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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

) **TRAFFIC CASE NO. 09-00933**  
) **CITATION NO. 71841**

**Plaintiff,**

**vs.**

**ARVIN S. AVILA,**

**Defendant.**

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

) **TRAFFIC CASE NO. 09-00965**  
) **CITATION NO. 69737**

**Plaintiff,**

**vs.**

**BILLY JACK SANCHEZ,**

**Defendant.**

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS  
9 CMC § 2107 CHARGE**

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

) **TRAFFIC CASE NO. 09-01124**  
) **CITATION NO. 71845**

**Plaintiff,**

**vs.**

**JIN GUO DONG,**

**Defendant.**

*Ageo*  
*PSO*

**ENTERED**  
**DATE: \_\_\_\_\_**

1 **PROCEDURAL BACKGROUND**

2 THESE MATTERS came before the Court on September 21, 2009, at 2:30 p.m. in Courtroom  
3 220A for a hearing on the defendants' consolidated motion to dismiss the charge of 9 CMC § 2107.  
4 Plaintiff Commonwealth of the Northern Mariana Islands was represented by Assistant Attorney  
5 General Gregory Baka. Defendant Sanchez appeared personally, while Defendants Avila and Dong  
6 failed to appear personally, but all were represented by counsel, Assistant Public Defender Richard C.  
7 Miller.

8 Defendants filed their motion on July 31, 2009, and noticed it for a hearing on August 31, 2009.  
9 Subsequently, the traffic prosecutor assigned to these matters was appointed and confirmed as the  
10 Commonwealth's Attorney General, and the Commonwealth's current counsel assumed the role of  
11 traffic prosecutor. The August 31<sup>st</sup> hearing was continued *sua sponte* by the Court until September 14,  
12 2009, due to a scheduling conflict, and the September 14<sup>th</sup> hearing was then continued to September 21<sup>st</sup>  
13 due to the close of court business caused by inclement weather from Typhoon Choi-wan. Despite the  
14 continuances, the Commonwealth failed to file any written opposition to the defendants' motion.  
15 Nevertheless, the Court allowed the Commonwealth's counsel to argue against the motion.

16 Based on the Court's review of the memorandum filed and the law, as well as the record and the  
17 arguments of counsel, the Court issued its oral ruling from the bench GRANTING the Defendants' joint  
18 motion. The Court now issues its written decision.

19 **FACTS**

20 Each of the three defendants in these traffic cases was issued a citation for alleged violations of  
21 the Commonwealth's Vehicle Code. All three defendants were cited for violating Sections 2201(a) and  
22 2107, Title 9 of the Commonwealth Code; operating a motor vehicle without being licensed and having  
23 an expired registration, respectively. Defendant Avila was additionally charged with violating Section  
24

1 5251(a), speeding; and Defendant Dong was additionally charged with violating Section 4108(d), failure  
2 to wear a seatbelt. Defendants' motion attacks the validity of the charge of Section 2107 only.

3 ANALYSIS

4 A traffic offense is defined as any violation of a statute, ordinance or regulation relating to the  
5 operation of motor vehicles and any violation of a statute, ordinance or regulation *relating* to the use of  
6 streets and highways by pedestrians or by the operation of any other vehicle. Com.R.Traf.P. 2(1). A  
7 non-moving traffic offense is defined as any parking or standing of vehicles in violation of a statute,  
8 ordinance or regulation and any violation of a statute, ordinance or regulation while the vehicle is not in  
9 operation. Com.R.Traf.P. 2(5). The crux of the Defendants' argument is that Section 2107 of the  
10 Vehicle Code, a statute, by itself does not create an offense because it does not describe any prohibited  
11 conduct nor does it impose any duty, and a violation of a penal statute requires an act and a mental state.  
12 (Motion to Dismiss at 2, para. 9).

13 Section 2107 of the Vehicle Code states:

14 § 2107. Registration: Expiration and Renewal.  
15 Every vehicle and bicycle registration under this division shall expire annually at  
16 midnight on the last day of the month designated by the bureau.  
17 9 CMC § 2107

18 The Government argues that Section 2107 must be read in context with other sections of the  
19 Vehicle Code, yet fails to identify with particularity which, in this instance, is the other applicable  
20 section. At first, it suggested Section 2101, which involves the duty to register a vehicle. First, Section  
21 2101 is not charged in any of the Defendants' citation. Second, that section expressly applies only to the  
22 owner of the vehicle, not to an operator who is not also the owner. Section 2101(a) states, in part, that:

23 Every *owner* of a motor vehicle or bicycle shall, *before operating any such motor vehicle*  
24 *or bicycle on any highway of the Commonwealth, register it with the bureau. . . .*  
25 9 CMC § 2101(a)

1 In these three traffic cases, none of the defendants is listed as the registered owner identified in the  
2 citations. On the other hand, Section 2105 requires a registration card to be kept in a vehicle driven on  
3 the public roads and makes no distinction between the owner or the operator of the vehicle. In part,  
4 Section 2105 states:

5 The registration card shall be carried in the vehicle at all times while the vehicle or  
6 bicycle is being operated upon a highway.

7 However, Section 2105 is also not cited as a part of the charges in any of the three citations  
8 herein. At the motion hearing, the government also referred to Section 7114(b) as another part of  
9 the Vehicle Code that pertains to vehicle registration. It states:

10 A police officer may impound an unregistered or improperly registered vehicle until such  
11 time as the vehicle is properly registered.

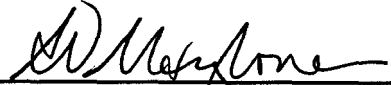
12 9 CMC § 7114(b)

13 Section 7114(b), however, stands on its own terms as a consequence for maintaining an unregistered or  
14 improperly registered vehicle and relates to Section 2101(a), which requires the owner to register a  
15 vehicle with the bureau.

16 Based on the review of the plain language of Section 2107, this Court agrees with the Defendants  
17 that Section 2107 is not a penal statute on its face, and that it fails to provide notice to the defendants.  
18 The gravamen is that Section 2107 fails to identify the prohibited act. *Commonwealth v. Martinez*, 2000  
19 MP 5, ¶ 12 (omission in the traffic citation of applicable subsection failed to put defendant on notice of  
20 the conduct for which he was charged so that he could adequately defend himself). Section 2107 fails to  
21 relate to the operation of motor vehicles or the use of streets and highways. It is a declarative provision  
22 that defines the point in time at which a vehicle registration will expire, and is similar in form to the  
23 definitional provisions listed under Section 1102 and 1103 of the Vehicle Code. It is not a penal statute  
24 that defines an offense that requires an act and mental state. If another statute is properly at issue against  
any defendant involving vehicle registration, then the Government must cite to that statute in its charge.

1 An uncharged statute cannot be read in conjunction with Section 2107. For these reasons, Defendants'  
2 motion to dismiss 9 CMC § 2107 is hereby GRANTED.<sup>1</sup>

3 IT IS SO ORDERED this 6<sup>th</sup> day of October, 2009.

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6 RAMONA V. MANGLONA, Associate Judge

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24 <sup>1</sup> When asked if the Commonwealth intended to amend the citation to reflect a charge for having an expired registration, the prosecution declined.