# IN THE SUPREME COURT OF GUAM

**PEOPLE OF GUAM,**
Plaintiff-Appellant,

**v.**

**ADAM JAMES MESSIER,**
Defendant-Appellee.

Supreme Court Case No.: CRA14-002
Superior Court Case No.: CF0084-12

## OPINION

**Cite as: 2014 Guam 34**

Appeal from the Superior Court of Guam
Argued and submitted on August 1, 2014
Dededo, Guam

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

**TORRES, C.J.:**

**[1]** This appeal concerns the trial court's grant of a motion for new trial following a Criminal Sexual Conduct trial. Defendant-Appellee Adam James Messier was convicted of two counts of Criminal Sexual Conduct and one count of child abuse, and he moved for acquittal or a new trial. The trial court denied Messier's motion for acquittal but granted his motion for a new trial. Plaintiff-Appellant People of Guam ("the People") appeal this decision. For the reasons set forth below, we reverse.

## I. FACTUAL AND PROCEDURAL BACKGROUND

**[2]** Messier was indicted on one count of Second Degree Criminal Sexual Conduct (as a First Degree Felony), one count of Fourth Degree Criminal Sexual Conduct (as a Misdemeanor), and one count of Child Abuse (as a Misdemeanor). A jury trial was held, and Messier was convicted of all counts against him. Messier then moved for acquittal or new trial.

**[3]** Messier argued that he was entitled to acquittal because "the evidence [was] insufficient to sustain a conviction of the offenses . . . charged in the indictment." Record on Appeal ("RA"), tab 98 at 2 (Mot. for Acquittal or New Trial, Apr. 5, 2013). In the alternative, Messier argued for a new trial on the grounds that "the verdicts [were] not supported by substantial evidence, that they [were] against the great weight and preponderance of the evidence, and that a new trial is otherwise required in the interest of justice." *Id.* In response, the People urged the trial court to deny Messier's motion because "there was enough evidence presented [to support the guilty verdict], especially when viewed in the light most favorable to the People." RA, tab 99 at 3 (People's Resp. to Mot. for Acquittal or New Trial, Apr. 8, 2013).

**[4]** The trial court heard oral argument on the motion, and thereafter issued its decision and order. In its decision and order, the trial court first thoroughly examined the evidence presented at trial. In doing so it found "a myriad of contradictions and inconsistencies between the admitted evidence and the testimonies of the victim and the witnesses." RA, tab 116 at (Dec. & Order, Feb. 26, 2014). These myriad inconsistencies were split into two lists—one collecting inconsistencies between the testimony of the victim and her sister/eyewitness, and the other collecting inconsistencies between the victim's testimony and evidence of her prior statements. *Id.* at 2, 4.

**[5]** The first list provided:

> 1. Evidence during trial revealed that the victim and the victim's sister both admitted that, approximately one year prior to making the complaint against defendant, they had lied about their father and their brother committing sexually-related acts against them. They admitted they created these lies in order to gain more freedom from parental oversight, and that they created these lies even knowing that their father and their brother could be prosecuted and incarcerated for the sexually-related acts that the two young women fabricated. The two girls made false verbal statements and false written statements to both the police and Guam Child Protective Services regarding these fabrications.
>
> 2. At trial, these two young women testified the incident occurred while they were sleeping side by side in the lower portion of a bunk bed at Defendant's house. They testified they were at Defendant's house because they were babysitting Defendant's young children while he and his wife (the witnesses' cousin) were attending a work-sponsered [sic] Christmas party. The victim testified she awoke to Defendant touching her upper and lower intimate areas, and the victim's sister testified she witnessed this occur.
>
> 3. These same two witnesses insisted this incident occurred on December 9, 2012, and they were adamant they were certain of this date because this was the day after the victim's birthday. However, several witnesses, without any apparent interest in the outcome in the case, testified that the work-sponsered [sic] Christmas party Defendant attended, which was the reason the witnesses said they were babysitting, occurred on December 15, 2012.[1] Evidence was also admitted that the victim told an individual it occurred sometime around Christmas Day.

[1] The trial court's listing of the dates of the alleged incident in 2012 is incorrect; all parties, as well as the indictment, allege that the criminal sexual conduct occurred in December of 2011. Appellant's Br. at 36 n.3 (May 12, 2014); RA, tab 9 (Indictment, Feb. 14, 2012).

The victim acknowledged she wrote a statement for the police stating the incident occurred "sometime in December."

4. At trial, the victim testified about the touching in a manner that indicated no blanket was ever covering her at the time of the alleged sexual contact, much less that Defendant pulled any blanket from off of the victim. The victim testified at trial that she shared a blanket with her sister when she slept that night, but her sister testified she had her own blanket that she did not share it with the victim.

5. The victim testified she and her sister, as well as the younger children, were already in bed and asleep before Defendant came home, while her sister testified that Defendant came home first and then afterward she, her sister and the younger children went to sleep in their beds.

6. The victim also testified at trial that she and her sister arrived at Defendant's house together that evening, while her sister testified that she arrived at Defendant's house without her sister and that her sister arrived there later.

7. The victim testified at trial that she changed her clothes before she went to bed, while her sister testified that she wore the same shirt to bed that she was wearing when she arrived at Defendant's residence.

8. The victim's sister testified at trial that she saw Defendant kneeling on the floor next to the victim with his back straight, while the victim testified at trial that Defendant was standing next to her and leaning over her.

9. The victim acknowledged that she told a school counselor that she wanted to wake her sister during the assault, but that her sister moved in such a way that she knew she was awake. However, she testified at trial that she had to wake her sister after the incident by calling her name. The victim's sister testified at trial that she was lying next to the victim, and that she watched the incident through half-closed eyes, but then she also testified that she asked the victim what happened, indicating that she would have been asleep and did not see the incident herself.

*Id.* at 2-4.

**[6]** The second list provided:

1. The victim testified the incident took place in a residence at Fern Terrace, Dededo, while evidence was admitted that the victim told another individual the incident occurred on Andersen Air Force Base.

2. Evidence was admitted that the victim told her school counselor that the Defendant pulled her shirt up to her neck to touch her breast, whereas she testified at trial that Defendant placed his hand underneath her shirt.

3. Evidence was admitted that the victim told her school counselor that Defendant touched her intimate parts over a blanket, and then he pulled the blanket down and continued touching her. At trial, the victim testified about the touching in a manner that indicated no blanket covered her at the time of the alleged sexual contact, much less that Defendant pulled any blanket from off of the victim.

4. Evidence was admitted that the victim told a child protective services worker that she cried during the assault and put her arm up over her face so that Defendant could not see her crying. The victim testified at trial that she froze or did not move at all during the assault, and she did not testify that she cried during the assault. Then, at a different time during her trial testimony, the victim testified that she turned her head to the side during the incident. She also acknowledged at trial that she even previously made a different statement that, instead, she moved her legs to one side during the incident in order to get Defendant to stop touching her.

5. The victim acknowledged she had made a statement to someone previously that, during the incident, Defendant rubbed her vagina so hard that it hurt. However, the victim did not testify at trial that this happened.

6. The victim acknowledged she made a written statement to police that Defendant only touched her vagina over her clothing. The victim also acknowledged she made a different previous statement to Guam Child Protective Services that Defendant touched her vagina, her buttocks, and her hand instead. However, the victim then testified much later in time at trial that Defendant touched her vagina, her hip, her stomach, her breast, and her face, but not her hand or her buttocks.

7. The victim acknowledged she previously told the police that Defendant pulled down her pants to touch her vagina, but then she testified at trial that Defendant touched her vagina over her pants and did not testify that Defendant pulled her pants down.

*Id.* at 4-5.

**[7]** The trial court then examined whether judgment of acquittal was warranted. The court cited the correct standards including the requirement to review the evidence in the light most favorable to the verdict. Ultimately, the trial court found that "Defendant has not met [*sic*] made a sufficient showing for a judgment of acquittal in this case." *Id.* at 7.

**[8]** Turning to the question of whether a new trial was warranted, the trial court noted that its "discretion to grant a new trial is 'much broader than its power to grant a motion for judgment of

acquittal.'" *Id.* at 8 (quoting *United States v. Alston*, 974 F.2d 1206, 1211 (9th Cir. 1992)). After thoroughly setting out the correct standards under which to consider a motion for new trial, the trial court cited liberally from this court's opinion in *People v. Leslie*, 2011 Guam 23. *Id.* at 8-9. The court then referenced the lists above and stated "the numerous contradictions and inconsistencies between the testimonies of the victim and her sister/eyewitness . . . create substantial uncertainties and discrepancies regarding events that may or may not have taken place." *Id.* at 9. The discrepancies pertained to "the date of the incident, the events leading up to the incident, and the Defendant's conduct during the claimed incident." *Id.* In sum, the trial court determined that "[t]he credibility of the victim and her sister were impeached at trial to the extent that the Court is left with grave concerns about the credibility of all their statements." *Id.* The trial court then ordered a new trial.

**[9]** The People filed a timely notice of appeal.

## II. JURISDICTION

**[10]** We have jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 113-163 (2014)), 7 GCA §§ 3107 and 3108(a) (2005), and 8 GCA § 130.20(a)(5) (2005).

## III. STANDARD OF REVIEW

**[11]** We review a trial court's decision on a motion for new trial for an abuse of discretion. *See, e.g.*, *People v. Quinata*, 1999 Guam 6 ¶ 16. We review questions of law *de novo*. *See, e.g.*, *People v. Singeo*, 2012 Guam 27 ¶ 8.

## IV. ANALYSIS

### A. Whether the Trial Court Abused its Discretion By Granting Messier a New Trial

#### 1. The law of motions for new trial

**[12]** To determine whether the trial court abused its discretion by granting Messier a new trial, we must first establish the law governing motions for new trial. Title 8 GCA § 110.30 provides that "[t]he [trial] court on motion of a defendant may grant a new trial to him if required in the interests of justice." 8 GCA § 110.30 (2005). Section 110.30(a) is substantively similar to Federal Rules of Civil Procedure ("FRCP") Rule 33(a), and this court has looked to federal case law on FRCP 33 for guidance.[2] *See People v. Leslie*, 2011 Guam 23 ¶ 15 n.1.

**[13]** While this statutory language seems straightforward, the law regarding motions for new trial is somewhat paradoxical. On the one hand, a trial judge has significant discretion—broader than the discretion enjoyed on motions for acquittal—to grant such motions and may "weigh the evidence and evaluate for itself the credibility of the witnesses" without being required to view the evidence in the light most favorable to the verdict. *Quinata*, 1999 Guam 6 ¶ 18. On the other hand, we have stressed that "motions for a new trial based on the weight of the evidence are not favored" and that trial courts should only grant such motions "sparingly and with caution, doing so only in those really 'exceptional cases.'" *Leslie*, 2011 Guam 23 ¶ 25 (citation and internal quotation marks omitted). In exercising this broad (yet rare) discretion, the trial court may only grant a new trial if it concludes that "the evidence 'preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred.'" *Id.* ¶ 15 (quoting *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980)).

[2] The issue discussed below—i.e., how much discretion a trial judge has to disagree with a jury's credibility determination—is also a significant question of state law, *see Hudson v. Louisiana*, 450 U.S. 40, 44 n.5 (1981), which has split state courts. *Compare State v. Ladabouche*, 502 A.2d 852, 856 (Vt. 1985) (refusing to adopt the "thirteenth juror" standard as "seriously intrud[ing]" on the jury's traditional function), *Stevens v. Virgin Islands*, 52 V.I. 294, *7 (2009) (same), *and People v. Lemmon*, 576 N.W.2d 129, 134 (Mich. 1998) (same), *with State v. Barendt*, 740 N.W.2d 87, 92-93 (N.D. 2007) (providing for trial judge's role as "thirteenth juror"), *State v. Karngar*, 29 A.3d 1232, 1235 (R.I. 2011) (same), *Alvelo v. State*, 704 S.E.2d 787, 788-89 (Ga. 2011) (same), *and State v. Durgin*, 82 A.3d 902, 909-10 (same). Nearly every state has weighed in on the issue, and the majority of states provide for the trial judge to sit as a "thirteenth juror."

**[14]** Though grants of such motions are disfavored, we review a trial court's decision only for an abuse of discretion and give substantial deference to the trial court due to its superior position to weigh the evidence. *Id.* ¶¶ 19-22. In this context, we have described an abuse of discretion as "discretion 'exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.'" *Id.* ¶ 14 (quoting *Quinata*, 1999 Guam 6 ¶ 17). Furthermore, "[w]hen determining whether a trial court abused its discretion in denying a motion for a new trial, we consider the degree to which the trial court has supported its determination." *Id.* ¶ 23 (citing *Quinata*, 1999 Guam 6 ¶ 19).

**[15]** This court has never heard an appeal from a grant of a motion for new trial in a criminal case that is based on the weight of the evidence. Most appeals have involved defendants challenging the denial of their motion for new trial; the few appeals brought by the prosecution have involved the jury receiving extraneous information regarding the case. *See, e.g.*, *People v. Castro*, 2002 Guam 23 ¶¶ 1, 11-14. As such, we have never examined a case in which the trial judge set aside a jury verdict based on his disagreement with a jury's credibility determinations. Thus, we must first address and establish the trial judge's role in making independent credibility determinations before closely examining the trial judge's reasons for disagreeing with the jury's credibility determinations in this case.

**[16]** There is a split among the federal circuits regarding when a trial judge may grant a new trial based on his or her disagreement with the jury's credibility determinations. *Compare United States v. Alston*, 974 F.2d 1206, 1211 (9th Cir. 1992) (trial court "may weigh the evidence and in so doing evaluate for itself the credibility of the witnesses" (quoting *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980))), *United States v. Washington*, 184 F.3d 653, 657-58 (7th Cir. 1999) (same), *United States v. Robertson*, 110 F.3d 1113, 1118 (5th Cir.

1997) (same), *United States v. Lanier*, 838 F.2d 281, 284-85 (8th Cir. 1988) (same), *United States v. Evans*, 42 F.3d 586, 593-94 (10th Cir. 1994) (same), *and United States v. Lutz*, 154 F.3d 581, 589 (6th Cir. 1998) (when reviewing motions for new trial, trial judges can act as "thirteenth juror"), *with United States v. Cote*, 544 F.3d 88, 101 (2d Cir. 2008) (credibility determinations are for the jury, and trial judges may only disturb them in "exceptional circumstances," such as testimony that is "patently incredible or defies physical realities"),[3] *United States v. Merlino*, 592 F.3d 22, 32-33 (1st Cir. 2010) (same), *and People v. Lemmon*, 576 N.W.2d 129, 137-39 (Mich. 1998) (thoroughly examining the split and choosing the "exceptional circumstances" position). *See also Commonwealth of the Northern Mariana Islands v. Seman*, 2001 MP 20 ¶¶ 1, 9-10 (in a sufficiency of evidence appeal from a bench trial, the court stressed "issues of witnesses' credibility are for the trier of fact to decide"); *United States v. Farley*, 2 F.3d 645, 652 (6th Cir. 1993) (same).

**[17]** In addition to this inter-circuit split, there appears to be some intra-circuit tension on the question. The Seventh Circuit's *Kuzniar* opinion strongly suggests significant limitations on a trial judge's discretion to disagree with jury credibility determinations, by stating, "It is axiomatic that, absent exceptional circumstances, issues of witness credibility are to be decided by the jury, not the trial judge." *United States v. Kuzniar*, 881 F.2d 466, 470 (7th Cir. 1989). These exceptional circumstances are limited to instances where "reasonable men could not have believed the testimony." *Id.* at 470-71. These statements were made in the context of a new trial granted because the trial court believed that it should have kept the relevant testimony from the jury, and the standard was that for keeping evidence from the jury. *Id.* However, the Seventh

[3] There is some confusion in the People's brief, as it cited to cases—including *United States v. Truman*, 688 F.3d 129, 139 (2d Cir. 2012)—that primarily addressed witness credibility in the context of motions for acquittal, which of course involve a much higher standard. However, unless otherwise noted, the cases cited herein discuss the judge and jury's role in credibility determinations in the context of motions for new trial.

Circuit did not limit it to such situations and stated flatly, "In general, conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial." *Id.* at 470 (citing First and D.C. Circuit case law). On the other hand, Seventh Circuit cases such as *Washington* have not articulated such limitations on trial judges disagreeing with jury credibility determinations. *Washington*, 184 F.3d at 657-58. There the court stated that the trial judge's "credibility assessment is soundly within the district court's discretion, and must be respected by this Court," *id.* at 658, even though the trial court's divergent credibility determination was not based on "exceptional circumstances" as described in *Kuzniar*.

**[18]** These approaches apply to all dispositions of new trial motions, but some appellate courts have imposed stricter review on trial court *grants* of such motions, because of the inherent conflict between "usual deference to the trial judge [and] deference to the jury on questions of fact." *United States v. Cox*, 995 F.2d 1041, 1043-44 (11th Cir. 1993); *see also Hutchinson v. Stuckey*, 952 F.2d 1418, 1420-21 (D.C. Cir. 1992); *Brun-Jacobo v. Pan Am. World Airways*, 847 F.2d 242, 245 (5th Cir. 1988); *State v. Spinale*, 937 A.2d 938, 947 (N.H. 2007). Other courts have held that the standard of review for grants and denials is identical, *see, e.g.*, *United States v. Ferguson*, 246 F.3d 129, 133 n.1 (2d Cir. 2001), with some convinced that a grant of new trial does not lead to a problematic conflict between judge and jury, "because an order directing a new trial leaves the final decision in the hands of the [second] jury." *Alston*, 974 F.2d at 1212.

**[19]** While the majority of authority seems to follow the approach imposing no limitation on the trial judge's consideration of witness credibility, these cases are noticeably devoid of discussion of the jury's role as trier of fact in our system, and most occur in an appellate court opinion affirming a trial court's denial of a motion for new trial. The cases which articulate limits on the trial judge's role seem to have the better argument, as they acknowledge the jury's

traditional role and attempt to protect it, while recognizing the necessity of some credibility determinations if a trial judge is to truly "weigh the evidence." In this regard, the Michigan Supreme Court's decision in *Lemmon* is the most instructive, because it confronts the split in authority.

**[20]** In *Lemmon*, the court addressed a trial court's grant of new trial in a criminal sexual conduct case in which the only testimony was that of two sisters, whom the jury credited but the trial court did not. *Lemmon*, 576 N.W.2d at 131-33. In dealing with this case, the court examined a similar new trial standard to the standard in this case—involving grant of a new trial in the "interest of justice" based on "the great weight of the evidence," to "prevent a miscarriage of justice." *Id.* at 133-34. Confronting the issue of a trial judge's ability to disagree with jury credibility determinations, the court noted the "conundrum" between the jury's fundamental role as finder of fact and the implicit credibility questions in weighing evidence after a motion for new trial. *Id.* at 135. The court described the jury's historic role as requiring "no citation of authority. It is the province of the jury to determine questions of fact and assess the credibility of witnesses." *Id.* at 134. With the jury's traditional role defined, the court stressed the importance of the jury in our system, observing in particular that "the preservation of the jury by constitutional amendment was designed as a limitation on judicial power." *Id.* at 135. In attempting to resolve the conundrum, the court aligned itself with jurisdictions that hold "absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the credibility for the constitutionally guaranteed jury determination thereof." *Id.* at 137 (internal quotation marks omitted). These "exceptional circumstances" required deference to the jury's credibility determinations "unless it can be said that directly contradictory testimony was so far impeached that it was deprived of all probative value or that

the jury could not believe it or contradicted indisputable physical facts or defied physical realities." *Id.* at 138 (citation and internal quotation marks omitted).

**[21]** We are persuaded that the jury's traditional and vital role as fact-finder should be protected and trial courts should not serve as "thirteenth jurors." Accordingly, we hold that where a motion for new trial is based on the weight of the evidence, in weighing that evidence, a trial court may not grant a new trial based solely on its disagreement with the jury's credibility determinations, unless credibility issues arise to the "exceptional circumstances" detailed above—including testimony that is "patently incredible or defies physical realities." *Cote*, 544 F.3d at 101.

**2. Application to the facts of this case**

**[22]** With the rule established, we must determine whether the trial court's credibility determination was founded on "exceptional circumstances." The trial court reviewed the record and determined that the evidence "preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred," due to "numerous contradictions and inconsistencies between the testimonies of the victim and her sister/eyewitness." RA, tab 116 at 9 (Dec. & Order). The first credibility issue the trial court highlighted was the fact that the sisters "had lied about their father and brother committing sexually-related acts against them," around one year before the alleged CSC in this case. *Id.* at 2.

**[23]** After listing other "inconsistencies," the trial court concluded that "[t]he credibility of the victim and her sister were impeached at trial to the extent that the Court is left with grave concerns about the credibility of all their statements." *Id.* at 9. The court then cited to *People v. Leslie* to conclude that a new trial was warranted here, because "the credibility of the

government's witnesses had been impeached and the government's case had been marked by uncertainties and discrepancies." *Id.* at 9-10 (quoting *Leslie*, 2011 Guam 23 ¶ 25.)

**[24]** Before turning to the substance of the People's arguments, we must further clarify a point regarding the difference between motions for acquittal and motions for new trial. The People, in a footnote in their opening brief, argue that "overturning the verdict of a rational jury [by denying a motion for acquittal, but granting a new trial] should never be in the interest of justice." Appellant's Br. at 26 n.1 (May 12, 2014). The People reiterate this argument in their reply brief, stating that "the Trial Court, by its own logic, just overturned the verdict of a rational trier of fact. This cannot be in the interest of justice." Reply Br. at 4 (June 24, 2014). This argument fundamentally misunderstands the differences between motions for acquittal and for new trial as well as their relation to each other. Most importantly, it fails to reckon with the requirement that the trial court view all evidence in the light most favorable to the verdict when considering a motion for acquittal—a requirement that does not exist when the court considers a motion for new trial based on the weight of the evidence. *See, e.g.*, *Quinata*, 1999 Guam 6 ¶ 18. Furthermore, "overturning" a verdict follows a trial judge finding insufficient evidence as a matter of law after which the Double Jeopardy Clause prohibits trying the defendant again for the same crime. *See Tibbs v. Florida*, 457 U.S. 31, 41-44 (1982). Double Jeopardy does not bar retrial of a criminal defendant who is granted a new trial. Because of the difference in the two standards, and the fact that the two motions are typically made in the alternative, nearly every trial judge granting a new trial under this standard will already have denied the defendant's motion for acquittal.

**[25]** Turning to the facts of the case, the People argue that the trial court overlooked numerous credibility-bolstering factors. First, the People point to the testimony of the victim and

eyewitness's mother regarding a phone call the mother received from her daughter at 4:00 a.m. in the hours following the alleged criminal sexual conduct. Appellant's Br. at 8-11, 28-29. Second, the People point to the mother's testimony regarding the victim's demeanor when the mother picked her up following the early morning phone call. *Id.* at 11-12, 29. Third, the People note the mother's testimony regarding the victim's change of demeanor in the weeks after the night in question—including that the victim "withdrew, stayed in her room a lot, wasn't really eating, having bad dreams," and "freaked out," "yell[ed]," and went to her room for the rest of the day when she was told that Messier would be stopping by the victim's home. *Id.* at 12-13, 30.

**[26]** Next, the People stress that Messier admitted to being in the room with the victim and her sister on the night in question, and the trial court did not mention this evidence in its written weighing of the evidence, despite the People including it in their opposition to the motion. *Id.* at 31-32. This evidence, the People assert, weakens the impact of uncertainties about date and location, which were of concern to the trial court. *See* RA, tab 116 at 3-4 (Dec. & Order). The People argue:

> Some inconsistencies are unimportant because [Messier]'s own statement clarifies the events. For example, [Messier]'s own written statement holds that the night of the incident was the same night he went to his work Christmas party, that Victim and her sister were asleep when he came home, and that he put a blanket on Victim.

Appellant's Br. at 38. Thus, the People assert, any inconsistencies regarding the date and location of the alleged incident are irrelevant "because [Messier]'s statement sets the scene as all alleged events having taken place on a single night (after the work Christmas party) at a single place ([Messier]'s home)." *Id.*

**[27]** Regarding other inconsistencies that the trial court highlighted, the People argue that the trial court "did not at all factor into its decision common reasons for inconsistencies" and that its "analysis of these inconsistencies is flawed in multiple ways." *Id.* at 37. The People argue that each of the noted inconsistencies is either of very little relevance, made consistent by other facts or statements, the possible result of passage of time, or a result of difference in perception and recollection between the victim and her sister. *Id.* at 37-42.

**[28]** In response, Messier argues that the trial court properly weighed all of the evidence. Appellee's Br. at 7-8 (Jun. 10, 2014). Messier asserts that the trial judge "necessarily saw and heard every bit of the evidence weighing in favor of the credibility [of the victim and her sister]." *Id.* at 7. Thus, according to Messier, "[t]hat the trial court considered every bit of the evidence weighing in favor of the credibility [of the victim and her sister] is indisputable." *Id.* at 8.

**[29]** The trial court concluded that "this case is analogous to the situations articulated by the Supreme Court of Guam which warrant the granting of a motion for new trial." RA, tab 116 at 9-10 (Dec. & Order) (citing *Leslie*, 2011 Guam 23 ¶ 25). In *Leslie*, we cited three cases as examples of those sufficiently "exceptional" to warrant a grant of new trial. *See Leslie*, 2011 Guam 23 ¶ 26 (citing *United States v. Simms*, 508 F. Supp. 1188 (W.D. La. 1980); *United States v. Capati*, 980 F. Supp. 1114 (S.D. Cal. 1997); *United States v. Hurley*, 281 F. Supp. 443 (D. Conn. 1968)). In *Simms*, the trial court granted a motion for new trial, because the government had not presented evidence to "convincingly establish defendant's guilt of conspiracy to purchase votes beyond a reasonable doubt." *Simms*, 508 F. Supp. at 1207. The court reached this conclusion after discerning that "there [was] no direct proof in the transcript . . . which shows that the defendant knowingly and intentionally entered into such a conspiracy," *id.* at 1204, and that the only evidence of defendant's intent to organize a conspiracy "[was] based

upon inferences drawn from" comments which had equally reasonable innocent explanations, *id.* at 1207. This case is not like *Simms*. Here, we are presented with direct proof of the crime, via the testimony of the victim and her sister as an eyewitness—testimony that is bolstered by the testimony of the victim's mother. The facts of *Simms* also would not implicate our "thirteenth juror" rule, as the weighing of evidence in *Simms* was not solely a matter of witness credibility.

**[30]** In *Capati*, the trial court was convinced that a new trial was warranted because "the heavy preponderance of the evidence demonstrate[d]" that a meeting allegedly held to conspire to commit the robberies could not have been held. *Capati*, 980 F. Supp. at 1133. The government was required to prove that the defendant in *Capati* had conspired or induced his co-conspirator to commit the robberies, and toward that end, the government presented the co-conspirator's testimony. *Id.* The co-conspirator testified to meeting with the defendant and planning the robberies, but the defendant introduced extensive documentary evidence to prove that he was not in-state during the timeframe in which his co-conspirator claimed the meeting occurred. *Id.* This led the trial court to ponder "[i]f the [co-conspirator] fabricated the most crucial part of his testimony, it is difficult to imagine what aspect of [co-conspirator's] testimony can be believed." *Id.* The court further found an obvious motive for the co-conspirator to fabricate the allegations, because the government had offered immunity for himself and his brother—though the co-conspirator "even lied to the jury about his agreement with the Government." *Id.* at 1133-34. In concluding, the trial court stated, "the only evidence from which the Defendants' criminal participation in the robberies could be established came from [the co-conspirator] and [the co-conspirator's] testimony is demonstrably false, particularly with respect to the pivotal agreement." *Id.* at 1134. In the parlance of the rule we adopt today, Capati was granted a new trial because the trial court found that credibility issues with the material

witness arose to the level of "exceptional circumstances," as documentary evidence was presented that proved his story was physically impossible.

**[31]** This case is not like *Capati*. Nothing in the evidence establishes the falsehood of either the victim or the eyewitness's testimony regarding the commission of the alleged criminal sexual conduct. While dates are somewhat confused, *see, e.g.*, RA, tab 116 at 3 (Dec. & Order), this confusion does not rise to the level of proving the impossibility of the occurrence of the criminal sexual conduct on a night in December of 2011. This is particularly the case where the indictment alleges "[o]n or about the 10th day of December 2011," RA, tab 9 (Indictment), and the date need not be alleged with exactitude in a criminal sexual conduct case, "as long as the defendant was afforded adequate notice of the charge against him." *People v. Atoigue*, No. 92-10589, 1994 WL 477518, at *6 (9th Cir. Sept. 2, 1994) (citing *United States v. Laykin*, 886 F.2d 1534, 1542-43 (9th Cir. 1989)). *See generally People v. Campbell*, 2006 Guam 14.

**[32]** Furthermore, the victim and her sister have no apparent motive to lie[4] as the co-conspirator in *Capati* did; nor does their mother have a motive to lie about the call she received at 4:00 a.m. being asked to pick up the victim and her sister from Messier's house. The lack of evidence suggesting a motive for the victim or her sister to fabricate the criminal sexual conduct allegation could and should be considered in weighing the evidence regarding the victim and witness's credibility. *See, e.g.*, *Spinale*, 937, A.2d at 947 (reversing grant of new trial in part due to lack of evidence suggesting a motive for the witness to fabricate the identification of the defendant); *see also People v. Marra*, 96 A.D.3d 1623, 1624 (N.Y. App. Div. 2012) (in reviewing whether verdict was against weight of the evidence, court discerned no motive for

[4] Messier's statement to the police includes a story that he angered the sisters by following them during a barbeque party and stopping them from inhaling gas from a whipped cream can. People v. Messier, CF0084-12 (People's Trial Ex. 6 at 3 (Jan. 17, 2013)). However, this was not considered in the trial court's decision and order and Messier does not mention it in his appellate brief.

victim to lie). This is particularly true here, where the sisters maintained their allegations for over a year and throughout a trial, in contrast to the relatively swift recantation of their previous allegations against their father and brother. The involvement of the mother and her testimony further lessens any weight of the evidence against the jury verdict, as she has no imaginable motive to lie about the 4:00 a.m. phone call or the aftermath of the night of the alleged criminal sexual conduct, nor does she share the history her daughters have of making a false accusation.

**[33]** *Hurley* also does not support Messier's position. In *Hurley*, the trial court was convinced by "incontrovertible documentary evidence which supported [the defendant's] testimony to a large degree." *Hurley*, 281 F. Supp. at 450. This documentary evidence was "highly significant," because it "was a prime indication of [the defendant's] intent," which was "the only contested issue before the jury." *Id.* at 449-51. Furthermore, the trial court did not credit the testimony of a co-defendant implicating the defendant due to "a series of prior inconsistent statements given to the F.B.I. on this issue." *Id.* at 449. These inconsistent statements were not inconsistent in marginal degrees, nor did they relate to tangential matters—they were central to the question of defendant's intent and the co-defendant's statements included an initial statement that the co-defendant later dubbed "all lies" and proceeded to vary between claiming no agreement had been reached on a particular day and that an agreement was in fact reached on that day. *Id.* This case is not like *Hurley*. As previously stated, there is no documentary evidence in this case that contradicts the victim, eyewitness, or mother's testimony. Furthermore, none of the inconsistencies cited by the trial court approach the inconsistencies of the co-defendant in *Hurley*. Unlike the co-defendant in *Hurley*, neither sister has admitted that a previous statement accusing Messier of CSC was "all lies", and neither's "inconsistencies" involve whether the criminal sexual conduct occurred.

**[34]** Taken together, *Simms*, *Capati*, and *Hurley* make clear that our statement in *Leslie* that "[c]ourts have granted new trial motions based on weight of the evidence only where the credibility of the government's witnesses had been impeached and the government's case had been marked by uncertainties and discrepancies," *Leslie*, 2011 Guam 23 ¶ 25, does not establish a low standard, nor is it met whenever government witnesses are impeached to any degree. Instead, the impeachment must be substantial and impeached witnesses not rehabilitated or corroborated. Furthermore, any "uncertainties or discrepancies" must relate to a central issue in dispute and must vary to a significant degree, like the statements in *Hurley*. Ultimately, for a trial court to grant a new trial based solely on its disagreement with a jury's credibility determinations, it must first find "exceptional circumstances."

**[35]** In *Leslie*, we were convinced to affirm the trial court's denial of the motion for new trial in part because "the trial court addressed each argument challenging the credibility of [the victim's] testimony, including those that [the defendant] now makes on appeal." *Leslie*, 2011 Guam 23 ¶ 24. This is not the case in the present appeal. The People are correct to point out the mother's corroborating testimony, and there is no indication in the trial court's decision and order that it weighed the mother's testimony as supporting the victim and her sister's credibility. To the extent that the trial court was convinced by the previous false accusations made by the victim and her sister, the addition of the mother's testimony adds strong support to the truth of their allegations in this circumstance. The People are also persuasive in pointing to differences in perception and memory as explaining "contradictions/inconsistencies" in the sisters' statements. This is particularly true regarding testimony about: what precise day the CSC occurred; whether the sisters shared a blanket; when the sisters went to sleep on the night in question; whether the victim changed clothes before bed; and whether Messier was kneeling or

standing over the victim. In each of these contexts, the trial court found divergent testimony by the sisters to be damaging to their credibility, though the jury did not.

**[36]** The trial court abused its discretion, in light of the facts that (1) the trial court's decision and order did not weigh the corroborating testimony of the mother and the reasonable explanations for minor inconsistencies, (2) the inconsistencies listed did not involve statements that the CSC had not happened, as in *Hurley*, and (3) the impeachment of the victim and her sister was based on previous allegations against third parties, rather than founded on either documentary evidence which proved their present allegations false or a motive to fabricate allegations against this defendant as was the case in *Capati*. Accordingly, even under the deferential standard required in reviewing trial court new trial decisions, the trial court abused its discretion by issuing a decision and order "not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *Quinata*, 1999 Guam 6 ¶ 17.

### B. Whether the Trial Court Abused its Discretion "By Carrying [Messier's] Burden for Him to Show a New Trial was Justified"

**[37]** The People also argue that the trial court "abused its discretion by making [Messier's] findings for him instead of ruling on the materials presented." Appellant's Br. at 26. In support of this argument, the People correctly note that Messier's Motion for Acquittal or New Trial was devoid of facts or legal argument. *See generally* RA, tab 98 (Mot. for Acquittal or New Trial). Instead, Messier cited the relevant standards and concluded that the motion is "based on such declarations and memoranda as shall be served and filed herein, on the papers and records on file herein, on the transcript of the entire trial of this action, and on such oral and documentary evidence as shall be presented at the hearing hereof." *Id.* at 2.

**[38]** Messier argues that the Guam rule for motions in a criminal context merely requires the movant to "state the grounds upon which it is made and . . . set forth the relief or order sought."

Appellee's Br. at 3 (quoting 8 GCA § 1.27). In contrast, Guam Rules of Civil Procedure Rule 7(b)(1) requires motions in civil cases to "state *with particularity* the grounds therefor, and . . . set forth the relief or order sought." *Id.* at 3-4 (quoting GRCP 7(b)(1)). These rules are drawn from Federal Rules of Criminal Procedure Rule 47 and Federal Rules of Civil Procedure Rule 7, respectively. *Id.* at 4. Messier cites an influential treatise to establish that the criminal rule for motions is "more flexible than its civil counterpart in [that] it does not require that the grounds for the motion be stated 'with particularity.'" *Id.* (quoting 3B Charles Alan Wright & Peter J. Henning, *Federal Practice and Procedure* § 791 (4th ed. 2013)).

**[39]** Messier is correct that 8 GCA § 1.27 did not require him to state with particularity his grounds for acquittal or a new trial. For precedential support, the People rely exclusively on our opinion in *Lamb v. Hoffman*, 2008 Guam 2 ¶ 35. Appellant's Br. at 25. Though the trial court quoted this case in its decision and order, *see* RA, tab 116 at 7 (Dec. & Order), the People's reliance is misplaced. *Lamb* was a civil case in which the movant was required to state with particularity the grounds for the motion. 2008 Guam 2 ¶¶ 33-34. Furthermore, the movant in *Lamb* sought a new trial on the vague ground of "unfairness," for which he provided no legal support. *Id.* ¶ 34 ("[Movant] fails to articulate a rule of law upon which we can base a finding that the proceeding below was fundamentally unfair."). Finally, the oft-quoted language in *Lamb* pertains to appellate review, *see id.* ¶ 35 ("In order to conduct a meaningful review, the parties must articulate their arguments in a way that allows *this court* to apply recognized rules of law." (emphasis added)), and does not establish the standard the People seem to think it does. A trial court does not abuse its discretion by inferring the thrust of a criminal defendant's argument for a new trial and closely examining the facts relevant to that argument, just as this court did not

abuse its discretion in *Lamb* by inferring the movant's argument and examining the relevant facts and law. *See id.* ¶¶ 35-36.

**[40]** Though Messier was not required to "state with particularity" the grounds for his motion, we do not adopt his apparent position that he had no burden whatsoever on the motion. *See* Oral Argument at 10:30:50-10:31:38 (Aug. 1, 2014). Criminal defendant movants still have a burden to present factual or legal argument in support of motions, though that burden is less than that imposed on civil movants by GRCP 7(b)(1). Because we have already held that the trial court abused its discretion by granting the motion for new trial, we will not determine whether Messier met his burden nor will we attempt to further detail what burden criminal movants must satisfy.

## VI. CONCLUSION

**[41]** The trial court's decision and order does not establish this as an "exceptional" case warranting a new trial; thus, the trial court abused its discretion when it granted Messier's motion for a new trial. We hold that where a motion for new trial is based on the weight of the evidence, a trial judge cannot set aside a jury verdict based solely on a disagreement with the jury's credibility determinations. Accordingly, we **REVERSE** the trial court, reinstate Messier's conviction, and **REMAND** for further proceedings not inconsistent with this opinion.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice