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Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,

Plaintiff-Appellee,

v.

JEFFREY RODRIGUEZ BALUYOT,

Defendant-Appellant.

Supreme Court Case No.: CRA15-025

Superior Court Case No.: CF0256-14

OPINION

Cite as: 2016 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted on February 26, 2016
Hagåtña, Guam

Appearing for Defendant-Appellant:

Howard Trapp, *Esq.*
Howard Trapp Incorporated
200 Saylor Building
139 E. Chalan Santo Papa
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:

Yoav Sered, *Esq.* (argued)
Matthew Heibel, *Esq.* (briefed)
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

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

TORRES, C.J.:

[1] Defendant-Appellant Jeffrey Rodriguez Baluyot appeals from a final judgment convicting him of three counts of Second Degree Criminal Sexual Conduct (“CSC”) following the alleged sexual assault of a minor during a photoshoot session. Baluyot argues that the trial court’s jury instructions regarding the essential elements of the charged offenses were deficient because they only reiterated the indictment verbatim. Specifically, he contends the trial court’s failure to highlight that a finding of “an intentional touching can reasonably be construed as having been for the purpose of sexual arousal or gratification” within the essential element instructions implied that it was not an essential element. The People counter that the trial court’s definition of “sexual contact” immediately prior to enumerating the essential elements of the offense sufficiently informed the jury that (1) the relevant touching involved the victim’s intimate parts and (2) that the *mens rea* behind the touching was for the purpose of sexual arousal or gratification. For the reasons stated below, we affirm Baluyot’s convictions.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On May 30, 2014, Baluyot was indicted on three counts of Second Degree CSC. The counts read as follows:

First Count

On or about the 8th day of May 2014, in Guam, JEFFREY RODRIQUEZ BALUYOT did commit the offense of Second Degree Criminal Sexual Conduct, when he did intentionally engage in sexual contact with another, by causing his hand to touch the primary genital area of C.R.G.. [sic] (DOB: 11/07/1997), and the Defendant caused personal injury to the victim and used force or coercion to accomplish the sexual contact, in violation of 9 GCA §§ 25.20 (a)(6) and (b).

Second Count

On or about the 10th day of May 2014, in Guam, JEFFREY RODRIQUEZ BALUYOT did commit the offense of Second Degree Criminal Sexual Conduct, when he did intentionally engage in sexual contact with another, by causing his penis to touch the primary genital area of C.R.G.. [sic] (DOB: 11/07/1997), and the Defendant caused personal injury to the victim and used force or coercion to accomplish the sexual contact, in violation of 9 GCA §§ 25.20 (a)(6) and (b).

Third Count

On or about the 10th day of May 2014, in Guam, JEFFREY RODRIQUEZ BALUYOT did commit the offense of Second Degree Criminal Sexual Conduct, when he did intentionally engage in sexual contact with another, by causing his penis to touch the buttock of C.R.G.. [sic] (DOB: 11/07/1997), and the Defendant caused personal injury to the victim and used force or coercion to accomplish the sexual contact, in violation of 9 GCA §§ 25.20 (a)(6) and (b).

Record on Appeal (“RA”), tab 7 at 1-2 (Indictment, May 30, 2014).

[3] At trial, the victim testified that she knew Baluyot from church, and that he offered her a job as a make-up artist. Prior to the incident, he paid her to apply make-up to his clients, and also to allow him to photograph her in a school uniform and a bikini. The following week, she worked again for Baluyot as a make-up artist at Photography Point studio. At the studio, the victim testified Baluyot asked her to put a school uniform on with black boots. He then indicated he wanted to test out his camera and instructed her to wear a blindfold, directing her to pose in a sexual manner. Baluyot put his hand in her panties, touching the victim’s vagina, then placed his penis between her legs, touching the outer part of her privates with his penis. She testified she was afraid during the encounter, and was injured when the two fell on the floor. She testified that after they fell, Baluyot stopped and asked “[b]esides the awkwardness, was it fun?” -- to which she did not respond -- and then he took her home. Transcript (“Tr.”) at 23-24 (Jury Trial, Apr. 10, 2015) (emphasis omitted). She described Facebook messages Baluyot sent her,

including one following the incident that stated “it was fun, when do you want to do the next session[?]” *Id.* at 33.

[4] Guam Police Department Officer Sotero C. Olpindo testified regarding his interviews with the victim and her grandfather. His testimony authenticated photographic evidence of bruises on the victim’s right arm as well as an abrasion on her ear, and he authenticated the victim’s statement. Another officer, Carlo E. Reyes testified about his confiscation of the outfit the victim wore during the incident as well as a studio sign-in sheet. Officer Reyes further authenticated photographs of the studio, and described his confiscation of Facebook messages from the victim and her grandfather.

[5] Officer Reyes requested Officer Brian T. Benavente’s assistance in locating Baluyot, and after doing so, Benavente interviewed Baluyot at the police station. During the interview, Baluyot stated he knew the victim from church, told her she could be a model, and offered her a job at his studio to work as a make-up artist. Officer Benavente read Baluyot’s statement into evidence, which stated the victim worked with him, that he picked her up from school for a photoshoot on the date of the incident, but stopped the shoot when he realized he did not have a memory card and took her home. He testified that Baluyot denied any sexual activity with the victim. The victim’s grandfather also testified. He identified Baluyot as a member of his church and stated the victim worked for Baluyot. He also stated he took her to the hospital due to stress following the incident.

[6] Following the testimony, the court instructed the jury regarding various legal definitions and also on the essential elements of the charged offenses:

Now I want to give you some legal definitions. The first one is “*Intentionally*” defined. A person acts intentionally, or with intent, with respect to his conduct or

to a result thereof when it is his conscious purpose to engage in the conduct or to cause the result.

“*Sexual Contact*” defined. 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.

“*Intimate Parts*” defined. Intimate parts include the primary genital area, or a buttock of human being [sic].

Tr. at 26-27 (Jury Trial, Apr. 14, 2015). The court proceeded to define “victim,” “force or coercion,” and “personal injury” prior to providing the essential elements of the first count of

Second Degree CSC:

In order to find him guilty of this crime, the People must prove beyond a reasonable doubt that the Defendant, Jeffrey Rodriguez Baluyot, (1) on or about the 8th day of May, 2014; (2) in Guam; (3) did intentionally; (4) engage in sexual contact with another, by causing his hand to touch the primary genital area of an individual with the initials C.R.G. and date of birth, November 7, 1997; and (5) caused personal injury to the victim; and (6) used force or coercion to accomplish the sexual contact.

Id. at 27-28. The lesser crime of Fourth Degree CSC was then defined. The court next provided the essential elements of the second charge:

In order to find him guilty of this crime, the People must prove beyond a reasonable doubt that the Defendant, Jeffrey Rodriguez Baluyot, (1) on or about the 10th day of May, 2014; (2) in Guam; (3) did intentionally; (4) engage in sexual contact with another, by causing his penis to touch the primary genital area of an individual with the initials C.R.G. and date of birth, November 7, 1997; and (5) caused personal injury to the victim; and (6) used force or coercion to accomplish sexual contact.

Id. at 29. The lesser crime of Fourth Degree CSC was then defined. The charge for the elements of the third count was as follows:

In order to find him guilty of this crime, the People must prove beyond a reasonable doubt that the Defendant, Jeffrey Rodriguez Baluyot, (1) on or about the 10th day of May, 2014; (2) in Guam; (3) did intentionally; (4) engage in sexual

contact with another, by causing his penis to touch the buttock of an individual with the initials C.R.G. and date of birth, November 7, 1997; and (5) caused personal injury to the victim; and (6) used force or coercion to accomplish the sexual contact.

Id. at 30. The lesser crime of Fourth Degree CSC was then defined.

[7] The jury rendered a verdict of “guilty” to all counts. Judgment was entered on June 9, 2015, and Baluyot timely appealed.

II. JURISDICTION

[8] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-165 (2016)); 7 GCA §§ 3105, 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[9] “We consider whether the proffered instructions accurately stated the relevant law under a *de novo* standard.” *People v. Gargarita*, 2015 Guam 28 ¶ 12 (citing *People v. Diego*, 2013 Guam 15 ¶ 9). “In doing so, ‘a single jury instruction should not be judged in artificial isolation. Instead, instructions should be considered and reviewed as a whole [I]nstructions that might be ambiguous in the abstract can be cured when read in conjunction with other instructions.’” *Id.* (alteration in original) (quoting *People v. Jones*, 2006 Guam 13 ¶ 28). However, “where . . . the defendant fails to object to the jury instructions at trial, we will not reverse absent plain error. ‘Plain error is highly prejudicial error.’” *Diego*, 2013 Guam 15 ¶ 23 (footnote and citations omitted) (quoting *People v. Felder*, 2012 Guam 8 ¶ 19).

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IV. ANALYSIS

A. Whether the trial court’s definition of “sexual contact” sufficiently communicated to the jury that Second Degree CSC contains the requirement of sexual gratification as an essential element of the charged offenses.

[10] Baluyot claims error on the grounds that the jury instructions were insufficient to properly advise the jury on the essential elements of Second Degree CSC, particularly the *mens rea* requirement. Appellant’s Br. at 6 (Nov. 10, 2015). In his view, it was improper for the instructions to simply mirror the indictment. *Id.* at 7-9. There was no objection to the instructions at trial. Accordingly, Baluyot must establish plain error before this court reverses his conviction. *See Diego*, 2013 Guam 15 ¶ 23. The plain error standard is satisfied when: “(1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process.” *Id.* (citations omitted).

[11] Under the first prong of the plain error standard, we must determine whether the court’s instructions amounted to error. *See id.* Baluyot asserts that the trial court failed to instruct the jury regarding the essential elements of the charged offenses because (1) the essential elements in the jury instructions merely reiterated the indictment, (2) the essential element, “that the intentional touching can reasonably be construed as having been for the purpose of sexual arousal or gratification” was not incorporated within the essential elements instructions, and (3) the trial court’s failure to instruct the jury that the definition of “sexual contact” is an essential element of Second Degree CSC implied that it is not an essential element. Appellant’s Br. at 6. The People counter that the challenged instructions appropriately specified (1) that sexual contact is an essential element of Second Degree CSC, and (2) “the mens rea requirement of

Sexual Gratification is subsumed into the definition of Sexual Contact.” Appellee’s Br. at 3 (Dec. 23, 2015) (emphasis omitted). In the People’s view, there was no error simply “because the requirement of sexual gratification as an element of sexual contact was communicated to the jury as part of the definition of sexual contact rather than a discrete essential element of the offense.” *Id.* at 1 (emphasis omitted).

[12] Baluyot anticipated the People’s argument, but contends that “[a]n instruction in the very language of 9 [GCA] § 25.10(a)(8) just confuses the issue because ‘include’ means ‘to have as part of a whole.’” Appellant’s Br. at 10 (quoting Webster’s New World College Dictionary 722 (4th ed. 2004)). In his interpretation, the term “include” is ambiguous, and the trial court’s failure to instruct the jury “that intentional touching can reasonably be construed as having been for the purpose of sexual arousal or gratification” within the essential elements instructions implied that it was not an essential element “overwhelmingly.” *Id.*

[13] Baluyot further questions the absence of “universally accepted form” instructions used by the trial court. *Id.* He sets forth essential element instructions he believes are superior, which first include a description of the criminal code violated, the burden of proof, then enumerating the elements starting with the requisite *actus reus*, the requirement of force, the requirement of injury, and the *mens rea* requirements. *Id.* at 11-13. The People counter that Baluyot fails to take issue with the term “includes” elsewhere, such as its inclusion in the definitions of “Intimate Parts,” “Force or Coercion,” and within “the statement that ‘the Crime of Second Degree Criminal Sexual Conduct *includes* the lesser crime of Fourth Degree Criminal Sexual Conduct.’” Appellee’s Br. at 5. Rather, taken as a whole, the People believe the jury instructions “unambiguously state that Sexual Contact is an essential element of the offense and that Sexual

Contact includes a ‘purpose of sexual arousal or gratification.’” *Id.* (citing *Gargarita*, 2015 Guam 28 ¶¶ 11-12).

[14] This court has upheld jury instructions which track the language of the relevant statute. *See People v. Demapan*, 2004 Guam 24 ¶ 20 (holding that there was no prejudicial error affecting the defendant’s substantial rights because the trial court’s instructions regarding “entry with intent accurately tracked the burglary statute and were sufficient for the jury to understand that [the defendant’s] intent to commit theft was to be proven to exist concurrently with his entry”). Additionally, we have stated “[o]ur duty is to interpret statutes in light of their terms and legislative intent.” *People v. Flores*, 2004 Guam 18 ¶ 8 (quoting *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7). Unless there is “clear legislative intent to the contrary, the plain meaning prevails.” *Id.* (quoting *Sumitomo Constr. Co. v. Gov’t of Guam*, 2001 Guam 23 ¶ 17).

[15] The statutory definition of “[s]exual [c]ontact 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) (2005). This language is identical to the instruction provided to the jury. *See Tr.* at 26 (Jury Trial, Apr. 14, 2015). Furthermore, the term “includes” is not ambiguous, and a plain reading indicates the purpose of the word was to preface what lewd behavior falls within the definition of “sexual contact.” *See* 9 GCA § 25.10(a)(8). There are no notes within the legislative history suggesting otherwise. *See* Pub. L. 15-60:1 (Aug. 31, 1979).

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[16] Although Baluyot may believe that the instructions were not ideal, the instructions when read as a whole were not erroneous. Therefore, Baluyot has failed to satisfy the first prong of the plain error analysis. Finding no error, we need not address the remaining factors of a plain error analysis.

V. CONCLUSION

[17] Baluyot failed to establish error. Accordingly, we **AFFIRM** all of his convictions.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice