IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

VINCENT PETER ROSARIO CAMACHO,
Defendant-Appellant.

Supreme Court Case No.: CRA15-013
Superior Court Case No.: CF0022-09

OPINION

Cite as: 2016 Guam 37

Appeal from the Superior Court of Guam
Argued and submitted on October 26, 2015
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] A jury found Defendant-Appellant Vincent Peter Rosario Camacho guilty of two counts of First Degree Criminal Sexual Conduct ("CSC"), four counts of Second Degree CSC, one count of Terrorizing, and two counts of Child Abuse. The court granted Camacho's Motion for Acquittal with respect to one of the First Degree CSC charges, but denied it as to the remaining charges. The court then sentenced Camacho to 40 years of incarceration for the remaining First Degree CSC charge and three counts of Second Degree CSC. All other convictions were given sentences to run concurrently with the 40-year term.

[2] On appeal, Camacho argues that there was insufficient evidence to support his conviction for First Degree CSC, that hearsay testimony was erroneously admitted over objection, and that the court abused its discretion by failing to grant him a new trial based on cumulative error. For the reasons herein, we affirm Camacho's convictions.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Camacho was charged by superseding indictment for several instances of CSC and related crimes for the sexual assault of three minor victims. At the close of the People's case-in-chief, Camacho faced two charges of First Degree CSC; three charges of Second Degree CSC, one of which included two counts; two charges of Child Abuse; and one charge of Terrorizing.[1]

[4] In late 2008, Donna Cruz moved her family—including her eight-year-old daughter K.M.Q. and four-year-old daughter K.Q.Q.—to live with her aunt Dorothy Cruz and Dorothy's husband, Camacho. Not long after, during a family Christmas gathering, K.Q.Q. approached

[1] At the close of their case, the People agreed to drop the eighth charge from the amended indictment, Intimidation of a Witness by Extortion, for insufficiency of the evidence.

Dorothy's sister, Lourdes Saloma, and told her that "[Camacho] touched their bebe[,] which [means] . . . vagina in Chamorro." Transcript ("Tr.") at 76-77 (Jury Trial, Apr. 24, 2014). At trial, Lourdes explained that when K.M.Q. overheard K.Q.Q.'s disclosure, she "got scared" and told K.Q.Q. in front of Lourdes that she "w[asn't] supposed to tell anybody." *Id.* at 77-78, 90. K.M.Q. thereafter confirmed to Lourdes that it was true and that the same thing also happened to her. These hearsay statements were admitted over objection by defense counsel under the residual hearsay exception of Guam Rule of Evidence ("GRE") 807.

[5] A few days after the Christmas party, several members of the family held a meeting to discuss what K.M.Q. and K.Q.Q. had told Lourdes. During this meeting, another family member, fifteen-year-old K.A.F., began to cry and disclosed that Camacho had also sexually assaulted her.

[6] K.A.F. testified in court that when she was five, she and her twin sister spent the night at Dorothy and Camacho's residence, and before she went to bed, while she was watching television in only her panties, Camacho rubbed his penis on her buttocks. She said this happened while she was lying on her stomach on the floor behind her twin sister. Lourdes claimed that K.A.F. told her that her twin sister was also sexually assaulted, but her twin sister told Lourdes she did not remember anything like that ever happening to either of them. The twin sister also told an investigating officer that she did not remember ever witnessing her sister, K.A.F., being molested, although she did remember spending that night at her aunt's house and watching television.

[7] K.A.F. told the jury that she did not tell anyone until the family meeting because in her younger years she did not understand that what had occurred was wrong. Even after realizing

the gravity of what had happened, she was afraid of what Camacho would do if she told someone and feared that Dorothy would not like her anymore.

[8] After the family meeting, on January 13, 2009, Donna took her daughters, K.M.Q. and K.Q.Q., to the police. About a week later, she took her daughters to Healing Hearts Crisis Center—a rape crisis center—where social worker Leticia Piper conducted an intake interview. Piper's in-court testimony about what K.M.Q. told her during her intake interview and a redacted version of her report were admitted over a hearsay objection as admissible under GRE 803(4)—an exception for hearsay statements made for medical diagnosis or treatment. Piper told the court that her role was to prepare a report that a nurse was to use later for a physical examination and to decide whether to refer the girls for other medical treatment.

[9] During this intake interview, K.M.Q. told Piper how Camacho had touched her, but Piper was unable to determine whether the touching was under or over K.M.Q.'s clothes. K.M.Q. also told Piper that there had been blood on her panty and that she had felt pain in her vagina. She told Piper that her mother had thrown the panty away. Donna later testified she did not recall ever seeing a bloody panty in the relevant timeframe and denied ever throwing one away.

[10] During K.Q.Q.'s intake, she was unable to retain her focus after she identified certain body parts to Piper, and she "did not make any disclosure" or talk about the incident at all. Tr. at 48-49 (Jury Trial, Apr. 25, 2014).

[11] K.M.Q. and K.Q.Q. made these statements to Piper in Nurse Ann Rios's presence,[2] and Rios later conducted a physical examination of both girls. Rios told the court that she remembers being told K.M.Q. experienced pain in her vagina, which made her decide to examine

[2] Nurse Rios testified that she has "specialized training in sexual assault nurse examinations." Tr. at 37 (Jury Trial, Apr. 29, 2014). These nurses are sometimes referred to as "SANE nurses," *State v. Mendez*, 2010-NMSC-044, ¶ 37, 148 N.M. 761, 242 P.3d 328, or "SANEs," *id.* ¶ 42.

K.M.Q.'s vaginal area to look for potential injury. She testified that she did not remember anything about a bloody panty and her report did not contain anything about a bloody panty. She testified that K.M.Q. also told her that her uncle touched her vagina multiple times. She explained that young girls are very sensitive and that while touching "the outside of the vagina might not cause pain . . . the minute that it's opened and touched on the inside it may cause pain." Tr. at 61 (Jury Trial, Apr. 29, 2014).

[12] Rios's physical examination of both of the girls' vaginal areas resulted in normal findings. Rios explained to the jury that because the incidents had occurred weeks prior to the examinations, normal findings did not prove or disprove that sexual abuse had occurred because the girls' bodies had time to heal.

[13] K.M.Q. and K.Q.Q. also testified at trial. K.M.Q. told the jury that Camacho "always used to touch . . . [w]here [her] private spot is," Tr. at 102 (Jury Trial, Apr. 25, 2014), and that she was scared to tell anyone because Camacho told her "he[] [would] do something to [her] or [her] mom," *id.* at 105. She also told the jury that on one occasion when the children were left alone with Camacho she heard K.Q.Q. crying from within Camacho's locked room. K.M.Q. then stated that although she did not see what happened to her sister, her sister later told her what happened.

[14] During cross-examination, defense counsel highlighted multiple inconsistencies in K.M.Q.'s testimony and pre-trial statements. K.M.Q. told the Healing Hearts representatives that she actually witnessed her sister being touched, but on cross-examination admitted that she only heard her sister crying behind a locked door and never saw anything. She also told the Healing Hearts staff that Dorothy was in the shower at the time of the incident, but on the stand told the jury that her aunt was at the store. She also told the jury on cross-examination that she

did not tell anyone because she had told lies in the past, which conflicted with the reasoning she gave during her direct examination. There was also a conflict about the number of times K.M.Q. claimed she was assaulted. Although a major source of conflicting testimony elsewhere in the record, K.M.Q. was not asked about the bloody panty at trial.

[15] K.Q.Q. later took the stand and confirmed in her testimony that Camacho gave her "a bad touch" on her "private parts" one time when she lived with him. Tr. at 133 (Jury Trial, Apr. 25, 2014). She also told the jury that the touch was outside her clothing.

[16] Camacho testified in his own defense. He told the jury that at the time of the alleged incident with K.A.F., he lived in a standalone unit with Dorothy that had concrete floors. He claimed he would never let the girls lie on the floor or be only in their panties. He then told the jury that he "never had the occasion to really be with these kids" because he did not babysit or watch them. Tr. at 21 (Jury Trial, Apr. 30, 2014). He maintained that the three girls were lying about the sexual assaults and that he did not know why they would lie about something like this because he had a good relationship with all of the children in Dorothy's family. He denied ever touching any of the girls.

[17] The jury returned a guilty verdict on all charges. The court granted Camacho's Motion for Acquittal with respect to the First Charge of First Degree CSC because there was insufficient evidence to prove the element of penetration with respect to K.Q.Q. This same motion was denied for the charge relating to K.M.Q. because the evidence of pain, the description of the touching viewed in the light most favorable to the Government, and this court's holding in *People v. Enriquez*, 2014 Guam 11 ¶¶ 19-22, made it "not unreasonable for the jury to conclude . . . that the pain was a result of penetration." RA, tab 144 at 6 (Dec. & Order, Aug. 22, 2014). This Decision and Order also denied Camacho's Motion for Acquittal for the remaining charges

for insufficiency of the evidence based on witness credibility and Camacho's Motion for New Trial based on the interest of justice. Camacho was sentenced to 40 years for the remaining charges and timely appealed.

II. JURISDICTION

[18] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 114-254 (2016)); 7 GCA §§ 3107(b), 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[19] "The trial court's decision to admit evidence under a hearsay exception is reviewed for an abuse of discretion." *People v. Jesus*, 2009 Guam 2 ¶ 18 (citing *People v. Cepeda*, 69 F.3d 369, 371 (9th Cir. 1995); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997)). Reversal is required only where improper admission of evidence affected the verdict. *See People v. Perez*, 2015 Guam 10 ¶ 34 ("In Guam, when the trial court abuses its discretion in admitting certain evidence, the proper standard for evaluating whether reversal is required is the harmless error standard." (citation omitted)).

[20] *De novo* review is applied where there has been a denial by the trial court of a defendant's motion for acquittal based on insufficiency of the evidence. *People v. George*, 2012 Guam 22 ¶ 47 (citing *People v. Song*, 2012 Guam 21 ¶ 26).

[21] "The trial court's denial of a defendant's motion for a new trial is reviewed for an abuse of discretion." *People v. Leslie*, 2011 Guam 23 ¶ 12 (citing *People v. Flores*, 2009 Guam 22 ¶ 9).

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IV. ANALYSIS

[22] We first consider whether the court abused its discretion in admitting hearsay evidence under GRE 803(4) and 807. Next, we look at the sufficiency of the evidence produced at trial. Finally, we consider whether the trial court abused its discretion in denying Camacho a new trial.

A. Hearsay Evidence

[23] Camacho argues that Piper and Lourdes's hearsay testimony was improperly admitted.[3] Appellant's Br. at 14-16, 18 (July 1, 2015). The admission of hearsay under an exception is reviewed for an abuse of discretion. *Jesus*, 2009 Guam 2 ¶ 18 (citing *Cepeda*, 69 F.3d at 371). "A court abuses its discretion by basing its decision on an erroneous legal standard or clearly erroneous factual findings, or if, in applying the appropriate legal standards, the [trial] court misapprehended the law with respect to the underlying issues in the litigation." *San Miguel v. Dep't of Pub. Works*, 2008 Guam 3 ¶ 18. The admissibility of each witness's testimony will be addressed in turn.

1. Social Worker Piper's Hearsay Testimony

[24] K.M.Q.'s statements to Piper were admitted pursuant to GRE 803(4), over objection by the defense, in the form of Piper's Healing Hearts report and in-court testimony. Tr. at 39-40, 47-48 (Jury Trial, Apr. 25, 2014). The hearsay contained in her report and her in-court testimony are in all important respects identical, and we analyze them together. Camacho does not challenge the admissibility of particular hearsay statements under GRE 803(4), arguing instead

[3] On appeal, Camacho raises the argument that Lourdes's testimony should have been excluded only in a single sentence as part of a larger argument that the court abused its discretion in denying him a new trial. Appellant's Br. 18 ("The testimony of Lourdes Saloma about what K.Q.Q. and K.M.Q. told her [is] . . . hearsay for which no exception applied."). As explained in Part IV.C., this issue was not raised in Camacho's motion and is not properly considered there. That said, because Camacho timely objected to this hearsay at trial, Tr. at 76 (Jury Trial, Apr. 24, 2014), and obliquely raises the issue here, and because the government sufficiently briefed the issue, Appellee's Br. 28-31 (Aug. 14, 2015), we consider this argument on its own merit in the interest of justice.

that "the Rule does not apply to non medical [sic] professionals such as Leticia Piper, a social worker who conducted the forensic examination, which was an 'interview for court.'" Appellant's Br. 15. Thus, he challenges all of Piper's testimony based on her identity as a social worker and the overall purpose of the interview.[4]

[25] GRE 803(4) provides an exception to the general prohibition of hearsay when the statements are "made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Guam R. Evid. 803(4). This language tracks Federal Rule of Evidence ("FRE") 803(4)—before its 2011 restyling—from which GRE 803(4) was derived. *See* Guam R. Evid. 803 (Source). "The Rule 803(4) exception to the hearsay rule is founded on a theory of reliability that emanates from the patient's own selfish motive—her understanding 'that the effectiveness of the treatment received will depend upon the accuracy of the information provided to the physician.'" *United States v. Joe*, 8 F.3d 1488, 1493-94 (10th Cir. 1993) (quoting 2 McCormick on Evidence § 277, at 246-47 (John W. Strong ed., 4th ed. 1992)); *see also People v. Ignacio*, 10 F.3d 608, 613 (9th Cir. 1993) (same). "Under the exception the statement need not have been made to a physician. Statements to hospital attendants, ambulance drivers, or even members of the family might be included." Fed. R. Evid. 803(4) advisory committee's note to 1972 proposed rules. "Statements as to fault would not ordinarily qualify . . . . Thus a patient's statement that he was struck by an automobile would qualify but not his statement that the car was driven through a red light." *Id.*

[4] We do not address the questions whether proper foundation was laid to introduce Piper and Rios's hearsay testimony identifying Camacho as the perpetrator or whether it was an abuse of discretion to admit Piper's testimony repeating K.M.Q.'s observations about an incident involving Camacho and K.Q.Q.—declarations that Piper admitted were pertinent not to K.M.Q.'s medical diagnoses or treatment, but to K.Q.Q.'s treatment. Trial counsel objected, preserving these issues, Tr. at 40, 47 (Jury Trial, Apr. 25, 2014), but counsel on appeal has chosen not to pursue them, *see generally* Appellant's Br.

