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3 **FOR PUBLICATION**
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5 **IN THE SUPERIOR COURT**
6 **FOR THE**
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8 COMMONWEALTH OF THE NORTHERN
9 MARIANA ISLANDS,

10 Plaintiff,

11 v.

12 JOAQUIN REYES CRISOSTOMO, and NEIL
13 SABLAN TAISACAN,

14 Defendants.

Criminal Case No. 00-0523(A)

**ORDER DENYING MOTION TO
VACATE AND DISMISS**

15 **I. INTRODUCTION**

16 **THIS MATTER** came before this Court on July 15, 2003 at 1:30 p.m. in room 223A to hear
17 Defendants' Motion to Vacate Judgment of Conviction and Dismiss Misdemeanor Charges. Defendant,
18 Joaquin Crisostomo was represented by Bruce Mailman. Defendant, Neil Taisacan was represented by
19 Reynaldo Yana. The Commonwealth was represented by Kevin Lynch.

20 **II. FACTS**

21 On May 30, 2003, a jury found Defendant, Crisostomo, guilty of: Illegal Possession of Firearm in
22 violation of 6 CMC § 2205(a); Possession of a Prohibited Firearm in violation of 6 CMC § 2222(e); and
23 Possession of Prohibited Ammunition in violation of 6 CMC § 2222(e). This Court found Defendants
24 Crisostomo and Neil S. Taisacan guilty of: Assault and Battery, 6 CMC § 1202(a); Assault, 6 CMC §
25 1202(a); and Disturbing the Peace, 6 CMC § 3101(a). The Defendants filed their respective motions
26 seeking reconsideration, dismissal and a vacating of the judgment.

27 **III. DISCUSSION**

28 Courts are obligated to "respect the law's important interest in the finality of [criminal] judgments."
Massaro v. United States, ___ U.S. ___, 123 S. Ct. 1690, 1693, 155 L. Ed. 2d 714, 720 (2003). This
Court will not disturb judgments rendered without a serious basis for challenges to the guilt of the defendant.

1 Commonwealth Rule of Criminal Procedure 2 states that the “rules are intended to provide for the
2 just determination of every criminal proceedings. They shall be construed to secure simplicity in procedure,
3 fairness in administration, and the elimination of unjustifiable expense and delay.” Allowing motions to be
4 made outside those allowed by the Commonwealth Rules of Criminal Procedure violates the spirit of the
5 Rules. Even a liberal construction of these Rules requires basic adherence to their propositions. Rule 2
6 of the Commonwealth Rules of Criminal Procedure does not give the Court authority to grant Defendants’
7 motion for judgment of acquittal after return of a guilty verdict, where the motion is filed even one day
8 outside the time limit prescribed by Rule 29(c), regardless of whether the motion is (1) accompanied by
9 a claim of legal innocence, (2) filed before sentencing, or (3) filed late because of attorney error. *Carlisle*
10 *v United States*, 517 U.S. 416, 419, 116 S. Ct. 1460, 1463, 134 L. Ed. 2d 613, 620-21 (1996)
11 (applying Federal Rule of Criminal Procedure 29(c), the counterpart of the Commonwealth Rule).

12 The Defendants have filed two separate motions, both essentially seeking the same objective, an
13 overturn of the guilty verdicts against them. To achieve this objective, the following legal mechanisms were
14 employed: a Motion to Reconsider Adjudication of Misdemeanor Counts, a Motion to Dismiss Those
15 Counts, and a Motion to Vacate Judgment of Conviction and Dismiss Misdemeanor Charges. None of
16 these motions exist within the Commonwealth Rules of Criminal Procedure.

17 The appropriate motions would be a Motion For Judgment of Acquittal or a Motion For a New
18 Trial. Com. R. Crim. P. 29(c) and 33.

19 To allow the Defendants to raise new forms of actions, borrowed from other bodies of law,
20 contravenes the purpose of the Commonwealth Rules of Criminal Procedure. The Rules exist to protect
21 defendants in criminal actions. Part of that distinction is the importance of adherence to the standards as
22 provided by the Rules of Criminal Procedure. The Commonwealth Rules of Criminal Procedure were
23 specifically implemented to avoid the common law that used to govern court proceedings and are designed
24 to provide a consistent approach to the trial of criminal cases. Piecemeal application of principles outside
25 the Commonwealth Rules of Criminal Procedure should only be allowed where novel issues are raised for
26 which the Rules themselves do not provide the appropriate mechanism to deal with the issues presented.
27 The Defendants state that because the motions proffered are based on the supposition that the
28 misdemeanor counts are void, the motions need not conform to Commonwealth Rules of Criminal

1 Procedure requirements. To arrive at the conclusion that the misdemeanor counts are void, the Defendants
2 rely on the fact that the jury acquitted the Defendants on the non-bench trial charges. That claim is
3 inherently based on an insufficiency of evidence argument. Moreover, the type of argument raised is one
4 specifically provided for by a motion for judgment of acquittal. A trial judge does not abuse discretion in
5 denying a defendant's motion for judgment of acquittal where evidence which was properly admitted against
6 defendant and inferences that could be drawn from such evidence are sufficient to support conviction.
7 *United States v Greene*, 834 F.2d 86, 89 (4th Cir. 1987).

8 As such, the Defendants' motions must conform to the appropriate Rules and the guidelines within
9 those Rules. Both a motion for judgment of acquittal under Commonwealth Rule of Criminal Procedure
10 29(c) and a motion for a new trial under Commonwealth Rule of Criminal Procedure 33 require the filing
11 of the motion within seven (7) days of a return of a guilty verdict.

12 Defendant Crisostomo filed his *Motion to Reconsider Adjudication of Misdemeanor Counts*
13 *as to [Defendant]; and to Dismiss Those Counts* on July 8, 2003. Defendant Neil Taisacan filed his
14 *Motion to Vacate Judgment of Conviction and to Dismiss Misdemeanor Charges* on June 30, 2003.
15 The jury and the Court returned their verdicts on May 29, 2003. Both motions should have been filed as
16 motions for a new trial or judgment of acquittal. Therefore, both motions should have been filed with the
17 Court within the seven day time frame allowed by the Rules. Both Defendants' motions were filed beyond
18 the time provided for that filing. To grant the motions at this stage of the proceeding would be error.

19 Defendants also raise a Double Jeopardy issue within their motions that would preclude any filing
20 deadline requirement.

21 The Double Jeopardy Clause of the 5th Amendment to the United States Constitution is
22 replicated in Article 1, § 4(e) of the Commonwealth Constitution. This provision protects
23 against three types of abuses: (1) a second prosecution for the same offense after acquittal;

24 *Commonwealth v. Cabrera*, 1997 MP 18 ¶ 7. None of the protections afforded by the double jeopardy
25 clause are at issue in the instant case. First, there was only one trial. The trial contained two separate fact
26 finders, a jury and the Judge, each reviewing different charges. Where separate charges are considered
27 against the same defendant this Court is troubled to find a basis for a double jeopardy violation. The Ninth
28 Circuit considered the issue previously stating:

1 On appeal to the United States District Court for the Northern Mariana Islands, Appellate
2 Division, Magofna claimed that the judge actually submitted the same assault and battery
3 charge to the jury that was reserved for the judge. He argued that since the jury considered
4 and acquitted him of the same assault and battery charge for which the district court
5 convicted him, his conviction violated the Fifth Amendment's double jeopardy clause. He
6 also asserted that NMI's jury trial statute required all charges to be submitted to the jury
7 if any one charge entitled the defendant to a jury trial.

8 The appellate division denied his appeal, finding that the judge and jury did not consider
9 the same assault and battery charge. It did not address Magofna's statutory argument.

10 Magofna then appealed to this court. In a memorandum disposition filed August 2, 1988,
11 855 F.2d 860, **we affirmed the appellate division's decision finding no double
12 jeopardy violation.**

13 *Commonwealth v. Magofna*, 919 F.2d 103, 104-105 (9th Cir. 1990) (emphasis added). Based on the
14 separate and differing charges, which contain different elements and potential punishments there can be no
15 double jeopardy violation.

16 **IV. ORDER**

17 Defendants' motions are **DENIED**. The judgment of this Court as to both Defendants stands.
18 The judgment of the jury as to Defendant Crisostomo also stands.

19 The **Sentencing** is set for **August 7, 2003 at 9:00 a.m. in Courtroom 223A.**

20 **SO ORDERED** this 31st day of July 2003.

21 /s/
22 _____
23 David A. Wiseman
24 Associate Judge