

1 **FOR PUBLICATION**

2  
3 **IN THE SUPERIOR COURT**  
4 **OF THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**  
7 **NORTHERN MARIANA ISLANDS,**

8 **Plaintiff,**

9 **v.**

10 **JOSEPH SANTIAGO CASTRO,**

11 **Defendant.**

) **TRAFFIC CASE No. 05-01507**

) **ORDER DENYING DEFENDANT'S**  
) **JURY TRIAL DEMAND**

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13 )  
14 **I. INTRODUCTION**

15 THIS MATTER came for hearing on January 24, 2006. Counsel Angela M. Krueger  
16 appeared for Defendant Joseph Castro (“Defendant”). Assistant Attorney General Nancy Knox-  
17 Bierman appeared for the Commonwealth of the Northern Mariana Islands (the “Commonwealth”).

18 )  
19 **II. FACTUAL AND PROCEDURAL HISTORY**

20 Defendant is charged with Diving While Under the Influence of Alcohol in violation of 9  
21 CMC § 7105(a)(2); Reckless Driving in violation of 9 CMC § 7104; Following a Vehicle too  
22 Closely in violation of 9 CMC § 5309; and Having an Open Container in violation of 9 CMC §  
23 5853(c). The matter is currently set for Bench Trial.

24 Defendant, in his motion demands a jury trial pursuant to the “common law” jury trial right.  
25 The Commonwealth opposed this demand. Both parties appeared for hearing but submitted on their  
26 points and authorities. After reviewing the parties’ submissions along with the applicable law of  
27 the Commonwealth, this Court renders its judgment.

1 **III. DISCUSSION**

2 Defendant’s demand for jury trial in this case is unique because Defendant demands a jury  
3 trial apart from that provided under 7 CMC § 3101(a), instead grounding his demand in the  
4 language of 7 CMC § 3401 and the “common law” right to jury trial recognized in U.S. federal  
5 courts. The question posed, therefore, is whether the “common law” jury trial right extends to  
6 defendants in the Commonwealth in addition to the criminal jury trial right provided under 7 CMC  
7 § 3101(a)?

8 As a preliminary matter, Defendant is not entitled to a jury trial pursuant to 7 CMC §  
9 3101(a). The criminal jury trial right under 7 CMC § 3101(a) is reserved exclusively to defendants  
10 charged with a felony punishable by five years in prison or by a fine of more than \$2,000, or both.  
11 7 CMC § 3101(a). As none of the charges Defendant faces carries a maximum penalty exceeding a  
12 \$2,000 fine or five years imprisonment, Defendant is not entitled to a jury trial pursuant to 7 CMC §  
13 3101(a). However, the Court’s analysis cannot end here, because Defendant, although  
14 acknowledging the inapplicability of 7 CMC § 3101(a) to Defendant’s case, grounds his demand on  
15 his claim that Defendant should be afforded a jury trial pursuant to the “common law” jury trial  
16 right.

17 The Commonwealth enjoys a unique relationship with the United States by virtue of the  
18 Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the  
19 United States of America, 48 U.S.C. § 1801 (hereinafter “Covenant”). Specifically, the Covenant  
20 governs this Union between the United States and the Commonwealth of the Northern Mariana  
21 Islands. *Sablan v. Inos*, 3 N.M.I. 418 (1993). Section 501(a) of the Covenant enumerates those  
22 elements of the U.S. Constitution which apply to the Commonwealth, and specifically exempts the  
23 Commonwealth from the requirements of indictment by grand jury and jury trial in any  
24 prosecutions based on local law, unless required by local law. Covenant § 501(a). *See also CNMI*  
25 *v. Magofna*, 919 F.2d 103, 106 (9t Cir. 1990) (upholding the constitutionality of § 501(a)). As  
26 examined, *supra*, the Commonwealth has elected to provide a jury trial right in criminal cases, but  
27 has limited that right to three classes of criminal cases: (1) those carrying punishment of five years  
28 imprisonment; (2) those carrying a fine exceeding \$2,000; (2) or those carrying a combination of

1 both five years imprisonment and a fine exceeding \$2,000. 7 CMC § 3101(a).

2 Defendant, however, argues that pursuant to 7 CMC § 3401 and the “common law” jury trial  
3 right recognized by U.S. courts under certain circumstances, which depends on the “seriousness” of  
4 the charge rather than the Constitutional guarantee, he is entitled to a jury trial. 7 CMC § 3401  
5 provides that in the absence of local written law or customary law, that the common law of the  
6 several United States will be the rules of decision in the courts of the Commonwealth. 7 CMC §  
7 3401. Defendant also cites several United States Supreme Court cases, which recognize the deep-  
8 seated common law jury trial right. *See e.g. United States v. Booker*, — U.S. —, 125 S.Ct. 738, 748  
9 (2005), *Apprendi v. New Jersey*, 530 U.S. 466, 477, 120S.Ct. 2348 (2000). Defendant further draws  
10 a factual parallel to his reckless driving case by citing *District of Columbia v. Colt* where the Court  
11 found a jury trial right for a defendant charged with a driving offense that endangered public life,  
12 notwithstanding its relatively light maximum penalties, because the Court found it to be sufficiently  
13 “serious”. 282 U.S. 63, 74, 51 S.Ct. 52 (1930).

14 Lastly, Defendant, argues that the common law jury trial right should also be extended to  
15 Defendant’s charge of Driving while Under the Influence of Alcohol by drawing an analogy  
16 between intoxicated driving and reckless driving and citing authority from Hawaii supporting the  
17 link. *See State v. O’Brien*, 68 Haw. 38, 704 P.2d 883, 886 (1985). Although this Court agrees with  
18 Defendant that charges of Driving Under the Influence and Reckless Driving are indeed serious  
19 because such activities are inherently dangerous to public safety, Defendant’s arguments supporting  
20 a common law jury trial in the Commonwealth are unpersuasive.

21 7 CMC § 3401 provides that the Common Law shall be the rules of decision in the courts of  
22 the Commonwealth, but this provision is specifically restricted to instances where local written or  
23 customary law is silent. *See Mundo v. Super Ct.*, 4 N.M.I. 832 (1996) (holding that “NMI Courts  
24 are bound by the common law of the fifty states *only* in the *absence* of written law or customary law  
25 to the contrary”) (*emphasis added*). Here, the legislature *has* spoken by providing a specific  
26 criminal jury trial right under 7 CMC § 3103(a) to the exclusion of offenses which do not meet the  
27 minimum penalty threshold.

28 Although the language of § 3101(a) does not ostensibly abolish the “common law” jury

1 right, it, by virtue of establishing a penalty threshold, provides a jury trial right for offenses  
2 carrying a maximum punishment of five years imprisonment, fine exceeding \$2,000, or offenses  
3 meeting both thresholds, to the exclusion of those offenses that fail to carry the threshold maximum  
4 penalty. Indeed, this admittedly narrow interpretation of § 3101(a) is especially appropriate when  
5 read in light of section 501(a) of the Covenant, which affirmatively eliminated any requirement of  
6 jury trials in criminal cases in the Commonwealth *without* comment as to the source of the right.  
7 Consequently, Defendant cannot avail himself of the common law jury trial right rooted so deeply  
8 in U.S. jurisprudence because section 501(a) of the Covenant has firmly prevented such common  
9 law roots from anchoring in the CNMI.

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11 **III. CONCLUSION**

12 In conclusion, because a common law right to jury trial does not exist in the CNMI and  
13 because Defendant's charges do not carry penalties mandating trial by jury under 7 CMC § 3101(a),  
14 Defendant's demand for jury trial is DENIED.

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17 So ORDERED this 7th day of March 2006.

18  
19 /s/ \_\_\_\_\_

20 David A. Wiseman, Associate Judge

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