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By order of the Court, Judge Joseph N. Camacho

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

**COMMONWEALTH OF THE
 NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

KELVIN CABRERA SANCHEZ,

Defendant.

CRIMINAL CASE NO. 23-0132

**ORDER GRANTING DEFENDANT’S
 MOTION TO SUPPRESS EVIDENCE
 BECAUSE THE WARRANTLESS
 SEARCHES DID NOT COMPLY WITH
 ANY EXCEPTIONS, THUS
 THE WARRANTLESS SEARCHES
 VIOLATED THE UNITED STATES
 CONSTITUTION AND THE
 COMMONWEALTH OF THE
 NORTHERN MARIANA ISLANDS
 CONSTITUTION**

I. INTRODUCTION

THIS MATTER came before the Court for an Evidentiary Hearing on Kelvin Cabrera Sanchez’s (“Defendant” or “Sanchez”) Motion to Suppress on May 1, 2024, at 10:00 a.m. in Courtroom 220A. Assistant Attorney General David Karch represented the Commonwealth of the Northern Mariana Islands (“Government”). The Defendant appeared and was represented by Assistant Public Defender Molly Dennert.

II. PROCEDURAL HISTORY

1. On November 15, 2023, the Government filed the Information charging Sanchez with one count of Unlawful Possession of Ammunition and one count of Illegal Possession of a Controlled Substance, Crystal Methamphetamine commonly known as “ice.”
2. On March 6, 2024, Sanchez filed a Motion to Suppress Evidence arguing that the warrantless searches violated the Fourth Amendment to the United States Constitution

1 and Article I, Section 3 of the Constitution of the Commonwealth of the Northern
2 Mariana Islands, and there was no exception to a warrantless search that applied.
3 Sanchez further claimed that he was not inherently dangerous, was not observed
4 driving, and the Department of Public Safety (“DPS”) officers abruptly confronted
5 him walking on a residential road.

- 6 3. On March 7, 2024, the Court set the Evidentiary Hearing for May 1, 2024.
- 7 4. On April 2, 2024, the Government filed its Opposition to the Defendant’s Motion to
8 Suppress Evidence.
- 9 5. On April 26, 2024, Sanchez filed a Reply to the Government’s Opposition.
- 10 6. On May 1, 2024, during the Evidentiary Hearing, three witnesses testified: (1)
11 DPS Officer Paul Ichihara, (“Officer Ichihara”), (2) DPS Sgt. Michael Langdon, (“Sgt.
12 Langdon”), and (3) DPS Officer Giovanni Taitingfong, (“Officer Taitingfong”), and
13 no exhibits were admitted.
- 14 7. Officer Ichihara testified that he heard on the DPS Radio Dispatch that a vehicle was
15 following another vehicle near Northern Marianas College in the As Terlaje area.
16 Officer Ichihara was the first of the three DPS officers who testified at the Evidentiary
17 Hearing to arrive at the San Jose residential area. When Officer Ichihara arrived,
18 Sanchez was speaking to DPS Officer Ogumoro and DPS Officer Santos. Officer
19 Ichihara arrived approximately three minutes after DPS Officer Ogumoro and DPS
20 Officer Santos. It took Officer Ichihara fifteen minutes from DPS central in Susupe to
21 drive to the San Jose residential area. Officer Ichihara asked if the other DPS officers
22 had patted down Sanchez. Officer Ichihara asked Sanchez to come with him and asked
23 if he could pat Sanchez down for Sanchez’s safety and officer safety. Officer Ichihara
24 did this because Sanchez wore a jacket at night and had his hands under his armpit.
25 Officer Ichihara proceeded to pat Sanchez down when he felt a small object in
26

1 Sanchez's left pocket. Officer Ichihara asked Sanchez what was in the pocket and
2 Sanchez responded a glass pipe. Officer Ichihara instructed Sanchez to remove the
3 object, and Sanchez complied, taking out a glass pipe. Officer Ichihara observed a
4 white powdery substance in the pipe and called DPS Central by radio to note his
5 findings. Officer Ichihara got a narcotics identification kit from Sgt. Langdon. Officer
6 Ichihara proceeded to test the white powdery substance. The narcotics identification
7 kit showed a presumptive positive for methamphetamine commonly known as "ice".
8 Officer Ichihara observed Sgt. Langdon perform a field sobriety test on Sanchez, and
9 then Sgt. Langdon placed Sanchez under arrest. Officer Ichihara testified that Sanchez
10 told the DPS officers they could not touch his bag and Sanchez did not permit the DPS
11 officers to touch his bag. Officer Ichihara searched the bag and found a weight scale,
12 a zip loc bag, and a straw. After the search, DPS officers procured the bag. DPS
13 Officers impounded the white Toyota Corolla that was at the San Jose residential area.
14 At the DPS impound lot Officer Ichihara and Officer Taitingfong did an inventory of
15 the white Toyota Corolla. Officer Ichihara did not observe any indication of
16 intoxication from Sanchez. Officer Ichihara did not ask Sanchez if Sanchez was
17 driving the white Toyota Corolla. Officer Ichihara did not advise Sanchez of his
18 Constitutional rights before conducting the pat down.
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21 8. Sgt. Langdon testified that he overheard the radio conversation and proceeded to head
22 to the location in San Jose. Sgt. Langdon arrived on the scene and saw several other
23 DPS officers standing with Sanchez. Sgt. Langdon saw the black bag on top of a
24 vehicle near Sanchez. Sgt. Langdon asked Sanchez if he was okay or needed medical
25 assistance. Sgt. Langdon smelled a strong odor of marijuana and intoxicants and
26 noticed Sanchez's face was flushed. Sgt. Langdon then asked Sanchez if he smoked
marijuana or had anything to drink and Sanchez replied in the affirmative. When Sgt.

1 Langdon asked how much he had to drink Sanchez shrugged his shoulders. Sgt.
2 Langdon asked Sanchez when was the last time Sanchez smoked and Sanchez replied
3 before he drove. Sgt. Langdon asked if anyone was with Sanchez in the vehicle while
4 driving and Sanchez said he was alone. Sgt. Langdon did not see Sanchez driving any
5 car nor did Sgt. Langdon hear Sanchez say when or what car Sanchez drove. Sgt.
6 Langdon advised Sanchez of his Constitutional rights at the scene and placed Sanchez
7 under arrest for Driving Under the Influence (“DUI”). Sgt. Langdon requested a tow
8 truck. Sanchez was cited for noncompliance with vehicle registration, and vehicle
9 insurance.
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11 9. Officer Taitingfong testified that he was on duty when he heard the call through DPS
12 radio dispatch, and then Officer Taitingfong went to the scene in San Jose. When
13 Officer Taitingfong arrived in San Jose, Officer Taitingfong saw Sanchez speaking to
14 DPS Officer Santos and Officer Ichihara. Officer Taitingfong spoke to Officer
15 Ichihara. Officer Taitingfong saw Sgt. Langdon make contact with Sanchez and
16 conduct his DUI investigation. Officer Taitingfong saw a white Toyota Corolla with
17 license plate ADA-829 parked right in front of the apartment in the San Jose residential
18 area where Sanchez was found. Sanchez was standing in the roadway next to a blue
19 Toyota Echo. Sanchez was then handcuffed and placed under arrest. Officer
20 Taitingfong requested a read-out from DPS central on the white Toyota Corolla and
21 found that the registration of the vehicle had expired. Officer Taitingfong called for
22 the vehicle to be impounded and then did an inventory of Sanchez’s black bag. When
23 the white Toyota Corolla was brought to the impound lot an inventory on the vehicle
24 was conducted. Officer Taitingfong did not see Sanchez driving the white Toyota
25 Corolla. Officer Taitingfong was not aware of Sanchez being intoxicated because he
26 did not make contact with Sanchez. The white Toyota Corolla was registered to Billy

1 Sanchez. Officer Taitingfong did not check the registrations of the other cars on the
2 scene. Officer Taitingfong testified that through prior knowledge, he knows Kelvin
3 Cabrera Sanchez is related to Billy Sanchez, possibly as cousins.

