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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

NICOLAS FAUSTO CAMADDU,
Defendant-Appellant.

Supreme Court Case No. CRA13-020
Superior Court Case No. CF0097-12

OPINION

Cite as: 2015 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted August 8, 2014
Hagåtña, Guam

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

MARAMAN, J.:

[1] Defendant-Appellant Nicolas Fausto Camaddu appeals his judgment of conviction of two counts of First Degree Criminal Sexual Conduct (as a First Degree Felony) and four counts of Second Degree Criminal Sexual Conduct (as a First Degree Felony). Camaddu argues that the trial court erred in admitting various pieces of evidence under Rules 413 and 404(b) of the Guam Rules of Evidence (GRE), and in allowing hearsay evidence and prior consistent statements to be admitted. Camaddu further argues that the trial court should have been disqualified from considering the matter of sentencing. For the reasons set forth herein, we affirm the judgment of conviction and the decision to not disqualify the trial court judge from sentencing Camaddu.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Camaddu was indicted by a Superior Court grand jury on one count of First Degree Criminal Sexual Conduct (As a First Degree Felony) and one count of Second Degree Criminal Sexual Conduct (As a First Degree Felony). The sole victim named in the indictment, as well as in the superseding indictment that followed, is A.N.C. Plaintiff-Appellee People of Guam (the “People”) sought by motion to introduce evidence of prior bad acts—namely, Camaddu’s 1979 conviction of Second Degree Criminal Sexual Conduct, as well as other bad acts allegedly committed by Camaddu against his stepdaughter, B.B., in the past.¹ Camaddu filed a motion in limine to prohibit the introduction of evidence of prior bad acts. After a hearing on the matter, the trial court issued a decision and order denying Camaddu’s motion to prohibit the introduction

¹ Later, the People expanded their motion to include prior bad acts against a second stepdaughter, A.M.

of prior bad act evidence, and finding that any risk of prejudice could be prevented by a proper limiting instruction to the jury.

[3] Thereafter, the grand jury returned a superseding indictment, charging Camaddu with two counts of First Degree Criminal Sexual Conduct (As a First Degree Felony) and four counts of Second Degree Criminal Sexual Conduct (As a First Degree Felony). The allegations contained in the superseding indictment, and upon which Camaddu was tried, are as follows:

1. Charge One, Count One: That, in the period between December 1, 2011, and February 6, 2012, Camaddu intentionally engaged in sexual penetration with A.N.C., a minor, by causing his finger to penetrate A.N.C.'s vagina, in violation of 9 GCA §§ 25.15(a)(1) and (b).
2. Charge One, Count Two: That, in the period between November 1, 2011, and February 6, 2012, but at a time different from that alleged in the first count, Camaddu intentionally engaged in sexual penetration with A.N.C., a minor, by causing his finger to penetrate A.N.C.'s vagina, in violation of 9 GCA §§ 25.15(a)(1) and (b).
3. Charge Two, Count One: That, in the period between December 1, 2011, and February 6, 2012, Camaddu intentionally engaged in sexual contact with A.N.C., a minor, by causing his finger to touch A.N.C.'s primary genital area, in violation of 9 GCA §§ 25.20(a)(1) and (b).
4. Charge Two, Count Two: That, in the period between November 1, 2011, and February 6, 2012, but at a time different from that alleged in the first count, Camaddu intentionally engaged in sexual contact with A.N.C., a minor, by causing his finger to touch A.N.C.'s primary genital area, in violation of 9 GCA §§ 25.20(a)(1) and (b).
5. Charge Two, Count Three: That, in the period between December 1, 2011, and February 6, 2012, Camaddu intentionally engaged in sexual contact with A.N.C., a minor, by causing his hand to touch A.N.C.'s inner thigh, in violation of 9 GCA §§ 25.20(a)(1) and (b).
6. Charge Two, Count Four: That, in the period between December 1, 2011, and February 6, 2012, Camaddu intentionally engaged in sexual contact with A.N.C., a minor, by causing the hand of A.N.C. to touch Camaddu's penis, in violation of 9 GCA §§ 25.20(a)(1) and (b).

RA, tab 54 (Superseding Indictment, Jan. 22, 2013).

[4] During the trial, the victim, A.N.C., was allowed to testify regarding prior uncharged allegations against Camaddu, and Camaddu's two stepdaughters, B.B. and A.M., were allowed to testify regarding incidents involving themselves and Camaddu allegedly occurring many years earlier. The trial court gave the following limiting instruction to the jury before deliberation:

Evidence of Prior Bad Acts.

In a criminal case in which the defendant is accused of an offense of criminal sexual conduct, evidence of the defendant's commission of other offenses, or offenses of criminal sexual conduct is admissible, and may be considered for its bearing on any matter to which it is relevant.

Transcript ("Tr."), vol. 8 at 100 (Jury Trial, May 24, 2013).

[5] The jury found Camaddu guilty of all counts and charges in the superseding indictment. During the sentencing hearing, the trial court informed the parties that the court had received a letter from Senator Brant McCreadie recommending that Camaddu be sentenced to the maximum amount permitted by law. The trial court then continued the sentencing hearing for later that afternoon; however, before the continued hearing, Camaddu filed a motion to strike the letter and appoint a new judge for sentencing.

[6] After a hearing on the motion to strike, the trial court issued a decision and order denying the motion. Camaddu formally objected to the trial court's competency, and the trial court filed its answer to the objection, denying Camaddu's allegations of incompetency. The matter of competency was then assigned to a recusal judge to determine, and after a hearing, the recusal judge denied the motion.

[7] At the sentencing hearing before the original trial court judge, Camaddu was sentenced to life imprisonment without the possibility of parole. A judgment of conviction was entered on the docket, and Camaddu timely appealed.

II. JURISDICTION

[8] This court has jurisdiction over the appeal from a final judgment in a criminal case. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-234 (2014)); 7 GCA § 3107(b) (2005); *see also* 8 GCA § 130.15(a) (2005) (permitting defendant's appeal from a final judgment of conviction).

III. STANDARD OF REVIEW

[9] "Evidentiary rulings are reviewed for an abuse of discretion and will not be reversed absent prejudice affecting the verdict." *People v. Hall*, 2004 Guam 12 ¶ 34; *see also People v. Chinel*, 2013 Guam 24 ¶ 18; *People v. Torres*, 2014 Guam 8 ¶ 18. "[A]buse of discretion exists when the reviewing court is firmly convinced that a mistake has been made regarding admission of evidence." *People v. Santos*, 2003 Guam 1 ¶ 29 n.6. The court reviews *de novo* whether evidence comes within the scope of GRE 404(b). *Torres*, 2014 Guam 8 ¶ 18. Whether a judge should be disqualified from hearing a matter is reviewed for appearance of impropriety. *See Dizon v. Superior Court*, 1998 Guam 3 ¶ 8.

IV. ANALYSIS

A. Admission of Prior Bad Act Evidence

[10] At trial, the court ruled that several pieces of evidence of prior bad acts were admissible pursuant to Rule 413 or Rule 404(b) of the Guam Rules of Evidence ("GRE").

[11] GRE 413 pertains specifically to trials in which the defendant has been charged with a sex offense. It reads in part: "In a criminal case in which the defendant is accused of an offense of criminal sexual conduct, evidence of the defendant's commission of another offense or offenses of criminal sexual conduct is admissible, and may be considered for its bearing on any matter to which it is relevant." GRE 413(a). This court recently opined on the application of

GRE 413. *See generally Chinel*, 2013 Guam 24. In the *Chinel* case, the court offered instruction to trial courts as to what analysis must be applied when determining whether a proffered piece of evidence is admissible under GRE 413, taking guidance from federal courts interpreting the analogous federal rule of evidence. *Id.* ¶¶ 25-28. The analysis is three-pronged, requiring that (1) “the defendant in the present case must be accused of sexual assault[;]” (2) “the evidence proffered must be evidence of the defendant’s commission of another past act of sexual assault[;]” and (3) “the past act must be relevant, meaning that its existence must make any fact at issue more or less probable than if such evidence were excluded.” *Id.* ¶ 25. This is the approach our court adopted.² *Id.* ¶ 26. However, even if evidence is deemed admissible under GRE 413, it must still be scrutinized under other sections of the GRE. “GRE 413(c) specifically states that “[t]his rule shall not be construed to limit the admission or consideration of evidence under any other rule.” *Id.* ¶ 30 (quoting GRE 413(c)). Therefore, the trial court was still required to consider whether exclusion of the evidence was warranted under GRE 403 because the probative value would be substantially outweighed by its prejudicial effect.

[12] The trial court also allowed evidence in under GRE 404(b), which provides in full:

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

GRE 404(b). This court recently addressed the admission of evidence under GRE 404(b). *See generally Torres*, 2014 Guam 8. To be admissible under GRE 404(b), “the evidence of prior acts

² The trial court, however, when confronted with these evidentiary decisions, did not have the benefit of this court’s opinion in *Chinel*, which was issued several months after the trial in this case.

and crimes must (1) prove a material element of the crime currently charged; (2) show similarity between past and charged conduct; (3) be based on sufficient evidence; and (4) not be too remote in time.” *Id.* ¶ 41 (citation omitted). The trial court must then undertake a balancing test, weighing the admissibility of the evidence using the GRE 403 factors. *Id.* The four-part test stated above has been referred to as the *Hinton* test, reiterated in *United States v. Hinton*, 31 F.3d 817, 822 (9th Cir. 1994). See *Torres*, 2014 Guam 8 ¶ 41 (citing *People v. Palisoc*, 2002 Guam 9 ¶ 8).

[13] Camaddu argues on appeal, as he did at the trial court, that various pieces of evidence admitted pursuant to GRE 413 and GRE 404(b) should not have been admitted either because they did not meet the criteria for GRE 413 or GRE 404(b) admission, or because, even if they could be deemed admissible under either of those rules, the evidence was inadmissible under GRE 403. Indeed, Camaddu argues that the trial court did not undertake a proper analysis or conduct a GRE 403 balancing test. See Appellant’s Br. at 1-2 (Apr. 30, 2014) (“The record is silent on what factors the court took into consideration or why it ruled the way it did, demonstrating the court did not engage in a searching inquiry of why the evidence should be admitted.”). For purposes of organization, we will set out the challenged evidence before analyzing the evidence under GRE 413 and 404(b).

1. The Challenged Evidence

a. Camaddu’s 1979 conviction

[14] The People, through then-Superior Court Clerk of Court Richard Martinez, introduced into evidence a copy of a judgment of conviction against Camaddu in Superior Court Case Number CF0121-79. In that 1979 case, Camaddu pleaded guilty to Criminal Sexual Conduct in the Second Degree. *People v. Camaddu*, CF0121-79 (People’s Trial Ex. 27 (Nov. 20, 1979));

Tr., vol. 3 at 19-27 (Jury Trial, May 17, 2013). Prior to trial, the parties argued over the admissibility of the prior judgment of conviction. Camaddu argued that the 1979 conviction was irrelevant, and that any probative value of its introduction would be outweighed by its prejudicial effect. Tr. at 8 (Pre-Trial Conference, Dec. 17, 2012). Camaddu further argued that the judgment of conviction was, at the time of the underlying trial, 34 years old, and that the earlier crime was “in no way similar” to the crimes currently charged. *Id.* at 8-9. The People countered that the 1979 conviction was relevant in that Camaddu was convicted of entering someone’s home and having sex with that person without her consent. *Id.* at 10. The People asked the court to balance its consideration of the age of the judgment with its relevance—namely, that it was a sexual act, and it was done without consent. *Id.* at 11.

[15] The trial court denied Camaddu’s motion in limine, ruling that the issuance of a proper limiting instruction to the jury would prevent any unfair prejudice to Camaddu by the introduction of evidence of prior bad acts. RA, tab 50 at 5-6 (Dec. & Order, Jan. 18, 2013). In its decision and order, the trial court reasoned as follows:

[T]he Court is still obligated to consider this admission of evidence under any other rule pursuant to GRE 413(c). Accordingly, while Rule 413 enlarges the admissibility of evidence of past crimes ordinarily restricted by Rule 404, Rule 403 analysis should still apply.

....

In considering whether Defendant’s prior bad act evidence is prejudicial, the issuance of the proper limiting instruction can prevent that prejudice from being unfair. *People v. Palisoc*, 2002 Guam 9 ¶ 29 (citing *People v. Evaristo*, 1999 Guam 22 ¶ 17). *Palisoc* “emphasize[d] that an instruction to the jury limiting the use for which the evidence can be considered should be given both at the time the evidence is offered and during closing jury instructions prior to jury deliberation.” *Id.*

Id. at 5.

[16] We must initially examine whether the trial court abused its discretion in finding that Camaddu's 1979 conviction falls within the scope of GRE 413, and its introduction was not unfairly prejudicial under GRE 403. The standard of review of abuse of discretion is highly deferential, requiring that a reviewing court must be "firmly convinced that a mistake has been made regarding the admission of evidence." *See Santos*, 2003 Guam 1 ¶ 29 n.6.

[17] In the *Chinel* case, the trial court similarly allowed the admission of a judgment of conviction for a prior offense. 2013 Guam 24 ¶ 13. The trial court in *Chinel* made several findings with regard to the admissibility of the prior judgment of conviction. *Id.* ¶¶ 41-44, 47. As this court recounted in its opinion, the trial court in *Chinel* utilized factors, expressed in *United States v. LeMay*, 260 F.3d 1018, 1027-28 (9th Cir. 2001), which were subsequently adopted by this court. *Id.* ¶¶ 12, 39. The list of factors courts should consider, though not exhaustive, is as follows:

(1) [T]he similarity of the prior acts to the acts charged; (2) the closeness in time of the prior acts to the acts charged; (3) the frequency of the prior acts; (4) the presence or lack of intervening circumstances; and (5) the necessity of the evidence beyond the testimonies already offered at trial.

Id. ¶ 39 (citing *LeMay*, 260 F.3d at 1028).

[18] The trial court in *Chinel* made specific findings regarding its decision to admit the evidence. It found, for instance, that although the old conviction and the present charge involved victims of different ages (one being a minor family member and the other an adult tourist), they both involved non-consensual sexual conduct. *Id.* ¶ 41. Further, the trial court found it relevant to its decision the fact that the defendant in that case had been paroled from his previous conviction for only five months before being arrested for the current case. *Id.* ¶ 42. And finally, the trial court in *Chinel* gave the jury a limiting instruction, informing them that the prior

conviction was not proof beyond a reasonable doubt of the defendant's guilt in the current case, but that it went to any matter to which it was relevant. *Id.* ¶ 47.

[19] In the instant case, the trial court held a hearing on Camaddu's motion in limine, and thereafter issued a decision and order denying the motion. However, the trial court did not conduct any real inquiry as to the particular evidence sought to be admitted, nor did it articulate what factors, if any, it considered in reaching its decision to allow the evidence. Indeed, its decision not to prohibit the introduction of this evidence appears more summary than searching. *See* RA, tab 50 at 5-6 (Dec. & Order).

[20] Camaddu was tried before the issuance of our opinion in *Chinel*, and the trial court, therefore, did not have the benefit of our guidance in that opinion. However, even though the suggested *LeMay* factors adopted in *Chinel* are not specifically applied, trial courts confronted with GRE 413 decisions must still conduct a "searching inquiry . . . discussing any other factors that may be relevant, and considering both the amount of unfair prejudice and probative value in making determinations." *Chinel*, 2013 Guam 24 ¶ 39. The trial court here did none of these with respect to Camaddu's 1979 judgment of conviction. With no reasoning to review, which might have supported its exercise of discretion, the trial court's apparent summary decision to admit the 1979 conviction was an abuse of discretion. Because we determined the trial court abused its discretion in admitting evidence of the 1979 conviction, we do not need to address the court's analysis of the prejudicial effect of that evidence. Although the trial court provided a limiting instruction to the jury, this alone does not excuse the trial court from conducting a searching inquiry, nor does it cure its failure to do so.

b. Prior bad acts testified to by B.B., A.M., and A.N.C.

[21] Two of Camaddu's stepdaughters, B.B. and A.M., who were both adults by the time of the trial, testified during trial about acts allegedly committed against them by Camaddu years earlier. A.N.C., the victim in this case, also testified about prior uncharged bad acts allegedly committed by Camaddu against her. Prior to their testifying, and outside of the presence of the jury, the People conveyed what prior bad act evidence they intended to introduce through these witnesses and for what purpose they sought the introduction of the evidence. Camaddu, through counsel, had an opportunity to weigh in and make his objections. Each piece of evidence that the trial court ruled admissible³ will be addressed in turn.

i. B.B.'s testimony**(a) B.B.'s visit to the Department of Corrections (DOC)**

[22] The People proffered that B.B. would testify that when she was younger, she visited Camaddu at DOC, and that Camaddu put her on his lap while his leg inappropriately touched her private parts. Tr., vol. 4 at 3 (Jury Trial, May 20, 2013). The People asserted that this act was a sexual act and thus falls within the purview of GRE 413. *Id.* Camaddu's counsel objected that this alleged act took place over eighteen years earlier, and that the act of a child sitting on Camaddu's lap, straddling his leg, is not a sexual act within the context of GRE 413. *Id.* at 4. Camaddu's counsel argued that merely bringing up this incident would be unfairly prejudicial because it would raise to the attention of the jury that Camaddu was incarcerated at DOC at that point. *Id.* at 4-5. The People countered that Camaddu's prior incarceration was already put before the jury by his cross-examination of Richard Martinez regarding the 1979 judgment. *Id.*

³ There were several pieces of evidence that the trial court ruled would not be admitted. However, as those are not relevant to the appeal, they will not be addressed in this opinion. Further, not all the evidence discussed during the hearing on admissibility was actually testified to exactly as proffered by the People, although any variances do not appear to be of any relevance to the court's review.

The trial court, after allowing both sides the chance to address this proffered testimony, stated: “Thank you, the Court is going to rule in favor of the Government in terms of 413; this information regarding the DOC visitation could be asked.” *Id.* at 6.

[23] The actual testimony of B.B. on this matter, as elicited through direct examination, was as follows: That B.B. was 23 years old; that she remembers visiting Camaddu at DOC twice when she was younger; that the first time was when she was about six years old, and that her mom and another sister were present with her during that visit; that she sat on Camaddu’s lap in a “saddle position”; that her sister was sitting on Camaddu’s other lap; that Camaddu bounced her up and down and applied pressure to her private parts; that she felt uncomfortable; and that she felt or knew that this was not appropriate. Tr., vol. 5 at 53-57 (Jury Trial). She was extensively cross-examined by Camaddu’s counsel. *Id.* at 64-69.

(b) B.B.’s testimony about Camaddu touching her inside her shorts

[24] The People proffered that B.B. would testify about a prior incident where Camaddu put his hands inside her shorts. Tr., vol. 4 at 6 (Jury Trial). The People asserted that this was “clearly” GRE 413 evidence. *Id.* Camaddu’s counsel objected as to its probative value and prejudicial effect. *Id.* at 7. The trial court ruled as follows: “Having heard arguments, the court is going to allow this under Rule 413. . . . And, again, the Defense could always ask question to impeach her credibility or question it.” *Id.*

[25] The actual testimony of B.B. on this matter, as elicited through direct examination, was as follows: That when B.B. was about ten years old, Camaddu asked her to massage his head; that he made her sit on the couch and he put a pillow on top of her lap; that he lay down on her lap and started touching her; that he worked his hand into her shorts; that he rubbed her private

parts with two of his fingers; that this lasted for several minutes; that by “private parts,” she means her vagina. Tr., vol. 5 at 59-62 (Jury Trial). She was extensively cross-examined by Camaddu’s counsel. *Id.* at 64-69.

(c) B.B.’s testimony that Camaddu commented on her butt

[26] The People proffered that B.B. would testify that Camaddu would make comments to her about the shape of her butt. The People conceded that this was not GRE 413 evidence, but that it should be admitted under GRE 404(b) to show lack of mistake. Tr., vol. 4 at 11 (Jury Trial). Camaddu’s counsel objected that the alleged statement is “completely speculative,” prejudicial, and does not prove any of the things the People assert that it will. *Id.* at 12. The trial court ruled as follows: “Thank you. The Court is going to allow it under 404(b).” *Id.*

[27] This particular evidence, however, even though deemed admissible under GRE 404(b), was not elicited during the actual trial, and thus was not put into evidence.

(d) B.B.’s general statement about a touching when she was in the ninth grade

[28] The People proffered that B.B. would testify about a non-specific incident that took place when she was in the ninth grade, years earlier. The People stated that they “appreciate that there are no details given, previously, by the witness about the specifics of this ninth grade touching that the witness clearly remembers, because she remembers that was the last time.” *Id.* at 13. The People argued that the statement would only come in in response to the People’s intended question to B.B. as to whether she remembers when was the last time Camaddu “did this to you[,]” to which B.B. would answer, “I remember it was in the ninth grade.” *Id.* The People sought its admission under GRE 413. *Id.* Camaddu’s counsel objected that there is no foundation for this statement to show that it even falls within the purview of GRE 413. *Id.* The

trial court ruled: “Thank you. The Court is going to rule that it comes in under 413. And I understand that the Defense will have a continuing objection if that were to come to pass.” *Id.* at 15.

[29] The actual (and only) testimony of B.B. on this matter, as elicited through direct examination, was as follows:

Q: What, if any, instance occurred that were similar to this?

. . . .

Do you remember the very last incident, do you remember how old you were?

A: Uhm, 14, I was a freshman in school.

Q: And what school were you going to at the time?

A: Southern High.

Tr., vol. 5 at 63 (Jury Trial).

ii. A.M.’s testimony

(a) A.M.’s testimony about statements made by Camaddu

[30] The People proffered that A.M. would testify that Camaddu would ask her about her panties and that he had seen her naked. The People conceded that this testimony did not amount to GRE 413 evidence, but that it should be admitted under GRE 404(b) to “show some sort of motive or, certainly, lack of mistake” Tr., vol. 4 at 18 (Jury Trial). Camaddu’s counsel objected that it was more prejudicial than probative, and that it was irrelevant. *Id.* The trial court ruled: “Thank you. This would come under 404(b).” *Id.*

[31] This information, however, does not appear to have been elicited during A.M.’s actual testimony, and therefore, is not evidence admitted in this case.

(b) A.M.'s visit to DOC

[32] The People proffered that A.M. would testify to an incident that took place while she was visiting Camaddu at DOC, at a different time than the incident that B.B. would testify to. A.M. would testify that while she was visiting Camaddu at DOC years earlier, she handed her baby brother to Camaddu, and during this transfer, Camaddu touched A.M.'s breast with one hand and slid his other hand between her legs. *Id.* at 18-19. Camaddu's counsel objected to this evidence as being as much as fifteen years old, and being more prejudicial than probative. *Id.* The trial court ruled: "Thank you. The Court is going to allow this as requested by Counsel, 413[.]" *Id.*

[33] The actual testimony of A.M. on this matter, as elicited through direct examination, was as follows: That she was 27 years old; that when she was ten years old she visited Camaddu at DOC; that with her during that visit were her mother, two of her sisters, and two of her brothers, one of whom was a baby; that she was carrying her baby brother on her lap; that Camaddu reached for the baby, and in doing so, Camaddu slipped his hand between her legs; that Camaddu rubbed against A.M.'s vagina, over her clothes; that with his other hand behind the baby, Camaddu rubbed A.M.'s breast for about two seconds; that this incident made her feel uncomfortable and that she knew it was not right. *Tr.*, vol. 5 at 75-78 (Jury Trial). A.M. was extensively cross-examined by Camaddu's counsel. *Id.* at 82-92.

(c) A.M.'s testimony about finding her pants undone

[34] The People proffered that A.M. would testify about a prior incident when she awoke to find her pants and belt unbuckled, and that Camaddu asked her if he could touch her. *Tr.*, vol. 4 at 20 (Jury Trial). The People argued that the evidence falls under GRE 413 as an attempt to commit a sexual offense. *Id.* Camaddu's counsel objected, arguing that there was no actual touching, only an attempt to ask permission to touch, which is not within the scope of GRE 413.

Camaddu's counsel further objected that the evidence is prejudicial. *Id.* at 20-21. The trial court ruled: "And the Court finds it will come under 413(d)(6). *Id.* at 21.

[35] The actual testimony of A.M. on this matter, as elicited through direct examination, was as follows: That when she was nineteen years old, she went to sleep in her room at a house she lived in with her mother, Camaddu, three sisters (including the victim), and one brother; that she was wearing jeans with a buckle or a belt; that as she was lying on her bed, she felt someone staring at her and awoke to find her belt and pants were unbuttoned; that Camaddu asked A.M. if he could touch her; that she told Camaddu to get out of her room; that Camaddu walked out, and that A.M. closed the door behind him. Tr., vol. 5 at 80-81 (Jury Trial). A.M. was extensively cross-examined by Camaddu's counsel. *Id.* at 82-92.

(d) A.M.'s testimony about being picked up from school

[36] The People proffered that A.M. would testify about an incident from years prior when Camaddu picked her up from high school, drove her to a secluded location, and then asked A.M. if he could touch her. The People argued that this also falls within GRE 413 as an attempt to "sequester" A.M. so that sexual contact could be made. Tr., vol. 4 at 21-22 (Jury Trial). Camaddu's counsel objected that this conduct, even if proven, does not meet the requirements of GRE 413 because there was no attempt; rather, it was a completed act when permission was requested and denied. *Id.* at 22. The trial court ruled: "Thank you. The Court is going to rule that it will come in under 413(d)(6)." *Id.* at 23.

(e) A.M.'s testimony about Camaddu giving her pornographic material

[37] The People proffered that A.M. would testify that Camaddu attempted to give A.M. pornographic magazines, and that this evidence falls under GRE 404(b), because it lends credibility to the claims of the victim in this case, A.N.C., that the same thing happened to her.

Id. Camaddu's counsel objected that the claim that Camaddu gave a person other than the victim pornographic material ten years earlier does not fall under GRE 404(b), as it does not tend to show lack of mistake or any other 404(b) reasons for admitting evidence. *Id.* at 24. The trial court stated: "The Court . . . is going to rule that it will come in under 404(b)." *Id.* at 24-25.

[38] The actual testimony of A.M. on the incidents described in the two preceding subsections (d) and (e), above, as elicited through direct examination, was as follows: That Camaddu had picked up A.M. from somewhere (she could not recall where); that Camaddu pulled the car into a vacant parking lot and asked A.M. if he could touch her; that she cannot recall how old she was at the time, but she thinks she was going to Southern High; that after Camaddu asked if he could touch her, she told him no; that Camaddu then said to her, "Well, if you ever need someone to talk to about sex, you can come to me"; that Camaddu tried to hand her a pornographic magazine; that the car they were in was a Bronco; and that no one other than Camaddu and A.M. were present. Tr., vol. 5 at 78-80 (Jury Trial). A.M. was extensively cross-examined by Camaddu's counsel. *Id.* at 82-92.

iii. A.N.C.'s testimony regarding uncharged prior bad acts

(a) A.N.C.'s statement referencing "every time he did it to me"

[39] The People proffered that A.N.C. would testify as to "every time he did it to me," which the People asserted shows Camaddu's modus operandi. Tr., vol. 4 at 16 (Jury Trial). Camaddu's counsel objected that the statement is speculative because we do not know what "it" is that she is referring to. *Id.* The People countered that the statement was given by A.N.C. to a Child Protective Services ("CPS") worker, in the context of the CPS report, and also to a detective, in the context of a police investigation. *Id.* at 17-18. Camaddu's counsel argued that there is not enough context from which they could determine whether the evidence meets any of the

requirements of GRE 413. The trial court responded: “Thank you. The Court having looked at the exhibit, herein, --- the page, rather, the Court is going to overrule . . . overrule your objection and allow it in under 413.” *Id.* at 17.

[40] However, it does not appear that this specific testimony was elicited during the actual trial, and thus it is not in evidence.

(b) A.N.C.’s statement that Camaddu made her watch an X-rated movie

[41] The People proffered that A.N.C. would testify that years earlier, Camaddu pulled down A.N.C.’s shorts and unzipped his pants while he was making her watch an X-rated movie. *Id.* at 24-25. The People argued that this evidence falls within the “attempt” subsection of GRE 413, and that the part about the X-rated movie was relevant to show how the entire act occurred. *Id.* at 25-26. Camaddu’s counsel objected that the evidence about the X-rated movie should not come in under GRE 413, and that it was unduly prejudicial under GRE 403. *Id.* at 26. The trial court stated: “The court is going to allow it in under 413.” *Id.*

[42] The actual testimony of A.N.C. on this matter, as elicited through direct examination, was as follows: That at some time before she was in kindergarten, she was playing in her bedroom when Camaddu called her out to the living room to watch cartoons; that no one else was home; that she walked out to the hallway and peeked (presumably into the living room) and saw that it was not cartoons that was playing; that instead of cartoons, it was an X-rated movie; that Camaddu, in an angered voice, called her to come; that she walked over closing her eyes; that Camaddu told her to sit down; that Camaddu removed her hand from her face and unzipped his pants; that she was scared and was about to run, but Camaddu held her down and pulled down her pants; that she then felt something near her butt, and she got up and ran to her sister’s room

and locked the door. *Id.* at 59-60. A.N.C. was extensively cross-examined by Camaddu's counsel. *See* Tr., vol. 5 at 12-14 (Jury Trial).

(c) A.N.C.'s testimony about Camaddu licking her vagina

[43] The People proffered that A.N.C. would testify about a previous incident where Camaddu pulled down her pants and licked her vagina, which the People argued comes within the scope of GRE 413. Tr., vol. 4 at 30 (Jury Trial). Camaddu's counsel conceded that, if proven, it would come in under 413; however, it is more prejudicial than probative. *Id.* The trial court stated: "The Court is going to allow it in under 413." *Id.*

[44] Following the ruling on that last piece of evidence, the trial court stated: "The Court has made it's [sic] rulings on the various statements, at issue, for potential witnesses that will now be taking the stand . . . [B.B.], and [A.M.], and the alleged victim in this matter." *Id.* at 31. Trial then proceeded.

2. GRE 413 and GRE 404(b) Analysis

a. GRE 413

[45] As stated above, this court in *Chinel* held with respect to GRE 413 rulings that "we must be satisfied that the trial courts conducted a searching inquiry citing any *LeMay* factors particularly relevant to the case, discussing any other factors that may be relevant, and considering both the amount of unfair prejudice and probative value in making determinations." 2013 Guam 24 ¶ 39. The Tenth Circuit, in discussing the companion federal rules, held that "after the [trial court] resolves the three threshold issues, including a finding that the proffered evidence is relevant, it must proceed to balance the probative weight of the Rule 413 evidence against the danger of unfair prejudice, confusion of the issues . . . [and other Rule 403 factors]." *United States v. Guardia*, 135 F.3d 1326, 1330 (10th Cir. 1998) (citations and internal quotation

marks omitted). “Evidence must pass several hurdles before it can be admitted under Rule 413. . . [and] the trial court must make a reasoned, recorded finding that the prejudicial value of the evidence does not substantially outweigh its probative value.” *Id.* at 1332. In this case, we are hard pressed to find any record of the trial court’s reasoning regarding its decision to admit this evidence.

b. GRE 404(b)

[46] Of the evidence discussed above, the only GRE 404(b) evidence that was actually elicited during the trial was the testimony of A.M., who is not the victim in this case, that Camaddu had tried to give her pornographic material years earlier.⁴ See Tr., vol. 5 at 78-92 (Jury Trial). Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. GRE 404(b). Proper purposes for admitting evidence under GRE 404(b) are to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Id.*

[47] In *Palisoc*, this court stated:

In order for evidence of a prior bad act to be admissible under Rule 404(b), the Government bears the burden of establishing that the evidence: (1) proves a material element of the crime currently charged; (2) is similar to the charged conduct; (3) is based on sufficient evidence; and (4) is not too remote in time. *Evaristo*, 1999 Guam 22 at ¶ 11 (citing *Hinton*, 31 F.3d at 822); see also *United States v. Arambula-Ruiz*, 987 F.2d 599, 603 (9th Cir. 1993) (placing the burden on the Government of proving that the evidence meets all of the four requirements). A fifth and final consideration that the court must address is whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

2002 Guam 9 ¶ 8. While the trial court’s decision to admit evidence of prior bad acts under GRE 404(b) is reviewed for abuse of discretion, this court reviews *de novo* whether the evidence falls

⁴ Although the trial court made rulings that a few pieces of evidence could come in under GRE 404(b), of those, only the testimony of A.M. regarding pornographic material actually came in at trial.

within the scope of GRE 404(b)—i.e., whether the evidence is relevant to one of the proper 404(b) purposes and meets the *Hinton* criteria. See *Torres*, 2014 Guam 8 ¶¶ 18, 41. “[E]vidence is admissible under Rule 404(b) if it is relevant to an issue in the case other than [the] defendant’s criminal propensity.” *United States v. Meling*, 47 F.3d 1546, 1557 (9th Cir. 1995) (second alteration in original) (citation and internal quotation marks omitted) (addressing the federal counterpart to GRE 404(b)); see also *United States v. Jackson*, 84 F.3d 1154, 1159 (9th Cir. 1996) (“Unless the evidence of other crimes tends only to prove propensity, it is admissible.”). However, even evidence that is deemed admissible under GRE 404(b) may still be excluded pursuant to GRE 403 if its prejudicial effect substantially outweighs its probative value. See *Torres*, 2014 Guam 8 ¶ 46.

[48] None of the enumerated GRE 404(b) grounds was specifically alleged by the People or ruled on by the trial court with respect to A.M.’s testimony about the pornographic magazine. The People simply offered that this evidence lends credibility to the claims of A.N.C., the victim in this case, that the same thing happened to her many years earlier. Tr., vol. 4 at 23 (Jury Trial). As was the case in *Palisoc*, “[t]he trial court here failed to require from counsel any sort of statement articulating the [People’s] chain of inferences linking the prior bad act evidence to the charged offenses.” 2002 Guam 9 ¶ 15 (emphasis added). However, because the issue of whether evidence qualifies under 404(b) is reviewed *de novo*, this court may review the evidence and make that threshold determination for itself. The court finds that the evidence offered by A.M. – again, not the victim – that Camaddu offered her a pornographic magazine several years prior is not relevant to Camaddu’s motive, opportunity, intent, preparation, plan, knowledge, or identity with respect to the charges he faced in the trial below.

[49] The only categories that the proffered 404(b) evidence might conceivably fall under are intent and absence of mistake or accident. However, because the People proffered almost no basis for how this evidence satisfies GRE 404(b), and because the trial court made no findings, there is little, if anything, to review regarding the decision to admit the evidence under 404(b). This court must thus engage in the analysis afresh. In determining whether evidence is properly found to be within the scope of GRE 404(b), as recently addressed by this court in *Torres*, the court must look to the four factors set forth in *Hinton*.

[50] Under the first prong of the *Hinton* test, the evidence must prove a material element of the crime charged. *Torres*, 2014 Guam 8 ¶ 42. Camaddu has been charged with two counts of First Degree Criminal Sexual Conduct, alleging penetration, and four counts of Second Degree Criminal Sexual Conduct, alleging sexual contact, against A.N.C. Title 9 of the Guam Code defines sexual contact as “the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being *for the purpose of sexual arousal or gratification*.” 9 GCA § 25.10(a)(8) (2005) (emphasis added). Therefore, a material element of Second Degree Criminal Sexual Conduct is that the sexual contact was intentionally done for the purpose of sexual arousal or gratification. The court can conceive of an argument that the evidence that Camaddu, years earlier, tried to give someone else pornographic material could go toward establishing that his intent and purpose in touching A.N.C. as alleged in the counts of Second Degree Criminal Sexual Contact was for sexual arousal or gratification. None of the allegations in any of these six counts in the superseding indictment involve showing or giving A.N.C. pornographic material, although A.N.C. did testify that, years earlier, Camaddu made her watch an X-rated movie. While one might argue that this

goes to Camaddu's intent or lack of mistake, it would be a strain to conclude that the evidence that Camaddu tried to give A.M. pornographic material goes toward proving that Camaddu's touching of A.N.C. as charged in the superseding indictment was done for the purpose of sexual gratification or was not a mistake. The evidence seems only to go toward Camaddu's proclivity toward such conduct, which is a prohibited use of such evidence. The court is thus not convinced that this prong is met.

[51] The second prong of the *Hinton* test asks whether there is a similarity between the past conduct *and the conduct charged*. See *Torres*, 2014 Guam 8 ¶ 43. “[A]cts need only be sufficiently similar so as to help establish elements such as intent.” *Id.* (citing *Palisoc*, 2002 Guam 9 ¶ 22) (internal quotation marks omitted). Although A.N.C. testified that at some time before she was in kindergarten, Camaddu forced her to watch an X-rated movie, the offenses for which Camaddu was actually being tried do not bear any similarity to the allegation of A.M. that Camaddu tried to offer her a pornographic magazine.

[52] The third prong is that the GRE 404(b) evidence is based on sufficient evidence. *Id.* ¶ 44. In this case, the evidence came from A.M.'s own testimony about what she says she experienced personally. Therefore, this prong of the test is satisfied.

[53] The fourth and final prong of the *Hinton* test looks at whether the prior act of trying to give A.M. pornographic material is too remote in time. *Id.* ¶ 45. A.M. was 27 years old at the time of trial, and she testified that this incident took place at some time when she was a student at Southern High, though she was unsure of exactly when. At any rate, this would put the incident as occurring at least ten years earlier. “This court has followed other courts in declining to adopt a rigid rule that would act to freeze dates on a time line for purposes of admissibility.” *Id.* (citations and internal quotation marks omitted). In *Torres* we held that the age of the prior act

in and of itself does not bar admissibility of the evidence, citing cases in which courts have upheld admission of evidence of acts several years old. *See id.* (citing *United States v. Smith*, 282 F.3d 758, 769 (9th Cir. 2002); *United States v. Rude*, 88 F.3d 1538, 1550 (9th Cir. 1996)); *see also United States v. Johnson*, 132 F.3d 1279, 1283 (9th Cir. 1997) (thirteen or more years not too remote in time).

[54] The four factors of this test are strung together by the conjunctive “and” rather than the disjunctive “or.” *See Torres*, 2014 Guam 8 ¶ 41. In applying the factors of the *Hinton* test to the evidence admitted under GRE 404(b), the court finds that the third and fourth prongs of the *Hinton* test have been met, but that the first and second prongs are not satisfied. Therefore, upon *de novo* review, the court finds that the evidence does not meet the requirements of the *Hinton* test. As such, the admission was in error, and this court need not move on to the next inquiry, which is whether the evidence is more probative than prejudicial under GRE 403.

B. Objections as to Hearsay and Prior Consistent Statements

[55] In addition to his challenge to the admission of evidence of prior bad acts under GRE 413 and GRE 404(b), Camaddu also challenges the trial court’s admission of testimony from Detective Mary Jane Raval, which Camaddu claims were beyond the scope of his direct examination, as well as hearsay testimony from Annparo Rios, the sexual assault nurse examiner.

1. Detective Raval

[56] Both Detective Mary Jane Raval and the victim, A.N.C., testified as the People’s witnesses. Camaddu later called Detective Raval back to the stand to question her about inconsistencies between what A.N.C. testified to at trial and what A.N.C. previously reported to Detective Raval. *See Tr.*, vol. 6 at 2 (Jury Trial, May 22, 2013). Camaddu’s counsel was granted permission to ask Detective Raval leading questions on his direct examination of

Detective Raval. *Id.* at 3-4. During his direct examination of Detective Raval, Camaddu's counsel asked her about incidents that the victim, A.N.C., had described—specifically, regarding inconsistencies between what A.N.C. told Detective Raval and what A.N.C. testified to at trial, having to do primarily with where various incidents took place, what time of day they took place, what A.N.C. was wearing at the time, and other such details about how the various incidents unfolded. *Id.* at 12-16.

[57] When the People began their cross-examination of Detective Raval, they first asked her about whether A.N.C. told her where she learned the word “fingering” from, and Camaddu's counsel objected that this was beyond the scope of the direct examination, and the trial court overruled the objection. *Id.* at 16. Detective Raval then responded that A.N.C. said she heard it from her father. *Id.* at 16-17. The People then asked Detective Raval about the incident in February 2012, and had her recount certain statements that A.N.C. made to Raval, such as that Camaddu told A.N.C. that if she wanted two dollars she had to give him what he wanted, and that Camaddu placed his hand on A.N.C.'s thigh during that February incident and advanced it toward her vagina. *Id.* at 17. Camaddu's counsel objected to these questions as being beyond the scope. *Id.* The trial court then stated: “Okay, I'm going to overrule your objection, you allowed her, and the Court did not have any objections of her reviewing her statements, sir, and you told her she can review as much as she could. For those reasons that's the reason why, you opened the door.” *Id.*

[58] The People then moved on to the Christmas Eve incident, and asked Detective Raval about A.N.C. telling her that her father fingered her and squeezed her breasts, unzipped his pants, and took out his penis. *Id.* at 18. Further, the People asked Detective Raval about A.N.C. describing for her something on her hand that she thought was mucus. *Id.* At that point,

Camaddu's counsel asked to approach the bench, and stated that the purpose of him asking leading questions on his direct examination of Detective Raval was to not open the door and allow a mere retelling of the entire case of the People, and that he only asked questions specific to the inconsistent statements A.N.C. made during trial. *Id.* at 19.

[59] The trial court reiterated that because Camaddu's counsel allowed Detective Raval to refresh her recollection by reviewing her report, he opened the door and challenged A.N.C.'s credibility and memory. *Id.* The People countered that by asking these questions of Detective Raval, they were pointing out all the consistent statements A.N.C. made at trial and to Detective Raval—that while Camaddu's counsel was working to impeach A.N.C. through Detective Raval, the People sought to rehabilitate A.N.C. through the same witness. *Id.* The questioning of Detective Raval then ended after the People asked her about A.N.C. telling her that Camaddu's penis felt soft and that she ran into the bathroom after the Christmas Eve incident to wash her hands. *Id.* at 20.

[60] A prior consistent statement, as provided in the GRE, is considered non-hearsay. The applicable rule states:

(d) Statements which are not hearsay. A statement is not hearsay if--

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . .

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive

GRE 801(d)(1)(B). Evidentiary rulings, such as the decision to admit evidence as a prior consistent statement, are reviewed for an abuse of discretion, and will not be reversed absent prejudice affecting the verdict. *Hall*, 2004 Guam 12 ¶ 34.

[61] In the situation at issue here, the declarant is A.N.C., even though the testifying witness is Detective Raval. Essentially, A.N.C. testified during trial as to details of how the alleged incidents, for which Camaddu is charged, unfolded. A.N.C. was extensively cross-examined by Camaddu's counsel regarding her testimony, and in particular, regarding conflicting or inconsistent details between what she testified to and what she previously told the police. Later, Camaddu's counsel re-called Detective Raval, who had already testified as the People's witness, in order to highlight the inconsistencies between details that A.N.C. testified to and what A.N.C. previously reported to Detective Raval. *See* Tr., vol. 6 at 2 (Jury Trial). The People, upon their cross-examination of Detective Raval, queried her on other statements A.N.C. reported to her, for the proffered reason that they are prior consistent statements sought to rehabilitate A.N.C. *Id.* at 19.

[62] Wharton's Criminal Evidence states:

§ 9:39. Prior consistent statements—Procedure for proving prior consistent statements

Where a party claims the witness's testimony was a "recent fabrication," concocted for trial, a prior statement consistent with such testimony may be shown. If a witness, testifying to a material fact associated with an event, failed to mention that fact when giving an account of the event on a previous occasion, a party may prove in reply that at about the same time the witness did mention the material fact. *To be admissible, a prior consistent statement must also respond to the specific point on which the witness had been impeached.* Finally, the trial judge has discretion to determine whether a prior consistent statement is admissible; and the judge's ruling will not be disturbed absent an abuse of discretion.

A prior consistent statement is admitted or excluded, without regard to whether the impeached witness is the defendant or another witness. *It may be shown that a prior statement of an accomplice or of a complaining witness in a sex crime prosecution is consistent with such person's trial testimony.*

2 Wharton's Criminal Evidence § 9:39 (15th ed. 1997) (emphases added). Here, A.N.C., as a complaining witness in a sex crime, was impeached regarding details of the incidents that are the

subject of the charges brought against Camaddu. Camaddu's counsel called Detective Raval with the objective of pointing out the various inconsistent details offered by A.N.C.

[63] Moreover, as to the GRE requirement that a prior consistent statement may be admitted only after an express or implied charge against the declarant of recent fabrication or improper influence, there was extensive cross-examination of A.N.C. regarding not only the inconsistencies of her statements, but her arguable motive to lie. *See* Tr., vol. 5 at 7, 9, 10-12 (Jury Trial). Camaddu's counsel asked A.N.C. during cross-examination about the hatred her sister, B.B., had for Camaddu, and also told the judge, during a sidebar discussion over the People's objection to the question, that he was taking that line of questioning because "[he] feel[s] it gives [A.N.C.] motivation to be just untruthful." *Id.* at 22-23. Camaddu's counsel engaged in lengthy cross-examination of A.N.C. about her sisters wanting Camaddu to go to jail, and her mother being worried that Camaddu might get custody of A.N.C.—all of which went to Camaddu's counsel trying to establish motive for fabrication of testimony. *Id.* at 24. Therefore, there was an express charge by Camaddu's counsel of A.N.C.'s recent fabrication, improper influence, or motive to lie. *See* GRE 801(d)(1)(B).

[64] A.N.C. was impeached during her cross-examination as to details Detective Raval was asked about in the People's cross-examination of her, which the trial court ruled could come in as prior consistent statements. Therefore, the trial court was within its discretion to rule that the People could ask Detective Raval about the various details A.N.C. told her that *were* consistent with what A.N.C. testified to at trial. *See, e.g., United States v. Smith*, 893 F.2d 1573, 1582 (9th Cir. 1990) ("In general, a district court has broad discretion regarding whether to admit a prior consistent statement under Fed. R. Evid. 801(d)(1)(B).").

2. Annparo Rios

[65] Camaddu argues on appeal that the trial court erroneously allowed Annparo Rios, the sexual assault nurse examiner from Healing Hearts Crisis Center, to testify about statements A.N.C. made to her regarding a history of digital penetration. Appellant's Br. at 24. Camaddu alleges on appeal that the statements were inadmissible hearsay. *See id.* at 25. Camaddu relies on this court's holding in *People v. Roten*, 2012 Guam 3, that a police officer's testimony about statements the victim made to him was impermissible hearsay. *Id.* In *Roten*, the police officer testified about details the victim allegedly told him. 2012 Guam 3 ¶ 15. The People contended that these statements were not being offered for the truth of the matter asserted, and thus were not hearsay, because they were offered only to show the results of the police investigation and the information the officer learned during that investigation. *Id.* ¶ 17.

[66] The People asked Rios on redirect: "You said you took some medical history from [A.N.C.]. Was there a history of penetration that [A.N.C.] alleged?" Tr., vol. 3 at 93 (Jury Trial). Camaddu's counsel objected. *Id.* The People first sought the admission of A.N.C.'s statement to Rios under a hearsay exception, as being offered for purposes of medical diagnosis, which the trial court initially allowed. *Id.* at 93-94. However, Camaddu's counsel later cited to the Healing Hearts waiver form, which states that the information gathered will be forwarded to law enforcement, and argued that the information was therefore given to Rios by A.N.C. for forensic purposes and not medical purposes. *Id.* at 95-96. The trial court agreed. *Id.* The People then offered the information as non-hearsay (versus a hearsay exception), arguing that it would be offered not for its truth, but to show the effect on Rios—specifically, why she performed the exam on A.N.C. The trial court thereafter allowed the statement to come in on that basis. *Id.* at 96-97.

[67] The relevant portion of the testimony that is the subject of this issue on appeal is as follows, with the questions being asked by the People and answered by Rios:

- Q: And why would -- why did you do the vaginal examination?
- A: To check if there's any signs of injury, infection that I would need to be -- I should be concerned about.
- Q: Would anything in the history that she gave you indicate that there might have been?
- A: With her history, yes.
- Q: And what would that be?
- A: That would be the digital penetration.

Id. at 97-98. The People thereafter asked, and Rios answered, general questions about types of penetration, what degrees of pain are typically reported with penetration, what factors might affect levels of pain, and why it is important to get a history from a patient. *Id.* at 98-103.

[68] This situation is distinguishable from the situation with the police officer's testimony in *Roten*. In *Roten*, the police officer "came to his conclusions concerning [the] case solely on the basis of a single interview with the victim[.]" and this court stated that "it can be assumed that when [the police officer] testified concerning his conclusions, he was doing so not on the basis of any personal knowledge of what occurred between *Roten* and the victim, but rather on the basis of what the victim told him." 2012 Guam 3 ¶ 20. The court held in *Roten* that "[s]uch statements are precisely the type of hearsay that is prohibited[.]" *Id.* In this case, however, Rios testified that her examination of A.N.C. was normal, meaning that there were no signs of injury or infection. Tr., vol. 3 at 73 (Jury Trial). In other words, Rios did not make any conclusions about the truth of A.N.C.'s claim of penetration, but only testified that A.N.C.'s claim is what led Rios to conduct the examination. *Id.* at 97-98. From this, we hold that the trial court was within its discretion in allowing this testimony as not being offered for its truth, but for the effect on

Rios—i.e., prompting her to conduct an examination on A.N.C. As such, this ruling was not in error.

C. Effect of Evidentiary Errors on the Jury Verdict

[69] As discussed above, the court finds that the trial court's GRE 413 rulings were erroneous, because they were made without conducting a "searching inquiry" or a GRE 403 balancing test. *See Chinel*, 2013 Guam 24 ¶ 39. Additionally, the court finds that the trial court's admission of evidence under GRE 404(b), regarding Camaddu giving A.M. pornographic material, was erroneous, finding upon *de novo* review that the evidence does not fall within the scope of GRE 404(b), without the need to evaluate the trial court's discretion with regard to the GRE 403 balancing test.

[70] However, "[t]o order a reversal on the basis of an erroneous evidentiary ruling, we must find not only that the [trial] court abused its discretion but also that the error was prejudicial. Reversal of a jury verdict is not warranted unless the evidentiary error affects a party's substantial rights." *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (citing *Heyne v. Caruso*, 69 F.3d 1475, 1478 (9th Cir. 1995)). Thus, even if this court were to find that the trial court erred in admitting various pieces of evidence under GRE 413 and GRE 404(b), such error does not necessarily warrant reversal of the jury verdict. This court stated in *Palisoc* that:

[N]on-constitutional errors by the trial court only require reversal "if it is more probable than not that the erroneous admission of the evidence materially affected the jurors' verdict." If "other, properly admitted evidence of the defendant's guilt is overwhelming," then it is more likely than not the erroneous admission did not materially affect the jurors' verdict.

2002 Guam 9 ¶ 31 (citations omitted); *see also Santos*, 2003 Guam 1 ¶ 29 n.6 ("[E]ven if a mistake has been made, a new trial will not be granted unless the evidence would have caused a

different outcome at trial.” (citations omitted)). Camaddu makes no argument on appeal that the complained-of errors affect his constitutional rights.

[71] The charges against Camaddu have to do with two incidents of digital penetration of A.N.C.—the first occurring between December 1, 2011, and February 6, 2012, and the second occurring between November 1, 2011, and February 6, 2012. Additionally, Camaddu was charged with four incidents of sexual contact with A.N.C., occurring during this same general time frame. RA, tab 54 (Superseding Indictment). A.N.C. testified at length during the trial about these incidents. She testified about an incident occurring in November 2011, where she awoke in her bed to find Camaddu beside her, and that Camaddu shoved his hand in her pants and rubbed her vagina. Using the opening of a tissue box, she demonstrated for the jury with her finger how Camaddu placed his finger in her vagina. Tr., vol. 4 at 53-58 (Jury Trial). A.N.C. also testified about an incident on Christmas Eve 2011, where Camaddu called her out to the living room and told her to lie down on his lap. She stated that she fell asleep and later awoke to find Camaddu with one hand in her shirt and the other hand in her pants penetrating her vagina with his finger. Again, she demonstrated this digital penetration using her finger and the opening of a tissue box. Further, she testified that Camaddu unzipped his pants and forced her to put her hand around his penis and move it up and down for several minutes until “mucus” was all over her hand. *Id.* at 45-53. Finally, A.N.C. testified about a February 2012 incident where Camaddu was driving her to school and she asked him for two dollars. *Id.* at 36. Camaddu, according to A.N.C.’s testimony, responded that he would give her what she wanted if she gave him what he wanted. *Id.* at 37. She testified that he then put his hand on her lap near her vagina, after which she pushed him away. *Id.* She stated that she felt scared, but not surprised because she knew what he meant when he said to give him what he wanted. *Id.* at 43.

[72] Camaddu does not challenge on appeal that there was an insufficiency of evidence to convict him of the crimes charged. Furthermore, he chose to testify in his own defense,⁵ and the jury was therefore able to listen to and observe the testimony and demeanor of both A.N.C. and Camaddu, and to judge for itself the credibility of these witnesses.

[73] In the *Hall* case, this court, while finding error in the trial court's evidentiary ruling, held that the error did not warrant disturbing the verdict because "other, properly admitted evidence of [the defendant's] guilt [was] overwhelming and that it [was] more likely than not that the erroneous admission . . . did not materially affect the jurors' verdict." 2004 Guam 12 ¶ 39. The same is true of this case. A.N.C. testified at length about the charged incidents, and she was zealously cross-examined regarding the incidents that form the bases of the charges. Her credibility was extensively tested by Camaddu's counsel both on cross-examination and through the examination of other witnesses, such as Detective Raval. *See* Tr., vol. 4 at 68-89 (Jury Trial); Tr., vol. 5 at 5-25 (Jury Trial); Tr., vol. 6 at 2, 19 (Jury Trial). "A jury may adequately evaluate the victim's credibility during a lengthy cross-examination of the victim's testimony." *Roten*, 2012 Guam 3 ¶ 48. Based on the direct testimony of the victim/complaining witness, on Camaddu's own testimony and opportunity to be heard by the jury, and on the fact that Camaddu does not challenge the sufficiency of that evidence, the errors in admitting certain evidence do not rise to the level of reversible error. *See Hall*, 2004 Guam 12 ¶ 40.

D. Whether the Trial Court Erred in Failing to Recuse Itself from Determining Sentencing

[74] Title 7 GCA § 6105 is based on 28 U.S.C. § 455, and governs the substantive grounds for disqualification for judges. It provides:

⁵ Camaddu testified and denied touching and licking A.N.C.'s vagina or ever touching A.N.C. in any sexual way. Tr., vol. 6 at 36 (Jury Trial). He also denied the allegations of prior bad acts made by his stepdaughters, A.M. and B.M. *Id.* at 37-38. Finally, he denied trying to give A.M. pornography. *Id.* at 39. The People thoroughly cross-examined Camaddu regarding his testimony. *Id.* at 41-51.

Any judge shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned, but if, following complete disclosure to all parties in the proceedings of the reasons for disqualification, all parties agree to having the Judge continue to sit in the proceedings, he or she need not disqualify himself or herself.

7 GCA § 6105(a) (2005). Under this section, what matters is “the appearance of bias,” not “actual bias.” *Van Doo v. Superior Court*, 2008 Guam 7 ¶ 32 (citing *Dizon*, 1998 Guam 3 ¶ 10 n.3). “The appearance of bias is judged from the standard of a ‘reasonable person’ who knows all the facts, and understands the ‘contexts of jurisdictions, parties, and controversies involved.’” *Id.* (quoting *Ada v. Gutierrez*, 2000 Guam 22 ¶¶ 12-13).

[75] Camaddu argues that because of similar facts in this case to *Dizon*, the denial of his motion to disqualify the trial court judge from this case was in error. See Appellant’s Br. at 28. Camaddu argues that the following facts of this case, which are similar to those in *Dizon*, warrant disqualification: (1) a person of influence sent a letter to a judge requesting a specific result; (2) a sitting Guam senator has more influence over a Superior Court judge than a federal judge does; and (3) the judges in both cases knew of the importance of the case to the persons who wrote the letters. *Id.* at 27-30.

[76] The facts of this case are distinguishable from *Dizon*, and thus, the denial of disqualification was not in error. In *Dizon*, the petitioner sought recusal of the judge after learning of a letter from a judge of the Ninth Circuit to the judge sitting on his case. 1998 Guam 3 ¶ 3. The letter expressed the circuit judge’s concern for quick resolution of the case and asked for [the sitting judge’s] efforts to ensure that same end.” *Id.* This court stated that the judge’s friendship raises a “reasonable question as to impartiality and bias in the mind of a reasonable person.” *Id.* ¶ 12. In addition, this court stated that the fact that the sitting judge in *Dizon* received and read the letter but did not disclose it until after two requests had been made is also

troubling. *Id.* ¶ 15. More specifically, the judge in that case “deemed it innocuous and delayed production of the letter,” concluding that there was no need for disclosure. *Id.* The sitting judge “failed to provide the parties with an opportunity to raise objections or waive any claims of bias.” *Id.*

[77] In this case, however, nothing in the record suggests that the trial court judge and Senator McCreadie are friends, which proved to be one of the factors supporting a finding of partiality in *Dizon*. In addition, unlike the trial court judge in *Dizon*, the trial court judge in this case voluntarily disclosed Senator McCreadie’s letter to the parties at the earliest time practicable and gave both parties an opportunity to comment on the letter. Whether these facts are convincing evidence is not the issue, because this court applies the standard of whether a reasonable person with all of the facts could reasonably question the judge’s impartiality. *See id.* Thus, because these facts are unlikely to create reasonable questions as to impartiality and bias in the mind of a reasonable person, they do not warrant disqualification.

[78] This case is similar to *State v. Santangelo*, in which the defendant, convicted by a jury, claimed that the trial court committed reversible error by denying his motion for disqualification from the sentencing portion of trial. 534 A.2d 1175, 1188 (Conn. 1987). His motion was based on his claim that the trial judge, prior to the defendant’s sentencing, received and read a letter from a detective that “contained unsubstantiated, inflammatory comments and accusations concerning the defendant.” *Id.* “The trial court, on the record, acknowledged receiving and reading the letter but stated that it was ‘disregarding all [its] contents.’” *Id.* The court found that disqualification was not warranted because the judge “brought the letter he had received to the attention of the defendant and noted that there was no basis for giving its allegations credence.” *Id.* at 1189. The judge “then emphatically and categorically stated that he could, and would,

disregard the letter's contents." *Id.* The court found "no reason to believe that he could not do so, or that a reasonable person would have cause to question his ability to do so." *Id.*

[79] In this case, the trial court judge denied that the letter would influence her decision making and also denied that she knew the case was important to Senator McCreadie. RA, tab 120 (Answer (Objection to Judge), July 10, 2013). This court, like the court in *Santangelo*, finds no reason to believe that the trial court judge could not find that the letter would not influence her decision making or that a reasonable person would question her ability to impartially perform her duties.

[80] If the trial court is required to "recuse itself every time it receives unsolicited material uncomplimentary to a defendant prior to trial or sentencing [it] would create an intolerable situation which could lead to a manipulation of the criminal justice system." *Santangelo*, 534 A.2d at 1188 (citing *United States v. Hillsberg*, 812 F.2d 328, 335 (7th Cir. 1987), *cert. denied*, 481 U.S. 1041 (1987)). "[J]udges and justices have 'as strong a duty to sit when there is no legitimate reason to recuse as [they] do[] to recuse when the law and facts require.'" *People v. Tennesen*, 2010 Guam 12 ¶ 49 (citing *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995)). Title 28 U.S.C. § 455, which is the source of 7 GCA § 6105, is not intended to "bestow veto power over judges or to be used as a judge shopping device." *Nichols*, 71 F.3d at 351 (citing *United States v. Greenspan*, 26 F.3d 1001, 1005 (10th Cir. 1994); *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993)). We thus hold that the trial court did not err in denying Camaddu's motion to disqualify the trial judge, because reversing the trial court's motion would cause the trial court in similar cases to recuse itself whenever it receives unsolicited material prior to a defendant's trial or sentencing.

V. CONCLUSION

[81] We hold that the trial court abused its discretion in admitting evidence under GRE 413 because it failed to make any analysis or conduct a searching inquiry, and failed to engage in any balancing pursuant to GRE 403. Further, we hold that the trial court erred in admitting evidence of A.M.'s testimony regarding pornographic material because, upon *de novo* review, the court finds that the evidence does not fall within the scope of GRE 404(b), without the need to reach whether the trial court abused its discretion with regard to the GRE 403 balancing test. Further, we hold that the trial court did not abuse its discretion in making its evidentiary rulings regarding Detective Raval's testimony of A.N.C.'s prior consistent statements, or its non-hearsay ruling regarding penetration as elicited from Annparo Rios.

[82] Despite finding some evidentiary errors, we nonetheless **AFFIRM** Camaddu's judgment of conviction, finding that any errors regarding admission of evidence did not affect Camaddu's constitutional rights and do not warrant reversal. Because there was sufficient, properly admitted evidence of Camaddu's guilt, the court does not find that the improperly admitted evidence materially affected the verdict. Lastly, we **AFFIRM** the decision of the recusal judge denying Camaddu's motion to disqualify the trial court judge.

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Associate Justice

Original Signed: **Katherine A. Maraman**
By

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **Robert J. Torres**
By

ROBERT J. TORRES
Chief Justice