

FILED  
SUPERIOR COURT  
OF GUAM

2020 SEP -8 AM 10: 27

CLERK OF COURT

By: 

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

v.

CURTIS J. TAITAGUE,  
DOB: 05/02/1992

Defendant.

Criminal Case No. CF0138-20  
GPD Report No. 20-05890

**DECISION AND ORDER  
DENYING DEFENDANT'S  
MOTION TO DISMISS**

**INTRODUCTION**

This matter came before the Honorable Alberto C. Lamorena, III on August 13, 2020 for hearing on Defendant Curtis J. Taitague's ("Defendant's") Motion to Dismiss the Indictment ("Motion"). Assistant Attorney General Sean Brown represents the People, and Assistant Alternate Public Defender Heather M. Zona represents Defendant. Having duly considered the parties' briefs, oral arguments, and the applicable law, the Court now issues the following Decision and Order and **DENIES** Defendant's Motion.

**BACKGROUND**

The Guam Police Department ("GPD") arrested Defendant on February 25, 2020 after responding to an alleged burglary in process at the Verona Resort. Magistrate's Compl., Decl. (Feb. 26, 2020). The People subsequently filed a Magistrate's Complaint, charging Defendant with Burglary (as a Second Degree Felony), Criminal Trespass (as a Misdemeanor), and Theft (as a Petty Misdemeanor). *Id.* at 1.

The following facts are undisputed. On March 5, 2020, the grand jury indicted Defendant on the same charges alleged in the Magistrate's Complaint. During the grand jury proceedings, the People called GPD Officer Craig Peter Camacho Calvo to testify. Officer Calvo was not involved

1 in the investigation of the case. The People asked Officer Calvo whether the police report, drafted  
2 by another officer, contained various assertions and allegations. Officer Calvo testified for  
3 approximately twelve minutes. The prosecution did not call any other witnesses.

4 Defendant filed the present Motion on July 17, 2020, asking the Court to dismiss the  
5 indictment. Defendant submits a number of arguments regarding the Court's jurisdiction to dismiss  
6 the indictment and the permissibility of hearsay statements in grand jury proceedings. The People  
7 opposed Defendant's request to dismiss the Indictment, arguing the Court does not have jurisdiction  
8 to dismiss the Indictment on the grounds requested and that hearsay constitutes competent  
9 evidence. *See* Opp'n to Def.'s Mot. to Dismiss the Indictment ("Opposition") (July 24, 2020).  
10 Defendant replied to the People's opposition. *See* Reply Br. in Supp. of Mot. to Dismiss the  
11 Indictment ("Reply") (July 28, 2020).

12 The Court held a hearing on August 13, 2020. After hearing the arguments of the parties, the  
13 Court took the matter under advisement.

#### 14 DISCUSSION

15 Defendant asserts that the hearsay statements elicited from Officer Calvo during the grand  
16 jury proceeding do not constitute "competent evidence" under 8 G.C.A. § 50.42. Mot. at 7. The  
17 People argue that hearsay constitutes "competent evidence" under the statute and that case law  
18 interpreting the statute holds the same. Opp'n at 2.

19 Guam law requires that grand juries receive only "competent evidence." 8 G.C.A. § 50.42.  
20 Chapter 50, nor any other provision in Title 8, does not define "competent evidence." Defendant  
21 asserts that "competent evidence" must equate to "admissible evidence." Mot. at 7. Defendant goes  
22 on to explain that because hearsay is inadmissible evidence (generally), Officer's Calvo's recitation  
23 of the police report and the statements within that police report must constitute incompetent  
24 evidence in violation of the statute. The Court disagrees.

25 The Ninth Circuit in *People v. Quidachay*, in analyzing and interpreting 8 G.C.A. § 50.42,  
26 has addressed the issue of the meaning of "competent evidence" under the statute: "If it is evidence  
27 that a reasonable person would rely upon in conducting his or her daily affairs, then it is competent  
28 within the meaning of the statute, regardless of whether it would be admissible at trial under the

1 rules of evidence.” 815 F.2d 1131, 1313 (9th Cir. 1987) (emphasis added). The *Quidachay* court’s  
2 analysis on the comparisons between the current and previous versions of 8 G.C.A. § 50.42 are  
3 further instructive.

4 The former version of section 50.42 provided that “The grand jury shall receive only  
5 evidence which would be admissible over objection at the trial of a criminal action . . . .” The 1980  
6 revision by Public Law 15-94 eliminated this requirement. The 1980 amendment, the version of  
7 section 50.42 in force today, only required that the evidence be “competent,” not necessarily  
8 admissible. The Ninth Circuit interpreted the Guam Legislature’s amendment as intending ‘some  
9 restriction on the evidence that can be presented to and relied upon by a grand jury’ but not  
10 requiring only admissible evidence to be presented to a grand jury. *Id.* Otherwise, “the Guam  
11 Legislature would have accomplished nothing by its amendment of the section.” *Id.* In light of this  
12 precedent, the Court declines to hold that “competent evidence” means “admissible evidence.”

13 Defendant asks the Court to ignore the prior federal court decisions in *Quidachay* and *People*  
14 *v. Garrido*, 1984 WL 48828 (D. Guam App. Div., May 4, 1984), *aff’d and remanded*, 752 F.2d  
15 1378 (9th Cir. 1985) as “poorly reasoned, unsupported in law, and wrongly decided.” Mot. at 10.  
16 The Court declines to do so, as the Court agrees with the Ninth Circuit’s analysis in *Quidachay* that  
17 had the Guam Legislature intended “competent evidence” to mean “admissible evidence,” the 1980  
18 amendment to 8 G.C.A. § 50.42 via Public Law 15-94 would have accomplished nothing.

19 Defendant further makes comparisons of section 50.42 to Guam’s preliminary hearing statute  
20 under 8 G.C.A. § 45.60. At preliminary hearings, as opposed to grand jury proceedings, defendants  
21 may make objections to the admissibility of evidence on any grounds that would be available at  
22 trial. *Id.* § 45.60(a). However, comparison to Guam’s preliminary hearing statute only further  
23 solidifies the People’s argument and the Court’s holding: had the Guam Legislature intended  
24 hearsay or otherwise inadmissible evidence to constitute “incompetent evidence” under section  
25 50.42, the Legislature would not have amended the statute through 15-94 and kept the original  
26 admissibility requirement.

27 Defendant cites *Klinestiver v. Drug Enforcement Administration* and *Fonteneaux v. Shell Oil*  
28 *Co.* for the proposition that, generally, “competent evidence” is understood to mean “admissible

1 evidence.” Mot. at 7; 606 F.2d 1128 (D.C. Cir. 1979); 289 F. App’x 695 (5th Cir. 2008). However,  
2 these cases discuss “competent evidence” in a civil context, outside the realm of grand jury  
3 proceedings. The Court does not find Defendant’s cited cases persuasive.

4 Turning to the evidence presented, the Court holds “competent evidence” within the meaning  
5 of section 50.42 was presented to the grand jury. All that is required under the statute is “evidence  
6 that a reasonable person would rely upon in conducting his or her daily affairs.” *Quidachay*, 815  
7 F.2d at 1313. Defendant has not presented anything which suggests that a reasonable person would  
8 not rely upon statements of others in conducting his/her daily affairs, nor does Defendant present  
9 any case law holding the same. Similarly, the Court finds the evidence presented to the grand jury  
10 satisfies the test laid out in *Quidachay*. Defendant acknowledges the lessened-restrictions on section  
11 50.42 but asserts that “the evidence still needs some indicia of reliability.” Reply at 3. The Court  
12 reiterates that the proper test is that laid out in *Quidachay* and finds that the evidence presented  
13 meets this test.

14 Finally, Defendant asserts his due process rights under the Fifth and Fourteenth Amendment  
15 of the U.S. Constitution by the People for failing to present “competent evidence” to the jury. As  
16 explained, the Court does not find the evidence presented to the jury to be “incompetent evidence.”  
17 Therefore, no due process violation exists here.

18 **CONCLUSION**

19 For the reasons stated above, the Court **DENIES** Defendant’s Motion to Dismiss the  
20 Indictment for failure to present “competent evidence” to the grand jury. The Court shall hold a pre-  
21 trial conference on September 10, 2020 at 2:00pm.

22  
23 **IT IS SO ORDERED** this 8th day of September, 2020.

24 **SERVICE VIA E-MAIL**

25 I acknowledge that an electronic  
copy of the original was e-mailed to:

26 AG Prosecution,  
Alternate Public Defender

27 Date: 9/8/20 Time: 10:34am

28 Antonio Cruz  
Deputy Clerk, Superior Court of Guam



**HONORABLE ALBERTO C. LAMORENA, III**  
**Presiding Judge, Superior Court of Guam**