

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	CRIMINAL CASE NO. 97-187 AGIU CASE NO. 97-029
	)	
Plaintiff,	)	
	)	
v.	)	
MIN WANG, AKA LINDA WANG,	)	<b>ORDER DENYING DEFENDANT’S MOTION TO COMPEL</b>
	)	
Defendant.	)	
	)	

**I. INTRODUCTION**

This matter came before the Court on February 18, 1998 at 1:30 p.m. in Courtroom D on Defendant’s motion to compel. Assistant Attorney General Robert J. Steinborn appeared on behalf of Plaintiff. Defendant Min Wang appeared through her counsel, Timothy MB Farrell, Esq. This Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision.

[p. 2]

**II. FACTS**

Between September 1997 and January 1998, Defendant Wang made several requests to Plaintiff pursuant to Rule 16 of the Commonwealth Rules of Criminal Procedure to provide her with all materials in its possession having to do with every arrest, charge or prosecution of U.S. and non-

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U.S. citizens under Public Law 8-14<sup>1</sup>. The information is sought by Defendant Wang to establish a defense based on the Government's unequal enforcement of this law as against non-residents. The Government refused to comply with the requests, basing their denial in large part on the scope and materiality of the requested information.

On February 2, 1998, Defendant filed the instant motion to compel.

### III. ISSUES

1. Whether Defendant Wang has made a threshold showing that the Government declined to prosecute similarly situated suspects of other races in order to entitle her to discovery on her claim that prosecution was based on race?
2. Whether Rule 16(a)(1)(C) of the Commonwealth Rules of Criminal Procedure authorizes Defendant Wang to examine Government documents material to preparation of her selective-prosecution claims?

### IV. ANALYSIS

#### A. The Threshold Showing

Defendant Wang asserts that she is entitled to all the requested information because it will likely support her argument that Public law 8-14, and specifically 6 CMC § 1344, is being enforced unequally as against Asian non-resident women and thus, provide her with a basis for a motion to dismiss.

**[p. 3]** So long as the prosecution has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file . . . generally rests entirely in their discretion. Bordenkircher v Hayes, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978). As a result, a presumption of regularity supports their prosecutorial decisions. United States v. Chemical Foundation, Inc., 272 U.S. 1, 14-15, 47 S.Ct. 1, 6, 71 L.Ed. 131 (1926). For a defendant to be entitled to discovery on a claim that he was singled out for prosecution

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<sup>1</sup>Public Law 8-14 is codified in 6 CMC, Div. 1, Article 3. "Prostitution" (6 CMC §§ 1341-1348). In her reply brief, counsel for Defendant Wang indicated that her proposed motion to dismiss would be limited to the charges of promoting prostitution as provided under 6 CMC § 1344.

The requested documentation comprised eight separate categories of items pertaining to prosecutions under PL 8-14.

on the basis of race, there must be a threshold showing that the Government declined to prosecute similarly situated suspects of other races. U.S. v. Armstrong, \_\_\_ U.S. \_\_\_, 116 S.Ct. 1480, 1485 (1996).

As cited above, the Court finds the Armstrong case to be helpful and relevant to the instant case. In Armstrong, the defendants moved for discovery on a claim for selective prosecution in response to their indictments on federal drug trafficking charges, alleging that they were selected for prosecution because they were black. In support of their motion, the defendants offered an affidavit from a paralegal at the Federal Public Defender's office who declared that of the 24 drug trafficking cases involving the same statutes closed by their office in 1991, each involved a black defendant. Included with the affidavit was a "study" listing the 24 defendants, including their race and case disposition.<sup>2</sup> The District Court granted the motion despite the Government's argument that there was no evidence it had failed to prosecute non-black defendants. After an en banc Ninth Circuit affirmed, the Supreme Court granted certiorari and reversed. The Supreme Court held that in order for a defendant to be entitled to discovery on a claim that he was singled out for prosecution on the basis of race, he must make a threshold showing that Government declined to prosecute similarly situated suspects of other races. The "study" failed to meet the requisite threshold. Id. at 1489.

In the instant case, Defendant Wang advances a two-fold argument to meet threshold showing. First, she argues that local companies, including escort services, are required under CNMI law to advertise all job vacancies prior to employing non-residents. Since there have been no advertisements [p. 4] for escort job vacancies, the local escort companies must be employing local females.<sup>3</sup> Hence, there must be evidence of search and/or arrest warrants from these operations. If there is no such evidence, then this would presumptively support a finding of selective prosecution

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<sup>2</sup>In response to the Government's motion to reconsider, the Armstrong defendants also offered affidavits from a drug intake coordinator, a criminal defense attorney, and a newspaper article reporting that almost all Federal crack defendants are black. Armstrong, supra, at 1484.

<sup>3</sup>See letter dated January 19, 1998, from Younis Art Studio, Inc. dba Marianas Variety and Views indicating that no job vacancy announcements for "ESCORT" were found.

as against Defendant Wang and other Asian non-resident women.<sup>4</sup> Secondly, Defendant Wang offers a recent article from the Marianas Variety News and Views wherein a staff writer relates his personal account of prostitution in Saipan.<sup>5</sup> Ms. Wang contends that based on this article, males are not being prosecuted for prostitution-related offenses while women continue to be pursued for similar offenses.

Despite Defendant's novel argument, her offer of proof falls short of the threshold requirement, or even the showing in Armstrong which was deemed inadequate by the Supreme Court. For example, it is quite possible that "waitress" ads were used to advertise for escort positions. Thus, there would be no escort ads per se. In addition, Defendant Wang sets forth a list of other local entities that provide escort services to support her assertion that these companies continue to conduct business without accusation. However, Defendant offers no proof that the other escort companies are promoting or engaged in prostitution activities.

The Marianas Variety article also fails to support Ms. Wang's position as it merely consists of a local reporter's first-hand observations of prostitution on the island. The contents of the article do not comprise the offense of promoting prostitution, nor does it more importantly provide the requisite mens rea to support such an offense. As such, this Court does not find the article persuasive.

In accord with the Armstrong decision, the Court finds that the evidence provided by Defendant Wang is insufficient to satisfy the threshold requirement to entitle her to the discovery.

**[p. 5] B. Disclosure under Commonwealth Rules of Criminal Procedure Rule 16(a)(1)(C)<sup>6</sup>**

A defendant is entitled to discover documents which are "material to the preparation of his/her defense." Commonwealth v. Adlaon, 4 N.M.I. 171, 175 (1994). The defendant's "defense" means the defendant's response to the Government's case-in-chief. Armstrong, supra, at 1485. However, a claim of equal protection is not considered a defense on the merits. Id. at 1486.

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<sup>4</sup>A printout from the CNMI Department of Commerce indicates that there are 11 registered escort services on Saipan. On behalf of Defendant Wang, a Ray Beltran attempted to contact all 11 escort services and found that 7 of them actually supply escort services. See Affidavit of C. Ray Beltran.

<sup>5</sup>"Sex trade in the CNMI", Marianas Variety and Views, January 22, 1998.

<sup>6</sup>The language of Rule 16(a)(1)(C) of the Commonwealth Rules of Criminal Procedure is almost identical to Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure.

Based on the foregoing, Defendant Wang's argument of disclosure to support a case of unequal enforcement of 6 CMC § 1344 is not a defense on the merits to Plaintiff's charges of promoting prostitution. As such, Defendant is not entitled to disclosure of the requested documents under Com. R. Cr. P. Rule 16.

#### V. CONCLUSION

For all of the reasons stated above, Defendant Wang's Motion to Compel is **DENIED**.

So ORDERED this 20 day of May, 1998.

/s/ Timothy H. Bellas  
TIMOTHY H. BELLAS, Associate Judge