IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee

vs.

JOAQUIN C. CAMACHO, JR.
Defendant-Appellant

OPINION

Supreme Court Case No. CRA98-011
Superior Court Criminal Case No. CF0523-96

Filed: October 29, 1999

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Appeal from the Superior Court of Guam
Argued and submitted on May 14, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, Associate Justice, and JOHN A. MANGLONA, Designated Justice.

CRUZ, CJ:

[1] The Defendant-Appellant, Joaquin C. Camacho, Jr. appeals his conviction for two (2) counts of Murder (as a 1st Degree Felony) and two (2) Special Allegations of Possession and Use of a Deadly Weapon in the Commission of a Felony. The Defendant-Appellant seeks a reversal of the convictions based upon: (1) the trial court's failure to give a self-defense jury instruction; (2) ineffective assistance of counsel for failure of counsel to request a self-defense jury instruction; (3) the trial court's failure to suppress statements and evidence derived from an unlawful delay in bringing the defendant before a judge, pursuant to 8 GCA § 45.10(a) (1993); and (4) denial of defendant's motion for judgment of acquittal notwithstanding the verdicts. The trial court's decisions are affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

[2] On or about September 20, 1996, at approximately 11:45 p.m., Officer Peter J. Santos was conducting a check upon the One Stop Business License Center in Anigua. During this check, Officer Santos found a person lying on the ground. Upon approaching the individual, Officer Santos noticed that she had two deep cuts on both sides of her neck and was bleeding quite heavily from her wounds. The individual was dressed like a woman, wearing a black lace jacket, a black sports bra, and white denim shorts. Officer Santos called for medics and began interviewing the individual, who, at the time, was alert and breathing steadily.

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[3] The victim identified herself as Raymond Santos (in trial court it was acknowledged that she also went by the name of Rita)[1] and told Officer Santos what had happened to her. According to Raymond/Rita Santos, she was picked up by the person who caused her injuries at about 11:00 p.m. behind Club Texas in Anigua. She also recalled that her attacker was driving a Nissan Sentra. Raymond/Rita Santos said that she was driven to the area behind the One Stop building, where she was stabbed, then dumped by the assailant. She described her attacker to Officer Santos as being "light complected, male, possibl[y] Chamorro, in his late thirties with long black hair."[2] Raymond/Rita Santos also stated to Officer Santos the attack occurred inside the car and that the person who attacked her was not standing up at the time of the attack.

[4] At the time Raymond/Rita Santos was found, Officer Santos noticed that the bra she wore was soaked in blood from the neck wounds. Officer Santos also noted that Raymond/Rita Santos was not wearing any shoes and none were found in the area. Raymond/Rita Santos eventually died from the wounds she suffered from during the attack.

[5] Mr. Joaquin Camacho, Sr. testified that, on September 21, 1996, the day following the attack, his son, Joaquin Camacho, Jr. (hereinafter "the Appellant"), was distraught after reading the Sunday edition of the *Pacific Daily News* that headlined: "Two Killings in 24 Hours." Mr. Camacho testified that the next day he went to his son's place of work to talk at which time the Appellant broke down and cried. The Appellant then exclaimed, "I stabbed the guy." After talking to his son, it was Mr. Camacho's understanding that the Appellant was involved in a fight with several individuals and that the Appellant had

[1]In this case we will refer to the victim as Raymond/Rita Santos and use feminine pronouns to identify her. First, this is done to differentiate between her and the Appellant in addition to differentiating between her and the police officer who shares the same last name. Second, both parties refer to Raymond/Rita Santos as "she" in their briefs.

[2]Appellant's Brief at 4 (December 28, 1998); Record of Transcript vol. VIII, p. 40 (Trial, August 12, 1997).

stabbed one of the individuals. Mr. Camacho eventually went to the Attorney General's Office to report the incident. The Appellant's father believed, based upon the explanation of the Appellant, that the stabbing was in self-defense.

[6] On or about October 15, 1996, officers from the Guam Police Department were sent to find the Appellant at his apartment. At approximately 7:39 a.m., they observed the Appellant walking toward a gold Nissan Sentra. The officers approached the Appellant at which time Officer Nicholas Wellein asked if the Appellant could be interviewed at the Criminal Investigation Section (CIS). The Appellant agreed to accompany the officers and upon his arrival at CIS he was advised of his rights.

[7] Officer Wellein began interviewing the Appellant at approximately 8:25 a.m. The Appellant explained that he was involved in a fight with transvestites at the One Stop building in Anigua. In this initial interview, the Appellant did not admit that he stabbed any person and that he had left the area after he was able to escape from his attackers. The Appellant provided a written statement, consented to be fingerprinted, photographed, and to have his apartment searched. However, he was not arrested after this interview.

[8] Officer Wellein began a second interview of the Appellant after the written statement from the first interview was completed. After the Appellant was urged to tell the truth, the Appellant began crying and stated "I did it. I was the one who stabbed her." Officer Wellein continued the interview and asked the Appellant to give more details. The Appellant stated that he picked up a "woman" wearing a white top and black shorts outside the Ginza Massage. The Appellant later called the woman "one of the gays" who "asked him if he needed her services." He then drove to the back of the One Stop building. The Appellant stated that he and the woman got out of the car and went to the beach. The Appellant stated that he then confronted the woman about a previous altercation he had with the woman and her friends.

[9] According to the Appellant, the woman then reached inside her purse and when the Appellant turned around the woman had a knife in her hand. The Appellant claimed that the woman came toward him with the knife. The Appellant stated that he took the knife away from the woman, pulled her forward and began stabbing her in her neck, side, and in the back. After making this admission, the Appellant was not formally arrested by Officer Wellein, despite the fact that Officer Wellein had probable cause to do so. Officer Wellein testified that he wanted to get more information and requested the Appellant to provide a second written statement and to draw sketches regarding the events of September 20, 1996. The sketches prepared by the Appellant were shown to the jury and admitted into evidence.

[10] After completing the written statement and the sketches, Officer Weillen asked the Appellant if he was willing to do a reenactment of the incident. The Appellant, Officer Weillen, and a crime lab technician proceeded to the area where the Appellant first picked up the woman he stabbed. Shortly thereafter, they proceeded to the area behind the One Stop building where the car was parked and then to the site of the stabbing. During the reenactment, the Appellant referred to the woman as "Meshan." After the video reenactment, the Appellant was still not arrested. They then proceeded up to the Appellant's apartment to locate certain items of evidence. Only after interviewing the Appellant twice and asking him for sketches and a video reenactment did Officer Weillen arrest him. The Appellant was then formally arrested at approximately 6:10 p.m. and appeared before a magistrate at around 6:20 p.m., on October 15, 1996.

[11] The Appellant was indicted on two (2) counts of Murder (as a 1st Degree Felony) and A Special Allegation of Possession and Use of a Deadly Weapon in the Commission of a Felony with each count of murder. Prior to the trial, Appellant filed a motion to suppress evidence for failing to bring Appellant before a judge without unnecessary delay and to suppress defendant's statements because of a violation of the *McNabb-Mallory* rule. *See* 8 GCA §45.10; *Mallory v. United States* 354 U.S. 449, 77 S.Ct. 1356

(1957); *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608 (1943), *reh'g denied*, 391 U.S. 784, 63 S.Ct. 1322 (1943). Both motions were denied by the trial court.

[12] A jury trial was held and the People rested after presenting evidence over a four-day period. After the People rested their case, the Appellant moved for a Judgment of Acquittal citing insufficiency of the evidence. The Court denied the motion. The Appellant was eventually found guilty of both counts in the indictment including the special allegations.

[13] The Appellant filed a motion for Judgment Notwithstanding the Verdicts on August 21, 1997. After hearing oral argument on the matter, the trial court issued a decision and order denying the Appellant's motion. The Appellant was subsequently sentenced to life imprisonment for count two in the indictment, Murder (as a 1st Degree Felony), and received a consecutive sentence of twenty-five *(25)* years imprisonment for the special allegation in count two, Possession and Use of Deadly Weapon in the Commission of a Felony. Sentencing was deferred for Count One and the special allegation. The appeal was timely filed. The Appellant is presently incarcerated.

DISCUSSION

[14] This court has jurisdiction based upon 8 GCA § 130.15 (a) (1993), 7 GCA §§ 3107 and 3108 (1994).

[15] The Appellant presents the court with four issues to consider. The first issue raised by the Appellant is whether the trial court's failure to give a self-defense jury instruction, *sua sponte*, is reversible error. The Appellant states that he was deprived of his constitutional right to have the jury determine every material issue presented by the evidence because the trial court failed to give a jury instruction of self-defense. We review this issue for plain error. 8 GCA § 90.19 (1993) and § 130.50 (1993); *People of*

Guam v. Ueki, 1999 Guam 4, ¶¶ 17-18.

[16] The Appellant's second issue is that his trial counsel failed to request a self-defense jury instruction which rendered his assistance to the Appellant as ineffective. The Appellant believes that he was prejudiced by his trial counsel's failure to request a self-defense jury instruction. We review this matter *de novo. People v. Quintanilla,* 1998 Guam 17, ¶ 8.

[17] The third issue raised by the Appellant is whether the trial court erred in failing to suppress statements and evidence because of the unnecessary delay in bringing the Appellant before a Superior Court judge. The Appellant relies upon 8 GCA § 45.10, which requires that a person be brought before a judge of the Superior Court "without unnecessary delay." 8 GCA § 45.10(a). This matter will be reviewed *de novo. Coffey v. Government of Guam,* 1997 Guam 14, ¶ 6.

[18] The final issue raised by the Appellant is whether the trial court erred in denying Appellant's motion for Judgment of Acquittal Notwithstanding the Verdicts. Appellant contends that the evidence presented at trial was insufficient to convict him of any of the charges. We review this last concern *de novo. People of Guam v. Quinata,* 1999 Guam 6, ¶ 9; *People of Guam v. Cruz,* 1998 Guam 18, ¶ 8.

A. SELF-DEFENSE JURY INSTRUCTION.

[19] The Appellant argues that the trial court should have given a *sua sponte* jury instruction of self-defense and that the trial court's failure to do so prejudiced the Appellant. In support of this position, he primarily relies upon *People v. Mayweather,* 66 Cal.Rptr. 547 (1968), which reversed a conviction because of the trial court's failure to give a self-defense instruction. Unlike this case, in *Mayweather* the failure to give the instruction was not reviewed under the plain error standard.

[20] Courts are not bound to present every conceivable defense potentially suggested by the evidence.

See United States v. Span, 970 F.2d 573 (9th Cir. 1992). The Ninth Circuit found no plain error in a court's failure to give a jury instruction regarding excessive force where the Appellant did not present such a defense and the Appellant did not request the instruction. *Id.* at 578.

[21] Based upon the facts presented here, we find that the failure of the trial court to give a self-defense jury instruction *sua sponte* does not rise to the level of plain error. As in *Span,* the Appellant here did not present a self-defense theory at trial but instead relied upon an alternative theory that he did not commit the crime.[3] The court could not logically reverse on this issue when the two defenses basically exclude each other. In addition, the Appellant did not request the instruction. Reversal is not warranted on these bases.

B. INEFFECTIVE ASSISTANCE OF COUNSEL

[22] As a result of defense counsel's failure to request a self-defense jury instruction, the Appellant claims that his assistance of counsel was ineffective. In a recent decision, *People v. Kintaro,* this court reiterated that in determining whether a criminal defendant received ineffective assistance of counsel we will employ the two-prong test from the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). *People v. Kintaro*, 1999 Guam 15, ¶ 11. The first prong requires that a defendant demonstrate that his trial counsel's performance was deficient. In the second prong, the defendant must prove the deficient performance prejudiced his defense. *Id. (citing Quintanilla* at ¶ 8).

[23] Applying the first prong of this test, the Appellant claims that a jury instruction for self-defense

[3]As a tangential matter, the Appellant's counsel would have had a difficult time presenting a self-defense claim given the facts of the case. The Appellees note that the idea of a man who is over six feet tall and over two hundred pounds fearing a transvestite less than five feet tall and around one hundred forty pounds is unlikely. Appellee's Brief at 12-13 (January 27, 1999); Transcript, vol. X, p. 165 (Jury Trial, August 14, 1997). Even if Appellant were afraid of Raymond/Rita, inflicting multiple knife wounds in the neck, chest, and back goes far beyond meeting an aggressor with equal force.

should have been requested in light of the evidence presented, but trial counsel failed to do so. In examining this claim, the court must judge the reasonableness of counsel's challenged conduct, or lack thereof, based upon the facts of the particular case, viewed as of the time of counsel's conduct. *Kintaro* at ¶ 12; *Quintanilla* at ¶ 9 (*quoting Washington*, 466 U.S. at 690, 104 S.Ct. at 2066).

[24] In counsel's notice of witnesses and nature of defense, he raises three possible defenses: 1) the act was in self-defense, 2) he lacked the necessary mens rea for the offenses charged, and 3) another person committed the crime. During trial, however, trial counsel abandoned the self-defense and mens rea theories, instead arguing to the jury that the Appellant was not the person who stabbed Raymond/Rita Santos.

[25] In *Kintaro*, an appellant challenged his driving under the influence (DUI) conviction. The appellant argued that his lawyer provided him with ineffective assistance by failing to object when the prosecution relied solely upon appellant's admission and offered no proof that appellant was driving on that occasion. *Kintaro* at ¶ 13. We disagreed with appellant in that case because we noted that appellant's defense needed to admit that appellant was driving at the time of his arrest in order to assert other defenses. *Id.* at ¶ 16.

[26] As in *Kintaro*, we will not find fault in an attorney's performance because the attorney chose a consistent line of defense, rather than an exhaustive one. The nature of the self-defense theory and the theory pursued at trial are inherently irreconcilable. Under a theory of self-defense, the Appellant would essentially admit to the act and argue that it was done in self-defense, compared to the latter defense, relied upon at trial that the Appellant did not commit the crime. Based upon the facts of the case and the record presented, the indication is that the decision to pursue that particular defense was sound. The probability of an acquittal would have been increased also by arguing that another person committed the crime rather

than admitting to the act and arguing self-defense.

[27] It is true that the facts presented at trial also make a good case for self-defense, but the decision not to argue self-defense was reasonable in light of another theory that was not only more viable, but also provided a higher chance of acquittal. Trial counsel's conduct was a strategic decision and was reasonable under the circumstances. With a finding of reasonableness regarding trial counsel's conduct, the issue of prejudice need not be addressed further.

C. *MCNABB-MALLORY RULE* AND DELAY IN ARRAIGNING

[28] The Appellant argues next that the trial court erred in not suppressing his confession and other evidence obtained prior to his appearance before a magistrate. The Appellant contends that his statements and other evidence gathered during questioning should be suppressed because of the failure of the police to bring him before a Superior Court judge "without unnecessary delay," pursuant to 8 GCA § 45.10. Appellant also asserts that the delay in bringing him before a judge violated the *McNabb-Mallory* rule. *Mallory v. United States*, 354 U.S. 449, 77 S.Ct. 1356 (1957); *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608 (1943).

Title 8 GCA § 45.10, provides in relevant part:

> § 45.10 **Duty to Deliver Arrestee to Judge, or to Peace Officer.**
> (a) An officer making an arrest under a warrant or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a judge of the Superior Court.
> . . .
> (c) The person arrested shall in all cases be taken before the judge within twenty-four hours after the arrest, except that within the 24-hour period expires on a day when the Superior Court is not in session, the time shall be extended to include the duration of the next regular court session on the judicial day immediately following.

See also Fed. R. Crim. P. 5(a). The note to this statute states that "although Subsection (c) sets a maximum time period, the basic test in all cases requires no unnecessary delay." *Id.*

[29] The *McNabb-Mallory* rule was formulated by the U.S. Supreme Court to enforce compliance with Rule 5(a) of the Federal Rules of Criminal Procedure. Under the *McNabb-Mallory* rule, any evidence obtained by police during interrogation after arrest, may not be used against that arrestee at trial where there was an unreasonable delay in bringing the arrestee before a magistrate for arraignment. *See Mallory v. United States* 354 U.S. 449, 77 S.Ct. 1356 (1957); *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608 (1942). Although the main concern expressed by the Court focused upon coercive measures to obtain a confession, the ruling was broad enough to cover any other evidence obtained during the period between post-arrest and pre-arraignment. Despite Congress' limiting the effect of this rule upon federal law enforcement, Guam nonetheless adopted and has maintained the procedural safeguards stated in *McNabb-Mallory*, through 8 GCA § 45.10.

[30] The Appellant argues that although the police had probable cause to arrest the Appellant after he confessed to stabbing "Meshan," they did not arrest him for the purpose of continuing the investigation and eliciting damaging statements from the Appellant. While the Appellant is not explicit about this particular point, he suggests that this unreasonable delay should lead to the court finding that his statements to the police were involuntary in nature and should therefore have been suppressed. He additionally notes that this unreasonable delay would also support a finding that the *Miranda* waiver may be involuntary as well.

[31] In support of his argument, the Appellant cites *United States v. Wilson*, 838 F.2d 1081 (9th Cir. 1988), in which the Ninth Circuit examined the voluntariness of a confession. The court ruled that where the Appellant was arrested and then held for more than six hours for interrogation, the confession given by the Appellant was deemed involuntary in nature. *Id.* at 1087. The court found that delay "in excess of six

hours can itself form the basis for a finding of involuntariness." *Id.*

[32] However, in this case, the People argues that the right to be brought before a judge for arraignment under 8 GCA § 45.10 attaches only upon arrest. Therefore, no violation occurred here because the Appellant was brought before a judge only ten minutes after his formal arrest. In response to the claim of involuntariness, the People asserts that the officers took no coercive or inappropriate measures to obtain the Appellant's confession. They note that the Appellant was informed of his constitutional rights twice and chose to waive them. Additionally, they mention that the Appellant was not detained while the police questioned him and that the police spoke with him in a cordial manner.

[33] A careful balancing act must be done here, as in many *McNabb-Mallory* claims.[4] The court must find a balance between the goals of rewarding police officers for following proper criminal procedural rules and of preventing them from using questionable tactics that would allow them to avoid these rules. We consider two matters in making our decision.

[34] In examining the issue brought before the Court, we must first decide when the Appellant was actually under arrest.[5] The trial court found that the Appellant was arrested at 6:10 p.m. and arraigned at 6:20 p.m. on October 15, 1996. Based upon the ten minutes between when the Appellant was arrested and the time he appeared for the magistrate's hearing, the delay does not appear to be unreasonable. The Appellant does not dispute the findings of the trial court as to when he was arrested and his first appearance before a Superior Court Judge. Without any dispute about the factual findings relied upon the trial court to conclude that there was no unreasonable delay, no other facts presented would suggest that the trial

[4] *See* 1 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 72 (3rd ed. 1999).

[5] Under 8 GCA §20.10 (1993), which defines arrest, "An arrest is made by an actual restraint of the person, or by submission to the custody of the person making the arrest."

court's decision denying the motion to suppress was wrong.

[35] In *United States v. Jackson*, police officers approached the defendant to question him about two women who had been run over by an automobile. The officers continued to question him without arresting him after he stated, "I did it. I'm sorry." *United States v. Jackson*, 712 F.2d 1283, 1285 (8th Cir. 1983). That court opined that the time which begins the period in which the defendant must be presented to a magistrate starts as soon as the police have probable cause to arrest. *Id.* Nevertheless, the court held that, based on the case law relating to voluntary confessions, the police's failure to promptly arrest after having probable cause did not make the declaration involuntary. *Id.* at 1287.

[36] In *Everetts v. United States*, the police captured a sixteen-year-old boy suspected of robbing and killing another man. While they had the defendant handcuffed to a desk for eight hours, the boy made a confession which he later argued was involuntary and in violation of his *Miranda* rights. *Everetts v. United States*, 627 A.2d 981 (D.C. 1993). The court was disturbed by the facts in that case; it declared, "In short, our concerns in this case must serve as a warning to the police that unnecessary pre-presentment delay of this length, aggravated by factors such as youth, will be met with serious skepticism by the courts of this jurisdiction about the voluntariness of an ensuing Miranda waiver." *Id.* at 985-86. Still, the court held that defendant's confession was knowing, intelligent, and voluntary. *Id.* at 986.

[37] While in the instant case we are troubled by the officers' behavior, we do not find that they violated the *McNabb-Mallory* rule. Given the facts that the Appellant admitted his guilt at an early point in the questioning, that he waived his constitutional rights, and that he was treated in a respectful manner while being questioned, we do not view the officers' actions as reversible conduct. Nevertheless, we do not encourage this type of questioning when such strong probable cause to arrest already exists. We may not be as forgiving in future cases in which such questionable practices occur.

D. MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICTS.

[38] The Appellant argues that the trial court erred in denying the motion for judgment of acquittal because there was no evidence linking him to the injuries sustained by the victim Raymond/Rita Santos. He points to the numerous inconsistencies of testimony which include his own statement of what he did and the victim's statement of how the crime occurred. He relies upon the testimony of Dr. Espinola to show that it was impossible for him to have committed the crime because Dr. Espinola declared that there were two attackers and two different knives used. According to Dr. Espinola's testimony, a large pool of blood would have been found inside Appellant's car, if the crime had occurred as described by the victim. No such blood spill was ever found in the Appellant's car. In light of this evidence presented at trial, the Appellant argues that the evidence is insufficient to convict him.

[39] The People contend that sufficient evidence was presented to connect the Appellant to the crime against Raymond/Rita Santos. They point to the statement of Raymond/Rita Santos describing his attacker. The Appellant fit that same description. Additionally, both the described attacker and the Appellant drove Nissans. The People also point out that the confession of the Appellant matched much of the evidence presented to the jury. Therefore, the People assert that the jury had more than enough evidence to rationally conclude that the Appellant committed the crime as charged.

[40] Under a Motion for Judgment of Acquittal, the Court must examine the evidence in a light most favorable to the government and decide whether any rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. *People v. Cruz,* 1998 Guam 18, ¶ 9. Upon review of the record, it is clear that the People's evidence against the Appellant was more than sufficient to convict the Appellant. Although there were inconsistencies and contradictions in the testimony of witnesses, the task of determining the weight of the evidence and inconsistencies of testimony lies within the purview of

the jury. Therefore, we affirm the trial court's decision.

CONCLUSION

[41] This case presents four issues for the Court's consideration. The first issue concerned the lack of jury instructions for self-defense. This court holds that the trial court's failure to give such a *sua sponte* instruction was not error. The Appellant presented a defense theory that he did not commit the crime which is inconsistent with a self-defense theory. Regarding the second issue of ineffective assistance of counsel, we conclude that trial counsel's decision to forego a self-defense jury instruction was reasonable in light of the defense theory presented at trial. Although we are deeply concerned about the facts surrounding the third issue, the alleged violation of the *McNabb-Mallory* rule, we affirm the trial court's decision not to suppress the evidence. Finally, with respect to the fourth issue of the motion for judgment of acquittal, we agree with the trial court that more than enough evidence was presented for the jury to rationally find the Appellant guilty beyond a reasonable doubt. Consequently, we **AFFIRM** the four conclusions of the trial court.

PETER C. SIGUENZA
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice