

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM

Plaintiff-Appellee,

v.

DANNY F. GUERRERO

Defendant-Appellant.

Supreme Court Case No. CRA01-004

Superior Court Case No. CM1059-98

OPINION

Filed: August 27, 2003

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Appeal from the Superior Court of Guam

Argued and submitted on April 7, 2003

Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

TYDINGCO-GATEWOOD, J.:

[1] Defendant-Appellant Danny Flores Guerrero (hereinafter “Guerrero”) was convicted of the misdemeanor crime of Driving While Under the Influence of Alcohol. On appeal, Guerrero challenges his conviction on the following three grounds: (1) improper curtailment during his defense counsel’s cross-examination of Guam Police Department Officer Manuel Chong (hereinafter “Officer Chong”); (2) insufficiency of the evidence; and (3) inconsistent verdicts. We find that none of the grounds advanced by Guerrero warrants a reversal of his conviction and affirm the judgment.

I.

[2] At approximately 2:30 in the morning of April 14, 1998, while inside a marked police vehicle, Officer Chong observed a gray Toyota Forerunner veering off the roadway by the Tamuning Route 14 Shell Gas Station, between two power poles, and almost colliding into one of the poles. The Forerunner reversed back onto Route 14 and accelerated towards the Tumon area, while executing two 360 degree turns. Although the driver eventually regained control of the vehicle while proceeding towards the Tumon area, Officer Chong noted that the vehicle was constantly fish-tailing. Officer Chong eventually pulled the vehicle over, and the operator identified himself as Guerrero.

[3] Officer Chong perceived that Guerrero was driving while under the influence of alcohol. Not only did Officer Chong note that Guerrero emitted a very strong odor of alcoholic beverages through his mouth and nose, but also that Guerrero had glassy and bloodshot eyes and a slurred speech. Moreover, when Guerrero exited his vehicle, he had to lean onto the vehicle for support. When Officer Chong asked Guerrero if he had been drinking, Guerrero admitted that he had consumed seven beers. After Guerrero indicated that he did not have any physical ailments that would possibly impair his performance on a set of

tests to determine if he was impaired, Officer Chong then performed a battery of three tests as part of the Standardized Field Sobriety Test.¹ The first test performed, namely the Horizontal Gaze Nystagmus, tests the eyes of the driver for any involuntary jerkiness. Transcript, pp. 96-97 (Jury Selection & Trial, Aug. 9, 2000). The second test, the Walk-and-Turn Test, is a test where the individual is instructed to take nine steps down a line, turn a certain way, and take nine steps back. Transcript, pp. 96-97 (Jury Selection & Trial, Aug. 9, 2000). The third test, the One Leg Stand Test, is when an individual is instructed to stand and raise a foot of choice off the ground, toe pointing forward, knee straight, hands to the side, and then count from one to thirty while in this manner. Transcript, pp. 96-97 (Jury Selection & Trial, Aug. 9, 2000). Officer Chong determined that Guerrero failed all three tests, and was therefore impaired. Guerrero was taken to the police precinct and was read his Constitutional rights. Officer Chong then gave Guerrero the opportunity to take a breathalyzer test; however, because Guerrero became belligerent, no such test was ever given. Transcript, pp. 127-128 (Jury Selection & Trial, Aug. 9, 2000).

[4] On July 28, 1998, the People of Guam (hereinafter “People”) filed a complaint and charged Guerrero with Driving While Under the Influence of Alcohol (As a Misdemeanor), in violation of Title 16 GCA §18102(a), and Imprudent Driving (As a Petty Misdemeanor), in violation of Title 16 GCA §3301(a) and §9108. A jury trial was held on August 9-10, 2000. On August 11, 2000, the jury thereafter returned a verdict of guilty to the charge of Driving While Under the Influence of Alcohol (As a Misdemeanor) and a verdict of not guilty as to the Imprudent Driving charge. Guerrero was sentenced on September 1, 2000.

¹ Apparently, the Standardized Field Sobriety Test, consists of three phases. The first phase is the vehicle-in-motion where the officer observes a vehicle for possible violations. The second phase is the personal contact, wherein the officer approaches the vehicle and determines whether the driver is displaying any indications of impairment. The third phase is the pre-arrest screening, which consists of the Horizontal Gaze Nystagmus, Walk-and-Turn, and One Leg Stand tests. Transcript, pp. 96-97 (Jury Selection & Trial, Aug. 9, 2000).

On August 3, 2001, the judgment was entered on the docket and Guerrero filed a Notice of Appeal on August 13, 2001.²

II.

[5] This court has jurisdiction over this appeal from a final judgment. Title 8 GCA §130.15(a) (1993) and Title 7 GCA §§3107, 3108(a) (1994).

III.

[6] In this appeal, we address the three grounds, which Guerrero advances to challenge his conviction, namely, the improper curtailment during his defense counsel’s cross-examination of Officer Chong, insufficiency of the evidence and inconsistent verdicts.

A. Cross-Examination

[7] The first issue we address is whether the trial court improperly curtailed the defense counsel’s cross-examination of Officer Chong regarding the educational qualifications of his instructor at the Pacific Rim Vehicular Homicide/DUI Seminar. “The scope of cross-examination lies in the discretion of the trial court and will not be disturbed unless there is a manifest abuse of discretion.” *People v. Santos*, 2003 Guam 1, ¶ 28 (citations and quotations omitted). “The trial court does not abuse its discretion in the admission or exclusion of evidence so long as the court’s ruling falls within the zone of reasonable disagreement.” *Smith v. State*, 65 S.W.3d 332, 340 (Tex. Crim. App. Ct. 2001) (internal quotations and citations omitted). In *People v. Santos*, this court examined the trial court’s broad discretion during cross-examination as reflected in section 611 of the Guam Rules of Evidence, which provides in pertinent part:

² Originally, Guerrero filed a Notice of Appeal (CRA00-007) on September 11, 2000, however, because a Judgment was not filed until September 20, 2000, the appeal was dismissed on July 27, 2001 due to the lack of finality of the judgment.

Mode and Order of Interrogation and Presentation.

(a) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

Title 6 GCA §§611 1(a), (b) (1994); *Santos*, 2003 Guam 1, ¶ 28. More importantly, in *Santos*, this court set forth the balancing between a “trial court’s broad discretion to preclude repetitive and unduly harassing interrogation,” and “a defendant’s constitutional right to confront the witnesses against him” in determining whether a trial court has improperly curtailed the cross-examination of a witness. *Santos*, 2003 Guam 1, ¶ 28 (quotations and citations omitted).

[8] In the case at bar, Guerrero argues that the trial court improperly curtailed his defense counsel’s cross-examination of Officer Chong when the court precluded questions regarding the educational qualifications of Daniel T. Gilbert (hereinafter “Mr. Gilbert”), Officer Chong’s instructor at the Pacific Rim Vehicular Homicide/DUI Seminar for the Northwestern University Traffic Institute. Guerrero maintains that as a result of such curtailment, defense counsel was unable to properly challenge Officer Chong’s testimony regarding his knowledge of the Standardized Field Sobriety Test. We disagree. As the following discussion reflects, the trial court did not abuse its discretion during defense counsel’s cross-examination of Officer Chong.

[9] First, the trial court properly sustained the People’s objection regarding Officer Chong’s knowledge of his instructor’s educational qualifications. The only purpose for defense counsel’s question was to demonstrate that the instructor was not a medical doctor. Although defense counsel admitted that “[he] was not saying [Mr. Gilbert is] not qualified to give a seminar, because anyone of course can do that,” defense counsel sought to demonstrate that Mr. Gilbert had no scientific training regarding the physical effects of

alcohol because he was only a Juris Doctor. Transcript, p. 155 (Jury Selection & Trial, Aug. 9, 2000). The trial judge, however, explained to defense counsel that ‘I’m not going to allow you to use this witness here to testify regarding Gilbert, unless you bring in some other witness’ and “[t]hat doesn’t - that doesn’t tell me that he’s not qualified to give a certificate, or to give a seminar, the fact that he does not have an M.D.” Transcript, p. 155 (Jury Selection & Trial, Aug. 9, 2000); *see Smith*, 65 S.W.3d at 341 (noting that “[t]he question of whether a witness offered as an expert possesses the required qualifications rests largely in the trial court’s discretion.”). Moreover, we are unable to find in either Guerrero’s brief or in the trial transcript any support for Guerrero’s contention that only a medical doctor is qualified to instruct individuals regarding the Standardized Field Sobriety Test.

[10] Additionally, even assuming that Mr. Gilbert’s twenty-four hour seminar was insufficient to provide Officer Chong with the proper knowledge in detecting signs that an individual was under the influence of alcohol, Officer Chong’s knowledge regarding the Standardized Field Sobriety Test was not exclusive to that seminar. Officer Chong, in fact, admitted during cross-examination, that he did not rely upon Mr. Gilbert’s seminar to qualify him to perform the Standardized Field Sobriety Test. *See* Transcript, p.157 (Jury Selection & Trial, Aug. 9, 2000). This would further evidence how Mr. Gilbert’s educational background was irrelevant in ascertaining Officer Chong’s knowledge regarding the Standardized Field Sobriety Test.³

[11] Second, assuming *arguendo* that we find that the trial court should have allowed the defense counsel to delve into the educational background of Officer Chong’s seminar instructor, after conducting a thorough review of the trial transcript, we agree with the People’s contention that Guerrero’s defense was not prejudiced. *Santos*, 2003 Guam 1, ¶34. We find especially significant the fact that defense counsel was well-versed in the subject of the Standardized Field Sobriety Test, and thus, was able to posit questions

³ It appears from the record that Officer Chong relied on another seminar that he attended, entitled “War on Ice, DUI Vehicular Homicide,” to qualify him on the Standardized Field Sobriety Test. Transcript, pp.95-96 (Jury Selection & Trial, Aug. 9, 2000)

that effectively challenged the actual substance of Officer Chong's knowledge regarding the Standardized Field Sobriety Test.⁴ Defense counsel, for example, disputed Officer Chong's understanding of the Standardized Field Sobriety Test and whether the officer conducted the test correctly. *See* Transcript, pp. 159-170 (Jury Selection & Trial, Aug. 9, 2000). In essence, if the purpose of defense counsel's cross-examination was to demonstrate whether or not Officer Chong had the proper understanding and background to conduct the Standardized Field Sobriety Test, he was able to do so even though he was precluded from asking questions regarding the instructor's qualifications. We also note that since Officer Chong testified that he did not rely on Mr. Gilbert's seminar to qualify him to perform the sobriety test, allowing the question could not have benefited the defense's case. Thus, its disallowance did not prejudice Guerrero.

[12] In sum, we hold that the trial court did not abuse its discretion during defense counsel's cross-examination of Officer Chong.

B. Insufficiency of Evidence

[13] We next address Guerrero's assertion that there was insufficient evidence to support the jury's guilty verdict on the Driving While Under the Influence of Alcohol charge. "In reviewing the sufficiency of the evidence to support a criminal conviction," this court inquires as to "whether the evidence in the record could reasonably support a finding of guilt beyond a reasonable doubt." *People v. Sangalang*, 2001 Guam 18, ¶ 20 (citations omitted); *People v. Reyes*, 1998 Guam 32, ¶ 7; *People v. Leon Guerrero*, 2001 Guam 19, ¶ 32. Because "this is a highly deferential standard of review," "[w]hen 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.* *Sangalang*, 2001 Guam 18, ¶ 20 (citations and quotations omitted) (emphasis added); *see also United States v. Birges*, 723 F.2d 666,

⁴ Defense counsel had a great advantage in ascertaining Officer Chong's knowledge regarding the DUI seminar because defense counsel attended the same seminar. Transcript, p.149 (Jury Selection & Trial Aug. 9, 2000).

672 (9th Cir. 1984).

[14] When we view the evidence in the light most favorable to the People in the instant case, we find that there is sufficient evidence to support the jury's guilty verdict on the Driving While Under the Influence of Alcohol charge. *See People v. Angoco*, Crim. Case No. CR95-00094A, 1996 WL 875777 * 5 (D. Guam App. Div., Oct. 16, 1996). Title 16 GCA §18102(a), defines the charge of Driving While Under the Influence of Alcohol as the following: "It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle." Title 16 GCA §18102(a) (1994). Here, the People put forth the testimony of Officer Chong who comprehensively described the three phases of the Standardized Field Sobriety Test, and how Guerrero's driving and physical mannerisms demonstrated to him that Guerrero was in fact intoxicated. First, Officer Chong described his observation regarding Guerrero's erratic driving and constant fish-tailing. In Officer Chong's own words, Guerrero's "vehicle [was] going off the roadway right in between these two power poles here, almost striking this concrete pole." *See Transcript*, p. 110 (Jury Selection & Trial, Aug. 9, 2000). Additionally, Officer Chong further explained how "[t]he vehicle started making a 360 degree - or started skidding, more or less the operator lost control of the vehicle, made a complete circle or 360 degree turn." *See Transcript*, p. 111 (Jury Selection & Trial, Aug. 9, 2000).

[15] Second, Officer Chong described how Guerrero exhibited physical signs of intoxication such as red, glassy and blood-shot eyes. Moreover, Officer Chong also noted how Guerrero not only emitted the smell of alcohol through his mouth and nose, but also needed support after exiting his vehicle. More importantly however, Guerrero admitted to drinking seven cans of beer when asked if he had been drinking. *See Transcript*, pp. 116-117 (Jury Selection & Trial, Aug. 9, 2000).

[16] Third, Officer Chong described how Guerrero failed all three types of tests given under Standardized Field Sobriety Test. *See Transcript*, pp. 120-122 (Jury Selection & Trial, Aug. 9, 2000)

(describing how Guerrero failed the Horizontal Gaze Nystagmus Test); Transcript, pp. 123-125 (Jury Selection & Trial, Aug. 9, 2000) (describing how Guerrero failed the Walk-and-Turn Test); Transcript, pp. 126-127 (Jury Selection & Trial, Aug. 9, 2000) (describing how Guerrero failed the One-Legged Stand Test). Accordingly, we find that there was sufficient evidence adduced at trial to support Guerrero's conviction.

C. Inconsistent Verdicts

[17] The last issue we address is whether Guerrero's guilty verdict on the Driving While Under the Influence of Alcohol charge should be overturned because the jury had found him not guilty on the Imprudent Driving charge. The standard of review for examining whether to set aside a conviction based on an inconsistent verdict is de novo. *People v. Chargualaf*, 2001 Guam 1, ¶ 29; see *Angoco*, 1996 WL 875777 at **6 (citing *United States v. Hart*, 963 F.2d 1278 (9th Cir. 1992)); see also *United States v. Mitchell*, 146 F.3d 1338, 1342 (11th Cir. 1998). "A conviction generally may not be overturned solely on the ground that the jury reached an inconsistent verdict." *Chargualaf*, 2001 Guam 1, ¶ 30. Furthermore, "[i]nconsistent verdicts are not a bar to a conviction so long as there is sufficient evidence to support the guilty verdict." *Id.*, ¶ 31. In *People v. Chargualaf*, this court embraced the following rationale set forth by the United States Supreme Court in *United States v. Powell*, 469 U.S. 57, 105 S.Ct. 471 (1984):

[W]here truly inconsistent verdicts have been reached, '[t]he most that can be said is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt' It is equally possible the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the lesser offense.

Chargualaf, 2001 Guam 1, ¶ 30 (quoting *Powell*, 469 U.S. at 64-65, 105 S.Ct. at 476). For the two reasons we outline below, we find that Guerrero's conviction should not be overturned based on the theory of inconsistent verdicts.

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[18] First, the guilty verdict on the Driving While Under the Influence of Alcohol charge is not legally inconsistent with the not guilty verdict on the Imprudent Driving charge. “Verdicts are legally inconsistent *if the existence of the essential elements for one offense negates the existence of the essential elements for another offense of which the defendant also stands convicted.*” *State v. Williams*, 679 A.2d 920, 923 n. 6 (Conn. 1996) (citations and internal quotations omitted) (emphasis added). When comparing the elements of the two crimes, it was reasonable for the jury to find Guerrero guilty of Driving While Under the Influence of Alcohol charge while finding him not guilty of the Imprudent Driving charge because the two crimes are not mutually exclusive. *See United States v. McCall*, 85 F.3d 1193, 1197-1198(6th Cir. 1996) (noting that “inconsistent verdicts do not give rise to a sufficiency of the evidence challenge, with the possible exception of a guilty verdict on mutually exclusive crimes”). Driving While Under the Influence of Alcohol contains the following elements:

It is unlawful for any person, while under the influence of an alcoholic beverage or any controlled substance, or under the combined influence of an alcoholic beverage and any controlled substance, to operate or be in physical control of a motor vehicle.

Title 16 GCA §18102(a) (1994) (emphasis added). Contrarily, Imprudent Driving consists of the following elements:

All motor vehicles traveling upon the public highway shall be driven at a careful, prudent rate of speed not greater than nor less than is reasonable and proper, having due regard to the surface of the highway, the width of the highway and the condition of traffic upon the highway and all other restrictions and conditions then and there existing.

Title 16 GCA §3301(a) (1996). Pursuant to section 18102(a), the only requirements to Driving While Under the Influence of Alcohol are that the driver was under the influence and was operating or in physical control of the vehicle. The manner in which the driver handled the vehicle is not dispositive under section 18102(a). Thus, while the jury may have found insufficient evidence to hold Guerrero liable for Imprudent Driving, the crime of Driving While Under the Influence of Alcohol is not contingent upon the finding that Guerrero was driving imprudently.

[19] Second, even if the verdicts were legally inconsistent, because we found that there was sufficient evidence to support Guerrero’s guilty verdict on the Driving While Under the Influence of Alcohol charge, the conviction can still remain. This is so because courts have held that “[i]nconsistent verdicts are not a bar to conviction so long as there is sufficient evidence to support the jury’s determination of guilt.” *United States v. Gieger*, 190 F.3d 661, 664 (5th Cir. 1999); *Chargualaf*, 2001 Guam 1, ¶ 31; see *Birges*, 723 F.2d at 673 (“Inconsistent verdicts may stand, even when a conviction is rationally incompatible with an acquittal, provided there is sufficient evidence to support the guilty verdict.”). Consequently, Guerrero’s conviction is not defeated based on the theory of inconsistent verdicts.

IV.

[20] We find that the trial court did not improperly curtail defense counsel’s cross-examination of Officer Chong. We also find that there was sufficient evidence to support Guerrero’s Driving While Under the Influence of Alcohol conviction even though the jury acquitted him on the Imprudent Driving charge. The judgment is **AFFIRMED**.