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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.**

**MELVIN MARATITA MANGLONA**

**Defendant.**

) **CRIM. CASE NO. 17-0012R**  
)  
) **ORDER GRANTING THE**  
) **COMMONWEALTH'S MOTION TO**  
) **QUASH THE SUBPOENA OF A**  
) **PROSECUTOR WHO HANDLED THE**  
) **CASE AS THE DEFENDANT FAILED TO**  
) **ESTABLISH A COMPELLING NEED BY**  
) **SHOWING THE NECESSITY OF THE**  
) **PROSECUTOR'S TESTIMONY AND**  
) **THAT ALL OTHER AVAILABLE**  
) **SOURCES OF COMPARABLY**  
) **PROBATIVE EVIDENCE HAVE BEEN**  
) **EXHAUSTED**  
)  
)

**I. INTRODUCTION**

This matter came before the Court on June 14, 2017 in Courtroom 220A of the Saipan Courthouse on the Commonwealth's Motion to Quash Subpoena. The Defendant, Melvin Maratita Manglona, was present and represented by Attorney Brien Sers Nicholas. The Commonwealth was represented by Assistant Attorney General Teri Tenorio.

The Court hereby makes the following order.

**II. BACKGROUND**

The Defendant is accused of engaging in sexual penetration with an alleged minor victim. Information at 1-2. The Defendant is charged with two counts of sexual abuse of a minor in the first degree, in violation of 6 CMC § 1306(a)(2). Information at 1-2. The Defendant is also charged with disturbing the peace in violation of 6 CMC § 3101(a). Information at 2.

1 This matter is presently set for a jury trial on June 26, 2017 in the Rota Courthouse. On May  
2 31, 2017, the Defendant subpoenaed Assistant Attorney General Elizabeth Weintraub (“AAG  
3 Weintraub”). AAG Weintraub was the prosecutor assigned to *Commonwealth v. Manglona*, Crim.  
4 No. 16-0157, which also involved the Defendant. Crim No. 16-0157 and Crim. No. 17-0012 are  
5 essentially the same charges and allegations against the Defendant. The Commonwealth dismissed  
6 Crim. No. 16-0157 without prejudice on December 15, 2016. The Commonwealth re-filed the case  
7 under Crim. No. 17-0012 through penal summons on January 25, 2017. The present case has since  
8 been re-assigned to Assistant Attorney General Teri Tenorio, although AAG Weintraub remains on  
9 the case in an advisory capacity.

10 The Commonwealth filed its motion to quash on June 5, 2017. The Commonwealth argues  
11 that it is improper to subpoena a prosecuting attorney, even if the attorney has withdrawn from the  
12 matter. Mot. to Quash at 1. According to the Commonwealth, although AAG Weintraub is no  
13 longer prosecuting this case, she is “still involved in an advisory capacity on the above-captioned  
14 case.” *Id.*

15 The Defendant filed his opposition on June 12, 2017. The Defendant’s opposition outlines  
16 an alleged conversation between AAG Weintraub, Mildred Sikebert,<sup>1</sup> and the alleged minor victim,  
17 V.M. According to the Defendant, the alleged victim complained to her mother that AAG  
18 Weintraub and Ms. Sikebert “kept putting words in [V.M.’s] mouth.” Opp at. 2. According to the  
19 Defendant, when the alleged victim told AAG Weintraub and Ms. Sikebert that she wrote a letter  
20 saying that the Defendant had not abused her, AAG Weintraub and Ms. Sikebert “kept insisting that  
21 [V.M.’s family] forced her to do so.” *Id.* When the alleged victim’s mother telephoned AAG  
22 Weintraub, the Defendant claims that AAG Weintraub told her [the alleged victim’s mother] that  
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<sup>1</sup> Ms. Sikebert is a social worker for the Division of Youth Services.

1 the alleged victim “is a liar (sic).” *Id.*<sup>2</sup> It is unclear whether AAG Weintraub accused the alleged  
2 victim of lying about recanting, or lying about the alleged incident of abuse.

3 The Commonwealth filed its reply on June 13, 2017. The Commonwealth argues that the  
4 Defendant failed to address the legal standard for taking testimony from a prosecutor, nor has he  
5 shown a compelling need for AAG Weintraub’s testimony, nor has he exhausted all other available  
6 sources of comparably probative evidence.

