**IN THE SUPREME COURT OF GUAM**

**PEOPLE OF GUAM,**
Plaintiff-Appellant,

**v.**

**JESSE PAMA ORALLO,**
Defendant-Appellee.

# OPINION

Supreme Court Case No. CRA02-004
Superior Court Case No. CF0239-99

**Filed: May 7, 2004**

**Cite as: 2004 Guam 5**

Appeal from the Superior Court of Guam
Argued and submitted on June 24, 2003
Hagåtña, Guam


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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*

**TYDINGCO-GATEWOOD, J.:**

**[1]** The People of Guam ("People") appeal from the trial court's decision to grant Defendant-Appellant Jesse Pama Orallo's ("Orallo") motion for a new trial. The trial court held that the People were required by the discovery statutes to produce a written report prepared by its investigator in an entirely unrelated case, which was used to rebut the credibility of a witness for the defense. We disagree. The report, which was prepared for an entirely different investigation not involving Orallo, is not relevant under the discovery statutes. The trial court's order granting a new trial is reversed.

**I.**

**[2]** On the night of February 7, 1999, Orallo allegedly went to the home of his sister, Remedios Orallo ("Remedios"), and woke a female minor to let him in. The minor was the daughter of Remedios's boyfriend, Francis San Nicolas ("San Nicolas"). Orallo then allegedly sexually assaulted the minor. On April 4, 1999, the alleged victim's mother filed a complaint against Orallo with the Guam Police Department ("Orallo Complaint"). On April 5, 1999, Orallo was indicted on: (1) three counts of first degree criminal sexual conduct; (2) three counts of second degree criminal sexual conduct; (3) one count of third degree sexual criminal conduct and; (4) one count of fourth degree sexual criminal conduct.

**[3]** On April 5, 1999, in an entirely separate matter, Remedios filed a child abuse complaint against San Nicolas, alleging that he assaulted her daughters and smoked ice in their presence ("San Nicolas Complaint"). Attorney General Investigator Anthony W. Blas ("Blas"), who had previously investigated the Orallo Complaint, investigated the San Nicolas Complaint. During Blas' investigation of the San Nicolas Complaint, Remedios admitted to Blas that she told her daughters to lie. Blas transcribed the content of that conversation in an investigatory report ("Blas' Written Statement").

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**[4]** Prior to Orallo's trial, the court ordered mutual discovery pursuant to 8 GCA §§ 70.10, 70.25(b), and 70.25(c) on March 8, 2001. On April 16, 2001, Orallo filed his witness list. The People provided Orallo with a witness list on April 19, 2001. Blas was on the People's witness list. The People did not provide Orallo with Blas' Written Statement. The record does not show that Orallo made any specific motion or request for Blas' Written Statement.

**[5]** Orallo's trial began on April 24, 2001. At trial, Orallo called Remedios to testify on the charges brought against him. Remedios testified that the victim admitted to her that she had not been sexually assaulted by Orallo. The People called Blas to testify on his investigation of the San Nicolas Complaint in order to impeach Remedios' testimony. The People showed Blas' Written Statement to defense counsel, who complained to the trial judge and suggested that the question be limited to whether the investigator had knowledge that Remedios had asked her daughters to lie in the San Nicolas Complaint. Blas then testified to that effect. Orallo was found guilty on April 30, 2001.

**[6]** Orallo obtained new counsel on May 4, 2001. Orallo's new counsel filed a post-trial motion seeking dismissal or a new trial arguing that the People failed to comply with the trial court's discovery order by not providing Blas' Written Statement. The trial court granted the motion on the grounds that the People violated its discovery order.

## II.

**[7]** This court has jurisdiction over this appeal pursuant to Title 7 GCA § 3107(b). The People appeal from the trial court's grant of a motion for a new trial, a permissible ground for an appeal by the People in a criminal case. *See* Title 8 GCA § 130.20(a)(1) (1993).

## III.

**[8]** The People appeal the trial court's order granting a motion for a new trial based on the People's failure to comply with the trial court's discovery order. The order required the People to provide discovery pursuant to Title 8 GCA § 70.10. The issue we face is whether section 70.10 required the People to

provide an investigator's written statement, which although unrelated to the investigation of the case at bar, was used to impeach a defense witness. Whether section 70.10 requires such a disclosure is an issue of statutory interpretation and therefore a question of law we review *de novo*. *See Ada v. Guam Tel. Auth.*, 1999 Guam 10, ¶ 10.

**[9]** We begin with the premise that "[t]here is no general constitutional right to discovery in a criminal case." *Weatherford v. Bursey*, 429 U.S. 545, 559, 97 S.Ct. 837, 846 (1977), and note that "'the right to pre-trial discovery is strictly limited to that which is permitted by statute or court rule mandated by constitutional guarantees.'" *Cole v. State*, 835 A.2d 600, 608 (Md. 2003) (quoting *Tharp v. State*, 763 A.2d 151, 171 (Md. 2000)).

**[10]** The Guam statute that controls the discovery of the People's witnesses and evidence, Title 8 GCA § 70.10, provides in relevant part:

> (a) Except as otherwise provided . . . at any time after the first appearance upon noticed motion by the defendant, the court shall order the prosecuting attorney to disclose to the defendant's attorney or permit the 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 known to the prosecuting attorney:
>
> > (1) the name and address of any person whom the prosecuting attorney intends to call as a witness at the trial, together with his relevant written or recorded statement;
> >
> > . . . .
> >
> > (7) any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.
>
> (b) The prosecuting attorney's obligations under this Section extend to any material information in the possession or control of members of his staff and any other persons who have participated in the investigation or evaluation of the case and who either regularly report or with reference to this case have reported to his office.

Title 8 GCA § 70.10 (1993).[1] The trial court found that section 70.10 required the disclosure of the impeachment evidence.

[1] Title 8 GCA § 70.25 controls the discovery of a defendant's witnesses and evidence.

**A. Discovery Under Section 70.10(a)(7)**

**[11]** The People argue that Blas' written statement is not exculpatory, does not negate the guilt of the defendant or tend to reduce his punishment. We agree. The written report documented an interview by Investigator Blas of Remedios and her admission that she lied in a separate case. The evidence impeaches only Remedios' credibility, who was called to testify in Orallo's defense. Thus, Blas' written statement acts against Orallo's interests and is not exculpatory.

**[12]** The disclosure of exculpatory evidence is required by section 70.10(a)(7) which codifies and expands upon the constitutional due process requirement, set forth in *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), that the prosecution must disclose evidence favorable to the defendant which is material to guilt or punishment. *See People v. Reyes*, 1999 Guam 11, ¶ 19; *People v. Fisher*, 2001 Guam 2, ¶ 12. In *Fisher*, this court stated: "Although *Brady* encompasses impeachment evidence, it is not so broad as to require the People to disclose evidence to impeach a defense witness. . . . [w]here that impeaching material does not meet the *Brady* test of being material and exculpatory." *Fisher*, 2001 Guam 2 at ¶ 13 (citations omitted). Thus, because Blas' written statement is not exculpatory, does not negate Orallo's guilt or tend to reduce his punishment, it is not discoverable under section 70.10(a)(7) and the analysis turns to section 70.10(a)(1).

**B. Discovery Under Section 70.10(a)(1)**

**[13]** Section 70.10(a)(1) requires the prosecutor to disclose "the name and address of any person whom the prosecuting attorney intends to call as a witness at the trial, together with his relevant written or recorded statement." 8 GCA § 70.10(a)(1).[2] The People argue generally that section 70.10 is inapplicable because it does not address rebuttal evidence. We disagree. As noted above, the People's impeachment or rebuttal evidence is discoverable if it is material and exculpatory. Moreover, section 70.10(a)(1) expands discovery beyond *Brady* evidence. *See e.g. State v. Brown*, 335 N.W.2d 542, 546 (Neb. 1983) ("In the wake of *Brady* the Federal Rules of Criminal Procedure were revised in 1966 so that

[2] We first note that although the People's witness list includes Investigator Blas, it does not identify him as a rebuttal witness. Orallo did not complain of this, and the People do not make an issue of it on appeal. Thus, we are constrained to determining whether Blas' written statement is a "relevant statement" under section 70.10(a)(1).

discovery in criminal cases was broadened and liberalized."). Thus, 70.10(a)(1) may be applicable to rebuttal evidence.

