

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

**COMMONWEALTH OF NORTHERN)
MARIANA ISLANDS,)**

Plaintiff,)

v.)

**HONG FAN LI,)
Defendant.)**

CRIMINAL CASE NO. 00-0224

ORDER

THIS MATTER came before the court on January 17, 2001, in Courtroom 205A at 9:00 a.m. on Defendant’s motion for disclosure of the identity and information concerning the confidential informant. Assistant Public Defender Jeffrey A. Moots, Esq. appeared on behalf of Hong Fan Li (“Defendant”). Assistant Attorney General Marvin J. Williams, Esq. appeared on behalf of the Commonwealth of the Northern Mariana Islands (“Government”). The court having reviewed the documents on file and having heard the arguments of counsels, now renders its decision.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 19, 2000, the Government filed an information charging Defendant with one count of Promoting Prostitution in the Second Degree in violation of 6 CMC §1344(a). The Government alleged that on or about April 8, 2000, Defendant solicited customers for prostitution [p. 2] purposes and engaged in conduct designed to facilitate and aid an act of prostitution by offering sex

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and/or sexual acts in exchange for money. Specifically, the Government alleged that during the evening hours of the night in question, the Defendant approached an informant working in an undercover capacity for the Department of Public Safety and offered sexual services for money.

On October 26, 2000, Defendant filed a motion for disclosure of the identity and information concerning the confidential informant asserting that the Defendant is entitled to such disclosure in this case because the informant was the only witness to the conversation that make up the factual allegation in Count I. The Government filed its opposition to the motion on December 4, 2000 asserting that Defendant failed to meet her burden of showing that information is relevant or helpful in her defense and therefore is not entitled to the confidential information before trial.

Initially, the motion before this court was scheduled to be heard before Associate Judge Lizama's court on January 3, 2001. However, at the hearing, the Government indicated that it would disclose the information requested by Defendant and the matter was not heard. Since the last hearing, the Government disclosed only the identity of the informant and thereafter the Defendant moved this court for a hearing on the remaining issue of disclosing confidential information concerning the informant.

II. ISSUE

Whether Defendant has a constitutional due process right to the disclosure of confidential information concerning the informant where the informant is the only Government witness in the case.

III. ANALYSIS

In the CNMI, in a criminal case, due process requires discovery of evidence favorable to an accused upon request where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the prosecution. The underlying policy rests on the fundamental principle

that the accused must be afforded a fair trial. *See Commonwealth v. Campbell*, 4 N.M.I. 12, 15-16 (1993) (citing *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)). The evidence within the due process rule includes information bearing on the credibility of a significant witness in the [p. 3] case, impeachment evidence and other exculpatory evidence. *See Commonwealth v. Campbell* 4 N.M.I. at 15. To establish a violation of the due process rule under *Commonwealth v. Campbell*, a defendant must show that the prosecutor failed to disclose material evidence. *Id.*

In this case, neither the Defendant nor the Prosecutor articulated whether or not the information requested by the Defendant regarding the informant is exculpatory information. Defendant's only argument was that because the informant is the only witness to the conduct with which the Government alleges the Defendant is charged with, this fact makes the information regarding the informant material and necessary to insure a fair trial. At the hearing, Defendant further contended that the information concerning the informant is necessary to ensure Defendant's right to effective assistance of counsel and that Defendant had a right to be prepared for trial. The prosecutor, on the other hand, stated that the Government has responded to most of the specific requests in Defendant's motion. The prosecutor went further by stating that the informant was not offered any consideration for his participation in this case, that the informant does not have any interest in this case, and that the informant does not have any pending criminal case for which he was offered leniency or non-prosecution if he participated in this case.

Notwithstanding the fact that neither parties in this case articulated whether the information requested is exculpatory material or not, the prosecution still has a duty to disclose such information. In *Commonwealth v. Campbell*, the court held that the prosecution has an affirmative due process duty to disclose requested evidence favorable to an accused where the evidence is material to either

guilt or punishment. A defendant is not required to seek court intervention to obtain disclosure of such material from the prosecutor. *Id.* at 16. Notwithstanding the fact that the Government responded to most of the specific requests in the Defendant's motion, the prosecutor did not articulate whether or not any of the information that has not been disclosed is exculpatory material. Therefore, the prosecutor in this case should disclose exculpatory evidence, if any, to the Defendant.

IV. ORDER

Based on the foregoing reasons, Defendant's motion is GRANTED. The court hereby orders the Government to disclose exculpatory evidence, evidence favorable to the Defendant which is [p. 4] material to the Defendant's guilt or punishment.

SO ORDERED this January 26, 2001.

/s/
VIRGINIA S. SABLON-ONERHEIM, Associate Judge