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BY:   
DEPUTY CLERK OF COURT

1 **FOR PUBLICATION**

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3 **IN THE SUPERIOR COURT**  
4 **FOR THE**  
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**  
7 **NORTHERN MARIANA ISLANDS,**

8 **Plaintiff,**

9 **v.**

10 **IGNACIO DLG. DEMAPAN, JR.,**  
11 **(d.o.b. 02/12/1980)**

12 **Defendant.**

) **CRIMINAL ACTION NO. 15-0109**  
) **DPS CASE NO. 15-004110**  
)

) **ORDER DENYING DEFENDANT'S**  
) **MOTION TO SUPPRESS; AND**  
)

) **ORDER DENYING DEFENDANT'S**  
) **MOTION TO DISMISS**  
)

13 **I. INTRODUCTION**

14 This matter came before the Court for an evidentiary hearing on May 12, 2016, at 1:30 p.m.  
15 in Courtroom 202A. The court heard arguments on two motions filed by defendant Ignacio DLG.  
16 Demapan, Jr.: (1) motion to suppress; and (2) motion to dismiss. Demapan was represented by  
17 attorney Brien Sers Nicolas. The Commonwealth was represented by Assistant Attorney General  
18 Betsy Weintraub.

19 Demapan has been charged with illegal possession of a controlled substance, in violation of  
20 6 CMC § 2142(a), as stated in Count I of the Information. He seeks to suppress any seized  
21 contraband and to have the case dismissed if his suppression motion were to be granted.

22 Based on the parties' briefs, evidence submitted, testimony heard at the hearing, oral  
23 arguments from counsels, and the applicable law, the Court **DENIES** Demapan's motion to  
24 suppress and **DENIES** his motion to dismiss.

ENTERED

1 **II. FINDINGS OF FACT**

2 At the evidentiary hearing held on March 12, 2016, the Court heard testimony from Officer  
3 David Hosono. The Court finds that Officer Hosono's testimony was credible. Based on the  
4 evidence presented, the Court makes the following findings of fact:

5 On the early evening of May 19, 2015, Officer Hosono was on routine patrol in Chalan  
6 Kanoa Village. Officer Hosono was in the driver's seat of a marked patrol vehicle. Officer Danny  
7 Joe Fitial was in the passenger seat. The two were assigned to the Special Enforcement Action  
8 Section (SEAS). As officers assigned to SEAS, their responsibilities included patrolling community  
9 and poker establishments, as well as to help uniformed service members in responding to  
10 emergency situations and to investigate crimes within the community.

11 As Officer Hosono was making a left turn onto the street just south of Viva Poker, a Chalan  
12 Kanoa poker establishment, he noticed a white Toyota Prius with dark tinted windows. The four-  
13 door sedan was parked directly behind the back exit. Officer Hosono noticed that the Prius was  
14 parked on the main traveled portion of the highway outside of a business. At the hearing, he  
15 testified that it was not typical for a vehicle to be parked on the roadway in that fashion, noting that  
16 the Prius was parked in violation of the Vehicle Code.<sup>1</sup> Officer Hosono chose not to investigate the  
17 vehicle, giving the driver "the benefit of the doubt."

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20 <sup>1</sup> The Court assumes, without finding, that Officer Hosono is referencing a violation of 9 CMC § 5603(a), which  
21 provides that "No person may park or leave standing any vehicle, either attended or unattended, upon the main traveled  
22 portion of any highway outside of a business or residential district, when it is practicable or possible to leave the vehicle  
23 standing off the main traveled portion of the highway. In no event may any person park or leave standing any vehicle,  
24 whether attended or unattended, upon any highway unless a clear and unobstructed width of not less than 15 feet upon  
the main traveled portion of the highway opposite the standing vehicle is left for the free passage of other vehicles on  
the highway or unless a clear view of the vehicle may be obtained from a distance of 300 feet in each direction upon the  
highway."

1           Officer Hosono continued to drive on the south road. But as the patrol vehicle came parallel  
2 to the Prius, the white sedan "took off." Officer Hosono observed that it was about 5:52 p.m.,  
3 observed that there was still remaining daylight, and decided to follow the Prius from behind—now  
4 driving northbound on Petro Yobbo Avenue. The Prius drove for around five house lots (less than a  
5 mile), and then made a sudden right turn without the use of a right turn signal into the residential lot  
6 owned by the elder Lely.<sup>2</sup>

7           Officer Hosono followed the Prius into the Lely residence. Officer Hosono testified that he  
8 was a resident of Chalan Kanoa; that he was familiar with the Lely's residence, and what vehicles  
9 the Lely's drove. He was, however, not familiar with the Prius. Officer Hosono parked the patrol  
10 vehicle inside the residence. He exited the vehicle and approached Christopher Lely, the son of the  
11 owner, who was standing outside the residential house. When Officer Hosono inquired about the  
12 Prius, Christopher responded that he was not familiar with the vehicle. At that moment, the elder  
13 Lely came out from the back door and told Officer Hosono to "check that vehicle." Officer Hosono  
14 testified that he felt that he needed to investigate the suspect after that conversation.

15           Officer Hosono then returned to the patrol vehicle, activated the blue light, and parked  
16 behind the Prius. When asked for the reason why he activated the blue light at the evidentiary  
17 hearing, Officer Hosono testified that it was for the violation of the 9 CMC ' 5504(a), failure to use  
18 the turn signal. He then approached the Prius on foot. Officer Hosono testified that he could not see  
19 into the Prius because of the tinted windows. He knocked on the driver's side window, and  
20 Demapan rolled down the window. Officer Hosono then asked for Demapan's license and  
21 registration.

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23 <sup>2</sup> The Court did not inquire and could not decipher from the record the full name of the owner of the Lely's residence.



1 **A. Officer Hosono's Credibility**

2 In issuing the findings of facts at this issue in this matter, the Court resolved a factual  
3 dispute between evidence submitted by Demapan and by the Commonwealth. Demapan asserted in  
4 a sworn affidavit that he engaged a right turn signal before entering the Lely residence.<sup>4</sup> On the  
5 other hand, Officer Hosono testified on the witness stand that Demapan failed to activate his turn  
6 signal.

7 There are two factual issues that suggest that Demapan's account of the story could be true  
8 over Officer Hosono's unusual actions. First, Officer Hosono testified that he approached Demapan  
9 on suspicion of a traffic infraction, but he did not immediately approach the parked Prius; instead,  
10 he made the decision to approach the Prius only after speaking with the Lely's. Second, the fact that  
11 the elder Lely told Officer Hosono to "check that car" does not appear in the probable cause  
12 statement. These facts lend some credence to Officer Hosono's testimony as to the right turn signal  
13 should not be taken at face value.

14 This Court is not oblivious to the danger that police testimony could be "patently tailored to  
15 nullify constitutional objections." *People v. Garafolo*, 44 A.D.2d 86, 88 (N.Y. App. Div. 1974). But  
16 only where the evidence is so incredible to be unbelievable because it is manifestly untrue,  
17 physically impossible, contrary to experience, or self-contradictory—does the court find that an  
18 officer's testimony has no probative value. *Id.*

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<sup>4</sup> Demapan did not testify at the suppression hearing. Had Demapan chosen to testify in exercise of his Fourth  
23 Amendment rights, his testimony would not have been in violation of the Fifth Amendment's Self-Incrimination Clause.  
24 *Simmons v. United States*, 390 U.S. 377, 393–94. Where a defendant testifies in support of a motion to suppress, their  
testimony may not be admitted against them at trial, unless no objection is made. *Id.*

1 To evaluate the probative value of the evidence, the court may take into account the totality of  
2 circumstances. *Id.*

3 On balance, the Court finds that Officer Hosono's testimony on Demapan's use of the right  
4 turn signal is more credible for three reasons. First, there has been no testimony to suggest that  
5 Officer Hosono's version of events was physically impossible. There's been no countervailing  
6 testimony to suggest that Officer Hosono's vision of the Prius's turn signal lenses was unclear as he  
7 followed the Prius into the Lely residence. Second, the delay between Officer Hosono's arrival at  
8 the Lely residence and Demapan's arrest was not so prolonged to be contrary to experience. *E.g.*,  
9 *People v. Carmona*, 233 A.D.2d 142, 144 (N.Y. App. Div. 1996) (holding that an officer's decision  
10 to take a dinner break instead of arresting a suspect was contrary to experience). In addition, Officer  
11 Hosono's decision to first approach the Lely's was not contrary to experience because he was  
12 familiar with members of the Lely residence and the vehicles that they drove. Third, as to whether  
13 the elder Lely actually asked Officer Hosono to check that car; there's been no evidence submitted  
14 to the contrary.

15 Therefore, the Court finds that Demapan failed to activate his right turn signals as he turned  
16 into the Lely residence.

17 **B. Motion to Suppress**

18 Article I, § 3 of the Commonwealth Constitution and the Fourth Amendment to the United  
19 States Constitution ensure that ordinary citizens are not subjected to unreasonable searches and  
20 seizures by the Commonwealth. Thus, evidence obtained during a search and seizure conducted in  
21 violation of the Constitution is inadmissible in court. *Commonwealth v. Pua*, 2009 MP 21 ¶ 14 n.7  
22 (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)).

1           Accordingly, on a motion to suppress, the defendant bears the initial burden of establishing  
2 that a police officer subjected them to a warrantless search or seizure. *United States v. Bassignani*,  
3 560 F.3d 989, 993 (9th Cir. 2009) (citing *United States v. Arboleda*, 633 F.2d 985, 989 (2d Cir.  
4 1980)). Once the defendant has met this burden, the government must show that the search and  
5 seizure did not violate the constitution. *See Arboleda*, 663 F.2d at 989; *see also United States v.*  
6 *Jenkins*, 938 F.2d 934, 937 (9th Cir. 1991); *accord Commonwealth v. Castro*, No. 03-0407 (NMI  
7 Super. Ct. Aug. 16, 2014) (Order Denying Def.'s Mot. to Suppress at 4).

8           Here, Demapan met his initial burden to show a search and seizure of his person. Demapan  
9 submitted a statement that Officer Hosono pulled up in his patrol vehicle with active lights, and  
10 later asked to see his license and registration.<sup>5</sup> He also submitted a sworn statement that neither  
11 Officer Hosono nor Officer Fitial presented a warrant before searching the Prius.

12           In response, the Government argues that the search and seizure was a result of a lawful  
13 investigatory stop. In addition, the Government argues that subsequent search and seizure of  
14 contraband was not subject to the constitutional search warrant requirement under the plain view  
15 exception and the search-incident-to-arrest exception. The Court is persuaded by the Government's  
16 arguments for the following reasons.<sup>6</sup>

### 17 **1. Terry Stop**

18           An investigatory stop of persons or vehicles that fall short of traditional arrest are  
19 constitutional under Article I, section 3 of the Commonwealth Constitution and the Fourth  
20 Amendment to the United States Constitution. *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 13. To

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22 <sup>5</sup> When a police officer requires a motorist to identify himself, he is seized under Fourth Amendment jurisprudence.  
*Brown v. Texas*, 443 U.S. 47, 50 (1979).

23 <sup>6</sup> Accordingly, the Court need not reach the Government's argument under the inevitable-discovery doctrine.



1 demonstrate an investigatory stop, the government carries the burden to show that an officer of  
2 reasonable caution, given the facts observed by the detaining officer, would harbor an articulable  
3 and reasonable suspicion of the defendant's criminal activity, including traffic-code infractions. *Id.*  
4 ¶¶ 13, 14; *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 18. Reasonable suspicion requires more  
5 than a hunch by the officer, but much less than a preponderance of the evidence. *Crisostomo*, 2014  
6 MP 18 ¶ 18. It is evaluated upon review of the totality of circumstances. *See, e.g., id.* ¶ 18  
7 (explaining that an officer's failure to cite the defendant for a traffic infraction was indicative of  
8 lack of reasonable suspicion).

9 **a. *People v. Bozarth***

10 The facts in this case are similar to the Illinois state appellate case of *People v. Bozarth*,  
11 2015 IL App (5th) 130147. There, the state appellate court reversed the trial court's denial of the  
12 defendant's motion to suppress for lack of reasonable suspicion. *Id.* ¶ 22. In *Bozarth*, the state  
13 trooper was travelling westbound in an unmarked patrol unit on routine patrol in a rural area. *Id.* ¶  
14 3. In the course of his patrol, the state trooper came upon the defendant's red Pontiac travelling  
15 eastbound. *Id.* After seeing the Pontiac, the state trooper turned around to follow the defendant's  
16 car. *Id.* The state trooper had testified that he chose to follow the Pontiac because it was the only  
17 vehicle in the area. *Id.*

18 The state trooper followed the Pontiac for approximately one-half of a mile, until the  
19 defendant's car turned north into a private driveway. *Id.* ¶ 4. When the state trooper observed that  
20 there were no tail lights going up to the house, he also turned his patrol vehicle into the private  
21 driveway. *Id.* Upon noticing the Pontiac parked behind a bar with the lights off, the state trooper  
22 pulled behind the vehicle. *Id.* When the officer exited his patrol vehicle to approach the Pontiac, he



1 had his flashlight in one hand and gun drawn in the other. *Id.* The state trooper later testified that, at  
2 the time he parked behind the Pontiac, he was not aware that the defendant had committed any  
3 infractions or violation of the law. *Id.* ¶ 8.

4 The state trooper then approached the Pontiac's driver-side window. *Id.* ¶ 5. When the  
5 defendant rolled down her window, the state trooper detected the "strong odor of an alcoholic  
6 beverage" from the defendant's breath. *Id.* The defendant was then later arrested for driving under  
7 the influence of alcohol. *Id.*

8 From these facts, the Illinois state appellate court concluded that the government could not  
9 articulate any facts to show that the defendant's seizure was supported by reasonable suspicion. *See*  
10 *id.* ¶ 19. The court articulated two reasons for its analysis. First, the court held that the state trooper  
11 could not establish "any suspicion" of criminal activity when he began following the Pontiac—it  
12 was not a violation of the law for the Pontiac to be the only car in the area. *See id.* Second, the state  
13 trooper had testified that he was not aware of any infraction or violation of the law when he parked  
14 his patrol vehicle behind the defendant's vehicle. *Id.*

15 **b. Totality of Circumstances**

16 But here, in Demapan's case, Officer Hosono had articulated sufficient facts to support an  
17 investigative stop. First, Officer Hosono testified that the Prius was parked in the main traveled part  
18 of the road outside of Viva Poker, a possible violation of 9 CMC § 5603(a). Second, Officer  
19 Hosono testified that the Prius made a right turn into the Lely residence without the use of a turn  
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1 signal, a possible violation of 9 CMC § 5504(a).<sup>7</sup> Given knowledge of these facts, an officer of  
2 reasonable caution could have performed a lawful traffic stop to investigate a possible traffic  
3 infraction.

4 Still, Demapan argues that there are two facts that support against a finding that there was  
5 reasonable suspicion for the investigatory stop. First, Officer Hosono did not immediately approach  
6 the Prius at the Lely residence. Second, Demapan was not cited for a traffic infraction. As to the  
7 first point, Officer Hosono testified that the Prius had tinted windows and that he could not see into  
8 the vehicle—thus, it was reasonable for an officer to initially approach Christopher Lely, who was  
9 standing outside. As to the second point, while Demapan was not cited for a traffic infraction,  
10 Officer Hosono's testimony provides sufficient facts to support investigation of an actual traffic  
11 infraction. *See Crisostomo*, 2014 MP 18 ¶ 18 (explaining that there is no reasonable suspicion for a  
12 speeding infraction if the area is "too small and rugged" to reach the requisite speed).

13 In addition, while there was no testimony to this effect, the Court also considers that an  
14 officer of reasonable caution could have investigated an incident of criminal trespass, in violation of  
15 6 CMC § 1804.<sup>8</sup> As to this issue, Officer Hosono testified that the elder Lely asked him to "check  
16 that vehicle."

17 Accordingly, on review of the totality of the circumstances, the Court finds that Officer  
18 Hosono's investigatory stop was supported by reasonable suspicion of a traffic infraction—a  
19 possible violation of 9 CMC § 5504(a). Officer Hosono's investigatory stop could also be supported

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21 <sup>7</sup> As the Court discussed earlier, Demapan submitted in his sworn statement that he activated his right turn signal.  
22 However, Demapan did not impeach Officer Hosono on this point at the evidentiary hearing. Moreover, the Court  
23 found Officer Hosono's testimony .credible.

24 <sup>8</sup> 6 CMC § 1804(a) provides that, "A person commits the offense of trespass if he or she makes an unlawful and  
unauthorized entry upon or interferes with the peaceful use and enjoyment of the property of another, and upon being  
lawfully advised to leave or desist refuses to promptly do so."

1 by reasonable suspicion under a criminal trespass theory, in violation of 6 CMC § 1804. Therefore,  
2 Officer Hosono's seizure of Demapan was justified.

### 3 **2. Plain View Exception**

4 The Government also met its burden to show that the search and seizure of two baggies,  
5 located in the open compartments of the Prius, was lawful under the plain view exception. Under  
6 this exception to constitutional requirement to obtain a search warrant, "an officer may search, and  
7 seize, contraband that is left in open view and is observed by a police officer from a lawful vantage  
8 point." *Fu Zhu Lin*, 2014 MP 6 ¶ 22. A police officer is entitled to seize evidence discovered in  
9 plain view in the course of a lawful investigatory stop; and to arrest the defendant when evidence  
10 discovered in plain view gives probable cause to believe the defendant had committed a crime.  
11 *United States v. Hensley*, 469 U.S. 221, 235 (1985).

12 Here, Officer Hosono's entry into the driver's side window of the Prius was proper because  
13 he was engaged in a lawful traffic stop. Furthermore, it was proper to order Demapan out of the  
14 vehicle by opening the driver's side door.<sup>9</sup> From that lawful vantage point, Officer Hosono observed  
15 two baggies with crystal-like substance residue: the first, inside the open glove compartment; and  
16 the second, inside the driver's side door compartment. Officer Hosono immediately recognized the  
17 items as potential contraband and contacted a crime scene technician. He also placed Demapan  
18 under arrest for illegal possession of a controlled substance. Accordingly, Officer Hosono's search  
19 and seizure of the first two baggies was supported by the plain view exception.<sup>10</sup>

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21 <sup>9</sup> See *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (describing a police order for a defendant to exit out a vehicle  
22 as a *de minimis* intrusion into their privacy rights).

23 <sup>10</sup> The government's burden of proof for a well-recognized warrant exception is probable cause. *Jenkins*, 938 F.2d at  
24 937.

1           **3. Search Incident to Arrest Exception**

2           The Government also met its burden to show that seizure of the third and final baggie was  
3 lawful under the search-incident-to-arrest exception. This exception to the constitutional search  
4 warrant requirement permits a police officer, as a contemporaneous incident of that arrest, to  
5 perform a limited search of an arrested driver's automobile for evidence related to the arresting  
6 crime. *Fu Zhu Lin*, 2014 MP 6 ¶¶ 22, 25. The officer may search the passenger compartment and  
7 any containers within the search incident to arrest if there is reasonable belief that the arrestee might  
8 access the vehicle at the time of the search or that the vehicle contains evidence of the offense of the  
9 arrest. *Arizona v. Gant*, 556 U.S. 332, 342–43 (2009). Containers could include closed or open  
10 glove compartments, consoles, or other receptacles located anywhere within the passenger  
11 compartment, including luggage, boxes, bags or clothing. *New York v. Belton*, 453 U.S. 454, 460  
12 n.4 (1981).

13           Here, Officer Fitial searched and seized a baggie inside the Cherry Coke in the Prius's center  
14 console. Officer Fitial had a reasonable belief that a search incident to arrest was necessary because  
15 Officer Hosono had earlier seized two baggies with crystal-like substance residue. Accordingly, the  
16 search of the center console and the Cherry Coke was justified because it was related to the charge  
17 of illegal possession of controlled substance. In addition, it appears more likely than not that the  
18 search was contemporaneous with the arrest because it took place at the crime scene.<sup>11</sup> Therefore,  
19 Officer Fitial's search of the Prius and the subsequent seizure of the third baggie were justified  
20 under the search-incident-to-arrest exception.

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22 <sup>11</sup> Officer Fitial did not testify at the hearing and there was no direct testimony as to when the discovery of the third  
23 baggie took place. However, such search must have taken place before the Prius was turned over to its registered  
24 owners.

1 For these reasons, the search of the Prius and the seizure of the three baggies allegedly  
2 containing a controlled substance did not violate the Constitution. At this time, the evidence is  
3 admissible at trial. Therefore, Demapan's motion to suppress is denied.

4 **C. Motion to Dismiss**

5 Demapan also raises a motion to dismiss, pursuant to NMI R. Crim. P. 12(b)—arguing that  
6 the case must be dismissed if the Court were to grant his motion to suppress. Demapan's motion is  
7 procedurally improper.

8 NMI R. Crim. P. 12(b) allows the court to review “any defense, objection, or request which  
9 is capable of determination” before trial. A pre-trial motion is generally “capable of determination”  
10 if it involves questions of law, rather than fact. *United States v. Shortt Accountancy Corp.*, 785 F.2d  
11 1448, 1452 (9th Cir. 1986) (relying on Circuit Court decisions from the Fifth and Sixth Circuit  
12 Court of Appeals). If a motion to dismiss is substantially founded upon evidence concerning the  
13 alleged offense, a court may not grant the motion at the pre-trial stage. *Commonwealth v. Ogumoro*,  
14 No. 15-0055 (NMI Super. Ct. Dec. 17, 2015) (Order Denying Ogumoro's Mot. for Reconsideration  
15 at 4); *Commonwealth v. Sablan*, No. 15-0035 (NMI Super. Ct. Jan. 8, 2016) (Order Denying Def.'s  
16 Mot. to Dismiss at 5–6).

17 Here, Demapan seeks potential dismissal of his case on a question of fact—and not of law.  
18 Therefore, his request for relief is premature and the motion is denied.

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**IV. CONCLUSION**

For the foregoing reasons, Demapan's motion to suppress is **DENIED**. Demapan's motion to dismiss is also **DENIED**.

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



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**ROBERTO C. NARAÑA**, Presiding Judge