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BY
CLERK OF COURT

FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

TRAFFIC CASE NO. 09-00306
CITATION NO: 71528

Plaintiff,

vs.

JUDGMENT OF CONVICTION

VICENTE QUITUGUA SABLAN,)
d.o.b. 08/05/89)

Defendant.)

THIS MATTER came before the court on November 17, 2009 at 9:00 a.m. in Courtroom 220A for a bench trial. The Commonwealth was represented by Assistant Attorney General Gregory Baka. Defendant appeared with counsel Assistant Public Defender Richard C. Miller.

Defendant stands charged for violating the following sections of Title 9 of the Commonwealth Vehicle Code: Section 7104(a) (Reckless Driving), and Section 7105(a-1),(a-2),(a-5) (Driving Under the Influence of Alcohol)¹. At trial, the court received the sworn testimony of Police Officer Nam Koon Kwon. Based on the evidence presented, the Court finds as follows²:

In the early morning hours of March 7, 2009, Officer Kwon responded to a dispatch call that reported a fight in progress at the beach side near Aquarius Tower Beach Hotel in Chalan Kanoa,

¹ The citation included the charge of violating Section 2107 (Expired Registration), which has been dismissed pursuant to this Court's decision in *Commonwealth v. Avila, et al.*, Tr. Case 09-0933 ORDER GRANTING DEFENDANTS' MOTION TO DISMISS 9 CMC § 2107 CHARGE (Oct. 6, 2009).

² The parties also stipulated to allow the Court to rely on the evidence previously presented at the October 21, 2009 evidentiary hearing on the Defendant's motion to suppress statements and other evidence.

1 Saipan. When the officer first arrived at the beach side, he saw two parked vehicles, and about ten
2 young individuals scattering about. Some individuals pointed north towards the Townhouse Shopping
3 Center, and so the officer proceeded north without talking to the individuals. When he arrived at the
4 southern part of the Townhouse parking lot, near the former Blockbuster Store, he did not see anyone
5 in the area. He then proceeded back onto Beach Road and headed southbound. When he turned right
6 from Beach Road into the driveway leading to the Aquarius Tower, he stopped two vehicles that were
7 exiting through the driveway. These two vehicles were the same ones he saw parked by the beach and
8 where the individuals that pointed him to the northern direction had been standing nearby.

9 When the officer approached the operator of the first vehicle, he encountered the Defendant in
10 this traffic case. The officer asked the operator-Defendant what was going on, and the defendant's
11 passenger responded that there was a fight, and that the suspect left the scene. The officer then asked
12 the Defendant where he was going. The Defendant responded that he was going home, and he has to
13 go home because he is under probation. During this encounter, the officer used a flash light and
14 observed the Defendant's flushed face, bloodshot eyes, and detected a strong odor of alcohol from his
15 exhaled breath. The officer asked the Defendant how old he was, and the Defendant told him he was
16 19 years old. When asked if he consumed any alcoholic beverages, he admitted to consuming three to
17 four cans of beer.

18 The officer thereafter asked the Defendant to step out of the vehicle and perform a field sobriety
19 test (FST) comprised of a coordination test and a balance test. The officer explained and demonstrated
20 the test to the Defendant, and the Defendant then performed the tests. The officer observed the
21 Defendant's performance and concluded that he showed signs of impairment. In particular, Defendant
22 was instructed to touch his nose once, but he touched them three times with both arms. When he
23 performed the ten-steps balance test, Defendant walked 13 steps, and failed to make heel-to-toe contact
24 while walking the line of a marked parking stall. The officer arrested the Defendant after the first FST
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1 for driving under the influence of alcohol (DUI) and reckless driving, and advised the Defendant of his
2 *Miranda* rights at the parking lot.

3 When the Defendant was in the police vehicle, he started talking to himself, like whispering,
4 and he started crying. The officer also smelled the strong odor of alcohol in the police car.

5 When they arrived at the Department of Public Safety (DPS) central station in Susupe, the
6 officer administered a second FST on the Defendant. The officer again demonstrated the tests, and
7 then observed the Defendant's performance. He showed signs of impairment again, this time because
8 his upper body was swaying.

9 Officer Kwon brought the Defendant into the station and, after advising him of his
10 constitutional rights in writing and the Defendant waived his right to remain silent, proceeded to ask
11 him particular questions. Defendant admitted to driving from the Aquarius Beach to his house, and to
12 drinking three to four cans of Bud. Although the officer found Defendant to be cooperative, he noted
13 that he was swaying when he walked, and was talkative and even emotional because he was crying.
14 The Defendant then submitted to a breath test, and his blood alcohol concentration (BAC) was 0.175.
15 (Pl's Ex. 1) During this interview process, the officer saw the defendant's driver's license.

16 Based on these facts, this Court finds the Commonwealth presented sufficient evidence to prove
17 beyond a reasonable doubt that the Defendant violated 9 CMC § 7105 (a)(1), (a)(2), and (a)(5), and
18 therefore finds him GUILTY of Driving Under the Influence of Alcohol³.

19 As to the charge of Reckless Driving, the Commonwealth must prove that the Defendant drove
20 or operated "any vehicle upon a highway in willful or wanton disregard for the safety of persons or
21 property." 9 CMC § 7104(a). In this case, there is no evidence of any deviant or erratic driving
22 behavior. The Commonwealth relies solely on the fact that Defendant was under the influence of
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24 ³ 9 CMC § 7105 (Driving While Under the Influence of Alcohol or Drugs) states:

(a) A person shall not drive, operate or be in actual physical control of any vehicle while:

(1) Having a Blood Alcohol Concentration (BAC) of 0.08 percent or more as measured by a breath or blood test; or
25 (2) Under the influence of alcohol; or

...

(5) Having a Blood Alcohol Concentration (BAC) of 0.01 percent or more for a person under the age of 21.

1 alcohol to support the reckless driving charge. The Commonwealth Supreme Court, in dicta, touched
2 on this concept of attaching drinking alcohol as a basis to convict for reckless driving. In
3 *Commonwealth v. Yao*, 2007 MP 12, ¶ 13, the Court stated, “Although drinking by itself might be
4 insufficient evidence, it is certainly a factor to be considered.” In a footnote, the *Yao* Court stated,

5 [W]hile evidence of intoxication is a factor that might bear upon proof of . . . reckless
6 driving in a given case, it does not, of itself, prove reckless driving.” (*citation omitted*)
7 “One may be both drunk and reckless. He may be reckless though not drunk; he may
8 even be a total abstainer, and he may be under the influence of intoxicants and yet drive
9 carefully. Indeed, with knowledge of his condition, he might . . . drive with
10 extraordinary care.” (*citation omitted*)

11 *Id.* at fn. 4. Based on the facts and the law, this Court finds that the Commonwealth failed to prove the
12 charge of reckless driving beyond a reasonable doubt, and therefore finds him NOT GUILTY.

13 Sentencing in this matter is hereby set for November 19, 2009 at 10:30 a.m. in Courtroom
14 220A. The parties are ordered to be present.

15 IT IS SO ORDERED *nunc pro tunc* this 14th day of December, 2009.

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18 RAMONA V. MANGLOÑA, Associate Judge
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