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SUPERIOR COURT  
OF GUAM

2019 JUN 10 PM 3:45

CLERK OF COURT

By:           *ae*          

**IN THE SUPERIOR COURT OF GUAM**

THE PEOPLE OF GUAM,

CRIMINAL CASE NO. CF0268-19

vs.

**DECISION AND ORDER**

LESTER ANASTACIO,

Defendant.

**INTRODUCTION**

This matter came before the Honorable Vernon P. Perez on June 10, 2019, for hearing on Defendant Lester Anastacio's ("Defendant") Ex Parte Motion and Application for Bail Redetermination Hearing Under 8 G.C.A. § 45.50(a) for Release on Personal Recognizance ("Motion for Bail Redetermination"). Defendant was present with counsel Assistant Alternate Public Defender John P. Morrison, and Assistant Attorney General Matthew A. Phelps was present on behalf of the People of Guam ("the Government"). In accord with its ruling from the bench on June 10, 2019, the Court now issues the following Decision and Order DENYING Defendant's Motion for Bail Redetermination.

**BACKGROUND**

On May 16, 2019, Defendant was indicted with the following charges: (1) Terrorizing (As a Third Degree Felony); (2) Family Violence – Strangulation (As a Third Degree Felony) – 2 Counts; (3) Family Violence (As a Third Degree Felony); and (4) Harassment (As a Petty Misdemeanor). (Indictment, May 16, 2019). These charges stem from allegations that

1 Defendant kicked his girlfriend, Gail Joy Mobil (“Ms. Mobil”), in the stomach and punched her  
2 face twice with a closed fist. (Decl. of Brendlynn O. Joseph, Magistrate’s Compl., May 7,  
3 2019). Defendant then placed his hand around her neck, choking her and causing her to have  
4 difficulty breathing. *Id.* Ms. Mobil yelled multiple times for help and for Defendant to stop  
5 and let her leave, but Defendant refused and threw her to the floor. *Id.* Defendant then inserted  
6 a towel deep into her mouth, causing her to have difficulty breathing, then grabbed the back of  
7 her head and banged her head on the floor about three times. *Id.* According to Ms. Mobil, she  
8 tried to get away from Defendant multiple times using her feet and arms to push him away, but  
9 was unsuccessful, and Defendant did not stop attacking her until someone knocked on the door  
10 of the residence asking for her. *Id.* Officers who responded to the scene observed that Ms.  
11 Mobil had swelling and redness to her right eye, her lips appeared to be swollen and bleeding  
12 from a laceration to her lower and upper lip, her gums also appeared to be bleeding, and a red  
13 mark on her neck. *Id.* Ms. Mobil complained of pain to her face, neck, and that she felt slightly  
14 light headed and dizzy. *Id.* A witness, Ms. Gladys Joyce K. Mobil, also reported to the police  
15 that when she arrived at Ms. Mobil’s residence she heard Defendant yelling in the bedroom,  
16 and Ms. Mobil yelling “Help Me! Why do you do that to me!” *Id.* Defendant then opened the  
17 door and instructed everyone to leave or he will hurt them. *Id.* After Ms. Mobil came running  
18 out of the house towards Ms. Gladys, Defendant walked towards them with a shovel in his right  
19 hand and an electric saw on his left hand, and then said “Huh. You want me to take her away!”  
20 and threw the saw at her direction. *Id.*

21 On May 22, 2019, at Arraignment, Defendant asserted his right to speedy trial. Jury  
22 Trial and Selection in this matter is currently set to commence on July 3, 2019 at 1:30 p.m.

23 On May 24, 2019, Defendant filed the instant Motion for Bail Redetermination.  
24 Defendant is confined pending the posting of \$5,000 cash bail. *See* Commitment Order, May.  
25 7, 2019. On June 5, 2019, the Government filed its Opposition to the Motion for Bail  
26 Redetermination. At the Motion Hearing, the Government acknowledged that the alleged  
27 victim in this matter does not oppose Defendant’s release, but indicated that its position was that  
28

1 the Motion for Bail Redetermination should still be denied because Defendant is a danger to the  
2 community.

### 3 DISCUSSION

4 Defendant moves the Court to release him on personal recognizance as he does not have  
5 the means to pay the five thousand dollar (\$5,000.00) cash bail. *See generally*, Mot. Bail  
6 Redetermination, May 24, 2019.

7 Under Guam law, the Court must “order the person charged to be released on  
8 recognizance, unless the judge determines, in his discretion, on the basis of available  
9 information, that such a release will not reasonably assure the appearance of the person as  
10 required or will endanger the safety of any other person or the community.” 8 G.C.A. §  
11 40.15(b). Factors for the Court to consider in determining whether Defendant presents a  
12 substantial risk of nonappearance or is a danger to the safety of any other person or the  
13 community include:

- 14 (1) the nature of the offense charged, the apparent possibility of conviction and  
15 the likely sentence;
- 16 (2) the history and characteristics of the person charged, including:
  - 17 (i) length of his/her residence on Guam;
  - 18 (ii) his/her employment status and history, and financial condition;
  - 19 (iii) his/her family ties and relationships;
  - 20 (iv) his/her reputation, character and mental and physical condition;
  - 21 (v) his/her prior criminal record, if any, including any record of prior  
22 release on recognizance or on bail;
  - 23 (vi) his/her history relating to drug or alcohol abuse;
  - 24 (vii) the identity of the reasonable members of the community who will  
25 vouch for his/her reliability;
  - 26 (viii) whether at the time of the current offense or arrest, he/she was on  
27 probation, on parole or on other release pending trial, sentencing,  
28 appeal or completion of sentence of an offense under Federal, state  
or local law; and
  - (ix) his/her history of compliance with other court orders;
- (3) the nature and seriousness of the danger the person would pose to the  
community or to any individual member thereof if released; and

1 (4) any other factors which bear on the risk of willful failure to appear or the  
2 danger the person would pose to the community or to any individual member  
3 thereof if released.

4 8 G.C.A. § 40.15(c).

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

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

20 8 G.C.A. § 40.20. Under section 40.20, the least onerous conditions shall be imposed to ensure  
21 Defendant's appearance as required and the safety of any other person and the community.

22 "Determinations as to bail conditions and amounts are not to be driven by the goal of keeping  
23 the accused incarcerated, but should rather be reached in consideration of the only authorized  
24 interests, *to wit*, ensuring the appearance of the accused and the safety of others." *People v.*  
25 *Song*, 2011 Guam 19 ¶ 11.

26 In support of his motion, Defendant offers that he is the sole provider and caregiver for  
27 his seventy-one year old mother and has two children ages six and ten years old. (Mot. Bail  
28 Redetermination at 4). Defendant also offers that he is a U.S. citizen, a forty-four year long  
resident of Guam, has most of his family ties on Guam, is currently employed but has no cash-  
on-hand or assets, and has no apparent history of drug or alcohol use. *Id.* Defendant  
acknowledges that he has a criminal history, but states that the cases are closed. *Id.*

1 Upon consideration of the 8 G.C.A. § 40.15 factors, the Court is greatly concerned with  
2 the safety of the community and Defendant's ability to exert self-control. Defendant is charged  
3 with serious felonies, including Terrorizing (As a Third Degree Felony), two counts of  
4 Strangulation (As a Third Degree Felony), and Family Violence (As a Third Degree Felony).  
5 (Indictment, May 16, 2019). The Court is concerned about the serious nature of these offenses  
6 charged as well as the multiplicity of the offenses. Defendant is alleged to have committed  
7 multiple acts of physical violence against the victim in this matter, including non-fatal  
8 strangulation, and faces up to twenty (20) years of imprisonment should he be convicted of the  
9 felony charges. See 9 G.C.A. § 80.30(c).

10 Thus, upon the Court's review, Defendant's release only on personal recognizance does  
11 not sufficiently allay the Court's concerns regarding the safety of the community. This  
12 decision, however, does not preclude Defendant from requesting release with proposed third-  
13 party custodians in the future.

14 **CONCLUSION**

15 For the foregoing reasons, the Court hereby DENIES Defendant's Motion for Bail  
16 Redetermination. The parties are to return for a Pre-Trial Conference on June 25, 2019 at 10:00  
17 a.m. Jury Selection and Trial remains set for July 3, 2019 at 1:30 p.m.

18 **IT IS SO ORDERED,** ~~nunc pro tunc to June 10, 2019,~~ this June 10, 2019.

19  
20 SERVICE VIA COURT BOX  
21 I acknowledge that a copy of the  
22 original hereto was placed in the  
23 court box of  
AG & APD  
24 Date 6-10-19 Time 4 pm  
CL  
Deputy Clerk, Superior Court of Guam

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HONORABLE VERNON P. PEREZ  
Judge, Superior Court of Guam