

ROP v. Kumangai, 10 ROP 176 (Tr. Div. 2001)
REPUBLIC OF PALAU,
Plaintiff,

v.

RONALD KUMANGAI,
Defendant.

CRIMINAL CASE NO. 00-341

Supreme Court, Trial Division
Republic of Palau

Decided: October 22, 2001

ARTHUR NGIRAKLSONG, Chief Justice:

The information against criminal defendant Ronald Kumangai charges him with **1177** two counts of committing child abuse. Specifically, Count One charges the Defendant with continually committing child abuse from September 23, 1997 to September 22, 2000, and Count Two charges the Defendant with committing child sexual abuse “on or about September 23, 2000.” The trial against the Defendant began and, at the conclusion of the Government’s case, the Defendant moved, pursuant to ROP Rule of Criminal Procedure 29(a), for acquittal on Count Two. The Defendant argued that the Government failed to introduce evidence showing that the alleged child abuse occurred either “on or about September 23, 2000,” or at any other point in time. The Court granted the Defendant’s motion and dismissed Count Two because the Government lawyers, Ms. Imelda Nakamura and Mr. John Thompson, were unable and failed to respond to the Defendant’s motion. The Court now, on its own motion pursuant to ROP R. Crim. P. 29(a), dismisses Count One as being too indefinite with respect to the time of the alleged offense, and thus it does not comply with the Due Process Clause of the Palau Constitution.

The Due Process Clause of the Palau Constitution, which is similar to the United States Constitution’s Due Process Clause, requires that a defendant in a criminal case be given both notice of the elements of the offense charged against him and a fair opportunity to defend himself against those charges. *Russell v. United States*, 82 S. Ct. 1038, 1047 (1962). A defective count in an information that does not give a defendant the approximate time the charged conduct allegedly occurred deprives him of a fair opportunity to defend himself against the charge. *United States v. Contris*, 592 F.2d 893, 896-97 (5th Cir. 1979); *see also generally* 21A Am. Jur. 2d *Criminal Law* § 980 (1998); 2 Charles E. Torcia, *Wharton’s Criminal Procedure* § 273 (1975); 1 Charles A. Wright, et al., *Federal Practice and Procedure* § 125 (1982).

In arriving at the decision to dismiss Count One, the Court reviewed the Government’s evidence introduced at trial with respect to the dates that the alleged child abuse occurred. Although the affidavit of probable cause states that for years the Defendant had been getting into bed with the victim, touching her private parts, and fondling her breasts, the Government

ROP v. Kumangai, 10 ROP 176 (Tr. Div. 2001)

introduced evidence to support only a single act of child abuse. Furthermore, the Government could not point to when this act occurred, but instead proposed that it took place at some time between September 23, 1997 and September 22, 2000. This three-year time period, however, is too indefinite and general to have allowed the Defendant to prepare a defense against a charge of one act of child abuse. If the Government had charged the Defendant in Count One of committing only a single act of child abuse between September 23, 1997 and September 22, 2000, the Defendant certainly would have moved for a bill of particulars to specify a narrower time period within which the alleged act occurred. But at the conclusion of the Government's case, when it first became clear that the Government was charging only one act of abuse and through no fault of the Defendant, it was too late for him to file such a motion. *See* ROP R. Crim. P. 7(f).

Accordingly, the Court dismisses Count One as being too indefinite with respect to time to allow the Defendant to defend himself against the charge.