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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.

HANK JR. PUA ARURANG

Defendant.

) **TRAFFIC CASE NO. 14-02029**
)
) **ORDER DENYING**
) **COMMONWEALTH'S MOTION FOR**
) **STAY PENDING APPEAL DUE TO**
) **FAILURE TO ARTICULATE AND**
) **SUPPORT THE FACTORS NECESSARY**
) **FOR A STAY**
)
)

I. INTRODUCTION

This matter came before the Court on October 5, 2015¹ in Courtroom 220 on the Commonwealth's Motion for Stay Pending Appeal. Defendant, Hank Jr. Pua Arurang, was present and represented by Assistant Public Defender Michael Sato. The Commonwealth was represented by Assistant Attorney General Emily Cohen.

Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the Commonwealth's Motion for Stay Pending Appeal.

II. BACKGROUND

This case arises out of a June 28, 2014 traffic stop. On October 23, 2014, the Defendant filed a motion to suppress evidence, arguing that the stop was not supported by probable cause or reasonable suspicion. The Commonwealth filed an opposition to the motion to suppress evidence on October 31, 2014. The Court granted the Defendant's Motion to Suppress Evidence on December 3,

¹ This matter was originally set for September 30, 2015 and was continued to October 5, 2015, when the Court heard arguments on this motion.

1 2014.² On December 11, 2014, the Commonwealth filed its Motion to Reconsider Order to
2 Suppress Evidence Due to Unlawful Traffic Stop. The Defendant filed his opposition on January
3 16, 2015. The Commonwealth filed its reply on January 30, 2015. The Court heard arguments on
4 the motion to reconsider on March 25, 2015. The Court ultimately granted in part and denied in part
5 the Commonwealth's motion to reconsider on June 16, 2015.³

6 The Commonwealth filed its Notice of Appeal on July 13, 2015. On the same day, the
7 Commonwealth filed a Motion for Stay Pending Appeal with the Superior Court. The
8 Commonwealth stated in its Motion for Stay that “[t]he Commonwealth moves for a stay of the
9 proceedings because the Commonwealth cannot prove its case beyond a reasonable doubt without
10 the evidence which was suppressed by this Court.” Mot. to Stay at 2. The Commonwealth did not
11 discuss any applicable standards for when a stay would be proper. The Defendant did not file an
12 opposition to the Motion to Stay; however, the Defendant orally opposed the motion at the October
13 5, 2015 motion hearing.

14 III. DISCUSSION

15 Under Commonwealth Supreme Court Rule 8(a)(1), the party seeking a stay must first seek
16 relief in the Superior Court.⁴ The Superior Court has the ability to issue a stay due to the Superior
17 Court's inherent power “to issue all writs necessary to complete the exercise of its duties and
18 jurisdiction under this constitution and the laws of the Commonwealth.” NMI Const. art. IV § 2.

19
20 ² See *Commonwealth v. Arurang*, Traffic Case No. 14-02029 (NMI Super. Ct. Dec. 3, 2014) (Order Granting
21 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).

22 ³ See *Commonwealth v. Arurang*, Traffic Case No. 14-02029 (NMI Super. Ct. June 16, 2015) (Order Granting in Part
and Denying 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).

23 ⁴ Although Supreme Court Rule 8(c) states Rule 38 of the Commonwealth Rules of Criminal Procedure govern stays in
24 a criminal case, the procedure outlined in Supreme Court Rule 8(a)(1) still applies in criminal cases. Further, NMI R.
Crim. P. Rule 38 only covers stays of execution. The present motion seeks a stay pending the appeal of an order
excluding evidence, rather than seeking the stay of the execution of a sentence.

1 The Court has “broad discretion to stay proceedings as an incident to its power to control its own
2 docket.” *Clinton v. Jones*, 520 U.S. 681, 707 (1997).

3 As the Commonwealth Supreme Court has not addressed the factors for issuing a stay in a
4 criminal case,⁵ the Court will turn to the standard in civil cases. *See State v. Robles-Nieves*, 306
5 P.3d 399, 402-402 (Nev. 2013) (applying civil factors for granting a stay in a criminal case). An
6 appellant is entitled to a stay if they show either: “(1) a combination of probable success on the
7 merits and the possibility of irreparable injury or (2) that serious questions are raised and the
8 balance of hardship tips sharply in the appellants’ favor.” *Mangona v. Aldan*, 1998 MP 5 ¶ 3 (citing
9 *Vaughn v. Bank of Guam*, 1 NMI 318, 321 (1990)).⁶

10 The movant bears the burden of establishing that they are entitled to a stay by actually
11 “show[ing]” that these factors apply in their case. *Manglona*, 1998 MP 5 ¶ 3 (citing *Vaughn*, 1 NMI
12 at 321); *Clinton*, 520 U.S. at 708 (“The proponent of a stay bears the burden of establishing its
13 need.”). In *Vaughn*, the Commonwealth Supreme Court emphasized that the appellant either did not
14 address some factors, or admitted that those factors did not apply. *Vaughn*, 1 NMI at 321-323.

15 The Motion for Stay Pending Appeal before this Court does not address any standard for
16 issuing a stay, beyond a basic statement that “the Commonwealth cannot prove its case beyond a
17 reasonable doubt without the evidence which was suppressed by this Court.” Mot. to Stay at 2.
18 Courts do not consider issues “for which the proponent cites no legal authority.” *Fitial v. Kim*, 2001
19 MP 9 ¶ 18. *See also Guerrero v. Dep’t of Public Lands*, 2011 MP 3 ¶ 24 (declining to address an
20 issue where no cases were cited and no public policy arguments were made); *Roberto v. De Leon*
21 *Guerrero*, 4 NMI 295, 298 (“In the absence of cited authority, we need not address these

22 ⁵The present case is a traffic case, and traffic cases are handled as criminal cases.

23 ⁶ In *Commonwealth v. Blas*, the Commonwealth Supreme Court stated that *Vaughn* is not the proper standard in
24 motions to stay execution of a sentence pending appeal. 2004 MP 26 ¶ 1 n.3. However, the present motion for a stay is
not a motion for a stay of execution of a criminal sentence, rather the Commonwealth is seeking to stay the proceedings
pending appeal.

1 arguments.”) In particular, “[o]ur adversarial system relies on advocates to inform the discussion.”
2 *In re Estate of Camacho*, 2012 MP 8 ¶ 13 n.7 (quoting *Saipan Achugao Resort Members’ Ass’n v.*
3 *Wan Jin Yoon*, 2011 MP 12 ¶ 50).

4 The Commonwealth has not articulated any standard for granting a stay, nor has the
5 Commonwealth established and articulated why the Superior Court should grant a stay in this case.
6 Thus, the Commonwealth’s Motion for Stay must be denied.

7 **IV. CONCLUSION**

8 Accordingly, the Commonwealth’s Motion for Stay Pending Appeal is **DENIED**.

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10 **IT IS SO ORDERED** this 7th day of March, 2016.

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JOSEPH N. CAMACHO
Associate Judge

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