IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

FRANKIE GARRIDO BLAS,
Defendant-Appellant.

Supreme Court Case No.: CRA15-011
Superior Court Case No.: CF0164-14

OPINION

Cite as: 2016 Guam 19

Appeal from the Superior Court of Guam
Argued and submitted on December 9, 2015
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, C.J.:

[1] Defendant-Appellant Frank Garrido Blas appeals the trial court's denial of his request for a trial continuance. The trial court denied the continuance to abide by the time standards within Administrative Rule No. 13-003. We permitted this appeal following Blas's Petition for Interlocutory Review because we were persuaded that resolution of the questions of law presented will protect Blas from substantial and irreparable injury, and will also clarify issues of general importance in the administration of justice. In their brief, the People additionally request this court to clarify the circumstances under which continuances are appropriate for Administrative Rule No. 13-003 purposes. For the reasons stated below, we reverse the trial court's Order, lift the stay issued, and remand this case for further proceedings not inconsistent with this Opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] A Complaint was filed against Blas on April 5, 2014, for Assault on a Peace Officer (As a 3rd Degree Felony), Criminal Mischief (As a 3rd Degree Felony), Resisting Arrest (As a Misdemeanor), Disorderly Conduct (As a Petty Misdemeanor), and Public Drunkenness (As a Violation). He was indicted for each charge in the Complaint on April 15, 2014, and arraigned on April 23, 2014.

[3] The trial court's initial trial scheduling order set the trial for October 22, 2014. The trial court later moved the trial date due to another scheduled trial. On November 14, 2015, the trial court again reset the trial until February 10, 2015. On February 3, 2015, the trial court once

more continued the trial to conduct a retrial of a hung jury case "that [the court] had to close before [the trial court's] administrative deadline of one year." Transcripts ("Tr.") at 3 (In Limine Mot. Hr'g, Mar. 19, 2015).

[4] On March 19, 2015, Blas moved to continue the March 25, 2015, trial date to a time after April 23, 2015, to allow an off-island witness to testify on his behalf. Blas did not learn until March 18, 2015, that the witness left Guam on March 17, 2015, "to attend his son's graduation from basic armed services training in the mainland." Record on Appeal ("RA"), tab 58 at 1 (Mot. to Continue Trial, Mar. 19, 2015). The trial court orally denied the continuance because it had previously moved the trial dates, and because the time standards set forth in Administrative Rule No. 13-003 required resolution of the case by April 7, 2015:

> I've had to move [the trial] through no fault of Mr. Blas, I think, three times now, and I know he wants his trial as soon as possible. Unfortunately, I know he's the one requesting a continuance today . . . [b]ut the Court has an administrative deadline of April 7th, by which to close the case, if I don't bring the case to judgment by that time I'm committing an ethical violation that I will be prosecuted for. So you're going to have to appeal it if it's an issue, because I'm committing an ethics violation that will be prosecuted even if Mr. Blas does not complain about it . . . because the Ethics Prosecutor goes ahead and acts on his own initiative to prosecute judges for violation of time standards.

Tr. at 4 (In Limine Mot. Hr'g). Defense counsel expressed frustration that the time standards were at odds with "the ends of justice," but the trial court expressed it was "left with no choice," and that the time standards issue was the sole reason for the denial:

> MR. SAMPATH: But this is the only reason why you are denying the motion?
>
> . . .
>
> THE COURT: Correct. And I'm sorry that it has to be that way, but I have no choice, I'm left with no choice. So we're going to continue on with the trial. The motion is denied.

Id. at 4-5.

[5] Blas filed a Verified Petition for Permission to Appeal ("Petition") to contest denial of the requested continuance pursuant to Guam Rules of Appellate Procedure ("GRAP") 4.2. This court issued an order staying the proceedings, and requested a response from the People. The People then filed a non-opposition to Blas's Petition.

[6] Blas's Petition first contended that the trial court's decision to deny the continuance would deprive Blas of exculpating eyewitness testimony, resulting in substantial and irreparable injury. The People did not dispute Blas's position. Second, the Petition argued it would "aid the administration of justice in Guam" if this court defined "the scope of good cause to continue trial dates beyond the mandated period in the time standards." Verified Pet. for Permission to Appeal at 4, (Mar. 20, 2015). The People agreed this case presents the opportunity to clarify issues of general importance in the administration of justice, namely clarifying the role of the ethics prosecutor with respect to time standards as well as clarifying the "nature of good cause for changing or vacating trial dates." Answer in Non-Opp'n to Pet. at 6-7 (Mar. 27, 2015). We granted permission to appeal, and pursuant to GRAP 4.2, the date of the order was treated as the date of filing the notice of appeal.

[7] After the Petition was granted, the trial judge wrote the Administrator of the Courts expressing concern about his ability to generate case age reports using JustWare, the Judiciary of Guam's case management system, to meet the judicial time standards set forth in Administrative Rule No. 13-003. The trial judge indicated that "[t]he ethics prosecutor is currently actively prosecuting multiple judges for violation of 'time standards.' This case age report is the only tool available to judges to track the shelf life of our cases, so as not to violate [Administrative Rule

No. 13-003]." People v. Blas, CRA15-011 (Notice (Attach. at 1, Letter, Apr. 15, 2015), Apr. 20, 2015)). The Administrator of the Courts responded:

> It is my understanding that the time standards are aspirational standards. It is my further understanding that Chief Justice Robert Torres has made it abundantly clear to the Committee on Judicial Discipline that these standards are aspirational. . . . I am not specifically aware of any prosecution of a judicial officer. Any case involving a judge would not be public until it is filed before the Supreme Court.

Id. (Attach. 2 (Letter at 2, Apr. 16, 2015)).

II. JURISDICTION

[8] This court has jurisdiction to hear an interlocutory appeal, even if the underlying order is not a final appealable order. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-143 (2016)); 7 GCA § 3108(b) (2005); and Guam R. App. P. 4.2. Interlocutory review is appropriate where we determine that resolution of the questions of law on which the order is based will: (1) materially advance the termination of the litigation or clarify further proceedings therein; (2) protect a party from substantial and irreparable injury; or (3) clarify issues of general importance in the administration of justice. 7 GCA § 3108(b).

[9] We were persuaded that interlocutory review is appropriate in this case because resolution of the questions of law presented will protect Blas from substantial and irreparable injury, and clarify issues of general importance in the administration of justice. Order at 2 (Apr. 1, 2015). Accordingly, we granted Blas's Petition, and pursuant to GRAP 4.2, the date of the order was treated as the date of filing the notice of appeal, triggering all applicable GRAP deadlines. *See* GRAP 4.2(d); Order at 2 (Apr. 1, 2015).

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III. STANDARD OF REVIEW

[10] "The decision to grant or deny a requested continuance lies within the broad discretion of the [trial] court, and will not be disturbed on appeal absent clear abuse of that discretion." *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir. 1985) (citations omitted) *amended by*, 764 F.2d 675 (9th Cir. 1985); *see also People v. Ulloa*, No. 87-00020A, 1988 WL 242607, at *1 (D. Guam App. Div. Nov. 17, 1988) ("We review the decision to grant or deny a continuance for abuse of discretion. We may only reverse if the denial was 'arbitrary or unreasonable.'" (quoting *Flynt*, 756 F.2d at 1358) (citing *United States v. Pope*, 841 F.2d 954, 956 (9th Cir. 1988))).

IV. ANALYSIS

A. Whether the appeal is moot because a stay of trial was issued and the witness has returned to Guam.

[11] The fact that the witness has presumably returned to Guam since the initial request for a continuance to a time after April 23, 2015, requires us to address whether the issues presented in the appeal are moot in whole or in part. RA, tab 58 at 1-2 (Mot. to Continue Trial). The parties do not address the mootness issue in their briefs. However, mootness is a threshold jurisdictional issue. *United States v. Strong*, 489 F.3d 1055, 1059 (9th Cir. 2007) (citing *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir.2003)).

[12] The exercise of our judicial power "depends on the existence of a case or controversy." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975); *see also Tumon Partners, LLC. v. Shin*, 2008 Guam 15 ¶ 37 ("It is a well-settled general rule that the existence of an actual controversy is an essential requisite to appellate jurisdiction . . . ." (alteration in original) (citations omitted)). Every judicial tribunal has a duty "to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to

declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653 (1895). This is true absent fault of the defendant. *See id.*

[13] A case can become moot "at any stage of litigation." *Town House Dep't Stores v. Ahn*, 2000 Guam 32 ¶ 9 (citing *Calderon v. Moore*, 518 U.S. 149, 150 (1996)). A claim is moot "when the issues are no longer live or the parties lack a legally cognizable interest in the outcome." *Id.* (quoting *United States v. Ripinsky*, 20 F.3d 359, 362 (9th Cir. 1994)). Even if a mootness issue is not raised by the parties "[courts] are required sua sponte to examine jurisdictional issues." *ACLU of Nev. v. Masto*, 670 F.3d 1046, 1062 (9th Cir. 2012) (quoting *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999)).

[14] Accordingly, an appeal should be dismissed as "moot 'when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant.'" *Strong*, 489 F.3d at 1059 (quoting *Calderon*, 518 U.S. at 150).

[15] In this case, a continuance to a time after April 23, 2015, was requested to permit an off-island witness to testify. RA, tab 58 at 1-2 (Mot. to Continue Trial). Blas learned on March 18, 2015, that the witness left Guam on March 17, 2015, "to attend his son's graduation from basic armed services training in the mainland. *Id.* at 7. The witness has presumably returned and would now be available to testify as this date has passed. Hence, the dispute presented in the initial Petition and presently at issue on appeal regarding whether the trial court abused its discretion in denying the continuance is no longer live.

[16] Notwithstanding a finding of mootness, there are recognized exceptions to the mootness doctrine that may, in this court's discretion, render this case justiciable.

1. Whether the moot issues are capable of repetition, yet evading review.

[17] Courts may still reach the merits of a mooted appeal, however, if the appeal is "capable of repetition yet evading review." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). The "capable of repetition, yet evading review" exception to mootness is applicable when "(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again." *Id.* (alteration in original) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990) (citations omitted)).

[18] In *Spencer*, the Supreme Court affirmed the denial of a habeas corpus petition challenging allegedly unconstitutional parole revocation procedures. *Id.* at 17-18. The issue became moot because the petitioner's sentences expired. *Id.* The Court reasoned that the petitioner failed to show either "that the time between parole revocation and expiration of sentence is always so short as to evade review," or that "he [would] once again be paroled and have that parole revoked." *Id.*

[19] The failure to secure a trial continuance based on time standards could meet the first requirement if the time period between the denial of the request for continuance and the scheduled trial date is so short as to evade review, such as when an emergency requires the request to be made on the eve of trial. An emergency is present in this case, and it is distinguishable from our prior determination in Vincent Quintanilla's parallel Petition for Interlocutory review because the emergency that existed was one of Quintanilla's own doing. People v. Quintanilla, CRA15-019 (Order at 7-8, June 24, 2015). The specific defense sought by Quintanilla limited the exception because a defendant is required to "plead not guilty by reason

of mental illness, disease or defect" within ten days of his arraignment, "or at such later time as the court for good cause may allow." 9 GCA § 7.22(d) (2005). Unlike Quintanilla, most defendants will enter the requisite plea prior to the eve of trial. We further reasoned Quintanilla's situation was different than a denial of continuance that would deprive a defendant of exculpating eyewitness testimony resulting in substantial and irreparable injury. *See* Order at 2 (Apr. 1, 2015). Therefore, Quintanilla failed to meet the first prong because most defendants will previously provide notice of a diminished capacity defense and he failed to show that the relevant time period is always so short as to evade appellate review.

[20] Blas, however, satisfies this first prong of the exception because the emergency presented was beyond his control and he showed the challenged action could not be reviewed in sufficient time to obtain a meaningful remedy if he prevailed. Blas first learned on March 18 that the potentially exculpatory witness had left Guam and the next day moved to continue the trial scheduled for March 25, which the court denied. The period of time remaining before the scheduled trial did not permit the denial of Blas's motion for continuance to be fully litigated utilizing the usual appellate process.[1]

[21] As to the second prong, Blas's trial has not yet occurred, and there might yet be additional instances beyond his control at trial that would necessitate securing another continuance. Quintanilla's case is again distinguishable because we determined Quintanilla was unable to establish that he "[would] be subject to the same action again" because Quintanilla's

[1] Our April 1, 2015, Order granting interlocutory review noted that "[t]he Superior Court denied the continuance because it had previously moved the trial dates, and also because the time standards set forth in Administrative Rule No. 13-003 require resolution of the case by April 7, 2015." Order at 1 (Apr. 1, 2015) (citing Verified Pet. for Permission to Appeal, Attach. "A" (Mins., Mar. 19, 2015)). If we had not issued a stay, or granted interlocutory review, the trial would have proceeded without the potential exculpatory witness returning in time to testify. *See* Order at 1 (Mar. 24, 2015); Order at 2 (Apr. 1, 2015).

trial had already passed, and he was acquitted of all but one charge. Order at 8 (June 24, 2015) (quoting *Spencer*, 523 U.S. at 17).

[22] Thus, the "capable of repetition, yet evading review" exception to mootness is applicable to Blas, but we also choose to exercise our discretion to review the issue because the issues involve matters of important continuing interest.

2. The moot issues involve matters of an important continuing interest.

[23] Mootness is a "flexible discretionary doctrine, not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved." *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984) (citation omitted). A court has authority to decide cases that are "functionally justiciable" and present "important public issues of statewide significance that should be decided immediately." *Id.* Thus, this court may exercise its discretion to "reach the merits of a technically moot issue" when that issue falls within the public interest exception. 5 Am. Jur. 2d *Appellate Review* § 604 (2016) (footnotes omitted); *see also Noble v. Noble*, 456 S.W.3d 120, 127 (Mo. Ct. App. 2015) (holding that a moot issue "may" be considered on "appeal if the case presents 'an unsettled legal issue of public interest and importance of a recurring nature that will escape review unless the court exercises its discretionary jurisdiction.'" (quoting *TCF, LLC v. City of St. Louis*, 402 S.W.3d 176, 181 (Mo. Ct. App. 2013))); *State ex rel. Dienoff v. Galkowski*, 426 S.W.3d 633, 639 (Mo. Ct. App. 2014) ("We will exercise our discretion to invoke the public interest exception 'if there is some legal principle at stake not previously ruled as to which a judicial declaration can and should be made for future guidance.'" (quoting *State ex rel. Missouri Pub. Def. Comm'n v. Waters*, 370 S.W.3d 592, 603 (Mo. 2012) (en banc))); *State of Alaska, Alaska Bd. of Fisheries v. Grunert*, 139 P.3d

1226, 1232-33 (Alaska 2006) ("Although [the court] generally refrain[s] from deciding questions when events have rendered the legal issues moot, [the court] may consider certain issues if they fall within the public interest exception to the mootness doctrine." (citation omitted)).

[24] Turning again to the comparable Quintanilla case, we acknowledged that although a significant issue may have been involved, Quintanilla's challenge could be adequately addressed on appeal. Order at 9 (June 24, 2015). This court denied Quintanilla's petition as moot because we

> [could not g]rant Quintanilla's request for relief in the form of a stay because the trial has already passed. The issue of whether the trial court erroneously deprived Quintanilla of a diminished capacity defense can only be addressed on appeal. Furthermore, the issue of whether a trial court should have found "good cause" to exceed time standards can be adequately addressed on an appeal from the final judgment.

Id. Unlike Quintanilla, this court granted Blas's Petition for Interlocutory Review, and the issue is currently before this court on appeal. *See* Order at 2 (Apr. 1, 2015). Thus, we can address the moot issue because the extent to which time standards give way to considerations of fairness and justice is a matter of important and continuing significance.

B. Whether the trial court abused its discretion in denying a motion to continue trial to secure attendance of an unavailable, but potentially exculpatory, witness.

[25] A trial court has the authority to grant a continuance of trial in a criminal case when "the ends of justice require a continuance." 8 GCA § 80.50(b) (2005).[2] The Ninth Circuit Court of

[2] The entirety of the subsection relating to trial continuances in a criminal case reads as follows:

> (b) In accordance with the policy stated in Subsection (a), criminal cases shall be given precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings. No continuance of a trial shall be granted except upon affirmative proof in open court, upon reasonable notice, that the ends of justice require a continuance. No continuance shall be granted for any longer time than it is affirmatively proved the ends of justice require. Whenever

Appeals has set forth a four-factor test for reviewing courts to consider when determining whether the trial court properly denied a request for continuance based upon an appellant's showing of each factor: (1) "the extent of appellant's diligence in his efforts to ready his defense prior to the date set for hearing," (2) "how likely it is that the need for a continuance could have been met if the continuance had been granted" (often phrased in terms of "utility"), (3) "the extent to which granting the continuance would have inconvenienced the court and the opposing party, including its witnesses," and (4) "the extent to which the appellant might have suffered harm as a result of the district court's denial." *Flynt*, 756 F.2d at 1358-59 (citations omitted); *see also Pope*, 841 F.2d at 956.

[26] Although not reported in the Federal Supplement, the District Court of Guam Appellate Division adopted these factors in its 1988 *Ulloa* opinion. 1988 WL 242607, at *1 ("The critical factors are the moving party's diligence in preparing for trial, the likely utility of a continuance, the inconvenience to the court and opposing party, and prejudice resulting from a denial." (citing *Pope*, 841 F.2d at 956)). Decisions of the District Court of Guam's Appellate Division are persuasive rather than binding on the Guam Supreme Court. *Amerault v. Intelcom Support Servs., Inc.*, 2004 Guam 23 ¶ 11 ("[T]his court must only consider Appellate Division decisions as persuasive authority . . . ."). However, the "decisions of the District Court of Guam's Appellate Division are [generally] binding on the Superior Court of Guam." *Id.* (citation omitted). Accordingly, the trial court abused its discretion in failing to apply the *Ulloa* factors. We hereby adopt the *Ulloa* factors, which will each be addressed in turn.

> any continuance is granted, the court shall enter in its minutes the facts proved which require the continuance.

8 GCA § 80.50(b).

1. Whether Blas exercised sufficient diligence in preparing his defense through securing attendance of the witness prior to trial.

[27] Both Blas and the People agree that diligence was shown by Blas in his efforts to secure attendance of the witness. Appellant's Br. at 7 (July 2, 2015); Appellee's Br. at 10 (Aug. 3, 2015). "When a party seeks a continuance because of the absence of a witness, he must show that he exercised due diligence to procure the witness's presence at the trial." *State v. Corby*, 699 P.2d 51, 53 (Kan. 1985) (citing *State v. Jones*, 601 P.2d 1135 (Kan. 1979)). An "issuance of a subpoena is not the *sine qua non* of good faith and due diligence." *Cleary v. State*, 942 P.2d 736, 744 (Okla. Crim. App. 1997) (citing *Rogers v. State*, 721 P.2d 820, 823-24 (Okla. Crim. App. 1986)). Rather, "[w]hat constitutes due diligence to secure the presence of a witness depends upon the facts of the individual case." *People v. Linder*, 486 P.2d 1226, 1228 (Cal. 1971) (en banc) (citation omitted). Terms associated with "diligence" include "persevering application, untiring efforts in good earnest, [and] efforts of a substantial character." *Id.* (citation omitted). Because due diligence is "incapable of a mechanical definition" courts must consider "[t]he totality of efforts of the proponent to achieve presence of the witness." *See id.* at 1228-29.[3]

[28] The People analogize this case to *Corby*. Appellee's Br. at 10-11 (citing 699 P.2d at 53). In *Corby*, the prosecution subpoenaed a key witness who testified at the preliminary hearing, but subsequently moved 100 miles away. 699 P.2d at 52. The witness was served, and contacted by telephone, but failed to appear at the prosecutor's office as agreed on the day of trial. *Id.* She

[3] Relevant considerations include (1) "the character of the proponent's affirmative efforts," (2) whether the proponent "reasonably believed prior to trial that the witness would appear willingly and therefore did not subpoena him when he was available," (3) "whether the search was timely begun, and [(4)] whether the witness would have been produced if reasonable diligence had been exercised." *Linder*, 486 P.2d at 1228-29 (citations omitted).

then expressed refusal to appear, and declined a ride from a law enforcement officer. *Id.* at 52-53. The trial court denied the prosecution's request for continuance, and the trial court dismissed the charges with prejudice because jeopardy had attached. *Id.* at 53. On appeal, the reviewing court reversed, holding that the trial court abused its discretion. *Id.* Prior to the witness's refusal to appear, the prosecution "had no reason to believe that the witness would not cooperate" and "had done everything that could be expected of a party to secure the attendance of a witness, absent any knowledge that the witness was unwilling to appear." *Id.*

[29] As in *Corby*, Blas had no reason to believe the witness would leave Guam during the trial period. The defense counsel had previously interviewed the witness and expected him to testify at trial. RA, tab 58 at 2 (Mot. to Continue Trial). Blas did not learn until March 18, 2015, that the witness left Guam on March 17, 2015, "to attend his son's graduation from basic armed services training in the mainland." *Id.* at 1. Immediately, Blas attempted to contact his attorneys to inform them that the witness was not expected to return until April 23, 2015, but was unable to reach them until a trial preparation meeting the afternoon of March 18, 2015. *Id.* The next day, Blas's defense counsel filed a Motion to Continue Trial. *Id.* Blas does not believe his failure to serve a subpoena on the witness should preclude a finding of diligence because the witness was beyond the court's subpoena power as he was off-island. *See id.; see also* Tr. at 2(In Limine Mot. Hr'g); Appellant's Br. at 7.

[30] The People are likewise "satisfied that [Blas] showed sufficient diligence in preparing for trial, despite the lack of a subpoena, because the witness in question was a friendly witness and Blas expected him to testify at trial." Appellee's Br. at 11.

[31] The court failed to consider the materiality of the proffered testimony to Blas's case and any prejudice that Blas would suffer if the continuance was denied. Blas did not act unreasonably in believing the witness would be available, and the witness's sudden and temporary off-island departure surprised Blas. Therefore, the first factor weighs in favor of Blas because he exercised diligence in securing the witness's testimony.

2. Whether a continuance would have been useful to Blas.

[32] Blas next contends that the witness will provide "useful material testimony that would not be cumulative with any other witnesses." Appellant's Br. at 4, 9. "The absence of this witness and his testimony would undercut Blas's central defense that he did not assault police officers." Appellant's Br. at 4; *see* RA, tab 58 at 1-2 (Mot. to Continue Trial). The People agree, and believe sufficient justification was presented to warrant a brief continuance because the witness's testimony "would directly contradict that of the arresting officers." Appellee's Br. at 12.

[33] Other jurisdictions have concluded that a continuance is appropriate and should be granted when a defense witness will provide non-cumulative and potentially exculpatory testimony. In the first case cited by Blas, *Ostolaza v. State*, the appellate court held that the trial court abused its discretion in denying a continuance in a burglary trial. 943 So. 2d 1001, 1003 (Fla. Dist. Ct. App. 2006); *see* Appellant's Br. at 8. The witness in *Ostolaza* intended to testify that he and the defendant were intoxicated when they entered the dwelling at issue by mistake, believing it to be the witness's dwelling. 943 So. 2d at 1003.

[34] Blas also cites a decision issued by a Massachusetts Appellate Court, in which the appellate court determined the trial court abused its discretion when failing to grant a

continuance that would permit the defendant to secure the attendance of two unavailable witnesses who would have contradicted the officer's testimony that the defendant committed the crime. *See* Appellant's Br. at 8; *Commonwealth v. Silva*, 374 N.E.2d 353, 354 (Mass. App. Ct. 1978). Balancing the defendant's needs against that of the Commonwealth, the reviewing court noted the case was not one "where the motion for a continuance arose from lack of preparation or as a delaying tactic. Prior to the denial of his motion, Silva had been in court with his witnesses ready for trial on three occasions when the case had been scheduled but was not called." *Silva*, 374 N.E.2d at 353-54 (citations omitted).

[35] The People supplement the above referenced cases with *Sheriff, Clark Cty. v. Smith*, in which the defendant successfully petitioned for a writ of habeas corpus following the trial court's grant of a one-day continuance to allow for the testimony of a witness, who was unable to travel to the state due to inclement weather. Appellee's Br. at 12-14; *Smith*, 609 P.2d 1236, 1236-37 (Nev. 1980). The prosecution appealed, and the reviewing court overturned the writ because the witness's tardiness was due to inclement weather rather than willfulness on the part of the prosecution. *Smith*, 609 P.2d at 1236-37.

[36] In his Motion to Continue Trial, Blas refers to the witness as a "crucial percipient witness." RA, tab 58 at 1 (Motion to Continue Trial). The witness, who lived nearby Blas's residence, claimed to have witnessed Blas's encounter with the officers, and intended to testify that Blas was "manhandled" by the officers, that Blas did not attack the officers, and also that Blas did not resist arrest. *Id.* at 2. Blas stressed in his Motion to Continue Trial that "there [were] no other percipient witnesses of the alleged incident, except for the officers, and Blas" and that the witness was "the only witness who [could] counter the officers' allegations." *Id.*

[37] The witness's testimony would be useful to Blas because it may be similarly exculpatory to the testimony sought in *Ostaloza* and *Silva*. *See Ostaloza*, 943 So. 2d at 1003; *Silva*, 374 N.E.2d at 354. Furthermore, there is no indication the witness is unwilling to attend and testify from the record because his absence from Guam was due to a family affair. *See* RA, tab 58 at 1-3 (Motion to Continue Trial). Thus, Blas has likely established the utility of the witness's testimony, tilting the second factor in his favor.

3. Whether the need for the continuance was outweighed by the inconvenience to the court, the People, and witnesses.

[38] Turning to the third factor, "[w]e must examine the extent to which the court and the opposing party, including its witnesses, would have been inconvenienced by a continuance." *Pope*, 841 F.2d at 957 (citing *Flynt*, 756 F.2d at 1359). The People concede that a continuance would not have inconvenienced the prosecution. Appellee's Br. at 14. Instead, we must consider the inconvenience to the court.

[39] On the one hand, a "[trial] court is given wide discretion in managing its docket, and we will not interfere with the exercise of that discretion absent a showing of clear abuse." *In re Estate of Henry*, 250 S.W.3d 518, 526 (Tex. Ct. App. 2008) (alteration in original) (quoting *Roskey v. Cont'l Cas. Co.*, 190 S.W.3d 875, 879 (Tex. Ct. App. 2006). An abuse of discretion occurs when a trial court "acts arbitrarily or unreasonably without reference to any guiding rules and principles." *Id.* (citations omitted). The burden of reversing a trial court's case management decisions is "formidable," and "[d]eference is afforded to the trial court in making case management decisions because it is in a much better position to determine the effect that a particular procedure will have on both parties." *Krevis v. City of Bridgeport*, 817 A.2d 628, 633 (Conn. 2003) (citations omitted). This "case management authority is an inherent power

necessarily vested in trial courts to manage their own affairs in order to achieve the expeditious disposition of cases," and "[t]he ability of trial judges to manage cases is essential to judicial economy and justice." *Id.* (citations omitted).

[40] On the other hand, the trial court must balance its own interests of expeditiously clearing its dockets with the defendant's right to present a complete defense. *See Ungar v. Sarafite*, 376 U.S. 575, 589 (1964). Although the decision to grant or deny a continuance is within the trial court's discretion, "a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality." *Id.* (citation omitted). Instead of employing "mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process," the reviewing court must evaluate "the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied." *Id.* (citations omitted).[4]

[41] The Due Process Clause of the Fourteenth Amendment[5] mandates that "criminal prosecutions must comport with prevailing notions of fundamental fairness." *California v. Trombetta*, 467 U.S. 479, 485 (1984). This standard of fairness has been interpreted as "requir[ing] that criminal defendants be afforded a meaningful opportunity to present a complete defense." *Id.* Encompassed within the right to present a complete defense includes "[t]he right to offer the testimony of witnesses, and to compel their attendance, if necessary," as well as "the right to present the defendant's version of the facts as well as the prosecution's to the jury so it

[4] Adherence to a rigid "'no continuances' policy," for example, has been held to be prejudicial to a defendant, and "[s]trict adherence to such a policy would be an abuse of discretion for lack of exercising any discretion." *State v. Stefani*, 137 P.3d 659, 666 (N.M. Ct. App. 2006).

[5] The principles of the Due Process Clause of the Fourteenth Amendment apply to Guam through the Organic Act. *See* 48 U.S.C.A. § 1421b(u) (Westlaw through Pub. L. 114-143 (2016)).

may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19 (1967). Thus, "a fundamental element of due process of law" is not only "the right to confront the prosecution's witnesses for the purpose of challenging their testimony," but the defendant's "right to present his own witnesses to establish a defense." *Id.*

[42] The People analogize this case to *Corby* and *Smith*, cases which involved denials of continuances to secure the testimony of key witnesses. Appellee's Br. at 13-14. In *Corby*, the reviewing court held the trial court abused its discretion in denying a continuance to accommodate the sole eyewitness to the crime. 699 P.2d at 52. In *Smith*, the trial court abused its discretion when it denied a continuance to accommodate the testimony of the out-of-state victim of the crime with which defendant had been charged, due to inclement weather. 609 P.2d at 1236-37.

[43] Because Blas claims that the witness will provide material exculpatory evidence, the parties agree the witness's testimony is essential to Blas's meaningful opportunity to present a complete defense. Appellee's Br. at 14; RA, tab 58 at 1-2 (Mot. to Continue Trial). Denying Blas this opportunity would prejudice him, as well as hinder the prosecution's duty to promote due process and the interests of justice. Appellee's Br. at 14.[6]

[44] Many cases involve requests for relatively short continuances, such as one or two days. *See Pope*, 841 F.2d at 957 (one to two day continuance requested for an unavailable expert witness). However, courts have held that trial courts abused their discretion when granting or

[6] Prosecutors have a higher duty in a criminal case than securing a conviction and have "as much . . . duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88 (1935), *overruled on other grounds by Stirone v. United States*, 361 U.S. 212 (1960); *see also United States v. Bowen*, 799 F.3d 336, 354 (5th Cir. 2015); *see also* ABA Standards for Criminal Justice, Prosecution Function and Defense Function, Standard 3-1.2(c) (3rd ed. 1993) ("The duty of the prosecutor is to seek justice, not merely to convict.").

denying requests for continuances for longer periods. For example, in *State v. Reynolds*, the reviewing court held the trial court abused its discretion in not granting a continuance from May 16, 1978, until after June 5, 1978. 597 P.2d 1020, 1021-23 (Ariz. Ct. App. 1979). The continuance requested would permit the defendant's expert witness to testify in support of an insanity defense, and the trial court abused its discretion because there was a "reasonable possibility that [the] testimony would have materially influenced the jury," resulting in prejudicial error. *Id.* at 1021-23. Even though the continuance requested in this case was longer than that requested in *Pope* or in *Reynolds*, the continuance requested by Blas was no longer than those previously imposed by the trial court. *See* Tr. at 3 (In Limine Mot. Hr'g).

[45] Former Model Code of Judicial Conduct Canon 3(B)(8), referenced in Administrative Rule No. 13-003, stated that a judge "shall dispose of all judicial matters promptly, efficiently, and fairly." Model Code of Judicial Conduct Canon 3(B)(8) (Am. Bar Ass'n 2004). The commentary to the Canon states, "[c]ontaining costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public." *Id.* Furthermore, even though a judge is tasked with facilitating settlement, "parties should not feel coerced into surrendering the right to have their controversy resolved by the courts." *Id.*[7]

[46] The barrier to the continuance in this case was the trial court's strict adherence to the judicial case management and time standards adopted by the Supreme Court of Guam. Administrative Rule 13-003 adopts the National Center for State Courts' ("NCSC") explanation that employing a top tier of resolving 98% of cases within the time standards is reasonable.

[7] The canons have since been modified. *See* American Bar Association Center for Professional Responsibility, *ABA Model Code of Judicial Conduct*, (August 10, 2010), http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/tableofcontents.html (last visited June 7, 2016).

Administrative Rule 13-003 at 1-2 (May 13, 2013). Blas stresses this "creates some flexibility in the rule for extenuating circumstances." Appellant's Br. at 14.

[47] The time standards promulgated in the Administrative Rule recognizes that some cases will take longer to resolve, such as murder cases and complex, multi-party litigation. Administrative Rule 13-003 at 2 (citing National Center for State Courts Model Time Standards for State Courts, August 2011 (Introduction at 4)).[8] Moreover, in criminal felony and misdemeanor cases, a criminal trial scheduling order shall be issued by the assigned judge within ninety (90) days of the case being filed, setting the trial date as well as other relevant dates, and such scheduling order or portions thereof shall not be vacated or changed without good cause determined by the assigned judge and described on the record orally or in writing. *Id.* at 8. Thus, Blas believes "Administrative Rule 13-003 does not command a blind obedience to the time standards without regard for the fundamental rights of parties, consideration of extenuating circumstances, or consideration of good cause to extend beyond the deadline." Appellant's Br. at 14. Administrative Rule 13-003 expressly provides that these case-age time standards are "aspirational goals," and "each trial court judge shall diligently strive to meet them, consistent with their obligations pursuant to Canon 3B(8) of the Model Code of Judicial Conduct." Administrative Rule 13-003 at 1 (May 13, 2013) (citing Model Code of Judicial Conduct Canon 3(B)(8) (Am. Bar Ass'n 2004).).

[8] More specifically, Administrative Rule 13-003 indicates that in felony cases, 75% should be concluded within 270 days (9 months), and 98% concluded within 365 days (12 months). Administrative Rule 13-003 at 2. For misdemeanor cases, 50% should be concluded within 180 days (6 months), 75% concluded within 270 days (9 months), and 98% concluded within 365 days (12 months). Administrative Rule 13-003 at 3. In a criminal case, "the term 'concluded' is intended to include sentencing, acquittal, dismissal or other action effectively ending the adjudicatory and dispositional phases of the case." *Id.* at 2 n.2.

[48] Other provisions currently exist within applicable court rules conferring a trial court's authority to grant a continuance upon its finding good cause. The criminal procedure rules permit a criminal trial scheduling order to be altered upon the trial court's finding of good cause. Guam Crim. R. 1.1 (e), (f). Similarly, the Guam Rules of Civil Procedure permit modification to a scheduling order "for good cause and with the judge's consent." Guam R. Civ. P. 16(b)(4).

[49] The inconvenience to the trial court is outweighed by the probative value of the witness's anticipated testimony, and Blas's right to a fair trial. Guam court rules confer upon the trial court power to grant a continuance based upon good cause, but the trial court failed to consider the materiality of the proffered testimony to Blas's case as well as the prejudice that Blas would suffer if the continuance was denied.

[50] The continuance of a month, though perhaps inconvenient to the trial court, is not outweighed by the prejudice suffered by Blas. There are built-in safeguards within the Guam Rules of Criminal Procedure, Civil Procedure, and the Administrative Rules to permit a continuance based upon good cause. The trial court in this case failed to balance its own interests of expeditiously clearing its dockets with considerations of fairness and the defendant's fundamental rights. Thus, the third factor weighs in Blas's favor.

3. Whether Blas can demonstrate that prejudice would result without the continuance.

[51] "To warrant reversal the defendant must show prejudice from the denial of the continuance." *Pope*, 841 F.2d at 957 (citing *Flynt*, 756 F.2d at 1359; *Armant v. Marquez*, 772 F.2d 552, 556-57 (9th Cir. 1985)). A trial court "must give great weight to any substantial prejudice to the rights of the moving party" when exercising its discretion to grant or deny a continuance. *Salazar v. State*, 559 P.2d 66, 74 (Alaska 1976) (quoting *Burleson v. State*, 543

P.2d 1195, 1199-200 (Alaska 1975)). Although "[e]fficiency in the operation of the court system and the interest of the public in prompt disposition of criminal cases dictate that unnecessary delays be avoided," these "considerations must be subordinated if substantial rights of a defendant are affected." *Id.* (footnote omitted). The right of the accused to call favorable witnesses is guaranteed by the Sixth Amendment, is a fundamental component of due process, and is integral to the right to present a defense. *See id.* at 75 (citing *Washington*, 388 U.S. at 18); *see also* 48 U.S.C.A. § 1421b(u) (extending due process protections within the United States Constitution to Guam).

[52] Here, Blas argues that "it is central to [his] defense that he be able to present eyewitness testimony that he did not assault either of the two officers at the scene that evening." Appellant's Br. at 15. Denial of the continuance is prejudicial to Blas because the witness's testimony is central to his case. *Id.* Moreover, the court conceded the sole reason for denying the continuance was due to the time standards. Tr. at 4 (In Limine Mot. Hr'g). The trial court's interest in abiding by aspirational time standards, which have built-in flexibility for extenuating circumstances, was an abuse of discretion because Blas's ability to present a complete defense was prejudiced. As all four factors weigh in Blas's favor, we hold that the trial court abused its discretion.

V. CONCLUSION

[53] The moot issues in this case satisfy the exceptions to the mootness doctrine in that they are capable of repetition, yet evading review, and present an important continuing interest. The *Ulloa* factors should have been considered by the trial court and are hereby adopted by this court. It was an abuse of discretion for the trial court to fail to evaluate the *Ulloa* factors, which, when

applied, clearly show that failing to grant the continuance prejudiced Blas. Furthermore, the court should have considered the built-in safeguards within the Guam Rules of Criminal Procedure, Civil Procedure, and the Administrative Rules that permit a continuance based upon good cause. For the foregoing reasons, we **REVERSE** the trial court's Order, lift the stay issued, and **REMAND** this case for further proceedings not inconsistent with this Opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice