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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

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8 PEOPLE OF GUAM,) Criminal Case No. CM0041-20
9 vs.) GPD Report No.: 20-1403
10 PAN SA KIM, aka MIKE KIM,) DECISION AND ORDER DENYING
11 DOB: 01/02/1979) DEFENDANT'S MOTION TO COMPEL
12 Defendant.) INTERNAL AFFAIRS REPORTS

INTRODUCTION

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14 This matter came before the Honorable Maria T. Cenzone on Defendant Pan Sa Kim's
15 ("Defendant") Motion to Compel Discovery filed on January 22, 2021 (the "Motion").
16 Attorney Clyde Lemons of Lujan & Wolff LLP represents Defendant, and Assistant Attorney
17 General Christine Santos Tenorio represents the People of Guam ("the People"). Oral
18 argument on the motion was held on March 23, 2021, following which the Court took the
19 matter under advisement pursuant to Supreme Court of Guam Administrative Rule 06-001 and
20 CVR 7.1(e)(6)(A) of the Local Rules of the Superior Court of Guam. The Court's review of
21 this issue is limited to Item No. 33 of Defendant's Motion compelling the People to provide:
22 "[A]ny evidence of perjurious conduct, or like dishonesty material to the credibility of any
23 officer the prosecution intends to call at trial that has resulted in a sustained decision by the

1 Internal Affairs division of the officer's agency." *Mem.* at p. 8, 9. Having considered the
2 arguments set forth in the pleadings, during the motion hearing, and the applicable law, the
3 Court now issues the following Decision and Order **DENYING** Defendant's Motion to
4 Compel Discovery of Internal Affairs records.

5 BACKGROUND

6 On or about January 14, 2020, Officers of the Guam Police Department ("GPD")
7 responded to a walk-in criminal sexual conduct complaint at the Hagatna Precinct Command
8 when they met with C.C. (DOB 03/06/1992) ("Victim"). *People's Decl.* (Jan. 23, 2020).
9 Victim explained that Defendant had assisted her with a criminal complaint reported to Airport
10 Police on January 6, 2020, where he had given her his phone charger. *Id.* Later that afternoon,
11 Defendant sent a text message to Victim asking if he could pick up his charger. Defendant,
12 then proceeded to Victim's Dededo residence in his personal vehicle after his work shift. *Id.*
13 When Defendant arrived, he knocked on the door; however instead of waiting at the door while
14 Victim retrieved the charger, Defendant walked through the front door and into Victim's
15 bedroom. *Id.* Defendant told Victim he wished they met under "better circumstances" then
16 reached over Victim's shoulder and touched her left breast. *Id.* Victim then told Defendant to
17 leave. *Id.* Detectives confirmed that Defendant completed his work shift at around 9:00 a.m.
18 on January 6, 2020, and supervisors confirmed that it is not common practice to complete a
19 follow-up investigation while off-duty. *Id.*

20 On January 23, 2020, Defendant was charged with Forth Degree Criminal Sexual
21 Conduct (As a Misdemeanor), and Official Misconduct (As a Misdemeanor). *Mag. Compl.*
22 (Jan. 23, 2020).

1 On January 22, 2021, Defendant filed his Motion to Compel Discovery enumerating
2 various items to be turned over from the People. The People filed their Response on March 22,
3 2021, addressing each of Defendant's enumerated requests. The motion hearing was held on
4 March 23, 2021, where Defendant brought special attention to paragraph 33 of his Motion to
5 Compel, his request for any Internal Affairs reports regarding the conduct of any officers the
6 prosecution intended to call at trial. Hrg. Min. at 10:21:19 AM (March 23, 2021). The other
7 requests in Defendant's Motion to Compel Discovery were all addressed in the People's
8 Response to the Motion and had been resolved to the satisfaction of the Parties and to the
9 Court. *Id.* at 10:31:00 AM. The Court then took the remaining request, as it pertains to the
10 Internal Affairs reports, under advisement. *Id.* at 10:28:01 AM.

11 DISCUSSION

12 **A. Defendant fails to demonstrate the materiality of the requested Internal Affairs ("IA")** 13 **reports as it relates to the preparation of his defense.**

14 Defendant requests this Court to compel the prosecution to turn over "any evidence of
15 perjurious conduct, or like dishonesty material to the credibility of any officer the prosecution
16 intends to call at trial that has resulted in a sustained decision by the Internal Affairs division of
17 the officer's agency." Mot. to Compel at p. 8 (Jan. 22, 2021). Defendant further asserts that if
18 the prosecution is uncertain about whether the IA's findings should be provided to defense,
19 then the material should be submitted to the trial court, in camera to make the determination of
20 materiality. *Id.* Citing to the Guam Supreme Court's holding in *People v. Mateo*, 2017 Guam
21 22 Dec. 28, 2017), the People assert that Defendant's broad request for discovery does not
22 automatically make the information material and the Defendant has failed to establish such
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1 materiality, thereby justifying denial of the motion. Resp. at p. 5, 6 (March 22, 2021). The
2 Court agrees with the People in this instance.

3 Title 8 of the Guam Code Annotated Section 70.10 regulates the discovery process in
4 criminal proceedings and provides, in relevant part:

- 5 a) Except as otherwise provided by §§ 70.20 and 70.30, at any time after the first
6 appearance upon noticed motion by the defendant, the court shall order the
7 defendant's attorney to inspect and copy the following material and information
within his possession or control, the existence of which is known, or by the exercise
of due diligence may become knowing to the prosecuting attorney:

- 8 7) Any material or information which tends to negate the guilt of the defendant as
9 to the offense charged or would tend to reduce his punishment therefor.

10 8 GCA § 70.10(a)(7). In addition to the enumerated discoverable items listed in 8 GCA §
11 70.10, "upon noticed motion by the defendant and a showing of materiality to the preparation
12 of his defense and that the request is reasonable, the court in its discretion may order the
13 prosecuting attorney to disclose to the defendant's attorney any relevant material and
14 information not covered by § 70.10" under 8 GCA § 70.15(a). A threshold showing of
15 materiality must be established before the prosecution is obligated to turn over evidence to the
16 defendant either automatically or following a motion by the defendant. *People v. Mateo*, 2017
17 Guam 22 ¶ 15. "Mere speculation that a government file may contain *Brady* material is not
18 sufficient to require a remand for *in camera* inspection...." *Id.* ¶ 15. "Although this standard
19 is not difficult to meet, this general limitation must be considered prior to disclosure." *People*
20 *v. Tuncap*, 1998 Guam 13 ¶ 18.

21 "Evidence is material only if there is a reasonable probability that, had the evidence
22 been disclosed to the defense, the result of the proceeding would have been different. A
23 'reasonable probability' is probability sufficient to undermine the confidence in the outcome."

1 *People v. Fisher*, 2001 Guam 2 ¶ 13 (quoting *United States v. Presser*, 844 F.2d 1275, 1281
2 (6th Cir. 1988)). Although the Court in *Mateo* addressed the request to turn over personnel
3 records of the arresting officers, the Supreme Court indicated that in pursuing this request, the
4 Defendant in *Mateo* “fail[ed] to identify what would be in any existing internal affairs report or
5 present evidence in the record to establish the more basic fact of whether any internal affairs
6 complaint was ever actually filed against either officer. Thus, no record evidence exists to
7 determine whether any internal affairs complaint would have been material to Maeo’s defense,
8 a requirement under *Brady v. Maryland*, [citation omitted].” *Mateo*, 2017 Guam 22 n. 2.

9 Similarly, Defendant has the burden to show beyond mere speculation that the IA
10 documents will contain material evidence. Defendant has not even established the threshold
11 question of the existence of any such IA records. Absent from Defendant’s request is a
12 showing that the IA reports present a reasonable probability to produce a different outcome for
13 the proceedings. Defendant is speculating that “if” any GPD officers are the subject of an IA
14 complaint, then those reports should be turned over in camera to determine its materiality.
15 Defendant has not satisfied the procedural requirements under *Mateo*.

16 Compare the instant case to this Court’s ruling in CM0622-11, *People of Guam v. Jay*
17 *Julian Phillip*, granting the defendant’s request for IA reports because in that case the
18 defendant was able to demonstrate the reports’ materiality to his defense. *See* Decision and
19 Order in CM0622-11 (Aug. 28, 2020). In *Phillip*, the defendant there sufficiently articulated
20 that one of the officer witnesses had been the subject of several complaints of excessive force
21 which may have then been the subject of an IA report. *Id.*¹ In contrast, Defendant here has not

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23 ¹ In *Phillip*, this Court found that “Although Defendant does not allege specifically that such IA complaints exist,
he point to recorded testimony of Officer Aguon in Criminal Case No. CF0355-14, whereby he “testified that in the

1 sufficiently alleged any basis for his request of the IA reports; he has simply asked for any IA
2 reports that may exist. There is no reasonable basis here for the Court to grant the Motion.

3 **B. The Court need not address the People’s argument that IA records are not within its
4 control.**

5 Having ruled that Defendant failed to establish the materiality of any IA records as well
6 as the existence of any such investigations, the Court need not rule upon the issue of whether
7 such records are within the People’s control. See Response at p. 5. Should Defendant establish
8 materiality of any IA records, the Court will address this matter as appropriate.

9 **CONCLUSION**

10 For the above reasons, the Court **DENIES** Defendant’s Motion to Compel Discovery
11 for Item No. 33 as to his request for “[A]ny evidence of perjurious conduct, or like dishonesty
12 material to the credibility of any officer the prosecution intends to call at trial that has resulted
13 in a sustained decision by the Internal Affairs division of the officer’s agency.” As the parties
14 have represented to the Court that the Prosecution has complied with all other requests in
15 Defendant’s Motion to Compel, the motion is moot to such extent.

16 SO ORDERED, this 20th day of April 2021.

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18 **HONORABLE MARIA T. CENZON**
19 **JUDGE, SUPERIOR COURT OF GUAM**

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22 past, he had been subject of at least one excessive force complaint which, according to his testimony, was
23 investigated and found to be unsustainable. [sic]. * * * This is not the situation where a Defendant asserts a blanket
24 discovery request for internal affairs investigations or complaints without any reasonable basis for such request.”
Id. at 6.