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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

BEN CASTRO CRISOSTOMO,
DOB: 10/31/1983

Defendant.

) Superior Court Case No. **CF0097-23**
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DECISION AND ORDER
RE. LIMITED REMAND ORDER

INTRODUCTION

This matter is before the Honorable Judge Maria T. Cenzone upon the Supreme Court of Guam's Limited Remand Order (the "Remand Order") of July 18, 2024, ordering this Court to consider Defendant's claim as set forth in its motion for stay and limited remand filed in the Supreme Court (hereinafter the "Appellate Motion") that the People failed to disclose exculpatory material. Representing Defendant Ben Castro Crisostomo (hereinafter "Defendant" or "Defendant Crisostomo") in this matter is Assistant Alternate Public Defender Peter J. Santos. Representing the People of Guam ("the People") in the instant matter is Assistant Attorney General Valerie A. Nuesa. The Remand Order further mandated this Court to issue a written decision and order resolving the matter within ninety (90) days from the date of the Remand Order, inclusive of any briefing and hearing. *Ltd Remand Order* at 7.

1 On August 2, 2024, the Court issued a Briefing Schedule requiring the parties to submit
2 briefs identifying the particular exculpatory evidence which is the subject of the Appellate Motion
3 and articulating their respective arguments. After reviewing Defendant's Opening Brief, the
4 People's Responsive Brief, and the applicable statutes and case law, the Court now issues this
5 Decision and Order.
6

7 PROCEDURAL AND FACTUAL BACKGROUND

8 **A. The Defendant's Charges and Procedural History.**

9 On February 16, 2023, a grand jury indicted Defendant of the following offenses: the First
10 Charge of Aggravated Assault (As a Third Degree Felony), the Second Charge of Terrorizing (As
11 a Third Degree Felony), the Third Charge of Child Abuse (As a Misdemeanor), and the Fourth
12 Charge of Family Violence (As a Misdemeanor). *See Indictment* (Feb. 16, 2023).
13

14 A jury of twelve and four alternates was selected and Jury Trial was held on April 5, 6, 7,
15 18, 19, 21, and 24, 2024, respectively. As indicated in the Remand Order, two days prior to trial,
16 on April 3, 2023, defense counsel filed an *ex parte* motion to compel discovery relating to an
17 incident reported to police "involving the named victim and [P.C.], who is the father of the victim's
18 children, wherein the victim made nearly identical allegations against [P.C.] that she has made
19 against the Defendant Ben Crisostomo in this case. Defendant respectfully requests for any police
20 reports where [J.W.] was a named victim where [P.C.]" Order at 2. Prior to the start of jury
21 selection on April 5, 2024, the Court was prepared to address the defendant's motion to compel
22 discovery of the subject police report; however, trial counsel indicated that the discovery request
23 had been satisfied. See Order at 2-3 (citing Transcript (Tr.) at 5-6 *Jury Trial, Apr. 3, 2023)).
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26 Also as indicated in the Order, during cross-examination of the victim on April 18, 2023 –
27 fifteen days after the Court addressed the motion to compel, defendant's trial counsel referred to
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1 J.W.'s similar allegations against P.C. during her cross-examination; however, did not impeach
2 her using the police report which had already been provided to trial counsel two weeks prior. Order
3 at 3-4.

4 Jury deliberations began on April 24, 2023. The jury returned a guilty verdict on all charges
5 on April 25, 2023. *See* Min. Entry (Apr. 25, 2023); *see also Judgment of Conviction* (Jan. 30,
6 2024). On May 5, 2023, the Defendant filed its Motion for Judgment of Acquittal on Insufficiency
7 of the Evidence, or in the Alternative, Declaration of Mistrial Based Upon Prosecutorial
8 Misconduct on May 5, 2023. The People filed its Opposition to Defendant's motion on May 8,
9 2023. The Court heard oral arguments from the parties and took the matter under advisement on
10 August 15, 2023, and issued its Decision and Order denying Defendant's motion on November 13,
11 2023. *See Decision and Order Re. Denying Defendant's Motion of Acquittal After Guilty Verdicts*
12 *and Alternative Motion for a Mistrial* (Nov. 13, 2023).

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15 On January 8, 2024, the Court sentenced the Defendant to a total sentence of five (5) years'
16 imprisonment at the Department of Corrections, with all but three (3) years suspended, with credit
17 for time served. *See Judgment of Conviction* (Jan. 30, 2024). A Notice of Appeal was filed and
18 served upon this Court on February 9, 2024. *See Ntc. of Appeal* (Feb. 9, 2024). The Supreme Court
19 issued its Remand Order on July 18, 2024, for this Court to consider Defendant's claims that "the
20 People failed to disclose exculpatory material under *Brady v. Maryland*. . .and *Giglio v. United*
21 *States*. . ." *Ltd. Remand Order* (Jul. 18, 2024).

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24 In order to assist it in determining whether the People violated *Brady* or *Giglio* in providing
25 defense counsel with the requested discovery on the eve of jury selection, this Court issued a
26 briefing schedule ordering the parties to submit arguments and evidence in support of its motion,
27 citing to the mandates of Criminal Procedure Rules CR1.1. *See Order Re. Briefing Schedule and*
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1 *Hearing on Limited Remand Order of Guam Supreme Court* (Aug. 2, 2024). Defendant submitted
2 his Opening Brief, Exhibit List and Witness List on August 16, 2024. The People submitted its
3 Responsive Brief on August 26, 2024. The Court took the matter under advisement on October 1,
4 2024, without need of oral arguments from the parties. *See Order Re. Ltd. Remand Order; Matter*
5 *Taken Under Advisement* (Oct. 1, 2024).¹
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7 **B. Defendant’s Motion and Claims in Controversy.**

8 The basis for Defendant’s Appellate Motion before the Supreme Court is “[d]uring the
9 course of these [trial] proceedings, Crisostomo has obtained court filings showing that the victim
10 in this case had provided statements to the Guam Police Department alleging that her ex-boyfriend
11 [P.C.] had threatened to kill her on or about October 30, 2021.” *Ltd. Remand Order* (Jul. 18, 2024)
12 at p. 4. He further claims:
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14 [U]ndisclosed statements by the victim were not turned over to trial counsel. Trial
15 counsel was informed that no reports existed in response to the Subpoena Duces
16 Tecum for all reports in which the victim made complaints against ex-boyfriend
[P.C.].

17 *Id.* In its Opening Brief to this Court, without citing to the specific evidence, the Defendant claims
18 that undisclosed evidence was “impeaching,” “inadvertently suppressed,” and “prejudicial in that
19 it deprived the Defendant of a fair trial because there was no time to prepare for the trial with
20 respect to that evidence.” *Def.’s Opening Brief* (Aug. 16, 2024) at p. 2. Defendant argues that
21 “[h]ad the evidence been diligently provided when requested, the Defendant would have had
22 adequate time to prepare using the suppressed evidence.” *Id.*
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26 ¹ Initially, the Court ordered the parties to submit a list of all witnesses they intended to call at the hearing and a list
27 of all exhibits they intended to introduce at the hearing. *See Order* (Aug. 2, 2024). However, the Defendant failed to
28 specify the number and identities of witnesses he intended to call at the evidentiary hearing on the motion. On that
basis, the Court found that oral arguments were not necessary and proceed to take the matter under advisement. *See*
Order (Oct. 1, 2024).

1 The Defendant's Exhibit List (Aug. 16, 2024) for the matter before this Court identifies the
2 following exhibits, but no actual exhibits were submitted in support of the Motion:

- 3 A. Guam Police Report No. 23-02729, pp. 1-113, and photos.
- 4 B. Guam Police Report No. 21-26681, pp. 1-29
- 5 C. PO10-23, Petition for Temporary Order of Protection and OSC.
- 6 D. PO10-23, Declaration of Counsel.
- 7 E. PO10-23, Order of Protection.
- 8 F. CF330-20, Deferred Plea Agreement.

9 Moreover, no reference was made to the exhibits in the Defendant's Opening Brief to establish
10 what exhibits or evidence was suppressed by the People or how the failure to timely provide the
11 documents or purported discovery constituted a violation of *Brady, Giglio* and their progeny.

12 **B. The People's Response**

13 To the Defendant's claims of a failure to disclose *Brady* evidence, the People retort to the
14 Appellate Motion that "relevant statements and documentation from the Guam Police Department"
15 were provided to Defendant during the course of discovery. *See Ltd Remand Order* (Jul. 18, 2024).
16 In its responsive brief before this Court, the People argue that "it remains unclear [from
17 Defendant's Opening Brief] . . . what statements Defendant claims were 'inadvertently suppressed'
18 that were made by J.W. (and her children) to the police about P.C. *Ppl.'s Resp. Brief* (Aug. 26,
19 2024) at p. 3. The People further assert that the Defendant has failed to meet the "threshold of
20 materiality" as he "does not specify the substance of the statements, the subject matter thereof,
21 when they were made, and in what context and form(s) (whether verbal or written) they were
22 made." *Id.*²

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27 ² The Court notes that the responsive brief filed by the People was not submitted by the same prosecutor who brought
28 the matter to trial. AAG Grant Olan represented the People at trial and at the hearing during which the defendant's *ex parte* motion was argued.

DISCUSSION

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2 This Court's inquiry, as mandated by the Supreme Court, is whether the People have failed
3 to meet their discovery obligations as mandated by *Brady/Giglio*. See *Ltd. Remand Order* (Jul.
4 18, 2024) at p. 6. Under 8 GCA § 70.10(a)(7), the People have an ongoing obligation to turn over
5 "any material or information which tends to negate the guilt of the defendant as to the offense
6 charged or would tend to reduce his punishment therefor." In addition, the People have an
7 obligation to turn over any *Brady* material, i.e., material that is favorable and possibly exculpatory
8 to the defense. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("the suppression by the
9 prosecution of evidence favorable to an accused upon request violates due process where the
10 evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of
11 the prosecution."); see also *People v. Rugante*, 2019 Guam 23 ¶ 7. Impeachment evidence relating
12 to government witnesses constitutes potential *Brady* material. *People v. Fisher*, 2001 Guam 2 ¶
13 12; see also *Giglio v. United States*, 405 U.S. 150, 151-55 (1972) (holding evidence relating to
14 credibility of government witnesses falls within *Brady*). "In order to establish a *Brady* violation,
15 a defendant must establish each of the following: (1) the alleged *Brady* evidence is favorable to
16 the defendant because it is exculpatory or impeaching; (2) the government suppressed the
17 evidence, either willfully or inadvertently; and (3) the suppression prejudiced the defendant by
18 depriving him or her of a fair trial." *People v. Mateo*, 2017 Guam 22 ¶ 13 (quoting *People v.*
19 *Campos*, 2015 Guam 11 ¶ 29).

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24 In addition to mandatory *Brady* disclosures, 8 GCA § 70.15(a) authorizes the courts to
25 order prosecution to turn over other evidence upon "a showing of materiality to the preparation
26 of his defense and that the request is reasonable." *Id.* ¶ 15. "A threshold showing of materiality
27 must be established before the prosecution is obligated to turn over evidence to the defendant
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1 either automatically (under section 70.10 and *Brady*) or following a motion by the defendant
2 (under section 70.15)." *Id.* In order to establish "materiality," the defendant must show that there
3 is a reasonable probability that, had the evidence been disclosed to the defense, the result of the
4 proceedings would have been different. "A 'reasonable probability' is probability sufficient to
5 undermine the confidence in the outcome." *People v. Fisher*, 2001 Guam 2 ¶ 13 (quoting *United*
6 *States v. Presser*, 844 F.2d 1275, 1281 (6th Cir. 1988)).
7

8 **A. The Defendant has failed to identify with particularity what evidence was**
9 **suppressed.**

10 Despite being given another opportunity to specify what particular evidence was
11 suppressed or provided to the Defendant with an insufficient time to prepare for trial, the
12 Defendant refers only to this Court's Order identifying "statements made by J.W. (or her children)
13 to police about P.C." or to "the requested discovery." The Defendant's Opening Brief fails to
14 establish that whatever statements or reports made by J.W. or the children about P.C. were
15 material to the defense other than by stating that "the evidence was impeaching." *Opening Brief*
16 at 2. Additionally, the Defendant makes no attempt in his Opening Brief to explain to the Court
17 how the documents identified in his Exhibit List constituted suppressed evidence, nor was any
18 affidavit submitted by defense counsel to explain how the People suppressed these particular
19 documents or statements in violation of *Brady* or *Giglio*. The Court notes further that Defendant's
20 trial counsel informed the Court on the morning of the jury selection that outstanding discovery
21 which was the subject of the *ex parte* motion to compel had already been provided prior to the
22 start of trial, albeit on the eve of selection; however, two weeks later, the report or information
23 was not used to impeach J.W. during cross-examination. *See Ltd Remand Order* at 2, 3-4.
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1 Having failed to articulate in his Opening Brief the particular documentary evidence
2 which was suppressed nor how such suppression resulted in prejudice, the Court echoes the
3 Supreme Court's determination on the record's silence on this issue: "But the record is unclear
4 whether other statements in the Government's possession may have been suppressed. The record
5 is also silent on any potential prejudice that may have occurred from delayed disclosure." *Ltd*
6 *Remand Order* (Jul. 18, 2024), p. 6. Certainly, the Court has reviewed the record and similarly
7 comes to the same determination of the record's silence on the matter. The Court cannot make a
8 determination upon mere speculation that certain evidence contains *Brady* material.

