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BY: *SP* *DKC*  
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1 **FOR PUBLICATION**

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6 **IN THE SUPERIOR COURT**  
7 **FOR THE**  
8 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

9 **COMMONWEALTH OF THE** ) **CRIM. CASE NO. 14-0049**  
10 **NORTHERN MARIANA ISLANDS,** )  
11 **Plaintiff,** ) **ORDER DENYING MOTION FOR**  
12 **v.** ) **DAUBERT HEARING AT SUPPRESSION**  
13 **FRANK TUDELA PANGELINAN,** ) **HEARING**  
14 **Defendant.** )

15 **I. INTRODUCTION**

16 On August 26, 2014 the Commonwealth filed a motion for a *Daubert* hearing. The  
17 Commonwealth requests that the Court conduct a preliminary *Daubert* hearing before allowing an  
18 expert witness to testify in a suppression hearing to be held on August 29, 2014. The  
19 Commonwealth bases its motion on NMI Rule of Evidence 702 and *Daubert v. Merrell Dow*  
20 *Pharmaceuticals*, 509 U.S. 579 (1993). Based on a review of the filing and applicable law, the  
21 Court denies the Commonwealth's motion.

22 **II. DISCUSSION**

23 NMI Rule of Evidence 702 states:

24 If scientific, technical, or other specialized knowledge will assist the trier of fact to  
25 understand the evidence or to determine a fact in issue, a witness qualified as an

1 expert by knowledge, skill, experience, training, or education, may testify thereto in  
2 the form of an opinion or otherwise, if

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

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

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

7 NMI R. Evid. 702.

8 *Daubert* requires the trial court judge to examine expert evidence before trial to “ensure that  
9 any and all scientific testimony or evidence admitted is not only relevant, but reliable.” *Daubert*,  
10 509 U.S. at 589.

11 The NMI Supreme Court has not reached the issue of whether a formal pretrial *Daubert*  
12 hearing is required for suppression hearings. Other United States jurisdictions have held that a  
13 court has the discretion to choose the manner in which it tests expert reliability, without requiring a  
14 *Daubert* hearing.<sup>1</sup> *United States v. Ozuna*, 561 F.3d 728, 736-37 (7th Cir. Ill. 2009), *cert. denied*,  
15 559 U.S. 970 (2010) (Noting that the Rules of Evidence are generally inapplicable at evidentiary  
16 hearings and declining to impose on district courts the additional requirement of conducting a  
17 *Daubert* hearing before considering expert testimony at a suppression hearing); *United States v.*  
18 *Stepp*, 680 F.3d 651, 669 (6th Cir. Tenn. 2012) (agreeing with the approach in *Ozuna* and finding  
19 the district court abused its discretion in excluding an expert because it wrongly believed it did not  
20 have the discretion to hear the expert’s testimony based on its own finding that the expert lacked the  
21 requisite qualifications to testify); *United States v. Beltran-Palafox*, 731 F. Supp. 2d 1126, 1140 (D.  
22 Kan. 2010) (“The most common method for [the trial court to perform its gatekeeping function] is a  
23 *Daubert* hearing, although such a process is not specifically mandated.”); *United States v. Charley*,  
24 189 F.3d 1251, 1266 (10th Cir. 1999) (a district court is granted great latitude in “deciding whether  
25 to hold a formal hearing.”).

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<sup>1</sup> Because the Commonwealth Rules of Evidence are patterned after the Federal Rules of Evidence, it is appropriate to look to how the federal courts have interpreted these rules for guidance. *Sablan v. Elameto*, 2013 MP 7 ¶ 17 (quoting *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

