

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)

Plaintiff,)

vs.)

WILLIAM A. LAZALITA,)

Defendant.)
_____)

Traffic Case No. 99-2021

**ORDER GRANTING PLAINTIFF'S
MOTION TO QUASH AND
DENYING PLAINTIFF'S REQUEST
FOR SANCTIONS**

I. PROCEDURAL BACKGROUND

This matter came before the Court on November 8, 1999, at 11:00 a.m. in Courtroom 223 on the Commonwealth's Motion to Quash Subpoenas Duces Tecum and the Commonwealth's Request for Sanctions. Assistant Attorney General Kevin Lynch, Esq. appeared on behalf of the Commonwealth. Barry A. Hirshbein, Esq. appeared on behalf of the Department of Public Safety (DPS). Assistant Public Defender Robert T. Torres, Esq. appeared on behalf of the Defendant, William A. Lazalita. The Court, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

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II. FACTS

The Commonwealth moves the Court to quash the subpoenas duces tecum served by Defendant's counsel on Charles W. Ingram, Jr., Commissioner of DPS and Gregory Castro, Director of DPS Division of Corrections (DOC). The subpoenas sought to compel the production of the following materials: (1) reports, photographs by Crime Scene Technicians, documents, field notes by police officers and other documents relating to DPS Traffic Case No. 99-3768; (2) reports, documents, or records regarding the treatment of Defendant by DPS EMS/Fire Personnel;

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(3) findings or reports regarding any disciplinary action taken by DPS against DOC Officer Jose T. Castro; and (4) findings or reports regarding any disciplinary action taken by DPS against DPS Officer Vicente Sablan.

III. ISSUES

1. Whether the Court should grant the Commonwealth's Motion to Quash the Subpoenas Duces Tecum.

2. Whether the Court should grant the Commonwealth's Request for Sanctions on the grounds that use of subpoenas duces tecum was unduly burdensome and oppressive.

IV. ANALYSIS

1. Motion to Quash.

The Commonwealth contends that the subpoenas must be quashed on the grounds that they are unduly burdensome and oppressive and due to the fact that they allegedly seek the production of irrelevant or privileged material. Defendant contends that use of the Com. R. Crim. P. 17 subpoenas was necessary due to the failure of the Office of the Attorney General to respond adequately to discovery requests made on May 28, 1999, and June 1, 1999, pursuant to Com. R. Crim. P. 16.

Interpretations of the Federal Rules of Criminal Procedure are instructive as the Commonwealth Rules of Criminal Procedure are patterned after the federal rules.

Commonwealth v. [p. 3] Ramangmau, 4 N.M.I. 227, 233 (1995). "Every subpoena must be a good faith effort to obtain evidence, and the . . . court may ensure that rule 17(c) is used only to that end through the court's power to quash or modify subpoenas." United States v. Arditti, 955 F.2d 331 (5th Cir. 1992), citing Bowman Dairy Co. V. United States, 341 U.S. 214, 71 S.Ct. 675, 95 L.Ed. 879 (1951); see also, United States v. Komisaruk, 885 F.2d 490, 495 (9th Cir. 1989).

"Decisions regarding the quashing of a subpoena duces tecum . . . are committed to the trial judge's discretion." United States v. Hughes, 895 F.2d 1135, 1145 (6th Cir. 1990), citing United

States v. Nixon, 418 U.S. 683, 702, 94 S.Ct. 3090, 3104, 41 L.2d.2d 1039 (1974).

A party serving a subpoena duces tecum must show three things to withstand a motion to quash. Arditti, supra at 345, citing United States v. Nixon, supra. “He must show that (1) the subpoenaed document is relevant, (2) it is admissible, and (3) it has been requested with adequate specificity.” Id. “[The] specificity and relevance elements require more than the title of a document and conjecture as to its contents.” Id. Here, Defendant specifically requests reports, photographs by Crime Scene Technicians, documents, field notes by police officers, and other documents relating to the underlying traffic case. The request is specific, but does not state the relevance of the requested documents or the admissibility of such documents. Defendant also makes a specific request for reports, documents, or records regarding the treatment of Defendant by DPS EMS/Fire Personnel. The request is specific, but again, does not state the relevance of the requested documents or the admissibility of such documents. Finally, Defendant commands the Commonwealth to produce findings or reports regarding any disciplinary action taken by DPS against DOC Officer Jose T. Castro, and to produce findings or reports regarding any disciplinary action taken by DPS against DPS Officer Vicente Sablan. These requests do not reference a specific report or finding and fail to state either the relevancy or the admissibility of the requested documents.

The Court finds that use of a Com. R. Crim. P. 17 subpoena duces tecum is not warranted in the present situation. Furthermore, Defendant has failed to meet its burden of showing that the subpoenas duces tecum made specific requests for relevant and admissible evidence. As such, the Commonwealth’s Motion to Quash the Subpoenas Duces Tecum is **GRANTED**.

[p. 4] 2. Request for Sanctions.

A subpoena duces tecum is an extraordinary tool to be used in compelling and urgent circumstances. “Although rule 17 extends to materials not subject to rule 16 discovery, it is not intended to provide an additional means of discovery.” United States v. Arditti, supra., citing Bowman, supra. A more prudent course would have been to file a motion to compel discovery. The Court finds, however, that failure to file such a motion was not unreasonable on the part of Defendant and that use of the Com. R. Crim. P. 17 subpoenas was not unduly burdensome or

oppressive on the Commonwealth. As such, the Commonwealth's Request for Sanctions is **DENIED**.

In addition, the Court notes that the Commonwealth must fulfill its discovery obligations and any Com. R. Crim. P. 16 discovery which has not been provided should be provided as soon as practicable.

V. CONCLUSION

For the foregoing reasons, the Commonwealth's Motion to Quash the Subpoenas Duces Tecum is **GRANTED**.

For the foregoing reasons, the Commonwealth's Request for Sanctions is **DENIED**.

So ORDERED this 9 day of November, 1999.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge