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SUPERIOR COURT
OF GUAM *an*

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff,

v.

GILBERTO FLORENDO
KUSTERBECK,

Defendant.

CRIMINAL CASE NO. CF0142-20

DECISION AND ORDER RE AMENDED
MOTION FOR NEW TRIAL

This matter came before the Honorable Dana A. Gutierrez on March 19, 2026, for a continued hearing on Defendant Gilberto Florendo Kusterbeck's Amended Motion for New Trial ("Amended Motion"). At the hearing, Attorney Peter C. Perez appeared on behalf of Kusterbeck, and Assistant Attorney General Christine S. Tenorio appeared on behalf of the People of Guam ("People"). After the hearing, the Court ordered the parties to file further briefings, and after receiving these briefings, the Court took the matter under advisement. Now, upon consideration of the pleadings, the further briefings, the parties' arguments, and the applicable law, the Court hereby **DENIES** the Amended Motion.

BACKGROUND

In 2022, Kusterbeck was convicted of crimes against a minor ("victim") in the above-captioned case. *See* Judgment (Jan. 5, 2023). Kusterbeck appealed his convictions, creating Supreme Court Case No. CRA23-002. The Supreme Court of Guam affirmed Kusterbeck's convictions. *See generally People v. Kusterbeck*, 2024 Guam 3. On April 3, 2025, the Supreme

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Court issued its Mandate in Case No. CRA23-002, thus returning jurisdiction over this case to the Superior Court. *See* Am. Mot. New Trial, Ex. B (Mandate).

On June 6, 2025, Kusterbeck filed a Motion for New Trial, claiming the victim had recanted her trial testimony and that this recantation constituted newly discovered evidence. *See generally* Mot. New Trial (June 6, 2025). As proof of the alleged recantation, the Motion appended a handwritten letter from the victim which reads, in its entirety:

I, [redacted], no longer want to continue the case against Gilbert [sic] Kusterbeck. I want to drop my testimony against him because I'm tired of it and I want it to be over with and dropped. I no longer want to proceed with this case.

Mot. New Trial, Ex. A (Letter, Sept. 21, 2023) ("Victim's Letter"). The People responded that the Victim's Letter was neither properly authenticated nor a recantation of trial testimony, and that even if the Court found otherwise, the Victim's Letter was insufficient evidence to warrant granting a new trial. *See generally*, Opp. Mot. New Trial (June 20, 2026).

On September 19, 2025, Kusterbeck filed his Amended Motion, which provides the Victim's Letter and also a Declaration recently executed by the victim ("Victim's Declaration"). The victim declares that she had "prepared a handwritten letter stating that I wanted this case dropped" and that "[t]he contents of the letter are true and correct." Am. Mot. New Trial, Ex. D (Decl. [Victim], Aug. 5, 2025). The victim further declares, *inter alia*, that "[t]he allegations made against Mr. Kusterbeck as charged in the Indictment are not true," and "[t]he testimony I gave against Mr. Kusterbeck during the trial in CF0142-20 was not true." *Id.*

In response, the People filed a Supplemental Brief and a related Declaration of Counsel. The People argue the Victim's Declaration is "on its face . . . suspicious" because the Declaration is "typewritten and uses terms that a [minor] would not otherwise use." Supp. Br. at 6 (Oct. 7, 2025). The People assert that the victim's "mother and family members also refuse to let Office of

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the Attorney General of Guam personnel speak with [the victim] regarding the affidavit.” *Id.*; *see* Decl. Christine S. Tenorio at 1 (Oct. 7, 2025). The People explain they “believe that [the victim’s] mother influenced or pressured [the victim] to sign off [on] the prepared statement,” and allude to potential supporting evidence for this theory arising from Kusterbeck’s “jailhouse calls” with the victim’s mother. Supp. Br. at 3, 8–9; *see also* Brief Re Admissibility of Paytel Recordings (Jan. 6, 2026). On November 12, 2025, Kusterbeck filed a Reply Brief, arguing the Victim’s Declaration should be deemed trustworthy evidence. *See generally* Reply (Nov. 12, 2025).

