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

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COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,

) CRIMINAL CASE NO. 16-0062

6

Plaintiff,

)

) ORDER DENYING DEFENDANT'S

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v.

)

) MOTION TO DISMISS FOR

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PETER KOICHI LEMEI,

)

) DESTRUCTION OF EVIDENCE AS THE

9

Defendant.

)

) ALL THREE FACTORS REQUIRED

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)

) UNDER *YOUNGBLOOD* AND

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I. INTRODUCTION

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This matter came before the Court on December 14, 2016 on the Defendant's Motion to Dismiss for Destruction of Evidence. The Defendant Peter Koichi Lemei<sup>1</sup> was present in custody and represented by Assistant Public Defender Tillman Clark. The Commonwealth was represented by Assistant Attorney General Heather Barcinas.

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Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** the Defendant's motion to dismiss.

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II. BACKGROUND

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This matter came before the Court for a bench trial on August 16, 2016. The Defendant is charged with one count of theft, as charged in Count I of the First Amended Information, in violation of 6 CMC § 1601(a). Evangeline Chaves is the alleged victim in this case. The

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<sup>1</sup> The Defendant is also known as Peter Lemei Koichi, Boboi, and Petrus.

1 Commonwealth alleges that, early on the morning of April 10, 2016, the Defendant stole Ms.  
2 Chaves's purse while she was playing cards in a friend's car-port.

3 Ms. Chaves and Department of Public Safety ("DPS") Officer Ralph Rangamar were the  
4 first two witnesses to testify at the August 16, 2016 bench trial during the Commonwealth's case-  
5 in-chief. The third witness to testify during the Commonwealth's case in chief was Wilma Delotta,  
6 who testified that she was an eyewitness to the alleged incident. On cross-examination, Ms. Delotta  
7 testified that she viewed photos at DPS Headquarters but could not recognize anyone in the photos.  
8 The photo line-up mentioned by Ms. Delotta was not provided to the Defendant. The Defendant  
9 orally moved for a mistrial, arguing that the Commonwealth failed to provide exculpatory evidence  
10 to the defense, violating the *Brady* rule.<sup>2</sup>

11 The Court took a recess from the bench trial and took up an evidentiary hearing as to the  
12 Defendant's motion for a mistrial. At the evidentiary hearing, the Court heard testimony from Ms.  
13 Delotta and DPS Detective Andrew Taimano ("Det. Taimano") about the photo line-up.

14 The Defendant filed his written Motion for Mistrial for Violation of *Brady* on August 24,  
15 2016. The Court ultimately ruled on the Defendant's Motion for Mistrial on October 28, 2016. *See*  
16 *Commonwealth v. Koichi*, Crim. No. 16-0062 (NMI Super. Ct. Oct. 28, 2016) (Order Denying the  
17 Defendant's Motion for Mistrial as the Continuance of the Bench Trial and Re-Calling Witnesses  
18 Cures Any Prejudice From Law Enforcement Officer's Failure to Provide Exculpatory Evidence)  
19 ("October 28 Order.")

20 In the October 28 Order, the Court denied the Defendant's motion to dismiss and made a  
21 number of findings related to the photo line-up shown to Ms. Delotta by Det. Taimano. In  
22 particular, the Court found Ms. Delotta's testimony that she saw a photo line-up to be credible, as

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24 <sup>2</sup> The *Brady* rule "requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense." *Commonwealth v. Guerrero*, 2014 MP 2 ¶ 7 (citing *Brady* 373 U.S. at 87).

1 well as her testimony that she signed only her statement and not the photo line-up. October 28  
2 Order at 2. The Court also found that if any photo line-up was shown to Ms. Delotta by Det.  
3 Taimano, that it would most likely be the same photo line-up shown to Ms. Chaves. *Id.* at 3. The  
4 photo line-up shown to Ms. Chavez and Ms. Delotta was admitted during the August 16, 2016  
5 evidentiary hearing as Defendant's Exhibit A. The Court also found that Det. Taimano's failure to  
6 note Ms. Delotta's non-identification was inadvertent. October 28 Order at 6.

7 At the October 31, 2016 continuance of the bench trial, the Defendant made an oral motion  
8 to dismiss the case for destruction of evidence.<sup>3</sup> The Defendant filed his written Motion to Dismiss  
9 for Destruction of Evidence on November 10, 2016. The Commonwealth filed its opposition on  
10 November 25, 2016. The Defendant did not file a reply. The Court heard arguments on the motion  
11 to dismiss on December 14, 2016.

### 12 III. DISCUSSION

#### 13 A. Governing Law

14 The Defendant argues that Det. Taimano's failure to preserve the photo line-up shown to  
15 Ms. Delotta is a violation of his due process rights under the Due Process Clause of the Fourteenth  
16 Amendment of the United States Constitution. This Court has previously addressed the standard in  
17 cases involving the destruction of evidence in *Commonwealth v. Barcinas*. In *Barcinas*, a  
18 Department of Public Safety Officer deleted an audio recording of a statement made by the alleged  
19 victim. Crim. No.15-0206 (NMI Super. Ct. Aug. 8. 2016) (Order Denying Defendant's Motion to  
20 Dismiss for Destruction of Evidence as Defendant Failed to Show that the Evidence was Destroyed  
21 in Bad Faith, that the Evidence Possessed an Apparent Exculpatory Nature Before It was  
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24 <sup>3</sup> The bench trial was continued to January 26, 2017.

1 Destroyed, and that the Defendant Would be Unable to Obtain Comparable Evidence by Other  
2 Reasonably Available Means at 4-6).

3 In *Barcinas*, the Court followed the federal standard for destruction of evidence. *Barcinas*,  
4 Crim. No. 15-0206 at 5. The federal standard governing destruction of evidence is governed by two  
5 United States Supreme Court cases: *Youngblood* and *Trombetta*. *Arizona v. Youngblood*, 488 U.S.  
6 51, 58 (1988); *California v. Trombetta*, 467 U.S. 479, 479 (1984). Together, *Youngblood* and  
7 *Trombetta* form the federal standard related to the failure to preserve potentially useful evidence.  
8 The defendant must show “(1) that the government acted in bad faith in failing to preserve the  
9 evidence; (2) that the exculpatory value of the evidence was apparent before its destruction; and (3)  
10 that the nature of the evidence was such that the defendant would be unable to obtain comparable  
11 evidence by other reasonably available means.” *United States v. Jobson*, 102 F.3d 214, 218 (6th  
12 Cir. 1996) (citing *Youngblood*, 488 U.S. 57-58; *Trombetta*, 467 U.S. 488-89).

13 “Where potentially useful evidence is not preserved, bad faith alone will not violate a  
14 criminal defendant’s due process right to access exculpatory evidence.” *United States v. Wright*,  
15 260 F.3d 568, 571 (6th Cir. 2001) (citing *United States v. Jobson*, 102 F.3d 214, 218 (6th Cir.  
16 1996)). Rather, a defendant must also show “that the exculpatory value of the evidence was  
17 apparent before its destruction...[and] he or she must also demonstrate an inability to obtain  
18 comparable evidence by other reasonably available means.” *Id.*

19 The Court notes that the Defendant is specifically asking the Court to reconsider the  
20 approach taken in *Barcinas*. Rather than following the federal standard, the Defendant outlined a  
21 series of state court decisions and urged the Court to adopt a standard different from the one  
22 outlined in *Youngblood* and *Trombetta*. The defendant in *Barcinas* also argued that the Court  
23 should apply a state court standard rather than the federal standard. *Barcinas*, Crim. No. 15-0206

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1 (Order at 5 fn. 2). Similar to *Barcinas*, this Court follows the approach outlined by the United States  
2 Supreme Court in *Youngblood* and *Trombetta*. *Id.*<sup>4</sup>

3 **B. The Defendant Must Establish Each of the Factors Outlined in *Youngblood* and**  
4 ***Trombetta***

5 Thus, the Court will address whether the Defendant has established the factors outlined in  
6 *Youngblood* and *Trombetta*. The Court will look to whether the Defendant has shown “(1) that the  
7 government acted in bad faith in failing to preserve the evidence; (2) that the exculpatory value of  
8 the evidence was apparent before its destruction; and (3) that the nature of the evidence was such  
9 that the defendant would be unable to obtain comparable evidence by other reasonably available  
10 means.” *United States v. Jobson*, 102 F.3d 214, 218 (6th Cir. 1996) (citing *Youngblood*, 488 U.S.  
11 57-58; *Trombetta*, 467 U.S. 488-89) (emphasis added). The Defendant must show all three of these  
12 factors to succeed in his motion to dismiss. *Id.*

13 **1. The Defendant Failed to Establish Bad Faith For Inadvertently Failing to Preserve**  
14 **the Evidence**

15 First, the Defendant must show that Det. Taimano acted in bad faith by failing to preserve  
16 the specific photo line-up shown to Ms. Delotta. “Unless a criminal defendant can show bad faith  
17 on the part of the police, failure to preserve potentially useful evidence does not constitute a denial  
18 of due process of law.” *Youngblood*, 488 U.S. at 58. *Youngblood* requires that a defendant “show

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19 <sup>4</sup> Title 7, Section 3401 provides:

20 In all proceedings, the rules of the common law, as expressed in the restatements of the law approved  
21 by the American Law Institute and, to the extent not so expressed as generally understood and applied  
22 in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of  
23 written law or local customary law to the contrary; provided, that no person shall be subject to criminal  
24 prosecution except under the written law of the Commonwealth.

