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

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,**
Plaintiff-Appellee,

**v.**

**JIAN HUA ZHANG,**
Defendant-Appellant.

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**SUPREME COURT NO. CR-07-0016-GA**
SUPERIOR COURT NO. 05-0254A

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**Cite as: 2009 MP 6**

Decided June 19, 2009

Joseph L.G. Taijeron, Jr., Assistant Attorney General, Commonwealth Attorney General's Office, for Plaintiff-Appellee
Joey P. San Nicolas, Esq., Saipan, Northern Mariana Islands, for Defendant-Appellant

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

MANGLONA, J.:

¶ 1 Defendant Jian Hua Zhang appeals her conviction for assault and battery arguing there is insufficient evidence to sustain her conviction, and the trial judge improperly interjected personal knowledge as evidence. We hold that the prosecution presented sufficient evidence for a reasonable trier of fact to find Zhang guilty of assault and battery beyond a reasonable doubt. We further hold that the trial judge did not improperly interject personal knowledge as evidence, but properly conducted an assessment of a witness's credibility. Accordingly, Zhang's assault and battery conviction is AFFIRMED.

**I**

¶ 2 Early in the morning on May 7, 2005, an unidentified man contacted Officer Michael Camacho ("the officer") claiming that a woman was assaulted earlier that morning at her apartment complex. The man led the officer to Li Rong Jiang, who was sitting in a nearby vehicle. The officer observed that Jiang appeared "shaken," had a bloody lower lip, and blood on her blouse. Appellant's Excerpts of Record ("ER") at 12. The officer tried to calm Jiang down and communicate with her, but discovered she did not speak English. The officer arranged for a Chinese-speaking police officer to transport Jiang to the Department of Public Safety ("DPS") to take photographs and gather information about her injuries. Subsequently, Jiang stated that her employer, Jian Hua Zhang, assaulted her. Thereafter, Zhang was charged with assault and battery in violation of 6 CMC § 1202(a).[1]

¶ 3 At the bench trial, Jiang testified that she babysat Zhang's son on May 7, 2005 at Zhang's apartment. She further testified that when Zhang arrived home between four and five in the morning, Zhang smelled like alcohol and was upset with her. Zhang allegedly slammed her against the wall seven to eight times, before slapping and punching her in the face. Zhang then grabbed Jiang's neck, threw her to the floor, and repeatedly kicked her. Jiang also testified that while Zhang kicked her, Zhang threatened to kill her and throw her "body into the sea." ER at 43. Zhang then sat on Jiang and hit her with a water bottle approximately ten times before pouring the water on her head.

¶ 4 Zhang denied assaulting Jiang, but admitted that there was tension between the two of them prior to the alleged assault. Zhang testified that Jiang was not a good babysitter and that

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[1] After arranging Jiang's transportation to DPS, the officer interviewed Zhang. The record does not indicate what Zhang told the officer. On direct examination, the officer stated that he asked Zhang "if she was aware that [Jiang] was assaulted." ER at 18. In response, the officer testified that Zhang "didn't say 'yes' or 'no.' She made a comment." On cross examination, however, the officer stated that he didn't interview Zhang because "[s]he doesn't speak English." ER at 33. It is also unclear whether any other police officer interviewed Zhang.

Zhang's son "usually [got] hurt" when Jiang babysat. ER at 51. She stated that Jiang injured her son several times over the previous two years while babysitting.[2] On the day in question, Zhang testified that she arrived at her apartment at approximately 12:30 a.m. after finishing her shift working at a night club. She testified that she spoke briefly with Jiang after arriving home from work, but then went to bed. After falling asleep, Zhang claimed that neighbors woke her up and told her that Jiang physically abused her son while babysitting that night. Zhang testified that she confronted Jiang about the allegations, but did not assault her. Rather, Zhang stated that she went back to bed and was asleep at the time of Jiang's alleged assault.

¶ 5 The trial court found Zhang guilty of assault and battery. In rendering his decision from the bench, the trial judge stated that Jiang's testimony was more credible than Zhang's. The trial judge stated that Zhang's testimony "didn't add up" and sounded both "scripted" and "suspect," whereas Jiang's testimony "appeared sincere." ER at 89. The trial judge also questioned whether Zhang arrived at her apartment at 12:30 a.m., as she claimed, because night clubs "are normally closed at 2 a.m. . . . ." ER at 89. The trial court sentenced Zhang to one year in prison, all suspended except for six days, and two years of supervised probation.[3]

**II**

*Sufficiency of the Evidence*

¶ 6 On appeal, Zhang contends there is insufficient evidence to sustain her conviction for assault and battery. Whether there is sufficient evidence to support Zhang's assault and battery conviction is reviewed de novo. *Commonwealth v. Yan*, 4 NMI 334, 336 (1996). Although our review encompasses all the evidence from trial, a litigant claiming insufficiency of the evidence "faces a nearly insurmountable hurdle." *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 33. In reviewing a challenge to the sufficiency of the evidence, we do not re-weigh the evidence, *Commonwealth v. Camacho*, 2009 MP 1 ¶12, nor do we disregard the determinations of the trier of fact and substitute our judgment for that of the trial court. *Commonwealth v. Taitano*, 2005 MP 20 ¶ 12; *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Rather, we consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See, e.g.*, *Commonwealth v. Yao*, 2007 MP 12 ¶ 5. All reasonable inferences are drawn in favor of the government, and any conflicts in the evidence are resolved in favor of the verdict. *Camacho*, 2002 MP 6 ¶ 108; *see also United States v. Alvarez-Valenzuela*, 231 F.3d 1198, 1201-02 (9th Cir.

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[2] Other than her own testimony, Zhang offered no evidence that Jiang abused her child.

[3] On August 2, 2007, the trial court placed Zhang on unsupervised probation for the remainder of her probation.

2000). "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 NMI 322, 329 (1991). We "will not reverse the finding unless, after reviewing all the evidence, we are left with a firm and definite conviction that a mistake has been made." *Commonwealth v. Wu*, 2007 MP 29 ¶ 6 (quoting *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 3).

¶ 7 In the Commonwealth, a person commits assault and battery if he or she "unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent." 6 CMC § 1202(a). Zhang denies making any unlawful contact with Jiang. Furthermore, she asserts that the prosecution failed to present adequate evidence to sustain her assault and battery conviction. She therefore claims that a reasonable trier of fact could not have found that she committed the crime beyond a reasonable doubt.

¶ 8 We find that the prosecution presented sufficient evidence to sustain Zhang's conviction. Zhang admits that there was tension between her and Jiang in the days and even years leading up to the alleged assault. Zhang also admits that she confronted Jiang early in the morning on May 7, 2005. During that confrontation, Jiang testified that Zhang slammed her against the wall seven or eight times before slapping and punching her in the face. Zhang then grabbed her neck, threw her to the floor, and repeatedly kicked her. Jiang further testified that while Zhang kicked her, she also threatened to kill her. After kicking her, Jiang testified that Zhang hit her with a water bottle approximately ten times before pouring the water on her head. Clearly, Zhang's conduct falls within the purview of the Commonwealth's assault and battery statute. *See* 6 CMC § 1202(a).

¶ 9 Zhang does not dispute the fact that the Commonwealth presented evidence at trial indicating that she unlawfully struck, beat, wounded, or otherwise did bodily harm to Jiang. Rather, she argues that the Commonwealth did not provide enough evidence to sustain her conviction. Specifically, Zhang argues that there were three witnesses in Zhang's apartment at the time of the alleged assault, but none of them were called to testify to corroborate Jiang's allegations. Furthermore, Zhang argues that there were inconsistencies in Jiang's testimony at trial. As proof of Jiang's inconsistent testimony, Zhang notes that the trial judge, in rendering his decision, stated that "[t]here's some inconsistency about [Jiang's] testimony, the beating." ER at 89. Zhang therefore claims that the uncorroborated testimony of a single witness is insufficient to sustain an assault and battery conviction.

¶ 10 As a preliminary matter, Jiang's testimony is not entirely uncorroborated. In addition to Jiang's testimony, the Commonwealth presented circumstantial evidence supporting her allegations. In the hours immediately following the assault, the officer observed that Jiang appeared "shaken." ER at 12. The officer testified that Jiang had a bloody lower lip and a bruised face. He further observed blood on Jiang's blouse. The prosecution supported the officer's observations by producing photographs of Jiang's facial injuries, which were taken on the day of the assault. Although this evidence does not corroborate all of Jiang's allegations, it does support that the fact that she was assaulted on the day in question.

¶ 11 Nonetheless, even without corroboration, the testimony of a single witness can be sufficient to sustain an assault and battery conviction. In *Commonwealth v. Camacho*, we held that a twelve-year-old girl's allegedly uncorroborated testimony of sexual penetration was sufficient to sustain a defendant's conviction of sexual abuse of a minor. 2009 MP 1 ¶ 25. We stated that because the witness's testimony was not "inherently implausible," we would defer to the trier of fact. *Id.* Because the trier of fact found the witness's testimony to be credible, and the defendant presented no facts indicating that the witness's allegations were implausible, we upheld the conviction. *Id.* ¶ 25, 42.

¶ 12 Similarly, in *Commonwealth v. Camacho* a defendant argued that uncorroborated accomplice testimony was insufficient to sustain his murder conviction. 2002 MP 6 ¶¶ 108-09. In affirming his conviction, we held that "[i]f believed by the trier of fact, uncorroborated accomplice testimony alone may support a conviction." *Id.* ¶ 110. In so holding, we determined that the trier of fact has wide latitude in deciding which witnesses to believe and disbelieve. *Id.* ¶ 109. We cannot disregard a witness's statement unless the testimony is "incredible or unsubstantial on its face." *Id.* (quoting *United States v. Terry*, 760 F.2d 939, 942 (9th Cir. 1985)); *see also United States v. Yossunthorn*, 167 F.3d 1267, 1270 (9th Cir. 1999). Thus, "[e]ven if there are inconsistencies in the testimony, so long as the testimony is not inherently implausible, the conviction must stand." *Id.* ¶ 110.

¶ 13 Furthermore, in *Taitano*, we affirmed a defendant's conviction for assault and battery that was based primarily on the testimony of a single witness in a jury trial. 2005 MP 20 ¶¶ 1, 15, 40. The defendant claimed the conviction should be overturned because the credibility of the Commonwealth's sole witness had been called into question. *Id.* ¶ 15. In rejecting the defendant's claim, this Court stated that "[w]e resolve issues of witness credibility in favor of the prosecution." *Id.* (citing *Camacho*, 2002 MP 6 ¶ 108). We continued by stating that it is a "well settled notion" that it is the "exclusive function" of the trier of fact to determine the credibility of

witnesses, to resolve evidentiary conflicts, and to draw reasonable inference from proven facts. *Id*. (quoting *United States v. Alarcon-Simi*, 300 F.3d 1172, 1176 (9th Cir. 1977)).

¶ 14 Additionally, testimonial inconsistencies do not undermine the sufficiency of the evidence. In *Commonwealth v. Seman*, we affirmed two defendants' convictions of assault and battery despite inconsistencies in witness testimony at trial. 2001 MP 20 ¶ 13. "While there may be inconsistencies in the evidence . . . those inconsistencies affect the witness' credibility rather than the legal sufficiency of the evidence." *Id*. ¶ 12. We further stated that "[c]hallenges to the credibility of a witness are not . . . challenges to the sufficiency of the evidence . . . ." *Id*. (quoting *United States v. Latouf*, 132 F.3d 320, 330 (6th Cir. 1997)). Accordingly, we determined that issues of witness credibility are left to the trier of fact. *Id*.

¶ 15 Notably, Commonwealth case law is supported by federal court precedent. Many of the United States Courts of Appeal also hold that the uncorroborated testimony of a single witness can, under the appropriate circumstances, be sufficient to sustain a conviction. *See, e.g.*, *United States v. Wilson*, 115 F.3d 1185 (4th Cir. 1997) (upholding a drug trafficking and firearm conviction, the court stated that "[j]ust as the uncorroborated testimony of one witness or of an accomplice may be sufficient to sustain a conviction, the uncorroborated testimony of an informant may also be sufficient"); *United States v. LeQuire*, 943 F.2d 1554 (11th Cir. 1991) (upholding a racketeering conviction, the court stated that "uncorroborated testimony of an accomplice is sufficient to support a conviction in the Federal Courts if it is not on its face incredible or otherwise insubstantial"); *Brown v. Davis*, 752 F.2d 1142 (6th Cir. 1985) (upholding a rape conviction, the court stated that "the testimony of a single, uncorroborated prosecuting witness or other eyewitness is generally sufficient to support a conviction"); *United States v. Danzey*, 594 F.2d 905 (2d Cir. 1979) (upholding an armed robbery conviction, the court stated that "[t]he testimony of a single, uncorroborated eyewitness is generally sufficient to support a conviction"); *United States v. Smith*, 563 F.2d 1361 (9th Cir. 1977) (upholding an armed robbery conviction, the court stated that "the testimony of one witness, if solidly believed, is sufficient to prove the identity of a perpetrator of a crime").

¶ 16 Just as we found that uncorroborated testimony is sufficient to sustain a conviction for sexual abuse of a minor, *Camacho*, 2009 MP 1 ¶ 25, murder, *Camacho*, 2002 MP 6 ¶ 110, and assault and battery, *Taitano*, 2005 MP 20 ¶¶ 1, 15, 40, we likewise find that Jiang's testimony is sufficient to sustain Zhang's assault and battery conviction. Nothing in the record provides any indication that Jiang's testimony is "inherently implausible," *see Camacho*, 2009 MP 1 ¶ 25, or "unsubstantial on its face," *see Camacho*, 2002 MP 6 ¶ 109. In fact, the plausibility of Jiang's testimony was supported by photographs, which document her facial injuries, and the testimony

of the officer, who stated that Jiang looked shaken and was wearing a blood-stained blouse in the hours immediately following the alleged assault. Thus, in reviewing the facts in a light most favorable to the prosecution, we find that a reasonable trier of fact could have found Zhang guilty of assault and battery beyond a reasonable doubt.

¶ 17 We also find Zhang's attack on Jiang's credibility unpersuasive. Although there may have been inconsistencies in Jiang's testimony, we reiterate that evidentiary inconsistencies undermine a witness's credibility, and not the sufficiency of the evidence. *See Seman*, 2001 MP 20 ¶ 12. In assessing the credibility of both Jiang and Zhang, we note that the trial judge's determinations are given "due regard." *See Kaipat*, 2 NMI at 329. The trial judge was in a much better position to assess Jiang's credibility than this Court, as the evidence at trial consisted largely of oral testimony that was contradictory in nature. Consequently, we will not "disturb factual findings which hinge on the trial court's assessment of a witness's credibility." *Commonwealth v. Cabrera*, 4 NMI 240, 246 (1995). Notably, the trial judge found Jiang's testimony to be credible and Zhang's testimony to be incredible. In rendering its decision, the trial court stated that Jiang's testimony "appeared sincere," whereas, Zhang's testimony "didn't add up" and sounded both "scripted" and "suspect." ER at 89. We will not disregard these determinations and substitute our judgment for that of the trial court. Therefore, we hold that there is sufficient evidence to sustain Zhang's conviction for assault and battery.

*Statements of the Trial Judge*

¶ 18 Zhang argues that the trial judge improperly interjected personal knowledge as evidence. The admission of evidence is within the sound discretion of the trial court, and is subject to review for abuse of discretion. *Camacho*, 2002 MP 6 ¶ 6. An abuse of discretion exists if the "[trial] court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Commonwealth v. Campbell*, 4 NMI 11, 16 (1993). Under this standard, "we look to determine whether there has been manifest or gross abuse of discretion." *Ito v. Macro Energy, Inc.*, 4 NMI 46, 65 (1993).

¶ 19 On direct examination, Jiang testified that she was assaulted at approximately 4 a.m. on May 7, 2005. Zhang, on the other hand, testified that she came home from work at 12:30 a.m. and spoke with Jiang shortly thereafter. In rendering its decision, the trial court stated:

> [Zhang] works at Echo, a club and she came home at 12:30. Well, the clubs are normally closed at 2 a.m. in the morning. So that in itself is a little bit suspect to this court. And these are the things that the court considered . . . to determine who to believe.

ER at 89. Zhang argues that there was no evidence that her place of employment closed at 2 a.m., and, more specifically, that no evidence was admitted indicating what time her place of

employment closed on the night of the assault. Therefore, Zhang argues the trial court improperly admitted personal knowledge as evidence.

¶ 20 In support of her argument, Zhang relies solely on *United States v. Mariscal*, 285 F.3d 1127 (9th Cir. 2002). In *Mariscal*, a defendant was indicted for being an undocumented alien in possession of a firearm. *Id*. at 1129. The defendant was a passenger in a vehicle, which was pulled over by police officers when the driver failed to use his turn signal. *Id*. While conducting a search of the vehicle, the police officers found a handgun in the backseat where the defendant was sitting. *Id*. The defendant later confessed that he owned the handgun, and that he was in the country illegally. *Id*. Subsequently, the defendant moved to suppress all evidence and statements arising out of the stop, arguing that the police did not have reasonable suspicion to stop the vehicle. *Id*. The motion was denied, and, following a bench trial, the district court found the defendant guilty. *Id*.

¶ 21 On appeal, the United States Court of Appeals for the Ninth Circuit overturned the defendant's conviction. *Id*. at 1133. The court noted that Arizona law did not require a turn signal unless there was a possibility that traffic would be affected, but the prosecution did not present evidence that any other car was affected by the vehicle's right turn. *Id*. at 1131. The Ninth Circuit determined that the district court erred in finding that "McDowell Road is a heavily traveled east-west street in the City of Phoenix." *Id*. The court noted that the district court seemingly "injected some sort of personal driving experience into the case." *Id*. As a result, the court stated that "nobody can tell if the [district] judge's experience was at the location in question in autumn in the late hours of the night . . . ." *Id*. The Ninth Circuit therefore reversed the district court's decision.

¶ 22 Zhang's reliance on *Mariscal* is misguided. In *Mariscal*, the relevant law did not require a turn signal unless there was a possibility that traffic would be affected. Thus, the court stated that in order for the police to have a reasonable suspicion to stop the driver, evidence must be presented that there was traffic in the driver's vicinity. *Id*. This was essential to establish a violation of the relevant law. *See id*. Unlike *Mariscal*, a determination of when Zhang's place of employment closed is not an essential element for the crime of assault of battery. Whether Zhang's place of employment closed at 2:00 a.m. or at any other time does not implicate any of the required elements of assault and battery as set forth in 6 CMC § 1202(a). While evidence of traffic was essential to the district court's finding of guilt in *Mariscal*, the trial court's determination of guilt in the present case did not hinge on the time Zhang's place of employment closed on the night in question.

¶ 23 Although Zhang's work schedule does not implicate the elements of assault and battery, it does implicate her credibility. A trial judge in a bench trial serves as the trier of fact. In such circumstances, the trial judge is charged with assessing the credibility of witnesses. As the trier of fact, the trial judge has wide latitude in deciding which witnesses to believe and disbelieve. *Camacho*, 2002 MP 6 ¶ 109. In making credibility determinations, the trial judge may make reasonable inferences based on the testimony, demeanor, appearance, and conduct of the various witnesses.

¶ 24 In the present case, the trial judge explicitly stated that Jiang "appeared sincere and her delivery was sincere," while portions of Zhang's testimony were either suspicious or implausible. ER at 87-90. He stated that Zhang's testimony "sounded . . . scripted." ER at 88. He further stated that Zhang's allegation that Jiang abused her son "didn't add up." ER at 89. In the context of this discussion, the trial judge tacitly alluded to the fact that Jiang, on direct examination, testified that she was assaulted at 4 a.m. Zhang, on the other hand, testified that she arrived home at 12:30 a.m. and went to bed. The testimony was irreconcilable and the trial judge, therefore, had to make a credibility determination. The trial judge stated that Zhang's testimony regarding the time she arrived home on the night of the assault was "suspect." ER at 89. In making this statement, we find that the trial judge was not making a factual finding as to what time Zhang actually arrived home. Rather, he was making a credibility determination. That credibility determination was primarily based on the fact that the trial judge did not find Zhang to be a believable witness. Although a variety of factors apparently colored that determination, we find that the trial judge did not abuse his discretion in disbelieving Zhang's testimony. Thus, we will not substitute our own credibility determinations for those of the trial court.

**III**

¶ 25 In reviewing the evidence in a light most favorable to the prosecution, we hold that there is sufficient evidence for a reasonable trier of fact to find Zhang guilty of assault and battery. We further hold that the trial judge did not improperly interject personal knowledge as evidence, but properly conducted an assessment of Zhang's credibility as a witness. Accordingly, Zhang's conviction of assault and battery is AFFIRMED.

Concurring:
Demapan, C.J., Castro, J.