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1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 OF THE
5 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

6 COMMONWEALTH OF THE)
7 NORTHERN MARIANA ISLANDS,)

8 Plaintiff,)

9 v.)

10 JORDAN KOSAM.)

11 Defendant.)

CRIMINAL CASE NO. 12-0134

ORDER PARTIALLY VACATING
COURT'S ORDER OF JANUARY 19, 2016

12 COMMONWEALTH OF THE)
13 NORTHERN MARIANA ISLANDS,)

14 Plaintiff,)

15 v.)

16 AMBROSIO T. OGUMORO.)

17 Defendant.)

CRIMINAL CASE NO. 12-0134
(formerly CRIMINAL CASE NO. 13-0073B)

ORDER PARTIALLY VACATING
COURT'S ORDER OF JANUARY 19, 2016

18 INTRODUCTION

19 This MATTER came before the Court on January 20, 2016, at 8:30 a.m. in Courtroom 223A. This
20 hearing was held at the Government's request to resolve a legal question concerning the effect of an invalid
21 penal summons on proving the charge of Obstructing Justice: Interference with a Law Enforcement Officer
22 or a Witness, filed pursuant to 6 CMC § 3302. Plaintiff, Commonwealth of the Northern Mariana Islands,
23 was represented by Special Prosecutor George L. Hasselback. Defendant, Ambrosio T. Ogumoro was
24 represented by Attorney Edward C. Arriola.¹

25 On January 19, 2016, at the conclusion of selecting the jurors for trial, but before the jurors were

¹ While named in the caption, Defendant, John Kosam, pleaded guilty and was sentenced on January 13, 2016.

1 sworn in, the Court allowed both parties to file a memorandum on the issue prior to the January 20, 2016
2 hearing. The Government filed its memorandum, labeled "Opposition to Motion to Dismiss" by the court-
3 ordered deadline. Ogumoro filed his memorandum, labeled "Defendant Reply to Opposition" immediately
4 prior to the hearing.

5 Following review of the parties' submissions, oral arguments, and the applicable law, the Court
6 **PARTIALLY VACATES** its Order Denying Ogumoro's Motion to Dismiss, issued on January 19, 2016
7 and **FINDS** that the valid service requirement as provided in 6 CMC § 6101(a) is immaterial to the
8 Obstructing Justice charge filed pursuant to 6 CMC § 3302.

9 BACKGROUND

10 The Court addresses an issue to be resolved following its ruling on Ogumoro's motion to dismiss
11 counts 9–13 of the information. The 11 criminal charges pending against Ogumoro are the following:

| 12 Count | Description of the Charge | Commonwealth Code Provision |
|----------|---|-----------------------------|
| 13 1 | Conspiracy to Commit Theft of Services | 6 CMC § 303(a) |
| 14 2 | Misconduct in Public Office | 6 CMC § 3202 |
| 15 3 | Theft of Services | 6 CMC § 1607(b) |
| 16 4 | Misconduct in Public Office | 6 CMC § 3202 |
| 17 9 | Conspiracy to Commit Obstructing Justice: Interference with a Law Enforcement Officer or Witness | 6 CMC § 303(a) |
| 18 10 | Misconduct in Public Office | 6 CMC § 3202 |
| 19 11 | Obstructing Justice: Interference with a Law Enforcement Officer or Witness | 6 CMC § 3302 |
| 20 12 | Misconduct in Public Office | 6 CMC § 3202 |
| 21 13 | Misconduct in Public Office | 6 CMC § 3202 |
| 22 14 | Criminal Coercion | 6 CMC § 1431(a)(6) |
| 23 15 | Misconduct in Public Office | 6 CMC § 3202 |

1 On January 19, 2016, the Court denied Ogumoro's belated² motion on procedural grounds, but
2 allowed Ogumoro to raise his dismissal motion at the close of his case-in-chief. The Court also allowed the
3 Government to object to said motion at the time and also allowed submission of an opposition brief. As a
4 basis for allowing Ogumoro to raise his dismissal motion, the Court found that there may be merit to his
5 argument that a defendant may not be convicted of obstructing the attempted service of an invalid penal
6 summons under his reading of 6 CMC § 6101(a), which creates an obligation in law enforcement officers
7 to make diligent efforts to serve a lawful penal summons.³

8 Following the Court's January 19, 2016 order, the Government now seeks to clarify that there is no
9 merit to Ogumoro's argument, and that service of an invalid penal summons is immaterial to proving an
10 Obstructing Justice charge.

11 DISCUSSION

12 Upon review of the parties' submissions and oral arguments, the Court finds a need to partially vacate
13 its January 19, 2016 order. Specifically, the Court vacates its findings and discussion regarding Ogumoro's
14 arguments for dismissal of counts 9–13, but leaves in place its admonishment of Ogumoro's filing of a
15 substantive argument in violation of the pretrial order and in non-compliance of the Rules of Criminal
16 Procedure—at the last hour, to wit, the last working day before trial.

17 The Court reiterates its concerns raised in the January 19, 2016 order as follows: "At the outset, the
18 court must take serious issue with Ogumoro's untimely and improper submission of a substantive motion
19 on the eve of trial—leaving no reasonable time for the Government to file a substantive opposition brief.
20 In doing so, Ogumoro violates the Court's pre-trial motion hearing deadline of December 16, 2015 by more
21

22 ²

23 ³ 6 CMC § 6101(a) ("All process in any criminal proceedings, contempt proceeding, or in a juvenile delinquency
24 proceeding, issued in accordance with law and the rules of procedure prescribed in accordance with law, shall be obligatory upon
25 all police officers and marshals of the Marshals Service division having knowledge of it, and any police officer or marshal to
whom process is given shall promptly make diligent effort to execute or serve it either personally or through another police officer
or marshal.") (emphasis added).

1 than a month. Even if the Court were to waive the requirement that a party complies with the pre-trial order.
2 Ogumoro would still not be in compliance with the Rules of Criminal Procedure. Specifically, Ogumoro is
3 not in compliance with Rule 45(d), which requires that motions be served not later than five working days
4 before a specified hearing date. Ogumoro offers no excuse for his tardiness." *Commonwealth v. Ogumoro*,
5 No. 12-0134 (NMI Super. Ct. Jan. 19, 2016) (Order Denying Ogumoro's Mot. to Dismiss at 2).

6 In addition, the Court notes that Ogumoro had almost three years to file his legal objections to the
7 information, dated March 20, 2013. More than two years have elapsed since this Court's finding that the
8 penal summons issued against Ogumoro's alleged co-conspirator, Edward T. Buckingham, was invalid.
9 Ogumoro has offered no excuse, valid or not, for the belated nature of his legal argument, especially since
10 the grounds for his motion had been present during said two years. Turning to the merits of Ogumoro's
11 motion to dismiss, the Court finds his argument to be unfounded for the following reasons.

12 As to the Government's burden to prove an Obstructing Justice charge pursuant to 6 CMC § 3302,
13 the Government argues that the measure for whether a police officer is engaged in the "lawful pursuit of his
14 duties"⁴ is whether they acted in their official capacities or whether they engaged in a personal frolic. *United*
15 *States v. Heliczzer*, 373 F.2d 241, 245 (2d. Cir. 1967). It is immaterial under this analysis that the subsequent
16 arrest is unlawful or that the process is held to be invalid. *Id.*; *cf. United States v. Ferrone*, 438 F.2d 381,
17 390 (3d Cir. 1971) (holding that a person does not have the right to forcibly resist a police officer's execution
18 of a search warrant, even if the warrant were later held to be invalid). The Court finds this argument
19 persuasive and applicable to the matter at hand. Therefore, it finds that 6 CMC § 6101(a)'s valid service
20 requirement is inapposite to proving the charge of Obstructing Justice: Interference with a Law Enforcement
21 Officer or Witness, made pursuant to 6 CMC § 3302.

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23
24 ⁴ 6 CMC § 3302 ("Every person who unlawfully resists or interferes with any law enforcement officer in the lawful
25 pursuit of his or her duties, or unlawfully tampers with witnesses or prevents or attempts to prevent their attendance at trials, is
guilty of obstructing justice, and upon conviction thereof may be imprisoned for a period of not more than one year, or shall be
fined not more than \$1,000, or both.") (emphasis added).

