IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

PETRUS JUNIOR MARTIN,
Defendant-Appellant.

Supreme Court Case No.: CRA15-039
Superior Court Case No.: CF0679-11

OPINION

Cite as: 2018 Guam 7

Appeal from the Superior Court of Guam
Argued and submitted on August 17, 2016
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.[1]

CARBULLIDO, J.:

[1] Defendant-Appellant Petrus Junior Martin appeals from a final judgment convicting him of two counts of First Degree Criminal Sexual Conduct ("CSC") (as a First Degree Felony) and three counts of Second Degree CSC (as a First Degree Felony). Martin argues the two counts of First Degree CSC were multiplicitous, violated double jeopardy, and the trial court abused its discretion by admitting certain hearsay statements. In supplemental briefing, Martin also argues that there is insufficient evidence to sustain all the counts of which he was convicted.

[2] For the reasons that follow, we affirm the final judgment entered by the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The People's initial indictment alleged two charges of First Degree CSC, one charge of Second Degree CSC, and one charge of Felonious Restraint against two defendants: Alaph Mounik and Petrus Junior Martin. The People entered a superseding indictment removing the charge of Felonious Restraint and modifying the First Degree and Second Degree CSC charges to two charges with multiple counts, rather than separate charges for each count. After Martin's trial began, a Plea Agreement was reached with Mounik. The People entered a third and final charging document, the Amended Superseding Indictment, removing Mounik as a defendant and maintaining the charges against Martin: two counts of First Degree CSC and three counts of Second Degree CSC. After the People's case-in-chief, Martin's counsel moved for judgment of acquittal based on insufficient evidence with respect to the third count of Second Degree CSC

[1] The signatures in this opinion reflect the titles of the Justices at the time this matter was argued.

only. Tr. at 13-14 (Jury Trial, June 30, 2014). The court denied the motion. *Id.* at 19. The jury returned a verdict of guilty on all five counts. After the verdict, Martin's counsel did not renew his motion for judgment of acquittal or move for judgment of acquittal with respect to any other counts. Tr. at 14-15 (Jury Trial, July 9, 2014). The court held three sentencing hearings prior to entering its Judgment and Sentence. The court ultimately sentenced Martin to twenty years' incarceration for each count of First Degree CSC to run consecutively and five years' incarceration for each count of Second Degree CSC to run concurrently. Judgment was entered. Martin did not initially file a timely appeal but moved for reentry of judgment. Judgment was reentered, and Martin timely appealed.

[4] The charges at issue in this case stem from an incident where a minor, M.R., according to testimony at trial, was abducted and sexually assaulted by three men. Of the three accused males, one was a minor, I.M., and the second, Mounik, accepted a plea agreement. The third, Martin, is the Defendant-Appellant in this case.

[5] At trial, the People called a number of witnesses, including: M.R.'s father; Dr. William Weare, M.R.'s examining physician at the Healing Hearts Crisis Center; and Guam Police Department ("GPD") Officer Peter Paulino. Dr. Weare's medical evaluation report was also submitted.

II. JURISDICTION

[6] This court has appellate jurisdiction over this matter pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-173 (2018)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[7] A claim that an indictment has resulted in multiplicitous convictions is reviewed *de novo*. *United States v. Stewart*, 420 F.3d 1007, 1012 (9th Cir. 2005) (citing *United States v. Vargas-Castillo*, 329 F.3d 715, 718-19 (9th Cir. 2003)). A double jeopardy claim likewise presents a question of law that we review *de novo*. *People v. Quenga*, 2015 Guam 39 ¶ 8 (quoting *People v. San Nicolas*, 2001 Guam 4 ¶ 8).

[8] Where a defendant has raised the issue of sufficiency of the evidence by a motion for judgment of acquittal, we review the trial court's denial of the motion *de novo*. *People v. Song*, 2012 Guam 21 ¶ 26. At trial, Martin raised sufficiency of the evidence only with respect to one count of Second Degree CSC, which would therefore raise the question of whether plain error review applies to the remaining four counts. *See People v. Quitugua*, 2009 Guam 10 ¶ 10 (citation omitted) (applying plain error review when issue was not raised at trial). We decline to reach this question, however, because we find the evidence sufficient even if we apply a *de novo* standard to all the counts that Martin presently contests, as discussed further in Part IV.C of this opinion.

[9] We review for plain error where no objection to the admission of evidence is made at trial. *People v. Mendiola*, 2014 Guam 17 ¶ 23 n.2 (citation omitted); *see also* 8 GCA § 130.50(a) (2005). We have previously summarized plain error review as "highly prejudicial error. We will not reverse unless (1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process." *Quitugua*, 2009 Guam 10 ¶ 11 (citations omitted).

[10] Evidentiary decisions, such as the admission of evidence over a hearsay objection, are reviewed for abuse of discretion. *People v. Perez*, 2015 Guam 10 ¶ 19 (quoting *People v. Roten*, 2012 Guam 3 ¶ 13). An abuse of discretion is "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.'" *Id.* (quoting *People v. Evaristo*, 1999 Guam 22 ¶ 6).

