Limit Character Evidence is denied. 6 CMC §
12 1320(d) applies to this matter and functions notwithstanding NMI R. Evid. 404. The March
13 19, 2013 incident is admissible.

14
15 **IT IS SO ORDERED** this 5th day of March, 2014

16 
17 _____
18 **ROBERTO C. NARAÑA, Presiding Judge**
19
20
21
22
23
24
25
26
27
28