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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

**ANTONIO SUING QUIZON,**

Defendant.

**CRIMINAL CASE NO. 13-0112**

**ORDER GRANTING DEFENDANT'S  
MOTION FOR MISTRIAL**

**I. INTRODUCTION**

THIS MATTER came before the Court for a bench trial on June 11 and 16, 2014 in Courtroom 202A. Assistant Attorney General Heather P. Barcinas the Commonwealth of the Northern Mariana Islands ("the Commonwealth") was represented by. Antonio Quizon ("Defendant") was present and represented by attorney Joaquin DLG. Torres.

Based on the filings, oral arguments and applicable law, the Court GRANTS Defendant's motion for a mistrial.

**II. BACKGROUND**

In this action Defendant faced one count of Assault and Battery in violation of 6 CMC § 1202(a), and one count of Disturbing the Peace in violation of 6 CMC § 3101(b). On June 11, 2014, the bench trial in this matter began. However, during the cross-examination of the alleged victim, Joy Bayatan, Ms. Bayatan testified about evidence that the Commonwealth failed to provide to the Defendant during discovery. Ms. Bayatan

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1 testified that she took photographs of her injuries with her cell phone following the alleged  
2 assault by Defendant. Additionally, Ms. Bayatan testified that she went to the  
3 Commonwealth Health Center (CHC) days after the alleged assault and underwent an  
4 ultrasound. The results of the ultrasound were then sent to Guam for examination. The  
5 Commonwealth had access to this evidence and did not produce it to Defendant during  
6 discovery. Defendant moved for a continuance of the trial to review this new evidence, and  
7 the Court granted the continuance, order the Commonwealth to produce the photographs and  
8 medical records, and continued the trial to June 16, 2014.

9 The bench trial resumed on June 16, 2014. After the Commonwealth rested its case,  
10 the Defendant took the stand. During his direct examination, the Defendant testified that he  
11 had given a written statement to the Department of Public Safety (“DPS”) while in custody  
12 at the Department of Corrections (“D.O.C.”), outside the presence of counsel. However, this  
13 statement was not produced during discovery, and had never been reviewed by defense  
14 counsel. The Court ordered the Commonwealth to produce Defendant’s statement.  
15 Defendant then moved the Court for a mistrial, arguing that the Commonwealth violated  
16 Rule 16 of the Commonwealth Rules of Criminal Procedure, and violated Defendant’s due  
17 process rights by failing to turn over *Brady* materials.

### 18 19 **III. DISCUSSION**

20 Defendant’s motion for a mistrial raises two issues that will be discussed separately  
21 below. First, whether Defendant’s due process rights have been violated due to the  
22 Commonwealth’s failure to turnover *Brady* material on two separate occasions. Second,  
23 whether the Commonwealth’s failure to turnover the *Brady* material constitutes a violation  
24 of Rule 16, and if so the proper remedy to resolve the situation.

#### 25 **1. *Brady* Due Process Violation**

26 The United States Supreme Court held in *Brady* that the “suppression by the  
27 prosecution of evidence favorable to an accused upon request violates due process where the  
28 evidence is material to either guilt or to punishment, irrespective of the good faith or bad

1 faith of the prosecution.” 373 U.S. 83, 87; *CNMI v. Campbell*, 4 NMI 11, 15 (1993)(quoting  
2 *Brady*); cf. *United States v. Agurs*, 427 U.S. 97, 106-07 (1976)(noting a defendant does not  
3 have to request evidence). The fundamental policy behind requiring the disclosure of *Brady*  
4 materials is to ensure that the defendant is afforded a fair trial. *CNMI v. Campbell*, 4 N.M.I.  
5 at 15.

6 A defendant must show that the government failed to disclose material evidence for a  
7 *Brady* violation to occur. *Id.* Such material includes information that “bears on the  
8 credibility of a significant witness” as well as favorable impeachment evidence. *Id.* The  
9 prosecution does not have a duty to turnover *Brady* materials prior to trial; however, the  
10 government must produce exculpatory material in time for the defendant’s effective use of  
11 those materials at trial. *Id.* at 16; *U.S. v. Gordon*, 844 F.2d 1397, 1403 (9th Cir. 1988).  
12 Effective use of evidentiary materials has been found to exist when the evidence was still  
13 “of value to the accused.” *CNMI v. Hong*, 2013 MP 19 ¶ 15 (quoting *United States v.*  
14 *Davenport*, 753 F.2d 1460, 1462 (9th Cir. 1985)).

15 When a court is presented with a potential *Brady* violation, “the court has broad  
16 discretion to remedy the problem before the accused is prejudiced by non-disclosure.”  
17 *Campbell*, 4 N.M.I. at 16. In addition, “an accused does not suffer a due process violation  
18 until he or she has been tried and convicted.” *CNMI v. Adlaon*, 4 N.M.I. 171, 174 (1994)  
19 (citing *Campbell*, 4 N.M.I at 16).

20 As was stated above, there have been two instances in which it was discovered that  
21 the Commonwealth failed to disclose potential *Brady* information and thus both instances  
22 will be discussed separately below.

### 23 **A. Cellular Photographs and Medical Records**

24 The first potential *Brady* violation that has arisen during the bench trial occurred  
25 when the Commonwealth failed to turn over the cellular telephone photographs taken by  
26 Ms. Bayatan as well as her medical records. The materiality of these pieces of evidence to  
27 Defendant seems clear. Documentation of the alleged victim’s injuries would be highly  
28 probative to the elements of the Assault and Battery Charge as well as possible

1 impeachment evidence. Although both the photographs and medical records would be  
2 considered *Brady* material, these materials were disclosed by the government to Defendant  
3 prior to the end of trial. To further protect Defendant's constitutional rights, the Court  
4 granted a continuance to allow Defendant to properly assess and adapt his trial strategy in  
5 regards to the newly disclosed material.

6 When the bench trial recommenced, Defendant had the opportunity to use both items  
7 during cross-examination of Ms. Bayatan and chose not to. Furthermore, both pieces of  
8 evidence are still available for Defendant's use during his case-in-chief. For these reasons,  
9 Defendant is still able to make "effective use" of both the photographs and medical records  
10 and thus there has been no *Brady* violation in regards to the photographs and medical  
11 records.

#### 12 **B. Defendant's Written Statement to DPS**

13 The second incident in which an issue arose with the Commonwealth's failure to  
14 properly turnover information to Defendant occurred when the defendant waived his right to  
15 remain silent and took the stand. During Defendant's testimony it was revealed that while in  
16 custody at the D.O.C. he gave a written statement to DPS that was never disclosed during  
17 discovery. Although the prosecutor is correct in asserting that Defendant's written statement  
18 may be inculpatory in some regards, the statement may also be exculpatory due to the fact  
19 that in the statement Defendant asserts that it was Ms. Banatay that first escalated the  
20 confrontation by yelling. Such information would be highly valuable to the Disturbing the  
21 Peace charge and possibly also valuable for the Assault and Battery charge as well.  
22 Furthermore, disclosure of the statement would also be favorable to Defendant in regards to  
23 possible punishment that he may face. If the statement was disclosed beforehand, Defendant  
24 may have been more willing to enter into a plea agreement and thus such disclosure would  
25 qualify as *Brady* material.

26 Additionally, the Commonwealth did provide Defendant the statement pursuant to  
27 Court order. However, the complication presents itself that the Defendant has already  
28 waived his Fifth Amendment right to remain silent as soon as he took the stand.

1 Defendant's "effective use" of the statement is questionable at this point because notice of  
2 this statement prior to trial would have probably been the most useful for possibly entering  
3 into a plea agreement or in preparing a defense for trial. In this situation it appears that the  
4 Court attempted to remedy the *Brady* violation in granting a continuance, but the damage at  
5 this point is now irreparable. Thus, it would appear unlikely at this juncture in the bench  
6 trial that any action short of a mistrial would remedy the prejudice caused to Defendant by  
7 the nondisclosure.

8 Although it would appear that nondisclosure of Defendant's statement to DPS is a  
9 potential *Brady* violation, Supreme Court precedent is clear in that no violation of  
10 Defendant's due process rights has occurred because no verdict has been rendered and  
11 Defendant has not been convicted.<sup>1</sup> Thus, there is no due process violation and those  
12 grounds for a mistrial are improper.

## 13 **2. Rule 16 Violation**

14 Commonwealth Rule of Criminal Procedure 16(a)(1)(A) provides that the  
15 government, if so requested, must disclose to the defendant "any relevant written or  
16 recorded statements made by the defendant, or copies thereof, within the possession,  
17 custody, or control of the government, the existence of which is known, or by the exercise of  
18 due diligence may become known, to the attorney for the government". NMI R. Crim. P.  
19 16(a)(1)(A).<sup>2</sup> Failure to comply with a discovery request allows a court to grant a  
20 continuance, prohibit a party from introducing evidence, or a court "may enter such other as  
21 it deems just under the circumstances." *See id.*(d)(2). Dismissal is an "extraordinary  
22 remedy" and as such is a disfavored remedy. *Campbell*, 4 NMI at 16. To warrant a  
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25 <sup>1</sup> It is puzzling why the Court must wait for a verdict for a Due Process violation to occur. However, Rule 16  
26 allows the Court to remedy the potential Due Process violation, thus protecting Defendant's fundamental right  
to a fair trial.

27 <sup>2</sup> Because the Commonwealth Rules of Criminal Procedure are modeled after the Federal Rules of Criminal  
28 Procedure, federal cases interpreting the counterpart Federal Rules are helpful in interpreting the  
Commonwealth Rules of Criminal Procedure. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 233 (1995).  
However, Federal Rule of Criminal Procedure 16 was amended in 2002; therefore, the formatting and wording  
of Fed. R. Crim. P. 16 is no longer identical to NMI R. Crim. P. 16.

1 dismissal the government's misconduct must be flagrant and must have prejudiced the  
2 defendant. *Id.*

3 As was discussed above, any potential *Brady* violation in regards to the cellular  
4 photographs and medical records of Ms. Bayatan has been remedied by the continuance  
5 granted by the Court. The continuance gave Defendant an opportunity to properly adapt any  
6 trial strategy and thus Defendant was not prejudiced by nondisclosure and there was no Rule  
7 16 violation.

8 However, the nondisclosure of Defendant's statement to DPS falls squarely within  
9 Rule 16 because, as was discussed above, Defendant's statement is relevant to a possible  
10 plea agreement before trial or to Defendant's trial strategy. Furthermore, Defendant's  
11 statement was in the custody and control of DPS and as such the prosecutor was fully able to  
12 have access to such information through proper diligence. The Court sought to remedy the  
13 situation by granting a continuance; however, the damage is now irreparable and going  
14 forward with the trial would be severely prejudicial. Defendant will be prejudiced because  
15 in waiving his right to remain silent and taking the stand he is still subject to cross  
16 examination and questioning of any inconsistencies between his written statement and trial  
17 testimony. The Court does not agree with the Commonwealth's assertion that there are no  
18 inconsistencies between Defendant's statement to DPS and testimony given at trial. There  
19 are inconsistencies between the written statement and Defendant's testimony surrounding  
20 circumstances between the alleged altercation between Defendant and Ms. Bayatan. Going  
21 forward Defendant will be prejudiced because he may have chosen not to take the stand  
22 having been aware of the statement. Striking his testimony will not completely remedy this  
23 situation and is thus not a viable option. The only appropriate remedy now would be to  
24 grant Defendant's motion for mistrial.


25 This Court understands that a mistrial is generally disfavored, but at this juncture it is  
26 apparent that the Commonwealth's behavior has risen to the level of flagrant misconduct  
27 and thus a mistrial is warranted. *Commonwealth v. Adlaon*, 4 N.M.I. 171, 175  
28 (1994)(discussing that dismissal is appropriate when the defendant has been prejudiced by

1 the government's flagrant misconduct). The Court has been forced already to attempt to  
2 remedy a nondisclosure issue in the beginning of the trial in regards to the cellular  
3 photographs and medical records. It is now forced to remedy yet another potential *Brady*  
4 issue. Additionally, this court is extremely concerned with the fact that Defendant was  
5 questioned during detainment while Defendant was represented by counsel. Although the  
6 questioning ceased once DPS learned that Defendant was represented by counsel, this is still  
7 a grave error that should be cautioned against in the future.<sup>3</sup> These mistakes are extremely  
8 flagrant and cannot be properly remedied due to the fact that Defendant has already waived  
9 his right to remain silent. *See id.* In hopes to properly protect Defendant's fundamental  
10 rights to a fair trial Defendant's motion for a mistrial must be granted.

11 **IV. CONCLUSION**

12 Accordingly, the Court finds that the Commonwealth's multiple discovery  
13 violations, the most serious of which came to light only after the Defendant had waived his  
14 Fifth Amendment right and taken the stand, cannot be remedied without a mistrial. The  
15 Court finds that proceeding with the trial would infringe upon Defendant's fundamental  
16 right to a fair trial, guaranteed by the Due Process clause of the United States Constitution.  
17 Thus, Defendant's motion for a mistrial is GRANTED.

18 **IT IS SO ORDERED** this 10th day of September, 2014.

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23 **ROBERTO C. NARAÑA**, Presiding Judge  
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27 <sup>3</sup> DPS's conduct in questioning Defendant whilst he was represented by counsel is an egregious error  
28 compounded by the fact that DPS failed to come forward with this mistakenly acquired statement. The Court  
is very concerned that these types of practices are occurring and would strongly warn against such future  
practices.