

1 FOR PUBLICATION

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

BY: 
DEPUTY CLERK OF COURT

5	COMMONWEALTH OF THE)	TRAFFIC CASE NO. 15-00305
6	NORTHERN MARIANA ISLANDS,)	
7)	ORDER DENYING DEFENDANT'S
8	Plaintiff,)	MOTION TO DISMISS AS 1 CMC § 7406 IS
9)	NOT UNCONSTITUTIONALLY VAGUE AS
10	v.)	APPLIED, AS A GOVERNMENT VEHICLE
11)	IS A VEHICLE OWNED OR LEASED BY
12	RITA ALDAN SABLAN)	THE COMMONWEALTH GOVERNMENT
13)	
14	Defendant.)	
15)	

16 I. INTRODUCTION

17 This matter came before the Court on June 10, 2015 in Courtroom 220 on the Defendant's
18 Motion to Dismiss. The Defendant, Rita Aldan Sablan, was present and represented by Brien Sers
19 Nicholas, Esq. The Commonwealth was represented by Assistant Attorney General Emily Cohen.
20 The Defendant filed her motion to dismiss on May 22, 2015. The Commonwealth filed its
21 opposition on May 29, 2015. The Defendant filed her reply on June 5, 2015. The Court
22 subsequently held an evidentiary hearing on August 27, 2015 in Courtroom 220.

23 Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the
24 Defendant's Motion to Dismiss.

II. BACKGROUND

On January 15, 2015, the Defendant, the Commissioner of Education at the Public School
System ("PSS"), was cited with three counts of violating the government vehicle provisions of the
Commonwealth Code: 1 CMC § 7406(g)(2), driving a government vehicle that does not bear a
government license plate; 1 CMC § 7406(f), driving an unmarked government vehicle; and 1 CMC

1 § 7406(e), operating a government vehicle with tinting on its windows. The vehicle in question is a
2 white four-door 2011 Honda Accord sedan, which is registered to “Joeten Motor Lease Dept.” and
3 is leased to PSS.

4 On May 22, 2015, the Defendant filed her Motion to Dismiss, arguing that the term
5 “government vehicle” in 1 CMC § 7406 is unconstitutionally vague. Def.’s Mot. at 1. The
6 Defendant further argued that the Commonwealth would be unable to prove beyond a reasonable
7 doubt that the vehicle in this case is a “government vehicle,” and thus the case should be dismissed
8 with prejudice. *Id.*

9 Following the motion hearing on June 10, 2015, the Court ordered an evidentiary hearing,
10 which was held on August 27, 2015. At the evidentiary hearing, the Court heard testimony from
11 several witnesses: Herman S. Sablan, the Director of Procurement from the Commonwealth of the
12 Northern Mariana Islands Government; Rita Dela Cruz, the Procurement Officer for PSS; Juana
13 Guerrero, the Director of the Bureau of Motor Vehicles, a division of the Commonwealth
14 Department of Public Safety; and Joseph John Cabrera, who works in the sales department at Joeten
15 Motors. The testimony at this evidentiary hearing involved procurement procedures for vehicles
16 leased by the government, as well as what procedures are in place or would have to potentially be in
17 place for a vehicle owned or leased by the government to be in compliance with 1 CMC § 7406.¹

18 III. DISCUSSION

19 The Defendant’s Motion to Dismiss is based on Rule 12(b)(1) and (2) of the Commonwealth
20 Rules of Criminal Procedure. Motions under Rule 12(b)(1) focus on “[d]efenses and objections
21 based on defects in the institution of the prosecution,” while Rule 12(b)(2) focuses on “[d]efenses
22 and objections based on defects in the complaint or information.” NMI R. Crim. P. 12(b)(1)-(b)(2).

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¹ The full text of 1 CMC § 7406 is available at: http://www.cnmilaw.org/pdf/cmc_section/T1/7406.pdf.

1 The Defendant's Motion to Dismiss is based on the following arguments: 1) that 1 CMC §
2 7406 is unconstitutionally vague; and 2) that the Commonwealth will be unable to meet its burden
3 in proving that the vehicle driven by the Defendant is a "government vehicle" under 1 CMC § 7406.
4 Def.'s Mot. to Dismiss at 1. The Court will address these two arguments in turn.

5 **1. The Term "Government Vehicle" is Not Unconstitutionally Vague**

6 The Defendant argues that the definition of a "government vehicle" under 1 CMC § 7406(a)
7 is unconstitutionally vague as applied.² A government vehicle is defined under the statute as "a
8 vehicle owned or leased by the Commonwealth government or any of its branches or political
9 subdivisions, including autonomous agencies, government corporations, boards, and commissions."
10 1 CMC § 7406(a)(2). The Defendant argues that, as 1 CMC § 7406 requires that certain actions be
11 taken with government vehicles, including providing government license plates and adding
12 government markings, that the definition of a "government vehicle" is "vague at best" since the
13 Commonwealth does not own a leased vehicle. Def.'s Memorandum at 5.

14 In examining whether a statute is impermissibly vague, Courts must determine whether the
15 statute "define[s] the criminal offense with sufficient definiteness that ordinary people can
16 understand what conduct is prohibited" and also "establish[es] minimal guidelines to govern law
17 enforcement." *United States v. Van Hawkins*, 899 F.2d 852, 854 (9th Cir. 1990) (citation omitted).

18 In cases that do not implicate the First Amendment, Courts look to "whether the statute is
19 impermissibly vague *in the circumstances of this case*." *United States v. Rodriguez*, 360 F.3d 949,
20 953 (citation omitted) (emphasis in original). "To be impermissibly vague as applied, the statute
21 must be so vague that a reasonable person would not know whether the defendant's conduct might
22 violate the statute." *Commonwealth v. Inos*, 2013 MP 14 ¶ 12 (citing *Commonwealth v. Mundo*,

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24 ² The Defendant also briefly mentions that 1 CMC § 7406 "begs the question of what qualifies as 'government markings' and/or 'government license plates'" in her reply; however, the Defendant does not argue these points in her filings and instead focuses on the definition of a "government vehicle." Def.'s Reply at 3.

1 2004 MP 13 ¶ 18). There is a “widely recognized judicial policy in favor of preserving statutes in
2 the face of constitutional challenges whenever possible.” *In re Seman*, 3 NMI 57, 73 (1991).

3 In determining whether a statute is vague, Commonwealth courts interpret the statutory
4 language “according to its plain meaning.” *Commonwealth v. Inos*, 2013 MP 14 ¶ 12. (citing
5 *Aurelio v. Camacho*, 2012 MP 21 ¶ 15). Courts may determine plain meaning with the help of
6 dictionaries. *Id.* (citing *Dep’t of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 19).

7 A government vehicle is defined under the statute as “a vehicle owned or leased” by the
8 government. 1 CMC § 7406(a)(2). Under the Vehicle Code, an “owner” of a vehicle is:

9 [A] person having all the incidents of ownership including the legal title of a vehicle
10 whether or not such a person lends, rents or pledges the vehicle; the person entitled to the
11 possession of a vehicle as the purchaser under a conditional sales contract; the mortgagor of
12 a vehicle, the government, when entitled to the possession and use of a vehicle under a
13 lease, lease-sale, or rental-purchase agreement for a period of 12 months or more.

14 9 CMC § 1103(e). Thus, a vehicle’s owner, under the Vehicle Code, includes the Commonwealth
15 government in situations where the Commonwealth leases a vehicle for more than 12 months. *Id.*

16 A lease is “[a] contract by which the rightful possessor of personal property conveys the
17 right to use that property in exchange for consideration.” BLACK’S LAW DICTIONARY 764 (Abridged
18 9th Ed.). Based on this definition, as well as the definition of a vehicle’s owner provided by the
19 Vehicle Code, a government vehicle is a vehicle that the government holds legal title to as an
20 owner, or a vehicle that the government is leasing for longer than 12 months, as described in 9
21 CMC § 1103(e).

22 The Defendant’s argument is based on the idea that 1 CMC § 7406(a)(2) does not provide
23 sufficient guidance as to what constitutes a government vehicle. The statute itself defines a
24 government vehicle as a vehicle “owned or leased” by the Commonwealth. 1 CMC § 7406(a). This
statute applies to both vehicles owned and leased by the government—there is no ambiguity. In the
circumstances of this case, any requirements that an action be taken on a vehicle “owned or leased”

1 by the government is sufficiently clear to government employees and officials. When a vehicle is
2 titled to the Commonwealth or is being leased by the Commonwealth, then the Commonwealth
3 Code requires that the vehicle be in compliance with 1 CMC § 7406 by virtue of the government's
4 lease or ownership of the vehicle.

5 Statutes must also provide minimal guidance to law enforcement. *United States v. Van*
6 *Hawkins*, 899 F.2d 852, 854 (9th Cir. 1990). A statute must provide "minimal guidelines" to
7 prevent "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their
8 personal predilections." *Kolender v. Lawson*, 461 U.S. 352, 358 (1982) (citation omitted). The
9 statute provides the required minimal guidance to law enforcement, as it applies to vehicles that are
10 owned or leased by the Commonwealth, and does not provide officers with complete unfettered
11 discretion with regard to which vehicles must comply with 1 CMC § 7406.

12 Therefore, the term "government vehicle" in 1 CMC § 7406(a)(2) means a vehicle owned
13 by the Commonwealth government or leased by the Commonwealth government for more than
14 twelve months.

15 **2. The Factual Determination as to the Nature of the Vehicle Will Be Based Upon Evidence** 16 **Presented at Trial**

17 The Defendant also argues that the case must be "dismissed because it is undisputed that the
18 evidence shows that the vehicle is not a governmental vehicle as a matter of law." Def.'s
19 Memorandum at 5. Rule 12(b) allows the Defendant to raise "[a]ny defense, objection, or request
20 which is capable of determination without the trial of the general issue." NMI R. Crim. P. 12(b).
21 These defenses may be raised based on "defects in the institution of the prosecution" under Rule
22 12(b)(1), or "defects in the complaint or information" under Rule 12(b)(2). *Id.*

23 In addressing Rule 12(b) motions, the Court must not "invade the province of the ultimate
24 finder of fact." *United States v. Nukida*, 8 F.3d 665, 669 (9th Cir. 1993) (quoting *United States v.*
Shortt Accountancy Corp., 785 F.2d 1448, 1452 (9 Cir.), *cert. denied*, 478 U.S. 1007, 92 L. Ed.

1 715, 106 S. Ct. 3301 (1986)).³ The finder of fact “is concerned with the general issue of guilt,” so
2 motions “requiring factual determinations may be decided before the trial if the facts surrounding
3 the commission of the alleged offense would be of no assistance in determining the validity of the
4 defense.” *Id.* (quoting *Shortt*, 785 F.2d at 1452). The Court must decide a factual issue “if it is
5 entirely segregable from the evidence to be presented at trial. If the pretrial claim is substantially
6 founded upon and intertwined with evidence concerning the alleged offense, the motion falls within
7 the province of the ultimate finder of fact and must be deferred.” *Id.*

8 The Defendant cites *Commonwealth v. Pai* for the proposition that the Court should dismiss
9 the present case, as the vehicle is titled to Joeten Motors. Def.’s Memorandum at 4-5 (citing
10 *Commonwealth v. Pai*, Crim. No. 11-0262 (NMI Super. Ct. April 30, 2012) (Order Granting
11 Defendant’s Motion to Dismiss). The defendant in *Pai* was charged with 6 CMC § 1609(b)(4),
12 which requires that the individual use or receive a “direct benefit” from the utilities theft. *Id.* at 5.
13 The Court dismissed the theft of utilities case against *Pai*, as the Commonwealth could not show
14 under the undisputed facts that the defendant had received a benefit from the theft of utility
15 services. *Id.* at 9-10. The Court in *Pai* stated that, since the facts in the case were undisputed, it was
16 not invading the province of the jury. *Id.* (citing *United States v. Nukida*, 8 F.3d at 669-70).

17 In the present case, the issue of whether the vehicle is a “government vehicle” is one that is
18 “founded upon and intertwined with evidence concerning the alleged offense,” unlike in *Pai*.
19 *United States v. Nukida*, 8 F.3d at 669. The Defendant argues that, based on the undisputed facts,
20 the Commonwealth will not be able to prove that the vehicle in question is a “government vehicle”
21 as it is registered to Joeten Motors. Def.’s Resp. at 5. Despite this, whether a vehicle is a
22 “government vehicle” depends upon whether it is a vehicle “owned or leased” by the government. 1

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24 ³ As the Commonwealth Rules of Criminal Procedure are modeled on the Federal Rules of Criminal Procedure,
interpretation of the Federal rules is instructive. *Commonwealth v. Ramangmau*, 4 NMI 227, 233 n.3 (1995).

1 CMC § 7406(a). Proving whether this vehicle is a government vehicle is “substantially founded
2 upon and intertwined with evidence concerning the alleged offense,” and as such must be reserved
3 for the ultimate finder of fact at trial. *United States v. Nukida*, 8 F.3d at 669.

4 This proceeding was only a motion hearing. This case is not yet at trial. At trial, the
5 Commonwealth will present evidence, if any, as to whether the Defendant drove a government
6 vehicle in violation of 1 CMC § 7406.

7 **IV. CONCLUSION**

8 Accordingly, the Defendant’s Motion to Dismiss is **DENIED**.

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10 **IT IS SO ORDERED** this 8th day of January, 2016.

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14 JOSEPH N. CAMACHO
15 Associate Judge
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