10 'Mere speculation that a government file may contain *Brady* material is not
11 sufficient to require a remand for *in camera* inspection, much less reversal for a
12 new trial. A due process standard which is satisfied by *mere speculation* would
13 convert *Brady* into a discovery device and impose undue burden' upon the trial
14 courts.

14 *Mateo*, 2017 Guam 22 ¶ 17 (emphasis added) (quoting *United States v. Navarro*, 737 F.2d 625,
15 631 (7th Cir. 1984), *cert. denied*, 469 U.S. 1020 (1984).

16 **B. The Defendant has failed to meet its burden pursuant to *Mateo* in establishing**
17 **a *Brady* violation and materiality. Defendant had adequate time to prepare.**

18 In consideration of the applicable caselaw and Guam statutes, the Court makes the
19 following inquiry and determinations. First, what were the statements which were withheld? *See*
20 *Mateo*, 2017 Guam ¶ 17. Defendant apparently claims in his Appellate Motion that "[d]uring the
21 course of these proceedings, Crisostomo has obtained court filings showing that the victim in this
22 case had provided statements to the Guam Police Department alleging that her ex-boyfriend [P.C.]
23 had threatened to kill her on or about October 30, 2021." *Ltd Remand Order* (Jul. 18, 2024) at p.
24 4. As discussed, *supra*, the Defendant has failed to articulate in its Opening Brief what those
25 statements are specifically and has failed to identify the discovery documents in which they are
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1 contained. Clearly, this Court cannot speculate as to which of the exhibits identified in Defendant's
2 Exhibit List were suppressed. Moreover, contrary to appellate counsel's claim in his Appellate
3 Motion (as articulated in the Supreme Court's Limited Remand Order), during the April 5, 2023,
4 hearing, Defendant's trial counsel had affirmed receipt of all outstanding evidence and, despite
5 being aware of J.W.'s accusations against P.C., apparently chose not to use the evidence to
6 impeach J.W. on April 18, 2023. In support of this finding, the Remand Order notes the following:
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8 The People then made an oral motion in limine to exclude testimony about the other
9 incident. *Id.* at 6-7. The court responded, "I think at this point, it's probably not
10 necessary to conduct a review of that particular complaint. I think it satisfies the
11 request that he had, at least in terms of what other information might be out there
12 to allow them to prepare." *Id.* at 7. Defense counsel added, "We'll just reserve that
13 if, during testimony, there is rebuttable or impeachable testimony offered by any
14 witness that the reports could serve to impeach -- then, you know, we reserve the
15 right to use it. It's just like any other information that we could use to impeach."
16 *Id.* To which the trial court responded, "I think we can cross that bridge when we
17 get to it." *Id.* The record seems to indicate that the allegations were referenced
18 during cross-examination of [J.W.], but the police report was not used to impeach
19 her[.]³

20 Second, are the statements exculpatory? *See Mateo*, 2017 Guam 22 ¶ 13. The Defendant
21 has failed to articulate how these statements are exculpatory, let alone demonstrate how the People
22 have willfully or inadvertently suppressed those statements.
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24 Third, are those statements material? *Id.* ¶ 15. Is there a reasonable probability that the
25 result of the proceedings would have been different had they been disclosed? Once again, without
26 knowing with certainty the identification or the context surrounding the alleged statements, the
27 Court cannot make a determination as to its materiality.
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³ *Ltd Remand Order* at 3 (quoting Transcript (Tr.) at 5-6 (Jury Trial, Apr. 5, 2023)(emphasis added).

