

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

COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS,

Plaintiff,

v.

JAI HOON YOO,

Defendant.

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Traffic Case No. 00-5959

**ORDER**

**I. PROCEDURAL BACKGROUND**

This matter came before the court for a bench trial on December 20, 2001, in Courtroom 220 at 1:30 p.m. Assistant Attorney General Elaine A. Paplos, Esq., appeared on behalf of the Commonwealth. G. Anthony Long, Esq., appeared on behalf of the Defendant, Jai Hoon Yoo. The court, having heard and considered the arguments of counsel and being fully informed of the premises, now renders its decision.

**II. FACTS**

On August 3, 2000, Defendant Jai Hoon Yoo (Defendant) was involved in a vehicular collision with a minor pedestrian. A Department of Public Safety (DPS) Officer arrived at the scene to investigate the collision, but no citation was issued.

On August 8, 2000, five days after the collision, DPS Officer Franklin Pangelinan issued a citation to Defendant for Failure to Exercise Due Care, in violation of 9 CMC § 5408. [p. 2]

On December 20, 2000, this matter came before the court for a bench trial. The Commonwealth presented its case, including five (5) witnesses and three (3) exhibits, and rested. Defense counsel, prior

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to presenting its case, objected to the fact that the traffic citation in this matter was issued five days after the vehicular collision. The court noted the objection and directed counsel to proceed with its case-in-chief. At the conclusion of the bench trial the court adjudged Defendant to be guilty of Failure to Exercise Due Care, in violation of 9 CMC § 5408. The court noted, however, that it would dismiss the charge with prejudice if it found that the DPS Officer who issued the traffic citation lacked authority to issue it due to the fact that the citation was issued five days after the incident. The court then directed counsel for the Commonwealth and for the Defendant to submit briefs addressing the issue.

### **III. ISSUES**

1. Whether Defendant waived the right to object to the fact that the traffic citation was issued five days after the vehicular collision pursuant to Com. R. Crim. P. 12(f) because Defendant failed to raise such issue or defect in the citation in a pretrial motion as required by Com. R. Crim. P. 12(b).

2. Whether a Department of Public Safety Officer has the authority to issue a traffic citation five days after the occurrence of the event giving rise to the charge set forth in the citation.

### **ANALYSIS**

#### **A. Waiver of Defendant's Right to Object to Defect in Citation.**

Defense counsel objects to the fact that the traffic citation was issued five days after the vehicular collision. This objection, however, was not made until after the Commonwealth presented its case-in-chief at trial. The Commonwealth, therefore, asserts that Defendant waived the right to object to the fact that the traffic citation was issued five days after the vehicular collision pursuant to Com. R. Crim. P. 12(f) because Defendant failed to raise such issue or defect in the citation in a pretrial motion as required by Com. R. Crim. P. 12(b).

“In traffic cases the complaint or information and summons shall be in the form known as the ‘Traffic Ticket, Complaint/Citation and Summons’ . . .” *See* Com. R. Traf. P. 3(a). Accordingly,

in the [p. 3] present matter the traffic citation is the charging document and all procedural rules related to an information apply to the traffic citation.

“Objections to the form of an information must be made prior to trial.” *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 234 (1995) *citing* Com. R. Crim. P. 12(b)(1). Pursuant to Com. R. Crim. P. 12(b)(1)-(2):

Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. **The following must be raised prior to trial:**

**(1) Defenses and objects based on defects in the institution of the prosecution;**

**(2) Defenses and objections based on defects in the indictment or information . . .**

Com. R. Crim. P. 12(b)(1)-(2)(emphasis added). Failure to raise defenses and objections based on defects in the information in a pretrial motion constitutes a waiver of such defenses and objections. *See* Com. R. Crim. P. 12(f) (“Failure by a party to raise defenses or objections or to make requests which must be made prior to trial . . . shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver”).

Interpretations of the Federal Rules of Criminal Procedure are instructive because the Commonwealth Rules of Criminal Procedure are patterned after the federal rules. *Commonwealth v. Ramangmau*, *supra* at 233 n. 3, *citing* *Commonwealth v. Martinez*, 4 N.M.I. 18, 20 (1993). “The defenses for which pretrial assertion is mandatory relate to procedural defects in obtaining the charge and to defects in the information that go to matters of form rather than substance that usually are apparent on the face of the pleading.” *United States v. Smith*, 866 F.2d 1092, 1094 (9<sup>th</sup> Cir. 1989).

In the present matter, Defendant failed to challenge the perceived procedural defect in the traffic citation until after the bench trial commenced and after the Commonwealth presented its case-in-chief. Com. R. Crim. P. 12(b)(1) and 12(b)(2) contemplate that any such challenge to a charging document, in this case a traffic citation, be brought before the court in a pretrial motion. Also, Com. R. Crim. P. 12(f) provides that failure to bring such a challenge to the validity of a charging document constitutes a waiver on the part of the Defendant to raise such issue at trial. However,

Com. R. Crim. P. 12(f) also [p. 4] provides that “the court for cause shown may grant relief from such waiver.” See Com. R. Crim. P. 12(f), *see also United States v. Gonzales*, 749 F.2d 1329, 1336 (9<sup>th</sup> Cir. 1984) (court has discretion to grant relief from waiver for "cause shown").

In the present matter, the court is concerned with the fact that the DPS Officer investigating the vehicular collision did not issue a traffic citation until five days after the incident. Accordingly, the court finds that Defendant has raised an important issue and has therefore shown cause as to why his argument should not be deemed waived pursuant to Com. R. Crim. P. 12(f).

B. Authority of a DPS Officer to Issue Citation Five Days after Alleged Violation.

Defendant asserts that the plain language of the Commonwealth Vehicle Code, found at 9 CMC § 1101, *et. seq.*, states that a DPS Officer only possesses the authority to issue a citation at the scene of an accident.

Pursuant to 9 CMC § 1303:

Whenever any person is halted by a police officer for any violation of this title and is not required to be taken before a judge pursuant to 9 CMC § 1302, **the person shall, in the discretion of the officer, either be given a traffic citation as provided in 9 CMC § 1304, or be taken without unnecessary delay before the proper judge . . .**

9 CMC § 1303 (emphasis added).

Pursuant to 9 CMC § 1304(a):

Whenever a person is halted by a police officer for any violation of this title and is not taken before a judge, **the officer shall prepare a written traffic citation** and the driver of the vehicle shall surrender his or her operator’s license. When the operator’s license has been surrendered by the driver, the citation shall constitute a temporary operator’s license until the court appearance date specified on the citation.

9 CMC § 1304(a) (emphasis added).

Analysis of a statute must begin with the plain language of the statute. A basic principle of statutory construction is that the language must be given its plain meaning. *Camacho v. Northern Marianas Retirement Fund*, 1 N.M.I. 362, 368 (1990); *Nansay Micronesia Corp. v. Govendo*, 3 N.M.I. 12, 18 (1992); *Govendo v. Micronesian Garment Manufacturing Inc.*, 2 N.M.I. 272, 284

(1991); *Estate of Faisao v. Tenorio*, 4 N.M.I. 260, 265 (1995); *Office of the Attorney General v. [p. 5] Deala*, 3 N.M.I. 110, 117 (1992); *King v. Board of Elections*, 2 N.M.I. 398, 403 (1991)(When the language is clear, the court will not construe it contrary to its plain meaning.); *Commonwealth Ports Auth. v. Hakubotan Saipan Ent., Inc.*, 2 N.M.I. 212, 221 (1991); *In Re The Estate of Rofag*, 2 N.M.I.18, 29 (1991) (It is therefore necessary to give [language] the meaning that the legislature intended.); *Commonwealth v. Nethon*, 1 N.M.I. 458 (1990); and *Commonwealth v. Hasinto*, 1 N.M.I. 377, 382 (1990).

The plain language of 9 CMC § 1304(a) states “[w]henever a person is halted by a police officer for any violation of this title and is not taken before a judge, the officer **shall** prepare a written traffic citation . . .” See 9 CMC § 1304(a) (emphasis added). “Unless the context otherwise indicates[,] the use of the word ‘shall’ . . . indicates a mandatory intent.” SUTHERLAND, STATUTORY CONSTRUCTION § 25.04 (4th ed. 1985), see also *Aquino v. Tinian Cockfighting Board*, 3 N.M.I. 284, 292 (1993) (statutory term “shall” creates duty and is mandatory). As such, when a person is stopped for a violation of the vehicle code and is not taken before a judge, a DPS Officer is only empowered to issue a traffic citation at the scene. Accordingly, the traffic citation issued in the present matter was issued without authority. The proper procedure would have been for the DPS Officer to present the results of his investigation to the Office of the Attorney General for consideration and for the Office of the Attorney General to then file an Information charging Defendant with the alleged offense.

## V. CONCLUSION

For the foregoing reasons, the court finds that Defendant has therefore shown cause as to why his argument challenging the validity of the August 8, 2000, traffic citation should not be deemed waived pursuant to Com. R. Crim. P. 12(f).

For the foregoing reasons, the court finds that when a person is stopped for a violation of the vehicle code and is not taken before a judge, a DPS Officer is only empowered to issue a traffic citation at the scene. As such, the court finds that traffic citation issued in the present matter was

issued without authority. Accordingly, the charge of Failure to Exercise Due Care, set forth in the traffic citation dated August 8, 2001, is hereby **DISMISSED WITH PREJUDICE** and the court's Judgment and **[p. 6]** Commitment Order entered on December 20, 2000, whereby Defendant was adjudged to be guilty of Failure to Exercise to Due Care, in violation of 9 CMC § 5408, is hereby **VACATED**.

So ORDERED this 23<sup>rd</sup> day of April, 2001.

/s/  
JUAN T. LIZAMA, Associate Judge