7 The Court heard arguments on this issue on June 14, 2017. At the June 14, 2017 hearing, the  
8 Defendant indicated that he would be calling AAG Weintraub for the sole purpose of asking her  
9 whether she called the alleged victim a liar while speaking on the phone with the alleged victim’s  
10 mother. The Defendant also intends to call the alleged victim’s mother to testify that AAG  
11 Weintraub had called her daughter a liar. The Commonwealth denied that AAG Weintraub had  
12 made any such statement and declined to stipulate as to any statements allegedly made by AAG  
13 Weintraub or waive any hearsay objections related to statements allegedly made by AAG  
14 Weintraub. The Commonwealth also stated that, should the Court allow the Defendant to call AAG  
15 Weintraub as a witness, the Commonwealth would thoroughly cross-examine her regarding the  
16 entire case.

### 17 III. LEGAL STANDARD

18 Courts are generally reluctant<sup>3</sup> to allow prosecutors to testify in criminal cases they have  
19 handled. *United States v. Prantil*, 764 F.2d 548, 554 (9th Cir. 1985). “When either party in a  
20 criminal case seeks testimony from the prosecuting attorney, the federal courts have applied a  
21 ‘compelling need’ test.” *Ullmann v. State*, 230 Conn. 698, 716 (Conn. 1994) (citing *United States v.*

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22 <sup>2</sup> From the context of the filing, the Court can tell that “lair” is a typo for the word “liar.”

23 <sup>3</sup> The Commonwealth Superior Court has imposed sanctions in the past for improper subpoenas of participating  
24 prosecutors. *Commonwealth v. Cheung Ping Yin*, Crim. No. 99-421B (NMI Super. Ct. Dec. 1, 1999) (Order Granting  
Motions for Sanctions at 3-5) (imposing sanctions where defense counsel improperly subpoenaed the Presiding Judge  
and the Assistant Attorney General handling the case). From the filings and representations made in court, it appears to  
the Court that the Defendant subpoenaed AAG Weintraub in good faith as part of his trial preparation.

1 *Prantil*, 764 F.2d at 554; *United States v. Dack*, 747 F.2d 1172, 1176 n.5 (7th Cir. 1984); *United*  
2 *States v. Birdman*, 602 F.2d 547, 553 (3d Cir. 1979); *United States v. Schwartzbaum*, 527 F.2d 249,  
3 253 (2d Cir. 1975). To establish a compelling need, the party that wants to call the prosecutor to  
4 testify bears the burden to show that the prosecutor’s testimony is “necessary and not merely  
5 relevant and that all other available sources of comparably probative evidence have been  
6 exhausted.” *Id.* (citing *State v. Thompson*, 20 Conn. App. 290, 297 (Conn. App. 1989); *Prantil*, 764  
7 F.2d at 551; *Rudolph v. State*, 829 P.2d 269, 273 (Wyo. 1992)) (internal quotation marks omitted)).  
8 “The defendant must also show that the testimony of the participating prosecutor would not be  
9 cumulative of other testimony or evidence and that he has exhausted other available sources of  
10 comparably probative evidence.” *Rudolph v. State*, 829 P.2d at 273 (citing *State v. Thompson*, 20  
11 Conn. App. at 297).

#### 12 IV. DISCUSSION

13 The Commonwealth argues that the Court should quash the Defendant’s subpoena of AAG  
14 Weintraub. Since the Defendant wishes to call AAG Weintraub as a witness, the Defendant bears  
15 the burden of establishing that AAG Weintraub’s testimony is “necessary and not merely relevant  
16 and that all other available sources of comparably probative evidence have been exhausted.”  
17 *Ullmann*, 230 Conn. at 716 (emphasis added). The Court will address each of these prongs in turn.

##### 18 A. The Prosecutor’s Testimony Must Be Necessary and Not Merely Relevant

19 The first prong in the Court’s inquiry is whether the Defendant has established that AAG  
20 Weintraub’s testimony is “necessary and not merely relevant.” *Ullmann*, 230 Conn. at 716.  
21 “Regardless of the prosecutor’s view of the utility of his own testimony, [the trial court] is charged  
22 with the responsibility of making determinations as to the materiality of witness testimony.”  
23 *Prantil*, 764 F.2d at 552. Although courts frown upon hearing testimony from participating  
24 prosecutors, “an accused’s right to call relevant witnesses and to present a complete defense may

1 not be abrogated for the sake of trial convenience or for the purpose of protecting a [prosecutor]  
2 from possible embarrassment while testifying, *if he possesses information vital to the defense.*”  
3 *Gajewski v. United States*, 321 F.2d 261, 268-269 (8th Cir. 1963) (emphasis added).

4 In his opposition, the Defendant alleges that AAG Weintraub and Ms. Sikebert were  
5 “putting words in [the alleged victim’s] mouth,” that AAG Weintraub called the alleged victim a  
6 liar, and that AAG Weintraub told the alleged victim that the alleged victim had been forced to  
7 write a letter stating that the Defendant had not abused her. Opp. at 2. At the June 14, 2017 hearing,  
8 the Defendant stated that he would only have AAG Weintraub testify as to whether she called the  
9 alleged victim a “liar” while speaking with the alleged victim’s mother.

10 In *United States v. Tamura*, the defendant tried to call the prosecutor to testify that a witness  
11 had changed his statement before trial. 694 F.2d 591, 601 (9th Cir. 1982). In *Tamura*, when the  
12 witness first spoke with the prosecutor, the witness was unsure if he had negotiated with the  
13 defendant, Tamura, or another individual, Akimoto. *Id.* One month before trial, the witness  
14 ultimately named Tamura. *Id.* “[T]he prosecutor was ‘skeptical about this sudden change from  
15 Akimoto to Tamura,’ and he told [the witness] ‘to go back and think real hard about who you talked  
16 to and when.’” *Id.*

17 The Ninth Circuit found that no compelling need existed in *Tamura*. 694 F.2d at 601. “[T]he  
18 prosecutor could not properly testify that [the witness] had seemed unsure of his story and that the  
19 prosecutor was skeptical; these were merely the prosecutor’s opinions about [the witness’s]  
20 credibility.” *Id.*<sup>4</sup> Similarly, whether a prosecutor remembers or does not remember a particular  
21 detail does not create a compelling need to hear the prosecutor testify. *United States v. Watson*, 952  
22 F.2d 982, 986 (8th Cir. 1991) (“[W]e do not believe the [Assistant United States Attorney’s] stated

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24 <sup>4</sup> The Ninth Circuit noted that the sole difference between the prosecutor’s account of the conversation during arguments, and the admissible portions of the witness’s testimony, was whether the prosecutor had told him to “think real hard.” 694 F.2d at 601.

1 lapse of memory was vital evidence” where the testimony “would not have contradicted Williams  
2 and would not have given the jury additional facts with which to evaluate the Detective’s  
3 credibility.”).

4 In contrast, in *Prantil* the participating prosecutor “was a witness to, and indeed a  
5 participant in, some aspect of all of the events in the indictment.” *Prantil*, 764 F.2d at 551.  
6 Testimony from the prosecutor in *Prantil*, who was directly involved in the underlying facts of the  
7 case, is distinguishable from testimony regarding whether a prosecutor thinks a witness is less  
8 credible.<sup>5</sup>

9 Here, AAG Weintraub allegedly called the alleged victim a “liar.” The Defendant argues  
10 that AAG Weintraub’s statement is absolutely necessary because it shows that the Commonwealth  
11 does not find its own key witness credible.

12 The Defendant has not established that AAG Weintraub questioning the victim’s credibility  
13 gives rise to a compelling need. Any issues regarding the credibility of the alleged victim would  
14 come to light if and when she testifies, and calling AAG Weintraub to testify as to this would be  
15 cumulative. In *United States v. Dupuy*, the defendant sought to call the prosecutor as an  
16 impeachment witness. 760 F.2d 1492, 1498 (9th Cir. 1985). The Ninth Circuit found no compelling  
17 need since the defendants had access to the prosecutor’s notes, there were law enforcement agents  
18 present for the alleged conversation, and “there was ample testimony which indicated that [the  
19 witness] was prone to lie.” *Id.* See also *Watson*, 952 F.2d at 986 (“This testimony would not have  
20 contradicted [the witness] and would not have given the jury additional facts with which to evaluate