1 Nevertheless, even if the Court assumes *arguendo*, for the purpose of deciding the matter
2 currently before it, that the statements made by J.W. (or her children) accusing P.C. of similar acts
3 were exculpatory and material, the Court finds that the People’s disclosure of the requested
4 discovery identified in defendant’s trial counsel’s *ex parte* motion to compel, the receipt of which
5 was confirmed by trial counsel on April 5, 2023, was made “at a time when it still has value.”
6 *United States v. Houston*, 648 F.3d 806, 813 (9th Cir. 2011). Thus, there was no prejudice to
7 Defendant. In this instance, *People v. Tedtaotao*, 2015 Guam 31, supports a finding that Defendant
8 suffered no prejudice.
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10 In *Tedtaotao*, the Guam Supreme Court found that “no *Brady* violation occurs “[even] if
11 previously undisclosed evidence is disclosed during trial, unless the defendant is prejudiced by the
12 delay in disclosure.”” *People v. Tedtaotao*, 2015 Guam 31 ¶52 (citation omitted). “In such a case,”
13 the Supreme Court continued, “the appropriate standard to apply is essentially whether the
14 disclosure came so late as to prevent the defendant from receiving a fair trial. . . . If a defendant
15 receives exculpatory evidence in time to make effective use of it, a new trial is generally not
16 warranted.” *Id.*
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19 The disclosure in *Tedtaotao* was of a co-defendant’s statement which he later retracted,
20 the retraction of which was discovered by the People during witness preparation after the trial had
21 already begun. The People provided no written discovery to the defendant informing him of the
22 retraction nor did they notify Tedtaotao in any way. *Id.* ¶53. Tedtaotao, instead, only became aware
23 of the retraction during his defense counsel’s cross-examination of the co-defendant who had made
24 the statement and later retracted his statement, while the co-defendant was on the stand. In this
25 instance, the Supreme Court ruled that no *Brady* violation occurred, and that Tedtaotao had not
26 been deprived of a fair trial despite the People’s failure to inform him of the retraction, reasoning:
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1 [53] Evidence that Cruz had retracted an earlier statement is clearly *Brady*
2 material because it impeaches a government witness. Moreover, the People did not
provide Tedtaotao with this information when they had a duty to do so.

3 [55] However, Tedtaotao was not deprived of a fair trial. Tedtaotao had full
4 opportunity to cross-examine Cruz regarding Cruz's retraction and retracted
5 statements. Moreover, as the trial court noted, "[Cruz] was also listed on
6 [Tedtaotao's] witness list and [Tedtaotao] was free to call [Cruz] on the stand,
7 further question [Cruz] in front of the jury, and further attack his credibility, bias,
8 and truthfulness." [citation omitted]. Finally, the fact that Tedtaotao did not move
for a continuance in order to prepare his case in chief in light of the new evidence
hurts any argument that he suffered prejudice as a result of the delay. *See Kitano*,
2011 Guam 11 ¶ 27.

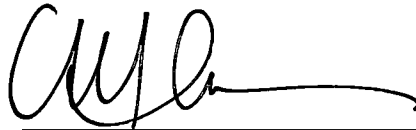
9 The People's "inadvertent suppression" (as described by Defendant in his Opening Brief)
10 is far less egregious than that of the prosecutor in *Tedtaotao*. Here, Defendant's trial counsel
11 acknowledged the receipt of all outstanding discovery as identified in his *ex parte* Motion to
12 Compel on April 5, 2023 – at least thirteen (13) days prior to his cross-examination of J.W. on
13 April 18, 2023. He had more than ample time to prepare to impeach J.W. with any information –
14 police reports, protective orders, any documentary or other evidence – disclosed by the People
15 even on the eve of trial and most certainly had adequate time to prepare during the two weeks in
16 which Defendant had the information. 8 GCA § 80.40 entitles a defendant to "at least five (5) days
17 after entering his plea to prepare for trial." Like the defendant in *Tedtaotao*, Defendant here
18 asserted his right to speedy trial; however, as the Supreme Court noted in *Tedtaotao*, no request
19 for a continuance was made; but, in any event, he had more than the minimum five (5) days in
20 which to prepare to impeach the witness J.W. with the discovery, even if it was provided on the
21 eve of trial.
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25 Thus, the Court finds that the Defendant has failed to meet his burden of showing that the
26 People have committed a *Brady* violation in this matter.
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CONCLUSION

For the above reasons, the Court finds that the People did not suppress any discovery in its possession nor fail to provide exculpatory evidence to the Defendant in violation of *Brady*, *Giglio* or Guam Supreme Court precedent. The statements made by J.W. (or her children) to police about P.C. were disclosed to the Defendant with adequate time to prepare for the cross-examination of J.W. at trial. Even assuming *arguendo* that any evidence was suppressed – which the Court does not find – the Defendant Crisostomo suffered no prejudice.

SO ORDERED this 16th day of October, 2024.



HONORABLE MARIA T. CENZON
Judge, Superior Court of Guam

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Antonio P. Cowz
Deputy Clerk, Superior Court of Guam