IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,

v.

LIYUAN ZHANG ATTAO and TANG XIA,
Defendants

LIYUAN ZHANG ATTAO,
Defendant/Appellant.

Supreme Court Appeal No. 03-004-GA
Criminal Case No. 02-0173(E)

FOR PUBLICATION

OPINION

Cite as: *Commonwealth v. Attao,* 2005 MP 8

Argued and submitted on May 11, 2004
Saipan, Northern Mariana Islands

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BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; JOHN A. MANGLONA, *Associate Justice*; VIRGINIA S. SABLAN-ONERHEIM, *Justice Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Defendant Liyuan Zhang Attao was arrested for prostitution at a karaoke bar as a result of a covert law enforcement operation. She was subsequently charged and convicted of one count of prostitution. She appeals her conviction. We AFFIRM the trial court's judgment.

I.

¶2 On June 5, 2002, at the Midnight Karaoke ("the karaoke bar") in San Jose, Saipan, the Investigative Unit of the Attorney General's Office ("AGIU") conducted a covert operation to uncover, and make arrests for, prostitution. Joseph H. Race ("Race"), the AGIU Chief, entered the karaoke bar and ordered a beer. Race has an extensive law enforcement background, which consists of 42 years of experience in both the United States and the Commonwealth. Upon his entry into the karaoke bar, three female employees gathered around Race, and one of them asked Race if he would be interested in a special massage.[1] The three employees asked Race to buy them "lady's drinks" and Race did so.[2] Sometime thereafter, Defendant Liyuan Zhang Attao ("Attao") walked into the karaoke bar.

¶3 Attao asked Race if he would take her to the Hyatt, referring to the Hyatt Regency Saipan Hotel ("the Hyatt"). When Race asked what they would do there, Attao replied that they would "have sex and everything." She asked him for how long he would want

[1] *See* Trial Tr. at 9.

[2] *See* Trial Tr. at 9.

her. She stated that it would be $80 for one hour or $150 for all night, but that Race would have to discuss the fee with Momma San.[3] When Race spoke with Momma San, the prices stated by Momma San were consistent with Attao's prices.

¶4 Another female employee approached Race and asked to go along to the Hyatt. Thereafter, Attao pulled Race aside and suggested that he tell Momma San he only had $200, so that the other employee and Attao could split the amount that would be spared, $100, as their tip at the Hyatt.[4] Attao rubbed Race's shoulders, back, and arms during their conversation about their proposed night at the Hyatt. When she picked up her purse stating she was ready to go, Race walked out and signaled to the other AGIU officers waiting outside to come inside, where the arrest of the various individuals pointed out by Race ensued. When Attao was searched at the time of her arrest, a cell phone and several condoms were found inside her purse.

¶5 On the next day, June 6, 2002, the Office of the Attorney General ("the Government") filed a criminal information against Attao and Tang Xia ("Xia"),[5] charging them with one count of prostitution in violation of 6 CMC § 1343.[6] Pursuant to 6 CMC § 1346(a), a person who violates 6 CMC § 1343 is subject to up to 90 days imprisonment or a fine of up to $1,000, or both, for the first violation. Attao and Xia were tried separately. Attao timely appeals the Judgment of Conviction entered on December 23, 2002.

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[3] From the record, Momma San appears to be the moniker used by a female whose legal name is Su Yong Mei (Trial Tr. at 40).

[4] Apparently, Attao calculated that by stating he only had $200, Race would be spending $100 less than what it would otherwise cost him to have two prostitutes for all night, at $150 per prostitute.

[5] It appears that Defendant Tang Xia refers to the other employee that wanted to go along to the Hyatt with Attao and Race, and Momma San was charged through a separate criminal information although she was listed as a codefendant in Race's report to the Government (Trial Tr. at 40).

[6] Section 1343 of Title 6 of the Commonwealth Code provides: "[a] person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person for a fee. . . . "

II.

¶6 We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

III.

¶7 The following are the issues on appeal.

1. Did the trial court err as a matter of law, under Rule 11 of the Commonwealth Rules of Criminal Procedure, when it declined to intervene in the plea negotiation between Attao and the Government?
2. Was Attao subject to selective prosecution based on her immediate relative immigration status in violation of her constitutional right to equal protection, because Momma San, who holds a green card, was offered a more favorable plea bargain by the Government?
3. Was Attao's constitutional right to confront adverse witnesses violated when the trial court allowed Race's testimony that the prices stated by Momma San were consistent with those earlier stated by Attao?
4. Was there insufficient evidence so that no rational trier of fact could have found Attao guilty of prostitution beyond a reasonable doubt?

A. Rule 11 Prohibition Against Court Intervention in Plea Negotiations

¶8 The first issue on appeal is whether the trial court erred as a matter of law, under Rule 11 of the Commonwealth Rules of Criminal Procedure, when it declined to

intervene in the plea negotiation between Attao and the Government. This is a question of law and is reviewed *de novo*. *Commonwealth v. Oden*, 3 N.M.I. 186, 191 (1992).

¶9 Under Rule 11(e)(1) of the Commonwealth Rules of Criminal Procedure, the court may not participate in any plea agreement discussions.[7] The purpose of such prohibition is to preserve the judge's impartiality after the negotiations are completed, as judicial involvement detracts from a judge's objectivity in three potential ways: (1) such involvement makes it difficult for a judge to objectively assess the voluntariness of the plea entered by the defendant; (2) judicial participation in plea discussions resulting in failure inherently risks the loss of a judge's impartiality during trial, because he has become aware of the defendant's possible interest in pleading guilty, and because he may have viewed unfavorably the defendant's rejection of the proposed agreement; and (3) involvement in plea negotiations diminishes the judge's objectivity in post-trial matters such as sentencing and motions for a judgment of acquittal. *United States v. Bruce*, 976 F.2d 552, 557-58 (9th Cir. 1992). Hence, although the court is allowed to reject the plea agreement under Rule 11,[8] *see United States v. Miller*, 722 F.2d 562, 563 (9th Cir. 1983), and a defendant whose plea has been accepted in violation of the Rule should be afforded the opportunity to plead anew, *see United States v. Jaramillo-Suarez*, 857 F.2d 1368, 1370 (9th Cir. 1988), the mandate of Rule 11 is unambiguous--the participation of the

[7] Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure, this Court has long held that it is appropriate to consult interpretations of the federal rules when interpreting the Commonwealth Rules of Criminal Procedure. *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶8, n.1; *Commonwealth v. Diaz*, 2003 MP 14 ¶ 12, n.11; *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233 n.3 (1995). Accordingly, we find interpretations of Rule 11 of the Federal Rules of Criminal Procedure helpful in the instant matter.

[8] The power to assess the wisdom of and review the plea agreement under Rule 11 protects against the erosion of the judicial sentencing power, and this grant of power carries with it the duty to exercise it responsibly. *United States v. Miller*, 722 F.2d 562, 563, 565 (9th Cir. 1983). Courts should be wary of second-guessing prosecutorial choices, as they do not know which charges are best initiated at which time, which allocation of prosecutorial resources is most efficient, or the relative strengths of various cases and charges. *Id*. at 565.

judge in plea negotiations is prohibited under all circumstances, without any exceptions. *Bruce*, 976 F.2d at 558.

¶10 Here, Attao's argument is not that the trial court acted in violation of Rule 11 by participating in plea negotiations. Rather, Attao argues that the court violated Rule 11 as a matter of law by declining to participate in the plea negotiation because the plea agreement offered to her was made in violation of her constitutional right to equal protection. Attao argues that the trial court had a duty as a matter of law to require the prosecution to offer a certain plea bargain to Attao. But the language of Rule 11 does not authorize such court intervention in plea negotiations. In fact, as mentioned, it provides an absolute bar against it.

¶11 In light of the above, we hold that no error was made when the trial court declined to intervene in the plea negotiation between Attao and the Government.

B. Selective Prosecution in Violation of Right to Equal Protection

¶12 The second issue on appeal is whether Attao was subject to selective prosecution based on her immediate relative immigration status in violation of her constitutional right to equal protection, because Momma San, who holds a green card, was offered a more favorable plea bargain. Whether there was a violation of an individual's right to equal protection is a constitutional issue and is reviewed *de novo*. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 493, 111 S. Ct. 888, 897, 112 L. Ed. 2d 1005, 1018 (1991); *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). The trial court's factual determination of the existence of a selective prosecution is reviewed for clear error. *United States v. Estrada-Plata*, 57 F.3d 757, 760 (9th Cir. 1995).

¶13 A defendant has no constitutional right to plea bargain. *Commonwealth v. Camacho*, 2002 MP 21 ¶ 9; *United States v. Wheat*, 813 F.2d 1399, 1405 (9th Cir. 1987),

aff'd, 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988); *United States v. Herrera*, 640 F.2d 958, 962 (9th Cir. 1981). The decision whether to offer a plea bargain is a matter of prosecutorial discretion. *United States v. Moody*, 778 F.2d 1380, 1385-86 (9th Cir. 1985), (citing conflict in a case reviewing denial of motion to dismiss because of selective prosecution). The government can refuse to bargain altogether, as well as cut off or limit negotiations if it chooses to. *Herrera*, 640 F.2d at 962.

¶14 This broad discretion afforded the executive rests largely on the recognition that "the decision to prosecute is particularly ill-suited for judicial review." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-90, 119 S. Ct. 936, 946, 42 L. Ed. 2d 940, 957 (1999). "Such factors as the strength of the case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake." *Id*., 525 U.S. at 490, 119 S. Ct. at 946, 42 L. Ed. 2d at 957.

> Judicial supervision in this area, moreover, entails systemic costs of a particular concern. Examining the basis of a prosecution delays the criminal proceeding, threatens to chill law enforcement by subjecting the prosecutor's motives and decision-making to outside inquiry, and may undermine prosecutorial effectiveness by revealing the Government's enforcement policy.

Id.

¶15 Nonetheless, a prosecutor's discretion is not absolute and is subject to constitutional constraints. *United States v. Armstrong*, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486, 134 L. Ed. 2d 687, 698 (1996); *United States v. Batchelder*, 442 U.S. 114, 125, 99 S. Ct. 2198, 2204-05, 60 L. Ed. 2d 755, 765 (1979).

¶16 The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, which is applicable to the Commonwealth pursuant to the COVENANT TO

ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* CMC at lxxxi, *et seq.*, commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws." *Vacco v. Quill*, 521 U.S. 793, 799, 117 S. Ct. 2293, 2297, 138 L. Ed. 2d 834, 841(1997). [9] This provision creates no substantive rights. *Id*. The Equal Protection Clause is not susceptible of exact delimitation, and no definite rule, which automatically will solve the question in specific instances, can be formulated. *Louisville Gas & Elec. Co. v. Coleman*, 277 U.S. 32, 37, 48 S. Ct. 423, 425, 72 L. Ed. 770, 774 (1928). Rather, it embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly. *Vacco*, 521 U.S. at 799, 117 S. Ct. at 2297, 138 L. Ed. 2d at 841; *Coleman*, 277 U.S. at 37, 48 S. Ct. at 425, 72 L. Ed. At 774 (holding that the rights of all persons must rest upon the same rule under similar circumstances under the Equal Protection Clause).

¶17 No statutory provision exists in the Commonwealth mandating that a prosecutor offer the same plea bargain to all codefendants charged with similar offenses in a given case. But the exercise of selectivity in law enforcement by the prosecution violates the Equal Protection Clause if the selection is deliberately based upon an unjustifiable standard such as race, religion, or some other arbitrary classification. *United States v. Moody*, 778 F.2d 1380, 1386 (9th Cir. 1985); *Armstrong*, 517 U.S. at 464, 116 S. Ct. at 1486, 134 L. Ed. 2d at 698.

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[9] In the Commonwealth, the equal protection of the laws is guaranteed under Article I, Section 6 of the Commonwealth Constitution. N.M.I. Const. art. I, § 6. We apply Article I, Section 6 of the Commonwealth Constitution using the same analysis as for the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Commonwealth v. Bergonia*, 3 N.M.I. 25, 36 (1992). The Government of the Northern Mariana Islands is to be considered a State government for the purpose of applying the Equal Protection Clause. *Sablan v. Iginoef*, 1 N.M.I. 551, 580 (1990). The Equal Protection Clause applies to aliens and United States citizens alike. *Bolanos v. Kiley*, 509 F.2d 1023, 1025 (2nd Cir. 1975).

¶18 Accordingly, a defendant who relies on contentions of impermissible selective prosecution must demonstrate that she was selected for prosecution on an impermissible ground. *Moody*, 778 F.2d at 1386. The requirements for a selective prosecution claim draw on the ordinary equal protection standards. *Armstrong*, 517 U.S. at 465, 116 S. Ct. at 1486, 134 L. Ed. 2d at 698. Hence, to challenge a prosecutor's plea bargaining or charging decision, the defendant must show both a discriminatory effect and a discriminatory intent, i.e., that (1) others similarly situated to him were not prosecuted or were given more favorable plea bargains; and (2) his prosecution was based on an impermissible motive. *United States v. Bass*, 536 U.S. 862, 863, 122 S. Ct. 2389, 2389, 153 L. Ed. 2d 769, 772 (2002); *United States v. Estrada-Plata*, 57 F.3d 757, 760 (9th Cir. 1995). These are factual determinations which an appellate court reviews for clear error. *Id.* at 760. The standard for proving selective prosecution claims, however, is particularly demanding and requires a criminal defendant to introduce clear evidence to displace the presumption that a prosecutor has acted lawfully. *American-Arab Anti-Discrimination Comm.*, 525 U.S. at 489, 119 S. Ct. at 946, 42 L. Ed. 2d at 957.

¶19 Here, Attao's argument that she suffered a discriminatory effect appears strong. Indeed, at least from the record presented before us, it seems she was treated differently than a similarly situated defendant, Momma San, who, although charged with a more culpable crime of promoting prostitution, was offered a more favorable plea bargain. The Prosecution does not challenge this alleged discriminatory effect. Nonetheless, Attao's conclusory argument that the Prosecution's action was based on a discriminatory intent in no way amounts to clear evidence. Attao has shown no connection whatsoever between the motive of the Prosecutor in choosing to strike the plea bargain that it did with Momma San and Momma San's immigration status, nor has she shown any connection

between the motive of the Prosecutor and her own immigration status. In fact, she provided no supportive evidence to the trial court and now provides no supportive evidence to this Court. We are, therefore, compelled to find that no clear error was committed when the trial court reached its December 23, 2002 Judgment of Conviction, unmoved by Attao's selective prosecution argument. Finally, in light of the lack of evidence proffered by Attao regarding the Prosecution's allegedly discriminatory motive, we cannot conclude that her constitutional right to equal protection was violated.

C. Right to Confront Adverse Witnesses

¶20 The third issue on appeal is whether Attao's constitutional right to confront adverse witnesses was violated when the trial court allowed Race's testimony that the prices stated by Momma San were consistent with those earlier stated by Attato.

¶21 Article I, Section 4(b) of the Commonwealth Constitution provides that in all criminal prosecutions, "[t]he accused has the right to be confronted with adverse witnesses." N.M.I. Const. art. I, § 4(b). Because the Confrontation Clause of the Constitution of the Northern Mariana Islands is patterned after that of the Sixth Amendment to the United States Constitution,[10] we resort to the federal case law for guidance in interpreting our Confrontation Clause. *See Commonwealth v. Condido*, 3 N.M.I. 501, 507 (1993); *Commonwealth v. Atalig*, 2002 MP 20 ¶ 54. Alleged violations of the Confrontation Clause are reviewed *de novo*. *See United States v. Nielsen*, 371 F.3d 574, 581 (9th Cir. 2004); *United States v. Cianci*, 378 F.3d 71, 75 (1st Cir. 2004).

[10] The Sixth Amendment to the United States Constitution provides: "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. CONST. amend. XI.

¶22 The Confrontation Clause of the Sixth Amendment[11] as made applicable to the States by the Fourteenth Amendment is violated where the out-of-court hearsay statement by a codefendant implicating the defendant is admitted into evidence without the declarant's being available at trial for full and effective cross-examination by the defendant. *Nelson v. O'Neil*, 402 U.S. 622, 627, 91 S. Ct. 1723, 1726, 29 L. Ed. 2d 222, 227 (1971). Here, Attao's right to confrontation was not violated because we find that the statement made by Momma San regarding the prices was not a statement implicating Attao.

¶23 At trial, Race testified that the prices stated by Momma San were "the same as . . . [those] stated by the defendant." (Trial Tr. at 11.) That was the extent of his testimony regarding Momma San's alleged extrajudicial statement. In light of such, it is our opinion that the alleged extrajudicial statement made by Momma San listing the prices--$80 for one hour and $150 for all night--did not inculpate Attao. According to Race's testimony, those prices had already been stated by Attao anyway before Race ever spoke with Momma San. Additionally, Momma San's statement made no reference to Attao's participation in committing prostitution as an accomplice. If anything, Momma San's alleged statement regarding the prices implicated herself as someone promoting prostitution. We find that Attao was not affected by Momma San's alleged extrajudicial statement, and even if she were so affected, it was certainly not to any prejudicial degree.

¶24 Furthermore, reversal is unnecessary where it is clear beyond a reasonable doubt that the improper admission of a hearsay statement constituted a harmless error. *Schneble v. Florida*, 405 U.S. 427, 430, 92 S. Ct. 1056, 1058-59, 31 L. Ed. 2d 340, 344

[11] A major reason underlying the constitutional confrontation rule is to give a defendant charged with a crime an opportunity to cross-examine the witnesses against him. *Bruton v. United States*, 391 U.S. 123, 126, 88 S. Ct. 1620, 1622, 20 L. Ed. 2d 476, 479 (1968).

(1972). Here, even assuming *arguendo* that Momma San's statement regarding the prices--$80 for one hour or $150 for all night--had been improperly admitted in violation of Attao's right to confront her adverse witnesses, the admission at most constituted a harmless error beyond a reasonable doubt, for which we need not reverse the trial court's judgment of conviction. The independent evidence of Attao's guilt--that she offered sexual conduct for a fee in violation of 6 CMC § 1342--in the instant case is overwhelming.

¶25 Race testified at trial that Attao asked him to take her to the Hyatt, where they would have "sex and everything." (Trial Tr. at 10.) In addition, although Attao argues that the only evidence presented to prove that she offered sexual conduct for a fee was Momma San's extrajudicial statement regarding the prices (Attao Br. at 28), we disagree. Race testified that Attao had stated the prices--specifically, $80 for one hour or $150 for all night--to him already before he ever spoke with Momma San. (Trial Tr. at 10.) Moreover, Attao's argument--that because Race spoke with Momma San to set the final price, Attao could not possibly have offered sexual conduct for a fee--must fail under a simple application of common sense. For Attao's argument to hold, only the prostitutes working independently for themselves alone could ever be culpable of committing prostitution, as only in such situations, would a prostitute have the freedom to set the final price herself; Attao's misguided argument would leave all other prostitutes working for third parties conveniently out of the reach of law enforcement. Additionally, according to Race's trial testimony, Attao even asked him to tell Momma San that he only had $200 so that she would make out with more in tip; such behavior would have made no sense were she not offering sexual conduct for a fee. Also, she had picked up her purse and was ready to go to the Hyatt *with* Race, apparently to have "sex and

everything" for a fee, when Race walked outside of the karaoke bar to signal the other AGIU officers waiting outside to come in. Finally, we note that at the time of her arrest, a cell phone and several condoms were found inside Attao's purse, which, if anything, tended to implicate her involvement in prostitution in light of the particular events that took place at the karaoke bar on the night of her arrest.

¶26 We find that Momma San's statement regarding the prices was not a statement implicating Attao, and that even if it were *arguendo*, admitting it into evidence amounted to a harmless error beyond a reasonable doubt. We hold, therefore, that Attao's right to confrontation was not violated.

D. Sufficiency of Evidence

¶27 The last issue on appeal is whether there was insufficient evidence so that no rational trier of fact could have found Attao guilty of prostitution beyond a reasonable doubt. We review the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Oden*, 3 N.M.I. at 191.

¶28 Attao argues that the Government failed to present sufficient evidence as to the following essential elements of the crime of prostitution: date of offense, sexual conduct, and offer to engage in sexual conduct for a fee. First, we are compelled to note that the date of the offense is not an element of the crime of prostitution under 6 CMC § 1343.[12] In any event, a criminal information need only provide the defendant with an adequate notice of when the crime allegedly occurred. *Oden*, 3 N.M.I. at 192; *United States v. Nersesian*, 824 F.2d 1294, 1323 (2nd Cir. 1987) ("Where 'on or about' language is used,

[12] Section 1343 of Title 6 of the Commonwealth Code provides: "[a] person is guilty of prostitution if such person engages or agrees or offers to engage in sexual conduct with another person for a fee."

the government is not required to prove the exact date, if a date reasonably near is established. This is especially true where, [] the exact time when an offense was committed is not an essential element of the offense charged." (citations omitted)); *United States v. Synowiec*, 333 F.3d 786, 791 (7th Cir. 2003) ("Where the indictment alleges that an offense allegedly occurred 'on or about' a certain date, the defendant is deemed to be on notice that the charge is not limited to a specific date.").

¶29 We, therefore, find unpersuasive Attao's argument that we must vacate Attao's conviction due to the "on or about" language used to describe the date of the offense in the information. Regarding the sufficiency of evidence as to the elements--(1) offer to engage in sexual conduct (2) for a fee--we have already discussed herein the overwhelming evidence implicating Attao's guilt. We hold there was sufficient evidence to support her conviction.

IV

¶30 For the foregoing reasons, the trial court's judgment is hereby **AFFIRMED**.

SO ORDERED THIS 25th DAY OF MAY 2005.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
JOHN A. MANGLONA
Associate Justice

/s/_____
VIRGINIA S. SABLAN-ONERHEIM
Justice *Pro Tempore*

Law Revision

IN THE
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

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Defendants,

LIYUAN ZHANG ATTAO,

Defendant-Appellant.

SUPREME COURT APPEAL NO. **03-0004-GA**
Superior Court Criminal **Case NO.** 02-0173(E)

ERRATA

¶1 **On May 25, 2005,** this **Court issued** its Opinion in the above-captioned **appeal.**

¶2 *The Opinion contained errors which are corrected as* **follows:**

¶3 Footnote 9 is corrected to read:

> "In the Commonwealth, the equal protection of the laws is guaranteed under Article I, Section 6 of the Commonwealth Constitution. N.M.I. Const. art. I, § 6. We apply Article I, Section 6 of the Commonwealth Constitution using the same analysis as for the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Commonwealth v. Bergonia*, 3 N.M.I. 25, 36 (1992). The Government of the Northern Mariana Islands is to be considered a State government for the purpose of applying the Equal Protection Clause. *Sablan v. Iginoef*, 1 N.M.I. 551,580 (1990). The Equal Protection Clause applies to aliens and United States citizens alike. *Bolanos v. Kiley*, 509 F.2d 1023, 1025 (2nd Cir. 1975)."

¶3 The last sentence and citation in ¶21 are corrected to read:

> "Alleged violations of the Confrontation Clause are reviewed *de novo*. *See United States v. Nielsen*, 371 F.3d 574, 581 (9th Cir. *2004); United States v. Cianci*, 378 F.3d 71, 75 (1st Cir. 2004)."

¶4 SO ORDERED this 18th day of JULY 2005.

MIGUEL S. DEMAPAN
Chief Justice

JOHN A. MANGLONA
Associate Justice

VIRGINIA S. SABLAN- ONERHEIM
Justice *Pro Tempore*

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¶4 SO ORDERED this 18th day of JULY 2005.

MIGUEL S. DEMAPAN
Chief Justice

JOHN A. MANGLONA
Associate Justice

VIRGINIA S. SABLAN- ONERHEIM
Justice Pro *Tempore*