



FOR PUBLICATION



E-FILED  
CNMI SUPERIOR COURT  
E-filed: Sep 28 2020 01:41PM  
Clerk Review: Sep 28 2020 01:41PM  
Filing ID: 65968139  
Case Number: 20-0132-CR  
N/A

IN THE SUPERIOR COURT FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,

Plaintiff,

v.

RUDOLPH RUDOLPH,

Defendant.

CRIMINAL CASE NO. 20-0132

ORDER FINDING THAT BECAUSE A  
DEFENDANT HAS THE RIGHT UNDER  
6 CMC § 6303(c) TO CROSS-EXAMINE  
ADVERSE WITNESSES AT A  
PRELIMINARY EXAMINATION  
HEARING TO WEED OUT  
GROUNDLESS CLAIMS, THE  
DEFENDANT IS ENTITLED TO THE  
TANGIBLE MATERIALS, IF ANY, IN  
POSSESSION OF THE  
COMMONWEALTH THAT RELATES  
TO THE COMMONWEALTH'S  
DETERMINATION OF PROBABLE  
CAUSE SO THAT DEFENDANT CAN  
FULLY AND PROPERLY CROSS  
EXAMINE THE GOVERNMENT'S  
WITNESS

I. INTRODUCTION

THIS MATTER came before the Court on September 23, 2020 at 10:00 a.m. in Room 212B at the Marianas Business Plaza. The Commonwealth of the Northern Mariana Islands ("Commonwealth") was represented by Assistant Attorney General Samantha Vickery. Defendant Rudolph Rudolph ("Defendant" or "Rudolph") appeared in custody and was represented by Court-appointed Counsel Vincent Seman. At issue is Rudolph's motion to obtain the tangible materials currently in the Commonwealth's possession that formed the basis of its probable cause determination.

By order of the Court, Associate Judge Joseph N. Camacho

1 On August 17, 2020, Defendant filed his Motion for All Tangible Materials Used by Law  
2 Enforcement to Establish Probable Cause to Fully and Properly Cross Examine the Government's  
3 Witness. On August 24, 2020, the Commonwealth filed its Opposition to Defense Request to  
4 Compel Production of Tangible Materials Used by Law Enforcement to Establish Probable Cause.  
5 On August 31, 2020, Defendant filed his Reply to the Commonwealth's Opposition to Defense  
6 Request for Tangible Materials Used by Law Enforcement to Establish Probable Cause.

7 Based on the filings, the testimony of the Commonwealth's witness at the preliminary  
8 examination hearing, the applicable laws, and arguments of counsels, the Court hereby issues the  
9 following Order.

## 10 II. BACKGROUND

### 11 A. The Affidavit of Probable Cause

12 On or about July 28, 2020, Department of Public Safety ("DPS") Detective Shannon Dela  
13 Cruz ("Detective Dela Cruz") swore out a Complaint and Affidavit of Probable Cause in Support of  
14 the Issuance of an Arrest Warrant for Defendant Rudolph pursuant to Rule 4 of the Commonwealth  
15 Rules of Criminal Procedure ("Affidavit"). The Office of the Attorney General reviewed the  
16 Affidavit before it was taken to a judge for review and consideration – as the Office of the Attorney  
17 General typically does for affidavits and warrants that are given to a judge for review and  
18 consideration.

19 The Affidavit alleged that Defendant Rudolph sexually abused victim, F.F., a minor child.  
20 In the Affidavit, Detective Dela Cruz stated that on Monday, July 20, 2020, DPS Police Officer  
21 Tom Kintoki responded to a reported sexual abuse of a minor complaint. DPS Officer Kintoki met  
22 with DPS Detective Wally Emul and Division of Youth Services ("DYS") Personnel Christine  
23 Aldan. DYS Personnel Aldan gave a statement about what another person (namely Genevieve  
24 Fitial) said about the alleged sexual abuse of the minor child, F.F.

1 In the Affidavit, Detective Dela Cruz stated that on Monday, July 20, 2020, F.F. was  
2 examined at the Children’s Clinic by Nurse Practitioner Heather Taylor. F.F. also gave statements  
3 about the allege sexual abuse during the medical exam.

4 In the Affidavit, Detective Dela Cruz stated that on Wednesday July 22, 2020, she witnessed  
5 a forensic interview of F.F. conducted by DYS Personnel Mariah Manglona where F.F. described  
6 the alleged sexual abuse. This forensic interview was recorded by video.<sup>1</sup>

7 In the Affidavit, Detective Dela Cruz stated that on Wednesday, July 22, 2020 she  
8 conducted an interview with Marlyn F. Kamal, who gave statements about the alleged sexual abuse  
9 of F.F.

10 In the Affidavit, Detective Dela Cruz stated that on Friday, July 24, 2020, she conducted an  
11 interview with Cecilia Fitial, who gave statements about the alleged sexual abuse of F.F.

12 In the Affidavit, Detective Dela Cruz stated that on Monday, July 27, 2020, she conducted  
13 an interview with Genevieve Fitial, who gave statements about the alleged sexual abuse of F.F.

14 On Tuesday, July 28, 2020, Associate Judge Teresa Kim-Tenorio reviewed the Affidavit  
15 and found probable cause<sup>2</sup> to charge Defendant with Sexual Abuse of a Minor in the First Degree in  
16 violation of 6 CMC § 1306(a)(1) (“SAM1”) and Sexual Abuse of a Minor in the Second Degree in  
17 violation of 6 CMC § 1307(a)(2) (“SAM2”).

18 The Affidavit did not indicate how many individual counts of SAM1 or SAM2.

19  
20 \_\_\_\_\_  
21 <sup>1</sup> DPS Detective Dela Cruz testified at the preliminary examination hearing that the forensic interview was recorded by  
22 video.

23 <sup>2</sup> When a judge reviews warrants, complaints, and affidavits pursuant to a Rule 4 or Rule 5 of the Commonwealth Rules  
24 of Criminal Procedure and makes a determination of probable cause it is a “one-sided story,” meaning that the judge  
reads a document and only hears the side of the law enforcement officer (often times the affidavits are reviewed by the  
Office of the Attorney General before these documents are brought to the judge). At the Preliminary Examination  
Hearing, the review by the judge of the probable cause happens in a formal court setting and is now a “two-sided story,”  
meaning that the defendant now has the assistance of an attorney who can cross-examine the testifying adverse witness,  
often times case agent, the law enforcement officer leading the investigation.

1        **B. Filing of Information**

2            On August 5, 2020, eight days after the signing of the Affidavit, the Commonwealth filed an  
3 Information, the charging document. The Information charged Defendant with *three* counts of  
4 Sexual Abuse of a Minor in The First Degree in violation of 6 CMC § 1306(a)(1) and *four* counts of  
5 Sexual Abuse of a Minor in The Second Degree in violation of 6 CMC § 1307(a)(2).

6            The Affidavit as to Defendant Rudolph did not indicate how many individual counts of  
7 SAM1 or SAM2. It is worth noting that it is common practice for law enforcement officers to only  
8 generally list in the arrest warrant the charges the Commonwealth intends to bring against a  
9 defendant. It is only after the Office of the Attorney General reviews the police reports/statements,  
10 video, etc., that the Office of the Attorney General specifies the particular individual charges to be  
11 brought against a defendant in the Information, the charging document. This is because the Office  
12 of the Attorney General typically reviews the police reports/statements, video, etc., several days  
13 after the defendant is arrested.

14            Typically, the Information is filed and provided to the defendant near to or on the day of the  
15 preliminary examination hearing. However, though the Office of the Attorney General may have  
16 access to the police report/statements, video, etc. used to make a detailed review and determination  
17 of which criminal charges to file against a defendant, the defendant does not have the same access  
18 to this material. Therefore, the defendant cannot determine how the Office of the Attorney General  
19 arrived at its determination of which criminal charges to file against a defendant.

20            Here, Defendant Rudolph only has a copy of the Affidavit, which does not provide the exact  
21 charges brought against Defendant. The exact charges that the Commonwealth is bringing against  
22 Defendant is only in the Information, the charging document, the basis of which are contained in  
23 the police report/statements, video, etc. in the possession of the Commonwealth, and only the  
24 Commonwealth.

1           **C. The Preliminary Examination Hearing**

2           On August 12, 2020, seven days after the Information was filed, a preliminary examination  
3 hearing (also referred to as a preliminary hearing) was held to determine whether there is probable  
4 cause to charge Defendant Rudolph with the crimes listed in the Information, the charging  
5 document. The Commonwealth’s sole witness was Detective Dela Cruz. Detective Dela Cruz  
6 testified that she based her probable cause determination on three things: her own observation at the  
7 forensic interview of the child, her own interviews with the adult eyewitness listed above, and the  
8 medical record of the sexual assault examination (SANE) of the child.

9           At the preliminary examination hearing, Defendant Rudolph orally requested the tangible  
10 materials that Detective Dela Cruz mentioned in her testimony and in the Affidavit. The  
11 preliminary examination hearing was continued to allow the parties to brief the issue in writing.

12           **D. The Request for Tangible Materials**

13           On August 17, 2020, Defendant Rudolph filed his request for the following materials:

- 14           • All documents and information in the custody or possession of the CNMI  
15 Department of Public Safety, including but not limited to their case file, relating to  
16 the forming a basis of the Commonwealth’s assertion of probable cause in this  
17 matter.
- 18           • All documents reviewed by Detective Dela Cruz as prepared by CNMI Division of  
19 Youth Services, including but not limited to any diagrams, pictures, drawings,  
20 exhibits, relating to the forming a basis of the Commonwealth’s assertion of  
21 probable cause in this matter.
- 22           • Reasonable accommodation to review any video/audio recording of the minor  
23 interviewed relating to the forming a basis of the Commonwealth’s assertion of  
24 probable cause in this matter.

- All documents reviewed by Detective Dela Cruz as prepared by any and all witness or in preparation of any interviews of any and all witnesses relating to the matter, including but not limited to any diagrams, pictures, drawings, exhibits, relating to the forming a basis of the Commonwealth’s assertion of probable cause in this matter.
- Any audio/visual recordings of any witnesses (excluding the minor) interviewed relating to the forming a basis of the Commonwealth’s assertion of probable cause in this matter.
- All documents reviewed by Detective Dela Cruz as prepared by CNMI Children’s Clinic Provider Clinic medical personnel, including but not limited to any reports, diagrams, pictures, drawings, exhibits, relating to the forming a basis of the Commonwealth’s assertion of probable cause in this matter.

### III. DISCUSSION

#### A. The Scope of 6 CMC § 6303(c) – The Defendant’s Right to Cross Examine

In *Commonwealth v. Saimon*, Crim. No. 18-0020 (NMI Super. Ct. Sept. 13, 2019), the Court held that a defendant’s statutory right under 6 CMC § 6303(c) to cross-examine adverse witnesses at a Rule 5.1 preliminary examination hearing gives defendants the right to receive the tangible materials, if any, used by law enforcement officers to establish probable cause for the defendant’s arrest. 6 CMC § 6303(c) (“The arrested person may cross-examine adverse witnesses and may introduce evidence in his or her own behalf.”); *see also Commonwealth v. Vicente Sablan Basa*, Crim. No. 20-0126 (NMI Super. Ct. Sept. 16, 2020).

The Court’s role at a preliminary examination hearing “is not simply to rubber stamp the prosecution’s complaint,” *In re Commonwealth of the N Mar. I.*, 2018 MP 8 ¶ 17, but rather “to determine whether there is probable cause to believe that a crime has been committed and that the accused committed it.” *Babauta v. Superior Court of N. Mar. I.*, 4 NMI 309, 311 (1995); *see also* 6

1 CMC § 6303(f) (“If [...] it does not appear to the official that there is probable cause to believe that  
2 a criminal offense has been committed and that the arrested person committed it, the official shall  
3 discharge the arrested person.”). At a preliminary examination hearing, Courts must “weed out  
4 groundless claims and thereby avoid ... the imposition and expense of an unnecessary criminal  
5 trial[.]” *In re Commonwealth of the N Mar. I.*, 2018 MP 8 ¶ 16 (citation omitted).

6 To facilitate the Court’s role in determining whether there is probable cause to proceed to  
7 trial, the Commonwealth Legislature provided defendants with the right to cross-examine adverse  
8 witnesses at the preliminary examination hearing. 6 CMC § 6303(c). This is because cross-  
9 examination is “the greatest legal engine ever invented for the discovery of truth [.]” *California v.*  
10 *Green*, 399 U.S. 149, 158 (1970) (citation omitted). Cross-examination gives the Court the  
11 opportunity to place the testimony of the witness in its proper context and weigh the strength and  
12 credibility of the witness’ testimony. Without a full and proper cross-examination, the Court would  
13 be unable to accurately evaluate and weigh the witness’ testimony.

14 For a defendant’s cross-examination at a preliminary examination hearing to be effective, it  
15 is necessary for the defendant to be privy to the tangible materials such as documents, photographs,  
16 video, etc. that relate to the opposing party’s testimony. *See Brandon v. Mare-Bear, Inc.*, No. 99-  
17 15312, 2000 U.S. App. LEXIS 12585, at \*11 (9th Cir. June 5, 2000) (finding that one of the  
18 primary goals of discovery is to prevent trial by ambush and surprise). This is because without  
19 access to the tangible materials, if any, that relate to the Commonwealth’s probable cause  
20 determination, the defendant would not know what types of questions to ask, would be unable to  
21 impeach the credibility of the testifying witness’ statements, and would be unable test the veracity  
22 of the government’s allegations that a crime has been committed and that the defendant committed  
23 the crime. Without access to the tangible materials, if any, a defendant would be unable to fully and  
24 properly exercise his or her statutory right to cross-examine adverse witnesses at a preliminary

1 examination hearing under 6 CMC § 6303(c). Without a full and proper cross-examination at a  
2 preliminary examination hearing stage, the Court would not be able to perform its duty to determine  
3 whether there is probable cause to believe that a crime has been committed and that the defendant is  
4 the person who committed that crime.<sup>3</sup>

5 Disclosure of the materials, if any, used by law enforcement to establish probable cause  
6 serves the interest of justice.<sup>4</sup> Justice Sutherland famously stated in *Berger v. United States*, 295  
7 U.S. 78 (1935), that:

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9 <sup>3</sup> A defendant’s right to the tangible materials prior to a preliminary examination hearing flows from a defendant’s right  
10 to cross-examine under 6 CMC § 6303(c). A defendant’s rights under 6 CMC § 6303(c) *is separate and distinct* from a  
11 defendant’s rights under the Confrontation Clauses of the Sixth Amendment of the United States Constitution and  
12 Article I, Section 4(b) of the NMI Constitution because the Sixth Amendment and Article I, Section 4(b) apply at trial  
13 whereas 6 CMC § 6303(c) applies at preliminary examination hearings. See *Commonwealth of the N. Mar. I. v.*  
14 *Namauleg*, 2009 MP 13 ¶ 8 (finding that a defendant’s constitutional right to confront adverse witnesses is a trial right);  
15 *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* 14 (1976) (stating that Article I,  
16 Section 4(b) of the NMI Constitution “applies at time of trial”); see also *United States v. Mitchell-Hunter*, 663 F.3d 45,  
17 51-52 (1st Cir. 2011); *Peterson v. California*, 604 F.3d 1166, 1170 n.3 (9th Cir. 2010) (finding that because defendants  
18 do not have a Sixth Amendment right to cross-examine adverse witnesses at preliminary examination hearings, an  
19 effective assistance of counsel argument based on a failed Confrontation Clause argument must also fail); *United States*  
20 *v. Andrus*, 775 F.2d 825, 836 (7th Cir. 1985) (finding that “the Sixth Amendment does not provide a confrontation right  
21 at a preliminary hearing”); *United States v. Harris*, 458 F.2d 670, 677-78 (5th Cir. 1972) (“There is no Sixth  
22 Amendment requirement that [defendants] . . . be allowed to confront [witnesses] at a preliminary hearing prior to  
23 trial.”).

24 Additionally, a defendant’s right to receive discovery under the Due Process Clause of the Fourteenth Amendment of  
the United States Constitution is also inapplicable here because a defendant’s discovery rights under the Due Process  
Clause mandates “that the government produce exculpatory material in time for the defendant’s effective use of those  
materials *at trial*” – not a preliminary examination hearing. *Commonwealth v. Campbell*, 4 NMI 11, 16 (1993)  
(emphasis added); see also *Commonwealth v. Hong*, 2013 MP 19 ¶¶ 12-13 (finding no due process violation when the  
Commonwealth turned over exculpatory material to the defendant twenty-nine (29) days before trial, even though the  
Commonwealth received the letters seven (7) months earlier, because the defendant did not demonstrate how the  
disclosure unfairly prejudiced him in his preparation for trial “a *Brady* claim is meritless where disclosure of material  
evidence is not produced too late to deprive the defendant of a fair trial” (internal citation omitted)); *Commonwealth v.*  
*Adlaon*, 4 NMI 171, 175 (1994) (“[A]n accused does not suffer a due process violation until he or she has been tried  
and convicted.”); *United States v. Davenport*, 753 F.2d 1460, 1462 (9th Cir. 1985).

<sup>4</sup> See; *Exonerations in 2018*, Nat’l Registry Exonerations (Apr. 9,  
2019), <https://www.law.umich.edu/special/exoneration/Documents/Exonerations%20in%202018.pdf> (finding failure to  
disclose evidence was major factor in a significant portion of wrongful convictions); Ari Shaprio, *Guilt By Omission:*  
*When Prosecutors Withhold Evidence Of Innocence*, NPR (Aug. 4,  
2017), [https://www.npr.org/2017/08/04/541675150/guilt-by-omission-when-prosecutors-withhold-evidence-of-](https://www.npr.org/2017/08/04/541675150/guilt-by-omission-when-prosecutors-withhold-evidence-of-innocence)  
*innocence*; Emily Bazelon, *She Was Convicted of Killing Her Mother. Prosecutors Withheld the Evidence That Would*  
*Have Freed Her*, N.Y. Times (Aug. 1, 2017), [https://www.nytimes.com/2017/08/01/magazine/she-was-convicted-of-](https://www.nytimes.com/2017/08/01/magazine/she-was-convicted-of-killing-her-mother-prosecutors-withheld-the-evidence-that-would-have-freed-her.html)  
*killing-her-mother-prosecutors-withheld-the-evidence-that-would-have-freed-her.html* (“Omitted evidence is a major  
reason for wrongful conviction and for people taking pleas they shouldn’t have taken.”); Emma Zack, *Why Holding*  
*Prosecutors Accountable Is So Difficult*, INNOCENCE PROJECT (Apr. 23, 2020), [https://www.innocenceproject.org/why-](https://www.innocenceproject.org/why-holding-prosecutors-accountable-is-so-difficult/)  
*holding-prosecutors-accountable-is-so-difficult/*; *Michael Morton’s Prosecutor Will Face Criminal Charges for*



1 “[a prosecutor] is the representative not of an ordinary party to a controversy, but  
2 of a sovereignty whose obligation to govern impartially is as compelling as its  
3 obligation to govern at all; and **whose interest, therefore, in a criminal  
4 prosecution is not that it shall win a case, but that justice shall be done.** As  
5 such, he is in a peculiar and very definite sense the servant of the law, the twofold  
6 aim of which is that guilt shall not escape or innocence suffer. He may prosecute  
7 with earnestness and vigor -- indeed, he should do so. But, while he may strike  
8 hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain  
9 from improper methods calculated to produce a wrongful conviction as it is to use  
10 every legitimate means to bring about a just one.” *Berger v. United States*, 295  
11 U.S. 78, 88 (1935) (emphasis in bold added).

12 These words serve as a compass to guide prosecutors. When the Office of the Attorney General, as  
13 the representative of the Commonwealth Government, withholds or delays in disclosing the  
14 tangible materials already in its possession to hamper the ability of defendants to exercise their  
15 rights under 6 CMC § 6303(c), the interests of justice are not served.

16 Here, Defendant only has access to Detective Dela Cruz’s Affidavit, which has been filed in  
17 court. Defendant cannot conduct an effective cross-examination with only Detective Dela Cruz’s  
18 Affidavit because the Office of the Attorney General relies on the police reports/statements, video  
19 etc. in drafting the Information which specified the exact (or more accurately additional) charges  
20 brought against Defendant in the Information. Even with Detective Dela Cruz’s Affidavit, without  
21 access to the police reports, statements, video, etc., which is basis of how the Office of the Attorney  
22 General decided which charges to bring against Defendant, it is impossible for Defendant to fully  
23 and properly cross examine the adverse witness. Therefore, to allow Defendant to exercise his  
24 rights under 6 CMC § 6303(c), Defendant is entitled to these tangible materials.

**B. The Federal Rules of Criminal Procedure – Persuasive Authority**

It is worth mentioning that the current Federal Rules of Criminal Procedure have moved in  
the direction of this Court’s decision. FED. R. CRIM. P. 26.2(a) (“After a witness other than the

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*Withholding Evidence*, INNOCENCE PROJECT (Apr. 19, 2013), <https://www.innocenceproject.org/michael-mortons-prosecutor-will-face-criminal-charges-for-withholding-evidence/>.

1 defendant has testified on direct examination, the court, on motion of a party who did not call the  
2 witness, must order an attorney for the government or the defendant and the defendant's attorney to  
3 produce, for the examination and use of the moving party, any statement of the witness that is in  
4 their possession and that relates to the subject matter of the witness's testimony."); FED. R. CRIM. P.  
5 26.2(g)(1) (stating that Rule 26.2(a) applies to Rule 5.1 preliminary hearings).

6 "Because the Commonwealth Rules of Criminal Procedure are patterned after the Federal  
7 Rules of Criminal Procedure, [Commonwealth Courts have] long held that it is appropriate to  
8 consult . . . the federal rules when interpreting the Commonwealth Rules of Criminal Procedure."  
9 *Commonwealth v. Laniyo*, 2012 MP 1 ¶ 6 (quoting *Commonwealth v. Attao*, 2005 MP 8 ¶ 9 n.7).

10 **C. The Tangible Materials, If Any, A Defendant is Entitled to is Limited to the**  
11 **Preliminary Examination Hearing and Probable Cause Pursuant to 6 CMC §**  
12 **6303(c)**

13 Because Defendant's right to access tangible materials, if any, at a preliminary examination  
14 hearing flows from the defendant's right to cross-examine adverse witnesses under 6 CMC §  
15 6303(c), a defendant is only entitled to receive the tangible materials, if any, that relate to the  
16 Commonwealth's probable cause determination.<sup>5</sup>

17 For example, though a knife, or at least a photo of the knife, used in an alleged stabbing case  
18 must be turned over to the defendant to conduct cross-examination at the preliminary examination  
19 hearing, the defendant would not be entitled to the lab results from the DNA test of any blood stains  
20 on the knife if the lab results have not been received by the Commonwealth when they made their  
21 probable cause determination.

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22 <sup>5</sup> Here, Defendant made his motion for the tangible materials after the Commonwealth completed its direct examination  
23 of its first witness. Therefore, because the issue of *when* the Commonwealth should provide the tangible materials is  
24 not presently before the Court, the Court makes no findings at this time concerning whether the tangible materials  
should be disclosed prior to the preliminary examination hearing or at the preliminary examination hearing after the  
Commonwealth's direct examination.

1 The types of materials a defendant is entitled to at the preliminary examination hearing is  
2 different from the information that is discoverable by a defendant to show reasonable doubt at trial  
3 – which would include the information discoverable under Rule 16, Rules 26.2, and the due process  
4 clause of the NMI and U.S. Constitutions.<sup>6</sup>

5 **D. Preliminary Examination Hearings are NOT the same as Criminal Trials**

6 To be clear, the Court is not suggesting that the Court hold a “mini-trial” at a Rule 5.1  
7 preliminary examination hearing.

8 The Court notes that at a preliminary examination hearing:

- 9 1. the Rules of Evidence do not apply,<sup>7</sup>
- 10 2. hearsay testimony is allowed,
- 11 3. the Commonwealth need not call factual witnesses,<sup>8</sup>
- 12 4. the trier of fact is the judge,
- 13 5. the standard of proof is Probable Cause,<sup>9</sup> and
- 14 6. Double Jeopardy does not apply – meaning the Commonwealth can refile charges if  
15 additional evidence comes to light.

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18 <sup>6</sup> Rule 16, Rule 26.2, and *Brady* are only trial rights. *See Commonwealth v. Jian Huang*, No. 03-0350 (CNMI Super. Ct.  
19 November 28, 2003) (finding that Rule 16 is a trial right); 1993 Advisory Committee Note to Rule 26.2 (“As noted in  
20 the 1983 Advisory Committee Note to Rule 12(i), the courts have generally declined to extend the Jencks Act, 18  
21 U.S.C. § 3500, beyond the confines of actual trial testimony. That result will be obviated by the addition of Rule  
22 26.2(g)”). *Commonwealth v. Campbell*, 4 NMI 11, 16 (1993) (finding that due process only requires “that the  
23 government produce exculpatory material in time for the defendant’s effective use of those materials *at trial*” (emphasis  
24 added)). As noted above, a defendant’s rights under 6 CMC § 6303(c) ***is separate and distinct*** from a defendant’s  
rights under the United States Constitution and the NMI Constitution.

<sup>7</sup> NMI R. EVID.1101(c)(2).

<sup>8</sup> Generally, the Office of the Attorney General calls the case agent, the law enforcement officer leading the  
investigation, as its witness.

<sup>9</sup> The probable cause standard is lower than the preponderance of the evidence standard and is satisfied when the  
arresting officer has sufficient facts and trustworthy information “to warrant a prudent man in believing that the  
petitioner had committed or was committing an offense.” *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

1 In contrast, a criminal trial is a totally different proceeding at a different stage of the case. The  
2 Court notes that at a criminal trial:

- 3 1. the Rules of Evidence apply,
- 4 2. hearsay testimony is not allowed unless there is an exception,
- 5 3. only factual witnesses and expert witnesses are allowed to testify,
- 6 4. the trier of fact is the jury,<sup>10</sup>
- 7 5. the standard of proof is Proof Beyond a Reasonable Doubt,<sup>11</sup> and
- 8 6. Double Jeopardy applies.

#### 9 IV. CONCLUSION

10 Without the materials relied upon in forming the Commonwealth's witness' testimony at the  
11 preliminary examination hearing, a defendant will be unable to fully and properly exercise his or  
12 her statutory right pursuant to 6 CMC § 6303(c) to cross-examine adverse witnesses.

13 Because the role of the trial court at a preliminary examination hearing "is not simply to  
14 rubber stamp the prosecution's complaint,"<sup>12</sup> but rather to "to weed out groundless claims and  
15 thereby avoid ... the imposition and expense of an unnecessary criminal trial,"<sup>13</sup> a defendant's  
16 statutory right under to 6 CMC § 6303(c) to cross-examine adverse witnesses gives defendants the  
17 right to access to the tangible materials, if any, in possession of the Commonwealth that relates to  
18 the Commonwealth's determination of probable cause so that Defendant can fully and properly  
19 cross examine adverse witnesses.<sup>14</sup>

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21 <sup>10</sup> For criminal cases with only misdemeanor offenses, the judge is the trial of fact.

22 <sup>11</sup> "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970).

23 <sup>12</sup> *In re Commonwealth of the N Mar. I.*, 2018 MP 8 ¶ 17.

23 <sup>13</sup> *In re Commonwealth of the N Mar. I.*, 2018 MP 8 ¶ 16.

24 <sup>14</sup> Cross Examination has been called "the greatest legal engine ever invented for the discovery of truth," *California v. Green*, 399 U.S. 149, 158 (1970).

1 Defendant's Motion is hereby **GRANTED** and the Office of the Attorney General is hereby  
2 ordered to produce all notes, statements, police reports, videos, etc. relevant to the determination of  
3 probable cause at the preliminary hearing – more specifically:

- 4 • Department of Public Safety Police Officer Tom Kintoki's Report and Notes relevant to this case.
- 5 • Division of Youth Services Personnel Mariah Manglona's report, notes, diagrams, and other tangible materials of minor child F.F. relevant to this case.
- 6 • Reports and statements of interview of Maryln F. Kamal relevant to this case.
- 7 • Reports and statements of interview of Cecelia Fitial relevant to this case.
- 8 • Reports and statements of interview of Genevieve Fitial relevant to this case.
- 9 • Reports and statements of interviews of allege victim, minor child F.F. relevant to this case.
- 10 • Notes, reports, diagrams and other tangible materials from Children's Clinic Nurse Practitioner Heather Taylor relevant to this case.
- 11 • The medical record of the sexual assault examination (SANE) of the minor child, F.F.
- 12 • Reasonable accommodation for Defendant and/or his attorney to view the video/audio recording<sup>15</sup> of the forensic interview of the minor child F.F.

13 **IT IS SO ORDERED** this 28<sup>th</sup> day of September, 2020.

14  
15 /s/  
**JOSEPH N. CAMACHO**, Associate Judge

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<sup>15</sup> Detective Dela Cruz testified that she was present during the video recording of the forensic interview of F.F.