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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

FRANKLIN C. CEPEDA, JR.,
Defendant-Appellant.

SUPREME COURT NO. 2011-SCC-0030-CRM
SUPERIOR COURT NO. 03-0253D

OPINION

Cite as: 2014 MP 12

Decided November 7, 2014

Colin M. Thompson and Daniel T. Guidotti, Saipan, MP, for Defendant-Appellant Franklin C. Cepeda, Jr.
Brian P. Flaherty and James B. McAllister, Assistant Attorneys General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee Commonwealth of the Northern Mariana Islands

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; HERBERT D. SOLL, Justice Pro Tem.

MANGLONA, J.:

¶ 1 Defendant-Appellant Franklin C. Cepeda, Jr. ("Cepeda") appeals his convictions for assault and battery, and theft. He contends the trial court erred by excluding various pieces of evidence and limiting his ability to impeach witnesses. He also claims the cumulative effect of the errors warrants reversal if the errors were individually harmless. For the reasons discussed below, we AFFIRM Cepeda's convictions.

I. Facts and Procedural History

¶ 2 On March 1, 2000, Rong Zhou ("Zhou") was beaten and stabbed at the Yellow House Karaoke Bar ("Yellow House"). Zhou was dead by the time police arrived at the scene. During the investigation, two women—Xiaoli He ("Xiaoli") and Qui Xiang You ("Qui")—participated in a photo lineup where they identified Jeffrey Deleon Guerrero as the perpetrator. Soon after, Detective Mark Taisacan filed an Affidavit of Probable Cause in Support of the Issuance of an Arrest ("Taisacan affidavit" or "affidavit") with the trial court. The affidavit recounted Xiaoli and Qui's testimony as well as other facts supporting Detective Taisacan's assertion that probable cause existed to charge Guerrero. He was subsequently charged with and ultimately acquitted of Zhou's murder.

¶ 3 Three years after Guerrero was acquitted, Detective David Hosono ("Detective Hosono")—who was not part of the original investigation in 2000—was assigned to re-investigate Zhou's murder. The case was re-opened because there was new evidence: Franklin Cepeda Sr. told the police that his son—Cepeda, George Ilo ("Ilo"), and Benjamin Fitial ("Fitial") were involved in the murder. Ilo subsequently signed a plea agreement in which he agreed to testify about the attack on Zhou. Cepeda was then charged with and convicted of, among other things, murdering Zhou. But later, the convictions were vacated due to improper instructions and the prejudice resulting from multiple harmless errors.

¶ 4 Cepeda was tried again in 2011. Before the trial began, the Commonwealth filed a motion in limine to preclude Cepeda from using Xiaoli and Qui's prior testimony. Cepeda opposed the motion, arguing that the testimony was admissible. After hearing both parties' arguments, the trial court granted the Commonwealth's motion.

¶ 5 At trial, the prosecution called Detective Hosono as a witness. He began his testimony by explaining that his primary suspects (Cepeda, Ilo, and Fitial) were different than the 2000 investigation's primary suspect (Guerrero) because "[t]here is no substantial evidence leading to [Guerrero] but there is a lot of substantial evidence that it leads to other people." Trial Tr. 409. On cross-examination, Cepeda focused on this statement when attempting to admit the affidavit as proof of an inconsistent statement for impeachment, and as an admission by a party opponent. The trial court declined to admit the affidavit for either purpose.

¶ 6 Cepeda also made two attempts to introduce chain-of-custody receipts as business records. First, he moved to introduce Exhibit CC—the chain-of-custody receipt for knives recovered at the crime scene. The Commonwealth objected, and the trial court sustained the objection. Second, Cepeda moved to introduce Exhibit II—sixteen chain-of-custody receipts for other items recovered at the crime scene. The Commonwealth objected to introducing each receipt and, as before, the court sustained the objection.

¶ 7 Following the close of trial, the trial court convicted Cepeda of assault and battery, and theft. He now appeals.

II. Jurisdiction

¶ 8 We have jurisdiction over trial court final judgments and orders. 1 CMC § 3102(a).

III. Standards of Review

¶ 9 Cepeda contends the trial court erred by excluding evidence and limiting his ability to impeach witnesses. These claims are reviewed for abuse of discretion when he preserved the error, *Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶ 16; for plain error when he did not, *id.*; and de novo when the claim turns on the interpretation of a court rule, *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 2.

¶ 10 Cepeda also claims that the cumulative effect of the errors materially affected the verdict. We review this claim de novo. *United States v. Dohan*, 508 F.3d 989, 993 (11th Cir. 2007); *see Jing Xin Xiao*, 2013 MP 12 ¶¶ 82-83 (affording no deference when reviewing for cumulative error).

IV. Discussion

¶ 11 We will address Cepeda's arguments in the following order: (1) the exclusion of chain-of-custody receipts; (2) the affidavit's exclusion from substantive evidence; (3) the affidavit's exclusion from impeachment evidence; (4) the ruling allegedly preventing Cepeda from using prior testimony to impeach Ilo; and (5) cumulative error.

A. Excluding Chain-of-Custody Receipts

¶ 12 First, Cepeda argues that the trial court abused its discretion by not admitting the chain-of-custody receipts in Exhibits CC and II. We review this claim for abuse of discretion and reverse only if there is an error that affected the defendant's substantial rights. *Cf. Commonwealth v. Leon Guerrero*, 2013 MP 3 ¶ 8 (addressing erroneous admission of evidence).

¶ 13 Chain-of-custody receipts are admissible under NMI Rule of Evidence ("Rule") 803(6). *Commonwealth v. Taitano*, 2005 MP 20 ¶ 19 (referring to the document as a "chain of custody form"). Before a chain-of-custody receipt will be admitted, the party seeking to admit the evidence must establish that: (1) chain-of-custody forms are commonly relied on by the police to catalog and identify evidence; (2) it is standard practice for the forms to be filled out the day the evidence is obtained; (3) the procedure is followed every time evidence is brought in; and (4) it is a regular course of police business to prepare

the forms. *Id.* If these four requirements are met, the receipts are admissible unless a separate evidentiary rule bars admission.

¶ 14 Accordingly, we can only find an error if Cepeda laid the foundation required by *Taitano*, and the exhibits were not excludable under a separate evidentiary rule. Here, the chain-of-custody receipts were admissible under Rule 803(6) because, before attempting to admit the exhibits, Cepeda elicited testimony on the four foundational elements required by *Taitano*. The Commonwealth essentially conceded this point by acknowledging that Cepeda "laid foundation that probably satisfies the business records exception set forth in *Taitano*." Resp. Br. at 3. Thus, we look to whether the exhibits were excludable under another rule.

¶ 15 Rather than contesting admissibility under Rule 803(6), the Commonwealth contends the exhibits were excludable under Rule 403 because the evidence was cumulative.[1] The Commonwealth is incorrect; the exhibits were not cumulative at the time the trial court ruled. Exhibit CC was not cumulative because it included information that was not already in the record: the license plate number of the car where the knives were found. Similarly, Exhibit II was not cumulative at the time Cepeda attempted to introduce it because the testimony about the contents of those chain-of-custody receipts came *after* Cepeda attempted to introduce the exhibit. Because Cepeda provided the foundation required by *Taitano* and the evidence was not excludable under Rule 403, the trial court erred by not admitting the chain-of-custody receipts.

¶ 16 Having concluded the trial court erred, we must determine whether Cepeda's substantial rights were affected by the exclusion of the chain-of-custody receipts. Substantial rights are affected when an error has an effect on the outcome of the proceeding. *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29. Substantial rights are not affected when wrongfully excluded evidence is merely cumulative or corroborative of other evidence in the record. *United States v. Warren*, 42 F.3d 647, 656 (D.C. Cir. 1994); *cf. Leon Guerrero*, 2013 MP 3 ¶ 9 (explaining that no substantial right is affected when erroneously *admitted* evidence is cumulative or corroborative).

¶ 17 Turning to the trial court's exclusion of Exhibit CC, the erroneous exclusion of the chain-of-custody receipts did not affect Cepeda's substantial rights. Exhibit CC documented the collection of two knives from a car at the crime scene. Except for two exceptions discussed below, the material information in Exhibit CC—the collection of two knives at the scene—had already been introduced through the testimony of DPS investigator Sergeant Joe Aldan ("Sergeant Aldan"). The only information in Exhibit CC that Sergeant Aldan did not share with the court was the license plate number and the type of vehicle where the weapons were found. It is not clear from Cepeda's brief or the record how this information would or could have affected the outcome of the case.

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[1] Under Rule 403, the trial court can exclude relevant evidence when "its probative value is substantially outweighed by . . . the needless presentation of cumulative evidence." NMI R. EVID. 403.

¶ 18 Like the chain-of-custody receipts in Exhibit CC, the trial court's exclusion of the chain-of-custody receipts in Exhibit II also did not affect Cepeda's substantial rights. Exhibit II contained chain-of-custody receipts detailing numerous items collected at the scene. This information was subsequently introduced through Officer Martin Kapileo's testimony. Because the evidence in Exhibit II was ultimately introduced, the exclusion of the exhibit could not have affected the verdict.

¶ 19 Therefore, the exclusion of the exhibits was harmless because there is no indication that the exclusion affected the verdict.[2]

B. Excluding the Taisacan Affidavit from Substantive Evidence

¶ 20 Cepeda next asserts that the trial court erred by excluding the Taisacan affidavit because it was admissible under Rule 801(d)(2)(B) as an admission by a party opponent. But before reaching this claim, we address the Commonwealth's contention that Cepeda failed to provide the proper foundation.

1. Foundation

¶ 21 The Commonwealth argues that the trial court properly excluded the affidavit because Cepeda failed to provide the proper foundation required by Rules 801 and 901. Specifically, the Commonwealth contends there was no showing that Detective Hosono had personal knowledge of the affidavit and the affidavit was not authenticated. Ordinarily, we review each of these claims for abuse of discretion; however, the trial court did not have the opportunity to address these arguments because they were not raised before the evidence was excluded as hearsay. Accordingly, we review the claims de novo.

¶ 22 Neither of these claims is persuasive. First, under Rule 801(d)(2)(B), personal knowledge is not required for admitting evidence. *Pillsbury Co. v. Cleaver-Brooks Div. of Aqua-Chem, Inc.*, 646 F.2d 1216, 1218 n.2 (8th Cir. 1981) ("[P]ersonal knowledge is not a prerequisite for the adoption of another's statement pursuant to [Federal] Rule 801(d)(2)(B)."); *Jordan v. Binns*, 712 F.3d 1123, 1129 (7th Cir. 2013) (similar); *United States v. Mckeon*, 738 F.2d 26, 32 (2d Cir. 1984) (similar).[3]

¶ 23 Second, the affidavit was authenticated. Under Rule 901(b)(4), a record is authenticated if a reasonable person could conclude that the evidence is what it purports to be. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 27. Authentication can be proven by the document's distinctive characteristics—such as appearance, contents, and substance—taken in conjunction with the circumstances. NMI R. EVID.

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[2] Our conclusion is bolstered by Cepeda's own argument. He asserts that he wanted the exhibits admitted "to establish that certain pieces of evidence were collected at the crime scene" and that excluding the evidence prohibited him from doing so. Opening Br. at 6. But despite the exclusion of the exhibits, Cepeda achieved his goal when he elicited testimony that walked the court through the material information in the contested exhibits.

[3] We look to federal case law because Rule 801(d)(2)(B) is patterned after the federal version. *Jing Xin Xiao*, 2013 MP 12 ¶ 47 n.5 ("When a rule of this Court is 'patterned' after a federal rule, it is appropriate to look to how the federal courts have interpreted that rule for guidance.").

901(b)(4). While we have not previously applied Rule 901(b)(4),[4] this fact-specific inquiry is guided by precedent on the similar Federal Rule of Evidence ("Federal Rule"). *Jing Xin Xiao*, 2013 MP 12 ¶ 47 n.5. For example, in *Abreu v. N.M. Children, Youth & Families Dep't*, the district court concluded a government letter was authentic because it: (1) included the anticipated contents—the letter contained the expected substance and names; and was (2) formatted as expected—specifically, the letter was printed on the department's letterhead. 797 F. Supp. 2d 1199, 1209 n.5 (D.N.M. 2011). Likewise, in *Air Land Forwarders, Inc. v. United States*, the court based its authentication decision on the accompanying signature. 38 Fed. Cl. 547, 554 (Fed. Cl. 1997). Applying these cases' guidance here, we believe the affidavit was authenticated. The affidavit includes the anticipated contents: (1) allegations and facts supporting a warrant for Guerrero; and (2) purported signatures from Detective Taisacan, an Assistant Attorney General, and a judge. The format of the affidavit also conforms to expectations—the affidavit included a caption-like heading that identified the document, the case number, and the purpose for filing the affidavit. In short, the consistency between the affidavit and the testimony is sufficient to reasonably conclude that the affidavit is authentic based on the document's distinctive characteristics and the circumstances surrounding its submission.

2. Admission by a Party Opponent

¶ 24 Having disposed of the Commonwealth's foundation arguments, we turn to Cepeda's claim that the trial court erred by excluding the affidavit because it was an admission by a party opponent under Rule 801(d)(2)(B). Because this claim turns on the interpretation of Rule 801, we review the claim de novo, *Commonwealth v. Jai Hoon Yoo*, 2004 MP 5 ¶ 2, and reverse only if there is an error that affected the defendant's substantial rights, *Commonwealth v. Leon Guerrero*, 2013 MP 3 ¶ 8. Under Rule 801(d)(2)(B), an out-of-court statement is admissible against a party when that party has manifested an adoption or belief in the statement's truth.

¶ 25 Before addressing the merits of Cepeda's claim, it is helpful to first address the parties' contention that the federal circuits are split on how to treat out-of-court statements by government agents under Federal Rule 801(d)(2)(B).[5] The parties' argument that there is a circuit split rests on two lines of cases. In the first line, courts have held that out-of-court statements made by government agents are admissible under Federal Rule 801(d)(2)(B) when the government manifests its adoption or belief in the statements. *See, e.g.*, *United States v. Morgan*, 581 F.2d 933, 937 (D.C. Cir. 1978) (admitting statements in an officer's sworn affidavit); *United States v. Kattar*, 840 F.2d 118, 131 (7th Cir. 1988) (admitting

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[4] We have only addressed Rule 901(b)(4) once: *Camacho*, 2009 MP 1 ¶¶ 30-32. But we did not apply Rule 901(b)(4) because we did not reach the merits of the case. *Id.* ¶ 33.

[5] Federal precedent is important here because Rule 801(d) is patterned after Federal Rule 801(d). *Jing Xin Xiao*, 2013 MP 12 ¶ 47 n.5.

government briefs filed in earlier cases). In the second line of cases, courts have held that government agents' out-of-court statements are not admissible under Federal Rule 801(d)(2)(D). *See, e.g.*, *United States v. Kampiles*, 609 F.2d 1233, 1245 (7th Cir. 1979) (excluding government employee's out-of-court statements); *United States v. Yildiz*, 355 F.3d 80, 82 (2d Cir. 2004) (excluding government informant's out-of-court statements). These two lines do not represent a circuit split because the opinions address different issues: Federal Rules 801(d)(2)(B) and 801(d)(2)(D). *Kampiles*, 609 F.2d at 1246 & n.16 (examining a claim under Federal Rule 801(d)(2)(D) while highlighting that *Morgan* focused on Federal Rule 801(2)(2)(B)). Furthermore, the lack of a split is reinforced by the second line of cases—dealing with Federal Rule 801(d)(2)(D)—where courts have both: (1) recognized the validity of the Federal Rule 801(d)(2)(B) line of cases, *Yildiz*, 355 F.3d at 82; and (2) distinguished Federal Rule 801(d)(2)(D) cases from Federal Rule 801(d)(2)(B) cases, *Kampiles*, 609 F.2d at 1246 & n.16. This is enough to conclude the cases are complementary rather than representative of a circuit split.

¶ 26 Having dispensed with the parties' contention that there is a circuit split, we refocus on the actual issue: did the Commonwealth manifest its adoption or belief in the affidavit's truth under Rule 801(d)(2)(B). To decide this issue, *Morgan* is instructive because it addressed Federal Rule 801(d)(2)(B) in a factually similar situation. *Jing Xin Xiao*, 2013 MP 12 ¶ 47 n.5.

¶ 27 In *Morgan*, the defendant attempted to admit an officer's sworn affidavit in support of a search warrant, but the trial excluded the affidavit as hearsay. *Morgan*, 581 F.2d at 935-36. On appeal, the court held that the statement should have been admitted under Federal Rule 801(d)(2)(B) because the government manifested its adoption or belief in the truth of the statements by presenting them in a sworn affidavit before a court. *Morgan*, 581 F.2d at 937; *see id.* at 939 (explaining that when "the government has indicated in a sworn affidavit to a judicial officer that it believes particular statements are trustworthy, it may not sustain an objection to the subsequent introduction of those statements on grounds that they are hearsay"). The court noted that "[t]hough the proposition seems self evident, it bears mention that when the government authorizes its agent to present his sworn assurances to a judicial officer that certain matters are true and justify issuance of a warrant, the statements of fact or belief in the officer's affidavit represent the position of the government . . . ." *Id.* at 937 n.10. Thus, *Morgan* established that an officer's sworn affidavit could be admitted as an admission of a party opponent.

¶ 28 With *Morgan* as a guiding principle, we turn to the facts underlying Cepeda's claim. Like the defendant in *Morgan*, Cepeda unsuccessfully attempted to admit an officer's affidavit that the officer: (1) swore was accurate before a judge and (2) submitted to the trial court in support of a warrant. Appx. at 20-24 (affidavit); *Morgan*, 581 F.2d at 936-37. Thus, like the United States government in *Morgan*, the Commonwealth is deemed to have adopted the position taken in the affidavit because it authorized the

officer's sworn submission to the trial court.[6] *Morgan*, 581 F.2d at 937 & n.10 (holding that statements adopted by the government are admissible under Federal Rule 801(d)(2)(B)); *accord Yildiz*, 355 F.3d at 82 (indicating that the government adopts sworn statements submitted to a judicial officer and recognizing arrest warrants as an example of such statements); *see Kattar*, 840 F.2d at 131 (holding that documents filed by the Justice Department with the court were admissible under Federal Rule 801(d)(2)(B)). Because the Commonwealth manifested its adoption or belief in the affidavit, the affidavit was an admission by a party opponent and the trial court did not have the discretion to exclude the evidence as hearsay. *See* NMI R. EVID. 801(d)(2) (stating an admission by a party opponent is not hearsay). Therefore, we conclude that excluding the affidavit as hearsay was an error.

¶ 29 Nonetheless, the error was harmless. The improper exclusion of evidence is harmless so long as that evidence was subsequently presented to the court. *Warren*, 42 F.3d at 656 (concluding the erroneous exclusion of evidence is harmless when the evidence was cumulative); *cf. Leon Guerrero*, 2013 MP 3 ¶ 9 (explaining that no substantial right is affected when erroneously *admitted* evidence is cumulative). Here, Cepeda asserts that the exclusion of the affidavit was harmful because: (1) it denied him the opportunity to provide evidence that Guerrero committed the murder; and (2) it prevented him from introducing evidence showing the Commonwealth once believed Guerrero murdered Zhou. But both of these points were presented to the court. First, the court learned about both the evidence and allegations made in the affidavit suggesting Guerrero murdered Zhou. Second, Detective Hosono testified that the Commonwealth once believed Guerrero murdered Zhou. Because the information Cepeda hoped to elicit from the affidavit was subsequently introduced through other testimony, we conclude that Cepeda was not harmed by the erroneous exclusion of the affidavit.

C. Preventing Cepeda from Using the Taisacan Affidavit to Impeach Detective Hosono

¶ 30 Cepeda asserts the trial court erred by not allowing him to use the affidavit to impeach Detective Hosono by contradiction. He contends this claim stems from the trial court denying his attempt to admit the affidavit as impeachment by contradiction. But this was not the argument he made at trial (nor the argument the trial court addressed); instead, he moved to admit the evidence as an admission by a party opponent and a prior inconsistent statement. He now asks us to treat his request at trial as an attempt to admit the evidence as impeachment by contradiction and argues the trial court erred by not admitting the evidence on that basis.[7] Because Cepeda claims the trial court erred on a basis that was not presented a

[6] Further buttressing this conclusion is the Office of the Attorney General's review of the affidavit before it was submitted to the judge. In *Morgan*, the Assistant Attorney General's policy of reviewing affidavits before they were submitted to a judge reinforced the court's belief that that the affidavits were adopted by the government. *Morgan*, 581 F.2d at 937 n.10.

[7] Cepeda contends his attempt to admit the affidavit as a prior inconsistent statement was merely a mislabeled motion and, that properly construed, he was asking the trial court to admit the affidavit for impeachment

trial, we review for plain error. *See Jing Xin Xiao*, 2013 MP 12 ¶ 16 (reviewing for plain error when the issue was not preserved for appeal).

¶ 31 Under plain error, we first ask whether the trial court erred. *Hossain*, 2010 MP 21 ¶ 29. Cepeda asserts there was an error because the trial court should have allowed him to use the affidavit for impeachment by contradiction. During the portion of the trial that Cepeda focuses on, the trial court did not reach the impeachment by contradiction issue nor did Cepeda request the trial court rule on the question. Thus, the trial court's ruling only extended to Cepeda's request to use the affidavit as an admission or a prior inconsistent statement; the decision did not affect his ability to use the affidavit for impeachment by contradiction. Because the trial court did not prevent Cepeda from using the affidavit for impeachment by contradiction, Cepeda has failed to prove the trial court erred.

D. Preventing Cepeda from Using Prior Testimony to Impeach Ilo

¶ 32 Cepeda claims that the trial court erred by preventing him from impeaching Ilo by contradiction using Xiaoli and Qui's testimony from Guerrero's trial (collectively, "prior testimony"). As Cepeda highlighted during oral argument, the basis for his claim is that the trial court's decision to grant a motion in limine excluding the prior testimony precluded him from using that evidence for impeachment. But the motion in limine did not prevent him from using the prior testimony to impeach Ilo; the trial court's ruling only stopped Cepeda from introducing the prior testimony as substantive evidence. This conclusion is supported by the motion, the parties' arguments on the motion, and the trial court's ruling on the motion.

¶ 33 First, the motion in limine only focused on hearsay and did not address whether the prior testimony could be used for impeachment. Hearsay rules are concerned with admitting evidence for the truth of the matter. NMI R. EVID. 801(c). Accordingly, the Commonwealth's focus on painting the prior testimony as inadmissible under those rules was an attempt to prevent the statements from being introduced as substantive evidence. But that request was not an argument for preventing the prior testimony from being used for impeachment. *See Urooj v. Holder*, 734 F.3d 1075, 1078-79 (9th Cir. 2013) (explaining that impeachment evidence is not offered for the truth of the matter). Furthermore, the Commonwealth's request for relief—explaining that Cepeda failed to establish the conditions required for admitting hearsay—reinforces our belief that the motion was only concerned with preventing the prior testimony from being used as substantive evidence. Thus, the motion's focus indicates the Commonwealth was not seeking to restrict Cepeda's ability to use the prior testimony for impeachment.

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by contradiction. We evaluate the motion as it was made and nothing more. *Cf. Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there."). To do otherwise would put us in the untenable position of guessing whether the party made the argument raised at trial or made the argument the party says he intended to make.

¶ 34 Second, the parties' arguments on the motion focused on the elements for hearsay rather than impeachment. Impeachment was only discussed briefly. But neither Cepeda nor the Commonwealth dwelled on this point or argued about whether the motion should be denied (or denied in part) because the prior testimony was valid impeachment evidence. In fact, Cepeda quickly steered the trial court away from the impeachment discussion by stating: "I think [the prior testimony] is direct evidence so let's go back now Your Honor to the test that has been presented [for admitting hearsay evidence]." Trial Tr. 9. If the motion covered using the evidence for impeachment, we believe the parties would have argued over that issue. But they did not. Thus, the focus of the parties' arguments supports the conclusion that the motion addressed substantive evidence without affecting Cepeda's ability to use the prior testimony for impeachment.

¶ 35 Third, the trial court's ruling on the motion focused on hearsay; the ruling did not address whether the prior testimony was admissible for impeachment. The trial court explained it was granting the motion because Cepeda failed to establish the elements necessary to admit hearsay evidence. No other justification was given. If the trial court was also precluding Cepeda from using the prior testimony for impeachment, the ruling would have explained why it reached that conclusion. *Cf. Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there."). But the trial court did not. The specific focus of the court's ruling—centered on why the prior testimony was inadmissible hearsay—supports reading the decision as limited to substantive evidence rather than a restriction on impeachment.

¶ 36 These three factors indicate that Cepeda was only precluded from admitting the prior testimony as substantive evidence. We cannot reasonably conclude that the trial court also prevented Cepeda from admitting the evidence for impeachment purposes when the motion, the parties, and the court did not address that use.[8] Because Cepeda has not demonstrated that the trial court precluded him from using the prior testimony for impeachment, he fails to establish the prerequisite to his claim. Accordingly, we conclude there was no error affecting Cepeda's ability to use the prior testimony for impeachment.

E. Cumulative Error

¶ 37 We address Cepeda's contention that the cumulative-error doctrine requires reversal because we find three individually harmless errors: (1) excluding Exhibit CC, (2) excluding Exhibit II, and (3) excluding the affidavit from substantive evidence. *See Commonwealth v. Sebuu*, 2011 MP 15 ¶ 8 n.5

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[8] Our conclusion that the motion in limine did not bar Cepeda from using the prior testimony is bolstered by the trial court's acknowledgment that Cepeda could ask Detective Hosono whether Guerrero was originally a prime suspect in part because of the identification by the Chinese witnesses. In fact, this line of questioning had already come in without objection from the Commonwealth. Furthermore, the Commonwealth explained it had no objection to Cepeda asking questions that highlighted there were eyewitness statements that made Guerrero the prime suspect, and that those eyewitnesses also testified at Guerrero's trial.

(explaining that cumulative error requires two or more individually harmless errors). We review this claim de novo because the trial court did not and could not rule on the question. *Dohan*, 508 F.3d at 993; *see Jing Xin Xiao*, 2013 MP 12 ¶¶ 82-83 (affording no deference when reviewing for cumulative error). When reviewing cumulative-error claims, "[r]eversal is required under the cumulative-error doctrine if it is more probable than not that, taken together, the errors materially affected the verdict." *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 46. We decline to reverse when we find sufficiently strong un-refuted evidence supporting the conviction. *Jing Xin Xiao*, 2013 MP 12 ¶ 83.

¶ 38 The Commonwealth presented strong evidence at trial supporting the conviction that would not have been refuted by the exhibits and affidavit the trial court erroneously excluded. For example, Melvin Cabrera[9] testified that Cepeda said he stabbed the Yellow House owner, Furthermore, Ilo testified in-depth about the moments leading up to and immediately after Zhou's death.[10] Additionally, Fitial testified that, on the night that Zhou was attacked, Cepeda returned to the car following the alleged murder with a bloody knife and blood on his shirt. In sum, the court heard three witnesses implicate Cepeda in Zhou's murder. Based on the strength of the evidence against Cepeda, we conclude the cumulative effect of the harmless errors does not warrant reversal under the cumulative-error doctrine. *See Cepeda*, 2009 MP 15 ¶¶ 64-66 (Manglona, J., concurring in part and dissenting in part) (declining to reverse for cumulative error when substantially similar evidence was presented and more egregious errors occurred during trial).[11]

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[9] Cabrera was a Commonwealth witness who is related to Cepeda and met with him the day after the attack on Zhou.

[10] For example, Ilo testified that Cepeda: (1) told Ilo to see if Zhou was at the Yellow House, (2) grabbed a knife and a bat from the car before going into the Yellow House, (3) entered the Yellow House and begun swinging the bat, (4) hit Zhou on the head with the bat, and (5) grabbed the knife and stabbed Zhou.

[11] The concurrence and dissent are persuasive because its strength-of-the-evidence standard for cumulative error was adopted in *Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶ 83.

V. Conclusion

¶ 39 For the reasons discussed above, we AFFIRM Cepeda's convictions.

SO ORDERED this 7th day of November, 2014.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

HERBERT D. SOLL
Justice Pro Tem