The Court held hearings on the Amended Motion in November 2025, December 2025, and March 2026. At the March 2026 hearing, Kusterbeck informed the Court that he intended to make his case solely based on documentary evidence. Kusterbeck indicated he would introduce four pieces of evidence in support of his Amended Motion: (1) the Victim’s Letter; (2) the Victim’s Declaration; (3) representations made in open court by the Victim’s counsel, Attorney Joseph C. Razzano, in November 2025; and (4) the Declaration of Joseph C. Razzano (Mar. 9, 2026) (collectively, “New Evidence”). Kusterbeck also clarified that he did not plan to call the victim to testify, as she did not want to do so. *See* Min. Entry (Mot. Hr’g, Mar. 19, 2026); *see also* Decl. Joseph C. Razzano (Mar. 9, 2026) (“In [Attorney Razzano’s] discussion with [the Victim] as her counsel she confirmed . . . [s]he does not want to testify at this proceeding due to medical, work, and school matters.”).

The People objected to the New Evidence, arguing each piece of evidence was inadmissible hearsay. *See* Order Re Further Briefing at 1 (Mar. 24, 2026). The Court determined that the admissibility of this evidence was a “threshold question” that would need to be addressed before proceeding. *Id.* Shortly thereafter, the Court ended the hearing early due to an unexpected personal matter. *Id.* at 1 n.1. The Court continued the hearing to April 1, 2026.

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On March 24, 2026, upon further consideration of the matter, the Court issued an Order Re Further Briefing. Citing federal case law, the Court explained that “newly discovered evidence must be admissible in order to support a motion for new trial.” *Id.* at 2 (citations omitted). The Court noted that Kusterbeck’s Amended Motion was “substantially, if not entirely, premised” on the New Evidence. *Id.* The Court reasoned that if the New Evidence was inadmissible hearsay, then Kusterbeck could not prevail. *Id.* Thus, the Court ordered Kusterbeck to file a further briefing “addressing the admissibility of all of the evidence that the People are objecting to, including any applicable hearsay exceptions or other bases for admissibility,” and ordered the People to file a response. *Id.* at 3. The Court also vacated the continued hearing, explaining it would first review the further briefings and then determine whether further arguments were necessary. *Id.*

The parties filed as ordered. *See* Def’s Resp. Br. (Apr. 10, 2026); People’s Resp. Br. (Apr. 23, 2026); *see also* Order Granting Unopposed Motion to Extend Time (Apr. 1, 2026). After reviewing the further briefings, the Court determined that further oral argument was unnecessary and took the matter under advisement. *See* Under Advisement Notice (June 11, 2026).

DISCUSSION

A court may grant a new trial when “required in the interests of justice.” 8 GCA § 110.30(a). While a trial court generally has “broad discretion” to grant a new trial, there is nonetheless “a high bar for what qualifies as ‘interests of justice’” under this standard. *People v. Sablan*, 2023 Guam 4 ¶ 30. Accordingly, a motion for new trial should only be granted in “exceptional cases,” and the court’s discretion in this area “obviously should be exercised cautiously and sparingly.” *Id.* ¶ 31 (citations omitted).¹

¹ Even further caution is warranted when the motion is based on a victim’s recantation. *See, e.g., Haouari v. United States*, 510 F.3d 350, 353 (2d Cir. 2007) (“It is axiomatic that witness recantations ‘must be looked upon with the utmost suspicion.’”) (citation omitted); *United States v. Rouse*, 410 F.3d 1005, 1009 (8th Cir. 2005) (“[S]kepticism ‘is especially applicable in cases of child sexual abuse where recantation is a recurring phenomenon,’ particularly

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When a motion for new trial is premised on newly discovered evidence, the motion must be analyzed under the test set forth in *People v. Reyes*, 1999 Guam 11:

[A] movant must show: 1) the evidence is newly discovered; 2) the failure to discover the evidence sooner was not the result of lack of diligence; 3) the evidence is material to the issues at trial; 4) the evidence is neither cumulative nor impeaching; and 5) the evidence, at a new trial, would probably result in acquittal.

Id. ¶ 14 (citing *United States v. Sitton*, 968 F.2d 947, 959-960 (9th Cir. 1992)). Here, the Court can set aside the first four factors because the fifth factor is dispositive. The People have lodged hearsay objections to Kusterbeck’s entire evidentiary proffer. If the People are correct that the New Evidence is inadmissible, then the jury would not hear it, which means the New Evidence would *not* “probably result in acquittal.” *Id.*; *cf. United States v. Hinkson*, 585 F.3d 1247, 1267 (9th Cir. 2009) (“So, what effect on a jury could excluded evidence have? None.”).

Kusterbeck advances two core arguments regarding admissibility. First, he argues that the Court has misconstrued the case law; he argues that evidence *does not* need to be admissible at trial in order to support a motion for new trial. Def’s Resp. Br. at 2–3. Second, Kusterbeck states (though does not analyze) five potential theories under which the New Evidence might be admissible: (1) 6 GCA § 4308, (2) Guam Rule of Evidence (“GRE”) 801(c), (3) GRE 801(d)(1), (4) GRE 801(d)(2), and (5) GRE 803(4). Def’s Resp. Br. at 2, 6. The Court is not persuaded.

A. Discovered Evidence Must be Admissible to Grant a New Trial

Kusterbeck first challenges the Court’s prior holding that “newly discovered evidence must be admissible in order to support a motion for new trial.” Order Re Further Briefing at 2 (citing *United States v. Hill*, 737 F.3d 683, 687 (10th Cir. 2013); *United States v. MacDonald*, 779 F.2d

‘when family members are involved and the child has feelings of guilt or the family members seek to influence the child to change her story.’” (quoting *United States v. Provost*, 969 F.2d 617, 621 (8th Cir. 1992)).

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962, 964 (4th Cir. 1985); *United States v. Parker*, 903 F.2d 91, 102 (2d Cir. 1990)). Kusterbeck suggests the Court misunderstands these cases; he argues they “do not require that the newly discovered evidence be admissible *at the motion stage*,” but only require that “the newly discovered evidence be admissible *at trial*.” Def’s Resp. Br. at 2 (emphasis added). Instead, Kusterbeck asserts that “[p]ost-trial declarations and affidavits are precisely the types of evidence movants submit and Courts evaluate in determining motions for new trial.” *Id.* at 3 (citing *People v. Quong*, 42 P.2d 386 (Ct. App. 1935); *People v. Cole*, 155 Cal. Rptr. 892 (Ct. App. 1979); *People v. Delgado*, 851 P.2d 811 (Cal. 1993)).

At the outset, Kusterbeck does not explain why California case law would be persuasive authority here. Title 8 GCA § 110.30 is based on former Federal Rule of Criminal Procedure 33, not on a California statute. *See* 8 GCA § 110.30, SOURCE. As such, Guam Supreme Court case law addressing newly discovered evidence generally follows federal cases, not California cases. *See, e.g., Reyes*, 1999 Guam 11 ¶ 14 (adopting the five-factor test from the Ninth Circuit). Moreover, California has a statute that prescribes the specific procedure for deciding a motion for new trial based on newly discovered evidence. California Penal Code § 1181(8) provides, in relevant part, “the defendant *must* produce at the hearing, in support thereof, *the affidavits of the witnesses* by whom such evidence is expected to be given” (emphasis added)). In California, the defendant is *required* to offer out-of-court declarations (i.e., hearsay) to support his motion for new trial. Guam has no similar statute or requirement. Thus, the Court does not find California law persuasive on the interaction of newly discovered evidence and hearsay rules.

Moreover, Kusterbeck’s argument appears to misconceive the Court’s evidentiary concern. The Court’s position was, and remains, that newly discovered evidence must be admissible at trial “in order *to support* a motion for new trial”—that is, in order to justify *granting* a new trial.

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Kusterbeck is correct, so far as it goes, that courts sometimes do consider hearsay evidence when deciding a motion for new trial. That is true in the federal courts as well as in California. *See, e.g., MacDonald*, 779 F.2d at 964 (noting the trial court’s consideration of “a melange of hearsay evidence”). But the point is that if the New Evidence would be inadmissible at a new trial, it is no basis on which to *grant* the new trial. Thus, while it is true that the Court may “evaluate” newly discovered evidence at the “motion stage,” the purpose of that evaluation is to determine whether the evidence would be admissible at trial. If it would not be admissible, the motion must be denied. *See Hill*, 737 F.3d at 687–89 (affirming denial of motion for new trial because newly discovered evidence would be inadmissible at a new trial); *MacDonald*, 779 F.2d at 964 (affirming denial of motion for new trial because, *inter alia*, “[t]here is substantial doubt that these hearsay statements would be admissible” at a new trial); *Parker*, 903 F.2d at 102–03 (affirming denial of motion for new trial because newly discovered evidence would be inadmissible). A new trial cannot be granted unless the newly discovered evidence would probably result in acquittal at trial, and the excluded evidence would not generate that result.

The Court does not find that it misinterpreted the relevant case law. As before, the Court holds that the New Evidence must be admissible at trial to support a motion for new trial. Thus, Kusterbeck’s Amended Motion can succeed only if he can prove the New Evidence would be admissible at a new trial over the People’s hearsay objection.

B. Kusterbeck’s Evidence is Inadmissible Hearsay

As discussed above, the New Evidence is composed of (1) the Victim’s Letter, (2) the Victim’s Declaration, (3) Attorney Razzano’s Declaration, and (4) Attorney Razzano’s oral statements. Under GRE 801(c), hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Here,

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each piece of evidence is a “statement” under GRE 801(a)(1), insofar as each is an “oral or written assertion.” Each statement was made in a setting other than while the declarant was giving testimony. And each statement is offered by Kusterbeck to “prove the truth of the matter asserted,”—primarily, to prove that the victim’s trial testimony was untrue and that she has now recanted that testimony. Thus, each piece of evidence is hearsay within the meaning of GRE 801(c). The general rule is that hearsay is “inadmissible at trial unless it falls into a known exception.” *E.g., People v. Roten*, 2012 Guam 3 ¶ 16; *see* Guam R. Evid. 802. Thus, the New Evidence would be inadmissible at trial unless it is within a hearsay exception.

1. 6 GCA § 4308 is Not a Hearsay Exception

Kusterbeck first argues that the Victim’s Letter, Victim’s Declaration, and Attorney Razzano’s Declaration are admissible under 6 GCA § 4308. Def’s Resp. Br. at 2. However, 6 GCA § 4308 is not a “known exception” to the hearsay rules. The statute describes the procedure for making an unsworn declaration under penalty of perjury; the statute says nothing about its relation to other evidentiary rules. Kusterbeck cites no Guam cases that interpret 6 GCA § 4308 as a hearsay exception, nor is the Court aware of any. Moreover, 6 GCA § 4308 is based on a federal statute, 28 U.S.C. § 1746. 6 GCA § 4308, *SOURCE*. Federal courts do not appear to interpret 28 U.S.C. § 1746 as a hearsay exception. *See Horacek v. Martin*, 2023 WL 333977 * 3 (W.D. Mich. Jan. 20, 2023) (“Even assuming Plaintiff’s affidavit complies with 28 U.S.C. § 1746 . . . the statements therein are inadmissible hearsay.”). Thus, compliance with 6 GCA § 4308 has no bearing on whether the evidence in question is hearsay.

2. The Victim’s Potential Trial Testimony is Not at Issue

Next, Kusterbeck argues that if the victim were to testify at trial, her “*testimony* regarding the Declaration and Letter would not be hearsay under 6 GCA § 801(c).” Def’s Resp. Br. at 6

(emphasis added). That may be true, but it is immaterial here. The question before the Court is whether the New Evidence *itself* would be admissible at trial, not whether testimony about the New Evidence would be admissible. The victim's theoretical future testimony has no bearing on whether the documents themselves are hearsay.

3. The Other Hearsay Rules Do Not Apply, or Likely Will Not Apply

Kusterbeck cites three hearsay rules that he believes may be relevant. He argues, in entirety:

[The victim's testimony] would also constitute non-hearsay under 6 GCA § 801(d)(1) as prior statements by a witness, and under § 801(d)(2) as admissions by a party opponent. In the event [the victim] was not available for trial, the Declaration and Letter would not be excluded by the hearsay rule as statements against interest under 6 GCA § 804(b)(3), but without her testimony conviction would be impossible and acquittal would result.

Def's Resp. Br. at 6. Here, Kusterbeck "appears content to 'announce a position' and leave it to this court to 'discover and rationalize the basis for [his] claims . . . and then search for authority either to sustain or reject [his] position.'" *People v. Martinez*, 2025 Guam 17 ¶ 17 (quoting *Lamb v. Hoffman*, 2008 Guam 2 ¶ 35). Kusterbeck does not tie these contentions to specific facts or provide supportive case law; he does not even explain which of the three sub-subsections of GRE 801(d)(1) or the five sub-subsections of GRE 801(d)(2) would be relevant here. Moreover, as the Court will explain, none of these rules are likely to permit the admission of the New Evidence.

GRE 801(d)(1)(A) permits the admission of a witness's prior statement when such statement is "inconsistent with the declarant's testimony." Guam R. Evid. 801(d)(1)(A). However, this rule applies only if the prior inconsistent statement was "given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition." *Id.* Here, none of the New Evidence was given "under oath . . . at a trial, hearing, or other proceeding," so GRE 801(d)(1)(A) does not support admissibility here.

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GRE 801(d)(1)(B) allows hearsay evidence to be admitted to rebut an “express or implied charge against the declarant of recent fabrication or improper influence or motive.” Guam R. Evid. 801(d)(1)(B). But under this rule, “the prior consistent statement must be made prior to the time that the supposed motive to falsify arose.” *People v. Sharpe*, 2024 Guam 12 ¶ 24 (quoting *People v. Hall*, 2004 Guam 12 ¶ 26). In other words, GRE 801(d)(1)(B) would only apply if the People charged that the victim fabricated her testimony *after* she executed the Victim’s Letter and Victim’s Declaration. This is unlikely. The People have repeatedly emphasized that they believe the victim’s motive to falsify arose *before* she executed her Letter and Declaration—that is, they claim the Letter and Declaration result from the fabrication. *See* Opp. Mot. Dismiss at 3–4; People’s Supp. Br. at 6–7; Brief RE: Paytel Recordings; Decl. Christine S. Tenorio at 1. As such, it is unlikely that at a new trial, the People will charge that the victim’s motive to fabricate arose “recently,” and thus GRE 801(d)(1)(B) does not support admissibility here.

GRE 801(d)(2) allows hearsay evidence to be admitted if the evidence represents an “admission by party-opponent.” Guam R. Evid. 801(d)(2). Here, however, the parties to this case are Kusterbeck and the People; the victim is not a party, and thus not a party-opponent. *See, e.g., State v. Howard*, 504 S.W.3d 260, 277 n.6 (Tenn. 2016) (“The [Tennessee] Court of Criminal Appeals properly concluded that ‘a rape victim is not a party for purposes of the hearsay exception for party admissions.’”); *Logan v. State*, 71 S.W.3d 865, 869 (Tex. Ct. App. 2002) (“We hold that a statement by a victim or complainant in a criminal case is not admissible under [Texas Rule of Evidence] 801(e)(2) as an admission by a party opponent.”); *State v. Ingram*, 2006–Ohio–4559, ¶ 8.² Since the victim is not Kusterbeck’s “party opponent,” GRE 801(d)(2) does not support admissibility here.

² Each of these cases interprets a “party-opponent” evidentiary rule substantively similar to GRE 801(d)(2). Compare Guam R. Evid. 801(d)(2) with Tenn. R. Evid. 803(1.2); Tex. R. Evid. 801(e)(2); Ohio Evid. R. 801(D)(2).

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Finally, GRE 804(b)(3) allows hearsay evidence to be admitted if the victim is “unavailable” at trial, and if the evidence is “[a] statement tending to expose the declarant to criminal liability and offered to exculpate the accused.” Guam R. Evid. 804(b)(3). However, there are two important limitations to this rule. First, “unavailability” is a demanding standard. As relevant here, a victim is “unavailable” if she “*persists* in refusing to testify concerning the subject matter of the declarant’s statement *despite an order of the court to do so*,” or is “*unable* to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity,” or “is absent from the hearing and the proponent of a statement has been *unable* to procure the declarant’s [attendance or testimony] *by process or other reasonable means*.” Guam R. Evid. 804(a)(2)–(a)(5) (emphasis added). Kusterbeck has not shown that any of these circumstances are likely to arise. The only evidence in the record relevant to a claim of “unavailability” is Attorney Razzano’s statement that the victim “does not want to testify . . . due to medical, work, and school matters.” Decl. Joseph C. Razzano at 1. While the Court understands the victim’s desire to focus on other matters, the Court doubts that this would meet the standard of “unavailability” under GRE 804.

Second, evidence offered under GRE 804(b)(3) “is not admissible unless corroborating circumstances *clearly indicate* the trustworthiness of the statement.” Guam R. Evid. 804(b)(3). (emphasis added). In other words, even assuming the victim would be unavailable at trial, the New Evidence would not become admissible unless Kusterbeck could provide evidence that *clearly indicates* that the evidence is trustworthy. There is no such evidence in the record now, nor has Kusterbeck explained what different evidence he might have available to him at a new trial. Instead, Kusterbeck appears to argue that the Victim’s Declaration is trustworthy because it was executed under penalty of perjury. This is a curious argument given that Kusterbeck offers the

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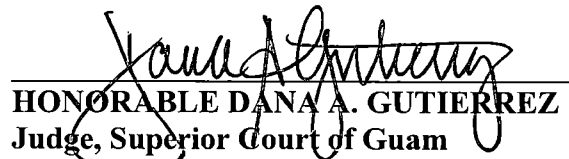
Victim's Declaration to negate the victim's own trial testimony, which was also given under penalty of perjury. If the victim is now admitting she has made untrue statements under penalty of perjury before, this raises a serious question as to whether the Court should assume she is making truthful statements now. In short, the Court finds it unlikely that the victim will be "unavailable" for trial, and even if she would be, it is unlikely that there would be clear corroborative evidence to admit the New Evidence under GRE 803(b)(4).

In light of this analysis, the Court returns to the *Reyes* standard. To grant a new trial, the Court must find that "the evidence, at a new trial, would probably result in acquittal." *Reyes*, 1999 Guam 11 ¶ 14. The Court has determined that the New Evidence is all hearsay. Kusterbeck has not identified any hearsay exception that would likely apply; at most, he has identified two exceptions that would only support admissibility in unlikely circumstances. For that reason, the Court does not find that the New Evidence would *probably* result in Kusterbeck's acquittal at a new trial. Instead, it is more likely than not that the New Evidence would not even be admitted at a new trial. Kusterbeck's Amended Motion therefore fails on the fifth prong of the *Reyes* test, and the Court will not order a new trial.

CONCLUSION

For the foregoing reasons, the Court **DENIES** Kusterbeck's Amended Motion for New Trial.

SO ORDERED this 8th day of September, 2026.


HONORABLE DANA A. GUTIERREZ
Judge, Superior Court of Guam

SERVICE VIA EMAIL

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

AG, Perez,
Razzano
Date: 9/8/26 Time: 2:36pm
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Deputy Clerk, Superior Court of Guam