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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

MINORICHY NISAR T. RUGANTE,
Defendant-Appellant.

Supreme Court Case No.: CRA17-009
Superior Court Case No.: CF0023-14

OPINION

Cite as: 2019 Guam 23

Appeal from the Superior Court of Guam
Argued and submitted on February 15, 2018 and May 13, 2019
Hagåtña, Guam

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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and ROBERT J. TORRES, Associate Justice.

MARAMAN, C.J.:

[1] Defendant-Appellant Minorichy Rugante appeals from a final judgment convicting him of two counts of First Degree Criminal Sexual Conduct (as a 1st Degree Felony) and one count of Kidnapping (as a 2nd Degree Felony). For the reasons below, we reverse and remand for a new trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] We summarize the facts and proceedings that are relevant to our disposition. In 2014, along with two other co-defendants, Rugante was charged with sexually assaulting S.R. After a jury trial, Rugante was found guilty of two counts of First Degree Criminal Sexual Conduct under 9 GCA § 25.15(a)(6) and 9 GCA § 25.15(a)(4)(B), respectively. He was also found guilty of one count of Kidnapping under 9 GCA § 22.20(a)(2) and (b).

[3] Approximately nineteen months after trial, Rugante moved for a new trial on the basis that a court-ordered psychological evaluation of S.R. conducted in 2016 (“2016 Evaluation”) constituted undisclosed exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963). The court denied the motion. Nothing in the record indicates that the trial judge reviewed the material before denying the motion. *See* Record on Appeal (“RA”), tab 296 (Dec. & Order, Jan. 3, 2017); *see also* RA, tab 286 (Min. Entry, Oct. 6, 2016). The trial court sentenced Rugante and entered a final judgment. Rugante timely appealed.

[4] During appellate proceedings, Rugante submitted a sealed copy of the 2016 Evaluation. The 2016 Evaluation referred to two additional court-ordered psychological examinations

conducted on S.R. (“2008 & 2010 Evaluations”). After briefing and oral arguments, we stayed the appeal and issued a limited remand order for further sealed proceedings. The Superior Court issued a Decision and Order in response to our limited remand. Upon motion, we lifted the stay of appellate proceedings, received further briefing on Rugante’s *Brady* claim, and heard additional arguments.

II. JURISDICTION

[5] This court has jurisdiction over appeals from final judgments of conviction rendered in the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-73 (2019)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[6] We review alleged *Brady* violations *de novo*. *People v. Mateo*, 2017 Guam 22 ¶ 12.

IV. ANALYSIS

[7] In *Brady*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 87; *see also People v. Orallo*, 2004 Guam 5 ¶ 12 (explaining that 8 GCA § 70.10 codifies and expands principles set forth in *Brady*). Impeachment evidence relating to government witnesses constitutes potential *Brady* material. *People v. Fisher*, 2001 Guam 2 ¶ 12; *see also Giglio v. United States*, 405 U.S. 150, 151-55 (1972) (holding evidence relating to credibility of government witnesses falls within *Brady*). To establish a *Brady* violation, a defendant must establish each of the following: (1) the alleged *Brady* evidence is favorable to the defendant because it is exculpatory or impeaching; (2) the government

suppressed the evidence, either willfully or inadvertently; and (3) the suppression prejudiced the defendant by depriving him or her of a fair trial. *Mateo*, 2017 Guam 22 ¶ 13 (quoting *People v. Campos*, 2015 Guam 11 ¶ 29).

[8] On appeal, the People do not argue that they did not suppress the 2008 & 2010 Evaluations, thereby waiving the argument. *See* Sealed Appellee’s Br. (Dec. 17, 2018); Appellee’s Br. at 31-41 (Oct. 6, 2017). We thus find the suppression prong of *Brady* satisfied. *See People v. Tedtaotao*, 2017 Guam 12 ¶¶ 7-8 (explaining “well-settled” rule that issues not raised on appeal are generally waived). Instead, the People dispute the other two prongs of *Brady*: (1) whether the evidence was impeaching and (2) whether its non-disclosure was prejudicial. *See* Sealed Appellee’s Br. at 6-12. We turn to these prongs as they relate to the 2008 & 2010 Evaluations.¹

A. The 2008 & 2010 Evaluations Constituted Impeachment Evidence

[9] The United States Supreme Court has held that “[i]mpeachment evidence, . . . as well as exculpatory evidence, falls within the *Brady* rule. Such evidence is ‘evidence favorable to an accused,’ so that, if disclosed and used effectively, it may make the difference between conviction and acquittal.” *United States v. Bagley*, 473 U.S. 667, 676 (1985) (internal citations omitted); *see also Kyles v. Whitley*, 514 U.S. 419, 450 (1995).

[10] An instructive case addressed by the Second Circuit is *Fuentes v. Griffin*, 829 F.3d 233 (2d Cir. 2016). In *Fuentes*, defendant was charged with first-degree rape and first-degree sodomy. *See id.* at 236. At trial, while in the middle of closing argument, defense counsel was

¹ The 2016 Evaluation cannot, within reason, be characterized as *Brady* material because it was conducted over a year after Rugante’s trial. We see no way that the prosecution could be said to have “suppressed” evidence that did not exist before or at the time of trial. For this reason, we attend to the more important question of whether the 2008 & 2010 Evaluations constituted *Brady* material.

leafing through medical records introduced by the prosecution when he discovered a document that had never been produced. *Id.* at 240. The document disclosed that the victim had a psychiatric consultation when she was hospitalized for the rape. *Id.* at 240-41. The psychiatric examination disclosed the victim had reported depression and substance abuse. *Id.* at 241. The defendant moved for a mistrial because the failure to disclose this information constituted *Brady* material, and it would have supported the defendant's version of events, which argued the victim acted erratically. *Id.* The trial court denied the motion. *Id.* The Second Circuit reversed, holding that "[b]ased on clearly established fundamental rights and principles, we think it indisputable that if the prosecution has a witness's psychiatric records that are favorable to the accused because they provide material for impeachment, those records fall within *Brady* principles, and that the Supreme Court has so recognized." *Id.* at 247. The court further elaborated:

We think it beyond doubt that the Supreme Court recognizes the application of *Brady* principles to a witness's psychiatric records, possessed by the prosecution, that may be used to impeach his credibility, particularly where, as here, the witness's testimony is the only evidence that there was in fact a crime and the State's other evidence is not strong enough to sustain confidence in the verdict.

Id. at 248.

[11] Other circuits have held similarly when presented with analogous *Brady* material in the form of mental health records of a crucial witness. *See, e.g., Browning v. Trammell*, 717 F.3d 1092, 1105 (10th Cir. 2013) ("On the impeaching side, [the witness's] psychiatric evaluations evinced, among other things, memory deficits, magical thinking, blurring of reality and fantasy, and projection of blame onto others. This is classic impeachment evidence."); *Gonzalez v. Wong*, 667 F.3d 965, 981 (9th Cir. 2011) ("There is a colorable argument that the psychological

reports could have been used to impeach [the witness].”); *Wilson v. Beard*, 589 F.3d 651, 666 (3d Cir. 2009) (finding impeachment evidence under *Brady* where “[t]he mental health evaluation also indicates that [the witness] had a history of ‘headaches and blackouts’ and an inability ‘to form adequate perceptions,’ that he is ‘easily confused,’ has ‘dissociative tendencies,’ ‘blackouts,’ ‘motor visual problems,’ ‘weak’ ‘long and short term memory,’ ‘poor judgment,’ and ‘distorted perceptions of reality’”); cf. *People v. Tedtaotao*, 2015 Guam 31 ¶ 54 (holding that where key witness has retracted testimony, evidence “is clearly *Brady* material because it impeaches a government witness”).

[12] Similarly to these cases, S.R.’s 2008 Evaluation expressed concerns with her ability to recall and sequence events, besides her experience of hallucinations.² Appellant’s Sealed Suppl. Excerpts of Record (“SER”), vol. 2 at 140-61 (Dec. 22, 2008 Letter from Dr. James Kiffer to Judge Michael Bordallo and Aug. 23, 2010 Letter from Dr. James Kiffer to Judge Steve Unpingco (Dec. 13, 2018)). The 2008 & 2010 Evaluations also found she abused alcohol and that her cognitive capacities had declined over time. *See id.* at 148-51, 159, 164-66; *see also* Tr. at 140-61 (Jury Trial, Feb. 16, 2015).

[13] Further, S.R.’s direct testimony and her statements to Guam Police Department (“GPD”) officers and Healing Hearts Crisis Center examiners lent strong support to the People’s case at trial—she was the most important direct eyewitness because, besides her recollections, the testimony of other individuals hinged on statements she made after the alleged crime.

