

**NORTHWESTERN UNIVERSITY SCHOOL OF LAW
JUDICIAL COUNCIL**

Opinion 02-2

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November 2, 2002

I. Morris delivered the unanimous opinion of the Judicial Council, in which B. Dunn, S. Lubet, J. Polk, C. Riekes, and T. Tatum join.

Introduction

The defendant in this case filed a motion to dismiss. The burden of production for such a motion is placed on the moving party. Both sides briefed the issue and presented oral argument before the Judicial Council. For the reasons stated below, the Council finds that the defendant has not met the requisite burden and therefore denies the motion to dismiss.

Analysis

Three arguments are brought forth to support this motion. First, the defense argues a lack of jurisdiction because the defendant's identity may have been revealed to the Executive Committee at the probable cause hearing. This argument is without merit. The Council finds no substantive proof that the defendant's identity was ever known or revealed during the hearing. Further, even if the defendant's identity was revealed, we fail to see a nexus establishing why this Council now lacks jurisdiction.

Next, the defense claims the prosecution never submitted a proper charge in this matter. Again, we find no substance in this argument. The Honor Code Art. IV, § 1(c)(i) states that if "a person having reason to believe that an Honor Code violation has occurred . . . [he or she may] [a]pproach the suspect violator and suggest that the suspect violator voluntarily report the

violation to the Prosecutor.”¹ The self-reporting letter in this case meets this standard. The defense argues the letter was deficient because it did not contain a date, nor was receipt of the charge notarized by the Registrar’s Office. Although the Honor Code contains provisions for such requirements, we do not find their absence fatal in this situation.²

In order for a missing date or lack of notarization to be sufficient causes to support a motion to dismiss, they must substantially prejudice the defendant’s case. *See Judicial Council Opinion 90-2*, 1, 3-4. Here, the defense has established no such prejudice.

The final argument in support of the motion to dismiss concerns the Prosecution’s pre-trial conduct. Specifically, the defense argues that the Prosecution’s telephone conversation with the defendant’s Moot Court partner should have been disclosed when the complaint was presented to the defendant.³ The Prosecution argued the partner was at that point not a witness, and therefore there was no requirement to inform the defense. While we disagree with this proposition, we find no substantial prejudice resulting from this error.

Factually, the matter is very similar to the situation in *Jud. Coun. Op. 90-2* at 10-13. There, the Council found that the Prosecutor had breached the requirements of Article IV, § 2(d) by failing to inform the Executive Committee of a conversation with a student who was a potential witness in the matter. *Id.* at 10. However, the Council found that that the withholding did not substantially prejudice the accused. “The Council concludes that a dismissal is only warranted if the Prosecutor’s failure to present the substance of the interview ‘substantially

¹ All references are to the 1986 Northwestern University School of Law Honor Code.

² *See* The Honor Code Art. IV, §§ 1 (c)(ii), 2(b).

³ The Honor Code Art. IV, § 4(d) states “[t]he Prosecutor shall attach a copy of the complaint to be served on the Accused all information relating to the Accused’s innocence or guilt. Such information shall include but is not limited to i) the names of all witnesses, ii) the substance of their testimony or their substantially verbatim statements, or tangible evidence relating to the charge, and iii) any documents.” In this case, the defendant was accused of plagiarizing a portion of a brief for the Julius Miner Moot Court Competition. As part of the Prosecutor’s investigation, the Prosecutor spoke with the defendant’s partner in the Competition. The Prosecutor did not reveal the existence of this conversation when the complaint was presented to the defendant.

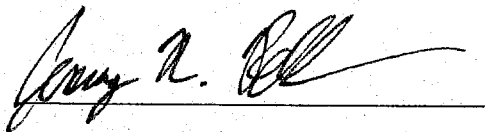
prejudiced the defendant.” *Id.* at 12. The Honor Code Art. IV, § 8(d) states that [u]pon failure of the Prosecutor to provide material evidence to the Accused, the Accused may move for a continuation of the trial date to avoid prejudicial surprise or for a dismissal where the Prosecutor’s failure has *substantially prejudiced* the Accused.”⁴ Similar to *Op.* 90-2, we find no such prejudice occurring in this case. This is not a situation of the Prosecution hiding the ball. The defendant was aware of the partner’s existence from the very beginning, and has presented no evidence of being substantially prejudiced by the Prosecution’s decision. Where the defendant cannot provide the required level of prejudice, dismissal is inappropriate.

Conclusion

While the Council recognizes that errors may have occurred during the investigation of this proceeding, we see no reason to believe the defendant has been substantially prejudiced in any way. Therefore, the defendant’s motion to dismiss must be denied.

IT IS SO ORDERED.

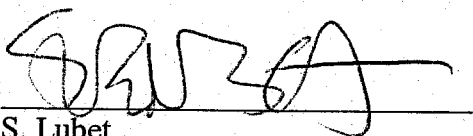
⁴ Emphasis added.



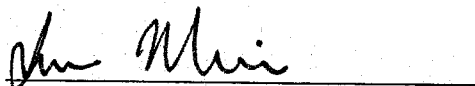
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