4 **III. FINDINGS OF FACTS**

5 Based on the sworn testimonies¹, the Court makes the following findings:

- 6 1. As Terlaje is located about a mile from San Jose.
- 7 2. No accurate timeline was presented of the alleged incident at As Terlaje and the
8 officers at the San Jose residential area.
- 9 3. DPS officers went to a San Jose residential area.
- 10 4. DPS Officer Santos and DPS Officer Ogumoro were at the San Jose residential area.
11 Other DPS officers arrived after DPS Officer Santos and DPS Officer Ogumoro.
- 12 5. DPS Officer Santos and DPS Officer Ogumoro did not testify at the Evidentiary
13 Hearing.
- 14 6. Sanchez was walking at the San Jose residential area.
- 15 7. Of the three DPS officers who testified at the Evidentiary Hearing, Officer Ichihara
16 was the first to arrive at the San Jose residential area.
- 17 8. Officer Ichihara had not seen Sanchez driving any vehicle.
- 18 9. It took Officer Ichihara about fifteen minutes to arrive at the San Jose residential area.
19 Officer Ichihara arrived at the San Jose residential area three minutes after DPS Officer
20 Santos and DPS Officer Ogumoro.
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25 ¹ There was no testimony or evidence presented at the May 1, 2024 Evidentiary Hearing as to exactly what
26 happened in the As Terlaje area. Furthermore, there was no testimony or evidence presented at the May 1, 2024
Evidentiary Hearing as to exactly why or how officers went to the San Jose residential area. Perhaps a lot of
things happened. Perhaps nothing of significance happened. It would be improper for the Court to speculate.
The Court's findings are limited to the sworn testimonies received in court as those were the only evidence
presented.

- 1 10. Officer Ichihara brought Sanchez aside and conducted a pat down. Officer Ichihara's
2 reason for the pat down was it was nighttime and Sanchez wore a jacket with his hands
3 under his armpit.
- 4 11. Officer Ichihara proceeded to pat Sanchez down when he felt a small object in
5 Sanchez's left pocket. Officer Ichihara asked Sanchez what was in the pocket and
6 Sanchez responded it was a glass pipe.
- 7 12. Officer Ichihara instructed Sanchez to remove the object, and Sanchez complied,
8 taking out a glass pipe. Officer Ichihara observed a white powdery substance in the
9 pipe.
- 10 13. Officer Ichihara got a narcotics identification kit from Sgt. Langdon.
- 11 14. Officer Ichihara proceeded to test the white powdery substance. The kit showed a
12 presumptive positive for methamphetamine commonly known as "ice."
- 13 15. Of the three DPS officers who testified at the Evidentiary Hearing, Sgt. Langdon was
14 the second to arrive at the San Jose residential area.
- 15 16. Sgt. Langdon arrived at the San Jose residential area after Officer Ichihara.
- 16 17. Sgt. Langdon did not see Sanchez driving any vehicle.
- 17 18. Sgt. Langdon saw several other officers standing with Sanchez.
- 18 19. Sgt. Langdon asked Sanchez if he was okay or needed medical assistance.
- 19 20. Sgt. Langdon smelled a strong odor of marijuana and noticed Sanchez's face was
20 flushed.
- 21 21. Sgt. Langdon asked Sanchez a series of questions to determine if Sanchez had been
22 driving under the influence.
- 23 22. Sgt. Langdon did not hear Sanchez say *when* Sanchez drove or *what* car he drove.
- 24 23. Sgt. Langdon advised Sanchez of his constitutional rights at the scene and placed
25 Sanchez under arrest for Driving Under the Influence.
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24. Of the three officers who testified at the Evidentiary Hearing, Officer Taitingfong was the third to arrive at the San Jose residential area.

25. When Officer Taitingfong arrived, he saw Sanchez speaking to DPS Officer Santos and Officer Ichihara. Sanchez was standing in the roadway next to a blue Toyota Echo.

26. Officer Taitingfong had not seen Sanchez driving any vehicle.

27. Officer Taitingfong saw Sgt. Langdon conduct a DUI investigation on Sanchez.

28. Officer Taitingfong saw a white Toyota Corolla with license plate ADA-829 parked right in front of the apartment in the San Jose residential area.

29. Officer Taitingfong requested a registration read-out of the white Toyota Corolla from DPS Central.

30. The white Toyota Corolla was registered to Billy Sanchez. The white Toyota Corolla’s vehicle registration was expired.

31. Officer Taitingfong did not check the registrations of the other cars at the San Jose residential area.

32. Officer Taitingfong called for the white Toyota Corolla to be impounded.

33. Officer Ichihara and Officer Taitingfong searched the black bag that was on top of the blue Toyota Echo.

IV. LEGAL STANDARD

“The Fourth Amendment protects people from unreasonable searches and seizures by the government, and it permits brief investigative stops . . . when a law enforcement officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *United States v. Atchak*, 2023 U.S. Dist. LEXIS 157016 at * 3 (citing U.S. Const. amend. IV; *Navarette v. California*, 572 U.S. 393, 396 (2014) (internal citations omitted).

1 “Article I, section 3 of the NMI Constitution and the Fourth Amendment to the United
2 States Constitution prohibit unreasonable searches and seizures.” *Commonwealth v.*
3 *Crisostomo*, 2014 MP 18 (citing *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 13). “This
4 protection ‘extend[s] to brief investigatory stops of persons or vehicles that fall short of
5 traditional arrest.’” *Id.*

6 “[G]enerally, ‘[t]he government bears the burden of justifying a warrantless
7 search.’” *United States v. Cortez-Rivera*, 454 F.3d 1038, 1041 (citing *United States v.*
8 *Johnson*, 936 F.2d 1082, 1084 (9th Cir. 1991) (per curiam)). “However, once the defendant
9 satisfies these burdens by raising an issue for suppression, the burden of persuasion shifts to
10 the government to justify its search by showing that the search was lawful.” *Commonwealth*
11 *of the N. Mariana Islands v. Yu Zhu Zhang*, Criminal Case No. 22-0039 (NMI Super. Ct. Feb.
12 13, 2023) (Order Denying Defendant's Motion to Suppress as to the Mailed Package... Order
13 Granting Defendant's Motion to Suppress as to the Illegal Contraband...) (citing *United States*
14 *v. Arboleda*, 633 F.2d 985, 989 (2d Cir. 1980)). “It is the Government's burden to prove by a
15 preponderance of the evidence that the officer conducting the stop had a reasonable and
16 articulable suspicion that the defendant was engaged in criminal activity.” *United States v.*
17 *Tompkins*, 2009 U.S. Dist. LEXIS 126944 at *21-22 (citing *Terry v. Ohio*, 392 U.S. 1, 30
18 (1968)).
19
20

21 **V. DISCUSSION**

22 **Reasonable Suspicion**

23 “Reasonable suspicion exists when an officer is aware of specific, articulable facts
24 which, when considered with objective and reasonable inferences, form a basis for
25 particularized suspicion.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir.
26 2000).

1 the U.S.-Canada border. *See United States v. Manrique-Frias*, 2023 U.S. Dist. LEXIS 165486
2 at *9 (D. Mont. Sep. 18, 2023). In *Manrique-Frias*, responding officers made several
3 observations that led to their reasonable suspicion, including “Manrique-Frias’s proximity to
4 the border, the characteristics of the area, previous illegal entry in the area, and Manrique-
5 Frias’s behavior.” *Id.* at 8-9. It was “a rural area where it was unusual to have hitchhikers”
6 and “the CBP officers further testified that it was cold and there was snow on the ground.” *Id.*
7 at 9. When the CBP officers encountered the defendant, he was in an area “where on-foot
8 illegal entries recently had increased.” *Id.* at 10.

9
10 In *United States v. Edwards*, the 911 caller provided sufficient information for officers
11 to act upon. *See United States v. Edwards*, 761 F.3d 977, 982 (2014). “In this case, the tip was
12 an anonymous 911 call from an eyewitness reporting an ongoing and dangerous situation and
13 providing a detailed description of a suspect.” *Id.* at 984. In *Edwards* and *Manrique-Frias*,
14 officers had a connection between the person stopped and a certain criminal activity they were
15 investigating.

16 Here, the DPS officers are unable to establish a link between Sanchez and the white
17 Toyota Corolla, as the DPS officers did not witness Sanchez operating the vehicle and it is
18 not registered in his name. Sanchez stood in the same vicinity of the white Toyota Corolla,
19 but there were other cars parked on that road as testified to by the DPS officers. The
20 Government has failed to demonstrate what crime was being investigated in the San Jose
21 residential area. When DPS officers arrived at the San Jose residential area, Sanchez was in
22 the area. Sanchez was never seen driving the white Toyota Corolla or any car in the As Terlaje
23 area or the San Jose residential area.
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25 The Court finds that the responding DPS officers did not have reasonable suspicion to
26 conduct an investigative stop on Sanchez. Therefore, the Court finds that the Government
has failed to prove by a preponderance of the evidence that the warrantless search did not

1 violate the Fourth Amendment to the United States Constitution and Article I, Section 3 of
2 the Constitution of the Commonwealth of the Northern Mariana Islands.

3 Though the Court can end its analysis at this point, in the interest of thoroughness the
4 Court will address the other searches.

5 **i. Pat Down for Officer Safety**

6 “*Terry* permits a brief stop of a person whose suspicious conduct leads an officer to
7 conclude [...] that criminal activity may be afoot, and a pat down search of the person for
8 weapons when **the officer is justified** that the person may be armed and presently dangerous.”
9 *Minnesota v. Dickerson*, 508 U.S. 366, 366-67 (1993) (emphasis added).

10 When Officer Ichihara approached Sanchez to conduct a pat down, Officer Ichihara
11 did not have a “particularized and objective basis” for doing so. Sanchez was not presently
12 doing anything suspicious. “Courts consider all the circumstances surrounding an encounter
13 to determine whether it was consensual.” *Manrique-Frias*, at 6 (citing *United States v. Kim*,
14 25 F.3d 1426, 1430 (9th Cir. 1994)). “The U.S. Supreme Court has considered ‘the
15 threatening presence of several officers, the display of a weapon by an officer, some physical
16 touching of the person of the citizen, or the use of language or tone of voice indicating that
17 compliance with the officer's request might be compelled’ in making this determination.” *Id.*
18 (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). With several armed DPS
19 officers surrounding Sanchez, Officer Ichihara conducted a pat down. The situation had
20 transitioned from Sanchez conversing with two DPS officers to being escorted to the side by
21 a third DPS officer, namely Officer Ichihara for a pat down.

22 Officer Ichihara did not see weapons on Sanchez’s person, he did not observe Sanchez
23 acting erratically, and most importantly, Officer Ichihara did not see Sanchez in any vehicle
24 on the scene. Sanchez was not stopped for suspicious conduct, nor did Officer Ichihara assume
25 or have reason to assume Sanchez had weapons and may be presently dangerous. Sanchez
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1 was stopped while walking on a road near a residential area and some cars were parked in that
2 area. “Unlike a general interest in criminal enforcement, however, the government’s officer
3 safety interest stems from the mission of the stop itself.” *Rodriguez v. United States*, 575 U.S.
4 348, 356 (2015). In *United States v. Job*, officers went to a residence looking for Richard
5 Elliot and saw Defendant Job opening the garage of the same residence. *See United States v.*
6 *Job*, 871 F.3d 852, 858 (2017). The Defendant Job wore a baggy shirt with cargo pants that
7 had full pockets. *See Id.* “In the police report, Officer Dedonato stated that he ‘felt it would
8 be much safer for my partners and myself if I patted Job down for weapons.’” *Id.* at 858. The
9 Defendant Job was unrelated to the reason the officers had gone to that home. *Id.* Officers
10 handcuffed the Defendant Job and patted him down, feeling “a hard tube-like object with a
11 bulbous end” in one of the pockets. *Id.* When the officer pulled out a glass pipe, he arrested
12 Job for “possession of narcotics paraphernalia.” *Id.* The officer observed Job at the garage
13 looking nervous and saw that his pockets were filled. *See United States v. Job*, 871 F.3d at
14 858. “But the facts that Job’s pants appeared to be ‘full of items’ and he appeared nervous do
15 not support the conclusion that he was engaged in criminal activity.” *Id.* at 861. The Court in
16 *Job* found that the officers did not have reasonable suspicion that Job engaged in criminal
17 activity. *See Id.* The Court in *Job* also stated that the record did not show that Job and the
18 person the officers were looking for were engaged in a similar criminal activity or that Job
19 might pose a threat to officers. *See Id.* The Court in *Job* found the search of Job’s person was
20 unlawful and the evidence found should have been suppressed. *See Id.* at 862.

