



1 **THE VEHICLE STOP**

- 2 1. On August 19, 2022, at 6:53 p.m. on Tinian, Department of Public Safety (DPS)
- 3 Officer Euneen Mendiola conducted a stop of a government vehicle being driven by
- 4 Defendant because it was being operated after normal working hours, in violation of
- 5 1 CMC § 7406. The vehicle belonged to the Department of Public Works (DPW)
- 6 Tinian.
- 7 2. Officer Mendiola impounded the vehicle, a white Nissan Frontier with government
- 8 license plate number GOVT 4657, at 7:19 p.m.
- 9 3. Officer Dustin Sablan drove the government vehicle to drop Defendant off at his
- 10 residence. Defendant did not receive any traffic citation at that time.
- 11 4. Officer Dustin Sablan then drove the impounded vehicle to DPS Central for
- 12 inventory and safekeeping.
- 13 5. Officer Mendiola informed Sgt. Herbert Borja about the impoundment. Sgt.
- 14 Herbert Borja arrived at DPS Central at 7:27 p.m. to conduct an inventory of the
- 15 vehicle.
- 16 6. During the initial inventory search, Sgt. Borja discovered expended and
- 17 unexpended .22 caliber cartridges, empty ammunitions boxes, and multiple
- 18 damaged gun trigger locks.
- 19 7. Later that night, at approximately 9:20 p.m., Sgt. Borja along with Detectives
- 20 Anthony and Dennis Borja visited the American Gun Club shooting range and saw
- 21 signs of forced entry. After speaking with the gun club's caretaker, Benjamin
- 22 Borja, they confirmed that 24 firearms and a large number of ammunition were
- 23 missing from the club.
- 24 8. At the gun club, the detectives took possession of a set of keys. These keys were
- 25 able to unlock all 18 gun locks that had been found in the DPW vehicle that had
- 26 been impounded.
- 27 9. The next morning, August 20, 2022, at approximately 10:00 a.m., Sgt. Borja
- 28 conducted a second, more thorough inventory of the vehicle and discovered

1 additional firearms-related items, including additional expended and unexpended  
2 ammunition.

### 3 **THE BUY-BUST OPERATION**

4 10. On August 20, 2022, detectives also arranged a buy-bust operation where a  
5 confidential source was given \$300 to purchase a firearm from Defendant.

6 11. The confidential source was followed to Defendant's residence, where he purchased  
7 a handgun and two handgun magazines using the \$300 he was given. He was given  
8 a rifle, rifle magazine, and ammunition for free by Defendant.

9 12. Based on these facts, Sgt. Herbert Borja applied for a search warrant for  
10 Defendant's residence as well as an arrest warrant for Defendant on September 26,  
11 2022.

12 13. Drug Enforcement Task Force (DETF) officers also arranged additional buy-bust  
13 operations on Defendant on September 24 and 26, 2022.

14 14. On September 24, 2022, a cooperating source claims to have purchased a rifle and a  
15 handgun from Defendant sometime between 4:06 a.m. and 6:22 a.m.

16 15. On September 26, 2022, at approximately 8:00 p.m., the cooperating source  
17 attempted another buy-bust of Defendant. However, at 8:21 p.m., the cooperating  
18 source returned to the DETF officers and said that he was unable to purchase  
19 firearms from Defendant because Defendant was paranoid about the FBI and drones  
20 flying in the sky. The buy-bust operation was concluded.

### 21 **THE ARREST**

22 16. On September 26, 2022, at approximately 10:35 p.m., DPS and DETF officers  
23 executed the arrest warrant on Defendant at his residence and took him into  
24 custody. Approximately twenty officers were involved in the execution of the  
25 arrest warrant.

26 17. Defendant was standing outside of his home when he was located by police, placed  
27 in handcuffs, and secured.

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1 18. At approximately 10:38 p.m., Defendant was read his Miranda rights and advised of  
2 the charges against him. Defendant acknowledged understanding both his rights  
3 and the nature of the charges against him.

4 19. Defendant was transported by officers to the DPS Boating Safety Office.

5 **DEFENDANT'S STATEMENT – PART I**

6 20. Defendant was brought to the conference room and sat down.

7 21. At about 10:50 p.m., Sgt. Herbert Borja again advised Defendant of his  
8 constitutional rights using the standard DPS advisement of rights form.

9 22. The form consisted of nine statements. Sgt. Borja read each statement aloud to  
10 Defendant and asked Defendant if he understood.

11 23. Defendant indicated he understood by writing “yes” and affixing his signature next  
12 to each statement.

13 24. Defendant then signed the form at the bottom saying he was willing to make a  
14 statement and answer questions.

15 25. Sgt. Borja observed that Defendant did not appear to have any difficulty  
16 understanding what was being said to him.

17 26. At approximately 11:30 p.m., Sgt. Borja began questioning Defendant. Officer  
18 Steven dela Cruz was also present in the room to witness the questioning and take  
19 notes.

20 27. Sgt. Borja again asked Defendant if he understood his constitutional rights, and  
21 Defendant responded, “Yes.”

22 28. Shortly after his interview began, Defendant admitted to having possession of  
23 firearms. He offered to take police officers to where various firearms were located.

24 **THE SEARCH FOR AND RECOVERY OF PROPERTY**

25 29. Over approximately the next three hours, Defendant provided the police with  
26 detailed information about where to locate several different firearms. Defendant  
27 escorted the police to these locations and assisted them in finding the firearms.

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1 30. At 11:46 p.m., Defendant led the police to one handgun hidden inside an air  
2 conditioning unit in his home.

3 31. At about 12:00 a.m., Defendant led the police to six more firearms hidden under  
4 trees on his homestead land. The firearms were hidden inside boxes wrapped in  
5 blue tarps. Officers also recovered numerous firearm magazines, cleaning supplies,  
6 and accessories.

7 32. The officers and Defendant returned to the Boating Safety Office where Defendant  
8 was allowed to drink water, eat food, and smoke a cigarette.

9 33. At about 1:25 a.m., Defendant led officers back to his residence where he pointed  
10 them to another handgun hidden inside his shoe.

11 34. Defendant then led the police to a third location at the western part of Tinian, where  
12 at 1:54 a.m. he directed officers to three more firearms hidden under a wooden door  
13 laying in the thick vegetation. Officers also recovered over 2,700 rounds of  
14 ammunition.

15 35. At 2:24 a.m., Defendant led the police further up the hill where he showed them the  
16 location of another hidden firearm.

17 36. Sgt. Borja observed that Defendant had no difficulty taking officers to these  
18 locations, that he gave clear directions, and that he appeared to know exactly where  
19 the firearms were.

20 37. At one of the locations, while officers were still processing the scene, Defendant  
21 asked if he could smoke a cigarette. Officers gave Defendant a drink and allowed  
22 him to smoke a cigarette.

23 **DEFENDANT'S STATEMENT – PART II**

24 38. The officers arrived back at the Boating Safety Office with Defendant at about 2:52  
25 a.m. on September 27, 2022. They resumed questioning Defendant.

26 39. Sgt. Borja asked Defendant whether he was taking any drugs or medication, and  
27 Defendant responded that he had smoked "ice," or methamphetamine, right before  
28 he was arrested.

1 40. Defendant had smoked “ice” at least nine times earlier that day and had also  
2 consumed oxycodone.

3 41. Sgt. Borja asked whether the drug would impair Defendant’s ability to understand  
4 and answer questions, and Defendant responded, “No.”

5 42. Sgt. Borja asked Defendant how he felt, to which Defendant responded, “All good.”

6 43. Sgt. Borja asked Defendant if he knew why he was arrested, and Defendant  
7 answered, “Yes.” When asked to elaborate, Defendant stated, “Because of the  
8 guns.”

9 44. Sgt. Borja asked Defendant if he could provide more information about the guns.  
10 Defendant responded, “That’s it, I gave you what you asked for.”

11 45. Sgt. Borja asked Defendant if he knew who was responsible for burglarizing the  
12 American Gun Club shooting range. Defendant reiterated that he did not want to  
13 provide any more information and that he had already turned over the guns.

14 46. The interrogation was concluded, and Defendant fell asleep. Defendant had not  
15 slept the night before and had not properly slept in about four days due to his  
16 methamphetamine use.

17 47. Sgt. Borja stated that Defendant did not appear to be under the influence of  
18 narcotics. Sgt. Borja observed that as the evening went on, Defendant appeared to  
19 be getting more tired, but noted that the officers present were also getting tired.

20 48. Officer dela Cruz stated that Defendant did not appear to be under the influence of  
21 narcotics. Officer dela Cruz observed that Defendant appeared tired but seemed to  
22 understand what was being said to him, responded appropriately, and was able to  
23 engage in conversation.

24 49. At 5:33 a.m., DETF officers escorted Defendant to Tinian DPS Central, where he  
25 was detained until he was transported to Saipan.

26 **III. PROCEDURAL BACKGROUND**

27 On October 4, 2022, Defendant was charged by way of a fourteen count  
28 Information with violating various provisions of the Commonwealth Criminal Code.

1 Defendant was charged with nine counts of possession of an illegal firearm, two counts of  
2 failing to possess a firearm owner’s registration card, two counts of prohibited sale and  
3 transfer of a firearm, and one count of unlawful possession of ammunition.

4 On December 27, 2022, Defendant filed a motion seeking to suppress evidence  
5 asserting that his “constitutional rights were violated on August 19, 2022, when his vehicle  
6 was unlawfully searched without a warrant, and, again, on September 26, 2022, when he  
7 was subjected to a custodial interrogation to which he did not knowingly, intelligently and  
8 voluntarily consent.” Mot. at 6. Defendant seeks to suppress “any evidence, statements, or  
9 observations obtained by law enforcement after their unlawful search began, including  
10 firearms, ammunition, and any alleged statements made [by Defendant] to investigating  
11 officers.” *Id.*

#### 12 IV. LEGAL STANDARD

13 In analyzing a motion to suppress, the defendant has the burden of production and  
14 burden of persuasion to show a factual basis for the motion. *See United States v.*  
15 *Bassignani*, 560 F.3d 989, 993 (9th Cir. 2009) (citation omitted). However, once the  
16 defendant satisfies these burdens by raising an issue for suppression, the burden of  
17 persuasion shifts to the government to justify its search by showing that the search was  
18 lawful. *See United States v. Arboleda*, 633 F.2d 985, 989 (2d Cir. 1980).

19 The standard of proof at a suppression hearing is a preponderance of the evidence.  
20 *See United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974) (stating that “the controlling  
21 burden of proof at suppression hearings should impose no greater burden than proof by a  
22 preponderance of the evidence”). The preponderance of the evidence standard is described  
23 as “evidence which is of greater weight or more convincing than the evidence which is  
24 offered in opposition to it; that is, evidence, which as a whole show that the fact sought to  
25 be provided is more probable than not.” *Salty Saipan Corp. v. Shakir*, 2018 MP 18 ¶ 18  
26 (citation omitted).

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V. ANALYSIS

**A. The Warrantless Inventory Search of Defendant’s Government Vehicle Was Lawful Pursuant to NMIAC § 150-100-115(b).**

Article I, § 3 of the Commonwealth Constitution and the Fourth Amendment to the United States Constitution ensure that ordinary citizens are not subjected to unreasonable searches and seizures by the Commonwealth. Thus, evidence obtained during a search and seizure conducted in violation of the Constitution is inadmissible in court. *Commonwealth v. Pua*, 2009 MP 21 ¶ 14 n.7 (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)); *see also Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 22 (“Under the exclusionary rule, evidence obtained by police through unlawful means usually must be suppressed.”).

On a motion to suppress evidence, once the defendant establishes that a law enforcement officer subjected him to a warrantless search or seizure, the burden shifts to the government to prove that a search falls into one of the specific exceptions to the warrant requirement. *Illinois v. McArthur*, 531 U.S. 326, 338 (2001) (Souter, J. concurring); *Commonwealth v. Manglona*, Crim. No. 16-0036 (N.M.I. Super. Ct. June 29, 2016) (Order Denying Defendant’s Motion to Suppress at 4-5).

Here, it is undisputed that Defendant had not consented to the search of the government vehicle he was found driving after hours and that officers had not obtained a warrant to search the vehicle. However, at the evidentiary hearing, Defendant conceded that the police officers had authority to impound the vehicle under administrative code NMIAC § 150-100-115(b), a code which sets forth the Department of Public Safety’s vehicle impound regulations. NMIAC § 150-100-115(b) provides that “[a] government vehicle ***shall*** be impounded if the operator or the vehicle is found in violation of 1 CMC § 7406.” NMIAC § 150-100-115(b) (emphasis added). 1 CMC § 7406 provides that “[n]o government vehicle shall be operated or otherwise used during any time other than normal working hours . . . .” 1 CMC § 7406(b)(1).

Accordingly, the officers were required to impound the vehicle upon finding a violation of 1 CMC § 7406, which is what occurred here. NMIAC § 150-100-210(b)



1 further requires DPS to conduct an administrative search of any impounded vehicle and to  
2 record all personal property found within the vehicle. NMIAC § 150-100-210(b); *see also*  
3 *South Dakota v. Opperman*, 428 U.S. 362, 372 (1976) (inventory searches of vehicles are  
4 reasonable when they are completed “pursuant to standard police procedures.”). The  
5 inventory search of Defendant’s government vehicle was therefore lawful pursuant to the  
6 administrative code, and the evidence obtained from the search performed need not be  
7 suppressed.

8 **B. Defendant’s Statements to the Police on September 26 and 27, 2022, Were**  
9 **Voluntarily, Knowingly, and Intelligently Made.**

10 Suspects must be informed of their constitutional rights before any custodial  
11 interrogation may begin. *Commonwealth v. Mettao*, 2008 MP 7 ¶ 17 (2008) (citing  
12 *Miranda v. Arizona*, 384 U.S. 436, 445 (1966)). The government may not use statements,  
13 whether exculpatory or inculpatory, that stem from a custodial interrogation of the  
14 defendant unless it demonstrates the use of procedural safeguards effective to secure the  
15 privilege against self-incrimination. *Miranda*, 384 U.S. at 444. Suspects are deemed to be  
16 in “custody” when “they are formally arrested or otherwise deprived of their freedom of  
17 action in any significant way.” *Mettao*, 2008 MP 7 ¶ 17. “‘Interrogation’ [includes] not  
18 only [] express questioning but also . . . statements made by police officers intended to  
19 elicit incriminating responses from a suspect.” *Id.*

20 The government bears the burden of establishing, under the totality of the  
21 circumstances, that any waiver of a suspect’s constitutional right against self-incrimination  
22 was voluntarily, knowingly, and intelligently made. *Id.* at ¶ 19. The government must  
23 prove the *Miranda* waiver “at least by a preponderance of the evidence.” *Missouri v.*  
24 *Seibert*, 542 U.S. 600, 609 (2004). Where the government fails to meet its burden of proof  
25 regarding the waiver, any subsequent statements made by the defendant are deemed to have  
26 been elicited in violation of his due process rights and must be suppressed. *See Mettao*,  
27 2008 MP 7 ¶ 19.

1           The Commonwealth concedes that Defendant was in custody as of approximately  
2 10:30 p.m. on September 26, 2022 when he was arrested, and that any questioning of  
3 Defendant thereafter constituted a custodial interrogation. Further, the facts of what  
4 occurred on the evening of September 26, 2022 and the early morning of September 27,  
5 2022 do not appear to be in dispute. The issue before the Court is whether Defendant’s  
6 statements to law enforcement officers during his custodial investigation were voluntarily,  
7 knowingly, and intelligently made.

8           Defendant argues that his alleged waiver of his constitutional right to remain silent  
9 was not voluntary, knowing, and intelligent because he was under the influence of  
10 methamphetamine at the time of his alleged waiver. Mot. at 12. Defendant claims that he  
11 was experiencing paranoia in addition to feelings of invincibility, and that in this altered  
12 state of mind he was unable to make reasonable decisions regarding the waiver of his  
13 constitutional rights. *Id.* at 13. He maintains that he was incapable of understanding and  
14 waiving his Miranda rights at the time that they were posed to him, and that his will was  
15 overborne.<sup>1</sup> *Id.* at 13-14.

16           The Commonwealth does not dispute that Defendant was under the influence of  
17 methamphetamine at the time of his custodial interrogation. Rather, the Commonwealth  
18 argues that intoxication alone does not automatically render a defendant’s waiver  
19 involuntary, unknowing, and unintelligent. The question, argues the Commonwealth, is  
20 whether the defendant’s ability to reason, comprehend, or resist were so disabled that he  
21 was incapable of free, rational choice. Response to Mot. at 16. The Commonwealth  
22 contends that, in the instant case, the totality of the circumstances surrounding Defendant’s  
23 interrogation supports a finding that he voluntarily, knowingly, and intelligently waived his  
24 right to remain silent. *Id.* The Court agrees.

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27 <sup>1</sup> A waiver by an intoxicated defendant will be deemed involuntary “if the totality of the circumstances show  
28 that the defendant’s will was overborne.” *U.S. v. Worden*, 2010 WL 4537058, at \*3 (D. Minn. Oct. 13,  
2010), *report and recommendation adopted*, 2010 WL 4537933 (D. Minn. Nov. 3, 2010) (citing *U.S. v.*  
*Annis*, 446 F.3d 852, 855 (8th Cir. 2006), *cert. denied*, 551 U.S. 1163 (2007)).

1           As an initial matter, the evidence shows that Defendant was sufficiently informed of  
2 his constitutional rights prior to his waiver of those rights. Defendant was provided his  
3 Miranda warnings at the scene of his arrest and again immediately prior to his interrogation  
4 at the Boating Safety Office. Both times, Defendant acknowledged that he understood his  
5 rights, including his right to remain silent. At the start of questioning, Sgt. Borja asked for  
6 a third time whether Defendant understood his constitutional rights, to which Defendant  
7 responded, “Yes.”

8           As to whether Defendant’s waiver of his rights was voluntary, knowing, and  
9 intelligent, the totality of the circumstances shows that being under the influence of  
10 methamphetamine did not so disable Defendant’s ability to reason, comprehend, or resist  
11 that he was incapable of free, rational choice. *See People v. Loftis*, 157 Cal. App. 3d 229,  
12 236 (1984). Defendant was cognizant enough to give the officers clear directions to at least  
13 four different locations, whereupon their arrival he assisted them in finding the exact  
14 locations of the firearms—despite many of the firearms being hidden in obscure locations  
15 such as inside an air conditioning unit, inside a shoe, inside boxes wrapped in blue tarps  
16 stuffed into a pile of cut down trees, and underneath a wooden door laying in thick  
17 vegetation. Defendant was cognizant enough to ask for food, water, and smoking breaks  
18 on multiple occasions and was in fact seen eating, drinking, and smoking cigarettes. Both  
19 Sgt. Borja and Officer dela Cruz, who were present on the night of Defendant’s arrest and  
20 who accompanied him and questioned him, testified that Defendant appeared to understand  
21 what was being said to him, responded appropriately, and was able to engage in  
22 conversation. Defendant was even cognizant enough to set a clear boundary, telling the  
23 officers not once but twice that he would not provide any further information about the  
24 guns or the gun club burglary because he already “gave [them] what [they] asked for.”

25           In *United States v. Foster*, 2016 U.S. Dist. LEXIS 161940, \*30 (E.D. Tenn. Sept.  
26 28, 2016), the defendant claimed that he was too high on methamphetamine and too sleep  
27 deprived to have made a voluntary waiver. The court found that “[e]vidence that a  
28 defendant suffered, at the relevant time, from a condition or deficiency that impaired his

1 cognitive or volitional capacity is never, by itself, sufficient to warrant the conclusion that  
2 his confession was involuntary for purposes of due process; some element of police  
3 coercion is always necessary.” *Id.* (citing *United States v. Newman*, 889 F.2d 88, 94 (6th  
4 Cir. 1989)). “While intoxication is a factor in determining the voluntariness of a consent or  
5 waiver of rights, a defendant can voluntarily waive his rights or consent even when  
6 intoxicated.” *Id.* (citing multiple cases); *see also People v. Bauer*, 1 Cal.3d 368, 374  
7 (1969) (defendant may not be permitted to obtain exclusion of a statement that he is under  
8 the influence of narcotics on the sole ground that he was in fact under the influence of  
9 narcotics); *People v. Houle*, 13 Cal.App.3d 892 (1970) (rejecting contention that defendant  
10 was incapable of intelligently waiving his *Miranda* rights because he was under the  
11 influence of amphetamine at the time, where record contained evidence that defendant  
12 understood *Miranda* warning).

13 In *Foster*, the defendant testified that he had just smoked methamphetamine prior to  
14 giving a statement to police officers and that he had been consuming methamphetamine  
15 daily for weeks at that point. 2016 U.S. Dist. LEXIS 161940 at \*18. He also stated that he  
16 had been awake for two weeks. *Id.* Nevertheless, the court determined that “[e]ven if  
17 Defendant was high and sleep-deprived at the time of his first confession,” there was no  
18 evidence that the officers knew of and took advantage of any significant weakened mental  
19 state of the defendant. *Id.* at \*32. Rather, one officer described the defendant as  
20 “cooperative, coherent, and fully able to engage in a logical conversation over several  
21 hours.” *Id.* The officers also credibly testified that they did not “threaten Defendant, draw  
22 weapons, or use harsh language.” *Id.* Given the totality of the circumstances, the court  
23 concluded that the evidence did not indicate the defendant was too intoxicated to make a  
24 knowing and voluntary waiver, nor did the evidence suggest any objectively improper  
25 action on the part of the officers. *Id.* at \*33.

26 Here, similarly, Defendant attested that he had smoked methamphetamine  
27 immediately prior to his arrest and that he had been smoking methamphetamine  
28 continuously throughout the day. *See Foster*, 2016 U.S. Dist. LEXIS 161940 at \*18.

1 Defendant also stated that he had not slept the night before his arrest and that he had not  
2 properly slept in about four days due to his methamphetamine use. *See id.* Nevertheless,  
3 even if Defendant was intoxicated and sleep-deprived at the time of his interrogation, there  
4 is no evidence that the officers knew of and took advantage of Defendant's mental state.  
5 *See id.* at \*32. The officers testified that Defendant did not appear to be under the  
6 influence of drugs; rather he was calm and cooperative. *See id.* Like the officers in *Foster*,  
7 Sgt. Borja testified that Defendant appeared to understand what was going on and what was  
8 being said to him, and Officer dela Cruz testified that Defendant responded appropriately to  
9 questioning and was able to engage in conversation. *See id.* Further, the Court finds no  
10 evidence that the officers threatened Defendant, used harsh language, or coerced him in any  
11 way. *See id.* at \*33.

12 The Court concludes that the totality of the circumstances shows, by a  
13 preponderance of the evidence, that Defendant was cognizant and capable of making a  
14 voluntary, knowing, and intelligent waiver of his rights.

#### 15 VI. CONCLUSION

16 **THEREFORE**, for the reasons stated above, Defendant's Motion to Suppress  
17 Evidence is **DENIED**.

18  
19 **IT IS SO ORDERED** this 29th day of March, 2023.

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22 /s/  
**ROBERTO C. NARAJA**, Presiding Judge