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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

JOSEPH SEMAN EPINA,

Defendant.

) **CRIMINAL CASE NO. 16-0040**
)
)
) **ORDER GRANTING FUNDING FOR**
) **TRANSCRIPTION SERVICES**
) **PURSUANT TO NMI R. PRAC. 36 AND**
) **DEFENDANT'S CONSTITUTIONAL**
) **RIGHT TO ACCESS TO BASIC TOOLS**
) **FOR AN ADEQUATE DEFENSE**

I. INTRODUCTION

This matter came before the Court on October 17, 2018 on Defendant's Motion for Funding Transcription of Hearing. Defendant¹ was present in custody² and was represented by Assistant Public Defender Heather Zona. The Commonwealth was represented by Chief Prosecutor Michele Harris and Assistant Attorney General Teri Tenorio.

Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS** the Defendant's Motion for Funding Transcription of Hearing.

II. BACKGROUND

This matter stems from the Defendant's alleged sexual abuse of the minor V.R. on or about March 12, 2016. The Defendant was charged by information with sexual abuse of a minor in the first degree pursuant to 6 CMC § 1306(a)(1); assault and battery pursuant to 6 CMC § 1202(a); and

¹ Defendant Joseph Seman Epina is indigent.

² Defendant has been in custody since his arrest on March 14, 2016. *See* Arrest Warrant.

1 disturbing the peace pursuant to 6 CMC § 3101(a). *See* Amended Information. The Defendant has
2 been in custody since his arrest on March 14, 2016. *See* Arrest Warrant.

3 On March 5, 2018, the Court issued an order requiring an evidentiary hearing to determine
4 whether the alleged victim’s memory of the alleged sexual abuse had been tainted by suggestive
5 and coercive interview techniques. *See Commonwealth v. Epina*, Crim. No. 16-0040 (NMI Super.
6 Ct. Mar. 5, 2018) (Order for Pretrial Memory Taint Evidentiary Hearing to Determine Whether the
7 Alleged Child Victim’s Memory Remains Sufficiently Reliable Pursuant to Commonwealth Rule of
8 Evidence 602 After Being Subjected to Suggestive and Coercive Interview Techniques) (“March
9 2018 Order”). Although other jurisdictions have addressed the issue of memory taint, this is an
10 issue of first impression in the CNMI. In determining whether to order an evidentiary hearing, the
11 Court heard expert testimony from Dr. Wendy Bourg, an expert in child psychology, on May 8,
12 2017.

13 The memory taint evidentiary hearing on this issue spanned several days. The evidentiary
14 hearing was held on August 6, August 7, August 8, August 10, August 15, August 17, and August
15 24.³ At the memory taint evidentiary hearing, the Court heard testimony from a number of
16 witnesses, including the alleged victim, social workers, health care providers, police officers, and
17 two experts: Dr. Wendy Bourg, the same expert who testified in May 2017, and Crimson Barocca, a
18 social worker and forensic interviewer. Dr. Bourg’s prior testimony in this case was incorporated
19 into the memory taint evidentiary hearing. At the conclusion of the evidentiary hearing, the Court
20 ordered the parties submit proposed Findings of Facts and Conclusions of Law.⁴ *Commonwealth v.*
21 *Epina*, Crim. No. 16-0040 (NMI Super. Ct. Aug 27, 2018) (Minute Order).

22 _____
23 ³ All dates were in 2018.

24 ⁴ As a case of first impression in the CNMI with far-reaching precedential ramifications beyond this particular case, an accurate written record is important. The transcription will be use by the Court in considering the memory taint evidentiary hearing, and, if necessary, may also be use for trial or appeal.

1 Defendant filed his Motion for Funding For Transcription of Hearing on October 9, 2018.
2 Defendant received the audio recording of the proceedings on September 26, 2018 and submitted it
3 to two transcription services, receiving one estimate of transcription for \$3,087.50 and one for
4 \$3,115.00. The attached invoices reflected an estimated 22-24 hours of audio to be transcribed, or
5 650 pages. At the October 17, 2018 motion hearing date, the Commonwealth did not oppose the
6 request for a certified transcript, agreeing that an accurate written transcript of these proceedings
7 would serve the needs of the parties and the Court.

8 The Commonwealth Superior Court does not have its own certified transcriptionist, nor does
9 the Court have a court stenographer. Typically, when written transcripts are needed for appellate
10 purposes, Superior Court staff transcribes the audio recordings piecemeal during gaps in their busy
11 schedules.

12 III. DISCUSSION

13 The Defendant moves the Court to provide funding for a certified transcript of the
14 proceedings in this case to be produced, pursuant to Rule 36 of the Commonwealth Rules of
15 Practice. Rule 36 provides for the production of audio recordings and written transcripts to the
16 parties. NMI R. Prac. 36.

17 This Court previously granted a defense request for audio recordings and some written
18 transcripts in *Commonwealth v. Crisostomo*. Crim. No. 13-0049 (NMI Super. Ct. Mar. 18, 2014)
19 (Published Sept. 5, 2014) (Order Granting Defendant's Request for Audio Recordings; Granting in
20 Part Request for Written Transcripts of Pretrial Proceedings; Denying Request for Written
21 Transcripts of Trial Proceedings) ("*Crisostomo* Order"). In *Crisostomo*, the defendant filed an *ex*
22 *parte* motion for the transcripts of pretrial and trial proceedings, arguing that these transcripts were
23 needed for him to effectively cross-examine and impeach witnesses at trial. *Id.* at 1.

24

1 In *Crisostomo*, this Court ultimately granted the defendant’s request in part, ordering that
2 written transcripts be produced for “all proceedings that involve the testimony of witnesses who are
3 also expected to testify during trial.” *Crisostomo* Order at 3. The United States Constitution⁵
4 “requires that indigent defendants have access to the ‘basic tools of an adequate defense . . . when
5 those tools are available for a price to other [defendants].” *Crisostomo* Order at 2 (quoting *Britt v.*
6 *North Carolina*, 404 U.S. 226, 227 (1971) (internal quotation marks omitted)). “[T]here can be no
7 doubt that the State must provide an indigent defendant with a transcript of prior proceedings when
8 that transcript is needed for an effective defense or appeal.” *Id.* (quoting *Britt*, 404 U.S. at 227).
9 Courts weigh two factors in determining whether a transcript must be provided to an indigent
10 defendant so that he may have an effective defense: “(1) ‘[T]he value of the transcript to the
11 defendant in connection with . . . the trial for which it is sought;’ and (2) ‘[T]he availability of
12 alternative devices that would fulfill the same functions as a transcript.’” *Id.* (quoting
13 *Commonwealth v. Saimon*, Crim. No. 90-0097 (NMI Super. Ct. May 17, 1991) (Order Re Written
14 Transcript on Appeal at 4) (quoting *Britt*, 404 U.S. at 227-28)).

15 In *Crisostomo*, the Court dealt with transcripts for trial purposes. In the present case, we are
16 still in the pre-trial stage of the proceedings. However, the Court notes the extraordinary
17 circumstances of the present case. The Defendant was arrested on March 14, 2016 and charged by
18 information on March 23, 2016. Since then, numerous hearings have taken place, including hours of
19 expert testimony, over the course of two and a half years. The parties must now condense the
20 previous two and a half years of testimony into coherent proposed orders regarding an issue of first
21 impression in the CNMI. Due to the unique procedural posture of this case, the Court will turn to
22 the factors outlined in *Crisostomo* despite the fact that this case is not yet ready for trial.

23 ⁵ The Fourteenth Amendment of the United States Constitution is applicable in the Commonwealth pursuant to Section
24 501 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United
States of America. 48 USC § 1801 note.

1 First, the Court will look to the “value of the transcript to the defendant in connection with
2 ...the trial for which it is sought.” *Crisostomo* Order at 2. Here, the transcript would encompass
3 voluminous testimony regarding whether the alleged victim’s memory has been tainted, and this
4 transcript is undoubtedly essential to the Defendant in preparing his proposed order, as well as for
5 impeachment purposes at trial, and for appellate purposes should this case be appealed.

6 Second, the Court will look to the “availability of alternative devices that would fulfill the
7 same functions as a transcript.” *Crisostomo* Order at 2. Although an audio recording of the
8 proceedings is available, and has been provided to the Defendant, these audio recordings span two
9 and a half years and encompass hours of testimony, including technical testimony from two expert
10 witnesses. In addition, a number of witnesses testified, including individuals involved in the
11 investigation and the alleged victim, and a written transcript of these testimonies could prove useful
12 for impeachment at trial. Thus, although an audio recording is available, it would not serve the
13 same purpose as a written transcript, given the voluminous nature of the audio record involved, and
14 the unique procedural posture of this case. A written transcript would aid the parties and the Court
15 in identifying and cross-referencing changes, if any, to the memory of the alleged victim. A written
16 transcript would also make it easier to identify the impact of the numerous individuals who
17 interviewed the alleged victim. Further, a written transcript is highly preferable to painstakingly
18 playing back many hours of testimony.

19 Thus, the Court will grant the Defendant’s request for funding for the production of a
20 certified transcript. The Court again emphasizes the unique procedural posture of this case and the
21 hours upon hours of audio recordings that will need to be transcribed. The Commonwealth does not
22 oppose this motion, and correctly points out that a certified transcript would aid both the parties and
23 the Court in addressing the memory taint issue.

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IV. CONCLUSION

Accordingly, the Defendant's Motion for Funding for Transcription of Hearing is **GRANTED.**⁶

IT IS SO ORDERED this 22nd day of October, 2018.



JOSEPH N. CAMACHO
Associate Judge

⁶ The Court will issue a separate order authorizing the payment of an amount not to exceed \$3,115.00 for transcription services.