



1 Defendant's Motion to Suppress stems from events occurring in the evening of March 21,  
2 2016. On March 21, 2016, approximately between 11:00 p.m. and 12:00 a.m., Officer Juan  
3 Mendiola ("Officer Mendiola") was dispatched to the China Town area of Saipan after Department  
4 of Public Safety ("DPS") received reports of a vehicle illegally parked on the road. Upon arrival to  
5 the scene, Officer Mendiola noticed the vehicle in question facing eastbound—parked, with the  
6 engine and headlights on—in the westbound lane. Officer Mendiola cautiously approached the  
7 vehicle and found Defendant and his passenger, Aguida C. Villagomez ("Passenger Villagomez"),  
8 reclined and asleep in the driver's seat and front passenger seat, respectively. Officer Mendiola  
9 woke up Defendant, who then, according to Officer Mendiola, looked around and seemed confused.

10 First, Officer Mendiola asked Defendant why he was parked in the road and asleep at the  
11 wheel. Defendant explained that, to some degree, his car tire became loose and caused the car to  
12 swerve into the opposite lane. After Defendant regained control of the car, he parked in the middle  
13 of the road to avoid a ditch, called his uncle for assistance, and fell asleep while he was waiting.  
14 Defendant was waiting for approximately one hour before Officer Mendiola arrived on the scene.

15 Next, Officer Mendiola asked Defendant for his license and registration. In response to  
16 Officer Mendiola's request, Defendant produced the vehicle registration from the glove  
17 compartment. Then, Defendant reached in the bag seat for a bag, pulled out a black wallet, and  
18 began opening the zippered wallet.<sup>1</sup> As Defendant partially unzipped the wallet, Defendant revealed  
19 a small ziplock bag containing a shiny, crystal-like substance in it. Officer Mendiola saw the  
20 ziplock bag and its contents, immediately suspected it to be methamphetamine, and seized the entire  
21 wallet. Officer Mendiola asked Defendant who owned the wallet, and Defendant responded "not  
22 mine." Officer Mendiola then asked who owned the small ziplock bag and Defendant responded  
23 "mine."

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25 <sup>1</sup> There is conflicting testimony as to why or what prompted Defendant to reach for the bag and open the wallet, however, finding Officer Mendiola's testimony to be credible, it is reasonable to assume that Defendant was attempting to retrieve a form of identification. Defendant does not have a driver's license and has been cited for driving without a license on several occasions.

1           Shortly thereafter, Passenger Villagomez became alert and started acting suspiciously—  
2 almost erratically. Specifically, Passenger Villagomez began bending forward and reaching  
3 underneath her seat. Officer Mendiola asked Passenger Villagomez to stop what she was doing, but  
4 she did not stop. As the only officer on scene, Officer Mendiola acted quickly to diffuse the  
5 situation. For safety concerns, Officer Mendiola had Defendant exit the vehicle and secured him in  
6 the police car. Subsequently, Officer Mendiola approached the passenger side, had Passenger  
7 Villagomez exit the vehicle, handcuffed her, and placed her beside him. Officer Mendiola  
8 conducted a limited search underneath the front passenger side seat, the area where Passenger  
9 Villagomez was reaching, and found a small container. Officer Mendiola opened the container and  
10 found paraphernalia—specifically, a pipe with residue, q-tips, and a straw.

11           After Officer Mendiola seized the paraphernalia, Officer Hermosillia Rudolfo (“Officer  
12 Rudolfo”) arrived on scene. Officer Rudolfo tested a sample from the ziplock bag using a Narcotic  
13 Identification Kit. The result was a presumptive positive for methamphetamine. Defendant was  
14 arrested for possession of a controlled substance.<sup>2</sup>

#### 15           **B. Procedural History**

16           On March 28, 2016, the Commonwealth filed the Information charging Defendant with one  
17 count of Illegal Possession of a Controlled Substance, in violation of 6 CMC § 2142(a) and made  
18 punishable by 6 CMC § 2142(b). The parties submitted two relevant filings in this matter.

19           On April 19, 2016, Defendant, by and through counsel, filed Defendant’s Motion Suppress  
20 (“Defendant’s Motion”) and supporting Affidavit. Therein, Defendant argued that the evidence  
21 was obtained in violation of Defendant’s Fourth Amendment rights as the search was conducted  
22 without a warrant and *per se* unreasonable. For that reason, the evidence should be suppressed.

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<sup>2</sup> At the time, Defendant was also cited for driving without a license.

1 On May 4, 2016, the Commonwealth filed their Response in Opposition to the Defendant's  
2 Motion to Suppress and Dismiss ("Commonwealth's Opposition").<sup>3</sup> Therein, the Commonwealth  
3 argued: (1) if Officer Mendiola's encounter with Defendant amounted to an investigatory stop, the  
4 stop was supported by reasonable suspicion; (2) the ziplock bag containing methamphetamine is  
5 admissible pursuant to the plain view doctrine; (3) the paraphernalia is admissible pursuant to the  
6 search incident to a lawful arrest exception of the warrant requirement; and, (4) even if the Court  
7 is not persuaded by the search incident to a lawful arrest exception, the contraband is admissible  
8 pursuant to the Inevitable Discovery Doctrine through an inventory search.

9 Defendant did not file a reply brief to refute the possible exceptions to the Fourth  
10 Amendment requirement. Further, Defendant's arguments at the evidentiary hearing were not  
11 based on legal analysis but, in his words, "the common sense theory" and the "tummy test." It was  
12 not persuasive.

### 13 III. LEGAL STANDARD

14 Article I, section 3 of the Commonwealth Constitution and the Fourth Amendment to the  
15 United States Constitution prohibit unreasonable searches and seizures. Since Article I, § 3 is  
16 modeled after the Fourth Amendment, looking to federal and United States Supreme Court cases is  
17 appropriate. *See Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 12.

18 The Fourth Amendment to the United States Constitution generally requires a warrant  
19 supported by probable cause before law enforcement officers can conduct a search. *See U.S.*  
20 *CONST.*, amend. IV. "Warrantless searches are *per se* unreasonable under the Fourth Amendment –  
21 subject only to a few specifically established and well delineated exceptions." *Katz v. United States*,  
22 89 U.S. 347, 357 (1967). Accordingly, on a motion to suppress, the defendant bears the initial  
23 burden of establishing that a police officer subjected them to a warrantless search or seizure. *United*  
24 *States v. Bassignani* 560 F.3d 989, 993 (9th Cir. 2009) (citing *United States v. Arboleda*, 633 F.2d

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<sup>3</sup> A motion to dismiss was not filed in this action. Thus, the Court construes the Commonwealth's Opposition solely as an opposition to Defendant's Motion to Suppress and ignores all arguments opposing a motion to dismiss.

1 985, 989 (2nd Cir. 1980)). Once the defendant has met this initial burden, the government must  
2 show that the search and seizure did not violate the constitution. *See Arboleda*, 663 F.2d at 989; *see*  
3 *also United States v. Jenkins*, 938 F.2d 934, 937 (9th Cir. 1991). In other words, the  
4 Commonwealth has the burden of proving by a preponderance of the evidence whether a search  
5 falls within an exception. *See CNMI v. Pangelinan*, 3 CR 357 (1988).

6 In general, the exclusionary rule is a judge-made doctrine that prohibits the introduction, at  
7 trial, of evidence obtained in violation of a defendant's Fourth, Fifth or Sixth Amendment Rights.  
8 *See generally Weeks v. United States*, 232 US 383 (1914); *See also Mapp v. Ohio*, 367 U.S. 643  
9 (1961). The exclusionary rule encompasses both the "primary evidence obtained as a direct result of  
10 an illegal search or seizure" and "evidence later discovered and found to be a derivative of an  
11 illegality." *Segura v. United States*, 468 U.S. 796, 804 (1984) (internal citations omitted).

12 The main purpose of the exclusionary rule is to deter the government from violating a  
13 person's constitutional rights, or in other words, "to compel respect for the constitutional guaranty  
14 . . . by removing the incentive to disregard it." *Mapp v. Ohio*, 367 U.S. 643, 656 (1961) (internal  
15 citation omitted). Considering that the exclusionary rule is a judicially prescribed remedial device,  
16 "the application of the rule has been restricted to those areas where its remedial objectives are  
17 thought most efficaciously served." *United States v. Calandra*, 414 U.S. 338, 348 (1974). However,  
18 exclusion of tainted evidence, including fruit of the poisonous tree, is not automatic; whether  
19 exclusion is warranted in a given case depends on "the culpability of the police and the potential of  
20 the exclusion to deter wrongful police conduct." *Herring v. United States*, 555 U.S. 135, 137  
21 (2009).

#### 22 IV. DISCUSSION

23 The Court denies Defendant's Motion to Suppress for the following reasons.

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1           **1. Officer Mendiola’s Investigatory Stop of the Defendant was supported by Reasonable**  
2           **Suspicion that Defendant Committed a Traffic Violation or Engaged in Criminal**  
3           **Activity.**

4           Generally, an officer has the authority to briefly detain a person for investigative purposes.  
5           To make such a stop, the officer must have reasonable suspicion, supported by articulable facts of  
6           criminal activity or involvement in a completed crime. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). In  
7           reviewing whether an officer had a reasonable suspicion, courts require more than a hunch, but  
8           much less than a preponderance of the evidence. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).  
9           Whether the standard of reasonable suspicion is met is judged under the totality of circumstances.  
10          *United States v. Arvizu*, 534 U.S. 266, 273 (2002). Bases for suspicion include inferences and  
11          deductions officers draw from applying their experience and specialized training to the situation at  
12          hand. *Id.* Officers may also rely upon “relevant characteristics of a location – such as that the stop  
13          occurred in a high-crime area.” *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 19 (internal  
14          quotations omitted) (internal citations omitted). “Courts apply an objective – rather than subjective  
15          – standard for two reasons: (1) the Fourth Amendment regulates conduct rather than thoughts and  
16          (2) the objective standard promoted evenhanded, uniform enforcement of the law.” *Fu Zhu Lin*,  
17          2014 MP 6 ¶ 15 (internal quotations omitted) (internal citations omitted).

18          The Commonwealth makes two arguments; (1) Officer Mendiola’s approach is not a stop  
19          within the rule because the car was already stopped; and, (2) if Officer Mendiola’s approach is  
20          considered a stop, said stop was supported by reasonable suspicion.

21          First, the Court finds that Officer Mendiola’s actions amounted to a stop, despite the fact  
22          that the car was already stopped. Second, the Court finds that Officer Mendiola’s stop was  
23          supported by reasonable suspicion that Defendant had committed a traffic violation or engaged in  
24          criminal activity.

25          Here, Officer Mendiola only came upon Defendant after DPS received reports of a vehicle  
                illegally parked on the road. Further, when Officer Mendiola came onto the scene, Defendant’s  
                vehicle was found facing eastbound—parked at a sharp curve, in the middle of the road, with the

1 engine and headlights on—in the westbound lane of Sugar King Road. To make matters worse,  
2 Defendant was found asleep at the wheel. Based on the facts, it is readily apparent that Defendant’s  
3 vehicle was illegally parked, blocking traffic and posed a substantial safety risk to possible on-  
4 coming traffic, himself, and his passenger. Thus, the investigatory stop was supported by  
5 reasonable suspicion – and thus, lawful.

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7 **2. The Contraband (Ziplock Bag containing Methamphetamine) is Admissible Pursuant  
to the Plain View Doctrine.**

8 The plain view doctrine states: if police are lawfully in a position from which they view an  
9 object, if its incriminating character is immediately apparent, and if the officers have a lawful right  
10 to access the object, they may seize it without a warrant. *Horton v. California* 496 U.S. 128, 136-  
11 137 (1990). If, however, the police lack probable cause to believe that an object in plain view is  
12 contraband, without conducting further search of the object, the plain view doctrine cannot justify  
13 its seizure. *Arizona v. Hicks*, 480 U.S. 321, 326 (1987). The purpose of the “immediately apparent”  
14 requirement is to prevent “general, exploratory, rummaging in a person’s belongings.” *Coolidge v.*  
15 *New Hampshire*, 403 U.S. 443, 467 (1971).

16 The Commonwealth argues, “[u]nder the plain view exception, an officer may search, and  
17 seize, contraband that is left in open view and is observed by a police officer from a lawful vantage  
18 point.” *Fu Zhu Lin*, 2014 MP 6 ¶ 27 (citing *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993)).  
19 Further, a police officer is entitled to seize evidence discovered in plain view in the course of a  
20 lawful investigatory stop; and to arrest the defendant when evidence discovered in plain view gives  
21 probable cause to believe that defendant had committed a crime. *United States v. Hensley*, 469 U.S.  
22 221, 235 (1985).

23 Here, Officer Mendiola was in a lawful position—standing on a public road, peering into  
24 Defendant’s car, in the middle of a lawful investigatory stop—when Defendant opened the wallet  
25 and revealed the contraband. At that time, Officer Mendiola immediately saw a ziplock bag

1 containing a shiny crystal-like substance in the wallet. Using over 20 years of experience and  
2 training as a police officer, Officer Mendiola suspected that the shiny crystal-like substance in the  
3 ziplock bag was methamphetamine. Since Officer Mendiola was in a lawful vantage point when he  
4 recognized the evidence as immediately incriminating in nature, he was entitled to seize the wallet  
5 containing the suspected contraband. Thus, the ziplock bag and its contents are admissible pursuant  
6 to the Plain View Doctrine.

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8 **3. The Paraphrenalia (Pipe, Qtips and Straw) is Admissible Pursuant to the Search  
Incident to a Lawful Arrest Exception.**

9 A search incident to a lawful arrest is a well-established exception to the Fourth  
10 Amendment's warrant requirement against unreasonable searches and seizures. *Weeks v. United*  
11 *States*, 232 US 383, 392 (1914). The rationale for the search is to protect the arresting officer and to  
12 preserve evidence, however, the search does not need to be justified by a showing that the officer  
13 feared for his or her safety or needed to prevent the destruction of evidence. *United States v.*  
14 *Robinson*, 414 U.S. 218, 236 (1973)("Since it is the fact of custodial arrest which give rise to the  
15 authority to search, it is of no moment that [the officer] did not indicate any subjective fear of the  
16 [defendant] or that he did not himself suspect that [the defendant] was armed.").

17 The police must make a lawful arrest. *Knowles v. Iowa*, 525 U.S. 113 (1998) (Court held  
18 that issuing a traffic citation is not enough). Incident to a lawful arrest, the police may search the  
19 person and areas of immediate control where he might reach to obtain weapons or destroy evidence.  
20 *Chimel v. California*, 395 U.S. 752, 762-763 (1969). A search incident to an arrest must be  
21 contemporaneous in time and place with the arrest. *Preston v. United States*, 376 U.S. 364, 367  
22 (1964). The search may even precede an arrest, provided there is probable cause to arrest prior to  
23 the search. *Rawling v. Kentucky*, 448 U.S. 98, 111 (1980).

24 The search incident to a lawful arrest exception can, in some circumstances, extend to  
25 vehicle searches when the arrestee was a recent occupant or passenger of a vehicle. *See generally*



1 *New York v. Belton*, 453 U.S. 454 (1981); *see also Thornton v. United States*, 541 US 615 (2004).  
2 In *New York v. Belton*, the United States Supreme Court held that a police officer who made a  
3 lawful custodial arrest of the occupant of an automobile may, as a contemporaneous incident of that  
4 arrest, search the automobile and examine the contents of any containers found therein. *Id.* at 757-  
5 758. Recently, the Supreme Court overruled the broad rule in *Belton*. In keeping with the rationales  
6 of a search incident to a lawful arrest, an officer is permitted to conduct a vehicle search when an  
7 arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains  
8 evidence of the offense of arrest. *Arizona v. Gant*, 556 U.S. 332, 335 (2009).

9         The Commonwealth argues that the search incident to a lawful arrest exception outlined in  
10 *Fu Zhu Lin*, 2014 MP 6 and codified under 6 CMC §6201(a),<sup>4</sup> renders Officer Mendiola’s search  
11 of the vehicle permissible and the paraphernalia admissible at trial. In *Fu Zhu Lin*, the  
12 Commonwealth Supreme Court questioned whether the post-arrest search exceeded the scope of the  
13 search incident to a lawful arrest exception. 2014 MP 16 ¶ 21. There, the Court found that the  
14 search was constitutional and the evidence was admissible, in part, because the defendant’s arrest  
15 was a valid custodial arrest that authorized the police to search the defendant’s person for weapons  
16 and other instruments, fruits, or evidences of the offense.” *Id.* ¶ 30.

17         On the night in question, Officer Mendiola conducted a lawful investigatory stop when  
18 Defendant opened his wallet and revealed a ziplock bag containing a shiny, crystal like-substance.  
19 Utilizing over 20 years of police experience and training, Officer Mendiola suspected the shiny,  
20 crystal-like substance to be methamphetamine. Further, upon questioning, Defendant claimed that  
21 the ziplock bag belonged to him. Officer Mendiola’s ability to recognize or suspect the contraband

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<sup>4</sup> The Court does not agree that 6 CMC §6201 is the appropriate standard in determining this suppression issue. Section 6201 gives broad authority to “[e]very person making an arrest” to “take from the person arrested all offensive weapons which the arrested person may have about his or her person” as well as the premises surrounding the arrest. 6 CMC §6201(a). Section 6201 also states, “[e]xcept as otherwise required by law, no search warrant is required for the actions authorized by this section.” 6 CMC §6201(c). As subsection (c) makes clear, governmental conduct is still required to comport to constitutional restraints.

1 to be methamphetamine as well as Defendant's ownership of the ziplock bag, gave rise to probable  
2 cause for Defendant's arrest.

3 Before having a chance to arrest Defendant, Passenger Villagomez began acting erratically  
4 and started reaching for something underneath her seat. Officer Mendiola testified that, at that time,  
5 he was worried and afraid for his safety. Officer Mendiola also testified that Passenger Villagomez  
6 continued to reach under her seat and did not listen to instructions to cease. Being the only officer  
7 on scene, Officer Mendiola secured Defendant in the front seat of the police vehicle. Then, Officer  
8 Mendiola approached Passenger Villagomez, had her exit the vehicle, handcuffed her, and then  
9 placed her to his side. Officer Mendiola conducted a limited search to the area where Passenger  
10 Villagomez was reaching and found a container. Officer Mendiola opened the container and found  
11 drug paraphernalia – specifically, a pipe with residue on it, Q-tips and a straw. After regaining  
12 control of the scene, Defendant was arrested and charged with Illegal Possession of a Controlled  
13 Substance, in violation of 6 CMC § 2142(a) and made punishable by 6 CMC §2142(b).

14 Based on above, the Court finds that Officer Mendiola lawfully arrested Defendant. The  
15 Court also finds that Officer Mendiola conducted a search that was contemporaneous in time and  
16 place as the arrest. And finally—given the suspicious nature or circumstances prompting the  
17 investigatory stop, Defendant's possession of a controlled substance and Passenger Villagomez's  
18 erratic and potentially dangerous behavior—it was reasonable for Officer Mendiola to believe the  
19 vehicle contained evidence of the offense of arrest. Thus, the paraphernalia is admissible pursuant  
20 to the search incident to a lawful arrest exception to the warrant requirement.

21 In conclusion, the Court finds that the ziplock bag containing methamphetamine is  
22 admissible pursuant to the plain view doctrine. The Court also finds that the paraphernalia is  
23 admissible pursuant to the search incident to a lawful arrest exception to the warrant requirement.  
24 Since the above-mentioned evidence is admissible, the Court declines to discuss the merits of the  
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1 Commonwealth's argument as to the Automobile Exception, the Inevitable Discovery Doctrine, and  
2 Inventory Search exception.

3 **V. CONCLUSION**

4 Based on the foregoing, Defendant's Motion to Suppress is hereby **DENIED**.

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6 **SO ORDERED** this 29th day of June, 2016.

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10 **TERESA K. KIM-TENORIO**  
11 Associate Judge

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