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1 **FOR PUBLICATION**

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

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COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

CRIMINAL CASE NO. 12-0134

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Plaintiff,)

10

v.)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

11

EDWARD T. BUCKINGHAM,)

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Defendant.)

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I. INTRODUCTION

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THIS MATTER came before the Court on August 16, 2013. The Commonwealth appeared by and through Assistant Attorney General George Hasselback. The Defendant appeared by and through Brien Sers Nicholas, Esq.

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II. DISCUSSION

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The Defendant moves the Court to dismiss this case for lack of personal and subject matter jurisdiction. The Court will examine each of the Defendant's arguments in turn.

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A. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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The Defendant correctly argues that the original summons issued to him was invalid.

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1 Crim. P. 4(a). Id. “More than one warrant or summons may issue for the same defendant.” Id. The
2 summons shall be in the same form as the warrant” NMI R. Crim. P. 4(c)(2). To be valid, a
3 summons must be (1) signed by a judge; (2) describe the offense charged in the information; (3)
4 contain the name of the defendant; (4) and “summon the defendant to appear before the court at a
5 stated time and place.” NMI R. Crim P. 9(b)(2); NMI Crim. P. 4(c)(1), 9(b)(1). Here, the summons
6 issued to the Defendant on August 3, 2012, was not signed by a judge. Therefore it was invalid.

7 However, the point is moot.

8 The Defendant was brought before the Court on May 28, 2013. The Defendant argues that
9 his appearance before the Court was insufficient to allow this Court to exercise personal
10 jurisdiction. The Defendant is incorrect.

11 Once a criminal defendant is present within the Commonwealth, the Court may exercise
12 jurisdiction over his person. See Frisbie v. Collins, 342 U.S. 519 (1952) (citing Ker v. Illinois, 119
13 U.S. 436 (1886)). “It is well established that irregularities in the manner in which a defendant is
14 brought into custody does not deprive the court of personal jurisdiction over the defendant in a
15 criminal case.” United States v. Stewart, 689 F.2d 759, 762 (1982) (citing United States v. Peltier,
16 585 F.2d 314, 335 (8th Cir. 1978); United States v. Turner, 442 F.2d 1146, 1148 (8th Cir.
17 1971); Collins v. Swenson, 443 F.2d 329, 331 (8th Cir. 1971); See also Frisbie v. Collins, 342 U.S.
18 519, 522, 96 L. Ed. 541, 72 S. Ct. 509 (1952), *reh'g denied*, 343 U.S. 937, 96 L. Ed. 1344, 72 S. Ct.
19 768 (1952); Ker v. Illinois, 119 U.S. 436, 440, 30 L. Ed. 421, 7 S. Ct. 225 (1886)). Here, the
20 Defendant was brought before the Court on May 28, 2013. Therefore, the Court has personal
21 jurisdiction over the Defendant.

22 Accordingly, the Defendant’s motion to dismiss for lack of personal jurisdiction is denied.

23 **B. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

1 Pursuant to 1 CMC § 7847(b), the Public Auditor appointed George Hasselback to serve as
2 an Assistant Attorney General in this case. The Defendant contends that 1 CMC § 7847(b)
3 unconstitutionally infringes upon the prosecutorial power vested in the OAG by Article III, § 11 of
4 the Commonwealth Constitution. Accordingly, the Defendant argues that the prosecution of this
5 case by George Hasselback deprives this Court of subject matter jurisdiction.

6 The Office of the Public Auditor was established by Article III, § 12 of the Commonwealth
7 Constitution:

8 The governor shall appoint a public auditor with the advice and
9 consent of each house of the legislature. The public auditor shall
10 audit the receipt, possession and disbursement of public funds by
11 the executive, legislative and judicial branches of the government,
12 an instrumentality of the Commonwealth or an agency of local
13 government and shall perform other duties provided by law.

12 The Commonwealth Code further defines the powers, authority, and duties of the OPA. See
13 1 CMC §§ 2301-2310, 7812-7851. The Legislature has assigned the OPA a wide range of additional
14 powers and duties over the years. For example, the OPA is mandated to "specifically act to prevent
15 and detect fraud, waste and abuse in the collection and expenditure of all public funds." 1 CMC
16 § 2304. The Public Auditor may initiate investigations into any program or operation involving the
17 expenditure of public funds. 1 CMC § 2304(b). Commonwealth agencies may call on the Public
18 Auditor to render an opinion as to "whether or not certain practices are in accord with generally
19 accepted accounting principles." 1 CMC § 2303(c). Finally, the OPA has the authority to
20 investigate and prosecute the Attorney General and the Governor for violations of Commonwealth
21 law. 1 CMC § 7847(b). In the Commonwealth, the OPA serves as a "sentinel against government
22 malfeasance." In Re Joey P. San Nicolas, 2013 MP 8 ¶ 13 (Slip Opinion).

23 The OAG was established by Article III, § 11 of the Commonwealth Constitution: "The
24 Attorney General shall be responsible for providing legal advice to the governor and executive


1 departments, representing the Commonwealth in all legal matters, and prosecuting violations of
2 Commonwealth law." Article III, § 11 clearly delegates prosecutorial authority to the OAG.
3 However, the Commonwealth Supreme Court recently reviewed Article III, § 11 and recognized
4 that an Assistant Attorney General cannot prosecute the Attorney General or Governor: "[t]he
5 power to prosecute is not absolute. If it were the OAG would be required to prosecute attorneys
6 within its office as well as the Governor, who currently has the authority to appoint and remove the
7 Attorney General." In Re Joey P. San Nicolas, 2013 MP 8 ¶ 13 (Slip Opinion). If the OAG cannot
8 prosecute the Attorney General or the Governor, then the legislature is free to delegate that
9 prosecutorial authority to the OPA without infringing upon the power vested in the OAG.

10 In light of In Re Joey P. San Nicolas and the narrow application of § 7847(b), the Court
11 holds that § 7847(b) does not unconstitutionally infringe upon the prosecutorial power vested in the
12 OAG by Article III, § 11 of the Commonwealth Constitution. Accordingly, Defendant's motion to
13 dismiss for lack of subject matter jurisdiction is denied.

14 III. CONCLUSION AND ORDER

15 The Defendant's motion to dismiss is denied.

16 **IT IS SO ORDERED** this 4th day of September, 2013.

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19 KENNETH L. GOVENDO
ASSOCIATE JUDGE