IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee

vs.

OSMUNDO V. SANGALANG, JR.
Defendant-Appellant

Supreme Court Case No. CRA00-003
Superior Court Case No.CF0450-99

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on February 5, 2001
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, JR., and F. PHILIP CARBULLIDO, Associate Justices.

CARBULLIDO, J.:

[1] This is an appeal from a jury verdict convicting the Appellant, Osmundo V. Sangalang, Jr., of the offenses of Aggravated Murder and Murder and the concomitant Special Allegations of the Possession and Use of Deadly Weapon in the Commission of the respective felonies. Appellant advances four arguments on appeal, *to wit*: (1) that the trial court erred in admitting evidence of Appellant's statements to the police; (2) that there was insufficient evidence of culpable mental state to sustain the convictions; (3) that there was sufficient evidence of Appellant's mental defect to support the defense of insanity; and (4) that the trial court failed to charge the jury, *sua sponte,* with an instruction for the defense of diminished capacity. We find that these arguments lack merit and affirm the convictions.

I.

[2] On September 2, 1999, the Superior Court Territorial Grand Jury returned an indictment charging the Appellant (hereinafter "Sangalang") with two counts of Aggravated Murder, as a first degree felony and pursuant to Title 9 GCA § 16.30(a)(1) and (b).[1] Included in the indictment were Special Allegations of the Possession and Use of a Deadly Weapon in the Commission of a Felony, pursuant to 9 GCA § 80.37. The victims of the homicide were Sangalang's wife Elaine M. Sangalang (hereinafter "Elaine") and Jun Velasco (hereinafter "Velasco").

[1]The statute provides: "(a) Criminal homicide constitutes aggravated murder when: (1) it is committed intentionally with premeditation; . . . .(b) Aggravated murder is a felony of the first degree, . . ." Title 9 GCA § 16.30(a)(1) and (b) (1993).

[3] Sangalang and Elaine were married in 1977 and remained so until her death on July 14, 1999. Sometime during 1996, Elaine and Velasco became involved in an affair, and, despite their attempts to conceal the fact, Sangalang became aware of the affair. As the affair continued, Sangalang became increasingly withdrawn and depressed. Sangalang lost weight and had trouble at work due to excessive absences and poor performance.

[4] On July 14, 1999, Sangalang and Elaine had plans to meet; however, he discovered that she was at Velasco's residence where he observed Elaine, Velasco, and another individual drinking. Sangalang confronted his wife and asked her to return with him; however, she refused and stated that she would meet him at about 7:00 p.m. that evening. Later in the evening, Sangalang picked up his step-grandson, and drove by the Velasco residence. Sangalang saw that his wife was still at the residence. At 8:00 p.m., Sangalang again drove by the residence and saw that his wife was still there. Sangalang became very angry, drove to his residence and retrieved his firearm. Sangalang testified that he test-fired the gun and then, with his grandson, drove back to the Velasco residence. Sangalang instructed his grandson to call Elaine outside and instruct her to return home. Despite this request, she refused to leave. Upon hearing this, Sangalang confronted his wife, retrieved his firearm and shot at Velasco. Elaine was shot while attempting to prevent her husband from shooting Velasco again. Sangalang then continued to shoot both his wife and Velasco. The children in the house attempted to call the police and Sangalang instructed them to put the phone down. He subsequently left the scene.

[5] Sangalang was pulled over by the Guam Police Department (hereinafter "GPD") several hours later. He was placed into custody and transported to their offices at Tiyan. While there, Sangalang was advised of his *Miranda* rights which he waived. He then made written and oral statements about the

incident. He further provided a re-enactment of the incident which the police video-taped.

[6] At the arraignment, Sangalang pleaded not guilty to the charges by reason of mental defect or illness. Sangalang was examined by Dr. James Kiffer, a clinical psychologist of the Superior Court, and by Dr. William Hoctor, a psychiatrist employed by the U.S. Navy and the Pacific Area Counselling Network. Although both professionals diagnosed Sangalang as suffering from severe mental depression, they concluded that Sangalang was competent to stand trial.

[7] Prior to trial, on December 20, 1999, Sangalang filed a motion to suppress the statements he made to the police when taken into custody. After a hearing on the matter, the trial court denied Sangalang's motion on the basis that, viewing the totality of the circumstances, Sangalang's waiver of his *Miranda* rights was knowing and voluntary.*See* Plaintiff-Appellee's Excerpts of Record, Tab 2 (Decision and Order, Jan. 3, 2000). The court discounted Sangalang's claim that his waiver was not made knowingly and observed that the voluntariness of his waiver did not become an issue until after Dr. Hoctor's statement to that effect. The court determined that Dr. Hoctor's assessment was derived from Sangalang's statements given months after the events at issue. Further, the trial court found that there was no coercive police activity, that Sangalang executed written waivers and provided a detailed confession, that his rights were individually explained and that he acknowledged that he understood them, and that there was no evidence that Sangalang did not understand English. *See* Plaintiff-Appellee's Excerpts of Record, Tab 2 (Decision and Order, Jan. 3, 2000).

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[8] A jury trial was commenced on January 4, 2000. At the conclusion of the trial, the jury found Sangalang guilty of Murder as a lesser offense of Aggravated Murder and the Special Allegation (as to victim Elaine), and Aggravated Murder and the Special Allegation (as to victim Velasco).[2] On February 18, 2000, Sangalang was sentenced to life imprisonment without the possibility of parole for the aggravated murder of Velasco and twenty five years for the special allegation. He was further sentenced to life imprisonment with the possibility of parole for the murder of Elaine and twenty five years for the special allegation. The sentences were to run consecutively. Sangalang filed a timely Notice of Appeal.

II.

[9] This court has jurisdiction pursuant to Title 7 GCA §§3107 and 3108 (1994).

III.

A. Denial of Sangalang's Motion to Suppress

[10] We review a motion to suppress *de novo*. *People v. Hualde*, 1999 Guam 3, ¶ 19. The voluntariness of a waiver of *Miranda* rights is reviewed *de novo*. *Id.* A determination that a waiver was knowing and intelligent is reviewed for clear error. *Id*.

[11] The privilege against self incrimination is derived from the Fifth Amendment of the United States Constitution. *Hualde* 1999 Guam 3 at ¶ 20 (citing *Miranda v. Arizona*, 384 U.S. 436, 460-461, 86 S.Ct. 1602, 1620-1621 (1966)). Under the Fifth Amendment, the government is prohibited from compelling an

[2] The lesser included offense of murder is found in 9 GCA § 16.40(a)(1). *See* Transcript, Vol. VII of VII, at p. 21 (Sentencing, February 18, 2000). The statute provides: "Criminal homicide constitutes murder when: (1) it is committed intentionally or knowingly; . . . (b) Murder is a felony of the first degree" Title 9 GCA § 16.40(a)(1)(b) (1993).

individual to incriminate himself. *Id.*; *see Murphy v. Waterfront Commissioner*, 378 U.S. 52, 57, 84 S.Ct. 1594, 1598, n. 6 (1964); *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742, 104 S.Ct. 2720, 2725 (1984) (recognizing that "the Constitution only proscribes compelled self-incrimination"). The privilege against self-incrimination attaches when the government subjects a defendant to custodial interrogation. *See Hualde*, 1999 Guam 3 at ¶ 20; *see also Grand Jury Subpoena Dated April 9, 1996 v. Smith*, 87 F.3d 1198, 1201 (11th Cir. 1996); *People v. Veloria*, Crim. No. CR96-00055A, 1997 WL 209052, *2 (D. Guam App. Div. 1997). Because the process of custodial interrogation contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely, the government is required to use prophylactic procedural safeguards designed to secure the privilege against self-incrimination. *Hualde*, 1999 Guam 3 at ¶ 20. In accordance with *Miranda*, an individual must be informed of the right to remain silent prior to custodial interrogation. *Veloria*, 1997 WL 209052, at *2; *People v. Quidachay*, Crim. No. 99997A, 1983 WL 299952, * 3 (D. Guam App. Div. Nov. 8, 1983).

[12] Testimonial evidence that is a product of custodial interrogation is inadmissible unless a defendant waived the privilege against self-incrimination. *Murphy*, 378 U.S. at 57, 84 S.Ct. at 1598, n. 6; *Quidachay*, 1983 WL 299952 at * 3. To be valid, the waiver must be voluntary, knowing and intelligent. *Hualde*, 1999 Guam 3 at ¶ 20. Statements made by a defendant who was not advised of his *Miranda* rights are per se involuntary and therefore inadmissible. *Allen v. State*, 686 N.E.2d 760, 770 (Ind. 1997). If properly administered warnings were given, the court must determine whether the defendant's waiver was voluntary before allowing the statements to be admitted into evidence. *Id.* This court has stated that the inquiry of whether a waiver is coerced has two distinct dimensions:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Hualde,1999 Guam 3 at ¶ 30 (citations omitted).

[13] "A valid waiver of [a defendant's] *Miranda* rights depends upon the totality of the circumstances, including the background, experience, and conduct of the defendant." *United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998). There is a presumption against a finding of a waiver, and the prosecution bears the burden of proving by a preponderance of the evidence that a defendant knowingly and intelligently waived his *Miranda* rights. *Id.*

[14] However, if police conduct is not "causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Colorado v. Connelly*, 479 U.S. 157, 164, 107 S.Ct. 515, 520 (1986). Because interrogators often employ forms of psychological coercion, courts may take the defendant's mental condition into account as a factor in determining "voluntariness." *Id*. However, the police practice of using subtle psychological techniques "does not justify a conclusion that a defendant's mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional 'voluntariness'". *Id.*

[15] In *Colorado v. Connelly*, the defendant's statements to the police, after a waiver of *Miranda* rights, were deemed admissible notwithstanding the defendant's contention that it was the voice of God that told him to confess to the murder he had committed. *Id*. at 161, 107 S.Ct. at 518-519. A psychiatrist gave expert opinion that the defendant was experiencing command hallucinations which interfered with his ability

to make free and rational choices. *Id.* Despite this, the Court rejected an approach that would require a court to make "sweeping inquiries into the state of mind of a criminal defendant who has confessed, inquiries [that are] divorced from any coercion brought to bear on the defendant by the State." *Id.* at 166-167, 107 S.Ct. at 521.

[16] Similarly, in the instant case, although there was an allegation that Sangalang suffered from a mental illness, in the totality of the circumstances, and in the absence of some police coercion, it cannot be said that the trial court erred in denying the motion to suppress. The only witness at the suppression hearing was Special Agent Joseph S. Carbullido (hereinafter "Carbullido") of the Guam Police Department. Officer Carbullido had transported Sangalang to the GPD offices in Tiyan after he had been arrested. Carbullido testified that Sangalang appeared "hyper" and nervous but that he surmised that Sangalang was hyper and nervous about the pullover and arrest. Transcript, vol. I of VII, p. 15 (Suppression Hearing, Dec. 30, 1999). Handcuffs were removed upon his arrival at the police station. Transcript, vol. I of VII, p. 18 (Suppression Hearing, Dec. 30, 1999). Carbullido advised Sangalang of his Constitutional rights at approximately 6:20 a.m.. Carbullido testified to the procedure that had been used to obtain the waiver of the *Miranda* rights, including the reading of each of the rights and an acknowledgment that Sangalang understood each of those rights. Transcript, vol. I of VII, pp. 20-21 (Suppression Hearing, Dec. 30, 1999); *see also* Appellee's Excerpts of Record, Excerpts 1, p. 4 (Custodial Interrogation form). It did not appear that Sangalang had difficulty understanding what was being explained to him nor were definition of terms ever needed. Transcript, vol. I of VII, p. 22-23 (Suppression Hearing, Dec. 30, 1999). In fact, Carbullido testified that Sangalang appeared coherent and responded appropriately to the questions asked. Transcript, vol. I of VII, p. 25 (Suppression Hearing, Dec. 30, 1999). Sangalang gave detailed responses

to the questions asked. Transcript, vol. I of VII, p. 28 (Suppression Hearing, Dec. 30, 1999). Carbullido testified that he had not raised his voice nor banged a table at any point in the interview process. Transcript, vol. I of VII, p. 29 (Suppression Hearing, Dec. 30, 1999). Officer Carbullido then described the circumstances surrounding the preparation of Sangalang's written statement. Transcript, vol. I of VII, pp. 30-37 (Suppression Hearing, Dec. 30, 1999). Carbullido testified that no promises were made to Sangalang nor was Sangalang subjected to physical mistreatment. Transcript, vol. I of VII, p. 74 (Suppression Hearing, Dec. 30, 1999). On cross-examination, Carbullido denied that Sangalang seemed to act like someone on drugs. Transcript, vol. I of VII, p. 82 (Suppression Hearing, Dec. 30, 1999). But he admitted that Sangalang had indicated several times during his video re-enactment that he was "going to explode." Transcript, vol. I of VII, p. 89 (Suppression Hearing, Dec. 30, 1999).

[17] Conspicuously absent from the above outline of the testimony is any fact that would support a finding of police misconduct. In fact, counsel for Sangalang pointed out that the police had done a good job. Transcript, vol. I of VII, pp. 102-103 (Suppression Hearing, Dec. 30, 1999). Sangalang argues that it was not that external forces were applied but rather, as pointed out by Dr. Hoctor's report, that internal pressures compelled him to give an involuntary waiver of his rights. However, for this court to find a violation of *Miranda* on this basis alone would require us to conduct a sweeping inquiry into the state of mind of Sangalang separate from any coercion brought to bear on him by the government. *See Connelly*, 479 U.S. at 166-167, 107 S.Ct. at 521. Due process requires the exclusion of evidence obtained by the government in disregard of an individual's constitutional rights. Absent coercive police activity, there is no basis for finding that a confession was not voluntary within the meaning of the Due Process Clause. *Id.* at 167, 107 S.Ct. at 522.

[18] Therefore, we hold that notwithstanding Sangalang's alleged mental condition, in the totality of the circumstances, his waiver of the *Miranda* rights was valid and that the lower court did not commit error in denying Sangalang's motion to suppress.

B. Sufficiency of Evidence to Support the Conviction

[19] Sangalang launches a two-pronged attack against his convictions: (1) that he has demonstrated that there was more than sufficient evidence of his mental illness that the jury could not have rationally concluded that Sangalang had the requisite mental states for Aggravated Murder and Murder; and (2) that there was overwhelming evidence that Sangalang was acting under an extreme mental or emotional disturbance for which there had been a reasonable explanation or excuse and therefore that, pursuant to 8 GCA § 130.60, this court should reduce the degree of the offenses or punishment imposed.

1. Standard of Review

[20] In reviewing the sufficiency of the evidence to support a criminal conviction, the critical inquiry is whether the evidence in the record could reasonably support a finding of guilt beyond a reasonable doubt. *People v. Reyes*, 1998 Guam 32, ¶ 7 (citing *Jackson v. Virginia*, 443 U.S. 303, 318, 99 S.Ct. 2781, 2788-89 (1979)). "When a criminal defendant asserts that there is insufficient evidence to sustain the conviction, this court reviews the evidence in the light most favorable to the prosecution to ascertain whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. This is a highly deferential standard of review. *Id.* (citing *United States v. Rubio-Villareal*, 967 F.2d 294 (9th Cir. 1992) (*en banc*)).

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2. Analysis

a. Evidence Supporting the Convictions

[21] After reviewing the entire record in the light most favorable to the prosecution, we find that a rational jury could have found that the essential elements of the offenses charged were proven beyond a reasonable doubt. *See Reyes*, 1998 Guam 32 at ¶ 7. Most especially, at issue here was whether Sangalang acted intentionally and with premeditation. In this regard, the jury was presented with testimony from eyewitnesses to the incident. Velasco's son testified that he saw Sangalang shoot his father. Transcript, vol. III of VII, p. 8 (Trial, Jan.6, 2000). He further testified that Elaine tried to stop Sangalang from shooting again but that Sangalang pushed Elaine down, shot her and continued to shoot the two victims until Sangalang was out of bullets. *Id*. Other witnesses to the incident attempted to contact the police but were told by Sangalang to put the phone down. Transcript, vol. III of VII, p. 11 (Trial, Jan.6, 2000). The jury heard evidence that it appeared that Sangalang stealthily departed the victims' location. Transcript, vol. III of VII, p. 24 (Trial, Jan. 6, 2000). Finally, the jury also considered Sangalang's confession and video-taped re-enactment of the incident.

[22] The evidence more than adequately demonstrated Sangalang's responsibility for the crimes that he was convicted and we therefore find that his challenge to the sufficiency of the evidence lacks merit. There was more than sufficient evidence to support the jury's conclusion that Sangalang acted intentionally and with premeditation in causing the deaths of Elaine and Velasco.

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b. Reduction of Degree of Offense

[23] Sangalang further argues that under the facts and circumstances of this case, there was no evidence of a culpable mental state to support the jury's finding and that this court should exercise its discretion and reduce the murder convictions to manslaughter as defined in 9 GCA § 16.50.[3]

Sangalang relies upon the following statute:

> The appellate court may reverse, affirm or modify a judgment or order appealed from, or reduce the degree of the offense or the punishment imposed, and may set aside, affirm or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.

Title 8 GCA § 130.60 (1993).

[24] In *People v. Reyes*, the defendant asked this court to exercise its discretion and find that there was insufficient evidence of a culpable mental state to support his conviction of murder and reduce that charge to manslaughter, either reckless or under the influence of an extreme mental or emotional disturbance for which there is a reasonable explanation or excuse. *Reyes*, 1998 Guam 32 at ¶ 6. The court found that there was sufficient evidence for which the jury could reasonably conclude that the appellant had acted knowingly and recklessly under circumstances manifesting extreme indifference to the value of human life. *Id.* at ¶ 8.

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[3] Manslaughter is defined in 9 GCA § 16.50(a)(2). That section provides:

> (a) Criminal homicide constitutes manslaughter when: . . . (2) a homicide which would otherwise be murder is committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as he believes them to be. The defendant must prove the reasonableness of such explanation or excuse by a preponderance of the evidence.

Title 9 GCA § 16.50(a)(2) (1993).

[25] Similarly, there is sufficient evidence in this case to support the jury's conclusion that Sangalang had acted intentionally and with premeditation in causing the deaths of Elaine and Velasco. Nothing in the record compels us to exercise our discretion and reduce the degree of the offenses of which Sangalang was convicted.

C. Sufficiency of Evidence for Defense of Insanity

[26] Sangalang claims that there was sufficient evidence of insanity to support the complete defense offered by statute against the two offenses of which he was convicted. Sangalang's basic argument is that the evidence more than adequately showed that he was legally insane at the time of the offenses. We reject this argument and find that Sangalang has failed to meet his burden of proof on the affirmative defense of insanity.

1. Standard of Review

[27] Preliminarily, an issue arises with respect to the proper standard of review in determining whether Sangalang proved his affirmative defense of insanity.[4] A more common issue defendants raise is the sufficiency of the evidence to support the jury's finding that the prosecution met all the elements required for a conviction. As stated in the discussion of the preceding issue, the Supreme Court of the Untied States has determined that, when there is a challenge to the sufficiency of the evidence to support a conviction, an appellate court views the evidence against an appellant in the light most favorable to the government to determine whether "any rational trier of fact could have found the essential elements of a crime beyond a

[4]The People regard the same standard as that used for a judgment of acquittal, i.e., that this court must review the evidence against the defendant for sufficiency in the light most favorable to the government to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Appellee's Opening Brief at 6 (citing *People v. Quinata*, 1999 Guam 6). Sangalang, on the other hand , argues that this court's inquiry is limited to whether there is substantial evidence in the record to support the jury's finding of sanity. Appellant's Opening Brief at 15 (citing *People v. Wolff*, 61 Cal.2d 795, 40 Cal. Rptr. 271 (1964)).

reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2788 (1979) (citation omitted).

[28] The *Jackson* standard is framed in light of the fact that the government has the burden to prove all elements of the crime beyond a reasonable doubt before a conviction may be obtained. The argument presently before the court differs from a challenge to the sufficiency of the evidence to support a conviction in that, with regard to the insanity defense, it is the *defendant*, and not the government, who has the burden of showing that he was legally insane by a preponderance of the evidence. *See* Title 9 GCA § 7.22 (a) (1994). Thus, the issue is whether and how this distinction affects the standard by which we review the jury's finding on the insanity defense. This is an issue of first impression in this jurisdiction.

[29] A brief review of the standards articulated by jurisdictions that, like Guam, require a defendant to prove the defense of insanity by a preponderance of the evidence is warranted. Some courts review a jury's finding regarding an affirmative defense under the same type of standard used for a challenge to the sufficiency of the evidence to support a conviction, that is, the standard enunciated in *Jackson v. Virginia*. *See, e.g.*, *State v. Prince*, 688 So.2d 643, 649 (La. 1997); *State v. Lively*, 921 P.2d 1035, 1043 (Wash. 1996) (*en banc*); *Brown v. State*, 295 S.E.2d 727, 732-33 (Ga. 1982). In Louisiana, for example, the court explicitly adopted the *Jackson* standard, even despite the fact that the defendant has the burden to prove the insanity defense. That court stated:

> In reviewing a claim of insufficiency of evidence in regard to a defense of insanity, a reviewing court applies the test set forth in *Jackson v. Virginia, supra*, to determine whether, viewing the evidence in the light most favorable to the state, any rational juror could have found that the defendant had not proven by a preponderance of the evidence that he was insane at the time of the offense.

Prince, 688 So.2d at 649; *cf. State v. Mishne*, 427 A.2d 450, 458 (Me. 1981) (employing a *Jackson*-type standard); *State v. Anderson*, 723 P.2d 464, 468 (Wash. Ct. App. 1986).

[30] By contrast, the Texas courts have rejected a *Jackson*-type standard of review in the context of the insanity defense. *See Meraz v. State*, 785 S.W.2d 146, 154-55 (Tex. Crim. App. 1990). Instead, the intermediate criminal appeals court reviews a jury's findings on the insanity defense using the standard employed by civil courts to determine whether a new trial is warranted, the test being "whether after considering *all the evidence relevant to the issue at hand*, the judgment is so against the great weight and preponderance of the evidence so as to be manifestly unjust." *Id*. at 155 (emphasis added). The court's reasoning for its rejection of *Jackson* is two-fold. First, a *Jackson*-type review is not mandated because *Jackson* deals with a challenge to the sufficiency of the evidence to support a conviction, whereas in the case of an affirmative defense, the defendant admits that the elements of the crime are met, but that he also met his burden of proving the affirmative defense of insanity. *See id*. at 152-53. Second, the Texas Constitution gave the intermediary courts of criminal appeals the authority to conduct a *weight* of the evidence review. *Id*. at 153-54. Based on these two reasons, the Texas court rejected the *Jackson*-type review and adopted the weight of the evidence review in all cases where the defendant challenges the jury's findings on the affirmative defense of insanity.

[31] The most important distinction between a *Jackson*-type review and a weight of the evidence review lies in the result. The Texas court explained that if a conviction is challenged because of insufficient evidence, and a court reverses using a *Jackson*-type review, the defendant cannot be retried under the double jeopardy principles. *Id*. at 156. By contrast, the "weight of the evidence" refers to a jury's determination that more evidence supports one side of the issue than the other, and a court's finding that

the jury's determination was against the weight of the evidence does not preclude a retrial. *Id.*; *see also Bethay v. State*, 219 S.E.2d 743, 747, n. 1 (Ga. 1975) (holding that a reversal based on insufficient evidence would bar retrial whereas "[w]here the trial court grants a new trial on the ground that the verdict is against the weight of the evidence, a subsequent prosecution would not be barred by the [double jeopardy statute]."), *disagreed with on other grounds by Humphrey v. State*, 314 S.E.2d 436 (Ga. 1984).

[32] In formulating the proper standard of review under these circumstances, we note that although the government bears the burden of proving each and every element of an offense beyond a reasonable doubt, its burden does not extend to negating a defense explicitly designated as an affirmative defense such as the one at issue here. Title 8 GCA § 90.21 (a),(c) (1993). In Guam, the defense of mental illness, disease or defect excusing criminal conduct is specifically designated an affirmative defense which the defendant bears the burden of proving by a preponderance of the evidence. 9 GCA § 7.22(a). Successful invocation of the defense of insanity excuses criminal responsibility for an offense. *People v. Jung*, 2001 Guam 15, ¶ 22. The defendant necessarily admits that he committed the act as charged but that because of his mental illness, disease or defect, he is excused. *Id.; see also Bethea v. United States*, 365 A.2d 64, 83 n.38 (D.C. 1976) (observing that the issue of the accused's possible exculpation on the grounds of insanity does not arise unless and until the government has proven beyond a reasonable doubt all of the elements of the charged offense). Moreover, so that there is no misunderstanding with the approach we take here, neither side provided this court with the jury instructions that the court ostensibly charged. Thus, there is no issue as to error in the law as instructed, nor that the instructions were misleading or incomprehensible. All that is at issue in this case is whether the jury should have found that Sangalang was insane.

[33] With the above considerations in mind, we must now determine which test to employ in our jurisdiction when the defendant challenges the jury's finding on the insanity defense. Under the criminal procedure statutes, a motion for acquittal may be granted only if the court finds that there was insufficient evidence to support a conviction. Title 8 GCA § 100.10 (1993). There is nothing to preclude the defendant from challenging both the sufficiency of the evidence to support a conviction, as well as the jury's findings on his affirmative defense of insanity. *See Meraz*, 785 S.W.2d at 153. However, a challenge to the insanity finding does not implicate the jury's findings on the elements of the crime. Because insanity is an affirmative defense in this jurisdiction, a defendant who raises an insanity defense essentially concedes that he committed the offense, but that he should be absolved of responsibility because the evidence shows that he was legally insane. *See id.* If a defendant admits or concedes that he committed the offense, he is essentially admitting that the evidence was sufficient to convict. Thus, a *Jackson*-type review of the sufficiency of the evidence to support the conviction is not warranted. Rather, because the defendant concedes that the government met its burden, the challenge to the jury's findings on the insanity defense necessitates a factual review, as opposed to a legal review. In such cases, the court weighs the evidence, and if the case is exceptional in that the evidence is so "against the great weight and preponderance of the evidence so as to be manifestly unjust," a new trial would be warranted. *Meraz,* 785 S.W.2d at 154-55; *see* Title 8 GCA § 110.30 (1993) (providing that a new trial is warranted if *justice* so requires). We are persuaded that this test provides the appropriate means of reviewing the sufficiency of the evidence relating to an insanity defense.

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2. Analysis

[34] Turning to the issue at hand, under the standard of review announced above, we find that Sangalang has failed to meet his burden of proof. Two mental health professionals testified before the jury below. The Appellee called Dr. James Kiffer (hereinafter "Dr. Kiffer"), a clinical psychologist employed by the Superior Court of Guam, to testify. Dr. Kiffer was qualified as an expert in forensic psychology. Transcript, vol. V of VII, p.7 (Trial, Jan.10, 2000). Dr. Kiffer testified to interviewing Sangalang at least twice. Transcript, vol. V of VII, p.8 (Trial, Jan.10, 2000). He met with the government and reviewed some of the police reports and the video re-enactment in the preparation of his opinion. Transcript, vol. V of VII, p.8 (Trial, Jan.10, 2000). Dr. Kiffer diagnosed Sangalang as suffering from a major depression of fairly long standing duration, possibly most of 1999. Transcript, vol. V of VII, p.9 (Trial, Jan.10, 2000). He further testified that the depression did not result in a lack of substantial capacity to know or understand what he was doing. Transcript, vol. V of VII, p.10 (Trial, Jan.10, 2000). Dr. Kiffer testified that after his conversation with Sangalang he concluded that Sangalang could control his actions. Transcript, vol. V of VII, p.15 (Trial, Jan.10, 2000).

[35] Sangalang's expert, Dr. William Hoctor, a psychiatrist, was qualified as an expert in the field of forensic psychiatry. Transcript, vol. V of VII, p. 125 (Trial, Jan.10, 2000). Dr. Hoctor testified that his diagnosis, as well as Dr. Kiffer's, concluded that Sangalang was suffering from severe major depression. Transcript, vol. V of VII, p.130 (Trial, Jan.10, 2000). Dr. Hoctor testified that it was his opinion that at the time of the crime Sangalang was mentally ill, but that his mental illness "did not render him substantially incapable of understanding the nature and quality of his act, or that it was wrong. In other words, he knew what he was doing, despite the fact that he was mentally ill." Transcript, vol. V of VII, pp.136-37 (Trial,

Jan.10, 2000). Dr. Hoctor further testified that to "a degree of reasonable medical certainty that as a result of his mental illness, that he lacked substantial capacity to control his actions at the time of the crime." Transcript, vol. V of VII, p.137 (Trial, Jan.10, 2000).

[36] Additionally, other evidence was before the jury from which it could have made its determination to reject Sangalang's insanity defense. Sangalang cited to the California Supreme Court's case of *People v. Wolff*, 61 Cal. 2d 795, 40 Cal. Rptr. 271 (1964). Although the case has been subsequently overruled by statute, it did make some salient observations that this court may utilize. There, the defendant, a fifteen year old boy at the time of the crime, was charged with the murder of his mother. He pleaded not guilty by reason of insanity. The jury found that he was legally sane at the time of the commission of the offense, and the trial court determined that it was first degree murder. Despite the unanimity of expert opinions to the effect that in each of their respective medical opinions defendant suffered from a permanent form of one of the group of mental disorders generically known as schizophrenia and that the defendant was legally insane at the time he murdered his mother, the California Supreme Court held that that fact did not preclude the "jury from weighing, as they were required to do, these witnesses' further opinions that the defendant was legally insane at the time of the murder." *People v. Wolff*, 61 Cal. 2d 795, 812, 40 Cal. Rptr. 271, 281 (1964). Moreover, it observed that an examination of the conduct and declarations of the defendant are relevant considerations and admissible proof of his state of mind for the respective offenses with which he was charged. *See id.* at 805, 40 Cal. Rptr. at 277.

[37] The *Wolff* court looked at certain types of conduct as evidence of legal sanity. These included an ability to devise and execute a deliberate plan; the manner in which the crime was conceived, planned and executed; the fact that witnesses observed no change in the defendant's manner and that he appeared to

be normal; the fact that the defendant walked steadily and calmly, spoke clearly and coherently and appeared to be fully conscious of what he was doing; and the fact that shortly after committing the crime the defendant was cooperative and not abusive or combative, that questions were answered by him quickly and promptly; and that he appeared rational, spoke coherently, was oriented as to time, place and those persons who were present. *Id.* at 805-806, 40 Cal. Rptr. at 277. The court further held that the oral declarations of a defendant made during the period of time material to his offense may be used as evidence of legal sanity. *Id.* at 808, 40 Cal. Rptr. at 279.

[38] In this case, the facts before the jury included evidence that Sangalang discovered that his wife was still in the company of the man with whom she had been having an affair for a significant period of time. Sangalang returned to his residence and retrieved his firearm. Prior to confronting his wife, Sangalang test-fired the weapon. Sangalang took his step-grandson with him and had the latter go into the house to speak with the victim. All the while, he had remained hidden behind a tree. Sangalang confronted the victims and proceeded to shoot them. He instructed children at the residence not to call the police and then left. Additionally, Sangalang had been cooperative with the police, was not combative or abusive and rendered a lengthy and detailed description of the events orally, in writing, and in a video re-enactment.

[39] "The members of the jury are the exclusive judges of the credibility of witnesses and the weight to be given their testimony." *People v. Mesa*, 1980 WL 18234 at *2 (D. Guam App. Div. Sept. 9, 1980). Thus, deference must be paid to the jury's role as the body charged with the resolution of facts in dispute. In the instant case, the jury was presented not only with Sangalang's psychiatric expert but also had before it the facts and circumstances of his mental condition prior and subsequent to the homicides. We hold that the jury's finding that Sangalang was sane at the time of the act was not against the great weight and

preponderance of the evidence and consequently decline to reverse the convictions on this ground.

D. Failure to Instruct, *Sua Sponte,* on the Defense of Diminished Capacity

[40] Finally, Sangalang argues that the trial court committed reversible error by failing to instruct the jury, *sua sponte*, on the defense of diminished capacity.

1. Standard of Review

[41] When the defendant does not object to the jury instructions at the time of trial, an appellate court will review only for plain error. *People v. Perez*, 1999 Guam 2, ¶ 21; *see also* Title 8 GCA § 130.50(b) (1993).[5] "Plain error is highly prejudicial error affecting substantial rights. Such error will be found only where necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process." *Perez*, 1999 Guam 2 at ¶ 21.

2. Analysis

[42] The concept of diminished capacity as provided in Guam's criminal code was recently discussed in *People v. Jung*, 2001 Guam 15. In *Jung*, we adopted the view that any evidence of mental illness, disease or defect is admissible if it is relevant to the issue of whether a defendant possessed the requisite mental state required for the offense charged. *People v. Jung*, 2001 Guam 15 at ¶ 39. We expressly rejected any limitation which would render such evidence relevant only to the issue of insanity. *Id.* at ¶ 38. We also rejected the idea that the use of such evidence was limited in applicability to specific intent crimes or homicide crimes. *Id.* at ¶¶ 42- 43.

[43] Although this court concluded that an instruction to the jury on the relevance and applicability of evidence of mental abnormality was the better practice, whether or not the failure to instruct the jury on

[5]Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. Title 8 GCA § 130.50(b) (1993).

diminished capacity is reversible error is dependent upon a plain error analysis where, as is the case here, no instructions were requested by either party. *Id.* at ¶¶ 48-49. In *Jung*, we held that under the circumstances of the case, the failure to instruct the jury, *sua sponte*, on the diminished capacity defense constituted plain error. *Id*. at ¶ 58.

[44] The instant case is distinguishable from *Jung* in that neither party in the instant case thought it appropriate to include the jury instructions as part of the record on appeal. Much of the analysis in *Jung* was predicated on an examination of whether the instructions as a whole had the effect of precluding the jury's consideration of the evidence of mental disease or defect in determining whether the government had proved the elements, most specifically the *mens rea*, of the offenses charged. *See id*. at ¶¶ 54-55. In *Jung*, we found that the instructions may have misled the jury into thinking that the evidence was relevant only to the issue of insanity. *Id.* We further found that in a case where the existence of the requisite *mens rea* was the determinative issue, preclusion of the jury's consideration of evidence of mental abnormality on the issue of the government's burden to prove the *mens rea* element was not harmless. *Id*. at ¶ 56. Here, the record before us is inadequate to perform such an analysis and therefore precludes a finding of harmless error and consequently plain error in the trial court's failure to instruct, *sua sponte*, on diminished capacity.

[45] The facts in the instant case leads us to believe that even if it were error for the trial court to instruct the jury that evidence of Sangalang's mental abnormality could be considered in determining whether the government has proven the required mental state, such error was harmless. In light of the inadequate record presented for our review, we are not persuaded that the lower court's failure to instruct affected the outcome of the proceedings nor can we conclude that a miscarriage of justice would otherwise result in

affirming Sangalang's conviction.

IV.

[46] We find that although Sangalang's mental condition is a relevant consideration in determining the admissibility of his statements to the police, in this case Sangalang voluntarily waived his rights under *Miranda*. Further, there was sufficient evidence to support the conviction, and the jury's finding on the insanity defense was not against the great weight and preponderance of the evidence. Finally, although it was error for the trial court not to instruct the jury, *sua sponte*, on the defense of diminished capacity, such error was harmless. For these reasons, the judgment is **AFFIRMED**.

F. PHILIP CARBULLIDO
Associate Justice

PETER C. SIGUENZA, JR.
Associate Justice

BENJAMIN J.F. CRUZ
Chief Justice