

1 FOR PUBLICATION

CLERK OF COURT
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2
3 IN THE SUPERIOR COURT
4 FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

5 COMMONWEALTH OF THE
6 NORTHERN MARIANA ISLANDS,

7 Plaintiff,

8 v.

9 JOSEPH A. CRISOSTOMO,

10 Defendant.

) CRIM. CASE NO. 13-0049
)
)

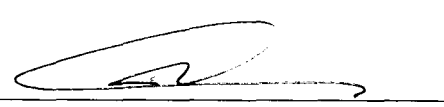
) ORDER PUBLISHING EX PARTE
) ORDER RE DEFENDANT'S PRETRIAL
) MOTION FOR AUDIO RECORDINGS
) AND WRITTEN TRANSCRIPTS OF
) PRETRIAL PROCEEDINGS
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)

11 TAKE NOTICE that an ex parte order was issued in this case on March 18, 2014

12 concerning the Defendant's motion for transcripts of pretrial and trial proceedings. Although not
13 issued under seal, the order was not published at the time of issuance. The trial in this case has
14 already occurred, and during the trial, the availability of transcripts and Defendant's request for
15 transcripts were discussed on the record numerous times. The issues determined in the March 18,
16 2014 order are important and relevant to many cases in this jurisdiction. See 1 CMC § 3404.

17 Furthermore, there is an absence of published case law on the issue of an indigent defendant's right
18 to pretrial access to written transcripts of prior proceedings. Accordingly, the Court finds that there
19 is good cause to now publish the March 18, 2014 order.

20 IT IS SO ORDERED this 5th day of September, 2014.

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24 JOSEPH N. CAMACHO
Associate Judge

ASD
J. King

CLERK OF COURT
2014 MAR 18 PM 1:30
BY [Signature]

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

COMMONWEALTH OF THE) CRIM. CASE NO. 13-0049
NORTHERN MARIANA ISLANDS,)
)
Plaintiff,) ORDER GRANTING DEFENDANT'S
) REQUEST FOR AUDIO RECORDINGS;
v.) GRANTING IN PART REQUEST FOR
) WRITTEN TRANSCRIPTS OF
JOSEPH A. CRISOSTOMO,) PRETRIAL PROCEEDINGS; DENYING
) REQUEST FOR WRITTEN
) TRANSCRIPTS OF TRIAL
Defendant.) PROCEEDINGS
)
) EX PARTE

only
J. King

ENTERED

On March 3, 2014, Defendant Joseph A. Crisostomo filed this *ex parte* motion for transcripts of pretrial and trial proceedings. Defendant requests, at the expense of the CNMI government, transcripts of all pretrial hearings and daily transcripts of the trial proceedings in this case. Defendant Crisostomo argues that these written transcripts are necessary because of the "length and complexity" of this case. Def.'s Mot. at 2. Defendant Crisostomo argues that the written transcripts of the pretrial proceedings are necessary to effectively cross-examine and impeach witnesses at trial should their trial testimony differ from their pretrial testimony. Defendant Crisostomo asserts that daily written transcripts of the trial proceedings are required for defense counsel to "effectively confront the Commonwealth's case and present the defense." Def.'s Mot. at 2.

1 On March 17, 2014, Defendant Crisostomo filed a second *ex parte* motion requesting the
2 transcripts again, and requesting recordings of all pre-trial hearings and daily recordings of the trial
3 proceedings in this case.

4 As a preliminary matter, the Court grants Defendant's request for audio recordings of the
5 pretrial proceedings and daily trial proceedings. The Court notes that the Defendant has already
6 received some audio recordings of pretrial proceedings, and directs Defendant to submit to the
7 Court a list of the pretrial proceedings for which he still requires audio recordings. Audio
8 recordings of the daily trial proceedings will be available the next business day.

9 Equal protection under the Fourteenth Amendment of the United States Constitution¹
10 requires that indigent defendants have access to the "basic tools of an adequate defense . . . when
11 those tools are available for a price to other [defendants]." *Britt v. North Carolina*, 404 U.S. 226,
12 227 (1971). "While the outer limits of that principle are not clear, there can be no doubt that the
13 State must provide an indigent defendant with a transcript of prior proceedings when that transcript
14 is needed for an effective defense or appeal." *Id.* The Court considers two factors in determining
15 whether a free written transcript is necessary for an indigent defendant to receive an effective
16 defense: (1) "[T]he value of the transcript to the defendant in connection with . . . the trial for
17 which it is sought;" and (2) "[T]he availability of alternative devices that would fulfill the same
18 functions as a transcript." *Commonwealth v. Saimon*, Crim. No. 90-0097 (NMI Super. Ct. May 17,
19 1991) (Order Re Written Transcript on Appeal at 4) (quoting *Britt*, 404 U.S. at 227-28).

20 Transcripts of earlier proceedings, such as a previous mistrial or pretrial hearings, are
21 assumed to be valuable to the defendant, even absent any specific claim by the defendant
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23
24 ¹ Section one of the Fourteenth Amendment of the United States Constitution is applicable in the Commonwealth pursuant to Section 501 of the Covenant. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. § 1801 note.

1 concerning their usefulness. *See Britt*, 404 U.S. at 228. This is because transcripts of prior
2 proceedings can be used to impeach prosecution witnesses. *Id.*

3 Concerning the availability of alternative devices, in *Britt*, the United States Supreme Court
4 found that an acceptable “alternative device” existed where a court reporter “would at any time
5 have read back to counsel his notes of the mistrial, well in advance of the second trial, if counsel
6 had simply made an informal request.” *Id.* at 229. In this jurisdiction, the Superior Court found that,
7 in the context of obtaining trial court proceedings in advance of an appeal, access to audio
8 recordings of the trial court proceedings and the ability to request written transcripts of relevant
9 portions to be appealed, was a sufficient alternative device. *Saimon*, Crim. No. 90-0097 at 5-6.

10 Here, the Defendant makes two different requests regarding written transcripts. First,
11 Defendant Crisostomo requests written transcripts of all pretrial proceedings. The Court finds that
12 for all proceedings that involve the testimony of witnesses who are also expected to testify during
13 trial, access to such written transcripts is constitutionally required. Thus, the Court grants
14 Defendant’s requests as to these proceedings, for the portions of the proceedings involving witness
15 testimony. Defendant Crisostomo shall submit to the Court a list of hearing dates and topics of
16 proceedings that fall into this category, on or before **March 20, 2014** so that the Court can direct
17 the Clerk’s Office to prepare the necessary written transcripts in advance of trial.² Defendant shall
18 use the witness log sheets, available in the case file, to identify the starting and ending times for the
19 portions of such hearings that involve witness testimony, as those are the portions of the hearings
20 for which a written transcript is necessary. To expedite the process, the Defendant may submit the
21 list in parts, so that transcript preparation can begin as soon as possible.

22
23 ² The Court notes that, given the Judiciary’s budgetary constraints, obtaining written transcripts of pretrial proceedings
24 in advance of trial is logistically complicated. The Superior Court has no court reporter, so there are no written
transcripts absent a specific request, and such requests take a good deal of time to fulfill. This situation is not workable
for the long-term as the Judiciary is forced to either sacrifice the constitutional rights of the Defendant, which is
unacceptable, or spend resources that do not exist.

1 As to pretrial proceedings that do not involve witness testimony, the Court finds that written
2 transcripts of such proceedings are not particularly valuable to the Defendant, and that access to the
3 audio recordings of such proceedings is an acceptable alternative device. Such proceedings simply
4 record legal arguments and the Court's rulings on legal issues and are not useful for impeachment.
5 Defense counsel surely already has thorough notes from these proceedings, and can fill in any gaps
6 by listening to the audio recordings.

7 Second, Defendant Crisostomo requests daily written transcripts of the trial proceedings.
8 Defendant Crisostomo offers no legal authority to support the argument that such written transcripts
9 are necessary to safeguard the defendant's confrontation rights or right to effective assistance of
10 counsel. This scenario, the request for daily written trial transcripts, falls outside of the rule
11 articulated in *Britt*, which deals with transcripts of prior proceedings. *See Britt*, 404 U.S. at 227.
12 The Court finds that Defendant's confrontation rights and right to effective assistance of counsel
13 will be protected through his next-business-day access to daily audio recordings.

14 Accordingly:

- 15 1. Defendant's motion for audio recordings of pretrial hearings is **GRANTED**.
16 Defense counsel shall submit a list of all of the hearings for which Defendant
17 does not yet have audio recordings.
- 18 2. Defendant's motion for daily audio recordings of the trial is **GRANTED**. Daily
19 audio recordings of the trial proceedings will be made available to Defendant the
20 next business day.
- 21 3. Defendant's motion for written transcripts of pretrial hearings is **GRANTED IN**
22 **PART** as to all pretrial proceedings that involve testimony of witnesses that may
23 be used for impeachment at trial. On or before **March 20, 2014**, Defendant shall
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submit to the Court a list of the proceedings containing such testimony, and the portions of such proceedings that require transcription.

4. Defendant's motion for written transcripts of pretrial hearings is **DENIED IN PART** as to all pretrial proceedings that do not involve testimony of witnesses that may be used for impeachment at trial.

5. Defendant's motion for daily written transcripts at trial is **DENIED**.

IT IS SO ORDERED this 18th day of March, 2014.



JOSEPH N. CAMACHO
Associate Judge