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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.

ARURANG, HANK JR. PUA

Defendant.

) **TRAFFIC CASE NO. 14-02029**
)
) **ORDER GRANTING IN PART**
) **COMMONWEALTH'S MOTION TO**
) **RECONSIDER THAT REASONABLE**
) **SUSPICION IS THE CORRECT**
) **STANDARD IN THE COURT'S ORDER**
) **GRANTING DEFENDANT'S MOTION**
) **TO SUPPRESS EVIDENCE DUE TO**
) **UNLAWFUL TRAFFIC STOP WHERE**
) **VEHICLE MOMENTARILY LEFT**
) **DESIGNATED LANE TO AVOID**
) **COLLISION WITH DOG ON WET ROAD**
)

I. INTRODUCTION

This matter came before the Court on March 25, 2015 at 9:00 a.m. on the Commonwealth's Motion to Reconsider in Courtroom 220. Defendant, Hank Pua Arurang Jr., was represented by Assistant Public Defenders Eden Schwartz and Michael Sato. The Commonwealth was represented by Assistant Attorney General Emily Cohen.

On November 26, 2014, the Court heard the Defendant's Motion to Suppress Breathalyzer Results, as well as the Defendant's Motion to Suppress Evidence Obtained from Unlawful Seizure. The Court granted the Motion to Suppress Breathalyzer Results on December 1, 2014, and later granted the Motion to Suppress Evidence Obtained from Unlawful Seizure on December 3, 2014.

On December 11, 2014, the Commonwealth filed its Motion to Reconsider Order to Suppress Evidence Due to Unlawful Traffic Stop, related to the Court's December 3, 2014 order. The Defendant filed his opposition on January 16, 2015. The Commonwealth filed its reply on

1 January 30, 2015. The hearing date was originally scheduled for February 11, 2015, but was later
2 re-scheduled to March 25, 2015 due to scheduling conflicts.

3 Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS**
4 **IN PART AND DENIES IN PART** the Commonwealth's motion to reconsider.

6 II. BACKGROUND

7 At the November 26, 2014 suppression hearing, the Court heard testimony from the
8 Defendant, as well as from Officer Daniel Smith, and John Leous, Jr., who was a passenger in the
9 Defendant's truck on the night of the traffic stop. The suppression hearing was regarding a traffic
10 stop that occurred on June 28, 2014, at 4:00 a.m.

11 On June 28, 2014 at around 4:00 a.m., the Defendant and Officer Smith were both driving
12 northbound on Beach Road. The Defendant was in the inner lane, while Officer Smith was in the
13 outer lane. The Defendant passed Officer Smith's vehicle, and then signaled and changed lanes into
14 the outer lane. Then, the Defendant signaled and turned right, heading east, onto the road leading to
15 the 360 Building. The road leading to the 360 Building has three lanes at the intersection with
16 Beach Road: an eastbound lane, as well as two westbound lanes, one of which is a left turn lane.
17 Between the eastbound and westbound lanes are reflectors and faint paint, marking the division
18 between the lanes.

19 At the time of the stop, the road was wet and the Defendant's windshield had a slight mist
20 on it, but not so much moisture that the Defendant needed to use windshield wipers.¹ When the
21 Defendant turned right on the road leading to the 360 Building, he noticed a puddle extending a few
22 feet into the right side of the road, with a dog drinking from the puddle. The Defendant moved left
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24 ¹ The Court took judicial notice that it had been raining for several days leading up to June 28, 2014.

1 and his tires briefly touched the lane marker between the eastbound and westbound lanes. There
2 was no oncoming traffic and he touched the lane divider only for a few seconds. The Defendant
3 moved back into the right lane after passing the dog and the puddle. As Officer Smith passed
4 through the intersection, he saw the Defendant's tires on the lane marker. At this point, Officer
5 Smith initiated a traffic stop.

6 During the suppression hearing, the Commonwealth's argument was that Officer Smith had
7 **probable cause** to stop the Defendant's vehicle. The Commonwealth also argued **probable cause**
8 in its filings related to the suppression motion. Opp. to Def.'s Mot. to Supp. 2:6-4-18; Resp. to
9 Def.'s Reply to Gov. Opposition 2:7-6:8.²

10 At the suppression hearing, Defendant asked that the court take judicial notice that there had
11 been rainy weather in the days leading up to the stop, because of an Accuweather weather report for
12 the month of June provided by the Defendant. The Commonwealth objected to the judicial notice
13 on the record, but did not make any argument regarding why the judicial notice was improper. The
14 Court took judicial notice that it had been raining for several days leading up to June 28, 2014.

15 The Court granted the Defendant's Motion to Suppress Evidence on December 3, 2014 in its
16 Order Granting Defendant's Motion to Suppress Evidence Due to Unlawful Traffic Stop Where
17 Vehicle Momentarily Left Designated Lane to Avoid Collision With Dog on Wet Road. On
18 December 11, 2014, the Commonwealth filed its Motion to Reconsider Order to Suppress Evidence
19 Due to Unlawful Traffic Stop. The Commonwealth asks that the court reconsider these rulings:

- 20 1. The Court's judicial notice that it had been raining prior to the traffic stop.
- 21 2. The legal standard required for a traffic stop.

22 _____
23 ² At the November 26, 2014 suppression hearing, the Commonwealth was represented by Assistant Attorney General
24 Clayton Graef. Mr. Graef also handled the filings related to the suppression hearing. The motion to reconsider, filed on
December 3, 2014, was filed by Assistant Attorney General Emily Cohen, who also represented the Commonwealth at
the March 25, 2015 hearing for the motion to reconsider.

1 3. The legality of the traffic stop.
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3 **III. LEGAL STANDARD**

4 A court may reconsider its earlier ruling when there is “an intervening change of controlling
5 law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice.”
6 *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI
7 408, 414 (1992)).³ This standard applies in both civil and criminal matters. *Id.* Reconsideration may
8 not be used “to repeat old arguments previously considered and rejected, or to raise new legal
9 theories that should have been raised earlier.” *National Metal Finishing Com. v.*
10 *BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990). Commonwealth law favors
11 the finality of court decisions, to “maintain consistency and avoid reconsideration of matters once
12 decided during the course of a single continuing lawsuit.” *Cushnie v. Arriola*, 2000 MP 7 ¶ 14.
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16 ³ The Commonwealth filed this motion under NMI R. Civ. P. 60(b). As this motion was filed on December 11, 2014,
17 regarding an order issued on December 3, 2014, which is within the filing window for NMI R. Civ. P. 59(e) motions,
18 the Court will treat this motion to reconsider as a motion under Rule 59(e). Rule 59(e) and Rule 60(b) motions are
19 similar, but “[w]hether a motion is construed as a Rule 59(e) or Rule 60(b) motion depends upon the time in which the
20 motion is filed.” *China Color Printing v. Pacific Information Bank*, Civ. No. 99-0747 (NMI Super. Ct. Feb 23, 2012)
(Order Denying Defendant’s Motion to Alter or Amend the Court’s January 3, 2012 Order at 3) (quoting *Allender v.*
Raytheon Aircraft Co., 439 F.3d 1236, 1242 (10th Cir. 2006). “A motion for reconsideration filed within ten days of
21 entry of judgment will fall under Rule 59(e); whereas, a motion filed after that time will fall under Rule 60(b).” *Id.*
22 (internal citations omitted). Generally, motions to reconsider fall within NMI R. Civ. P. 59(e), and the Commonwealth
Supreme Court has in the past applied the “intervening change in the controlling law, the availability of new evidence,
or need to correct a clear error” language from *Camacho* to Rule 59(e) motions. *Angello v. Louis Vuitton Saipan*, 2000
MP 17 ¶ 23 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI at 414). The *Angello* Court did point out that the
Superior Court had also examined the case under Rule 60(b), but the Supreme Court’s analysis discussed Rule 59(e). *Id.*
at ¶ 23 n8. This is the same test being argued by both parties in relation to this motion to reconsider. Rule 60(b) motions
23 are meant to “strike a balance between serving the ends of justice and preserving the finality of judgments.” *China*
Color Printing, Civ. No. 99-0747 at 4 (citing *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986)). Rule 60(b) motions
24 must be “highly convincing” and a party must “show good cause for the failure to act sooner, and that no undue
hardship be imposed on other parties.” *Id.* (citations omitted). Among the grounds for relief under Rule 60(b) is clear
error, similar to Rule 59(e), which is found within Rule 60(b)(6)’s “any other reason justifying relief” catch-all
provision. *Id.*

