

FOR PUBLICATION

APPEAL NO. 02-006-GA

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Plaintiff/Appellee,

v.

GLENN M. DELEON GUERRERO,

Defendant/Appellant.

CRIMINAL CASE NO. 01-0434

OPINION

Cite as: Commonwealth v. Deleon Guerrero, 2004 MP 3

Argued on August 13, 2003

Decided March 10, 2004

Attorney for Appellant:
Perry B. Inos, Esq.
P.O. Box 502017
Saipan, MP 96950

Attorney for Appellee:
Peggy Campbell, Esq.
Assistant Attorney General
Office of the Attorney General
Honorable Juan A. Sablan Memorial Bldg.
2nd Floor
Caller Box 10007
Saipan, MP 96950

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, and JOHN A. MANGLONA, Associate Justice.

DEMAPAN, Chief Justice:

¶1 Appellant Glenn M. Deleon Guerrero appeals a Superior Court conviction for assault and battery. The appeal being timely, we have jurisdiction pursuant to N.M.I Const. art. IV, § 3. Because Appellant has not shown that the evidence in this case was insufficient, this Court affirms the conviction.

I.

¶2 On March 10, 2001, Appellant, along with Peter Deleon Guerrero (“Peter”) and others, was involved in an altercation with Jason Yingling (“Yingling”) at a dance club. As a result, the Appellant was charged with riot, assault and battery.

¶3 Yingling and Peter had a heated verbal exchange at the bar, and the police officers asked Yingling to leave. As the officers were escorting Yingling out, Peter slapped Yingling on the head. Yingling turned and threw a punch at Peter in response. Appellant and others then stepped in and ganged up on Yingling. Some of the events were filmed by the dance club’s surveillance camera.

¶4 The trial court found Appellant guilty of assault and battery. It further found that the doctrine of defense of others was “inapplicable and even if it is, it is unjustified.”

¶5 The trial court found that Appellant’s belief that he was defending Peter was unreasonable in several respects. One, Peter is an expert in martial arts and is able to protect himself. Two, there were two police officers and a bouncer present on the scene who, according to the court, were clearly capable of handling the situation. Three, after Yingling was pushed to the floor and helpless, Appellant continued to fight and made no attempt to remove himself from the fray. The court further found that Appellant even pursued Yingling into the bathroom to continue the attack. Appellant now brings this appeal arguing that the trial court should have found that Appellant’s

actions were justified as in defense of Peter.

II.

¶6 Appellant claims that the trial court erred by not finding that Appellant's actions were justified as defense of others. Specifically, Appellant contends that there was insufficient evidence for the trial court to conclude beyond a reasonable doubt that the claim of defense of others is inapplicable and unjustified. We disagree.

¶7 The standard of review for a challenge to the sufficiency of evidence in a criminal case involving the defense of others requires the court to consider the evidence in the light most favorable to the government and to determine whether any reasonable trier of fact could have found beyond a reasonable doubt that defense of others was inapplicable. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340, 344 (1996), *see also United States v. Sanchez-Lima*, 161 F.3d 545 (9th. Cir. 1998). Further, this Court may not consider issues of fact *de novo* and therefore gives deference to the trial court's findings of fact. 1 CMC § 3103; *Fitial v. Kim*, 2001 MP 9 ¶ 15.

¶8 Appellant has not pointed to anything in the record that demonstrates that there was not enough evidence for the trial court to reasonably make its decision. The evidence the trial court considered in this case was the testimony of eyewitnesses on the scene of the melee and a tape of the events filmed by the dance club's surveillance camera. Appellant fails to explain how this testimony and physical evidence were insufficient to reasonably lead to the conclusions made by the trial court that formed the basis of the court's rejection of the defense of others claim, namely, that Peter was an expert in martial arts, that the police and bouncers had control of the situation, and that Appellant continued to attack even after the victim was incapacitated. Moreover, Appellant has not provided the Court with a transcript of the witnesses' testimony or a copy of the tape, in violation of Commonwealth Rule of Appellate Procedure 30, so it is impossible for the Court to determine

whether this evidence is adequate or not.

¶9 Appellant's argument instead gives a general rehashing of his side of the story and suggests that the trial court made a mistake in believing the prosecution's version of the incident. Because this Court cannot "consider issues of fact de novo, or set aside findings of fact unless they are clearly erroneous," the trial court's findings and judgment of conviction must be affirmed. 1 CMC § 3103.

¶10 Accordingly, the judgment of the trial court is hereby AFFIRMED.

So Ordered this 10th day of March 2004.

/s/
MIGUEL S. DEMAPAN, Chief Justice

/s/
ALEXANDRO C. CASTRO, Associate Justice

/s/
JOHN A. MANGLONA, Associate Justice