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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

**Plaintiff,**

**vs.**

**AQUILINO C. CASTILLO,  
D.O.B. 05/12/1953**

**Defendant.**

**CRIMINAL CASE NO. 11-0236  
DPS CASE NO. 11-007664**

**ORDER DENYING MOTIONS AS  
UNTIMELY FILED AND  
CONTINUANCE OF TRIAL**

**THIS MATTER** came before the Court for motions hearing on March 14, 2012 at 9:00 a.m. in Courtroom 223A. The Government was represented by Assistant Attorney General Nicole Driscoll. Defendant appeared under the custody of the Department of Corrections with his counsel Benjamin K. Petersburg, Assistant Public Defender.

Defendant has filed three pretrial motions: (1) to exclude Rule 413 Evidence, (2) to dismiss counts VIII and XVI, and (3) for pretrial determination of competency of child witness. The motions were filed on March 7, 2012. Trial was set for March 19, 2011. The motions were therefore filed eight business days prior to trial. The Government also filed a motion regarding child witness procedures the day before this hearing.

The pretrial order in this case states that all pretrial motions must be filed ten business days prior to trial. The Court in its published order in *CNMI v. Tiberke*, 11-0173 (December 30, 2011) (Order Re: Change of Plea and Notice on Pretrial Orders) stated with regard to pre-trial orders:

For sometime now, counsel, in general, proceeding before this Court have been very lax with respect to compliance with the Court's pretrial

1 order. The Court on many occasions has raised this concern when there  
2 were several attorneys present in the Court. However, the Court has seen  
3 little to no improvement in counsel's lax treatment of the Court's pretrial  
4 orders. There are of course, exceptions, however, the Court's message  
is directed to the majority of counsel practicing before this Court who  
the Court believes this message is applicable to.

5 (The court went on to Order) \* \* \*

6 that the parties hereto and all counsel practicing before this Court shall  
7 comply with all terms of the pretrial order issued by this Court and shall  
8 be on notice that the Court will consider imposing sanctions for  
violation thereof beginning with the New Year.

9 Based on the Court's ruling in *Tiberke* and the pretrial order of this court in the present case the  
10 Court deems the Defendant's Motions untimely and as such will not entertain them.

11 Subsequent to the Court's ruling, Defendant through his attorney, stated that he wanted a new  
12 attorney. Counsel stated that he does not believe that Defendant has fully understood several issues in  
13 this prosecution. The Court felt it necessary to have an interpreter present and continued the matter to  
14 1:30 p.m., at which time, the Court through an interpreter, explained to Defendant that he was not  
15 entitled to select his own attorney appointed unless he has the funds to retain his own attorney. The  
16 Court further found that he is represented by competent counsel, which satisfies his constitutional  
17 entitlement to effective assistance of counsel.

18 Counsel then referred to Defendant's Motion filed on March 14, 2012 to appoint an interpreter  
19 and continue the jury trial which was scheduled for March 19, 2012, only 5 days thereafter. The reasons  
20 for the continuance as stated in Counsel's declaration is that he does not believe that Defendant has fully  
21 understood the ramifications of the charges against him and the case in general due to lack of effective  
22 communication and by not having an interpreter.

23 The Court, of course, can not proceed to trial under such circumstances as it would be a  
24 violation of Defendant's due process rights to do so, and consequently, the Court must continue the jury  
25 trial scheduled for March 19, 2012 and reschedule it a later date. The Court, however, has concerns  
26 with the issues stated below.

27 First, when counsel requested an interpreter, which was granted on or about September 21, 2011,  
28 the Court was unaware that Defendant did not engage the services of one, once the Court approved it.

1 It has been the practice of this Court that once Counsel's requested services of an interpreter is granted,  
2 Counsel is then the one who typically procures an interpreter or informs the Court that they need some  
3 assistance in doing so. Although defense counsel did raise the issue of the need for an interpreter for  
4 trial, the Court assumed that other pretrial interpreter needs were accommodated. The Court finds it  
5 troubling that with only two working days before a major felony jury trial that Counsel became aware  
6 of a communication problem between he and his client that is claimed to be so poor that he can not  
7 proceed and finds it necessary to continue the trial.

8 The Public Defender's Office, and in particular, Counsel for Defendant in this matter as well  
9 as all counsel practicing before this Court are placed on notice that they must be more diligent in  
10 handling future cases in order that this scenario does not repeat itself, a scenario the Court will not  
11 tolerate in future cases.

12 Pursuant to a teleconference with Counsel, the new jury trial date is July 23<sup>rd</sup>, 2012 at 9:00 a.m.  
13 in Courtroom 223A.

14  
15 So **ORDERED** this 16<sup>th</sup> day of March, 2012.

16  
17 /s/  
18 DAVID A. WISEMAN, Associate Judge

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