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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

FELIX MANIBUSAN GEORGE,
Defendant-Appellant.

Supreme Court Case No.: CRA11-009
Superior Court Case No.: CF0070-10

OPINION

Cite as: 2012 Guam 22

Appeal from the Superior Court of Guam
Argued and submitted on August 28, 2012
Hagåtña, Guam

Appearing for Defendant-Appellant:
Michael F. Phillips, *Esq.*
The Law Offices of Phillips & Bordallo, P.C.
410 W O'Brien Dr., Ste. 102
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Lea L. Kear, *Esq.*
Assistant Attorney General
Office of the Attorney General
287 W O'Brien Dr.
Hagåtña, GU 96910

ORIGINAL

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

PER CURIAM:

[1] Defendant-Appellant Felix Manibusan George appeals from a final judgment convicting him of twenty counts of First Degree Criminal Sexual Conduct (As a First Degree Felony), five counts of Second Degree Criminal Sexual Conduct (As a First Degree Felony), and one count of Terrorizing (As a Third Degree Felony). George claims that the evidence is insufficient to support his convictions. After reviewing the evidence presented at trial in the light most favorable to the People, we hold that George failed to meet his burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict. Accordingly, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] A grand jury returned an indictment charging George with twenty counts of First Degree Criminal Sexual Conduct ("CSC") (As a First Degree Felony), five counts of Second Degree CSC (As a First Degree Felony), and one count of Terrorizing (As a Third Degree Felony). Record on Appeal ("RA"), vol. I, tab 6 (Indictment, Feb. 12, 2010).

[3] During the People's case in chief, the victim, K.A.,[1] took the stand and testified that she was currently fourteen years old, that day being her birthday. She first met George, her mother's then-boyfriend, more than four years prior to trial, and he moved in with her and her mother shortly thereafter.

[4] When asked how she refers to her private area, K.A. testified, "I just call it my 'thing.'" Transcript ("Tr.") at 42 (Cont. Jury Trial, Mar. 14, 2011). She clarified that this meant her

[1] Pursuant to Guam Rules of Appellate Procedure Rule 3(d)(3)(B), we shall refer to the victim by initials only. *See* Guam R. App. P. 3(d)(3)(B) ("All motions, briefs, opinions, and orders of the court shall refer to a child [or] a victim of a sex crime . . . by initials only.").

vagina. She testified that she refers to the same area of the defendant's body as "[h]is 'thing.'" *Id.* at 43.

[5] K.A. testified that about a month and a half after George moved in, her mother and aunt went to the store. K.A. had wanted to accompany her mother and aunt to the store, but she could not because she had to do chores. While her mother and aunt were at the store, George called her into her mother's room and told her to close the door and the window. After complying with George's instructions, he told her to take off her clothes and lie down on the bed, which she did. She testified that she did so because she was scared. George, who had also removed his clothes, then got on top of her. George then tried to put his "thing" to her "thing." *Id.* at 44. When asked whether George was able to put his "thing" in her "thing" all the way, K.A. responded, "It went in a little bit but it started to hurt," so she told him to stop, which he did. *Id.* at 45. George tried to put his "thing" in K.A.'s "thing" on five to ten different occasions. *Id.* K.A. saw white stuff come out of George's "thing" during these incidents. *Id.* at 45-46.

[6] K.A. testified that there had been five to ten incidents where George put his tongue to her "thing." *Id.* at 46-48. These incidents, too, happened in her mother's room. During these incidents, K.A. was naked while George was dressed. When George was using his tongue on K.A.'s "thing," his tongue went "inside and outside." *Id.* at 48. K.A.'s mother was never home during these incidents.

[7] K.A. also testified to incidents where George would put his finger in her "thing." *Id.* at 50-52. These incidents also happened in her mother's bedroom. During these incidents, K.A. was naked while George was dressed. According to K.A., George would try to put his finger all the way in.

[8] K.A. testified that there had been five to ten incidents where George told her to put her mouth to his "thing." *Id.* at 52-54. During these incidents, she was dressed while George was naked. These incidents took place in her mother's room. George would be on the bed while K.A. knelt down next to him. While George's "thing" was in her mouth, his hands would pull her hair. After he would finish, K.A. would see the "white stuff," and he would tell her to get a rag and wipe it. *Id.*

[9] On three or more occasions, George touched K.A.'s breasts. Again, this would happen in her mother's room while her mother was at the store. George would use his hands and his mouth to touch her breasts. George made "the red mark" on her breasts with his mouth, but K.A. could not remember how many times he left this mark. *Id.* at 54-55.

[10] K.A. further testified that George stuck a "green crystal" inside of her "thing." *Id.* at 56. K.A.'s drawing of the crystal was admitted into evidence. George also kissed K.A., and "put his tongue into mine." *Id.* at 58.

[11] K.A. never told anybody about what George was doing because she was afraid of what would happen. George told her that "he would come after us." *Id.* at 55. The first person K.A. told about the incidents was her grandmother.[2] K.A. testified, "After me and my mom were arguing, I told my grandma because it kept bugging me." *Id.* at 56. She did not tell anybody about the incidents immediately after George moved out because she was afraid that George would come after her if he got out of jail. She testified, "He said if he don't [sic] come after me, he will send somebody after me." *Id.* at 57.

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[2] According to the Attorney General's declaration in support of the magistrate's complaint, K.A. read "Play By The Rules" in school in December 2009, and decided to tell a trusted adult about the sexual assaults. RA, vol. I, tab 1 (Mag.'s Compl., Feb. 4, 2010).

[12] K.A. testified that the sexual abuse began when she was about ten years old and in the fourth grade. Some incidents happened while she was living at Taitano Apartments and continued when her family moved to Swamp Road. Later, she and her family moved in with Clarissa Tullao, who lived at Taitano Apartments. Other incidents took place while she was living in Clarissa's house. The last incident occurred in Clarissa's room. K.A. testified that George "made me lay down and then he tried to put his 'thing' on me. And when it start[ed] hurting, I told him to stop." *Id.* at 81.

[13] On cross-examination, K.A. testified that she had a three-year-old sister who was born after her mother started dating George. She acknowledged that in an earlier conversation with defense counsel, she told him that she was mad at George because he abandoned her, her mother, and her sister. She told defense counsel during that conversation that she could not change her story because she was afraid of going to DYA. She also acknowledged that she told defense counsel that if George were to come home, she would feel safe, but she clarified that she meant, "I was hoping if he change and that's why I think that I'll be safe if he would change." *Id.* at 66-67. She acknowledged that during the time that George lived with her, he grounded her only when she did something wrong, and that he never physically assaulted her, as in punches or slaps.

[14] K.A. further acknowledged that when she spoke to the nurse at Healing Hearts, she did not tell the nurse about any fingers or a green object being used during the incidents. She acknowledged telling the investigating police officer that she got hickeys in the fourth grade and that she missed school because of the hickeys. She also told the officer that George's penis had skin hanging from the front of the tip.

[15] Prior to K.A.'s testimony, K.A.'s grandmother took the stand and testified that on December 23, 2009, K.A. came to talk to her, and that K.A. was crying, scared and shaking. K.A. told her grandmother that George molested her. K.A. did not disclose any details to her grandmother. Afterward, K.A.'s grandmother called K.A.'s mother to the side of her house and talked to her. K.A.'s mother and grandmother brought K.A. to the police precinct to report the incidents that same day.

[16] On cross-examination, K.A.'s grandmother testified that at the time K.A. reported the molestation to her, K.A. had been living with her for about a month and a half. At the time of trial, K.A. was living with her grandmother. K.A.'s grandmother further testified that before December 2009, K.A. lived at Taitano Apartments. While K.A. was living at Taitano Apartments, her grandmother visited her about once a month.

[17] Following the grandmother's testimony, K.A.'s mother took the stand. She testified that she first met George in December 2006. George moved in with her in January 2007 and lived with her until November 2009. While George was living with her, they lived in Taitano Apartments #114 and later moved to a house on Swamp Road. During the time K.A.'s mother lived with George, she would go to the store or run errands about two to three times per week. She sometimes took K.A. with her when she felt sorry for K.A. K.A.'s mother further testified, "Sometimes, you know, when [George] stand [sic] as a father, when [K.A.] makes mistakes, she -- she has to stay behind." Tr. at 8 (Cont. Jury Trial, Mar. 14, 2011). Some of the times she left K.A. behind with George, somebody else was present. Once or twice a month, however, she would leave K.A. alone with George while no one else was present. K.A. kept a diary, which her mother sometimes read. K.A. never mentioned in her diary any allegations of sexual abuse by George.

[18] K.A.'s mother also testified that in January 2011, she received a phone call from an investigator from the Alternate Public Defender's Office asking her to bring K.A. to the office. K.A. spoke with the investigator alone while her mother waited outside the room, and the interview lasted for almost an hour. K.A. was thirteen years old at the time. After K.A. spoke to the investigator, her mother signed a waiver of prosecution. She signed the waiver because K.A. said that George did not really fully penetrate her, and K.A. wanted to give him a chance.

[19] K.A.'s mother testified that from the moment she found out about the sexual abuse, K.A. has never told her that she was lying about the abuse.

[20] On cross-examination, K.A.'s mother acknowledged that she moved to Swamp Road in July 2008, and that she lived there for about two to three months. She acknowledged that afterwards, she moved to Taitano Apartments #3, where a Clarissa Tullao also lived. K.A.'s mother and George broke up in November 2009.

[21] K.A.'s mother also acknowledged that on the day that K.A. first made the allegations of abuse, she and K.A. had gotten into an argument about K.A.'s chores. K.A.'s mother acknowledged that between 2006 and 2009, George was unemployed. She testified that there were times when K.A. would accompany her to the store, but that most of the time K.A. was unable to go because of her mistakes in school. She testified that George never raised a hand to K.A., her younger daughter, or herself. In response to defense counsel's question, "And isn't it true that [George] never yelled at [the baby] and said if -- or, told you that if you don't shut her up, you're going to -- he's going to throw her up against the wall?", she testified, "Yes, he said that to me but he didn't do it." *Id.* at 20. She testified that she did not report this threat to the police "because he really didn't mean it to -- to touch the daughter." *Id.* She explained that she never told anybody about this incident before because she had forgotten about it.

[22] K.A.'s mother acknowledged that she never noticed anything unusual about the relationship between George and K.A. According to K.A.'s mother, George and K.A. seemed to get along really well and the only times K.A. was upset was when he punished her for not doing chores or for messing up at school. During K.A.'s mother's relationship with George, K.A. got Bs and Cs at school, and George would make sure that K.A. did her homework. K.A.'s mother acknowledged that K.A. once got in trouble for giving a pornographic DVD to a neighbor.[3] K.A.'s mother never saw any pornographic DVDs in the house while she was living with George.

[23] When K.A. told her mother about the abuse, she did not disclose any details. K.A. never mentioned a green object or oral sex. K.A. told her mother that she was upset with George because he abandoned them. K.A. used to call George "Father" and "Dad." *Id.* at 33.

[24] From the time she started dating George, K.A.'s mother had to take him to the hospital several times – sometimes three or four times a month – for health reasons. On some occasions, George was admitted into the hospital. His longest hospital admission lasted almost a week. K.A.'s mother sometimes had to lift George off the floor if he fainted, and she often had to help him shower when he was not feeling well.

[25] Officer Anna Marie Kuper from the Guam Police Department testified that she took the initial complaint in this case, and that the complaint was made in December 2009. Officer Kuper first spoke to K.A.'s mother, who was the reporting person. According to Officer Kuper, the general nature of the allegations made was sexual abuse against K.A. The officer next spoke to K.A. K.A. told the officer that the sexual abuse first took place at Taitano Apartments, and that

[3] The People objected to this question after K.A.'s mother answered it. Tr. at 22 (Cont. Jury Trial, Mar. 14, 2011). The trial court sustained the objection, but there was no motion to strike, and the jury was not instructed to disregard the testimony. *Id.* at 22-23.

the last incident of sexual abuse also took place at Taitano Apartments. K.A. told Officer Kuper that she had moved a few times. Officer Kuper testified, "I know she mentioned first it was Taitano's Apartment, they moved to Swamp Road, moved back to Taitano's Apartment, and during the time of the interview, they were staying at Gill-Baza." *Id.* at 86. After reviewing her report, Officer Kuper testified that the last date of the alleged abuse was January 1, 2009, and that it took place at the apartment of K.A.'s stepsister, Clarissa Tullao, this apartment being part of Taitano Apartments. During Officer Kuper's interview of K.A., K.A. appeared calm and did not indicate to her any deceit or lying.

[26] On cross-examination, Officer Kuper acknowledged that prior to this incident, she had never met K.A., and she did not know whether K.A. was a good liar or a bad liar. In response to defense counsel's question as to whether K.A. told her that the first time that George put his "thing" in her was when her mom and aunt went to do errands and George called her into Chris' room, Officer Kuper answered, "I believe you're right. Yes, sir." *Id.* at 92. Officer Kuper acknowledged that she asked K.A. to tell her everything that happened. She admitted that, to her knowledge, K.A. never mentioned a green crystal object. She acknowledged that K.A. was calm at the time they spoke. She also acknowledged asking K.A. to describe George's penis, and she testified that K.A. described George's penis as having "skin in the front." *Id.* at 93.

[27] On redirect examination, Officer Kuper testified that K.A. told her that the first incident of sexual abuse took place at Taitano Apartments, when George attempted to put his penis into K.A.'s vagina but could not. She testified further, "The actual penetration happened, I believe, in Swamp Road when he actually was able to insert his penis into her vagina." *Id.* at 98.

[28] The People's next witness was Nurse Ann Rios from Healing Hearts Crisis Center. Prior to Rios' testimony, the trial court read to the jury the parties' stipulation that Rios is an expert in

the fields of registered nursing, sex abuse nurse examination, and sex abuse victims. After an at-length description of her training, experience, and duties as a sexual abuse nurse examiner, Rios testified to her interview and examination of K.A. Rios read aloud from her report K.A.'s answers to the interview questions, which were as follows:

> "Writer asked [K.A.], 'Do you know why you're here today?' [K.A.] responded, 'Because the lady send me here for an exam. You know, to check if I've been damaged,' and then in parentheses it says, 'Please note, the "lady" was later identified as Officer Kuper.'
>
> "Writer then asked, 'Why would someone need to check if you were damaged?' [K.A.] responded, 'It happened two years ago; my old house, the apartment, 114. He called me in my room, he forced me to do it. He asked me to put his mouth to my bebe. Next, he was on top of me, on my mom's bed.' [K.A.] then clarified the location of the apartment as Macheche, Taitano's Apartments.
>
> "For the purpose of clarification writer drew a diagram of a male and female stick figure for [K.A.] to complete the body inventory. [K.A.] was able to identify the parts with ease. [K.A.]'s body inventory identified the breasts as 'breasts,' the penis as 'dick,' the buttocks as 'butt,' and the vagina as 'bebe.'
>
> [K.A.] then used a green crayon to mark the body parts used during the incidents. Writer then asked client, 'How many times did this happen?' [K.A.] responded, 'I don't count, but it's a lot.' Client described incidents of oral sex performed by her, to Felix George. 'Mostly my mouth to his dick.'
>
> "Client described an incident: 'He kissed me and put a hickey mark on my neck.' Writer asked where. Client stated, 'The house on Swamp Road. No one was home.' Writer asked what a 'hickey' is. [K.A.] stated, 'My aunt told me what it was. She had one.' [K.A.] continued, 'That's the time he didn't make me go to school. Twice.'
>
> "Client also admitted, 'He put a hickey on my breast one time.' [K.A.] also described an incident of oral sex performed on her, by Felix George. 'He put his mouth to my bebe.' [K.A.] also stated, 'He got on top of me and tried to put his thing in my bebe, but he couldn't because it hurt.' Clarification was asked what 'thing' meant, and she stated, 'Dick.'
>
> "[K.A.] states she didn't say anything because, 'He told me if I tell, then he would get -- that when he gets out of jail, he'll find us,'" and then she meant, "me, my mom and my sister, 'and kill us.' [K.A.] added, 'He also threatened my sister. When my sister cry, he said I'd better keep her quiet or he'll slam her to the wall and stab her.'
>
> "Client didn't disclose any other past sexual abuse with anyone besides Felix George."

Tr. at 48-51 (Cont. Jury Trial, Mar. 15, 2011).

[29] Rios testified that because K.A. provided a positive history of skin-to-skin contact, she performed an examination. K.A. declined to have Rios examine her breasts because K.A. was uncomfortable with that examination. Rios was able to perform a genital examination of K.A. Upon examination of K.A.'s hymen, Rios discovered a "V-shaped notch, which is a deep partial tear of the hymen." *Id.* at 57. Rios was unable to examine K.A.'s cervix as K.A. was uncomfortable with that examination. K.A.'s anus was normal. According to Rios, the injury to K.A.'s hymen was consistent with the history provided by K.A., specifically with K.A.'s statement, "His dick to my bebe." *Id.* at 60. Rios testified,

> What this injury is, is actually consis- -- consistent with something penetrating. So if I were to take -- draw a circle, and take a pen, and keep poking it, and how you would have, maybe those little tears at the edge, it would be very different than having a puncture from a hole punch. So -- You see how clean those are, but if you were to make that hole with a pen or a pencil, it would be jagged. So, yes, it's [consistent] with a penetrating --

Id. at 60-61. She testified that the injury was consistent with penetrating trauma.

[30] Rios further testified that based upon her experience and training, as far as encountering victims and how victims release details of events, in her expert opinion:

> [I]t's really dependent on maybe the person who's doing the interview. . . . Some of our victims that we've had, is that maybe they won't disclose right away because if that suspect is still within the home -- and maybe they feel like they weren't believed, or maybe they think maybe the family member knows and isn't doing anything about it. Sometimes -- First of all they don't even know it's wrong. Sometimes maybe they'll have a friend that's encountered, or maybe they'd read the newspaper or, like I said, maybe that suspect isn't at home anymore, and then they feel safe to kind of disclose what happened, and then with information, it really depends on who the person asking.
>
> I know we've had some patients that have come into us that really won't talk to the police, because if you think of somebody who was maybe a victim of a crime, or maybe that suspect had guns, and then here you're being interviewed by a person who's holding a gun, it can be kind of intimidating, and sometimes -- I

> know we've had some patients that come, and they just felt like they were interrogated, and not really asked what happened . . . .

Id. at 61-62.

[31] On cross-examination, Rios reiterated that the partial tear in K.A.'s hymen was consistent with the history provided. Rios acknowledged that K.A. never mentioned digital penetration or that a green object was used to penetrate her. When asked whether the type of injury to K.A.'s hymen could be caused by a tampon, Rios responded, "There's contradicting studies with that. Some say if they maybe didn't know how to use a tampon, maybe, and there's other studies that say no, so it's really -- That one was kind of, like, on the fence." *Id.* at 83. She testified that any blunt force to the vagina can possibly cause a tear of the hymen.

[32] On redirect examination, Rios testified that she does not always see injury to the hymen in every single sexual abuse case, and that a lack of injury does not mean that there is no sexual abuse.

[33] On re-cross examination, Rios acknowledged that evidence of injuries, like a partially torn hymen, in and of itself does not prove that a sexual abuse occurred, but that it suggests it.

[34] After Rios' testimony, the People rested its case. George then moved for a judgment of acquittal. The motion was denied.

[35] The following day, the defense started its case in chief. The defense's first witness was K.A. K.A. testified that since her testimony at trial two days before, she had been feeling sad "Because I made everything up." Tr. at 8 (Cont. Jury Trial, Mar. 16, 2011). She admitted that George never did the things she had attested to earlier. K.A. testified that she told her mother about the lies the day before. She waited until the day before to tell her mother that she was lying because she was scared "[a]bout making this up." *Id.* at 9. She told her mother that she wanted to come back to court to tell the court that she made everything up. K.A. denied that her

mother told her to say that she lied or that anyone forced her to say that she lied. As to why she made up the allegations, she testified, "Because when he [walked] out on -- Like, when he [walked], and without saying goodbye, I was mad at him, and ever since he abandoned us, I was, like, so mad, making this up." *Id.* at 12. She admitted that she made up the allegations to get even with George. She acknowledged that she never thought it would get this far or that she would have to go to Healing Hearts.

[36] Before completion of defense counsel's direct examination of K.A., the People moved for a mistrial. The trial recessed for the rest of the day. The following day, the court heard the parties' arguments on the People's motion for a mistrial and denied the motion.

[37] Later that day, the defense continued its direct examination of K.A. K.A. again acknowledged that she had made up the allegations against George. She testified that she knew about the "white stuff" because she "was hanging out with the wrong friends," and that they told her about it. Tr. at 38 (Cont. Jury Trial, Mar. 17, 2011). She testified that the green object she spoke of earlier was something she had found in her mother's drawer when her father was still alive, and that George never put the object inside her.

[38] On cross-examination, the People recounted various statements made by K.A. in her initial testimony and in her statements to the police and Healing Hearts. K.A. admitted to making these statements, but insisted that she lied when she made them. K.A. further testified:

> Q Okay. And [defense counsel] told you, and your mom told you that your baby sister needs your -- needs her dad, right?
>
> A Yes, and even I need my dad, too.
>
> Q Okay. And he said -- And you really miss your own dad, who passed away in that hunting accident, right?
>
> A Yes, but I (indiscernible) him as a real dad.
>
> Q And you miss your dad so much that it still hurts you a little, right?

A Yes.

Q And when they told you that your baby sister needs her dad, you don't want her to grow up without a dad also, right?

A Yes.

Q And you really love your sister a lot, right?

A Yes.

Q And you really want her to have her dad, no matter what, right?

A Yes.

Q Now you don't want your family to be torn apart by what he did, right?

A I don't want my family to tore apart, I just need him to stand as a dad for both of us.

Q You just want him to come home, and never do this again, and be a happy family, right?

A Yes.

Q And you're willing to say what you need to, to try to get him to come home for your baby sister, right?

A Yes.

. . . .

Q Now, [K.A.], can you just -- and I just want you to be clear about this. You just -- Right now you just want him to come home for your baby sister, right?

A Yes.

Q And, [K.A.], you're a -- you're a very good person, aren't you?

A Yes.

Q You really love your family a lot, right?

A Yes.

Q And you're willing to come up here and say it never happened because you want him to come home, right?

A Yes.

Id. at 58-60.

[39] On redirect examination, K.A. testified that she came forward on her own. She again testified that the alleged abuse never happened. When asked, "If he did all these things to you, would you want him to come home, or would you want him to stay away from you?", K.A. responded, "Uhm, if it did happen, I would ne- -- never want -- an home, but he never did -- happen." *Id.* at 61.

[40] The defense called K.A.'s mother as its next witness. She testified as to the preceding day's events, specifically, her daughter talking to her and how she came about contacting defense counsel who gave her and K.A. a ride to his office, and then to court.

[41] On cross-examination, K.A.'s mother acknowledged that part of the reason she had signed the waiver of prosecution in January 2011 was because she wanted her baby daughter to have her father.

[42] On redirect examination, defense counsel asked K.A.'s mother, "[I]f you believe that Felix George did all these things to [K.A.], would you still want him to come back home?", to which she responded, "Not if I believe, no." *Id.* at 92. When asked whether she believed that any of the allegations happened, K.A.'s mother responded, "I don't believe." *Id.*

[43] Officer Jude Ascura of the Guam Police Department took the stand next. He testified that he examined George's penis and observed that George was circumcised.

[44] After Officer Ascura's testimony, the defense rested its case. George then renewed his motion for a judgment of acquittal in light of the additional testimony. The court denied the motion.

[45] The jury returned guilty verdicts as to all counts in the indictment. George then moved for a judgment of acquittal, or, in the alternative, for a new trial. The trial court denied both motions. George was sentenced to: (1) three concurrent life sentences without the possibility of

parole for the first degree CSC convictions; (2) twenty years of imprisonment for the second degree CSC convictions, to run consecutive to the life sentences; and (3) five years of imprisonment for the terrorizing conviction, to run consecutive to the twenty-year sentence. Judgment was filed, and George timely filed his Notice of Appeal.

II. JURISDICTION

[46] This court has jurisdiction over appeals from a final judgment of conviction pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-197 (2012)); 7 GCA §§ 3107(b) and 3108(a) (2005); and 8 GCA §§ 130.10-.15(a) (2005).

III. STANDARD OF REVIEW

[47] Where a defendant raises the issue of sufficiency of the evidence by a motion for judgment of acquittal, we review the trial court's denial of the motion *de novo*. *People v. Song*, 2012 Guam 21 ¶ 26 (citing *People v. Anastacio*, 2010 Guam 18 ¶ 10). In determining whether there exists sufficient evidence to sustain a conviction, we review the evidence presented at trial in the light most favorable to the People and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *People v. Tennessen*, 2009 Guam 3 ¶ 14); *see also* 8 GCA § 90.21(a) (2005) ("No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt."). "This is a highly deferential standard of review." *Song*, 2012 Guam 21 ¶ 26 (quoting *People v. Tenorio*, 2007 Guam 19 ¶ 9) (internal quotation marks omitted).

IV. ANALYSIS

[48] George claims that the evidence is insufficient to support his convictions, and therefore the trial court erred in denying his motion for judgment of acquittal. Appellant's Br. at 10-15 (May 23, 2012).

[49] Under Guam law, the trial court "on motion of a defendant or on its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment . . . after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." 8 GCA § 100.10 (2005). The trial court determines whether a motion for judgment of acquittal should be granted by applying the same test used when the sufficiency of the evidence is challenged. *Song*, 2012 Guam 21 ¶ 27 (citing *Tennessen*, 2009 Guam 3 ¶ 14). Thus, on appeal we review the evidence in the light most favorable to the People and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *Tennessen*, 2009 Guam 3 ¶ 14).

[50] A verdict of guilty removes the presumption of innocence to which a defendant had formerly been entitled and replaces it with a presumption of guilt. *Id.* ¶ 28 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011); *Herrera v. Collins*, 506 U.S. 390, 399-400 (1993)). Accordingly, the "defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." *Id.* (quoting *Sisk*, 343 S.W.3d at 65) (internal quotation marks omitted). In conducting this analysis, the People "must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *Id.* (quoting *Sisk*, 343 S.W.3d at 65) (internal quotation marks omitted) (citing *Anastacio*, 2010 Guam 18 ¶ 17).

[51] As we have most recently stated regarding motions for judgment of acquittal:

> It is not the province of the court, in determining [a motion for a judgment of acquittal], to resolve conflicts in the evidence, to pass upon the credibility of witnesses, to determine the plausibility of explanations, or to weigh the evidence; such matters are for the jury. When ruling on a motion for judgment of acquittal, the trial court is concerned with the existence or nonexistence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence. A defendant is entitled to a judgment of acquittal when the People fail to produce evidence of the offense charged. A trial court

> should grant a motion for judgment of acquittal when the evidence merely raises a suspicion that the accused is guilty. However, if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

Id. ¶ 29 (alteration in original) (citations and internal quotation marks omitted).

[52] With these standards in mind, we turn to George's particular claim.

[53] George does not challenge any specific element of any of the three crimes for which he was convicted.[4] Rather, he broadly challenges the sufficiency of the evidence by arguing that K.A.'s allegations of abuse were not credible in light of her later trial testimony wherein she recanted her previous allegations, and by pointing to other perceived inconsistencies in her testimony throughout the investigation and trial.[5] Appellant's Br. at 2-10. George also argues

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[4] In order to convict George of First Degree CSC, the People had to prove that George "engage[d] in sexual penetration with the victim" and that "the victim is under fourteen (14) years of age." 9 GCA § 25.15(a)(1) (2005). "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, but emission of semen is not required." 9 GCA § 25.10(a)(9) (2005).

In order to convict George of Second Degree CSC, the People had to prove that George "engage[d] in sexual contact with another person" and "that other person is under fourteen (14) years of age." 9 GCA § 25.20(a)(1) (2005). "Sexual contact" includes: "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). "Intimate parts" include "the primary genital area, groin, inner thigh, buttock or breast of a human being." 9 GCA § 25.10(a)(3).

To convict George of Terrorizing, the People had to prove that George:

> communicate[d] to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication [was] made or another, and the natural and probable consequence of such a threat, [was] to place the person to whom the threat [was] communicated or the person threatened in reasonable fear that crime [would] be committed.

9 GCA § 19.60(a) (2005).

[5] "Although it is possible that there is insufficient evidence for every element of a crime, generally, appellants should argue what specific element or elements were not supported by sufficient evidence." *People v. Jesus*, 2009 Guam 2 ¶ 62. Because George's arguments on appeal focus primarily on K.A.'s recantation of her allegations of abuse, George appears to impliedly argue that none of the elements of any of the charges were supported by sufficient evidence.

that Nurse Rios' testimony regarding the injury to K.A.'s hymen was inconclusive as to whether the injury was caused by sexual abuse. *Id.* at 6.

[54] George contends:

> In order to uphold the convictions, this Court should, after comparing and considering all of the evidence, be able to state it feels an abiding conviction to a moral certainty, of the truth of each of the charges. Based upon both the lack of separate evidence from prosecution witnesses and the sole witness to the alleged criminal acts recanting, Mr. George respectfully maintains neither a rational trier of fact or [sic] this Court could find guilt beyond a reasonable doubt and to a moral certainty.

Id. at 11-12.

[55] Like the defendant in *People v. Jesus*, 2009 Guam 2 ¶ 59, George attempts to argue the evidence in a light most favorable to the defense. George misconstrues the standard by trying to re-argue that there is reasonable doubt. *See id.* As we explained in *Jesus*:

> The U.S. Supreme Court has directly spoken on the matter reminding that "this inquiry does not require a court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" Instead, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact *could* have found the essential elements of the crime beyond a reasonable doubt."

Id. (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). This court cannot merely substitute its judgment for that of the jury. *Id.* ¶ 61.

[56] In raising his insufficiency of the evidence claim, George ignores the evidence supporting the People's version of the events. Based on the entire record presented, there was more than ample evidence to prove each and every element of the crimes charged. When K.A. first took the stand, she testified in detail as to the numerous incidents of sexual penetration and sexual contact perpetrated by George, as well as to his threats of harm should she ever report the abuse. K.A.'s original version of events was corroborated by the testimonies of: K.A.'s grandmother, who testified to K.A.'s report of the abuse; K.A.'s mother, who testified to the various living

situations of K.A. during the period of abuse and provided evidence of moments of opportunity for George to commit the abuse; Nurse Rios, who found injury to K.A.'s hymen consistent with the reported abuse, and who read to the jury K.A.'s verbatim statements detailing the abuse; and Officer Kuper, who testified as to K.A.'s statements regarding the abuse. While there were clear conflicts in the evidence and issues of witness credibility, it was not the province of the trial court—nor is it the province of this court—to resolve these conflicts or to pass upon the credibility of the witnesses or the weight of the evidence. In ruling on the motion for judgment of acquittal, the trial court was concerned with the existence or nonexistence of evidence, not its weight. Merely alleging that K.A.'s testimony is not credible does not suffice to raise a challenge to the sufficiency of the evidence and affords this court no basis for granting relief. It is clear that notwithstanding K.A.'s recantation or the other conflicts in the evidence,[6] viewing the evidence in the light most favorable to the People, a rational trier of fact could have found the essential elements of each crime beyond a reasonable doubt. This is so even though it is possible that a different finder of fact could have reached a different conclusion. *Id.*

V. CONCLUSION

[57] For the foregoing reasons, we find that, viewing the evidence in the light most favorable to the People, a rational trier of fact could have found the essential elements of each offense

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[6] As explained by the Supreme Court of Connecticut,

> [W]e are mindful that it may seem unjust to allow a conviction to stand when the evidence on which the conviction rested has been discredited. It must be remembered, however, that, once properly convicted, the [defendant] no longer [is] cloaked in the mantle of the presumption of innocence. Discrediting the evidence on which the conviction rested does not revive the *presumption* of innocence.

Gould v. Comm'r of Corr., 22 A.3d 1196, 1209-10 (Conn. 2011) (citation omitted). Moreover, "courts universally view recantation evidence with a healthy dose of skepticism." *Id.* at 1210 (citations omitted). "Indeed, it is not unprecedented for a witness to recant a recantation." *Id.* at 1211 (citations omitted).

beyond a reasonable doubt. Thus, the trial court did not err in denying George's motion for judgment of acquittal. Accordingly, we **AFFIRM**.

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

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

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