

**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

EUGENE B. REPEKI, JR., et al.,

Defendant.

Crim. Case No. 00-162B

**ORDER DENYING MOTION FOR
JUDGMENT OF ACQUITTAL**

INTRODUCTION

This matter came before the court on January 24, 2001 on the motion of Defendant Eugene B. Repeki, Jr. for judgment of acquittal of the offense of second degree murder, following his conviction by jury verdict on December 14, 2000.¹ Defendant argues that the evidence presented at trial is insufficient to sustain the verdict because the evidence supports a reasonable inference that his acts did not cause the injury leading to the death of the victim, Cesar Valerio. Defendant further maintains that because Valerio's injuries were sustained during a sudden quarrel, there was no malice aforethought and thus a conviction for second degree murder cannot stand. [p. 2]

¹ Judgment entered against the Defendant on the count of second degree murder and aggravated assault and battery on December 26, 2001. The parties stipulated that the count of aggravated assault and battery merged as a lesser included offense of second degree murder.

FOR PUBLICATION

FACTS

At trial, the government presented one witness to the events of May 4, 1999 outside of Courtney's Plaza Commercial Building on Saipan. Co-Defendant Thomas Ch. Basa testified that after consuming a number of beers, he, Anthony Magofna, and Defendant Repeki became involved in a verbal exchange with Valerio who was employed as a security guard for the premises where these incidents occurred. According to Basa, Valerio invited them to fight. Basa recalled Repeki running up the stairs in response to the taunts of the security guard, removing his belt, and swinging it at the security guard who was in possession of a pair of scissors and mace. Basa testified that after Magofna grabbed the security guard from behind and held him, he saw the guard stab Magofna with the scissors. According to Basa, Repeki then hit the security guard with a heavy metal ashtray. Basa also stated that he, along with Repeki and Magofna, kicked the security guard, and when the security guard fell, the three ran away from the scene.

The parties disagree as to the Defendant's responsibility for the injury causing Valerio's death. Basa testified that he saw Repeki strike the victim on the right side of the head with the ashtray. No additional testimony was offered to establish any other blow to the head. At trial, however, Dr. Eric Legaspi testified that Cesar Valerio's death was caused by an injury to the left temporal area of the head. Repeki thus argues that on the basis of Basa's testimony, there is no evidence establishing that he committed any act which led to the injury causing the death of Valerio. Repeki also claims that circumstances giving rise to the quarrel or fight further negate any possible finding of malice aforethought.

ISSUE

Whether the evidence presented at trial is sufficient to sustain defendant's conviction of the crime of murder in the second degree, in violation of 6 CMC § 1101(b).

ANALYSIS

Motions for judgment of acquittal are brought under Com. R. Crim. P. 29, which provides, in material part, that “[t]he court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more of the offenses charged in the information . . . if the evidence is insufficient to sustain a conviction of such offense or offenses.” The test used in deciding a motion for judgment of acquittal is identical to that used to challenge the sufficiency of the evidence. *See [p. 3] Commonwealth v. Ramangmau*, 4 N.M.I. 227, 237 (N.M.I. 1995). In reviewing the sufficiency of the evidence, a court draws all reasonable inferences in favor of the government and asks whether any reasonable trier of fact could have found beyond a reasonable doubt the essential elements of the offense. *Id.* at 237. The motion for acquittal must be granted only if “there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt.”

Here, Repeki claims that the evidence neither sustains a finding that his conduct caused the injury leading to the death of Cesar Valerio, nor that it was committed with “malice aforethought,” an essential element of the offense of second degree murder under 6 CMC § 1101(b).² He presents two arguments in support of his claim.

A. Defendant’s Mental State

Under the law of the Commonwealth, the crime of murder requires the specific mental state of “malice aforethought,” which, the parties agree, exists when the natural consequences of a particular act are dangerous to human life, and the act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.³ Although malice aforethought need

² 6 CMC § 1101 defines murder as “the unlawful killing of a human being by another human being with malice aforethought.”

³ Jury Instruction 31, tendered by the parties, read as follows:

“MALICE” may be either express or implied..

not imply deliberation or the [p. 4] lapse of considerable time, Defendant nevertheless argues that where, as here, a quarrel was ongoing during the time of the killing, the element of malice aforethought must necessarily be absent as a killing occurring during the course of a quarrel cannot constitute murder.

Defendant's contention misconstrues the mental state element in the crime of second degree murder. Malice aforethought is the condition of a person's mind. Since no one can look into the mind of another, the only way to decide what is in his mind is to infer it from his acts and that inference is one of fact for the jury. *See Ramangmau*, 4 N.M.I. at 238. Malice aforethought does not mean simply hatred or ill will, but also embraces a state of mind with which one intentionally commits a wrongful act without legal justification or excuse. *See, e.g., United States v. Celestine*, 510 F.2d 457, 459 (9th Cir.1975). One circumstance which a jury could properly consider in deciding whether a defendant in a second-degree murder prosecution acted with malice was whether he used a weapon or other instrument upon his victim in such manner as might be expected naturally and probably to cause death. *Id.* Here, there was ample evidence to sustain the jury's finding, implicit in the conviction of second degree murder, that this was no sudden quarrel but instead a vicious and unprovoked attack in which the Defendant deliberately smashed the victim in the head with a heavy, metal ashtray and that these acts were performed with knowledge of the danger to, and

MALICE is express when there is manifested an intention unlawfully to kill a human being.

MALICE is implied when:

1. The killing resulted from an intentional act.
2. The natural consequences of the act are dangerous to human life, and
3. The act was deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed.

The word "aforethought" does not imply deliberation or the lapse of considerable time. It only means that the required mental state must precede rather than follow the act. .

CALJIC 8.11

with the conscious disregard for, the life of Cesar Valerio. Moreover, such a finding of intentional conduct is perfectly consistent with the jury's rejection of the defense of self defense⁴ and the option of a verdict of voluntary manslaughter, on which the jury was also instructed.⁵ [p. 5]

B. Proximate Cause

Because Basa testified that he saw Repeki hit Valerio with the ashtray on the right, and not the left, side of the head, Defendant claims there is no evidence establishing that he committed any act leading to the injury of death of Mr. Valerio.

In making this argument, Defendant overlooks unrefuted testimony at trial establishing that only Repeki beat the victim on the head with the ashtray and there was only one blow to the victim's head. In light of Dr. Legaspi's testimony that the victim died from a blow to the head, the evidence was more than sufficient to support a jury finding that Repeki struck the blow which caused the Defendant's death. Since the court must view the evidence in the light most favorable to the government and may grant a motion for acquittal only if "there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt," the motion should be denied. In short, the jury's implicit finding that the blow inflicted by Repeki caused the death of Cesar Valerio rests on substantial evidence.

⁴ An honest but unreasonable belief in the need to defend negates element of malice and reduces offense to manslaughter.

⁵ The jury had the option of finding the Defendant guilty of manslaughter, and the jury was also expressly instructed on the differences between murder and manslaughter. *See* Jury Instruction No. 32B, Murder and Manslaughter Distinguished:

The distinction between murder and manslaughter is that murder requires malice, while manslaughter does not.

When the act causing the death, though unlawfully, is done in the heat of passion or is excited by a sudden quarrel and it amounts to adequate reasonable provocation, the offense is manslaughter. In such a case, even if an intent to kill exists, the law is that malice, which is an essential element of murder is absent.

To establish that a killing is murder and not manslaughter, the burden is on the Commonwealth to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion or is excited by a sudden quarrel.

CONCLUSION

For the foregoing reasons, defendant Eugene B. Repeki's motion for judgment of acquittal is hereby DENIED.

SO ORDERED this 26 day of January, 2001.

BY THE COURT:

/s/
TIMOTHY H. BELLAS, Associate Judge