IV. ANALYSIS

A. Martin Waived His Objection that the Indictment Was Multiplicitous

[11] Title 8 GCA § 65.15 requires a defendant to raise an objection to an indictment prior to trial, except where the objection is that it fails to show jurisdiction or to charge an offense. 8 GCA § 65.15(b) (2005) ("The following shall be raised prior to trial: . . . (b) Defenses and objections based on defects in the indictment . . . ."); *accord* Fed. R. Crim. P. 12(b)(3)(B)(ii) ("The following . . . objections, . . . must be raised by pretrial motion . . . : . . . (B) a defect in the indictment . . . including: . . . charging the same offense in more than one count (multiplicity) . . . ."). Failure to raise such an objection in a pretrial motion constitutes waiver absent a showing of good cause. 8 GCA § 65.45 (2005); *see also People v. Grajo*, No. 86-00002, 1987 WL 109393, at *3 (D. Guam App. Div. Feb. 12, 1987) (ruling that defendant waived objection to indictment under 8 GCA § 65.15 when he failed to raise before trial or show good cause); *People v. White*, 2005 Guam 20 ¶¶ 14-15 (same). This court has discretion to review plain errors or defects affecting substantial rights, even when not raised at trial. *See* 8 GCA § 130.50. We exercise this discretion "sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result." *People v. Ueki*, 1999 Guam 4 ¶ 17 (citing *United States v. Young*, 470 U.S. 1, 15 (1985) (internal quotation marks omitted)).

[12] Because Martin did not raise the issue of a multiplicitous indictment at any time prior to appeal, he did not satisfy the mandatory procedural requirements set forth under 8 GCA §§ 65.15(b) and 65.45, and in the present case he has failed to provide any good cause for his failure to do so. *See White*, 2005 Guam 20 ¶¶ 15-16 ("We hold that failure to raise objections to defects in the indictment or institution of the prosecution in a timely fashion, without good cause, precludes appellate review."); *People v. Diaz*, 2007 Guam 3 ¶ 51 (same); *People v. Garrido*, 882 F. Supp. 152, 153 (D. Guam App. Div. 1995) (same). Therefore we hold Martin waived objection to the indictment by failing to comply with the timeliness requirements of 8 GCA §§ 65.15 and 65.45.

B. Consecutive Sentences Did Not Violate Double Jeopardy

[13] Martin also argues that "[c]onsecutive sentences imposed on multiplicitous counts violates [sic] Double Jeopardy." Appellant's Br. at 20 (Apr. 29, 2016); *see also* Appellant's Reply Br. at 7-8 (Aug. 11, 2016). As noted above, Martin waived his objection to the indictment based on multiplicity, but in order to address his double jeopardy claim, we will address his argument that the indictment was multiplicitous.

[14] Title 9 GCA § 1.22 specifically enables charging multiple offenses when a defendant's conduct establishes multiple criminal acts, except under certain enumerated circumstances not implicated here. 9 GCA § 1.22 (2005) ("When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense."). "An indictment is multiplicitous if it charges a single offense in more than one

count."[2] *United States v. Williams*, 527 F.3d 1235, 1241 (11th Cir. 2008) (citing *Ward v. United States*, 694 F.2d 654, 660-61 (11th Cir. 1983)); *United States v. Jenkins*, 313 F.3d 549, 557 (10th Cir. 2002) ("Multiplicitous counts are separately charged counts that are based on the same criminal behavior." (citing *United States v. McIntosh*, 124 F.3d 1330, 1336 (10th Cir. 1997))). Multiplicitous counts "are improper because they allow multiple punishments for a single criminal offense." *Jenkins*, 313 F.3d at 557 (citing *McIntosh*, 124 F.3d at 1336).

[15] Where an indictment charges two violations of the same statute for seemingly related conduct, our multiplicity analysis is twofold. We must first determine "what act the legislature intended as the 'unit of prosecution' under the statute." *San Nicolas*, 2001 Guam 4 ¶ 13 (citations omitted).[3] When determining the unit of prosecution, "[t]he relevant inquiry is 'whether the conduct at issue was intended to give rise to more than one offense under the same [statutory] provision.'" *Id.* (second alteration in original) (quoting *United States v. McLaughlin*, 164 F.3d 1, 14 (D.C. Cir. 1998)). This inquiry necessarily involves determining whether the alleged violation is statutorily defined as a course of conduct offense. *See People v. Afaisen*, 2016 Guam 31 ¶¶ 9, 32-34; *see also* 9 GCA § 1.22(e) ("[A defendant] may not, however, be convicted of more than one offense if . . . the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted . . . ."); *People v. Quinones*, 779

[2] Multiplicity stands in contrast to "duplicity," which describes more than one offense alleged in a single count. *United States v. Davis*, 306 F.3d 398, 415 (6th Cir. 2002) (citation omitted); *Quenga*, 2015 Guam 39 ¶ 52 (citation omitted).

[3] We note that Martin misframes the application of *Blockburger v. United States*, 284 U.S. 299, 304 (1932), when he states that "[a]n indictment is not multiplicitous if each count or charge requires proof of a fact which the other does not," Appellant's Br. at 17, and then goes on to assert his consecutive sentences for the two counts of First Degree CSC violated double jeopardy, *see id.* at 20. As we discussed at some length in *San Nicolas*, "*Blockburger* applies only where the defendant is convicted of violating two distinct statutory provisions," but here Martin was sentenced consecutively for two counts under the same First Degree CSC statute, "therefore, the *Blockburger* test is inapplicable in determining whether consecutive sentences are proper." *San Nicolas*, 2001 Guam 4 ¶¶ 11-12. Because Martin challenges his consecutive sentences imposed for two violations of the same statute, the proper test is the "unit of prosecution" test. *See id.* ¶ 13; *accord People v. Afaisen*, 2016 Guam 31 ¶ 13.

N.Y.S.2d 131, 132 (App. Div. 2004) ("An indictment cannot charge a defendant with more than one count of a crime that can be characterized as a continuing offense unless there has been an interruption in the course of conduct." (citations omitted)).

