



FOR PUBLICATION



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IN THE SUPERIOR COURT
FOR THE

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)

CRIMINAL CASE NO. 20-0083

Plaintiff,)

vs.)

ORDER DENYING DEFENDANT’S
MOTION IN LIMINE

ROBERT BORJA CEPEDA,)
(D.O.B. 01/15/1958))

Defendant.)
_____)

THIS MATTER came before the Court on Defendant’s ROBERT BORJA CEPEDA’s (“Defendant”) Motions in Limine. Assistant Attorney General Chester Hinds represented the Government. Defendant ROBERT BORJA CEPEDA was present and represented by Assistant Public Defender Vina Seelam.

FOR GOOD CAUSE SHOWN AND BASED ON THE MATTERS ADDUCED IN COURT, the Court DENIES the Defendant’s Motions in Limine. The Court finds motions in limine 2, 3, 9, 10 and 14 to be moot and denies motions in limine 1, 4, 5, 6, 7, and 8. The Defendant withdrew motions 11, 12 and 13.

The Proper Use of a Motion in Limine

As a threshold issue, the hearing raised a question of the proper use of motions in limine. The Commonwealth cited *United States v. Heller* for the proposition that “a motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area.” *United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009). The Commonwealth seeks too narrow of a definition for a motion in limine. The *Heller* court merely provided an

By order of the Court, Presiding Judge Robert C. Naraja

1 explanation of how a motion in limine can be used but did not seek to limits its use. *Id.* The
2 *Heller* court found harmless the lower court’s failure to make an express ruling on the
3 government’s motion in limine because the matter was rendered moot when the defendant
4 waived his right to a jury trial. *Id.* It noted that “a threshold evidentiary ruling is generally
5 superfluous” in a bench trial because the need to ask a judge to rule in advance on
6 prejudicial evidence so the judge will not hear the evidence would be “coals to Newcastle.”
7 *Id.* at 1112.

9 There is no explicit reference to a motion in limine in the NMI Rules of Civil
10 Procedure or Rules of evidence (nor the federal rules) and as such it is an inherently elastic
11 motion. It is true the term “in limine” literally means “at the outset.” *Id.* at 1111 citing
12 Black’s Law Dictionary 803 (8th ed, 2004). However, a motion in limine can be made at
13 any time during the trial. It is also true that generally motions in limine are used “to limit in
14 advance testimony or evidence in a particular area.” *Id.* at 1111-12. That said the use of a
15 motion in limine is not restricted to limiting testimony or evidence. Rather, they can include
16 motions to control the conduct of the prosecutor or courtroom environment, among other
17 things.
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20 Like the *Heller* Court, this Court makes no attempt to define a motion in limine or
21 create any rules for their usage. But generally, this Court will not look favorably on motions
22 in limine which merely seek to reiterate the rules of evidence, rules of criminal procedure, or
23 an attorney’s obligations, ethical or otherwise, under general principles of law. Motions in
24 limine should not be speculative in nature. They should focus on a specific, relatively
25 narrow, issue rather than the broad, general concerns raised in many of the Defendant’s
26 motions here.
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Motion in Limine No. 1

The Defense moved for an order excluding all witnesses from the court room, until and except while testifying.

The Court **DENIES** Motion in Limine No. 1. This motion seeks to enforce the rule on sequestration pursuant to NMI Rule of Evidence 615. The Defendant merely needs make an oral motion to invoke the rule on sequestration at the start of trial.

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Motion in Limine No. 2

The Defense moved for an order prohibiting all witnesses from talking or otherwise communicating with each other, or with others, regarding matters pertaining to their testimony, including questions asked and answers given. This order would specifically allow witnesses to speak with the Assistant Attorney General or Defense counsel, or both, but only outside the presence of other witnesses.

The Court finds Motion in Limine No. 2 to be **MOOT**. The Court need not issue an order for the parties or witnesses to be required to follow NMI Rule of Evidence 602, a witness's need for personal knowledge, or NMI Rule of Evidence 615, which excludes a witness from hearing another witnesses testimony.

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Motion in Limine No. 3

The Defense moved for the Court to order that all witnesses remain subject to recall.

The Court finds Motion in Limine No. 3 to be **MOOT**. The Court need not issue an order for what is already covered by NMI Rule of Evidence 611 governing the mode and order of examining witnesses and presenting evidence. The Defendant should make a motion at the end of witness's testimony if it seeks for the witness to remain available for recall.

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Motion in Limine No. 4

The Defense moved for an order requiring the Assistant Attorney General to disclose statements made to the Attorney General's Office before or during trial by witnesses who testify at trial, including law enforcement witnesses.

The Court **DENIES** Motion in Limine No. 4. The Defendant acknowledged these statements would be required to be produced as *Brady* material. The Defendant's motion also would have expanded the Commonwealth's obligations past what is required by NMI Rule of Criminal Procedure Rule 26.2.

Rule 26.2 only requires such statements to be produced when signed by the witness or otherwise adopted by the witness, or a substantially verbatim recital of an oral statement. *Commonwealth v. Joseph Saimon and Richmond Keybond*, Crim. No. 18-0066 (Super. Ct. Nov. 6, 2020) (Order Granting in Part and Denying in Part Defendant Saimon's Motions in Limine). The Commonwealth proffered it has already made all required disclosures.

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Motion in Limine No. 5

The Defense moved for an order requiring the Prosecution to turn over all notes and statements of the witnesses it has interviewed and intends to call to trial. This request did not seek attorney's work product.

The Court **DENIES** Motion in Limine No. 5. The disclosure of statements is addressed in Motion in Limine 4. Notes, however, do not generally qualify as witness statements which must be produced under NMI Rule of Criminal Procedure 26.2. *See Commonwealth v. Joseph Saimon and Richmond Keybond*, Crim. No. 18-0066 (Super. Ct. Nov. 6, 2020) (Order Granting in Part and Denying in Part Defendant Saimon's Motions in Limine); *Commonwealth v. Benjamin Hattori*, Crim. No. 18-0099 (Super. Ct. May 31, 2019)

1 (Order Denying Defendant’s Motion to Compel Discovery and Request for an Evidentiary
2 Hearing). The Commonwealth proffered it has already made all required disclosures.

3 **Motion in Limine No. 6**

4 The Defense moved to exclude the testimony of any witness and the introduction
5 of or reference to, any statement or evidence that has not been discovered to the Defense
6 prior to trial.

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8 The Court **DENIES** Defendant’s Motion in Limine No. 6. Motions in limine are
9 generally to address testimony or evidence in a particular area rather than serve as general
10 rulings. The Defendant seeks to exclude all evidence that has not been “discovered” to the
11 Defendant prior to trial. The Defendant’s motion fails to recognize the distinction between
12 evidence and “discoverable” evidence. The Defendant’s motion would treat “any as-yet
13 undiscovered evidence” as “discoverable.” Not all of the evidence the Commonwealth may
14 have accumulated is necessarily “discoverable.” The Supreme Court has clarified that “the
15 *Brady* rule is not an evidentiary rule which grants broad discovery powers to a defendant
16 and that ‘there is no general constitutional right to discovery in a criminal case.’” *United*
17 *States v. Todd*, 920 F.2d 399, 405 (6th Cir. 1990) (quoting *Weatherford v. Bursey*, 429 U.S.
18 545, 559 (1977)).

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21 Furthermore, under the NMI Rules of Criminal Procedure, Rule 16 limits
22 discovery to statements made by Defendant, the Defendant’s prior record, tangible
23 documents and objects, and reports of examination tests. The Defendant’s broad motion
24 would exclude evidence when not fitting into one those categories.
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Motion in Limine No. 7

The Defense moved for an order requiring the Prosecution to disclose the existence of any moral turpitude convictions of any witness it intends to call at trial as well as any witnesses the Defense intends to call trial.

The Court **DENIES** Motion in Limine No. 7. The motion is not only speculative in nature but could better be accomplished through the Defendant consulting with the Commonwealth. It would only need to file a motion to compel if the Commonwealth refuses to provide the requested information.

Motion in Limine No. 8

The Defense moved for an order requiring the Prosecution to disclose the existence of any evidence of dishonesty or moral turpitude contained in testifying officers' personnel files.

The Court **DENIES** Motion in Limine No. 8 as the Defendant has failed to make the required showing of materiality to file a successful *Henthorn* motion. This Court has specifically declined to follow the federal *Henthorn* rule. *CNMI v. Atalig*, Crim. No. 18-0088 (NMI Super. Ct. Aug. 15, 2019), *See also United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991) In *Atalig*, this Court held that “more than mere speculation is required to trigger the Commonwealth’s duty to search files and personnel records” and that “the better approach is one that requires a threshold showing of materiality to trigger a mandatory review by the prosecution.” Crim. No. 18-088 at 5.

Motion in Limine No. 9

The Defense moved to exclude from evidence any and all evidence regarding the commission of any alleged criminal conduct, prosecuted or otherwise, by the Defendant not charged in the above-captioned case.

1 The Court finds Motion in Limine No. 9 to be **MOOT**. The Court need not issue
2 an order for the Commonwealth to be required to follow the Rules of Evidence or the federal
3 and NMI Constitutions.

4 **Motion in Limine No. 10**

5 The Defense moved for an order requiring the Prosecution to advise all its
6 witnesses regarding the inadmissibility of hearsay statements.

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8 The Court finds Motion in Limine No. 10 to be **MOOT**. The Court need not issue
9 an order requiring the Commonwealth to follow the Rules of Evidence. Moreover, some
10 hearsay is bound to occur in the natural flow of trial. When hearsay occurs, the Defendant
11 should object at that time.

12 **Motion in Limine No. 11**

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14 The Defendant withdrew Motion in Limine No 11. It had moved for an order that
15 all objections made during in limine motions be considered also made at trial.

16 **Motion in Limine No. 12**

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18 The Defendant withdrew Motion in Limine No 12. It had moved for an order that
19 all in limine and trial objections made be deemed to have been made under the United States
20 Constitution.

21 **Motion in Limine No. 13**

22 The Defendant withdrew Motion in Limine No 13. It had moved for an order
23 requiring the parties to advise witnesses, including law enforcement witnesses, of the court's
24 rulings on in limine motions.

25 **Motion in Limine No. 14**

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27 The Defense moved for an Order prohibiting the prosecutor and all witnesses from
28 expressing opinions as to the guilt or innocence of the Defendant.

1 The Court finds Motion in Limine No. 14 to be **MOOT**. The Court need not issue an
2 order requiring the Commonwealth to follow the Rules of Evidence, the ABA Rules of
3 Professional Conduct, or the federal and NMI Constitutions. If an issue arises, the Defendant
4 should make an objection at that time.

5 **SO ORDERED** this 11th day of December, 2020.

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8 /s/
9 **ROBERTO C. NARAJA**, Presiding Judge