# IN THE SUPREME COURT OF GUAM

**PEOPLE OF GUAM,**
Plaintiff-Appellee,

**v.**

**XO ISI JOHN, aka ISITERO FRED, aka ISITENO FRED, aka JOHN ISITENO, aka FRED ISI JOHN, aka ESSAY,**
Defendant-Appellant.

Supreme Court Case No.: CRA16-003
Superior Court Case No.: CF0112-15

## OPINION

**Cite as: 2016 Guam 41**

Appeal from the Superior Court of Guam
Argued and submitted on July 18, 2016
Hagåtña, 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]** Defendant-Appellant Xo Isi John appeals from an Amended Judgment convicting him of Murder (as a First Degree Felony) and an accompanying Special Allegation of Possession and Use of a Deadly Weapon in the Commission of a Felony. John seeks reversal of his convictions based upon four claimed errors by the trial court. John argues that: (1) the trial court erroneously permitted evidence of other wrongs or acts in violation of Guam Rules of Evidence ("GRE") 404(b); (2) the trial court erroneously instructed the jury on the defense of self-defense; (3) the trial court erred in refusing to instruct the jury regarding the Castle Doctrine; and (4) John was provided with ineffective assistance of counsel.

**[2]** For the reasons stated below, we affirm John's conviction.

## I. FACTUAL AND PROCEDURAL BACKGROUND

**[3]** On or about February 17, 2015, in the early morning hours, an altercation ensued between John and Felipe Aldan Reyes, Jr. that resulted in Reyes's death.

### A. Indictment

**[4]** John was indicted on February 26, 2015, on three separate charges, including the following: Charge 1 – Murder (as a First Degree Felony), in that he knowingly caused the death of Reyes, with a Special Allegation (Possession and Use of a Deadly Weapon in the Commission of a Felony); Charge 2 – Murder (as a First Degree Felony), in that he recklessly caused the death of Reyes, along with the same related Special Allegation; and Charge 3 – Aggravated Assault (as a Second Degree Felony) with a related Special Allegation.

**B. Motions *In Limine***

**[5]** Prior to trial, John submitted a motion *in limine* requesting, among other things, to use self-defense as a defense theory. The same motion also opposed the introduction of John's prior bad acts under GRE 404(b). John also filed another motion *in limine* requesting, *inter alia*, that the trial court permit the use of the defense provided under 9 GCA §§ 7.111-7.114, entitled the "Castle Doctrine Act." Record on Appeal ("RA"), tab 28 at 1-2 (*In Limine* Mot. #2, Apr. 13, 2015).

**C. Trial and Evidence Presented**

**[6]** At trial, John's neighbor, Risina Atenap, testified that John, Reyes, and Atenap's husband drank alcohol together early in the evening of February 16, 2015. Later that night, Atenap witnessed John on top of and stabbing Reyes, while Reyes lay on the floor yelling at John to stop. Two other witnesses testified who knew John personally. John's landlord, Carlos Pelena, testified to John's demeanor and other acts of John when he is intoxicated, including John's previous statements that he would threaten to kill people. Pelena also stated that he employed Reyes and Anthony John Jao at his appliance repair shop. Jao also testified. His testimony indicated that before the incident, Reyes asked Jao to go with him to John's residence. Reyes had a pipe in hand running towards John's sliding glass doors when Jao took the pipe away from Reyes. Thereafter, Jao left the scene and left Reyes crying outside of John's apartment. Jao also testified about John's demeanor while he is intoxicated.

**[7]** The officers who investigated the scene and questioned John also testified. Two doctors testified, Dr. Aurelio Espinola and Dr. Jared Carlson, indicating that Reyes sustained several injuries, stabs and cuts, and that the cause of death was due to severe blood loss caused by a stab wound to Reyes's femoral artery and a vein in his right leg.

**[8]** Before Pelena testified as to John's threats made while he was intoxicated, the trial court and parties discussed the content of the statements and whether they could be introduced at trial. The court, thereafter, permitted the testimony regarding the threats. After the People's case-in-chief, John moved for a judgment of acquittal based on two theories—the Castle Doctrine and his assertion of self-defense. The trial court denied the motion.

**[9]** John testified in his own defense. During his testimony, John claimed that he was acting in self-defense in stabbing Reyes because, while he was sitting on his porch, Reyes came to his home and attacked him. He testified that after stabbing Reyes, he noticed a lot of blood on the ground. He then went inside of his apartment and heard Reyes screaming but did not seek help because he did not have a phone.

**D. Jury Instruction Discussions**

**[10]** Prior to being read to the jury, the trial court and the parties discussed at length the contents of the jury instructions. This included a lengthy discussion of the Castle Doctrine and whether such jury instruction should be incorporated. Both parties gave their respective positions on the matter, and the trial court denied the inclusion of the instruction because the evidence lacked a factual basis supporting an addition. The trial court and parties also discussed the self-defense theory and the requisite burden of proof. Before the parties gave closing arguments, the jury instructions were read to the jurors. Defense counsel did not object to the jury instructions as enunciated.

**E. Verdicts and Appeal**

**[11]** John was found guilty of Murder (as a First Degree Felony), in that he recklessly caused the death of Reyes, along with the related Special Allegation (Possession and Use of a Deadly Weapon in the Commission of a Felony) as listed under Charge 2 of the Indictment. He was

acquitted of the Murder and Special Allegation under Charge 1, as well as the lesser included offenses of Manslaughter and Negligent Homicide. The court vacated the jury's guilty verdict "for Manslaughter (as a first degree felony), as a lessor included offense of Murder (Charge 1 of the Indictment)." RA, tab 90 at 1-4 (Am. J., Jan. 28, 2016). The verdicts are reflected in the trial court's Amended Judgment, and a timely notice of appeal was filed.

## II. JURISDICTION

**[12]** This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through P.L. 114-254 (2016)); 7 GCA §§ 3107(b) and 3108 (2005); and 8 GCA §§ 130.10 and 130.15(a) (2005).

## III. STANDARD OF REVIEW

### A. GRE 404(b)

**[13]** This court applies a *de novo* standard of review in determining whether the evidence falls within the scope of GRE 404(b). *See People v. Camaddu*, 2015 Guam 2 ¶ 9 (citing *People v. Torres*, 2014 Guam 8 ¶ 18); *see also People v. Palisoc*, 2002 Guam 9 ¶ 7 (citing *United States v. Arambula-Ruiz*, 987 F.2d 599, 602 (9th Cir. 1993)). We then apply an abuse of discretion standard when reviewing the trial court's admission of prior bad acts that fall within the scope of GRE 404(b) evidence. *See Camaddu*, 2015 Guam 2 ¶ 9 (quoting *People v. Hall*, 2004 Guam 12 ¶ 34); *see also Palisoc*, 2002 Guam 9 ¶ 7 (citing *People v. Quintanilla*, 2001 Guam 12 ¶ 9; *People v. Evaristo*, 1999 Guam 22 ¶ 6). "An abuse of discretion occurs when the court makes a judgment that clearly goes against the logic and effect of the facts." *Palisoc*, 2002 Guam 9 ¶ 7 (citing *Quintanilla*, 2001 Guam 12 ¶ 9). Where a trial court abuses its discretion in making evidentiary rulings, this court will not reverse the judgment of conviction "absent prejudice affecting the verdict." *Camaddu*, 2015 Guam 2 ¶ 9 (quoting *Hall*, 2004 Guam 12 ¶ 34).

**B. Jury Instruction – Self-Defense**

**[14]** "We consider whether the proffered instructions accurately stated the relevant law under a *de novo* standard." *People v. Gargarita*, 2015 Guam 28 ¶ 12 (citing *People v. Diego*, 2013 Guam 15 ¶ 9). This court reviews jury instructions as a whole rather than in isolation. *See id.* (quoting *People v. Jones*, 2006 Guam 13 ¶ 28). We apply a plain error standard when no objection to the jury instructions was made at trial. *See id.* ¶ 11 (citing *People v. Felder*, 2012 Guam 8 ¶ 8). "Plain error is highly prejudicial error, which this court 'will not reverse unless (1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process." *Id.* (quoting *Felder*, 2012 Guam 8 ¶ 19).

**C. Castle Doctrine – Refusal to Instruct**

**[15]** "Where the parties dispute whether the evidence supports a proposed instruction, we review a [trial] court's rejection of the instruction for an abuse of discretion." *United States v. Mincoff*, 574 F.3d 1186, 1192 (9th Cir. 2009) (quoting *United States v. Bello-Bahena*, 411 F.3d 1083, 1089 (9th Cir. 2005)). When the issue turns on whether the jury instructions adequately present the defendant's theory of the case, the denial of a proposed jury instruction is reviewed *de novo*. *See id.* (quoting *United States v. Somsamouth*, 352 F.3d 1271, 1274 (9th Cir. 2003)). We apply a *de novo* standard of review when addressing issues of statutory interpretation. *See People v. Joshua*, 2015 Guam 32 ¶ 20 (quoting *Felder*, 2012 Guam 8 ¶ 9).

**[16]** In briefing this issue, John analyzes the alleged error under a plain error standard of review. Appellant's Br. at 26-27 (Apr. 12, 2016) (alleging that the "trial court committed plain error when it denied defense counsels' [sic] request to read the jury an instruction on the Castle Doctrine"). However, the People concede that the standard to be applied is an abuse of

discretion. Appellee's Br. at 45, 48 (June 1, 2016) ("Accordingly, the trial court did not abuse its discretion to deny inclusion of the Castle Doctrine as a jury instruction."). The People are correct; an abuse of discretion standard is appropriate and will be applied in this case.

## IV. ANALYSIS

### A. Admissibility of Evidence Under GRE 404(b)

**[17]** The admission of prior crimes, wrongs, or other bad acts is governed by GRE 404(b), which states in its entirety:

> Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Guam R. Evid. 404(b). Admissibility of evidence under this provision is governed by the four-factor test first laid out in *United States v. Hinton*, 31 F.3d 817, 822 (9th Cir. 1994), which has been adopted by this court and is commonly referred to as the *Hinton* test. *See Camaddu*, 2015 Guam 2 ¶ 12 (citations omitted). Evidence of a prior bad act is admissible under GRE 404(b) when the People establish "that the evidence (1) proves a material element of the crime currently charged; (2) is similar to the charged conduct; (3) is based on sufficient evidence; and (4) is not too remote in time." *Camaddu*, 2015 Guam 2 ¶¶ 12, 47 (quoting *Palisoc*, 2002 Guam 9 ¶ 8). If the People satisfy their burden of proving all four factors of the *Hinton* test, then the trial court must determine "whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice," otherwise known as the balancing test under GRE 403. *Id.* ¶ 47 (quoting *Palisoc*, 2002 Guam 9 ¶ 8); *see also* Guam R. Evid. 403.

**[18]** John maintains on appeal that the trial court erred when it allowed the prosecution to introduce prior bad acts in order to prove that John had the requisite intent to murder Reyes. Appellant's Br. at 12. Specifically, John challenges the testimony of Pelena regarding: (1) John's drunken threats to kill Reyes, Jao, and Pelena; and (2) John accidentally slapping Reyes. *Id.* at 15. John concedes that the third and fourth *Hinton* factors have been satisfied, but claims that the People cannot satisfy the first two factors from the *Hinton* test. Appellant's Reply Br. at 3 (June 28, 2016). Lastly, John asserts that the trial court abused its discretion by failing to conduct a balancing test under GRE 403 and by not providing a limiting instruction to the jury. Appellant's Br. at 17.

**[19]** The People contend that the *Hinton* test is satisfied and that even if the test is not met, the admission of the evidence was harmless error because John was not convicted of murder with intent to kill. Appellee's Br. at 30-39. The People also maintain that there was overwhelming evidence that John committed reckless murder whereby if there was any error, it did not affect John's substantial rights. *Id.*

**1. Does this Evidence Fall under GRE 404(b) – *De Novo* Review**

**[20]** In addressing John's appeal, this court must first apply the *Hinton* test to determine whether the evidence complained about by John on appeal was properly admissible under GRE 404(b).

**[21]** As a preliminary matter, we examine the context in which John's challenge to the evidence of accidentally slapping Reyes was raised. Defense counsel asked Pelena the following questions during his cross-examination:

> Q: Okay. Referring to [John], you've never once seen him hit another human being, have you? . . . You've never once seen him hit another person, correct?

A: Of course, yeah.

Transcript ("Tr.") at 87 (Jury Trial, May 19, 2015). Thereafter, while on redirect, the People asked the following:

Q: Have you ever seen the defendant, [John], punch or hit another person?

A: It was the second argument -- first, he hit the pipe -- the post of the balcony. . . . Then, second punch, he hit [Reyes] in the face because he was standing here, he was there. He hit first the pipe and the second went through and I think he hit [Reyes] here. . . . Not that strong, like a slap, something like that.

*Id.* at 90-91. The evidence of John's unintentional slapping was not evidence that the prosecution initially sought to introduce and does not constitute evidence under GRE 404(b). The trial court did not commit error by admitting this testimony when the defense, by initially asking the very question in its cross-examination of Pelena, raised the now challenged evidence on appeal. *See, e.g.*, *United States v. Wilson*, 439 F.2d 1081, 1082 (5th Cir. 1971) ("defendant may not complain on appeal that he was prejudiced by evidence relating to a subject which he opened up at trial").

**[22]** Turning to the evidence of the drunken threats, the testimony offered by Pelena at trial was as follows:

Q: Okay. Now, did [John] say anything specifically to you or to anybody else?

A: Well, that night when [John] was drunk, as I told you, he was really nice for the past year, but when he's drunk, [John] says something that, you know, you'll get scared like, I'm going to kill everybody, I'm going to kill you.

Q: Okay. So did [John] tell you that he was going to kill you?

A: Yeah.

. . . .

Q: Okay. And did [John] say that to [Reyes], as well?

> A: Yeah, [John] told everybody because I know he was drunk, though. . . . I'm going to kill [Pelena] . . . . I'm going to kill [Reyes], kill [Reyes], I'm going to kill you. . . .

Tr. at 79-80 (Jury Trial, May 19, 2015). The trial court and the parties discussed the evidence of the prior threats before its admission, and defense counsel mainly took issue with not having received proper notice of the threats before trial. *Id.* at 64-65, 68-69. The record does not establish that the trial court made a definitive ruling or explicitly conducted a balancing test under GRE 403 with respect to this evidence. *See generally id.* Nevertheless, we will now apply the *Hinton* test to determine the admissibility of the testimony of the prior threats.

**a. Relevance**

**[23]** "Under the first prong of the *Hinton* test, the evidence must prove a material element of the crime charged." *Camaddu*, 2015 Guam 2 ¶ 50 (citing *Torres*, 2014 Guam 8 ¶ 42). John was charged with, among other crimes, committing murder (as a First Degree Felony). *See* RA, tab 7 at 1-2 (Indictment, Feb. 26, 2015). "Criminal homicide constitutes murder when: (1) it is committed intentionally or knowingly . . . ." 9 GCA § 16.40(a)(1) (2005). At trial, the People introduced the challenged evidence for the purpose of proving intent. Tr. at 60 (Jury Trial, May 19, 2015). John disputed his mental state by asserting the defense of self-defense and requesting a jury instruction regarding intoxication. *See* RA, tab 22 at 1, 5 (*In Limine* Mots., Apr. 8, 2015). The People held the burden to prove intent as an element of the crime charged, and we have previously noted that the People may prove intent by introducing evidence of a prior bad act. *See Palisoc*, 2002 Guam 9 ¶ 12 (footnote omitted) (citing *Quintanilla*, 2001 Guam 12 ¶ 13; *United States v. Hadley*, 918 F.2d 848, 851 (9th Cir. 1990)); *see also Evaristo*, 1999 Guam 22 ¶ 13 (stating that admission of 404(b) prior bad acts evidence was proper in that it was intended to both weaken the assertion of self-defense as well as establish the element of intent to commit the

alleged crime). The evidence of John's prior threats tends to prove the mental element of intent to murder Reyes. Specifically, stating "I'm going to kill you" proves an individual's conscious objective to cause the death of another human being. The trial court discussed how threats may show the intent of a person:

> Well, how does his opinion about what he's going to do say anything about the person's actual intent unless his statement is the result of some participating event, such as he made a threat? That shows the defendant's intent, obviously, and if he's reporting the communication of that threat, then it has great probative value in that respect.

Tr. at 5 (Jury Trial, May 19, 2015). The trial court's reasoning is sound. The threats are therefore relevant because they help to establish a material element for the crime charged of murder with intent to kill.

**b. Similarity**

**[24]** "The second prong of the *Hinton* test asks whether there is a similarity between the past conduct *and the conduct charged*." *Camaddu*, 2015 Guam 2 ¶ 51 (citing *Torres*, 2014 Guam 8 ¶ 43). "The acts need only be 'sufficiently similar' so as to help establish elements such as intent." *Torres*, 2014 Guam 8 ¶ 43. In *Torres*, for example, this court held that evidence "plac[ing] Torres in a closed bedroom with [the victim], who was in only a bra, panties, and blindfold" was "sufficiently similar" to the crime of Third Degree Criminal Sexual Conduct because there were "clear sexual undertones" to the prior act and that prior act "concern[ed] the relationship between [the defendant] and [the victim]." *Id.* Here, Pelena's testimony indicated that when John was intoxicated, John would threaten to kill Reyes. Tr. at 79-80 (Jury Trial, May 19, 2015). This conduct is sufficiently similar to the conduct charged as John was also intoxicated that night he stabbed Reyes and the prosecution alleged that John had the intent to kill Reyes. *See* Tr. at 71, 96 (Jury Trial, May 18, 2015).

**c. Sufficiency and Proximity**

**[25]** "John concedes that the third and fourth prong[s] were satisfied." Reply Br. at 3. Because we find the first two factors are met and John concedes on the last two factors, all four factors under the *Hinton* test are satisfied. The next step is to conduct a balancing test under GRE 403.

**2. GRE 403 Balancing Test – Abuse of Discretion**

**[26]** Once concluding evidence of the prior threats falls within the scope of GRE 404(b) evidence, the court must balance the probative value of the prior bad acts against its prejudicial effect. *See Palisoc*, 2002 Guam 9 ¶ 28. "Under [GRE] 403, even relevant evidence may be excluded if 'its probative value is substantially outweighed by the danger of unfair prejudice.'" *Id.* (quoting Guam R. Evid. 403). We apply an abuse of discretion standard when reviewing the trial court's application of this balancing test under GRE 403. *See id.* (citing *Evaristo*, 1999 Guam 22 ¶ 6; *Arambula-Ruiz*, 987 F.2d at 603). Under the abuse of discretion standard, John "must show that the trial court's decision to admit the evidence over his [objection] is not justified by the evidence and is clearly against the logic and effect of the facts as are found." *Quintanilla*, 2001 Guam 12 ¶ 9 (citing *People v. Tuncap*, 1998 Guam 13 ¶ 12).

**[27]** Here, the record does not show that the trial court conducted a balancing test under GRE 403 pertaining to the evidence proffered as a result of Pelena's testimony of the prior threats. Moreover, the trial court did not issue a limiting instruction regarding the evidence of the prior threats. Therefore, the trial court erred and abused its discretion by its failure to conduct a balancing test under GRE 403 and failure to provide a limiting instruction. Nevertheless, this erroneous evidentiary ruling does not automatically constitute *per se* reversal. We must now

determine whether the error of admitting the evidence of the prior threats constitutes harmless error.

**3. Harmless Error**

**[28]** Reversal of a conviction based on an erroneous evidentiary ruling is warranted when this court finds the trial court abused its discretion and the error was prejudicial. *See Camaddu*, 2015 Guam 2 ¶ 70 (quoting *Gilbrook v. City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999)). "Reversal of a jury verdict is not warranted unless the evidentiary error affects a party's substantial rights." *Id.* (quoting *Gilbrook*, 177 F.3d at 858). "Non-constitutional errors by the trial court only require reversal 'if it is more probable than not that the erroneous admission of the evidence *materially affected the jurors' verdict*.'" *Id.* (emphasis added) (citations omitted). "If 'other, properly admitted evidence of the defendant's guilt is overwhelming,' then it is more likely than not the erroneous admission did not materially affect the jurors' verdict." *Palisoc*, 2002 Guam 9 ¶ 31 (quoting *United States v. Ezzell*, 644 F.2d 1304, 1306 (9th Cir. 1981)).

**[29]** As the Second Circuit noted in *Zappulla v. New York*, when analyzing the erroneous admission of evidence under the harmless error standard, the following factors are considered:

(1) the overall strength of the prosecution's case;

(2) the prosecutor's conduct with respect to the improperly admitted evidence;

(3) the importance of the wrongly admitted testimony; and

(4) whether such evidence was cumulative of other properly admitted evidence.

391 F.3d 462, 468 (2d Cir. 2004) (citations omitted). The Second Circuit applied these factors in *United States v. McCallum* in its analysis of erroneous admission of Federal Rules of Evidence 404(b) evidence. *See* 584 F.3d 471, 477-78 (2d Cir. 2009). The *McCallum* court stated that "the

strength of the government's case is the most critical factor in assessing whether error was harmless." *Id.* at 478 (citing *United States v. Lombardozzi*, 491 F.3d 61, 76 (2d Cir. 2007)).

**[30]** Overwhelming evidence was admitted proving that John was the cause for Reyes's death—John stabbed Reyes, noticed a copious amount of blood, heard Reyes yelling, and failed to assist Reyes. Tr. at 97-102 (Jury Trial, May 18, 2015); Tr. at 179, 208-15 (Jury Trial, May 19, 2015). The People's case is strong because John admitted he stabbed Reyes and left him outside screaming. The People also proffered eye-witness neighbor testimony that indicated that John was on top of Reyes and stabbing him while Reyes was screaming for John to stop. The record is devoid of the People emphasizing or repeatedly calling the jury's attention to the evidence of the prior threats. Moreover, John was acquitted of the charge for which the People sought to introduce the evidence of the prior threats. John was convicted of murder by a reckless nature (extreme indifference to the value of human life) and not murder with intent to kill. The lack of a limiting instruction and the admission of the evidence likely did not materially affect the jurors' verdict. John testified in his own defense, and therefore had an opportunity to be heard by the jury on his claim of self-defense. The jury was free to judge for themselves John's testimony against the testimony of others. After weighing the factors as expressed in *Zappulla* we find that the People's case (that John committed reckless murder) was indisputably strong. It was harmless error for the court to allow evidence of the prior threats.

**[31]** Evidence of the prior threats satisfied the four factors of the *Hinton* test. However, the trial court abused its discretion when it admitted the evidence without conducting a balancing test under GRE 403 and when it did not issue a limiting instruction. Nevertheless, the improper admission of the prior threats was harmless error because the People's case was indisputably strong and the People did not emphasize the evidence at trial. Thus, John's argument that the

trial court erroneously permitted evidence of other wrongs or acts in violation of GRE 404(b) does not warrant reversal of his convictions.

**B. Self-Defense Jury Instruction**

**[32]** John next argues on appeal that the trial court erred in failing to properly instruct the jury on the topic of self-defense. He maintains, for the first time on appeal, that the trial court's jury instruction for self-defense "did not properly inform the jury it was obligated to acquit John if the [People] failed to disprove the defense beyond a reasonable doubt." Appellant's Br. at 20. Because the instruction is allegedly similar to the one given in *People v. Gargarita*, 2015 Guam 28, and because the instruction allegedly constitutes plain error, John contends that his convictions should be reversed. *Id.* at 17-22.

**[33]** The People counter by arguing that, although the jury instruction was likely done in error and the error was likely clear, the error did not affect John's substantial rights and reversal is not necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process. Appellee's Br. at 41-44. The People maintain that John "could not give a single, clear articulation of how [Reyes] was the initial aggressor" and that the facts establishing reckless murder are "overwhelming[]" in this case. *Id.* at 42-43.

**[34]** The trial court instructed the jury on self-defense as follows:

> Okay, now I'm going to read you an instruction about self-defense. . . . All right, Title 9, [GCA] Section 7.84 provides that the 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] Section 7.86 provides that the use of force is not justifiable under Title 9, [GCA] Section 7.84 in the following instance: (1) the use of deadly force is not justifiable under Title 9, [GCA] Section 7.84 unless the defendant believes that such force is necessary to protect himself against death or serious bodily harm. Nor is it justifiable if the defendant knows that he can avoid the necessity of using such force with complete safety by retreating.

> Title 9, [GCA] Section 7.86 also provides that a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating.
>
> . . . .
>
> Title 9, [GCA] Section 7.96 provides that the justification afforded by Section[s] 7.84 and 7.86 is unavailable when, (1) the defendant's belief in the unlawfulness of the force or conduct against which he employs protective force is erroneous, and (2) his error is due to ignorance or mistake as to the provisions of this code or any other promotion provision of the criminal law.
>
> Title 9, [GCA] Section 7.96 also provides that when the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under Title 9, [GCA] Section[s] 7.84 and 7.86 but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of his use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.
>
> If you find that the above Title 9, [GCA] Section 7.96 applies to defendant's action and state of mind, you must also find that the legal defense of self-defense may not be considered in your deliberations. When a defense of self-defense is raised, the Government has the burden of disproving the defense beyond a reasonable doubt.

Tr. at 22-25 (Jury Trial, May 21, 2015).

**[35]** We previously discussed an identical issue in *Gargarita*. *See generally Gargarita*, 2015 Guam 28. The trial court in *Gargarita* failed to explicitly instruct the jury that self-defense is a justification and that a failure by the prosecution to disprove self-defense beyond a reasonable doubt must lead to an acquittal. *See id.* ¶¶ 13, 15-16. On appeal, we found plain error and reversed the defendant's conviction. *See id.* ¶¶ 1, 40. Analogous to *Gargarita*, the trial court in this instance did not instruct the jury that if the prosecution failed to disprove self-defense beyond a reasonable doubt, then the jury must acquit John of the charges. *See* Tr. at 22-25 (Jury Trial, May 21, 2015). Because John did not object to the self-defense instruction at trial, the

plain error standard of review also applies. Therefore, to warrant a reversal of his convictions, John must prove that the included self-defense jury instruction "(1) [constitutes] error; (2) [that] the error is clear or obvious under current law; (3) [that] the error affected [his] substantial rights; and (4) [that] reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process." *Gargarita*, 2015 Guam 28 ¶ 11 (quoting *Felder*, 2012 Guam 8 ¶ 19).

**1. Whether the Self-Defense Jury Instruction was Erroneous**

**[36]** The trial court did not instruct the jury to acquit John if the People failed to disprove John's self-defense claim beyond a reasonable doubt. The trial court similarly omitted this jury instruction in *Gargarita*. We stated that "[s]uch an instruction is pivotal because it ensures the jury takes the appropriate step of reaching a 'not guilty' verdict in the event that a reasonable doubt remains with regard to whether the defendant acted in self-defense." *Id.* ¶ 16. Without this instruction, we concluded that the entirety of the jury instructions did not properly inform the jury of its responsibilities in adjudicating the issue of self-defense. *Id.* Here, we also find that the trial court committed error in its failure to instruct the jury to acquit John if the prosecution failed to meet its burden on the issue of self-defense even if all of the elements of the charges against John were met. The first prong of the plain error analysis is satisfied.

**2. Whether the Error was Clear or Obvious under Current Law**

**[37]** The second prong requires us to determine whether the error of omitting language from the jury instruction was plain in that the error was clear or obvious under current law.[1] *See id.* ¶

[1] In *Gargarita*, we emphasized further that

> [a] determination of whether an error is "clear" for purposes of the plain error analysis does not require the existence of precedent exactly on point. The "plainness" of the error can depend on well-settled legal principles as much as well-settled legal precedents. We can, in certain cases, notice plain error in the absence of direct precedent, or even where uniformity among the circuits, or among state courts, is lacking. This rule is particularly appropriate for our jurisdiction, whose case law consists of less than twenty years of Guam Supreme Court precedent. It would be unfair

20. This analysis is similar to *Gargarita*, where the trial court did not have the benefit of a Guam appellate court providing specific guidance as to the content of a jury instruction on self-defense. *Id.* ¶ 21. Notwithstanding, in *Gargarita*, we concluded the error was clear and that the error did not lucidly and accurately state the law. *Id.* Our analysis under this prong would not alter from *Gargarita*, and we find the second prong also satisfied.

**3. Whether the Error Affected Substantial Rights**

**[38]** In concluding that the trial court's instruction was a clear instructional error, we must now determine whether the error affected John's substantial rights. *See id.* ¶¶ 11, 23. An error affects a defendant's substantial rights when the error was prejudicial such that it affected the outcome of the case. *See id.* ¶ 23 (quoting *People v. Fegarido*, 2014 Guam 29 ¶ 41). The defendant holds the burden to prove prejudice by showing that the error "constitute[s] a mistake so serious that but for it the defendant probably would have been acquitted." *Id.* (quoting *Fegarido*, 2014 Guam 29 ¶ 41). The duty of the reviewing court is to examine the entire record and "determine whether the instructional mistake had a probable impact on the jury's finding that the defendant was guilty." *Id.* (quoting *United States v. Jackson*, 569 F.2d 1003, 1010 (7th Cir. 1978)).

**[39]** John maintains that the evidence shows that Reyes was the initial aggressor since he brought a knife to John's porch and used a broken bottle to attack John. Appellant's Br. at 21; Reply Br. at 7. John also claims that the evidence proved that John had injuries consistent with being in a fight by sustaining injuries to his fingers, back, and arm. Appellant's Br. at 21. By not assisting Reyes after John stabbed him, he claims "[i]t was reasonable for John to seek the

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to require defendants to demonstrate plain error with a case directly on point given that many issues have not yet been resolved by this court.

2015 Guam 28 ¶ 20 (quoting *People v. Perry*, 2009 Guam 4 ¶ 32).

sanctuary of his home because he had just been attacked by [Reyes]." Reply Br. at 8. He also asserts that because the evidence showed Reyes was the initial aggressor, his "'case hinged on the jury clearly understanding its role in determining whether he acted in justifiable self-defense.'" Appellant's Br. at 21 (quoting *Gargarita*, 2015 Guam 28 ¶ 24). He contends that the third prong is satisfied and that the "deficient instruction affected the substantial rights of John because it did not sufficiently inform the jury of its duty if it found that the government failed to disprove John's defense." *Id.* at 21-22.

**[40]** The People oppose by stating that the evidence was not so clear that Reyes was the initial aggressor and that John "could not give a single, clear articulation of how [Reyes] was the initial aggressor." Appellee's Br. at 41-42. The People claim that not only was there overwhelming evidence proving that John committed reckless murder, but the level of force used by John was unreasonable. *Id.* at 42-43.

**[41]** After reviewing the record, John was the only witness that could account for how the altercation with Reyes initially transpired. John testified in his own defense, claiming that Reyes started the fight by slapping him in the face and stabbing him with the broken bottle. Tr. at 173, 179, 186 (Jury Trial, May 19, 2015). John's account of the night also included Reyes cursing at him and grabbing his hair from the table where John was sitting. *Id.* at 179, 206, 208. At trial, John also testified that when Reyes was retrieving his items from the table and preparing to leave, John did not go inside his house because he "couldn't . . . because [he] knew that that time, [Reyes] was going to attack [him]." *Id.* at 186.

**[42]** No other witness testified to the incident other than John's neighbor, Atenap. Atenap testified that around 1:00 a.m. she heard sobbing like someone was going to die. Tr. at 96 (Jury

Trial, May 18, 2015). She looked outside through her screen door and saw John on top of Reyes; she witnessed John stabbing Reyes while Reyes was telling John to stop. *Id.* at 96-98.

**[43]** Under Guam's self-defense statutes, use of force is not justifiable unless the defendant believes such force is necessary to protect him or herself against, among other things, death or serious bodily harm. *See* 9 GCA § 7.86(b) (2005). The use of deadly force is also not justifiable if the defendant knows that he can avoid the necessity of using such force with complete safety by retreating. *Id.* § 7.86(b)(2) (2005). This obligation, however, does not apply when the defendant is in his dwelling unless the defendant was the initial aggressor. *Id.* § 7.86(b)(2)(A) (amended by Pub. L. 32-111:2 (Feb. 10, 2014)). Subject to certain limitations, "a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used, without retreating . . . ." *Id.* § 7.86(c) (2005).

**[44]** Appellate courts from other jurisdictions have affirmed a guilty verdict over a defendant's claim of self-defense when the evidence showed that the defendant stabbed the victim in the back. *See Cleveland v. Texas*, 177 S.W.3d 374, 380-81 (Tex. App. 2005), *cert. denied*, 547 U.S. 1073 (2006) (finding that the jury could have reasonably concluded that defendant's conduct in continuing to stab victim's back as the victim lays bleeding on the floor inconsistent with the defendant's claim of self-defense); *see also Louisiana v. Brumfield*, 639 So. 2d 312, 316 (La. Ct. App. 1994); *Louisiana v. Bell*, 442 So. 2d 715, 717 (La. Ct. App 1983), *writ denied*, 444 So. 2d 1244 (La. 1984).[2] Like in those cases, John's use of force may have been unreasonable to constitute a valid self-defense claim, even if Reyes was the initial aggressor. *See*

[2] In *Louisiana v. Bell*, the reviewing court found that it was proven beyond a reasonable doubt that the defendant used a knife to stab the victim multiple times in the back and arms and the victim was "extremely intoxicated" at the time of the altercation. 442 So. 2d at 717. The court stated that "[e]ven assuming the victim [was the initial aggressor], we are convinced defendant could have defended himself by less dramatic measures. In short, his actions (of repeatedly stabbing the victim in the back) were not necessary to save himself from any perceived danger." *Id.*

*Louisiana v. Taylor*, 721 So. 2d 929, 932 (La. Ct. App. 1998) ("Even if the victim herein was initially the aggressor, it was unreasonable for defendant to respond with deadly force. . . . It is particularly pertinent in this regard that the victim was unarmed and was stabbed in the back . . ."); *see also Oregon v. Stapp*, 338 P.3d 772, 776 (Or. Ct. App. 2014) (finding harmless error in admitting evidence of past acts where evidence established defendant reacted to threat "by stabbing [the victim] eight times, including in the back of the legs" and thus "the error at issue here had little likelihood of affecting the jury's verdict as to the 'reasonable use of force' issue").

**[45]** Dr. Espinola, Guam's Chief Medical Examiner, performed an autopsy to determine the manner and cause of death. Tr. at 122-23 (Jury Trial, May 13, 2015). Espinola testified that the main cause of death was a stab wound to the thigh. *Id.* Reyes sustained cuts, scratch marks, trauma, and stabs on his back, back of arms, elbow, and back of hands, as well as a dislocated shoulder. *Id.* at 129-53. This testimony was corroborated by Dr. Carlson, a Guam Memorial Hospital surgeon, who indicated that Reyes sustained two stab wounds on his right thigh, one each to his left thigh, left shoulder, finger, and multiple slash wounds to his back. Tr. at 118-19 (Jury Trial, May 18, 2015). John did not have serious injuries except scratches and redness to his hands, fingers, and bicep. *Id.* at 29-45. Reyes's co-worker, Jao, testified that Reyes was drinking that night. *Id.* at 71. John's neighbor, Atenap, provided eye-witness testimony indicating that John was on top of Reyes when Reyes was screaming for John to stop. *Id.* at 97, 102.

**[46]** John testified that Reyes slapped him in the face, stopped, and picked up his items from the patio table; Reyes then cussed at him; John then stood up, pushed Reyes, and hit Reyes; Reyes fell on the floor with the knife when John proceeded to grab the knife and then stab Reyes. Tr. at 179 (Jury Trial, May 19, 2015). John later stated that after Reyes grabbed his items, Reyes

was also trying to grab his hair and pull John away from the table. *Id.* at 206-08. John admitted he stabbed Reyes in the leg so that Reyes could not attack him. *Id.* at 180-85. He also raises credibility concerns in that he claims he did not cut Reyes in the back despite Dr. Espinola's testimony. *Id.* at 180. He also claims that the investigating officer, Bia Nanato, lied in testifying that during his investigation, John told Officer Nanato he never saw a body and that John informed Officer Nanato that his injuries were from bush cutting. *Id.* at 216-18.

**[47]** Generally speaking, "credibility determinations, as well as the weight to be attributed to the evidence, are soundly within the province of the jury's trial function." *Brumfield*, 639 So. 2d at 316 (citing *State ex rel. Graffagnino v. King*, 436 So. 2d 559 (La. 1983)). A reviewing court will not overturn a guilty verdict on self-defense grounds where it is "persuaded beyond a reasonable doubt that no reasonable jury could have found [defendant's conduct] were lawful acts of self-defense." *Washington v. Kidd*, 786 P.2d 847, 851 (Wash. Ct. App. 1990).

**[48]** We find beyond a reasonable doubt that the evidence overwhelmingly shows that John used force far above what could be considered reasonable in proportion to the threat that he allegedly faced and that a reasonable jury would have rejected any evidence to the contrary. In *Gargarita*, we stated that a "layperson cannot be assumed to know the amount of time that choking a person will lead to death or to know with certainty the amount of time that has passed when in the midst of a violent struggle." 2005 Guam 28 ¶ 31. Therefore, "the difference in force used to choke a person to unconsciousness and to choke a person to death is a much finer line" in determining reasonableness when compared to cases like this, where the defendant violently stabbed the victim. *Id.* ¶ 28. We also discussed certain cases that the People cited in *Gargarita*. *See id.* In *United States v. Jackson*, the defendant also claimed self-defense, but the court did not find plain error where the defendant used excessive force against that victim. 569 F.2d 1003,

1010 (7th Cir. 1978), *cert. denied*, 437 U.S. 907 (1978). In *New Hampshire v. Richard*, the reviewing court also did not find plain error because the evidence showing that the defendant did not act in self-defense was overwhelming. 7 A.3d 1195, 1203 (N.H. 2010). Here, a combination of the facts that Reyes was likely intoxicated at the time of the incident, the neighbor's eye-witness testimony that both John and Reyes were on the ground where John was on top of Reyes, Reyes suffering multiple stab wounds and slashes on his back, while John had few scratches on his hands and arm, proves that John passed the threshold of using reasonable force. Therefore, we conclude that the People met their burden to disprove John's self-defense claim beyond a reasonable doubt because the evidence of John's guilt is overwhelming.

**[49]** The third prong of the plain error analysis is not satisfied because there is overwhelming evidence showing the People met their burden to disprove John's self-defense theory beyond a reasonable doubt. John therefore failed to meet his burden to prove that the instructional error was a mistake so serious that he probably would have been acquitted. Thus, we will not reverse his convictions based on the self-defense jury instruction issue raised on appeal.

**C. The Trial Court Properly Denied Instructing the Jury on the Castle Doctrine**

**[50]** John also asserts that it was plain error for the trial court to refuse to instruct the jury on the Castle Doctrine under 9 GCA §§ 7.111-7.114, "when it interpreted the meaning of a residence [u]nder the Castle Doctrine to not include a porch." Appellant's Br. at 24. He cites to various jurisprudence that declares that a porch is a part of a person's dwelling. *Id.* It is John's position that the "porch was for all intents and purpose[s] connected to John's bedroom, therefore it was an appurtenance attached to his dwelling," and "[t]he trial court's interpretation of habitable property was incorrect." *Id.* John contends that "the Castle Doctrine was an integral

part of his defense, and he was prejudiced when the court prevented him from arguing it before the jury." Reply Br. at 11-12.

**[51]** The People concede that the abuse of discretion standard applies. *See* Appellee's Br. at 48. The People assert, however, that the trial court did not abuse its discretion in denying the jury instruction because it "found insufficient factual basis to include the instruction; and, [because Reyes] lay clear and away of the porch when [John] stabbed him on the ground, there appeared to be flimsy factual basis on which to include the Castle Doctrine as a jury instruction." *Id.*

**[52]** The trial court's ruling in which it denied John's request to charge the jury regarding the Castle Doctrine indicated the following:

> I am convinced that the intent of the statute is to address any intrusion into the sanctum sanctorum. It's because there's a -- if there's a door and walls, even if they're screened, if there was a door on this porch with -- even regardless of whether there was screening above the low walls, I think that that is what characterizes a residence for purpose of the statute because he can retreat into his home and close the door and bar entry to the King of England and whoever else, even though the wind may still whistle through all the holes in the walls, you know, as the expression goes. And that's how I find factually that this does not fall under the castle doctrine, because of the lack of a door that would be breached to make it a part of the residence proper.

Tr. at 32 (Jury Trial, May 20, 2015).

**[53]** "A criminal defendant is entitled to jury instructions related to a defense theory so long as there is 'any foundation in the evidence'" and it is supported by the law. *United States v. Doe*, 705 F.3d 1134, 1144 (9th Cir. 2013) (quoting *United States v. Burt*, 410 F.3d 1100, 1103 (9th Cir. 2005)); *see also United States v. Montgomery*, 819 F.2d 847, 851-52 (8th Cir. 1987) ("[A] party is entitled to an instruction reflecting the party's theory of the case if a timely request is made and the proffered instruction is supported by the evidence and correctly states the law." (citations omitted)).

**[54]** The issue that John raises on appeal requires us to determine only the narrow issue of whether a porch or patio is within the reach of the Castle Doctrine Act as adopted by Guam. Stated differently, we must determine whether the Castle Doctrine Act, as codified at 9 GCA §§ 7.111-7.114, provides immunity to a defendant who uses force—up to deadly force—against an unlawful intruder when the defendant is located on his porch or patio. If a patio or porch is included within the reach of the Castle Doctrine, then John was entitled to the jury instruction under the circumstances of this case.

**[55]** Our analysis turns on statutory interpretation of the Castle Doctrine Act, codified in 9 GCA §§ 7.111-7.114. "It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself. Absent clear legislative intent to the contrary, the plain meaning prevails." *People v. Camacho*, 2015 Guam 37 ¶ 31 (quoting *Enriquez v. Smith*, 2012 Guam 15 ¶ 11); *see also People v. Kim*, 2015 Guam 25 ¶ 13. "[I]n determining legislative intent, a statute should be read as a whole, and . . . [we] construe each section in conjunction with other sections." *Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 (citing *Kelly v. Robinson*, 479 U.S. 36, 43 (1986)). "Accordingly, '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *Id.* (alteration in original) (quoting *Kelly*, 479 U.S. at 43). "If a statute is ambiguous as to a certain term, courts will look to the legislative history in order to ascertain the legislative intent." *In re: Request of I Mina'Trentai Dos Na Liheslaturan Guåhan*, 2014 Guam 24 ¶ 13 (citing *Burlington N.R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 461 (1987)).

**[56]** Guam's Legislature specified its intent in enacting the Castle Doctrine Act, by codifying its Legislative Findings and Intent, which state:

> [I]t is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action from acting in defense of themselves and others.
>
> . . . .
>
> [T]he "Castle Doctrine" is a common-law doctrine of ancient origins that declares that a person's home is his or her castle.
>
> . . . .
>
> Therefore, it is the intent of *I Liheslatura* that no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

9 GCA § 7.111 (added by P.L. 32-111 (Feb. 10, 2014)). The Castle Doctrine justifies a person's use of defensive force against another when certain circumstances are present. *See id.* § 7.112. The Act provides that:

> (a) A person is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily injury to another if:
>
> > (1) the person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully or forcefully entered, *a business, residence, or occupied vehicle*, or if that person had removed or was attempting to remove another against that person's will from the *business, residence, or occupied vehicle*; and
> >
> > (2) the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

*Id.* § 7.112(a) (added by Pub. L. 32-111 (Feb. 10, 2014)) (emphases added). When a person unlawfully and by force enters or attempts to enter a person's *business, residence, or occupied vehicle*, then that person "is presumed to be doing so with the intent to commit an unlawful act involving force or violence." *See id.* § 7.112(c) (added by Pub. L. 32-111 (Feb. 10, 2014)). The statute clearly indicates that the justification provided for by the Castle Doctrine only applies in

the areas of a "business, residence, or occupied vehicle." *See id.* §§ 7.112-7.114 (added by Pub. L. 32-111 (Feb. 10, 2014)). The terms "habitable property" and "residence" are defined terms within the statute. The statute states, in pertinent part:

> (d) As used in this Section, the term:
>
> (1) *habitable property* has the meaning provided by § 34.10. Habitable property, as used in this Section, are limited to business buildings, for which the victim has beneficial control and use; and residences, vehicles and house boats for which the victim has a legal right to occupy.
>
> Habitable property, as used in this Section, *does not* include yards or outdoor spaces surrounding business buildings, residences, vehicles or house boats. . . .
>
> . . . .
>
> (3) *residence* as used in this Chapter, means a habitable property in which a person resides, either temporarily or permanently, or is visiting as an invited guest.

*Id.* §§ 7.112(d)(1), (3) (added by P.L. 32-111 (Feb. 10, 2014)); *see also Kim*, 2015 Guam 25 ¶ 15 (discussing the meaning of habitable property as provided in 9 GCA § 34.10, stating *habitable property* means any "structure, vehicle or vessel adapted for the accommodation or occupation of persons" (citing 9 GCA § 34.10)). The plain language of the Act conveys that the reach of the Castle Doctrine does not apply when that force is used in yards or outdoor spaces that surround residences. *See* 9 GCA § 7.112(d)(1). The issue before us turns on whether a porch is an outdoor space surrounding a residence.

**[57]** John cites to three cases in support of his position that the Castle Doctrine's reach includes events occurring on a porch. Appellant's Br. at 24. John initially cites to the case *State v. Bonano*, 284 A.2d 345 (N.J. 1971), decided by the Supreme Court of New Jersey. *Id.* The *Bonano* case involved a homeowner using deadly force against an unwelcomed individual. 284

A.2d at 347-48. The homeowner was standing at his own doorway, while the intruder was on his porch approaching the homeowner. *Id.* The court stated that the justification under New Jersey's Castle Doctrine applies to "[a] porch or other similar physical appurtenance" but this rule is limited to "those cases where the defendant is *actually in* his *dwelling* house." *Id.* at 347 (emphases added).

**[58]** John then cites to the Supreme Court case, *Florida v. Jardines*, 133 S. Ct. 1409 (2013). Appellant's Br. at 24 (citation omitted). In *Jardines*, the Court stated that "[t]he area 'immediately surrounding and associated with the home'—what our cases call the curtilage—[i]s 'part of the home itself *for Fourth Amendment purposes*.' . . . The front porch is the classic exemplar of an area adjacent to the home and 'to which the activity of home life extends.'" 133 S. Ct. at 1414-15 (emphasis added) (quoting *Oliver v. United States*, 466 U.S. 170, 180, 182 (1984)).

**[59]** Lastly, John cites to a case decided by the Supreme Court of Michigan, *People v. Riddle*, 649 N.W.2d 30, 33 (Mich. 2002). Appellant's Br. at 24 (citation omitted). In *Riddle*, the Michigan court stated that its interpretation of the common-law "castle doctrine applies to all areas of a *dwelling*—be it . . . an attached appurtenance such as a garage, porch or deck—[but] it does *not* apply to open areas in the curtilage that are not a part of a *dwelling*." 649 N.W.2d at 33 (first and last emphases added). "Thus, the castle doctrine is relevant only to acts of self-defense that take place in the *dwelling*." *Id.* at 45 (emphasis added).[3]

[3] The *Riddle* court also recognized that the Castle Doctrine derived from the common-law as it existed in 1846. *Riddle*, 649 N.W.2d at 43 n.26. However, Michigan's legislature codified the common-law doctrine. *Id.* As a result, the *Riddle* court noted the legislature's power to modify the common-law and "decide whether there are other places in which a defendant's failure to retreat cannot be considered as a factor in determining whether it was necessary for him to exercise deadly force in self-defense." *Id.* Such is also the case in Guam, whereby the "Guam Legislature has the power to modify the common law." *Guam Greyhound, Inc. v. Brizill*, 2008 Guam 13 ¶ 18 (citing *Liberty Warehouse Co. v. Burley Tobacco Growers' Coop. Mktg. Ass'n*, 276 U.S. 71, 89 (1928)).

**[60]** John's proffered cases are not persuasive, and we will not follow the principles from these cases for several reasons. *Jardines* is not convincing to support John's position because the Court discussed areas protected only for Fourth Amendment purposes. Analysis on what areas would constitute unlawful searches and seizures is substantially different in context and purpose when discussing what constitutes an area where a person may use defensive force, including deadly force. The *Bonano* and *Riddle* cases consistently use the term "dwelling" as an area in which the Castle Doctrine applies. In those cases, a porch is a part of a "dwelling." Florida's codified version of the Castle Doctrine, for example, applies to "a dwelling, residence, or occupied vehicle." Fla. Stat. Ann. § 776.013(1)(a) (West 2014). Under the Florida statute, "dwelling" is defined as "a building or conveyance of any kind, *including any attached porch* . . . ." *Id.* § 776.013(5)(a). Guam's Castle Doctrine Act uses no such language. *See* 9 GCA §§ 7.111-7.114.

**[61]** In fact, the initial version of Guam's Castle Doctrine Act, introduced as Bill No. 146-32, closely resembled the language from the Florida version and included the language "dwelling, residence, or occupied vehicle." *Compare* Fla. Stat. Ann. § 776.013, *with* Legis. B. No. 146-32, 32d Guam Legis., Reg. Sess. (Guam 2013). In the original version of Bill No. 146-32, the term "dwelling" was also defined to include "any attached porch," mirroring the Florida definition. *See* Legis. B. No. 146-32, 32d Guam Legis., Reg. Sess. (Guam 2013). An amended version of this bill was passed as Guam Public Law 32-111. *See* Guam Pub. L. 32-11 (Feb. 10, 2014). A red-lined version of the text contained in the legislative history to Public Law 32-111 shows that the Legislature replaced "dwelling" with "habitable property" and omitted the inclusion of "any attached porch" in the final, adopted version. *Id.* As it is codified today, the Castle Doctrine

Act's language does not provide for the inclusion of an attached porch. *See* 9 GCA §§ 7.111-7.114.

**[62]** Based on the legislative history, the fact that the Act does not use the term "dwelling" or the phrase "any attached porch," and because the Act specifies that a residence is a habitable property and habitable property "does not include yards or outdoor spaces," we find and now conclude that an attached porch is not included within the province of the Castle Doctrine Act as adopted in Guam. Therefore, when a person uses force while located on an attached porch, the justification under Guam's Castle Doctrine Act does not apply. John used force against Reyes while he was located on his attached porch. Because we hold that a porch is not included within the province of the Castle Doctrine, the admitted evidence does not support the inclusion of a jury instruction for a defense under the Castle Doctrine Act. Thus, the trial court did not abuse its discretion in denying jury instructions regarding the Castle Doctrine Act.

**D. John Was Not Denied Effective Assistance of Counsel**

**[63]** The last issue that John raises on appeal is a claim that he "received ineffective assistance of counsel because [his trial] counsel failed to object when the trial court denied the request to read the instruction on the Castle Doctrine." Appellant's Br. at 27. This claim holds no merit. Trial counsel properly preserved the claim of error at trial when the Castle Doctrine was discussed at length between the trial court and the parties. *See* Tr. at 23-33 (Jury Trial, May 20, 2015). In any event, as discussed above, the trial court's failure to instruct the jury as to the Castle Doctrine was not error. John's claim of ineffective assistance of counsel therefore does not support a reversal of his convictions.

## V. CONCLUSION

**[64]** For the reasons discussed above, we conclude that the trial court did not commit reversible error. Accordingly, the Amended Judgment of Conviction is **AFFIRMED**.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice