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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

GEORGE CHAMBERS, JR.,
Defendant-Appellant.

Supreme Court Case No. CRA21-011
Superior Court Case No. CF0156-21

OPINION

Cite as: 2023 Guam 15

Appeal from the Superior Court of Guam
Submitted on the briefs on June 6, 2023
Hagåtña, Guam

Appearing for Defendant-Appellant:
Peter C. Perez, *Esq.*
Law Office of Peter C. Perez
DNA Bldg.
238 Archbishop Flores St., Ste. 802
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr.
Tamuning, GU 96913

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

TORRES, C.J.:

[1] In an attempt to secure pandemic unemployment assistance, Defendant-Appellant George Chambers, Jr. provided several documents to the Guam Department of Labor (“GDOL”) purporting to show his connections to the workforce. Some of those documents were of dubious veracity. Plaintiff-Appellee People of Guam (“People”) charged Chambers with several crimes for submitting false documents to GDOL and trying to defraud the Government of Guam. A jury acquitted Chambers of most charges but convicted him of (1) Tampering with Public Records (as a Misdemeanor) and (2) Unsworn Falsification (as a Misdemeanor). Chambers appeals those convictions, arguing the People provided insufficient evidence to sustain them.

[2] We find sufficient evidence to sustain the Tampering with Public Records conviction, but a lack of sufficient evidence for the Unsworn Falsification charge. We thus affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] The Pandemic Unemployment Assistance (“PUA”) program was created by § 2102 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. Pub. L. No. 116-136, 134 Stat. 281, 313-17 (2020). Under the CARES Act, applicants were eligible for cash benefits if they could no longer work due to the effects of the Coronavirus pandemic. *Id.*

[4] In June 2020, Chambers applied for PUA benefits. Several months went by, and Chambers had still not been paid.¹ Trying to see what the problem was, Chambers called GDOL, which oversaw the administration of the PUA program for Guam, asking why he had yet to receive any

¹ Unbeknownst to Chambers, he had not been paid simply because of how GDOL was processing claims. GDOL was releasing payments based on filing dates.

PUA payments. Chambers's claim was then brought to the attention of Greg Massey, the head of Guam's PUA program, who assigned the case to Crystiann Nededog.

[5] Reviewing his application, Nededog noticed that Chambers's application had been flagged as needing additional documents. What had caused GDOL to flag Chambers's application was never clarified. Nededog emailed Chambers telling him he needed to submit additional documents "connecting [Chambers] to the workforce." Transcript ("Tr.") at 64 (Jury Trial, June 10, 2021). She said the required documents included a "business license, receipts, [and] GRTs for proof of employment."² *Id.* at 67.

[6] In response, Chambers emailed Nededog several documents, including a photograph of Chambers's social security card, a birth certificate for his daughter (whom Chambers claimed he was taking care of), receipts from different projects, and a business license for a "GC Cleaning." Nededog thought something looked "off" about the submitted business license, specifically that the font used for the expiration date appeared to differ from the font with Chambers's information. *Id.* at 70, 71. She brought this to the attention of her boss, Massey. Further, Nededog stated that when she called Evangeline Cepeda, for whom Chambers had listed as doing work, Cepeda told her that Chambers had not worked for her. After conferring with the Guam Department of Revenue and Taxation ("DRT"), which confirmed the business license submitted by Chambers was not genuine, the matter was referred to the Attorney General's office.

[7] By May 27, 2021,³ Chambers faced six counts of criminal misconduct: two counts of Forgery (as a Third Degree Felony) in violation of 9 GCA § 46.10(a)(3) and (c); one count of Tampering with Public Records (as a Third Degree Felony) in violation of 9 GCA § 55.10(a)(2)

² Though Nededog claims she told Chambers she gave him "options" of documents to send, Tr. at 65 (Jury Trial, June 10, 2021), in the email she sent to Chambers, she said that the listed documents were "required"; this included a business license, *id.* at 67.

³ A superseding indictment had been issued, replacing the original one.

and (b); two counts of Unsworn Falsification (as a Misdemeanor) in violation of 9 GCA § 52.30(b); and one count of Unsworn Falsification (as a Misdemeanor) in violation of 9 GCA § 52.30(a).

[8] During the trial, Cepeda contradicted the story told by Nededog, at least regarding their phone conversation. Cepeda stated that she told Nededog that Chambers did limited work for her, at the residence where Chambers was staying. This was not reflected on the case note filled out by Nededog summarizing the call.

[9] GDOL witnesses admitted that being unable to work when one was the primary caregiver for a child who did not attend school or another facility that was closed due to the COVID-19 pandemic qualified that person for PUA benefits. None of the witnesses said that Chambers did not qualify for PUA funds under this provision. *See* Tr. at 12-14 (Mot. Hr'g, June 15, 2021) (showing that the People were not opposed to stipulating that Chambers at one point met eligibility for PUA benefits by having to take care of his daughter). But the trial court ruled that the jury need not make a finding that Chambers was ineligible for benefits to convict him, so this specific directive was not included in the jury instructions. The trial court also denied Chambers's motion for judgment of acquittal, which had adopted similar reasoning (since the People failed to prove Chambers ineligible for the PUA benefits, he could not be found guilty of trying to defraud the Government of Guam).

[10] After the trial, the jury found Chambers guilty on two counts: (1) Tampering with Public Records (as a Misdemeanor, a lesser-included offense to the Felony charge); and (2) Unsworn Falsification (as a Misdemeanor). Both convictions revolved around submitting the false business license; Chambers was acquitted with respect to all other charges. Chambers timely appealed.

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II. JURISDICTION

[11] We have jurisdiction over an appeal from a final judgment of conviction under 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-22 (2023)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA §§ 130.10 and 130.15(a) (2005).

III. STANDARD OF REVIEW

[12] “When a defendant raises 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. Wia*, 2020 Guam 17 ¶ 9. To review a claim for sufficiency of the evidence, we review the evidence “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. Kotto*, 2020 Guam 4 ¶ 29 (quoting *People v. Song*, 2012 Guam 21 ¶ 27).

IV. ANALYSIS

[13] Chambers argues there was insufficient evidence to support both of his convictions. Each conviction will be analyzed in turn.

A. Tampering with Public Records

[14] Chambers’s conviction for Tampering with Public Records came under 9 GCA § 55.10(a)(2). This statute makes it illegal to “make[], present[] or use[] any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of [a public record].” 9 GCA § 55.10(a)(2) (2005). A public record is defined as any “document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government.” *Id.* § 55.10(a)(1).

[15] The jury instructions tracked the statute; the jury was asked to find if Chambers “[p]resented to the Guam Department of Labor a business license issued by the Guam Department

of Revenue and Taxation” while “[k]nowing it to be false and intending it be taken as a genuine representation of part of the information or records kept by the Department of Revenue and Taxation.” Record on Appeal (“RA”), tab 77 at 7F (Jury Instrs., June 18, 2021).

[16] Chambers offers eleven reasons (denoted (a)-(k)) why there was insufficient evidence to convict him of Tampering with Public Records. *See* Appellant’s Br. at 17-31 (Dec. 30, 2022). As pointed out by the People, most of the reasons do not address the sufficiency of the evidence required for a conviction under the pertinent statute. Appellee’s Br. at 18-19 (Feb. 21, 2023). The following points are simply irrelevant to Chambers’s conviction here: whether Chambers lost his job due to COVID-19 (point (a)); whether Chambers was eligible for and submitted a PUA application (points (b), (c), and (f)); whether GDOL provided guidance to Chambers on the application and document submissions (points (d) and (e)); whether GDOL attempted to understand Chambers’s side of the story (point (g)); and whether Chambers was ever under an obligation to submit a business license (points (h) and (j)). None of these points relate to the question posed to the jury, which was whether Chambers “[p]resented to the Guam Department of Labor a business license issued by the Guam Department of Revenue and Taxation” while “[k]nowing it to be false and intending it be taken as a genuine representation of part of the information or records kept by the Department of Revenue and Taxation.” RA, tab 77 at 7F (Jury Instrs.).

[17] Chambers argues these points show he was entitled to receive benefits, and since he never received these benefits or adequate help to receive them, nothing he submitted after his initial application “is relevant [or] should . . . be considered.” Appellant’s Reply Br. at 6 (Mar. 7, 2023). This specific charge did not require the jury to find that Chambers defrauded GDOL or tried to

gain benefits to which he was not entitled.⁴ RA, tab 77 at 7F (Jury Instrs.). All that was necessary for the jury to convict Chambers for this count was a finding that he presented a public record, knowing it to be false, and intended it to be taken as genuine. *Id.* As none of these reasons address the evidence—or lack thereof—of the essential elements of Tampering with Public Records, they may be set aside.

[18] In point (k), Chambers argues the People failed to prove that he intended the business license provided to DRT to be taken as genuine. Appellant’s Br. at 30. In a sufficiency of the evidence analysis, the People are entitled to “the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom.” *People v. Bosi*, 2022 Guam 15 ¶ 11 (quoting *Song*, 2012 Guam 21 ¶ 28). For the original PUA application, the People offered testimony that an applicant had to acknowledge, under penalty of perjury, that all the information provided was correct. *See* Tr. at 32-33 (Jury Trial, June 10, 2021). While the business license submission was not part of this application, it was requested and provided as further documentation for the application. *See id.* at 64-65, 67. Therefore, Chambers sent an email containing a document purporting to be a business license to a government worker; it is unclear why that worker should have believed the attached document was false. These facts support an inference that Chambers wanted the document he attached to be considered genuine.

[19] This leaves Chambers with one last argument, point (i): “[t]he People failed to prove that the business license submitted was issued by [DRT].” Appellant’s Br. at 27. The People argue they did not have to prove this point. Appellee’s Br. at 19. Yet, the jury instructions for this count required a finding that DRT issued the business license. *See* RA, tab 77 at 7F (Jury Instrs.). But is this finding required by the statute?

⁴ In fact, the People charged Chambers with several more serious crimes requiring a finding of an intent to defraud GDOL, and Chambers was acquitted of these charges.

[20] “In cases involving statutory construction, the plain language of a statute must be the starting point.” *People v. Rachulap*, 2022 Guam 9 ¶ 18 (quoting *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23). The statute reads in relevant part: “A person commits an offense if he . . . presents . . . any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of [a public record].” 9 GCA § 55.10(a)(2). The key question is whether “any record, document or thing” refers to a public record itself or if it can include creations *purporting* to be public records. To explain the difference, consider a person who possesses two deficient driver’s licenses. The first was acquired by someone who submitted a false address and picture to the local DMV. The second one was bought from someone in the business of making fake licenses. The former, having been issued by the government, is a public record despite being based on incorrect information. But the second license merely *purports* to be a public record; the state did not create it, so it was never actually a public record.

[21] The statutory history suggests a broad reading. This statute was based on Model Penal Code (“MPC”) § 241.8. 9 GCA § 55.10, Source. In the MPC Commentaries, the drafters note this provision was meant to capture the “wholesale invention” of documents. Model Penal Code § 241.8 cmt. 3 (Am. L. Inst. 1980). Under this reading, a purported public record would be captured by the statute.

[22] We hold a person violates 9 GCA § 55.10 when offering a wholesale invention of a document purporting to be a public record with the intent that such document be taken as genuine. There was sufficient evidence of Chambers doing just so: the People introduced evidence Chambers submitted a document purporting to be a business license issued by DRT, and a DRT witness testified the Department could not have issued such a document. Tr. at 70, 179-83 (Jury Trial, June 10, 2021). The jury instruction that Chambers had to present “a business license issued

by [DRT]” is a harmless error, as it created a higher burden for the People than was needed; it had no prejudicial effect on Chambers. *See United States v. Watters*, 717 F.3d 733, 735 (9th Cir. 2013); *State v. Roland*, 619 S.W.2d 771, 777 (Mo. Ct. App. 1981); *see also Robinson v. United States*, 649 A.2d 584, 588 (D.C. 1994) (finding no effect to defendant’s substantial rights where erroneous jury instruction “created a greater burden of proof for the government”). Thus, we affirm the conviction for Tampering with Public Records.

B. Unsworn Falsification

[23] Moving to his second conviction, Chambers was also found guilty of Unsworn Falsification under 9 GCA § 52.30(b). This statute makes it a crime if a person “with intent to mislead a public servant in performing his official function, . . . makes, submits or uses . . . any . . . writing . . . which he knows to be either false or not what it purports to be in the circumstances in which it is made, submitted or used.” 9 GCA § 52.30(b) (2005). Once more, the jury instructions tracked the statute; they required a finding that Chambers “[i]ntend[ed] to mislead a public servant of the Department of Labor in performance of an official function” when he “[k]nowingly made, submitted, or used a false or altered writing, purportedly a then-current and valid business license . . . [w]hich he knew was false or not what it purported to be under the circumstances in which it was made, submitted or used.” RA, tab 77 at 7H (Jury Instrs.).

[24] Chambers largely repeats many of the same points he used to challenge his Tampering with Public Records conviction. *See Appellant’s Br.* at 33-46. As mentioned above, most points raised are irrelevant to the elements of the charged offense. The People introduced testimony that the business license submitted by Chambers was fake. Again, Chambers submitted this document in response to a request dealing with his PUA application. This is sufficient evidence for a jury to infer that Chambers made or submitted a false business license, knowing it to be false.

[25] The key question for this conviction is whether there was sufficient evidence to show Chambers intended to mislead GDOL employees. We have yet to address the proof necessary to show an “intent to mislead” in this statute. Perhaps anyone who submits false documents intends to mislead a public servant. The People seem to adopt this position. *See* Appellee’s Br. at 24-25. But this construction renders the words “intent to mislead” surplusage. Separate from the intent-to-mislead requirement, the statute already requires a person “*knows*” the documents submitted are false. 9 GCA § 52.30(b) (emphasis added). Thus, a knowledge culpability requirement is already attached to this element of the crime. Therefore, the preceding qualifier of “intent to mislead” must be another requirement in addition to mere knowledge that the underlying statement or document is false; it must be done with the intent to lead the public servant astray. *Cf. Mendiola v. Bell*, 2009 Guam 15 ¶¶ 19-20 (finding it significant that a statute did *not* have an intent requirement when punishing misleading conduct).

[26] The importance of the “intent to mislead” requirement is confirmed by the statutory history of 9 GCA § 52.30. This section was based on MPC § 241.3 and N.J. Stat. Ann. § 2C:28-3 (West 1981). 9 GCA § 52.30, Source. The MPC Commentaries note the intent-to-mislead requirement is meant “to ensure that the declarant is taking his submission seriously enough to warrant the imposition of criminal sanctions.” Model Penal Code § 241.3 cmt. 2. They add that this provision of the MPC was not meant to serve “as a general prohibition of lying about official matters.” *See id.* cmt. 1. The drafters behind the New Jersey statute also explained that “a more affirmative purpose to pervert justice ought to be shown” to be culpable of a crime under this section. *Final Report of the New Jersey Criminal Law Revision Commission*, commentary to § 2C:28-1, at 275 (1971) (applying the same standard to § 2C:28-3).

[27] Guam’s law on this subject was also based in part on an older version of a similar Massachusetts statute. *See* 9 GCA § 52.30, Source. Though the Massachusetts law has since been revised, the current section requires someone “mislead” a public servant.⁵ *Compare* 9 GCA § 52.30, *with* Mass. Gen. Laws Ann. ch. 268, § 13B(b) (West 2022). In defining what it means to mislead someone under the statute, the Supreme Judicial Court of Massachusetts has held that “to ‘mislead[]’ principally entails sending a person on a proverbial ‘wild goose chase,’ by inducing the person to go somewhere materially different from where he or she otherwise would have gone.” *Commonwealth v. Tejada*, 73 N.E.3d 290, 292-93 (Mass. 2017) (alteration in original) (citation omitted). The court explained:

[T]o find the defendant guilty of misleading a [public official] with a lie, the jury would need to find not only that the statement was false, but that it reasonably could have led [officials] to pursue a materially different course in their investigation from one they otherwise would have pursued because it sent them in the wrong direction

Id. at 293 (emphasis omitted).

[28] By submitting the purported business license, Chambers was trying to convince GDOL that he was eligible for PUA benefits. At the same time, the People never proved Chambers was ineligible to receive benefits; in fact, they may have conceded he was eligible. *See* Tr. at 13-14 (Mot. Hr’g). In this way, it cannot be said that Chambers was trying to send GDOL employees on

⁵ The Massachusetts statute in question criminalizes conduct in which the actor:

willfully, either directly or indirectly . . . misleads . . . another person . . . with the intent to . . . impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk’s hearing, court-ordered mediation or any other civil proceeding of any type.

Mass. Gen. Laws Ann. ch. 268, § 13B(b) (West 2022).

a “wild goose chase” or send them in the wrong direction; he wanted them to believe he was eligible for PUA benefits, which he was.

[29] We recognize this reading may seem to contradict the note accompanying 9 GCA § 52.30. That note reads in part: “This Section would include under its scope the presentation of a friend’s valid driver’s license as the defendant’s own” 9 GCA § 52.30 cmt. But “[a]nnotations and comments [to the Guam Code] are not part of the law.” 1 GCA § 101(a) (2005). And, this comment is not necessarily incorrect; it is just contextual.

[30] Consider a pair of identical twins, Sabrina and Sydney, who take the driving test to get their driver’s licenses at the age of 21. Sabrina passes her test and gets her license, but Sydney fails. Sometime later, Sydney goes to a festival and orders alcoholic drinks. As she is leaving the vendor’s booth, Sydney is stopped by a police officer, concerned that vendors are selling alcohol to under-aged patrons. He asks to see Sydney’s ID, and she presents the officer with her sister’s driver’s license. Has Sydney committed Unsworn Falsification? The answer is no. True, she presented an object that was not what it purported to be—it was her sister’s license. Still, she has not attempted to mislead the officer. She showed the officer the license to convince him she was over the age of 21, which she was. Even though it was not her license, she was not trying to lead the officer on a wild goose chase or send him to the wrong conclusion in his investigation.

[31] On the other hand, if Sydney drove home that night, got stopped by an officer, and then showed her sister’s license, now she has committed Unsworn Falsification. In this scenario, Sydney is trying to convince the officer she is licensed to operate a motor vehicle, which she is not. A contextual analysis is needed to determine whether someone intends to mislead a public servant. Looking at the context here, the People offered no evidence showing Chambers was

ineligible for PUA benefits. So, they did not prove he intended to send GDOL on a materially different course in their investigation of his eligibility.

[32] The People have only two responses to this argument. First, they cite *State v. Vainio*, 2001 MT 220, 306 Mont. 439, 35 P.3d 948, to support their position that Chambers’s conviction should be upheld. But, in that case, the reviewing court reversed the conviction due to insufficient evidence. *Vainio*, 2001 MT 220, ¶ 70. The People rely on *Vainio* to show how Chambers’s situation is different. It does not help their cause.

[33] In *Vainio*, the defendant was convicted of Unsworn Falsification for omissions he made on a state Medicaid Provider Enrollment Form. *Id.* ¶ 13. The Montana Supreme Court reversed the conviction because there was insufficient evidence to prove the defendant made false claims. *Id.* ¶¶ 52-70. This differs from the situation here, where no one contends the business license submitted by Chambers was legitimate. But the *Vainio* court reversed the conviction because, while the defendant did not list every county where he did business as the state form required, he listed the county where he had his corporate office. *Id.* ¶¶ 68-69. The defendant argued he was only answering the form as he had done numerous times in the past, by listing only the county with his corporate office; additionally, the state was aware of his other offices. *Id.* ¶ 69. The court found “the State presented no evidence that [the defendant] purposefully intended to mislead a public servant by listing the main office from which he did business.” *Id.* ¶ 68. The court made clear that Unsworn Falsification requires *two* elements—false information and an intent to mislead. *Id.* ¶ 69.

[34] The People likewise have not shown Chambers intended to mislead GDOL. The People offered no evidence that Chambers was not entitled to PUA benefits. By having to stay home and

take care of his daughter, he probably was eligible for benefits. Therefore, *Vainio* seems to support Chambers's position rather than cut against it.

[35] Second, the People argue the moment Chambers submitted the false business license, he became ineligible for PUA benefits. Appellee's Br. at 23. They cite no authority for this proposition, probably because it is not true. The CARES Act itself did not provide for disqualification criteria regarding PUA benefits. It did, however, incorporate 20 C.F.R. § 625 by reference. See 15 U.S.C.A. § 9021(h). This regulation disqualifies people who submit false information "in order to obtain . . . a payment of [P]UA to which the individual . . . *is not entitled.*" 20 C.F.R. § 625.14(i) (2022) (emphasis added). If Chambers was entitled to PUA benefits, submitting false documents in applying for those benefits does *not* disqualify him per federal law. As the People failed to prove Chambers was ineligible for benefits, they also failed to show he had the intent to mislead in his application. The conviction for Unsworn Falsification is vacated.

V. CONCLUSION

[36] We find the People presented sufficient evidence to convict Chambers of Tampering with Public Records and **AFFIRM** that conviction. Because the People presented insufficient evidence to convict Chambers of Unsworn Falsification, we **REVERSE** and **VACATE** that conviction. This case is **REMANDED** to the trial court for resentencing consistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice