

1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **FOR THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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

CRIMINAL CASE NO. 12-0045

8 **Plaintiff,**)

ORDER GRANTING
DAUBERT HEARING

9 **v.**)

10)
11 **JOSEPH A. CRISOSTIMO,**)

12 **Defendant.**)

13 **I. INTRODUCTION**

14 **THIS MATTER** came before the Court February 6, 2013 for a motions hearing.
15 Assistant Public Defender, Douglas Hartig appeared on behalf of Joseph A. Crisostimo
16 (“Defendant”). Assistant Attorney General Chemere McField and Assistant Attorney
17 General Nicole Driscoll appeared on behalf of the Commonwealth.
18

19 Defendant is charged with possession of a controlled substance in violation of 6
20 CMC § 2142(a) in connection with events which reportedly took place on January 11, 2012.
21 Officers arrested Defendant based on their observation of a clear glass pipe in his proximity
22 which later tested presumptively positive for crystal methamphetamine.
23

24 On January 28, 2013 the defendant filed the instant motion to exclude expert
25 testimony related to the NIK field test and the laboratory tests done on Guam, and motion
26 for a *Daubert* hearing pursuant to NMI R. Evid. 702 to determine the reliability of expert
27 testimony related to the two drug tests.
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II. DISCUSSION

The Court must determine whether to order a hearing under Rule 702 to determine the admissibility of expert testimony related to drug testing.

Under Rule 702,

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

(1) the testimony is based upon sufficient facts or data,

(2) the testimony is the product of reliable principles and methods, and

(3) the witness has applied the principles and methods reliably to the facts of the case.

NMI R. Evid. 702.

This Court is charged with the role of gatekeeper, assuring that expert testimony “rests on a reliable foundation . . .” *United States v. Hermanek*, 289 F.3d 1076, 1093 (9th Cir. 2002) (quoting *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 597); *see, e.g., Commonwealth v. Imperial*, Crim. No. 11-0290 (NMI Super. Ct. June 13, 2012) (Findings of Fact Conclusions of Law and Order Regarding Competency at 2, n. 5) (concluding that expert was not qualified to testify as to competency pursuant to Rule 702). “A trial court has broad latitude not only in determining whether an expert’s testimony is reliable, but also in deciding how to determine the testimony’s reliability.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011) (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152

1 (1999)).¹ Accordingly, this Court in its discretion may determine the testimony's reliability
2 with or without a hearing.

3 Here, there is nothing in the record demonstrating that any expert testimony related
4 to the drug testing results complies with Rule 702. Drug testing is scientific in nature and
5 not generally within the purview of lay witnesses. *See* NMI R. Evid. 701(c) (lay witness
6 opinions are limited to those “not based on scientific, technical, or other specialized
7 knowledge.”) As a gatekeeper this Court is charged with ensuring the reliability of expert
8 evidence. In the absence of any filings upon which to qualify an expert without a hearing,
9 this Court will hold a hearing to determine the admissibility of expert evidence related to
10 drug tests performed in this case, upon which the Commonwealth intends to rely.
11

12 **III. CONCLUSION**

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14 For the aforementioned reasons the Court **GRANTS** the Motion for a *Daubert*
15 hearing under Rule 702. The motion to exclude is **STAYED** pending a determination based
16 on the hearing testimony.

17 A hearing is set for February 26, 2013 at 9:00 a.m.
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20 **IT IS SO ORDERED** this 7th day of February, 2013.
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24 /s/
Joseph N. Camacho, Associate Judge
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¹ “[W]hen interpreting our rules of civil procedure, which are patterned after the federal rules, we will principally look to federal interpretation for guidance.” *Commonwealth Dev. Auth. v Camacho*, 2010 MP 19 ¶ 16.