25 7 CMC § 3401. This Court has already applied the federal standard as outlined in *Youngblood* and *Trombetta*. *Barcinas*,  
Crim. No. 15-0206 at 5. Section 3401 establishes a hierarchy of applicable law in the Commonwealth: at the top, the  
Commonwealth Constitution, statutes, and case law; next, “local customary law;” followed by the Restatements; and,  
finally, “if there is no written, customary, or Restatement law on point, ‘the common law...as generally understood and  
applied in the United States.’” *In re Buckingham*, 2012 MP 15 ¶ 12 (discussing 7 CMC § 3401). The Court will apply  
the approach outlined by the United States Supreme Court in *Youngblood* and *Trombetta* as a part of “the common  
law...as generally understood and applied in the United States.” *Id.*

1 bad faith on the part of the police.” 488 U.S. at 58. This requirement “both limits...the police’s  
2 obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the  
3 interests of justice most clearly require it, *i.e.*, those cases in which the police...by their conduct  
4 indicate that the evidence could form a basis for exonerating the defendant.” *Id.*

5 In determining bad faith, the record must show “an allegation of official animus towards  
6 [the Defendant] or of a conscious effort to suppress exculpatory evidence.” *Trombetta*, 467 U.S. at  
7 488. The bad faith requirement is interrelated with the requirement that the evidence possess an  
8 exculpatory value apparent at the time of destruction. *United States v. Jobson*, 102 F.3d 214, 218  
9 (citing *Youngblood*, 488 U.S. at 56-57). “The presence or absence of bad faith by the police for  
10 purposes of the Due Process Clause must necessarily turn on the police’s knowledge of the  
11 exculpatory value of the evidence at the time it was lost or destroyed.” *Youngblood*, 488 U.S. at 56  
12 n\*. In essence, “without knowledge of the potential usefulness of the evidence, the evidence could  
13 not have been destroyed in bad faith.” *United States v. Zaragoza-Moreira*, 780 F.3d 971, 977 (9th  
14 Cir. 2015).

15 The Defendant argues that the bad faith requirement is actually a rebuttable presumption of  
16 bad faith which the Commonwealth would need to disprove. Def.’s Mot at 17-18. In support of this,  
17 the Defendant directed the Court’s attention to a Tenth Circuit case, *United States v. Bohl*, 25 F.3d  
18 904, 913 (10th Cir. 1994). The Defendant argues that *Bohl* requires the Court to “analyze the  
19 evidence for an ‘innocent explanation’” for the destruction of evidence that would rebut the  
20 presumption of bad faith. Def.’s Mot. at 17.

21 In *Bohl*, the Tenth Circuit noted that “even if the government destroys or facilitates the  
22 disposition of evidence knowing of its potentially exculpatory value, there might exist innocent  
23 explanations for the government’s conduct that are reasonable under the circumstances to negate  
24 any inference of bad faith.” *Bohl*, 25 F.3d at 913. Despite this, this does not shift the burden of

1 proving bad faith away from defendants. *Id.* Defendants still bear the burden of establishing bad  
2 faith: in *Bohl*, the Tenth Circuit simply noted that in that specific case the government did not have  
3 a good faith reason for destroying the evidence. *Id.*

4 Based on Det. Taimano's testimony, he does not remember showing Ms. Delotta the photo  
5 line-up. Det. Taimano, as described above, prepares one photo line-up per case, so the photo line-up  
6 shown to Ms. Delotta was identical to that shown to Ms. Chaves. If Det. Taimano failed to preserve  
7 anything, it would have been failing to note Ms. Delotta's non-identification and failing to have Ms.  
8 Delotta sign the photo line-up. Further, the Court found in its October 28 Order that Det. Taimano's  
9 failure to note Ms. Delotta's non-identification was inadvertent. October 28 Order at 6.  
10 Additionally, there is no evidence of official animus or a conscious effort to suppress evidence in  
11 the record before the Court.

## 12 **2. The Exculpatory Nature of the Evidence was Apparent**

13 Next, the evidence must "possess an exculpatory value that was apparent before the  
14 evidence was destroyed." *Trombetta*, 467 U.S. at 489. "Where potentially useful evidence is not  
15 preserved, bad faith alone will not violate a criminal defendant's due process right to access  
16 exculpatory evidence." *United States v. Wright*, 260 F.3d 568, 571 (6th Cir. 2001) (citing *United*  
17 *States v. Jobson*, 102 F.3d 214, 218 (6th Cir. 1996)). Rather, a defendant must also show "that the  
18 exculpatory value of the evidence was apparent before its destruction." *Id.*

19 The Court has already found that Ms. Delotta's non-identification was material evidence.  
20 October 28 Order at 5-6. Further, the Court notes that a non-identification by an eyewitness is  
21 potentially exculpatory evidence. Although the Court found Det. Taimano's actions to be  
22 inadvertent in its October 28 Order, the non-identification of the Defendant by an eyewitness is  
23 potentially exculpatory evidence, the nature of which would be apparent at the time of the non-  
24 identification.