Responding GPD Officer Jerome Santo Tomas testified as to what S.R. told him at the scene of

² Guam Rule of Evidence 601 states, “Every person is competent to be a witness except as otherwise provided in these rules or by the laws of Guam.” Whether S.R. was *competent* to be a witness is distinct from whether S.R. was a *credible* witness, as correctly noted by the People. *See* Appellee’s Br. at 38-39 (Oct. 6, 2017). What matters for our analysis is whether the 2008 & 2010 Evaluations could have been used to attack S.R.’s credibility, not her competence.

the rape and her identification of the perpetrators. Valerie Cepeda and Amparo Rios of Healing Hearts also testified at length as to S.R.'s mental health and her statements about what happened. GPD Officer Maile Steffy-Lizama testified as to S.R.'s statements in an interview conducted after the rape, which included her description of the suspects. S.R. herself testified at length, twice, through an interpreter. S.R.'s statements regarding how many males were at the scene and her identification of the suspects were also not entirely consistent with other evidence presented, as conceded by the People. *See* Appellee's Br. at 41 (Oct. 6, 2017) (listing examples of how S.R.'s testimony was inconsistent).

[14] Consequently, we hold that the 2008 & 2010 Evaluations constitute impeachment evidence within *Brady* because they could have potentially been used to undermine S.R.'s ability to perceive and recall these important events.³ S.R.'s testimony and her statements to GPD officers and Healing Hearts examiners were especially crucial to the prosecution's case given the lack of conclusive physical evidence. *Cf. Giglio*, 405 U.S. at 154 (holding *Brady* was violated for failure to disclose impeachment evidence of government witness when prosecution's case "depended almost entirely on" said witness's testimony, without which "there could have been no indictment and no evidence to carry the case to the jury"). For instance, FBI forensic

³ The Superior Court concluded that the 2008 & 2010 Evaluations would not have been admissible under Guam Rule of Evidence 609, which provides the conditions for admitting impeachment evidence of prior criminal history. *See* RA, tab 384 at 8-10 (Dec. & Order, Oct. 31, 2018); Guam R. Evid. 609. Similarly, the Superior Court concluded that the 2008 & 2010 Evaluations would not have been admissible under Guam Rule of Evidence 412 (the "rape shield statute"). *See* RA, tab 384 at 10-15 (Dec. & Order, Oct. 31, 2018); Guam R. Evid. 412. Even assuming these conclusions may be correct, they are not dispositive because they fail to address the altogether distinct, and more important, question of whether the 2008 & 2010 Evaluations were admissible insofar as they impeached S.R.'s credibility on the basis of "memory deficits, magical thinking, [and] blurring of reality and fantasy," not on the basis of alleged prior criminal or sexual history, which are entirely separate grounds for impeachment. *Browning*, 717 F.3d at 1105. In any event, the courts are split on the question of whether inadmissible evidence may constitute *Brady* material. *See, e.g., Ellsworth v. Warden*, 333 F.3d 1, 5 (1st Cir. 2003) (en banc) ("The circuits are split on whether a petitioner can have a viable *Brady* claim if the withheld evidence itself is inadmissible. Most circuits addressing the issue have said yes if the withheld evidence would have led directly to material admissible evidence."). We have not addressed that question, and we need not address it here.

examiner Shane Hoffman testified that semen from S.R.'s vaginal area excluded Rugante as a contributor, and that other DNA testing of swabs from S.R.'s breasts and certain clothing were inconclusive as to whether Rugante was a contributor. The only item that identified Rugante as a major DNA contributor was a stain from a red t-shirt on the ground near the scene. Given the relative importance of S.R.'s testimony and her statements to GPD officers and others at trial, we find that the 2008 & 2010 Evaluations constituted impeachment evidence.

B. The Failure to Disclose the 2008 & 2010 Evaluations Deprived Rugante of a Fair Trial

[15] Evidence is material under *Brady* “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is probability sufficient to undermine confidence in the outcome.” *Fisher*, 2001 Guam 2 ¶ 13 (quoting *United States v. Presser*, 844 F.2d 1275, 1281 (6th Cir. 1988)). Importantly, materiality “is not a sufficiency of [the] evidence test”—a “defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough [evidence] left to convict.” *Kyles*, 514 U.S. at 434-35. Rather, the suppressed evidence is material if “the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.* at 435.

[16] The People contend that the 2008 & 2010 Evaluations were not prejudicial to Rugante because the issue of S.R.'s mental health arose at trial. *See, e.g.*, Sealed Appellee's Br. at 8-9. The People also argue that the psychological examinations would have been cumulative. *Id.* We are unpersuaded.

[17] In the context of mental health records, “[c]ross-examination is especially ‘important where the evidence consists of the testimony of individuals whose *memory might be faulty . . .*’” *Fuentes*, 829 F.3d at 248 (original emphasis omitted) (emphasis added) (quoting *Greene v. McElroy*, 360 U.S. 474, 496 (1959)); *cf. Commonwealth v. Barroso*, 122 S.W.3d 554, 562-63 (Ky. 2003) (explaining importance of mental health conditions that impact witness’s ability to perceive reality or recall information, as distinguished from conditions such as depression or anxiety which may not necessarily affect memory or perception). The Tenth Circuit has similarly held that where impeachment evidence in the form of mental health records showed “a tendency to blur reality and fantasy,” it was material under *Brady* even when other corroborating evidence was present. *Browning*, 717 F.3d at 1107 (“[T]he existence of *some* corroborating evidence for [the witness’s] testimony does not necessarily vitiate the materiality of her mental health records.”); *see also Wilson*, 589 F.3d at 667 (concluding *Brady* was violated “[i]n light of the importance of the testimony of . . . three witnesses and the significant impeachment value of” the mental health history of two of those witnesses).

[18] S.R. testified to events that might throw her ability to perceive reality into doubt, such as her statement that “a spirit of my grandfather that uses me,” and that she had seizures or convulsions because of this spirit, which “sometimes feels like he wants to kill me when the spirit was with me.” Transcript (“Tr.”) at 175 (Feb. 16, 2015). Her inability to accurately recall events was brought forth at trial. *See* Tr. at 174 (Feb. 16, 2015); Tr. at 21-23 (Feb. 12, 2015) (S.R. responding “I don’t remember” to questions on cross-examination). Yet, although this testimony overlaps to *some* extent with findings in the 2008 & 2010 Evaluations, *see* Appellant’s Sealed SER, vol. 2 at 140-61 (Dec. 22, 2008 Letter from Dr. James Kiffer to Judge Michael

Bordallo and Aug. 23, 2010 Letter from Dr. James Kiffer to Judge Steve Unpingco), any such overlap is not co-extensive. For instance, the 2008 & 2010 Evaluations also diagnosed her alcohol abuse and came to certain conclusions not brought forth at trial. *See id.* at 140-161; *see also* Tr. at 90-186 (Feb. 16, 2015); Tr. at 5-35 (Feb. 12, 2015) (no mention of alcohol abuse).

[19] Additionally, the 2008 & 2010 Evaluations were written by a psychologist responding to a court order, which plausibly could have been used by defense counsel to argue that they were entitled to some weight. It is thus possible that defense counsel could have used S.R.'s mental health reports to bolster Rugante's defense in a more effective way than by mere cross-examination, especially because of the relative importance at trial of S.R.'s direct testimony and her statements to other witnesses after the incident. In concluding this, we are persuaded by analogous cases. *See Browning*, 717 F.3d at 1106-07; *Wilson*, 589 F.3d at 665; *East v. Johnson*, 123 F.3d 235, 239 (5th Cir. 1997) (“[W]hen ‘the withheld evidence would seriously undermine the testimony of a key witness on an essential issue or there is no strong corroboration, the withheld evidence has been found to be material.’” (quoting *Wilson v. Whitley*, 28 F.3d 433, 439 (5th Cir. 1994))); *Banks v. Reynolds*, 54 F.3d 1508, 1519 (10th Cir. 1995) (“[E]vidence in the hands of a competent defense attorney may be used ‘to uncover other leads and defense theories.’ Thus, we may draw reasonable inferences as to what those other lines of defense may have been.” (internal citation omitted)). We therefore find that the 2008 & 2010 Evaluations were material because they “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Kyles*, 514 U.S. at 435 (footnote omitted).

[20] For these reasons, we find that the 2008 & 2010 Evaluations constitute undisclosed *Brady* material, and in the interests of justice, Rugante must be granted a new trial. We need not reach the remainder of the arguments presented by Rugante.

V. CONCLUSION

[21] We **REVERSE** the judgment entered by the Superior Court and **REMAND** for a new trial and any other proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice