IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ROBERT LEE PATTERSON III,
Defendant-Appellant.

Supreme Court Case No.: CRA18-008
Superior Court Case No.: CF0109-17

OPINION

Cite as: 2019 Guam 7

Appeal from the Superior Court of Guam
Argued and submitted on February 22, 2019
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Defendant Robert Lee Patterson III appeals a judgment of conviction the Superior Court entered for three counts of Third Degree Criminal Sexual Conduct—one count for sexual penetration; one count for cunnilingus; and one count for fellatio. Patterson challenges the sufficiency of the evidence based on an alleged inconsistency between the amount of time the victim testified the assault lasted and the time between phone calls in Patterson's cell phone records.[1] We affirm Patterson's convictions.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Patterson had been in a long-term romantic relationship with D.B. From a previous relationship, D.B had three children including daughter J.R.B. On February 24, 2017, Patterson, D.B., and D.B.'s children resided at the same house in Dededo.

[3] J.R.B. testified that on the morning of February 24, 2017, she woke up late and missed the school bus. Her mother told her to stay home and clean the house. *Id.* At approximately 8:05 a.m., Patterson spoke to J.R.B. on the phone and asked her to cook breakfast for him; he arrived home approximately twenty minutes later. Patterson ate breakfast with D.B's son, and then went for a cigarette. Before going outside to smoke, Patterson asked J.R.B., by mouthing the words to her, to go to his room and look for his boots. After J.R.B. returned to the kitchen, Patterson came back inside the house and instructed J.R.B. to go back to his room again. Once in the room, Patterson locked the door, which also had a sheet covering it. Patterson told J.R.B. to take off her boxers and underwear and put on a bathing suit bottom. Patterson then forced

[1] Patterson also challenged his convictions as violating prohibitions against double jeopardy. However, he withdrew this point in his Reply Brief.

J.R.B. to hold his penis. He then made her lie on the bed and spread her legs, where he performed cunnilingus and inserted his penis into her vagina. Patterson then inserted his penis into J.R.B.'s mouth and ejaculated. J.R.B. testified that it felt like this lasted 30-40 minutes. Afterwards, Patterson gave J.R.B. a towel and wiped her face. He made her drink some tea, which was in a refrigerator in the room. J.R.B. also testified that Patterson did not make or receive any calls during the assault, and that she called her sister at approximately 10:00 a.m. to tell her what happened. Subsequently, J.R.B. received a call from her mother, D.B.

[4] According to GTA phone records introduced at trial, several phone calls and text messages were made that morning. At 8:03 a.m., Patterson received a one-minute phone call from the house. At 8:17 a.m., he received a seven-minute phone call from the house. At 9:02 a.m., Patterson sent D.B. through WhatsApp a video of a gift he had given her. At 9:05 a.m., Patterson placed a one-minute call to the house, and at 9:24 a.m., Patterson placed a two-minute call to the house. At 10:35 a.m., Patterson received a two-minute call from an unknown number. At 10:37 a.m., Patterson placed a five-minute call to the house. At 10:42 a.m., Patterson received a one-minute phone call from D.B. At 10:46 and 10:48 a.m., D.B. received two consecutive phone calls from the house. After a series of short phone calls, Patterson placed a twenty-minute call to D.B. at 11:01 a.m.

[5] Based on a review of these records, the substantial periods of time without a phone call being placed are 8:04 a.m. to 8:17 a.m. (13 minutes); 8:24 a.m. to 9:05 a.m. (41 minutes); and 9:26 a.m. to 10:35 a.m. (69 minutes). Patterson asserts that the evidence shows he was away from the house as of 9:05 a.m. since he placed a phone call to the house.

[6] J.R.B. filed a police report two days later, and Patterson was later indicted on three counts of Third Degree Criminal Sexual Conduct as a Second Degree Felony. After the trial

court denied Patterson's motion for judgment of acquittal, a jury convicted him of all three counts. Judgment was entered, and Patterson timely appealed.

II. JURISDICTION

[7] This court has jurisdiction over appeals from final judgments of conviction. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-20 (2019)); 7 GCA §§ 3107, 3108(a) (2005); 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[8] Insufficient evidence claims are matters of law, which we review *de novo*. *People v. Camacho*, 2015 Guam 37 ¶ 9. In reviewing sufficiency, we ask "whether the evidence in the record could reasonably support a finding of guilty beyond a reasonable doubt." *Id.* (quoting *People v. Root*, 2005 Guam 16 ¶ 33). The facts are viewed in the light most favorable to the government. *People v. Song*, 2012 Guam 21 ¶ 26.

IV. ANALYSIS

[9] "In Guam, the testimony of a sexual assault victim does not need to be corroborated, and a victim's testimony alone can support a criminal sexual conduct conviction." *People v. Perez*, 2015 Guam 10 ¶ 36; *see also People v. Campbell*, 2006 Guam 14 ¶ 40. At trial, J.R.B. testified regarding the facts and circumstances supporting each criminal sexual conduct count. The record contains sufficient evidence to support Patterson's convictions.

[10] However, Patterson raises an additional question—one not previously answered by this court. He asks whether phone logs rise to the level of reliable technological evidence upon which a court can rely in overturning an otherwise valid conviction supported by testimony.

[11] Technology and new evidence can provide a valid basis for raising an actual innocence claim. *See, e.g.*, *People v. Shum*, 797 N.E.2d 609, 620 (Ill. 2003); *Anderson v. State*, 831 A.2d

858, 865-67 (Del. 2003). Actual innocence claims are gateway claims that allow a convicted criminal defendant a fresh look at a case. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). To make a tenable claim of actual innocence, in post-conviction review, a defendant must show that because of *new* evidence, "no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Id.* (quoting *Schlup v. Delo*, 513 U.S. 298, 329 (1995)). "'[A]ctual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). Under this precedent, courts have analyzed the reliability of evidence, such as newly discovered DNA or undisclosed records, to provide *post*-conviction relief. *See McQuiggin*, 569 U.S. at 387, 399.

[12] Here, however, there is no claim of newly discovered evidence or significant advances in technology. Patterson merely makes a claim of competing evidence and theories. The jury resolves these questions and conflicts. *People v. Jesus*, 2009 Guam 2 ¶¶ 60-61. Records of calls to and from a particular phone are not the type of technological evidence that generally affords a defendant a "fresh look." These records are evidence for the jury to consider.

[13] Patterson's jury heard and considered the evidence surrounding the phone records. Therefore, Patterson's claim is ultimately one of mere sufficiency, not actual innocence, which requires us to defer to the jury. *Id.* As an evidentiary matter, Patterson contends that phone calls from his cell phone to the house indicate that he was away from the residence when the call was made. However, mere proof of a call from a cell phone to a residence does not categorically prove a person's absence from the residence. The location of a defendant at the time of a phone call is a matter for the jury, and the phone records do not prove Patterson's location.

[14] Even delving into Patterson's phone records, the evidence reasonably supports the jury's verdict. J.R.B. testified that the entire assault lasted about 30-40 minutes. Based on the

testimony, we assume that Patterson's initial phone call to the house occurred away from the residence shortly after 8:00 a.m. At some point thereafter, he returned to the house. Under the defense's timeline, it is plausible that Patterson's initial phone call to the house occurred at 8:03 a.m. Because J.R.B. testified that Patterson did not make or receive any phone calls during the assault, the records reveal three uninterrupted periods of time between calls—8:04 a.m. to 8:17 a.m. (13 minutes); 8:24 a.m. to 9:05 a.m. (41 minutes); 9:26 a.m. to 10:35 a.m. (69 minutes). Even if Patterson arrived home about twenty minutes after the first phone call, the two subsequent periods of time are sufficient for a jury to base a finding of guilt. Even if Patterson's phone call to the house at 9:05 a.m. placed him away from the residence, the 41-minute window from 8:24 a.m. to 9:05 a.m., acknowledged by Patterson, is sufficient time in which a jury could conclude a sexual assault occurred. Therefore, even under Patterson's theory, the evidence is sufficient to support the jury's conviction.

V. CONCLUSION

[15] We **AFFIRM** Patterson's Judgment of Conviction.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice