IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ELI CHARFAUROS QUINTANILLA,
Defendant-Appellant.

OPINION

Cite as: 2019 Guam 25

Supreme Court Case No.: CRA18-011
(Consolidated with CRA18-013)
Superior Court Case No.: CF0532-17

Appeal from the Superior Court of Guam
Argued and submitted on May 31, 2019
Hagåtña, Guam

Appearing for Defendant-Appellant:
Stephen P. Hattori, *Esq.*
Public Defender
Public Defender Service Corporation
779 Rte. 4
Sinajana, GU 96910

Appearing for Plaintiff-Appellee:
Jeremy S. Kemper, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr.
Tamuning, GU 96910

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

TORRES, J.:

[1] Defendant-Appellant Eli Charfauros Quintanilla appeals a final judgment finding him guilty of Attempted Possession of a Schedule II Controlled Substance (As a Third Degree Felony). Quintanilla seeks reversal of his conviction on three grounds: (1) insufficient evidence he performed an act constituting a substantial step toward commission of the crime, (2) the trial court's failure to give a specific intent instruction to the jury, and (3) ineffective assistance of counsel where trial counsel did not object to bad act evidence and did not seek a limiting instruction to mitigate the effect of such evidence. For the reasons discussed below, we affirm the judgment of conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In September 2017, Quintanilla stayed at a hotel in Tamuning and asked hotel staff about a package he was expecting to be delivered containing transcripts. A few weeks prior, Guam Community College had received a request for transcripts from Quintanilla and had sent the transcripts to the requested address in Washington State. After talking with the hotel staff, Quintanilla left a number with the hotel staff to call to notify him when the package arrived. The following day, after he checked out, the hotel received a package addressed to Quintanilla. Hotel staff called the number Quintanilla had provided, but there was no answer on the first attempt. On another attempt, hotel staff was informed it had a wrong number. A bellman eventually noticed that the return address and the delivery address on the package were the same and there was a hole in the package. Through the hole, the bellman could see that the package contained a small item wrapped in duct tape. The bellman's description of the package was corroborated by a member of the Mandaña Drug Task Force involved in the investigation. Finding the package

suspicious, the bellman reported it to his supervisor. A K9 unit arrived at the hotel, and the dog alerted officers to the package. The package contained approximately 25 grams of methamphetamine. Postal records showed the package had been sent from Las Vegas.

[3] The police placed Quintanilla in custody the same day, and he gave verbal consent for a search of a bag he had in his possession. The bag had two containers inside, which held plastic bags with methamphetamine residue. While in custody, an officer asked Quintanilla "if he uses the drug ice. He stated yes. [The officer] asked him when was the last time he smoked, or used the drug. [Quintanilla] stated about two days ago." Transcripts ("Tr.") at 126 (Jury Trial, Nov. 16, 2017). Quintanilla told the officer he was expecting a friend from Las Vegas to send him his college transcripts. He told the officer he had checked the front desk several times, but that the package had yet to arrive. He denied having any knowledge about the package containing drugs.

[4] The People charged Quintanilla with Importation of a Schedule II Controlled Substance (As a First Degree Felony), Conspiracy to Import a Schedule II Controlled Substance (As a First Degree Felony), Conspiracy to Possess a Schedule II Controlled Substance with Intent to Deliver (As a First Degree Felony), Attempted Possession of a Schedule II Controlled Substance with Intent to Deliver (As a First Degree Felony), and Attempted Possession of a Schedule II Controlled Substance (As a Third Degree Felony). At the close of the People's case-in-chief, Quintanilla moved for a judgment of acquittal on all charges, which the court denied.

[5] The jury found Quintanilla guilty of Attempted Possession of a Schedule II Controlled Substance and not guilty of all other charges. The court entered a final judgment and sentenced Quintanilla to two years of imprisonment with credit for time served. Quintanilla timely appealed.

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II. JURISDICTION

[6] This court has jurisdiction over an appeal from a final judgment of conviction. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-90 (2019)); 7 GCA §§ 3107, 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[7] We review *de novo* a denial of a motion for acquittal "[w]here a defendant has raised the issue of sufficiency of evidence by motion for acquittal in the trial court." *People v. Belga*, 2016 Guam 1 ¶ 16 (quoting *People v. Anastacio*, 2010 Guam 18 ¶ 10). We review for plain error a jury instruction where a party did not object to the instruction at trial. *People v. Felder*, 2012 Guam 8 ¶ 8.

IV. ANALYSIS

[8] Quintanilla challenges his conviction on three grounds. First, Quintanilla argues there was not sufficient evidence for a rational trier of fact to find he attempted to possess a Schedule II controlled substance. Appellant's Br. at 8-12 (Dec. 5, 2018). Second, he contends that the trial court plainly erred in not instructing the jury that attempted possession of a controlled substance requires a finding of specific intent to possess the controlled substance. *Id.* at 12-18. Third, he argues that trial counsel was ineffective in not objecting to the admission of bad act evidence and in not seeking a limiting instruction to mitigate the effect of such evidence. *Id.* at 18-21. We address each argument in turn.

A. The Evidence was Sufficient for a Rational Trier of Fact to Find Beyond a Reasonable Doubt that Quintanilla Attempted to Possess a Schedule II Controlled Substance

[9] When evaluating a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Taitano*,

2015 Guam 33 ¶ 12 (quoting *People v. Guerrero*, 2003 Guam 18 ¶ 13). "[T]he only relevant question is 'whether [the conviction] was so insupportable as to fall below the threshold of bare rationality.'" *Id.* (quoting *Coleman v. Johnson*, 566 U.S. 650, 656 (2012) (per curiam)). "When ruling on a motion for judgment of acquittal, the trial court is concerned with the existence or nonexistence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence." *Belga*, 2016 Guam 1 ¶ 43 (quoting *People v. Mendiola*, 2014 Guam 17 ¶ 21). However, "[w]hile circumstantial evidence is sufficient to sustain a conviction, juries must not be allowed to convict on mere suspicion and innuendo." *Anastacio*, 2010 Guam 18 ¶ 18 (citations omitted). "A trial court should grant a motion for judgment of acquittal when the evidence merely raises a suspicion that the accused is guilty." *People v. Song*, 2012 Guam 21 ¶ 29.

[10] Quintanilla was charged with attempted possession of a Schedule II controlled substance for "unlawfully and knowingly attempt[ing] to possess an *amphetamines-based controlled substance*, in violation of 9 GCA §§ 67.401.2(a) and (b)(1), and 13.10, as amended." Record on Appeal ("RA"), tab 46 at 4 (Am. Indictment, Nov. 16, 2017). The indictment follows the essential elements of Guam's drug possession statute, which states, in relevant part: "It is unlawful for any person knowingly or intentionally to possess a controlled substance . . . ." 9 GCA § 67.401.2(a) (as amended by Guam Pub. L. 28-105:1 (Apr. 14, 2006)). A "material, compound, mixture, or preparation containing . . . amphetamine" is a Schedule II controlled substance. 9 GCA Ch. 67 App. B(c)(1) (as amended by Guam Pub. L. 31-110:7 (Sept. 30, 2011)); *see also* 9 GCA § 67.205 (2005). The indictment also cited Guam's attempt statute, which reads:

> A person is guilty of an attempt to commit a crime when, with intent to engage in conduct which would constitute such crime were the circumstances as

> he believes them to be, he performs or omits to perform an act which constitutes a substantial step toward commission of the crime.

9 GCA § 13.10 (2005).

[11] The issue here is whether Quintanilla performed a "substantial step" towards commission of the crime. *See* Appellant's Br. at 8. "[O]ur duty is to interpret statutes in light of their terms and legislative intent. . . . Absent clear legislative intent to the contrary, the plain meaning prevails." *People v. Quenga*, 2015 Guam 39 ¶ 36 (omission in original) (quoting *People v. Flores*, 2004 Guam 18 ¶ 8). Guam's attempt statute does not define the term "substantial step." *See* 9 GCA § 13.10. In determining how to define a "substantial step," caselaw from New Jersey and California is especially persuasive, given that Guam's attempt statute is based on statutes from these states. *See id.* (Source); *People v. Castro*, 2016 Guam 16 ¶ 21 ("Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction." (quoting *Sumitomo Constr. Co. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 7)).

[12] Although Quintanilla relies on *United States v. Joyce*, 693 F.2d 838 (8th Cir. 1982), the Eighth Circuit's definition of a "substantial step" is more limited than that contained in the Model Penal Code ("MPC") and caselaw from California and New Jersey. In *Joyce*, a defendant had traveled from Oklahoma City to St. Louis to procure cocaine, met with an undercover officer, and told the officer he was interested in purchasing the drugs; however, he walked away from the transaction when the officer refused to open a package containing cocaine without the defendant first producing his money. 693 F.2d at 840. The court ruled there was insufficient evidence of a "substantial step" and stated a defendant's "act must have passed the preparation stage so that if it is not interrupted extraneously, it will result in a crime." *Id.* at 841-42 (citation

omitted). In so holding, the Eighth Circuit essentially read "substantial step" to mean the "last proximate act" as contemplated in MPC section 5.01(1)(b).

[13] The drafters of the MPC, on which Guam's attempt statute is also based, warned of the approach discussed in *Joyce* and other methods used to distinguish acts of preparation from acts constituting an attempt. *See* Model Penal Code § 5.01, cmt. 7 at 38-43, 47 (Tent. Draft No. 10, 1960); *see also United States v. Jackson*, 560 F.2d 112, 119-120 (2d Cir. 1977). The drafters explained, "The fact that further major steps must be taken before the crime can be completed does not preclude a finding that the steps already undertaken are substantial. It is expected, in the normal case, that this approach will broaden the scope of attempt liability." Model Penal Code § 5.01, cmt. 7 at 47; *Jackson*, 560 F.2d at 119. We observe that, in determining what constitutes a "substantial step," the focus should be on steps already taken by an actor, rather than on steps that remain before the actor could complete the crime. *See* Model Penal Code § 5.01, cmt. 7 at 47; *Jackson*, 560 F.2d at 119. The MPC drafters explained that by requiring a substantial step rather than a last proximate act or one of its various analogues, "apprehension of dangerous persons [would] be facilitated and law enforcement officials and others [would] be able to stop the criminal effort at an earlier stage—thereby minimizing the risk of substantive harm—without providing immunity for the offender." Model Penal Code § 5.01, cmt. 7 at 48; *see Jackson*, 560 F.2d at 120.

[14] Similarly, caselaw from New Jersey and California generally support our interpretation of the term "substantial step." The Supreme Court of New Jersey has stated that "a substantial step is conduct by an accused that strongly corroborates his or her alleged criminal purpose." *State v. Perez*, 832 A.2d 303, 311-12 (N.J. 2003). The Supreme Court of California has noted that a defendant may be convicted of criminal attempt when the defendant acts "with the intent to engage in the conduct and/or bring about the consequences proscribed by the attempted crime,

and performs an act that 'go[es] beyond mere preparation . . . and . . . show[s] that the perpetrator is putting his or her plan into action.'" *People v. Johnson*, 303 P.3d 379, 384 (Cal. 2013) (alterations in original) (quoting *People v. Toledo*, 26 P.3d 1051, 1056 (Cal. 2001)). The California Supreme Court has also noted that "the plainer the intent to commit the offense, the more likely that steps in the early stages of the commission of the crime will satisfy the overt act requirement." *People v. Dillon*, 668 P.2d 697, 703 (Cal. 1983) (in bank). We find the reasoning of these cases and the MPC drafters persuasive, that while mere preparation is not sufficient, an overt act need not be the ultimate step toward or the last proximate act in consummation of the crime attempted to constitute a "substantial step." The separate provisions dealing with "last proximate act" and "substantial step" should be interpreted to encompass different conduct. *Compare* Model Penal Code § 5.01(1)(b), *with* Model Penal Code § 5.01(1)(c). Determining what act or acts constitute a substantial step will depend upon the facts of a particular case, which are determined by the trier-of-fact. *See Jackson*, 560 F.2d at 120.

[15] Here, there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Quintanilla took a substantial step. He flew to Guam two days before the package arrived, rented a room in the hotel where the package was ultimately delivered, asked the hotel staff about the status of his package, and left a contact number for when the package arrived. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that "the steps already undertaken [were] substantial." Model Penal Code § 5.01, cmt. 7 at 47.

B. The Trial Court Did Not Plainly Err in Failing to Instruct the Jury on Specific Intent

[16] Quintanilla argues the trial court plainly erred by failing to instruct the jury that attempt to possess a controlled substance requires a finding of specific intent to possess the controlled substance. Appellant's Br. at 12-18. Trial counsel did not object to the instruction on attempted

possession of a Scheduled II controlled substance. *See* Tr. at 10-11 (Jury Trial, Nov. 17, 2017). Therefore, we review the instruction for plain error. *Felder*, 2012 Guam 8 ¶ 2. Under plain error review, 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." *People v. Gargarita*, 2015 Guam 28 ¶ 11 (quoting *Felder*, 2012 Guam 8 ¶ 19).

[17] Attempt is a specific intent crime, *People v. Nathan*, 2018 Guam 13 ¶ 15 n.4, meaning that the prosecution must prove that "an offender actively desired certain criminal consequences, or objectively desired a specific result to follow his act or failure to act," 21 Am. Jur. 2d *Criminal Law* § 114 (2019); *see also People v. Demapan*, 2004 Guam 24 ¶ 26; 9 GCA § 4.30(a) (2005). When reviewing jury instructions, "a single jury instruction should not be judged in artificial isolation, but should be considered and reviewed as a whole." *People v. Kanistus*, 2017 Guam 26 ¶ 12.

[18] Here, regarding the attempted possession of a controlled substance charge, the trial court instructed the jury:

> The [P]eople must prove beyond a reasonable doubt that the defendant, Eli Quintanilla, (1) on or about the period between September 13 [and] 14[,] 2017 inclusive, in Guam, did attempt to possess . . . a Schedule II controlled substance, that is, an amphetamine based substance and did so unlawfully and *knowingly*.

Tr. at 97 (Jury Trial, Nov. 17, 2017) (emphasis added). The trial court also instructed the jury on the definition of attempt:

> A person is guilty of an attempt to commit a crime when with intent to engage with conduct which would constitute such crime . . . were the circumstances as he believes them to be he performs or admits [sic] to perform an act which constitutes a substantial step toward commission of the crime.

Id. at 94. As attempt is a specific intent crime, the trial court erred by not instructing the jury that the People had to prove beyond a reasonable doubt that Quintanilla unlawfully and

intentionally attempted to possess a Schedule II controlled substance. Although the trial court erred in using "knowingly," rather than "intentionally," we find that, in the totality of the instructions, the jury was adequately instructed.

[19] In *People v. Demapan*, 2004 Guam 24, the defendant challenged his burglary conviction in part because the trial court did not expressly instruct the jury that it had to find specific intent. 2004 Guam 24 ¶ 1. The trial court instructed the jury on the definition of "intentionally" and on knowledge and intent, without giving an explicit specific intent instruction. *See id.* ¶¶ 24, 26. We ruled that the trial court did not plainly err in failing to give an explicit specific intent instruction because "in the totality of the instructions, the jury was adequately instructed." *Id.* ¶ 26.

[20] In *People v. Kanistus*, 2017 Guam 26, we distinguished *Demapan* and ruled that the trial court erred in failing to instruct that specific intent was a necessary element of attempted murder. *See* 2017 Guam 26 ¶¶ 22-24. We distinguished the cases because *Kanistus* was more complex than *Demapan*, which "increased the likelihood of juror confusion." *Id.* ¶ 22. We noted that "*Demapan* involved jury instructions regarding two distinct crimes . . . that were brought against a single defendant," whereas the underlying case in *Kanistus* involved "multiple defendants and multiple, related charges." *Id.* We also noted that "the specific intent language was not obviously attached to the language in the jury instructions for the specific intent crime." *Id.* ¶ 23.

[21] This case is more akin to *Demapan* than *Kanistus*. It involves a single defendant, and the connection between the two instructions, though not made explicit by the trial court, was clear. The attempted possession of a controlled substance instruction said "attempt to possess," and the attempt instruction provided the requisite specific intent definition—"with intent to engage with conduct which would constitute such crime." Tr. at 94 (Jury Trial, Nov. 17, 2017). Therefore, although the trial court should have used "unlawfully and *intentionally*," rather than "unlawfully

and knowingly," in the totality of the instructions, the jury was adequately instructed that it had to find that Quintanilla intended to possess a controlled substance in order to convict.

C. The Record is Not Sufficiently Developed to Determine Quintanilla's Ineffective Assistance of Counsel Claim

[22] Quintanilla argues that trial counsel's performance was deficient because counsel failed to object to or limit the admission of evidence of prior bad acts—Quintanilla's past drug use—under Guam Rule of Evidence 404(b). *See* Appellant's Br. at 19-20. "[A] court may hear an ineffective assistance claim directly on appeal where the record is sufficiently complete to make a proper finding." *People v. Borja*, 2017 Guam 20 ¶ 15. However, "an ineffective assistance claim is better heard under a writ of habeas corpus because it usually requires an evidentiary inquiry beyond the record." *Id.* The record here is not sufficiently complete for us to make a proper finding regarding whether trial counsel's decisions were made for strategic purposes or not. Therefore, this claim is best brought in a habeas corpus proceeding, and we decline to reach the merits of this argument.

V. CONCLUSION

[23] For these reasons, we **AFFIRM**.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice