

FILED
2011-07-13
SUPERIOR COURT
GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JEREMY REY LESLIE,
Defendant-Appellant.

Supreme Court Case No.: CRA11-001
Superior Court Case No.: CF0633-09

OPINION

Cite as: 2011 Guam 23

Appeal from the Superior Court of Guam
Argued and submitted on July 13, 2011
Dededo, Guam

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

TORRES, J.:

[1] After a jury trial, Defendant-Appellant Jeremy Rey Leslie was convicted on two counts of Third Degree Criminal Sexual Conduct for intentionally engaging in sexual penetration with a minor but acquitted on a charge of the Electronic Enticement of a Child. On appeal, Leslie challenges his conviction and the trial court’s decision dismissing his Motion for New Trial. Leslie makes two arguments. First, Leslie argues that the trial court abused its discretion when it denied his Motion for New Trial. Leslie asserts that the minor M.L. (DOB: 05/04/1994), who was the key witness for Plaintiff-Appellee People of Guam (“People”), offered testimony that was “simply not credible.” Thus, Leslie contends that the trial court committed a “clear error of judgment” when it found that M.L.’s testimony was credible and that the evidence did not weigh heavily against the verdict such that Leslie should be granted a new trial. Second, Leslie argues that this court should set aside his conviction because the jury delivered an inconsistent verdict when it found Leslie guilty on two counts of Third Degree Criminal Sexual Conduct, but acquitted him on the Electronic Enticement of a Child charge.

[2] We reject each of Leslie’s arguments and affirm both the trial court’s ruling and the judgment of conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] In late November 2009, Leslie found M.L.’s Myspace page while browsing the Internet and over the next couple of weeks, the two engaged in online conversations using instant messaging. M.L.’s Myspace profile indicated she was eighteen years old, although in later

online conversations with Leslie, she expressed she actually was fifteen going on sixteen. Leslie and M.L. made plans to meet in person, and late one evening in early December 2009, Leslie picked her up outside her residence.

[4] During the course of this evening, Leslie engaged in sexual penetration with M.L. on two separate occasions. On one occasion, Leslie performed cunnilingus on M.L. On another occasion, Leslie stuck his “finger inside of [M.L. (DOB: 05/04/1994)] and . . . finger[ed]” her. Transcripts (“Tr”) at 84 (Jury Trial, June 30, 2010). When these events occurred, Leslie was twenty-nine years old, and M.L. was fifteen.

[5] A Superior Court of Guam Grand Jury indicted Leslie on two charges: (1) Electronic Enticement of a Child (as a First Degree Felony), and (2) Third Degree Criminal Sexual Conduct (as a Second Degree Felony) (Two Counts). Record on Appeal (“RA”), tab 1 at 1-2 (Indictment, Dec. 18, 2009). Under the first charge involving the Electronic Enticement of a Child, the Grand Jury indicted Leslie for using Myspace to communicate with a “minor known by him to be under the age of eighteen (18) years . . . with the intent to promote or facilitate the commission of a felony, that is, Third Degree Criminal Sexual Conduct, and that he intentionally traveled to the agreed upon meeting place at the agreed upon meeting time.” *Id.* at 1. Under the second charge involving two counts of Third Degree Criminal Sexual Conduct, the Grand Jury indicted Leslie for intentionally engaging in sexual penetration with a minor who was “at least fourteen (14) but less than sixteen (16) years of age” on two separate occasions on the night of the incident. *Id.* at 2.

[6] Throughout the trial, the jury heard testimony from six witnesses including testimony from the People’s key witness, M.L. M.L. testified on direct examination and briefly in non-extensive cross examination. Tr. at 3-60 (Jury Trial, June 29, 2010).

[7] The jury also heard from Leslie, who offered key testimony on direct examination. Tr. at 7-64 (Jury Trial, June 30, 2010). On direct examination, Leslie stated that when he engaged in sexual penetration with M.L., he did not really understand what her age was, but presumed it to be at least sixteen. *Id.* at 17. Leslie cited two primary reasons for his conclusion. *Id.* First, Leslie stated that he was confused because M.L.’s Myspace profile indicated that she was eighteen years old. *Id.* Second, Leslie stated that he was confused because M.L. told him that she was fifteen years old—going on sixteen—via a message that she sent him over Myspace. *Id.* Specifically, Leslie stated that he “didn’t really understand what . . . turning 16 meant.” *Id.* Leslie “presumed it at that time to be something that was very around the corner, something that we kind of anticipate coming quickly, going to be 16.” *Id.*

[8] After the jury and trial court heard all of the testimony at trial, the trial court instructed the jury:

It is a defense to a charge of criminal sexual conduct that the defendant reasonably believed that [M.L.] had reached the age of sixteen. The defendant has the burden of proving that it is more probably true than not true that the defendant reasonably believed that [M.L.] had reached the age of sixteen. If you find that the defendant reasonably believed that [M.L.] had reached the age of sixteen, you must find the defendant not guilty.

RA, tab 43 (Jury Instruction 6F, July 7, 2010).

[9] The jury found Leslie guilty on both counts of the second charge involving Third Degree Criminal Sexual Conduct and acquitted him of the first charge involving the Electronic Enticement of a Child. RA, tabs 39-41 (Verdict Forms, July 6, 2010). Subsequently, Leslie

timely filed a Motion for New Trial arguing that he was entitled to a new trial because M.L.’s testimony was “simply not credible.” RA, tab 49 at 1 (Mot. for New Trial, Aug. 18, 2010). Leslie asserted that the trial court should grant him a new trial “in the interests of justice,” as permitted by 8 GCA § 110.30(a). RA, tab 50 at 1 (Mem. in Support of Mot. for New Trial, Aug. 18, 2010). The People filed an Opposition to the Motion. RA, tab 52 at 1-2 (People’s Opp’n Mot., Sept. 3, 2010).

[10] The trial court denied the motion, finding that M.L.’s testimony was credible and that the totality of the evidence did not weigh heavily against the verdict such that Leslie should be granted a new trial. RA, tab 54 at 6 (Dec. & Order, Nov. 5, 2010). A judgment of conviction was entered, and Leslie timely filed this appeal. Guam R. App. P. 4(b) (2005); RA, tab 77 at 1-2 (Not. of Appeal, Feb. 3, 2011).

II. JURISDICTION

[11] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-44 (2011)); 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[12] The trial court’s denial of a defendant’s motion for a new trial is reviewed for an abuse of discretion. *People v. Flores*, 2009 Guam 22 ¶ 9. We review *de novo* the issue of whether to set aside a conviction based on an inconsistent verdict. *See People v. Guerrero*, 2003 Guam 18 ¶ 17.

IV. ANALYSIS

[13] In this appeal, we address the two grounds that Leslie advances to challenge the trial court’s ruling and his conviction. First, we address whether the trial court abused its discretion

when it denied Leslie's Motion for New Trial. Second, we address whether to set aside Leslie's conviction based on an inconsistent verdict.

A. Motion for New Trial

[14] In order to set aside the trial court's denial of Leslie's motion for a new trial, we must determine that the trial court abused its discretion. *Flores*, 2009 Guam 22 ¶ 9. An abuse of discretion is discretion "exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found." *People v. Quinata*, 1999 Guam 6 ¶ 17 (quoting *People v. Tuncap*, 1998 Guam 13 ¶ 12) (internal quotation marks omitted).

[15] Our role is limited to determining whether the trial court abused its discretion because the decision to grant a new trial rests within the sound discretion of the trial court. *United States v. Alston*, 974 F.2d 1206, 1212 (9th Cir. 1992) (defining the trial court's role in determining whether to grant a new trial). Title 8 GCA § 110.30, specifically provides the trial court with discretion to grant a new trial: "The court on motion of a defendant may grant a new trial to him if required in the interests of justice."¹ 8 GCA § 110.30(a) (2005). Under section 110.30(a), a trial court's discretion to grant a new trial is "much broader than its power to grant a motion for judgment of acquittal." *Alston*, 974 F.2d at 1211. The trial court "need not view the evidence in the light most favorable to the verdict." *Quinata*, 1999 Guam 6 ¶ 18 (quoting *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980)) (internal quotation marks omitted). Instead, the trial court may "weigh the evidence and in so doing evaluate for itself the credibility of witnesses." *Alston*, 974 F.2d at 1211 (internal quotation marks and citation omitted).

¹ Section 110.30(a) is substantively similar to Federal Rule of Criminal Procedure 33(a) which reads, "Upon the defendant's motion, the court may . . . grant a new trial if the interest of justice so requires." Fed. R. Crim. P.33(a). This court may therefore look to federal case law interpreting that rule for guidance.

Specifically, “[a] trial court may set aside the verdict, grant a new trial, or submit the issues for determination by another jury if it concludes that the evidence ‘preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred.’” *Quinata*, 1999 Guam 6 ¶ 16 (quoting *Lincoln*, 630 F.2d at 1319); *see also Alston*, 974 F.2d at 1211-12.

[16] Accordingly, to reverse the trial court’s decision, we must have a “definite and firm conviction the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion” denying Leslie’s Motion for a New Trial. *Quinata*, 1999 Guam 6 ¶ 17 (quoting *Tuncap*, 1998 Guam 13 ¶ 12) (internal quotation marks omitted). As the appellant, Leslie also carries the “significant burden” of proving that the trial court abused its discretion. *Quinata*, 1999 Guam 6 ¶ 17 (citing *United States v. Steel*, 759 F.2d 706, 713 (9th Cir. 1985)); *see also Alston*, 974 F.2d at 1212.

[17] Leslie moved for a new trial on the ground that the testimony of M.L. was simply not credible and argues that the trial court committed a clear error of judgment when it found that M.L.’s testimony was credible. RA, tab 49 at 1 (Mot. for New Trial, Aug. 18, 2010). In support of his argument, Leslie advances four grounds: (1) that M.L.’s testimony was not credible because of her hesitant demeanor; (2) that M.L. was not credible because she lied about her age on an internet profile; (3) that M.L. was not credible because she lied about her age to a police officer; and (4) that M.L.’s testimony was not credible because she wanted to date an older man. Appellant’s Br. at 6-9 (May 5, 2011).

[18] Leslie has failed to overcome his burden of proving that the trial court committed a clear error of judgment when it denied his Motion for New Trial for three key reasons: (1) courts favor appellate deference to the trial court when reviewing a grant or denial of a motion for a new trial;

(2) the trial court carefully considered its denial, providing specific support for its determination in its Decision and Order; and (3) this is not likely an “exceptional case” in which the trial court should interfere with the jury’s factual findings.

1. Appellate courts favor deferring to a trial court’s determination of a motion for a new trial.

[19] Appellate courts favor deferring to a trial court’s determination of a motion for a new trial because appellate deference to the trial court makes sense. *See Alston*, 974 F.2d at 1212. Trial courts preside over the jury and listen to all of the evidence. *See Quinata*, 1999 Guam 6 ¶ 19. Thus, a trial court is in the best position to weigh the evidence and evaluate a witness’s credibility for itself. When merely reviewing “the dry pages of the record,” appellate courts cannot experience “the tenor of the testimony at trial.” *Alston*, 974 F.2d at 1212. Yet, the appellate courts do not actually experience trial testimony, which is an important experience because “[t]he balance of proof is often close and may hinge on personal evaluations of witness demeanor.” *Id.*

[20] Appellate courts have emphasized the advantages of deferring to a trial court’s determination. In the factually similar case of *People v. Palomo*, Crim. No. 96-00070A, 1997 WL 209048 (D. Guam App. Div., Apr. 21, 1997), the District Court of Guam Appellate Division explained the importance of appellate deference when considering whether the trial court abused its discretion in denying Palomo’s motion for a new trial. *People v. Palomo*, Crim. No. 96-00070A, 1997 WL 209048, at *4 (D. Guam App. Div., Apr. 21, 1997). Palomo was indicted and eventually convicted for the sexual penetration and unlawful touching of a minor. *Id.* at *1-2. Palomo moved for a new trial, arguing that he was entitled to one because the alleged victim’s testimony “preponderated sufficiently heavily against the verdict such that a serious miscarriage

of justice may have occurred.” *Id.* at *4. The trial court denied Palomo’s motion for a new trial. *Id.* at *2. On appeal, Palomo argued that the trial court abused its discretion in denying his motion. *Id.* at *4. He asserted that the trial court committed a clear error of judgment in its conclusion because the alleged victim’s testimony lacked credibility. Finding that the trial court did not abuse its discretion when it denied Palomo’s motion for a new trial, the District Court of Guam Appellate Division stated: “The trial judge is in a much better position to evaluate the credibility and demeanor of the witnesses than are we and, as such, we defer to those findings.” *Id.*

[21] In *People v. Quinata*, 1999 Guam 6, this court similarly acknowledged the importance of appellate deference to the trial court when considering whether the trial court abused its discretion in denying a motion for a new trial. We considered the fact that the trial judge “presid[ed] over the jury trial and listen[ed] to all of the testimony” when it deemed the evidence sufficient to sustain Quinata’s conviction. *Quinata*, 1999 Guam 6 ¶ 19.

[22] We continue to recognize the importance of appellate deference when considering whether the trial court abused its discretion in denying a defendant’s motion for a new trial. Accordingly, we defer to the trial court’s determination in denying Leslie’s Motion for a New Trial. Like in *Palomo* and *Quinata*, the trial court in this case had the opportunity to consider all of the evidence and, in particular, to evaluate M.L.’s manner while testifying on direct examination and cross examination. The trial court had the opportunity to experience the true tenor of the testimony at trial and, thus, was in the best position to determine M.L.’s credibility as well as whether the totality of the evidence weighed so heavily against the verdict such that Leslie should be granted a new trial.

2. The trial court provided specific support for its determination.

[23] The trial court carefully provided specific support for its determination in its Decision and Order denying Leslie's Motion for New Trial, which further supports our finding that the trial court did not abuse its discretion. When determining whether a trial court abused its discretion in denying a motion for a new trial, we consider the degree to which the trial court has supported its determination. See *Quinata*, 1999 Guam 6 ¶ 19. In *Quinata*, we reasoned, in part, that the trial court did not abuse its discretion because its determination was "well supported by specific citations to testimonial evidence in [its] Decision and Order." *Id.*

[24] The trial court here similarly provided specific support for its determination. In its Decision and Order, the trial court addressed each argument challenging the credibility of M.L.'s testimony, including those that Leslie now makes on appeal. See RA, tab 54 at 1-6 (Dec. & Order, Nov. 5, 2010). For example, the trial court stated, in pertinent part:

Defendant then argues that M.L.'s testimony was not credible because of her demeanor. M.L.' [sic] hesitance in testifying can easily be explained by her young age, embarrassment over the situation and the attention received in court. Further, the court notes that the time at which Defendant notes her hesitant demeanor were during the most difficult portions of her testimony – when she first took the witness stand, and during her description of the incidents for which defendant was charged. It is understandable that she would be nervous and even hesitant. Indeed, her credibility is bolstered by the fact that she testified at all, as young girls are not usually willing volunteers of their sexual encounters. Nevertheless, M.L.' [sic] age, intelligence, and demeanor were all taken into account when determining whether her testimony was credible. The court finds that it was.

Defendant next argues that M.L.'s testimony was not credible because she lied about her age on an internet profile (Def.'s Exs A, B), and lied about her age to a policeman. Her misrepresentations were not under oath. Also, this evidence was in part offered by M.L. herself. Her previous misrepresentations of her age on her internet profile were explained by M.L. under oath. This is actually Defendant's last argument that M.L.'s testimony is not credible – because she wanted to date

an older man. Specifically, M.L.'s sentiment was that she 'could fit in more if she was friends with Defendant.

Id. (citations omitted). The trial court's careful and specific support for its determination militates against Leslie's assertion that the trial court abused its discretion.

3. This is not an exceptional case meriting a new trial.

[25] Although trial courts may grant new trials, motions for a new trial based on the weight of the evidence are not favored. *United States v. Cox*, 995 F.2d 1041, 1043 (11th Cir. 1993) (quoting *United States v. Martinez*, 763 F.2d 1297, 1312-13 (11th Cir. 1985) (reversing a trial court's decision to grant a defendant a new trial)). "Courts are to grant [motions for a new trial] sparingly and with caution, doing so only in those really 'exceptional cases.'" *Cox*, 995 F.2d at 1043 (quoting *Martinez*, 763 F.2d at 1312-13); *see also United States v. Pimentel*, 654 F.2d 538, 545 (9th Cir. 1981) (quoting 2 Charles Alan Wright & Edward H. Cooper, *Federal Practice and Procedure* § 553, at 487 (1969)); *United States v. Capati*, 980 F. Supp. 1114, 1132 (S.D. Cal. 1997). "[C]ourts have granted new trial motions based on weight of the evidence only where the credibility of the government's witnesses had been impeached and the government's case had been marked by uncertainties and discrepancies." *Martinez*, 763 F.2d at 1313.

[26] *United States v. Simms*, 508 F. Supp. 1188 (W.D. La. 1980), *United States v. Capati*, 980 F. Supp. 1114, and *United States v. Hurley*, 281 F. Supp. 443 (D. Conn. 1968), are three examples of exceptional cases in which the trial court had a basis to overturn the credibility determination made by the jury. In *Simms*, the trial court granted a new trial because "the government's case depend[ed] upon inferences upon inferences drawn from uncorroborated testimony that . . . [was] subject to questions of credibility." *Simms*, 508 F. Supp. at 1207. In *Capati*, the trial court granted a new trial because the testimony of the government's key witness

was subject to serious impeachment by independent evidence. *See Capati*, 980 F. Supp. at 1133-34. In *Hurley*, the trial court granted a new trial because the direct testimonies of the government's key witnesses were subject to serious impeachment by prior inconsistent statements and by independent evidence. *Hurley*, 281 F. Supp. at 449.

[27] Distinguishable from *Simms*, *Capati*, and *Hurley*, this case falls short of qualifying as an exceptional case that would merit the trial court exercising its discretion to interfere with the jury's factual findings and order a new trial. Unlike in *Simms*, the People's case did not depend upon "inferences upon inferences drawn from uncorroborated testimony." *Simms*, 508 F. Supp. at 1207. Here, in fact, the People argue that much of M.L.'s testimony was corroborated by other witnesses, including Leslie. Appellee's Br. at 8 (June 6, 2011). In its Decision and Order denying Leslie's Motion for New Trial, the trial court also indicated that Leslie corroborated much of M.L.'s testimony when he testified as to what took place between himself and M.L. *See* RA, tab 54 at 4-5 (Dec. & Order, Nov. 5, 2010). This case is also distinguishable from *Capati* and *Hurley* because the People did not present its case "through the testimony of [an] impeached and suspect [witness]." *Martinez*, 763 F.2d at 1313 (distinguishing the characteristics of exceptional cases in which granting a new trial is appropriate). Here, Leslie did not subject M.L. to serious impeachment by prior inconsistent statements or by independent evidence as in *Hurley* and *Capati*, despite having opportunities on cross-examination to impeach M.L.'s testimony. *See* Tr. at 54-57 (Jury Trial, June 29, 2010). Because this is not one of those exceptional cases in which the trial court should interfere with the jury's factual findings, the trial court did not abuse its discretion when it denied Leslie's Motion for New Trial.

B. Inconsistent Verdicts

[28] Leslie next argues that his conviction on the two counts of Third Degree Criminal Sexual Conduct should be set aside because the guilty verdict on these counts was rationally incompatible with his acquittal on the Electronic Enticement of a Child charge. Leslie provided no argument in his Opening Brief on inconsistent verdicts, but instead raised the issue for the first time on appeal at oral argument. We generally will not address an argument raised for the first time on appeal. *Tanaguchi-Ruth + Assocs. v. MDI Guam Corp.*, 2005 Guam 7 ¶ 78. Our exercise of discretion to review a newly raised issue is “reserved for extraordinary circumstances where review is necessary to address a miscarriage of justice or clarify significant issues of law.” *Cho v. Fujita Kanko Guam, Inc.*, 2009 Guam 21 ¶ 40 (citing *Tanaguchi-Ruth*, 2005 Guam 7 ¶ 78). Moreover, we will not reverse the trial court “on a contention not presented to it, absent exceptional circumstances, significant questions of general impact, or where injustice might otherwise result.” *Tanaguchi-Ruth*, 2005 Guam 7 ¶ 82 (quoting *United States v. Munoz*, 746 F.2d 1389, 1390 (9th Cir.1984)).

[29] We find no exceptional circumstance that would favor our exercise of discretionary review over our application of the rule requiring issues to be raised below in the first instance and, therefore, decline to address the issue of inconsistent verdicts.

V. CONCLUSION

[30] In light of the deferential standard of review that this court must apply in reviewing a trial court’s Decision and Order denying a motion for a new trial, and given the trial court’s familiarity with the evidence and its ability to evaluate the witnesses, we hold that the trial court did not abuse its discretion when it denied Leslie’s Motion for New Trial. The trial court’s

decision to deny Leslie's Motion for New Trial was within its sound discretion, and Leslie has failed to carry the significant burden of proving that the trial court abused its discretion by committing a clear error of judgment when it reached its conclusion.

[31] We decline to exercise our discretion to address Leslie's argument of inconsistent verdicts, an issue raised for the first time on appeal at oral argument. We find no reason to upset the trial court's sound decision, nor do we find a reason to delve into the jurors' thought processes, which would otherwise rebuff the collective judgment of the jury. Accordingly, we **AFFIRM** the trial court's Decision and Order denying Leslie's Motion for New Trial, and we **AFFIRM** the judgment of conviction.

Original Signed: Robert J. Torres
By
ROBERT J. TORRES
Associate Justice

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

Original Signed: F. Philip Carbullido
By
F. PHILIP CARBULLIDO
Chief Justice