IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Plaintiff-Appellee,

v.

NESTOR TAITANO,

Defendant-Appellant.

Supreme Court Appeal No. 01-017-GA
Superior Court Case No. 99-0180B-CR

OPINION

Cite as: *Commonwealth v.Taitano,* 2005 MP 20

Argued and submitted on February 6, 2004
Saipan, Northern Mariana Islands

Attorney for Appellant: Bruce Berline, Esq., Second Floor, Lizama Bldg. P.O. Box 5682 CHRB Saipan, MP 96950	Attorney for Appellant: Mark B. Hanson, Esq., Second Floor, Lizama Bldg. PMB 738 P.O. Box 10000 Saipan, MP 96950	Attorney for Appellee: Kevin A. Lynch Assistant Attorney General Office of the Attorney General Civic Center Complex Saipan, MP 96950

FOR PUBLICATION

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; PEDRO M. ATALIG,[1] Justice Pro Tem

Associate Justice Castro delivered the opinion of the Court.

¶1 Appellant Nestor Taitano ("Taitano") appeals his convictions for involuntary manslaughter, illegal use of a firearm in the commission of involuntary manslaughter, and assault and battery. The errors Taitano complains of are either not errors at all or invitations for this Court to substitute our judgment for that of the trial court; therefore the trial court's judgment is AFFIRMED.

I.

¶2 On or about May 4, 1999, Taitano, George Manglona and Joaquin Namalug drove to see a friend, Dean Santos, who lived with his mother, Lydia Sanchez. Prior to the incidents of May 4, Ms. Sanchez, and her property, were the targets of harassment and vandalism. Ms. Sanchez, apparently, believed that George Manglona was responsible for the vandalism and the threatening phone calls she had received. Upon learning Mr. Manglona was in the car, she confronted him.

¶3 While he was still seated in Taitano's car, Ms. Sanchez assaulted Mr. Manglona, attempted to get him out of the car and ultimately ended up inside the car. At some point, Taitano drove away from Ms. Sanchez's home with Ms. Sanchez an unwillingly passenger. Taitano drove to his mother's home, parked the car, and secured a gun. At that point, Mr. Manglona kicked Ms. Sanchez out of the car, chased her away, and he secured a machete. For her role in this incident, Ms. Sanchez received many injuries including two black eyes, a swollen lip, and blood-soaked clothes.

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[1] We note that with sadness that after reaching our decision in this case but prior to its publication, Justice Pro Tem Atalig passed away. The remaining two justice panel proceeds to judgment as a quorum *See Nguyen v. United States*, 539 U.S. 69, 82 (2003).

¶4 When Taitano drove away with Ms. Sanchez, Dean Santos, Antonio Santos and Jack Dela Cruz gave chase. They followed Taitano, parked in his driveway and began looking for Mr. Manglona and Taitano. Taitano saw Jack Dela Cruz, Antonio Santos and Dean Santos in the garage and demanded the three leave, but they all advanced on Taitano's position. Taitano retreated, demanded they leave and warned the individuals that he had a gun. Jack Dela Cruz ignored this warning, continued to advance and Taitano shot and killed him.

¶5 The next day, Taitano surrendered to the Department of Public Safety ("DPS"). The Attorney General's Office ultimately filed the following charges: (1) Murder in the First Degree (and lesser included offenses); (2) Use of a Firearm in Commission of a Crime; (3) Kidnapping; (4) Assault with a Dangerous Weapon (knife); (5) Assault with a Dangerous Weapon (gun); (6) Aggravated Assault and Battery; (7) Use of a Firearm in Commission of a Crime; (8) Assault and Battery. A dual bench and jury trial commenced on May 29, 2001.

¶6 After nearly three weeks of testimony, the trial court heard closing arguments on June 14, 2001, and the jury returned its verdict on June 18, 2001. They acquitted Taitano of first and second degree murder, but convicted him of the lesser included offense of involuntary manslaughter pursuant to 6 CMC § 1102(b). The jury also found Taitano guilty of Count 3 – Use of a Firearm in the Commission of a Crime. The jury acquitted Taitano for the remaining counts, but the trial judge found Taitano guilty of assault and battery.

¶7 Taitano filed his first notice of appeal on June 29, 2001. The same day, he filed a post-verdict motion for acquittal. After oral arguments, the trial court denied Taitano's

final motion for acquittal, and held sentencing on September 27, 2001. The trial court issued a Sentence Order on October 1, 2002, and this appeal followed.

II.

¶8 This Court has jurisdiction pursuant to Article IV, section 3 of the Commonwealth Constitution and Title 1, section 3102 of the Commonwealth Code.

III.

¶9 Taitano raises a laundry list of errors in his appeal. In his Eight points of error, Taitano claims that: (1) there was insufficient evidence for a conviction of involuntary manslaughter; (2) there was insufficient evidence for a conviction of assault and battery; (3) the trial court allowed inadmissible hearsay into evidence; (4) the trial court improperly admitted into evidence his 1993 burglary conviction; (5) the trial court improperly prohibited him from introducing evidence of the prior bad acts of Joaquin Dela Cruz and Antonio Santos; (6) prosecutorial misconduct shifted the burden of proof on the element of self-defense; (7) the trial court failed to record sidebar conferences; and (8) the cumulative effect of the errors precluded him from receiving a fair trial.

IV.

A. Complaints Regarding Insufficient Evidence

¶10 In his first and second issues on appeal, Taitano contends that there was insufficient evidence to convict him of Involuntary Manslaughter and Assault and Battery. When reviewing a challenge to the sufficiency of the evidence this Court will examine the evidence in the light most favorable to the Government and determine whether a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340, 344 (1996).

i. Involuntary Manslaughter

¶11 On May 4, 1999, Taitano and his confederates fled Lydia Sanchez's home with Ms. Sanchez, unwillingly, in the back seat fighting with Mr. Manglona. Ms. Sanchez's sons and Jack Dela Cruz gave chase, but before they arrived at Taitano's home, Taitano armed himself with a firearm. Although Taitano warned Jack Dela Cruz to leave his property, Taitano was not trapped and did not flee. Subsequently, Taitano shot and killed Jack Dela Cruz. Mr. Dela Curz did not have a gun, and under Commonwealth law, deadly force is not allowed against an unarmed person. Was there enough evidence to convict Taitano of involuntary manslaughter?

¶12 Appellant faces a nearly insurmountable hurdle in claiming that the evidence presented at trial could not lead a reasonable juror to find an unlawful killing beyond a reasonable doubt. *See CNMI v. Zhen*, 2002 MP 4 ¶33. In this case there is ample evidence to suggest Taitano was guilty. To begin with, the claim of self-defense was fully argued at trial and the jury weighed the evidence and rejected Taitano's defense. It was disputed whether the deceased possessed a rock as he advanced toward Appellant, and the jury was free to conclude, and apparently did conclude, that the deceased wasn't armed. We will not substitute our judgment for that of the jury. *See United States v. Espinosa*, 771 F.2d 1382, 1391 (10th Cir.1985).

¶13 Further, even if there was no conflicting testimony regarding Mr. Dela Curz's possession of a rock, the jury could have easily concluded that arming himself with a gun, prior to Mr. Dela Cruz's arrival, was not an act consistent with self-defense. The killing of another person in self-defense is justifiable homicide if an individual honestly and reasonably believes that his life is in imminent danger or that there is a threat of

serious bodily harm. *People v. Helfin*, 456 N.W.2d 10, 18 (1990). An act, however, committed in self-defense, but with excessive force, or in which the defendant was the initial aggressor, does not meet the elements of lawful self-defense. *Id.* at 21-22.

¶14 Appellant asks this Court to reweigh the evidence presented in the trial court. The record, however, is clear on several points. Taitano absconded with an unwilling passenger, armed himself with a firearm before there was any indication that he may need to, and failed to flee when he was not trapped in any way. Against these facts Taitano seeks an action common among children on a playground, a "do over." The jury reviewed the evidence presented, evaluated credibility, and made a determination that there was no malice aforethought but that the killing was indeed unlawful. That decision produced a conviction for manslaughter, which was reasonable under the circumstances. We decline the invitation to retry the case at the appellate level. Taitano's first point of error has no merit.

ii. Assault and Battery

¶15 Taitano's argument regarding his conviction for assault and battery violates Rule of Appellate Procedure 28 in that he fails to cite any authority in support of his contention. Taitano claims that his conviction for assault and battery relies solely on the testimony of Lydia Sanchez and that this Court should not consider Lydia Sanchez to be a credible witness because she offered testimony on other charges of which the trial court acquitted Taitano. Notwithstanding the fact that Taitano failed to follow the Appellate Rules of Procedure, this argument is groundless. We resolve issues of witness credibility in favor of the prosecution. *Commonwealth v. Camacho*, 2002 MP 6 ¶108. Further, it is a well settled notion that "it is the exclusive function of the jury to determine the credibility

of witnesses, resolve evidentiary conflicts, and draw reasonable inference from proven facts." *United States v. Alarcon-Simi*, 300 F.3d 1172 (9th Cir. 1977); *see also Espinosa*, 771 F.2d at 1391.

B. Complaints Regarding Hearsay

¶16 In his third issue on appeal, Taitano argues that the admission of inadmissible hearsay precluded him from receiving a fair trial. "A hearsay statement is an out-of-court statement 'offered in evidence to prove the truth of the matter asserted.'" *Thomas v. Hubbard*, 273 F.3d 1164 (9th Cir. 2001). The Confrontation Clause allows for a challenge of the admission of a hearsay statement that "lacks adequate indicia of reliability and is made by an out-of-court declarant. A statement does not bear adequate indicia of reliability if it does not fall within a 'firmly rooted hearsay exception' or have some other 'particularized guarantees of trustworthiness.'" *Id*. at 1172. We review the trial court's admission of alleged hearsay evidence for an abuse of discretion. *In re Estate of Deleon Guerrero*, 3 N.M.I. 253, 266 n. 13 (1992).

i. Chain of Custody Forms and the Business Record Exception

¶17 Over Taitano's objection, the trail court accepted Group Exhibit 40 into evidence. Exhibit 40 consisted of several chain of custody forms that were part of the crime scene investigation. The crime scene technicians who completed these forms, Frederick Sato and Norman Suda, were not available to testify at trial, and the officer that did testify, Johannes Taimanao, was a custodian and had no personal knowledge of the crime scene or who filled out the forms. The custodian of documents need not have personal knowledge of the actual creation of the documents in question, and there is not any requirement that business records be prepared by the party who has custody of the

documents and seeks to introduce them into evidence. Did the trial court err when it admitted Exhibit 40?

¶18 We reject the claim that Exhibit 40 is inadmissible hearsay. "A memorandum, report, record, or data compilation, in any form, of acts [or] events, ... made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." COM.R.EVID. 803(6). Rule 803(6) "favor[s] the admission of evidence rather than its exclusion if it has any probative value at all," *In re Ollag Constr. Equip. Corp.*, 665 F.2d 43, 46 (2d Cir.1981) (quotation omitted), and the "principal precondition" to admissibility "is that the record[ ] [has] sufficient indicia of trustworthiness to be considered reliable." *Saks Int'l v. M/V "EXPORT CHAMPION"*, 817 F.2d 1011, 1013 (2d Cir.1987). Exhibit 40 met these requirements and, therefore, the trial court acted properly when it admitted Exhibit 40 into evidence.

¶19 At trial, the Government established that chain of custody forms are commonly relied upon by DPS in cataloging and identifying evidence, that it is standard policy that the forms be filled out the day the evidence is procured, that the procedure is followed every time evidence is brought in, and that it is a regular part of the Department's business to prepare the forms. Thus, the exhibit clearly was made "in the course of a regularly conducted business activity," *see* COM. R. EVID. 803(6), and was not "drafted in

response to unusual or 'isolated' events." *United States v. Strother,* 49 F.3d 869, 876 (2d Cir.1995).

¶20 We further reject Taitano's argument that the Government's failure to provide the specific employee responsible for filling out the chain of custody forms proved fatal to its foundation. "The custodian need not have personal knowledge of the actual creation of the document.... Nor is there any requirement under Rule 803(6) that the records be prepared by the party who has custody of the documents and seeks to introduce them into evidence." 4 Weinstein's Evidence, at 803-201-04 (quotation omitted). Rather, all that is required is proof that "it was the business entity's regular practice to get information" from the person who created the document, a fact Officer Taimanao's testimony established. *See Saks Int'l,* 817 F.2d at 1013.

¶21 Taitano attempts to buttress his claims by citing *NLRB v. First Termite Control Co., Inc.,* 646 F2d 424 (9th Cir. 1981), for the proposition that the witness laying the foundation for documents must have personal knowledge of how the records were prepared. *See id.* at 428. Taitano misapprehends *First Termite Control. First Termite Control* dealt with the admissibility of business records between business entities. In other words, an employee of one business entity attempted to lay the foundation for business records of another. *See id. First Termite Control* represents a completely different fact pattern than the case at bar. Here, there is only one entity, and we are dealing with its employees who have knowledge on how records are prepared. This was lacking in the fact pattern in *First Termite Control.* We conclude that the trial court acted properly in admitting Exhibit 40.

ii. Testimony of Officer Aldan

¶22 Taitano's arguments regarding the testimony of Officer Aldan are similar to his objections to the admission of Exhibit 40. Apparently, Taitano objects to inventory reports or police reports if they were not drafted by the individual testifying. Under Taitano's argument, however, an investigative report would rarely be admissible as such reports typically are not prepared by persons directly involved in the matter under investigation. Investigative reports "embody the results of investigation and accordingly are often not the product of the declarant's firsthand knowledge." *Combs v. Wilkinson* 315 F.3d 548, at 555 (6th Cir. 2002) (citations omitted). We adopt our prior reasoning and conclude that the trial court acted properly in admitting Officer Aldan's testimony.

iii. Testimony of Officer Guerrero

¶23 Taitano next complains of Officer Guerrero's testimony that Ms. Sanchez told him that Taitano stabbed her. Taitano called Officer Guerrero to the stand in an effort to discredit Ms. Santos via the introduction of inconsistent prior statements. The record, however, indicates that Officer Guerrero was recounting from his report which contained Ms. Sanchez prior statement. Obviously, the report is not hearsay. COM. R. OF EVID. 803(6). Statements inside the report, however, could be. The testimony complained of, however, appears to fall under numerous exemptions to the hearsay rule. *See* COM. R. OF EVID. 803(1); 803(2); and 803(3). Further, even if these statements didn't fall under hearsay exceptions, it is not clear that they are even hearsay to begin with because prior statements by a witness offered for the purpose of rehabilitation are not hearsay. Com. R. of Evid. 801(d)(1)(B). Because of this, we find that the trial court did not err in admitting the challenged testimony.

iv. Testimony of Officer Cepeda

¶24 Taitano next takes issue with the testimony of Officer Cepeda regarding Dean Santos' statement about his mother, Ms. Sanchez, getting into Taitano's car. Although we would normally be disinclined to accept this type of testimony, it is within the trial court's purview to do so as a trial court is accorded wide latitude to receive evidence as it sees fit. *See General Elec. Co. v. Joiner*, 522 U.S. 136, 141-42, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). This is particularly true in those situations when the trial court is conducting a bench trial. *Harris v. Rivera*, 454 U.S. 339, 346, 102 S.Ct. 460, 70 L.Ed.2d 530 (1981).

¶25 The record indicates that the complained of line of questioning was in response to similar questions asked by Taitano's attorney.[2] While Taitano may very well be correct that the complained of testimony violates the Commonwealth's bar on hearsay statements, he has failed to cite a single controlling case to this point. Moreover, we do not feel any proffered case law would be dispositive because Taitano elicited and opened the door to the testimony he now assigns as error. Under these circumstances, he is not entitled to relief. *See State v. Robinson*, 146 S.W.3d 469, 493 (Tenn.2004). Indeed, we will not allow a litigant to take advantage of errors which he himself committed, invited, induced the trial court to commit, or which were the natural consequence of his own neglect or misconduct. *See id* (citations omitted).

C. Complaints Regarding the Admission of a Prior Burglary Conviction

¶26 Taitano took the witness stand at his trial and, over the defense's objections, he was questioned about his prior burglary conviction. Although the crime of burglary does

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[2] "I'm going to ask you again, didn't Dean Santos tell you that night, as you were interviewing him on May 4, 1999, that his mother Lydia Sanchez, talked to George Manglona inside the blue station wagon . . ."

not directly involve dishonesty, courts have held that it is probative of a defendant's credibility and does assist the jury in assessing a defendant's credibility. Was the admission of Taitano's prior burglary conviction improper? We review the admission or exclusion of evidence for an abuse of discretion. *See Commonwealth v. Kaipat*, 2 N.M.I. 322, 327 (1991).

