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1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **FOR THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**
7 **NORTHERN MARIANA ISLANDS,**

8 **Plaintiff,**

9 **v.**

10 **GREGORY FRANK TAITANO CASTRO**

11 **Defendant.**

) **TRAFFIC CASE NO. 17-00814**
)
) **ORDER GRANTING DEFENDANT'S**
) **MOTION TO DISMISS AS A TRAFFIC**
) **CITATION DESIGNED FOR TRAFFIC**
) **VIOLATIONS, WHICH DOES NOT LIST**
) **THE ELEMENTS OF ETHICS**
) **VIOLATIONS, IS INSUFFICIENT TO**
) **PUT THE DEFENDANT ON NOTICE OF**
) **THE CHARGES IN VIOLATION OF**
) **DEFENDANT'S CONSTITUTIONAL DUE**
) **PROCESS RIGHTS**
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13 **I. INTRODUCTION**

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15 THIS MATTER came before the Court on July 10, 2017 in Courtroom 220A for a bench
16 trial. The Defendant, Gregory Frank Taitano Castro, was present and represented by Attorney Rene
17 Holmes. The Commonwealth was represented by Assistant Attorney General Jonathan
18 Wilberscheid.

19 The Court hereby makes the following order.

20 **II. BACKGROUND**

21 The Defendant is charged with violations of 1 CMC § 7406, Restriction Upon Use of
22 Government Vehicles. Specifically, the traffic citation charges four offenses. First, the citation
23 charges that the Defendant violated 1 CMC § 7406(d), which requires that government vehicles
24 “are only to be used for official government business.” Second, the citation charges that the

1 Defendant violated 1 CMC § 7406(e), which prohibits tinting the windows of some government
2 vehicles. Third, the citation charges that the Defendant violated 1 CMC § 7406(f), which requires
3 that government vehicles be marked. Finally, the citation charges the Defendant with 1 CMC §
4 7406(g)(1). Offenses contained within 1 CMC § 7406 are ethics violations.

5 On July 10, 2017, the morning of the bench trial, the Commonwealth provided discovery—
6 specifically new interviews and investigation reports. The Commonwealth also moved to amend the
7 citation, changing 1 CMC § 7406(g)(1) to 1 CMC § 7406(g)(2) during pretrial house-keeping. The
8 Court granted the Commonwealth’s motion over the Defendant’s objection. The Defendant moved
9 that the Court reconsider its order allowing the Commonwealth to amend the citation, changing 1
10 CMC § 7406(g)(1) to 1 CMC § 7406(g)(2).¹ After the bench trial began and after the
11 Commonwealth called its first witness and began direct examination of the witness, the Defendant
12 made an oral motion to dismiss, arguing that the citation was insufficient to put him on notice of the
13 charges against him.

14 On July 11, 2017, the Court heard additional arguments from the parties and ordered
15 supplemental briefing on the sufficiency of the citation and whether the Court should reconsider it’s
16 order allowing the Commonwealth to amend the citation.

17 The Commonwealth filed its Memorandum of Law in Opposition to Defendant’s Motions to
18 Dismiss and Reconsider on July 31, 2017. The Defendant also filed his Supplemental Briefing on
19 Defendant’s Motion to Reconsider and Motion to Dismiss the Citation on July 31, 2017.

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23 ¹ The Defendant’s motion to reconsider was addressed in a separate order. *See Commonwealth v. Castro*, Tr. No. 17-
24 00815 (NMI Super. Ct. Aug. 21, 2017) (Order Denying Defendant’s Motion to Reconsider as Defendant Failed to
Articulate the Legal Grounds for Reconsideration).

1 **III. LEGAL STANDARD**

2 The Northern Mariana Islands Rules of Traffic Cases apply in traffic cases. NMI R. Traff.
3 1.² Traffic offenses are “any violation of a statute, ordinance or regulation relating to the operation
4 or use of motor vehicles and any violation of a statute, ordinance, or regulation relating to the use of
5 streets and highways by pedestrians or by the operation of any other vehicle.” NMI R. Traff. 2(1).
6 The Northern Mariana Islands Rules of Criminal Procedure apply to traffic cases, since “[o]ther
7 rules and laws which govern criminal procedure shall, insofar as they are applicable, implement the
8 rules prescribed by these Rules.” NMI R. Traff. 2. “The rules of traffic procedure are not, and were
9 not intended to be, the sole authority in traffic-related cases.” *Commonwealth v. Castro*, 2002 MP
10 13 ¶ 19. “[T]he rules of traffic procedure exist to supplement other applicable rules; when applying
11 the applicable rules of criminal procedure . . . the rules of traffic procedure must also be followed.”
12 *Id.*

13 “In traffic cases, the complaint or information and summons shall be in the form known as
14 the ‘Traffic Ticket, Complaint/Citation and Summons.’” NMI R. Traff. 3(a). Traffic cases may also
15 be brought by information. *Commonwealth v. Babauta*, 2001 MP 10 ¶ 11. Under the Northern
16 Mariana Islands Rules of Criminal Procedure, “[t]he information shall be a plain, concise, and
17 definite written statement of the essential facts constituting the offense charged.” NMI R. Crim. P.
18 7(c)(1). The information must also “state for each count the citation of the statute, rule, regulation
19 or other provision of law which the defendant is alleged to have violated.” NMI R. Crim. P. 7(c)(1).

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22 ² Under Rule 13 of the Northern Mariana Islands Rules of Traffic Cases, the traffic rules are titled “Commonwealth
23 Rules of Traffic Procedure” and should be cited as “Com. R. Traf. P.” NMI R. Traff. 13. In the NMI Supreme Court
24 Style Manual, issued in 2010, the traffic rules are titled the “Rules of Traffic Cases” and are to be cited as NMI R.
Traff. For the sake of consistency going forward, since the current traffic rules under revision will likely be issued
under the new citation format, the Court will cite these rules according to the NMI Supreme Court Style Manual.
Similarly, the NMI Rules of Criminal Procedure are to be cited as “Com.R.Cr.P” in the rules themselves, but are to be
cited as “NMI R. Crim. P.” in the NMI Supreme Court Style Manual. NMI R. Crim. P. 59.

1 “Error in the citation or its omission shall not be ground[s] for dismissal of the information . . . if
2 the error or omission did not mislead the defendant to his prejudice.” NMI R. Crim. P. 7(c)(3).

3 A citation, information, and indictment are different types of charging documents. A traffic
4 citation is generally issued by law enforcement officers. BLACK’S LAW DICTIONARY 221 (Abridged
5 9th Ed.). An information is generally issued by a prosecutor. BLACK’S LAW DICTIONARY 668
6 (Abridged 9th Ed.). An indictment is generally issued by a grand jury. BLACK’S LAW DICTIONARY
7 662 (Abridged 9th Ed.).

8 IV. DISCUSSION

9 The Defendant argues that the citation, in its present form, is insufficient to put the
10 Defendant on notice to the charges against him. The Court will first address whether the Defendant
11 waived his objection to the citation by failing to object to the issue prior to trial. Then, the Court
12 will address whether the citation itself is sufficient.

13 **1. The Commonwealth’s Untimely Discovery and Amendment of Charges is Cause to** 14 **Allow the Defendant to Raise His Objection During Trial Pursuant to NMI R. Crim. P.** 15 **12(f).**

16 As a threshold matter, the Court notes the Commonwealth’s argument that the Defendant
17 waived any objections to the citation by failing to raise them prior to trial. Under Northern Mariana
18 Islands Rules of Criminal Procedure Rule 12(b), “[a]ny defense, objection, or request which is
19 capable of determination without the trial of the general issue may be raised before trial by motion.”
20 NMI R. Crim. P. 12(b) (“Rule 12(b)”). Rule 12(b) outlines a number of motions which must be
21 made prior to trial, including “[d]efenses and objections based on defects in the complaint or
22 information (other than that it fails to show jurisdiction in the court or *to charge an offense* which
23 objections shall be noticed by the court at any time during the pendency of the proceedings).” NMI
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1 R. Crim. P. 12(b) (emphasis added).³ See also *Commonwealth v. Yoo*, 2004 MP 5 ¶ 8 (“It is clear
2 that objections to the form of an information, in this case a traffic citation, must be made prior to
3 trial.”)

4 If a defendant fails to make such a motion prior to trial, “the court for cause shown may
5 grant relief from the waiver.” NMI R. Crim. P. 12(f). “The decision whether to grant relief from
6 waiver under Rule 12(f) lies in the discretion of the trial court, once good cause for such relief is
7 shown.” *Yoo*, 2004 MP 5 ¶ 11. In *Yoo*, the trial court dismissed a citation because the trial court was
8 “concerned” that the DPS Officer who wrote the citation did not write the citation until five days
9 after the alleged incident, despite the fact that the Defendant did not raise any objections to the
10 citation until after the close of the Commonwealth’s case in chief. 2004 MP 5 ¶¶ 5, 9. The trial
11 court in *Yoo* dismissed the case after a guilty verdict had been entered. *Id.* ¶ 5. The Commonwealth
12 Supreme Court ultimately overturned the trial court’s dismissal, since challenges to the citation
13 must be made prior to trial unless there is good cause shown, and the trial court’s concern that the
14 responding officer waited five days to issue the citation was not good cause. *Id.* ¶ 16.⁴

15 Here, the Defendant raised his motion during the trial, as the Commonwealth began its case
16 in chief. The Commonwealth argues that the Defendant’s late motion is a litigation tactic, and that
17 there is no cause to allow the Defendant to make the motion after the trial has begun. The
18 Commonwealth also argues that any objection given via a letter sent by the Defendant objecting to
19 the citation prior to trial is insufficient since this objection was not filed with the Court. The
20 Defendant argues that his due process rights cannot be trumped by the Northern Mariana Islands
21 Rules of Criminal Procedure, nor by the Northern Mariana Islands Rules of Traffic Cases. Further,

22 ³ In the civil context, a complaint is “[t]he initial pleading that starts a civil action and states the basis for the court’s
23 jurisdiction, the basis for the plaintiff’s claim, and the demand for relief.” BLACK’S LAW DICTIONARY 261 (Abridged
9th Ed.). In the criminal context, a complaint is “[a] formal charge accusing a person of an offense.” *Id.*

24 ⁴ During the five days that elapsed between the incident and the issuance of the citation, the officer in *Yoo* continued his
investigation, which included interviewing the victim’s father and speaking with the Attorney General’s Office about
the case. *Yoo*, 2004 MP 5 ¶ 4.

1 the Defendant points out that, unlike *Yoo*, where the trial court was concerned that the DPS Officer
2 wrote Yoo's citation five days after the fact, here the Defendant is alleging that the whole citation is
3 constitutionally improper as it fails to provide notice to the Defendant of the charges against him.

4 The Commonwealth provided some discovery a few days before trial and again on the
5 morning of trial. The Commonwealth also waited until the morning of trial to move to amend the
6 citation. The Commonwealth provided discovery on the eve of trial, then amended the charges on
7 the morning of the bench trial, so it is unlikely that the Defendant would have had time to properly
8 prepare his defense in light of the newly provided evidence and amended charges.

9 Further, the Court notes that the Commonwealth's amendment from 1 CMC § 7406(g)(1) to
10 1 CMC § 7406(g)(2) on the morning of trial changed the offense charged from a *non-offense* to an
11 offense. Section 7406(g)(1) provides:

12 Only government license plates may be issued to government vehicles, and within
13 one year of April 22, 1995, all government cars must bear government license plates,
14 excepting only government cars that are leased for less than 60 days. A government
license plate is one that clearly says "Government" or "Gov't," and that can easily be
distinguished from an ordinary license plate.

15 1 CMC § 7406(g)(1). Section 7406(g)(1) does not outline a specific offense related to government
16 license plates, nor does it impose a fine or term of imprisonment.

17 Section 7406(g)(2), on the other hand, outlines offenses related to government license plates
18 as well as the related fines and terms of imprisonment. 1 CMC § 7406(g)(2). Section 7406(g)(2)
19 actually defines *three* different offenses related to government license plates. *Id.* One possible
20 offense outlined by Section 7406(g)(2) is: "After one year from April 22, 1995, any person driving,
21 operating or using a government vehicle that does not bear government license plates shall be guilty
22 of an infraction punishable by a fine of up to \$500, and/or three days imprisonment." 1 CMC §
23 7406(g)(2). A second possible offense outlined by Section 7406(g)(2) is: "Any person driving,
24 operating or using a vehicle that is a government vehicle that does not bear government license

1 plates shall be guilty of an infraction punishable by a fine of up to \$500, and/or three days
2 imprisonment.” *Id.* A third possible offense outlined by Section 7406(g)(2) is: “Any person driving,
3 operating or using a vehicle that is not a government vehicle, but that does carry government plates,
4 shall be guilty of an infraction punishable by a fine of up to \$500, and/or three days imprisonment;
5 except, if the vehicle was transferred away from the government within the past 60 days.” *Id.*
6 Section 7406(g)(2) is significantly different from Section 7406(g)(1), which was not actually a
7 crime at all. The Defendant must then defend against a charge that entails up to three possible
8 offenses.

9 Due to the Commonwealth’s failure to make timely discovery, the late hour of discovery,
10 and the Commonwealth’s motion to amend the citation from a non-violation to a code section with
11 three possible offenses, the Court finds that there is good cause shown to allow the Defendant to
12 raise this issue after the start of trial. NMI R. Crim. P. 12(f).

13 **2. The Charging Document Must Contain Sufficient Information to Put the Defendant**
14 **on Notice to the Charges Against Him.**

15 The Defendant argues that the citation failed to put him on notice to the charges against him.
16 The Defendant relied on *Hamling v. United States* while arguing that the traffic citation was
17 insufficient to put him on notice to the charges against him. 418 U.S. 87, 117-118 (1974). *Hamling*
18 outlined two constitutional requirements for a charging document: “first, [that it] contains the
19 elements of the offense charged and fairly informs the defendant of the charge against which he
20 must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future
21 prosecutions of the same offense.” *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007)
22 (quoting *Hamling*, 418 U.S. at 117).

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1 Under *Hamling*, “[i]t is generally sufficient that an indictment set forth the offense in the
2 words of the statute itself, as long as ‘those words of themselves fully, directly, and expressly,
3 without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense
4 intended to be punished.’” *Hamling*, 418 U.S. at 117 (quoting *United States v. Carll*, 105 U.S. 611,
5 612 (1882)). If the “language of the statute” is used to define the offense, “it must be accompanied
6 with such a statement of the facts and circumstances as will inform the accused of the specific
7 offense, coming under the general description, with which he is charged.” *Id.* at 117-118 (quoting
8 *States v. Hess*, 124 U.S. 483, 487 (1888)).

9 In *Hamling*, the indictment was sufficient where the petitioners were charged with an
10 obscenity-related offense where the indictment failed to define “obscenity,” since it is a “legal term
11 of art.” 418 U.S. at 118-119. According to *Hamling*, since obscenity is “a legal term of art” and
12 “[t]he legal definition of obscenity does not change with each indictment; it is a term sufficiently
13 definite in legal meaning to give a defendant notice of the charge against him.” *Id.* at 118 (citing
14 *Roth v. United States*, 354 U.S. 476, 491-492 (1957)). On the other hand, if a charge requires a
15 “specific identification of fact,” the indictment must “do more than simply repeat the language of
16 the criminal statute.” *Id.* (quoting *Russell v. United States*, 369 U.S. 749, 764 (1962)).⁵

17 “The Sixth Amendment [to the United States Constitution] is satisfied when the
18 information is specific enough to advise the defendant of the charge against him, to enable him to
19 prepare for trial, and to plead the result in bar of a subsequent prosecution for the same offence.”
20 *Babauta*, 2001 MP 10 ¶ 12 (citing *Russell v. United States*, 369 U.S. 749, 763-764 (1962)). In

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22 ⁵ The petitioners in *Hamling* argued that their indictment, charging them with conspiring to mail obscene materials, was
23 insufficient to put them on notice as to the charges against them. *Hamling*, 418 U.S. at 117. The Court notes that, since
24 the petitioners in *Hamling* were charged with an obscenity related offense, the *Hamling* court addressed whether the
definition of “obscenity” needed to be alleged in the indictment, ultimately holding that the indictment was sufficient
without the definition of “obscenity” since it is a “legal term of art.” *Id.* at 118-119. This is dissimilar to the present
case, which is an ethics case alleging various misdemeanors related to a government vehicle.

1 *Babauta*, although the defendant was charged with traffic offenses, the charging document was an
2 information rather than a traffic citation. *Id.* at ¶ 13. The defendant in *Babauta* was charged by
3 information, which included “the language of each statute” as well as “the date of the offense and
4 where the violation occurred.” *Id.* ¶ 13.

5 “The Commonwealth is required to provide a defendant, through a combination of
6 information and discovery, with ‘the elements of the offenses with which he was charged, as well as
7 the underlying facts supporting those charges.’” *Commonwealth v. Li*, Tr. No. 15-00616 (NMI
8 Super. Ct. Sept. 15, 2015) (Order Denying Commonwealth’s Request for Leave to Amend
9 Information as to Count II Since This Count Would Add a Multiplicitous Charge at 7) (quoting
10 *Commonwealth v. Castro*, 2008 MP 18 ¶ 14). “The information may be taken together with
11 discovery to provide both the elements and underlying facts.” *Id.* (citing *Castro*, 2008 MP 18 ¶ 14).

12 **a. The Charging Document Does Not Contain Elements of the Offense Charge**
13 **and Thus Fails to Fairly Inform the Defendant of the Charges Against**
14 **Which He Must Defend.**

15 Traffic cases may be brought by either citation or information. *Babauta*, 2001 MP 10 ¶ 11.
16 Under *Hamling*, “it is generally sufficient that an indictment set forth the offense in the words of the
17 statute itself, as long as ‘those words themselves fully, directly, expressly, without any uncertainty
18 or ambiguity, set forth all the *elements necessary to constitute the offence intended to be*
19 *punished.*” *Hamling*, 418 U.S. at 117 (quoting *Carll*, 105 U.S. at 612 (emphasis added)).

20 The traffic citation form used by the Department of Public Safety provides boxes to be
21 checked off by the officer completing the form. These boxes indicate which traffic infractions were
22 committed, such as whether the driver was driving in the wrong lane, or failed to signal, or was
23 involved in a fatal accident. The citation form also allows the officer to indicate the road and
24 weather conditions. The citation form does not provide check boxes or space for officers to include
similar details for non-traffic offenses, such as alleged ethics violations like misuse of government

1 vehicles. The citation form is formatted to provide sufficient information in typical traffic
2 violations, but not for ethics violations.

3 The offense of misuse of a government vehicle may be charged as a traffic offense, although
4 it is more aptly described as an ethics violation under Title 1 of the Commonwealth Code.⁶ On the
5 traffic citation, there are no check boxes or space for additional details related to misuse of a
6 government vehicle. In the citation in the present case, only the code sections alleged to have been
7 violated are listed. The citation fails to allege any of the elements of the offense charged—instead,
8 the citation merely cites the provisions violated. *See Citation*. The present citation also indicates the
9 location of the alleged violation, as well as the date, and the identity of the Defendant. *Id.* In
10 contrast, an Information generally provides far more information regarding the alleged offense,
11 including restating the elements of the offense as listed in the statute.

12 In the present case, the citation form merely states the code sections alleged to have been
13 violated, without providing any elements or facts. Thus, the citation is insufficient under *Hamling*.
14 The Commonwealth argues that the Defendant may simply look up the code sections; however,
15 solely providing the code sections with no additional information is insufficient to put the
16 Defendant on notice to the charges against him. The Commonwealth is required to list both the
17 offenses charged and their elements, not to merely list the offenses and expect the Defendant to
18 guess the elements of the offenses. *Hamling*, 418 U.S. at 117.

19 The Commonwealth also argues that the citation may be supplemented by discovery to
20 inform the Defendant of the missing facts, pointing to *Commonwealth v. Castro*, 2008 MP 18 ¶ 14.⁷
21 In *Commonwealth v. Castro*, the Commonwealth Supreme Court held that discovery could be read
22 together with the charging document to fill gaps in the charging document. *Id.* In *Castro*, the

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⁶ Traffic offenses are listed in Title 9 of the Commonwealth Code.

24 ⁷ The full case name is *Commonwealth v. Joselito Castro*. The Defendant in that case is not to be confused with the
Defendant in the present case, Gregory Frank Taitano Castro.

1 defendant was charged by information, and the information “contained the language of the statutes
2 he allegedly violated” as well as the date, the initials of the minor victim, and the allegation that the
3 defendant “touched the girl’s breast.” *Id.* ¶ 14. Thus, although the discovery in *Castro*
4 supplemented the charging document, the charging document still provided some basic facts, as
5 well as repeated the statutory language of the offense, as required by *Hamling* and its progeny. *Id.*

6 While *Castro* demonstrates how timely discovery could supplement a charging document
7 that has slight deficiencies, the Commonwealth overlooks that the Constitution’s Due Process
8 Clause requires that a certain bare minimum must be present in the charging document to enable the
9 Defendant to find the information that would further clarify the charges against him while working
10 through the discovery. Here, the charging document does not contain any elements of the offenses
11 charged, nor does it allege any facts beyond the date, location, and identity of the Defendant.

12 Moreover, the Commonwealth failed to provide discovery in a timely manner, ultimately
13 turning over new interviews and investigation reports on the morning of trial. While timely
14 discovery could supplement a charging document that has slight deficiencies, a certain bare
15 minimum must be present in the charging document to enable the Defendant to find the information
16 that would further clarify the charges against him and sufficiently put him on notice when he
17 reviews the discovery to prepare a complete and proper defense. Further, the Defendant must have
18 discovery in time to sort through it and fill in any gaps in a deficient charging document, so that he
19 will know what the charges will be at trial, as well as file any motions, interview witnesses, seek
20 expert witnesses, and prepare for trial.

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1 Additionally, the Commonwealth has the burden to establish that notice was provided and,
 2 thus, that the discovery provided to the Defendant filled in missing elements of the citation. Here,
 3 the Commonwealth has made no offer of proof or argument to show how the discovery turned over
 4 to the Defendant provided the elements of the charges and/or the underlying facts that formed the
 5 basis of the charges; unlike *Castro*, where the discovery was alleged to include specific factual
 6 basis for the charges. 2008 MP 18 ¶ 14. There is nothing on the record to show that the insufficient
 7 citation was somehow supplemented by discovery sufficiently to put the Defendant on notice.⁸ This
 8 is especially true for the charge under 1 CMC § 7406(g)(2), as there was no reference to 1 CMC §
 9 7406(g)(2) by statutory words or any factual basis that would have given the Defendant notice to
 10 defend against any of the three possible crimes that fall under this charge until the very morning of
 11 trial. The citation in its present form is insufficient to put the Defendant on notice.

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 13 **b. The Charging Document Does Not Provide Sufficient Information to Enable
 14 Defendant to Plead an Acquittal or Conviction in Bar of Future
 15 Prosecutions of the Same Offense.**

16 Second, the charging document must “[enable] him to plead an acquittal or conviction in bar
 17 of future prosecutions of the same offense.” *Resendiz-Ponce*, 549 U.S. at 108 (2007) (quoting
 18 *Hamling*, 418 U.S. at 117). This requirement is meant to protect the Defendant from double
 19 jeopardy, so that “in case any other proceedings are taken against him for a similar offense, whether
 20 the record shows with accuracy to what extent he may plead a former acquittal or conviction.”
 21 *United States v. Debrow*, 346 U.S. 374, 376 (1953) (citations omitted).

22 As described above, the citation provides nothing more than the code sections alleged to
 23 have been violated, the date, location, and name of the Defendant. This, alone, is insufficient for the

24 ⁸ In *Commonwealth v. Li*, this Court allowed the discovery to be used to fill gaps in the information. *Commonwealth v. Li*, Tr. No. 15-00616 (NMI Super. Ct. Sept. 15, 2015) (Order Denying Commonwealth’s Request for Leave to Amend Information as to Count II Since This Count Would Add a Multiplicitous Charge at 7) (citing *Commonwealth v. Castro*, 2008 MP 18 ¶ 14). In *Li*, the defendant was charged by information, which included a bare minimum that permitted timely-provided discovery to fill in gaps. *Id.* That is not the situation in the present case.

1 Defendant to prepare his defense and protect himself from double jeopardy, as described above and
2 required by *Hamling*. The citation lacks the necessary description of the elements of the offenses or
3 any sort of factual background. Without any factual basis or any description of the elements of the
4 charges against him, the Defendant could neither describe what specific conduct of his was tried
5 under this charging document nor know how any subsequently charged offenses do or do not fall
6 within the elements of the offenses charged in this document. Again, this is especially true for the
7 charge under 1 CMC § 7406(g)(2) as there was no reference to 1 CMC § 7406(g)(2) either by
8 statutory words, code number, or any factual basis to provide notice of this charge.

9 As a final note, “[e]rror in the citation or its omission shall not be ground[s] for dismissal of
10 the information . . . if the error or omission did not mislead the defendant to his prejudice.” NMI R.
11 Crim. P. 7(c)(3). In *Yoo*, the Commonwealth Supreme Court stated that a responding officer waiting
12 five days to issue a citation “did not mislead Defendant nor did it prejudice his defense.” 2004 MP
13 5 ¶ 14. Here, the lack of notice prejudiced the Defendant by requiring him to essentially guess as to
14 the charges against him.

15 To be abundantly clear: the issue is the failure to give the Defendant constitutionally
16 required notice of the charges against him. The traffic citation, if it included the statutory offenses
17 of 1 CMC § 7406(d), (e), (f), and (g)(2), as well as the elements and factual allegations may have
18 put the Defendant on notice. Even viewed together with discovery, the traffic citation fails to put
19 the Defendant on notice. The traffic citation merely lists the code sections and does not include any
20 elements or factual basis that would allow the Defendant to know what his alleged conduct was or
21 what the elements of the charged offenses were, especially in the case of 1 CMC § 7406(g)(2). The
22 traffic citation, in its present form, provides insufficient notice for the Defendant to adequately
23 prepare for trial. The Defendant is left to guess as to what part of discovery is relevant and essential

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1 in preparing a defense. Further, there is nothing on the record showing that any discovery provided
2 to the Defendant is sufficient to fill the gaps in such a deficient charging document.

3 Thus, the traffic citation provided in this case, which only lists the code section without
4 providing elements or factual basis, is insufficient to put the Defendant on notice of the charges
5 against him as required by the Sixth Amendment of the United States Constitution. *Babauta*, 2001
6 MP 10 ¶ 12 (citing *Russell*, 369 U.S. at 763-764); U.S. CONST. AMEND. VI. The United States
7 Constitution and Commonwealth Constitution require that the citation be dismissed as deficient.

8 **V. CONCLUSION**

9 Accordingly, the Defendant's motion to dismiss is **GRANTED**.

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11 **IT IS SO ORDERED** this ^{25th} day of August, 2017.

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15 **JOSEPH N. CAMACHO**
16 **Associate Judge**
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