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2024 NOV -5 PM 12: 23

SUPERIOR COURT
OF GUAM

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

v.

LOUIS ANTHONY VARGAS,
DOB: 06/06/1985

Defendant.

Criminal Case No. CF0446-18
GPD Report No. 18-21592

**DECISION AND ORDER
DENYING DEFENDANT'S MOTION
TO DISMISS SUPERSEDING
INDICTMENT DUE TO DOUBLE
JEOPARDY**

INTRODUCTION

This matter came before the Honorable Alberto C. Lamorena, III on August 23, 2024 for hearing on Louis Anthony Vargas's ("Defendant's") Motion to Dismiss Superseding Indictment Due to Double Jeopardy ("Motion"). Assistant Attorney General Christine Tenorio represents the People, and Assistant Public Defender Stephen Hattori represents Defendant. Having duly considered the parties' briefs, oral arguments, and the applicable law, the Court now issues the following Decision and Order and **DENIES** Defendant's Motion.

BACKGROUND

On May 14, 2021, an Amended Indictment was filed, charging Defendant with Charge One (Five Counts): First Degree Criminal Sexual Conduct (as a 1st Degree Felony) with Special Allegation: Vulnerable Victim Enhancement, and Charge Two (Five Counts): Second Degree Criminal Sexual Conduct (as a 1st Degree Felony) with Special Allegation: Vulnerable Victim Enhancement. See Amended Indictment (May 14, 2021). The charges stem from allegations that Defendant repeatedly sexually penetrated L.E.L. (DOB: 08/27/2008) ("Victim"), a minor under the age of 13, over a multi-year period, with both his penis and foreign objects. Id.

A jury trial was held between April 27, 2021 and May 20, 2021. Following the trial, the jury returned a guilty verdict for Charge Two (Count Four): Second Degree Criminal Sexual Conduct (as a 1st Degree Felony) and its accompanying Vulnerable Victim Enhancement. See Verdict Forms 17

1 & 18 (May 20, 2021). However, the jury was unable to reach unanimous verdicts on the other charges.
2 See Verdict Forms 1-16, 19, & 20 (May 20, 2021). The Court accepted the jury’s verdict and declared
3 a mistrial on the charges the jury was unable to reach unanimous verdicts on. See Minute Entry (May
4 20, 2021).

5 The People originally expressed their intent to retry the charges on which the jury was hung,
6 and a future trial was set for July 2021. See Minute Entry (May 21, 2021). However, the People
7 quickly moved to dismiss all remaining charges *without prejudice*. See People’s Motion to Dismiss
8 Remaining Charges Without Prejudice at 1-2 (Jun. 10, 2021). This was because the Victim was
9 unable to testify against the Defendant in the upcoming trial due to emotional distress caused by
10 reliving the incidents at the first trial. Id. at 1. The Court granted the People’s request and dismissed
11 the remaining charges *without prejudice*. See Decision and Order Granting the People’s Motion to
12 Dismiss Remaining Charges Without Prejudice at 3-4 (Sep. 13, 2021); Order for Dismissal (Jan. 10,
13 2022).

14 Defendant’s conviction of Charge Two (Count Four): Second Degree Criminal Sexual
15 Conduct (as a 1st Degree Felony) would ultimately be vacated by the Supreme Court of Guam after
16 they found an unrelated violation of Defendant’s Sixth Amendment rights. See *People v. Vargas*,
17 2024 Guam 1 ¶ 32. That matter was remanded for a new trial. Id. at ¶ 32.

18 Three years later, with the Defendant’s conviction now vacated, the People filed a Superseding
19 Indictment, bringing forth all the same charges and special allegations to which Defendant was
20 originally tried in 2021. See Superseding Indictment (Jul. 12, 2024).

21 On July 26, 2024, Defendant filed his Motion to Dismiss Superseding Indictment Due to
22 Double Jeopardy. Seeking dismissal of the Superseding Indictment, Defendant claims that the
23 People’s multi-year wait before refileing the charges has prejudiced him by unreasonably interfering
24 with his ability to prepare a defense. See Motion at 3-5 (Jul. 26, 2024). Defendant also claims Double
25 Jeopardy bars retrial because the mistrial was improperly declared without any manifest necessity to
26 do so. Id. at 6-9.

27 On July 29, 2024, the People filed their Opposition to Defendant’s Motion (“Opposition”).
28 The People claim Defendant is simply rehashing an old Motion to Dismiss with Prejudice filed on

1 June 24, 2021, which the Court already denied in its September 13, 2021 Decision and Order. See
2 Opposition at 3 (Jul. 29, 2024). The People also claim Defendant is barred from claiming Double
3 Jeopardy protections because he consented to the original mistrial. Id. at 3-4. Lastly, the People
4 claim Double Jeopardy does not bar retrial, even if Defendant hadn't consented to the mistrial,
5 because the mistrial was declared in manifest necessity. Id. at 4-6.