¶27 The law of evidence is based on a natural tension between admitting all relevant evidence and excluding prejudicial evidence. Evidence of an individual's prior convictions typifies this tension. The very reason prior convictions are so carefully segregated and regulated by the rules of evidence is that they are intrinsically prejudicial. It is a basic principle of evidence law that the bad character of a defendant cannot be used to prove present guilt. *State v. Eugene*, 536 N.W.2d 692, 697 (N.D. 1995) (citations omitted).

¶28 To aid in sorting through this tension we turn to Rule 609 of the Commonwealth Rules of Evidence. Under COM. R. EVID. 609(a)(1), a prior felony conviction is admissible to impeach a witness's credibility if its probative value outweighs the prejudicial impact. In admitting a prior conviction under 609(a)(1), the trial court must consider the factors set forth in *United Staves v. Cook*, 608 F.2d 1175, 1185 n. 9 (1979) (en banc). These factors are: (1) the impeachment value of the prior crime; (2) the point of time of the conviction and the witness' subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. *See id.* According to Taitano, the trial court erred in admitting his conviction for burglary because the judge did not apply the

five factor test found in *Rivers.* He additionally argues that if the evidence were properly weighed, the prejudice of the conviction outweighed any probative value. We disagree.

¶29 The first prong of the Cook test is the impeachment value of the prior crime. "[I]mpeachment by prior crime aids the jury by allowing it to see the 'whole person' and thus to judge better the truth of his testimony." *State v. Gassler,* 505 N.W.2d 62, 67 (Minn.1993) (quotations omitted). Taitano contends that his prior conviction is not probative because burglary is not a crime dealing with dishonesty. While only crimes of dishonesty are automatically admitted for impeachment purposes, other crimes may also be admitted. *See* COM. R. EVID. 609(a). Although the crimes of burglary and theft do not directly involve dishonesty, they appear to be probative of appellant's credibility and would have assisted the jury in assessing his credibility. *See State v. Ross,* 491 N.W.2d 658, 659-60 (Minn.1992) (finding that burglary conviction, though not a crime of dishonesty, may be admissible under 609(a)(1)).

¶30 The Second prong of the *Cook* test involves the amount of time that has passed since the conviction. "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witnesses from the confinement imposed for that conviction, whichever is the later date." Taitano must concede that his conviction occurred within ten years of the instant prosecution, and therefore not "stale" under the rule. *See Gassler,* 505 N.W.2d 67 (Minn.1993) (stating that all convictions occurring within ten years of prosecution are not stale). Under this rubric, Taitano's burglary conviction was within ten years. *See* Com. R. Evid. 609(b). Even though there is no showing of Taitano's conduct between his

release date and the time of the crime, this factor favors admission of the prior conviction.

¶31 The third factor compares the similarity of the prior conviction with the currently charged crime. We believe that crimes that are similar in nature cause greater prejudice and thus more likely to be excluded. *See. United States v. Wallace*, 84 F.2d 1464, 1473 (9th Cir. 1988). Here, the Government charged Taitano with negligent homicide, which is not similar to his prior burglary conviction. Therefore, this factor favors admission of the prior conviction.

¶32 The fourth and fifth factors are the importance of appellant's testimony and his credibility. If a defendant's credibility is the central issue of a case, "a greater case can be made for admitting the impeachment evidence, because the need for the evidence is greater." *State v. Ihnot* 575 N.W.2d 581 at 587 (Minn. 1998) (quotation omitted). The record indicates that Taitano spent much effort in attacking the credibility of the prosecutions witnesses. Indeed, Taitano has, inexplicably, asked this Court to reevaluate the credibility of Ms. Sanchez. At trial and on appeal, Taitano placed a large emphasis on credibility. Because of this weight, his creditability was at issue too.

¶33 On balance, the factors favor allowing the evidence of prior convictions, and we conclude that the district court did not abuse its discretion by admitting Taitano's prior conviction for impeachment purposes.

D. Complaints Regarding the Admissibility of the Victims' Violent Acts

¶34 Antonio Santos and Joaquin Dela Cruz had prior convictions for assault and had spent time in prison. At trial, Taitano attempted to introduce this evidence in an effort to bolster his claims of self-defense. This evidence included testimony that Mr. Santos had

a conviction for assault with a dangerous weapon, was a violent drunk, and that he had been arrested for assaulting a police officer and resisting arrest. Additionally, the trial court accepted testimony that the victim, Mr. Dela Cruz, had spent time in prison. The Commonwealth allows a defendant to introduce evidence regarding a deceased individual's bad acts when the defendant claims self-defense. Did the trial court err when it allowed Taitano to introduce some, but not all, evidence of Mr. Santos' and Dela Cruz's prior bad acts? We review the admission of evidence at trial for an abuse of discretion. *Commonwealth v. Ramangmau,* 4 N.M.I. 227, 237 (1995).

¶35 Upon reading Taitano's arguments regarding the admission of Mr. Dela Curz's and Mr. Sanots' prior bad acts, we are left with the impression that Taitano was unable to introduce any evidence of prior bad acts. This impression is simply not true. Taitano, apparently, is concerned that he was unable to introduce evidence with the repetition and shock value he desired.[3] Taitano, however, has not provided this Court with case law supporting the proposition that the trial court should have introduced more evidence than it did. Instead, Taitano cites cases holding that, when arguing self-defense, the defendant should be allowed to introduce evidence of the victim(s) prior bad acts. Obviously the problem for Taitano is the trial court *did* allow such evidence. Taitano, therefore, is left to arguing the trial court should have done more than it did. Trial courts, however, are provided with wide discretion in admitting evidence. *See General Elec.,* 522 U.S. at 141-42. Taitano was entitled to, and in fact did, introduce evidence of the victim's, and his confederate's, prior bad acts. Taitano's complaints are of degree and not of substance. The trial court did not abuse its discretion and we reject Taitano's argument.

[3] The record is replete with instances of the Government objecting to Taitano's attorney using terms like "bludgeoned" and "in cold blood."

E. Complaints Regarding Prosecutorial Misconduct

¶36 Taitano next argues that the Commonwealth improperly used his silence against him when the prosecutor insinuated at trial and in closing arguments that, if Taitano had a valid self-defense claim he would have brought it up the night of the shooting or, at the least, informed his family and friends as to what happened. Taitano had yet to be arrested and had not received his *Miranda* warnings when he claims that his silence was used against him. While a prosecutor may not use the silence of an accused individual against him, this proscription applies only in cases where the defendant does not take the stand or when the prosecutor uses a defendant's silence after he received *Miranda* warnings. Was the use of Taitano's pre-arrest silence against him error?

¶37 In this case, the prosecutor's argument related to Taitano's failure to take the initiative and assert his defense to either the police or to family members prior to his arrest. Because the prosecutor's argument properly drew inferences from the evidence and merely responded to defendant's testimony, defendant was not denied a fair trial. *People v. Bahoda,* 531 NW2d 659 (1995); *People v. Crump,* 549 NW2d 36 (1996). Although the prosecutor may not use the silence of an accused individual against him, this proscription applies does not apply if the defendant has not received *Miranda* warnings. *See Doyle v. Ohio*, 426 U.S. 610, 619 (1976); *People v. Dixon,* 552 NW2d 663 (1996). The complained of testimony was pre-arrest, and therefore *Doyle* doesn't apply. *See Jenkins v. Anderson*, 447 U.S. 231, 238 (1980) (the use of pre-arrest silence to impeach a criminal defendant's credibility does not violate the Fifth or Fourteenth Amendments).

F. Trial Court's Failure to Record Sidebar Conferences

¶38 Taitano next takes issue with the fact that the sidebar conferences at trail were not recorded. Presumably Taitano claims he has been deprived of his right to a complete trial record. *See Ross v. State*, 482 A.2d 727, 734 (1984) *cert. denied*, 469 U.S. 1194, 105 S.Ct. 973, 83 L.Ed.2d 976 (1985). But, "prejudice must be shown, or perceived, to have resulted from a failure to record a portion of a trial proceeding for reversible error to be found." *Ross*, 482 A.2d at 734. Taitano makes no showing that he was prejudiced by the failure to report these sidebar conferences and our review of the record reflects none.

G. The Cumulative Effect of Errors

¶39 Taitano's final argument claims that the cumulative effect of the various alleged errors complained of in his brief warrant a new trial. We recognize that this is a valid argument under the right circumstances; however, the circumstances do not exist in the present case. Most of the errors cited are not, in fact, errors. Taitano was entitled to a fair trial, not a perfect one and, after a careful review of the record; it is obvious that is what he received.

V.

¶40 A trial regarding the unlawful taking of another's life is a difficult and sad event. A jury of Taitano's peers listened to an array of testimony, evaluated the evidence, determined the credibility of the witnesses, and rendered a verdict. Absent a showing of error we will not disturb those findings and determinations. Although Taitano has a laundry list of problems with the way his trial preceded, we are unable to say that he did not receive a fair trial. Indeed, most of the errors he complains of were, in fact, not errors at all but proper legal decisions. We decline to substitute our judgment for the judgment

of the judge and jury. Therefore, the verdict of the trial court is AFFIRMED in all respects.

SO ORDERED THIS 14TH DAY OF DECEMBER 2005.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
ALEXANDRO C. CASTRO
Associate Justice

IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF DECISIONS TO BE PUBLISHED IN NORTHERN MARIANA ISLANDS REPORTER, VOLUME SEVEN.	**ERRATA ORDER** **2011-~~ADM-0003-MSC~~**

PER CURIAM:

I. DECISIONS REVISED BY THIS ORDER

The decisions listed below, all styled as opinions, require substantive revision. They are hereby revised by changes as set forth in section two of this order. The published decisions containing all revisions shall constitute the final versions of the decisions.

1. *Commonwealth v. Taitano*, 2005 MP 20
2. *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3
3. *Liu v. CNMI*, 2006 MP 5
4. *Sattler v. Mathis*, 2006 MP 6
5. *Commonwealth v. Pua*, 2006 MP 19
6. *Bank of Saipan v. Martens*, 2007 MP 5
7. *Commonwealth v. Milliondaga*, 2007 MP 6
8. *Tan v. Younis*, 2007 MP 11
9. *Estate of Muna v. Commonwealth*, 2007 MP 16

10. *Commonwealth v. Blas*, 2007 MP 17

II. REVISIONS

1. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 28 shall read as follows:

¶28 ...the trial court must consider the factors set forth in *United States v. Cook*, 608 F.2d 1175, 1185 n. 9 (9th Cir. 1979) (en banc). (*continuation omitted.*)

2. *Kevin Int'l Corp. v. Superior Court*, 2006 MP 3 Supreme Court Original Action Number shall read as follows:

Supreme Court Original Action No. 06-0009-GA.

Attorneys of Record shall read as follows:

For Plaintiff-Petitioner: Viola Alepuyo, Saipan.

For Defendant-Real Party in Interest: Steven Carrara, Saipan.

3. Liu v. CNMI, 2006 MP 5 ¶ 27 shall read as follows:

¶27 ...The Petitioner cites *Unites States v. Fanfan*, 2004 WL 1723114, 2004 U.S. Dist. LEXIS 18593 (D.Me. June 28, 2004)...Petitioner likens the grant of certiorari in *Fanfan*, which sought to review the effects of the *Blakely v. Washington*, 542 U.S. 296 (2004)...the *Blakely* decision... (*continuation omitted.*)

4. *Sattler v. Mathis*, 2006 MP 6 ¶ 8 shall read as follows:

¶8 Looking beyond our own decisions, to those we have relief on in the past, is more helpful. Our precedent stems primarily from an Idaho case, *Krebs v. Krebs*, 759 P.2d 77 (1988) (discussed below), and from a Ninth Circuit decision, *U.S. v. McConney*, 728 F.2d 1195 (9th Cir. 1984). (*continuation omitted.*)

5. *Commonwealth v. Pua*, 2006 MP 19 ¶ 10 shall read as follows:

¶10 Aside from the fact that the Attorney General did not "certif[y] to the Superior 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" – which will not necessarily defeat jurisdiction, *see U.S. v. Becker*, 929 F.2d 442, 445 (9th Cir. 1991) (finding that failure to certify pursuant to analogous federal statute is correctable at the court's discretion) – this statute is clearly inapplicable to the present case. (*continuation omitted.*)

6. *Commonwealth v. Pua*, 2006 MP 19 ¶ 16 shall read as follows:

¶16 Furthermore, we are not the first court to find mandamus jurisdiction may be accorded even when appellate jurisdiction is lacking. In *U.S. v. Barker*, 1 F.3d 957, 959 (9th Cir. 1989), the Ninth Circuit held that where the Government had plead in the alternative for 1) jurisdiction pursuant to 18 U.S.C. § 3731 (the federal analog to our 6 CMC § 8101), or 2) mandamus relief, even though no jurisdiction could be had under 18 U.S.C. § 3731, mandamus relief was still available due to the gravity of issue. *See also U.S. v. Collamore*, 868 F.2d 24, 30 (1st Cir. 1989) (holding similarly that mandamus was proper when 18 U.S.C. § 3731 jurisdiction was questionable.) (*continuation omitted.*)

7. *Bank of Saipan v. Martens*, 2007 MP 5 ¶ 14 shall read as follows:

¶14 . . . The question in each case is whether under all the circumstances the remedy was pursued with reasonable dispatch. *See McDaniel v. U.S. Dist. Court*, 127 F.3d 886, 890 n.1 (9th Cir. 1997) (Rymer, Circuit Judge, concurring, *citing United States v. Olds*, 426 F.2d 562 (3rd Cir. 1970)). (*continuation omitted.*)

8. *Commonwealth v. Miliondaga*, 2007 MP 6 ¶ 6 shall read as follows:

¶6 . . . Two provisions are not the same offense if each contains an element not included in the other. *Hudson v. United States*, 522 U.S. 93, 107 (1997) (Stevens, J. concurring). (*continuation omitted.*)

9. *Tan v. Younis*, 2007 MP 11 ¶ 36 shall read as follows:

¶36 So strong is the Constitutional protection of free expression that it even contemplates and protects a degree of abuse. "[E]rroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'" *Brown v. Hartlage*, 456 U.S. 45, 60, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982) (citations omitted). Indeed, "[s]ome degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press." *New York Times*, 376 U.S. at 271 (quoting James Madison, 4 *Elliot's Debates on the Federal Constitution* 571 (1856)).

10. *Estate of Muna v. Commonwealth*, 2007 MP 16 ¶ 13 shall read as follows:

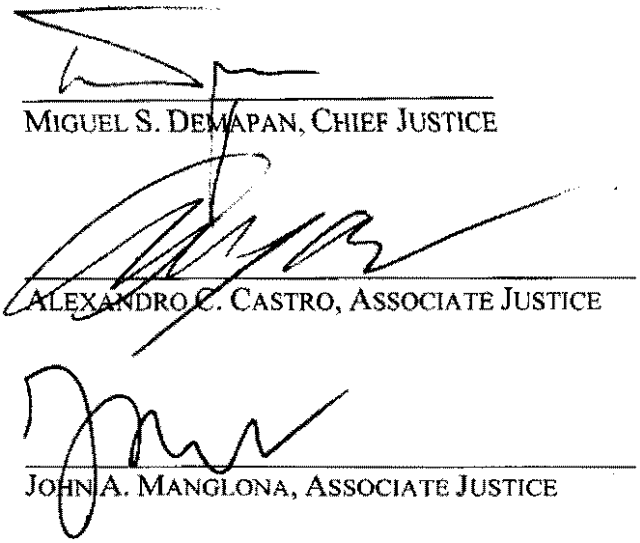
¶13 The Fifth Amendment of the United States Constitution and the Constitution of the Commonwealth of the Northern Mariana Islands Constitution require that when private property is taken for public use by eminent domain, "just compensation" must be provided to the owner. *Kirby Forest Indus., Inc. v. United States*, 467 U.S. 1, 9 (1984).

11. *Commonwealth v. Blas*, 2007 MP 17 ¶ 3 shall read as follows:

¶3 The Commonwealth charged Blas with vehicular homicide, reckless driving, and driving under the influence of alcohol. On October 18, 2004, the jury heard the vehicular homicide charge, while the trial court heard the reckless driving and driving under the influence charges. On November 2, 2004, the jury returned a verdict acquitting Blas on the vehicular homicide charge, but the trial court found him guilty of reckless driving and driving under the influence of alcohol. Blas timely appealed.

SO ORDERED.

Entered this 30th day March of 2011.



MIGUEL S. DEMAPAN, CHIEF JUSTICE

ALEXANDRO C. CASTRO, ASSOCIATE JUSTICE

JOHN A. MANGLONA, ASSOCIATE JUSTICE