IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

vs.

ARTHUR SALAS ROOT,
Defendant-Appellant.

Supreme Court Case No. CRA04-002
Superior Court Case No. CM0004-04

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on February 16, 2005
Hagåtña, Guam

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BEFORE: FRANCES M. TYDINGCO-GATEWOOD, Presiding Justice[1]; ROBERT J. TORRES, Associate Justice; and MIGUEL S. DEMAPAN, *Justice Pro Tempore*.

TYDINGCO-GATEWOOD, P.J.:

[1] Defendant-Appellant Arthur Salas Root appeals from a Superior Court judgment of conviction on the charges of Family Violence and Assault. Root argues on appeal that the trial court erred in failing to instruct the jury that the People of Guam must prove, as an element of the crime of Family Violence, that his actions did not include acts of self-defense. Root also contends that the trial court erred in failing to instruct the jury on self-defense as a defense to Assault. Finally, Root challenges the sufficiency of the evidence presented at trial.

[2] While we find that the trial court erred in failing to instruct the jury that the People bear the burden of proving, as an element of Family Violence, that Root did not act in self defense, we hold that such error is harmless error. We further hold that the trial court properly denied Root's request to instruct the jury on self-defense, as a defense to Assault. Finally, we hold that there was sufficient evidence to sustain the convictions of both Family Violence and Assault. Accordingly, we affirm.

I.

[3] Defendant-Appellant Arthur Salas Root was convicted by a jury of Family Violence (as a Misdemeanor), in violation of Title 9 Guam Code Annotated § 30.10(a)(1) and 30.20(a), and Assault (As a Misdemeanor), in violation of Title 9 Guam Code Annotated § 19.30(a)(1) and (3). The charges upon which Root was convicted state, in full:

> Family Violence (As a Misdemeanor), First Charge (Count One):
>
> > On or about December 31, 2003, in Guam, ARTHUR SALAS ROOT did recklessly cause and attempt to cause bodily injury to another family member or household member, that is, THERESE LEHMAN, to wit: by kicking and slapping, in violation of 9 GCA §§ 30.10(a)(1) and 30.20(a).

[1] Associate Justice Tydingco-Gatewood, as the senior member of the panel, was designated as the Presiding Justice.

Assault (As a Misdemeanor), Third Charge (Count One):

> On or about December 31, 2003, in Guam, ARTHUR SALAS ROOT did recklessly cause and attempt to cause bodily injury to another, that is, THERESE LEHMAN, to wit: by kicking and slapping, in violation of 9 GCA § 19.30(a)(1) and (e).

Appellant's Excerpts of Record ("ER"), pp. 1-2 (Magistrate's Complaint).

[4] Root requested the trial court to instruct the jury, with respect to the Family Violence charge, that the People must prove beyond a reasonable doubt that Root's acts did not include acts of self-defense. The trial court denied Root's request, on the basis that it was not an element of the crime, and further, that the definition of family violence found in the jury instructions adequately addressed Root's concerns.

[5] Root also requested that the trial court instruct the jury on self-defense, as a defense to the Assault charge. The trial court similarly denied Root's request, finding that the evidence did not support the self-defense instruction.

[6] Root moved for a judgment of acquittal at the close of the People's case, which was denied. Final judgment was entered on the docket on May 20, 2004. This appeal followed.

II.

[7] We have jurisdiction over this appeal from a final judgment of conviction. 48 U.S.C. § 1424-1(a)(2) (West, WESTLAW, through Pub. L. 109-85 (excluding P.L. 109-59) (2005)); Title 7 GCA § 3107(b) (West, WESTLAW through Guam Pub. L. 28-037 (2005)); and Title 8 GCA § 130.15(a) (West, WESTLAW through Guam Pub. L. 28-037 (2005)).

[8] The issue of whether a trial court's jury instruction misstates elements of a statutory crime is reviewed *de novo*. *United States v. Phillips*, 367 F.3d 846, 854 (9th Cir. 2004).

[9] Similarly, "[i]ssues of statutory interpretation are reviewed *de novo*." *People v. Flores*, 2004 Guam18, ¶ 8 (quoting *Ada v. Guam Tel. Auth.,* 1999 Guam 10, ¶ 10). It is "[o]ur duty to interpret statutes in light of their terms and legislative intent" and thus, "[a]bsent clear legislative intent to the contrary, the plain meaning prevails." *Flores*, 2004 Guam 18 at ¶ 8 (citations omitted).

[10] We review for abuse of discretion "whether the required factual foundation exists to support a requested jury instruction." *United States v. Hairston*, 64 F.3d 491, 493 (9th Cir. 1995). Once it is determined that the factual foundation exists, the "[f]ailure to instruct the jury on an appropriate defense theory is a question of law reviewed *de novo.*" *United States v. McGeshick*, 41 F.3d 419, 421 (9th Cir. 1994).

III.

A. Family Violence

1. Statutory Elements

[11] Root argues that the trial court erred in failing to instruct the jury that it must find, as an element of the Family Violence charge, that Root did not act in self-defense. Specifically, Root relies on the language of Title 9 GCA § 30.10(a), which defines an act of family violence as excluding acts of self-defense. He argues that the failure to instruct on an element of the offense is a constitutional error which requires reversal.

[12] The People contend that the language found in section 30.10(a), which excludes acts of self-defense from the term "family violence," is not an element of the Family Violence charge. Rather, the People argue, "[t]he requirement that the actions of the defendant not be in self-defense is part of the definition of [Title] 9 GCA § 30.10 and is not a separate statutory element which must be proven by the prosecution." Appellee's Brief, p. 5 (Nov. 8, 2004). Additionally, the People argue that the definition of family violence, and the fact that it does not include acts of self-defense, was provided to the jury in a separate jury instruction, and thus viewing the jury instructions as a whole, it is clear that the jury was correctly instructed on the applicable law.

[13] "The Fifth Amendment to the United States Constitution guarantees that no one will be deprived of liberty without 'due process of law'; and the Sixth, that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.'" *United States v. Gaudin*, 515 U.S. 506, 509-510, 115 S. Ct. 2310, 2313 (1995). Accordingly, the Court has held

that "these provisions require criminal convictions to rest upon a jury determination that the defendant is guilty of *every element* of the crime with which he is charged, beyond a reasonable doubt." *Id.*, 515 U.S. at 510, 115 S. Ct. at 2313 (emphasis added). In addition, Guam law is clear that "[i]t is the People's burden to prove all the elements of a crime beyond a reasonable doubt." *People v. Evaristo*, 1999 Guam 22, ¶ 12.

[14] An "element" has been defined as "a constituent part of the offense which must be proved by the prosecution *in every case* to sustain a conviction under a given statute." *Singh v. Ashcroft*, 386 F.3d 1228, 1231 (9th Cir. 2004) (quoting *United States v. Innie*, 7 F.3d 840, 850 (9th Cir. 1993); *see also* BLACK'S LAW DICTIONARY (8th ed. 2004) (defining "elements of crime" as "[t]he constituent parts of a crime – usu. consisting of the actus reus, mens rea, and causation – that the prosecution must prove to sustain a conviction."). Thus, the relevant inquiry in this case is whether the phrase "does not include acts of self-defense," found in the definition of family violence, Title 9 GCA § 30.10(a), is an "element" of the offense of Family Violence.

[15] Title 9 GCA § 30.20(a) criminalizes the offense of Family Violence, and provides: "Any person who intentionally, knowingly, or recklessly commits an act of *family violence, as defined in § 30.10* of this Chapter, is guilty of a misdemeanor, or of a third degree felony." *Id.* (West, WESTLAW through Guam Pub. L. 28-037 (2005)) (emphasis added). In turn, section 30.10, entitled "Definitions," states in relevant part:

> (a) Family violence means the occurrence of one (1) or more of the following acts by a family or household member, *but does not include acts of self-defense* or defense of others: 1. Attempting to cause or causing bodily injury to another family or household member . . . ."

Title 9 GCA § 30.10(a)(1) (West, WESTLAW through Guam Pub. L. 28-037 (2005)).[2] Thus, in order

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[2] Title 9 GCA § 30.10 states, in its entirety:

> § 30.10. Definitions. As used in this Chapter:
> (a) Family violence means the occurrence of one (1) or more of the following acts by a family or household member, but does not include acts of self-defense or defense of others:
> 1. Attempting to cause or causing bodily injury to another family or household member;

to charge and convict a defendant of Family Violence, section 30.20(a) incorporates the definition of "family violence" found in section 30.10 as an element of the offense. In other words, while section 30.20(a) provides the mental state required for the offense of family violence, the facts found in section 30.10 provide the additional, "constituent part[s] of the offense which must be proved" by the People in order to sustain a conviction of Family Violence. Under a plain reading of section 30.20(a), the definition of family violence found in section 30.10, including the requirement that the act *not* be an act of self-defense, is incorporated as an element of the offense of Family Violence. We therefore hold that the phrase defining family violence as an act which "does not include [the] act[s] of self-defense" is an element of the offense of Family Violence, which must be proved by the People beyond a reasonable doubt.

2. Jury Instructions

[16] The next issue we consider is whether the trial court erred in failing to instruct the jury, with

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2. Placing a family or household member in fear of bodily injury.

(b) Family or household members include:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are dating or who have dated;
4. Adults or minors who are engaged in or who have engaged in a sexual relationship;
5. Adults or minors who are related by blood or adoption to the fourth degree of affinity;
6. Adults or minors who are related or formerly related by marriage;
7. Persons who have a child in common; and
8. Minor children of a person in a relationship described in paragraphs (1) through (7) above.

(c) Bodily injury as used in this Chapter, has the same meaning as that provided in subsection (b) of § 16.10 of this title;

(d) Attempt as used in this Chapter, has the same meaning as that provided in § 13.10 of this title;

(e) Peace officer means any person so defined in 8 GCA § 5.55;

(f) Victim means any natural person against whom a crime, as defined under the laws of Guam, has been committed or attempted to be committed;

(g) Witness means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, or (iv) who has been served with a subpoena issued under the authority of any court in Guam, or (iv) who would be believed by any reasonable person to be an individual described in subparagraphs (i) through (iv), above, inclusive;

(h) Prosecuting attorney as used in this Chapter means the Attorney General of Guam and those persons employed by the Attorney General's office specifically designated by the Attorney General.

respect to the Family Violence charge, that the People bear the burden of proving that Root did not act in self-defense. The trial record reveals that the jury was instructed, with respect to the elements of the Family Violence charge, as follows:

> The People must prove beyond a reasonable doubt that the Defendant, ARTHUR SALAS ROOT did:
>
> 1. recklessly;
> 2. cause or attempt to cause;
> 3. bodily injury to another family member or household member, that is, Therese Lehman;
> 4. to wit: by kicking and slapping;
> 5. on or about the 31st day of December, 2003;
> 6. within Guam.

ER6 (Jury Instruction No. 4A, "Essential Elements of 1st Charge–Count I"). Clearly, the trial court did not enumerate as an essential element of the offense, that the People must prove that Root did not act in self-defense.

]17] Moreover, the trial court's separate jury instruction on the definition of family violence found in section 30.10(a) is a misstatement or misdescription of section 30.10(a). Specifically, the jury was instructed as follows: "Family Violence means the occurrence of the following act by a family or household member, but does not include *self-defense of others:* Attempting to cause or causing bodily injury to another family or household member." ER6 (Jury Instruction No. 4Q, "'Family Violence' Defined") (emphasis added). *But see* 9 GCA § 30.10(a) ("Family violence . . . does not include self-defense or defense of others"). Thus, upon an examination of the jury instructions as a whole, we find that the jury was not properly instructed that it must find that Root's actions did not include acts of self-defense.

[18] Based on the above, we hold that the trial court erred in failing to charge the jury that the People must prove, as an element to the offense of Family Violence, that Root's actions did not include acts of self-defense.[3]

[3] We only decide, based upon the circumstances of the case at bar and our reading of the jury instruction as a whole, that the jury was not properly instructed as to the elements of family violence. Because the trial court incorrectly stated the definition of family violence, we need not pass on the issue of whether a proper jury charge on the

[19] Based on the above, we hold that the trial court erred in failing to charge the jury that the People must prove, as an element to the offense of Family Violence, that Root actions did not include acts of self-defense.

3. Harmless Error Review

[20] Where a trial court erroneously instructs a jury as to an element of an offense, whether the error be one of omission or a misstatement of the law, such error is subject to the harmless error review. In particular, the United States Supreme Court has held that "where a reviewing court concludes beyond a reasonable doubt that the omitted element was uncontested and supported by overwhelming evidence, such that the jury verdict would have been the same absent the error, the instruction is properly found to be harmless." *Neder v. United States*, 527 U.S. 1, 17, 119 S. Ct. 1827, 1837 (1999). Therefore, in order to properly determine whether an error is harmless, we must review the trial record and assess whether it was uncontested that Root's actions did not include acts of self-defense, and further, whether there exists overwhelming evidence that Root's actions did not include acts of self-defense. If the above two inquiries are answered in the affirmative, then it necessitates a finding of harmless error in this case.

[21] Upon review of the evidence presented at trial, both *Neder* requirements appear to be satisfied. This is especially true where, as here, the jury found that Root acted "recklessly." Section 4.30(c) of the Criminal Code defines the term "recklessly":

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definition of family violence will satisfy the court's duty to instruct the jury as to every element of an offense. Nonetheless, and based on our discussion herein, it is advisable for the trial court to delineate, separate from defining the crime of family violence, that as an element of the offense of family violence, the prosecution bears the burden of proving beyond a reasonable doubt that the defendant's actions do not include acts of self-defense, or acts in defense of others, whatever the case may be. We are aware that this may pose some difficulty, especially in a case where self-defense would not otherwise appear to be at issue, yet, we are bound by the statute as passed by the Guam Legislature, which places the burden on the prosecution to prove that the defendant's actions were not acts of self-defense or defense of others.

> A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result *and his disregard is unjustifiable* and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

9 GCA § 4.30(c) (West, WESTLAW through Guam Pub. L. 28-037 (2005)) (emphasis added). The Criminal Code further states, with respect to self-defense: "[T]he 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 on the present occasion." Title 9 GCA § 7.84 (Westlaw through Guam Pub. L. 28-037 (2005)).

[22] A reading of the above statutory sections indicates that a finding of recklessness, or unjustifiable disregard, necessarily negates a finding of self defense, which is a justifiable use of force. *Duran v. State*, 990 P.2d 1005, 1008 (Wyo. 1999) ("The state proved to the satisfaction of the jury that appellant acted recklessly. The same evidence that proved appellant acted recklessly also proved that appellant did not act in self-defense since proof of recklessness under the facts of this case negates self-defense.") (quoting *Small v. State,* 689 P.2d 420 (Wyo. 1984)).

[23] Accordingly, we apply the *Neder* standard to determine if the error was harmless. First, it was uncontested that Root's actions were reckless and not acts of self-defense. Neither Root nor any other witness proffered evidence of his acting in self-defense. *See e.g., Neder*, 527 U.S. at 15, 119 S. Ct. at 1836 (finding that, although the element of materiality was omitted from the jury instruction, "Petitioner underreported $5 million on his tax returns, and did not contest the element of materiality at trial. Petitioner does not suggest that he would introduce any evidence bearing upon the issue of materiality if so allowed.").

[24] Second, there is overwhelming evidence that Root's actions, that is, kicking and/or slapping the victim, were not acts of self-defense. Turning to the evidence at trial, the victim testified as to events inside her house as follows:

> A. [by Lehman] All I'm doing is walking, you know, toward – he was asking me his clothes. So, I was walking toward it and then next thing, swung the hand. I don't know if it was a straight hand or a back

hand, or what. All I know is there was a blow, you know; there was a hit.

. . .

A. He hit my facial – my face.

. . .

A. On the left side.

Transcript, vol. I, p. 23 (Trial, Mar. 30, 2004). The victim testified as to a subsequent event outside her house, that Root subsequently "gave me a side swap and everything. . . . Like a hit back or something like that. He was walking away . . . [and] he hit me again." Tr. vol. I, pp. 25-26 (Trial, Mar. 30, 2004). And still later, after a phone call to her daughter:

A. [by Lehman] He was arguing with me and everything. But he moved away. He stopped. He was walking out the door.

Q. [by Atty. O'Mallan] So what did you do?

A. Was just looking right behind him and everything like that. He was reaching to his car.

. . .

A. Then I noticed he was reaching . . . to get something in the car – reaching in for something in the car, or something.

. . .

A. I noticed because there was a pipe there that he was reaching at.

Tr., vol. I, p. 28 (Trial, Mar. 30, 2004). The dialogue at trial with respect to the victim's use of force against Root, was as follows:

Q. [by Atty. O'Mallan] Okay. What did you think was going to happen?

. . .

A. That was it for me. Either I have to start defending myself or what.

Q. Okay. So, what did you do?

A. I have a outside – in the outside – I spoke outside. So there was a can of – a coffee can filled with sand. That was the only thing

I did. I picked that up fast and I hit him and I kept on. So that kinda like make him forget about grabbing the pipe. He just went after me like a rage.

Q. So did you run?

A. Kept on, like we were sparring.[4]

Q. No. After you threw the can, did you run?

A. Yes, I moved away, yes. But he just kept on.

Q. Kept on doing what?

A. Kept on hitting me.

Q. Okay. Were you trying to get away from him?

A. Yes.

Q. And how was he hitting you?

A. Fist, knee, keep trying to kick or what. But it was . . .

Q. What did he do with his knee?

A. That was later on when I got cornered but he kept on using his knee but I kept blocking it.

Q. Okay. But did he ever hit you with his knee?

A. Yes, he did.

Q. Where?

A. When I got into the situation that I got caught in the soft grass. I'm wearing heel. My foot got caught in that area and that's when he was able to give him a front knee – kneecap in the middle part.

Q. Where?

A. He gave me a blow in the middle, my private.

Q. Okay. And then what else happened?

A. That's when I went down. He gave me a blow there and he knocked me, like you know, keep hitting me down there. So I

[4] The victim later clarified that when she said sparring, she meant she was defending, or blocking, Root's hits/kicks with her hands.

went down. And then when I went down – I was down on the ground – he kept on kicking me from back to front, wherever. But I was down.

. . .

Q. And then after you were on the ground and he's kicking you while you're on the ground, what did you do?

A. He just kept – while he was kicking me, thank God the cops came. . . .

Tr., vol. I, pp. 29-31 (Trial, Mar. 30, 2004). Even the preceding excerpt from the trial record, which is the only evidence of any use of force against Root, suggests that Root's use of force against the victim was not an act of self-defense. Stated another way, based on a review of the trial transcript, Root's acts of kicking and slapping the victim was not a result of his belief that it was "immediately necessary for the purpose of protecting himself" from the victim's use of unlawful force. 9 GCA § 7.84.

[25] We therefore hold that the trial court's error in failing to instruct the jury as to the element of Family Violence, that is, that Root's actions did not include acts of self-defense, was harmless.

B. Assault

1. Self-defense Instruction

[26] Root contends that the trial court erred in failing to instruct the jury on self-defense as a defense to the Assault charge. He argues that the evidence presented at trial was that Root kicked the victim after she struck him with the Folgers can, and thus, there was factual foundation to submit the defense to the jury and require the prosecution to disprove the defense beyond a reasonable doubt.

[27] The People contend that because there was no evidence of self-defense presented to the jury, the trial court's actions in refusing to so instruct the jury was proper.

[28] "Courts are not bound to present every conceivable defense potentially suggested by the evidence." *People v. Camacho*, 1999 Guam 27, ¶ 20. A "defendant [is] entitled to a jury instruction on self-defense if there [is] evidence in the record to support it." *United States v. Jackson*, 726 F.2d

1466, 1468 (9th Cir. 1984). More specifically, the standard is that "an instruction must be given if there is evidence upon which the jury could rationally sustain the defense." *Id.*

[29] Root cites to the incident with the Folgers coffee can as support for his theory of self-defense. *See supra* pp. 10-11. While it is true that the victim at this time used force on Root, this alone is insufficient to support a self-defense instruction. There was no evidence from which the jury could find, or even infer, that Root believed that the force he used on the victim was necessary to protect himself.

[30] We therefore hold that there was insufficient evidence in the record to support a self-defense jury instruction, and therefore, the trial court's failure to so instruct was proper.

C. Sufficiency of the Evidence

[31] Root argues that there was insufficient evidence to prove that Root kicked and slapped the victim, as alleged in the complaint, and thus, his convictions should be reversed. Root argues that because the People charged in the conjunctive, the People must also prove its case in the conjunctive. In addition, Root claims that there was insufficient evidence that he slapped the victim and further argues that the evidence presented was insufficient to prove that he kicked the victim.

[32] The People provide excerpts from the trial transcript in support of their argument that the evidence presented at trial was sufficient for the jury to find that Root kicked and slapped the victim, and thus the Family Violence and Assault convictions should be affirmed.

[33] "'In reviewing the sufficiency of the evidence to support a criminal conviction,' this court inquires as to 'whether the evidence in the record could reasonably support a finding of guilty beyond a reasonable doubt.'" *People v. Guerrero,* 2003 Guam 18, ¶ 13 (quoting *People v. Sangalang,* 2001 Guam 18, ¶ 20); *see also People v. Reyes*, 1998 Guam 32, ¶ 7; *People v. Leon Guerrero*, 2001 Guam 19, ¶ 32. There is sufficient evidence to support a conviction if viewing the evidence "in the light most favorable to the prosecution . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Guerrero,* 2003 Guam 18 at ¶ 13 (quoting *.Sangalang,* 2001 Guam 18 at ¶ 20).

[34] Root essentially argues that the People failed to prove that Root kicked *and* slapped the victim. We have very recently addressed Root's argument that the People must prove in the conjunctive any crime so charged, notwithstanding the disjunctive language found in the statute criminalizing a defendant's actions. In *People v. Maysho*, 2005 Guam 4, ¶ 11, we expressly rejected such contention. Quoting language from *United States v. Arias*, 253 F.3d 453, 457 (9th Cir. 2001), we stated: "when the statute speaks disjunctively, the conjunctive is not required even if the offense is charged conjunctively in the indictment." *Maysho*, 2005 Guam 4 at ¶ 11. Accordingly, where, as here, the statutes criminalizing an offense speak disjunctively, the conjunctive is not required for a conviction, regardless of whether the offense is charged conjunctively. Thus, proof of either kicking or slapping may establish Root's guilt despite the conjunctive language, "kicking and slapping," as alleged in the complaint. *See id.* (rejecting the defendant's similar argument and holding that "proof of either 'willful' or 'wanton' may establish [the defendant's] guilt notwithstanding that the charge was phased in the conjunctive").

[35] However, while the People were only required to prove *either* kicking *or* slapping to convict Root of Family Violence and Assault, there is sufficient evidence in the trial record to support the conjunctive charge. Root's sole contention with respect to this issue is that there was insufficient evidence that Root kicked and/or slapped the victim. A review of the trial evidence in the light most favorable to the jury verdict proves otherwise.

[36] In addition to testimony provided by the victim, *see supra* at pp. 9-12, Guam Police Officer Antonio Virgilio tested that upon interviewing the victim after the incident with Root, he noticed "the redness to her left and right facial area; redness to her neck; bruising to her thighs – both thighs; and redness to her shins." Tr., vol. I, p. 97 (Trial, Mar. 30, 2004).

[37] Dr. Aurelio Espinola, Chief Medical Examiner, testified that a photo depicting the victim's left side at the mid-thigh level was a bruise caused by blunt trauma, including "a kick." Tr., vol. II, p. 83-84 (Trial, Mar. 31, 2004). In addition, Dr. Espinola testified that the bruise pictured in the picture had to have occurred "within two days" of the injury. Tr., vol. II, p. 85 (Trial, Mar. 31,

2004). The victim testified that the photo was taken on January 2, 2004, two days after the victim claimed to have been injured by Root. Tr., vol. I, p. 36 (Trial, Mar. 31, 2004).

[38] Finally, Dr. Olivia Cruz, the emergency room physician who examined the victim shortly after the incident, also noted redness in the lower part of the victim's abdomen.

[39] Upon this review the trial evidence, we hold that the record reasonably supports the jury's finding of guilty beyond a reasonable doubt with respect to the Family Violence and Assault charges.

IV.

[40] We find that the trial court erred in failing to instruct the jury that the People bear the burden of proving, as an element of Family Violence, that Root did not act in self defense, but we hold that such error is harmless error. We also hold that the trial court properly denied Root's request to instruct the jury on self-defense, as a defense to Assault. Finally, we hold that there was sufficient evidence to support the conviction of both the Family Violence and Assault charges. The trial court judgment of conviction is hereby **AFFIRMED**.