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FOR PUBLICATION

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 01-0477T
)	
Plaintiff,)	ORDER DECLARING A MISTRIAL
)	
v.)	
)	
DIEGO S. CABRERA and ALLEN TELIU,)	
)	
Defendants.)	
)	

This matter proceeded to trial by jury on February 10, 2003, at 9:00 a.m. at the Commonwealth Superior Court on Tinian. The Plaintiff was represented by Assistant Attorney General Grant D. Sanders. Defendant Diego S. Cabrera appeared and was represented by Assistant Public Defender Douglas Hartig. Defendant Allan Teliu appeared and was represented by Reynaldo O. Yana, Esq.

On the morning of February 14, 2003, the jury was charged and commenced deliberations.¹ At approximately 2:30 p.m. the jurors sent two notes to Judge Wiseman that were shared with counsel. The notes stated that the jurors were unable to reach a unanimous verdict and listed the jurors' numerical vote for each of the Defendants. On each note, one note for each of the two counts that they were deliberating, the jury conveyed the information as stated above.

With concurrence of counsel for all parties, the Court called the jurors in court and gave them a deadlock, or *Allen*, jury instruction. The Court also admonished the jury not to inform the Court, or anyone

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¹ The Court instructed the jurors prior to deliberations that, “. . . you are not to tell anyone-including me-how the jury stands, numerically or otherwise, on the question of the guilt of a Defendant, until after you have reached a unanimous verdict or have been discharged.” Court Jury Instruction 17.

1 else, how they stand numerically, or otherwise, until after they had reached a verdict. The Court then sent
2 the jury to further their deliberation. After the jurors had left the courtroom, Defendant Cabrera through
3 his attorney Douglas Hartig, moved for a mistrial based upon the events. Defendant Telilui, through his
4 attorney Ray Yana, joined in the mistrial motion. The Court took the motion under advisement.

5 Later, at approximately 5:00 p.m., the Defendants withdrew their motion for a mistrial. The Court
6 solicited alternative suggestions from all parties in the event that the jurors were still deadlocked. The parties
7 suggested that the jurors be given more time to deliberate. The Court then called the jurors into the
8 courtroom and asked the foreperson if they believed that they could reach a verdict if they had more time
9 to deliberate. The foreperson said that they could reach a unanimous verdict if they had more time. The
10 Court then asked if they would like to continue into the evening or resume on Tuesday afternoon, it being
11 a three day weekend and Tuesday morning was preempted by schedule conflicts of the Court and counsel.
12 The jurors were sent back to the jury room to discuss this matter.

13 The jury returned to Court approximately fifteen minutes later. The foreperson stated that they would
14 not be able to reach a unanimous verdict no matter how long they deliberated. The jurors were discharged
15 and the Court declared a mistrial. The Court stated for the record that it found, after giving careful
16 consideration to the alternatives and to Defendants' interest in having the trial completed in a single
17 proceeding, that the jurors could not reach a verdict. The Court found that a mistrial was the only
18 alternative to insure justice under the circumstances and that there was a manifest and legal necessity for
19 a mistrial.

20 Counsel for both parties are hereby ordered to appear in court for a status conference on February
21 27, 2003 at 9:00 a.m. in Courtroom 223A, for the purpose of discussing a new trial schedule and for
22 presenting arguments as to whether this Court can decide the three misdemeanor charges notwithstanding
23 the declaration of a mistrial.

24 **SO ORDERED** this 18th day of February 2003.

25
26 /s/ David A. Wiseman
27 DAVID A. WISEMAN, Associate Judge
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