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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

MB KOTTO aka John Doe,
Defendant-Appellant.

Supreme Court Case No.: CRA19-003
Superior Court Case No.: CF0655-17

OPINION

Cite as: 2020 Guam 4

Appeal from the Superior Court of Guam
Argued and submitted on October 14, 2019
Hagåtña, Guam

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

TORRES, J.:

[1] Defendant-Appellant MB Kotto appeals from a Judgment of Conviction entered in the Superior Court. Kotto argues that the court should reverse his conviction based upon an alleged violation of his Sixth Amendment and Organic Act confrontation rights, the court's incorrect denial of a post-verdict motion to acquit, and erroneous jury instructions related to self-defense. For the reasons set forth below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Plaintiff-Appellee People of Guam (the "People") obtained an indictment against Kotto, charging him with two counts of Aggravated Assault (as a Second-Degree Felony), two counts of Aggravated Assault (as a Third-Degree Felony), one count of Assault (as a Misdemeanor), and one count of Family Violence (as a Misdemeanor). The Aggravated Assault charges were accompanied by a special allegation of possession or use of a deadly weapon in the commission of a felony. These charges stemmed from an altercation during which the People alleged Kotto punched his then-girlfriend and stabbed another victim in the neck with a knife.

[3] Kotto's defense focused on the inconsistencies in witness statements and relied upon the justification of self-defense. Three witnesses to some of the events were minors, with the initials C.R., N.M., and D.J.S. Prior to trial, these witnesses gave a joint video interview to defense counsel's investigator, which Kotto tried to use as part of his cross-examination of these witnesses.

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

[4] Before defense counsel's cross-examination of C.R., the trial court discussed with counsel how best to present the video interview as part of Kotto's cross-examination of these witnesses. The trial court expressed concern that trial counsel would waste significant time trying to jump from one part of the video to another. Kotto's counsel indicated during these discussions an intent to seek admission of the entire video with another witness later on during trial. *See* Transcript ("Tr.") at 81 (Jury Trial, Oct. 18, 2018) ("It will come in later on with another witness."). During this discussion, Kotto's counsel first suggested playing the video on silent as part of the cross-examination of C.R.

[5] During the cross-examination of C.R., Kotto attempted to play some sound from the video, but the court restricted use of the video because it contained all three witnesses talking over one another. The trial court was concerned that, for impeachment purposes, the sound could not be limited to the specific witness being cross-examined and that it would confuse the jury. The trial court repeated that if specific extrinsic evidence from the video was necessary to show inconsistencies in the testimony, it could be used, including "short, short excerpt[s]." *Id.* at 122. However, the court further cautioned, "If it's not well controlled, I have grave concerns." *Id.*

[6] At no point in these discussions did the court restrict counsel from asking specific questions to C.R. or otherwise restrict the use of the video interview to point out specific perceived inconsistencies between the video and C.R.'s in-court testimony. And Kotto repeated that a primary reason for impeaching based upon this video was to show that C.R.'s recollection was all based upon what he was told by others, rather than his personal, firsthand account. This was already established, however, by the prosecution during direct examination. At various

times during cross-examination, C.R. again admitted that he did not see many of the events at issue and that his knowledge was secondhand.

[7] Unlike with C.R., Kotto barely used the video interview during his cross-examination of M.N. When confronted with the video evidence, M.N. repeatedly stated that he remembered nothing from the interview or what answers he provided as part of that interview. In the one short colloquy between the court and counsel regarding the videotape, there is no indication that Kotto was limited from using the video interview in cross-examining M.N.

[8] Like with the prior two witnesses, the transcript of trial reveals no specific instance in which Kotto was prevented from using the video as part of the cross-examination of D.J.S. During the cross-examination of D.J.S., the parties stipulated that the entire video could be played, with sound, during the testimony of Kotto's investigator. Kotto's counsel stated:

> My understanding is that [prosecution counsel] has stipulated that the jury will see the video at some point during trial . . . . For purposes of impeachment only, not as substantive evidence, and for that reason we don't have to confront him with everything on the video. Is that the agreement? I don't -- we don't have to confront him at all with his statements.

Tr. at 74 (Jury Trial, Nov. 5, 2018). Eventually, the video was played in full, with sound, to the jury.

[9] After both sides rested, the trial court instructed the jury. On self-defense, the court instructed:

> The use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person or on the present occasion.
>
> In employing such protective force, the defendant may estimate the necessity thereof under the circumstances as he believes them to be when the

> force is used without retreating, surrendering possession, and doing any other act which he has no legal duty to do, or abstaining from any lawful action.
>
> The People have the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. You must acquit the defendant if the People have failed to disprove the defendant's self-defense claim beyond a reasonable doubt.

See Tr. at 126 (Jury Trial, Nov. 13, 2018); *see also* Record on Appeal ("RA"), tab 115 at 58 (Jury Instrs., Nov. 15, 2018). The trial court defined for the jury the term "deadly force" and explained when deadly force may and may not be used to justify the use of force in self-defense. *See* Tr. at 126-27 (Jury Trial, Nov. 13, 2018); *see also* RA, tab 115 at 59-60 (Jury Instrs.). When instructing the jury on each individual charge Kotto was facing, the court repeatedly instructed that "[t]he People must prove beyond a reasonable doubt that MB Kotto . . . did not act in self-defense." Tr. at 128-29 (Jury Trial, Nov. 13, 2018); *see also* RA, tab 115 at 63, 67 (Jury Instrs.).

[10] The jury found Kotto guilty of Aggravated Assault (as a Third-Degree Felony), with a special allegation of possession or use of a deadly weapon in the commission of a felony, and the lesser included offense of Assault (as a Misdemeanor). The jury acquitted Kotto of the remaining charges.

[11] Eleven days after the jury returned its verdict, Kotto moved for a judgment of acquittal. The court denied this motion. Soon after, Kotto was sentenced to concurrent terms of imprisonment of five years. The trial court entered judgment, and Kotto timely appealed.

II. JURISDICTION

[12] We have jurisdiction over appeals from a final judgment of conviction rendered in the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-130 (2020)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[13] We review *de novo* whether there was a violation of Kotto's rights to confront a witness. *See People v. Ojeda*, 2011 Guam 27 ¶ 9. Similarly, we review *de novo* whether the trial court erred in denying Kotto's motion to acquit. *See People v. Finik*, 2017 Guam 21 ¶ 19; *People v. Fisher*, 2001 Guam 2 ¶ 20. Finally, we review *de novo* whether or not the jury instructions accurately stated the law. *See People v. Diego*, 2013 Guam 15 ¶ 9; *see also People v. Gargarita*, 2015 Guam 28 ¶ 12.

IV. ANALYSIS

A. The Trial Court Did Not Violate Kotto's Right to Confront the Witnesses Against Him

[14] Kotto first argues on appeal that the trial court denied his right to confront the three minor witnesses against him—C.R., M.N., and D.J.S.—by limiting the use of the videotaped interview during cross-examination of each witness. *See* Appellant's Br. at 12 (June 26, 2019). We review alleged violations of a defendant's right to confront witnesses *de novo*, including any alleged "[e]videntiary rulings relating to violations of the Confrontation Clause." *See Ojeda*, 2011 Guam 27 ¶ 9. A violation of a defendant's confrontation rights requires reversal unless, "assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt." *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986); *see also Ojeda*, 2011 Guam 27 ¶ 32. We find that Kotto's Organic Act and Sixth Amendment rights were not violated.

[15] The Sixth Amendment's Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI. The Organic Act of Guam both specifically incorporates the

Sixth Amendment's Confrontation Clause, *see* 48 U.S.C.A. § 1421b(u), and provides an independent right for criminal defendants "to be confronted with the witnesses against him," 48 U.S.C.A. § 1421b(g). *See also People v. Jesus*, 2009 Guam 2 ¶ 23. Included within these rights is the right to cross-examine witnesses put forth by the prosecution. *See Ojeda*, 2011 Guam 27 ¶ 2; *see also Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987). "Because cross-examination is an important tool in enforcing the right to confront, any limits placed on cross-examination require a constitutional analysis. *Ojeda*, 2011 Guam 27 ¶ 21.

[16] While the Sixth Amendment and the Organic Act provide a right to cross-examine witnesses, defendants are not guaranteed the right to cross-examination "in whatever way, and to whatever extent, the defense might wish. *Jesus*, 2009 Guam 2 ¶ 26 (quoting *United States v. Owens*, 484 U.S. 554, 559 (1988)); *see also People v. Kitano*, 2011 Guam 11 ¶ 39. A defendant's confrontation rights are "not absolute"; they "may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." *Ojeda*, 2011 Guam 27 ¶ 22 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973)). "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on [the] cross-examination [of a prosecution witness]." *Van Arsdall*, 475 U.S. at 679. This includes the authority to "exclude evidence through the application of evidentiary rules that themselves serve the interests of fairness and reliability—even if the defendant would prefer to see that evidence admitted." *Ojeda*, 2011 Guam 27 ¶ 22 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)).

[17] A court may limit the use of evidence for many reasons without violating the Confrontation Clause, including "based on concerns about . . . harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant."

Id. (quoting *Van Arsdall*, 475 U.S. at 679). This includes the authority to place limits, where appropriate, on the use of prior inconsistent statements for impeachment. *See, e.g.*, *United States v. Dempewolf*, 817 F.2d 1318, 1320-21 (8th Cir. 1987); *United States ex rel. Nance v. Fairman*, 707 F.2d 936, 942 (7th Cir. 1983); *cf. State v. Leandry*, 127 A.3d 1115, 1132 (Conn. App. Ct. 2015) (finding trial court did not commit evidentiary error in limiting use of audio portion of video evidence during cross-examination of prosecution witness).

[18] If the trial court limited the use of the video interview with the three minor witnesses at all—and the record reveals no specific instance of a limitation placed upon Kotto's cross-examination—the court did so based, in part, upon concerns related to juror confusion. *See* Tr. at 77-83, 121-22 (Jury Trial, Oct. 18, 2018). A non-arbitrary limitation on cross-examination violates a defendant's confrontation rights if that limitation is disproportionate to the intended benefit of restricting the cross-examination. *See Ojeda*, 2011 Guam 27 ¶ 22, 27; *see also Michigan v. Lucas*, 500 U.S. 145, 151 (1991); *Fairman*, 707 F.2d at 942 ("[T]he question in each case must finally be whether defendant's inability to make the inquiry created a substantial danger of prejudice by depriving him of the ability to test the truth of the witness' direct testimony." (quoting *United States ex rel. Blackwell v. Franzen*, 688 F.2d 496, 500 (7th Cir. 1982))). Making this determination calls for a balancing of interests between the probative value of the type of cross-examination restricted by the trial court and the prejudice faced by the defendant in being refused the opportunity to cross-examine in the manner he desired. *See Ojeda*, 2011 Guam 27 ¶ 22. This analysis must be done case by case. *See id.* ¶ 28.

[19] To support his appeal, Kotto relies almost entirely upon the decision in *Mendenhall v. State*, 18 So. 3d 915 (Miss. Ct. App. 2009). In *Mendenhall*, the court found that prohibiting a

defendant from using a prior inconsistent statement during the cross-examination of a material state witness as to a material fact violated the defendant's fundamental right to a fair trial. *See id.* at 916. This case, however, differs on both the facts and the law.

[20] Factually, the trial court in *Mendenhall* granted a motion in *limine* to prohibit the defendant from using statements memorialized in medical records in which the victim-witness admitted to being intoxicated on the night in question. *Id.* at 919-20. "The trial court then granted defense counsel permission to ask [the victim] whether he consumed alcohol on the night of the shooting, but it prohibited defense counsel from engaging in a full cross-examination as to whether [the victim] made a prior statement to the doctor the night of the shooting inconsistent with his trial testimony." *Id.* at 920. In this way, the trial court barred entirely *any* reference to the prior inconsistent statement. In contrast, the trial court here permitted specific cross-examination related to prior inconsistent statements, an opportunity that trial counsel apparently declined, and the court later admitted the entire video evidence containing the inconsistent statements. *See* Tr. at 67-69 (Jury Trial, Nov. 8, 2018).

[21] The restrictions on cross-examination were thus neither absolute nor as onerous as those imposed by the trial court in *Mendenhall*. Moreover, the victim in *Mendenhall* was "the sole eyewitness in th[at] case." 18 So. 3d at 921. In contrast, none of the three witnesses in the video interview were direct eyewitnesses to the primary events. *See* Tr. at 151-57 (Jury Trial, Oct. 18, 2018) (C.R. admitting his information was all secondhand); Tr. at 15 (Jury Trial, Oct. 19, 2018) (M.N. admitting he saw none of the events inside the gate where A.R. was stabbed); Tr. at 51 (Jury Trial, Nov. 5, 2018) (D.J.S. admitting he never saw inside the gate on night in question).

[22] Legally, the court in *Mendenhall* did not rely on the Sixth Amendment's Confrontation Clause to reach its decision. Though the court mentions confronting a witness, its analysis was not based in the Sixth Amendment's protections. Instead, the court reached its decision by relying upon local Mississippi rules of evidence. *See Mendenhall*, 18 So. 3d at 921 (citing Miss. R. Evid. 613). The court ultimately found that the trial court erred in weighing the potential prejudice that might arise from admission of the doctor's notation, when the issue should have been analyzed through evidentiary rules that permit a defendant to impeach witnesses on any material fact. *See id.* In contrast, the trial court in this case was worried about juror confusion, among other things, but ultimately let the video footage be admitted into evidence, including for impeachment. *See* Tr. at 67-69 (Jury Trial, Nov. 8, 2019); *see also* Tr. at 74 (Jury Trial, Nov. 5, 2018).

[23] The case of *Long v. State*, 694 S.W.2d 185 (Tex. Ct. App. 1985), *aff'd*, 742 S.W.2d 302 (Tex. Crim. App. 1987) (en banc), cited in Kotto's reply brief, also bears little similarity to the facts presented here. In *Long*, the court permitted the prosecution to play a videotaped interview of a child victim, recorded when neither defendant nor his counsel were present. *Id.* at 186. Because of this, the defendant had no opportunity to cross-examine the witness. This was a straightforward violation of the defendant's Sixth Amendment rights. *See id.* at 191-92. During its rebuttal case, the prosecution called the victim to testify in person. *See id.* at 192. The *Long* court held this could not rectify the previous constitutional violation because the defendant was likely surprised by the witness's appearance and the witness took the stand at a different phase of trial. *See id.* Significant time had also passed between the playing of the videotape and the live testimony, so "[t]he jury's initial impression could not adequately be counteracted by this belated

opportunity to cross-examine the witness in person. *Id.* According to the court, because of this procedure, the defendant was forced to choose between exercising his confrontation rights by calling the witness himself or exercising his right to remain passive by putting the prosecution to its proof. *See id.*

[24] The facts here bear little to no resemblance to those set forth in *Long*. Kotto was presented with live witnesses to cross-examine, and nothing in the record suggests that specific lines of inquiry were restricted or that Kotto was prevented from re-calling the witnesses once the audio portion of the videotape was admitted into evidence.

[25] Even if the facts were similar to those in *Long*, this portion of the decision in *Long* is questionable authority. The intermediate appellate decision in *Long* was appealed to the Texas Court of Criminal Appeals, which affirmed the decision and held that the statute permitting the playing of a videotaped interview was facially unconstitutional. *See Long v. State*, 742 S.W.2d 302 (Tex. Crim. App. 1987) (en banc). A few years later, however, in the case of *Briggs v. State*, that same court reversed its decision in *Long*, finding the statute may be unconstitutional as applied, but that it was not facially unconstitutional. 789 S.W.2d 918 (Tex. Crim. App. 1990) (en banc).

[26] In *Briggs*, the court addressed whether playing a videotaped interview, followed later by in-person testimony and the right to cross-examine, violated defendant's Sixth Amendment confrontation rights. *See id.* at 924. The court found this after-the-fact opportunity to cross-examine would pass constitutional muster, as long as defendant "was not forced to call [the witness] himself in order to secure those rights. *Id.* "Because [the witness] was available and in fact did testify during the State's case in chief, appellant was afforded a full and fair opportunity

to cross[-]examine her." *Id.* This decision follows United States Supreme Court precedent, which has held that *contemporaneous* cross-examination is not constitutionally protected under the Sixth Amendment's Confrontation Clause. *See California v. Green*, 399 U.S. 149, 161 (1970). Even were the facts similar (and they are not), the legal proposition that Kotto attempts to support by citing *Long* is questionable. *See State v. Tompkins*, 859 N.W.2d 631, 638-42 (Iowa 2015) (finding no constitutional violation where defendant believed he could not cross-examine prosecution witness on prior statements because they were outside scope of direct examination, those hearsay statements were later admitted into evidence by another witness, and defense counsel chose not to recall witness to impeach those hearsay statements).

[27] The right in "[t]he Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose [the] infirmities [in a witness' testimony] through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony." *Owens*, 484 U.S. at 558. That clearly happened here, where all witnesses admitted the key fact that the defense sought to establish by using the video to cross-examine, and the entire video was ultimately admitted into evidence.[2] Nor is there any evidence in the record of any specific question or area of inquiry that Kotto was prevented from exploring through the video evidence. The prejudice, if any, Kotto faced because of the trial court's directives was minimal. So too was any benefit Kotto might have achieved by using the videotape as he desired.

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[2] During oral argument, Kotto raised for the first time the argument that he was prohibited from raising a defense theory that all of the witnesses "got together to come up with a joint story," and therefore the jury should not have believed any of the witnesses' testimony. *See* Digital Recording at 11:05:25-11:06:22 (Oral Argument, Oct. 14, 2019). Because this argument was neither raised in the court below nor asserted in Kotto's briefs, it has been waived. *See People v. Blas*, 2015 Guam 30 ¶ 18 n.1. In any event, we do not believe that any limitations on the use of the video evidence during cross-examination prevented Kotto from pursuing this theory of the case.

[28] We find that the trial court did not violate Kotto's Sixth Amendment and Organic Act confrontation rights. Even if error did occur, it was harmless beyond a reasonable doubt because none of the three minor witnesses directly saw the relevant events, and the damaging potential of using the tape was "fully realized." *Van Arsdall*, 475 U.S. at 684; *see also Ojeda*, 2011 Guam 27 ¶ 32; *cf. Commonwealth v. Marinelli*, 690 A.2d 203, 217-18 (Pa. 1997) (rejecting claim of Confrontation Clause violation because facts defendant sought to impeach had been "brought out at trial by the Commonwealth").

B. The Trial Court Properly Denied Kotto's Motion for a Judgment of Acquittal

[29] Kotto next challenges on appeal the trial court's denial of his motion to acquit. *See* Appellant's Br. at 19-22. A defendant is entitled to a judgment of acquittal "if the evidence is insufficient to sustain a conviction of such offense or offenses." 8 GCA § 100.10 (2005). We review the trial court's denial of a motion to acquit *de novo*. *See Finik*, 2017 Guam 21 ¶ 19; *Fisher*, 2001 Guam 2 ¶ 20. In conducting this analysis, "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." *People v. Song*, 2012 Guam 21 ¶ 27 (citing *People v. Tennessen*, 2009 Guam 3 ¶ 14); *see also People v. Cruz*, 1998 Guam 18 ¶ 9. Kotto is not entitled to a presumption of innocence as part of our review; rather, the burden is on Kotto to establish "that the evidence was legally insufficient to sustain a guilty verdict." *See Song*, 2012 Guam 21 ¶ 28 (quoting *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)). This is a "highly deferential standard of review." *People v. Wusstig*, 2015 Guam 21 ¶ 8 (quoting *People v. Tenorio*, 2007 Guam 19 ¶ 9); *see also Finik*, 2017 Guam 21 ¶

19. We are concerned solely "with the existence or nonexistence of evidence, not its weight." *Song*, 2012 Guam 21 ¶ 29.

[30] Self-defense is a justification defense, *see* 9 GCA § 7.78(b) (2005), which permits a defendant to "use . . . force upon or toward another person . . . when the defendant believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion," 9 GCA § 7.84 (2005). Under Guam law, when a defendant puts forth a justification defense, the People have the burden of disproving that defense beyond a reasonable doubt. *See* 9 GCA §§ 7.78 cmt., 7.84; *see also Gargarita*, 2015 Guam 28 ¶¶ 13-19. In other words, "failure by the prosecution to disprove self-defense beyond a reasonable doubt must lead to an acquittal." *People v. John*, 2016 Guam 41 ¶ 35; *see also Gargarita*, 2015 Guam 28 ¶¶ 13-19. In a motion to acquit, the court must determine whether there is sufficient evidence upon which the jury could find beyond a reasonable doubt that Kotto lacked justification to use self-defense. *See Fisher*, 2001 Guam 2 ¶ 21-23.

[31] In denying Kotto's motion, the trial court found that the testimony of the minor victim, A.R., along with the testimony of Juliet Naes, C.R., D.J.S., and M.N., provided sufficient evidence to prove that Kotto did not act in self-defense. *See* RA, tab 139 at 3 (Dec. & Order, Jan. 23, 2019). Here, the testimony of A.R. and Naes, if believed by the jury, would have been sufficient to sustain a conviction against Kotto.

[32] According to A.R.'s testimony, on the night in question, he noticed that Kotto was arguing with his then-girlfriend, Naes. After a short altercation between Kotto and Naes, during which Naes slapped Kotto, A.R. testified that Kotto swung a knife around toward Judy Matusi—not Naes. This was prompted, according to A.R.'s testimony, by Matusi cursing at Kotto. After

Kotto presented the knife, Matusi then picked up a rock and threw it at Kotto's head. Kotto then charged toward Matusi, who was standing next to A.R. A.R. pushed Matusi out of the way, before Kotto cut A.R. with the knife.

[33] Naes similarly testified that Kotto was swinging his knife around toward her, Matusi, and A.R. Although someone had been aiming a slingshot at Kotto, according to Naes's testimony, that had stopped by the time Kotto swung his knife around. When asked directly, "when Mr. Kotto was swinging the knife at [A.R.], was anybody else attacking Mr. Kotto," Naes responded, "No." Tr. at 136 (Jury Trial, Oct. 19, 2018). She repeated similar testimony during later questioning. *See id.* at 147-48.

[34] While Kotto has put forth a rational argument he acted in self-defense under his characterization of events, *see* Appellant's Br. at 19-22, we are obligated in the posture of this appeal to view the evidence in the light most favorable to the People. *See Fisher*, 2001 Guam 2 ¶ 22. "[I]t is not the province of 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." *People v. Taisacan*, 2018 Guam 23 ¶ 17 (omission in original) (quoting *Song*, 2012 Guam 21 ¶ 29). Rather, we are concerned only with the existence or non-existence of evidence. *See id.*

[35] Viewing the evidence in the light most favorable to the People, the jury could have rationally come to at least two conclusions, each of which would establish that Kotto did not act in self-defense. If the jury believed A.R.'s version of the events, in which Matusi threw a rock at Kotto, a jury could still rationally find that Kotto was the initial aggressor because he was swinging a knife toward Matusi and that Matusi acted in self-defense by throwing a rock at

Kotto. If the jury believed Naes's version of events, the jury could also find that Kotto lacked any justification to use self-defense because he swung his knife around toward Naes, Matusi, or A.R., and ultimately struck A.R. with the knife. *See Fisher*, 2001 Guam 2 ¶ 23. This evidence is sufficient to contradict any assertion of self-defense beyond a reasonable doubt. *See id.* Therefore, we affirm the trial court's denial of Kotto's motion to acquit.

C. The Trial Court's Jury Instructions Related to Self-Defense Did Not Constitute Plain Reversible Error

[36] The final error Kotto asserts relates to the trial court's jury instructions concerning self-defense. *See* Appellant's Br. at 22-30. Because Kotto did not object to the instructions during trial, we review only for plain error. *See Gargarita*, 2015 Guam 28 ¶¶ 11-13. "Plain error is highly prejudicial error." *People v. Felder*, 2012 Guam 8 ¶ 19 (quoting *People v. Quitugua*, 2009 Guam 10 ¶ 11). The defendant has the burden of establishing: (1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected the defendant's substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process. *Id.*; *see also People v. Perry*, 2009 Guam 4 ¶ 9. Here, Kotto has failed to establish the first prong of a plain error analysis, as the jury instructions accurately stated the controlling law.

[37] Whether or not jury instructions accurately state the law is a question we review *de novo*. *See Diego*, 2013 Guam 15 ¶ 9; *see also Gargarita*, 2015 Guam 28 ¶ 12. In making this determination, we must view the jury instructions as a whole, rather than looking at individual instructions in isolation. *See John*, 2016 Guam 41 ¶ 14; *People v. Quintanilla*, 2001 Guam 12 ¶ 27. Kotto argues that the trial court's instructions were erroneous for two reasons: first, the instructions failed to state explicitly that self-defense is a justification defense; and second, the

instructions failed to "state that the jury is obligated to acquit the defendant even if all of the elements of the charges against him are proved." Appellant's Br. at 25. To support this position, Kotto relies largely upon our prior decision in *Gargarita*, 2015 Guam 28. *See id.* at 26-27. The instructions found erroneous in that case, however, are readily distinguishable from the jury instructions provided here.

[38] In *Gargarita*, we held that the trial court committed reversible plain error in instructing the jury on self-defense, even though the court provided the jury the statutory definitions of justification, self-defense, and deadly force. 2015 Guam 28 ¶¶ 7, 13, 15. We found two errors in the court's instructions. "First, although the jury was informed that the People bore the burden of disproving a justification defense, the trial court did not explicitly state that self-defense is a justification defense . . . ." *Id.* ¶ 15. "Without drawing that link, the jury may have improperly placed the onus on [the defendant] to prove that the force he used against the victim was lawful." *Id.* Second, we found that the instructions in *Gargarita* "did not state that the jury was obligated to acquit [the defendant] if the prosecution failed to meet its burden on the issue of self-defense even if all the elements of the charges against him were proved." *Id.* ¶ 16. Neither concern is at issue here.

[39] Contrary to Kotto's argument on appeal, our decision in *Gargarita* does not hold that a trial court must always instruct the jury that self-defense is a justification defense. Rather, we found the instructions in *Gargarita* erroneous because the trial court had provided "convoluted instructions" that stated that the People bear the burden on any justification defense, but then failed to directly link that instruction and the appropriate burden of proof to the defendant's claim of self-defense. *Id.* ¶ 17. The hallmark of our decision in *Gargarita* is simply that a trial

court must "instruct the jury that if the prosecution failed to disprove self-defense beyond a reasonable doubt, then the jury must acquit [the defendant] of the charges." *John*, 2016 Guam 41 ¶ 35; *see also People v. De Soto*, 2016 Guam 12 ¶ 25 ("[A] [s]elf-defense [instruction] requires a specific burden of proof instruction 'to avoid juror confusion about who has the burden of proof on the self-defense issue.'" (quoting *State v. Marchi*, 243 P.3d 556, 562 (Wash. Ct. App. 2010))).

[40] Here, the trial court provided the jury with the clear instruction that "[t]he People have the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. You must acquit the defendant if the People have failed to disprove the defendant's self-defense claim beyond a reasonable doubt." *See* Tr. at 126 (Jury Trial, Nov. 13, 2018); *see also* RA, tab 115 at 58 (Jury Instrs.). A similar instruction was absent from the trial court's instructions under review in *Gargarita*. *See* 2015 Guam 28 ¶ 13. Thus, the link we found to be missing in *Gargarita* was set forth by the court in this case.

[41] Here, "[t]he instructions as a whole repeatedly emphasized the [People's] duty to prove every element of the crime beyond a reasonable doubt and the jurors' duty to acquit the defendant if his evidence of self-defense raised any reasonable doubt in their minds." *Cherry v. Jago*, 722 F.2d 1296, 1300 (6th Cir. 1983). The court provided a generally applicable instruction stating that "[t]he People have the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense," and that the jury "must acquit the defendant if the People have failed to disprove the defendant's self-defense claim beyond a reasonable doubt." *See* Tr. at 126 (Jury Trial, Nov. 13, 2018); *see also* RA, tab 115 at 58 (Jury Instrs.). The trial court also provided a separate instruction with respect to each individual charge against Kotto, which

stated, as an element of each offense, that "[t]he People must prove beyond a reasonable doubt that MB Kotto . . . did not act in self-defense." Tr. at 128-29 (Jury Trial, Nov. 13, 2018); *see also* RA, tab 115 at 63, 67 (Jury Instrs.).

[42] When read as a whole, it would have been clear to the jury that the People's failure to prove that Kotto did not act in self-defense must result in an acquittal, even if all other elements of the offenses were proven beyond a reasonable doubt. *See, e.g.*, *Gagne v. Meachum*, 602 F.2d 471, 472-73 (1st Cir. 1979) (finding that instruction accurately stated the law, even where "the court did not tell the jury explicitly that the [government] had to prove absence of self-defense"); *cf. People v. Baluyot*, 2016 Guam 20 ¶ 16 (finding that "instructions when read as a whole were not erroneous," even if they "were not ideal"). Therefore, the instructions accurately stated the controlling law. Because there was no error, we need not address the other prongs of the plain error analysis.

V. CONCLUSION

[43] For the reasons set forth above, we **AFFIRM** the trial court's denial of Kotto's motion to acquit and the Judgment of Conviction.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice