

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM

Plaintiff-Appellee

vs.

JAKE FRANCISCO FISHER

Defendant-Appellant

OPINION

Filed: February 9, 2001

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Supreme Court Case No. CRA99-027

Superior Court Case No. CF0592-98

Appeal from the Superior Court of Guam

Argued and submitted on June 14, 2000

Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., Associate Justice; JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] On April 19, 1999, the Defendant-Appellant, Jake Francisco Fisher, was found guilty, after trial by jury, of one count of aggravated assault, as a third degree felony, with a special allegation of use of a deadly weapon in the commission of a felony. He was subsequently sentenced on October 25, 1999, to eight (8) months for aggravated assault, five (5) years for the special allegation and ordered to pay restitution to the victim. The Judgment was issued on December 7, 1999. The Defendant-Appellant appeals his conviction on the grounds that (1) the trial court erred in permitting improper impeachment evidence; (2) the People failed to disclose relevant discovery; (3) the trial court erred in failing to suppress prejudicial testimony of Dr. Jeron E. Landstrom,; and (4) the trial court erred in denying his motion for acquittal. Upon review of the testimony at trial and the relevant law on the issues, the court hereby affirms the Defendant-Appellant’s conviction.

FACTUAL AND PROCEDURAL BACKGROUND

[2] The Defendant-Appellant, Jake Francisco Fisher (hereinafter “Fisher”), was indicted by a grand jury and charged with one count of aggravated assault, as a third degree felony, with a special allegation of use of a deadly weapon in the commission of a felony. The indictment was derived from an incident which took place on the evening of June 21, 1998. On that evening, Fisher was residing in the home of Gloria Borja Cordero (hereinafter “Cordero”), Guam Housing and Urban Renewal Authority (hereinafter “GHURA”) property, when he was awakened by Francisco Palacios (hereinafter “Palacios”), who had entered the residence through the back door after receiving no response when knocking on the front door.

It was Palacios' testimony that he often entered the residence through the unlocked back door, at the approval of his friend, Cordero's son, Leyton Borja (hereinafter "Borja"). Fisher and Palacios were acquainted; however, Palacios was apparently unaware that Fisher was residing in the home. After Fisher awoke, Palacios informed Fisher who he was and that he was there to visit Borja.

[3] Fisher proceeded to yell at Palacios and ordered him out of the house. Fisher struck Palacios, who struck Fisher in return. Palacios observed Fisher reach for what he believed to be a weapon, at which time Fisher, brandishing a knife, began to proceed towards Palacios. Palacios went through the door and tried to close it behind him so as to avoid an attack by Fisher. Fisher struck the knife through the door resulted almost completely severing of one of Palacios' thumbs.

[4] At a suppression hearing, Fisher moved to exclude the People's witness, Dr. Jeron E. Landstrom, from testifying at trial. Fisher's motion was denied. A jury trial commenced and concluded a few days later. Fisher was convicted of the assault with the special allegation and sentenced to five months, for the assault, and five years, for the special allegation. Fisher timely filed a Notice of Appeal prior to the entry of the judgment.

ANALYSIS

[5] The court has jurisdiction over this matter pursuant to Title 7 GCA §§ 3107 and 3108, (1994) and Title 8 GCA § 130.15(a) (1993). Fisher raises four issues on appeal: (1) the trial court improperly permitted the People to introduce impeachment evidence regarding defense witness Cordero; (2) the People's failure to disclose the information that the residence was GHURA housing was a violation of the Brady Rule; (3) the trial court erred in denying Fisher's motion to suppress evidence based upon Rule 403 of the Guam Rules of Evidence; and (4) the trial court erred in denying Fisher's motion for judgment of

acquittal based upon the jury's alleged failure to properly apply the self-defense jury instruction. The court shall address each issue in turn.

A. Improper Impeachment Evidence

[6] Fisher contends that the People, on cross examination of Cordero, improperly attempted to impeach the witness by questioning her about possible violations of GHURA regulations for allowing Fisher to reside in her home. Although it is unclear from Fisher's brief, Fisher argues that the prosecutor improperly intimidated and discredited key defense testimony by raising irrelevant allegations that Cordero violated GHURA regulations. The People argue that they properly questioned Cordero to establish her bias towards Fisher and ultimately her untruthfulness. Both parties, however, make arguments citing little to no authority for their positions.

[7] "We review evidentiary rulings for an abuse of discretion and we will not reverse absent prejudice affecting the verdict." *J.J. Moving Serv., Inc. v. Sanko Bussan (GUAM) Co., Ltd.*, 1998 Guam 19, ¶ 31. Fisher completely fails to indicate how the trial court abused its discretion and in what manner such abuse created prejudice which affected the verdict. Furthermore, Fisher's argument that Cordero, who was a willing witness at trial, later declined to testify at sentencing because of the GHURA questions, is not indicative of any prejudice affecting the jury's verdict. At best, the effect, if any, was that Cordero refused to testify at Fisher's sentencing, which only demonstrates the fact that Fisher cannot establish the requirement that there was any prejudicial effect on the verdict itself.

[8] A review of the transcripts demonstrates that the People began cross-examination of Cordero and asked her two questions in particular— "Where you live, is that a GHURA house?" and "Okay. Can you please tell the jury, the procedures that are required to be able to live in a GHURA house?" Transcript,

vol. –, p. 81 (Jury Trial, Apr. 15, 1999). At that point, Fisher objected and the court entertained a sidebar conference. During the conference, the court intimated that Cordero may need to be appointed an attorney, and that the court believed the GHURA issue to be collateral to the matter at hand. In response, the People ultimately indicated that it would cease that line of questioning, but possibly return to it on the following day of trial, however, no further questioning of Cordero on the issue occurred.

[9] The court is shocked and confused at the presentation of this issue on appeal. The trial court ceased questioning on the GHURA issue. There is no indication in the record, nor does Fisher contend, that the People revived the issue in its closing argument. Although Fisher objected to the line of questioning, when the court raised its concerns the People retreated. There is also no indication from the record that Fisher attempted to move to strike the questions and testimony given.

[10] Guam Rule of Evidence (hereinafter “GRE”) 607 provides that any party may attack the credibility of a witness. 6 GCA § 607 (1994). GRE 608(b) further provides that,

in the discretion of the court, if probative of truthfulness or untruthfulness, [specific instances of conduct may] be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

6 GCA § 608(b)(1994). It appears that the People may have attempted to show that Cordero was biased towards Fisher. Instead, however, it appears that the People attempted to establish Cordero’s character for untruthfulness based upon the allusion to GHURA violations. The attempt to show bias was a separate and distinct tactic from any attempt to impugn her character for allowing him to live with her in GHURA housing. Because Fisher timely objected to the GHURA line of questioning, the court put a stop to the matter, and the People retreated from the GHURA issue. Fisher has demonstrated no prejudice and there is essentially no issue for this court to review. Even if the court were to review the trial court’s actions, as

previously indicated, the trial court did not even allow such questioning to occur and, therefore, unless the People want to raise the issue that further questioning should have instead been allowed, the trial court clearly did not abuse its discretion.¹

B. *Brady* Rule Violation

[11] Fisher contends that the People's failure to disclose that its intention to introduce evidence that Cordero rented from GHURA violated his due process right to a fair trial. In his brief, Fisher claims this due process violation by alluding to the fact that a *Brady* violation occurred, although he does not clearly demonstrate how the People's failure to disclose the fact that Cordero lived in GHURA housing and the rules and regulations which correspond to such privilege constitute *Brady* material or a *Brady* violation. In response, the People equally seem to misconstrue its obligation for disclosure of evidence in its possession.

[12] "Alleged *Brady* violations are reviewed de novo." *United States v. Alvarez*, 86 F.3d 901, 903 (9th Cir. 1996). *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97 (1963), holds that due process calls for the disclosure of favorable evidence by the government which is material to guilt or punishment. Such evidence includes impeachment evidence relating to government witnesses as well as exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380 (1985); *see also Giglio v. United States*, 405 U.S. 150, 151-155, 92 S.Ct. 763, 764-766 (1972) (holding that evidence relating to the credibility of government witnesses, including but not limited to plea agreements, financial assistance, inducements to testify and promises of leniency fall within the due process requirements

¹That Fisher raised such a specious argument borders on frivolous. To make matters worse, the People proceeded to entertain Fisher's arguments on appeal.

of *Brady*).

[13] Fisher clearly defines the GHURA information as impeachment material. Although *Brady* encompasses impeachment evidence, it is not so broad as to require the People to disclose evidence to impeach a defense witness. In *United States v. Presser*, 844 F.2d 1275, 1279 (6th Cir. 1988), the district court issued a discovery order requiring the government’s immediate disclosure of impeachment evidence “which tends to negate guilt.” The government refused to disclose “government evidence which could impeach defense witnesses.” *Id.* at 1278. The appellate court, after revisiting *Bagley* and *Giglio* found that “[n]either case, however, gives the defense a general right to pre-trial discovery of evidence impeaching defense witnesses, where the prosecution denies that any such material is exculpatory and material under *Brady*.” *Id.* at 1283. Furthermore, the court concluded that “the government need not disclose impeaching material in its possession relating to any potential defense witness where that impeaching material does not meet the *Brady* test of being material and exculpatory.” *Id.* at 1285. “[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A ‘reasonable probability’ is probability sufficient to undermine confidence in the outcome.” *Id.* at 1281. (citations omitted).

[14] Fisher urges this court to construe the impeachment evidence of Cordero to be *Brady* material; however, he fails to provide sufficient evidence to demonstrate that there is a reasonable probability that the outcome would have been different had the evidence been disclosed. This insufficiency is due, in part, to the fact that the information that Cordero lived in GHURA housing was information which Fisher was aware of or could and should have been aware. Additionally, as the People argue it, the People’s case against Fisher turned on the degree of force Fisher exerted in his own alleged self-defense. It was not the People’s case to prove that Fisher did not live with Cordero in the residence where the incident occurred.

Instead, the People attacked the propriety of his action, even in light of the fact that he lived in the residence. It does not appear that the GHURA information was sought to be used to indicate that Fisher did not live in Cordero's residence, but instead to show Cordero's bias towards Fisher and her possible character for untruthfulness, although the cross-examination did not progress that far. Thus, the court determines that the GHURA information was not *Brady* material as nothing was presented to indicate that had the evidence been disclosed there is a reasonable probability that the result would have been different. Thus, the evidence was neither material nor exculpatory and no *Brady* violation occurred.

C. Motion to Suppress

[15] In his Motion to Suppress Fisher sought to exclude, what he claimed to be, inflammatory medical evidence, because such evidence was unfairly prejudicial and not relevant to proving the elements of the charged offenses. Specifically, Fisher sought to exclude the People's witness, Dr. Jeron E. Landstrom (hereinafter "Landstrom") from testifying and creating, in the minds of the jury, the desire to exact revenge upon Fisher. The trial court's application of GRE 403 to the evidence in question is reviewed for an abuse of discretion. *People v. Evaristo*, 1999 Guam 22, ¶ 6. Additionally, "[a] [trial] court's decision to exclude or admit evidence under FRE 403 is reviewed with 'considerable deference.'" *United States v. Hankey*, 203 F.3d 1160, 1167 (9th Cir. 2000) (citation omitted). Guam Rule of Evidence 403 provides that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." 6 GCA § 403 (1995).

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[16] That the evidence presented by the People, through the testimony of Landstrom, was obviously prejudicial, as it is the People’s duty to present evidence to establish the guilt of a defendant. However, “[a]t issue is whether probative value is outweighed by the danger of *unfair prejudice* to a defendant.” *People v. Superior Court of Guam (Bruneman)*, 1998 Guam 24, ¶ 14. (emphasis in original). In his motion to suppress, Fisher argued that Landstrom’s testimony would only be relevant to establish the seriousness of Palacios’s injury; however, he also believed such testimony would be inflammatory. Fisher offered to stipulate that the injury sustained by Palacios was in fact serious bodily injury in an attempt to obviate the need for Landstrom’s testimony. However, the People rejected the offer of a stipulation of fact with regard to the injury and proceeded to present Landstrom. The People also called Palacios who testified to the seriousness of the injury he sustained and other particulars with regard to his medical treatment.

[17] On appeal, Fisher now argues that, in light of Palacios’ testimony, Landstrom’s testimony was cumulative, lacked probative value and caused confusion to the jury.² However, the People maintain that Landstrom’s testimony was essential not only to corroborate the testimony of Palacios, but also to provide the trier of fact with evidence as to Fisher’s intent when committing the assault.³

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²Although at the trial court level Fisher claimed the evidence was unfairly prejudicial, he did not contend that such evidence was irrelevant or lacked probative value, as he does now on appeal.

³Fisher claims that at trial the People attempted to elicit expert testimony from Landstrom as to whether Palacios’ injury was consistent with his testimony as to the position of his hand when the injury was sustained. Fisher further indicates that Landstrom admitted he was unqualified to give that type of opinion. However, the trial transcripts reveal that Landstrom, although not a forensics expert, was determined to be qualified, by the trial court, to testify whether the injury was consistent with prior testimony, after *voir dire*.

[18] Moreover, proper procedural safeguards were present, evinced through Fisher's opportunity to question Landstrom's expert qualifications and Fisher's ability to cross-examine Landstrom, to diminish the prospect of unfair prejudice. *Superior Court of Guam (Bruneman)*, 1998 Guam 24 at ¶ 14. Although the testimony of Landstrom and the performance of a computerized demonstration may have been substantial, the trial court exercised its discretion, after objection by Fisher, and ceased the examination of Landstrom as cumulative. Additionally after *voir dire*, Fisher objected to Landstrom's qualifications regarding testimony as to the consistency of the wound to the previous testimony. The court instructed the jury that Landstrom could not specifically recount to the jury what had happened on the night in question, however, he was qualified to provide his opinion whether the injury was consistent with Palacios' statement, made for the purpose of medical treatment. To argue that Landstrom's testimony was completely useless because Palacios had already testified as to the seriousness of the injury is inaccurate. Landstrom's testimony served to corroborate Palacios' statements, both as to the nature of the injury and the possible circumstances surrounding the sustaining of the injury. The People's refusal of Fisher's proposed stipulation of facts was sanctioned. "[The government] was entitled to prove these elements of the charged offenses by introduction of probative evidence. *United States v. Campbell*, 774 F.2d 354, 356 (9th Cir. 1985); see also *Parr v. United States*, 255 F.2d 86, 88 (5th Cir. 1958).⁴ However, a proper Rule 403 analysis "will incorporate some assessment of the need for the allegedly prejudicial information in light of a valid stipulation." *United States v. Hiland*, 909 F.2d 1114, 1134 (8th Cir. 1990) (citation and internal quotation omitted).

⁴"It is a general rule that 'A party is not required to accept a judicial admission of his adversary, but may insist on proving the fact.' 31 C.J.S. Evidence §§ 299, p. 1068. The reason for the rule is to permit a party 'to present to the jury a picture of the events relied upon. To substitute for such a picture a naked admission might have the effect to rob the evidence of much of its fair and legitimate weight.'" *Parr*, 255 F.2d at 88.

[19] Landstrom’s testimony was corroborative and probative. The trial court properly ceased examination of Landstrom when the testimony began to be cumulative. Fisher has failed to demonstrate that the testimony was unfairly prejudicial, thereby outweighing its probative value. Deference should be given to the trial court absent some clear abuse of discretion, which has not been established in this case.

D. Motion for Judgment of Acquittal

[20] After trial, Fisher made a motion for judgment of acquittal, which the trial court denied. The trial court’s denial of the Defendant-Appellant’s motion for judgment of acquittal is reviewed *de novo*. *People v. Cruz*, 1998 Guam 18, ¶ 8. *People v. Quinata*, 1999 Guam 6, ¶ 9. “Under a Motion for Judgment of Acquittal, the Court must examine the evidence in a light most favorable to the government and decide whether any rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt.” *People v. Camacho*, 1999 Guam 27, ¶ 40; *Cruz*, 1998 Guam 18 at ¶ 9.

[21] In support of his contention that the trial court erred in its denial of the motion for judgment of acquittal, Fisher argues that, based upon the evidence presented, the jury improperly ignored the self-defense instruction given by the court. This argument is premised upon Fisher’s view of the case as follows: (1) Palacios admitted that he was an intruder in the Cordero house; (2) he entered through the back door when no one answered his knock; (3) Cordero testified that Fisher lived in the residence; (4) the incident began when Fisher ordered Palacios out of the house; (5) the jury was instructed that Fisher may use reasonable force to eject an intruder; (6) that Fisher and Palacios exchanged blows after Palacios refused to leave, with Fisher throwing the first blow; and (7) that Fisher did not resort to deadly force to oust Palacios from the house. Therefore, Fisher attributes the conviction to the fact that the People presented

inflammatory evidence with regard to Palacios' injury and its allusion to the fact that Fisher may not have been a proper resident in the Cordero home.

[22] On review, however, the court must examine the evidence in a light most favorable to the People. *Cruz*, 1998 Guam 18 at ¶ 9. If, and only if, a rational trier of fact could not have found that the People established the essential elements of the crime beyond a reasonable doubt, should the court then overturn the conviction. *Id.* The essential elements of the crime were that (1) Fisher recklessly caused, (2) serious bodily injury to Palacios, (3) on or about June 21, 1998 in Guam. Additionally, the jury had to find that Fisher did not act in self-defense. Testimony was presented that the incident occurred on June 21, 1998 in Dededo, Guam. Transcript, vol. –, p. 7 (Jury Trial, Apr. 15, 1999). It was Cordero's testimony that Fisher lived in the residence with her and her family. Transcript, vol. –, pp. 77-80 (Jury Trial, Apr. 15, 1999). Fisher wielded a machete which he swung at Palacios, causing the injury to Palacios, while Palacios was outside of the house. Transcript, vol. –, pp. 16-21 (Jury Trial, Apr. 15, 1999). Testimony was presented to indicate that Palacios was attempting to leave the residence at the time the injury occurred. Transcript, vol. --, pp. 16-21 (Jury Trial, Apr. 15, 1999). The degree of seriousness of the injury was explained and attested to by Palacios and Landstrom. Transcript, vol. –, pp. 20-24, 53-64 (Jury Trial, Apr. 15, 1999).

[23] The altercation which occurred was left open to the jury's interpretation. Although Fisher claims that the evidence was uncontroverted, such does not establish the jury failed at their task. What is clear is that an altercation ensued, with Fisher striking the first blow, to which Palacios responded. Fisher then went after Palacios with a machete. The People presented evidence, through the testimony of Palacios, to indicate that this use of force was reckless and, at the same time, unreasonable under the guise of self-defense. The People presented sufficient evidence to establish its case against Fisher and to contradict

Fisher's claim that he acted reasonably in self-defense. Thus, the denial of Fisher's Motion for Judgment of Acquittal was proper.

CONCLUSION

[24] The trial court did not err in its evidentiary rulings during the trial below. Additionally, the evidence presented at trial was sufficient to uphold the verdict convicting Fisher. Therefore, the conviction is **AFFIRMED** in its entirety.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice