



1 summary of Defendant's statements were provided to demonstrate the basis for the perjury  
2 charge. *See* Motion to Find Statements Non-material and to Dismiss (Mar. 26, 2018).

3 On February 6, 2018, prior to the start of Defendant's jury trial, the Court *sua sponte*  
4 severed the perjury charges. The Court reasoned joinder of these claims may have a prejudicial  
5 effect against the Defendant since the offense of the 2016 trial and second trial "are of the same  
6 nature." *See* Decision and Order Severing Perjury Charge, at p. 5 (Feb. 6, 2018). Further, the  
7 People expressed their intent to present evidence from the 2016 case to prove the perjury charge  
8 in this matter. The Court was primarily concerned the jury "might use that evidence to decide  
9 Defendant's guilt." *Id.*

10 On February 14, 2018, after the conclusion of the CF0066-16 trial, the People were  
11 instructed to file an Amended Indictment relating to the perjury charges; the Court designated  
12 this matter as CF0066-16-01. *See* Order Instructing Government to File Amended Indictment  
13 (Feb. 14, 2018).

14 Defendant filed the instant motion requesting the Court to find the alleged false  
15 statements non-material, in effect warranting a dismissal.<sup>2</sup> Motion to Find Statements Non  
16 Material and Dismiss (Mar. 26, 2018). In response, without conceding to the factual  
17 underpinning of Defendant's Motion, the People acquiesce to the relief sought by the Motion.  
18 *See* People's Response to Defendant's Motion Find Statements Non-Material and to Dismiss, at  
19 p. 1 (Apr. 9, 2018). At the hearing, the parties agreed the basis for dismissal constitute a "decline  
20 to prosecute" thus warranting Dismissal *with* prejudice and an expungement.

### 21 Discussion

#### 22 a. Defendant's statements were non-material.

23 Guam law defines the crime of perjury as follows, "A person is guilty of perjury if,  
24 under oath in an official proceeding, he makes a false statement which is *material* and which he  
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27 <sup>2</sup> Defendant also argues that the statement was not false, that when asked, "It's your testimony here that you've  
28 never spoken to a police officer before? Mr. Barcinas' replied "No." *See* Motion to Find Statements Non Material  
and Dismiss, at p. 7. Assuming the Court accepts the Defendant's contention, the Court's conclusion remains  
unchanged.

1 does not believe to be true.” 9 Guam Code Ann. § 52.15(a) (emphasis added).<sup>3</sup> A material  
2 statement<sup>4</sup> is defined as “a statement *which affected or could have affected* the course or  
3 outcome of a proceeding, regardless of its admissibility under rules of evidence.” *Id.* § 52.15(b)  
4 (emphasis added). In another jurisdiction adopting the Uniform Model Penal Code, false  
5 testimony is deemed material if:

6 it tends directly or circumstantially to prove the central matters in issue or if it  
7 establishes or disproves matters which themselves bear crucially on the *central*  
8 *issues*; if the alleged falsehoods are of collateral issues, the materiality  
9 requirement may be met by testimony relating to a collateral matter which, if  
10 believed, has the capacity to affect the weight or force of the evidence *bearing on*  
11 *an ultimate issue* and thus has the capacity to influence the tribunal hearing the  
12 judicial proceeding.

13 *State v. Neal*, 826 A.2d 723, 361 N.J.Super. 522 (2003) (emphasis added).

14 In this case, the alleged false statement was that Defendant has “never” interacted with  
15 the police, prior to the investigation of the 2016 case. Whether or not the Defendant was  
16 interviewed, wanted for questioning, or ever interacted with the police has no bearing to the  
17 ultimate issues in the 2016 case. A person’s prior interactions with the police are generally  
18 inadmissible unless offered under an exception. *See* Rule 404(b), 413 of the Guam Rules of  
19 Evidence. The question posed by the prosecutor was immensely vague and thus unlikely to be  
20 of any significance to a jury in a prosecution for 2016’s criminal sexual conduct charges. *State*  
21 *v. Anderson*, 127 N.J. 191, 603 A.2d 928 (1992) (holding the issue of materiality of allegedly  
22 false statement in perjury prosecution is whether statement could have affected prior jury’s  
23 verdict). Therefore, the Court concludes Defendant’s statements were non-material.

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26 <sup>3</sup> This law is identical to Model Penal Code 241.1(1)-(2), the Court therefore looks to cases which interpret this law  
27 for guidance. *Benavente v. Taitano*, 2006 Guam 15, ¶ 48.

28 <sup>4</sup> The term “statement” as used in this chapter is defined as “any non-trivial representation, but a representation of  
opinion, belief or other state of mind is a statement only if it clearly relates to a state of mind apart from or in  
addition to the facts which it otherwise represents.” 9 Guam Code Ann. § 52.10(e).

1           b. Dismissal *with* Prejudice and expungement is proper.

2           The court may dismiss a prosecution pursuant to § 7.67 of the Criminal and Correctional  
3 Code. 8 Guam Code Ann. § 80.70. Pursuant to Section 7.67, the court may order a dismissal if  
4 having regard to the nature of the conduct charged to constitute an offense and the nature of the  
5 attendant circumstances, the court finds that the defendant's conduct presents such other  
6 extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding  
7 the offense. 9 Guam Code Ann. § 7.67. Having found the statements non-material as required  
8 under 9 Guam Code Ann. § 52.15(a) above, the Court finds dismissal is appropriate.

9           Expungement is also proper “when the prosecuting attorney *decides not to prosecute* the  
10 offense.” 8 Guam Code Ann. § 11.10(a) (emphasis added). The government indicated “a  
11 conviction at trial is not reasonably possible at this stage.” *See* People’s Response to  
12 Defendant’s Motion Find Statements Non-Material and to Dismiss, at p. 1. The government also  
13 represented that he has spoken with his immediate supervisors regarding his position on this  
14 case. At this point, the parties agree that no further prosecution for this charge will be pursued.  
15 Based on the representations of the parties, the Court is convinced that dismissal *with* prejudice  
16 and expungement is also appropriate.

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**Conclusion and Order**

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2 For the reasons provided above, the Court finds that it properly GRANTED the  
3 Defendant's Motions to find Statements Non-material and for Dismissal. The Court hereby  
4 ORDERS the above-captioned matter against Austin James Cruz Barcinas DISMISSED WITH  
5 PREJUDICE AND EXPUNGED.

6 Under 8 Guam Code Ann. §§ 11.10 and 11.11, the Court further ORDERS that the Clerk  
7 of the Superior Court of Guam, the Office of the Attorney General of Guam, and the Guam  
8 Police Department ("GPD") shall EXPUNGE their records of Austin James Cruz Barcinas in  
9 Criminal Case No. CF0066-16-01 and GPD Report No. 12-18590. All other local and federal  
10 law enforcement agencies to which GPD reports shall seal any records of the above from public  
11 inspection and refuse to admit the existence of such records to persons not entitled to examine  
12 them.

13 SO ORDERED this MAY 08 2018, *nunc pro tunc* April 17, 2018.

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HONORABLE MARIA T. CENZON  
Judge, Superior Court of Guam

**SERVICE VIA COURT BOX**

I acknowledge that a copy of the original hereto was placed in the court box of:

1) HOA's 2) PDSC  
3) GPD

Date: 5/9/18 Time: 11a

  
Deputy Clerk, Superior Court of Guam