1 2 3 4 5 6 7 8 9 10	FOR PUBLICATION  FOR PUBLICATION  TOTALS 26 AM II: 35  TOTALS 26  TOTALS 26 AM II: 35  TOTALS 26 AM II: 35  TOTAL 26
11	v. ) HEARING
12	FRANK TUDELA PANGELINAN,
13 14	Defendant.
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16	I. <u>INTRODUCTION</u>
17	On August 26, 2014 the Commonwealth filed a motion for a Daubert hearing. The
18	Commonwealth requests that the Court conduct a preliminary Daubert hearing before allowing an
19	expert witness to testify in a suppression hearing to be held on August 29, 2014. The
20	Commonwealth bases its motion on NMI Rule of Evidence 702 and Daubert v. Merrell Dow
21	Pharmaceuticals, 509 U.S. 579 (1993). Based on a review of the filing and applicable law, the
22	Court denies the Commonwealth's motion.
23	II. <u>DISCUSSION</u>
24	NMI Rule of Evidence 702 states:
25	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.

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

8 The NMI Supreme Court has not reached the issue of whether a formal pretrial Daubert 9 hearing is required for suppression hearings. Other United States jurisdictions have held that a 10 court has the discretion to choose the manner in which it tests expert reliability, without requiring a 11 Daubert hearing.<sup>1</sup> United States v. Ozuna, 561 F.3d 728, 736-37 (7th Cir. Ill. 2009), cert. denied, 12 559 U.S. 970 (2010) (Noting that the Rules of Evidence are generally inapplicable at evidentiary 13 hearings and declining to impose on district courts the additional requirement of conducting a 14 Daubert hearing before considering expert testimony at a suppression hearing); United States v. 15 Stepp, 680 F.3d 651, 669 (6th Cir. Tenn. 2012) (agreeing with the approach in Ozuna and finding 16 the district court abused its discretion in excluding an expert because it wrongly believed it did not 17 have the discretion to hear the expert's testimony based on its own finding that the expert lacked the 18 requisite qualifications to testify); United States v. Beltran-Palafox, 731 F. Supp. 2d 1126, 1140 (D. 19 Kan. 2010) ("The most common method for [the trial court to perform its gatekeeping function] is a 20 Daubert hearing, although such a process is not specifically mandated."); United States v. Charley, 21 189 F.3d 1251, 1266 (10th Cir. 1999) (a district court is granted great latitude in "deciding whether 22 to hold a formal hearing."). 23

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 <sup>&</sup>lt;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).

1	The primary rationale behind <i>Daubert</i> is inapplicable in a suppression hearing because the
2	purpose of <i>Daubert</i> is to task courts with the role of gatekeeper in order to keep unreliable expert
3	testimony from carrying too much weight with a jury. Ozuna, 561 F.3d at 737 (internal citation
4	omitted) ("Judges, on the other hand, are less likely to be swayed by experts with insufficient
5	qualifications."). A trial court's discretion in choosing the way it tests expert reliability is not
6	discretion to altogether abandon the gatekeeping function. Kumho Tire Co. v. Carmichael, 526
7	U.S. 137 (1999). Even without a formal <i>Daubert</i> hearing, a court must consider the qualifications
8	of the proffered expert and use its discretion to determine what weight to afford that expert's
9	testimony. United States v. Diaz, 25 F.3d 392, 394 (6th Cir. 1994). A court's determination of
10	what weight to afford an expert's qualifications, however, "will typically follow the presentation of
11	an expert's testimony, rather than precede it." Stepp, 680 F.3d at 669.
12	The Court therefore finds that a <i>Daubert</i> hearing is not required for a suppression hearing
13	and that it has the discretion to determine in which manner it chooses to test expert reliability.
14	III. <u>CONCLUSION</u>
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16	For the reasons set forth above, the Court hereby <b>DENIES</b> the Commonwealth's motion for
17	a formal <i>Daubert</i> hearing. The Court will hear and appropriately weigh the expert's testimony in
18	accordance with Rule 702.
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20	<b>SO ORDERED</b> this 26 <sup>th</sup> day of August, 2014.
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22	<u>/s/</u> TERESA K. KIM-TENORIØ
23	Associate Judge
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