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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	Criminal Action No. 92-184
)	
Plaintiff,)	
	)	<u>AMENDMENT OF</u>
v.	)	<u>ORDER UPON CERTIFICATION</u>
	)	<u>COMMONWEALTH'S PURPOSE FOR</u>
JULIO MERCADO SANGALANG,	)	<u>APPEAL OF ORDER EXCLUDING</u>
	)	<u>EVIDENCE/ORDER GRANTING</u>
Defendant.	)	<u>STAY OF PROCEEDINGS</u>
_____)	

This matter came on for a hearing on August 26, 1993, in Courtroom A. Russell Marsh appeared on behalf of the Commonwealth and Brien Nicolas appeared for the Defendant.

The Commonwealth of the Northern Mariana Islands, through its counsel, Russell Marsh, has filed notice of appeal pursuant to Six CMC § 8101. The Commonwealth is seeking interlocutory review of this Court's pretrial exclusion of the trial testimony of Steven Teregeyo. At this juncture, double jeopardy has not attached. Thus, having certified to this Court that "the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding," the Commonwealth has a conditional right to appeal the exclusionary order. See 6 CMC § 8101(b); *United States v. Gatto*, 763 F.2d 1040, 1050 (9th Cir. 1985) (interpreting federal counterpart to 6 CMC § 8101); *United States v. Adrian*, 978 F.2d 486 (9th Cir. 1992)

FOR PUBLICATION

1 (reaffirming *Gatto's* holding that government has conditional right
2 to appeal).

3 The federal counterpart to 6 CMC § 8101 is codified at 18
4 U.S.C. § 3731. In the Ninth Circuit, the filing of an appeal
5 based upon an exclusionary order pursuant to section 3731 does not
6 divest the district court of jurisdiction over the proceeding.
7 *Gatto*, 763 F.2d at 1049 (expressly rejecting "government's
8 argument that the district court lost jurisdiction over the
9 [criminal] action when the government filed its notice of appeal
10 pursuant to 18 U.S.C. § 3731 to challenge the exclusionary
11 order"); accord *Adrian*, 978 F.2d 486, 490. The rationale of *Gatto*
12 is premised upon the defendant's constitutional right to proceed
13 to trial.^{1/} *Gatto*, 763 F.2d at 1050. This Court, therefore,
14 adopts the rationale of *Gatto* and holds that this Court is not
15 divested of its jurisdiction over the proceeding. However, upon
16 motion of the Commonwealth, this Court stays the proceedings
17 pending the appeal.

18 In light of the appeal, the Defendant requested during the
19 hearing that this Court modify his bail conditions. Although this
20 request was denied from the bench, the Defendant is not precluded
21

22 ^{1/} The Ninth Circuit stated in *Gatto* that:

23 The government has a conditional right to appeal a
24 suppression order, but the exercise of this right may
25 result in a disruptive effect on the criminal trial
26 process, therefore harboring a potential for abuse. As
27 a result, the government's right to appeal pretrial
28 suppression orders must be balanced with a defendant's
right to proceed to trial on the indictment. This can
best be accomplished . . . by retaining jurisdiction in
the district court to dismiss the indictment in
appropriate cases.

Id. at 1050.

1 from filing a written motion seeking modification of his bail
2 conditions.

3 Finally, Mr. Nicolas is appointed to represent the Defendant
4 on appeal.

5 So ORDERED this 27 day of August, 1993.

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8 EDWARD MANIBUSAN, Associate Judge

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

COMMONWEALTH OF THE NORTHERN	)	Criminal Action No. 92-184
MARIANA ISLANDS,)	
)	
Plaintiff,)	
	)	<u>ORDER UPON CERTIFICATION</u>
v.	)	<u>COMMONWEALTH'S PURPOSE FOR</u>
	)	<u>APPEAL OF ORDER EXCLUDING</u>
JULIO MERCADO SANGALANG,)	<u>EVIDENCE/ORDER GRANTING</u>
)	<u>STAY OF PROCEEDINGS</u>
Defendant.)	
_____)	

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The Commonwealth of the Northern Mariana Islands, through its counsel, Russell Marsh, has filed notice of appeal pursuant to Six CMC § 8101. The Commonwealth is seeking interlocutory review of this Court's pretrial exclusion of the deposition testimony of Steven Teregeyo. At this juncture, double jeopardy has not attached. Thus, having certified to this Court that "the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding," the Commonwealth has a conditional right to appeal the exclusionary order. See 6 CMC § 8101(b); *United States v. Gatto*, 763 F.2d 1040, 1050 (9th Cir. 1985) (interpreting federal counterpart to 6 CMC § 8101); *United States v. Adrian*, 978 F.2d 486 (9th Cir. 1992)

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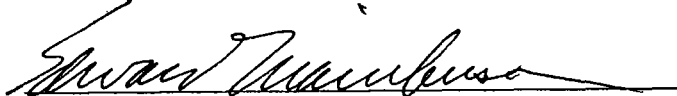
Id. at 1050.

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from filing a written motion seeking modification of his bail conditions.

Finally, Mr. Nicolas is appointed to represent the Defendant on appeal.

So ORDERED this 26 day of August, 1993.


EDWARD MANIBUSAN, Associate Judge