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22 <sup>5</sup> In *Prantil*, the prosecutor in question “negotiated directly with the defendant for the surrender of Ronald Powell, the  
23 fugitive whom the defendant was accused of harboring and giving aid.” *Prantil*, 764 F.2d at 548. Although the  
24 prosecutor in *Prantil* clearly had an investigatory role, it is unclear from the record before the Court whether AAG  
Weintraub’s interview with the alleged victim was investigatory or trial preparation. AAG Weintraub dismissed the  
initial case against the Defendant, Crim. No. 16-0157, on December 15, 2016 and later filed the present case, Crim. No.  
17-0012 on January 25, 2017. It is unclear whether the interview with the alleged victim, and the subsequent argument  
with the alleged victim’s mother, was solely trial preparation for Crim. No. 17-0012. There is insufficient information  
on the record to determine whether AAG Weintraub had taken on an investigatory role.

1 the Detective’s credibility.”) Further, in *Tamura*, it was improper when the defense sought to call  
2 the prosecutor merely to testify about his opinion of the victim’s credibility. 694 F.2d at 601.

3 Any testimony regarding whether AAG Weintraub called the alleged victim a “liar” simply  
4 goes to AAG Weintraub’s own personal opinions. Any issues as to the alleged victim’s credibility  
5 would not be answered by whether or not AAG Weintraub thinks she is a “liar.” Further, the  
6 Defendant fails to show that testimony regarding a collateral phone conversation between AAG  
7 Weintraub and the alleged victim’s mother would be probative of whether the Defendant had  
8 abused the alleged victim. Finally, if and when the victim testifies, the trier-of-fact will be able to  
9 make a determination as to her credibility based on her testimony. Any statement regarding AAG  
10 Weintraub’s opinion as to the alleged victim’s credibility would be cumulative. Thus, the  
11 Defendant has failed to establish that AAG Weintraub’s personal opinion about the alleged victim  
12 is “necessary and not merely relevant.” *Ullmann*, 230 Conn. at 716.

13 **B. All Other Available Sources of Comparably Probative Evidence Must Be Exhausted**

14 Even if the Defendant established the necessity of AAG Weintraub’s testimony, he must  
15 also establish that the prosecutor’s testimony would not be cumulative and that “all other available  
16 sources of comparably probative evidence have been exhausted.” *Ullmann*, 230 Conn. at 716;  
17 *Rudolph*, 829 P.2d at 273 (citing *Thompson*, 567 A.2d at 840). “[A] defendant has an obligation to  
18 exhaust all other available sources of evidence before a court should sustain a defendant’s efforts to  
19 call a participating prosecutor as a witness.” *Prantil*, 764 F.2d at 552 (citing *United States v. West*,  
20 680 F.2d 652, 654 (9th Cir. 1982)). “Both the quality and quantity of the alternate sources of  
21 evidence are proper subjects for comparison with that sought directly from the participating  
22 prosecutor.” *Id.*

23 At the June 14, 2017 hearing, the Defendant stated that he would only be questioning AAG  
24 Weintraub as to whether she called the alleged victim a “liar” while speaking on the phone with the

1 alleged victim's mother. The other incidents alleged by the Defendant, including whether the  
2 alleged victim was pressured by AAG Weintraub and Ms. Sikebert, can be testified to by the  
3 alleged victim or Ms. Sikebert.

4 The Defendant argues that he would not be able to question the alleged victim's mother  
5 about whether AAG Weintraub called the alleged victim a "liar" without venturing into hearsay<sup>6</sup>  
6 territory. According to the Defendant, the only way to get around the prohibition against hearsay  
7 would be to call AAG Weintraub solely on the issue of whether she called the alleged victim a  
8 "liar" while speaking with the alleged victim's mother. The Commonwealth denies that AAG  
9 Weintraub made any such statement, declines to stipulate as to any statements made by AAG  
10 Weintraub about the alleged victim, and refuses to waive any hearsay objection.

11 The Defendant "has an obligation to exhaust all other available sources of evidence" before  
12 the Court can allow the Defendant to call AAG Weintraub to testify. *Prantil*, 764 F.2d at 551.<sup>7</sup>  
13 "Nonetheless, the defendant's obligation to resort to alternative means of adducing factual  
14 testimony is not absolute. Both the quality and quantity of alternate sources of evidence are proper  
15 subjects for comparison with that sought directly from the participating prosecutor." *Prantil*, 764  
16 F.2d at 551-552.

