IN THE SUPREME COURT OF GUAM

IN RE: APPLICATION OF THE PEOPLE OF GUAM.

Supreme Court Case No. CVA23-017
Superior Court Case No. SP0034-23

OPINION

Cite as: 2024 Guam 17

Appeal from the Superior Court of Guam
Argued and submitted on July 11, 2024
Hagåtña, Guam

BEFORE: ROBERT J. TORRES, Chief Justice; KATHERINE A. MARAMAN, Associate Justice; and JOHN A. MANGLONA, Justice *Pro Tempore*.

TORRES, C.J.:

[1] Petitioner-Appellant (hereinafter, "Appellant") appeals from the Superior Court's denial of a motion to quash a grand jury subpoena *duces tecum*.[1] Along with a separate appeal from the denial of a motion to quash, this case raises legal issues of first impression regarding Guam grand juries.

[2] When interpreted as a whole, the statutory scheme contemplates grand juries having the power to issue subpoenas *duces tecum*. We conclude the grand jury subpoena power includes the power to command a witness to produce books, papers, documents, or other objects. Although the Guam Legislature has altered the common law grand jury, it would be unprecedented to create a grand jury that cannot issue a subpoena *duces tecum*. We also conclude that an Assistant Attorney General may sign a grand jury subpoena.

[3] The law presumes that a grand jury subpoena issued through normal channels is reasonable, without a strong showing to the contrary. The trial court found that Appellant did not rebut the presumption of regularity that attaches to actions of the grand jury. On appeal, Appellant fails to show this finding was clearly erroneous. The trial court did not abuse its discretion in denying the motion to quash because it applied the correct legal standard, and its factual findings are supported by substantial evidence. Finally, we clarify the proper procedure for challenging a grand jury subpoena *duces tecum*. We affirm.

[1] *Duces tecum* is a Latin phrase meaning "bring with you." *Duces Tecum*, *Black's Law Dictionary* (12th ed. 2024). A subpoena *duces tecum* commands a person to produce books, papers, documents, or other objects and bring them to the place the person is ordered to appear. *See* 8 GCA § 75.20 (2005).

I. FACTUAL AND PROCEDURAL BACKGROUND

[4] On February 28, 2023, a subpoena *duces tecum* was issued by a Guam grand jury to the custodian of records for Appellant. The subpoena commanded the custodian of records to "appear and testify before the INVESTIGATIVE GRAND JURY" one week later on March 7, 2023. Record on Appeal ("RA"), tab 3 (Mot. Quash, Mar. 14, 2023), Ex. A at 1 (Subpoena Duces Tecum, Feb. 28, 2023). The subpoena also commanded the custodian to bring these documents when they appeared before the grand jury:

> Any and all Government of Guam contracts to [Appellant], Government of Guam bid award notifications to [Appellant], Government of Guam Requests for Proposals to which [Appellant] submitted proposals, [Appellant] proposals submitted in response to Government of Guam Requests for Proposals, and email and letter correspondence between the Government of Guam and [Appellant] as to all Government of Guam Requests for Proposals and/or contracts, regardless of whether they were awarded to [Appellant] or not, during the time period of January 1, 2019 through the present.

Id. at 2. The subpoena was not served on Appellant until Friday, March 3, 2023. RA, tab 3 at 1 (Mot. Quash). Counsel for Appellant and its custodian of records appeared before the grand jury and negotiated an extension with the Office of the Attorney General ("OAG") to respond on March 14, 2023.

[5] Appellant moved to quash the subpoena in the Superior Court, which was docketed as a special proceeding. Appellant argued that although a grand jury has the power to subpoena documents and witnesses under Guam law, it "cannot issue a general investigatory Subpoena Duces Tecum." *Id.* at 2. It argued the court should quash the subpoena because it was "not attached to any specific request for an indictment," and because "[t]he case caption and number suggest that the 'INVESTIGATIVE GRAND JURY' is merely involved in a general investigation. *Id.* Appellant also contended that the OAG had to "provide notice and advice to Appellant regarding its rights and responsibilities related to the *subpoena*." *Id.*

[6] Appellant further argued that the subpoena was "vague, indiscernible, overbroad and ambiguous," because it "vaguely requests 'Bid Award Notifications', 'Contracts' and a broad category of correspondence." *Id.* at 3. Finally, Appellant argued the subpoena was unduly burdensome because of "the short time frame for production of records spanning multiple years and the cost of producing public documents which are already in the possession of the Government of Guam." *Id.* Appellant claimed that three employees spent over a week compiling 4,000 pages of documents that were potentially responsive to the subpoena. *See id.*; RA, tab 13 at 8 (Reply Opp'n Mot. Quash, July 24, 2023). Appellant filed those documents under seal, "to demonstrate [Appellant's] good faith and willingness to comply if the *subpoena duces tecum* is found to be lawfully issued." RA, tab 3 at 4 (Mot. Quash).

[7] The People countered that, "[i]n response to an investigation by the People into possible wrongdoing in the awarding of government contracts to [Appellant], a grand jury approved and issued a subpoena to the custodian of records for [Appellant]." RA, tab 11 at 1 (Opp'n Mot. Quash, June 7, 2023). They quoted this court's decision in *People v. San Nicolas*, 2016 Guam 21, to argue that subpoenas need not be attached to a specific request for an indictment because "the grand jury can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not." RA, tab 11 at 4 (Opp'n Mot. Quash) (quoting *San Nicolas*, 2016 Guam 21 ¶ 15 n.7). The People also argued that Appellant cited no authority for the proposition that the OAG had to identify subjects and targets of investigations, or issue advisement of rights, notices, or warnings. The People argued the subpoena was not ambiguous because "it demanded any and all records related to government contracts, *including* Requests for Proposals." *Id.* at 7. The People argued that Appellant's ability to comply with the subpoena by filing the documents under seal showed the subpoena was not unduly burdensome. *Id.* The People highlighted that Appellant

cited no authority for the proposition that it should not have to produce the records that could be obtained from the government. *Id.* They also argued that "[Appellant] may have records in relation to government contracts awarded to it that were never submitted to or filed with the government, and which the People and grand jury need access to as part of its investigation into whether there was wrongdoing in the awarding of those contracts." *Id.*

[8] Appellant raised for the first time in its reply the argument that a subpoena must be signed by the Attorney General himself and not an Assistant Attorney General. RA, tab 13 at 4 (Reply Opp'n Mot. Quash). Appellant argued the OAG was "engaged in a fishing expedition" and that a suspicion of "possible wrongdoing in awarding government contracts to [Appellant] is not a specific enough allegation for the Court to determine whether this subpoena is sufficiently related to the return of an Indictment or not, or whether it is reasonable in scope and burden." *Id.* at 5. Appellant argued that it was improper for the Government to be "be working back from its conclusion of wrongdoing," rather than articulate "which contracts, or which individuals it suspects of wrongdoing." *Id.* at 6. It also engaged in the same parsing of the subpoena's language it now performs on appeal to argue the language could not be understood. *Id.* at 7.