[16] We must also determine whether "the conduct underlying each violation involves a separate and distinct act." *United States v. Technic Servs., Inc.*, 314 F.3d 1031, 1046 (9th Cir. 2002) (citations omitted), *overruled in part on other grounds by United States v. Contreras*, 593 F.3d 1135 (9th Cir. 2010). We look to the indictment to evaluate whether the underlying acts, as alleged, were "separated in time or are of a significantly different nature." *State v. Multaler*, 2002 WI 35, ¶ 56, 252 Wis. 2d 54, 643 N.W.2d 437 (quoting *State v. Eisch*, 291 N.W.2d 800, 803 (Wis. 1980)). "Acts may be 'different in nature' even when they are the same types of acts as long as each required 'a new volitional departure in the defendant's course of conduct.'" *Id.* ¶ 57 (quoting *State v. Koller*, 2001 WI App 253, ¶ 31, 248 Wis. 2d 259, 635 N.W.2d 838). This analysis involves determining "whether there was sufficient time for reflection between the acts such that the defendant re-committed himself to the criminal conduct." *Id.* ¶ 56 (citing *State v. Hirsch*, 410 N.W.2d 638, 641 (Wis. Ct. App. 1987)).

[17] First Degree CSC is defined, in pertinent part, as follows:

> (a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:
>
> . . . .
>
> (4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:
>
> . . . .
>
> (B) the actor uses force or coercion to accomplish the sexual penetration.

9 GCA § 25.15(a), (a)(4), (a)(4)(B) (amended by Guam Pub. L. 32-012:2 (Apr. 11, 2013)). Sexual penetration is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body . . . ." 9 GCA § 25.10(a)(9) (2005).

[18] As a threshold matter, we find that the plain language of the statute clearly expresses legislative intent to define the unit of prosecution for First Degree CSC as a single act of penetration—"however slight"—when other statutory conditions are satisfied.

[19] In determining whether the conduct underlying the separate counts involved separate and distinct acts, we look to the indictment:

> Count One
>
> On or about the 3rd day of December 2011, in Guam, [Martin] did commit the offense of First Degree Criminal Sexual Conduct, in that he intentionally engaged in sexual penetration with another, to wit: by sexual intercourse with M.R. . . . and [Martin] was aided or abetted by one or more other persons and [Martin] used force or coercion to accomplish the sexual penetration, in violation of 9 GCA §§ 25.15(a)(4)(ii) and (b).[4]
>
> Count Two
>
> On or about the 3rd day of December 2011, *but at a time different than that alleged in the Third Charge, Count One above*, in Guam, [Martin] did commit the offense of First Degree Criminal Sexual Conduct, in that he intentionally engaged in sexual penetration with another, to wit: by sexual intercourse with M.R. . . . and [Martin] was aided or abetted by one or more other persons and [Martin] used force or coercion to accomplish the sexual penetration, in violation of 9 GCA §§ 25.15(a)(4)(ii) and (b).[5]

RA, tab 121 at 1-2 (Am. Superseding Indictment, July 1, 2014).

[4] Title 9 GCA § 25.15(a)(4)(ii) has since been renumbered as subsection 25.15(a)(4)(B). *See* Guam Pub. L. 32-012:2 (Apr. 11, 2013).

[5] *See supra* note 4 and accompanying text.

[20] We conclude that the counts of First Degree CSC allege offenses for separate acts. The indictment charges two distinguishable acts, separated in time. *Id.* (distinguishing the counts by alleging second violation occurred "*at a time different than that alleged in* [Count One]"); *see also Multaler*, 2002 WI 35, ¶ 56.

[21] Because First Degree CSC allows for a separate unit of prosecution based on a single separate act of penetration—"however slight"—and the indictment alleged two distinct acts of First Degree CSC, we find that the imposition of consecutive sentences was therefore proper, because the indictment was not multiplicitous. Where "the statute prohibits individual acts . . . then each act is punishable separately," *San Nicolas*, 2001 Guam 4 ¶ 23 (citing *United States v. Johnson*, 612 F.2d 843, 845-46 (4th Cir. 1979); *Blockburger*, 284 U.S. at 302). Therefore, we affirm the sentence imposed by the trial court.

C. The Evidence Was Sufficient for Each Count of First Degree CSC and Second Degree CSC

[22] As stated above, where a defendant has raised the issue of sufficiency of the evidence by a motion for judgment of acquittal, we review the trial court's denial of the motion *de novo*. *Song*, 2012 Guam 21 ¶ 26. Solely for the sake of argument, we will apply this standard to all counts contested by Martin, even though at trial he moved with respect to only one count.

[23] We have stated:

> In determining whether there exists sufficient evidence to sustain a defendant's conviction, we review the evidence presented at trial in the light most favorable to the People and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. "This is a 'highly deferential standard of review.'"

Id. (citations omitted); *see also People v. Wusstig*, 2015 Guam 21 ¶ 9. In reviewing a motion for judgment of acquittal, it is not for the court "'to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the

evidence; such matters are for the jury.'" *Song*, 2012 Guam 21 ¶ 29 (quoting *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005)); *see also People v. Jesus*, 2009 Guam 2 ¶ 61 ("The appellate court cannot merely substitute its judgment for that of the jury." (collecting cases)). In reviewing sufficiency of the evidence, a court is "concerned with the existence or non-existence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence." *Song*, 2012 Guam 21 ¶ 29 (citations omitted); *see also Jesus*, 2009 Guam 2 ¶ 62 ("[E]vidence sufficient to support a guilty verdict may be entirely circumstantial, and the factfinder is free to choose among reasonable interpretations of the evidence." (quoting *United States v. Boskic*, 545 F.3d 69, 85 (1st Cir. 2008))).

1. First Degree CSC Counts

[24] As charged, the elements of First Degree CSC are (1) sexual penetration with the victim, (2) aiding or abetting by another individual, and (3) use of force or coercion. 9 GCA § 25.15(a), (a)(4), (a)(4)(B). At trial, Martin testified to two instances of penetration, Tr. at 31-32 (Jury Trial, June 30, 2014), providing evidence to support the first element of First Degree CSC for two distinct counts.

[25] Numerous other witnesses testified, including: M.R.; her father; her examining physician; police officers; as well as Martin's accomplices, I.M. and Mounik. *See generally* Tr. (Jury Trial, June 20, 2014); Tr. (Jury Trial, June 23, 2014); Tr. (Jury Trial, June 24, 2014); Tr. (Jury Trial, June 25, 2014); Tr. (Jury Trial, June 26, 2014); Tr. (Jury Trial, June 27, 2014); Tr. (Jury Trial, June 30, 2014). M.R. testified that she was "forced" to drink alcohol prior to the rape. Tr. at 23:19-20 (Jury Trial, June 27, 2014). She also testified that she was held down, raped more than once, and had to climb a gate to leave the area. *Id.* at 24:8-26:20. Mounik also testified that there was a fence around at least part of the area, and that it was dark at the time.

Tr. at 36:9-11, 37:21-22 (Jury Trial, June 24, 2014). Mounik further told police that they were holding her legs because "she . . . was trying to get up." Tr. at 7:10-18 (Jury Trial, June 26, 2014). I.M. testified that M.R. resisted through the incident, and that she had to be restrained. *Id.* at 36:1-38:6, 68:1-7, 71:6-14. There was also circumstantial evidence that Martin was never alone at the scene, as he and I.M. left at the same time, as stated in both Martin's testimony, Tr. at 33:5-16 (Jury Trial, June 30, 2014), and I.M.'s testimony, Tr. at 41:4-5 (Jury Trial, June 26, 2014). Further, there was evidence of a striking extent of debris covering M.R.'s lower extremities, including dirt and vegetable foreign matter under her clitoral hood and at the opening of the vagina, along with probable leaf material at the cervix, deep inside the vagina. Tr. at 107:12-15, 108:18-21, 109:6-8, 109:11-14, 110:1-13 (Jury Trial, June 20, 2014).

[26] Based on our review of this evidence in the light most favorable to the People, we determine that a rational trier of fact could have found, beyond a reasonable doubt, the continuing presence of the second and third elements of First Degree CSC—aiding and abetting by another individual and the use of force or coercion—with respect to the second count. Because the evidence sufficient to support a guilty verdict may be entirely circumstantial, and the factfinder is free to choose among reasonable interpretations of the evidence, *e.g.*, *Jesus*, 2009 Guam 2 ¶ 62 (citation omitted), the fact that this evidence is circumstantial does not undermine its sufficiency.

[27] Martin himself testified to two distinct instances of penetration. *See* Tr. at 35:24-36:1 (Jury Trial, June 30, 2014). There was also a separation in time between the two distinct penetrations. *See, e.g.*, Tr. at 24:8-26:30 (June 27, 2014). The unit of prosecution allows for separate convictions based on two distinct instances of penetration, as discussed previously in

Part IV.B, and does not violate double jeopardy. This is the case even if other elements may be inferred to be satisfied circumstantially at the time the second penetration occurred.

[28] Consequently, we find Martin has not met his burden of showing the evidence at trial was insufficient to sustain convictions on two counts of First Degree CSC. *Cf. Jesus*, 2009 Guam 2 ¶ 62. Even if we were to apply a *de novo* standard of review, we conclude a rational trier of fact could have found, beyond a reasonable doubt, all of the essential elements of First Degree CSC necessary to sustain convictions on two distinct counts.

2. Second Degree CSC Counts

[29] As charged, the elements of Second Degree CSC are (1) sexual contact with the victim, (2) aiding or abetting by another individual, and (3) use of force or coercion. These elements parallel the elements of First Degree CSC, but instead of sexual penetration, sexual contact is required.

[30] As stated, Martin testified to the two instances of sexual penetration. *See* Tr. at 31-32 (Jury Trial, June 30, 2014). Because Second Degree CSC is not a lesser included offense of First Degree CSC, *see People v. Songeni*, 2010 Guam 20 ¶ 27; *People v. Cummins*, 2010 Guam 19 ¶ 8, the sexual penetration, aiding or abetting, and force or coercion elements that were established for two of the counts of First Degree CSC can therefore carry over to satisfy the requisite elements for the three charged counts of Second Degree CSC. Martin also testified that in his interview with police he admitted he had touched the victim's breasts. Tr. at 35-36 (Jury Trial, June 30, 2014). Officer Lujan corroborated this statement and testified that Martin admitted to touching the victim's breasts *while* his accomplices forced themselves on her. Tr. at 51, 67 (Jury Trial, June 23, 2014). Even if we were to apply a *de novo* standard of review, this testimony reflects sufficient evidence that a rational trier of fact could find, beyond a reasonable doubt, all

three elements of Second Degree CSC—sexual contact, aiding or abetting, and force or coercion—to support three distinct counts of Second Degree CSC.

[31] We therefore affirm Martin's convictions for all counts of First Degree CSC and all counts of Second Degree CSC.

D. The Trial Court Did Not Commit Reversible Error by Admitting the Testimony of M.R.'s Father, the Healing Hearts Report, and the Paulino Testimony

[32] Martin argues the trial court abused its discretion by admitting impermissible hearsay statements within M.R.'s father's testimony, the Healing Hearts Report, and the Paulino testimony.[6] *See* Appellant's Br. at 21-22. The People argue the statements were admitted under exceptions to the hearsay rule and, in the alternative, admission was harmless or was not plain error. *See* Appellee's Br. at 32-46 (June 28, 2016).

[33] Hearsay is defined as "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." Guam R. Evid. ("GRE") 801(c). Hearsay statements are generally inadmissible except as provided under recognized exceptions. *See* GRE 802.

1. The Trial Court Did Not Abuse its Discretion by Admitting the Testimony of M.R.'s Father under the "Excited Utterance" Hearsay Exception

[34] At trial, M.R.'s father testified at some length about his discovery of M.R. the morning following the incident, and her distraught appearance. Tr. at 39-40 (Jury Trial, June 20, 2014). Because the trial court admitted this testimony as an excited utterance over Martin's objection, we review for an abuse of discretion. *Perez*, 2015 Guam 10 ¶ 19 (citations omitted).

[6] Martin only assigns error generally, asserts that the entire Healing Hearts Report is inadmissible and does not point to specific hearsay statements made by M.R.'s father or Officer Paulino. *See* Appellant's Br. at 22. *But see* Guam R. App. P. 13(a)(9)(A) (requiring "citations to the authorities and parts of the record on which the Appellant relies").

[35] Under GRE 803(2), "excited utterance" statements are not considered inadmissible hearsay. GRE 803(2). An excited utterance is defined as "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." *Id.* For a statement to be admitted as an excited utterance, it must (1) describe an "event or condition startling enough to cause nervous excitement," (2) relate to the startling event, and (3) "be made while the declarant is under the stress of the excitement caused by the event before there is time to contrive or misrepresent." *Jesus*, 2009 Guam 2 ¶ 36 (citations omitted); *see also* GRE 803(2). "All three inquiries bear on the 'ultimate question' [of] '[w]hether the statement was the result of reflective thought or whether it was a spontaneous reaction to the exciting event.'" *Jesus*, 2009 Guam 2 ¶ 36 (quoting *United States v. Arnold*, 486 F.3d 177, 184 (6th Cir. 2007)).

[36] The facts underlying the CSC charges at issue in this case clearly establish an event startling enough to cause nervous excitement, and M.R.'s statements related to that event. Thus, the first two elements of the excited utterance exception have been satisfied.

[37] When assessing whether statements fulfill the third requirement, we may consider various factors, including, but not limited to, "the lapse of time between the startling event and the statement, whether the statement was made in response to an inquiry, age/maturity of the declarant, the physical and/or mental condition of the declarant, characteristics of the event, and the subject matter of the statements." *Id.* ¶ 38 (collecting cases). "[T]here is no precise amount of time between the event and the statement beyond which the statement cannot qualify as an excited utterance." *Id.* ¶ 40 (citation omitted). "[A] victim's statement made in response to an inquiry does not, without more, negate its spontaneity as an 'excited utterance.'" *Id.* ¶ 43 (citations omitted). "Describing the declarant's voice, appearance, demeanor, whether the

declarant was crying or appeared frighten, is often sufficient to demonstrate that the declarant was in an excited state." *Id.* ¶ 44 (citations omitted).

[38] At trial, M.R.'s father testified that he discovered M.R. sometime in the early morning following the incident, around or after 4:00 a.m. Tr. at 39 (Jury Trial, June 20, 2014). M.R.'s father's testimony indicates that M.R.'s statements were made within a matter of hours of the traumatic event. M.R.'s father also testified that he discovered M.R. "on the path towards the store . . . running," *id.*, indicating that the statements were made before M.R. had a chance to take shelter and collect her thoughts or reflect on the incident. Under the present facts, the passage of a matter of hours does not negate the apparent stress and excitement of the event. Any inquiry M.R.'s father may have made to M.R. does not negate the spontaneity of her statements.

[39] M.R.'s father described M.R. as running "like she's running away from somebody," crying, "like somebody's been beating her up," with a swollen face and red eyes, shaking, with grass on her person "like somebody dragged her," and her pants inside out. *Id.* at 39-40. Based on this description, we find that M.R. was sufficiently "excited" for her statements to be admissible under GRE 803(2).

[40] The fact that M.R. later recanted certain parts of her testimony does not, in itself, render her statements inadmissible. The trial court is not required to exclude otherwise admissible excited utterance evidence merely because the declarant later recants. *See State v. Young*, 161 P.3d 967, 973 (Wash. 2007) (en banc) (citing *State v. Briscoeray*, 974 P.2d 912, 916 (Wash. Ct. App. 1999)). M.R.'s subsequent declarations go to the weight of the hearsay statements made under the stress of excitement, not their admissibility. Consequently, her partial recantation must be weighed by the finder of fact.

[41] We therefore hold that the trial court did not abuse its discretion by admitting M.R.'s father's testimony under the excited utterance exception.

2. The Trial Court Did Not Abuse Its Discretion by Admitting the Healing Hearts Report under the "Medical Diagnosis" Hearsay Exception

[42] Martin argues that the trial court abused its discretion by admitting the Healing Hearts Report (hereinafter, the "Report") because "[t]he entire . . . Report . . . was impermissible hearsay."[7] Appellant's Br. at 22. The People argue that the Report was properly admitted under the Rule 803(4) exception for statements made for the purpose of medical diagnosis ("medical exception"). Appellee's Br. at 35-37. Martin replies that the trial court did not make a finding on the Report's admissibility under the medical exception or expressly apply Rule 803(4). Reply Br. at 9. Because the Report was admitted over an objection, we review for an abuse of discretion. *See Perez*, 2015 Guam 10 ¶ 19 (citations omitted).

[43] Rule 803(4) provides a hearsay exception for "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." GRE 803(4). This exception for statements made for purposes of medical diagnosis or treatment is a "'firmly rooted' exception to the

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[7] Martin's argument consists primarily of the following sentence: "The entire Healing Hearts Report offered into evidence during the testimony of Dr. Weare was impermissible hearsay." Appellant's Br. at 22. We would be within our authority to disregard his argument on the basis that:

> [i]t is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this [c]ourt to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position."

Lamb v. Hoffman, 2008 Guam 2 ¶ 35 (quoting *Wilson v. Taylor*, 577 N.W.2d 100, 105 (Mich. 1998)); *see also Millies v. LandAmerica Transnation*, 372 P.3d 111, 118 n.5 (Wash. 2016) (en banc) (declining to consider an issue that the appellant supported with insufficient argument); *cf. United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', [sic] really nothing more than an assertion, does not preserve a claim."). For the sake of argument, we address the claim because it was argued in some depth at oral argument.

exclusion of hearsay evidence," *People v. Ignacio*, 10 F.3d 608, 612 (9th Cir. 1993) (citation omitted), based on the presumption that a patient seeking medical care has a "strong motivation to be truthful." *Id.* (quoting Fed. R. Evid. 803(4) advisory committee's note to 1972 proposed rules) (citations omitted); *see also People v. Camacho*, 2016 Guam 37 ¶ 25 (quoting *United States v. Joe*, 8 F.3d 1488, 1493-94 (10th Cir. 1993)). "[W]hether a statement is admissible under the medical treatment exception does not depend solely on the intent of the person asking the questions, but also on whether the respondent understands herself to be providing information for purposes of medical treatment." *Ignacio*, 10 F.3d at 613 n.3. "[T]he trial court must act as a vigilant gatekeeper to ensure that the GRE 803(4) exception does not become overbroad, especially as applied to multidisciplinary interviews." *Camacho*, 2016 Guam 37 ¶ 30.

[44] During trial, the People moved to admit the Report after laying a foundation for its admission through the testimony of Dr. Weare. *See* Tr. at 103-105 (Jury Trial, June, 20, 2014). Martin objected to the admission of the Report, arguing that the Report "contain[ed] hearsay," "was prepared for forensic reasons," and did not "fall within a hearsay exception." *Id.* at 105. The People responded that the statements found within the Report were "made for the purposes of medical diagnosis" and therefore admissible. *Id.* The court overruled Martin's objection and admitted the Report without examining individual statements:

> There is case law to support the fact that even though there are some – that there are medical records, particularly with regard to Healing Hearts, or centers that deal both with the medical treatment, which are also – have an element of forensic information, or that are captured for the purposes of prosecution at a later date, that does not then make them inadmissible for purposes of medical records. So the Court will admit the exhibits into . . . evidence.

Id. The People then elicited testimony from Dr. Weare regarding the contents of the Report and his examination of M.R. *Id.* at 105-12.

[45] The trial court is correct to the extent that case law does exist regarding the admissibility of hearsay statements when made in the context of an examination at a multidisciplinary medical treatment center, such as Healing Hearts. For example, in *United States v. Lukashov*, the Ninth Circuit upheld a federal district court ruling that certain hearsay statements made to a social worker during an interview—in the presence of law enforcement—when combined with a medical examination at a multidisciplinary medical clinic specializing in child abuse, were admissible under the medical exception. 694 F.3d 1107, 1114-15 (9th Cir. 2012). In that case, a victim was interviewed by a social worker and physically examined by a doctor at a facility similar to Healing Hearts. *See id.* at 1115. At an evidentiary hearing, the social worker said that "the purpose of the interview was 'to gather information to be used in determining the diagnosis that the physician makes and to make treatment recommendations.'" *Id.* The doctor "explained that the physical exam and interview 'go hand-in-hand in generating a medical diagnosis.'" *Id.* The doctor told the victim that the multidisciplinary facility was "a regular doctor's office" and that the social worker and doctor were going to "make sure that [the victim] was healthy." *Id.* The defendant argued that "the purpose of [the victim's] statements to [the social worker] was to build a case against him rather than to obtain medical diagnosis or treatment." *Id.* He supported this argument with the fact that the interview was separate from the medical examination, a police officer was present, and the victim used the word "evidence" during the interview. *See id.* The Ninth Circuit was unpersuaded by these arguments. The court upheld the finding that the purpose of the victim's statements was for medical diagnosis and treatment because (1) the victim, the social worker, and the doctor believed the interview was a part of the medical process, (2) the presence of a police officer did not change the medical nature of the evaluations, and (3) mention of the word "evidence" was brief and was not subject to follow up. *Id.* The

court clarified that "what matters is that, to [the victim], [the social worker], and [the doctor], the interview took place *for the purpose of, and was reasonably pertinent to, medical diagnosis and treatment*." *Id.* (emphasis added) (citing Fed. R. Evid. 803(4); *Ignacio*, 10 F.3d at 613 & n.3).

[46] In *People v. Ignacio*, the Ninth Circuit held that a doctor's testimony regarding a victim's statements was admissible under the medical exception, but that a social worker's similar testimony was not because statements made to the social worker were not made for medical treatment. *See* 10 F.3d at 613-14 (finding statement to social worker inadmissible, but error was harmless). In fact, the social worker's testimony "establish[ed] that he questioned the child to determine whether he needed to notify Child Protective Services of a case of suspected child abuse." *Id.* at 613.

[47] As required by GRE 803(4) and emphasized in *Lukashov*, we look to the purpose for which a statement is made and whether that statement is pertinent to medical diagnosis or treatment. GRE 803(4); *see Lukashov*, 694 F.3d at 1115 (citing Fed. R. Evid. 803(4); *Ignacio*, 10 F.3d at 613 & n.3). Our inquiry must not place undue emphasis on the identity of the interviewer obtaining a statement or that interviewer's dual purpose when working at a facility like Healing Hearts. *See Camacho*, 2016 Guam 37 ¶ 29. We must instead assess each instance of hearsay "piece-by-piece, making individual decisions on each [statement] . . . ." *Id.* ¶ 30 (alteration in original) (citation omitted). The court "must 'carefully parse each statement . . . to determine whether [it] is sufficiently trustworthy, focusing on the declarant's motivation to seek medical care and whether a medical provider could have reasonably relied on the statement for diagnosing or treating the declarant.'" *Id.* (alteration in original) (citation omitted).

[48] After reviewing the Report in its entirety and giving consideration to all relevant evidence in the record, we determine that the statements made by M.R. to Dr. Weare in the

Report were made for the purposes of, and reasonably pertinent to, medical diagnosis or treatment.

[49] The Report itself consists of eight forms, containing brief descriptions of M.R.'s statements regarding the cause of her injuries, her symptoms, and Dr. Weare's physical findings. *See generally* Exs. 44G-R, People v. Martin, CF0679-11 (Healing Hearts Report (Dec. 4, 2011)). For example, M.R. made statements indicating that she was penetrated by a penis and a finger, Ex. 44H, and physically subdued, Ex. 44I. M.R. also made statements indicating that alcohol was used and a weapon was used to threaten her. Ex. 44I. The Report does not, however, indicate that M.R. made any statements with respect to the identities of her assailants.

[50] Nothing in the record suggests that M.R.'s statements would be made for a purpose other than to obtain medical treatment or diagnosis. For example, Dr. Weare understood the examination procedure at Healing Hearts to consist of both physical and non-physical examinations intertwined as part of the same diagnostic undertaking:

> This exam is a pretty comprehensive exam. It takes me a minimum of two hours to do it. I spend half an hour to an hour or more talking to the patient about their past medical history, the events that led up to the incident that got them before me. And details about what had happened. This lets me focus in on areas that I need to look at, especially when I do the physical exam. And then we do a thorough physical exam, which is the head-to-toe exam where basically we leave no parts untouched.

Tr. at 102 (Jury Trial, June 20, 2014). M.R.'s father testified that he understood her examination to be a "procedure," a "check," where M.R. would receive "some medication . . . to protect her from getting sick. . . ." Tr. at 45-46 (Jury Trial, June 20, 2014).

[51] We recognize that the stock language appearing on the Report itself strongly suggests that the document was created, at least in part, for the purpose of collecting evidence to be used at trial. For example, the title of the Report includes the terms "Forensic Medical Report –

Sexual Assault Form." Ex. 44G, People v. Martin, CF0679-11 (Healing Hearts Report (Dec. 4, 2011)). The cover page includes boxes for the input of a GPD number for the document, the name and badge number of the accompanying law enforcement officer, and the title or name and badge number of the officer present during examination. *Id.* Under the heading "Patient Consent / Information," the form states that the signee "understand[s] that an examiner can with . . . consent, conduct a separate medical examination *for evidence* of sexual assault at public expense," that the purpose of such examination "is *to discover and preserve evidence* of the assault," that the signee "consent[s] to a medical examination *for evidence* of sexual assault," that "collection of *evidence* may include photographing injuries," and that data may be collected "for health and *forensic* purposes." *Id.* (emphasis added).

[52] Nevertheless, our analysis must focus on the specific statements made within the Report, the purpose for which those individual statements were made, and whether they were reasonably pertinent to medical diagnosis or treatment. *See* GRE 803(4); *see also Camacho*, 2016 Guam 37 ¶ 28. Here, M.R.'s statements were admissible because they qualified under the Rule 803(4) exception, even if the Report itself was to be used for the additional purpose of collecting evidence against potential defendants.

[53] In summary, the record reflects that the statements made by M.R. found within the Report were made "for purposes of medical diagnosis or treatment." GRE 803(4). Her statements described "present symptoms, pain, or sensations" as well as the "inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." *Id.* Thus, we hold that the trial court did not abuse its discretion by admitting the Report under the medical diagnosis exception.

3. The Trial Court's Admission of Prior Inconsistent Statements as Substantive Evidence Was Not Plain Error

[54] Martin assigns error to the trial court's admission of statements made by Mounik through the testimony of Officer Paulino (hereinafter, the "Paulino testimony").[8] Appellant's Br. at 22. The People argue the Paulino testimony was admissible to impeach the unexpected, inconsistent statements made during Mounik's direct testimony at trial. *See* Appellee's Br. at 38-39, 42. Additionally, they argue that this court should adopt the so-called "modern rule" that would allow the testimony to become admissible as substantive evidence. Appellee's Br. 41-43. Finally, they argue in the alternative that admission of the Paulino testimony does not warrant reversal of the conviction because the admission was not plain error. Appellee's Br. at 43-46. In reply, Martin argues the testimony is inadmissible because it was offered as substantive evidence and does not satisfy GRE 801. Reply Br. at 9. Martin also argues in his reply that this court should not adopt the "modern rule." *Id.*

[55] At trial, Officer Paulino testified as to certain prior inconsistent statements made by Mounik during a police interview in which Mounik described the events surrounding the rape. *See* Tr. at 54-55 (Jury Trial, June 25, 2014). Martin did not object to admission of Paulino's testimony. *See generally* Tr. (Jury Trial, June 25, 2014); Tr. (Jury Trial, June 24, 2014). We therefore review for plain error.[9] *Mendiola*, 2014 Guam 17 ¶ 23 n.2 (citation omitted); *see* 8 GCA § 130.50(a); *see also Quitugua*, 2009 Guam 10 ¶ 10 (citation omitted).

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[8] Martin's "argument" consists primarily of the following sentence: "Officer Paulino's extensive testimony concerning his interview of Mounik, and the statements Mounik allegedly made when interviewed, impermissibly disclosed the substance of their conversations." Appellant's Br. at 22. We would be within our authority to disregard such cursory assertions. *See supra* note 7 and accompanying text.

[9] Martin does not include a plain error analysis even though that is the proper standard.

[56] A prior inconsistent statement made by a witness, under oath or in a deposition, is not considered hearsay if the witness is subject to cross-examination regarding the statement. GRE 801(d)(1)(A); *see also United States v. Dietrich*, 854 F.2d 1056, 1061 (7th Cir. 1988) ("If a prior inconsistent statement meets the requirements of Rule 801(d)(1)(A) it may be admitted as substantive evidence to establish the truth of the matter asserted." (citing *United States v. DiCaro*, 772 F.2d 1314 (7th Cir. 1985), *cert. denied*, 475 U.S. 1081 (1986))).

[57] If a prior inconsistent statement was not made under oath or in a deposition, extrinsic evidence of the statement may be admitted, for purposes of impeachment, if the witness "is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require." GRE 613(b). If offered as substantive evidence, extrinsic evidence of prior inconsistent statements will trigger the rule against hearsay. *See* GRE 802; *see also Dietrich*, 854 F.2d at 1061 (7th Cir. 1988) ("A prior inconsistent statement that does not meet one of the criteria of Rule 801(d)(1)(A) . . . may be used only for the purpose of impeaching the witness.").

[58] At trial, the People elicited testimony from Paulino regarding prior inconsistent statements made by Mounik during an unsworn police interview. *See* Tr. at 54-55 (Jury Trial, June 25, 2014); Tr. at 74-84, 88-89 (Jury Trial, June 24, 2014). Paulino testified that during Mounik's GPD interview, Mounik stated that Martin placed M.R. on the ground where Martin forced himself on her as she cried and pleaded with him to stop. Tr. at 54-55 (Jury Trial, June 25, 2014). Paulino also testified that Mounik stated that I.M. and Martin took turns holding M.R.'s legs down during the rape, that Mounik allegedly had consensual sex with her afterwards, and that after I.M. and Martin left the scene, Mounik carried M.R.'s unconscious body to a nearby roadway where he lay beside her until she awoke and walked away. *Id.* at 55-57.

Finally, Paulino testified that Mounik stated that none of the three men wore a condom. *Id.* at 58.

[59] Martin did not object to Paulino's testimony, *see id.* at 52-60, or request a limiting instruction on the admission of Mounik's prior inconsistent statements. Therefore, the prior inconsistent statement testimony was offered as substantive evidence and not for the limited purpose of impeaching Mounik's prior testimony. Nevertheless, this error does not rise to the level of plain error because the statements admitted did not affect Martin's substantial rights due to the cumulative nature of the testimony. For example, I.M. also testified that the men removed M.R.'s clothes while Martin and Mounik restrained her. Tr. at 33 (Jury Trial, June 26, 2014). I.M. further testified that he and Mounik held M.R.'s legs while Martin raped the victim. *Id.* at 35-40. In addition, M.R. testified she was forced into the backseat of a car, taken into the jungle, forced to drink alcohol, and raped by I.M. and Martin. Tr. at 84-86 (Jury Trial, June 26, 2014); Tr. at 7-8, 21-24 (Jury Trial, June 27, 2014). She testified that I.M. and Martin forcefully removed her clothes and took turns raping her while holding her against the ground. Tr. at 24-25, 50 (Jury Trial, June 27, 2014). Taking the cumulative nature of this testimony into account, we are not persuaded that the Paulino testimony of Mounik's hearsay statements adversely affected the integrity of the judicial process or Martin's substantial rights. Therefore, we hold that the error to admit extrinsic hearsay evidence of Mounik's prior inconsistent statements as substantive evidence did not rise to the level of plain error. Because we affirm the trial court on the admission of the Paulino testimony, we need not reach the issue of whether this court should adopt the "modern rule" as espoused by the People.

V. CONCLUSION

[60] For the foregoing reasons, we hold that: (1) Martin waived his objection to the indictment by failing to comply with the timeliness requirements of 8 GCA §§ 65.15 and 65.45; (2) the trial court did not err when it imposed consecutive sentences for each count of First Degree CSC; (3) the evidence was sufficient to convict Martin on each count of First Degree CSC and each count of Second Degree CSC; and (4) the trial court properly admitted the testimony of the victim's father, the Healing Hearts Report, and Officer Paulino's testimony. We **AFFIRM** the Judgment of Conviction entered by the trial court.

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

F. PHILIP CARBULLIDO
Associate Justice

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

KATHERINE A. MARAMAN
Associate Justice

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

ROBERT J. TORRES
Chief Justice