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SUPERIOR COURT
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IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

FREDDY CUEVAS SUSUICO,

Defendant.

CRIMINAL CASE NO. CF0492-22

DECISION AND ORDER

INTRODUCTION

This matter is before the Honorable Vernon P. Perez on Defendant Freddy Cuevas Susuico's ("Defendant") Motion to Dismiss, filed November 7, 2024. Defendant is represented by Heather Martinez Quitugua. The People of Guam ("the Government") are represented by Assistant Attorney General Grant Olan. Having reviewed the pleadings, the arguments presented, and the record, the Court now issues the following Decision and Order.

BACKGROUND

On August 4, 2022, Defendant was indicted with the following charges: (1) Theft of a Motor Vehicle (As a Second Degree Felony) – 13 Counts; (2) Theft of Property (As a Second Degree Felony) – 8 Counts; (3) Theft by Receiving (As a Second Degree Felony); (4) Burglary (As a Second Degree Felony) – 2 Counts; (5) Possession of a Schedule II Controlled Substance (As a Third Degree Felony); (6) Assault Against a Peace Officer (As a Third Degree Felony); and (7) Criminal Mischief (As a Misdemeanor) – 2 Counts. (Indictment, Aug. 4, 2022). Over two years later, on October 29, 2024, a grand jury returned a Superseding Indictment against

1 Defendant, charging him with (1) Theft by Receiving (as a Second Degree Felony) – 13 Counts;
2 (2) Theft by Receiving (As a Second Degree Felony) – 8 Counts; (3) Burglary (As a Second
3 Degree Felony) – 2 Counts; (4) Possession of a Schedule II Controlled Substance (As a Third
4 Degree Felony); (5) Assault Against a Peace Officer (As a Third Degree Felony); and (6) Criminal
5 Mischief (As a Misdemeanor) – 2 Counts. (Superseding Indictment, Oct. 29, 2024).

6 On November 7, 2024, Defendant filed the instant Motion. On January 10, 2025, the
7 Government filed its Opposition. On February 17, 2025, Defendant filed his Reply. The Court
8 subsequently placed the matter under advisement without further argument. *See* CR 1.1 Form 3,
9 Feb. 17, 2025.

10 DISCUSSION

11 Defendant moves to dismiss Charge One – Counts One, Two, and Four and Charge Two
12 – Counts One, Two, Three, Four, and Five of the Superseding Indictment because the charges
13 were filed after the statute of limitations. *See generally*, Mot. Dismiss, Nov. 7, 2024. The
14 Government opposes, arguing that “[b]ecause theft constitutes a single offense no matter how it
15 is charged under Title 9 Chapter 43 . . . the superseding indictment does not broaden or
16 substantially amend the charges in the original indictment.” (Opp’n at 2, Jan. 10, 2025).

17 Under Guam law, prosecution of a felony offense other than murder and criminal sexual
18 conduct must commence within three (3) years of the offense committed. 8 G.C.A. § 10.20.
19 “Generally speaking, the return of an indictment tolls the statute of limitations with respect to the
20 charges contained in the indictment.” *United States v. Pacheco*, 912 F.2d 297, 305 (9th Cir. 1990)
21 (internal citations omitted). “A superseding indictment returned while the first indictment is
22 pending is timely unless it broadens or substantially amends the charges in the original indictment.
23 To determine whether the superseding indictment impermissibly changed the charges in the
24 original indictment it is necessary to examine the two indictments carefully.” *United States v.*
25 *Sears, Roebuck & Co., Inc.*, 785 F.2d 777, 778-79 (citations omitted).

26 The original Indictment charged Defendant with Theft of a Motor Vehicle (As a Second
27 Degree Felony) in Charge One – Counts One, Two, and Four, and charged Defendant with Theft
28 of Property (As a Second Degree Felony) in Charge Two – Counts One, Two, Three, Four, and

1 Five. (Indictment, Aug. 4, 2022). The Superseding Indictment changed Charge One – Counts
2 One, Two, and Four and Charge Two – Counts One, Two, Three, Four, and Five to Theft by
3 Receiving (As a Second Degree Felony). (Superseding Indictment, Oct. 29, 2024). These charges
4 are all alleged to have occurred between February 5, 2020 and September 25, 2021. *Id.* Thus, the
5 issue before the Court is whether or not the Superseding Indictment broadened or substantially
6 amended the original indictment by changing the charge from Theft of a Motor Vehicle (As a
7 Second Degree Felony) and Theft of Property (As a Second Degree Felony) to Theft by Receiving
8 (As a Second Degree Felony).

9 “To determine whether a superseding indictment substantially broadens or amends a
10 pending timely indictment, it is appropriate to consider whether the additional pleadings allege
11 violations of a different statute, contain different elements, rely on different evidence, or expose
12 the defendant to a potentially greater sentence.” *United States v. Liu*, 731 F.3d 982, 996–97 (9th
13 Cir. 2013) (quoting *United States v. Yielding*, 657 F.3d 688, 704 (8th Cir. 2011) (internal
14 quotation marks omitted). “The central concern in determining whether the counts in a
15 superseding indictment should be tolled based on similar counts included in the earlier indictment
16 is notice.” *Id.* at 997. *See also United States v. Smith*, 197 F.3d 225, 229 (6th Cir. 1999) (citing
17 *Grady*, 544 F.2d at 601) (“Notice to the defendants of the charges, so that they can adequately
18 prepare their defense, is the touchstone in determining whether a superseding indictment has
19 broadened the original indictment.”).

20 Pursuant to 9 G.C.A. § 43.30, Theft of Property, “[a] person is guilty of theft if he
21 unlawfully takes or obtains or exercises unlawful control over, movable property of another with
22 intent to deprive him thereof.” 9 G.C.A. § 43.30(a). Pursuant to 9 G.C.A. § 43.50, Theft by
23 Receiving Stolen Property, “[a] person is guilty of theft if he intentionally receives, retains or
24 disposes of movable property of another knowing that it has been stolen or believing that it has
25 probably been stolen. It is a defense to a charge of violating this Section that the defendant
26 received, retained or disposed of the property with intent to restore it to the owner.” 9 G.C.A. §
27 40.50(a). Defendant argues that the changes in the Superseding Indictment from Theft of Property
28 to Theft by Receiving “are not mere technical changes but change the nature of the case

1 altogether” and the “defenses to the crimes are different as well.” (Mot. Dismiss at 4). Defendant
2 sets forth that “[w]hereas [he] could have argued he was not the one who stole the materials in
3 defense of the Indictment, that defense is no longer available to him because the elements of the
4 crimes have changed. In addition, the evidence as to Mr. Susuico’s intent has totally changed.
5 Whereas before the government was required to prove Mr. Susuico actively obtained goods, now
6 the elements address whether Mr. Susuico received goods knowing or thinking the goods were
7 probably stolen.” *Id.* Defendant also notes that these changes to the Indictment were not made
8 within months after the original Indictment was returned, but over two years later. *Id.* at 5.

9 “Guam's theft statute, set forth in Title 9 GCA § 43.30, and theft by receiving statute, set
10 forth in Title 9 GCA § 43.50, are based on Model Penal Code sections 223.2 and 223.6
11 respectively.” *People v. Palisoc*, 2002 Guam 9 ¶ 40. The Supreme Court of Guam, after
12 reviewing commentary to the Model Penal Code sections, found that “theft and theft by receiving
13 are intended to reach distinct wrongdoers.” *Id.* at ¶ 41. The Supreme Court observed that
14 “[s]everal states follow the same logic in interpreting their respective theft statutes, finding that
15 in enacting a receiving statute, the legislature:

16 Intended to reach a distinct group of wrongdoers. The class includes those persons
17 who receive, retain, or dispose of property received from another person with the
18 knowledge or reasonable belief that the property has been stolen. The legislative
intent was not to expand the offense of theft, but to create a separate crime.

19 *Id.* at ¶ 41. The Supreme Court made clear in *Palisoc*, that theft and theft by receiving are not the
20 same crime. *Id.* (“We agree with this line of cases and find that a defendant cannot be convicted
21 of both theft and theft by receiving because one who is a thief cannot be also be a receiver.”).
22 Accordingly, as theft and theft by receiving are not the same crime and the defenses available to
23 Defendant have changed, the Court finds that the Superseding Indictment broadened the original
24 indictment by adding new charges beyond the statute of limitations period. Therefore, the Court
25 finds Charge One of Theft by Receiving (As a Second Degree Felony) – Counts One, Two, and
26 Four and Charge Two of Theft by Receiving (As a Second Degree Felony) – Counts One, Two,
27 Three, Four, and Five of the Superseding Indictment must be dismissed.

1 **CONCLUSION**

2 For the foregoing reasons, the Court hereby GRANTS Defendant's Motion to Dismiss.

3 **IT IS SO ORDERED** this 23rd day of April, 2025.

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7 HONORABLE VERNON P. PEREZ
8 Judge, Superior Court of Guam

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22 **SERVICE VIA E-MAIL**

23 I acknowledge that an electronic
24 Copy of the original was e mailed to

AG, H. Cruzteguia

25 Date 4/23/25 Time 9:58am

Albert Calderon

26 Deputy clerk, Superior Court of Guam