

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

COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS,)
)
Plaintiff,)
)
v.)
JUN WANG,)
)
Defendant.)
_____)

Criminal Case No. 99-033

**ORDER GRANTING MOTION
FOR FREE TRANSCRIPT OF
PRELIMINARY HEARING**

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 1, 1999, the Office of the Attorney General filed an Information charging Defendant Jun Wang (hereinafter referred to as "Defendant") with one count each of robbery and theft, and two counts of assault with a dangerous weapon.

On February 16, 1999, a preliminary hearing was held in regard to Defendant Wang Jun. Subsequently, on or about March 3, 1999, Defendant served the Court with a motion for a free transcript of the preliminary hearing along with a proposed order.

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III. ISSUES

1. Whether Defendant is entitled to a free transcript of the preliminary hearing?

IV. ANALYSIS

A. Free transcript

In support of his motion, Defendant contends that due to his indigent status he is entitled to a free transcript of the preliminary hearing.

The United States Supreme Court has held that a state “must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners.” *Britt v. North Carolina*, 404 U.S. 226, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971). Although the Supreme Court has not defined the outer limits of this principle, “there can be no doubt that the State must provide an indigent defendant with a transcript of prior proceedings when that transcript is needed for an effective defense or appeal.” *Id.*, 404 U.S. at 227, 92 S.Ct. at 433. The *Britt* court identified two factors relevant to determining whether a given transcript is necessary for an adequate defense: (1) the value of the transcript to the defendant in connection with the appeal or trial for which it is sought, and (2) the availability of alternative devices that would fulfill the same functions as a transcript. *Id.*

In regard to the first *Britt* factor, the United States Supreme Court has consistently recognized the value to a defendant of a transcript of prior proceedings, without requiring a showing of need tailored to the facts of the specific case. See *Roberts v. LaVallee*, 389 U.S. 40, 88 S.Ct. 194, 19 L.Ed.2d 41 (1967); *Long v. District Court of Iowa*, 385 U.S. 192, 87 S.Ct. 362, 17 L.Ed.2d 290 (1966). As such, the Court will not address the first *Britt* factor in this case as Defendant’s need for the transcript is not disputed. Instead, the Court finds that this case turns on the second prong of the *Britt* test: whether there is an adequate alternative available to the Defendant. Implicit in this prong of the *Britt* test is the requirement that the alternative be constitutionally adequate. “All that is constitutionally required is an adequate alternative. And a bare minimum appears to fulfill this requirement.” *Fisher v. Hargett*, 997 F.2d 1095, 1099 (5th Cir.1993).

[p. 3] Most courts analyzing the second prong of *Britt*, including the *Britt* court itself, have focused upon the proposed method of providing some substitute for a transcript. See *Britt*, 404 U.S. at 229,

n.4, 92 S.Ct. at 434, n.4 (trial notes); Mayer v. Chicago, 404 U.S. 189, 194-195, 92 S.Ct. 410, 415, 30 L.Ed.2d 372 (1971) (“A statement of facts agreed to by both sides, a full narrative statement based perhaps on the trial judge’s minutes taken during trial or on the court reporter’s untranscribed notes, or a bystander’s bill of exceptions might all be adequate substitutes, equally as good as a transcript”); United States v. Mullen, 550 F.2d 373, 374 (6th Cir.1977)(counsel’s trial notes and recollection and reporter’s notes, if necessary).

In the case at bar, the Court finds that a constitutionally adequate alternative to a written transcript is available here, to wit, an audio cassette recording of the preliminary hearing. Moreover, the Court finds that providing Defendant with a true and correct audio recording of the preliminary hearing not only satisfies Defendant’s rights to equal protection, but also comports with the position of the United States Supreme Court and the Ninth Circuit on this issue. See Britt, supra; United States v. Devlin, 13 F.3d 1361, 1363 (9th Cir.1994)(timely requests by indigent defendants for free transcripts of significant prior proceedings should be routinely granted *unless* substantially equivalent alternative device available).

V. CONCLUSION

For all the reasons stated above, Defendant’s motion for free transcript of the preliminary hearing is **GRANTED**. The Court shall comply with Defendant’s request by providing an audio recording of the preliminary hearing on cassette tape, but not a written transcript.

So ORDERED this 17 day of March, 1999.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge