IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

vs.

RUDY F. QUINATA,
Defendant-Appellant.

Supreme Court Case No. CRA97-008
Superior Court Case No. CF0447-96

OPINION

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Appeal from the Superior Court of Guam
Argued and Submitted on October 7, 1998
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS, and BENJAMIN J. F. CRUZ, Associate Justices.

CRUZ, J.:

[1] This is an appeal of the trial court's denial of Appellant Rudy Fegurgur Quinata's post-trial motions for judgment of acquittal and for a new trial. Upon analysis of the applicable law, review of the record of the case, and after hearing arguments by respective counsel, this court affirms the decision of the trial court for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

[2] Two separate incidents gave rise to the underlying charges in the case before this court. The first incident took place on June 30, 1996. On that date, Glenn Quinata (hereinafter "Glenn") visited Appellant Rudy Fegurgur Quinata (hereinafter "Appellant") at the Appellant's residence. Appellant shared this home with his brother, Johnny F. Quinata (hereinafter "Johnny"), Johnny's wife, Vivian Quinata (hereinafter "Vivian"), and the couple's son. Significantly, upon leaving the Quinata residence, Glenn witnessed Appellant load a shotgun and then fire a shot "into an open area away from Glenn." In response, Glenn hid behind a car and left after Appellant stated, "go ahead and leave."[1] Describing the incident, Glenn testified, " I feared my life . . .'cause I didn't know if it was for me . . . I was panicky. I-- I thought my life was gonna be in danger."[2]

[3] As a result of this particular incident, Appellant was charged with one count of Possession of a Firearm without a Firearms Identification Card, and one count of Reckless Conduct as a misdemeanor.

[4] The second incident took place on July 16-17, 1996, again at the Quinata family residence. On July 16, Appellant and Johnny engaged in an argument concerning family matters. During the course of the argument, Appellant purportedly had a sawed off shotgun with him. The following evening Appellant awakened Johnny because he wanted to borrow money. Soon after denying Appellant's request for money, both Johnny and Vivian heard Appellant yell, "Get out of my fucking house."[3] At this point, Vivian called 911. Promptly thereafter, Johnny and Vivian decided to leave the residence.

[5] As Vivian departed, Appellant approached Vivian with his hands clenched above his shoulders and yelled "Aaah."[4] Describing this incident at trial, Vivian testified that Appellant, "went stomping over to me, like either he was going to hit me or grab me. . . ."[5]

[6] Appellant also allegedly told Johnny he was going to kill him, although the record is not clear as to the exact time the threat was made. This statement was relayed to Officer Roman Rojas of the Guam Police Department who responded to the emergency call. Johnny informed Officer Rojas that, Appellant had threatened him and that Officer Rojas needed "more backup and probably the National Guard."[6] At

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[1] Transcript at 37 (October 8, 1996).

[2] Transcript at 4-5 (October 9, 1996).

[3] Transcript at 23 (October 8, 1996).

[4] Transcript at 68 (October 8, 1996).

[5] Transcript at 26 (October 8, 1996).

[6] Transcript at 79 (October 7, 1996).

this time, Johnny also stated that Appellant still had the sawed-off shotgun. However, at trial, Vivian stated that Appellant did not possess the shotgun on that night. The record reveals that the officers did not immediately enter the residence upon arriving at the scene. Their subsequent search of the residence did not yield the shotgun.

[7] As a result of this second incident, Appellant was charged with three counts of Family Violence as a third degree felony, two counts of Terrorizing as a third degree felony, and one count of Assault as a misdemeanor.

[8] On October 6, 1996, Appellant stood trial for the crimes allegedly committed on June 30, 1996 and July 17, 1996. The jury found Appellant guilty of one count of Possession of a Firearm without a Firearms Identification Card, and one count of Reckless Conduct as a misdemeanor; both convictions pertained to the June 30, 1996 incident involving Glenn. The jury also found Appellant guilty of one count of Family Violence and one count of Terrorizing; both convictions related to acts committed solely against Vivian during the July 17, 1996 incident.

ANALYSIS

I.

[9] This court has subject matter jurisdiction based upon 7 GCA §§ 3107 and 3108 (1994). Our analysis of the instant case begins with Appellant's first issue: the trial court's decision to deny Appellant's motion for judgment of acquittal or in the alternative, a new trial. We review the trial court's ruling on the motion for judgment of acquittal *de novo*. *People v. Cruz*, 1998 Guam 18, ¶ 8. In conducting this review, courts apply the same test as that used to challenge the sufficiency of the evidence. *Id*. at ¶ 9. Accordingly, this court will review the evidence presented against Appellant in a light most favorable to the government to determine whether, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. (*citing Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2788 (1979)). Our inquiry, however, does not require the court to "ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt . . . ." *Woodby v. Immigration and Naturalization Service*, 385 U.S. 276, 282, 87 S.Ct. 483, 486 (1966). Rather, *Jackson* provides:

> This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the fact finder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution.

Jackson, 443 U.S., 307, 319, 99 S.Ct. 2781, 2789 (1979).

[10] Pursuant to 9 GCA §§ 19.40 (a) (1) and (b) as amended, Appellant was charged and convicted of Reckless Conduct. This statute provides:

§ 19.40. Reckless Conduct; Defined & Punished.

a) A person is guilty of reckless conduct if he:

(1) recklessly engages in conduct which unjustifiably places or may place another in danger of death or serious bodily injury;

> (2) intentionally points a firearm at or in the direction of another, whether or not the defendant believes it to be loaded.
>
> b) Reckless conduct is a misdemeanor.

9 GCA § 19.40 (1994).

[11] At the close of the prosecution's case and again at the end of trial, Appellant filed a motion for judgment of acquittal on two separate charges here on appeal, 1) the charge of Reckless Conduct as it related to the incident with Glenn, and 2) the charge of Terrorizing as it related to Vivian. This motion was made pursuant to 8 GCA § 100.10 (1993). In its entirety, this statute provides:

> **§ 100.10. Motion for Acquittal: Established; When Made.** The motion for a directed verdict is abolished and a motion for judgment of acquittal shall be used in its place. **The court on motion of a defendant or on its own motion shall order the entry of a judgment of acquittal** of one or more offenses charged in the indictment, information or complaint after the evidence on either side is closed **if the evidence is insufficient to sustain a conviction of such offense or offenses.** If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

8 GCA § 100.10 (emphasis added).

[12] Section 19.40 punishes "conduct which, though fortuitously not resulting an [sic] injury, is reckless with the respect to the creation of danger to life." *See* Comment to 9 GCA § 19.40. The undisputed facts regarding the Reckless Conduct charge reveal that Appellant fired a sawed-off shotgun at least twice in close proximity to Glenn causing him to fear for his life and hide behind a truck. Reviewing the evidence, as we must, in a light most favorable to the prosecution, we are satisfied that "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Cruz,* 1998 Guam 18 at ¶ 9. Understandably, Glenn may have been placed in fear of his life, but it was Appellant's act of recklessly discharging the weapon alone, that provided the justification for this conviction. In the case where the victim of Reckless Conduct felt compelled to hide behind a vehicle, the danger caused by the discharging of the weapon is only more apparent.

[13] As to the Terrorizing charge for which Appellant has also moved for a judgment of acquittal, the record also demonstrates that Vivian testified that Appellant, "went stomping over to me, like, like either he was going to hit me or grab me, and--and I ran out of the house."[7] The statement, "hu puno hao," was also made during this incident wherein Appellant, in addition to his threatening gestures, angrily yelled profanity directly at Vivian.[8]

[14] Appellant's assertion of inconsistent and bias testimony notwithstanding, it is the responsibility of the trier of fact, and not this court, to fairly "resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789. The record is devoid of any evidence indicative of the jury's failure to meet this responsibility as they concluded that Appellant was guilty beyond a reasonable doubt.

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[7] Transcript at 26 (October 8, 1996).

[8] Transcript at 27 (October 8, 1996).

[15] Accordingly, we affirm the trial court's decision to deny Appellant's motion for judgment of acquittal as to the Reckless Conduct and Terrorizing charges.

II.

[16] We next address Appellant's remaining contention that the trial court abused its discretion by denying his motion for a new trial on the Reckless Conduct charge, the Family Violence charge, and the Terrorizing charge. A trial court may set aside the verdict, grant a new trial, or submit the issues for determination by another jury if it concludes that the evidence "preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred." *See United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980). The trial court's denial of Appellant's motion for a new trial is reviewed for an abuse of discretion. *Yang v. Hong*, 1998 Guam 9, ¶ 4.

[17] On appeal of the denial of a new trial, Appellant shoulders the significant burden of having to show that an abuse of discretion occurred. *United States v. Steel*, 759 F.2d 706, 713 (9th Cir.1985). "An abuse of discretion has been defined as that 'exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.'" *People v. Tuncap*, 1998 Guam 13, ¶ 12 (*quoting Int'l Jensen, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 822 (9th Cir. 1993)). In accordance with this standard, this court will not substitute its judgment for that of the trial court. Instead, in order to reverse the trial court, "we must first have a definite and firm conviction the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion." *Id.* at ¶ 12 (*quoting United States v. Plainbull*, 957 F.2d 724, 725 (9th Cir. 1992)).

[18] The trial court's discretion to grant a new trial is much broader than its power to grant a judgment of acquittal in that the trial court "need not view the evidence in the light most favorable to the verdict." *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980). This broader grant of discretion allows the trial court to weigh the evidence and evaluate for itself the credibility of the witnesses. *Id*.

[19] In the instant case, the trial judge, after presiding over the jury trial and listening to all of the testimony, deemed the evidence sufficient to sustain the conviction. The trial court's determination was well supported by specific citations to testimonial evidence in the Decision and Order. For instance, as to the Reckless Conduct charge, the judge placed due emphasis on the testimony of witnesses who had observed Appellant in possession of the shotgun, as well as the testimony of Glenn who actually saw Appellant fire the weapon.

[20] As to the Family Violence charge, the Decision and Order again refers specifically to evidence deemed adequate to support the verdict, to wit, the police statement as well as the in-court testimony of both Johnny and Vivian. The Decision and Order also refers to specific evidence supporting the Terrorizing charge. The threatening gestures and the statement made by Appellant were sufficient to communicate a threat. The victim's fear was substantiated by the two (2) 911 calls and the statements made to the police as the victim left the residence.

[21] Based on the foregoing we are satisfied that all three convictions for which Appellant has moved for a new trial are firmly supported by the evidence presented. To conclude, we possess, "a firm and definite conviction" that the trial court committed no error of judgment in reaching its decision. *Tuncap*, 1998 Guam 13 at ¶ 12. Accordingly, we affirm the trial court's decision to deny the motion for a new trial.

III.

[22] As a final matter, this court would be remiss if it did not address Appellant's "fourth issue presented for review." As set forth in his brief, Appellant's fourth issue states: "Did the trial court commit reversible error by admitting statements of prior bad acts which were irrelevant to the charges involving the uttering witness?" Despite being listed for this court's review, this issue is not revisited in the opening brief nor in Appellant's reply brief.

[23] Rule 13 (b) of the Guam Rules of Appellate Procedure provides in relevant part:

> The brief of the Appellant shall contain under appropriate headings and in the order here indicated:
>
> > (5) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument shall include analysis and explanation of the appellant's contentions.

Guam R. App. P. 13 (b) (5).

[24] Guam Rule of Appellate Procedure 13 (u) sets forth the consequences for non-compliance with GRAP 13 (b) (5). GRAP 13 (u) states:

> If an appellant or appellee files a brief which substantially fails to meet the requirements of this rule [Rule 13] and Rule 16, and does not file a conforming brief within the time permitted under Rule 17 below, the consequences shall be as provided in Rule 17(d).

GRAP 13 (u).

[25] Guam Rule of Appellate Procedure 17 (d) (1), also provides as follows:

> If an appellant fails to file his brief within the time provided by this Rule, or within the time extended, an appellee or the Supreme Court may move for dismissal of the appeal. In any case, the brief may thereafter be filed only upon order of the Chief Justice of this Court and late filing shall constitute waiver of oral argument. The waiver may be set aside in the discretion of the Chief Justice of this Court.

Guam R. App. P. 17 (d) (1).

[26] When read cumulatively, these rules act upon Appellant's fourth issue in a manner that requires the issue be deemed abandoned.

[27] The Ninth Circuit has reached the same conclusion as well. *See Acosta-Huerta v. Estelle*, 7 F.3d 139 (9th Cir.1992). "Issues raised in a brief which are not supported by argument are deemed abandoned . . . . We will only review an issue not properly presented if our failure to do so would result in manifest injustice." *Acosta-Huerta*, 7 F.3d at 144 (*quoting Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (citations omitted)); *see also*, *United States v. Turner*, 898 F.2d 705, 712 (9th Cir. 1990).

[28] Accordingly, pursuant to the Guam Rules of Appellate Procedure as well as the persuasive *Acosta-Huerta* ruling, we deem Appellant's fourth issue to be abandoned.

CONCLUSION

[29] Based on the foregoing analysis, Appellant's fourth issue on appeal is dismissed and the decision of the Superior Court to deny Appellant's motions for judgment of acquittal and for a new trial is hereby **AFFIRMED**.