

FOR PUBLICATION

APPEAL NO. 01-010

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

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellant,**

v.

**JAI HOON YOO,
Defendant/Appellee.**

Traffic Case No. 00-5959

OPINION

Cite as: Commonwealth v. Jai Hoon Yoo, 2004 MP 5

Argued and submitted March 21, 2002
Decided April 21, 2004

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BEFORE: Alexandro C. Castro and John A. Manglona, Associate Justices; and Pedro M. Atalig, Justice *Pro Tem*

CASTRO, Associate Justice:

¶ 1 The Commonwealth of the Northern Mariana Islands (“Commonwealth”) appeals the trial court’s Order of Dismissal of April 23, 2001, dismissing this case with prejudice. We have jurisdiction in accordance with Article IV, section 3 of the Commonwealth Constitution and 1 CMC § 3102(a). We REVERSE.

ISSUES PRESENTED AND STANDARD OF REVIEW

- I. Whether the trial court abused its discretion by dismissing this case with prejudice based on an alleged defect in the citation raised by Defendant Jai Hoon Yoo after the Commonwealth rested from its case in chief.

- II. Whether the trial court erred in finding Defendant guilty of the offense of Failure to Exercise Due Care in violation of 9 CMC § 5408.

¶ 2 The issues presented in this case involve the interpretation of court rules and statutes, and are subject to *de novo* review on appeal. *Commonwealth v. Cabrera*, 4 N.M.I. 240, 250 (1995). The trial court’s decision to dismiss an information, or, as in this case, a citation that operates as an information, is reviewed for an abuse of discretion. *Commonwealth v. Campbell*, 4 N.M.I. 11, 15 (1993).

FACTUAL AND PROCEDURAL BACKGROUND

¶ 3 On August 3, 2000, the Defendant, Jai Hoon Yoo, collided with and injured a six-year boy while driving a pick-up truck on a highway in Chalan Kanoa. Department of Public Safety (“DPS”) officer Franklin Pangelinan (“Officer Pangelinan”) arrived at the scene to investigate the incident. Five days later, Officer Pangelinan issued a traffic

citation to Defendant at the DPS Traffic Office, charging Defendant with a violation of 9 CMC § 5408, Operators to Exercise Due Care.

¶ 4 At the bench trial of December 20, 2000, the Commonwealth presented its case, offering into evidence three exhibits and presenting the testimony of five witnesses including Officer Pangelinan. Officer Pangelinan testified that subsequent to August 3, 2000, he continued his investigation of the cause of the collision. During the course of his investigation, Officer Pangelinan reviewed the details of the case with his immediate supervisor, spoke with an Assistant Attorney General about the case and interviewed the victim's father. On August 8, 2000, after completing the investigation, Officer Pangelinan issued the citation to Defendant at the DPS Office. Excerpts of Record ("E.R.") at 27 (Traffic Ticket, Complaint/Citation and Summon).

¶ 5 After the Commonwealth rested its case in chief, and prior to Defendant's presentation of his case, Defendant objected to the fact that "the citation itself said that this whole incident happened on August 8 and the undisputed testimony shows that it happened on August 3" and that "[t]he citation is incorrect." E.R. at 63-64. The lower court noted the objection and directed defense counsel to proceed with Defendant's case in chief. At the conclusion of the bench trial, the trial court found Defendant guilty of Failure to Exercise Due Care as charged in the citation, in violation of 9 CMC § 5408, but added that it would dismiss the case if Officer Pangelinan improperly issued the underlining citation. At that time, the lower court continued the trial for 20 days to allow the parties to brief the issue of the form of the citation. E.R. at 71. After hearing the arguments by the parties and reviewing the supplemental briefs on the contested issue, the trial court dismissed the underlying case with prejudice holding that "the court finds

that Defendant has . . . shown cause as to why his argument challenging the validity of the August 8, 2000, traffic citation should not be deemed waived pursuant to Com. R. Crim. P. 12(f).” E.R. at 6. The Commonwealth appeals the trial court’s ruling.

ANALYSIS

I. Defendant Did Not Show Cause to Justify the Trial Court’s Grant of Relief from Waiver Pursuant to Com. R. Crim. P. 12(f).

¶ 6 A traffic citation issued for a violation of the CNMI Traffic Code operates as a charging document, or information, pursuant to Commonwealth Rule of Traffic Procedure 3(a), which reads, in pertinent part: “[i]n traffic cases the complaint or information and summons shall be in the form known as the ‘Traffic Ticket, Complaint/Citation and Summons’ substantially the same as set out in the appendix of forms here.” Com. R. Traff. P. 3(a). Further, Commonwealth Rule of Traffic Procedure 6(d) mandates “[a]n objection to the validity or regularity of the complaint or process issued thereunder shall be made by the defendant before trial.” Com. R. Traff. P. 6(d).

¶ 7 The Rules of Traffic Procedure are not the sole authority in traffic-related cases, and other rules, such as the Commonwealth Rules of Criminal Procedure, may apply. *Commonwealth v. Castro*, 2002 MP 13 ¶¶14-17. Commonwealth Rule of Traffic Procedure 2 states, “[o]ther rules and laws which govern criminal procedure shall, insofar as they are applicable, implement the rules prescribed by these Rules.” Com. R. Traff. P. 2. The Commonwealth Rules of Criminal Procedure may apply to address procedures that the Traffic Rules do not specifically address.

¶ 8 The Commonwealth argues that Defendant waived his right to object to a defect in the citation once trial began and after the Commonwealth rested its case in chief. The

Commonwealth's argument rests on Commonwealth Rule of Criminal Procedure 12(b), which states, in pertinent part:

- (b) Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial on motion. Motions may be written or oral at the discretion of the judge. The following *must* be raised prior to trial:
 - (1) Defenses or objections based on *defects in the institution of the prosecution*; or
 - (2) Defenses or objections based on *defects in the complaint or information* (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or ...

Com. R. Crim. P. 12(b) (emphasis added).¹ Defendant's challenges to the traffic citation in question are based either "on defects in the institution of prosecution," pursuant to Com. R. Crim. P. 12(b)(1), or "defects in the complaint or information," pursuant to Com. R. Crim. P. 12(b)(2). Therefore, Defendant was required to present these objections prior to trial or at the time set by the court prior to trial on the general issue. Com. R. Crim. P. 12(b). It is clear that objections to the form of an information, in this case a traffic citation, must be made prior to trial. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 234 (1995). In the present case, Defendant did not make a pre-trial objection based on a defect in the institution of the prosecution, namely that he received a traffic citation dated August 8, 2000, five days after the vehicular collision. Instead, he waited until after the Commonwealth presented its entire case at trial.

¶ 9

At trial, the lower court agreed with the Commonwealth's assertion that Defendant's delay in raising to a mandatory pre-trial objection resulted in a waiver of the

¹ The Commonwealth Rules of Criminal Procedure are patterned after the Federal Rules of Criminal Procedure and interpretations of the federal rules are instructive. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233 n.3 (1995).

right to object pursuant to Com. R. Crim. P. 12(b). E.R. at 67. However, the trial court granted Defendant relief, pursuant to Com. R. Crim. P. 12(f), from waiver of his right to object to a defect in the prosecution, because it was “concerned with the fact that the DPS Officer investigating the vehicular collision did not issue a traffic citation until five days after the incident.” E.R. at 5. The trial court held the delay in issuing the citations to be a violation of 9 CMC §§ 1303 and 1304, as it read the statutes to authorize an officer to issue a citation only at the scene of a traffic accident. E.R. at 5.

¶ 10 In granting such relief, the trial court relied on Commonwealth Rule of Criminal Procedure 12(f), which allows the court to grant relief from waiver of pre-trial defenses or objections for cause shown. Commonwealth Rules of Criminal Procedure 12(f) reads as follows:

(f) Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but *the court for cause shown may grant relief from the waiver.*

Com. R. Crim. P. 12(f) (emphasis added).

¶ 11 The decision whether to grant relief from waiver under Rule 12(f) lies in the discretion of the trial court, once good cause for such relief is shown. *United States v. Tekle*, 329 F.3d 1108, 1113 (9th Cir. 2003). When a defendant fails to show good cause, the court must deny waiver and deem the objection waived. *See United States v. Gonzalez*, 749 F.2d 1329, 1336 (9th Cir. 1984) (relief from waiver denied because appellant’s belated decision to change trial tactics is not “cause shown”). The trial court’s grant of relief from waiver in this instance is not warranted because it was based on its concern that Officer Pangelinan issued the citation away from the scene. This

concern, in and of itself, does not equate to cause shown by Defendant, as required by Com. R. Crim. P. 12(f) and relevant case law.

¶ 12 The rule prescribing mandatory pre-trial motions, be they based on a defect in the institution of the prosecution or in the form of the citation, allows parties to cure any defects prior to trial and prevents the parties from raising untimely motions at trial for tactical considerations. *See United States v. Smith*, 866 F.2d 1092 (9th Cir. 1989). There is no discernible distinction between Defendant's motion for acquittal after the Commonwealth completed its case in chief and an attempt to make an untimely objection in direct violation of Rule 12(b). The trial court allowed Defendant to make an untimely objection by granting relief from waiver of his right to raise a pre-trial objection, without a showing of cause. This action allows Defendant to flout the time limitations of Rule 12 and is untenable.

¶ 13 Further, a grant of relief from waiver for cause shown per Rule 12(f) is contingent on Defendant offering a justification or excuse for his failure to object to the form of the citation before trial. *Tekle*, 329 F.3d at 1112. Defendant offered no reason for his failure to object to the form of the citation and that misjudgment resulted in a waiver of his right to object once the trial began.² At trial, defense counsel's response to the court's inquiry as to why he failed to raise the issue of a defect in the prosecution before trial was that he "didn't think it was one needed to be raised before trial." E.R. at 79. Clearly, defense counsel was mistaken. Because Defendant failed to offer any justification for his failure to make a pre-trial objection, the trial court's grant of relief from waiver of that right was improper.

² This Court is convinced that Defendant's failure to object to a defect in the citation before trial was neither a trial tactic nor a strategic ploy. Regardless of Defendant's intent, the result of his failure to raise a mandatory objection before trial was waiver of that right.

¶ 14 Finally, the fact that the citation was dated August 8, 2000, instead of August 3, 2000, goes to the form rather than the substance of the charges and is not dispositive of the Commonwealth's case. *See Smith*, 866 F.2d 1092; *Gonzalez*, 749 F.2d at 1336. Commonwealth Rule of Criminal Procedure 7(c)(3), regarding informations, states: “[e]rror in the citation or its omission shall not be grounds for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.” Com. R. Crim. P. 7(c)(3). Here, the date of the citation did not mislead Defendant nor did it prejudice his defense. The Commonwealth provided discovery to the Defendant as early as September 21, 2000, which provided actual notice of the date of the offense and obviates any argument of lack of notice. E.R. at 76.

¶ 15 The trial court's dismissal of the underlying case with prejudice is an extreme remedy as it precluded any curative action by the Commonwealth, which may have included re-filing of the case by means of an information. *Commonwealth v. Babauta*, 2001 MP 10 ¶7 (traffic offenses may be brought by citation or by filing an information). “While a court has the power to dismiss pursuant to its supervisory powers, it is a disfavored remedy.” *Commonwealth v. Campbell*, 4 N.M.I. 11, 18 (1993). A dismissal with prejudice is a harsh remedy that “should be used sparingly ‘for in dismissing an indictment with prejudice, the court allows its interest in the orderly administration of justice to override the interests of victims and the public interest in the enforcement of the criminal law.’” *Commonwealth v. Palacios*, 2003 MP 6 ¶12 (internal footnote omitted) (*quoting United States v. Goodson*, 204 F.3d 508, 514 (4th Cir. 2000)).

¶ 16 We will reverse the trial court's decision to dismiss a citation if we find an abuse of discretion based on an erroneous view of the law or on a clearly erroneous assessment

of the evidence. *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 N.M.I. 79, 84 (1992). After reviewing the record in this case, the following is clear, a challenge to a defect in the institution of the prosecution or to the form of a citation must be made before trial. Defendant failed to raise either of those challenges prior to trial. Once trial commences, the trial court has discretion to relieve Defendant from waiver only for good cause shown. Defendant failed to show cause during trial that would warrant relief from waiver of compulsory pre-trial motions. Therefore, we find that the trial court abused its discretion by granting Defendant relief from waiver based on the court's concerns, raised *sua sponte*, that the traffic citation was issued 5 (five) days after the accident.

¶ 17 After a bench trial, the trial court found Defendant guilty of the offense of Failure to Exercise Due Care, in violation of 9 CMC § 5408. E.R. at 3. We find no error in the trial court's judgment of guilt in this respect. Therefore, at this time, we have no cause to analyze whether 9 CMC §§ 1303 and §1304 solely authorize a DPS officer to issue a traffic citation at the scene of an accident.³

CONCLUSION

¶ 18 The trial court abused its discretion in dismissing this case with prejudice based on its concerns with the form of the traffic citation rather than a timely objection by Defendant or good cause shown for relief from waiver of Defendant's right to object. After a trial on the merits, the trial court found Defendant guilty of violating 9 CMC § 5408(a) ("Failure to Exercise Due Care"). Accordingly, the trial court's dismissal with prejudice is **REVERSED**, the finding of guilt is reinstated and this case is remanded for sentencing.

³ We defer analysis of 9 CMC §§ 1303 and 1304 until a challenge to a traffic citation issued away from the scene of an accident is made before trial, as required by Commonwealth Rule of Traffic Procedure 6(d) and Commonwealth Rules of Criminal Procedure 12(b).

SO ORDERED THIS 21ST DAY OF APRIL 2004.

/s/ _____
ALEXANDRO C. CASTRO,
Associate Justice

/s/ _____
JOHN A. MANGLONA,
Associate Justice

/s/ _____
PEDRO M. ATALIG,
Justice *Pro Tempore*