23 Here, Officer Ichihara’s reasoning for patting down Sanchez was that it was night, he
24 was wearing a jacket, and his hands were under his armpits. Officer Ichihara did not see a
25 weapon on Sanchez’s person or have a reason to believe that Sanchez could pose a threat to
26 him and the other DPS officers. More importantly, the DPS officers could not connect Sanchez
to a specific crime that would lead them to believe Sanchez could be armed and dangerous,

1 thus requiring a pat down. The Government argues that the plain view exception applies here.
2 “One of the exceptions to the Fourth Amendment’s warrant requirement allows warrantless
3 seizures under the ‘plain view’ doctrine.” *Commonwealth of the N. Mariana Islands v. Pua*,
4 2009 MP 21 ¶ 21 (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)). “The plain
5 view doctrine allows police officers to seize an item without a warrant if: (1) officers are
6 lawfully in a position from which the officers view an object; (2) its incriminating character
7 is immediately apparent; and (3) the officers have a lawful right of access to the object.”
8 *Id.* (citing *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993)). The Court in *Pua* goes on to
9 say the plain view exception is “an extension of whatever the prior justification for an officer's
10 access to an object may be.” *Id.* (citing *Texas v. Brown*, 460 U.S. 730, 738-39 (1983) (plurality
11 opinion)).
12

13 Here, Officer Ichihara was not lawfully in a position where he could view the object
14 because the object was in Sanchez’s left pocket and could not be seen. Officer Ichihara
15 discovered the glass pipe during a pat down of Sanchez when he felt a round object. Officer
16 Ichihara then asked Sanchez about it and instructed Sanchez to take the object out and then
17 saw it was a glass pipe. The glass pipe was not immediately apparent because Officer Ichihara
18 did not see the pipe from where he stood with Sanchez. Officer Ichihara did not have a lawful
19 right to access the object because he had no reasonable suspicion to pat Sanchez down, nor
20 did Officer Ichihara have prior justification for access to the object because Sanchez was not
21 stopped for doing anything suspicious or criminal. Sanchez’s clothing, prior actions, or
22 behavior did not pose a threat to the DPS officers. The glass pipe was not in plain view of
23 Officer Ichihara’s observation.
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25 **ii. Sgt. Langdon’s DUI investigation**
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Sgt. Langdon was present when Officer Ichihara had Sanchez remove the glass pipe
from his left pocket. Sgt. Langdon then provided Officer Ichihara with the narcotics

1 identification kit. This occurred before Sgt. Langdon questioned Sanchez about a potential
2 DUI, even though no one witnessed Sanchez driving. Sgt. Langdon lacked sufficient grounds
3 to initiate a DUI investigation, as none of the DPS officers saw Sanchez driving. Referring
4 back to *Manrique-Frias*, while the off-duty officer initially alerted the responding officers of
5 Manrique-Frias' behavior and location, the responding officers made their observations of
6 wrongdoing by noting the weather and the location of Manrique-Frias. *See United States v.*
7 *Manrique-Frias* at 1, 9. Sgt. Langdon testified that he smelled the odor of marijuana. It is not
8 prohibited to smoke marijuana in the CNMI. Sgt. Langdon's observation that Sanchez may
9 have been smoking or intoxicated while walking down the road is not the same as Sgt.
10 Langdon observing Sanchez drive a vehicle while under the influence of marijuana or other
11 intoxicants.

13 **iii. Search Incident to Arrest Exception**

14 Officer Taitingfong searched a black bag after Sgt. Langdon placed Sanchez in
15 handcuffs. The Government contends it was a search incident to a lawful arrest. "A search
16 incident to a lawful arrest is an exception to the general rule that warrantless searches violate
17 the Fourth Amendment." *United States v. Camou*, 773 F.3d 932, 937 (9th Cir. 2014). In *State*
18 *v. Hall*, the testifying officer was conducting a lawful wellness check at the request of the
19 appellant's parents. *State v. Hall*, 2023-Ohio-3869 ¶2. The officers had a legitimate reason to
20 be at the scene, and based on the testifying officer's interaction with the appellant, the
21 appellant lunged for a knife in front of him, ignored his warnings to stop, and resisted arrest,
22 giving the officers the authority to arrest him. *See Id.* ¶¶ 4, 5.

24 In contrast, Sgt. Langdon did not have a lawful reason to arrest Sanchez for Driving
25 Under the Influence, as Sgt. Langdon and the other DPS officers who testified at the
26 Evidentiary Hearing did not personally witness Sanchez driving a vehicle. None of the
testifying DPS officers observed Sanchez driving under the influence while operating the

1 white Toyota Corolla. In the case of *Hall*, the officers had clear and observable reasons to
2 arrest the appellant. “Officers Adamescu and Moore were engaged in the official business of
3 conducting a wellness check within their official capacity as law enforcement officers.” *Hall*,
4 ¶ 5. The officers in *Hall* also had valid reasons to search the appellant, including reports from
5 his parents about meth use, the sighting of a butcher knife in his possession, and the presence
6 of various knives in his room. *See Id.* ¶¶ 5, 15.

7 “The first requirement of a search incident to arrest is that the search be limited to the
8 arrestee’s person or areas in the arrestee’s ‘immediate control’ at the time of arrest.” *Id.* (citing
9 *Arizona v. Gant*, 556 U.S. 332, 339 (2009)). The function of the first requirement is so officers
10 may prevent an arrestee from gaining possession of a weapon or destructible evidence. *See*
11 *Camou* at 937 (citing *Chimel v. California*, 395 U.S. 752, 763 (1969)). As testified by Officer
12 Taitingfong, the black bag was not in the immediate control of Sanchez, it was on top of the
13 blue Toyota Echo. Additionally, Officer Ichihara conducted a pat down of Sanchez before
14 Sgt. Langdon questioned Sanchez. Officer Ichihara stated that Sanchez was wearing a jacket
15 at night, and had his hands folded under his armpits as reasons for the pat down, none of which
16 were related to the black bag. The Government has not shown that Sanchez may have had a
17 weapon. In *Hall*, the appellant was known to carry knives as stated by his parents and the
18 testifying officer’s observations. *Hall*, ¶¶ 2, 5. The Government has also not shown that the
19 black bag was in Sanchez’s immediate control right before or right after he was arrested.
20 Officer Taitingfong testified that the black bag was on top of the Blue Toyota Echo before he
21 and Officer Ichihara searched it.

22 “The second requirement of a search incident to arrest is that the search be spatially
23 and temporally incident to the arrest.” *Camou* at 937 (citing *United States v. Chadwick*, 433
24 U.S. 1, 15 (1977), abrogated on other grounds by *California v. Acevedo*, 500 U.S. 565, 580
25 (1991)). The search incident to arrest took place immediately after Sanchez was arrested and
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1 in custody in the San Jose residential area. While the search was done immediately after the
2 arrest, the Government has not demonstrated that Sanchez had immediate control over the
3 black bag at the time of his arrest. The Court finds that the search of the black bag was not a
4 search incident to a lawful arrest because Sgt. Langdon's arrest of Sanchez was not lawful,
5 and the black bag was not in the immediate control of Sanchez to where Sanchez could gain
6 possession of a weapon or destructible evidence.

7 **iv. Inventory Search Exception**

8 Another exception to a warrantless search is "when police officers conduct
9 an inventory search following the impoundment of a vehicle." *Mendez-Vasquez v. State*, 217
10 N.E.3d 591, 594 (2023) (citing *Wilford v. State*, 50 N.E.3d 371, 374 (Ind. 2016)). The validity
11 of an inventory search is determined based on a two-part test. *See Mendez-Vasquez v. State*,
12 at 594.
13

14 First, the Government must establish that the impoundment giving rise to the need for
15 an inventory is valid under either statute or as a matter of community caretaking. *See Id.* at
16 594.

17 Second, courts must consider whether the scope of the inventory search was
18 reasonable. *See Id.* (citing *Fair v. State*, 627 N.E.2d 427, 431 (Ind. 1993)). The Court has
19 already found that the arrest of Sanchez for DUI was not lawful because none of the DPS
20 officers saw Sanchez driving any vehicle. The purpose of the inventory-search exception is to
21 protect an owner's property while it is in the custody of the police, insure against claims of
22 lost, stolen, or vandalized property, and guard the police from danger. *See Id.* at 595 (citing
23 *Colorado v. Bertine*, 479 U.S. 367, 372 (1987)).
24

25 The Government shall take temporary physical custody of "[a]ll vehicles driven or
26 operated by motorists who during the operation of said vehicles, violate Title 6 and/or Title 9
of the CNMI Code[.]" *See* Title 6 CMC § 2151(a)(1). Section 2151 gives two exceptions, one

1 of which states that no vehicle can be impounded if it was unlawfully possessed by someone
2 other than the owner in violation of criminal laws. *See* Title 6 CMC § 2151(a)(1)(ii). There
3 are two issues here. One, none of the DPS officers saw Sanchez driving any vehicle. Two, the
4 white Toyota Corolla that DPS officers impounded and searched, did not belong to Kelvin
5 Cabrera Sanchez. The white Toyota Corolla was registered to Billy Sanchez. The DPS officers
6 searched a vehicle the DPS officers did not see Sanchez driving and Sanchez did not own the
7 white Toyota Corolla. The scope of the search was unreasonable as the white Toyota Corolla
8 was not being driven by Sanchez in violation of Title 6 and/or Title 9 of the CNMI code.
9 Sanchez was not observed operating the vehicle while committing any violations under Title
10 6 and/or Title 9. The Court finds that the warrantless search of the white Toyota Corolla does
11 not fit within the inventory search exception.
12

13 **VI. CONCLUSION**

14 In a motion to suppress the Government has the burden of production to put forward
15 the “specific and articulable facts.” *United States v. Griffith*, 762 F. Supp. 2d 1179, 1190
16 (citing *United States v. Willis*, 431 F.3d 709, 715 n. 5 (9th Cir.2005) (quotations omitted)).
17 DPS officers violated Kelvin Cabrera Sanchez’s Fourth Amendment rights of the U.S.
18 Constitution and Article 1, Section 3 of the Constitution of the Commonwealth of the Northern
19 Mariana Islands by conducting warrantless searches on Sanchez and the black bag, absent any
20 exceptions.
21

22 DPS officers also failed to adhere to Title 6 §2151(a)(1)(ii) by searching the white
23 Toyota Corolla which Sanchez was not driving and Sanchez did not own. The Government
24 has not met its burden to produce specific and articulable facts that Sanchez had been driving
25 the white Toyota Corolla, much less driving it on that specific day, as none of the DPS officers
26 saw Sanchez driving that vehicle in connection with any crime.

1 Overall, the Court finds that Officer Ichihara did not have reasonable suspicion to pat
2 down Sanchez. Sgt. Langdon also lacked reasonable suspicion to inquire about DUI-related
3 matters and subsequently arrest Sanchez for Driving Under the Influence because Sgt.
4 Langdon and other DPS officers did not observe Sanchez driving under the influence. DPS
5 officers lacked the authority to impound the white Toyota Corolla and conduct an inventory
6 search when the vehicle did not belong to Sanchez and none of the officers observed Sanchez
7 driving the white Toyota Corolla.

8 Finally, the Government has not shown that the DPS officers had reasonable suspicion
9 to conduct an investigative stop on Sanchez. Any evidence found in connection to the
10 investigative stop from the warrantless searches must be suppressed.
11

12 Therefore, the Court finds that the Government has failed to prove by a preponderance
13 of the evidence that the warrantless searches did not violate the Fourth Amendment to the
14 United States Constitution and Article I, Section 3 of the Constitution of the Commonwealth
15 of the Northern Mariana Islands.

16 **THEREFORE**, the Defendant Kelvin Cabrera Sanchez's Motion to Suppress
17 Evidence is **GRANTED**.

18
19 **SO ORDERED** this 25th day of July, 2024.
20

21
22 /s/
JOSEPH N. CAMACHO, Associate Judge
23
24
25
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