

1 These charges stem from allegations that on or about February 18, 2019 around 3 to 4 am,
2 Defendant returned to his residence intoxicated, grabbed the victim by the hair and held her
3 down to the floor, then sat on her chest and pulled her hair while strangling her with his right
4 hand. (Decl. of Christine Santos Tenorio, Magistrate's Compl., Feb. 21, 2019). The victim was
5 unable to breathe and became unconscious. *Id.* When she regained consciousness, Defendant
6 was still pulling her hair and strangling her. *Id.* She struggled to turn sideways, and Defendant
7 kicked her back. *Id.* Defendant then undressed the victim and sexually assaulted her, with the
8 victim's minor children present in the room. *Id.*

9 On March 6, 2019, Defendant filed the instant Motion for Bail Redetermination.
10 Defendant is confined pending the posting of \$25,000 cash bail. *See* Commitment Order, Feb.
11 21, 2019. On March 14, 2019, Defendant filed an Addendum to Bail Motion Filed March 6,
12 2019, attaching a statement of the alleged victim, Miranta Masaioy. On March 20, 2019, the
13 Government filed its Opposition to the Motion for Bail Redetermination.

14 DISCUSSION

15 Defendant moves the Court to release him on personal recognizance as he does not have
16 the means to pay the twenty-five thousand dollars (\$25,000.00) cash bail. *See generally*, Mot.
17 Bail Redetermination, Mar. 6, 2019.

18 Under Guam law, the Court must "order the person charged to be released on
19 recognizance, unless the judge determines, in his discretion, on the basis of available
20 information, that such a release will not reasonably assure the appearance of the person as
21 required or will endanger the safety of any other person or the community." 8 G.C.A. §
22 40.15(b). Factors for the Court to consider in determining whether Defendant presents a
23 substantial risk of nonappearance or is a danger to the safety of any other person or the
24 community include:

- 25 (1) the nature of the offense charged, the apparent possibility of conviction and
26 the likely sentence;
27 (2) the history and characteristics of the person charged, including:
28 (i) length of his/her residence on Guam;
(ii) his/her employment status and history, and financial condition;

- 1 (iii) his/her family ties and relationships;
2 (iv) his/her reputation, character and mental and physical condition;
3 (v) his/her prior criminal record, if any, including any record of prior
4 release on recognizance or on bail;
5 (vi) his/her history relating to drug or alcohol abuse;
6 (vii) the identity of the reasonable members of the community who will
7 vouch for his/her reliability;
8 (viii) whether at the time of the current offense or arrest, he/she was on
9 probation, on parole or on other release pending trial, sentencing,
10 appeal or completion of sentence of an offense under Federal, state
11 or local law; and
12 (ix) his/her history of compliance with other court orders;
13 (3) the nature and seriousness of the danger the person would pose to the
14 community or to any individual member thereof if released; and
15 (4) any other factors which bear on the risk of willful failure to appear or the
16 danger the person would pose to the community or to any individual member
17 thereof if released.

18 8 G.C.A. § 40.15(c).

19 If the Court finds that release on his or her own recognizance would not assure a
20 defendant's appearance or would present a danger to any other person or the community, the
21 Court may still permit release subject to certain conditions under 8 G.C.A. § 40.20. These
22 conditions include:

- 23 (a) placement of the person in the custody of a designated person or organization
24 agreeing to supervise him and to assist him in appearing in Court;
25 (b) placement of restrictions on the activities, movements, associations and
26 residence of the person;
27 (c) execution of a bond in an amount specified by the judge; such bond in the
28 discretion of the judge to be either unsecured or secured in whole or in part by
the deposit of cash or other property, or by the obligation of qualified sureties;
(d) release of the person during working hours, but with the condition that he
return to custody at specific times; or
(e) any other condition reasonably necessary to assure appearance as required and
the safety of any other person and the community.

8 G.C.A. § 40.20. Under section 40.20, the least onerous conditions shall be imposed to ensure
Defendant's appearance as required and the safety of any other person and the community.
"Determinations as to bail conditions and amounts are not to be driven by the goal of keeping

1 the accused incarcerated, but should rather be reached in consideration of the only authorized
2 interests, *to wit*, ensuring the appearance of the accused and the safety of others.” *People v.*
3 *Song*, 2011 Guam 19 ¶ 11.

4 In support of his motion, Defendant offers that he does not have any criminal history,
5 that the alleged victim expressed her desire for his release from jail, that she is not afraid of him,
6 and that he is the sole breadwinner and needs to be able to work to provide for the family. *See*
7 *generally*, Mot. Bail Redetermination, Mar. 6, 2019; Addendum to Bail Mot., Mar. 14, 2019).
8 The Government opposes Defendant’s release, arguing that Defendant has failed “to provide the
9 Court any reasonable assurances to protect the safety and well-being of the community should
10 he be released,” and that “he will attend all of his hearings and not flee [this] jurisdiction.”
11 (Opp’n at 3, Mar. 20, 2019).

12 Upon consideration of the 8 G.C.A. § 40.15 factors, the Court is greatly concerned with
13 the safety of the community and whether Defendant will appear in court when required. The
14 Court acknowledges the alleged victim’s request for Defendant’s release; however, it also
15 recognizes the very serious nature of the offenses charged, along with the potential sentence
16 Defendant would face, should he be convicted of the charges. Defendant is accused of multiple
17 transgressions in one night, including strangling the alleged victim to the point that she lost
18 consciousness and committing acts of sexual assault with minor children present. *See* Decl. of
19 Christine Santos Tenorio, Magistrate’s Compl., Feb. 21, 2019). According to the Declaration
20 attached to the Magistrate’s Complaint, Guam Police Department Officers who responded to the
21 scene observed bruising to the alleged victim’s face, scratches to her arm, and that she
22 complained of pain to her head, neck, back, vagina, and anus. *Id.* Defendant faces up to two-
23 life sentences for the two counts of First Degree Criminal Sexual Conduct (As a First Degree
24 Felony). *See* 9 G.C.A. § 25.15(b). Such a lengthy potential sentence would give anyone so
25 accused considerable incentive to avoid future court hearings in the matter.

26 Thus, upon the Court’s review, Defendant’s release only on personal recognizance does
27 not sufficiently allay the Court’s concerns regarding the safety of the community and
28

1 Defendant's ability to comply with Court orders. This decision, however, does not preclude
2 Defendant from requesting release with proposed third-party custodians in the future.

3 **CONCLUSION**

4 For the foregoing reasons, the Court hereby DENIES Defendant's Motion for Bail
5 Redetermination. Further Proceedings are set for May 28, 2019 at 9:00 a.m.

6 **IT IS SO ORDERED, nunc pro tunc** to April 1, 2019, this **APR 09 2019**.

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10 SERVICE VIA COURT BOX
I acknowledge that a copy of the
original hereto was placed in the
court box of

11 AG, PDSC

12 Date 4/1/19 Time 10:00am

13 Deputy Clerk, Superior Court of Guam

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HONORABLE VERNON P. PEREZ
Judge, Superior Court of Guam