6 On August 19, 2024, Defendant filed his Reply to Opposition ("Reply"). Defendant denies
7 consenting to the mistrial, and claims that absent his consent, manifest necessity does not exist to
8 permit the mistrial. See Reply at 1-2 (Aug. 19, 2024).

9 The Court held a hearing on August 23, 2024. After hearing the arguments of the parties, the
10 Court took the matter under advisement.

11 DISCUSSION

12 **I. The People preserved their right to refile the charges on a future date because they** 13 **complied with all statutory requirements and had a good faith reason for seeking** 14 **dismissal in June 2021.**

15 Pursuant to 8 G.C.A. § 80.70, the People may file a motion for dismissal with leave of court.
16 8 G.C.A. § 80.70(a) provides that:

17 The prosecuting attorney may with leave of court file a dismissal of an indictment,
18 information or complaint and the prosecution shall thereupon terminate... The
19 prosecuting attorney shall file a statement of his reasons for seeking dismissal when he
20 applies for leave to file a dismissal and where leave is granted the court's order shall
21 set forth the reasons for granting such leave.

22 The primary purpose for the "leave of court" requirement is to "prevent harassment of a
23 defendant by a prosecutor's charging, dismissing, and recharging the defendant with a crime." See
24 *People v. Gutierrez*, 2005 Guam 19, ¶ 66 (citing *U.S. v. Derr*, 726 F.2d 617, 619 (10th Cir. 1984)).
25 "The prosecutor's good or bad faith *in bringing the motion* is the determining factor in granting or
26 denying the motion." Id. at ¶ 51. "The trial court at the very least must know the prosecutor's
27 reasons for seeking to dismiss the indictment and the facts underlying the prosecutor's decision."
28 Id. at ¶ 66 (internal citations omitted).

Here, the People properly laid out their reasons for seeking dismissal, explaining that the
Victim was unable to testify in the immediate future due to emotional distress caused by reliving the

1 incidents at the first trial. See People’s Motion to Dismiss Remaining Charges Without Prejudice at
2 1 (Jun. 10, 2021). There is nothing to suggest that they sought dismissal in bad faith. Rather,
3 dismissal was sought to protect the Victim’s mental health. Id. at 1. At the time, the Victim was a
4 12-year-old girl who had just given two days of testimony in an open courtroom. See Minute Entry
5 (May 3, 2021); Minute Entry (May 4, 2021). The People sought dismissal because Defendant had
6 asserted his right to a speedy trial, and the Victim’s emotional health prevented her from testifying
7 again on such short notice. See People’s Motion to Dismiss Remaining Charges Without Prejudice
8 at 1-2 (Jun. 10, 2021). This good faith reason preserved the People’s ability to refile a Superseding
9 Indictment on a future date.

10 **II. Defendant has failed to show any unfair prejudice caused by this current refiling. The**
11 **prejudice Defendant does claim is speculative in nature, and was already considered in**
12 **the Legislature of Guam’s decision not to implement a statute of limitations on the**
13 **crimes charged.**

14 Even though the People’s dismissal was sought in good faith, the Court still maintains broad
15 discretion and control over future attempts at refiling the charges. See *U.S. v. Taylor*, 487 U.S. 326,
16 333 (1988) (allowing courts to consider “prejudice to the defendant”, “the seriousness of the offense”,
17 “the facts and circumstances of the case which led to the dismissal”, and “the impact of a re-
18 prosecution ... on the administration of justice” when considering whether to bar re-prosecution).

19 When determining the existence of unfair prejudice to the defendant, the length of delay “is
20 closely related”. Id. at 340. “The longer the delay, the greater the presumptive or actual prejudice to
21 the defendant, in terms of his ability to prepare for trial or the restrictions on his liberty.” Id. at 340.
22 Whether the defense will be impaired “by dimming memories and loss of exculpatory evidence”
23 should also be considered. See *Doggett v. U.S.*, 505 U.S. 647, 654 (1992).

24 Here, it took the People three (3) years to file their Superseding Indictment after dismissing
25 the remaining charges. Now, several witnesses who testified in the first trial have moved off island.
26 The memories of witnesses who do remain are also not as fresh as they once were. However, it’s not
27 apparent that any unfair prejudice has actually resulted from this delay. Three (3) years is not an
28 exceptionally long time and it’s likely that the witnesses still remember the key details they testified

1 to. Defendant has provided no reason to believe otherwise, or that any key exonerating evidence once
2 available is now unobtainable due to this refiling.

3 There is also no statute of limitations for the crimes charged. See 8 G.C.A. § 10.17. In making
4 this decision, the Legislature of Guam considered the seriousness of both First and Second Degree
5 Criminal Sexual Conduct. The importance of prosecuting these crimes clearly outweighs any
6 prejudice Defendant speculatively claims, evidenced by the Legislature’s decision to set an indefinite
7 statute of limitations.

8 **III. Double Jeopardy does not bar re-trial of the charges because:**

9 a. **Defendant consented to the mistrial.**

10 As mentioned above, because the jury was hung, a mistrial was declared on Charge One (Five
11 Counts), Charge Two (Counts One, Two, Three, & Five), and all their accompanying Vulnerable
12 Victim Enhancements. See Minute Entry (May 20, 2021); Verdict Forms 1-16, 19, & 20 (May 20,
13 2021). This mistrial was declared without issuing an *Allen* charge to the jurors. See Minute Entry
14 (May 20, 2021).

15 Defendant claims the mistrial was declared unnecessarily and is thus improper. See Motion
16 at 6-9 (Jul. 26, 2024). Defendant claims an *Allen* charge should have first been given to the jurors
17 concerning the charges they were unable to reach unanimous verdicts on, and only then would further
18 division necessitate a mistrial. Id. at 6-9. In essence, an *Allen* charge is a jury instruction that
19 encourages dissenting jurors to reconsider whether their verdict is proper, considering other, equally
20 intelligent jurors ruled differently. See *Allen v. U.S.*, 164 U.S. 492, 501 (1896). This is not an
21 instruction for dissenting jurors to merely acquiesce to the majority decision, rather, it encourages
22 open and intelligent discussion among the jurors in reaching a unanimous verdict. Id. at 501-502.

23 “The Double Jeopardy Clause of the Fifth Amendment protects a criminal defendant from
24 repeated prosecutions for the same offense.” See *People v. Pablo*, 2016 Guam 29 ¶ 23. “As a part of
25 this protection against multiple prosecutions, the Double Jeopardy Clause affords a criminal defendant
26 a ‘valued right to have his trial completed by a particular tribunal.’” Id. at ¶ 23 (quoting *Oregon v.*
27 *Kennedy*, 456 U.S. 667, 671-672 (1982)). “In a jury trial, jeopardy attaches once the jury is empaneled
28 and sworn.” See *State v. Moriwake*, 65 Haw. 47, 47 (1982).

1 However, like other rights, Double Jeopardy protections can be knowingly and voluntarily
2 waived. See *People v. Jorn*, 400 U.S. 470, 485 (1971) (“A motion by the defendant for mistrial is
3 ordinarily assumed to remove any barrier to reprosecution, even if the defendant’s motion is
4 necessitated by prosecutorial or judicial error.”). However, a defendant has not waived their Double
5 Jeopardy protections if “*bad-faith* conduct by judge or prosecutor” incentivized the defendant’s
6 consent to mistrial. See *U.S. v. Dinitz*, 424 U.S. 600, 611 (1976) (emphasis added).

7 Here, Defendant consented to the mistrial. See Reporter’s Transcript of Verdict Proceedings
8 at 4 (Aug. 15, 2022). Although Defendant’s counsel inquired whether “the Court would want to talk
9 to them [the jurors], see if they could reach a verdict”, he never actually asked for an *Allen* charge to
10 be read, and left it completely to the Court’s discretion. Id. at 4. Furthermore, Defendant’s counsel
11 responded “okay” when the Court expressed an intent to retry the case, without issuing an *Allen* charge
12 to the jury. Id. at 4. There is also no indication this mistrial was based on bad-faith conduct by the
13 government. Therefore, Defendant validly consented to the mistrial and waived any double jeopardy
14 protections regarding the remaining charges.

15 **b. Even if Defendant had not consented to the mistrial, retrial is still permissible**
16 **because manifest necessity dictated the mistrial.**

17 The Double Jeopardy Clause “does not ‘*guarantee* to the defendant... the enforcement of the
18 criminal laws in one proceeding””, despite its purpose at preventing repeated prosecutions of the same
19 offense. See *People v. Pablo*, 2016 Guam 29 at ¶ 23 (citing *U.S. v. Dinitz*, 424 U.S. 600, 672 (1976))
20 (emphasis added). Because criminal trials are extremely complicated affairs to manage, certain
21 circumstances will inevitably come up where it’s necessary to abort the proceedings before unanimous
22 verdicts are reached.

23 If a trial in which jeopardy has attached is terminated over the objection of the defendant, the
24 test for lifting the double jeopardy bar to a second trial is the “manifest necessity” standard laid out in
25 *U.S. v. Perez*, 22 U.S. 579 (1824). Manifest necessity is determined by “taking all the circumstances
26 into consideration” and the Judge is afforded a deal of “discretion on the subject”. See *U.S. v. Perez*,
27 22 U.S. 579, 580 (1824). “The most common form of ‘manifest necessity’ is a mistrial declared by
28 the judge following the jury’s declaration that it was unable to reach a verdict.” See *People v. Pablo*,

1 2016 Guam 29 ¶ 24 (internal citations omitted). “In determining whether to declare a mistrial because
2 of jury deadlock, relevant factors for the ... court to consider include the jury’s collective opinion that
3 it cannot agree, the length of the trial and complexity of the issues, the length of time the jury has
4 deliberated, whether the defendant has objected to a mistrial, and the effects of exhaustion or coercion
5 on the jury.” See *U.S. v. Hernandez-Guardado*, 228 F.3d 1017, 1029 (9th Cir. 2000). If a mistrial is
6 declared improperly, without manifest necessity, double jeopardy bars retrial. See *U.S. v. Jorn*, 400
7 U.S. 470, 487 (1971).

8 Here, jeopardy had attached to all charges because the jury was empaneled and sworn in. See
9 Minute Entry (Apr. 27, 2021). However, the jury was deadlocked on Charge One (Five Counts),
10 Charge Two (Counts One, Two, Three, and Five), and all their accompanying Vulnerable Victim
11 Enhancements. See Verdict Forms 1-16, 19, & 20 (May 20, 2021). Declaring a mistrial as to those
12 charges was the only feasible option considering all the circumstances.

13 The jury’s revelation that it was unable to reach unanimous verdicts on those charges came
14 after the Court was already informed of their guilty verdicts on Charge Two (Count Four) and its
15 accompanying Vulnerable Victim Enhancement. See Reporter’s Transcript of Verdict Proceedings at
16 2-4 (Aug. 15, 2022). The Court’s knowledge of the two guilty verdicts intensified the coercive effect
17 of a future *Allen* charge, and prevented the Court from issuing one to the jury. See *Brasfield v. U.S.*,
18 272 U.S. 448, 449-450 (1926) (holding that the Court’s knowledge as to how a jury is divided prevents
19 further jury deliberations due to its coercive effect). Although the Court was not informed of how the
20 jury was divided as to the remaining charges, its knowledge of the jury’s unanimous guilty verdicts
21 on Charge Two (Count Four) and its accompanying Vulnerable Victim Enhancement fit firmly into
22 *Brasfield*. Permitting further jury deliberation would incentivize a decision in line with the verdicts
23 already revealed. This coercive effect prevented the Court from issuing an *Allen* charge or affording
24 the jury more time to reach unanimous decisions on the remaining charges.

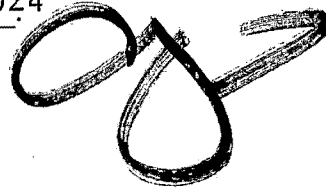
25 The length of time the jury deliberated and the exhaustive effect this had on them also
26 contributed to the manifest necessity of a mistrial. The jury deliberated for several days before
27 determining they were unable to reach a unanimous verdict. This is a sufficiently long enough time
28 to necessitate a mistrial without additional deliberation. See *Renico v. Lett*, 559 U.S. 766, 779 (2010)

1 (finding that a deadlocked jury, after approximately five hours of deliberation, sufficiently necessitates
2 a mistrial). The jury put forth a thorough and good faith attempt at reaching a unanimous decision,
3 despite not being able to ultimately agree. Because the jury failed to reach a unanimous verdict after
4 their exhaustive efforts to do so, it was necessary to declare a mistrial.

5 **CONCLUSION**

6 For the reasons stated above, the Court **DENIES** Defendant's Motion. The Superseding
7 Indictment will not be dismissed on either unfair prejudice or Double Jeopardy grounds.

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9 **IT IS SO ORDERED** this November 5, 2024



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13 **HONORABLE ALBERTO C. LAMORENA, III**
14 **Presiding Judge, Superior Court of Guam**

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23 **SERVICE VIA EMAIL**

24 I acknowledge that an electronic
25 copy of the original was e-mailed to:

26 AG, PDSC

27 Date: 11/5/24 Time: 12:28pm

28 Antonio Cruz
Deputy Clerk, Superior Court of Guam