**[14]** Orallo cites to a California Supreme Court Case, *Izazaga v. Superior Court*, to argue that the People must disclose the relevant written and recorded statements of all witnesses intended to be called at trial whether in its case-in-chief or in rebuttal. In *Izazaga*, the court examined California's then-recently passed Proposition 115 which provided for reciprocal discovery in criminal cases. *Izazaga v. Superior Court*, 285 Cal. Rptr. 231, 235, 54 Cal.3d 356, 363 (Cal. 1991). The issue in that case was whether the statute which required the defense to disclose the identity of witnesses intended to be called at trial together with relevant written or recorded statements violated the defendant's constitutional rights. *Id*. at 236, 285 Cal. Rptr. . at 365.

**[15]** The lengthy quote from *Izazaga* in Orallo's Brief addresses the argument that the California statute violated the defendant's due process rights. The court stated: "The due process clause requires notice that the defendant will have the opportunity to discover the prosecutor's rebuttal witnesses." *Id*. at 243, 285 Cal. Rptr. at 375. In so stating, the court noted that although the California discovery statute did not specify rebuttal witnesses,

> the only reasonable interpretation of the [statute's] requirement that the prosecution disclose '[t]he names and addresses of persons the prosecutor intends to call as witnesses at trial' is that this section includes both witnesses in the prosecution's case-in-chief and rebuttal witnesses that the prosecution intends to call.

*Id*. (quoting Cal. Penal Code § 1054.1). *Izazaga* goes on to state that "[r]eciprocity under the due process clause requires notice that the defendant will have the opportunity to discover the prosecutor's rebuttal witnesses (and their statements) following discovery of defense witnesses by the prosecutor." *Id*. at 245, 285 Cal. Rptr. at 377.

**[16]** However, there exists an important distinction between the reciprocal discovery statutes of California and Guam. The California statute, California Penal Code § 1054.3, regarding the discovery of the defense's witnesses includes "relevant written or recorded statements." *Id*. at 237, 285 Cal. Rptr. at 365 n.3. The analogous Guam statute, Title 8 GCA § 70.25(c), does not require disclosure of any written or recorded statement. Section 70.25 states: "Upon noticed motion by the prosecuting attorney, the court

may order . . . [t]he defendant's attorney to state the nature of any defense which he intends to use at trial and the name and address of any person whom the defendant's attorney intends to call as a witness in support thereof." Title 8 GCA § 70.25 (c) (1993). Thus, the holdings of *Izazaga*, though perhaps of some guidance, are not entirely persuasive in the instant analysis. Moreover, our analysis here is driven by, and confined to, the express language of Title 8 GCA 70.10(a)(1) and the definition of "relevant written or recorded statement."

**[17]** In *People v. Superior Court (Laxamana)*, this court adopted a broad definition of "statement" under section 70.10: "we define 'statement' as used in section 70.10 to include any record that embodies or summarizes, in whole or in part, a person's verbal utterance." *People v. Superior Court (Laxamana)*, 2001 Guam 26, ¶ 40. However, *Laxamana* involved "witness statements and investigative notes taken by the Office of the Attorney General and the Guam Police Department . . . during their investigation of Laxamana." *Id*. at ¶ 2. The statements at issue in *Laxamana* were made during the investigation of the defendant and presumably led to his indictment. Thus, the *Laxamana* court was not required to address whether the statements were relevant to the case. In the instant case, however, the written statement at issue was from an entirely different criminal investigation of a person who was not the defendant. Thus, the issue is narrowed to whether Blas' Written Statement is "relevant" under section 70.10(a)(1).

**[18]** Guam's discovery statutes do not define "relevant" as the term is used therein. The Guam Rules of Evidence define "relevant" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Title 6 GCA § 401 (1995). However, this statute primarily defines "relevant" for the purposes of admissibility at trial. *See e.g. People v. Castro*, 2002 Guam 23, ¶ 32; *People v. Leon Guerrero*, 2001 Guam 19, ¶ 26. This is not necessarily dispositive in the instant case, where the issue is whether the evidence must be disclosed in pretrial discovery. *See Cole*, 835 A.2d at 610-11 ("The word 'relevance' has a different meaning in the discovery context from its meaning in the trial context. The issue at trial is admissibility of offered evidence, while the issue in pre-trial stages is whether a party may obtain information or documents through discovery." (footnote omitted)). Although the criminal procedure statutes

do not provide for it, in the context of civil proceedings, whether evidence may be inadmissible at trial is not a ground to object to a discovery request, "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Guam R. Civ. P. 26. Thus, in civil cases, inadmissible evidence may be discoverable.

**[19]** In the absence of specifics regarding discovery in criminal cases, we find guidance in the rules which control discovery in civil cases. *See Cole*, 835 A.2d at 611 ("When relevance is at issue in criminal discovery disputes, the standard is the same as for civil actions."). Rule 26 of the Guam Rules of Civil Procedure provides in relevant part:

> (b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
>
> > (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is **relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party."

Guam R. Civ. P. 26(b)(1) (emphasis added). We find this language applicable to criminal discovery and hold that "relevant" under section 70.10, means "relevant to the subject matter involved in the pending action." *Id*.

**[20]** Returning to the facts of this case, Blas' Written Statement was prepared for his investigation of San Nicolas. The Written Statement was made by Blas in his interview of Remedios, only for the purposes of her complaint against San Nicolas. The San Nicolas Complaint was entirely unrelated to the Orallo Complaint. Therefore, Blas' Written Statement was not relevant to the subject matter of the Orallo Complaint and not discoverable under section 70.10(a)(1). *See State v. Vanderford*, 980 S.W.2d 390, 398-99 (Tenn. Crim. App. 1997) (denying a motion to compel the discovery of an audio tape recording of a conversation between the defendant and a confidential informant, or transcripts thereof, and finding that "the content of the audio tape was not 'relevant' within the meaning of [the Tennessee criminal discovery statute]. The content of the audio tape involved two crimes which were not alleged in the indictment."); *see also Hanson v. Commonwealth*, 509 S.E.2d 543, 546-47 (Va. Ct. App. 1999) (defining "relevant" under the Virginia criminal discovery statute to generally mean "relat[ing] to the

particular offense under prosecution."); *see also United States v. Gonzalez-Rincon*, 36 F.3d 859, 865 (9th Cir. 1994) (holding that a report used only for impeachment purposes was not "relevant" under Rule 16 of the Federal Rules of Criminal Procedure and therefore not discoverable).[3]

## IV.

**[21]** Investigator Blas' written statement was prepared during the course of an investigation which was unrelated to the charges against Orallo. The statement was used to impeach the credibility of a witness called to support Orallo's defense. The statement was not exculpatory, did not tend to negate Orallo's guilt and would not have reduced his punishment for the offense charged. Moreover, the statement did not relate to the particular offense charged against Orallo, and was therefore not relevant to the subject matter involved in the pending action. Thus, the statement was not discoverable under Title 8 GCA § 70.10. The trial court's order granting Orallo's Motion for a New Trial is hereby **REVERSED**. This matter is hereby **REMANDED** for sentencing hearing.

[3] Under Rule 16 of the Federal Rules of Criminal Procedure "[u]pon the defendant's request, the government must disclose to [the defendant] 'any relevant written or recorded statements made by the defendant' or any documents 'material to the preparation of the defense' that are 'within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.' United States v. Gonzalez-Rincon, 36 F.3d 859-65 (9th Cir. 1994) (quoting Fed. R. Crim P. 16(a)(1)(A),(C)).