17 In *Dupuy*, the defendant sought to call the prosecutor as an impeachment witness. 760 F.2d  
18 at 1498. The Ninth Circuit found there were ample alternative sources of evidence since the

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20 <sup>6</sup> Hearsay rules govern out of court statements used to "prove the truth of the matter asserted." NMI R. Evid. 801(c).  
Hearsay statements are inadmissible unless they fall within specific exceptions. NMI R. Evid. 803, 804.

21 <sup>7</sup> In looking to other available sources of testimony, courts have looked to whether third parties, such as other  
22 government agents, were present. *See, e.g., United States v. Dupuy*, 760 F.2d 1492, 1497-1498 (9th Cir. 1985)  
(excluding a prosecutor from testifying to impeach an informant where the prosecutor did not remember specific  
23 discrepancies cited by the defendants, the prosecutor turned notes over to defense counsel, and three DEA agents were  
"intermittently present" during the meetings in question); *United States v. Roberson*, 897 F.2d 1092, 1098 (11th Cir.  
1990) (finding no "compelling need" where other witnesses were available to testify as to plea bargaining that took  
24 place at the U.S. attorney's office); *United States v. Brothers*, 856 F.Supp. 388, 391 (M.D. Tenn. 1993) ("In this case,  
there were many other investigating agents present at Russel Brothers' proffer who can testify to what occurred during  
the meetings.").



1 defendants had access to the prosecutor's notes, there were law enforcement agents present for the  
2 alleged conversation, and "there was ample testimony which indicated that [the witness] was prone  
3 to lie." *Id.*; see also *United States v. Roberson*, 897 F.2d 1092, 1098 (11th Cir. 1990) (holding the  
4 prosecutor need not testify where other witnesses were available to testify as to plea bargaining that  
5 took place at the U.S. attorney's office); *United States v. Brothers*, 856 F.Supp. 388, 391 (M.D.  
6 Tenn. 1993) (holding the prosecutor need not testify where "there were many other investigating  
7 agents present at Russell Brothers's proffer who can testify to what occurred during the meetings").

8 Here, the testimony would involve a telephone call between AAG Weintraub and the  
9 alleged victim's mother. The Defendant argues that nobody other than AAG Weintraub and the  
10 alleged victim's mother can testify as to the contents of the telephone call, and that any statements  
11 by the alleged victim's mother regarding any statements made by AAG Weintraub would be barred  
12 as inadmissible hearsay. The Commonwealth suggested that the contents of the conversation could  
13 potentially come in through a hearsay exception, and thus the Defendant has not exhausted other  
14 sources of evidence. Since this phone call involved only AAG Weintraub and the alleged victim's  
15 mother, there is no other admissible way for its contents to be presented to the trier-of-fact.

16 Despite this, the Court notes that the purpose of any testimony from AAG Weintraub would  
17 be to call the alleged victim's credibility into question. Similar to *Dupuy*, there are numerous other  
18 avenues for the Defendant to address the alleged victim's credibility, including through cross-  
19 examining the alleged victim and questioning regarding the alleged letter written by the alleged  
20 victim that contradicts her testimony. Testimony regarding whether or not AAG Weintraub called  
21 the alleged victim a "liar" is not the *only* way for the Defendant to present this evidence to the jury.  
22 The additional evidence of AAG Weintraub's opinion of the victim's credibility, even if proper,  
23 would be cumulative to other sources of credibility and impeachment evidence the Defendant has at  
24 his disposal.

1 Further, as the Court detailed above in Section IV. A., the Defendant failed to establish that  
2 AAG Weintraub's personal opinion as to the credibility of the alleged victim is "necessary and not  
3 merely relevant." *Ullmann*, 230 Conn. at 716. In sum, the Defendant failed to establish a  
4 compelling need for the testimony. Specifically, the Defendant failed to show that testimony of a  
5 prosecutor who handled the case is *both* "necessary and not merely relevant *and* that all other  
6 available sources of comparably probative evidence have been exhausted." *Ullmann*, 230 Conn. at  
7 716 (emphasis added).

8 **V. CONCLUSION**

9 Accordingly, the Commonwealth's motion to quash is **GRANTED**.

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11 **IT IS SO ORDERED** this 2 day of June, 2017.

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16 JOSEPH N. CAMACHO  
17 Associate Judge  
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