

FILED
CLERK OF COURT
CNMI SUPREME COURT
DATE/TIME, 12/10/01 2:15 pm
BY: [Signature]
Rep. CLERK

IN THE SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
Plaintiff/Appellee,

v.

JESSE SEMAN, ET. AL.,
Defendants/Appellants.

Appeal No. 98-0024 & 98-025 (Consolidated)

JUDGMENT

¶ 1 Pursuant to Com.R.App.P. 36, the Opinion of this Court in this matter has been issued and judgment is hereby entered. Parties are herewith served with a copy of the Opinion which **AFFIRMS** the lower court's April 3, 1998 convictions.

Entered this 10th day of December, 2001.

CRISPIN M. KAIPAT
CLERK OF COURT

[Signature]
Louise C.DLG. Hofschneider
Deputy Clerk of Court

FILED
CLERK OF COURT
CNMI SUPREME COURT
DATE/TIME: 12/10/01 2:15pm
BY: *[Signature]*
Dep. CLERK

FOR PUBLICATION
IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JESSE SEMAN, et al.,
Defendants-Appellants.

OPINION

Cite as: *CNMI v. Seman*, 2001 MP 20
Appeal No. 98-024 & 98-025 (Consolidated)/Criminal Action No. 99-0001
Argued on December 12, 2000

Counsel For Appellant
Chris Leon Guerrero:
Mair, Mair, Spade &
Thompson
By:
Glenn W. Robles, Esq.
Suite 4-B, Horiguchi
Building, Garapan
P.O. Box 7917
Saipan, MP 96950

Counsel For Appellant
Norbert Pua:
Law Offices of Brian Sers
Nicholas
UIU Bldg., 1st Floor
P.O. Box 502876
Saipan, MP 96950

Counsel for Appellee:
Herbert D. Soll
Attorney General
By:
Marvin J. Williams
Assistant Attorney General
Criminal Division,

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, JUAN T. LIZAMA, Justice *Pro Tem*,
VIRGINIA S. SABLAN-ONERHEIM, Justice *Pro Tem*

DEMAPAN, Chief Justice:

¶1 Defendants Chris Leon Guerrero (“Leon Guerrero”) and Norbert Pua (“Pua”) (collectively “defendants”) appeal their convictions for misconduct in public office and assault and battery, in violation of 6 CMC § 3202 and 6 CMC §1202(a), respectively, based on the argument that insufficient evidence was presented during the bench trial. This Court has jurisdiction pursuant to N.M.I. Const.art.IV, §3 and 1 CMC § 3102(a). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On or about November 30, 1997, Francisco Eugenio (“Eugenio”) was allegedly beaten by Department of Public Safety officers while in custody for questioning at DPS’s Central Office in Susupe. Eugenio was a suspect in a commercial burglary during which he allegedly struck a police officer with a crowbar. His arrest followed an island-wide manhunt which ended in a chase through the Dan Dan homestead. Subsequent to the alleged arrest and beating at DPS’s Central Office, Eugenio was photographed and then taken to the Commonwealth Health Center (“CHC”) for treatment.

¶3 Defendants and nine other police officers were each charged with misconduct in public office and assault and battery for the alleged beating of Eugenio.¹ Only Leon Guerrero and Pua were

¹ The charges against officer Hillary Tagabuel were based on aiding and abetting the commission of the assault and battery.

convicted of the charged crimes at the conclusion of the bench trial.²

¶4 The court made the following findings, which are relevant to this timely appeal, in its Written Decision Following Trial (hereinafter, “Decision”):

(1) Eugenio attempted to elude police in the Dan Dan area. As a result of his considerable flight efforts, Eugenio sustained scratches to his back and some bumps and bruises to his body. A civilian witness, Mr. Gabutin, admitted that while assisting the police in the pursuit of Eugenio, he hit Eugenio with a large flashlight. In his testimony, Eugenio had attributed that beating to police officers, rather than Mr. Gabutin.

(2) Eugenio continued to resist arrest after he was brought to the ground and, therefore, the force used by the officers at the scene to subdue him was not excessive.

(3) Eugenio’s testimony was suspect because he was maced and his ability to identify any attackers was impaired for some time after the arrest.

(4) Officer Julian Camacho’s testimony was suspect due to his conflicting testimony on whether he had been promised some lenient treatment in another case pending against him in exchange for supplying information against his fellow police officers. In fact, Camacho perceived that DPS Internal Affairs had promised him leniency even if no such promise was actually made by Internal Affairs. As such, Camacho had ample motivation to implicate police officers when describing events.

(5) Considering the injuries sustained by Eugenio at the arrest scene, the number of

² The trial court dismissed the cases against defendant Diwain Stephan and Jesse Seman for lack of evidence. In contrast, Jack Camacho’s Motion for Directed Verdict of Acquittal was granted by the court on similar evidentiary grounds. Defendants Jose Saures, Jesse Concepcion, and Jason Tarkong were found not guilty on the grounds that “there was no evidence beyond a reasonable doubt that [those] officers...had physical contact with the victim.” Excerpts of Record Leon Guerrero (hereinafter, “Leon Guerrero ER”) at tab C, 9. The court found Defendants James De Leon Guerrero, Hillary Tagabuel, and Joaquin Salas not guilty on similar grounds. Leon Guerrero ER at tab C, 6-7.

assault and batteries testified to by Julian Camacho and Eugenio were not supported by the extent of Eugenio's injuries. Therefore, their testimony would only be considered to the extent it was supported by the evidence of the injuries contained in the CHC intake report and the photographs of Eugenio.

(6) With regards to Eugene Babauta's testimony, the court found that no motive was shown that would cause him to fabricate or embellish his testimony. In contrast to Camacho, it appeared difficult for Babauta to testify against the defendants. As such, the court found Babauta's testimony to be credible.

(7) Babauta testified that Pua had delivered a "right cross" to the victim's face. There was also testimony that Pua had bragged, during an early morning gathering of officers, about having "kneed" the victim. His bragging tended to corroborate that Pua came into contact with Eugenio and to establish Pua's state of mind on the night of the offense.

(8) Babauta also testified, as did Julian Camacho and Eugenio, that Leon Guerrero attacked Eugenio by delivering a downward kick to his back as Eugenio was leaning forward and facing the floor. Leon Guerrero had martial arts training and the description of the method with which the kick was delivered suggested to the court that the kick was consistent with such training.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶5

The issues before this Court are:

- I. Whether the Commonwealth proved beyond a reasonable doubt that Leon Guerrero and Pua violated 6 CMC § 1202(a), assault and battery;
- II. Whether the Commonwealth proved beyond a reasonable doubt that Leon Guerrero and Pua violated 6 CMC § 3202, misconduct in public.

¶6 We review these issues *de novo*. See *Commonwealth v. Yan*, 4 N.M.I. 334, 336 (1996); *Commonwealth v. Palacios*, 4 N.M.I. 330, 334 (1996). The test of sufficiency of evidence is whether, after we examine the evidence presented at trial in a light most favorable to the Commonwealth, and then drawing all reasonable inferences in favor of the Commonwealth, the trier of fact could find that every element of the crimes charged had been proven beyond a reasonable doubt. *Commonwealth v. Yan*, 4 N.M.I. at 336.

ANALYSIS

I. Proof of Guilt Beyond a Reasonable Doubt

A. Defendant Leon Guerrero

¶7 Appellant Leon Guerrero argues that Babauta's testimony was motivated by self-preservation and is, therefore, suspect. Being suspect, Babuata's testimony should not have been persuasive to the trial court and should not have served as the basis of Leon Guerrero's conviction for assault and battery³ and misconduct in office⁴. As such, Leon Guerrero argues that

³ The crime of assault and battery is defined by 6 CMC § 1202(a) as follows:

(a) A person commits the offense of assault and battery if the person strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent.

⁴ 6 CMC § 3202 provides in pertinent part:

Every person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office....

reasonable doubt existed as to his guilt and Babauta's testimony provided insufficient evidence to sustain his conviction.

¶8 This Court is deeply troubled by the circumstances surrounding Leon Guerrero's conviction. Namely, the fact that Eugenio sustained numerous injuries by a myriad of individuals during his apprehension whose causes were not and cannot be specifically identified, that Officer Camacho's testimony and that of Eugenio was judged to be "suspect" by the court, that the CHC report which was utilized to support Officer Camacho's and Eugenio's testimony was inconclusive at best, that the physician who testified regarding the CHC report was not the physician who examined Eugenio, that the photograph showing Eugenio's injuries did not identify the alleged injury caused by Leon Guerrero.

¶9 However, this Court is guided by the letter of the law and the limitations of its appellate power when judging findings of fact. 1 CMC § 3103. In assessing whether there is sufficient evidence to prove an element of a crime, we review the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the element beyond a reasonable doubt. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340 (1996). Essentially, when reviewing a non-jury criminal conviction, where the evidence consists largely of oral testimony contradictory in nature, due regard is given by this Court to the opportunity of the trial court to judge the credibility of the witnesses. *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991).

¶10 In this case, the trial judge believed the testimony of Babauta. Such a credibility decision is within the discretion of the trial court despite the allegations and evidence of bias presented against Babauta. Questions of credibility are for the trier of fact to decide and are generally immune from appellate review. *U.S. v. Hodges*, 770 F.2d 1475 (9th Cir. 1985). By analogy to this situation, it has been held that an accomplices testimony, although suspect, can support a

conviction. *United States v. Hibler*, 463 F.2d 455, 458 (9th Cir. 1972). Indeed, the rule is that even though an accomplice is in a position to gain from the government by his testimony and even though there are inconsistencies in his story, as has been alleged against Babauta, an appellate court may not disregard the witness' testimony unless it is "inherently implausible." *See Lyda v. Unites States*, 321 F.2d 788, 794-795 (9th Cir. 1963); *United States v. Rojas*, 554 F.2d 938 (9th Cir. 1977). While evidence was presented that Babauta may have been biased by the favorable treatment he allegedly received from the Commonwealth in light of the implied threat of his own criminal investigation, we cannot conclude that his testimony was inherently implausible. Accordingly, viewed in the light most favorable to the Commonwealth, the evidence is sufficient to support the trial court's verdict.

B. Defendant Pua

¶11 Pua, like Leon Guerrero, challenges his conviction by attacking the credibility of Babauta's testimony. Moreover, without elaborating further, Pua argues that the testimony of Officer Andrew Taimanao ("Taimanao") and Officer Anthony Ayuyu ("Ayuyu") contradicted Babauta's recollection of the night in question. In sum, Pua claims that the evidence presented by the Commonwealth was insufficient to convict him of assault and battery and misconduct in office because it is based on Babauta's "suspect" testimony.

¶12 Again, we are asked to re-evaluate the credibility of a witness judged to be believable by the trier of fact. And, again, we must state that the trial court's assessment of Babauta's testimony cannot be disturbed by this Court unless his testimony is "inherently implausible." *See Lyda v. Unites States*, 321 F.2d 788, 794-795 (9th Cir. 1963); *United States v. Rojas*, 554 F.2d

938 (9th Cir. 1977). While there may be inconsistencies in the evidence, particularly as to the divergence between Babauta's and Taimanao and Ayuyu's testimonies, those inconsistencies affect the witness credibility rather than the legal insufficiency of the evidence. We must point out that "[c]hallenges to the credibility of a witness are not ... challenges to the sufficiency of the evidence..." *United States v. Latouf*, 132 F.3d 320, 330 (6th Cir. 1997), *cert denied*, 523 U.S. 1086, 118 S.Ct. 1542, 140 L.Ed.2d 691 (1998) (citing and quoting *United States v. Farley*, 2 F.3d 645, 652 (6th Cir. 1993), *cert. denied*, 510 U.S. 1030, 114 S.Ct. 649, 126 L.Ed.2d 607 (1993)). In sum, issues of witnesses' credibility are for the trier of fact to decide. *Id.*

¶13 Specifically, while Babauta's in court testimony conflicted with his previous statement to the police with regards to which side of Eugenio's face Pua allegedly punched, we cannot state that it was "inherently implausible." Indeed, Taimanao and Ayuyu both provided testimony which, if it had been believed, would have exonerated Pua. However, the trial court, presented with all of the evidence in this matter, believed Babauta's testimony rather than that of Taimanao and Ayuyu. Such a decision is within the discretion of the trial court for, as previously stated, it is a clear principle that "[t]he trier of fact has a wide latitude in which to decide which witnesses to believe or disbelieve" *United States v. Clevenger*, 733 F.2d 1356, 1359 (9th Cir. 1984). We therefore find no basis for reversal after examining the evidence presented at trial in a light most favorable to the Commonwealth, and then drawing all reasonable inferences in favor of the Commonwealth. *Commonwealth v. Palacios*, 4 N.M.I. 330, 334 (1996).

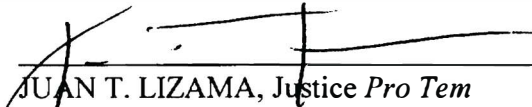
CONCLUSION

¶14 Based on the foregoing analysis, we **AFFIRM** Leon Guerrero's and Pua's convictions.

DATED this 6 day of December, 2001.



MIGUEL S. DEMAPAN, Chief Justice



JUAN T. LIZAMA, Justice *Pro Tem*



VIRGINIA S. SABLAN-ONERHEIM, Justice *Pro Tem*