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SUPERIOR COURT
OF GUAM

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

PETER DAVID TEDTAOTAO OGO,
aka Peter David Ogo, Jr., aka Peter David
Tedtaotao Ogo, Jr.,
DOB: 11/27/1986

Defendant.

CRIMINAL CASE NO. **CF0718-23**

GPD Report NOS. 21-25726/22-04543/22-06826/
22-29254/23-04462/23-09492/
23-09680/23-07628

DECISION AND ORDER
RE. DEFENDANT'S MOTION TO
SEVER CHARGES IN THE
INDICTMENT

I. INTRODUCTION

This matter is before the Honorable Judge Maria T. Cenzone on Defendant Peter David Tedtaotao Ogo's ("Defendant" or "Defendant Ogo") Motion to Sever Charges in the Indictment (the "Motion"). Representing Defendant Ogo is Assistant Public Defender Zachary C. Taimanglo. Representing the People of Guam ("the People") is Christine S. Tenorio. After the close of the pleadings in this case, the Court took the Motion under advisement pursuant to CVR 7.1(e)(6)(E) and CR 1.1(g)(4)(B) of the LOCAL RULES OF THE SUPERIOR COURT OF GUAM.

After reviewing the Defendant's Motion, the People's Opposition, and the applicable statutes and case law, the Court now issues this Decision and Order **GRANTING IN PART** Defendant's Motion.

1	March 18 – 19, 2023	Charge Four Count Two – Burglary to a School (As a Second Degree Felony)	Benavente Middle School (“BMS”), Dededo
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3	March 19, 2023	Charge Eight Count Three – Criminal Mischief (As a Misdemeanor)	BMS, Dededo
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5	April 8, 2023	Charge Eight Count Four – Criminal Mischief (As a Misdemeanor)	Immaculate Heart of Mary Catholic Church (“IHOM”), Toto
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7	April 9, 2023	Charge One Count Three – Burglary (As a Second Degree Felony)	Mr. and Mrs. Apuron (the “Apurons”), Mangilao
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9	April 9, 2023	Charge Eight Count Four – Criminal Mischief (As a Misdemeanor)	The Apurons, Mangilao
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11	April 10, 2023	Charge One, Count Four – Burglary (As a Second Degree Felony)	Fin Japanese Restaurant (“Fin” or “Fin Restaurant”), Dededo
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13	April 10, 2023	Charge Six – Theft of Property (As a Third Degree Felony)	Fin, Dededo
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15	April 10, 2023	Charge Eight Count Six – Criminal Mischief (As a Misdemeanor)	Fin, Dededo
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17	April 11, 2023	Charge Seven – Theft of Property (As a Third Degree Felony)	IHOM, Toto
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21 The dates of the alleged events as described in the Indictment may be grouped as follows:

22 (1) October 19, 2021 (Victims Diane Smith and Darren Pichon); (2) February 14, 2022 (Victim

23 SDA Housing); (3) November 12 – 13, 2022 (Victim WES); (4) February 15, 2023 (Victim I

24 Mart); (5) March 18 – 19, 2023 (Victim BMS); and (6) April 8 – 11, 2023 (Victims IHOM, the

25 Apurons, and Fin Restaurant). The alleged offenses range from Burglary, Attempted Burglary,

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1 Burglary to a School, Theft of Property, and Criminal Mischief. The locations of the alleged
2 offenses range from the villages of Yigo, Dededo, Toto, and Tamuning, Guam.

3 **B. Defendant's Motion to Sever Charges in the Indictment**

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5 Defendant Ogo filed his Motion on August 30, 2024. The Defendant argues that severance
6 of charges is appropriate in this matter because he would be unfairly prejudiced by presenting the
7 unrelated counts and charges to a single jury for consideration. *See Deft. 's Mot.* at 2. "The jurors
8 may connect that if Defendant committed one crime, he most likely committed the others. Jurors
9 may not be able to treat the allegations, charges, and counts as separate and apart from each other.
10 The jurors might treat this case as proven, if the Government is able to prove on count or charge."

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12 *Id.* at 3. Further, "the defendant may need to testify respecting his defenses to one charge or count;
13 and respecting his right to remain silent in regard to the other charges or counts." *Id.* Defendant
14 Ogo proposes the following method of severing the charges:

- 15 1. Charge One Count One: **SDA**;
- 16 2. Charge One Count Two, Charge Five, and Charge Eight Count Two: **I Mart**;
- 17 3. Charge One Count Three, and Charge Eight Count Five: **Mr. & Mrs. Apruon**;
- 18 4. Charge One Count Four, Charge Six, and Charge Eight Count Six: **Fin**;
- 19 5. Charge Two: **Smith**;
- 20 6. Charge Three: **Pichon**;
- 21 7. Charge Four Count One, and Charge Eight Count One: **Wettengel**;
- 22 8. Charge Four Count Two, and Charge Eight Count Three: **Benavente Middle School**; and
- 23 9. Charge Seven, and Charge Eight Count 4: **IHOM**.

24 *Id.* Defendant asks the Court to hold nine (9) separate trials for each of the nine named victims.

25 **C. The People's Opposition**

26 The People's Opposition agrees that severance of the trials may be appropriate; however,
27 argues that there need only be two, rather than nine, separate trials on the basis of the proximity
28 in time of the offenses to each other. *See Ppl. 's Opp.* At 4. The People propose that the charges

1 involving Diane Smith, SDA, and WES “should be joined because they all involve fingerprint
2 evidence, and they were all committed with a 13-month span.” *Id.* at 4. Similarly, the People
3 propose that the charges involving I Mart, the Apurons, BMS, IHOM, and Fin Restaurant “should
4 be joined in a separate trial because they all involve surveillance footage that show a male in a
5 ponytail,” and “these crimes all occurred within a 3-month span.” *Id.* The People reason that these
6 separate trials would join offenses that are of the “same or similar character.” *Id.* at 4 (citing *U.S.*
7 *v. Jawara*, 474 F.3d 565, 578 (9th Cir. 2007)). The People further argue that the Defendant has
8 failed to offer arguments of “how the current joinder prejudices him from exploring different
9 defenses in each trial.” *Id.* at 5.

12 DISCUSSION

13 **A. Controlling statutes and law**

14 The joinder of multiple offenses in a single Indictment is appropriate when the offenses
15 charged “are of the same or similar character or based on the same act or transaction or on two
16 (2) or more acts or transactions connected together or constituting parts of a common scheme or
17 plan.” 8 GCA §55.35(a). 8 GCA § 55.35 originates from the Federal Rules of Criminal Procedure
18 Rule 8. *See Note*, 8 GCA § 55.35. Therefore, the Court may turn to federal cases for guidance in
19 interpreting related local statutes. *See Benavente v. Taitano*, 2006 Guam 15.

21 Trial courts have broad discretion in deciding severance of trials. *U.S. v. Reavis*, 48 F.3d
22 763, 767 (4th Cir. 1995). In determining whether offenses are properly joined, courts traditionally
23 consider “whether the charges are laid under the same statute, whether they involve similar
24 victims, locations, or modes of operation, and the time frame in which the charged conduct
25 occurred.” *U.S. v. Taylor*, 54 F.3d 967, 973 (1st. Cir. 1995) (citations omitted). Further, “the
26 validity of the joinder is determined solely by the allegations in the indictment.” *United States v.*
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1 *Jawara*, 474 F.3d 565, 572 (9th Cir. 2007). Joinder is satisfied if one of three conditions is
2 satisfied: the charged offenses must be (1) “of the same or similar character,” (2) “based on the
3 same act or transaction,” or (3) “connected with or constituting parts of a common scheme or
4 plan.” *Id.* at 572. “Where there is substantial overlap in evidence between two offenses, joinder
5 eliminates the need to prove substantially the same evidence twice over, thus realizing precisely
6 the kind of economy envisaged by Rule 8(a).” *Howerton v. United States*, 964 A.2d 1282, 1292
7 (D.C. 2009). In this matter, both parties agree that severance of the alleged charges is appropriate
8 – where the parties depart is how such severance should be achieved. In ruling on this question,
9 the Court first turns to the charges alleged in this matter and whether joinder of offenses is
10 appropriate under Section 55.35.
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13 **B. Are the acts alleged of the “same or similar character”?**

14 The Court first considers whether the charges are “of the same or similar character.”
15 *Jawara* at 572. In considering charges of the same or similar character, some factors that may be
16 considered are the elements of the offenses, the temporal proximity of the acts, overlapping
17 evidence, and logical relation of facts. *Id.* at 578.
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19 Here, the Court looks to the underlying allegations in determining whether joinder is
20 appropriate in this case. The Indictment alleges nine (9) victims in this matter: Smith, Pichon,
21 SDA, WES, I Mart, BMS, IHOM, the Apurons, and Fin Restaurant. Because of the variance in
22 victims, the Court will consider other factors that realizes the judicial economy envisioned by 8
23 GCA § 55.35(a).
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25 The Court first considers if any overlapping evidence exists between the alleged offenses.
26 *See Id.* The People posit two kinds of overlapping evidence exist that tends to show the
27 Defendant’s identity: fingerprinting evidence and surveillance or video footage. *See Ppl.’s Opp.*
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1 at 4. The charges involving Smith, SDA, and WES involve overlapping fingerprinting evidence
2 – further, the charges involving I Mart, the Apurons, BMS, IHOM, and Fin Restaurant involve
3 evidence of video footage showing “a male in a ponytail.” *Id.* Therefore, the Court finds that the
4 factor of overlapping evidence weighs in favor of severance, because the separate evidence of
5 fingerprinting and video footage do not overlap in as far as evidence of Defendant’s guilt nor to
6 their relationship to the alleged victims. For instance, fingerprinting evidence could not show that
7 the Defendant burglarized BMS, and video footage could not show that the Defendant burglarized
8 SDA. On the other hand, fingerprint evidence purportedly connects the Defendant to the victims
9 Smith, SDA and WES, and surveillance footage connects him to IM Mart, BMS, the Apurons,
10 Fin and IHOM.
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13 Next, the Court looks to the temporal proximity between offenses. “The time-period factor
14 is to be determined on a case-by-case approach; there is no per se rule on when the time period
15 between similar offenses is so great that they may not be joined.” *U.S. v. Rogers*, 732 F.2d 625,
16 629 (8th Cir. 1984). As described in the above table, the events involving Smith, Pichon, SDA,
17 and WES occurred during the period of October 19, 2021, to November 13, 2022 – a span of
18 nearly thirteen (13) months. Further, the events involving I Mart, the Apurons, BMS, IHOM, and
19 Fin Restaurant began on February 15, 2023, to April 11, 2023 – a span of nearly two (2) months.
20 Although the Court finds that the proximity in time does not, in and of itself, weigh heavily in
21 favor of severance, the Court acknowledges that the allegations occurring from 2021 through
22 2022 may be appropriately severed from incidents which occurred in 2023.
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25 Finally, the Court looks to the nature of the alleged offenses. The Indictment charges
26 Defendant with Burglary, Attempted Burglary, Burglary to a School, Theft of Property, and
27 Criminal Mischief. With the exception of Criminal Mischief, the allegations involve the elements
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1 of Theft (i.e., unlawfully taking, obtaining or exercising unlawful control over the moveable
2 property of another with the intent to deprive him thereof), including the Burglary offenses, which
3 include the elements of Theft, plus the element of entering or surreptitiously remaining in any
4 habitable property, building, or school under 9 GCA § 37.20. Because the offense of Burglary
5 and the offense of Theft of Property are of the same or similar character, the Court finds that they
6 are properly joined. *See, e.g., United States v. Chambers*, (64 F.2d 1250, 1250-51)(1st Cir.
7 1992)(affirming joinder of six robberies involving similar victims over a period of two and a half
8 months; *United States v. Sanders*, 463 F.2d 1086 (8th Cir. 1972)(affirming joinder of counts where
9 offenses were of the same or similar character and occurred eight months apart); *Howard v.*
10 *United States*, 372 F.2d 294, 301 (9th Cir. 1967), *cert. denied* 388 U.S. 915 (1967)(holding that
11 “the use of multicount indictments charging offenses of similar character is a sanctioned
12 practice”). Only Charge Eight Criminal Mischief does not have elements encompassing Burglary
13 or Theft; however, six (6) of the nine (9) named victims are also alleged victims of Criminal
14 Mischief. Consequently, the Court finds that the elements of the offenses weigh in favor of
15 joinder.
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19 **B. Will the joinder of the offenses unduly prejudice the Defendant?**

20 The Court’s next inquiry is whether a joinder of offenses in a single trial would unduly
21 prejudice the Defendant. The court has discretion to grant severance of offenses “if it appears that
22 a defendant or the government is prejudiced by a joinder of offenses. . . .” 8 GCA § 65.35. Section
23 65.35 originates from Federal Rules of Criminal Procedure Rule 14, *see Note*, 8 GCA § 65.35,
24 thus federal case law is instructive. *See Benavente*, 2006 Guam 15. Although joinder may be
25 proper, severance may still be required if the defendant or the government is prejudiced by such
26 joinder. *See U.S. v. Cardwell*, 433 F.3d 378 (4th Cir. 2005). “Such cases, however, will be rare.
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1 It is not enough for the defendant to show that severance offers him a ‘better chance of acquittal.’”

2 *Id.*

3 Defendant argues that he would be unfairly prejudiced by trying unrelated counts and
4 charges in a single trial: “It would be unfairly prejudicial to the defendant to let emotions from
5 one count or charge spill over to other counts or charges.” *Def’t. ’s Mot.* at 2, 3. In addition, he
6 claims that “[t]here will be little overlapping evidence that would end up being presented twice.”

7 *Id.* “The prime consideration in determining whether or not to grant a severance is the possibility
8 of prejudice to the defendant in conducting his defense. Weighing the danger of confusion and
9 undue cumulative inference is a matter for the trial judge and within his sound discretion.”

10 *Johnson v. United States*, 356 F. 2d 680, 682 (8th Cir. 1966).

11 The Court finds that giving proper instructions to guide the jury deliberations sufficiently
12 addresses any undue prejudice from the joinder of the offenses. Admonishing a jury from
13 rendering a decision based upon emotion or feelings sufficiently addresses the Defendant’s
14 concern that “emotions from one count or charge [will] spill over to other counts or charges.” In
15 this instance, the following instructions are typically given to the jury as a matter of course:

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19 **Jury Instruction: Role of the Court**

20 You have now heard all of the evidence in the case and you have
21 heard the final arguments of the lawyers for the parties. My duty at this point
22 is to instruct you as to the law. It is your duty to accept these instructions of
23 law and apply them to the facts as you determine them, just as it has been
24 my duty to preside over the trial and decide what testimony and evidence is
25 relevant under the law for your consideration.

26 It is your duty to find the facts from all the evidence in the case. To
27 those facts you will apply the law as I give it to you. You must follow the
28 law as I give it to you whether you agree with it or not. **And you must not
be influenced by any personal likes or dislikes, opinions, prejudices or
sympathy.** That means you must decide the case solely on the evidence

1 before you. You will recall that you took an oath promising to do so at the
2 beginning of the case.

3 On these legal matters, you must take the law as I give it to you. If
4 any attorney has stated a legal principle different from any that I state to you
5 in my instructions, it is my instructions that you must follow.

6 You should not single out any instructions as alone stating the law,
7 but you should consider my instructions as a whole when you retire to
8 deliberate in the jury room.

9 (Emphasis added).

10 Additionally, the jury is instructed to consider each charge in an indictment independently of any
11 other:

12 **Jury Instruction: Consider Each Charge Separately**

13 A separate crime is charged in each charge of the Indictment. Each
14 charge, and the evidence pertaining to it, should be considered separately
15 by the jury. **The fact that you may find the defendant guilty or not guilty
16 as to one of the charges should not control your verdict as to any other
17 charge.**

18 You should not, any of you, be concerned about the wisdom of any
19 rule that I state. Regardless of any opinion that you may have as to what the
20 law may be - or ought to be - it would violate your sworn duty to base a
21 verdict upon any other view of the law than that which I give you.

22 (Emphasis added). *See People v. Jung*, 2001 Guam 15 at ¶ 25 (jury instructions, as part of the
23 written Closing Jury Instructions, that instructed to consider the charges and counts separately as
24 to the issue of insanity, were sufficient for a jury to separately consider each charge); *see also*
25 Ninth Circuit Manual of Model Criminal Jury Instructions 6.11. The Court finds that including
26 this instruction is sufficient to cure any potential prejudice, especially when the language is
27 carefully crafted with input from the parties. *See People v. Aguon*, 2020 Guam 24 ¶¶ 27-28 (trial
28 court appropriately issued curative jury instruction that were crafted with the consultation and
active participation from the parties). Moreover, any risk of prejudice can be cured by issuing

1 proper jury limiting instructions, as “the jury is presumed to follow the jury instructions.” *Id.* ¶
2 30; see also *Zafiro v. United States*, 506 U.S. 534, 540 (1993) (citation omitted).

3 And, finally, the jury is instructed that the People have the burden of proving each and
4 every element of an offense beyond a reasonable doubt, and this would apply with specificity to
5 all of the elements of each and every offense and count of every charge against the Defendant. In
6 this regard, the following instruction is always given to a jury in a criminal case:
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8 **Jury Instruction: People Have Burden to Prove Each and Every Element of an**
9 **Offense Charged**

10 **The People of Guam have the burden of proving every element of an**
11 **offense charged beyond a reasonable doubt.** If, after careful and impartial
12 consideration of all the evidence, you find that the People did not prove one
13 or more of the elements of an offense charged beyond a reasonable doubt,
14 then it is your duty to find the defendant not guilty.

15 Because the jury will be instructed (1) not to base its verdict on any emotion (e.g., personal
16 likes or dislikes, opinions, prejudices or sympathy), (2) to consider the evidence of each charge
17 separately in rendering a verdict and not to find him guilty of a charge simply because the jury
18 found him guilty of another charge in the indictment, and (3) that the People must prove every
19 element of an offense charged beyond a reasonable doubt, the Court finds that the instructions are
20 sufficient to protect against “undue prejudice” to the Defendant by the joinder of the charges.

21 **C. The Court will, nevertheless, sever the trial of the charges on the basis of the**
22 **temporal differences in the charges and the type of evidence relied on by the People.**

23 Notwithstanding the Court’s finding that joinder of the charges for a single trial is
24 appropriate in this case, the Court agrees to sever the trial of the matters, based upon the temporal
25 and evidentiary similarities shared by the charges, into two separate trials, as set forth in the
26 following tables:
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1 The 2021 and 2022 allegations shall be grouped together for the purposes of trial based
 2 upon the proximity of the incidences in time to each other as well as the nature of the offenses
 3 charged are similar, with the sole exception of the Criminal Mischief charge relating to victim
 4 Wettengel. The evidence upon which the People rely is latent fingerprint evidence of the
 5 Defendant.
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TRIAL 1				
DATE	OFFENSE	CHARGE	VICTIM	EVIDENCE
10/19/2021	Burglary (F)	Two	Smith	Fingerprints
10/19/2021	Attempted Burglary (F)	Three	Pichon	--
02/14/2022	Burglary (F)	One, Count 1	SDA	Fingerprints
11/13/2022	Burglary to a School (F)	Four, Count 1	Wettengel	Fingerprints
11/22- 23/2022	Criminal Mischief (M)	Eight, Count 1	Wettengel	Fingerprints

14 Trial 2 shall cover the offenses which are all close in time, are similar in nature alleged to
 15 have been committed against each of the victims and the evidence of which is intended to be
 16 supported by surveillance video:
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TRIAL 2				
DATE	OFFENSE	CHARGE	VICTIM	EVIDENCE
02/15/2023	Burglary (F)	One, Count 2	I Mart	Surveillance
02/15/2023	Theft of Property (F)	Five	I Mart	Surveillance
02/15/2023	Criminal Mischief (M)	Eight, Count 2	I Mart	Surveillance
03/18- 19/2023	Burglary to a School (F)	Four, Count 2	BMS	Surveillance
03/19/2023	Criminal Mischief (M)	Eight, Count 3	BMS	Surveillance
04/08/2023	Criminal Mischief (M)	Eight, Count 4	IHOM	Surveillance
04/11/2023	Theft of Property (M)	Seven	IHOM	Surveillance
04/09/2023	Burglary (F)	One, Count 3	Apurons	Surveillance
04/09/2023	Criminal Mischief (M)	Eight, Count 5	Apurons	Surveillance
04/10/2023	Theft of Property (F)	Six	Fin Rest.	Surveillance
04/10/2023	Criminal Mischief (M)	Eight, Count 6	Fin Rest.	Surveillance

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III. CONCLUSION

For the reasons set forth herein, the Defendant's Motion to Sever Charges in the Indictment is **GRANTED IN PART**. The Court shall schedule a Criminal Trial Scheduling Conference to discuss the setting of trial dates and other deadlines in this case, the notice of which shall be forthcoming.

SO ORDERED this 14th day of April, 2025.



HONORABLE MARIA T. CENZON
Judge, Superior Court of Guam

SERVICE VIA E-MAIL

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

AG, POSC

Date 4/14/25 Time 3:13 pm

Antonio J. Carr

Deputy clerk, Superior Court of Guam