E-FILED
CNMI SUPERIOR COURT
E-filed: Aug 29 2024 04:37AM
Clerk Review: Aug 29 2024 04:37AM
Filing ID: 74180866
Case Number: 24-0028-CR
N/A

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, **Plaintiff,** **v.** **SHAYNE BLANCO VILLANUEVA,** **Defendant.**	**CRIMINAL CASE NO. 24-0028** **ORDER DENYING DEFENDANT'S MOTIONS TO DISMISS AND DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION TO STRIKE**

I. INTRODUCTION

THIS MATTER came before the Court on July 8, 2024 at 9: a.m. for a hearing on Defendant Shayne Blanco Villanueva's ("Defendant") Motions to Dismiss and Motion to Strike. Assistant Attorney General James Kingman represented the Commonwealth of the Northern Mariana Islands ("Commonwealth"). The Defendant appeared through his counsel, Keith Chambers.

Based upon a review of the arguments, filings, and relevant law, and for the reasons stated herein, the Court **DENIES** the Motions to Dismiss and **DENIES IN PART AND GRANTS IN PART** the Motion to Strike.

II. BACKGROUND

On January 17, 2024, Defendant was subpoenaed by the House Special Committee on Federal Assistance and Disaster-Related Funding ("Special Committee") pursuant to its investigation into the Building Optimism, Opportunity and Stability Together ("BOOST") Program. Information at 2. The Special Committee was formed by House Speaker Edmund Villagomez on May 2, 2023 to "review and conduct any and all investigations" related to the previous year's Joint W&L and JGO Committee's referral report. Def.'s Mot. Strike 2. The report provided, in relevant part, that:

> The CNMI Legislature, via the House of Representatives and the Senate, either independently or jointly, should conduct legislative oversight into the BOOST program. Lawmakers in the incoming 23rd Legislature should continue the work that began in the 22nd Legislature to examine whether Governor Ralph DLG Torres and the Review Panel consisting of the Governor's Chief of Staff, William Castro, Secretary Atalig, and Secretary Deleon Guerrero and Economic Development Director Mr. Jesus Taisague, committed any misconduct in office or abuse of public funds, and whether any violations should be addressed by legislative action or referral to the proper legal authorities. Key witnesses, including but not limited to those identified by the Committee, including the BOOST administrator, contractors, and recipients, and other government officials and employees, should be summoned to the 23rd Legislature to answer questions by the investigative body.

Def.'s Mot. Strike 4.

The report further provided that:

> Investigating lawmakers in the incoming 23rd Legislature should further examine whether Governor Torres and the members of the BOOST Review Panel have committed any misconduct or abuse of public funds, and whether any violations identified rise to the level of censure, impeachment, or other legislative action. Key witnesses should be summoned to the 23rd Legislature to answer questions by the investigative body. These witnesses should include but not limited to … Roil Soil, [and] Nonstop Corporation … as well as individuals named in contracts, subcontracts, requests for reimbursement or other records of public expenditure.

Def.'s Mot. Strike 3.

Defendant appeared before the Committee on March 5, 2024. *Id.* at 3. He attended the hearing with his lawyer, who sat behind him while he testified. Def. Mot. Dis. 2. Defendant conferred with his counsel during recesses. Def. Mot. Dis. 3.

At the hearing, Defendant, on the advice of his counsel, invoked the Fifth Amendment in response to every question asked by the Committee but one. *Id*. at 3-4. Representative Attao first asked Defendant, "Can you please tell us a little bit about your post-secondary educational background," to which Defendant plead the Fifth. *Id.* at 5. Representative Attao then asked Defendant whether he had "a degree or any certification in marketing or advertising," to which Defendant again plead the Fifth. *Id.* The question Defendant did answer concerned whether he had any additional

documents to provide to the Committee. *Id*. at 3. Over the course of the hearing, Representatives Yumul and Attao warned Defendant three times that he risked being held in contempt for his conduct. *See* Information at 6-7. After a short recess, Representative Flores moved to find Defendant in contempt for "his failure to respond." *Id*. at 7. The motion was seconded and all nine committee members present voted in its favor. *Id*. at 7-8.

The original Information in this case was filed on March 28, 2024, charging Defendant with one count of contempt. Def. Mot. Strike 6. The Information contains a lengthy background section describing the origins of the Special Committee, as well as the following findings of the Joint Committee:

> SHAYNE BLANCO VILLANUEVA ("VILLANUEVA") owns Roil Soil.
> VILLANUEVA was in charge of BOOST Farmer/Fisher/Rancher grant applications, which he reviewed at the Bank of Saipan.
> VILLANUEVA was allowed to review applications and Non-Stop and Roil Soil employees were brought in to help with the program.
> VILLANUEVA applied for BOOST.
> VILLANUEVA marketed the BOOST program as a subcontractor.
> VILLANUEVA submitted invoices for services rendered and for travel related to BOOST.

Def.'s Mot. To Strike 4.

Defendant now asks the Court to dismiss the contempt charge against him on the basis that the Special Committee violated his right to counsel under 1 CMC § 1303(a) and his Fifth Amendment privilege against self-incrimination, and to strike portions of the Information as surplusage. The Court rules as follows.

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III. LEGAL STANDARD

i. Motion to Dismiss

Pursuant to Rule 12(b) of the Commonwealth Rules of Criminal Procedure, "any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion." NMI R. Crim. P. 12(b). The United States Supreme Court has determined that a defense is "capable of determination without trial of the general issue […] if trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense." *United States v. Covington*, 395 U.S. 57, 60 (1969). In other words, a pre-trial motion is generally "capable of determination" if it involves questions of law, rather than fact. Cf. *United States v. Shortt Accountancy Corp.*, 785 F.2d 1448, 1452 (9th Cir. 1986).

ii. Motion to Strike

Rule 7(c) of the Commonwealth Rules of Criminal Procedure permits the Court upon the defendant's motion to "strike surplusage from the information." NMI R. Cr. P. 7(c). Under Rule 7(c), "the information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." *Id.*

Rule 7(c) of the Commonwealth Rules of Criminal Procedure is substantively identical to Rule 7(d) of the Federal Rules of Criminal Procedure, so federal interpretations of Rule 7(d) are instructive. Federal courts have held that it is the defendant's burden to show "that surplusage should be stricken as inflammatory and/or prejudicial." *United States v. Daniel*, 2010 U.S. Dist. LEXIS 148393, *10-11 (C.D. Cal. July 28, 2010). "[T]he court should not grant a defendant's motion to strike surplusage as prejudicial unless it is clear that the information is not relevant and is prejudicial." *United States v. Edwards*, 72 F.Supp.2d 664, 667 (M.D. La. 1999). Whether or not to grant a motion to strike surplusage from the information "is a decision that rests in the discretion" of the court. *United States v. Terrigno*, 838 F.2d 371, 373 (9th Cir. 1988).

IV. DISCUSSION

a. Motions to Dismiss

Defendant requests dismissal on the basis that he was unable to consult with his counsel while testifying before the Special Committee in violation of 1 CMC § 1303(a) and that the contempt charge should not apply where he validly asserted his Fifth Amendment privilege against self-incrimination.

i. 1303(a) Right to Counsel

Defendant grounds his request for relief in the alleged denial of his right to counsel under 1 CMC § 1303(a). He argues that although his lawyer was permitted to attend the hearing and provide him advice during recesses, he was deprived of the right to counsel because his lawyer was not permitted to sit next to him at the witness table.

1303(a) provides:

> "Every witness at a hearing of an investigating committee may be accompanied by counsel of his or her own choosing, who may advise the witness as to the witness's rights, subject to reasonable limitations which the committee may prescribe to prevent obstruction of or interference with the orderly conduct of the hearing."

1 CMC § 1303(a).

As a preliminary matter, Defendant argues that he was deprived of his right to counsel, but it appears that neither he nor his counsel asserted that right. Defendant's claim that his counsel was "forced" to sit behind him is belied by the footage of the hearing provided as an exhibit to the present motion, which shows the Sergeant of Arms wordlessly gesturing to a seat behind Defendant and Defendant's counsel complying without protest.[1] Def.'s Mot. Dis. 12. Though not an exacting

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1 Rule 201(b) of the NMI Rules of Evidence permit a court to take judicial notice "of undisputed matters of public record." In re Est. of Manglona, 2023 MP 13 ¶ 78.

standard, in the context of a criminal case a suspect must invoke their right to counsel clearly and unambiguously. *See Jones v. Harrington*, 829 F.3d 1128, 1138 (9th Cir. 2016) ("[I]nvoking the right to counsel cannot be accomplished by silence or pantomime, but requires the suspect to articulate specifically that she wants counsel."). It does not appear that Defendant or his counsel at any point requested to sit together at the witness table.

Furthermore, Defendant was neither a criminal suspect nor a criminal defendant. He was a witness in a legislative hearing. As such, the scope of his right to counsel is far more limited. The United States Supreme Court has held that, even in the more procedurally stringent context of a criminal trial, "when a defendant becomes a witness, he has no constitutional right to consult with his lawyer while he is testifying." *Perry v. Leeke*, 488 U.S. 272, 281, 109 S. Ct. 594, 600 (1989). A witness in a criminal trial "has an absolute right to such consultation before he begins to testify, but neither he nor his lawyer has a right to have the testimony interrupted in order to give him the benefit of counsel's advice." *Id.* And while CNMI law does guarantee a witness the right to counsel at a legislative hearing, it also emphasizes that the right is "subject to reasonable limitations." 1 CMC § 1303(a).[2]

It is also unclear that any injury resulted from the seating arrangement. Under 1 CMC § 1307(b), "[i]f the investigating committee fails in any material respect to comply with the requirements" of 1303(a), anyone "subject to a subpoena […] who is *injured by that failure* shall be relieved of any requirement […] to testify or produce evidence therein." 1 CMC § 1307(b) (emphasis added). Defendant contends that he was injured by the denial of his right to "legal advice during the

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2 While the Court declines to impose a more rigorous standard for the right to counsel in legislative hearings than what is provided by statute, it notes the potential utility of an amendment to the House of Representatives Rules of Procedure clarifying the scope of the right.

hearing." Def. Rep. at 7. However, he was permitted to consult with his counsel before the hearing and during recesses, and stated that he was pleading the Fifth "on the advice of [his] counsel." Information at 6-7. Given that other courts have imposed outright bans on "communication between a defendant and his lawyer during a brief recess," this seems to be a perfectly reasonable limitation. *United States v. Sandoval-Mendoza*, 472 F.3d 645, 651 (9th Cir. 2006); *see also Perry* at 284-85. At this stage, the facts do not warrant dismissal.

For the foregoing reasons, Defendant's motion to dismiss pursuant to 1 CMC §§ 1303(a) and 1307(b) is **DENIED.**

ii. Fifth Amendment Right Against Self-Incrimination

Defendant asks the Court to dismiss the contempt charge against him on the basis that he was entitled to assert his Fifth Amendment privilege against self-incrimination. He argues that he was entitled to a blanket Fifth Amendment privilege relieving him of the obligation to answer any BOOST-related questions or, in the alternative, that he was within his rights to assert the privilege in response to Representative Attao's specific questions about his educational background.

Whether a witness has the right to a blanket refusal to answer any question based on the Fifth Amendment protection against self-incrimination is a matter of first impression in the Commonwealth. In the absence of binding Commonwealth authority, the Court turns to federal jurisprudence for guidance. *See Commonwealth v. Taitano*, 2017 MP 19 ¶ 39. Under federal law, blanket invocations of the Fifth Amendment are strongly disfavored. *See United States v. Pierce*, 561 F.2d 735, 741 (9th Cir. 1977) ("[A] blanket refusal to answer any question is unacceptable."). The Ninth Circuit permits such invocations only in the rare circumstances "where the trial judge has some special or extensive knowledge of the case that allows evaluation of the claimed fifth amendment privilege even in the

absence of specific questions to the witness." *United States v. Moore*, 682 F.2d 853, 856 (9th Cir. 1982).

United States v. Tsui provides a helpful illustration of this exception. In *Tsui*, the vice president of a loan company who was called as a witness was permitted a blanket assertion of the Fifth Amendment when the prosecution's case-in-chief made clear that both his company and he individually were the subjects of ongoing criminal investigations. *United States v. Tsui*, 646 F.2d 365, 367 (9th Cir. 1981) ("The District Court knew from the Government's case-in-chief that [the witness] was up to his neck in criminal investigations and that further passing-of-the-blame questioning would only lead to answers which would, in all probability, furnish the chain of evidence needed to prosecute [him]."). Crucially, the prosecution in *Tsui* openly expressed their belief that the witness' answers would lead to incriminating evidence and that the statute of limitations for the relevant offense had not yet run. *Id.*; *see also United States v. Moore*, 682 F.2d 853 (9th Cir. 1982) (finding that the district court erred in permitting a blanket invocation of the Fifth Amendment because the court's awareness of the mere possibility of exposure to liability did not constitute the "special or extensive knowledge" necessary to allow the privilege).

Here, by contrast, the Court's understanding is that Defendant is not the subject of any other investigations. Indeed, Defendant is not even the subject of this investigation.[3] Defendant argues that a blanket assertion of the Fifth Amendment is proper as long as a witness' testimony "put[s] them at a crime scene." Def.'s Mot. Dis. 23. However, this mischaracterizes the exception to the prohibition

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[3] The Special Committee on Federal Assistance and Disaster-Related Funding, which conducted the hearing giving rise to the contempt claims, based its investigation on the Joint Committee's January 2023 Referral Report. *See* Information at 5-6. Both the Referral Report and the Information specifically name the parties to the investigation, and Defendant is not among them. *Id.* at 4 ("Lawmakers in the incoming 23rd Legislature should continue the work that began in the 22nd Legislature to examine whether Governor Ralph DLG Torres and the Review Panel consisting of the Governor's Chief of Staff, William Castro, [Secretary Atalig], and [Secretary Deleon Guerrero] and Economic Development Director Mr. Jesus Taisague, committed any misconduct in office or abuse of public funds.").

on blanket assertions of the privilege against self-incrimination. The validity of a blanket assertion rests on whether the trial court had special knowledge of the witness' vulnerability to prosecution. This situation tends only to arise where the prosecution has openly expressed belief in the witness' culpability or the intent to charge the witness.

The cases Defendant cites to defend his assertion of a blanket privilege are readily distinguishable from the situation presently before the Court. In *McAllister* and *McDowell*, the court permitted a blanket invocation of the Fifth Amendment because counsel informed the court that they intended to introduce evidence of and ask questions about criminal conduct by the witness. *See U.S. v. McAllister*, 693 F.3d 572, 583-84 (6th Cir. 2012); *State v. McDowell*, 247 N.W.2d 499, 500 (Iowa 1976) (court upheld use of blanket assertion of privilege in a shoplifting case where the defense's theory of the case placed the witness "in the center of the crime" by accusing her of hiding the stolen merchandise in defendant's bag without defendant's knowledge). The *Reiner* court permitted a blanket assertion of the Fifth Amendment response because the defense's theory of the case placed the blame for the child's death squarely with her, putting her and the court on notice of her imminent liability. *See Ohio v. Reiner*, 532 U.S. 17, 21 (2001). Similarly, in *Ortiz*, the prosecution explicitly stated its intention to prosecute the witness and its belief in her culpability in open court. *United States v. Ortiz*, 82 F.3d 1066, 1073 (1996).

The risk of incrimination here is far more attenuated. Defendant argues that any and all BOOST-related questions are potentially incriminating because hypothetically, if he had committed any violation of Commonwealth law, admitting to it before the legislative committee *could* expose him to criminal liability. However, the prosecution has not stated any intention to pursue a criminal investigation into Defendant, nor is he named in the Information or the 2023 Referral Report. Nothing in the record so far suggests that Defendant is central to the Government's case or personally subject

to any criminal investigation. At this stage of the proceedings, the Court lacks sufficient knowledge of Defendant's particular vulnerability to prosecution as to merit upholding a blanket assertion of his Fifth Amendment privilege against self-incrimination.

As to Defendant's second contention that he was justified in pleading the Fifth in response to the questions about his educational background and marketing credentials, the same result must follow. In order for a witness to properly invoke their Fifth Amendment right against self-incrimination, it must "be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Hoffman v. United States*, 341 U.S. 479, 486-87 (1951). Here, Defendant plead the Fifth in response to two questions: "Can you please tell us a little bit about your post-secondary educational background?" and "Mr. Villanueva, do you have a degree or any certification in marketing or advertising?" Information at 6-7. Defendant cobbles together several Commonwealth statutes to argue that if his answers to these questions revealed that he misrepresented his educational background, he could possibly expose himself to liability for making "a false or misleading written statement for the purpose of obtaining property or credit" under 6 CMC 1705.

Defendant's resume fraud hypothetical is unpersuasive. The CNMI statute he cites has never been used to prosecute someone for misrepresenting their educational background and it is unclear that it could be used for such a purpose.[4] Furthermore, the BOOST investigation specifically concerns the ex-Governor and specific members of his cabinet's alleged misconduct and abuse of public funds.

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[4] While some states explicitly classify a knowing or willful misrepresentation on a job application as a misdemeanor, no such law exists in the Commonwealth, nor has resume fraud been recognized as a crime by the Commonwealth courts. *See, e.g.,* Wis. Stat. Ann. § 230.43(a) & (b); Fla. Stat. Ann. § 464.207.

If the questions about Defendant's educational background revealed that he lacked the credentials for his position as a marketer of the BOOST program, it could furnish a link in the chain of evidence that those who hired him were misusing public funds. But it is not a crime to accept a position for which one is unqualified. It is not remotely evident to the Court that the two questions to which Defendant plead the Fifth could result in injurious disclosures. Accordingly, the Motion to Dismiss the Information based on Defendant's right to assert the Fifth Amendment privilege against self-incrimination is **DENIED**.

b. Motion to Strike

Defendant requests that the Court strike three sections from the Information: the background section entitled "Joint W&L JGO Committee," the background section entitled "Relevant Findings of the Joint Committee," and the section describing Chairman Yumul's question and Defendant's reply (page 7, number 41 of the Information) on the basis that they are not essential to the contempt charge and are highly prejudicial.

Rule 7(d) permits motions to strike for the purpose of protecting "a defendant against prejudicial or inflammatory allegations that are neither relevant nor material to the charges." *United States v. Terrigno*, 838 F.2d 371, 373 (9th Cir. 1988) (internal quotations omitted). While the Court "should be mindful that the prosecution may not use the indictment as a vehicle to persuade the jury that the crime alleged has great and hidden implications," the standard is strictly construed "and such motions are rarely granted." *United States v. Pac. Gas & Elec. Co.*, 2014 U.S. Dist. LEXIS 139390 at 8 (N.D. Cal. Sep. 29, 2014). Courts frequently decline "to strike allegedly surplus background information where it provide[s] context for the defendant's conduct." *Id.* at 9.

In the present case, Defendant does not face a jury trial. The risk of prejudice is therefore minimal. *See United States v. York*, 2017 U.S. Dist. LEXIS 101381 at 4 (E.D. Cal. June 28, 2017)

("Allegations in the indictment that are never read to the jury are not prejudicial and therefore need not be stricken."); *United States v. Pike*, 2011 U.S. Dist. LEXIS 110310 at 5 (D. Nev. Sep. 23, 2011) (declining to grant the motion to strike surplusage because the parties stipulated to a bench trial). Furthermore, the background sections provide helpful context for the circumstances giving rise to the contempt charge. Under CNMI law, a person subpoenaed by an investigative committee may be charged with contempt for failure or refusal "to answer any *relevant* question." 1 CMC § 1306(a)(2) (emphasis added). The section describing the findings of the Joint Committee demonstrates the relevance of the Committee's questions about Defendant's educational background. The section entitled "Joint W&L JGO Committee" is relevant to the scope and authority of the Special Committee leading the investigation. Based on their relevance to the charged conduct and lack of prejudice to the Defendant, the Court finds that these two sections should not be stricken from the Information as surplusage.

Defendant also requests that paragraph 41 of the section entitled "Contumacious Conduct by Villagomez [sic]" should be stricken because it is immaterial and prejudicial.[5] Paragraph 41 concerns a question posed by Special Committee Chairman Ralph Yumul, to which Defendant responded by pleading the Fifth. As the Information refers only to Defendant's responses to Representative Attao's questions as the basis for the contempt charge, Defendant argues that paragraph 41 describes uncharged criminal behavior that goes beyond the scope of the Information. The Court agrees that this is immaterial to the contempt charge, and the Government in its opposition does not address paragraph 41. Accordingly, the Court finds this paragraph to be surplusage and hereby strikes it from

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[5] The Court notes that on August 5, 2024, the Government was granted leave to file an amended Information correcting the title of this section to reflect Defendant's name. *See* Order Granting Leave to Amend Information, Criminal Case No. 24-0028 (NMI Sup. Ct., Aug. 5, 2024). Until the Government files its amended Information the Court will refer to the original.

the Information. Defendant's motion to strike is hereby **DENIED IN PART** and **GRANTED IN PART**.

iii. CONCLUSION

THEREFORE, for the reasons stated above, the Court **DENIES** Defendant's Motions to Dismiss and **DENIES IN PART AND GRANTS IN PART** Defendant's Motion to Strike.

1. Defendant's motion to dismiss the contempt charge for alleged violation of his right to counsel under 1 CMC § 1303(a) is **DENIED**.
2. Defendant's motion to dismiss the contempt charge for alleged violation of his Fifth Amendment right against self-incrimination is **DENIED**.
3. Defendant's motion to strike the sections of the Information entitled ""Joint W&L JGO Committee" and "Relevant Findings of the Joint Committee" is **DENIED**.
4. Defendant's motion to strike paragraph 41 of the section of the Information entitled "Contumacious Conduct By Villagomez [sic]" is **GRANTED**.

IT IS SO ORDERED this 28th day of August, 2024.

/s/
ROBERTO C. NARAJA
Presiding Judge