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CLERK OF COURT

BY: 

**IN THE SUPERIOR COURT OF GUAM**

THE PEOPLE OF GUAM,

vs.

DANNY VINCENT RODRIGUEZ,

Defendant.

Case No. CF0011-21 and CF0586-20

**DECISION AND ORDER  
(Motion for Mistrial)**

**INTRODUCTION**

This matter came before the Honorable John C. Terlaje on December 18, 2023, during the trial of Danny Vincent Rodriguez's ("Defendant") Motion for Mistrial. Defender Curtis C. Van de veld appeared for Defendant. Assistant Attorney Christine Santos Tenorio appeared for the People of Guam ("People"). Based on the relevant law and authorities the Court now issues the following decision and order **REJECTING** Defendant's Motion for Mistrial.

**BACKGROUND**

On direct examination during trial, the People asked Officer Jorem Guardian, who interviewed the Defendant, what the Defendant stated to the Officer. Ppl.'s Opp. to Def.'s Mot. for Mistrial. ¶ 2, (December 15<sup>th</sup>, 2023). On cross-examination, the defense asked the police officer about not remembering the interview details with the Defendant. During redirect, the prosecution had the officer read exactly what he wrote about the interview to make sure everyone was clear on what was asked and answered. *Id.* The police officer proceeded to read his entire

1 interview with the Defendant into the record, including a portion that illustrated that the  
2 Defendant invoked his right to silence. *Id.* Defendant objected and this Court overruled it.  
3 Defendant moved for a mistrial.  
4

## 5 DISCUSSION

6 “[A] mistrial is required if the misconduct of the jury prejudiced the defendant to the  
7 extent that he or she did not receive a fair trial.” *People v. Flores*, 2009 Guam 22 ¶ 89 (quoting  
8 *United States v. Berry*, 627 F.2d 193, 197 (9<sup>th</sup> Cir. 1980)). “Trial courts generally have broad  
9 discretion in adjudging the propriety of a mistrial, granting such a motion only where so dictated  
10 by ‘manifest necessity’ or in order to serve the ‘ends of public justice.’” *People v. Pugh*, 2016  
11 Guam 22 ¶ 31 (citing *Illinois v. Somerville*, 410 U.S. 459, 461-63 (1973)). “The defendant has  
12 the burden of proving that there was an abuse of discretion, and where, the court is to review a  
13 motion for mistrial, ‘the power ought to be used with the greatest of caution under urgent  
14 circumstance, and for very plain and obvious causes.” *Id.* (citations omitted).  
15

### 16 **A. Neither manifest necessity nor the ends of public justice dictate granting a mistrial**

17 The Fifth Amendment of the United States Constitution provides that “[n]o person... shall  
18 be compelled to testify against himself.” U.S. Const. amend. V. In *Miranda v. Arizona*, the  
19 United States Supreme Court held that the Fifth Amendment forbids the use of the Defendant’s  
20 post-custodial silence as substantive evidence of the Defendant’s guilt. 384 U.S. 436, 467-68  
21 n.37 (1966). “Evidence of a defendant’s silence in pre-custodial or custodial circumstances  
22 violates the Fifth Amendment privilege against self-incrimination, when used as substantive  
23 evidence of guilt.” *Pugh*, 2016 Guam 22 ¶ 38. The Supreme Court of Guam adjudges  
24 prosecutorial references to a defendant’s silence under a harmless error standard. *See People v.*  
25 *Muritok*, 2003 Guam 21 ¶ 24.  
26

1                   **a. The People did not introduce evidence of the Defendant invoking his 5<sup>th</sup>**  
2                   **Amendment privilege for use as substantive evidence of guilt**

3                   The Fifth Amendment of the United States Constitution provides that “[n]o person...  
4 shall be compelled to testify against himself.” U.S. Const. amend. V. In *Miranda v. Arizona*, the  
5 United States Supreme Court held that the Fifth Amendment forbids the use of the Defendant’s  
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8 violates the Fifth Amendment privilege against self-incrimination, when used as substantive  
9 evidence of guilt.” *People v. Pugh*, 2016 Guam 22 ¶ 38. The Supreme Court of Guam adjudges  
10 prosecutorial references to a defendant’s silence under a harmless error standard. *See People v.*  
11 *Muritok*, 2003 Guam 21 ¶ 24.

13                   Defendant argues that the admission of the following testimony by Officer Guardian  
14 violates Defendant’s due process under the law: “After making that statement, I asked if he  
15 [Defendant] had any similar experiences with any of Abigail’s sisters. Rodriguez told me that he  
16 felt uncomfortable answering that question and did not wish to answer any other questions. I  
17 acknowledged and ended my interview.” Def.’s Mot. for Mistrial ¶ 2, (Dec. 14, 2023). Defendant  
18 cites *People v. Diego*, where the Guam Supreme Court found harmless error based on the  
19 overwhelming evidence against the Defendant. *See People v. Diego*, 2016 Guam 5 ¶ 5 and ¶¶  
20 27-32. Defendant also cites *People v. Ongil*, 2006 Guam 34; *People v. Pugh*, 2016 Guam 22;  
21 *People v. Aldan*, 2018 Guam 19 (holding that the same harmless error *combined with multiple*  
22 *other errors* violated due process).

24                   The People argue that they, “only elicited the information regarding the entirety of the  
25 Defendant’s interview on redirect examination to rehabilitate defense counsel’s attack of the  
26 accuracy of the police officer’s memory regarding the interview.” Ppl.’s Opp. to Def.’s Mot. for

1 Mistrial. ¶ 4-5, (December 15<sup>th</sup>, 2023). Further, “the People did not mention the Defendant’s  
2 silence in opening statements or direct examination” and “the People will not use the Defendant’s  
3 silence in closing statements.” *Id.* Although harmless error review does not apply, because this  
4 is not an appellate court<sup>1</sup>, the People argue persuasively that the testimony entered into the record  
5 is not improper under *Muritok*. To determine, “whether improper testimony regarding a  
6 defendant’s silence is harmless, three factors are considered: “(1) the extent of the comments  
7 made; (2) whether an inference of guilt from silence was stressed to the jury; (3) the extent of  
8 other evidence suggesting the defendant’s guilt.” *See People v. Muritok* 2003 Guam 21 ¶ 24  
9 (*quoting United States v. Pino-Noriega*, 189 F.3d 1089, 1099). Utilizing this analysis, the Guam  
10 Supreme Court found that there was harmless error when (1) and Officer testified that the  
11 Defendant invoked his right to silence and (2) that silence was not stressed to the Jury. *Id.* ¶ 26.  
12

13  
14 Finally, the People persuasively distinguish all the Defendant’s cases citing mistrial. *See*  
15 *People v. Aldan*, 2018 Guam 9 (issue regarding jury instruction, not testimony); *People v. Cruz*,  
16 2016 Guam 5 (Prosecutor asked jury to make inference from silence during summary); *People*  
17 *v. Diego*, 2016 Guam 5 ¶ 29-30 (invoked right without making statements, unlike this case where  
18 Defendant made two statements); and *People v. Ongiil*, 2016 Guam 34 ¶ 37 (issue involved  
19 prosecutor directly asking officer about the Defendant invoking right to remain silent, which is  
20 not the issue in this case). The People also do not object, in this case, “to a jury instruction that  
21 advises the jury that the Defendant’s silence should not be construed as guilt.” Ppl.’s Opp. to  
22 Def.’s Mot. for Mistrial. ¶ 4, (December 15<sup>th</sup>, 2023). Therefore, because the People do not plan  
23  
24

25  
26 <sup>1</sup> Rule 103(a) of Guam’s Rules of Evidence serves as additional function of delineating the procedural  
27 requirements during trial in order for a party to preserve a harmless error claim on appeal. *See People v. Jesus*,  
2009 Guam 2.

1 to emphasize testimony regarding silence to the jury, and for all the other reasons cited above,  
2 the introduction of this evidence is not substantive evidence of guilt.

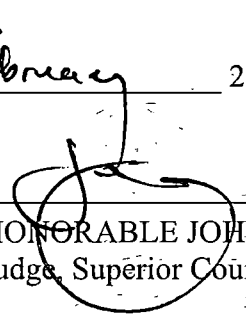
3  
4 **b. The People did not commit prosecutorial misconduct**

5 Defendant argues that the “Prosecutor has informed the Court that she is well versed in  
6 this issue. Hence, the court should find the admission of the evidence to rise to prosecutorial  
7 misconduct because the Prosecuting Attorney is not unfamiliar with the issue and the  
8 presentation was purposeful to gain an advantage over Defendant.” Def.’s Mot. for Mistrial. ¶ 3,  
9 (December 14<sup>th</sup>, 2023). It is speculative for this Court to assume that the Prosecuting Attorney  
10 made this presentation with any particular purpose, as even the Judiciary cannot read minds.  
11 Further, the Defense does not cite any case law or legal rules with which to infer the  
12 innerworkings of the Prosecutor’s mind (or the Prosecutor’s “purpose”) from behavior observed  
13 in court. *Id.* ¶ 3-4. Defense merely claims that because the Prosecutor stopped the other witness,  
14 Officer Savella, at an earlier point in reading the police report that this “demonstrates the intent  
15 to purposefully present evidence which was not properly admissible.” *Id.* ¶ 4. We cannot agree.  
16 Thus, the People did not commit prosecutorial misconduct.

17  
18 **CONCLUSION AND ORDER**

19 The Court will instruct the jury not to construe the Defendant’s silence during the  
20 interrogation referenced here as guilt. For this reason and the reasons above, the Court  
21 **REJECTS** Defendant’s Motion for Mistrial.

22  
23 SO ORDERED, this 5<sup>th</sup> day of February 2024.

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25   
26 HONORABLE JOHN C. TERLAJE  
27 Judge, Superior Court of Guam