IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

DAVID Q. MANILA,
Defendant-Appellant.

Supreme Court Case No.: CRA14-007
Superior Court Case No.: CF0020-08

OPINION

Cite as: 2015 Guam 40

Appeal from the Superior Court of Guam
Argued and submitted on February 23, 2015
Hagåtña, Guam

Appearing for Defendant-Appellant:
Terence E. Timblin, *Esq.*
Yanza, Flynn, Timblin, LLP
446 E. Marine Corps Dr., Ste. 201
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

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

MARAMAN, J.:

[1] Defendant-Appellant David Q. Manila appeals from a judgment of conviction following a jury trial. Manila was tried and convicted along with Anthony T. Quenga. We disposed of Quenga's appeal in *People v. Quenga*, 2015 Guam 39. Manila seeks reversal of his convictions based on claims of insufficiency of the indictment, insufficiency of the evidence, and various other arguments. For the reasons herein, we reverse in part, affirm in part, and remand to vacate the improper convictions and for resentencing.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On the night of January 12, 2008, the Guam Police Department discovered that Blue House, a karaoke bar in Upper Tumon, was a front for prostitution. Investigations revealed that the owner, Song Ja Cha, had arranged with a man in Chuuk to send several young Chuukese women to Guam to work at Blue House. The women were told they would be working at a restaurant or in a store but instead were held against their will and forced to serve as prostitutes. Cha was arrested, along with Saknin Weria and Freda Eseun, two Blue House employees who had acted as supervisors, and charged with compelling prostitution, promoting prostitution, felonious restraint, and assault.

[3] The investigation grew to include three members of the Guam Police Department, David Q. Manila, Anthony T. Quenga, and Mario L. Laxamana, who were suspected of having used their influence as law enforcement officers to keep Blue House employees from running away or seeking help and coercing them to continue to engage in prostitution. Manila and Quenga were also each accused of rape by Blue House employees. On November 16, 2012, the People filed a

superseding indictment, charging them with several offenses and conspiracies. Manila filed two motions to dismiss, arguing that the public officer exception was inapplicable and that it was unconstitutionally vague. The trial court denied the motions, concluding that the statute was constitutional and applied to the case.

[4] Following a plea deal by Laxamana and additional superseding indictments, the operative indictment (i.e., the Fourth Superseding Indictment) charged Manila with several counts of kidnapping, felonious restraint, and compelling and promoting prostitution, as well as conspiracy to commit each of these crimes. *See* Record on Appeal ("RA"), tab 560 (Fourth Superseding Indictment, July 31, 2013). He was also charged with first degree and second degree criminal sexual conduct ("CSC") with regard to two victims. Finally, he was charged with two misdemeanors: criminal intimidation and official misconduct.

[5] Cha's trial was severed and Weria and Eseun received plea deals, leaving Manila and Quenga to be tried together. The trial lasted over a month and featured testimony from over twenty prosecution witnesses. Following the People's case, Manila made a motion for a judgment of acquittal, which was denied. The jury returned a verdict finding Manila guilty of five counts of conspiracy to commit kidnapping, five counts of first degree kidnapping, five counts of conspiracy to commit felonious restraint, five counts of felonious restraint, five counts of conspiracy to compel prostitution, five counts of compelling prostitution, six counts of conspiracy to promote prostitution, six counts of promoting prostitution, two counts of first degree CSC, two counts of second degree CSC, one count of criminal intimidation, and one count of official misconduct. Quenga was also found guilty of most charges.

[6] Subsequently, Manila filed a motion to reduce the kidnapping convictions to second degree kidnapping and a motion for a new trial. Both motions were denied. Later, Manila filed

a second motion for a new trial for newly discovered evidence, which was also denied. Manila was ultimately sentenced to two concurrent 30-year sentences of imprisonment for the first degree CSC convictions, to run concurrently with the sentences for the other convictions.

[7] This appeal followed.

II. JURISDICTION

[8] This court has jurisdiction over this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-93 (2015)), and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[9] We review the sufficiency of the indictment with regards to the statute of limitations for harmless error. *Quenga*, 2015 Guam 39 ¶ 8. The application of a particular statute of limitations is a question of law reviewed *de novo*. *Id.*

[10] We review timely raised objections to the sufficiency of an indictment with regard to the elements of an offense for harmless error. "Whether an indictment is duplicitous is a question of law reviewed *de novo*." *People v. Muna*, No. CR94-00075A, 1996 WL 104532, at *1 (D. Guam App. Div. Mar. 6, 1996), *rev'd on other grounds*, 110 F.3d 69 (9th Cir. 1997).

[11] We review the trial court's denial of a motion for judgment of acquittal based on insufficiency of the evidence *de novo*. *People v. Mendiola*, 2014 Guam 17 ¶ 14. On appeal, the reviewing court is not charged with making a determination as to the defendant's guilt. *Id.* ¶ 15. Instead, the reviewing court must determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in a light most favorable to the prosecution. *Id.* This standard is highly deferential. *Id.*

[12] The following standards govern our review of Manila's post-trial motions. "Issues of statutory interpretation are reviewed *de novo*." *People v. Flores*, 2004 Guam 18 ¶ 8. "The trial

court's denial of a defendant's motion for a new trial is reviewed for an abuse of discretion." *People v. Leslie*, 2011 Guam 23 ¶ 12 (citing *People v. Flores*, 2009 Guam 22 ¶ 9).

IV. ANALYSIS

A. Statute of Limitations

[13] We first address Manila's claims with respect to the statute of limitations. As he was indicted at the same time as his co-defendant Quenga, his claims raise identical issues to those that we decided in *Quenga*, 2015 Guam 39. We review the sufficiency of the indictment with regards to the statute of limitations for harmless error. *Quenga*, 2015 Guam 39 ¶ 8. The application of a particular statute of limitations is a question of law reviewed *de novo*. *Id.*

1. Sufficiency of the Indictment

[14] We must consider whether the indictment was sufficient with regard to the statute of limitations. "Where the People file a charging document that appears on its face to be outside the statute of limitation period, they must allege specific facts that toll or invoke an exception to the general statute of limitations in order to avoid dismissal." *Id.* ¶ 17.

[15] Here, at no point did the People allege in the indictment that Manila was a police officer within three years of being charged. As the indictment was otherwise outside the general statute of limitations, this allegation was necessary to invoke the public officer exception on which the People relied. Thus, the indictment should have been dismissed as insufficient.

[16] As in *Quenga*, however, the trial court's failure to dismiss the indictment on this basis was harmless error. 2015 Guam 39 ¶ 26. Manila was well aware of the prosecution's reliance on 8 GCA § 10.40, as his motions to dismiss on statute of limitations grounds were based on that statute's unconstitutionality or inapplicability. He raised no factual dispute, and his arguments for dismissal rested on the assumption that even though he was a police officer at the time he was

charged, the public officer exception was inapplicable because it should be interpreted to apply only to crimes discovered within three years of the indictment or it was unconstitutionally vague. Since Manila knew of the People's reliance on the omitted allegations and had full opportunity to challenge them, he was not prejudiced by the insufficient indictment. Thus, the court's error in failing to dismiss the indictment was harmless.

2. Applicability of the Public Officer Exception

[17] Manila also argues that the public officer exception is inapplicable as a matter of law.

> In order for the public officer exception . . . to be applicable, three separate elements must be satisfied. First, the defendant must be or have been a public officer or employee or a person acting in complicity with a public officer or employee. . . .
>
> Second, the prosecution must have been commenced while the defendant continues in public office or employment or within three years thereafter. . . .
>
> Finally, the charged offenses must be "offense[s] based upon misconduct in office."

Quenga, 2015 Guam 39 ¶¶ 34-36 (alteration in original) (quoting 8 GCA § 10.40 (2005)).

[18] It is undisputed that Manila was a police officer at the time the prosecution was commenced, thus satisfying the first two elements of the exception. The final element is likewise satisfied because the crimes with which Manila was charged were virtually identical to those with which Quenga was charged, which we held to be offenses based upon misconduct in office. *Id.* ¶ 41. Thus, the trial court's determination that the public officer exception applied to

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all of the charged offenses was correct, and we affirm the trial court's denial of Manila's motion to dismiss on that ground.[1]

B. Sufficiency of the Indictment

[19] We next address Manila's claims that certain charges in the indictment failed to provide notice of all essential elements of the crimes charged.

[20] In regards to the sufficiency of an indictment:

> It is well established that an indictment is sufficient which apprises a defendant of the crime with which he is charged so as to enable him to prepare his defense and to plead judgment of acquittal or conviction as a plea to subsequent prosecution for the same offense. We read an indictment in its entirety, construed according to common sense. When an indictment's sufficiency is challenged following a verdict, it is only required that the necessary facts appear in any form or by fair construction within the document. An indictment which tracks the words of the statute charging the offense is sufficient as long as the words unambiguously set forth all the elements of the offense.

People v. Torres, 2014 Guam 8 ¶ 20 (citations and internal quotation marks omitted); *see also People v. Parker*, No. DCA CR-89-00048A, 1990 WL 320359, at *2 (D. Guam App. Div. Oct. 24, 1990), *aff'd*, 953 F.2d 1387 (9th Cir. 1992) ("[W]e must liberally construe the indictment in favor of validity . . . . Convictions are no longer reversed because of minor and technical deficiencies which did not prejudice the accused." (citations and internal quotation marks omitted)). We review timely raised objections to the sufficiency of an indictment with regards to the elements of an offense for harmless error. *Torres*, 2014 Guam 8 ¶ 17

1. Conspiracy Charges

[1] As Manila did not raise a statute of limitations defense or any factual dispute regarding the applicability of the public officer exception at trial, the court was not required to put the issue to the jury. *See Quenga*, 2015 Guam 39 ¶ 29.

[21] Manila claims that the conspiracy charges were insufficient for failing to allege an overt act. In order for a person to be found guilty of conspiracy, Guam's conspiracy statute requires that an overt act in pursuance of the agreement be committed by that person or one of his co-conspirators. 9 GCA § 13.30(c) (2005). "Under 9 G.C.A. § 13.30 an overt act is an 'essential fact' required to be alleged in the indictment." *People v. Manibusan*, No. DCA CRIM. 84-00085A, 1987 WL 109389, at *2 (D. Guam App. Div. May 18, 1987), *aff'd sub nom.*, *People v. Ignacio*, 852 F.2d 459 (9th Cir. 1988); *see also* 8 GCA § 95.30 (2005) ("Upon trial for conspiracy, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment, information or complaint nor unless one of the acts alleged is proved . . . .").

[22] The indictment merely states that Manila or a co-conspirator performed an overt act in pursuance of the agreement, without specifying what the overt act was. When read in its entirety, however, it is evident that the indictment contains allegations of overt acts described in the underlying crimes that formed the basis of each conspiracy count. For the charge of conspiracy to commit kidnapping, alleged co-conspirators Manila and Quenga were alleged to have unlawfully confined each of the victims. RA, tab 560 at 2-3 (Fourth Superseding Indictment). For the charge of conspiracy to commit felonious restraint, Manila and Quenga were alleged to have knowingly held each of the victims in a condition of involuntary servitude. *Id.* at 9-12. For the charge of conspiracy to compel prostitution, Manila and Quenga were alleged to have intentionally, by use of force, threat or duress, compelled each of the victims to engage in, promote, or abet prostitution. *Id.* at 14-18. For the charge of conspiracy to promote prostitution, Manila and Quenga were alleged to have knowingly solicited, induced, or caused each of the victims to commit or engage in prostitution, or to reside in or occupy a place of

prostitution. *Id.* at 21-25. These allegations represent the underlying crimes that were the subject of the conspiracies, but they necessarily involve overt acts carried out by Manila and his co-conspirator and satisfy the required allegation of an overt act.

[23] Our determination that charging the underlying crime also satisfies the requirement of pleading an overt act for a conspiracy charge is consistent with precedent from the Delaware Supreme Court. *See Holland v. State*, 744 A.2d 980, 982 (Del. 2000) ("When the only overt act alleged is the underlying substantive crime, a defendant's acquittal on this charge negates the overt act element of a conspiracy charge unless a co-conspirator committed the overt act."). We are unaware of any jurisdictions that have held differently, and Manila has not directed us to any. Furthermore, Delaware's interpretation is consistent with our precedent requiring that an indictment be read broadly and according to common sense. *See Torres*, 2014 Guam 8 ¶ 20; *see also Parker*, 1990 WL 320359, at *2 ("[W]e must liberally construe the indictment in favor of validity . . . . Convictions are no longer reversed because of minor and technical deficiencies which did not prejudice the accused." (citations and internal quotation marks omitted)). Accordingly, we are not persuaded by Manila's argument that the indictment was insufficient in this respect.

2. Kidnapping Charges

[24] Next, we consider Manila's claim that the kidnapping charges were insufficient for failing to specify what felony was being facilitated by the alleged unlawful confinement. We addressed an identical claim in *Quenga*, 2015 Guam 39 ¶ 58. In that case, we held that a kidnapping charge is not insufficient for failing to specify what felony was being facilitated if it can be reasonably deduced from reading the indictment as a whole. *Id.* ¶ 60. Manila was charged with perpetrating three felonies – felonious restraint, compelling prostitution, and

promoting prostitution – against the same victims that he allegedly kidnapped. Therefore, reading the indictment as a whole and according to common sense, it is clear that Manila was alleged to have unlawfully confined the victims for the purposes of facilitating these felonies. Accordingly, the indictment was not insufficient with regard to the elements of kidnapping.

C. Duplicity

[25] Next, we consider whether the charges against Manila were duplicitous. Manila raises the issue of duplicity only with respect to the CSC charges, but we will also address duplicity with respect to the criminal intimidation charges levied against him.

1. Criminal Sexual Conduct

[26] Manila argues that each count of first and second degree CSC with which he was charged were duplicitous because each contained two separate offenses: (a) sexual penetration or sexual contact occurring under circumstances involving the commission of any other felony; and (b) sexual penetration or sexual contact aided and abetted by Cha and accomplished through the use of force or coercion.

[27] "An indictment is considered duplicitous if a single count combines two or more different offenses. A danger of duplicity is that a jury could find a defendant guilty on a count without reaching a unanimous verdict on the commission of an offense." *Quenga*, 2015 Guam 39 ¶ 52 (quoting *United States v. Renteria*, 557 F.3d 1003, 1007-08 (9th Cir. 2009)). "Whether an indictment is duplicitous is a question of law reviewed *de novo*." *Muna*, No. CR94-00075A, 1996 WL 104532, at *1.

[28] We have held that "[w]hen a statute specifies two or more ways in which an offense may be committed, all may be alleged in the conjunctive in one count and proof of any one of those conjunctively charged acts may establish guilt." *Torres*, 2014 Guam 8 ¶ 52 (internal quotation

marks omitted); *see also Renteria*, 557 F.3d at 1008 ("When a statute specifies two or more ways in which an offense may be committed, all may be alleged in the conjunctive in one count and proof of any of those acts conjunctively charged may establish guilt." (internal quotation marks omitted)). The People did exactly that in this case, alleging in the conjunctive that Manila's conduct satisfied two separate means of perpetrating the CSC offenses. Therefore, the charges were not duplicitous.

2. Criminal Intimidation

[29] Although Manila did not explicitly raise a claim of duplicity concerning the criminal intimidation charge, we find it proper to address the issue given our resolution of his co-conspirator's appeal.[2] In *Quenga*, we held a charge of criminal intimidation was duplicitous because the charge was pleaded in the disjunctive and put to the jury without separating out the alternate theories of guilt into separate offenses. *See Quenga*, 2015 Guam 39 ¶ 57. Thus, it was impossible to ascertain whether the jury unanimously agreed that each element had been satisfied.

[30] The circumstances of Manila's criminal intimidation conviction are identical. The relevant elements set forth to the jury were that he (1) "did knowingly compel or induce another to do an act which the latter had a legal privilege not to do so, or to refrain from doing an act which the latter had a legal privilege to do" (2) "[b]y threatening to commit a criminal offense, or take or withhold action as an official, or to cause an official to take or withhold action." RA, tab 640 at 206 (Jury Instructions, Sept. 19, 2013). As there were multiple means of satisfying both

[2] Manila generally advanced all issues raised by Quenga. Appellant's Am. Opening Br. at 50 (Dec. 3, 2014).

of these elements, it is impossible to know if the jury unanimously agreed to either of them. Thus, Manila's criminal intimidation conviction must be vacated.

D. Double Jeopardy

[31] Although Manila has not explicitly raised a double jeopardy claim regarding his convictions of compelling prostitution and promoting prostitution, our holding in *Quenga*, 2015 Guam 39, with respect to these offenses compels us to address the issue in this case.

[32] In *Quenga*, we held that it is a double jeopardy violation for a defendant to be convicted of both promoting prostitution under 9 GCA § 28.20(a)(2) and compelling prostitution under 9 GCA § 28.30(a)(1), as they represent the "same offense" under the test set forth by the United States Supreme Court in *Blockburger v. United States*, 284 U.S. 299 (1932). *Quenga*, 2015 Guam 39 ¶ 51. As Manila was convicted of both offenses, a double jeopardy violation occurred, and we must vacate the less serious promoting prostitution convictions.

E. Sufficiency of the Evidence

[33] Next we consider Manila's appeal of the denial of his motion for acquittal and his insufficiency of the evidence claims. Manila makes several arguments regarding the judgment of acquittal and challenges the sufficiency of the evidence with regard to every crime of which he was convicted. We address each in turn.

1. Kidnapping

[34] Manila was convicted of kidnapping as a first degree felony in violation of 9 GCA §§ 22.20(a)(2) and 4.60. Read together, these statutes provide that a person is guilty of kidnapping if, with the intention of promoting or assisting in the commission of kidnapping, he or she induces or aids another person to unlawfully confine another for a substantial period to facilitate commission of any felony. 9 GCA §§ 4.60, 22.20(a)(2) (2005). Confinement is unlawful if it is

accomplished by force, threat or deception. 9 GCA § 22.20(c) (2005). "Kidnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree." 9 GCA § 22.20(b) (2005).

[35] Manila was convicted of kidnapping five different Blue House employees. In order to sustain the convictions, the record must contain evidence that Manila, with the intention of promoting or assisting in the commission of kidnapping, aided Cha to confine them for a substantial period to facilitate the commission of a felony.

[36] The record is replete with evidence that Cha confined each victim for the purpose of compelling and promoting prostitution. Each worked as a prostitute at Blue House, with Cha profiting off their efforts. Each testified that they did not want to do so and wanted to leave Blue House. *See* Tr., vol. 13 at 154-155 (Jury Trial – Day 11, Aug. 29, 2013) (testimony of E.N.); Tr., vol. 8 at 67 (Jury Trial – Day 6, Aug. 22, 2013) (testimony of K.C.); Tr., vol. 9 at 39-40 (Jury Trial – Day 7, Aug. 23, 2013) (testimony of A.T.); Tr., vol. 16 at 58, 87 (Jury Trial – Day 14, Sept. 4, 2013) (testimony of M.C. and L.P.). The testimony showed that the victims were locked in at night and were threatened that they would be physically abused or arrested if they tried to run away. There was no evidence that the victims were voluntarily released prior to trial.

[37] There was also evidence that Manila intentionally aided Cha in this endeavor, thus acting as her accomplice under 9 GCA § 4.60. One victim testified that Manila told her that she "cannot escape because [she] still owe[s] [Cha] for the passport and ticket" and "to take a good look at his face because he is the one that is going to come and look for [her]." Tr., vol. 9 at 25 (Jury Trial – Day 7). Another testified that Manila told her and other victims that they had to listen to Cha or she would call the police and have them arrested. Tr., vol. 13 at 81 (Jury Trial – Day 11). There was also testimony that Manila was present when Cha told the victim, in

English, that Manila was her police officer friend and would come and look for the victim if she tried to run away. Tr., vol. 16 at 51-53 (Jury Trial – Day 14). When viewed in a light most favorable to the People, the evidence was sufficient to support the kidnapping convictions.

2. Felonious Restraint

[38] Manila was convicted of felonious restraint as a third degree felony in violation of 9 GCA §§ 22.30(b) and 4.60. Read together, these statutes provide that a person is guilty of felonious restraint if, with the intention of promoting or assisting in the commission of felonious restraint, he or she induces or aids another person to knowingly hold another in a condition of involuntary servitude. 9 GCA §§ 4.60, 22.30(b) (2005).

[39] In order to sustain Manila's five felonious restraint convictions, the record must contain evidence that Manila, with the intention of promoting or assisting in the commission of felonious restraint, aided Cha to knowingly hold each victim in a condition of involuntary servitude. As discussed previously, the testimony produced at trial showed that each victim was forced by Cha to work at Blue House as a prostitute. It also showed that Manila aided in this effort by threatening the victims with arrest if they attempted to escape from their involuntary servitude. Accordingly, there was sufficient evidence to support Manila's felonious restraint convictions.

3. Compelling Prostitution

[40] Manila was convicted of compelling prostitution as a third degree felony in violation of 9 GCA §§ 28.30(a)(1) and 4.60. Read together, these statutes provide that a person is guilty of compelling prostitution if, with the intention of promoting or assisting in the commission of compelling prostitution, he or she induces or aids another person to compel another, by force, threat or duress, to engage in, promote or abet prostitution. 9 GCA §§ 4.60, 28.30(a)(1) (2005).

[41] In order to sustain the convictions, the record must contain evidence that Manila, with the intention of promoting or assisting in the commission of compelling prostitution, aided Cha in compelling these victims, by force, threat or duress, to engage in, promote or abet prostitution. As discussed above, there was evidence at trial that each victim was forced by Cha to engage in prostitution. Manila assisted Cha in this effort by threatening the victims with arrest if they did not comply with Cha's wishes. Furthermore, the evidence produced at trial that Manila was a patron of Blue House and paid for sex with two of the victims supports the jury's conclusion that Manila knew that the waitresses were engaging in prostitution and that he was intentionally acting to perpetuate Cha's enterprise. Thus, there was sufficient evidence to sustain the compelling prostitution convictions.

4. Criminal Sexual Conduct Convictions

[42] Manila was convicted of committing first and second degree CSC against two separate victims, E.N. and S.W. For first degree CSC, Manila was charged with engaging in sexual penetration with each victim where (1) the sexual penetration occurred under circumstances involving the commission of any other felony, and (2) he was aided or abetted by one or more other persons and he used force or coercion to accomplish the sexual penetration. *See* 9 GCA § 25.15 (2005). For second degree CSC, he was charged with engaging in sexual contact[3] with each victim under the same circumstances.

[43] We first address the sufficiency of the evidence as it pertains to E.N. Evidence was presented at trial that Manila was an accomplice to Cha in compelling E.N. to engage in

[3] Sexual contact is defined as including "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." 9 GCA § 25.10(a)(8) (2005).

prostitution. E.N. testified that she had sex with Manila three times. She testified that the first time, Manila took her into a private room and forcibly penetrated her vagina with his penis. Tr., vol. 13 at 170-72 (Jury Trial – Day 11). She further testified that the second time, Cha beat her with a clothes hanger when she refused to go with him, and both Manila and Cha threatened that she would be arrested if she did not comply with his wishes. Tr., vol. 14 at 5-11 (Jury Trial – Day 12, Aug. 30, 2013). She testified that she ultimately relented and had sex with him. *Id.* at 11. Finally, E.N. testified that the third time, Manila again threatened to arrest her if she did not have sex with him, which she did. *Id.* at 13-14. Title 9 GCA § 25.40 provides that the "testimony of the victim need not be corroborated in prosecutions [for CSC]." 9 GCA § 25.40 (2005). Therefore, E.N.'s testimony is sufficient to support the conviction of first degree and second degree CSC as it suggests that sexual penetration and sexual contact occurred under circumstances involving the commission of compelling prostitution, was aided and abetted by Cha, and was accomplished by force and coercion.

[44] Manila argues that E.N. "made no mention of sex with police officers in 2008 and failed to identify Manila from a photo spread." Appellant's Am. Opening Br. at 34. He also argues that "Blue House was a seven day a week operation with many girls present at all times [and] nobody saw her running out of a VIP room with no clothes on or heard her complain about being forced to have sex." *Id.* These arguments go to E.N.'s credibility, which is not for this court to evaluate in reviewing a motion for a judgment of acquittal. *Mendiola*, 2014 Guam 17 ¶ 28 ("It is not the province of the court, in determining [a motion for a judgment of acquittal], to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury." (alteration in original)

(internal quotation marks omitted)). The existence of E.N.'s testimony is enough to support the conviction.

[45] We next consider the sufficiency of the evidence as it relates to S.W. Manila argues that "the Government's own evidence conclusively showed that she consented to sexual penetration." Appellant's Am. Opening Br. at 34. S.W. testified that she did not want to have sex with Manila because he was a police officer. Tr., vol. 5 at 133 (Jury Trial – Day 3, Aug. 19, 2013). She testified that she was afraid she would be arrested if she did not have sex with him. *Id.* at 137-38. On cross-examination, however, she also testified that she did not manifest her unwillingness in any way. She testified that she did not tell him that she did not want to have sex, but instead gave him a lap dance, asked him to buy her more drinks, and treated him as she treated any of her other customers. Tr., vol. 6 at 53-56 (Jury Trial – Day 4, Aug. 20, 2013).

[46] As with E.N., Manila was charged with first degree CSC with regard to S.W. based on two prongs of 9 GCA § 25.15. Under the first prong, the People were required to prove that the sexual penetration occurred under circumstances involving the commission of compelling or promoting prostitution. S.W., though, was not among the victims for the crimes of compelling prostitution and promoting prostitution with which Manila was charged. Rather, the evidence at trial suggested that she willingly worked as a prostitute, having worked at Blue House previously and been asked by Cha to come back and earn more money. *Id.* at 68-69. Therefore, the People failed to present evidence showing that the sexual penetration occurred under circumstances involving the commission of compelling prostitution.

[47] Concerning promoting prostitution, there was evidence that Manila solicited prostitution by purchasing the drinks in order to have sex with S.W., which on its face would appear to satisfy the elements of promoting prostitution. *See* 9 GCA § 28.20(a)(2) ("A person is guilty of

promoting prostitution who . . . knowingly solicits, induces or causes a person to commit or engage in prostitution . . . ."). Nonetheless, we are not convinced that the legislature intended for any sex with a prostitute to be considered first degree CSC merely because it occurred under circumstances involving the commission of promoting prostitution. This interpretation of the statute would lead to unreasonable results. *See Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17 ("[N]otwithstanding the deference due the plain-meaning of statutory language, . . . such language need not be followed where the result would lead to absurd or impractical consequences, untenable distinctions, or unreasonable results." (alteration in original) (internal quotation marks omitted)). Thus, we are persuaded that that the People failed to present evidence showing that the sexual penetration occurred under circumstances involving the commission of promoting prostitution.

[48] The People were also required to prove that Manila was aided and abetted by Cha and used force or coercion to accomplish the sexual penetration. S.W. testified that Cha told her to go into the private room with Manila and "take care of him." Tr., vol. 5 at 130-31 (Jury Trial – Day 3). Applying the standard for accomplice liability found in 9 GCA § 4.60, in order for Cha to have aided and abetted Manila, she must have induced or aided Manila to commit first degree CSC with the intention of promoting or assisting in the commission of first degree CSC. 9 GCA § 4.60. There was no evidence presented at trial that Cha intended for Manila to have sex with S.W. against her will. Furthermore, since there was no evidence presented that S.W. protested in any way, the jury could not reasonably infer that Cha knew that she was being coerced into having sex. Therefore, we are also persuaded that the People failed to present evidence showing that Manila was aided and abetted by Cha.

[49] Finally, the People were required to prove that Manila used force or coercion to accomplish the sexual penetration or sexual contact. We first address force. In the context of third degree CSC, we have reasoned that the force necessary for engaging in CSC "must be greater than what is inherently required to accomplish penetration and must be sufficient to allow the defendant to control the victim." *People v. Tenorio*, 2007 Guam 19 ¶ 47. S.W. did not testify that Manila used force during their sexual encounter outside of that inherently required to accomplish penetration. *See* Tr., vol. 5 at 130-37 (Jury Trial – Day 3).

[50] Next we consider coercion. Where, as here, the defendant holds "a position of trust and authority, the statute requires evidence that the complainant was coerced to engage in sexual relations with defendant because of his [or her] position of authority." *Tenorio*, 2007 Guam 19 ¶ 38 (internal quotation marks omitted). S.W. testified that Manila never told her that she needed to have sex with him because he was a police officer. Tr., vol. 6 at 53 (Jury Trial – Day 4). Rather, he paid for the drinks as other customers did in exchange for sex. *Id.* at 54-56. Therefore, we conclude that, despite Manila's position of trust and authority, there was no evidence that he used his position to coerce S.W. into having sex with him.

[51] The remaining question is whether Manila used coercion to accomplish the sexual penetration under a more broad definition of coercion, not based on his position of trust and authority. We have previously cited to a definition of coercion used by Michigan courts wherein coercion is defined as doing "something to make [the complainant] reasonably afraid of present or future danger." *Tenorio*, 2007 Guam 19 ¶ 29 (quoting *People v. Kline*, 494 N.W.2d 756, 758 (Mich. Ct. App. 1992)). Under this standard, "the force or coercion should be strong enough to demonstrate that the complainant did not consent." *Id.* ¶ 33.

[52] The only evidence of actions by Manila that might constitute coercion was S.W.'s testimony that Manila told her that if she did not make him happy, he was going to tell Cha. Tr., vol. 5 at 137-38 (Jury Trial – Day 3). Although there was a large amount of evidence that Cha was cruel to her employees, including physically assaulting them, S.W. testified that Cha treated her better than the others. Tr., vol. 6 at 39 (Jury Trial – Day 4). S.W. was a willing employee, unlike many of the others, and she testified with regard to the incident that she was not afraid that Cha would beat her, but that she would be fired. Tr., vol. 5 at 138 (Jury Trial – Day 3). She also testified that she was afraid Cha would contact "higher people," who could have her put in jail, but as S.W. knew Manila to be a police officer himself, he could have simply threatened her directly if his goal was to instill in her a fear of being arrested. *Id.* Thus, the evidence does not suggest that Manila coerced S.W. so as to make her reasonably afraid of present or future danger.

[53] In sum, the People failed to produce sufficient evidence to support the convictions of first or second degree CSC, or the lesser included charges of third degree CSC, with regard to S.W. Accordingly, these convictions must be reversed.

5. Conspiracy Convictions

[54] Next, we consider Manila's claim that the evidence did not support the 21 conspiracies of which he was convicted. He argues that each of the charged conspiracies was allegedly the object of the same agreement or continuous conspiratorial relationship between him and Quenga and that there was no allegation of a separate conspiracy for each victim.

[55] In *Quenga*, 2015 Guam 39, we considered whether the evidence established that Quenga and Manila had engaged in a single conspiratorial relationship or had formed several agreements. In doing so, we applied the following factors set forth by the Pennsylvania Supreme Court:

> The number of overt acts in common; the overlap of personnel; the time period during which the alleged acts took place; the similarity in methods of operation; the locations in which the alleged acts took place; the extent to which the purported conspiracies share a common objective; and the degree to which interdependence is needed for the overall operation to succeed.

Id. ¶ 75 (quoting *Commonwealth v. Andrews*, 768 A.2d 309, 316 (Pa. 2001)). Based on these factors, we concluded that, viewed in the light most favorable to the People, the evidence showed a single conspiratorial relationship.

[56] The same is true in this case. Therefore, there was insufficient evidence to support all of Manila's conspiracy convictions. As in *Quenga*, we vacate all but the most serious conspiracy count, which is the First Charge, Conspiracy to Commit Kidnapping (As a First Degree Felony).

F. Motion to Reduce Kidnapping Convictions

[57] Next, Manila claims that the court erred in denying his motion to reduce his convictions of kidnapping and conspiracy to commit kidnapping to second degree offenses. As it is based on the statutory language of the kidnapping statute, this claim presents a question of statutory interpretation. "Issues of statutory interpretation are reviewed *de novo*. [O]ur duty is to interpret statutes in light of their terms and legislative intent. Absent clear legislative intent to the contrary, the plain meaning prevails." *Flores*, 2004 Guam 18 ¶ 8 (alteration in original) (citations omitted).

[58] Guam's kidnapping statute provides two separate means of committing the offense. Under the first prong, a person is guilty of kidnapping if he or she unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found. 9 GCA § 22.20(a). Under the second prong, a person is guilty of kidnapping if he or she unlawfully confines another for a substantial period, with any of four listed purposes. *Id.* Manila was found guilty under the second prong. In a separate section, the statute states that

"[k]idnapping is a felony of the first degree unless the defendant voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree." 9 GCA § 22.20(b).

[59] Manila argues for an interpretation of this statutory language wherein only the first prong, kidnapping based on removal of the victim, is a first degree felony. He maintains that voluntarily releasing the victim in a safe place prior to trial only makes sense as a reduction of charges with regard to the first prong, because someone who has been unlawfully confined has not been taken to an isolated and unsafe place. As Manila was found guilty under the second prong, he argues that he should have been convicted only of second degree kidnapping.

[60] Manila's argument does not find support in the plain meaning of the statute's language. The statute clearly states that kidnapping is generally a first degree felony, and it does not distinguish whatsoever between the two separate bases of culpability in doing so. Even if this court were to accept Manila's questionable contention that the reduction clause applies only to the first prong, a kidnapping violation under the second prong would still be a first degree felony under the unambiguous terms of the statute.

[61] We do not accept this contention, however, as we interpret the reduction clause to apply to either prong. Voluntarily releasing the victim in a safe location prior to trial, whether the kidnapping was accomplished by removing the victim or unlawfully confining the victim, results in a reduction of the charge. Here, there is no evidence that Manila did so. Rather, the victims were released only after the discovery of the illicit enterprise with which Manila was involved. Therefore, there is no basis to reduce the kidnapping charges, and the court acted properly in denying Manila's motion to that effect.

G. Motion for New Trial

[62] Next, Manila claims that the court erred in denying his motion for a new trial for newly discovered evidence. The evidence in question was statements made by Ivory Warren, who worked at Blue House at the same time as many of the victims. Tr., vol. 21 at 7, 14-18 (Mot. Hr'g, Jan. 21, 2014). Manila's counsel became aware of statements Warren made to an investigator subsequent to trial wherein she stated that Cha treated her employees well and that the victims in Manila's case had lied about the situation at trial. RA, tab 905, Ex. A (FBI Entry, Nov. 1, 2012). Manila moved for a new trial, arguing Warren's statement constituted newly discovered evidence. *Id.* at 1-6. The trial court denied the motion. RA, tab 927 at 8 (Dec. & Order, Mar. 31, 2014). Manila challenges this outcome on appeal.

[63] Manila moved for a new trial on the basis of newly discovered evidence. *See* 8 GCA § 110.30(c) (2005). This court has adopted the following standard for such a motion:

> [I]n order to prevail on a motion for new trial based upon newly discovered evidence, a movant must show: 1) the evidence is newly discovered; 2) the failure to discover the evidence sooner was not the result of lack of diligence; 3) the evidence is material to the issues at trial; 4) the evidence is neither cumulative nor impeaching; and 5) the evidence, at a new trial, would probably result in acquittal.

People v. Reyes, 1999 Guam 11 ¶ 14. Applying a similar standard,[4] the trial court denied the motion, finding that the statements (1) did not constitute newly discovered evidence, (2) were

[4] The trial court applied a standard set forth by the District Court of Guam Appellate Division:

> In order to establish that a new trial is justified the defendant must demonstrate that: '(1) the evidence is newly discovered and unknown to (him) at the time of trial; (2) the evidence is material, not merely cumulative or impeaching; (3) the evidence will probably produce an acquittal; and, (4) failure to learn of the evidence sooner was not due to a lack of diligence.'

People v. Joya, No. CR 95-00170A, 1996 WL 875776, at *2 (D. Guam App. Div. Oct. 1, 1996), *aff'd*, 122 F.3d 1073 (9th Cir. 1997) (quoting *United States v. Joelson*, 7 F.3d 174, 178 (9th Cir. 1993), *cert. denied*, 510 U.S. 1019 (1993)).

impeaching rather than material, (3) would not have likely produced an acquittal, and (4) were not discovered by Manila due to a lack of diligence. RA, tab 927 at 3-8 (Dec. & Order).

[64] After weighing the relevant factors, we cannot conclude that the trial court committed clear error of judgment in denying Manila's motion for a new trial. Manila admitted in his motion that he was aware of Warren as a potential witness but chose not to subpoena her for strategic purposes. There is no reason to believe that, had he attempted to do so, he would have been unable to obtain testimony from Warren similar to the statements she provided to the investigator. Therefore, we agree with the trial court that the evidence was not newly discovered. As the trial court's ruling was well-reasoned and contained ample support for its conclusion, the court did not abuse its discretion in denying Manila's motion for a new trial.[5]

V. CONCLUSION

[65] Manila's criminal intimidation conviction must be vacated for duplicity. Manila's promoting prostitution convictions must be vacated for running afoul of the Due Process Clause. All but the most serious count (i.e., the First Charge, Conspiracy to Commit Kidnapping (As a First Degree Felony)) of Manila's conspiracy convictions must be vacated for insufficient evidence. Manila's first and second degree CSC convictions with respect to S.W. must also be vacated for insufficient evidence. Given these vacated convictions, it is appropriate for Manila to be resentenced.

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[5] Manila also argues in cursory fashion that if the trial court is correct that his failure to discover the evidence was due to a lack of diligence then "it necessarily follows that Manila has been denied effective assistance of counsel and, for that reason alone, he should be granted a new trial." Appellant's Am. Opening Br. at 48. We have recently stated that "ineffective assistance of counsel claims . . . may be heard on direct appeal but [are] more properly entertained in a collateral proceeding." *People v. Fegarido*, 2014 Guam 29 ¶ 22 (quoting *People v. Moses*, 2007 Guam 5 ¶ 9). As factual findings regarding this claim would be required and Manila has not briefed the issue fully, we choose not to address it at this time.

[66] Accordingly, we **REVERSE** the judgment of the trial court with respect to these convictions and **REMAND** to vacate the improper convictions and resentence. In all other respects, the judgment is **AFFIRMED**.

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