1 IV. DISCUSSION

2 A. The Court Declines to Reconsider Taking Judicial Notice

3 A court may take judicial notice of a fact that is “not subject to reasonable dispute because
4 it: (1) is generally known within the Commonwealth or (2) can accurately and readily be
5 determined from sources whose accuracy cannot reasonably be questioned.” NMI R. Evid. 201(b).
6 A court may take judicial notice whether or not a party requests it, but it “must take judicial notice
7 if a party requests it and the court is supplied with the necessary information.” NMI R. Evid. 201(c)
8 In addition, judicial notice may be taken “at any stage of the proceeding.” NMI R. Evid. 201(d).
9 The Court will reconsider judicial notice if there has been a clear error.

10 The Commonwealth argues that judicial notice was improper, as “the defense would have to
11 show that the fact was not in dispute.” Mot. to Reconsider Suppression of Traffic Stop 4:26-4:27. A
12 fact needs to not be subject to reasonable dispute, and under Rule 201(b) a fact is not subject to
13 reasonable dispute if it is either “generally known” or “can be accurately and readily determined
14 from sources whose accuracy cannot reasonably be questioned.” The Court took judicial notice of
15 the weather conditions in June 2014 based on an Accuweather weather report, which the Court
16 found to not be subject to reasonable dispute as weather reports are a source whose accuracy cannot
17 reasonably be questioned. To be clear, the Court did not take judicial notice of the presence of a
18 puddle – simply that there had been rain in the days leading up to the June 28, 2014 stop.

19 Other courts have taken judicial notice of weather conditions based on data from websites.⁴
20 See *Yates v. Sweet Potato Enter., Inc.*, No. C 11-01950 LB, 2014 U.S. Dist. LEXIS 155418, at *42
21 (N.D. Cal. Nov. 3, 2014) (taking judicial notice of temperatures at San Francisco International
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24 ⁴ As the Commonwealth Rules of Civil Procedure “are patterned after the federal rules, [the Court] will principally look to federal interpretation for guidance.” *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 16 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

1 Airport in between July 20, 2011 and September 28, 2011 based on data from Wunderground.com);
2 *Martin v. Beight*, No. 13-CV-855A, 2015 U.S. Dist. LEXIS 56413, at *4-5 n1 (W.D.N.Y. April 29,
3 2015) (taking judicial notice of weather conditions based on data from Wunderground.com);
4 *Heilman v. Lyons*, No. 2:09-cv-2721 JAM KJN P, 2013 U.S. Dist. LEXIS 99432, at *30 (E.D. Cal.
5 July 16, 2013) (taking judicial notice of historical weather records for a specific zip code based on
6 Almanac.com).

7 If a party disagrees with the judicial notice, they are “entitled to be heard” if they make a
8 timely request. NMI R. Evid. 201(e). “If the court takes judicial notice before notifying a party, the
9 party, on request, is still entitled to be heard.” *Id.* This right to be heard “does not require ‘under all
10 circumstances, a formal hearing.’” *Amadasu v. Christ Hosp.*, 514 F.3d 504, 508 (6th Cir 2008)
11 (citing *American Stores Co. v. Comm’r of Internal Revenue*, 170 F.3d 1267, 1271 (10th Cir. 1999).

12 When Assistant Public Defender Eden Schwartz requested that judicial notice be taken that
13 it had been raining for several days before June 28, 2014, Assistant Attorney General Clayton Graef
14 stated on the record that he objected to the judicial notice. The Commonwealth states that they are
15 “merely asking the Court to be heard, as is [their] right under the Commonwealth’s Rules of
16 Evidence.” Reply to Def.’s Resp. to Mtn. to Reconsider 3:1-3:2. The Commonwealth further states
17 that, since judicial notice had already been taken, a motion to reconsider is the “only proper venue
18 to be heard,” rather than by submitting a brief following the hearing. *Id.* at 3. As the Court stated
19 above, Mr. Graef objected to the judicial notice on the record. The Commonwealth also outlined in
20 its Motion to Reconsider reasons why it believes judicial notice was improperly taken.⁵ The
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23 ⁵ The Commonwealth also raises hearsay, relevance, and foundation issues in their Motion to Reconsider. The Court “is
24 not bound by the Commonwealth Rules of Evidence in addressing preliminary questions concerning the admissibility of
evidence, except with regard to issues of privilege.” *Commonwealth v. Sablan*, Crim. No. 08-212 (NMI Super. Ct. Sept.
2, 2009) (Order Denying Defendant’s Motion to Suppress at 3 n2) (citing NMI. R. Evid. 104(a); NMI R. Evid.
1101(c)(1)). See also *United States v. Matlock*, 415 U.S. 164, 172-173 (1974) (“[T]he rules of evidence normally

1 Commonwealth has had ample opportunity to be heard, both by objecting on the record to the
2 judicial notice, and by filing its Motion to Reconsider.

3 In a criminal case, judicial notice is not necessarily conclusive as to a given fact. NMI R.
4 Evid. 201(f). Further, the Court notes that, even if judicial notice had not been taken, the Court still
5 found the Defendant's testimony about the misty weather and wet road conditions to be reliable.
6 Even absent judicial notice as to the weather, the Court would have taken the misty weather and wet
7 road into consideration. As there has been no showing of clear error in taking judicial notice, the
8 Court will not reconsider the issue of judicial notice at this time.

9 **B. Reasonable Suspicion is the Legal Standard for a Traffic Stop**

10 A court may reconsider its earlier ruling when there is "an intervening change of controlling
11 law, availability of new evidence, or the need to correct a clear error or prevent manifest injustice."
12 *Eguia*, 2008 MP 17 ¶ 7 (citing *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI at 414). In the
13 Court's December 3, 2014 order, as the Commonwealth had argued probable cause, the Court
14 applied probable cause in its analysis of the stop. *Arurang*, Crim. No. 14-02029 at 5. The Court will
15 reconsider whether probable cause was the proper standard if there has been a clear error or
16 intervening change in law.

17 At the outset, the Court notes that, up until the Commonwealth filed its Motion to
18 Reconsider Order to Suppress Evidence Due To Unlawful Traffic Stop, the Commonwealth had
19 been arguing that there was **probable cause** for the stop. At the November 26, 2014 suppression
20 hearing, the Commonwealth's position was that Officer Smith had **probable cause** to stop the
21 Defendant. The Commonwealth also argued **probable cause** in their motions related to the
22 suppression motion. Opp. to Def.'s Mot. to Supp. 2:6-4-18; Resp. to Def.'s Reply to Gov.

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24 applicable in criminal trials do not operate with full force at hearings before the judge to determine the admissibility of
evidence.")

1 Opposition 2:7-6:8. In fact, the Commonwealth went so far as to state that, “the issue at bar is one
2 of probable cause and not reasonable suspicion.” Opp. to Def.’s Mot to Supp. 4:4-4:5. Now, in its
3 motion to reconsider, the Commonwealth asks the court to apply the lower standard of reasonable
4 suspicion, rather than probable cause.⁶

5 The Court will reconsider its prior ruling, as there has been a clear error of law. Reasonable
6 suspicion is the standard for traffic stops. “A police-initiated traffic stop is reasonable under the
7 Fourth Amendment if the police stop the vehicle because of a ‘reasonable suspicion’ that the
8 vehicle’s occupants have broken the law.” *United States v. Hartz*, 458 F.3d 1011, 1017 (9th Cir.
9 2006) (citing *United States v. Lopez-Soto*, 205 F.3d 1101, 1104-05 (9th Cir. 2000)). *Commonwealth*
10 *v. Fu Zhu Lin*, was the leading case in the CNMI on the standard to stop a vehicle at the time of the
11 suppression hearing. 2014 MP 6. Under *Fu Zhu Lin*, an officer must have reasonable suspicion of
12 criminal activity, which can include traffic infractions. *Id.* ¶ 13 (citing *Delaware v. Prouse*, 440
13 U.S. 648, 669 (1979)).

14 The Commonwealth, in its Reply to Defendant’s Response to Motion to Reconsider, argues
15 that, in addition to clear error, there has been an intervening change in controlling law. The Court
16 finds that there was no intervening change of law. On December 12, 2014 the Commonwealth
17 Supreme Court published its opinion in *Commonwealth v. Crisostomo*, 2014 MP 18. In *Crisostomo*,
18 the Commonwealth Supreme Court applied reasonable suspicion as the standard for making a
19 traffic stop. *Crisostomo*, 2014 MP 18 ¶¶ 17-22.⁷

22 ⁶ “[T]he level of suspicion [reasonable suspicion] requires is ‘considerably less than proof of wrongdoing by a
23 preponderance of the evidence,’ and ‘obviously less’ than is necessary for probable cause.” *Navarette v. California*, 134
S.Ct. 1683, 1687 (2014) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)).

24 ⁷ The Commonwealth’s Motion to Reconsider Order to Suppress Evidence Due To Unlawful Traffic Stop was filed on
December 11, 2014. The Commonwealth Supreme Court issued its opinion in *Crisostomo* on December 12, 2014, one
day later.

1 In applying this standard, the Commonwealth Supreme Court referenced *Fu Zhu Lin*: “[t]o
2 make an investigatory stop, the officer must have a reasonable suspicion that criminal activity may
3 be afoot.” *Crisostomo*, 2014 MP 18 ¶ 18 (citing *Fu Zhu Lin*, 2014 MP 6 ¶ 13). The analysis in
4 *Crisostomo* also cites to *Fu Zhu Lin* to define reasonable suspicion, which requires “more than a
5 hunch, but much less than a preponderance of the evidence” of criminal activity. *Id.* ¶ 19 (citing *Fu*
6 *Zhu Lin*, 2014 MP 6 ¶ 13). This “[c]riminal activity, in turn, is either a felony crime, 6 CMC §
7 6103(d); or a traffic violation, see 9 CMC §§ 1302-04 (indicating police officers may stop
8 individuals for violations of the traffic code).” *Id.* ¶ 18. Under **both** *Fu Zhu Lin* and *Crisostomo*,
9 reasonable suspicion is the standard for traffic stops. If there was ever any ambiguity in *Fu Zhu Lin*,
10 there is none under *Crisostomo*.

11 Thus, the Court will apply reasonable suspicion to the stop on June 28, 2014.

12 **C. Briefly Touching the Center Lane Marker Does Not Give Rise to Reasonable**
13 **Suspicion**

14 Unreasonable searches and seizures are prohibited under both the Fourth Amendment of the
15 United States Constitution and Article I, § 3 of the Northern Mariana Islands Constitution. “Brief
16 investigatory stops of persons or vehicles that fall short of traditional arrest” are subject to this
17 prohibition on unreasonable searches and seizures. *Fu Zhu Lin*, 2014 MP 6 ¶ (quoting *United States*
18 *v. Arvizu*, 534 U.S. 266, 273 (2002)). “To make an investigatory stop, the officer must have a
19 reasonable suspicion that criminal activity may be afoot.” *Crisostomo*, 2014 MP 18 ¶ 18 (citing *Fu*
20 *Zhu Lin*, 2014 MP 6 ¶ 13). “Criminal activity, in turn, is either a felony crime, 6 CMC § 6103(d); or
21 a traffic violation, see 9 CMC §§ 1302-04 (indicating police officers may stop individuals for
22 violations of the traffic code).” *Id.* ¶ 18.

23 Reasonable suspicion requires “more than a hunch, but much less than a preponderance of
24 the evidence” of criminal activity. *Id.* ¶ 19 (citing *Fu Zhu Lin*, 2014 MP 6 ¶ 13). Reasonable

1 suspicion is examined under a totality of the circumstances, looking for “a particularized and
2 objective basis for suspecting legal wrongdoing” on the part of the detaining officer. *Id.* ¶ 19
3 (quoting *Fu Zhu Lin*, 2014 MP 6 ¶ 13). “An officer is entitled to rely on his training and experience
4 in drawing inferences from the facts he observes, but those inferences must also be grounded in
5 objective facts and be capable of rational explanation.” *United States v. Mariscal*, 285 F.3d 1127,
6 1130 (9th Cir. 2002) (citing *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000))
7 (internal quotation marks omitted). The Court will look to whether, under a totality of the
8 circumstances, Officer Smith had reasonable suspicion to stop the Defendant when his tires briefly
9 touched the center lane marker while making a turn at an intersection at night on a wet road.

10 “Suspicious must be reasonable, and they cannot be if they are not sufficient to cause an
11 officer to believe that the driver has done something illegal.” *Mariscal*, 285 F.3d at 1130. If an
12 officer makes a stop based on incorrect law, there is no reasonable suspicion; however, “[i]f the
13 facts are sufficient to lead an officer to reasonably believe there was a violation, that will suffice,
14 even if the officer is not certain about exactly what it takes to constitute a violation.” *Id.* So long as
15 “the objective facts known to the officer gave rise to reasonable suspicion that criminal activity was
16 afoot,” an officer’s mistake of fact will not invalidate a stop. *Id.* at 1131. Further, “a determination
17 that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.”
18 *United States v. Arvizu*, 534 U.S. 266, 277 (9th Cir. 2002) (finding that although a minivan carrying
19 adults and children could simply indicate a family on vacation, this does not prevent a finding of
20 reasonable suspicion).

21 The Defendant argues that, in examining reasonable suspicion, the Court should consider
22 road conditions as a part of its totality of the circumstances analysis. Def.’s Opp. to Mot. to
23 Reconsider 10:10-10:12. In particular, the Defendant insists that “an officer of reasonable caution
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1 would lack an objectively reasonable basis for the stop, given the obvious road hazards.” *Id.* at
2 10:4-10:7.

3 Under 9 CMC § 5301(a), vehicles must be operated on the right half of the roadway upon
4 “highways of sufficient width.”⁸ Under 9 CMC § 5304(a), which covers Driving on Highways
5 Laned for Traffic, “[a] vehicle shall be operated **as nearly as practical** entirely within a single lane
6 and may not be moved from the lane until the operator has first ascertained that the movement can
7 be made safely” (emphasis added).

8 The Commonwealth argues that the Court may not insert language from 9 CMC § 5304(a)
9 into 9 CMC § 5301(a) in examining the stop, as this “add[s] an extra element to a crime that the
10 Commonwealth is not required to prove.” *Mot. to Reconsider Suppression of Traffic Stop* 11:17-
11 11:25. The Court is not adding an extra element to 9 CMC § 5304(a), which includes language
12 regarding “highways of sufficient width.” A vehicle must stay within its lane marker so long as the
13 highway is of sufficient width – that is, not obstructed by a puddle intruding upon the roadway.
14 Rather than adding an element, 9 CMC § 5304(a) is simply instructive in interpreting when and
15 how a vehicle must drive within it a particular lane. Without looking to 9 CMC § 5304(a), the Court
16 is still left with the language from 9 CMC § 5301(a), which **still looks to** “highways of sufficient
17 width.” In the present case, a road hazard, the puddle, narrowed the lane, so that the Defendant’s
18 tires briefly touched the center lane marker.

19 Briefly leaving one’s lane while making a turn, at night, without on-coming traffic, does not
20 give rise to sufficient reasonable suspicion to make a stop on its own. Other courts have found that
21 briefly leaving a lane does not justify a stop. *See United States v. Gregory*, 79 F.3d 973, 978-979
22 (10th Cir. 1996) (finding that there was no reasonable suspicion where the defendant briefly crossed

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24 ⁸ Officer Smith initially cited Defendant for a violation of 9 CMC § 5301(c), which the Court interpreted as applying
only to divided highways. *Arurang*, 14-02029 at 5-6. In its place, the Commonwealth argued a violation of 9 CMC §
5301(a), which the Court ultimately took into account in its analysis in its December 3, 2014 order. *Id.* at 6-7.

1 into an emergency lane); *United States v. Lyons*, 7 F.3d 973, 976 (10 Cir. 1993) (finding that a
2 driver’s weaving within a lane and avoiding eye contact with an officer was insufficient to establish
3 reasonable suspicion where such actions merely caused the officer to have a “sixth sense” about
4 potential criminal activity); *State v. Bello*, 871 P.2d 584, 587 (Utah Ct. App. 1994) (no reasonable
5 suspicion where “[the officer’s] initial suspicion, triggered by a minor driving aberration, was not
6 corroborated in any way during the ensuing pursuit,” when the driver weaved in his lane on a windy
7 night); *United States v. Colin*, 314 F.3d 439, 446 (9th Cir. 2002) (holding that there was no
8 reasonable suspicion for a stop based on lane straddling or driving under the influence where the
9 vehicle “touch[ed] the right fog line and the center yellow line each for 10 seconds, after legitimate
10 lane changes.”); *State v. Caron*, 534 A.2d 978, 978 (Me. 1987) (holding that there was no finding of
11 reasonable suspicion “based solely on the single, brief straddling of the center line of the undivided
12 highway, with no oncoming traffic in sight and no vehicles passing on the left.”).

13 The Tenth Circuit has noted that, “if failure to follow a **perfect vector** down the highway or
14 keeping one’s eyes on the road were sufficient reasons to suspect a person of driving while
15 impaired, **a substantial portion of the public** would be subject each day to an invasion of their
16 privacy.” *Lyons*, 7 F.3d at 976 (emphasis added).⁹ In the CNMI, this is especially true. While
17 driving in the CNMI, in any given trip one may encounter poor lighting, debris, pot holes, stray
18 dogs and cats, and puddles of varying sizes.

19 The Vehicle Code’s provisions are to be “construed according to the plain meaning of their
20 terms, with a view to effect its object and promote justice.” 9 CMC § 1104(e). The object of the
21 Vehicle Code is to “regulate and govern traffic safety.” Governor’s Signing Statement, P.L. 3-61.
22 When examined through the lens of traffic safety, drivers in the CNMI must be able to take road

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24 ⁹ The Court notes that the Northern Mariana Islands Constitution contains an explicit guarantee to the right to privacy.
NMI Const. art. I, § 10.

1 hazards into account to be able to drive safely. Thus, there is no reasonable suspicion to stop a
2 driver who briefly touches a lane marker, while making a turn, to avoid a puddle and a dog on a wet
3 roadway at night.

4 **V. CONCLUSION**

5 Accordingly, the Commonwealth's motion to reconsider is **DENIED IN PART** as to
6 judicial notice, and **GRANTED IN PART** as to the standard for a traffic stop being reasonable
7 suspicion. Even under reasonable suspicion, there was no basis for the traffic stop in this case.

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11 **IT IS SO ORDERED** this 16th day of June, 2015.

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16 JOSEPH N. CAMACHO
17 Associate Judge
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