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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

BENNY SAM ROBERT,
Defendant-Appellant.

Supreme Court Case No.: CRA18-002
Superior Court Case No.: CF0477-16

OPINION

Cite as: 2019 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on October 29, 2018
Hagåtña, Guam

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

TORRES, J.:

[1] Defendant-Appellant Benny Sam Robert appeals from a conviction of one count of Terrorizing as a Second Degree Felony and his sentence for three separate Special Allegations for the Use of a Deadly Weapon in the Commission of a Felony. Robert argues insufficient evidence exists to support his Terrorizing conviction¹ and that his sentence is illegal because he should have been sentenced on one special allegation, rather than three. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] While Jose S. Villagomez was preparing to drive out of a parking lot, Robert approached his vehicle. *See* Transcript (“Tr.”) at 6 (Bench Trial, Dec. 12, 2016). Robert struck the back of the vehicle with a machete. *Id.* He then proceeded toward the driver’s window, swung the machete, and struck the driver’s side of the vehicle. *Id.* Robert then swung the machete again and struck Villagomez’s arm, injuring him. *Id.* Villagomez fled the vehicle through the passenger door. Robert continued to pursue him, still wielding the machete. *Id.* at 6-7.

[3] After a bench trial, the trial court found Robert guilty of one count of Aggravated Assault as a Second Degree Felony, Terrorizing as a Third Degree Felony, and Criminal Mischief as a Third Degree Felony, each of which included a Special Allegation for the Use of a Deadly Weapon in the Commission of a Felony. *See* Record on Appeal (“RA”), tab 56 at 1-4 (Judgment, Apr. 13, 2018). Robert was sentenced to five years of incarceration on each count, to be served concurrently. *Id.* at 2-3. Robert was sentenced to an additional five years of incarceration for each Special Allegation, each term to be served consecutively. In total, Robert

¹ In his sentencing memorandum after trial, Robert also argued that the charge of terrorizing should be merged with the charge of aggravated assault. RA tab 47 at 1-6 (Def.’s Sentencing Mem., July 18, 2017). On appeal, he abandons his merger argument. *See* Oral Argument at 10:17:38-10:18:23 (Oct. 29, 2018).

was sentenced to twenty years' imprisonment including other conditions. *Id.* Robert timely appealed.

II. JURISDICTION

[4] This court has jurisdiction over appeals from a final judgment of conviction. *See* 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-17 (2019)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[5] “Claims of insufficient evidence are matters of law reviewed *de novo*.” *People v. Camacho*, 2015 Guam 37 ¶ 9. Questions of statutory interpretation are also reviewed *de novo*. *See People v. Diaz*, 2007 Guam 3 ¶ 55. We must interpret statutes “in light of their terms and legislative intent.” *People v. Flores*, 2004 Guam 18 ¶ 8 (quoting *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7).

[6] We review the legality of a sentence *de novo*. *See People v. Manley*, 2010 Guam 15 ¶ 12.

IV. ANALYSIS

A. The Evidence is Sufficient to Support Robert's Conviction for Terrorizing

[7] At trial, Robert moved for a judgment of acquittal for reasons different than those he advances on appeal. *See* Tr. at 2 (Bench Trial, Dec. 14, 2017). Following a bench trial, a defendant may raise sufficiency of the evidence for the first time on appeal. *See People v. Maysho*, 2005 Guam 4 ¶ 7; *see also Camacho*, 2015 Guam 37 ¶ 9. That is because the trial judge, “acting as the trier of both fact and law, implicitly rules on the sufficiency of the evidence by rendering a verdict of guilty.” *Maysho*, 2005 Guam 4 ¶ 7 (quoting *United States v. Atkinson*, 990 F.2d 501, 503 (9th Cir. 1993)).

[8] In reviewing the sufficiency of the evidence, we determine whether the evidence in the record reasonably supports a finding of guilt beyond a reasonable doubt. *Camacho*, 2015 Guam

37 ¶ 9. Under this standard, we review the evidence in the light most favorable to the People. *People v. Song*, 2012 Guam 21 ¶ 26. The credibility of witnesses and the weight given to such testimony is within the exclusive role of the trier of fact and is immune from appellate review, and thus, we do not reweigh the evidence. *See People v. Sangalang*, 2001 Guam 18 ¶ 39; *see also People v. Messier*, 2014 Guam 34 ¶ 21. We review the record to determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Diaz*, 2007 Guam 3 ¶ 10; *see also* 8 GCA § 90.21 (2005).

[9] We review Robert’s Terrorizing conviction, determining whether there is sufficient evidence to support each statutory element beyond a reasonable doubt. Terrorizing, under 9 GCA § 19.60, is defined as follows:

A person is guilty of terrorizing if he communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, and the natural and probable consequence of such a threat, is to place the person to whom the threat is communicated or the person threatened in reasonable fear that crime will be committed.

9 GCA § 19.60(a) (2005).

[10] We have yet to rule on whether non-verbal conduct constitutes a threat under 9 GCA § 19.60.² Before reaching the merits, we review *de novo* this question of statutory interpretation. *See Diaz*, 2007 Guam 3 ¶ 55. “The plain meaning will prevail where there is no clearly stated legislative intent to the contrary.” *Data Mgmt. Res., LLC v. Office of Pub. Accountability*, 2013 Guam 27 ¶ 17 (quoting *Sumitomo Constr. Co. v. Gov’t of Guam*, 2001 Guam 23 ¶ 17). The statutory scheme does not define “threat” or “communication,” and we must give them their plain meaning. *See* 9 GCA § 19.10 *et. seq.*; *see also Flores*, 2004 Guam 18

² In his Opening Brief, Robert argues that communication of a threat must be verbally made and is not present here because he “did not say anything.” Appellant’s Br. at 10 (July 23, 2018). In his Reply Brief, however, Robert concedes that communication of a threat need not be verbal, *see* Appellant’s Reply Br. at 1-2 (Aug. 21, 2018), and at oral argument, Robert fully abandoned the argument that a threat must be verbally made, *see* Oral Argument at 10:19:50-10:20:17 (Oct. 29, 2018).

¶¶ 17-19. Under the plain meaning approach, a “threat [is] an *expression* of intention to inflict evil or injury on another.” *Threat, Black’s Law Dictionary* (10th ed. 2014) (emphasis added); *see also Threat, Webster’s* (2d ed. 1961). A “communication” is the expression or exchange of information by “speech, writing, *gestures, or conduct.*” *Communication, Black’s Law Dictionary* (10th ed. 2014) (emphasis added). In *Camacho*, we held that an indirect threat, communicated through others, can constitute a threat sufficient to uphold a conviction of terrorizing. *See* 2015 Guam 37 ¶ 25. There, we noted case law from other jurisdictions, which held that “nonverbal acts satisfy the communication requirement if a threat can be gleaned from context.” *Id.* Thus, we find that under the plain language of the statute, a threat may be made non-verbally by an expression of conduct or gestures.

[11] The record supports a finding of Robert’s guilt, and a rational trier of fact could have found the elements of Terrorizing beyond a reasonable doubt—namely, (1) that Robert did knowingly communicate a threat; (2) to commit a crime of violence dangerous to human life; and (3) the natural and probable consequence of such threat placed Villagomez in reasonable fear. *Id.*; *see* RA, tab 6 at 2 (Indictment, Aug. 16, 2016). Robert communicated a threat by running toward Villagomez, who was in his vehicle, while brandishing a machete and striking Villagomez’s vehicle several times. *See* Tr. at 6, 65 (Bench Trial, Dec. 12, 2016). Importantly, he struck the tailgate of the vehicle twice while leaving the vehicle damaged with a display of dents and slash marks. *Id.* at 6, 33. He further communicated a threat by striking the driver’s side of the vehicle with the machete. *Id.* at 80, 170. This conduct communicated a threat to commit a crime of violence dangerous to human life. *Cf. Phipps v. People*, 54 V.I. 543, 545 (2011).

