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SUPERIOR COURT
OF GUAM



IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

JOHN MIKE MULIAGA,
DOB: 02/13/1999

Defendant.

CRIMINAL CASE NO. CF0501-21
GPD Report No. 21-24704

**DECISION & ORDER
RE. DEFENDANT'S MOTION IN
LIMINE FOR DEFENSE EXPERT
TESTIMONY BY REMOTE AUDIO-
VIDEO MEANS; PEOPLE'S CROSS-
MOTION IN LIMINE TO EXCLUDE
TESTIMONY**

This matter came before the Honorable Alberto E. Tolentino on December 29, 2025, for an evidentiary hearing. Defendant John Mike Muliaga ("Defendant") was present with counsel Alternate Public Defenders Brycen Breazeale and Ana Maria Gayle. Chief Prosecutor Curtis Vandeveld was present for the People of Guam ("People"). At the hearing, the court addressed the Defendant's Motion in *Limine* and the People's Cross-Motion in *Limine* to Exclude Testimony. Following the hearing, the court took this motion under advisement pursuant to Supreme Court of Guam Administrative Rule 06-001, CVR 7.1(e)(6)(A) and CR1.1 of the Local Rules of the Superior Court of Guam. Having duly considered the parties' briefings, oral arguments, and the applicable law, the court now issues this Decision and Order **GRANTING** the Defendant's Motion in *Limine* and **DENYING** the People's Cross-Motion in *Limine* to Exclude Testimony.

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BACKGROUND

Based on events that occurred on or about October 9, 2021, the Defendant was charged with the following offenses: (1) MURDER (As a 1st Degree Felony); (2) AGGAVATED ASSAULT (As a 2nd Degree Felony); and (3) Two Counts of ASSAULT (As a Misdemeanor). *See* Indictment (Oct. 21, 2021). Although the People subsequently filed a Superseding Indictment in this case, the Defendant was charged with the same three offenses within the original Indictment. *See* Superseding Indictment (Jan. 21, 2022).¹

In preparation for trial, the Defendant filed under seal an *Ex Parte* Motion for Funding for Defense Expert. *See* generally Def.'s *Ex Parte* Mot. (Under Seal) (July 26, 2022). Ultimately, this court granted the Defendant's *Ex Parte* Motion for reasons set forth in its Decision and Order. *See* Decision and Order (Under Seal) (Oct. 6, 2022).

Due to delays in securing expert witnesses, the court reissued another scheduling order, setting trial for December 9, 2025. *See* Amended Criminal Trial Scheduling Order (Sep. 2, 2025). With a new trial date set, the Defendant filed a Motion in *Limine* for Defense Expert Doctor Joseph Cohen to [Testify] by Remote Audio-Video Means ("Motion in *Limine*"). *See* Def.'s Mot. *Limine* Expert (Dec. 5, 2025). The People filed its Opposition to the Motion in *Limine* on December 9, 2025. *See* Ppl.'s Mot. Continue (Dec. 9, 2025).²

On the day of trial, the court addressed the Motion in *Limine*. Before it could make a formal decision on the Motion in *Limine*, the court gave the People the opportunity to supplement its Opposition and the Defendant a reply to any supplemental briefing. *See* Jury Trial (Day 1) Mins. at 1:15:03PM (Dec. 9, 2025). On December 12, 2025, the Defendant filed a

¹ Although this document is originally captioned as a "Superceding Indictment," dictionaries such as Black's consider this spelling as error and use the spelling "superseding indictment." *See* Superseding Indictment, Black's Law Dictionary (10th ed. 2014). Therefore, the spelling as found in the dictionaries will be used throughout this Decision and Order.

² Both parties acknowledge that the captioning of the People's Opposition as a "Motion to Continue Trial" is erroneous, and will subsequently be referred to as the "People's Opposition" in this Decision and Order.

1 Supplement Brief to the Motion in *Limine*. See Def.'s Supp. Brief (Dec. 12, 2025). Within this
2 Supplemental Brief, the Defendant attached the Declaration of Dr. Joseph Cohen ("Dr. Cohen"),
3 listing his qualifications to provide remote testimony as a Forensic Pathologist. *Id.* The People
4 subsequently filed its Further Opposition to the Motion in *Limine* ("Further Opposition") and
5 also attached a Cross-Motion in *Limine* to Exclude Testimony ("Cross-Motion"). See Ppl.'s
6 Further Opp'n & Cross-Mot. *Limine* (Dec. 15, 2025). Upon review of the supplemental
7 pleadings, the court scheduled an evidentiary hearing on the Motion in *Limine* and Cross-
8 Motion for December 29, 2025.

10 At the evidentiary hearing, the parties questioned Dr. Cohen regarding his ability to
11 testify remotely on Zoom, the findings in his autopsy report, and his expertise as a forensic
12 pathologist. See generally Evidentiary Hr'g Mins. at 9:51:01AM – 12:10:20PM (Dec. 29,
13 2025). Upon hearing the parties' oral arguments on the issue of Dr. Cohen's testimony, the
14 court took the matter under advisement. *Id.*

16 DISCUSSION

17 **A. Defendant Muliaga's Motion in *Limine* to permit Dr. Cohen's remote testimony** 18 **complies with Local Superior Court of Guam Rule CR1.1(b).**

19 As an initial argument, the People state that this Motion in *Limine* was improperly
20 brought, because it was not supported by a memorandum containing citations of authority as
21 required under the Local Rules of the Superior Court of Guam. See CR 1.1(b)(1); see also Ppl.'s
22 Mot. Continue (Dec. 9, 2025). Having reviewed the authority cited within the Motion in *Limine*,
23 the court finds that each case relates to the Defendant's right to present a defense; despite the
24 cases' factual background not being identical to the instant case.

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1 **B. Dr. Cohen’s remote testimony by audio-video means is appropriate under the *Craig***
2 **analysis.**

3 The Defendant moves for Dr. Joseph Cohen’s testimony at trial by Zoom or another
4 court-approved audio-video transmittal. *See* Def.’s Mot. *Limine* (Dec. 5, 2025). In opposition,
5 the People argue two points.

6 First, the People cite 6 GCA § 2502, which states that “[a] witness can be heard only in
7 the presence and subject to the examination of all the parties, if they choose to attend and
8 examine.” 6 GCA § 2502. The court declines to limit its view of 6 GCA § 2502 only to physical
9 presence in a courtroom when the Supreme Court of the United States, the Guam Supreme
10 Court, and fellow trial courts within the Superior Court of Guam have recognized – on a case-
11 by-case basis – that virtual presence through live, but remote, two-way testimony can subject a
12 witness to examination of all parties.³ With this in mind, the People’s second argument states
13 that the two-part test regarding remote testimony under *Maryland v. Craig* does not apply,
14 because the issue is not the denial of the Defendant’s right to confront a witness against him.
15 *See* Ppl.’s Opp’n at 4–5 (Dec. 12, 2025).

16 In *Maryland v. Craig*, the Supreme Court of the United States recognized through
17 precedents that face-to-face confrontation at trial is a preference, which “must give way to
18 considerations of public policy and the necessities of the case.” *Maryland v. Craig*, 497 U.S.
19 836, 849 (1990) (quoting *Mattox v. United States*, 156 U.S. 237, 15 S.Ct., at 339–40). Notably,
20 the Guam Supreme Court stated, “[w]e join the majority of state courts in finding *Craig* applies
21 to testimony from an adult witness via two-way video, with the caveat that the theoretical
22 possibility of a deposition does not render remote testimony unnecessary.” *People v. Camacho*,

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24 ³ *See People v. Morales*, 2022 Guam 1 (holding that the use of CCTV testimony did not violate Morales’s Sixth
25 Amendment Confrontation Clause Rights Because of Morales’s Waiver); *see also People v. Cruz*, CF0708-23-01
26 (Decision & Order) (Apr. 3, 2025)) (granting the People’s Motion to Allow the Testimony of Former Medical
27 Examiner Dr. Jeffrey Nine, M.D., via Audio-Video Telecommunication); *see also Maryland v. Craig*, 497 U.S.
28 836, 849 (1990).

2025 Guam ¶ 43. In recognizing *Craig* as the “[t]he seminal Supreme Court case on the use of a video medium in lieu of physical confrontation,” the Guam Supreme Court did not limit its applicability only to a prosecution witness’s remote testimony. *Id.* ¶ 21 (quoting *White v. state*, 116 A.3d 520, 542 (Md. Ct. Spec. App. 2015)). Therefore, this court finds it appropriate to determine the admission of Dr. Cohen’s remote testimony under *Craig*’s two-prong test.

“To satisfy *Craig*, the trial court must make a case-specific finding after an evidentiary hearing that: (1) denial of in-person, face-to-face confrontation is necessary to further an important public policy; and (2) the reliability of the videoconference testimony can and will be procedurally assured.” *Camacho*, 2025 Guam ¶ 44 (citing *Craig*, 497 U.S. at 850, 855; *State v. Hamed*, 21-167, p. 6 (La. App. 5b Cir. 8/18/21), 326 So. 3d 375, 381). As the movant against remote testimony, the People must make a case-specific showing that both prongs of *Craig* are met by a preponderance of evidence. *Id.*

(1) The court finds that denying Dr. Cohen’s in-person, face-to-face confrontation is not “necessary to further an important public policy.”

“Courts define an ‘important public policy’ narrowly for the purpose of finding an exception to the Confrontation Clause.” *Camacho*, 2025 Guam ¶ 47 (quoting *State v. Tate*, 969 N.W.2d 378, 386 (Minn. Ct. App. 2022)). What the Guam Supreme Court did not view as important public policies sufficient on their own to satisfy the first prong of *Craig* included “judicial economy, added expense, or inconvenience.” *Id.* (quoting *State v. Whitaker*, 2024 MT 255, ¶ 22, 418 Mont. 501, 558 P.3d 741 (citations omitted)).

The People indicate that “[n]o showing has been made that Dr. Cohen would not testify in person, that efforts to secure sufficient funding have occurred over the court of the 3+ years or take Dr. Cohen’s testimony by deposition or remotely were taken prior to trial.” See Ppl.’s Further Opp’n & Cross-Mot. *Limine* at 3. Although the People mainly argue that the *Craig* two-

1 prong test should not be applied in this case, the People do argue that all of these circumstances
2 inure to the court's analysis of this first *Craig* factor. *Id.* at 4.

3 In response, the Defendant argues that the first consideration in *Craig* regarding the
4 denial of in-person, face-to-face confrontation is not applicable here, because it is a defense
5 witness's remote testimony at issue. *See* Jury Trial (Day 1) Mins. at 1:23:14 – 23:18PM. The
6 Defendant argued that any court that restricts a defendant's ability to prepare a defense, to bring
7 in witnesses, or any favorable testimony that might weigh on a finding of guilt or innocence
8 would violate his Sixth Amendment rights to present a defense and due process rights
9 articulated in the Organic Act of Guam. *Id.* at 1:32:10 – 32:50PM.

11 The Defendant further argues that procuring Dr. Cohen's in-person testimony would be
12 such a financial burden and strain on him, if not impossible, and ultimately prejudice his
13 defense. *Id.* at 1:18:20 – 18:35PM. Back in 2022, the court previously granted funding for a
14 defense expert not to exceed One Thousand Five Hundred Dollars (\$1,500.00) in accordance
15 with the Local Rules of the Superior Court of Guam Miscellaneous Rule 1.1.4(c).⁴ Based on Dr.
16 Cohen's Declaration, that maximum amount of funding would be insufficient to cover less than
17 one day of Dr. Cohen's travel fees. *See* Def.'s Supp. Brief, Decl. (Dec. 12, 2025). Even if the
18 Defendant applied for additional funding to secure Dr. Cohen's in-person testimony, the
19 Defendant argued that potential approval could take even longer on this four-year old case
20 where he has been confined at the Department of Corrections since 2022. *See* Jury Trial (Day 1)
21 Mins. at 1:21:26 – 21:37PM.
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25 When viewing the added expense in procuring Dr. Cohen's in-person testimony, Dr.
26 Cohen's off-island residency, the Defendant's Sixth Amendment right to present a defense, the
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⁴ It is noteworthy that Local Rules of Court governing Indigent Defense were repealed in 2025.

1 passage of time, and the Defendant's confinement status, the court finds no important public
2 policy that necessitates the denial of Dr. Cohen's in-person, face-to-face confrontation.

3 **(2) The court finds that the reliability of Dr. Cohen's remote testimony can and will**
4 **be procedurally assured.**

5 "In addition to preserving the oath, cross-examination, and observation of the witness's
6 demeanor, trial courts must ... ensure that witnesses called to testify remotely are alone and not
7 subject to being coached...make certain that witnesses are not improperly 'using notes,
8 documents or electronics while testifying'... to 'adequately ensure[] that the testimony is both
9 reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that
10 accorded live, in-person testimony." *In re R.D.*, 2021 IL App (1st) 201411, ¶ 15 (quoting *Craig*,
11 497 U.S. at 851).
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13 In regards to the People's concerns about Dr. Cohen's inability to testify remotely due to
14 counsel's past experience with him on a previous case and his age, the court is satisfied in Dr.
15 Cohen's ability to testify remotely based on his Declaration made under penalty of perjury, and
16 the court's personal knowledge with Dr. Cohen's testimony on December 29, 2025, for this
17 case's evidentiary hearing. Additionally, the court will ensure that the above procedural steps
18 are taken to ensure the reliability of Dr. Cohen's testimony before presented to the jury.
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20 Therefore, the court finds that the reliability of Dr. Cohen's remote testimony can and
21 will be procedurally assured.
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23 **C. The bases for Dr. Cohen's expert opinion are admissible under GRE 702 and 703.**

24 The People move for the exclusion of Dr. Cohen's testimony, arguing that he based his
25 testimony on the reliability of witness statements; namely, Cody Camacho. *See* Ppl.'s Further
26 Opp'n & Cross-Mot. *Limine* at 10. The People further argue that Dr. Cohen's report bolsters
27 testimony, which interferes with jury's duty as the fact finder of this case. *Id.*
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1 Guam Rule of Evidence (“GRE”) 702 guides Guam’s courts on the admissibility of
2 expert opinion testimony stating the following:

3 If scientific, technical, or other specialized knowledge will assist the trier of fact
4 to understand the evidence or to determine a fact in issue, a witness qualified as
5 an expert by knowledge, skill, experience, training, or education, may testify
6 thereto in the form of an opinion or otherwise, if (1) the testimony is based upon
7 sufficient facts or data, (2) the testimony is the product of reliable principles and
8 methods, and (3) the witness has applied the principles and methods reliably to
9 the facts of the case.

10 Guam R. Evid. 702.⁵ For opinion testimony, “[t]he standard applied to lay persons differs from
11 that applied to experts providing opinion testimony to finders of fact. *See, e.g., State v. Brown,*
12 836 S.W.2d 530, 549 (Tenn. 1992) (“The distinction between an expert and a non-expert
13 witness is that a non-expert witness’s testimony results from a process of reasoning familiar in
14 every day life and an expert’s testimony results from a process of reasoning which can be
15 mastered only by specialists in the field.”); *People v. Roten*, 2012 Guam 3 ¶ 26.

16 In the evidentiary hearing, Dr. Cohen indicated that forensic pathologists tend to use
17 witness statements, physical evidence, or video recordings when conducting their reports. *See*
18 Evidentiary Hr’g Mins. at 9:51:53 – 10:32:20AM. Likewise, Dr. Ishikawa previously testified
19 as to reviewing similar kinds of evidence when conducting an autopsy report. *See* Jury Trial
20 (Day 2) Mins. at 11:11:29 – 12:15:20PM (Dec. 16, 2025). Seeing that witness statements are the
21 type of facts or data of a particular case that forensic pathologists reasonably rely upon in
22 conducting their autopsy reports, the court finds no issue with this. However, the People
23 subsequently argued that submitting Dr. Cohen’s report to the jury would violate GRE 703
24 based on his statements relating to the reliability and persuasiveness of a witness, namely Cody
25 Camacho. *See* Evidentiary Hr’g Mins. at 11:35:35 – 41:10AM.

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28 ⁵ The parties stipulated to the admission of Dr. Joseph Cohen as an expert in Forensic Pathology. *See* Evidentiary
Hr’g Mins. at 9:51:53 – 10:32:20AM (Dec. 29, 2025).

Under GRE 703:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

Guam R. Evid. 703. "Courts have held that testimony of one witness which 'bolsters' the credibility of another witness or witnesses, even if it does not contain explicit discussion of credibility, is inappropriate." *Roten*, 2012 Guam 3 ¶ 31. Although *Roten* found it improper when the expert witness implicitly bolstered the victim's credibility, the Guam Supreme Court found the witness's single statement was "not so overwhelmingly important as to outweigh the strength of the People's case." *Id.* ¶¶ 45, 49.

In this case, the Defendant indicated that the word "reliable" within Dr. Cohen's report was meant to show that he used Camacho's statements as one of the bases for determining the cause of death, because he had the most consistent statement in this case. *See* Evidentiary Hr'g Mins. at 11:48:07– 51:31AM. In light of the court's jury instructions that outline the jury's duty regarding witness credibility, the People's case-in-chief presented thus far, and the ability for the Defendant to present a defense through its only expert witness, the court finds that the probative value of Dr. Cohen's report substantially outweighs its prejudicial effect.

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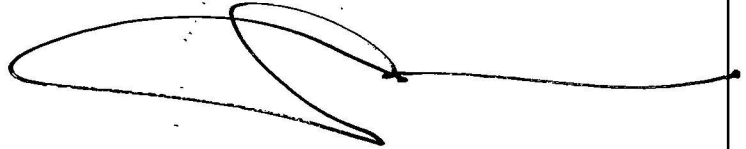
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CONCLUSION

For reasons set forth above, the court hereby **GRANTS** Defendant John Mike Muliaga's Motion in *Limine* for Defense Expert Testimony by Audio-Video Means and **DENIES** the People's Cross-Motion in *Limine* to Exclude Testimony.

SO ORDERED this JAN 14 2026, *nunc pro tunc*, December 29, 2025.



HONORABLE ALBERTO E. TOLENTINO
Judge, Superior Court of Guam

SERVICE VIA EMAIL

I acknowledge that an electronic copy of the original was e-mailed to:

OAG & APD

Date: 1/14/26 Time: 3:49

Reinita M. Lindlau
Deputy Clerk, Superior Court of Guam