

1 FOR PUBLICATION

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BY: *BDZC*  
DEPT. OF JUSTICE COURT

4 IN THE SUPERIOR COURT  
5 FOR THE  
6 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

6 COMMONWEALTH OF THE  
7 NORTHERN MARIANA ISLANDS,

8 Plaintiff,

9 v.

10 MARTIN ILO KAPILEO,

11 Defendant.

) TRAFFIC CASE NO. 12-01675

) ORDER DENYING DEFENDANT'S  
) MOTION FOR JUDGMENT OF  
) ACQUITTAL AND CLARIFYING THAT  
) SUCH MOTIONS ARE INAPPLICABLE  
) IN BENCH TRIALS

12 THIS MATTER came before the Court on July 24, 2013, at 1:30 p.m., on Defendant's  
13 Motion for Judgment of Acquittal. Defendant Martin Ilo Kapileo was present and represented by  
14 Brien Sers Nicholas. The Commonwealth was represented by Assistant Attorney General Brian  
15 Flaherty. Based on a review of the filings, oral argument and applicable law, the Defendant's  
16 motion is denied.

17 PROCEDURAL HISTORY

18 Following a three-day bench trial on July 1-3, 2013, this Court found Defendant Kapileo  
19 guilty of violating 9 CMC § 6101(a) (failure to stop at the scene of an accident), 1 CMC § 7406(d)  
20 (restriction upon use of government vehicles), 9 CMC § 5853(a) (drinking alcohol while operating  
21 a vehicle), 9 CMC § 5853(c) (possession of open container while operating a vehicle) and 9 CMC  
22 § 5408 (operators to exercise due care), as charged as Counts III, VI, VII, VIII and XI of the  
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1 Information. On July 5, 2013, Defendant filed a written motion for judgment of acquittal pursuant  
2 to Commonwealth Rules of Criminal Procedure Rule 29(c) as to Counts III, VI, VII, VIII and XI.

### 3 DISCUSSION

4 Defendant's motion is denied because a motion for judgment of acquittal is not proper when  
5 the court, rather than a jury, determines a verdict. This issue was previously addressed in  
6 *Commonwealth v. Ahn*, 3 CR 35 (Dist. Ct. App. Div. 1987). In *Ahn*, after rendering its verdict on  
7 ten misdemeanor counts, the trial court indicated to defendant that the court would deny a motion  
8 for judgment of acquittal or motion for reconsideration. *Id.* at 38, 40-41. The defendant appealed,  
9 arguing that his due process rights were violated because he was denied "fair and impartial  
10 consideration of post-trial motions." *Id.* at 41. The Appellate Division found the trial court did not  
11 abuse its discretion and stated: "A Rule 29 motion tests the sufficiency of the evidence to sustain a  
12 conviction. It is used only in jury trials, and not in cases tried by the court, since to do so would be  
13 pointless." *Id.* at 42 (citing 8A Moore's Federal Practice, § 29.02, p. 29-5).

14 The Appellate Division was the predecessor appellate court to the Commonwealth Supreme  
15 Court. The Commonwealth Supreme Court describes its relationship to the Appellate Division as  
16 follows: "We are entitled, and indeed duty-bound, to affirm, modify, or reverse decisions of a  
17 predecessor court just as we are so obligated and entitled with regard to our own decisions."  
18 *Commonwealth v. Superior Court*, 1 NMI 287, 291 (1990). Accordingly this Court is bound by  
19 *Ahn* until it is overruled or modified by the Commonwealth Supreme Court. *See Marianas Visitors*  
20 *Bureau v. Commonwealth*, Civ. No. 94-0516 (NMI Super. Ct. June 23, 1994) (Memorandum  
21 Decision and Judgment at 33).

22 Because the Commonwealth Rules of Criminal Procedure are based on the Federal Rules of  
23 Criminal Procedure, federal case law on their interpretation is instructive. *Commonwealth v. Attao*,  
24 2005 MP 8 ¶ 9 n.7. This Court has determined that a number of Federal Circuit Courts are in

1 accord with *Ahn*, finding that in a bench trial, a motion for judgment of acquittal is unnecessary to  
2 preserve the issue of sufficiency of evidence on appeal because the defendant's not guilty plea in a  
3 bench trial is the equivalent of such a motion. *United States v. Atkinson*, 990 F.2d 501, 503 (9th  
4 Cir. 1993); *Hall v. United States*, 286 F.2d 676, 677 (5th Cir. 1960), *cert. denied*, 366 U.S. 910  
5 (1961); *United States v. Whitlock*, 663 F.2d 1094, 1097 n. 24 (D.C. Cir. 1980); *United States v.*  
6 *Besase*, 373 F.2d 120, 121 (6th Cir. 1967); *United States v. Hon*, 306 F.2d 52, 54 (7th Cir. 1962),  
7 *overruled on other grounds by United States v. Snow*, 507 F.2d 22, 26 (7th Cir. 1974).

8 **CONCLUSION**

9 For the foregoing reasons, Defendant's motion is DENIED.

10 IT IS SO ORDERED this 25 day of July, 2013.

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16 Joseph N. Camacho, Associate Judge  
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