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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIM. CASE NO. 15-0048
)	
Plaintiff,)	ORDER DENYING DEFENDANT'S
)	MOTION TO DISQUALIFY JUDGE
v.)	FROM PRESIDING OVER TRIAL DUE
)	TO SAME JUDGE RULING ON PRE-
TUDELA, CARL K.)	TRIAL MATTERS
)	
Defendant.)	
)	

I. INTRODUCTION

This matter came before the Court on May 27, 2015 on the Defendant's Motion to Disqualify Judge. The Defendant was present and represented by Charles P. Reyes. The Commonwealth was represented by Assistant Attorney General Clayton Graef. The Defendant filed a Motion to Disqualify Judge on April 30, 2015. The Commonwealth did not file any written opposition. The Defendant filed a Motion to Re-Schedule the Trial Pending Resolution of Judicial Disqualification Matter, asking that the trial date of June 2, 2015 be vacated and re-scheduled to a later date. At the May 27, 2015 hearing, no arguments on the motion to disqualify were made, and thus the Court will make its ruling on the pleadings.

Based on a review of the filings and applicable law, the Court **DENIES** the Defendant's Motion to Disqualify.

1 **II. BACKGROUND**

2 The Defendant is moving to disqualify the undersigned judge because he had signed the
3 arrest warrant and presided over the preliminary hearing in this case.¹ The Defendant argues that,
4 because of the aforementioned reasons, the undersigned judge’s impartiality may reasonably be
5 questioned by a reasonable observer.

6 The Defendant claims the following grounds for recusal:

- 7 1. That on March 6, 2015, the Court approved an arrest warrant against the Defendant.
8 2. That at the March 19, 2015 preliminary hearing, the Court found probable cause to
9 proceed with criminal charges against the Defendant.
10 3. That the Court ordered the Office of the Attorney General to separate the one charge of
11 Misconduct in Public Office into three charges, one for methamphetamine, one for
12 marijuana, and one related to marijuana with the Co-Defendant, Desiree Nulud Bulaon.²

13
14 **III. DISCUSSION**

15 **1. Whether a Reasonable Observer Would Reasonably Question the Judge’s**
16 **Impartiality**

17 “A justice or judge of the Commonwealth shall disqualify himself or herself in any
18 proceeding in which his or her impartiality might reasonably be questioned.” 1 CMC § 3308(a).³
19 Whether a judge or justice’s impartiality might reasonably be questioned is examined “from the
20 perspective of a reasonable observer who is informed of all the surrounding facts and

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22 ¹ At the outset, the Court takes judicial notice of a similar motion filed in *Commonwealth v. Ogumoro*, Crim. No. 13-
23 0073, Supreme Court No. 2014-SCC-0022. The motion in *Ogumoro*, which requested that the Honorable Judge
24 Wiseman recuse himself, is currently on appeal before the Commonwealth Supreme Court. The Court notes that the
current motion is coming from an attorney who shares an office space with the attorney who represents Ogumoro.

² See *Commonwealth v. Tudela*, Crim. No. 15-0048 (NMI Super Ct. Mar. 20, 2015) (Order Finding Probable Cause (as
to Defendant Carl K. Tudela)).

³ Disqualification of a judge is covered by 1 CMC § 3308-09 and Com. C. Judic. Cond. Canon 3(C) and Canon 3(D).

1 circumstances.” *Commonwealth v. Repeki*, 2004 MP 8 ¶ 12 (quoting *Microsoft Corp. v. United*
2 *States*, 530 U.S. 1301, 1302 (2000). The reasonable person used in this analysis should be a
3 “thoughtful observer rather than . . . a hypersensitive or unduly suspicious person.” *In re Sherwin-*
4 *Williams Co.*, 607 F.3d 474, 478 (7th Cir. 2010) (citation omitted).

5 Judicial rulings are rarely sufficient to provide a valid basis for a bias or partiality motion –
6 typically, these would be grounds for an appeal, rather than a recusal. *Liteky v. United States*, 510
7 U.S. 540, 555 (1994). “Adverse rulings, standing alone, do not establish judicial bias or prejudice,
8 nor create a reasonable question of judicial impartiality.” *United States v. Oaks*, 606 F.3d 530, 537
9 (8th Cir. 2010) (quoting *United States v. Schwartz*, 535 F.2d 160, 165 (2d Cir. 1976). Thus, routine
10 actions like issuing warrants, finding probable cause at preliminary hearings, and ordering that
11 charges be separated to avoid confusing the issues would be insufficient, on their own, to raise a
12 reasonable question of judicial impartiality.

13 If a party is seeking to disqualify a judge under § 3308(a), “the challenged judge has the
14 discretion to evaluate and rule on the litigant’s motion for disqualification.” *Tudela v. Superior*
15 *Court*, 2010 MP 6 ¶ 23. “A judge’s duty to sit is as strong as his duty to recuse himself where
16 disqualified.” *Commonwealth v. Ogumoro*, Crim. No. 13-0073 (NMI Super. Ct. Oct. 9, 2014)
17 (Order Denying Defendant’s Motion to Disqualify at 4).

18 “A judge is presumed to be impartial, and the party seeking disqualification ‘bears the
19 substantial burden of proving otherwise.’” *Scott v. Metro. Health Corp.*, 234 Fed. Appx. 341, 352
20 (6th Cir. 2007) (quoting *United States v. Denton*, 434 F.3d 1104, 1111 (8th Cir. 2006)). Further, the
21 judge does not bear the burden of proving that he or she is impartial. *Id.* (citing *In re McCarthey*,
22 368 F.3d. 1266, 1269 (10 Cir. 2004).

23 The Defendant bears the burden of proving that a reasonable observer would reasonably
24 question Judge Camacho’s impartiality. The Court finds that the defendant has failed to meet this

1 burden with regards to the arrest warrant, the finding of probable cause, and the order instructing
2 the Commonwealth to separate out the charges against the Defendant.

3
4 **a. Approving the Arrest Warrant Against the Defendant**

5 The first ground for recusal outlined by the Defendant is the fact that Judge Camacho
6 reviewed and approved an arrest warrant against the Defendant. In particular, the Defendant argues
7 that issuing an arrest warrant could lead a reasonable person to doubt that judge's impartiality, and
8 to think that the judge had pre-judged the Defendant's guilt or innocence. Reviewing and issuing
9 warrants is an ordinary part of a judge's duties. Simply because a judge approves an arrest warrant
10 does not guarantee that the same judge will hear the case. More importantly, arrest warrants are for
11 probable cause, while guilt is beyond a reasonable doubt.⁴ Issuing warrants is such an ordinary part
12 of being a judge that no reasonable person would question a judge's impartiality simply because the
13 judge had signed an arrest warrant. "It is a very basic and frequent function of a Judge and any
14 reasonable person would see it as such." *Ogumoro*, Crim. No. 13-0073 (Order Denying Defendant's
15 Motion to Disqualify at 3). The Defendant has failed to show that a reasonable observer would
16 reasonably question Judge Camacho's impartiality with regard to the arrest warrant.

17
18 **b. Finding Probable Cause at the Preliminary Hearing**

19 The second ground for recusal outlined by the Defendant is the fact that Judge Camacho
20 heard the preliminary hearing and found probable cause to continue with the charges against the
21 Defendant. This, like signing an arrest warrant, is a very ordinary part of a judge's duties. Although
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24 ⁴ NMI R. Crim. P. 4; *Commonwealth v. Li, Ye*, 2007 MP 21 ¶ 6 (citing *State v. Brown*, 147 Wash. 2d 330, 339 (2002))
("In every criminal trial, the prosecution must prove beyond a reasonable doubt that a crime was committed.").

1 a judge may find probable cause for particular charges at a preliminary hearing, this does not mean
2 that the defendant will eventually be found guilty, in either a bench or jury trial.⁵

3 The purpose of a preliminary hearing is “to determine whether there is ‘probable cause’ for
4 the accusation, the nature of which is made known to the accused.” 84 A.L.R.3d 811 (1978). At the
5 preliminary hearing, the court’s main role is to “determine whether there is sufficient evidence of
6 probable cause to bind the accused over to answer and stand trial.” *Id.* The preliminary hearing, or
7 probable cause hearing, functions as a filter to determine which charges are supported by sufficient
8 evidence to continue to trial. Further, the standard of probable cause is very different from proof
9 beyond a reasonable doubt.

10 The Defendant argues that a judge who made a probable cause determination in a case is
11 analogous to a grand juror sitting on a petit jury in the same case. Def. Mem. in Supp. of Mtn. to
12 Disqualify Judge at 5 - 6. The Defendant cited a number of cases for the proposition that a grand
13 juror may not later sit on a petit jury. See *Greenwood v. State*, 34 Tex. 334 (Tex. 1871);
14 *Commonwealth v. Hussey*, 13 Mass. 221 (Mass. 1816); *Beason v. State*, 34 Miss. 602 (Miss. 1857);
15 *House v. State*, 96 Miss. 653 (Miss. 1910). A judge is readily distinguishable from a juror, simply
16 based on years of experience and specialized training in the law.⁶ In addition, an appellate justice
17 recusing himself or herself from a case he or she had presided over as judge is distinguishable, as in
18 that case the justice would have made rulings on the merits. A judge finding probable cause at a

21 ⁵ It is worth noting that at a preliminary hearing, a defendant has the benefit of an attorney. At a preliminary hearing, a
22 defendant may cross-examine the Commonwealth’s witnesses, and may call his or her own witnesses.

23 ⁶ There is a significant difference between lay jurors and judges, in terms of legal training and experience. To become a
24 judge, an individual must be an attorney with at least five years of experience. 1 CMC §3303(b). As a result, judges
have years of legal training and experience when compared to the average juror. The five year requirement is in place to
ensure that the potential judge has sufficient experience to know the difference between reasonable suspicion, probable
cause, and proof beyond a reasonable doubt. In some cases, even if there was probable cause shown at the preliminary
hearing, a defendant may later be found **not guilty** because the prosecution failed to prove their case beyond a
reasonable doubt. A judge, with knowledge and experience, can separate these different standards of proof.

1 preliminary hearing is simply ensuring that a certain threshold has been met, rather than making an
2 absolute finding on guilt or innocence.

3 Determining whether there is probable cause to hold a defendant over for trial is a far cry
4 from pre-judging the innocence or guilt of a particular defendant. Further, “[a]dverse rulings,
5 standing alone, do not establish judicial bias or prejudice, nor create a reasonable question of
6 judicial impartiality.” *United States v. Oaks*, 606 F.3d 530, 537 (8th Cir. 2010) (quoting *United*
7 *States v. Schwartz*, 535 F.2d 160, 165 (2d Cir. 1976)). Ruling on probable cause during preliminary
8 hearings is such an ordinary part of being a judge that no reasonable person would question a
9 judge’s impartiality simply because he or she had found probable cause. Thus, the Defendant has
10 failed to show that a reasonable observer would reasonably question Judge Camacho’s impartiality
11 with regard to the probable cause hearing.

12
13 **c. Instructing the Attorney General’s Office to Separate Out the Charges of**
14 **Misconduct in Public Office**

15 The third ground for recusal outlined by the Defendant is Judge Camacho’s instruction to
16 the Commonwealth to separate the one charge of Misconduct in Public Office into three charges,
17 one for methamphetamine, one for marijuana, and one related to marijuana with the Co-Defendant.⁷
18 The Defendant’s counsel mistakes the Court’s instruction to clarify the charges and underlying
19 factual allegations as an active attempt at taking sides. The Court is not pre-judging the Defendant’s
20 guilt. Separating out the charges is done to avoid confusing the issues at a later point in the case. In
21 the same order, the Judge Camacho also ordered that the Attorney General’s Office separate the
22 Defendant and Co-Defendant as to the marijuana charge. Although the Defendant paints these

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24 ⁷ See the Court’s Order Finding Probable Cause (as to Defendant Carl K. Tudela), Crim. No. 15-0048 (NMI Super. Ct. Mar, 20, 2015).

1 separate charges as “additional charges,” these charges were merely separated from the one
2 Misconduct in Public Office charge in order to avoid confusion of the issues. This, again, is simply
3 part of Judge Camacho doing his job, and would not lead a reasonable observer to find impropriety.

4 The Defendant argues that a “reasonable third person aware of the judge’s prior service as a
5 police officer and prosecutor” could see Judge Camacho’s order that the charges be separated out as
6 showing “a possible particular distaste for police officers accused of such wrongdoing.” Def. Mem.
7 in Supp. of Mtn. to Disqualify Judge at 7. If judges could be accused of impartiality for previously
8 working as prosecutors or defense attorneys, then very few judges would be able to hear criminal
9 matters at all. For instance, both Chief Justice Castro and Presiding Judge Naraja served as the
10 Attorney General of the CNMI.⁸ Using the Defendant’s reasoning, any judge or justice who had
11 ever prosecuted criminal cases would have to recuse from hearing any criminal cases due to the
12 possibility of impropriety. Again, the Defendant has failed to show that a reasonable observer
13 would reasonably question Judge Camacho’s impartiality with regard to the order instructing the
14 Commonwealth to separate the charges against the Defendant.

15 16 **2. Practical Concerns**

17 In addition to failing to meet his burden of proving that a reasonable observer would
18 reasonably question Judge Camacho’s impartiality, there are also a number of practical concerns
19 that the court would like to raise with regard to the Defendant’s theory of the law. The Defendant’s
20 motion seems to request that any judge that has worked with a case prior to trial – for instance,
21 signing a warrant, presiding over the arraignment, or presiding over the preliminary hearing – must
22 recuse himself or herself. In the Commonwealth, as a practical matter, this would make any

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24 ⁸ *Judiciary of the Northern Mariana Islands: The Honorable Chief Justice Castro*,
http://www.justice.gov.mp/uploads/Current_Justices_bios_and_pics_Castro_5-21.pdf; *Judiciary of the Northern
Mariana Islands: Presiding Judge Naraja*, http://www.justice.gov.mp/PJ_Naraja.html.

1 reasonable attempt at managing the Superior Court’s docket impossible. The Commonwealth is a
2 very small jurisdiction, and as a result, there are only five Superior Court judges. A defendant’s
3 case may be reviewed by multiple judges before it goes to trial – meaning that, quite quickly, a
4 defendant will exhaust every possible judge who could hear his or her case..

5 Here in the Superior Court, different judges handle different aspects of a case. Judges are
6 assigned daily bail hearings and bail modification hearings. Preliminary hearings must be heard
7 within ten days of their initial appearance, which means that the bail judge is not necessarily the
8 preliminary hearing judge. NMI R. Crim. P. 5.1. Defendants are arraigned by Presiding Judge
9 Naraja, as well as by the assigned judge, as is the case for cases in Rota and Tinian. There are also
10 numerous motions that can be filed even before a case goes to trial, such as suppression motions
11 and motions to dismiss. Various stages of a case are heard by different judges, making it quite
12 difficult to hear the trial if the Defendant’s theory is adopted as the law of the land.

13 Judges may recuse from a case due to conflicts, which limits the number of judges that may
14 actually hear a trial. Judges may also be unavailable to handle a pre-trial matter, due to illness or
15 being off-island. Under the Defendant’s theory of the law, any time the case moves to a new judge,
16 that judge would then be unable to hear the trial, especially if he or she makes any rulings in the
17 case. In a jurisdiction with only five judges, all five judges would be conflicted out very quickly. If
18 that happens, the Superior Court would have to appoint or hire pro-tem judges to handle cases and
19 trials, which would significantly delay the judicial process and add additional costs to our already
20 strained justice system.

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III. CONCLUSION

Accordingly, the Defendant's motion to disqualify the Honorable Associate Judge Camacho is **DENIED**.

IT IS SO ORDERED this 27th day of May, 2015.



JOSEPH N. CAMACHO
Associate Judge