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BY: 
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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

**EDWIN SOMORANG KILELEMAN,
(d/o/b: 08/14/1964)**

Defendant.

**CRIMINAL ACTION NO. 14-0069A
DPS CASE NO. 14-004802**

**SUPPLEMENTAL ORDER
REQUIRING DEFENDANT TO FILE A
RULE 8(a)(1) AFFIDAVIT**

I. INTRODUCTION

On August 12, 2014, Defendant Edwin S. Kileleman (“Defendant”) filed a Notice of Factual Basis for Motion to Suppress. The Defendant is represented by Assistant Public Defender Eden Schwartz. The Commonwealth of the Northern Mariana Islands (“Government”) then filed its Response to Defendant’s Notice of Factual Basis for Motion to Suppress on August 21, 2014. The Government is represented by Assistant Attorney General Margo Badawy.

Based upon review of the filings, applicable laws, and similar cases before the Commonwealth’s Superior Court, the Court hereby orders the Defendant to file a Rule 8(a)(1) affidavit or other documentation in support of his Motion to Suppress by September 11, 2014.

ENTERED

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II. BACKGROUND

On August 4, 2014, Defendant filed a Motion to Suppress Statements in which Defendant made numerous factual assertions stemming from an evidentiary hearing that occurred on June 27, 2014 in Courtroom 220. Defendant’s motion was not accompanied by an affidavit or other documentation. Subsequently, this Court issued an order dated August 11, 2014, in which the Court ordered Kileleman to file an affidavits supporting the factual basis for the motion. The Defendant then filed a Notice of Factual Basis for Motion to Suppress in which Defendant asserted that the Rule 8(a)(1) accompanying affidavit was unnecessary.¹ The Court hereby clarifies any misunderstanding surrounding the requirement of a Rule 8(a)(1) affidavit filing, and reasserts its prior holding requiring the Defendant to file an affidavit or other documentation supported by a declaration by September 11, 2014.

III. DISCUSSION

A. Rule 8(a)(1) Requirement

In accordance with Rule 8(a)(1) of the Commonwealth Rules of Practice: a party making a motion that involves a question of law must file the motion itself along with a separate memorandum of reasons. In addition, “affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.” NMI R. Prac. 8(a)(1). Recent CNMI superior court decisions have found that “[a] defendant who files a motion to suppress ‘bears the burden of coming forward with at least an offer of proof or some minimal showing that his motion to suppress has some factual basis’ before the Court is required to hold an evidentiary hearing.” (citing *Commonwealth v. Petrus*, Crim. No. 12-0235 (NMI Super. Ct. Aug. 28, 2013 at 2) (Order Den.’ing Mot. to Suppress Statement Without Prejudice)).

¹ Kileleman is correct in his pronouncement that the affidavit requirement is ripe for litigation. However, this court will require an affidavit or other evidence in support of the factual assertions made in the Motion to Suppress. Kileleman is free to pursue other avenues to challenge the Court’s interpretation of this requirement.

1 The Court understands there is confusion regarding the requirements of Rule 8(a)(1)
2 and wishes to clarify what is required to support a defendant's motion to suppress. Upon
3 filing a motion to dismiss, a defendant must provide evidentiary support for the factual
4 allegations contained therein through either (a) an affidavit or (b) documents supported by a
5 declaration. Copies of supporting documentation must be attached to the motion along with
6 a declaration attesting to the validity of the documents. This procedure is also applicable
7 when discovery is provided to the defendant by the government.
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9 In Kileleman's case, the facts contained in his motion detail a timeline of his arrest.
10 Given this unique circumstance it is possible for Kileleman to attach a copy of his booking
11 sheet and Detective Rhonda John's Declaration of Probable Cause to support most of the
12 facts contained in the motion. It appears that in providing these documents Kileleman will
13 probably meet the minimal showing required to proceed with a hearing.
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15 **B. *Manabat* Decision**

16 The Court will also take this opportunity to clarify its recent decision in *Manabat*, in
17 which this court did not require the defendant to supply an affidavit or other documents with
18 his motion to suppress. *Commonwealth v. Manabat*, Crim. No. 13-0122 (NMI Super. Ct.
19 March 21, 2014) (Order Granting Defendant's Motion to Suppress Statements at 4-5). In
20 *Manabat*, the court allowed the defendant to assert factual allegations in the motion that
21 were not supported by an affidavit, but rather were provided to the defendant through
22 discovery provided by the Commonwealth. *See id.* at 5.
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24 It was the exceptional circumstances surrounding the matter that compelled the court
25 to deviate from the usual requirement mandating a filing of an affidavit. In *Manabat*, the
26 court held the hearing on the motion to suppress on March 13, 2014 and the bench trial was
27 to begin on April 7, 2014. The court did not require an accompanying affidavit for the
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1 motion to suppress in an effort to preserve the defendant's fundamental rights due to the
2 immediacy of trial, but at a cost to the Commonwealth Rules of Practice.² The *Manabat*
3 decision is a narrow exception to the general rule and should not be interpreted as generally
4 applicable to other cases. Trial for Kileleman has not yet been set so there is no imminent
5 danger to the Defendant's constitutional rights as was the concern in *Manabat*.

6 Additionally, the interpretation of Rule 8(a) that Kileleman seeks this Court to adopt
7 is problematic. Kileleman proposes to be allowed to assert in his Motion to Suppress an
8 account of testimony given in an evidentiary hearing in courtroom 220. However, in
9 adopting this procedure the Court would be forced to go on its own fact-finding mission to
10 determine whether these assertions were in fact actually made. It is the duty of the attorneys
11 to supply the Court with evidentiary support and thus this Court will not adopt such a
12 practice as proposed by Kileleman. This Court instead adopts the standard set forth above in
13 which a defendant must provide either an affidavit or other documentation supported by a
14 declaration to evidence the factual allegations set out in a motion to suppress to satisfy the
15 offer of proof.
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18 Therefore, Kileleman has until September 11, 2014 to provide either an affidavit or
19 other documentary evidence supporting his Motion to Suppress. In addition, the Motion to
20 Suppress Hearing scheduled for September 11, 2014 is hereby vacated and the hearing is
21 rescheduled for September 25, 2014.

22 **IT IS SO ORDERED** this 2nd day of September, 2014.

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26 **ROBERTO C. NARAÑA**, Presiding Judge

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28 ² It is possible that the Court may have based its ruling in *Manabat* on a misinterpretation of the Rule;
however, the Court chose to error on the side of caution to protect the defendant's fundamental rights.
Commonwealth v. Campbell 4 N.M.I. 11 (1993).