[9] The Superior Court issued a decision and order denying the motion to quash. RA, tab 15 (Order Den. Mot. Quash, Aug. 8, 2023). The trial court concluded that "[a] Grand Jury has broad investigatory powers," *id.* at 1 (citing *San Nicolas*, 2016 Guam 21 ¶ 15 n.7), and that it "can issue an investigatory subpoena like the one propounded upon [Appellant]," *id.* at 2. The court noted that Appellant cited no authority to support its argument that the OAG had to disclose the target of the investigation or provide any warnings to recipients of subpoenas. *Id.* The court also rejected the argument that the subpoena was "vague, indiscernible, overbroad, and ambiguous." *Id.* It concluded that it did not "see how the fact that [Appellant] did not engage in the activity for which

some of the records are requested makes the request vague, indiscernible, overbroad, and ambiguous." *Id.* It further concluded that the subpoena specifically requested correspondence for "[p]roposals and/or contracts" and was therefore not vague, indiscernible, overbroad, or ambiguous. *Id.* Lastly, the court rejected the argument that the subpoena was unduly burdensome because Appellant was granted an extension and requested no other extensions before it filed responsive documents under seal. *See id.* at 2-3.

[10] Appellant moved for the Superior Court to enter judgment, which the trial court did. Appellant timely appealed. On April 11, 2024, this court denied the People's motion to dismiss, finding that the order denying the motion to quash the grand jury subpoena was appealable.

II. JURISDICTION

[11] We have appellate jurisdiction over civil appeals arising from final judgments or final orders entered in the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-157 (2024)); 7 GCA §§ 3107, 3108(a) (2005); 7 GCA § 25102(a) (2005).

[12] In an earlier order, we found that we had jurisdiction, and, in a separate case, we outlined the basis for our jurisdiction over appeals of the Superior Court's denial of a motion to quash a grand jury subpoena. *See* Order (Apr. 11, 2024); *In re Application of the People*, 2024 Guam 16 ¶¶ 14-19. We reaffirm that when the Superior Court denies a motion to quash and that action terminates the proceedings in that court, the trial court's denial is appealable, even though investigative proceedings where the recipient of the subpoena was not a party are ongoing. *See generally Md. State Bd. of Physicians v. Eist*, 11 A.3d 786, 799 n.14 (Md. 2011). When a civil action is filed to challenge a grand jury subpoena, an order resolving the motion to quash is a final and appealable order. *See In re 381 Search Warrants Directed to Facebook, Inc.*, 78 N.E.3d 141, 146 (N.Y. 2017). The procedure followed here to challenge the grand jury subpoena was proper,

and we have jurisdiction. As we clarify below, future challenges to grand jury subpoenas *duces tecum* are better addressed as petitions for judicial review.

III. STANDARD OF REVIEW

[13] "A trial court's ruling on a motion to quash a subpoena duces tecum is reviewed for an abuse of discretion." *Guam Election Comm'n v. Responsible Choices for All Adults Coal.*, 2007 Guam 20 ¶ 91. "[A] court abuses its discretion by basing its decision on an erroneous legal standard or clearly erroneous factual findings, or if, in applying the appropriate legal standards, the court misapprehended the law with respect to the underlying issues in the litigation." *People v. Faisao*, 2018 Guam 26 ¶ 12 (alteration in original) (quoting *People v. Mallo*, 2008 Guam 23 ¶ 56). Although the overall review is for an abuse of discretion, the trial court's interpretation of the underlying legal principles is subject to *de novo* review. *Sule v. Guam Bd. of Exam'rs for Dentistry*, 2011 Guam 5 ¶ 8. "A finding of fact is clearly erroneous where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made." *In re Guardianship of Moylan*, 2018 Guam 15 ¶ 6 (quoting *M Elec. Corp. v. Phil-Gets (Guam) Int'l Trading Corp.*, 2016 Guam 35 ¶ 41). "[L]ike any other issue of fact," we review for substantial evidence a trial court's finding that a party failed to rebut an evidentiary presumption. *Estate of Auen*, 35 Cal. Rptr. 2d 557, 564 (Ct. App. 1994) ("'It is for the trier of fact to determine whether the presumption will apply and whether the burden of rebutting it has been satisfied.' We review the trial court's finding that appellants failed to rebut the presumption . . . under the substantial evidence rule like any other issue of fact." (citation omitted)).

[14] "On abuse of discretion review, an appellate court does not review whether an alternative course of action was available, but only whether the trial court's decision was allowable." *People v. Bosi*, 2022 Guam 15 ¶ 66. "The concept of discretion implies that a decision is lawful at any

point within the outer limits of the range of choices appropriate to the issue at hand; at the same time, a decision outside those limits exceeds or, as it is infelicitously said, 'abuses' allowable discretion." *Id.* (quoting *Eastway Constr. Corp. v. City of New York*, 821 F.2d 121, 123 (2d Cir. 1987)). This court will not simply "substitute its judgment for that of the trial court." *Id.* ¶ 71 (quoting *People v. Quintanilla*, 2001 Guam 12 ¶ 9).

IV. ANALYSIS

A. A Guam Grand Jury Has the Power to Issue Subpoenas *Duces Tecum*

[15] Appellant claims that "Guam law does not empower the grand jury to *subpoena* material beyond witness testimony." Appellant's Br. at 5 (Apr. 22, 2024). It argues the plain language of Guam's grand jury statutes dictate that a grand jury can subpoena only witness testimony. *Id.* When interpreted as a whole, the statutory scheme contemplates grand juries having the power to issue subpoenas *duces tecum*. We conclude the grand jury subpoena power includes the power to command a witness to produce books, papers, documents, or other objects.

[16] Appellant further argues that because Guam law does not authorize an "investigating" grand jury, Guam's "indicting" grand juries can perform no investigations, including subpoenaing evidence.[2] Appellant asserts that the People's reliance on "the amorphous and conveniently invoked 'common law'" is misplaced. Appellant's Reply Br. at 7 (June 19, 2024). As this appeal raises several issues of first impression, we find it necessary to address the arguments raised by Appellant regarding the common law to guide the trial courts because the claims made by Appellant run "counter to the whole history of the grand jury institution." *See United States v.*

[2] Appellant argues that the subpoena *duces tecum* was issued to it by an "investigative grand jury," Appellant's Br. at 7 (Apr. 22, 2024), and that because "[t]he Government has offered no authority for a general investigative grand jury in Guam" a grand jury subpoena is "unlawful" unless it is "attached" to a "request or investigation for a specific indictment," *id.* at 10-11. We reject this argument for the same reasons we outlined in *In re Application of the People*, 2024 Guam 16 ¶¶ 75-88.

Williams, 504 U.S. 36, 50 (1992) (holding that power federal courts may have to fashion rules of grand jury procedure is very limited and would not permit reshaping of grand jury institution).

1. The plain language of 8 GCA § 75.45 authorizes grand juries to subpoena evidence

[17] "When interpreting a statute, we begin with its plain language because our 'task is to determine whether . . . the statutory language is plain and unambiguous.'" *In re Estate of Leon Guerrero*, 2023 Guam 10 ¶ 45 (quoting *In re Guardianship of Moylan*, 2021 Guam 15 ¶ 36) (internal quotation marks omitted). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *In re Guardianship of Moylan*, 2021 Guam 15 ¶ 36 (quoting *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6). "[I]n expounding [on] a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Id.* (alterations in original) (quoting *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17). "[O]ne of the most basic interpretive canons" is that a statute should be interpreted "so that effect is given to all its provisions, so that no part will be inoperative or superfluous . . . ." *People v. Taisacan*, 2023 Guam 19 ¶ 50 (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

[18] Title 8 GCA § 75.45 provides:

> (a) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the Attorney General, or, upon request of the grand jury, by any judge of the Superior Court, in support of the prosecution, for those witnesses whose testimony, in his opinion, is material in an investigation before the grand jury, and for such other witnesses as the grand jury, upon an investigation pending before them, may direct.
>
> (b) Failure of any person to obey a grand jury subpoena, or to comply with the requirements thereof, or to obey a lawful order of the foreman of the grand jury, shall be deemed a contempt of court.

8 GCA § 75.45 (2005).

[19] Read in isolation, subsection (a) seems silent on the grand jury's power to issue a subpoena *duces tecum*. However, "[i]t is well settled that 'a statute should be read as a whole,' and accordingly, each section should be construed in conjunction with other parts or sections to produce a harmonious whole." *Guam Resorts, Inc. v. G.C. Corp.*, 2012 Guam 13 ¶ 14 (quoting *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 14). A person can be held in contempt for failing to obey a grand jury subpoena *or* failing to comply with its requirements. If we are to interpret section 75.45 so no clause is superfluous, obeying a subpoena and complying with its requirements must refer to different things. If, as Appellant argues, the grand jury can subpoena only witness testimony, the only requirement of a subpoena would be to testify. But this would collapse any distinction between obeying a subpoena and complying with its requirements. When the broader context of the statute is considered along with its object and policy, section 75.45 contemplates the grand jury possessing the power to subpoena evidence.

[20] Any remaining doubt about this conclusion is resolved by later-enacted statutes. "[I]n construing a statute, a court may look to later acts of the legislature to ascertain the correct meaning of a prior statute." *See Jenkins v. Montallana*, 2007 Guam 12 ¶ 19. At least two statutes passed by the Legislature after the grand jury subpoena statute was added in 1980[3] indicate the Legislature understood grand juries to have the power to issue subpoenas *duces tecum*. The first reference is a provision of the Antitrust Law, which was added by Public Law 21-18 in 1991. Title 9 GCA § 69.35(e) provides that nothing in the Antitrust Law "shall be construed to prevent the regular use by the Attorney General of a grand jury for the *production of documents* or issuance subpoenas [sic] for witnesses, when the investigation relates to a criminal violation of this Chapter." 9 GCA § 69.35(e) (2005) (emphasis added). The second reference is a provision of the False Claims and

[3] *See* Guam Pub. L. 15-94:9 (Jan. 17, 1980) (creating section 75.45).

Whistleblower Act, which was added by Public Law 34-116 in 2018 and codified in Title 5. That provision states that a civil investigative demand cannot "require the production of any documentary material . . . if such material . . . would be protected from disclosure under: . . . the standards applicable to . . . subpoenas *duces tecum* issued by a court of the Unified Judiciary of Guam to aid in a grand jury investigation." 5 GCA § 37402(a)(1) (as added by Guam Pub. L. 34-116:XII:20 (Aug. 24, 2018)). Because the Legislature has crafted legislation that explicitly relies on a grand jury power to subpoena evidence, we cannot say that the plain language of 8 GCA § 75.45 prevents a grand jury from issuing a subpoena *duces tecum*.

2. The common law further supports our conclusion

[21] The People argue that "[t]he grand jury in Guam is authorized by several statutes, but also retains its inherent common law powers." Appellee's Br. at 10 (June 5, 2024). In its reply brief, Appellant incorrectly argues that the People "waived" their argument about the common law, despite acknowledging this court retains jurisdiction to review arguments that present a pure issue of law.[4] Reply Br. at 2-3. To sidestep this, Appellant claims that "the issue here is not purely one of law" because "[t]he People make factual assertions that the Guam grand jury statutes codify common law." *Id.* at 3. This argument misunderstands the difference between an issue of law and an issue of fact, because determining legislative intent is a question of law. *Corinth Pellets, LLC v. Arch Specialty Ins. Co.*, 2021 ME 10, ¶ 31, 246 A.3d 586, 595 ("Our evaluation of the legislative history—as a vehicle for determining the Legislature's intent—is conducted as a matter of law."); *People v. Venice Suites, LLC*, 286 Cal. Rptr. 3d 598, 605 (Ct. App. 2021) ("The ascertainment of legislative intent is a legal question, not a factual one."). Because it is "emphatically the province

[4] As we have recently explained, by definition an argument cannot be "waived" if it can still be reached by the court. *People v. Quinata*, 2023 Guam 25 ¶ 32 n.4. We admittedly have "not always been consistent" in distinguishing forfeiture and waiver. *Id.* But we encourage practitioners before this court to begin using these terms advisedly.

and duty" of this court "to say what the law is," *Teleguam Holdings LLC v. Guam*, 2018 Guam 5 ¶ 32 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)), we reach this issue to explain that the common law governs Guam grand juries where the statutes are silent.

[22] In *In re Application of the People*, 2024 Guam 16 ¶¶ 28-64, we provided a comprehensive overview of the history of the common law grand jury and its adoption in Guam. A relevant part of that history, as explained by the United States Supreme Court, bears repeating here: "While it is not clear when grand juries first resorted to compulsory process to secure the attendance and testimony of witnesses, the general common-law principle that 'the public has a right to every man's evidence' was considered an 'indubitable certainty' that 'cannot be denied' by 1742." *Id.* ¶ 29 (quoting *Kastigar v. United States*, 406 U.S. 441, 443 (1972) (footnote omitted)). In *In re Application of the People*, we held that Public Law 9-256, which created the first "local" grand juries in Guam, adopted the common law grand jury that existed in the federal courts for prosecutions brought under Guam law. 2024 Guam 16 ¶ 69. We also held that although Guam's grand jury statutes altered the common law grand jury, they did not repeal the common law by implication. *Id.* ¶ 74. Thus "where the code is silent, the common law governs." *Id.* ¶ 71 (quoting *Lacher v. Superior Court*, 281 Cal. Rptr. 640, 646 (Ct. App. 1991)).

[23] Appellant argues that because "[t]he Guam grand jury is a creature of Guam law," it has only those powers granted to it by statute. *See* Appellant's Br. at 11; *see also id.* at 8-9. In its reply brief, it claims that the concept of the common law is so amorphous that the argument that the Legislature adopted the common law grand jury "is not only meritless, it is unsound and impractical." Reply Br. at 4. But, after reviewing the legislative history of Guam's grand jury scheme, it becomes apparent that Appellant's argument lacks merit.

[24] Grand juries were first adopted in the District Court of Guam in 1960, when the Legislature exercised its authority under the Organic Act to make indictment by grand jury a requirement for federal felony offenses and first-degree murder under local law. *In re Application of the People*, 2024 Guam 16 ¶ 56. Then in 1969, the Legislature passed Public Law 9-256, which mandated that all felonies be indicted by a grand jury empaneled by the District Court. This law also created the first "local" grand juries because it permitted misdemeanors to be indicted by grand juries empaneled by the Island Court. *Id.* ¶ 59. Both grand juries in the District and Island Courts were governed by substantively the same rules—the Federal Rules of Criminal Procedure—and enjoyed the same powers—those exercised by common law grand juries that existed in the federal courts. *Id.* When the Superior Court was created in 1974, this did not abrogate the use of common law grand juries in local prosecutions; it merely transferred these common law felony grand juries from the District Court to the Superior Court. *Id.* ¶¶ 60, 70. The continuation of the Island Court's power to empanel misdemeanor grand juries in the Superior Court, coupled with transferring felony grand juries from the District Court to the Superior Court, perpetuated the use of common law grand juries in prosecutions under Guam law. *Id.* ¶ 70.

[25] In 1976, the Legislature passed the Criminal Procedure Code (Public Law 13-186) as part of the recommendations of the Law Revision Commission. The new Criminal Procedure Code codified the grand jury procedure that was based on the Federal Rules of Criminal Procedure, with some additions from the California Penal Code. *Id.* ¶ 61. When the Code was passed in 1976, the local courts of Guam had been conducting grand juries under the procedure outlined by the Federal Rules of Criminal Procedure for nearly seven years. *Id.* ¶ 64. Public Law 13-186 did not create a new grand jury scheme—it modified the existing one, which was a carbon copy of the federal grand jury system. And the federal grand jury system is based on the adoption of the grand jury

as it existed at common law. *In re Apr. 1956 Term Grand Jury*, 239 F.2d 263, 268 (7th Cir. 1956) ("The Fifth Amendment adopted the grand jury, as it existed at common law, and thereby made it a part of the fundamental law of the United States for the prosecution of crime. No part of the constitution defines the grand jury. No act of congress has ever attempted such a definition. It had its origin in the common law and has existed for many hundred years." (footnote omitted)).

[26] The Fifth Amendment right to indictment by a grand jury has not been made applicable to prosecutions under local Guam law through the Organic Act. *See Guam v. Inglett*, 417 F.2d 123, 124-25 (9th Cir. 1969) (holding that Organic Act required grand jury indictment only in federal prosecutions because right to indictment by grand jury had not been incorporated against the states), *disapproved on other grounds by United States v. Frame*, 454 F.2d 1136, 1138 (9th Cir. 1972). Appellant is correct that Guam grand juries are created by local statute, rather than by the Constitution or Organic Act. But even if grand juries in Guam are technically creatures of statute, this "cannot be dispositive of the matter." *Cf. People v. Antolin*, 216 Cal. Rptr. 3d 349, 352 (Ct. App. 2017) ("The Determinate Sentencing Law is 'wholly statutory,' but there is no dispute that the common law rule regarding jurisdiction to modify sentences applies to state prison sentences imposed pursuant to this statutory scheme, except to the extent that a statute specifically provides otherwise."). The right to indictment by grand jury is also statutory in Virginia, yet their Supreme Court has held that their grand jury system is founded on the English common law. *Reed v. Commonwealth*, 706 S.E.2d 854, 858 (Va. 2011). And the Supreme Court of New Hampshire, where grand jury indictment is statutory, has likewise held that, in that jurisdiction, the common law powers of the grand jury are not restricted. *State v. Blake*, 305 A.2d 300, 303 (N.H. 1973) (citation omitted).

[27] Appellant's interpretation would mean that when the Legislature passed Public Law 9-256, it intended to create grand juries in the Island Court with no substantive powers—because no statute authorized issuing subpoenas, presenting evidence, or examining witnesses. *See* P.L. 9-256:40 (Jan. 8, 1969); *see also, e.g.*, *In re Meeting of Grand Jury for Fourth Quarter, 1984*, 497 N.E.2d 1088, 1089 (Ind. Ct. App. 1986) (stating that Indiana "grand jury proceedings are strictly statutory and grand juries have no common-law powers"). *But see Gilmore v. State*, 98 N.E.2d 677, 679 (Ind. 1951) ("[S]election, impaneling, swearing, instruction, rights, powers and duties [of grand jury] are largely governed by statute. However, when cases not governed by the statute arise, resort may be had to the common law principles as declared by the courts of this state, as well as other states, for guidance."). As we held in *In re Application of the People*, the only logical conclusion is that, in 1969, when the Guam Legislature created "local" grand juries that could be empaneled by the Island Court, it was adopting the common law. *In re Application of the People*, 2024 Guam 16 ¶ 69.

[28] This is not to say that Guam's statutory scheme has not modified the common law grand jury. The Guam Legislature has the power to alter the common law. *See Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 18; *People v. John*, 2016 Guam 41 ¶ 59 n.3. And in Guam, unlike many jurisdictions, statutes in derogation of the common law are *not* strictly construed. 1 GCA § 700 (2005). This principle is based on California law. *Id.*, Source (citing former Guam Code Civ. P. § 4, former Guam Civil Code § 4, and former Guam Penal Code §§ 4-5, which were adapted from the California codes of the same name). But California courts have explained that while they must construe the Code "liberally and with a view to effect its objects and promote justice," *Herbert Hawkins Realtors, Inc. v. Milheiser*, 189 Cal. Rptr. 450, 452 (Ct. App. 1983), "where the code is

silent, the common law governs," *Lacher*, 281 Cal. Rptr. at 646. The California Court of Appeal has explained that,

> [a]s a general rule, [u]nless expressly provided, statutes should not be interpreted to alter the common law, and should be construed to avoid conflict with common law rules. A statute will be construed in light of common law decisions, unless its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter. . . . Accordingly, [t]here is a presumption that a statute does not, by implication, repeal the common law. Repeal by implication is recognized only where there is no rational basis for harmonizing two potentially conflicting laws.

Antolin, 216 Cal. Rptr. 3d at 352 (alterations in original) (citations and internal quotation marks omitted).

[29] Stated another way, "[t]he common law is not repealed by implication or otherwise, if there is no repugnancy between it and the statute, and it does not appear that the legislature intended to cover the whole subject." *Lacher*, 281 Cal. Rptr. at 646 (citations omitted). This court has found California law to be persuasive on this topic, observing that:

> The general rule is that statutes do not supplant the common law unless it appears that the Legislature intended to cover the entire subject or, in other words, to occupy the field. "[G]eneral and comprehensive legislation, where course of conduct, parties, things affected, limitations and exceptions are minutely described, indicates a legislative intent that the statute should totally supersede and replace the common law dealing with the subject matter."

Pangelinan v. Camacho, 2008 Guam 4 ¶ 5 n.9 (alteration in original) (quoting *I.E. Assocs. v. Safeco Title Ins. Co.*, 702 P.2d 596, 598 (Cal. 1985)).

[30] In its opening brief, Appellant seems to imply that the Guam Legislature abrogated the common law by statute when it adopted features of both the California and federal grand jury schemes but did not expressly include "the power to produce books, documents, or other materials." *See* Appellant's Br. at 17. It claims the "Legislature intentionally omitted" these

powers "from Guam law, whether express as in California or implied as in the federal scheme." *Id.* Appellant's argument is incorrect.

[31] The public laws that codified and clarified grand jury procedure—Public Laws 13-186 and 15-94—did not repeal the common law by implication. Public Law 13-186 amended the grand jury statutory scheme to incorporate provisions from California law into a process that previously mirrored federal law. *In re Application of the People*, 2024 Guam 16 ¶¶ 69-70. The argument that there are distinctions between the Guam, federal, and California grand jury schemes overlooks a key point: California also adopted grand juries as they existed at common law. *People ex rel. Pierson v. Superior Court*, 212 Cal. Rptr. 3d 636, 641 (Ct. App. 2017) (holding that California incorporated institution of criminal grand jury as known at common law). And under California law, without a statute clearly and unequivocally to the contrary, a criminal grand jury retains its common law powers, such as the power to issue subpoenas *duces tecum*, "even though the Legislature did not grant this procedural power explicitly." *Id.* at 643. The only use of the term "common law" in Appellant's opening brief is an acknowledgment that the California Court of Appeal found that a grand jury has a common law basis to issue subpoenas *duces tecum*.[5]

[5] Yet Appellant fails to acknowledge that their argument is almost the same one that was rejected by the California Court of Appeal in *M.B. v. Superior Court*:

> Despite this compelling common law history, petitioners contend the grand jury in this case had no power to issue a subpoena duces tecum because Penal Code section 939.2—the grand jury statute discussing subpoenas—refers only to requiring the attendance of witnesses, and says nothing about calling for the production of documents. Petitioners argue: "The Grand Jury in California is entirely a creation of the Legislature. Its only powers are those specifically granted to it in statute by the Legislature. It has no inherent powers," and "Without a specific grant of power from the Legislature, the Grand Jury cannot compel production of documents. Penal Code section 939.2 *excludes* that power."
>
> Petitioners are wrong. Not only is there statutory warrant for grand jury subpoenas duces tecum, but our Supreme Court has emphatically "rejected the contention that the California grand jury [is] a 'purely' statutory body, wholly distinct from its common law predecessor."

M.B. v. Superior Court, 127 Cal. Rptr. 2d 454, 457-58 (Ct. App. 2002) (alteration in original) (footnotes and citation omitted).

Appellant's Br. at 15 (citing *M.B. v. Superior Court*, 127 Cal. Rptr. 2d 454, 459-60 (Ct. App. 2002)).

[32] Any argument that combining the common law process of federal grand juries with the common law process of California grand juries resulted in a wholesale repeal of the common law is unpersuasive. This is especially salient on the point of a grand jury's subpoena powers. At oral argument, Appellant stated its position was that from 1976 until 1980—when Public Law 15-94 was passed creating section 75.45—Guam grand juries had no subpoena power. Digital Recording at 3:04:04-3:05:37 (Oral Arg., July 11, 2024). That would mean that the Legislature intended to create the first grand jury in the history of the United States lacking the power to compel witness testimony. *See Kastigar*, 406 U.S. at 443 (observing that by 1742, it was considered an "indubitable certainty" that grand juries had the "right to every man's evidence" (citation omitted)). *See generally* Sara Sun Beale et al., *Grand Jury Law and Practice* § 6:3 (2d ed. 2024) ("Grand juries have universally been accorded the power to compel witnesses to testify before them, and to obtain physical evidence by subpoena as well."). We cannot conclude that such an absurdity was intended.

[33] Instead, the statutory scheme enacted by Public Law 13-186 and amended by Public Law 15-94 can be reconciled with the common law, especially where the statutes are silent. Generally, the common law and Guam's statutory grand jury scheme can be harmonized. The Legislature did not intend to cover the whole subject of grand jury procedure and substantive powers but instead supplemented the preexisting common law framework.

[34] Appellant contends that "in 2024 there is no publicly published history of Guam Grand Juries having or exercising an implied *subpoena duces tecum* power, despite the 1980 enactment of Section 75.45, granting the subpoena power to the Guam grand jury." Appellant's Br. at 16.

But Guam grand juries could issue subpoenas—including subpoenas *duces tecum*— before the enactment of section 75.45. This section did not grant a new, as-of-yet unexercised subpoena power. *See* 8 GCA § 75.45, Note. Rather, section 75.45 *clarified* the subpoena process. That Guam grand juries had the subpoena power since their inception is supported by common law, common sense, the Compiler's note to section 75.45, and history. From 1969 to 1976, the grand jury procedure was governed by the Island Court's Rules of Criminal Procedure, which mirrored the Federal Rules of Criminal Procedure. *Compare* Fed. R. Crim. P. 6, 7, 17 (1970), *with* Guam Penal Code §§ 330, 338 (1970) (Island Ct. R. Crim. P. 6, 7, 17). There is an implied subpoena *duces tecum* power in the Federal Rules of Criminal Procedure, *see* Fed. R. Crim. P. 17(c)(1), as Appellant has admitted. *See* Appellant's Br. at 17; *Grand Jury*, 38 Geo. L.J. Ann. Rev. Crim. Proc. 243, 250 (2009); 1 Fed. Grand Jury § 11:3 (2d ed. 2023). The subpoena *duces tecum* power is clear in the historical public record.

[35] We affirm the legal conclusion of the trial court that Guam grand juries have the power to subpoena evidence. The Superior Court correctly concluded that Guam grand juries have broad investigatory powers to inquire into felonies and related misdemeanors, including issuing subpoenas *duces tecum* under 8 GCA § 75.45.

B. An Assistant Attorney General Can Sign a Grand Jury Subpoena

[36] Appellant argues that the plain language of 8 GCA § 75.45 requires all grand jury subpoenas be signed by the Attorney General if they are not signed by a judge of the Superior Court. Appellant's Br. at 18. Should we accept Appellant's hyper-technical reading of the statute, the subpoena would be invalid because it was signed by an Assistant Attorney General and not Douglas B. Moylan himself. The People counter that "Appellant's argument must fail because it

is both impractical and unsupported by the Guam Code Annotated." Appellee's Br. at 27. We agree with the People.

[37] First, this issue was not adequately preserved for appeal. An issue raised for the first time in a reply to a response in the trial court may be forfeited on appeal. *See, e.g.*, *In re Niaspan Antitrust Litig.*, 67 F.4th 118, 135 (3d Cir. 2023) ("Arguments raised for the first time before a district court in a reply brief are deemed forfeited."); *Novosteel SA v. United States*, 284 F.3d 1261, 1274 (Fed. Cir. 2002) ("Raising the issue for the first time in a [summary judgment] reply brief does not suffice; reply briefs *reply* to arguments made in the response brief—they do not provide the moving party with a new opportunity to present yet another issue for the court's consideration."). But courts will generally not consider an issue to be forfeited "where the [trial] court fully addressed the argument in its order and [where] both parties fully briefed the issue on appeal." *Salling v. Budget Rent-A-Car Sys., Inc.*, 672 F.3d 442, 444 (6th Cir. 2012) (second alteration in original) (quoting *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 553 (6th Cir. 2008)).

[38] The Superior Court did not discuss at all the argument that the Assistant Attorney General could not sign the subpoena (nor was it under any obligation to). We have the discretion to consider the issue forfeited because a fleeting reference to a signature by "the Acting Chief Prosecutor" is insufficient to preserve the matter for appeal. *See* RA, tab 13 at 4 (Reply Opp'n Mot. Quash); *see also In re Niaspan Antitrust Litig.*, 67 F.4th at 135 ("To preserve a matter for appellate review, a party 'must unequivocally put its position before the trial court at a point and in a manner that permits the court to consider its merits.'" (quoting *Garza v. Citigroup Inc.*, 881 F.3d 277, 284 (3d Cir. 2018))). However, we will exercise our discretion to reach the merits of this forfeited issue because it presents a pure question of law that is an issue of first impression.

[39] Title 8 GCA § 75.45(a) provides that "[a] subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the Attorney General, or, upon request of the grand jury, by any judge of the Superior Court." Section 75.45 is based on California Penal Code § 939.2, which provides: "A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney . . . or, upon request of the grand jury, by any judge of the superior court . . . ." Cal. Penal Code § 939.2 (West 2023). At oral argument, when presented with the fact that this court found no California cases that had interpreted section 939.2 to bar an assistant district attorney from signing a subpoena, Appellant responded that it believed the case *Ex parte Peart* supported their argument. Digital Recording at 3:21:54-3:22:59, 3:54:37-3:55:02 (Oral Arg.); *see also Ex parte Peart*, 43 P.2d 334 (Cal. Dist. Ct. App. 1935). *Peart* is inapposite, as it dealt with a different section of the Penal Code and was decided over 20 years before the California legislature added section 939.2. *See* 43 P.2d at 335 (interpreting Cal. Penal Code § 1326); Cal. Penal Code § 939.2, Credits (West).[6]

[40] We construe section 75.45 "liberally and with a view to effect its objects and promote justice." *Herbert Hawkins Realtors*, 189 Cal. Rptr. at 452. The Compiler's note states that "[t]his Section cleans up the administrative process by permitting the Attorney General to issue and sign all subpoenas for grand juries." 8 GCA § 75.45, Note; *see also Taisacan*, 2023 Guam 19 ¶ 54 ("Although these notes by the Compiler are emphatically *not* a source of substantive Guam law, *see* 1 GCA § 101(a) (2005), they are nonetheless useful for discerning the intent of the Commission—and thus serve as valuable quasi-legislative history.").

[6] Furthermore, *Peart* was superseded by statute in 1937 when the California legislature amended California Penal Code § 1326 to allow the district attorney to sign a subpoena "for those witnesses whose testimony, in his opinion, is material in an investigation before the grand jury." *See* Stats. 1937, c. 215, p. 512, § 1.

[41] The People argue that, based on 5 GCA § 30109, the Attorney General may delegate his authority to sign grand jury subpoenas. That section, which outlines the duties of the Attorney General, provides that "[t]he Attorney General is the public prosecutor and, by himself, a deputy or assistant, shall: . . . conduct grand jury proceedings." 5 GCA § 30109(b) (as amended by P.L. 31-153:2 (Nov. 21, 2011)). As this court has recently explained, a statutory phrase is ambiguous if it is "susceptible to two or more *reasonable* interpretations." *In re D.S.*, 2023 Guam 13 ¶ 35 (emphasis added) (citation omitted). The interpretation advanced by Appellant is unreasonable. Requiring the Attorney General to sign grand jury subpoenas, even though the statute explicitly empowers his subordinates to conduct grand jury proceedings, seems to be "detached from the reality of" grand jury proceedings and leads to "an unreasonable result." *Cf. Perez v. Civ. Serv. Comm'n*, 2018 Guam 25 ¶ 15.

[42] We conclude that a grand jury subpoena can be signed by an Assistant Attorney General.

C. The Trial Court Did Not Abuse Its Discretion When It Denied the Motion to Quash

[43] Appellant's arguments about the reasonableness of the subpoena misapprehend its burden at the trial court level and what it now is on appeal. Appellant argues that the OAG's suspicion of "possible wrongdoing in awarding government contracts to [Appellant] is not a specific enough allegation for the Court to determine whether this [subpoena] is sufficiently related to the return of an Indictment or not, or whether it is reasonable in scope and burden." Appellant's Br. at 20-21. But it was not the People's burden to make any showing on this point. Elsewhere, Appellant seems to state that the Superior Court abused its discretion because it disagreed with Appellant's arguments. *See id.* at 25 ("The Superior Court abused its discretion when it rejected this basis offered to quash the [subpoena]."). Appellant's arguments are generally untenable.

[44] In *In re Application of the People*, we observed that "[t]he touchstone for grand jury investigative power and ability of witnesses to challenge a subpoena *duces tecum* is the United States Supreme Court's decision in *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991)." 2024 Guam 16 ¶ 39. We found *R. Enterprises* to be highly persuasive and adopted it as the standard that applies in Guam to grand jury challenges.[7] *Id.* ¶ 91. This is because our grand jury statutes are based on federal and California law, and both jurisdictions apply the *R. Enterprises* standard.

[45] Title 8 GCA § 75.20 states that "[t]he court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive." 8 GCA § 75.20 (2005). This is based on Rule 17(c) of the Federal Rules of Criminal Procedure, *id.*, Note, which applies to motions to quash grand jury subpoenas. *See R. Enters.*, 498 U.S. at 303 (Stevens, J. concurring) ("Federal Rule of Criminal Procedure 17(c) authorizes a federal district court to quash or modify a grand jury subpoena *duces tecum* 'if compliance would be unreasonable or oppressive.'" (citing *United States v. Calandra*, 414 U.S. 338, 346 n.4 (1974))).

[46] Under both federal and California law, "a grand jury subpoena issued through normal channels is presumed to be reasonable, and the burden of showing unreasonableness must be on the recipient who seeks to avoid compliance." *M.B.*, 127 Cal. Rptr. 2d at 463 (quoting *R. Enters.*,

[7] Although our decision in this case and *In re Application of the People*, 2024 Guam 16, resolve many questions of first impression about grand juries, both appeals deal with subpoenas *duces tecum*. We do not reach the issue of whether a witness who is merely subpoenaed to testify may challenge the jurisdiction of a grand jury. But we note:

> In most jurisdictions the courts will not interrupt an ongoing grand jury proceeding to consider challenges to the grand jury's jurisdiction. In practical terms, this means that a witness who is subpoenaed to appear before a grand jury is not entitled to question whether the matter being investigated is within the jurisdiction of the grand jury. If the grand jury exceeds its authority, this may affect the validity of the indictment, but it does not ordinarily justify interrupting an ongoing investigation.

Sara Sun Beale et al., *Grand Jury Law and Practice* § 9:25 (2d ed. 2024) (footnote omitted).

498 U.S. at 300-01). California has adopted the *R. Enterprises* standard that "[a] grand jury subpoena permits the government to obtain documents unless 'there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation.'" *State Water Res. Control Bd. v. Baldwin & Sons, Inc.*, 258 Cal. Rptr. 3d 425, 436 n.18 (Ct. App. 2020) (quoting *R. Enters.*, 498 U.S. at 301). The trial court's decision that Appellant failed to rebut the evidentiary presumption that the subpoena was reasonable is a factual finding reviewed for substantial evidence. *See In re Guardianship of Moylan*, 2018 Guam 15 ¶ 6 ("A finding of fact is clearly erroneous where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made." (quoting *M Elec. Corp.*, 2016 Guam 35 ¶ 41)); *cf. Estate of Auen*, 35 Cal. Rptr. 2d at 564 (reviewing finding that appellants failed to rebut presumption of undue influence for substantial evidence); *N.T. Enloe Mem'l Hosp. v. N.L.R.B.*, 682 F.2d 790, 795 (9th Cir. 1982) (reviewing finding that employer failed to rebut presumption of union's majority status for substantial evidence).

[47] Appellant makes the conclusory statement that "[t]he Government is engaged in a fishing expedition via its general investigative grand jury," which, it proffers, "is an unreasonable abuse of the grand jury subpoena power." Appellant's Br. at 21. But it fails to point to any evidence in the record that it rebutted the presumption of reasonableness afforded to grand jury subpoenas. Instead, much of Appellant's argument seems to assume that the trial court applied the wrong legal standard. *See id.* ("The Government has not articulated which contracts, or which individuals it suspects of wrongdoing."). Appellant's view of the law is incorrect. Because the trial court applied the correct legal standard and Appellant does not show the trial court's factual findings

were erroneous, we conclude the trial court did not abuse its discretion in denying the motion to quash.

[48] We also reject Appellant's contention that it could not comply with the subpoena on grounds of vagueness and ambiguity because the language of the subpoena "is open to interpretation." *Id.* at 19. Appellant's arguments about the uncertainty of the meaning of words like "contract" or "Government of Guam" strain credulity. *See id.* at 23-24. We agree with the Superior Court that the plain language of the subpoena was not vague, indiscernible, or ambiguous. Appellant's argument that the subpoena is overbroad lacks merit. It cites no provision of statutory or case law to support its argument, nor does it point to anything in the record to show it rebutted the presumption that the subpoena was reasonable. On abuse-of-discretion review, disagreeing with the conclusion of the trial court is simply not enough.

[49] Appellant claims that "[b]ecause the Government seeks public documents it already by law has access to, compliance with the [subpoena] served on [Appellant] . . . , a private entity, imposes an undue burden on [Appellant]." Appellant's Br. at 26. Appellant cites no authority to support this proposition. *See In re Grand Jury*, 851 F.2d 499, 502 (1st Cir. 1988) (per curiam) ("The appellant's speculation that the information the government seeks from him is merely cumulative is just that—speculation. Moreover, the appellant suggests no legal basis, and we know of none, that permits a witness to refuse to testify on that ground."). Nor does it challenge the trial court's finding that "[Appellant] requested and was provided with an extension to produce the records" and that the trial court was "unaware of any subsequent extensions." RA, tab 15 at 2-3 (Order Den. Mot. Quash). Appellant makes no attempt to show that the trial court applied an incorrect legal standard or made clearly erroneous findings of fact. Its abuse-of-discretion challenge must fail. As one treatise explains:

> It is not uncommon for persons served with subpoenas duces tecum to resist production of the subpoenaed materials on the ground that the materials are not relevant to the grand jury's investigation, or that the grand jury is not engaged in a good faith investigation of matters within its jurisdiction. Because of the broad scope afforded to the grand jury's investigative powers, and the presumption of regularity that attaches to actions of the grand jury, such objections are almost universally overruled. Likewise, the claim that the grand jury may not subpoena material that is "merely redundant" of other information already in the possession of the grand jury has been rejected.

Beale et al., *supra*, § 6:23 (footnotes omitted).

[50] At oral argument, the People acknowledged one potential issue with a subpoena for documents is that some of the requested records may be so old as to be beyond the potentially applicable statute of limitations. Digital Recording at 3:43:39-3:46:00 (Oral Arg.). But the People maintained that even if a subpoena sought documents outside the limitations period, it was not necessarily overbroad because those documents could lead the grand jury to discover indictable conduct. *Id.* This is consistent with federal case law on the subject. *United States v. Doe*, 457 F.2d 895, 901 (2d Cir. 1972) ("[T]he grand jury's scope of inquiry 'is not limited to events which may themselves result in criminal prosecution, but is properly concerned with any evidence which may afford valuable leads for investigation of suspected criminal activity during the limitations period.'" (quoting *United States v. Cohn*, 452 F.2d 881, 883 (2d Cir. 1971))). We agree with the Second Circuit that "[n]o magic figure limits the vintage of documents subject to a grand jury subpoena. The law requires only that the time bear some relation to the subject matter of the investigation." *Trump v. Vance*, 977 F.3d 198, 212 (2d Cir. 2020) (per curiam) (quoting *In re Rabbinical Seminary Netzach Israel Ramailis*, 450 F. Supp. 1078, 1084 (E.D.N.Y. 1978)). Although the subpoena served on Appellant requested documents that may have been outside the

three-year statute of limitations that applies to most felonies, we cannot say it was *per se* too long a period for the subpoena to cover.[8]

[51] Appellant made no attempt in the trial court to rebut the presumption of regularity that attaches to actions of the grand jury, so its challenge fails on appeal. We decline Appellant's invitation to substitute our judgment for that of the trial court. We affirm the decision of the trial court.

D. We Clarify the Procedure to Challenge a Grand Jury Subpoena *Duces Tecum*

[52] This case began with the filing of a special proceeding in the Superior Court, in which Appellant sought to quash the subpoena *duces tecum* served upon it. That motion was eventually denied in a decision and order, followed by the entry of judgment. Appellant appealed that judgment by filing a notice of appeal. The People challenged this court's jurisdiction in a motion to dismiss, arguing that Appellant's appeal was untimely and that denial of a motion to quash a grand jury subpoena was not appealable. We ultimately denied the motion. Appellant now asks us to clarify the proper procedure to challenge a grand jury subpoena. Appellant's Br. at 27-28. It also asks that, as part of this clarification, we adopt a requirement that grand jury witnesses be informed "of their status as targets or subjects of grand jury investigations, as a matter of fairness." Appellant's Br. at 27. We find it prudent to clarify the proper procedure since there are no rules[9] directing how a party may or should challenge a grand jury subpoena.

[8] We also note that Guam's criminal procedure code provides that "a prosecution may be commenced against a public officer or employee or any person acting in complicity with such public officer or employee for any offense based upon misconduct in office by such public officer or employee at any time while such public officer or employee continues in public office or employment or within three (3) years thereafter." 8 GCA § 10.40 (2005). Thus, when the inquiry of the grand jury touches upon crimes related to public office, the scope of indictable conduct may be much longer than the previous three years.

[9] Some federal district courts have local rules governing grand jury procedure. *See, e.g.*, N.D. Ind. L. Cr. R. 6.1(b) ("The clerk must open a sealed miscellaneous case for each newly impaneled grand jury. Motions, orders, and other filings pertaining to the grand jury must bear the case number.").

[53] In most jurisdictions, including federal courts, "motions to quash subpoenas are not directly reviewable, and the witness must await the imposition of a contempt sanction before appellate review is available." Beale et al., *supra*, § 11:13 (footnote omitted). This rule can be traced to decisions of the U.S. Supreme Court which have held that "one to whom a subpoena is directed may not appeal the denial of a motion to quash that subpoena but must either obey its commands or refuse to do so and contest the validity of the subpoena if he is subsequently cited for contempt on account of his failure to obey." *United States v. Ryan*, 402 U.S. 530, 532 (1971) (citing *Cobbledick v. United States*, 309 U.S. 323 (1940)). But state courts have not universally adopted this rule. Maryland, for example,

> has consistently refused to follow the non-appealability rule adopted by the Supreme Court in . . . *Cobbledick*[] and *Ryan*. When a Maryland trial court denies a motion to quash or a motion for a protective order, and that action terminates the proceedings in the court, the trial court's denial is appealable even though administrative proceedings, or investigative proceedings, or separate court proceedings where the recipient of the subpoena was not a party, are ongoing.

Eist, 11 A.3d at 799 n.14. Similarly, the Court of Appeals of New York has found that "a motion to quash a *subpoena* issued prior to the commencement of a criminal action, even if related to a criminal investigation, 'is civil by nature,'" and so "an order resolving a motion to quash such a subpoena is a final and appealable order in a special proceeding that is 'not subject to the rule restricting direct appellate review of orders in criminal proceedings.'" *In re 381 Search Warrants Directed to Facebook, Inc.*, 78 N.E.3d at 146 (citations omitted); *see also People v. Coulibaly*, 152 N.Y.S.3d 499, 501 (App. Div. 2021) ("[E]ven when an order is issued pursuant to a criminal investigation or relates to a collateral aspect of a criminal proceeding, if the nature of the relief sought is civil in nature and the order can be said to be final and does not affect the criminal judgment itself, courts have found the matter to be civil and appeals from such orders are not constrained by the rule controlling appeals from orders in criminal proceedings."). In our order

denying the People's motion to dismiss, we relied on these authorities from New York and Maryland to find we had jurisdiction. Order at 1-3 (Apr. 11, 2024).

[54] As we explained in *In re Application of the People*, "[w]hen a civil action is filed to challenge a grand jury subpoena, an order resolving the motion to quash is a final and appealable order." 2024 Guam 16 ¶ 19 (citing *In re 381 Search Warrants Directed to Facebook, Inc.*, 78 N.E.3d at 146). But nothing in our opinions should be construed as preventing a witness who has been held in contempt for refusing to comply with a grand jury subpoena from litigating a motion to quash as part of contempt proceedings. *Cf. Guam Mem'l Hosp. Auth. v. Superior Court*, 2012 Guam 17 ¶ 19 (discussing possibility of challenging legislative subpoena *duces tecum* through contempt proceedings). When a witness faces a grand jury subpoena *duces tecum* they feel should be quashed, they have two options: either (1) file a civil action making the motion to quash, or (2) refuse to comply and litigate a motion to quash in contempt proceedings. In either case, appellate review is available. In a civil action, once the motion is resolved, the losing party may seek review by filing a notice of appeal. If the witness is held in contempt and the trial court denies the motion to quash, appellate review is available by petitioning for a writ of certiorari challenging the contempt citation. And in cases like this one, where a civil action is filed, when the Superior Court denies the motion to quash and that action terminates the proceedings in that court, the trial court's denial is appealable, even though investigative proceedings to which the recipient of the subpoena was not a party are ongoing. *See Eist*, 11 A.3d at 799 n.14.

[55] Although this case was filed as a special proceeding, future challenges to grand jury subpoenas *duces tecum* are better addressed as a petition for judicial review. Because a "petition for judicial review is a judicially created vehicle," the Superior Court can designate "'any suitable process or mode of proceedings' that best aligns with the spirit of" the grand jury process. *See*

Guam Police Dep't v. Guam Civ. Serv. Comm'n (Charfauros), 2020 Guam 12 ¶ 13. This includes shortening the time for the People to respond to a motion to quash, which may be as long as 60 days if the Rules of Civil Procedure are strictly followed. *See* Guam R. Civ. P. 4(d)(3) (60 days to answer if service waived); Guam R. Civ. P. 12(a) (60 days for Attorney General to answer). *But see* CVR 7.1(j) (Applications for Orders Shortening Time). Otherwise, the procedure followed in this case was proper: moving to quash under seal with a non-criminal cover sheet, allowing the issue to be briefed, holding an evidentiary hearing if considered necessary by the trial court, issuing a written decision and order resolving the motion to quash, and entering a separate judgment appealable to this court. Documents filed with the trial court that do not disclose the identity of the witness or the subject matter of the grand jury investigation need not be sealed, as they do not violate the secrecy of the grand jury. Either party may move under 8 GCA § 50.34(c) for the grand jury proceedings to be disclosed, which under statute is within the discretion of the trial court and may be held *in camera*.

[56] Appellant asks this court for clarification on the proper procedure to challenge a grand jury subpoena, but it does not propose any procedures or provide examples from other jurisdictions beyond citing the Department of Justice ("DOJ") manual about target letters. We decline Appellant's invitation to adopt a requirement that the OAG advise a grand jury witness of their rights if such witness is a "target" or "subject" of a grand jury investigation. Although Appellant accurately cites DOJ policy about issuing target and subject letters, it neglects that federal courts have uniformly found such warnings are not constitutionally or otherwise legally required. *See, e.g.*, *United States v. Washington*, 431 U.S. 181, 189 (1977); *United States v. Myers*, 123 F.3d 350, 356 (6th Cir. 1997) ("[T]he U.S. Attorney's Manual 'is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any

matter civil or criminal.' Additionally, any interest a target or subject may have in receiving the Advice of Rights form does not, on its own, rise to the level of a liberty interest protected by the Due Process Clause." (alteration in original) (quoting *United States v. Goodwin*, 57 F.3d 815, 818 (9th Cir. 1995))).

[57] Assuredly, while the better practice is to have a manual for prosecuting attorneys to conduct grand jury proceedings, we decline to exercise our supervisory jurisdiction to write that policy for the OAG. As Guam adopted the common law grand jury that existed in the federal system, we find federal court decisions persuasive that "[n]o witness is entitled to 'target warnings.'" *United States v. Burke*, 781 F.2d 1234, 1245 (7th Cir. 1985) (citing *Washington*, 431 U.S. 181); *United States v. D'Auria*, 672 F.2d 1085, 1093 (2d Cir. 1982) ("A target warning is not required as a matter of constitutional law."); *United States v. Scrimgeour*, 636 F.2d 1019, 1026 (5th Cir. 1981) ("There is no constitutional requirement that the Government inform a grand jury witness that he is a potential defendant. Nor does due process require that the Government warn a grand jury witness that he is a target of the grand jury's investigation."). At most, federal case law establishes that if the Government voluntarily gives a warning to a witness, it cannot mislead them. *United States v. Winter*, 663 F.2d 1120, 1151 (1st Cir. 1981) ("Because Price has raised what is essentially a due process claim, the key inquiry is not whether Price was technically a target, but whether the prosecutor either actually misled Price and his attorney about Price's status . . . ."), *abrogated on other grounds by Salinas v. United States*, 522 U.S. 52 (1997). *But see United States v. Crocker*, 568 F.2d 1049, 1056 (3d Cir. 1977) (holding due process not violated although assistant United States attorney may have misled defendant's attorney by suggesting defendant not a target when he appeared before grand jury), *abrogated on other grounds by United States v. Miller*, 527 F.3d 54 (3d Cir. 2008).

V. CONCLUSION

[58] Guam grand juries have the power to issue subpoenas *duces tecum*. The plain language of 8 GCA § 75.45 authorizes grand juries to subpoena evidence, and this conclusion is further supported by the common law. Additionally, we conclude that an Assistant Attorney General can sign a grand jury subpoena.

[59] The law presumes that a grand jury acts within the legitimate scope of its authority, without a strong showing to the contrary. The trial court found that Appellant did not rebut the presumption that the grand jury was acting within the scope of its authority. On appeal, Appellant fails to show this finding was clearly erroneous. The trial court did not abuse its discretion in denying the motion to quash because it applied the correct legal standard, and its factual findings are supported by substantial evidence. We also decline Appellant's invitation to adopt a disclosure requirement toward grand jury witnesses. We **AFFIRM**.

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
ROBERT J. TORRES
Chief Justice