IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

FRANCIS CHARLIE MADEUS,
Defendant-Appellant.

Supreme Court Case No.: CRA17-007
Superior Court Case No.: CF0023-14

OPINION

Cite as: 2019 Guam 24

Appeal from the Superior Court of Guam
Argued and submitted on February 22, 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 Francis Charlie Madeus appeals from a final judgment convicting him of two counts of Third Degree Criminal Sexual Conduct (as a 2nd 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, Madeus was charged with sexually assaulting S.R. After a jury trial, Madeus was found guilty of two counts of Third Degree Criminal Sexual Conduct, as a lesser included offense. He was also found guilty of one count of Kidnapping.

[3] Approximately nineteen months after trial, Madeus's co-defendant, Minorichy Rugante, moved for a new trial on the basis that a court-ordered psychological evaluation of S.R. conducted in 2016 (the "2016 Evaluation") constituted undisclosed exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963). Madeus did not join this motion, although he moved for a new trial on a separate theory. The court denied the motion without reviewing the alleged *Brady* material. 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 Madeus and entered a final judgment. Madeus timely appealed.

[4] During appellate proceedings, Madeus submitted a sealed copy of the 2016 Evaluation and argued that it constituted undisclosed *Brady* material, requiring a new trial. 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 the *Brady* issue, 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. 18, 2018); Appellee's Br. at 31-41 (Dec. 27, 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

[1] The 2016 Evaluation cannot, within reason, be characterized as *Brady* material because it was conducted over a year after Madeus'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.

sodomy. *See id.* at 236. At trial, while in the middle of closing argument, defense counsel was 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 Second Circuit 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] Appellee's Sealed Suppl. Excerpts of Record ("SER") at 8-29 (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. 18, 2018)). The 2008 & 2010 Evaluations also found she abused alcohol and that her cognitive capacities had declined over time. *See id.* at 25-28; *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.

[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 41-42 (Dec. 27, 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.

Responding GPD Officer Jerome Santo Tomas testified as to what S.R. told him at the scene of 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 44 (listing examples of how S.R.'s testimony was inconsistent or contradictory). S.R.'s testimony on the role of Madeus was especially difficult to follow—on one occasion she testified that he beat her, but then later stated Madeus did not beat her.

[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

[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.

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 examiner Shane Hoffman testified that DNA from S.R.'s breasts and shorts either excluded Madeus as a contributor or were inconclusive; the only item that identified Madeus as a major DNA contributor was a black t-shirt confiscated by police 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 Madeus 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] In some contrast to their opposition to co-defendant Rugante's *Brady* claim, *see People v. Rugante*, 2019 Guam 23 ¶ 16, in Madeus's case the People contend that the 2008 & 2010 Evaluations would not have been used to impeach because S.R.'s testimony at trial was favorable

to Madeus. *See, e.g.*, Sealed Appellee's Br. at 5-6 (Dec. 18, 2018). Madeus counters that the Superior Court's denial of his *Brady* motion was based on "an incorrect assumption" that he would have used the evidence solely for impeachment purposes. *See* Appellant's Sealed Reply Br. at 6 (Jan. 23, 2019). While the 2008 & 2010 Evaluations may have been used to "impeach the victim," he asserts his important constitutional right to prepare and present a complete defense was vitiated by the nondisclosure of the 2008 & 2010 Evaluations. *See id.* at 6-7. On the facts before us, we agree with Madeus.

[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, *see* Tr. at 177-75 (Feb. 16, 2015), and although this testimony overlaps to *some* extent with findings in the 2008 & 2010 Evaluations, *see* Appellee's Sealed SER at 8-29 (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.*; *see also* Tr. at 90-186 (Feb. 16, 2015); Tr. at 5-35 (Feb. 12, 2015) (no mention of alcohol abuse).

[19] Second, we realize that Madeus's arguments at trial were different from those presented by his co-defendant Rugante. For instance, Madeus's theory at trial was that "he was in the area," but "he was not the person that victimized" SR and did not rape her. Tr. at 9 (Jury Trial, Feb. 11, 2015) (counsel's opening statement). Essentially, he argued that it was a case of mistaken identity and that due to translation issues from Chuukese to English, the police misunderstood S.R.'s statements after the incident. *See id.* at 11-12.[4] Madeus's counsel also argued in closing that S.R. did not have memory problems. Tr. at 69 (Jury Trial, Feb. 20, 2015).

[20] Notwithstanding these differences, because of the important content in the 2008 & 2010 Evaluations, we are not convinced that Madeus was not prejudiced by their nondisclosure. It is reasonable to infer that had the 2008 & 2010 Evaluations been available to Madeus, his trial strategy may have been different. Reviewing materiality under *Brady* does not include speculation, but we can acknowledge "that evidence in the hands of a competent defense attorney may be used 'to uncover other leads and defense theories,' [and] we may draw

[4] S.R. also submitted a post-trial affidavit stating that Madeus did not assault her and asking the court to set aside the verdict with respect to Madeus. *See* RA, tab 233 (Aff. of Victim, Mar. 3, 2015).

reasonable inferences as to what those other lines of defense may have been." *Banks v. Reynolds*, 54 F.3d 1508, 1519 (10th Cir. 1995) (citation omitted). This comports with common sense. It is not at all unreasonable to infer that Madeus's access to the 2008 & 2010 Evaluations prior to trial may have had a significant impact on his general theory of the case—in light of their content and the fact that they pertained to the prosecution's most important witness. Moreover, we can reasonably infer that defense counsel could have used the 2008 & 2010 Evaluations to argue they were entitled to a certain amount of weight because they were written by a psychologist responding to court order. Indeed, "[i]n evaluating the materiality of withheld evidence, we do not consider each piece of withheld evidence in isolation. Rather, we review the cumulative impact of the withheld evidence; its utility to the defense as well as its potentially damaging impact on the prosecution's case." *Id.* at 1518; *see also Browning*, 717 F.3d at 1106-07; *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))).

[21] Because of the evidentiary importance of S.R.'s testimony and her statements after the alleged crime, we find that the suppression of the psychological reports has undermined our confidence in the outcome. *See Banks*, 54 F.3d at 1522; *see also Kyles*, 514 U.S. at 435 ("[T]he favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."); *United States v. Gemma*, 818 F.3d 23, 34 (1st Cir. 2016) ("[C]ourts have 'long interpreted [due process] to require that criminal defendants be afforded a meaningful opportunity to present a complete defense.'"). For these reasons, we find that the

2008 & 2010 Evaluations constitute undisclosed *Brady* material, and in the interests of justice, Madeus must be granted a new trial. We need not reach the remainder of the arguments presented by Madeus.

V. CONCLUSION

[22] 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