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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

**EDWIN SOMORANG KILELEMAN,
(d/o/b: 08/14/1964)**

Defendant.

**CRIMINAL ACTION NO. 14-0069A
DPS CASE NO. 14-004802**

**ORDER REQUIRING DEFENDANT TO
FILE A RULE 8(a)(1) AFFIDAVIT**

On August 4, 2014, Edwin Somorang Kileleman filed a Motion to Suppress Statements. Kileleman is represented by Assistant Public Defender Eden Schwartz. On August 6, 2014, the Court issued a Scheduling Order. The hearing on the Motion to Suppress Statements is set for September 11, 2014. The Commonwealth shall file its Opposition on or before August 25, 2014. Kileleman shall file his Reply, if any, on or before September 3, 2014.

Rule 8(a)(1) of the Commonwealth Rules of Practice provides:

A party making a motion may (and, if the motion involves a question of the interpretation of law, shall) file together with the motion a separate memorandum of reasons, including

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1 citation of supporting authorities why the motion should be
2 granted. *Affidavits* and other documents setting forth or
3 evidencing facts on which the motion is based *shall be filed*
4 *with the motion.* (emphases added).

5 Upon review of the Motion, the Court observes that Kileleman’s Motion to Suppress
6 Statements is not accompanied by an affidavit and other documents setting forth or
7 evidencing facts on which the motion is based. The language of Rule 8(a)(1) clearly
8 requires Kileleman to accompany his Motion to Suppress Statements with an affidavit
9 setting forth or evidencing facts on which the motion is based.

10 Other jurisdictions have determined that motions to suppress statements are required
11 to be accompanied by an affidavit. In *State v. Holloway*, 311 N.C. 573 (1984), the Supreme
12 Court of North Carolina analyzed North Carolina General Statute (“NCGS”) 15A-977(a).
13 NCGS 15A-977 is analogous to Rule 8(a)(1) of the Commonwealth Rules of Practice, and
14 states in pertinent part, “[t]he motion [to suppress evidence] must be accompanied by an
15 affidavit containing facts supporting the motion.” In *Holloway*, the court held that “[a]
16 defendant who seeks to suppress evidence upon a ground specified in NCGS 15A-974^[1]
17 must comply with the procedural requirements of [NCGS 15A-977(a)].” *Id.* at 576. The
18 court held that “a motion to suppress evidence made before trial ‘must be accompanied by
19 an affidavit containing facts supporting the motion.’” *Id.* at 577. The Court also held that
20 “[a] judge may summarily deny the motion to suppress evidence if: (1) The motion does not
21 allege a legal basis for the motion; or (2) The affidavit does not as a matter of law support
22 the ground alleged.” *Id.*

23 Rule 47 of the Federal Rules of Criminal Procedure (“FRCrP”) provides that a
24 criminal defendant’s support of a motion to suppress with an affidavit is merely permissive.
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¹ NCGS 15A-974 specifies unlawfully obtained evidence.

1 Notwithstanding the permissive language of FRCP 47, it has been the practice of some
2 federal courts to require an affidavit of an affiant with firsthand knowledge to be filed along
3 with a motion to suppress statements. See *United States v. Moran-Garcia*, 783 F. Supp.
4 1266, 1268 (S.D. Cal. 1991). In *Moran-Garcia*, the court held that the assertions of counsel
5 are not sufficient to support the factual basis for a motion to suppress because they are
6 unsworn and secondhand. *Id.* at 1270. The court there, as here, requires specific facts to
7 support the need for a hearing which come from a sworn statement of someone with
8 firsthand knowledge. The court held, “no evidentiary hearing need be held when the
9 evidentiary motion requesting such a hearing is not supported by the properly drawn and
10 timely filed sworn statement of an individual who has personal knowledge of the statement's
11 representations.” *Id.* The court also went on to hold:

13 The Court notes, in addition, that the jurisprudential concerns motivating this
14 policy are neither new nor inconsequential. As Judge Mansfield of the
15 Southern District of New York noted as long ago as 1967[:]

16 [T]he conduct of defendants' counsel in asserting ["serious
17 charges"] solely upon his own general information and belief
18 rather than upon statements of fact sworn to by persons having
19 personal knowledge, evidences a lack of appreciation for his
20 responsibilities as an officer of this Court. Experience shows
21 that unless such serious charges are initiated upon the sworn
22 statement of persons having personal knowledge of the facts, a
23 great deal of time of the parties and the Court is frequently
24 wasted upon unnecessary, expensive and protracted
25 suppression hearings, all for the reason that the attorney
26 demanding suppression merely upon his own say-so often
27 discovers only at the hearing that he has been misled by
28 unsworn representations of his clients, which they would be
unwilling to swear to in an affidavit, particularly if they were
questioned closely by their counsel and warned of the
consequences of perjury.

Id. (citing *United States v. Garcia*, 272 F.Supp. 286, 290 (S.D.N.Y. 1967)).

1 Unlike FRCrP 47, under Rule 8(a)(1) of the Commonwealth Rules of Practice
2 affidavits are not merely permissive, they are required. In *Commonwealth v. Sablan*, Crim.
3 No. 13-0157 (NMI Super. Ct. Nov. 15, 2013) (Order Granting Mot. to Suppress at 5), the
4 court found that “[a] defendant who files a motion to suppress ‘bears the burden of coming
5 forward with at least an offer of proof or some minimal showing that his suppress has some
6 factual basis’ before the Court is required to hold an evidentiary hearing.” (citing
7 *Commonwealth v. Petrus*, Crim. No. 12-0235 (NMI Super. Ct. Aug. 28, 2013 at 2) (Order
8 Den.’ing Mot. to Suppress Statement Without Prejudice)). The court in *Sablan* further held
9 that the affidavits must contain admissible facts. *Id.* The court extended this rule in
10 *Commonwealth v. Manabat*, Crim. No. 13-0122 (NMI Super. Ct. March 21, 2014) (Order
11 Granting Defendant’s Motion to Suppress Statements at 4-5), when the court directed
12 defense counsel to of Rule 8(a)(1). There, the court held the hearing on the motion to
13 suppress on March 13, 2014 and the trial began on April 7, 2014. The court found that
14 timing was a major issue and sought to preserve constitutional rights over the
15 Commonwealth Rules of Practice. In this case, the Court set the hearing for this Motion on
16 September 11, 2014 and a trial date has not yet been set. Unlike in *Manabat*, timing for
17 filing an affadivt is not a major issue in Kileleman’s Motion to Suppress Statements.
18 Additionally, pursuant to *Manabat*, Kileleman had advanced knowledge of Rule 8(a)(1) and
19 cannot assert that no such rule exists, as Manabat’s defense counsel asserted. Thus, there is
20 no excuse for Kileleman’s failure to accompany his Motion to Suppress Statements with an
21 affidavit.

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1 In *Commonwealth v. Kim*, Traf. No. 87-1907 (NMI Commw. Trial Ct. Nov. 18,
2 1987) (Order Dismissing Mot. to Suppress at 241), the court held that the affidavit must set
3 forth more than mere legal conclusions, but must include “facts within the personal
4 knowledge of the affiant.” Thus, unless an attorney has personal knowledge, an attorney’s
5 affidavit will not satisfy the affidavit requirement.

6 Kileleman is hereby ordered to file a Rule 8(a)(1) affidavit no later than August 18,
7 2014.

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9 **IT IS SO ORDERED** this 11th day of August, 2014.

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14 **ROBERTO C. NARAÑA**, Presiding Judge
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