IN THE SUPREME COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee

v.

MARIO M. REYES,
Defendant-Appellee

Cite as: ***CNMI v. Reyes, 2001 MP 14***

Appeal No. 94-019
Criminal Case No. 92-179

JUDGMENT

¶ 1 Pursuant to Rule 36 of the Rules of Appellate Procedure, **JUDGMENT** is hereby entered. The September 7, 1999 Decision in this case is **VACATED,** and this case is **REVERSED** and **REMANDED** for a new trial.

Entered this 19th day of July, 2001.

[signature]
Cris M. Kaipat, Clerk of Court

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Plaintiff/ Appellee,

v.

MARIO M. REYES,

Defendant/ Appellant.

OPINION

Cite as: *CNMI v. Reyes*, 2001 MP 14

Appeal No. 94-019
Criminal Case No. 92-179
Argued and Submitted on September 28, 1998

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BEFORE: WHITE, Special Judge,[1]
LIZAMA, Justice *Pro Tempore.*

WHITE, Special Judge:

¶1 This is an appeal of a criminal conviction jury trial. Defendant Mario M. Reyes ("Reyes") was tried together with a co-defendant, Joseph A. Bowie ("Bowie"). The Superior Court granted a directed verdict in favor of both defendants on charges of felony murder and robbery, and dismissed those charges. The jury found both of the defendants guilty of kidnaping and first degree murder, and both defendants appealed. We have jurisdiction pursuant to 1 CMC § 3101.

¶2 Oral argument was heard by this Court on September 28, 1998. On September 7, 1999, we issued a Decision, affirming Reyes' conviction, and indicating that we would issue our reasoning and analyis at a subsequent date.[2] For the reasons set forth in *Commonwealth of the Northern Mariana Islands v. Bowie*, 236 F.3d 1083 (9th Cir. 2001), *reh'g denied,* – F.3d – (March 23, 2001), we **VACATE** the Decision of September 7, 1999, **REVERSE** the conviction of Defendant Reyes, and

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[1]This appeal was originally heard by Justice Pro Tempore Ramon G. Villagomez, Special Judge Jane Mack and Special Judge Michael A. White. Between the time that this appeal was argued and the issuance of the Court's Decision on September 7, 1999, Special Judge Mack's term as Special Judge expired. The Decision was issued by the two remaining justices on the panel, affirming the Defendant's conviction in the Superior Court. Subsequent to the issuance of the Decision, Justice Pro Tempore Villagomez became and remains totally incapacitated. From the information available to this Court, it appears that Justice Villagomez' condition is not likely to change.

Accordingly, on June 29, 2000, the Chief Justice issued an Order, appointing Special Judge White as the lead justice in the case, and ordering him to "oversee the issuance of the reasoning and analysis promptly so that this case may not be delayed any further than necessary." On June 29, 2000, the Chief Justice issued two additional orders, designating the Hon. Juan T. Lizama and the Hon. Virginia Sablan-Onerheim, Associate Judges of the Commonwealth Superior Court, as members of the panel in this case, and excusing Justice Pro Tempore Villagomez and former Special Judge Mack from further service. Justices Pro Tempore Lizama and Sablan-Onerheim have reviewed the appellate record and the briefs of the parties, as well as the tape recording of the oral argument.

Special Judge White, being mindful of the Chief Justice's Order of June 29, 2000, as well as the provisions of 1 CMC § 3404 and of Canon 3.A.(5) of the Code of Judicial Conduct for the Commonwealth Judiciary ("A judge should dispose promptly of the business of the court."), wishes to express his sincere regrets to the parties, to their attorneys, to the Court, and to the people of the Commonwealth, for the delay in the issuance of this Opinion, for which he accepts full and complete responsibility.

[2] The Order further provided that "[t]he time for reconsideration or further appeal, if permissible, shall not start to run until the reasoning and analysis memorandum is entered and filed."

REMAND the case to the Superior Court for a new trial.

ANALYSIS

¶3 This case involves the kidnapping of Nilo Rivera and Eladio Laude, and the subsequent murder of Laude. The full facts of this case are set forth at *Bowie,* 236 F.3d at 1085-1097. The essential factual and procedural background for the essence of this appeal are abbreviated below. On November 5, 1992, Bowie and Reyes became embroiled in an alcohol-fueled dispute with Rivera and Laude over a near collision between their automobiles. Rivera and Laude were beaten at Reyes' house by the Reyes brothers, Mario and Efrain, and Bowie's friends, most of whom were related. The attackers tied their victims' wrists and deposited them in the trunk of Laude's car. Rivera escaped, but Laude's body was found the next morning along the side of the road and his abandoned burned car was recovered at another location.

¶4 During the criminal investigation, most of Laude's and Rivera's assailants and kidnappers were given favorable plea agreements in return for their full cooperation and truthful testimony against Bowie and Reyes.

