


2019 FEB 25 PM 2:58

BY: 
DEPUTY CLERK OF COURT

1 **FOR PUBLICATION**

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

6	COMMONWEALTH OF THE)	CRIMINAL ACTION NO. 16-0214
7	NORTHERN MARIANA ISLANDS,)	
8)	
9	Plaintiff,)	
10)	
11	v.)	ORDER GRANTING DEFENDANT'S
12)	MOTION FOR A MISTRIAL
13	MANOLO ROMOLOR,)	
14)	
15	Defendant.)	
16)	

17 **I. INTRODUCTION**

18 THIS MATTER came before the Court on February 14, 2019 at 4:30 p.m. at the Marianas
19 Business Plaza, Courtroom 2, for a hearing on the Defendant's Motion for a Mistrial. Assistant
20 Attorney Generals Terri Tenorio and Chester Hinds represented the Commonwealth of the Northern
21 Mariana Islands ("Commonwealth"). Attorney Bruce Berline represented Manolo Romolor
22 ("Defendant"), who was present.

23 **II. BACKGROUND**

24 The Defendant was charged with one count of sexual assault in the first degree, in violation
of 6 CMC § 1301(a)(1), one count of assault and battery under 6 CMC § 1202(a), and one count of
disturbing the peace under 6 CMC § 3101(a) on November 22, 2016. Specifically, the Defendant is
alleged to have sexually assaulted J.T. on November 19/20, 2016.

After a delay of over two years, the trial in this matter finally began on February 11, 2019 at
the United States District Court for the Northern Mariana Islands. A jury of six (6) with two (2)

ENTERED

AGO
B. Berline

1 alternates was empaneled and preliminary jury instructions were given on the morning of February
2 11, 2019. In the afternoon, opening arguments were heard and the Commonwealth's first witness,
3 Officer Ichibara, was called and excused after direct, cross, and redirect examination. From the very
4 beginning there were evidentiary and method issues with the Commonwealth's handling of Officer
5 Ichibara's testimony. These issues foreshadowed the course of the trial.

6 On the morning of February 12, 2019, the Commonwealth called the alleged victim, J.T., to
7 the stand. The alleged victim's testimony lasted most of the day. There were a multitude of
8 evidentiary issues and issues resulting from the Commonwealth's chosen method of direct
9 examination and redirect examination. In the afternoon, the issues became so extreme and persistent
10 that the Defendant moved for a mistrial citing prosecutorial misconduct. The Court then issued a
11 warning to the Commonwealth to correct its mistakes or the Commonwealth risked causing a
12 mistrial due to prosecutorial misconduct.¹ The Court took the Defendant's motion under advisement
13 pending the Commonwealth's actions. Later that day, the Commonwealth called Sergeant
14 Catherine Pangelinan to the stand. The Commonwealth's issues persisted.

15 Sergeant Pangelinan's testimony continued into the morning of February 13, 2019, and it
16 quickly became apparent that the Commonwealth had not corrected its issues. Thus, the Court
17 determined that arguments on the Defendant's Motion for a Mistrial needed to be heard before the
18 trial could proceed further. The Court placed the trial in recess until February 15, 2019 at 8:30 a.m.
19 Both parties were ordered to submit written briefs and the Court heard arguments on February 14,

20 ¹ "I need to warn the Commonwealth before calling the next witness that the following behavior must end immediately
21 or a motion for mistrial will be entertained subject further to the provided transcript and its contents. The
22 Commonwealth shall not vouch for the witness by using her first name or improperly summarize the testimony after
23 being warned previously; shall not bolster the witness's testimony by adding adjectives when restating the testimony;
24 shall not mischaracterize the witness' statements; shall not use improper phrases such as 'unconscious' in place of
sleep. The Court has added as many curative instructions as can be made. Any more will have an insurmountable
cumulative effect that it so infects the trial with unfairness that results in a denial of due process."

1 2019. The issue was taken under advisement, so that the Court had some time to consider the issue.
2 When the jury was assembled and the parties were present on the morning of February 15, the
3 Court declared a mistrial and briefly explained its reasoning. The Court provides its full reasoning
4 below.

5 III. DISCUSSION

6 The Defendant argued that the Court must declare a mistrial because intentional
7 prosecutorial misconduct occurred during the trial. Prosecutorial misconduct justifies a declaration
8 of a mistrial only when it “so infect[s] the trial with unfairness” that the Defendant’s due process
9 rights are in doubt. *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (quoting *Donnelly v.*
10 *DeChristoforo*, 416 U.S. 637, 643 (1974)).² The alleged prosecutorial misconduct must be
11 sufficiently impactful as to result in the denial of the defendant’s right to a fair trial. *Greer v. Miller*,
12 483 U.S. 756, 765 (1987); see *U.S. v. Bermudez*, 529 F.3d 158, 165 (2nd Cir. 2008) (a prosecutor’s
13 improper remarks did not justify a mistrial because the judge promptly gave curative jury
14 instructions after each improper comment); *U.S. v. Davis*, 514 F.3d 596, 613-614 (6th Cir. 2008) (a
15 prosecutor’s improper vouching for government witnesses did not justify a mistrial because the
16 prosecutor acknowledged inappropriateness of the comment at trial and the judge gave curative
17 instructions); *U.S. v. Clark*, 535 F.3d 571, 581 (7th Cir. 2008) (a prosecutor’s improper remarks did
18 not justify a mistrial because the remark was not so powerful or overwhelming as to render the
19 curative jury instruction ineffective).

20
21
22 ² Mistrial for prosecutorial misconduct is reviewed *de novo* in the appellate courts. *Hennon v. Cooper*, 109 F.3d 330,
333 (7th Cir. 1997).

1 Prosecutorial misconduct requires proof of improper conduct by the prosecutor that, *taken in*
2 *the context of the trial as a whole*, violated the defendant's due process rights. *U.S. v. Mabrook*, 301
3 F.3d 503, 509 (7th Cir. 2002) (emphasis added). The due process analysis in cases of alleged
4 prosecutorial misconduct revolves around the fairness of the trial, not the culpability of the
5 prosecutor. *Smith v. Phillips*, 455 U.S. 209, 210 (1982). The *cumulative effect*
6 may prejudice a defendant. *United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996)
7 (emphasis added). Where there are a number of errors at trial, it is more effective to analyze the
8 overall effect of all the errors in the context of the trial than to conduct an issue-by-issue harmless
9 error review. *Id.* Even if a particular error is cured by an instruction, the court should consider any
10 "traces" which may remain. *United States v. Necochea*, 986 F.2d 1273, 1282 (9th Cir. 1993).

11 **A. The Commonwealth Purposely Committed Prosecutorial Misconduct**

12 The Defendant moved for a mistrial due to prosecutorial misconduct on the first full day of
13 testimony. The Defendant alleged that the Commonwealth committed prosecutorial misconduct by
14 mischaracterizing testimony, eliciting hearsay intentionally, failing on multiple occasions to lay a
15 proper foundation, excessively leading a witness, excessively leading and repeating testimony,
16 vouching or improperly referring to the alleged victim by her first name, and violating the Court's
17 orders. The Defendant argued that the excessive amount of sustained objections and overall tenor of
18 the trial poisoned the Jury. The Defendant stated that the method with which the Commonwealth
19 conducted the trial put the Defendant in a position in which he could no longer obtain a fair trial.
20 The Defendant noted that it is not any one act or event. Instead, it was the cumulative effect of the
21 Commonwealth's actions that so infected the trial with unfairness.

1 instances of mischaracterization that alone could be cause for a mistrial due to the potential tainting
2 effect on the Jury.

3 First, when the alleged victim was testifying about the alleged incident, the Commonwealth
4 asked the alleged victim whether she was asleep. Instead of using the term “sleep,” the
5 Commonwealth used the term “unconscious” when repeating the alleged victim’s previous
6 testimony to ask a question. Sleep and unconsciousness are two different medical concepts.³
7 Perhaps it was an unintentional choice of words, but the effect of such a mischaracterization on the
8 Jury is likely overly prejudicial to the Defendant due to the different connotations the two terms
9 would present to the Jury. This is especially true in a sexual assault case.

10 Second, during the Commonwealth’s direction examination of the alleged victim, the
11 Commonwealth asked the alleged victim about “hard kissing.” However, the alleged victim had not
12 previously testified about kissing. Whether intentional or not, this is blatant testifying by the
13 Commonwealth. The testimony was eventually elicited in an appropriate manner, but the damage
14 was done. The Commonwealth put an idea in the jury’s mind that did not come from a testifying
15 witness. There is no excuse for such a mistake.

16 The Court finds that individually, these two instances, with the proper curative instructions,
17 may be enough to justify a mistrial. Taken in context with the other twelve (12) instances of
18 mischaracterization, the standard for mistrial due to prosecutorial misconduct was arguably met.
19 *Mabrook*, at 509. If a lie or a false statement is repeatedly told, it will eventually become adopted
20 as truth. This certainly applies to a Jury, which received no less than ten (10) curative instructions.

21
22 ³ Unconsciousness – first aid, Medlineplus.gov, <https://medlineplus.gov/ency/article/000022.htm> (last visited Feb. 19,
2019) (“A sleeping person will respond to loud noises or gentle shaking, an unconscious person will not”).

1 The Court can only make so many certain curative instructions before the Jury is overwhelmed and
2 does not know what to remember and what to forget. These mischaracterizations were severely
3 prejudicial to the Defendant and undoubtedly put his due process rights in question.

4 **2. Hearsay**

5 It is improper for a prosecutor to purposefully ask a question he or she knows will elicit an
6 inadmissible answer. *People v. Fortson*, 421 P.3d 1236, 1240 (Colo. Ct. App. 2018). The
7 Commonwealth had many hearsay issues in this trial, but one in particular sticks out. The
8 Commonwealth attempted to use the “Prior Consistent Statement” non-hearsay rule 801(d)(1)(B) to
9 have Sergeant Pangelinan testify that the alleged victim said “Manalo raped me.” However, the
10 Commonwealth misunderstands the rule. Rule 801(d)(1)(B) states:

11 A Declarant-Witness’s Prior Statement. The declarant testifies and is subject to
12 cross- examination about a prior statement, and the statement: (B) is consistent
13 with the declarant’s testimony and is offered to rebut an express or implied
charge that the declarant recently fabricated it or acted from a recent improper
influence or motive in so testifying...

14 NMI R. EVID. 801(d)(1)(B). The prior consistent statement rule allows a statement into evidence
15 that was made previously, to contradict a subsequent statement that was inconsistent with the
16 original statement. *Id.*, *United States v. McPartlin*, 595 F.2d 1321 (7th Cir. 1979), *cert denied*, 444
17 U.S. 833 (1979). Instead, the Commonwealth wished to use the alleged victim’s statement to
18 Sergeant Pangelinan to bolster a previous statement by the alleged victim during her direct
19 testimony. Specifically, the Commonwealth intended to elicit this out of court statement for the
20 truth of the matter asserted so that the alleged victim’s testimony that “Manalo raped me” would be
21 strengthened. This is exact definition of improper bolstering that the Rule 801(d)(1)(B) is designed
22 to protect against. *See People v. Finik*, 2017 Guam 21 *28 (“‘bolstering’ constitutes nothing more
23

1 than 'preemptive rehabilitation' of a witness through the testimony of another witness"). Despite
2 arguing to the contrary, the Court finds it difficult to believe that the Commonwealth did not know
3 this testimony would be inadmissible. Thus, the Commonwealth's actions were highly improper
4 and prejudicial to the Defendant. *Forston*, at 1240. Again, this is just one example, but it is one that
5 was representative of the entire trial.

6 **3. Lack of Foundation**

7 Rule 602 of the Rules of Evidence provides a guide for courts and attorneys regarding what
8 is required to establish a proper foundation:

9 A witness may not testify to a matter unless evidence is introduced sufficient to
10 support a finding that the witness has personal knowledge of the matter. Evidence to
11 prove personal knowledge may, but need not, consist of the witness' own testimony.
This rule is subject to the provisions of Rule 703, relating to opinion testimony by
expert witnesses.

12 NMI R. EVID. 602. A witness must be shown to have first hand knowledge of what they are
13 testifying about. *See United States v. Cruz*, 352 F.3d 499, 505-06 (1st Cir. 2003). There were
14 multiple instances when the Commonwealth failed to establish an adequate foundation to elicit the
15 testimony it desired.

16 One instance that stood out to the Court occurred when Department of Public Safety
17 investigator Sergeant Pangelinan took the stand. Specifically, Sergeant Pangelinan was supposed to
18 testify how the investigators obtained evidence, including the alleged victim's underwear during
19 their investigation. The Commonwealth simply asked Sergeant Pangelinan: "Did you find any
20 evidence?" At which point, Sergeant Pangelinan answered: "We found panties in the trash can."

1 The Commonwealth failed to lay an adequate foundation before asking that question.⁴ It was
2 completely unclear why the investigators were looking for any underwear. During her direct
3 examination, the alleged victim never mentioned wearing any underwear the night of the alleged
4 incident. The Defendant asked the alleged victim about the underwear she was wearing. However,
5 the alleged victim answered: "I don't know." The alleged victim also discussed at least two other
6 pairs of underwear that she wore after the incident. At no point was it ever clear which pair of
7 underwear the Commonwealth was attempting to elicit testimony about.

8 The Court can assume that the true natural progression of the of Sergeant Pangelinan's
9 testimony was to discuss how the case began at the Department of Public Safety when the
10 Defendant reported the alleged incident, then how the alleged victim was taken to the hospital and
11 what occurred there, then how the alleged victim took the investigators to her home, and finally
12 how the investigators and evidence technicians searched the home and found the underwear in
13 question. However, the Commonwealth failed to ask the questions that would have produced this
14 testimony. Instead the Commonwealth simply asked: "Did you find any evidence?" This was
15 typical of the line of questioning from the Commonwealth. It elicited testimony that invited an
16 objection by the Defendant, which was sustained.

17 When the Commonwealth attempted to elicit the testimony described above, the Defendant
18 correctly objected. However, this type of objection likely had a prejudicial effect on the Jury.
19 Whenever the Defendant objected in a situation like this, it likely makes the Jury think that the
20 Defendant wanted to hide evidence. The unintended consequence is that the Defendant is unfairly

21
22

⁴ Even if the Commonwealth had laid an adequate foundation, the Commonwealth could not ask that question. It is still
23 improper and prejudicial. The more appropriate question would be, assuming proper foundation: "What did you find
24 when you searched the home/apartment?"

1 painted negatively to the Jury, and thus overly prejudiced. The Defendant argued this very point at
2 the February 14 hearing. The Court agrees that the Defendant was likely unnecessarily prejudiced
3 by this type of situation, which was repeated multiple times. It was the Commonwealth's line of
4 questioning that put the Defendant in a position that required constant objections. While the one
5 situation described above is not enough to warrant a mistrial, it is the cumulative effect of multiple
6 similar scenarios.

7 **4. Excessive Leading/Excessive Repetition of Testimony**

8 Leading questions are improper unless a witness is hostile or adverse. NMI R. EVID. 611(c).
9 Courts have considered the persistent use of leading questions by prosecution despite court
10 warnings to be improper. *United States v. Lasley*, 2008 WL 191622, at *3 (D. Kan. Jan 22, 2008).
11 The Commonwealth repeatedly asked leading questions on direct examination, apparently to speed
12 up the trial. While the Court appreciates the Commonwealth's intention to keep the trial moving at
13 the appropriate pace, the actual result of its practice was to slow the trial down. The constant, and
14 appropriate, objections from the Defendant slowed the trial to a crawl. Further, this excessive
15 leading led to the Commonwealth consistently eliciting repetitive testimony. The Court counted
16 twenty-two (22) circumstances where the Commonwealth was testifying during direct examination.
17 Again, taken by itself, this likely does not rise to a level of prosecutorial misconduct that would
18 justify a mistrial. However, taken together with all the other issues. A declaration of a mistrial was
19 necessary.

20 **5. Use of the Alleged Victim's First Name**

21 In general, vouching is the placing the prestige of the government behind a witness through
22 personal assurances of the witness's veracity. *United States v. Necochea*, 986 F.2d 1273, 1282 (9th

1 Cir. 1993). The use of nicknames and terms of endearment by a prosecutor is improper and can be
2 considered an attempt by the prosecutor to align herself with the victim. *DeRosier v. Workman*, 679
3 F.3d 1196, n. 109 (10th Cir. 2012). Improper suggestions, insinuations, and especially, assertions of
4 personal knowledge are apt to carry more weight in a prosecutorial misconduct analysis. *Berger v.*
5 *United States*, 295 U.S. 78, 88 (1935).⁵ The Court counted ten (10) separate circumstances where
6 the Commonwealth referred to the alleged victim by her first name. While this is not classic
7 vouching as the Defendant stated, it still creates a situation in which the Commonwealth made an
8 improper suggestion or assertion of personal knowledge. Speaking to another person on a first name
9 basis shows a level of familiarity with another person. This insinuation of familiarity would have
10 translated to the Jury in a way that would unfairly prejudice the Defendant by bolstering the
11 witness' credibility. While this in itself is certainly not enough for a mistrial, especially with the
12 Court's curative instructions, the Court still felt that this practice was inappropriate.

13 **6. Cumulative Analysis**

14 Collectively, the issues elaborated upon above created an environment that so infected the
15 trial with unfairness that a mistrial was unavoidable. Individually, the Commonwealth is probably
16 correct: most of these issues would likely not be cause of a mistrial.⁶ However, these issues are not
17 looked at individually or in a balkanized manner; they are examined collectively. *Frederick*, at
18 1381. Therefore, in a situation such as this, a mistrial was the only course of action.

21 ⁵ The prosecuting attorney represents a sovereign whose obligation is to govern impartially and whose interest in a
22 particular case is not necessarily to win, but to do justice. It is the sworn duty of the prosecutor to assure that the
23 defendant has a fair and impartial trial. *Commonwealth of the Northern Mariana Islands v. Bowie*, 243 F.3d 1109 (9th
24 Cir. 2001).

⁶ As noted above, the mischaracterization of testimony issues present a serious case for a mistrial by itself. However,
the Court does not need to provide that analysis.

1 The Court would again like to make it clear that the analysis conducted above is not an
2 exhaustive analysis of all of the issues that occurred in this trial. The Court chose to analyze what it
3 considered to be the Commonwealth's most egregious and problematic issues. There were many
4 more, which contributed to the Court's final analysis and decision to declare a mistrial.

5 The blame for this mistrial lies solely with the Commonwealth. It is abundantly clear to the
6 Court that prosecutorial misconduct occurred. Over the eight (8) to ten (10) hours of testimony in
7 this trial⁷ the Defendant brought at least eighty (80) objections against the Commonwealth, of
8 which seventy (70) were sustained. These are astounding numbers. The Court eventually stopped
9 counting. Seasoned and well-prepared attorneys do not have a large amount of technical objections
10 such as "lack of foundation" or "asked and answered" at trial. Many of the Defendant's objections
11 against the Commonwealth were technical in nature. They spoke to a lack of preparation and
12 misconceptions regarding the Rules of Evidence. The Court also counted fourteen (14) different
13 circumstances where the Commonwealth mischaracterized a witness' testimony, twenty-two (22)
14 circumstances where the Commonwealth was "testifying" during direct examinations, and ten (10)
15 separate circumstances where the Commonwealth referred to the alleged victim by her first name.
16 Additionally, the Court issued ten (10) curative instructions to the Jury. Finally, there were a at least
17 five (5) side bars.

18 At a certain point, the cumulative effect of the objections, mischaracterizations, and
19 prosecutorial testifying is insurmountable for the Court's curative procedures. During the side bar
20 conversations, the Commonwealth repeatedly asked for latitude or leeway, and the Court granted
21 the Commonwealth latitude to a degree. However, this case was to be tried by six (6) jurors, and

22 _____
23 ⁷ Not counting the first witness, Officer Ichibara called at the end of the first day.

1 two (2) alternates. These people are everyday citizens who are not trained in the intricacies of the
2 law and how it operates. They do not intuitively know what to ignore and what to accept. These
3 citizens are doing their absolute best to watch and listen to everything and anything that happens in
4 the courtroom. They are interpreting every action that occurs and despite what the Court tells them
5 to disregard or ignore, they will have still heard it. At some point, those ideas will remain in a
6 juror's mind regardless of what the Court tells them. It is basic human nature.

7 The Court was more than generous to the Commonwealth. The Commonwealth had ample
8 opportunities to correct its issues and question witnesses properly within the Rules of Evidence.
9 However, the Commonwealth failed to take advantage of the opportunities given to it and continued
10 down the same untenable path. For reasons only known to the Commonwealth, the Commonwealth
11 was incapable of rectifying its mistakes.

12 In a bench trial, these mistakes would not necessarily be an issue. A trained judge with
13 extensive experience knows how to decipher and distinguish the facts of the testimony and come to
14 the correct decision. A court is not swayed by the consistent repetition or mischaracterization of
15 testimony. A jury, on the other hand, will be. Further, the Commonwealth argued that there were
16 times when the Court did not allow the Commonwealth to respond to the Defendant's objection
17 before sustaining it. The Court does not need to hear arguments on every single objection. If the
18 Court knows immediately that an objection should be overruled or sustained, then for purposes of
19 expediency, the Court may and should rule immediately without arguments. The objection is still
20 preserved for the record.

1 In hindsight, no one who has followed this case should be surprised by this outcome. The
2 Commonwealth's handling of this matter has been careless from the very beginning.⁸ There were
3 multiple issues in this case that predate this trial. The Commonwealth failed to produce its proposed
4 expert witness for a *Daubert* hearing on multiple occasions. *Commonwealth v. Romolor*, Crim. No.
5 16-0214 (NMI Super. Ct. Jan. 18, 2019) (Order Granting in Part and Denying in Part Defendant's
6 Motion in Limine). The Commonwealth repeatedly failed to follow the Court's procedural orders.
7 *Commonwealth v. Romolor*, Crim. No. 16-0214 (NMI Super. Ct. Feb. 1, 2019) (Order Granting
8 Defendant's Motions in Limine). Specifically, the Commonwealth filed three (3) witness lists after
9 the Court-ordered deadline and failed to investigate and produce potentially key evidence to the
10 Defendant until it nineteen (19) months past the Court ordered deadline. *Id.* There are five (5)
11 previous trial settings that required a continuance. *Id.* At every key moment in this case, the
12 Commonwealth showed itself two steps behind and unprepared.

13 After a thorough, cumulative analysis of the Commonwealth's conduct during the trial, it is
14 clear to the Court that the trial was infected by prosecutorial misconduct to the point that the
15 validity of the Defendant's Due Process rights was clearly in question. The Jury was tainted to the
16 point where no amount of curative instructions could remedy the problem. Therefore, a declaration
17 of mistrial was the only option.

18 **B. The Commonwealth's Prosecutorial Misconduct was Not Meant to Goad a Mistrial**

19 The Defendant argues that the Commonwealth's conduct during the trial was intentional.
20 Prosecutorial misconduct that is intended to cause a mistrial would attach jeopardy to this case, thus
21 the Commonwealth would be barred from trying the Defendant again. *Or. v. Kennedy*, 456 U.S.

22 _____
23 ⁸ Please see the attached list of events in this case.

1 667, 669, 679 (1982). However, double jeopardy does not attach even if the prosecutorial
2 misconduct was purposeful. A mistrial is granted at the request of the defendant precludes retrial
3 only where the prosecutor or judge engages in conduct intended to “goad” the defendant into
4 moving for a mistrial. *Kennedy*, at 669, 679; *see Lee v. U.S.*, 431 U.S. 23, 32-34 (1977 (the double
5 jeopardy clause does not bar re-prosecution absent provocative or bad faith conduct by the
6 prosecution or judge); *U.S. v. Dinitz*, 424 U.S. 600, 611-12 (1976). Here, the Commonwealth did
7 not purposefully intend to cause a mistrial. Instead, the Court believes that the Commonwealth’s
8 problems originate from a serious lack of preparation alluded to above.

9 The Court painfully witnessed a litany of incidents that suggest a lack of preparedness. The
10 most blatant evidence that the Commonwealth was unprepared came not during the trial itself, but
11 during the February 14 mistrial hearing. While trying to explain its reasoning for asking Sergeant
12 Pangelinan an improper question regarding the alleged victim’s underwear,⁹ the Commonwealth
13 stated that it was not sure what Sergeant Pangelinan would say. This was a stunning admission. It is
14 unfathomable that the Commonwealth did not generally know what one of its own witnesses would
15 say at this point in the case.

16 It was completely evident to the Court that the Commonwealth failed to properly prepare the
17 alleged victim. The Commonwealth’s style of direct examination is illustrative of this point. The
18 Commonwealth repeatedly failed to follow the natural linear progression of a witness’s story, which
19 is the most efficient way to elicit testimony for a jury. The Commonwealth’s style of jumping back
20 and forth between different events is indicative of a lack of preparation because it showed that the
21 Commonwealth did not have a full grasp of the story. It also showed that the Commonwealth

22 _____
23 ⁹ The particular question resulted in a sustained objection.

1 lacked control of its own witness and could not keep her on the right track. It was clear that the
2 alleged victim skipped over important details or the Commonwealth forgot to ask the right question
3 at the right time. The Commonwealth was simply unable to elicit the relevant testimony in enough
4 detail to create a linear story. This demonstrated to the Court that the Commonwealth clearly failed
5 to prepare its witnesses.¹⁰

6 The Commonwealth's inability to grasp and apply of the rules of evidence was another
7 indication of lack of preparation. The Commonwealth was consistently unable to establish a
8 foundation for the questions it attempted to ask. Again, this issue is related to the fact that the
9 Commonwealth did not follow the natural progression of the story. The Court would again like to
10 turn to the testimony of Sergeant Pangelinan discussed previously. The Commonwealth simply
11 failed to lay an adequate foundation, and this was not an isolated incident. In that situation, the
12 Commonwealth did not make it clear that Sergeant Pangelinan had firsthand knowledge of what
13 occurred. This includes the when, why, what, how, and who of a situation. If these questions are
14 asked and the answers are provided, a proper foundation is laid, and the story will flow naturally.
15 Instead, the Commonwealth asked: "Did you find any evidence?" This is completely improper.

16 The approach or line of questioning that constantly jumped back and forth between different
17 events inherently calls for objections such as mischaracterization, repetition, leading, and lack of
18 foundation as previously discussed. More specifically, when linking one event to another, it creates
19 a situation where the Commonwealth must recite previous testimony and facts. This opens the door
20 to mistakes, such as adding adjectives that were not in the original testimony, excessive repetition

21 ¹⁰ There is a significant difference between preparing a witness and coaching a witness. Preparing a witness means that
22 the attorney has thoroughly discussed with the witness the situation, understands every the witness knows about the
23 situation and how that witness will answer questions at trial, and has told the witness what to expect at trial. Coaching
24 a witness is telling the witness how to answer. The Court is not suggesting that the Commonwealth coach its witness.
The Court is simply noting that the witness and the Commonwealth were simply unprepared.

1 of key testimony, leading questions, or failing to lay a proper foundation. Once those mistakes are
2 made, a competent defense attorney will rightfully object. The Commonwealth made many of those
3 mistakes, and the Defendant was right to object. The Commonwealth's approach produced the
4 astronomical number of objections that this Court had to agonizingly endure.

5 The Commonwealth brought this situation upon itself. It was their purposeful handling of
6 this case and their lack of preparation for this trial that was the cause for the prosecutorial
7 misconduct. This mishandling and lack of preparation does not provide any proof that the
8 Commonwealth wanted the trial to end in a mistrial. Therefore, the Court cannot find that the
9 Commonwealth intentionally goaded the Court to declare a mistrial. This means that the
10 Commonwealth avoids the dire consequence of double jeopardy attaching.

11 Finally, the Court would like to note that this Court has sat on this bench since November of
12 2001. It has seen many cases and a multitude of issues come before it. However, this is the first
13 mistrial that this Court has ever declared. Mistrials are unusual and only occur when there are
14 exceptional mistakes. That was the unfortunate case here.

15 IV. CONCLUSION

16 For the forgoing reasons, the Defendant's Motion for a Mistrial is GRANTED. A status
17 conference is set in this matter for **March 18, 2019**, at **9:00 a.m.** at the Marianas Business Plaza.

18
19 **IT IS SO ORDERED** this 25th day of February, 2019.

20
21 
22 _____
23 **ROBERTO C. NARAJA**
24 Presiding Judge

CNMI v. Manolo Romolor,
TIMELINE
(16-0214-CR)

[Represented by Public Defender's Office - PDO (11-23/2016 to 04/09/2018)]

Date	Event	Status	Attorney Appearing
11/23/2016	Bail Hearing	Occurred	CAC-Tillman Clark(PDO)
12/1/2016	Preliminary Hearing	Occurred	CAC-Tillman Clark(PDO)
12/5/2016	Arraignment	Occurred	Douglas Hartig (PDO)
1/9/2017	Status Conference	Occurred	Nancy Dominski (PDO)
2/23/2017	Motion for Bail Modification		Michael Sato
2/24/2017	Motion for Bail Modification-Def. withdrew his request to modify bail		Michael Sato
3/20/2017	Status Conference (<i>set 1st Jury Trial for 10/10/2017</i> and PTC for 7/6/17) PTO issued 3/21/17		Cindy Nesbit (PDO)
5/16/2017	Commonwealth's Motion to Extend Discovery Deadline (<i>Granted 60 day extension from 4/21/17 to 6/21/17 to receive DNA testing results; In Minute Order, Court reminded Commonwealth would not grant these types of extensions routinely</i>)		Douglas Hartig (PDO)
6/22/2017	Motion to continue Motion to <i>Extend Discovery Deadline / Amended PTO issued 6/23/17 pushing back discovery dates and PTO to September 2017</i>		Douglas Hartig (PDO)
6/30/2017	Motion for Bail Modification		PDO
7/7/2017	Motion for Bail Modification	Continued	Jamal Saleh (PDO)
7/12/2017	Motion for Bail Modification (<i>Defendant was ordered to provide employment status, notarize extradition waiver, include vehicle as part of security of release</i>) Appears from notes right to speedy trial was waived then	Continued	Jamal Saleh (PDO)
9/21/2017	Pretrial Conference		Douglas Hartig (PDO)
9/21/2017			PDO
9/25/2017	Motion to continue Trial and to appoint expert; <i>Court granted Defendant's motion to continue J/T to 2/5/18</i>		Cindy Nesbit (PDO)
10/10/2017	FIRST JURY TRIAL SET (<i>re-set to 2/5/18</i>)	Order of Continuance	
11/21/2017	Daubert Motion hearing; Sua sponte <i>continued</i> to November 22, 2017	Continued	

CNMI v. Manolo Romolor
TIMELINE
(16-0214-CR)

11/22/2017	Daubert Motion Hearing (Court granted Defendant funds for two experts and to continue Daubert and granted Commonwealth's motion to continue the J/T to April 30, 2018) (first time Tenorio in Minute Order) (Court: granted <input type="checkbox"/> ; Denied <input type="checkbox"/>)	Continued	Cindy Nesbit (PDO)
1/25/2018	Daubert Motion Hearing	Continued	
1/29/2018	Daubert Motion Hearing (granted Defendant's motion to continue Daubert hearing to 3/8/18)	Continued	Douglas Hartig (PDO)
2/5/2018	SECOND JURY TRIAL SET	Continued	
3/8/2018	Govt Withdrew its proposed Expert Witness Dela Cruz; Daubert Motion Waived	Continued	
3/5/2018	Defendant's Motion to continue Daubert; GRANTED Commonwealth's motion to continue to 4/10/18		Douglas Hartig (PDO)

[Represented by Bruce Berline (04/09/2018 to Present)]

4/9/2018	Status Conference: PDO withdrew rep. Defendant, and is substituted by Atty. Bruce Berline		Atty. Bruce Berline
4/10/2018	Gov't requested to Re-schedule Daubert Motion Hearing		B/B
4/10/2018	Status Conference (rescheduled J/T to June 11, 2018); issued Second Amended PTO on 4/23/18		Bruce Berline
4/23/2018	Second Amended PTO issued (did not extend scheduling dates?) Extended dates of Witness List/Exhibits to 5/16/18; scheduled Daubert for 5/10/18 and PTC for 5/17/18		B/B
5/3/2018	Status Conference (Commonwealth informed Court can not get in touch with expert and both parties off-island in June; ordered to submit several dates to reschedule Daubert)		B/B
5/3/2018	Dispositives Motion <i>per Pre-trial Order</i>		B/B
5/3/2018	Motion in Limine <i>per Pre-Trial Order</i>		B/B
5/8/2018	Status Conference (Third Amended PTO issued after and rescheduled J/T to July 16, 2018)		Bruce Berline
5/10/2018	Third Amended PTO issued (did extend scheduling dates?) Extended witness list/exhibits to 6/27/18 and expert witness to 5/23/18; PTC to 6/28/18; Daubert to 6/12/18; Status Hearing 5/22/18)		
5/22/2018	Status Conference (Fourth Amended PTO rescheduled J/T to October 29, 2018)		Bruce Berline
6/9/2018	THIRD JURY TRIAL SET		

CNMI v. Manolo Romolor
TIMELINE
(16-0214-CR)

6/27/2018	Witness List due per Third Amended PTO (did it change?) Was due May 16 before in Second amended PTO		
6/28/2018	Hearing on disputed jury instructions <i>per Pre-trial Order</i>	Continued	
6/28/2018	Pretrial Conference <i>per Third PTO</i>	Continued	
7/16/2018	FOURTH JURY TRIAL DATE <i>scheduled per Third PTO</i>	Continued	
7/24/2018	Daubert Hearing scheduled for July 19, 2018 vacated as Commonwealth withdrew Elaine Delacruz and informed Court Commonwealth would appoint another expert witness		B/B
10/10/2018	Witness List due per Fourth Amended PTO		
10/11/2018	Pretrial Conference <i>per Fourth PTO</i>	Continued	Bruce Berline
10/15/2018	Pretrial Conference	Occurred	Benjamin Petersburg
10/16/2018	Pretrial Conference (issued Jury Instructions after and parties were ordered to file any objections by October 24, 2018)	Occurred	Benjamin Petersburg (Standing for Berline)
10/16/2018	Commonwealth submitted Third Amended Witness List (six days late than Fourth PTO due date) Added Custodian of Records of CHCC		
10/23/2018 10/28/2018	Court issued Orders rescheduling Daubert Hearing and J/T due to Yutu		
10/29/2018	FIFTH JURY TRIAL DATE (how was it set/?/need to confirm) Was set in Fourth Amended PTO issued 6/13/18		
11/15/2018	Status Conference and Daubert Hearing (rescheduled J/T to February 11, 2019)	Occurred	Bruce Berline
12/13/2018	Daubert Hearing on Expert Witness	Continued	
12/19/2018	Daubert Hearing on Expert Witness	Continued	Bruce Berline
12/20/2018	Commonwealth submitted Fourth Amended Witness List (seventy days late than Fourth PTO due date) Added Custodian of Records at IT&E		
12/24/2018	Evidentiary Hearing on Expert Witness Dr. Dreary	Heard	B/Berline
1/8/2019	Commonwealth submitted Fifth Amended Witness List (ninety days late than Fourth PTO due date) Added Blumel Ada and Lawrence Pangclinan		
1/24/2019	Pretrial Conference <i>and hearing on Defendant's motion for Sanctions</i>		
2/11/2019	SIXTH JURY TRIAL DATE		