But statements that include an alleged perpetrator's identity have frequently been admitted where the People have laid proper foundation on which a court can conclude it was pertinent to diagnosis or treatment of sexually transmitted diseases or psychological injury. *See, e.g.*, *Ignacio*, 10 F.3d at 613.

[26] The court was presented with a defense motion in limine to exclude the Healing Hearts report because it contained statements by K.M.Q. The defense argued that the statements were made during an interview that was "not conducted for medical purposes," but rather was for law enforcement purposes. RA, tab 109 at 1 (Mot. in Limine to Exclude Healing Hearts Report, Apr. 22, 2014). Defense counsel raised this same argument during Piper's in-court testimony relating details of the interview. Tr. at 39-40, 47-48 (Jury Trial, Apr. 25, 2014). The court admitted the testimony based on the holding in *Ignacio*, which states that "hearsay evidence can be admitted under the medical treatment exception whether the statements were made for purpose of physical or non-physical treatment and diagnosis." 10 F.3d at 613; *see also People v. Salas*, 2000 Guam 2 ¶¶ 27-28 (holding that hearsay that falls within this exception is admissible, even if corroborative of the victim's testimony, because statements of such a nature are "significant in treating sexual abuse"); Tr. at 5 (Jury Trial, Apr. 24, 2014).

[27] Camacho points to a distinction made in *Ignacio* between statements made to a doctor and those made to a social worker. Appellant's Br. 16 (quoting *Ignacio*, 10 F.3d at 613). The court in *Ignacio* admitted the statements made to the doctor but found that statements made to the social worker were elicited for the purpose of "ensuring the child's safety and were not aimed at treating or diagnosing the child's physical or psychological needs." 10 F.3d at 613. But *Ignacio* is distinguishable. In that case, the meeting with the social worker took place after seeing the doctor, *id.* at 611, and the People conceded that the social worker intended only to

ensure the child's safety and to determine whether he needed to contact Child Protective Services, *id.* at 613.

[28] As the notes to FRE 803 make clear, the statements need not be made directly to a doctor or nurse in order to qualify for the 803(4) exception. *See* Fed. R. Evid. 803(4) advisory committee's note to 1972 proposed rules. So long as the statements are "*made* for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof" and are "*reasonably pertinent* to diagnosis or treatment," they need not be made directly to a medical professional. Guam R. Evid. 803(4) (emphases added).

[29] Camacho contends that the statements made to Piper could not have had a medical-treatment or diagnostic purpose because Rios "made no mention in her direct testimony of anything said between K.M.Q. and Ms. Piper and only based her conclusions on what was told to her directly." Appellant's Reply Br. at 3 (Aug. 28, 2014). Contrary to Camacho's position, Rios actually testified that she conducted K.M.Q.'s physical examination because K.M.Q. told Piper she had experienced pain. Tr. at 55 (Jury Trial, Apr. 29, 2014). Piper was also responsible for referring clients for psychological services if those services were deemed necessary. Tr. at 32-34 (Jury Trial, Apr. 25, 2014). So long as the strictures of the rule are observed, the identity of the interviewer or that interviewer's dual purpose will not, by itself, render the testimony inadmissible under Rule 803(4). *See, e.g.*, *United States. v. Lukashov*, 694 F.3d 1107, 1111-15 (9th Cir. 2012).

[30] Nevertheless the identity of an interviewer and the interviewer's dual purpose are not irrelevant to the court's analysis. While we reject the arguments Camacho raises on appeal—which focus on the purported defects discussed above—and hold that K.M.Q.'s statements made

to Piper in the form of Piper's Healing Hearts report and in-court testimony were properly admitted pursuant to GRE 803(4), we stress that the trial court must act as a vigilant gatekeeper to ensure that the GRE 803(4) exception does not become overbroad, especially as applied to multidisciplinary interviews. "It should be emphasized that whether a statement is admissible under the medical treatment exception does not depend solely on the intent of the person asking the questions, but also on whether the respondent understands herself to be providing information for purposes of medical treatment." *Ignacio*, 10 F.3d at 613 n.3. As the Supreme Court of New Mexico acknowledged, there are "special challenges posed by determining the admissibility of statements made to SANE nurses under" the exception, because the dual role they play "raises appropriate concerns about whether the statement was made for the purposes of seeking medical care or whether a medical provider could have reasonably relied upon the statement for diagnosis or treatment of the declarant." *Mendez*, 2010-NMSC-044, ¶ 41. The trial court must examine hearsay "piece-by-piece, making individual decisions on each [statement]," *id.* ¶ 46, and it must "carefully parse each statement . . . to determine whether [it] is sufficiently trustworthy, focusing on the declarant's motivation to seek medical care and whether a medical provider could have reasonably relied on the statement for diagnosing or treating the declarant," *id.* ¶ 43.

2. Lourdes's Hearsay Testimony

[31] Camacho next argues that Lourdes's testimony was inadmissible hearsay. Lourdes testified that she was at a party where K.M.Q. and K.Q.Q. were also present. She noticed K.Q.Q. running back and forth with a mean look and then stopping. She testified over objection that K.Q.Q. told her that Camacho had "touched their bebe [(*i.e.*, vagina)]." Tr. at 77 (Jury Trial, Apr. 24, 2014). Lourdes testified that when K.M.Q. heard this admission she "got scared" and

told K.Q.Q. in front of Lourdes that K.Q.Q. "w[asn't] supposed to tell anybody." *Id.* at 77, 90. Lourdes and her sisters got together to decide what to do with this information before going to the police. *Id.* at 84-85. K.A.F. was present during the meeting and began crying before disclosing that the discussion reminded her of her own experience. *Id.* at 42-43. They then decided to go to the police. Tr. at 14 (Jury Trial, Apr. 29, 2014).

[32] The People conceded at trial that Lourdes's testimony was hearsay, but succeeded in having it admitted over a motion in limine and objection at trial under GRE 807, the residual hearsay exception. Tr. at 5-6, 77 (Jury Trial, Apr. 24, 2014). The admission of this testimony over objection is reviewed for an abuse of discretion. *See Jesus*, 2009 Guam 2 ¶ 18 (citing *Cepeda*, 69 F.3d at 371).

[33] GRE 807 requires that, in addition to having "circumstantial guarantees of trustworthiness" similar to those found in other hearsay exceptions, a court determine:

> (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Guam R. Evid. 807.

[34] The requirement that the hearsay statement be more probative than any other evidence on the point is not found in the other hearsay exceptions, *see* Guam R. Evid. 803, and acts as an important check preventing overuse. It ensures that, where available, a jury is given only the best evidence. *See, e.g.*, *Larez v. City of Los Angeles*, 946 F.2d 630, 644 (9th Cir. 1991) ("By requiring that 'the statement [be] more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts,' that subsection essentially creates a 'best evidence' requirement. The statements' admission, therefore, was

erroneous because the [evidence was] not the best available evidence of what [the declarant] said; testimony from the [original listeners] themselves would have been better." (first alteration in original)).

[35] While the statements made to Lourdes were spontaneous, which tends to prove their trustworthiness, the issue in this case is whether Lourdes's repeating of K.Q.Q. and K.M.Q.'s statements is more probative than their own in-court testimony. *See, e.g.*, *United States v. Balfany*, 965 F.2d 575, 581-82 (8th Cir. 1992).[5] The court in *Balfany* held that the victim's initial report of sexual abuse to her aunt offered by the aunt as hearsay testimony was not admissible under the residual exception because it was not more probative than the victim's own in-court testimony. 965 F.2d at 582. Additionally, the court found that while the aunt's testimony added some facts that the testimony of the victim and other admissible hearsay witnesses did not include, the People should have established the uniqueness of her testimony prior to asking the aunt to testify. *Id.*

[36] In *State v. Ahmed*, the Minnesota Court of Appeals admitted a victim's grandmother's hearsay testimony under the residual hearsay exception. 782 N.W.2d 253, 259-61 (Minn. Ct. App. 2010). The court found that because the statements were made spontaneously in response to pain the victim felt when his grandmother hugged him, the statements were adequately reliable. *See id.* at 261. Further, the victim was deemed incompetent to testify and he would not speak to any of the social workers who tried to interview him. *See id.* at 257, 259.

[37] The present case is more similar to *Balfany* in that K.M.Q. and K.Q.Q. both were able to testify and identify Camacho as the person who touched them inappropriately. Tr. at 102, 133

[5] GRE 807 and Minnesota's residual hearsay exception are derived from FRE 803(24), which is now codified by 28 U.S.C. § 807. *See* Guam R. Evid. 807 (Source); Minn. R. Evid. 807 advisory committee's cmt. to 2006 amendments. Therefore, these cases assist the interpretation of Guam's residual hearsay exception. *See Ada v. Gutierrez*, 2000 Guam 22 ¶ 30 n.7.

(Jury Trial, Apr. 25, 2014). K.M.Q. also described how K.Q.Q. told Lourdes and how it made her afraid. *Id.* at 106-07. Like *Balfany*, there were other witnesses in this case, namely Piper and Rios, that provided additional information regarding the sexual assault, and their hearsay testimony was properly admitted under GRE 803(4). Lourdes's hearsay testimony is not more probative on any fact admissible through other witnesses. Therefore, Lourdes's testimony should not have been admitted under GRE 807, and the court abused its discretion by admitting it.

[38] However, a new trial is not warranted for every abuse of discretion. *Perez*, 2015 Guam 10 ¶ 34 (holding an abuse of discretion in admitting certain evidence should not be reversed unless there is prejudice to the defendant). We consider: "(1) the overall strength of the prosecution's case; (2) the prosecutor's conduct with respect to the improperly admitted evidence; (3) the importance of the wrongly admitted evidence; and (4) whether such evidence was cumulative of other properly admitted evidence." *People v. Roten*, 2012 Guam 3 ¶ 41 (citing *United States v. Garcia*, 413 F.3d 201, 217 (2d Cir. 2005)).

[39] The court in *Balfany* found that because the aunt's inadmissible hearsay testimony was "essentially the same as the testimony of [the victim] and the other hearsay witnesses," it was "merely cumulative and, as such, harmless." 965 F.2d at 582. This court has also found similar errors in admitting hearsay evidence to be harmless where there was "ample evidence on the record [that] supported the guilty verdict." *Perez*, 2015 Guam 10 ¶ 25 (citing *Roten*, 2012 Guam 3 ¶¶ 24, 47, 50).

[40] In *Perez*, similar hearsay was admitted under the present sense impression hearsay exception where a mother testified about what her daughter said to her during her initial sexual-assault report. 2015 Guam 10 ¶ 31. In that case, admission under GRE 803(1) was an abuse of discretion because the hearsay lacked guarantees of reliability where there existed a year-long

delay in the daughter's report to her mother. *Id.* ¶¶ 29, 31. As in *Balfany*, the government's case against Perez was strong enough to sustain the conviction without this improperly admitted hearsay. *Id.* ¶ 36.

[41] Lourdes's testimony did not provide the jury with any important unique facts; it is largely cumulative of other properly admitted evidence. *See* Tr. at 77-78, 80 (Jury Trial, Apr. 24, 2014). Therefore, the error was harmless beyond a reasonable doubt.

B. Sufficiency of the Evidence

[42] "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*." *George*, 2012 Guam 22 ¶ 47 (citing *Song*, 2012 Guam 21 ¶ 26). This court must "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 *Song*, 2012 Guam 21 ¶ 26).

[43] Camacho argues that the trial court erred in denying his Motion for Acquittal because there was insufficient evidence to find the element of penetration with respect to the First Degree CSC[6] charge related to the victim K.M.Q. Appellant's Br. at 12-14. The element of 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). "[E]ven the slightest breach of any part of the vagina, including the labia majora, is sufficient." *People v. Mendiola*, 2014 Guam 17 ¶ 18 (collecting cases). This court has stated that to prove

[6] The First Degree CSC statute, 9 GCA § 25.15, provides that "[a] person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists: (1) the victim is under fourteen (14) years of age . . . ." 9 GCA § 25.15(a)(1) (2005).

penetration "there are no magic words that need to be stated at trial," but rather, the court must look to "the totality of [the] evidence." *Enriquez*, 2014 Guam 11 ¶ 19.

[44] Camacho contends that K.M.Q. only testified that Camacho touched her "private spot" but made no mention of penetration and that the additional evidence regarding the way K.M.Q. was touched was inadmissible hearsay evidence from Piper. Appellant's Br. at 14. He claims that the only possible evidence of penetration came from Rios's testimony that K.M.Q. told her that she felt pain. *Id.* However, he maintains that Rios "never established whether the touching was outside or inside of [K.M.Q.'s] clothing and testified that a slight touch could cause pain inside the vagina without penetration." *Id.* (citations omitted).

[45] We note at the outset that even if we had found that the trial court abused its discretion in admitting Piper's testimony based on the arguments Camacho makes on appeal, erroneously admitted evidence is properly considered in a challenge to the sufficiency of the evidence. *Lockhart v. Nelson*, 488 U.S. 33, 41-42 (1988) ("[A] reversal for insufficiency of the evidence should be treated no differently than a trial court's granting a judgment of acquittal at the close of all the evidence. A trial court in passing on such a motion considers all of the evidence it has admitted, and to make the analogy complete it must be this same quantum of evidence which is considered by the reviewing court."); *see also Best v. United States*, 66 A.3d 1013, 1019-20 (D.C. 2013) ("We evaluate sufficiency based on the evidence that was before the trial court, even if it was admitted erroneously." (citation omitted)). Harmless error analysis as to each appealed error is the proper mechanism with which to assess the impact erroneously introduced evidence or other trial errors has on the verdict; that analysis is not run anew when evaluating sufficiency of the evidence.

[46] In evaluating the sufficiency of the evidence in this case, we look to *Enriquez* and *Mendiola*. In *Enriquez*, the court determined that evidence was sufficient to support an inference of penetration where the defendant put "his hand under [the victim's] shorts" and "placed his fingers on her vagina and rubbed back and forth" causing her to "experience[] pain." 2014 Guam 11 ¶ 18, 22. Similarly, in *Mendiola*, we considered evidence sufficient to support an inference of penetration where the defendant "spread [the victim's] legs" and "lay on top of" her with "skin on skin" contact such that the victim felt "pressure on her vagina from [the defendant]'s penis," which caused the victim to experience "discomfort in her private parts and . . . pain on urination." 2014 Guam 17 ¶¶ 25-26.

[47] In this case, we have on the record before us Piper's testimony that K.M.Q. experienced pain and that she bled in her panty, Tr. at 45, 69 (Jury Trial, Apr. 25, 2014), as well as Rios's testimony that K.M.Q. told her that the pain had been "[i]n her vagina," Tr. at 53 (Jury Trial, Apr. 29, 2014). Contrary to Camacho's argument, Rios did not testify that the slightest touch, even to the *outside* of the vagina, was likely to elicit pain. *Id.* at 59-60 ("So we can touch the outside and that's like the skin and if you've ever changed a baby's diaper, you know the skin is, you know, it's smooth and you can touch that area, but as soon as you open up the areas within—they're very vascular, so they're very red because they're supposed to be, it's a lot of vessels in there but just sometimes the slightest touch will elicit pain."); *id.* at 93 ("[Question:] It's when the vagina—when there's some type of touching inside the vagina with the labia majora open that then it's possible a prepubescent could very well feel pain? [Answer:] Yeah. It doesn't necessarily need to be open, but it has to be inside the labia majora.").

[48] While it is true that Rios did not remember hearing about a bloody panty and made no reference to it in her report, *id.* at 78-79, and also true that K.M.Q.'s mother testified that she did

not remember seeing such a panty and denied ever throwing one away, *id.* at 23, the jury was permitted to selectively accept the testimony introduced at trial based on its credibility determinations, *see, e.g.*, *United States v. Bazazpour*, 690 F.3d 796, 803 (6th Cir. 2012) ("[A] jury may properly 'accept or reject testimony in whole or in part.'" (quoting *Powers v. Bayliner Marine Corp.*, 83 F.3d 789, 797 (6th Cir. 1996))). For this reason, we need not decide whether a report of pain at this level of generality—and without specific evidence that the touching was skin-to-skin—would be sufficient by itself to prove the element of penetration. On this record—which in the light most favorable to the People includes evidence of bleeding in addition to pain inside the vagina—a "rational trier of fact could have found the essential element[] of the crime beyond a reasonable doubt." *People v. Sangalang*, 2001 Guam 18 ¶ 20 (quoting *People v. Reyes*, 1998 Guam 32 ¶ 7).

C. Motion for a New Trial

[49] "[T]he decision to grant a new trial rests within the sound discretion of the trial court." *Leslie*, 2011 Guam 23 ¶ 15 (citing *United States v. Alston*, 974 F.2d 1206, 1212 (9th Cir. 1992)). When reviewing the trial court's denial of a motion for a new trial, this court has previously held that an abuse of discretion occurs when this court has a "definite and firm conviction the trial court, after weighing relevant factors, committed clear error of judgment in its conclusion." *Id.* ¶ 16 (quoting *People v. Quinata*, 1999 Guam 6 ¶ 17).

[50] Camacho argues that the trial court erred when it denied his Motion for Acquittal or in the Alternative for a New Trial. Appellant's Br. at 17-18. As Camacho points out, the trial court has "much broader" discretion to grant a new trial than to grant a motion for acquittal and the trial court "need not view the evidence in the light most favorable to the verdict." *Leslie*, 2011 Guam 23 ¶ 15 (citations and internal quotations marks omitted). The trial court, in considering a

motion for a new trial, may "weigh the evidence and in so doing evaluate for itself the credibility of witnesses." *Id.* (quoting *Alston*, 974 F.2d at 1211). However, the "significant burden" of proving that the trial court abused its discretion in deciding to deny a motion for a new trial lies with the appellant. *Id.* ¶ 16 (quoting *Quinata*, 1999 Guam 6 ¶ 17).

[51] This court in *Leslie* affirmed the trial court's denial of such a motion for three 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) [the case was] not likely an "exceptional case" in which the trial court should interfere with the jury's factual findings.

Id. ¶ 18. In the present case, Camacho lists seven errors that he argues cumulatively "justify the grant of a new trial." Appellant's Br. at 17-18.

[52] Five of Camacho's claimed errors center on inconsistent victim testimony, pointing out that K.A.F. and K.M.Q. made multiple factually inconsistent claims.[7] *Id.* Camacho further asserts that the admission of Piper's hearsay testimony and report and Lourdes's hearsay testimony was erroneous and requires a new trial. *Id.* at 18. However, the only grounds for a new trial raised in Camacho's original motion and analyzed in the trial court's Decision and Order were K.M.Q.'s inconsistent statements to Healing Hearts about seeing Camacho touch K.Q.Q. and admission of the Healing Hearts report before K.M.Q. testified. *See* RA, tab 142 at 7-8 (Notice of Mot.; Mot. for Acquittal, Aug. 7, 2014); RA, tab 144 at 8-9 (Dec. & Order). Consequently, we decline to review the arguments raised here for the first time on appeal, as we

[7] Camacho's assertions on victim inconsistency are: (1) "[t]hat K.A.F. had previously falsely claimed that her sister had also been molested"; (2) "[t]hat K.A.F.'s sister told Anthony Camacho that she was right next to K.A.F. during the alleged incident and denied seeing K.A.F. being molested"; (3) K.M.Q.'s testimony that "she told a Healing Hearts representative that she actually saw what happened to K.Q.Q."; (4) K.M.Q.'s testimony that "she did not tell anybody about the alleged touching because she was afraid that she would not be believed because she had lied in the past"; and (5) K.M.Q.'s claim "that the touching occurred more than 10 times." Appellant's Br. at 17-18.

find no extraordinary circumstances warranting such action. *See Leslie*, 2011 Guam 23 ¶ 28 ("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.'" (quoting *Cho v. Fujita Kanko Guam, Inc.*, 2009 Guam 21 ¶ 40)). Therefore, the only alleged grounds for a new trial we review are the admission of K.M.Q.'s statements that she actually saw Camacho touch K.Q.Q. and Piper's hearsay testimony and report. Appellant's Br. at 18.

[53] In its Decision and Order on the Motion for Acquittal or in the Alternative for a New Trial, the trial court reasoned that Camacho "cross-examined K.M.Q. on whether or not she did actually see [Camacho] touch K.Q.Q., and K.M.Q. answered in the negative" and that "the jury was able to weigh K.M.Q.'s statement in the report and her statement on the stand, and ultimately pass upon the credibility of K.M.Q. as a witness." RA, tab 144 at 9 (Dec. & Order). The trial court correctly noted that when considering a motion for a new trial, the court "*may* . . . evaluate for itself the credibility of witnesses." *Id.* at 8 (emphasis added) (quoting *Leslie*, 2011 Guam 23 ¶ 15) (internal quotation marks omitted). The trial court did not believe introduction of this evidence worked a miscarriage of justice because K.M.Q.'s inconsistency was exposed to the jury through cross-examination and the jury passed its judgment on her credibility. *Id.* at 9.

[54] The trial court produced specific support for its determination as outlined in *Leslie*. 2011 Guam 23 ¶ 23 ("[W]e 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.'" (second alteration in original) (quoting *Quinata*, 1999 Guam 6 ¶ 19)). The trial court carefully considered its denial by acknowledging the inconsistency Camacho highlighted

and also identifying how the inconsistency was exposed to the jury. RA, tab 144 at 9 (Dec. & Order).

[55] Camacho further asserts that the admission of Piper's hearsay testimony and report was improper and requires a new trial. Appellant's Br. at 18. We discussed this issue in Part IV.A.1., above, and we find that this issue does not weigh in favor of granting a new trial.

[56] Because the trial court provided specific support for its denial of the motion and because this is not an "exceptional case," we defer to the trial court's decision and find that it did not abuse its discretion in denying the Motion for a New Trial.

V. CONCLUSION

[57] We hold there was sufficient evidence to support Camacho's conviction for First Degree CSC, that Piper's hearsay testimony was properly admitted, that Lourdes's improperly admitted hearsay testimony was harmless, and that the court did not abuse its discretion by failing to grant Camacho a new trial. Accordingly, we **AFFIRM** Camacho's convictions.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice