

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,)
)
 Plaintiff-Appellee,)
)
 vs.)
)
 ROBERT MANTANONA CRUZ,)
)
 Defendant-Appellant.)
 _____)

Supreme Court Case CRA97-013
Superior Court Case CF0052-97

OPINION

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Appeal from the Superior Court of Guam

Hagåtña, Guam

Argued and Submitted on May 6, 1998

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS and EDUARDO A. CALVO, Associate Justices.

SIGUENZA, C.J.:

[1] Robert Mantanona Cruz appeals the trial court's decision denying his Motion for Acquittal. Cruz first asserts the Government failed to prove the existence of a deadly weapon, an element of the first robbery charge. He then submits that the Government did not prove the second charge because it failed to show that the witness was placed in fear of immediate serious bodily injury. Finally, Cruz argues that the convictions as to the special allegations should be vacated because these allegations are contingent on the improper robbery convictions.

[2] As to the first robbery charge, we disagree with Cruz's contention that the Government must prove the weapon to be actually deadly. The statute upon which the charge rested required the prosecutor to prove that the weapon appeared to be deadly and our review indicates sufficient evidence was presented as to this particular element. We also conclude that sufficient evidence was presented at the trial showing the victim's immediate fear during the robbery. Thus, the jury was properly allowed to consider the second robbery charge. Consequently, we affirm the trial judge's decision.

I. Procedural and Factual Background

[3] On the evening of January 24, 1997, Robert Mantanona Cruz and Larry Leon Guerrero went to the Gold Star Construction Company located in Harmon, Guam. When they arrived, they took possession of a 55-gallon drum of honing oil. They did so without permission of Tommy McKinney,

the owner of both the oil and drum. As they loaded the oil drum into a truck, Marcus Vancil, an employee of Gold Star who resided on the company grounds, confronted the two men and instructed them not to take the oil. Cruz ignored this statement and continued on with his actions. Vancil again stated they were not to take the barrel of oil. Cruz then placed his hand on a knife he had sheathed on his hip. When Vancil asked if he was going to use it, Cruz said “yes.” Vancil then started backing away from Cruz. At that time, Cruz told Leon Guerrero to get a gun¹. As a result, Vancil turned away and grabbed a pipe. When he next faced Cruz, the Appellant had unsheathed his knife and held it in his hand. In response, Vancil discarded his pipe, left Cruz’s presence, obtained a machete and returned. Upon his return, however, the loading of the barrel was completed and Vancil ceased his attempt to prevent the taking.

[4] Cruz eventually brought and stored the drum of oil at the residence of another individual living in Mangilao. The barrel was full at the time of storage, but apparently the oil had leaked out of the container. Due to the fumes, the residents of the property burned the container. Later, both the drum and the dolly used to move it were recovered by the police.

[5] Cruz was eventually arrested and indicted on February 6, 1997 on two counts of Second Degree Robbery (As 2nd Degree Felonies) pursuant to both 9 GCA § 40.20(a)(3) and (b) and § 40.20(a)(2) and (b)(1993). Special Allegations of using a deadly weapon, the knife, were also charged. Subsequently, a trial was conducted and the jury returned guilty verdicts on both counts of robbery and the special allegations.

[6] At both the close of the Government’s case and later, at the close of all evidence, defense

¹ Leon Guerrero did nothing as the gun was nonexistent.

counsel made oral motions for acquittal on both charges. He asserted that the prosecution had failed to present sufficient evidence from which the jury could find Cruz guilty beyond a reasonable doubt. Defense counsel argued that no evidence was presented showing Vancil, the victim-witness, was placed in immediate fear of bodily injury by Cruz. The Government opposed the motion, and after taking the matter under advisement, the court denied the motion by finding enough evidence had been presented permitting the matter to go to the jury.

[7] On August 8, 1997, the trial court sentenced Cruz to five years incarceration. The Judgment was later entered on October 3, 1997. A Notice of Appeal was filed on August 11, 1997

II. Analysis

[8] A defendant may move for acquittal pursuant to 8 GCA §100.10 (1993). This statute states that acquittal shall be ordered if the evidence is insufficient to sustain a conviction of such offense or offenses. *Id.* Guam's statute is similar to Federal Rule of Criminal Procedure 29, and decisions made pursuant to this rule are reviewed *de novo*. *U.S. v. Bahena-Cardenas*, 70 F.3d 1071, 1072 (9th Cir. 1995).

[9] A court determines whether a judgment of acquittal should be granted by applying the same test used when the sufficiency of the evidence is challenged. *Bahena-Cardenas*, 70 F.3d at 1072. Thus, an appellate court reviews the evidence presented in a light most favorable to the government and determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2788 (1979); *U.S. v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994).

[10] Cruz first argues that the prosecution never proved the knife was a deadly weapon. He asserts the definition of a deadly weapon, pursuant to 9 GCA §16.10(d)(1993), requires the Government to prove, based on the manner it was used or intended to be used, that the defendant knew the knife was capable of producing death or serious bodily injury. Furthermore, he argues that the knife was never recovered and thus the extent of its ability to inflict injury could not be determined.

[11] In response, the Government maintains that sufficient evidence was presented so a rational trier of fact could have found that the defendant was armed with a deadly weapon. They assert evidence was presented that described the knife, the manner of use, and its intended use.

[12] Based on the plain language of the robbery statute, the item must only appear to be a deadly weapon. The language of 9 GCA § 40.20(a)(3) reads in pertinent part:

- (a) A person is guilty of robbery in the second degree if, in the course of committing a theft, he:
 - (3) is armed with or displays *what appears to be* explosives or a deadly weapon. "Deadly Weapon" has the meaning provided by § 16.10. (Emphasis added).

[13] The provisions of 9 GCA § 40.20(a)(3) were addressed and explained previously by the Appellate Division in the case of *People v. Marquez*, Crim No. DCA86-00016A, 1987 WL 109388 (D. Guam App. Div. Jul. 31, 1987). The defendant in *Marquez* had asserted a gun used during a robbery could not be a deadly weapon because it was not loaded. *Id.* at *2. Based on this fact, the defendant argued neither its actual nor intended use could have caused death or serious bodily injury during the robbery. *Id.*

[14] The Appellate Division disagreed and wrote:

The Guam legislature addressed this precise point in § 40.20 when it selected the words ‘what appears.’ This language is dispositive of the issue at hand. A gun is a deadly weapon regardless of whether it is or is not loaded during the commission of a robbery. The instruction that a gun need not be loaded to be a deadly weapon correctly states the law.

Id. In discussing the crime of robbery, the *Marquez* court emphasized:

The gravaman [sic] of a robbery charge is the fear which causes a person to relinquish property, not the actual or threatened harm. The victim is placed in fear and cannot be expected to inquire whether the gun is loaded. In robbery cases, unlike assault cases where the gravaman [sic] of the assault is the attack, the gist of the offense is not the actual or threatened physical harm, but the taking of property by force or fear. The existence of actual ability to do physical harm with the weapon is of little importance. One need not have the ability to do harm but merely project the ability to do harm so as to engender fear in the victim.

Id.

[15] The language of 9 GCA § 40.20(a)(3) clearly focuses upon the projection to do harm during a theft and not the weapon’s actual ability to harm. Consequently, we find Cruz’s argument that the knife must be capable of producing death or serious bodily injury to be without merit. The testimony of witnesses that Cruz displayed what appeared to be a large knife during the theft is dispositive of the issue and requires this court to affirm the trial judge’s decision as to the first robbery charge.

[16] Even if the court were to accept Cruz’s argument, under his own cited authority, several factors should be considered in determining whether sufficient evidence was presented showing the knife was a deadly weapon. In *Davidson v. State*, 602 S.W.2d 272 (Tex. 1980), the court decided a knife can be a deadly weapon by showing the manner of use, its size and shape, and its capacity to produce death or serious bodily injury.

[17] In this case, testimony revealed the weapon was a hunting or buck knife, eight to nine inches in length when observed from a distance of three feet. The knife was initially sheathed, but as the confrontation escalated, it was taken out and held in Cruz's hand. Moreover, Cruz indicated verbally that he would use the knife. We believe the evidence presented was sufficient to allow the jury's consideration of the charge.

[18] Cruz next asserts error occurred because insufficient evidence was presented to establish that the witness was placed in fear of immediate serious bodily injury. Pursuant to 9 GCA § 40.20(a)(2):

- (a) A person is guilty of robbery in the second degree if, in the course of committing a theft, he:
 - (2) threatens another with or intentionally puts him in fear of immediate serious bodily injury; or

[19] Cruz maintains the prosecution did not prove the victim was placed in immediate fear of serious bodily injury. Instead, he argues Vancil was the aggressor during the encounter. Conversely, Cruz states the evidence shows that he was essentially passive and never manifested a desire to fight.

[20] Cruz's contention is without merit. The witness, Vancil, testified he was "scared" during the encounter. This was caused by Cruz holding an eight-to-nine inch knife with a jagged edge. Moreover, Cruz stated he would use the knife. Viewing this testimony in a light most favorable to the prosecution, sufficient evidence was presented for the jury to find Cruz guilty beyond a reasonable doubt.

[21] Cruz's contention as to the special allegation convictions were contingent on the reversal of the two robbery charges. Consequently, these convictions will not be disturbed.

III. Conclusion

[22] We hereby **AFFIRM** the trial court's decision denying the Motion for Acquittal.

JANET HEALY WEEKS
Associate Justice

EDUARDO A. CALVO
Associate Justice

PETER C. SIGUENZA
Chief Justice