

2022 MAY 10 PM 2:41

CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

BY: 

PEOPLE OF GUAM,

vs.

FRANK JOSEPH LEON GUERRERO
TAITAGUE,
DOB: 01/25/1972

Defendant.

CRIMINAL CASE NO. CF0021-21
GPD Report No: 21-01406

DECISION & ORDER:
Defendant's Motion to Reduce Family
Violence Charge to a Misdemeanor AND
Defendant's Motion to Dismiss the Special
Allegation

I. Introduction

This matter came before the Honorable Maria T. Cenzone on February 10, 2022, for a hearing on Defendant's Motion to Reduce Family Violence Charge to a Misdemeanor and Defendant's Motion to Dismiss Special Allegation. Attorney William Pole represented Defendant Frank Joseph Leon Guerrero Taitague ("Defendant")¹, and Assistant Attorney General Alysa Draper-Dehart represented the People of Guam (the "People"). After reviewing the Parties' written briefs and the record on file with the court, the arguments presented at the Motion Hearing, and the applicable statutes and case law, the court now issues this Decision and Order ruling on the Motions and DENYING Defendant's Motion to Reduce Family

¹ Defendant was previously represented by the Public Defender Services Corporation and then Alternate Public Defender, each of whom withdrew due to a conflict of interest, resulting in Attorney Pole's appointment. Withdrawal from Case (Feb. 4, 2021); Withdrawal and Order (Feb. 22, 2021).

1 Violence Charge to a Misdemeanor and Defendant's Motion to Dismiss Special Allegation for
2 the reasons set forth herein.

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4 **II. Procedural Background**

5 Pursuant to an Indictment by Grand Jury, on January 28, 2021, the Defendant was
6 charged with Aggravated Assault (As a 3rd Degree Felony) and Family Violence (As a Third
7 Degree Felony). The Court set the matter for trial to commence on February 16, 2022. Crim.
8 Trial Sched. Order (May 6, 2021). On December 20, 2021, Defendant filed his Motion to
9 Reduce Family Violence Charge to a Misdemeanor ("Motion"). The Defendant also filed a
10 Motion to Dismiss the Special Allegation attendant to the First Charge of Aggravated Assault
11 (As a Third Degree Felony). The People oppose both Motions and, in response, the Defendant
12 seems to argue that the Defendant and the Victim, who are brothers, should be permitted to
13 address the dispute as a family matter in order to avoid tearing apart a family. Def.'s Reply Br.
14 at 2 (Dec. 29, 2021) ("The current charges are unlikely to promote these brothers to maintain
15 their family bond and could even strain other family members relationship with these
16 brothers."). On December 27, 2021, Defendant's counsel filed an Addendum admitting that,
17 based on discovery provided by the People after the filing of Defendant's motion, "the extent of
18 injuries [suffered by the Victim] in the opening motions are potentially much more [serious
19 than] indicated." Def.'s Addendum (Dec. 27, 2021).

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23 The basis for Defendant's Motion to Dismiss the Special Allegation is that "it cannot be
24 shown that there was any intent to use a piece of wood as a deadly weapon under Guam law."
25 Def.'s Br. at 1 (Dec. 20, 2021). Moreover, Defendant argues that "the alleged acts of the
26 Defendant would constitute a reckless act and despite being alleged to have hit his brother three
27 times, no broken bones, fractures, sprains, or serious bodily injury has been indicated." *Id.* at 2-
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1 3. Defendant, however, acknowledged via the later filed Addendum that the Victim possibly
2 suffered a broken bone.

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4 **III. Law and Analysis**

5 **a. Motion to reduce the charge of Family Violence as a Third Degree Felony to**
6 **a Misdemeanor**

7 Under 9 GCA § 30.20(b), the court has the discretion to reduce a felony family violence
8 charge to a misdemeanor upon a written, noticed motion prior to commencement of trial.
9 However, this discretion is limited when the family violence charge is the defendant's third
10 offense and the charge for 3rd Degree Family Violence is brought under 9 GCA § 30.20(a)(3),
11 which states, "for the third offense, the offense shall be classified as a third degree felony and
12 the court shall impose a sentence of no less than one (1) year imprisonment. The person, upon
13 conviction, shall be termed a 'repeat offender' and may be subject to extended terms pursuant
14 to § 80.38 of Article 2, Chapter 80 of this Title." In this case, the third degree family violence
15 charge is brought generally under 9 GCA § 30.10(a)(1) by "attempting to cause or causing
16 bodily injury to another family or household member." Although the Defendant does have a
17 criminal history of family violence, there is no allegation that the Defendant has committed
18 *three* family violence offenses, thereby subjecting him automatically to the third degree felony
19 charge under 9 GCA § 30.20(a)(3). As such, the Court considers whether, under the
20 circumstances, Defendant is entitled to the discretion of the Court to reduce the charge to a
21 misdemeanor.
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25 In order to determine whether to grant the Defendant's motion to reduce the third degree
26 felony charge to a misdemeanor, the Court shall consider the factors enumerated under 9 GCA
27 § 30.20(c):
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- (1) the extent or seriousness of the victim's injuries;
- (2) the defendant's history of violence against the same victim whether charged or uncharged;
- (3) the use of a gun or other weapon by the defendant;
- (4) the defendant's prior criminal history;
- (5) the victim's attitude and conduct regarding the incident;
- (6) the involvement of alcohol or other substance, and the defendant's history of substance abuse as reflected in the defendant's criminal history and other sources; and
- (7) the defendant's history of and amenability to counseling.

While the Defendant seems to concede the factors weigh against granting the Defendant's Motion, the Court will nonetheless address each factor in turn in an abundance of caution. Def.'s Br. at 2 (Dec. 20, 2022) (stating "[M]any of the factors would go against the Defendant.")

1. Analysis of the 9 GCA § 30.20(c) Factors

i. The Extent of the Victim's Injuries

The Declaration filed along with the Magistrate's Complaint in this case states that the Victim sustained physical injuries. *See* Mag. Compl. Specifically, an officer observed "severe redness to the left forearm and a deformity 'due to bone not being straight on the left forearm.'" Decl. to Magistrate's Compl. (Jan. 19, 2022). Additionally, the Victim complained of severe pain. *Id.*

Bodily injury is defined under 9 GCA § 16.10(b) as "physical pain, illness, unconsciousness or any impairment of the physical condition." Bodily injury as defined here is different than serious bodily injury. *Serious bodily injury* is defined as bodily injury which creates serious permanent disfigurement, a substantial risk of death or serious, permanent disfigurement, severe or intense physical pain, or protracted loss or impairment of consciousness or of the function of any bodily member or organ under 9 GCA § 16.10(c).

1 The Victim in this case has been described as having “severe pain” and physical
2 impairment consistent with the statutory definition of bodily injury, and possibly of “serious
3 bodily injury” under 9 GCA § 16.10(c). Tr. Mot. Hr’g at 2:18 P.M. (Feb. 10, 2022). Defense
4 counsel also acknowledges that the Victim’s injuries may have been more extensive than
5 originally thought. In any situation, the fact that the Victim sustained some bodily injury
6 weighs **against** granting the motion.
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8 Moreover, 9 GCA § 30.20(d) prohibits the Court from reducing a felony family
9 violence charge to a misdemeanor if the court, after a hearing, “[F]inds substantial evidence
10 that a victim suffered serious bodily injury, as defined in Subsection (c) of § 16.10, Chapter 16
11 of this Title.” This prohibition applies as an automatic denial of Defendant’s motion to reduce
12 the felony charge to a misdemeanor “unless the court finds that due to unusual circumstances a
13 reduction of the charge is manifestly in the interest of justice.” *Id.* Defendant claims that the
14 “unusual circumstance” is the Defendant’s medical history, records of which Defendant
15 submitted to the Court *under seal* without first seeking an Order sealing such information. Tr.
16 Mot. Hr’g at 2:17 P.M. Whether “unusual circumstances” exist in this case in the context of
17 Defendant’s medical conditions is examined later herein. However, the Court finds that the
18 severity of the injuries suffered by the Victim weighs **against** granting the Defendant’s motion.
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22 **ii. The Defendant’s History of Violence against the Same Victim**

23 The Defendant admits that he does have a history of family violence, and that “many of
24 the [Section 30.20 (c)] factors would go against the [him].” Def.’s Br. at 2. (Dec. 20, 2021). The
25 Court notes that the Defendant’s prior family violence offenses named a different victim than
26 the Victim named in this case, but takes judicial notice of Defendant’s prior convictions for
27 family violence and possession of an illegal controlled substance pursuant to Rule 201 of the
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1 Guam Rules of Evidence, although come of these cases have been closed over ten (10) years
2 ago. *See* CF0566-02; CF0461-09; CF0226-14. Thus, while the Defendant does not have a
3 history of family violence as against this particular Victim, because of the Defendant's
4 admission that he has history of committing family violence and his significant prior record, the
5 Court weighs this specific factor *neither* in favor of nor against granting the motion in this
6 particular case.
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8 **iii. Use of a Gun or Other Weapon**

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10 The Defendant is alleged to have grabbed a "piece of wood" and struck the Victim's
11 arm with it, allegedly causing the Victim "severe pain." It is further alleged that the officer
12 "noted severe redness to the left forearm and a deformity 'due to bone not being straight on the
13 left forearm.'" Decl. Magist. Complaint. Defendant argues, in support of his motion to dismiss
14 the special allegation, that "it cannot be shown that there was any intent to use a piece of wood
15 as a deadly weapon under Guam law." Def.'s Br. at 1 (Dec. 20, 2021). However, Defendant
16 does admit that, subsequent to the filing of his original motion, discovery provided by the
17 People indicates "that the Victim suffered a possible Broken Bone and that the extent of any
18 injuries discussed in the opening motions are potentially much more series [sic] then [sic]
19 indicated." Def.'s Addendum.
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22 The Court considers whether a "piece of wood" is a "weapon" as contemplated by 9
23 GCA § 30.20(c). It is noteworthy to point out that this section *does not* require the Court to find
24 that the Defendant used a "deadly weapon," but only a "weapon." *Id.* The Defendant is charged
25 with the special allegation of "Possession or Use of A Deadly Weapon in the Commission of a
26 Felony." The Declaration submitted with the Magistrate's Complaint as well as discovery in the
27 Defendant's possession shows that the Victim suffered a severe injury, including a possible
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1 broken arm bone, and that he was in severe pain as a result of being struck three times by the
2 Defendant with the piece of wood. Therefore, this factor weighs *against* granting the motion².

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4 **iv. The Defendant's Prior Criminal History**

5 Defendant has an extensive prior criminal history with many allegations involving
6 violence towards others. In CF0461-09, the Defendant was accused of terrorizing (as a 3rd
7 degree felony) another person. The Defendant eventually pled guilty to the lesser-included
8 offense of harassment (as a misdemeanor) in that case. In CF0226-14, the Defendant was
9 charged with aggravated assault, family violence, and criminal mischief, all as 3rd degree
10 felonies. The Defendant later pled guilty to family violence (as a 3rd Degree felony) and the
11 other charges were dismissed. Finally, in PO0112-16, a petitioner who identified herself as the
12 Defendant's former girlfriend requested an order for protection because she was "in fear of
13 domestic abuse" from the Defendant. The petition was ultimately granted. Order of Protection
14 (Dec. 21, 2016). Thus, because the Defendant has an extensive prior criminal history that often
15 has involved violence towards others, this factor weighs *against* granting the Motion to
16 Reduce.

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19 **v. The Victim's Attitude and Conduct regarding the Incident**

20 Here, the Court notes that the Victim sought immediate medical attention after the
21 altercation with the Defendant. The Victim then told a police officer that "my brother fucked
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25 ² This Court previously addressed a similar situation in which a defendant in a family violence case was alleged to
26 have used a mop and cellphone as weapons against his victim. See *People v. Matheus*, Superior Court of Guam
27 Criminal Case No. CF0281-21, Decision and Order: Def.'s Mot. to Reduce Family Violence Charge to a
28 Misdemeanor (Dec. 9, 2021). Mr. Pole also served as the Defendant's lawyer in that case. In denying his motion to
reduce the felony family violence charge to a misdemeanor, this Court ruled, *inter alia*, that "the mop and the
cellphone were used as weapons to cause some physical injury to the alleged victim." *Id.* at p. 5 (citing to *Davis v.*
State, 945 A. 2d 1167 (Del. 2008) (Supreme Court found that the manner in which a mop wringer was used by the
Defendant against his victim constituted a deadly weapon under the circumstances)).

1 me up” and that he was in severe pain. Decl. Magist. Complaint. However, the Victim has
2 seemingly been uninterested at best ever since the filing of the case. During oral argument for
3 the Motions, it was stated that the People have not been able to locate the Victim and that the
4 Victim refused to tell the doctor who caused the injuries. Tr. Mot. Hr’g at 2:26 P.M.-2:27 P.M.
5 Therefore this factor weighs *neither* in favor or against granting the Motion to Reduce.
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7 vi. **The Involvement of Alcohol or Other Substance/History of**
8 **Substance Use as reflected in the Defendant’s criminal history**
9 **and other sources**

10 There are no allegations of alcohol or drug use in the Declaration to the Magistrate’s
11 Complaint or the Indictment in this case. However, the Court does note the Defendant has one
12 possession case from over ten years ago. Tr. Mot. Hr’g at 2:22 P.M. There being no evidence
13 before the Court that drugs or alcohol were involved in this particular instance, this factor
14 weighs *in favor* of granting the Motion to Reduce.
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16 vii. **The Defendant’s History of and Amenability to Counseling**

17 The Defendant was previously receiving counseling at Client Services Family
18 Counseling in the Family Violence Men’s Group as a result of his plea agreement in CF0226-
19 14. He was also ordered to attend and complete the anger management program administered
20 by the Adult Probation Office in CF0461-09. He seemingly completed this condition as his case
21 was later closed after having satisfied all conditions. Order Closing Case (Dec. 11, 2012).
22 Despite this treatment, the Defendant still finds himself embroiled today in another family
23 violence case. Given that the Defendant has a history of completing treatment conditions but
24 that counseling has not yet proven effective in correcting his behavior as evidenced by the latest
25 charges, the Court finds this factor weighs *neither* in favor nor against granting the Motion to
26 Reduce.
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1 **2. Analysis of 9 GCA § 30.20(d)**

2 As previously acknowledged by defense counsel, the factors of 9 GCA § 30.20(c)
3 cumulatively weigh against reducing the Defendant's charges. Even if the factors weighed in
4 favor of reducing Defendant's charge, 9 GCA § 30.20(d) would prevent the Court from doing
5 so. 9 GCA §30.20(d) states that the Court cannot reduce the charge if, after a hearing, the Court
6 finds substantial evidence that a victim suffered serious bodily injury "unless the court finds
7 that due to unusual circumstances a reduction of the charge is manifestly in the interest of
8 justice."
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11 While the Defendant seems to have conceded there was a serious bodily injury, the
12 Court will nonetheless analyze the facts in an abundance of caution. *See* Tr. Mot. Hr'g at 2:13
13 P.M. (stating "the Government has provided me additional evidence. That evidence is sufficient
14 to show probable cause for serious bodily injury. We have to concede that."). 9 GCA § 16.10(c)
15 defines serious bodily injury as:
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17 bodily injury which creates: serious permanent disfigurement; a substantial risk
18 of death or serious, permanent disfigurement; severe or intense physical pain; or
19 protracted loss or impairment of consciousness or of the function of any bodily
20 member or organ.

21 It is not clear from the record whether the altercation resulted in the Victim's disfigurement or
22 whether his left forearm was already disfigured. If the altercation led to the Victim's forearm
23 being disfigured, then it follows that the victim suffered serious bodily injury and 9 GCA
24 §30.20(d) prevents the Court from reducing the charge. Even if not, the Magistrate's Complaint
25 states that the Victim specifically complained of suffering from "severe" pain. This would
26 again suggest the Victim suffered a serious bodily injury since the Defendant caused him
27 "severe or intense physical pain" *Id.* Thus, the Court finds that the Victim suffered a serious
28 bodily injury pursuant to 9 GCA § 30.20(d).

1 The Defendant argues that the Court should still reduce the charges even if there was a
2 serious bodily injury because an unusual circumstance exists warranting such a move. Tr. Mot.
3 Hr'g at 2:17 P.M. The Court disagrees. First, Defendant's medical condition fails to qualify as
4 an unusual circumstance. On February 22, 2022, the Defendant filed a medical record under
5 seal. The medical record appears to be from an office visit on August 31, 2021. The record
6 describes Defendant's medical conditions as "stable." The Defendant was advised by the
7 treating physician to cease smoking, lose weight through diet and exercise, and to take his
8 medications. All three recommendations can easily be followed by the Defendant whether or
9 not his charge is reduced to a misdemeanor. Therefore, the Court finds that Defendant's
10 medical condition is not an unusual circumstance warranting the reduction of his family
11 violence charge in the interest of justice. Second, the Defendant constantly alludes to the fact
12 that the Defendant and the Victim are brothers in his briefing. *See* Def.'s Br. at 2 (Dec. 20,
13 2021); *See also* Def.'s Reply Br. at 2 (Dec. 29, 2021). The relationship between the parties does
14 not seem to be an unusual circumstance upon which the interest of justice warrants overriding 9
15 GCA § 30.20(d). By its very definition, all defendants charged with a family violence crime are
16 somehow intimately connected with their victims. *See* 9 GCA § 30.10(a). If the Court
17 recognized the Defendant's and Victim's relationship to be an unusual circumstance, then every
18 family violence charge would arguably merit a reduction. This result would be absurd in light
19 of the obvious intent of the legislature in enacting the Family Violence Act, Title 9, Guam Code
20 Annotated. Because Defendant's argument would lead to an illogical result, the Court finds that
21 the familial relationship is not an unusual circumstance and thus the Defendant's charge cannot
22 and will not be reduced by this Court under 9 GCA § 30.20(d).
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1 **b. Motion to Dismiss the Special Allegation of a Deadly Weapon**

2 Defendant's second Motion asks to dismiss the special allegation that a deadly weapon
3 was used in the commission of a felony. Both parties agree that 9 GCA § 16.10 is the
4 controlling statute in defining a deadly weapon. The statute reads as follows:
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6 Deadly Weapon means any firearm, or other weapon, device, instrument,
7 material or substance, whether animate or inanimate, which in the manner it is
8 used or is intended to be used is **known** to the defendant to be capable of
producing death or serious bodily injury.

9 9 GCA §16.10 (emphasis added).

10 The disagreement stems on whether the piece of wood, as was allegedly used by the Defendant,
11 fits this definition of a deadly weapon and specifically whether the required mens rea of
12 "knowingly" was present. 9 GCA §4.30(b) states the following:

13 A person acts knowingly, or with knowledge, with respect to his conduct or to
14 attendant circumstances when he is aware of the nature of his conduct or that
15 those circumstances exist. A person acts knowingly, or with knowledge, with
16 respect to a result of his conduct when he is aware that his conduct is practically
certain to cause the result.

17 Both parties cite to *People v. Chin Song*, 2012 Guam 21 in analyzing this issue. As the
18 Defendant points out, the culpability standard found in *Chin Song* of "subjective awareness of a
19 risk of death [that] could be inferred from the particular facts and circumstances of [the] case"
20 relates to whether there was reckless conduct, and not the mental state of "knowingly" as the
21 charge requires here. Def.'s Reply Br. at 2 (Dec. 29, 2021). While the Defendant is correct,
22 *Chin Song* is still valuable in that it establishes that if "a rational trier of fact could have found"
23 the mental state was satisfied, then there is no reason to dismiss the charge. *See Chin Song*,
24 2012 Guam 21 ¶ 58.
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1 1. **Whether a Rational Trier of Fact Could Find The Defendant Possessed**
2 **the Required Mental State**

3 A piece of wood, no matter how benign it may seem, can still be a deadly weapon. *See*
4 *People v. Camacho*, 2015 Guam 37 ¶ 33 (“We hold that where a defendant is charged with the
5 use of a deadly weapon in the commission of a felony, the special allegation may be imposed
6 whether or not the possession of such a weapon is otherwise unlawful.”). The Defendant
7 contends that the special allegation should be dismissed because the People cannot show he
8 possessed the “culpable mental state for a deadly weapon.” Def.’s Br. at 2 (Dec. 20, 2021).
9 Similar to the Defendant’s argument here, the Supreme Court of Guam previously heard an
10 appeal from a defendant that claimed the People could not prove “based on the manner it was
11 used or intended to be used, that the defendant knew the knife was capable of producing death
12 or serious bodily injury.” *People v. Cruz*, 1998 Guam 18 ¶ 10. The Guam Supreme Court
13 adopted the analysis from *Davidson v. State*, 602 S.W. 2d 272 (Tex. 1980), assessing whether
14 the instrument used was a deadly weapon based on “**the manner of use**, its size and shape, and
15 its **capacity to produce death or serious bodily injury**.” *Id.* at ¶ 16 (emphasis added). This
16 analysis still seems pertinent today as it aligns with Guam’s current statute that states an
17 instrument is a deadly weapon if “**the manner it is used or intended to be used** is known to
18 the defendant to be **capable of producing death or serious bodily injury**.” 9 GCA §16.10
19 (emphasis added).
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24 Despite the Court not being aware of any evidence alluding to the size and shape of the
25 piece of wood, it is still evident that a rational trier of fact could find that the piece of wood was
26 a deadly weapon from the manner the Defendant used it and its capacity to inflict serious bodily
27 injury upon the Victim. The Defendant allegedly hit the Victim not once, not twice, but three
28 times. Decl. Magist. Complaint. Hitting a person repetitively could lead a rational trier of fact

1 to find the piece of wood was used in a manner so as to inflict injury. After having been hit
2 three times on his left forearm with Defendant's piece of wood, the witness immediately
3 transported the Victim to a fire station. *Id.* That the two parties sought immediate help speaks to
4 the gravity of the strikes and the supposition that the Victim suffered not a minor but serious
5 bodily injury. An injury is a serious bodily injury if it inflicts "severe or intense physical pain"
6 on the Victim. 9 GCA § 16.10(c). Here, the Victim explicitly told the responding officer that he
7 was in severe pain. Decl. Magist. Complaint. The officer found the Victim on a stretcher at the
8 fire station and noted his left forearm was deformed and severely red. *Id.* Again, it is not clear
9 whether the altercation caused the Victim's disfigurement or whether his left forearm was
10 already disfigured. Either way, a rational trier of fact could use this evidence to find that the
11 piece of wood was used as a deadly weapon by the Defendant. On one hand, Defendant's use of
12 the piece of wood possibly caused the Victim a "serious permanent disfigurement." 9 GCA §
13 16.10(c). Alternatively, the Defendant hit the Victim three times on his already deformed left
14 forearm with the piece of wood. Jurisdictions have previously factored in the state of the Victim
15 when analyzing whether a piece of wood was indeed a deadly weapon. *See State v. Henderson*,
16 204 S.W.2d 774, 779 (Mo. 1947) ("And we think it can be further affirmed that the strength
17 and vitality of the victim of the assault also may be considered."). Therefore, a rational trier of
18 fact could find that the piece of wood was "capable of producing death or serious injury"
19 because it in fact did. 9 GCA §16.10.
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24 Regarding Defendant's specific contention that the People cannot prove he had the
25 necessary culpable state of mind for a deadly weapon, the Guam Supreme Court has also stated
26 that "[A] state of the mind, is rarely, if ever susceptible of direct or positive proof, and must
27 usually be inferred from the facts testified to by witnesses and the circumstances as developed
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1 by the evidence.” *People v. Yingling*, 2009 Gaum 11 ¶ 18. In the cases cited by both the
2 Defendant and the People, the Guam Supreme Court quotes *In re William G.*, 963 P.2d 287,
3 292 (Ariz. Ct. App. 1997) in stating that “[A]bsent a person’s outright admission regarding his
4 state of mind, his mental state must necessarily be ascertained by inference from all relevant
5 surrounding circumstances.” *People v. Song*, 2012 Guam 21 ¶ 47.

7 Again, the circumstances discussed above support the People’s contention that a rational
8 trier of fact could find the Defendant had the required mens rea for the crime. The Defendant
9 hit the Victim three separate times, suggesting malicious intent. It is also telling that before the
10 alleged beating began, a witness claims to have heard the Defendant tell the Victim “I’m going
11 to kill you.” Decl. Magist. Complaint. A rational trier of fact could find this statement and the
12 surrounding circumstances to reveal the Defendant did in fact knowingly use the piece of wood
13 to cause the Victim serious bodily injury. Moreover, the Victim might have suffered a broken
14 bone as a result of the Defendant’s actions. *See* People’s Br. at 5 (stating that the manner in
15 which the wood was used led to the “presumabl[e] break [of] the Victim’s arm.” The Defendant
16 recognizes the Victim might indeed have suffered a broken bone. *See* Def.’s Addendum. If true,
17 the broken arm would further the People’s contention that the piece of wood was used in a
18 manner so as to cause serious bodily injury and that the Defendant knowingly caused such an
19 injury. Finding that a rational trier of fact could indeed find the piece of wood to be a deadly
20 weapon, the Court denies Defendant’s Motion to dismiss the special allegation and instead
21 defers the question of whether the piece of wood was indeed a deadly weapon to a petit jury.

25 It is worth noting that the Defendant here was indicted by a grand jury on the special
26 allegation of a deadly weapon. A grand jury indicts “when from the evidence presented, there is
27 reasonable cause to believe that an indictable offense has been committed and that the
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1 defendant committed it.” 8 GCA § 50.54(b) (2013). "Reasonable cause amounts to evidence
2 such that a man of ordinary caution or prudence would be led to believe and conscientiously
3 entertain a strong suspicion of the guilt of the accused." *People v. Grato*, 1987 WL 109393 at*
4 2 (D. Guam 1987) (citations omitted). Therefore, a grand jury has already found that a rational
5 finder of fact could very well determine that the piece of wood was indeed a deadly weapon as
6 used by the Defendant. Otherwise, they would have not indicted the Defendant accordingly.
7 This Court finds nothing on the record that merits challenging the findings of the Grand Jury or
8 usurping a petit jury's fact-finding function by dismissing the special allegation.
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11 Other jurisdictions that define deadly weapons similarly to Guam have also found
12 pieces of wood to be deadly weapons. *See In re Fortney*, 162 Ohio App. 3d 170 (Ohio Ct. App.
13 2005); *State v. Henderson*, 204 S.W.2d 774, 779 (Mo. 1947); *Gov't. of Virgin Islands v.*
14 *Robinson*, 29 F.3d 878 (3d Cir. 1994). The crux of the Defendant's Motion is whether the
15 People can prove he had the requisite mens rea to be charged with the special allegation. When
16 "a defendant must possess a certain state of mind in order to be convicted of that crime, any
17 evidence showing the absence of that state of mind is relevant and thus admissible to negate
18 that element." *People v. Jung*, 2001 Guam 15 ¶ 33. Here, the Defendant only asserts the People
19 could not prove his mental culpability but fails to direct the Court to any evidence in support of
20 his argument. Instead, the claims by the witness, the statements of the Victim, the observations
21 of the responding police officer, and the overall circumstances of this alleged altercation serve
22 as evidence suggesting the Defendant did have the required mens rea to be convicted of the
23 crime. A grand jury has already found so and a rational petit jury could find so as well. For
24 these reasons, the Court denies Defendant's Motion to Dismiss the Special Allegation.
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The Court shall issue new trial dates under separate cover.

5/10/2022

HONORABLE MARIA T. CENZON
JUDGE, SUPERIOR COURT OF GUAM