¶5 While Reyes was incarcerated, an unsigned letter was found in his cell.[3] surrounding the letter and its subsequent handling by the Attorney General's office is the principal basis for the Ninth Circuit's decision in *Bowie*. The trial testimony showed that the Attorney

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[3]The authorship of the letter is unknown. Shortly after Mario's arrest, Sergeant Pedro Camacho San Nicolas routinely checked him in his cell. During this process, Sergeant San Nicolas saw Mario holding a piece of yellow writing paper in his hand. When Mario saw Sergeant San Nicolas, he crumpled the paper and put it in the trash. Sergeant San Nicolas eventually retrieved the paper and turned it over to Sergeant Joseph Aldan, one of the chief investigators in this case. Sergeant San Nicolas could not shed any light on whether Mario had written the letter, or merely received it from someone else. *Bowie,* 236 F.3d at 1986.
Upon reading the letter, Sergeant Aldan took it immediately to Assistant Attorney General Ron Hammett, the Chief of the Criminal Division in the Attorney General's Office who was in charge of this case. Sergeant Aldan was seeking guidance from Mr. Hammett as to how to follow up on the information in the letter. *Id.*

General candidly admitted, and the record plainly demonstrated, that the Attorney General told the Sergeant "to do nothing with the letter," and that the Sergeant followed the Attorney General's "terse instructions as delivered." *Bowie*, 236 F.3d at 1086.

¶6 At trial, the Sergeant's testimony reveals that:

> (1) his department purposefully did not conduct an investigation as to who wrote the unsigned letter, (2) that the letter was not given for analysis to a handwriting expert, (3) that no one outside the focus of the investigation was consulted about the letter as to its origins or its contents, and (4) that no other experts, such as a polygraph examiner, were used to determine the identity of the author.

Bowie, 236 F.3d at 1088.

¶7 The Ninth Circuit held that "the plain language in the letter would alert anyone . . . to the strong possibility that the witnesses in this case had agreed to testify falsely against Bowie in order to extract the writer of the letter from the center of blame for Laude's death." *Bowie,* 236 F.3d at 1090.

¶8 Nonetheless, the Ninth Circuit's Opinion leads to the inescapable conclusion that the use of the letter at trial, as evidence against Reyes, was just as much reversible error as was its use against Bowie.[4]

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[4]Counsel for Mario Reyes maintained throughout the trial that the letter was not written by his client. In fact, he introduced testimony from another Reyes brother that Efrain Reyes gave him a folded yellow document that appeared to be the letter, and that he then delivered it as requested to Mario Reyes. Moreover, counsel claimed that he had a handwriting expert who was prepared to say that the letter was not written by Mario Reyes, but the court--at the insistence of Bowie's counsel *and* the prosecutor--refused to admit this evidence because the witness was not on the witness list. We note that as soon as defense counsel mentioned a handwriting expert, the government joined in the motion and requested time to conduct its own examination. The prosecutor's request at this juncture of the trial gives new meaning to the phrase, "too little, too late." 236 F.3d at 1090, f. 3.

> Faced with this information, the prosecutor's clear duty under our Constitution was to do exactly the opposite of what he did. The law in place when the letter was found on November 17, 1992, left no room for doubt that the immediate constitutional obligation of the State and its representatives to collect potentially exculpatory evidence, to prevent fraud upon the court, and to elicit the truth was promptly to investigate the letter and to interrogate their witnesses about it. Let us be clear about this: The prosecutor's duty to protect the criminal justice system was not discharged in this case simply by ignoring the content of the letter and by turning it over to the defense, especially in the light of a scheduled joint trial where one defendant, Bowie, was certain to attempt to use it as evidence against his co-defendant, Mario Reyes. Failing to do anything about the content of this letter was at least the equivalent of knowingly sitting quietly by while a person called as your witness lies on the stand.

¶9 The Ninth Circuit was struck "by the government's insistence on a joint trial knowing full well that Bowie could not fail to introduce this letter in an attempt to exculpate himself by fingering his co-defendant. This ploy allowed the prosecution indirectly to use the uninvestigated letter against Mario Reyes without having to authenticate it and to introduce it themselves, and without having to risk further challenge and damage to the credibility of their own accomplice witnesses." *Bowie,* 236 F.3d at 1094-1095.

¶10 The Court concluded that the use of the letter at trial was "[a] fatal due process error committed by the Office of the Attorney General of the Commonwealth of the Northern Mariana Islands" which "fatally contaminated everything that followed." *Bowie,* 235 F.3d at 1095. "The Attorney General's fatal decision and calculated course of non-action in this case deprived Bowie of the fair process that was his due under our constitution before he could be deprived of his liberty." *Bowie,* 236 F.3d at 1097. "A prosecutor cannot avoid [the] obligation [to elicit the truth] by refusing to search for the truth and remaining willfully ignorant of the facts." *Bowie,* 263 F.3d at 1090-91. The Ninth Circuit found there was no doubt that the letter affected the jury's judgment. We hold the same to be true for Reyes.

CONCLUSION

¶11 For the reasons stated above the September 7, 1999 Decision in this case is **VACATED** and this case is **REVERSED** and **REMANDED** for a new trial.

Dated this 19th of July, 2001.

MICHAEL A. WHITE
Special Judge

VIRGINIA SABLAN-ONERHEIM
Justice *Pro Tempore*

JUAN T. LIZAMA
Justice *Pro Tempore*