IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

vs.

BM BENITO MAYSHO,
Defendant-Appellant

Supreme Court Case No. CRA03-014
Superior Court Case No. CM0096-003

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on July 7, 2004
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, and ROBERT J. TORRES, JR., Associate Justices.

TYDINGCO-GATEWOOD, J.:

[1] The Defendant-Appellant, BM Benito Maysho ("Maysho"), was convicted of the petty misdemeanor crime of Reckless Driving after a bench trial. On appeal, Maysho challenges his conviction on the ground of insufficiency of the evidence. We agree with Maysho and reverse his conviction.

I.

[2] On January 30, 2003, at approximately 2:25 in the afternoon, Guam Police Department Officer Daniel Anciano ("Officer Anciano") was directing traffic in Hagåtña, Guam, at the Route 4 and O'Brien Drive intersection, when a vehicle driven by Maysho failed to stop immediately in accordance with Officer Anciano's hand and whistle instructions. The two exchanged words and Officer Anciano thereafter arrested Maysho and took him into custody.

[3] Maysho was charged with Failure to Comply with a Lawful Order (as a petty misdemeanor), in violation of Title 16 GCA §§ 3503(d) and 9108; Reckless Driving (as a petty misdemeanor), in violation of Title 16 GCA § 9107(a), and Disorderly Conduct (as a violation) in violation of Title 9 GCA § 61.15(a)(2), and (c), as amended. After a bench trial, the trial court dismissed the charge of Failure to Comply with a Lawful Order and found Maysho not guilty of Disorderly Conduct. The trial court, however, found Maysho guilty of Reckless Driving. Maysho appealed his conviction for Reckless Driving.

II.

[4] This Court has jurisdiction over this appeal from a final judgment. 48 U.S.C. § 1424-1(a)(2) Title 7 GCA § 3107(b) (2004); *see also* Title 8 GCA § 130.15(a) (1996) (permitting defendant's appeal from a final judgment of conviction).

[5] Maysho asserts that there was insufficient evidence to support the judge's verdict on the Reckless Driving charge. In this case of first impression, we must determine the standard of review after a bench trial when the sufficiency of the evidence is challenged on appeal. Maysho also requests that this court expunge his criminal record.

[6] Generally, after a trial by jury, the standard of review for claims of insufficient evidence depends on whether the defendant preserves his claim by making a motion for judgment for acquittal at the close of the evidence. If a defendant preserves the claim of sufficiency of the evidence by filing a motion for acquittal, the standard of review on appeal is *de novo*. *See United States v. Carranza*, 289 F.3d 634, 641 (9th Cir. 2002). Failure to move for acquittal limits the review to plain error or manifest injustice. *See United States v. Delgado*, 357 F.3d 1061, 1068 (9th Cir. 2004).

[7] In the instant case, Maysho failed to file a motion for acquittal. However, in a bench trial a motion for acquittal is not necessary to preserve a challenge to the sufficiency of the evidence. *United States v. Atkinson*, 990 F.2d 501, 503 (9th Cir. 1993) (stating that "[i]n a bench trial, the judge acting as the trier of both fact and law implicitly rules on the sufficiency of the evidence by rendering a verdict of guilty. A motion to acquit is superfluous because the plea of not guilty has brought the question of the sufficiency of the evidence to the court's attention"). Because the appeal before this court is from a judgment rendered after a bench trial, Maysho's challenge to the sufficiency of the evidence was effectively preserved and the standard of review is *de novo*. *See id.; United States v. Carranza*, 289 F. 3d at 641.[1]

[8] "'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 (citing *People v. Sangalang*,

[1]The People incorrectly assert that the appropriate review is for clear error. In each of the three cases cited by the People, the trial court made findings of fact, and such findings were appealed. *See Dubner v. City and County of San Francisco*, 266 F.3d 959, 964 (9th Cir. 2001); *United States v. Saya*, 247 F.3d 929, 935 (9th Cir. 2001); *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S.Ct. 1504, 1511 (1985). In contrast, there is nothing in the record before us which indicates that the trial court made any factual findings. Rather, Maysho appeals only the judgment of conviction, without reference to any other decisions, findings, or orders of the trial court. The cases relied upon by the People are not applicable to this case.

2001 Guam 18, ¶ 20, *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; *see also United States v. Birges*, 723 F.2d 666, 672 (9th Cir. 1984), and *United States v. Dole*, 136 F.3d 631, 636 (9th Cir. 1998).

III.

[9] The sole issue raised in this appeal is whether the evidence is sufficient to sustain Maysho's conviction for Reckless Driving. Reckless Driving is defined by statute as follows: "Every person who drives any vehicle upon a highway in a willful or wanton disregard for the safety of person or property is guilty of reckless driving." Title 16 GCA § 9107(a) (1996).

[10] The specific charge against Maysho stated: "On or about JANUARY 30, 2003, in Guam, BM BENITO MAYSHO did drive a vehicle upon a highway in a willful and wanton disregard for the safety of persons or property, in violation of 16 GCA § 9107(a)." Appellant's ER, p. ER1 (Magistrate's Complaint). Maysho argues that because the People charged the defendant in the conjunctive, both elements of "willful" *and* "wanton" must be proven to convict. We disagree.

[11] In *United States v. Arias*, the defendant argued that the prosecution must prove, as alleged in the indictment, that he intended to "influence and prevent" the testimony of a witness, despite the statute's disjunctive language which criminalizes any threat intended to "influence, delay, or prevent testimony." *United States v. Arias*, 253 F.3d 453, 457 (9th Cir. 2001). The court rejected the defendant's argument, and held that "when the statute speaks disjunctively, the conjunctive is not required even if the offense is charged conjunctively in the indictment." *Id.* at 457-48. Accordingly, we reject Maysho's argument. Proof of either "willful" or "wanton" may establish Maysho's guilt notwithstanding that the charge was phased in the conjunctive. *See United States v. Booth*, 309 F.3d 566, 572 (9th Cir. 2002) ("When a statute specifies two or more ways in which an offense may be

committed, all may be alleged in the conjunctive in one count and proof of any one of these conjunctively charged acts may establish guilt."); *United States v. Jenkins*, 785 F. 2d 1387, 1392 (9th Cir. 1986).

[12] We now turn to the essential element of "willful or wanton disregard for the safety of persons or property" in Title 16 GCA § 9107(a). The terms willful or wanton are not defined in our Criminal and Correctional Code. Both terms, however, are defined by California case law and Maysho urges this court to adopt both definitions as they are specifically defined in the context of the Reckless Driving statute. Pertinent to this case, section 9107 is virtually identical to California's reckless driving statute.[2] California courts have stated that "[t]he word 'wilful' in this connection means 'intentional. . . . The intention here referred to relates to the disregard of safety, etc., not merely to the act done in disregard thereof." *People v. McNutt*, 105 P.2d 657, 659 (Cal. App. Dep't. Super. Ct. 1940). Guam law provides: "[a] person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result thereof." Title 9 GCA § 4.30(a) (1996).

[13] As for the definition of the term "wantoness," it "includes the elements of consciousness of one's conduct, intent to do or omit the act in question, realization of the probable injury to another, and reckless disregard of consequences." *McNutt*, 105 P.2d at 658 (citations omitted). "Reckless" is defined in our statute as follows:

> 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.

Title 9 GCA §4.30(c) (1996).

[14] With these definitions of willful and wanton, we review the trial record in a light most favorable to the People to ascertain whether any rational trier of fact could have found the essential

[2]California's Vehicle Code, Section 23103(a) states: "Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." CAL. VEH. CODE § 23103(a) (West 2004).

elements of the crime beyond a reasonable doubt. *See Guerrero*, 2003 Guam 18 at ¶ 13. In order to convict a defendant of Reckless Driving, it is necessary that

> the trier of fact be convinced by the evidence beyond a reasonable doubt and to a moral certainty that the defendant in the management of his automobile at the time and place in question intentionally did something with knowledge that injury to another was probable or acted with a wanton and reckless disregard for the safety of others and in reckless disregard of the consequences of his act.

See People v. Allison, 226 P.2d 85, 85 (Cal. App. Dep't. Super. Ct. 1951).

[15] The record shows that the following occurred: On January 30, 2003, Officer Anciano was temporarily assigned to direct traffic at the intersection of Route 4 and O'Brien Drive in Hagåtña. At approximately 2:25 p.m., a grey Nissan Quest Minivan driven by Maysho was traveling on the northbound center lane of Route 4, heading towards the intersection. Officer Anciano at this time was standing in the middle of the intersection. When the van was at a distance measuring about two hundred feet, Officer Anciano testified that he began giving the driver instructions to stop his vehicle "with open palms and the use of a whistle." Transcript ("Tr.") vol. --, p. 5 (Bench Trial, August 5, 2003).

[16] Although Officer Anciano intended the instructions to be a signal for the driver to stop, Maysho took them as a "warning, for me to notice him, notice that I have to slow down." Tr. vol. --, p. 35 (Bench Trial, August 5, 2003). Officer Anciano also testified that the first time he ever made eye contact with Maysho was not until Maysho's van was at "about the crosswalk." Tr. vol. --, pp. 16-17 (Bench Trial, August 5, 2003). Maysho confirmed the officer's testimony as to when they first made eye contact. Maysho stated that his car "was about–maybe about, five or four feet from the white–white line at the traffic light" when he first observed the officer signaling him. Tr. vol. –, p. 34 (Bench Trial, August 5, 2003).

[17] Officer Anciano testified that the weather was dry on the date of the incident and Maysho was not speeding when he was driving. The officer also stated that when Maysho's vehicle came to a complete stop, Maysho's management of the stop caused no tread marks, no skid marks, no accidents and no near accidents. Tr. vol. --, pp. 11-15 (Bench Trial, August 5, 2003). Maysho corroborated

the Officer's observation of the slow speed he was traveling to be about fifteen to twenty miles per hour. Both Maysho and his wife testified that Maysho was driving at this slow pace because his wife was suffering from a boil located near her rectum area. Tr. vol. --, pp. 31, 56, 57 (Bench Trial, August 5, 2003).

[18] Officer Anciano, described the stop as follows: Maysho's van did "come to a complete stop a couple of feet from me at the center of the intersection, not from the designated stopping zone where you usually stop traffic at...." Tr. vol. --, p. 7 (Bench Trial August 5, 2003). According to Officer Anciano, Maysho had crossed the designated stopping zone and the officer unsuccessfully attempted to have Maysho return to the zone. Maysho said however "I couldn't stop immediately . . . because of the car behind . . . I had to avoid, you know cars from behind me hitting me." Tr. vol. --, p. 34 (Bench Trial, August 5, 2003).

[19] In applying the aforementioned definitions of Reckless Driving, we find that Maysho's conduct does not amount to Reckless Driving. There is no evidence that Maysho, in the management of his automobile intentionally did something with knowledge that injury was probable or that Maysho acted with a wanton and reckless disregard for the safety of others and in reckless disregard of the consequences of his act. *See Allison*, 226 P.2d at 85.

[20] Maysho may have failed to understand Officer Anciano's instruction to stop the van immediately, but he alleged that it was necessary to execute a safe stop in order to avoid cars located behind him from colliding with his van. It is clear that when Maysho slowed his vehicle down and ensured a safe stop, he did so with knowledge to avoid injury to any person, most especially to the drivers driving behind his van. In addition, when Maysho entered the intersection, according to testimony by both the officer and Maysho, Maysho was not speeding. Failure to observe a stop instruction immediately in and of itself cannot be said to rise to the level of Reckless Driving. Furthermore, entry into an intersection at a legal and slow speed is clearly an indication of a careful driver as opposed to a reckless driver entering an intersection at an illegal and excessive speed. *See People v. Garo*, 144 N.Y.S.2d 107, 09 (N.Y. Co. Ct.1955) (in reversing a conviction for

Reckless Driving where the defendant failed to observe a stop sign and was thus involved in an accident, the court recognized that under the facts of the case that the failure to observe a stop sign "in itself cannot be said to establish [Reckless Driving]" and that "failure to observe a stop sign on a city street is an infraction regulated by a city ordinance. It may occur as a result of a momentary failure to concentrate, a momentary distraction or a visual omission. . . . If the defendant in addition to passing a stop sign had entered the intersection at an excessive and illegal rate of speed, it might be determined that his conduct was reckless in entering an intersection in such a manner, without stopping.").

[21] The evidence also showed that Maysho kept a proper lookout and in no way was in any danger of causing a collision. Once eye contact was made between him and the officer, Maysho, in accordance with what he believed the officer's hand gesture to mean, slowed down and eventually came to a safe stop. *See McNutt*, 105 P.2d at 660 (in reversing a conviction for Reckless Driving, where the defendant's actions in failing to keep a proper lookout may have caused the collision, the court observed that the defendant's actions . . . is insufficient to sustain Reckless Driving conviction).

[22] The officer also stated that when Maysho's vehicle came to a complete stop, Maysho's management of the stop caused no tread marks, no skid marks, no accidents and no near accidents. Clearly, the evidence is insufficient to prove that Maysho intentionally disregarded the safety of property or persons when he drove slowly and executed a safe stop. *See People v. Thompson*, 108 P.2d 105, 107 (Cal. Super. 1940) (in reversing a conviction for Reckless Driving where the evidence showed defendant's conduct of weaving in and out of traffic, and other physical evidence indicating negligence and gross negligence, the court held that such evidence was insufficient proof of Reckless Driving, insofar as there was no proof of intentional disregard of the safety of property or persons).

[23] Moreover, applying the definition of "wanton disregard," the evidence is insufficient to prove that Maysho was conscious of his conduct, intended to do or omit the act in question, realized the probable injury to another, and showed reckless disregard of consequences. *See McNutt*, 105 P.2d

at 658. The only evidence provided by Officer Anciano was testimony of his open palmed hand gesture. Although Maysho did not stop until he was a few feet from the officer and beyond the stopping zone by about five to eight feet, he nonetheless came to a complete and safe stop. There was no testimony that any other cars in front of Maysho were proceeding through the intersection, no testimony that Maysho was speeding, and no testimony that Maysho failed to slow his vehicle down upon seeing the Officer's hand gestures while approaching the intersection. The failure to stop immediately within the stop zone after receiving instructions from a uniformed traffic officer cannot by itself be deemed to establish Reckless Driving. Simply, there is no evidence of any "wanton" disregard for the safety of persons or property.

IV.

[24] After reviewing the evidence in the light most favorable to the People we find that there is insufficient evidence that Maysho intentionally operated his vehicle with knowledge that injury was probable, or that Maysho acted with a wanton and reckless disregard for the safety of others and in reckless disregard of the consequences of his act. Accordingly, we find that a rational trier of fact could not have found the essential elements of Reckless Driving beyond a reasonable doubt.

[25] In these circumstances, we hold that the trial court erred in convicting Maysho of Reckless Driving. Maysho's Judgment of Conviction is hereby **REVERSED**. We **REMAND** the matter to the trial court for a hearing on Maysho's expungement request.