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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Plaintiff-Appellee,

v.

JOAQUIN R. CRISOSTOMO,

Defendant-Appellant.

Supreme Court Appeal No. 03-0028-GA
Superior Court Criminal Case No. 00-0523A

OPINION

Cite as: ***Commonwealth v. Crisostomo,*** **2007 MP 7**

Argued and submitted on December 7, 2005
Saipan, Northern Mariana Islands

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FOR PUBLICATION

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

CASTRO, *Associate Justice*:

¶ 1 Defendant-Appellant Joaquin R. Crisostomo ("Crisostomo") appeals from the trial court's order convicting and sentencing him on misdemeanor charges after a jury acquitted him of felony charges in the same proceeding. Crisostomo complains of four errors: double jeopardy, collateral estoppel, and sufficiency of the evidence regarding both the elements of the crimes and his possession of a firearm. We see no double jeopardy or collateral estoppel violations, and find the evidence in the record sufficient to support the trial court's holding. We AFFIRM.

I.

¶ 2 On October 29, 2000, Seong Yong Tae ("Seong") was assaulted and robbed at gunpoint while operating the Marianas Washland Laundromat ("Washland") in Chalan Kanoa. An individual grabbed Seong from behind, while another, who was holding a gun and wearing a baseball cap, confronted him.

¶ 3 At the same time, Lori Benhart ("Benhart") and Francisca Abraham ("Abraham") were sitting on a bench outside of Abraham's home in Chalan Kanoa. Abraham's home is across the street from the Life Restaurant, an establishment down the road from Washland. Abraham observed a two-door automobile park in front of the restaurant and watched two or three individuals get out of the car and walk down the road towards Washland. Ten to fifteen minutes later, Abraham witnessed the same individuals run from Washland. The individuals got into the car and left the area. Benhart saw a two-door automobile, the same car Abraham saw, drive through the neighborhood many times. Benhart also saw the car park near the restaurant and watched three men get out and run toward Washland. Additionally, she noticed that one of the

three men had a long object protruding from a backpack. After twenty or thirty minutes, she saw the men run back from the road leading to Washland. Benhart then witnessed two men get into the automobile, pull away, then stop near Abraham's house to pick up the third man. Benhart wrote down the license plate number of the automobile and gave it to the police. At trial, Benhart recognized a photograph of Crisostomo's automobile, and identified it as the car she saw that night.

¶ 4 Officer Michael Langdon ("Langdon") received the suspects' vehicle information over the police radio, and shortly after midnight, saw the suspects' automobile parked near the Nan Ocha store in San Vicente. After he radioed the location to other officers, he placed his hand on the hood and noticed it was warm. Langdon looked inside the car and saw a black, wooden rifle stock on the floorboard of the passenger side.

¶ 5 Detective Jesus Cepeda ("Cepeda") and officers Gordon Salas and Sylvanda Reyes arrived at the scene and entered a nearby poker establishment to locate the operator of the automobile. Cepeda exited the poker room with Crisostomo and questioned him. Crisostomo said he was with his two brothers-in-law, Baldobino Taisacan and Neil Taisacan, and denied operating the car. Cepeda asked Crisostomo if he would consent to a search of the car. Crisostomo refused, stating that the car belonged to his wife. Unbeknownst to Crisostomo, Cepeda questioned Baldobino Taisacan, who said that Crisostomo picked him and Joaquin up at his mother's house and arrived at the poker room around 8:00 p.m. Additionally, Neil Taisacan exited the poker room and Officer Langdon asked him if he was with Crisostomo. Taisacan denied being with Crisostomo, claiming he and Baldobino Taisacan walked over from their house.

¶ 6 On October 30, 2000, the police arrested Neil Taisacan, Baldobino Taisacan, and Joaquin Crisostomo and took their pictures. Seong was later shown photos of several people, including those of Neil Taisacan, Baldobino Taisacan, and Crisostomo. Seong identified Crisostomo in the pictures. During the trial, however, Seong pointed to Neil Taisacan as the person who robbed him and held a gun on the night of the robbery.

¶ 7 Detective Juan Santos conducted an inventory search of the automobile on October 30, 2000, the day after the robbery. He found a black wooden stock for a .22 rifle, the trigger housing upper receiver with magazine for a .22 rifle, ammunition for a .22 rifle, a black color sixteen inch barrel, a .38 caliber revolver, and .38 caliber ammunition. At trial, Seong recognized the revolver seized from the automobile as the one pointed at him during the robbery.

¶ 8 Crisostomo was charged with attempted murder, armed robbery, theft, assault with a dangerous weapon, two counts of unlawful carrying of a firearm, criminal use of a firearm, two counts of illegal possession of a firearm, possession of a prohibited firearm, possession of prohibited ammunition, and illegal possession of ammunition (collectively "felony charges"). Simultaneously, the Commonwealth charged Crisostomo with assault, assault and battery, and disturbing the peace (collectively "misdemeanors charges"). A jury decided the felony charges, while the trial judge decided the misdemeanor charges.

¶ 9 The jury acquitted Crisostomo on all felony charges. The trial judge, however, found him guilty of the misdemeanor charges. Crisostomo timely appealed.

II.

¶ 10 Crisostomo raises four issues. He first claims that the Fifth Amendment of the United States Constitution prohibits courts from convicting a defendant of multiple offenses, arising

from the same set of facts, occasion, time and place. This is known as collateral estoppel, and we review such issues *de novo*. *Commonwealth v. Oden,* 3 N.M.I. 186, 191 (1992).

¶ 11 Crisostomo next argues that his convictions for assault, assault and battery, and disturbing the peace, and all firearm offenses violated his right against double jeopardy. Issues relating to multiple punishments are reviewed under a double jeopardy analysis and, therefore, reviewed *de novo. Id*.

¶ 12 In his final two points of error, Crisostomo raises issues of sufficiency of evidence. Specifically, he claims that no trier of fact could find him guilty of assault and battery, assault, and disturbing the peace since the jury found him not guilty. Additionally, Crisostomo claims that no reasonable trier of fact could have found that he possessed a firearm. The test for sufficiency is whether, in a light most favorable to the government, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Commonwealth v. Bergonia,* 3 N.M.I. 22, 34 (1992).

III.

Double Jeopardy and Collateral Estoppel

¶ 13 Double jeopardy and collateral estoppel are related yet analytically distinct, and it is important to note the distinction between the two. Double jeopardy prohibits the reprosecution of the same offense while collateral estoppel deals with the relitigation of the same factual issue. We have previously explained that "[o]ur double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution." *Oden*, 3 N.M.I. at 206. The Double Jeopardy Clause of the United States Constitution applies to the Commonwealth.[1] In our analysis of cases involving double jeopardy issues, we "resort to federal case law which interprets the U.S.

[1] *Id.* (citing Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, § 501(a)); *see also Commonwealth v. Milliondaga,* 2007 MP 6 ¶ 4.

Constitution's Double Jeopardy Clause to ensure that our interpretation of the Commonwealth Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause." *Id.*

¶ 14 The triers of fact in a Commonwealth dual trial (jury and judge) are not bound to each other in that the bench trial does not have to mirror the jury's decision. *See Commonwealth v. Taisacan,* 2005 MP 9 ¶¶ 32-4. The Ninth Circuit has also held that double jeopardy does not apply in these situations. *See Commonwealth v. Magofna*, 919 F.2d 103, 104-05 (9th Cir. 1990). Nonetheless, the United States Supreme Court held that collateral estoppel is provided under the Fifth Amendment's prohibition against double jeopardy. "The ultimate question to be determined. . . is whether [the] established rule of federal law is embodied in the Fifth Amendment guarantee against double jeopardy. We do not hesitate to hold that it is." *Ashe v. Swenson*, 397 U.S. 436, 445 (1970).

¶ 15 Cases with similar procedural situations to the instant case have upheld judge-determined convictions where juries acquitted defendants of separate charges. For example, in *Copening v. United States*, 353 A.2d 305, 313 (D.C. 1976), a jury acquitted defendant on the statutory charge but the trial judge found defendant guilty on each regulatory charge. On appeal, the court held that the doctrine of collateral estoppel did not apply because the defendant had been "tried in a single proceeding, in which the adjudications as to his guilt were to be rendered by concurrent as opposed to successive triers." *Id.* at 310. Similarly, we held in *Taisacan* that collateral estoppel did not bar the trial judge convicting the defendant and the jury acquitting him on different charges in the same proceeding. *Taisacan,* 2005 MP 9 ¶¶ 33-4.

¶ 16 Here, Crisostomo emphasizes that the trial judge convicted him of the misdemeanor charges *after* the jury handed down its findings of not guilty on the felony charges. As we

clarified in *Taisacan*, this detail is insignificant. *Id.* at ¶ 28. "The traditional concern of the collateral estoppel doctrine is not with the outcome of a decisional race between different triers, but with the need to protect a party from the rigors of twice litigating the same issue." *Copening*, 353 A.2d at 310 n.10 (citing *Ashe*, 397 U.S. at 445-47).

¶ 17 Crisostomo further argues that assault and assault and battery are lesser included offenses of disturbing the peace. This claim is without merit. We previously stated, "[a]n offense is a lesser included offense if its elements 'are a subset of the charged offense.' This determination is accomplished by a textual comparison of the pertinent statutes." *Commonwealth v. Kaipat*, 4 N.M.I. 301, 303 (citations and footnote omitted). We recently analyzed the statutes at issue in *Taisacan*, 2005 MP 9 ¶¶ 38-41. In *Taisacan*, we found that the elements of assault and assault and battery were not a subset of disturbing the peace. *Id.* As the elements of these crimes have not changed since our original analysis, we find no reason to revisit the issue.

Sufficiency of Evidence

¶ 18 We now turn to Crisostomo's sufficiency of evidence arguments. The test for sufficiency of evidence is whether, viewed in a light most favorable to the government, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Commonwealth v. Bergonia*, 3 N.M.I. 22, 34 (1992). We "will not reverse unless, after reviewing all the evidence, [we are] left with a firm and definite conviction that a mistake has been made. *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 3. Crisostomo fails to overcome this burden.

¶ 19 The automobile was seen near the scene of the crime, Crisostomo and Taisacan were seen fleeing the crime scene, and were observed speeding away. The automobile was later found, and the three men were found in the same poker room at the same time. Their stories did not match

as to how they got there or whether they were together. The victim identified Crisostomo from a photo and articles used in the commission of the crime, specifically, the hat and the gun which were found in the car. Overall, there is substantial circumstantial evidence pointing to Crisostomo's guilt.

¶ 20 Despite this, Crisostomo maintains that since there was only one gun used in the commission of the crime, both he and Taisacan cannot both be guilty of assault and assault and battery. Crisostomo's argument ignores the Commonwealth's statutory construction and misplaces emphasis on who held the gun. During the commission of the crime, one defendant held the victim and threw him to the ground while the other pointed the gun at his face. By statute, there is no distinction between principals in the first and second degree. 6 CMC § 201; *see Commonwealth v. Camacho*, 6 N.M.I. 382, 396 (2002). Rather, the required action is to aid, abet, counsel, command, induce or produce commission of the crime or to cause the act to be done. 6 CMC § 201. Here, both defendants acted in concert, and there is no question as to Crisostomo's intent. Additionally, Crisostomo's focus on who held the gun overlooks the fact that the firearm is not required for commission of either assault or assault and battery. When viewed in a light that favors the government, a rational trier of fact could find that Crisostomo committed the crimes of assault, assault and battery, and disturbing the peace. Therefore, we refuse to disturb the findings of the trial court on the ground of insufficient evidence.

Ownership of the Weapon

¶ 21 Crisostomo's final arguments focus on the issue of gun ownership. The trial judge found Crisostomo guilty of three crimes involving the handgun that the police found during a search of the car. Although one of his co-defendants borrowed the car, Crisostomo's girlfriend owned the car. Crisostomo demonstrated his control over the car when he denied the police officer's

request for consent to search the interior. The keys to the car were in Crisostomo's pocket, and Crisostomo eventually admitted to driving the car.

¶ 22 Crisostomo attempts to argue against his conviction based on the ownership of the weapon.[2] Indeed,

> [w]here a firearm . . . is found in a vehicle . . . , it shall be prima facie evidence that the firearm, . . . is in the possession of the occupant if there is but one. If there is more than one occupant, it shall be prima facie evidence that it is in the possession of all . . . .

6 CMC § 2205(b); *see generally People v. Heizman*, 511 N.Y.S.2d 409 (holding, under a similar statute, that the presumption applies even if the individual is not actually in the vehicle at time weapon is found). It is clear that Crisostomo has purposely ignored the statute and focused instead on ownership. Sufficient proof, however, does not turn on ownership of the weapon but on possession. Therefore, when viewed in a light that favors the government, a rational trier of fact could find that Crisostomo had possession of the firearm. Indeed, the statute compels this outcome.

IV.

¶ 23 Crisostomo's double jeopardy and collateral estoppel claims are without merit because there was only one proceeding with two distinct triers of fact. Additionally, the trial court heard a plethora of evidence that pointed to Crisostomo's guilt. For example, witnesses placed him at the scene of the crime, he gave untruthful answers to police questioning, he had control of the vehicle used in the crime, and the police found the weapons and other evidence inside the automobile. When viewed in a light most favorable to the government, a reasonable trier of fact

[2] Crisostomo fails, however, to cite any authority where ownership of the weapon used in a crime is required.

could have found the essential elements of the crimes beyond a reasonable doubt. We therefore AFFIRM the conviction.

SO DATED this 22nd day of March, 2007.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN
CHIEF JUSTICE

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO
ASSOCIATE JUSTICE

/s/ John A. Manglona
JOHN A. MANGLONA
ASSOCIATE JUSTICE