[12] The record further reveals that Villagomez was placed in reasonable fear that a crime would be committed. Villagomez raised his arms in a defensive posture while Robert swung the

machete outside of his vehicle. Tr. at 80 (Bench Trial, Dec. 12, 2016). Villagomez felt compelled to jump out of the truck and run away because he believed Robert was “ready to kill.” *Id.* at 148, 174. Accordingly, a rational trier of fact could have found Villagomez had a reasonable fear based upon Robert’s conduct. *See People v. Root*, 1999 Guam 25 ¶ 10 (“Subjective fear need not be proven in order to establish Terrorizing under 9 GCA section 19.60.”). Based on our review of the record, considering the evidence in the light most favorable to the People, there is sufficient evidence to support Robert’s conviction of Terrorizing.

B. A Special Allegation of Possession or Use of a Deadly Weapon May Attach to Multiple Felony Convictions

[13] Guam law provides a special allegation, which imposes an additional term of imprisonment, for possession or use of a deadly weapon during the commission of a felony. *See* 9 GCA § 80.37 (2005). Under the statute,

(a) [w]hoever unlawfully possesses or uses a deadly weapon in the commission of *a felony* punishable under the laws of Guam shall,

(1) in addition to the punishment imposed for the commission of *such felony*, be imprisoned for a term of not less than five (5) years nor more than twenty-five (25) years, . . .

. . . .

(e) The term required to be imposed by this Section shall *not run concurrently* with any term of imprisonment imposed for the commission of any other felony.

9 GCA § 80.37(a)(1), (e) (emphases added).

[14] Robert was convicted of three separate felonies, each including a special allegation sentencing enhancement. *See* RA, tab 56 at 1-4 (Judgment). Robert challenges his sentence, arguing that, as a matter of statutory interpretation, he should be subjected to only a single special allegation because of the single use of the machete and the injury of a single victim. Appellant’s Br. at 13-14; Reply Br. at 2-3. We review *de novo* both the legality of Robert’s

sentence, *see Manley*, 2010 Guam 15 ¶ 12, and the statutory interpretation of a special allegation, *see Diaz*, 2007 Guam 3 ¶ 55.

[15] We have similarly addressed this issue in *People v. Afaisen*, 2016 Guam 31, where a special allegation attached to two separate attempted murder convictions. There, in interpreting the relevant statute, we held that a special allegation is permissible for multiple felony convictions. *Id.* ¶¶ 26-27. While reviewing the language of the statute, we determined that the Legislature intended to “impose a penalty that would be in addition to the punishment for the underlying felony,” *id.* ¶ 27 (quoting *People v. Snaer*, 758 F.2d 1341, 1344 (9th Cir. 1985)), because of the use of singular words surrounding “a felony” and “such felony,” *id.* We find no reason to depart from this precedent and reiterate that a separate special allegation may attach to each individual underlying felony conviction. *See id.*; *see also People v. Moses*, 2016 Guam 17 ¶¶ 15-16. Therefore, being that Robert has three separate felony convictions, a special allegation may attach to each underlying felony.

[16] We reject Robert’s arguments that he should be subjected to just a single sentencing enhancement based on the special allegation because of his single use of the deadly weapon or that a single victim was injured. Although the issue in *Afaisen* arose following a double jeopardy analysis of the two attempted murder convictions of two separate victims, our special allegation analysis did not focus on the number of victims but rather the number of felony convictions. 2016 Guam 31 ¶¶ 26-27; *cf. Moses*, 2016 Guam 17 ¶¶ 15-16. The number of victims or number of uses of a single deadly weapon is irrelevant. The relevant inquiry is the number of underlying felony convictions during the commission of which the deadly weapon was used. *See Afaisen*, 2016 Guam 31 ¶¶ 26-27. In light of *Afaisen*, we find that a special allegation can attach to each of Robert’s felony convictions. *Id.* Therefore, the trial court did not err in attaching a special allegation to each underlying felony conviction, and we find no error in the sentence imposed.

V. CONCLUSION

[17] For the reasons set forth above, we **AFFIRM** Robert's judgment of conviction.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice