



FOR PUBLICATION



E-FILED
CNMI SUPERIOR COURT
E-filed: Feb 06 2020 11:12AM
Clerk Review: Feb 06 2020 11:12AM
Filing ID: 64681994
Case Number: 19-0009-JU
Joseph Norita Camacho

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

IN THE MATTER OF

F.R.R.,

Juvenile.

JUVENILE CASE NO. 19-0009

ORDER DETERMINING THAT EVEN
THOUGH DEFENDANT HAS
ALREADY BEEN ARRAIGNED,
DEFENDANT IS ENTITLED TO A
PRELIMINARY EXAMINATION
HEARING PURSUANT TO 6 CMC §
6303 AND NMI R. CRIM. P. 5.1

I. INTRODUCTION

THIS MATTER came before the Court on April 26, 2019 at 1:30 p.m. Juvenile F.R.R. (“F.R.R.” or “Defendant”), represented by Assistant Public Defender Heather M. Zona; co-defendant Juvenile J.P., represented by court-appointed attorney Steven Pixley; and the Commonwealth Government, represented by Assistant Attorney General J. Robert Glass, Jr., appeared for a preliminary examination hearing.¹ Before the preliminary examination hearing commenced, the Court raised the concern about whether the juveniles were entitled to a preliminary examination hearing because both juveniles had already been arraigned. Therefore, the Court ordered the parties to submit briefs as to whether the juveniles are entitled to a preliminary examination hearing *after* being arraigned on the same charges.²

¹ The Court, in publishing this Order, balances the need to add to the Commonwealth of the Northern Mariana Islands’ body of law and the need to maintain the juveniles’ confidentiality by using initials for all of the private individuals involved in this case. NMI R. JUV. P. 6(1).

² The Court will issue a separate order as to juvenile J.P.

By order of the Court, Judge Joseph N. Camacho

II. BACKGROUND

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2 On March 27, 2019, F.R.R. was arrested and detained at the Department of
3 Corrections. On April 2, 2019, an arrest warrant was issued for F.R.R. for violating: 6 CMC
4 § 1801(a) (burglary), 6 CMC § 1601(a) (theft), and 6 CMC § 303(a) (conspiracy).

5 This matter was set for a preliminary examination hearing on April 11, 2019, at 1:30
6 p.m. before the Honorable Associate Judge Kenneth L. Govendo at the United States
7 District Court courthouse for the Northern Mariana Islands (“U.S. District Courthouse”). On
8 April 11, 2019, Judge Govendo stated that there would not be enough time for the
9 preliminary examination hearing because two preliminary examination hearings involving
10 multiple defendants were scheduled for the same time that day. Additionally, the U.S.
11 District Courthouse³ required the proceedings to end by 5:00 p.m. Judge Govendo also
12 expressed concern about scheduling the preliminary examination hearing and rescheduling
13 the arraignment because he was unaware of the schedule of the Honorable Presiding Judge
14 Roberto C. Naraja, the judge who presides over all arraignment hearings.
15

16 Therefore, at the April 11, 2019 hearing, the defense counsels and the Assistant
17 Attorney General Frances Demapan agreed that the juveniles could be arraigned on April
18 15, 2019, as had been previously scheduled, before Judge Naraja and then have a
19 preliminary examination hearing on April 25, 2019, at the Marianas Business Plaza, before
20 the Honorable Associate Judge Joseph N. Camacho. The juveniles were arraigned on April
21 15, 2019, as scheduled. Due to scheduling conflicts, on April 24, 2019, Judge Camacho
22 (hereinafter “the Court”) issued a Sua Sponte Order as to juveniles F.R.R. and J.P., re-
23 setting the preliminary examination hearing for Friday, April 26, 2019. At the April 26,
24 2019 preliminary examination hearing, the Court was concerned about whether the juveniles
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³ Due to on-going mold and A/C problems at the Commonwealth of the Northern Mariana Islands Judiciary Building, the U.S. District Courthouse was use as a temporary courthouse.

1 were entitled to a preliminary examination hearing because the juveniles had already been
2 arraigned. Generally, a preliminary examination hearing is held within ten (10) days after
3 the initial appearance and before the arraignment hearing.

4 III. DISCUSSION

5 In the Commonwealth of the Northern Mariana Islands, courts hold several pretrial
6 hearings before a criminal trial commences. One such hearing is the preliminary
7 examination hearing (also known as a “preliminary hearing”). Courts use preliminary
8 examination hearings to “weed out groundless claims,” *Commonwealth v. Crisostimo*, 2005
9 MP 18 ¶ 14 (quoting *Mills v. Superior Court*, 728 P.2d 211, 214 (Cal. 1986)), by
10 determining “whether there is probable cause to believe that a crime has been committed
11 and that the accused committed it,” *Babauta v. Superior Court of N. Mar. I.*, 4 NMI 309,
12 311 (1995). To assist the Courts in this endeavor, the Commonwealth Code allows
13 defendants to cross-examine adverse witnesses and introduce evidence on their behalf. 6
14 CMC § 6303(c).⁴

15
16 Defendants are not constitutionally entitled to a preliminary examination hearing
17 “where, as here, the government commences prosecution through the filing of an
18 information, and arrests the accused under a warrant.” *Babauta*, 4 NMI at 311. Instead, in
19 such circumstances, a defendant’s right to a preliminary examination hearing derives from
20 statutes and court rules. *See id.*

21
22 Another pretrial hearing is the arraignment hearing. The arraignment hearing consists
23 of “reading the complaint or information to the defendant or stating to him/her the substance
24 of the charge and calling on him/her to plead thereto.” NMI R. CRIM. P. 10. Typically, an
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26 ⁴ *Commonwealth v. Saimon*, Crim. No. 18-0020 (NMI Super. Ct. Aug. 09, 2019) (Order Finding that Because a Defendant has the Right Under 6 CMC § 6303(c) to Cross-Examination at a Preliminary Examination Hearing to Weed out Groundless Claims, the Defendant is Entitled to Tangible Materials, if any, used by Law Enforcement to Establish Probable Cause for His Arrest to Fully and Properly Cross Examine the Government's Witness).

1 arraignment hearing is held after a preliminary examination hearing. However, the relevant
2 statutes and rules are silent as to whether a defendant can have a preliminary examination
3 hearing after being arraigned, NMI R. CRIM. P. 5.1 and 6 CMC § 6303, and there is no
4 Federal caselaw that is directly on point, *see Commonwealth v. Laniyo*, 2012 MP 01 ¶ 6.

5 After examining and analyzing the applicable law, the Court finds that preliminary
6 examination hearings may be held after a defendant is arraigned.⁵

7 Although not applicable to this case, the Court finds the language of Federal Rule of
8 Criminal Procedure 5.1 [“Federal Rule 5.1”] instructive on the importance of the criminal
9 justice system places on using the judicial process to “weed out groundless claims”⁶ prior to
10 trial, at least in felony prosecutions. *See Commonwealth v. Attao*, 2005 MP 8 ¶ 9 n.7
11 (“Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal
12 Rules of Criminal Procedure, [and the Supreme Court of the Commonwealth of the Northern
13 Mariana Islands] has long held that it is appropriate to consult interpretations of the federal
14 rules when interpreting the Commonwealth Rules of Criminal Procedure.”).

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18 _____
19 ⁵ Commonwealth Rule 5.1 states in relevant part that:

20 [The preliminary examination hearing] shall be held within a reasonable time but in any
21 event not later than *ten (10)* days following the initial appearance. With the *consent of the*
22 *defendant* and upon a showing of *good cause*, taking into account the *public interest* in the
23 prompt disposition of criminal cases, time limits, specified in this subdivision *may* be
24 extended one or more times by a judge. In the absence of such consent by the defendant, time
25 limits may be extended by a judge only upon a showing that extraordinary circumstances
26 exist and that delay is indispensable to the interests of justice.

27 NMI R. CRIM. P. 5.1 (emphasis added). Here, the original preliminary examination hearing was scheduled for
28 ten (10) days **after the arraignment**. Neither party has argued that holding a preliminary examination hearing
29 at this point in the proceedings would violate Rule 5.1’s ten (10) day **after the initial appearance** requirement.
30 Therefore, the issue of whether a defendant would be entitled to a preliminary examination hearing ten (10)
31 days after the initial appearance, and under what circumstances, is not before the Court at this time. *See*
32 *Commonwealth v. Roberto*, Crim. No. 15-0084 (NMI Super. Ct. Sept. 15, 2015) (Order Denying Defendant’s
33 Motion for a Preliminary Hearing As More than Ten Days Have Elapsed Since His Initial Appearance and a
34 Request for a Later Hearing was Not Made During that Ten-Day Period). The Court also notes that the
35 Government and the Defendant both agreed to hold the preliminary examination hearing *after* the arraignment
36 hearing. (Emphasis in bold)

⁶ *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 14.

1 Federal Rule 5.1(a) states in relevant part that:

2 If a defendant is charged with an offense other than a petty offense, a
3 magistrate judge must conduct a preliminary hearing unless: [...] (2) the
4 defendant is indicted; [...] or] (4) the government files an information charging
5 the defendant with a misdemeanor [...]

6 FED. R. CRIM. P. 5.1(a). In the federal criminal justice system, the defendant’s right to a
7 preliminary examination hearing in felony cases detaches if the defendant was indicted by a
8 grand jury because in the federal criminal justice system, grand juries, which are not used by
9 Commonwealth courts, perform the same function as Commonwealth Rule 5.1 preliminary
10 examination hearings—to determine whether there is probable cause to prosecute the
11 defendant with the charges brought. *Compare Babauta*, 4 NMI at 311 (“The purpose of a
12 preliminary examination [hearing] is to determine whether there is probable cause to believe
13 that a crime has been committed and that the accused committed it.”), *with Kaley v. United*
14 *States*, 571 U.S. 320, 328 (2014) (“An indictment [...] returned by a properly constituted
15 grand jury [...] conclusively determines the existence of probable cause to believe the
16 defendant perpetrated the offense alleged.” (internal citation omitted)).⁷

17 Because the Commonwealth does not employ grand juries and a Commonwealth
18 Rule 5.1 preliminary examination hearing is the only judicial mechanism available to
19 defendants in Commonwealth courts to determine probable cause prior to trial, to ensure that
20 a defendant’s pre-trial rights to a judicial proceeding to determine whether there is probable
21 cause the Court therefore finds that a defendant does have a right to a preliminary
22 examination hearing *after* the defendant has been arraigned.⁸ This finding is consistent with
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25 ⁷ See also *United States v. Turner*, No. 1:11CR 103 JAR, 2012 U.S. Dist. LEXIS 191210, at *3 (E.D. Mo. Aug.
26 27, 2012) (stating “there was no need for a [Federal Rule 5.1] preliminary hearing because [the defendant] was
indicted by a grand jury”); *United States v. Coiscou*, 793 F. Supp. 2d 680, 683 (S.D.N.Y. 2011) (“A
preliminary hearing thus provides independent screening by a magistrate judge of the prosecution’s decision to
charge—a screening which becomes unnecessary if a defendant is indicted by a grand jury [...].”).

⁸ Although there is a probable cause determination made at the issuance of an arrest warrant, the probable
cause determination made at the issuance of an arrest warrant lacks certain protections for defendants that are
available at the preliminary examination hearings. At a minimum, these rights include: the right to counsel; the

