IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

MANNIX FRANK SONGENI,
Defendant-Appellant.

Supreme Court Case No.: CRA10-001
Superior Court Case No.: CF0246-08

OPINION

Cite as: 2010 Guam 20

Appeal from the Superior Court of Guam
Argued and Submitted November 4, 2010
Hagåtña, Guam

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

TORRES, C.J.:

[1] In the trial court, Defendant-Appellant Mannix Frank Songeni was convicted of one charge of Second Degree Criminal Sexual Conduct ("CSC"). Songeni appeals this conviction on the theory that Second Degree CSC is not a "lesser included offense" of First Degree CSC under the applicable Guam statutes. For the reasons set forth below, we agree and reverse the conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] A Grand Jury issued an indictment charging Songeni with one count of First Degree CSC as a First Degree Felony and one count of Child Abuse as a Misdemeanor. *See* Appellant's Excerpts of Record ("ER") at 3-4 (Indictment). The indictment accused Songeni of causing his penis to enter the vagina of A.M., a minor under fourteen (14) years of age, but did not contain any charges against Songeni for Second Degree CSC. *Id.*

[3] Testimony at trial indicated (1) that Songeni encountered A.M. at the home of his some-time girlfriend; (2) that Songeni and at least 4 minors (including the victim) were at one point watching television in the living room of the home; and (3) that subsequently the other minors departed "to the store." *See* ER at 10-13, 19, 113-14 (Reporter's Transcripts of Jury Trial, Dec. 1, 2009 & Dec. 7, 2009). A.M. testified that after the other minors departed, Songeni sexually assaulted her. *See* ER at 10-11 (Reporter's Transcripts of Jury Trial, December 1, 2009). A.M. also testified that no one else was present during the assault. *See* ER at 11 (Transcripts of Jury Trial, Dec. 1, 2009). One other minor testified that he witnessed at least part of the assault. *See* ER at 100-01 (Transcripts of Jury Trial, Dec. 4, 2009).

[4] After both the People and Songeni rested their cases, the judge, while reviewing the draft jury instructions proposed by both parties, entered into the following colloquy with Songeni's counsel outside the presence of the jury:

> The Court: Have you given us your lesser included, Mr. Aglubat?
>
> Counsel: I'm not asking for any, Your Honor.
>
> The Court: I'm Sorry?
>
> Counsel: I'm not asking for any.
>
> The Court: But you can't not ask. Okay?
>
> Counsel: I understand, Your Honor.
>
> The Court: So you're not going to give me one?
>
> Counsel: No, Your Honor.
>
> The Court: *Ai adai*. Even though I asked you, you're not going to do it, even though the law says it; is that what you're saying to me?
>
> Counsel: Yes, Your Honor.
>
> The Court: All right.
>
> Counsel: With all due respect.
>
> The Court: I understand the law, and it's not that you don't want to do it, it's that you're just making the choice, but I have to give it. Okay? I just want you to know that. As I understand it, the Defendant is charged with two charges: First Degree Criminal Sexual Conduct, as a First Degree Felony. I want you to know that the lesser included would be Second Degree Criminal Sexual Conduct, as a First Degree . . . .

Reporter's Transcripts of Jury Trial, Dec. 7, 2009 at 124-25.

[5] Later, the court provided counsels with Draft # 1 of the jury instructions and during review of instructions 7B and 7C, the following exchanges occurred:

> The Court: Now 'The Conviction of a Lesser Included Offense,' 7B. The crime of first degree Criminal Sexual Conduct includes the lesser crime of second degree Criminal Sexual Conduct. If you are not convinced beyond a reasonable doubt that defendant is guilty of first degree Criminal Sexual Conduct, and if you are convinced beyond a reasonable doubt that defendant is guilty of the lesser crime of second degree Criminal Sexual Conduct, you may find

> the defendant guilty of second degree Criminal Sexual Conduct. The crime of second degree Criminal Sexual Conduct as a first degree felony is lesser to first degree Criminal Sexual Conduct, as a first degree felony.
>
> Counsel: Objection for the same reasons cited earlier, Your Honor.
>
> The Court: What is that?
>
> Counsel: That we're not asking for a lesser included offense.
>
> The Court: Okay. And again as I am mandated, I am compelled to do so by the Supreme Court. Objection's overruled.
>
> . . . .
>
> Counsel: We still object in the giving of this lesser included instruction.
>
> The Court: Okay.
>
> Counsel: Even with this change.
>
> . . . .
>
> The Court: And I understand the defendant's continuing objection as this being included, it's a lesser included. Correct [Counsel]?
>
> Counsel: Yes, Your Honor.

Id. at 186-87; 189-90.

[6] Over these objections, the trial court instructed the jury that Second Degree CSC was a "lesser included offense" of First Degree CSC and that if there was insufficient evidence to convict Songeni of First Degree CSC, the jury might alternatively convict him of Second Degree CSC. *See* Transcripts of Jury Trial, Dec. 9, 2009 at 100-01. The jury returned verdicts of guilty on the lesser included offense of Second Degree CSC as a First Degree Felony and Child Abuse as a Misdemeanor. *See* Appellant's Br. at 3; ER at 5-7 (Judgment, Feb. 11, 2010). Songeni was acquitted of First Degree CSC. *Id.* A judgment of conviction was entered, sentencing Songeni to twenty (20) years in confinement for both convictions. Songeni timely appealed. *See* ER at 6 (Judgment).

[7] In addition to renewing his objections to the trial court's jury instructions, Songeni appeals to this court on two other grounds: (1) the handling of the case by the trial court judge,

and (2) his sentence of twenty (20) years for the Second Degree CSC conviction. *See* Appellant's Br. at 6-11, 17.

II. JURISDICTION

[8] This court has jurisdiction over appeals taken from a judgment of conviction pursuant to 48 U.S.C.A. § 1421-1(a)(2) (Westlaw current through Pub. L. 111-264 (2010)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[9] Where a defendant objected to a particular jury instruction at trial, courts view the instruction in the context of the delivered jury instructions as a whole and reverse only for an abuse of discretion.[1] *See, e.g.*, *United States v. Alcantar*, 832 F.2d 1175, 1178 (9th Cir. 1987) (citing *United States v. Park*, 421 U.S. 658, 674 (1975); *United States v. Abushi*, 682 F.2d 1289, 1299 (9th Cir. 1982)).

IV. ANALYSIS

A. Second Degree CSC is not a lesser included offense of First Degree CSC

[10] Songeni's main argument concerns the propriety of the jury instructions delivered by the trial court judge. Specifically, Songeni contends that Second Degree CSC is not a proper lesser included offense of First Degree CSC; therefore, the trial court erred in *sua sponte* issuing an instruction on Second Degree CSC. Appellant's Br. at 11-17. The People made a similar argument on appeal in *People v. Cummins*, 2010 Guam 19, and did not submit any opposition to Songeni's arguments of this issue.

[1] This is not a universal rule. Traditionally, courts review the question of whether a proffered jury instruction misstated the elements of a charged crime under a *de novo* standard. *See, e.g.*, *United States v. Frega*, 179 F.3d 793, 806 n.16 (9th Cir. 1999); *United States v. Tagalicud*, 84 F.3d 1180, 1183 (9th Cir. 1996) (standard of review differs based on nature of objection).

[11] In determining whether one offense is a "lesser included offense" of another, we examine 8 GCA § 105.58. *See* 8 GCA § 105.58 (2005) ("Guilt of Included Offense Permitted: Defined."); *Cummins*, 2010 Guam 19 ¶ 16; *People v. Demapan*, 2004 Guam 24 ¶¶ 9-12; *Angoco v. Bitanga*, 2001 Guam 17 ¶ 13. Songeni's primary argument concerns whether Second Degree CSC is a lesser included offense of First Degree CSC under the language of 8 GCA § 105.58(b)(1). *See* Appellant's Br. at 12-17.

[12] In *Cummins*, this court ruled that Second Degree CSC is not a lesser included offense of First Degree CSC under 8 GCA § 105.58(b)(1) because Second Degree CSC contains a scienter element not within the greater offense of First Degree CSC. 2010 Guam 19 ¶¶ 19-20.

[13] However, our analysis on this issue does not end with the decision rendered in *Cummins*. In this case, unlike the defendant in *Cummins*, Songeni argued that Second Degree CSC could not properly be considered under *any* of the three prongs of 8 GCA § 105.58(b). *See* Appellant's Br. at 11-17. Although we ruled in *Cummins* that Second Degree CSC is not a proper "lesser included offense" of First Degree CSC under 8 GCA § 105.58(b)(1), we must now consider whether Second Degree CSC is a "lesser included offense" under 8 GCA § 105.58(b)(2) or (b)(3).

1. 8 GCA § 105.58(b)(2)

[14] Under 8 GCA § 105.58(b)(2), an offense can be considered an included offense of another if "[the offense] consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein." 8 GCA § 105.58(b)(2). Clearly this prong of 8 GCA § 105.58(b) deals solely with inchoate offenses.

[15] We ruled in *Cummins* that Second Degree CSC is not established by proof of the same or less than all the facts required to establish the commission of First Degree CSC under the "same

or less facts" test of 8 GCA § 105.58(b)(1). *See Cummins*, 2010 Guam 19 ¶¶ 17-22 (citations omitted). Our code defines criminal attempt as "an attempt to commit *a* crime when, with intent to engage in conduct which would constitute *such* crime were the circumstances as he believes them to be, he performs or omits to perform an act which constitutes a substantial step toward commission of *the* crime." 9 GCA § 13.10 (2005). From this language it is clear that an "attempted crime" under Guam law differs from *the* crime of which it is an inchoate version *only* insofar as it was not a completed version of *that* crime. It follows that the completed crime of Second Degree CSC is *distinct* from an "attempted" (or otherwise inchoate) crime of First Degree CSC. In the proper case, a trial court could, under this prong of 8 GCA § 105.58(b), properly instruct a jury on the crime of *Attempted First Degree* CSC or *Solicitation to Commit* First Degree CSC[2] as an included offense of First Degree CSC. However, *Second Degree* CSC can never constitute an included offense of First Degree CSC under this prong of 8 GCA § 105.58(b). If the trial court in this case gave the Second Degree CSS instruction under 8 GCA § 105.58(b)(2); it erred.

2. 8 GCA § 105.58(b)(3)

[16] Under 8 GCA § 105.58(b)(3), one offense can be considered a lesser included offense of another if "[the offense] differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission." 8 GCA § 105.58(b)(3). While this section is not *obviously* inapplicable to this case (as 8 GCA § 105.58(b)(2) is), the court finds that Second Degree CSC is similarly not included under First Degree CSC under the language of 8 GCA § 105.58(b)(3).

[2] Solicitation is defined in 9 GCA § 13.20.

a. Less serious injury

[17] The degrees of CSC are not clearly separated by divergent grades of "injury" either to a person or to property. *See* 9 GCA §§ 25.15–.35 (2005). This is in contrast to other Guam criminal statutes where differing degrees of injury either to persons or to property define either separate offenses or different grades of a single offense. *Compare* 9 GCA § 25.15–.35 *with* 9 GCA §§ 19.20–.30 (2005) (aggravated assault contemplates "serious bodily injury" while assault contemplates "bodily injury"), 9 GCA §§ 22.30–.35 (2005) (felonious restraint and unlawful restraint), *and* 9 GCA §§ 58.20(b)–58.30 (2005) (felony escape and ordinary escape).[3]

[18] States which define "lesser included offense" in a similar manner have likewise focused on whether the injuries or potential injuries criminalized by the statutes being analyzed were similar in *nature* but different in *scope*. *See, e.g.*, *People v. Palmer*, 944 P.2d 634, 638 (Colo. App. 1997) (under Colorado law, "menacing" not a lesser included offense of second degree assault because the offenses differ both in injury or risk of injury contemplated and in culpability required), *rev'd on other grounds*, 964 P.2d 524 (Colo. 1998); *State v. Roberson*, 812 A.2d 429, 433 (N.J. Super. Ct. Law Div. 2002) (where joyriding contained an element of risk to the public greater than that found in theft (of a motor vehicle), joyriding could not be considered a lesser included offense of theft); Commentary to Ky. Rev. Stat. Ann. § 505.020(2)(d) (Westlaw 2010) ("An illustration of this provision is provided by the definitions of assault [under Kentucky law]: assault in the second degree . . . is committed when an offender 'intentionally causes *serious physical injury* to another person'; assault in the third degree . . . is committed when an offender

[3] Songeni asserted at oral argument that another example which would fit under 8 GCA § 105.58(b)(3) would be different gradations of theft chargeable under 9 GCA § 43.20. Although we agree with Songeni's assertion that lesser grades of theft would be lesser included offenses of greater grades of theft under the operation of 8 GCA § 105.58(b), this would be due to the operation of 8 GCA § 105.58(b)(1) rather than by operation of 8 GCA § 105.58(b)(3). *See* 8 GCA § 105.58(b)(1) ("established by proof of the same or less than all the facts required to establish the commission of the offense charged"). The other examples listed above more accurately illustrate other Guam statutes which qualify as lesser included offenses under 8 GCA § 105.58(b)(3).

'intentionally . . . causes *physical injury* to another person.' Differing from the first offense only as to the degree of injury caused, the second offense is an 'included' offense."). In contrast to these examples, the two grades of CSC considered here do not contain similar clearly delineated language which distinguishes the two crimes solely on the basis of different or divergent "injury" suffered by the victim; as discussed below, the main textual difference between the grades of CSC concerns the separate definitions of "sexual penetration" and "sexual contact." *Compare* 9 GCA § 25.10(a)(9) (2005) *with* 9 GCA § 25.10(a)(8). The nature of the variation between these two definitions is not solely that the "injury" they contemplate is similar in nature but different in scope.

b. Lesser kind of culpability

[19] The "culpability" clause of 8 GCA § 105.58(b)(3) is also inapplicable in considering whether Second Degree CSC is a lesser included offense of First Degree CSC. First Degree CSC, as charged in this case, is defined as "engag[ing] in sexual penetration with the victim . . . if . . . the victim is under fourteen (14) years of age." 9 GCA § 25.15(a)(1); ER at 3 (Indictment). "Sexual penetration" is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body . . . ." 9 GCA § 25.10(a)(9). Second Degree CSC involves "sexual contact," defined to be the "*intentional* touching of the victim's or actor's intimate parts or the *intentional* touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that *intentional* touching can reasonably be construed as being *for the purpose* of sexual arousal or gratification." 9 GCA § 25.10(a)(8) (emphases added). Under these definitions, Second Degree CSC contains a *greater* quantum of culpability than First Degree CSC (which is essentially a status crime), as the relevant statutes contain

additional *mens rea* elements not found in First Degree CSC. The reverse would have to be true for Second Degree CSC to be a proper lesser included offense of First Degree CSC under 8 GCA § 105.58(b)(3).

[20] Again, this interpretation is supported by analogous authority from other jurisdictions. *See, e.g.*, *Wright v. State*, 658 N.E.2d 563, 567 (Ind. 1995) (under Indiana law, as the only difference between murder and reckless homicide is a lesser degree of culpability, reckless homicide is a lesser included offense of murder); *Green v. State*, 887 S.W.2d 230, 233 (Tex. App. 1994) (under Texas law, involuntary manslaughter and criminally negligent homicide are lesser included offenses of murder).

[21] We recognize that at least one other jurisdiction has held that sexual contact is a less serious injury than sexual penetration and that degrees of sexual assault may indicate a lesser degree of culpability. In deciding thusly, we reject the standards embraced by the Supreme Court of Hawai'i in *State v. Kinanne*, 897 P.2d 973 (Haw. 1995). Although we do not question the wisdom of that case, its outcome was at least partially premised on interpretation of the official commentary to Hawai'i Revised Statute § 701-109(4)(c), which is not applicable in Guam. *See id.* at 982-83 (citing *State v. Alston*, 865 P.2d 157, 167 (Haw. 1994)). The *Alston* court notes that in Hawai'i:

> Under [Haw. Rev. Stat. § 701-109(4)(c)], an offense is included if "[i]t differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person . . . or public interest or a different state of mind indicating lesser degree of culpability suffices to establish its commission."

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> "Subsection (c) differs from (a) in that there may be some dissimilarity in the facts necessary to prove the lesser offense, but the end result is the same." *State v. Freeman*, 774 P.2d 888, 892 (1989) (citing Commentary to HRS § 701-109)[4]. Under a subsection (c) analysis, the following factors are considered: (1) the degree of culpability; (2) the degree or risk of injury; and (3) *the end result.*

Alston, 865 P.2d at 167 (emphasis added) (citation omitted).

[22] Nothing in the text of 8 GCA § 105.58(b)(3) similarly suggests (or compels) an interpretation that it would be appropriate to consider "the end result" of any crime in determining whether or not that crime would be a lesser included offense of another crime. In the absence of guidance from the Guam Legislature equivalent to the official commentary to Haw. Rev. Stat. § 701-109, we are compelled to confine our analysis to the plain text of 8 GCA § 105.58(b)(3).

3. Conclusion

[23] Based on the foregoing analysis combined with our recent holding in *Cummins*, we hold that Second Degree CSC is not a lesser included offense of First Degree CSC. None of the three prongs of 8 GCA § 105.58(b) are satisfied. We must now address the impact of the trial court's decision to instruct the jury that Second Degree CSC was a lesser included offense of First Degree CSC.

B. Jury instruction on included offense

[24] In this case the erroneous jury instruction was not requested by the People, but was

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[4] The official commentary to Haw. Rev. Stat. § 701-109(4) reads in relevant part:

> Finally, paragraph (c) is concerned with cases in which the included offense involves a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability. Paragraph (c) differs from paragraph (a) in that, although the included offense must produce the same result as the inclusive offense, there may be some dissimilarity in the facts necessary to prove the offense. Therefore (a) would not strictly apply and (c) is needed to fill the gap.

Commentary to Haw. Rev. Stat. § 701-109 (Westlaw 2010).

delivered *sua sponte* by the trial court. This *sua sponte* instruction was presumably based on the case of *Angoco v. Bitanga*, where we held that "trial courts *must* issue lesser-included offense instructions if there is a rational basis for such as shown by substantial evidence, without regard to whether such instructions were *requested or objected to*[5] by the parties." 2001 Guam 17 ¶ 21 (emphases added). This holding is based on the language of 8 GCA § 90.27, which reads: "When there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of an included offense, the court shall charge the jury with respect to the included offense." *Id.* ¶¶ 14, 21 (quoting 8 GCA § 90.27 (1993)). Implicit in Songeni's argument that the trial court committed error is the contention that there can never be a "rational basis" for giving a lesser included offense instruction for an offense which is not, in fact, a proper lesser included offense. Therefore, the trial court in this case violated the rule set down in *Angoco* by instructing as it did. We agree. Logically, the next question then becomes whether this error by the trial court constitutes an abuse of discretion requiring reversal of Songeni's conviction on these grounds.

[25] If Second Degree CSC was not a proper included offense of First Degree CSC, Songeni was convicted of an offense which was not charged or contained in the indictment returned against him in this case. *See* ER at 3-4 (Indictment). Convictions on crimes not charged in the indictment constitute "constructive amendments" to indictments, which have been found by federal courts to be reversible error as they violate both the Fifth and Sixth Amendments to the Constitution of the United States. *See, e.g., United States v. Kelly*, 722 F.2d 873, 876 (1st Cir. 1983) ("The fifth amendment requires that a defendant be tried only on a charge made by the

[5] Although the current case is distinguishable from previous Guam cases as it concerns the issuance of an allegedly improper jury instruction, rather than the failure to provide an allegedly proper one, the language of *Angoco* is controlling.

grand jury. *Stirone v. United States*, 361 U.S. 212, 216-17, 219 (1960) . . . . The sixth amendment, working in tandem with the fifth amendment, requires that the defendant 'be informed of the nature and cause of the accusation.' U.S. Const. amend. VI. These two constitutional provisions require that allegations and proof mirror each other. The rationale is clear: no person should be denied the right to thoroughly prepare his or her defense, and should not be subject to 'another prosecution for the same offense.' *Berger v. United States*, 295 U.S. 78, 82 (1934).''). Although the Ninth Circuit in *Territory of Guam v. Inglett*, 417 F.2d 123, 125 (9th Cir. 1969) has ruled that the specific language of the Fifth Amendment relied upon in *Stirone*[6] is inapplicable to Guam under the Organic Act, a similar Guam statutory requirement can be found under 8 GCA § 55.20: "The court may permit an indictment or information to be amended upon the application of the prosecuting attorney at any time before verdict or finding if no additional [or] different offense is charged and if substantial rights of the defendant are not prejudiced." 8 GCA § 55.20 (2005). The Double Jeopardy Clause of the Fifth Amendment and the relevant portions of the Sixth Amendment cited by the *Kelly* court *are* in force on Guam by operation of 48 U.S.C. §§ 1421b(d) and (g). *See* 48 U.S.C.A. § 1421b(d), (g) (Westlaw through Pub. L. 111-264 (2010)).

[26] This court has previously held that it was essential that a trial court present to a jury instructions which provide "the full range of possible verdicts thus ensuring the most accurate judgment is rendered." *Angoco*, 2001 Guam 17 ¶ 19 (citing *People v. Breverman*, 960 P.2d 1094, 1101 (Cal. 1998)). We now hold that it was reversible error for the trial court to have *sua sponte* instructed the jury on Second Degree CSC, which was not charged in the indictment and

[6] In addition to the "double jeopardy" language cited in *Kelly*, federal cases construing constructive amendments also rely upon the "grand jury" clause of the United States Constitution. The Fifth Amendment provides in relevant part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . ." U.S. Const. amend. V.

was not a proper lesser included offense of First Degree CSC. As we stated in *Angoco*, error which gives the jury in a case an inaccurate range of possible verdicts and prevents them from rendering the most accurate judgment possible is (at minimum) an abuse of judicial discretion. *Id.* ¶ 19-21. This result is in line with federal case law. *See, e.g., United States v. Crocker*, 568 F.2d 1049, 1059-60 (3rd Cir. 1977)[7] ("In *Stirone* . . . the Supreme Court recognized that even though a trial court did not formally amend an indictment, it could accomplish the practical result of [amendment by] trying a defendant on a charge for which he was not indicted . . . . The consequence of a constructive amendment is . . . per se reversible error, requiring no analysis of additional prejudice to the defendant." (citation omitted)). Accordingly, the trial court abused its discretion in giving the jury instruction that Second Degree CSC was a lesser included offense of First Degree CSC.

V. CONCLUSION

[27] In order for one crime to be a "lesser included offense" of a second crime under Guam law, the crime must fall within one of the three prongs of 8 GCA § 105.58(b). In *Cummins* we held that Second Degree CSC was not a lesser included offense of First Degree CSC under 8 GCA § 105.58(b)(1). Here, we hold that Second Degree CSC is similarly *not* a lesser included offense of First Degree CSC under either 8 GCA § 105.58(b)(2) or (b)(3). Therefore, Second Degree CSC is not a lesser included offense of First Degree CSC under Guam law.

[28] The trial court abused its discretion by *sua sponte* instructing the jury to consider Second Degree CSC as a lesser included offense of First Degree CSC. Accordingly, Songeni's

[7] *Crocker* has been implicitly abrogated on unrelated grounds by *United States v. Gaudin*, 515 U.S. 506, 511-22 (1995), as recognized by *United States v. Miller*, 527 F.3d 54, 79 n.21 (3rd Cir. 2008).

conviction for Second Degree CSC is **REVERSED**. The case is **REMANDED** to the Superior Court, with instructions to **VACATE** Songeni's judgment of conviction.

[29] Having found the jury instruction issue raised in this case to be dispositive, the court will not proceed to the other two points of error raised by Songeni in his appeal.

Original Signed By: **F. Philip Carbullido**
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: **Katherine A. Maraman**
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: **Robert J. Torres**
ROBERT J. TORRES
Chief Justice