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FOR PUBLICATION

BY: JDZC
SA DEPUTY CLERK OF COURT

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
 Plaintiff,)
)
 v.)
)
 JOSEPH RAY ARRIOLA, JR.,)
 D.O.B. 02/28/1984)
 KURT B. KING)
 D.O.B. 08/31/1980.0)
)
 Defendants.)

CRIMINAL CASE NO. 09-0225(T)
D.P.S. CASE NO. 09-000480

**ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
RECONSIDERATION ON MOTION TO
SUPPRESS STATEMENT
OF CO-DEFENDANT
JOSEPH RAY ARRIOLA, JR.**

On May 3, 2010, Co-Defendant, Joseph Ray Arriola, Jr., filed and served on the Government a Motion to Suppress Statements. At the hearing on May 14, 2010 at the Tinian Superior Court, the Government had not filed any opposition to said Motion and thus the Court granted the Government until June 1, 2010 to file any response. On June 11, 2010, the Government had still failed to reply to the motion, the Court expressed its concern and took the matter under advisement.

On June 24, 2010, the Court having reviewed the unopposed motion found that it was unsupported by any declaration and further found that it was based on information and belief of Defendant's counsel. A motion and argument basing its premise on information and belief cannot be said to satisfy the evidentiary requirement of being based on personal knowledge, and therefore, is inadequate to support a motion to suppress. The moving papers must be supported by a declaration of defendant himself or by one with personal knowledge of the facts. *See U.S. v.*

1 *Wardlaw*, 951 F.2d 1115, 1116 (9th Cir. 1991).

2 The Court did state that Defendant's Motion had statements therein which if proved true
3 would mandate that the relief requested be granted, however, in view of the absence of any
4 evidentiary allegations the relief requested could not be granted at that time.

5 The Court further stated that if Defendant was to pursue the matter he should file a
6 declaration by either himself or one by a person, other than his attorney, with personal knowledge
7 of the contested facts on or before June 30, 2010. The Court would then give the Government
8 the opportunity to file a declaration or other document in opposition to said declaration.

9 On June 25, 2010, Defendant filed a Motion to Reconsider this Court's Order dated June
10 24, 2010 arguing that the Court should either (1) grant Defendant's Motion to Suppress
11 immediately or (2) grant their Motion upon filing an affidavit or declaration alleging facts
12 sufficient to support the allegations, without permitting the Government to oppose. After careful
13 reconsideration, the Court believes that Defendant's second request for relief is warranted for the
14 foregoing reasons.

15 The Court finds that an affidavit or declaration would satisfy the evidentiary requirements
16 under *Wardlaw*. As a general rule, any motion filed in Court may be opposed by an opposing
17 party. However, in view of the circumstances surrounding this case, the Court believes that the
18 Government has been given ample opportunities to oppose Defendant's Motion, but has failed to
19 do so. Thus, the Government has not been diligent in providing any opposition to Defendant's
20 Motion to Suppress and has further failed to respond to such serious allegations against a Tinian
21 Police Officer regarding his methods of questioning and interrogation. The Court cannot simply
22 ignore such inaction and continue to provide the Government with yet another opportunity to
23 oppose a Motion it has already failed to oppose on two separate occasions.

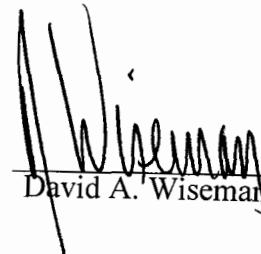
24 In addition, the Court does not believe that by ordering Defendant to submit a declaration,
25 it would be reversing itself arbitrarily or without good cause. Although, requiring a sworn
26 declaration by the defendant or a percipient witness regarding suppression motions may not have
27 been a constant practice of this Court, the Court believes that it should be and would, consistent
28 with established law, provide the proper direction for evidentiary matters with respect to motions

1 to suppress, and is a policy that must be instituted. If the Court has granted a motion to suppress
2 in the past without such supporting documentation, it by no means is bound to follow a practice
3 that should be improved. As it stands, Defendant is alleging facts with specificity, but those facts
4 don't meet the evidentiary standards without a sworn affidavit or declaration.

5 That being said, assuming Defendant does in fact provide the Court with a declaration by
6 either himself or by a person with personal knowledge of the alleged facts in his Motion to
7 Suppress, the Government will not be given an opportunity to respond. Upon review of the
8 filing, the Court will make a final determination on whether or not Defendant's Motion to
9 Suppress should be granted.

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SO ORDERED this 28 day of June, 2010.



David A. Wiseman, Associate Judge