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

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

FRANK TUDELA PANGELINAN,

Defendant.

CRIMINAL CASE NO. 22-0090

ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE
AS THE INFORMANT PROVIDED
SUFFICIENT INFORMATION IN
THE AFFIDAVIT TO FIND PROBABLE
CAUSE, FURTHERMORE THE RIGHT
TO PRIVACY IS PROTECTED BY
OBTAINING AN EAVESDROPPING
WARRANT

I. INTRODUCTION

THIS MATTER came before the Court on December 21, 2022, at 10:00 a.m. in Courtroom 220A, for a Motion to Suppress evidence and statements obtained as a result of an eavesdropping warrant. The Commonwealth of the Northern Mariana Islands ("Commonwealth") was represented by Assistant Attorney General Steven C. Kessell. Frank Tudela Pangelinan ("Defendant") was represented by Assistant Public Defender Vina Seelam.

II. RELEVANT FACTS

1. On February 10, 2022, Department of Public Safety ("DPS") Officer Carlos Feger applied to the Honorable Judge Joseph N. Camacho for an eavesdropping warrant to record "the drug conversation, meetings, and activities" of Defendant and his unidentified associates. *See* Exhibit B to Defendant's Motion, "Affidavit in Support of the Use of An Audio/Video Interception Device Search Warrant ("Affidavit"). Part of the Affidavit was based on Officer Feger's four-plus years' experience as a law

By order of the Court, Judge Joseph N. Camacho

1 enforcement officer, including his time assigned to the drug task force, and his training
2 and experience in the investigation of crimes involving illegal drug trafficking.

- 3 2. Officer Feger requested the warrant based on the following facts listed in the Affidavit:

4 On February 9, 2022, DPS Sergeant Dee Udui and Officer Feger learned from a Drug
5 Enforcement Task Force (“DETF”) Cooperating Source No. 032875 (“CS” or
6 “Informant”) that about a week earlier, the CS contacted Defendant via cell phone
7 (670)-588-6384 to purchase methamphetamine. *See* Exhibit B to Defendant’s Motion
8 at 2.

- 9 3. The CS had met with Defendant at a prearranged location in the southern area of
10 Saipan, Commonwealth of the Northern Mariana Islands, and purchased \$100 worth
11 of methamphetamine, commonly known as “Ice”. *Id.* Defendant informed the CS that
12 if he/she needs to purchase methamphetamine to contact Defendant through cell phone
13 (670)-588-6384, at any time during the day or night. *Id.*

- 14 4. On February 10, 2022, Judge Camacho granted Officer Feger’s request for an
15 eavesdropping warrant to make a voice and/or video recording of meetings or
16 telephone conversations about the purchase or credit of methamphetamine between
17 the CS and Defendant and/or his unknown associates. *See* Exhibit C, Search Warrant.
18 The warrant was authorized for sixty days from February 10, 2022, to April 10, 2022.
19 *Id.*

- 20 5. On February 11, 2022, and February 16, 2022, DETF officers utilized CS to conduct
21 a controlled buy-walk operation to purchase methamphetamine from Defendant. *See*
22 Exhibit D, Inventory of Items Obtained Pursuant to Search Warrant. On February 11,
23 2022, the CS met with Defendant and bought from Defendant 0.5 gross grams of
24 methamphetamine for \$100 U.S. currency. On February 16, 2022, the CS again met
25
26

1 with Defendant and bought from Defendant 0.6 gross grams of methamphetamine for
2 \$180 U.S. currency. On both of these occasions, DETF officers monitored and
3 recorded phone conversations and audio/video footage recordings between the CS and
4 Defendant. *See* Exhibit D.

5 6. On March 14, 2022, Judge Camacho signed an arrest warrant for the Defendant.

6 7. The Defendant was arrested on April 25, 2022. That same day, the Defendant was
7 released from custody pursuant to a Stipulation Order for Defendant to cooperate with
8 DETF as an informant.

9 8. On June 9, 2022, Judge Camacho signed and re-issued the arrest warrant for
10 Defendant, and Defendant was arrested that same day.

11 9. On June 14, 2022, the Defendant was charged by Information with two counts of
12 Trafficking of a Controlled Substance, in violation of 6 CMC § 2141(a)(1).

13 10. On June 28, 2022, Presiding Judge Roberto C. Naraja issued the Case Management
14 Order.

15 11. On August 3, 2022, Judge Camacho issued the Order Setting Jury Trial. The jury trial
16 was set for December 5, 2022.

17 12. On September 27, 2022, Defendant's Motion to Suppress Evidence was filed.
18

19 20 **III. PROCEDURAL BACKGROUND**

21 On June 14, 2022, Defendant was charged by Information with two counts of
22 Trafficking of a Controlled Substance, methamphetamine, commonly known as "Ice". Also
23 on June 28, 2022, the Case Management Order was issued.

24 On September 27, 2022, Defendant filed a Motion to Suppress Evidence, seeking the
25 suppression of "all evidence and statements obtained as a result of the eavesdropping warrant
26 issued without sufficient probable cause and in violation of [the Defendant's] right to

1 privacy.” *See* Defendant’s Motion to Suppress at 1. Defendant seeks to suppress any evidence,
2 statements, or observations obtained by DPS or DETF officers after the issuance of this search
3 warrant, including any audio or video recordings obtained as well as any suspected
4 methamphetamine, cash, and any alleged statements made by [Defendant]. *Id.* at 5. In support
5 of his request, the Defendant asserts that 1) the eavesdropping search warrant issued was
6 invalid because the application in support of the warrant failed to establish probable cause for
7 its issuance, and 2) the eavesdropping warrant issued was unconstitutional because the
8 Commonwealth failed to show why voice and video recordings were necessary for its
9 investigation. *Id.* at 7.

11 **IV. LEGAL STANDARD**

13 ***Motion to Suppress***

14 Any defense, objection, or request which is capable of determination without the trial
15 of the general issue may be raised before trial by motion. Motions may be written or oral at
16 the discretion of the judge. The following must be raised before trial: Motions to suppress
17 evidence. *See* NMI R. Crim. P. 12(b)(3).

18 “Unless otherwise provided by rule, the court may, at the time of the arraignment or
19 as soon thereafter as practicable, set a time for the making of pretrial motions or requests and,
20 if required, a later date of hearing.” NMI R. Crim. P. 12(c).

21 ***Eavesdropping Warrant***

22 “No warrants shall issue except upon probable cause supported by oath or affirmation
23 and particularly describing the place to be searched and the persons or things to be seized.”
24 *See* NMI Const. art. I, § 3(a). “No wiretapping, electronic eavesdropping or other comparable
25 means of surveillance shall be used except pursuant to a warrant.” *See* NMI Const. art. I, §
26 3(b). “The application for a warrant must set forth facts tending to establish the existence of
probable cause.” *See Commonwealth v. Crisostomo*, Criminal Case No. 10-0114D (Order at
6) (citing *Commonwealth v. Bowie*, 3 NMI 462, 467 (1993)). “However, it is not the affiant’s

1 belief that supports probable cause, but the magistrate's determination based on the facts set
2 forth on the face of the affidavit." *See United States v. McCain*, 271 F. Supp. 2d 1187, 1192.
3 It is also not the post hoc presentation of evidence absent from the Affidavit that will support
4 probable cause, but what is presented to the magistrate at the time he issues the warrant." *Id.*

5 "If the judge is satisfied that grounds for the application exist or that there is probable
6 cause to believe that they exist, the judge shall issue a warrant identifying the property or
7 person to be seized and naming or describing the person or place to be searched." NMI R.
8 Crim. P. 41(c)(1).

9 V. DISCUSSION

10 11 A. Filing deadline from Case Management Order does not necessarily bar a 12 Motion to Suppress Evidence

13 The Commonwealth argues that Defendant untimely filed his Motion to Suppress
14 Evidence because it was past the deadline set in the Case Management Order. *See*
15 Commonwealth's Response to Defendant's Motion to Suppress Evidence at 4-5. "All other
16 notices and pleading not covered herein shall be filed no later than fifty-five (55) days from
17 the date of this Order." *See* provision 4(c) of Case Management Order at 3. The date of the
18 Case Management Order was June 28, 2022, and fifty-five days from that date was August
19 16, 2022. Defendant filed the Motion to Suppress on September 27, 2022, forty-two days after
20 the fifty-five-day deadline. A motion to suppress is a pretrial motion not a pleading or a notice.
21 The fifty-five-day deadline does not necessarily bar Defendant's Motion to Suppress. Rule
22 12(b) has already set a deadline for certain motions including a motion to suppress, to be made
23 before trial. *See* NMI R. Crim. P. 12(b)(3). Though best practice would have been for
24 Defendant to file the motion to suppress within the deadline set by the Case Management
25 Order, because a motion to suppress is a pretrial motion, not a pleading or a notice, the Court
26 has the discretion to take up the matter. As to the posture of this case, the delay of the trial, if
any, does not appear to prejudice the Commonwealth or the Commonwealth's witnesses.
Notwithstanding that the Case Management Order deadline has passed, NMI R. Crim. P. Rule

1 12(b) does not specifically prohibit or completely bar the Court from taking up the motion to
2 suppress before trial. At the time of the filing of the Motion to Suppress, the jury trial was still
3 three months away. The Court finds that the Commonwealth or the Commonwealth's
4 witnesses are not prejudiced, thus the Court will address the Defendant's Motion to Suppress.

5 **B. Probable Cause**

6 Defendant argues that the eavesdropping warrant failed to include information that
7 would allow a judge to assess the reliability of the CS. *See* Defendant's Motion to Suppress
8 at 6-7. If the officer does not describe previous experience with the informant that would
9 bolster the informant's credibility, then the officer must take steps to "test the informant's
10 veracity," such as by verifying key information received from the informant or identifying
11 other sources providing the same information. *United States v. Crawford*, 943 F.3d 297, 306-
12 07 (6th Cir. 2019) (citing *United States v. Hammond*, 351 F.3d 765, 772 (noting that when an
13 affidavit contains vague information from an informant who is not known to the police or
14 known to be reliable, the informant's "tip can take on an increased level of significance for
15 probable cause purposes, if corroborated by the police through subsequent investigation").
16 The CS provided Officer Feger with Defendant's phone number, and a previous meeting with
17 Defendant to buy methamphetamine including the location of that meeting. Meeting
18 Defendant in person, buying methamphetamine at a specific location, and obtaining
19 Defendant's phone number to contact Defendant to buy more methamphetamine is not *vague*
20 information.

21 "Further, to secure an eavesdropping warrant, the application must establish
22 "substantial evidence that a person whose conversations are about to be intercepted is
23 committing, has committed or is about to commit a crime and that communications concerning
24 the crime will be obtained through the wiretapping or electronic eavesdropping.'" *Commonwealth v. Crisostomo* at 6. (citing the Analysis of the Constitution of the
25 Commonwealth of the Northern Mariana Islands (December 6, 1976) at 9). Based on the CS
26 previous purchase and Defendant giving the CS his phone number to contact Defendant to

1 buy more methamphetamine, there was substantial likelihood that if the CS were to meet with
2 Defendant again to procure methamphetamine, there would be evidence of a crime being
3 committed. By recording the conversations between the CS and Defendant there would be
4 evidence of Defendant trafficking methamphetamine. The CS's previous encounter with
5 Defendant showed a history of Defendant trafficking methamphetamine and the intent to do
6 so again. Defendant's alleged statement that "if [CS] needs to purchase methamphetamine or
7 "Ice" to contact Defendant through cell phone (670)-588-6384, at any time during the day or
8 night." *See* Exhibit B to Defendant's Motion at 2.

9 The CS gave Officer Feger detailed and reliable information about Defendant. Having
10 met Defendant in person, the CS knew Defendant sold methamphetamine. Defendant had
11 given his phone number to the CS if the CS wanted to buy more methamphetamine from
12 Defendant. The Affidavit provided enough information – who was committing a crime, what
13 kind of crime was being committed, and how the CS was to contact the Defendant to purchase
14 more of the illegal substance methamphetamine - for probable cause for the eavesdropping
15 warrant. Thus, the Court finds that the CS's statements in the Affidavit were detailed and
16 reliable to establish probable cause.

17 **C. Necessity of Audio/Video Recording a Buy-Walk Operation**

18 ***i. Necessity Requirement***

19 Defendant relies on the federal wiretapping statute, also known as Title III of the
20 Omnibus Crime Control and Safe Streets Act of 1968. Title III is codified in Title 18 U.S.
21 Code § 2518, which addresses the requirements for which a judge may enter an ex parte order
22 authorizing or approving an application for a wiretap. *See* 18 U.S. Code § 2518(3). For its
23 approval, the judge must determine whether "normal investigative procedures have been tried
24 and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."
25 *See* 18 USC 2518 3(c).
26

1 Defendant contends that the “case law interpreting this [18 USC § 2518 3(c)] is
2 instructive to the interpretation of NMI’s own necessity requirement,” specifically Article I §
3 3 and 10 of the NMI Constitution. *See* Defendant’s Reply to Opposition to Defendant’s
4 Motion to Suppress at 5. According to Defendant, the court should apply the necessity
5 requirement outlined in Article I § 10, to encompass applications for eavesdropping warrants.
6 *Id.* at 6. “The right of individual privacy shall not be infringed except upon a showing of
7 compelling interest.” *See* NMI Constitution art. I § 10. The necessity requirement comes from
8 an expansion on Article I § 10 in the Analysis of the Constitution that explains how an
9 intrusion could be compelling. The Analysis of the Constitution states, “[t]his requires proof
10 that the intrusion was necessary and could not have been accomplished in any other less
11 intrusive way”, Analysis of the Constitution at 30, which mirrors the federal requirement that
12 “normal investigative procedures have been tried and have failed”. *See* 18 US § 2518 3(c).

14 The requirements for eavesdropping or wiretapping are outlined in Article I § 3 of the
15 NMI constitution and Article I § 3(b) of the Analysis of the Constitution. “No wiretapping,
16 electronic eavesdropping or other comparable means of surveillance shall be used except
17 pursuant to a warrant”. *See* NMI Const. art. I, § 3(b). Before Defendant’s communications
18 were intercepted, Officer Feger applied for an eavesdropping warrant. The Analysis of the
19 Constitution states, “[i]t must be issued only upon probable cause.” *See* Analysis of the
20 Constitution at 10. “There must be substantial evidence that through wiretapping or electronic
21 eavesdropping authorized by a warrant, the intercepted conversations will reveal that the
22 person being intercepted is committing, has committed or is about to commit a crime.” *See*
23 Analysis of the Constitution at 11. Neither Article I § 3(b) of the NMI constitution nor Article
24 I § 3(b) of the Analysis of the Constitution requires an explanation for the necessity of
25 wiretapping or eavesdropping like what is required in the federal wiretapping statute, also
26

known as Title III of the Omnibus Crime Control and Safe Streets Act of 1968 as codified in Title 18 U.S. Code § 2518.

Officer Feger followed the appropriate protocol and submitted an affidavit to a judge to determine if probable cause existed for the issuance of an eavesdropping warrant. After providing detailed and reliable information about Defendant and activities dealing with methamphetamine, the judge found probable cause to grant the eavesdropping warrant.

ii. Fourth Amendment of the U.S. Constitution

“First, Section 10 indicates that the right to privacy is explicitly recognized in the Commonwealth as a constitutional guarantee, distinct from privacy interests that may be protected by the due process or equal protection clauses of the Commonwealth or U.S. Constitutions.” *Elameto v. Commonwealth*, 2018 MP 15, ¶16. Defendant argues that Article I § 10 of the NMI Constitution is the NMI “necessity requirement”. “The right of individual privacy shall not be infringed except upon a showing of compelling interest.” NMI Constitution art. I § 10. In this case, Defendant argues the warrant did not include a showing of a “compelling government interest” justifying the need for audio/voice recording. “The public has an interest in protecting the health, safety and welfare of the community composed of individuals.” Analysis of the Constitution at 29. DPS Sergeant Udui and Officer Feger received information that a person was illegally trafficking methamphetamine in Saipan, which posed a threat to the health, safety, and welfare of the community. In such instances where trafficking illegal substances is of concern, the government does have a compelling interest in protecting public safety.

Obtaining an eavesdropping warrant and recording conversations between Defendant and the CS served a public purpose. It is crucial to consider that the CS mentioned that the most recent interaction with Defendant occurred about a week earlier. Defendant could be contacted for more methamphetamine indicating the ongoing nature of Defendant’s illegal

activities and its impact on public health, safety, and welfare. The Affidavit contained detailed and reliable information for a finding of probable cause and recording the buy-walk operation would yield evidence of a criminal offense. Following constitutional requirements, Officer Feger applied for a warrant. Pursuant to the eavesdropping warrant, DETF recorded two instances of Defendant selling methamphetamine to the CS on February 11, 2022, and February 16, 2022. In the Commonwealth of the Northern Mariana Islands, what is required to issue an eavesdropping warrant is already outlined in Article I § 3 of the NMI constitution and Article I § 3(b) of the Analysis of the Constitution. For Defendant to substantiate his claim of a violation of his right to privacy, he must “provide sufficient evidence to establish that an intrusion rising to the level of a constitutional violation occurred.” *Elameto v. Commonwealth*, at ¶18. Therefore, compliance with Article I § 3 of the NMI constitution and Article I § 3(b) of the Analysis of the Constitution in obtaining an eavesdropping warrant protects the people of the Commonwealth’s Constitutional Right to Privacy.

VI. CONCLUSION

Notwithstanding Defendant not following the deadlines in a case management order, the Case Management Order does not specifically prohibit or completely bar the Defendant from filing his motion to suppress evidence prior to trial. The motion to suppress falls under the governance of NMI R. Crim. P. 12(b)(3) as a pretrial motion that can be filed before trial. The Commonwealth or the Commonwealth’s witnesses are not prejudiced by the Court taking up the Defendant’s Motion to Suppress after the deadline set in the Case Management Order has passed but before the trial.

The Court finds that the Affidavit submitted in support of an eavesdropping warrant included statements by the Informant that were sufficiently detailed and reliable for a finding of probable cause. Furthermore, compliance with Article I § 3 of the NMI Constitution in

1 obtaining an eavesdropping warrant protects the Right to Privacy in Article I § 10 of the NMI
2 Constitution. **THEREFORE**, Defendant's Motion to Suppress is **DENIED**.

3
4 **SO ORDERED** this 3rd day of August 2023.

5
6 /s/
7 **JOSEPH N. CAMACHO**, Associate Judge