

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

---

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

v.

HERMAN S. FITIAL,  
*Defendant-Appellant.*

---

**Supreme Court No. 2013-SCC-0033-CRM**

Superior Court No. 13-0003C

**OPINION**

**Cite as: 2015 MP 15**

Decided December 29, 2015

---

Colin M. Thompson, Saipan, MP, for Defendant-Appellant.

Chester Hinds and Clayton Graef, Assistant Attorneys General, Office of the  
Attorney General, Saipan, MP, for Plaintiff-Appellee.

---

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Defendant Herman S. Fitial appeals his conviction for Assault and Battery, arguing insufficiency of the evidence. He asserts the only evidence against him was his uncorroborated confession, which cannot serve as the basis for a conviction under the *corpus delicti* doctrine. For the reasons discussed below, we AFFIRM Fitial’s conviction.

### I. FACTS AND PROCEDURAL HISTORY

¶ 2 Fitial was charged with one count of Involuntary Manslaughter and one count of Assault and Battery for striking and causing the death of Jefferson Keju (“Keju”). On the night of January 1, 2013, Fitial went to New Chang Ming Market with Felix Kileleman (“Kileleman”), where the two encountered Keju. Fitial and Kileleman began arguing with Keju and then chased him toward the nearby Mobil gas station on Middle Road. At some point during the encounter, Keju swung at Fitial, missed, and Fitial allegedly punched Keju on the face. Fitial and Kileleman then chased Keju into the roadway, where he was hit by two vehicles. Keju died as a result of his injuries.

¶ 3 At trial, the court heard testimony from several witnesses, none of whom directly saw Fitial strike Keju.

¶ 4 Zeng Zhaosheng (“Zeng”) testified that he was working at New Chang Ming Market on the night of January 1, 2013. Sometime after 11:40, three men came into the store. Two men came to buy cigarettes, and the third tried to buy alcohol. When Zeng went outside, he saw the three men pushing each other. He also testified that he saw the men punching or pushing one another, but he was unsure if they were joking. Zeng identified one of the men as Kileleman. Zeng saw the men head toward a gas station on Middle Road, about 100 to 200 meters from New Chang Ming Market.

¶ 5 Manolo Romolor (“Romolor”) saw Fitial and Kileleman at about 11:40 p.m. at the Mobil station on Middle Road where he was working as a cashier. About ten minutes later, Romolor saw the two arguing with a third man in the parking lot. Romolor described them as if “they were about to fight . . .” *Id.* at 14. Romolor lost sight of the three men after they ran into the darkness. Romolor’s co-worker then ran inside and told him someone had been run over and instructed him to call the police.

¶ 6 Mobil gas station attendant Sherwin Agustin (“Agustin”) saw two men chasing a third. Agustin testified that one of the men was Fitial.<sup>1</sup> After the three men ran across the street, Agustin heard a loud bang and saw a car run over a man. Agustin saw three individuals near the road: a body in the roadway; Kileleman, who had fallen over in the drainage area; and Fitial, who was

---

<sup>1</sup> Agustin could not identify Fitial as being in the courtroom on the day of the trial.

standing on the road. During the time Agustin saw the three men, he did not see anyone hit anyone else.

¶ 7 Peter Taitano (“Taitano”) was using the WiFi internet at the Mobil station that night. Taitano testified that he saw two men chasing Keju toward the road. After walking outside of the station, Taitano saw Keju lying down on the road.

¶ 8 Raymond P. David (“David”), was working at High Roller 1 near the Century Hotel at around 11 p.m. that night. While David was outside, he heard an argument and saw two men chasing another man near the Mobil station. He further testified that he could see the shadows fighting, “like kind of tackling and throwing punches [at] each other.” *Id.* at 138. David later admitted he couldn’t tell who was making contact and if the men were pushing or punching. He said that when the two men caught up to the third, the physical contact was not punching, but more like tackling. He then heard a loud bang and moaning and saw two men running toward Chinatown.

¶ 9 The next day, after identifying Fitial in a surveillance video from New Chang Ming Market, Detective Jeffrey Olopai (“Olopai”) located and questioned Fitial. Olopai read Fitial his Miranda rights before Fitial began telling his story. According to Olopai, Fitial admitted to going to New Chang Ming Market, where he met Keju. The two began to argue, and Keju tried to hit Fitial with a rock. Fitial dodged and punched Keju in the face. Keju ran from New Chang Ming Market towards Mobil and out onto the northbound lane of Middle Road. Then, Keju was struck by a vehicle in the roadway as Fitial chased after him. Fitial asked a gas station attendant to call 911 and then went home.

¶ 10 That same day, Detective Elias Q. Saralu (“Saralu”) interviewed Fitial at the Criminal Investigations Bureau office. Saralu read Fitial his constitutional rights in both English and Carolinian, which Fitial indicated he understood. According to Saralu, Fitial admitted to running to New Chang Ming Market, where he argued with a young Chuukese man in the parking lot. Fitial told the Chuukese man to go home because he was drunk. The Chuukese man then picked up two rocks and ran toward the Mobil station on Middle Road. Fitial chased after him. The Chuukese man then swung at Fitial, missed, and Fitial punched the right side of the man’s face. Then, the Chuukese man ran into the roadway and was struck by a van.

¶ 11 According to the autopsy performed by Dr. Aurelio Espinola (“Dr. Espinola”), a forensic pathologist who was qualified as an expert witness, Keju had a laceration that was caused by a punch or some other light instrument. Additionally, an injury to Keju’s nose was consistent with blunt trauma or being punched. Dr. Espinola identified trauma to Keju’s liver consistent with having been punched. He further testified to injuries consistent with having been dragged, struck, or run over by a car.

¶ 12 At the close of the Commonwealth’s case, Fitial moved for a judgment

of acquittal. The court granted the motion on Involuntary Manslaughter, but denied as to Assault and Battery. The court subsequently found Fitial guilty of Assault and Battery and sentenced him to the maximum one year sentence.

¶ 13 Fitial now appeals his conviction.

## II. JURISDICTION

¶ 14 We have jurisdiction over final judgments and orders issued by the Superior Court. NMI CONST. art. IV, § 3.

## III. STANDARD OF REVIEW

¶ 15 Fitial argues there was insufficient evidence to support a conviction for Assault and Battery. A party preserves a sufficiency of the evidence argument by filing a motion for judgment of acquittal, *United States v. Carranza*, 289 F.3d 634, 641 (9th Cir. 2002) (citing *United States v. Munoz*, 233 F.3d 1117, 1129 (9th Cir. 2000)), which triggers de novo review. *Commonwealth v. Pua*, 2009 MP 21 ¶ 23. We then consider “the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Commonwealth v. Caja*, 2001 MP 6 ¶ 3. However, we review issues not raised at trial for plain error affecting substantial rights. NMI R. CRIM. P. 52(b).

## IV. DISCUSSION

¶ 16 Fitial argues the evidence was insufficient to support his conviction for Assault and Battery because the primary evidence against him was his uncorroborated confessions to two detectives, in violation of the doctrine of *corpus delicti*. Before turning to the merits, we address whether Fitial adequately raised the issue at trial.

¶ 17 “[A]ppeals should be based on questions and objections raised during trial, not after a review of the transcript.” *Commonwealth v. Rabauliman*, 2004 MP 12 ¶ 23. However, “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” NMI R. CRIM. P. 52(b). “The purpose of the plain error rule is to enforce the requirement that parties object to errors at trial in a timely manner so as to provide the trial judge an opportunity to avoid or correct any error, and thus avoid the costs of reversal.” *United States v. Chaney*, 662 F.2d 1148, 1151 n. 4 (Former 5th Cir. 1981)<sup>2</sup>; see also *Rabauliman*, 2004 MP 12 ¶ 23 (noting that objections should be raised during trial, “so that the harm may be cured when it occurs”). *Corpus delicti* arguments, in particular, are typically raised before the trial court in a motion for judgment of acquittal. See e.g., *United States v. Norris*, 428 F.3d 907, 911 (9th Cir. 2005) (defendant argued insufficient evidence of *corpus delicti* regarding sexual abuse count in motion for acquittal); *United States v. Corona-Garcia*, 210 F.3d 973, 978 (9th Cir. 2000)

---

<sup>2</sup> Because NMI R. CRIM. P. 52(b) is substantially similar to FED. R. CRIM. P. 52(b), reference to federal case law is instructive. See *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29 (adopting federal plain error analysis).

(defendant argued insufficient corroborating evidence of admission that he illegally entered the United States in motion for acquittal). When an insufficiency of the evidence claim is based upon an issue not raised in the motion for acquittal, we review for plain error. *See e.g., United States v. Rivera-Rivera*, 555 F.3d 277, 285 & n.7 (1st Cir. 2009) (reviewing for plain error when appellant moved for judgment of acquittal but argued new theory on appeal).

¶ 18 Under the doctrine of *corpus delicti*, a defendant's confession must be supported by some independent corroborating evidence "to serve as the basis for a conviction." *Caja*, 2001 MP 6 ¶ 26 (citing *United States v. Lopez-Alvarez*, 970 F.2d 583, 589 (9th Cir. 1992)). Here, Fitial argued there was insufficient evidence of Assault and Battery in his motion for acquittal, but failed to assert his confessions lacked adequate corroborating evidence under the doctrine of *corpus delicti*. Upon review of the entire trial record, we find Fitial failed to explicitly mention *corpus delicti* and also made no assertion that his confessions must be corroborated to serve as the basis of a conviction. Because Fitial did not raise the issue of *corpus delicti* at trial, we review his claim for plain error. NMI R. CRIM. P. 52(b). To obtain relief, Fitial must "show that: (1) there was error; (2) the error was plain or obvious; [and] (3) the error affected the appellant's substantial rights, or put differently, affected the outcome of the proceeding." *Commonwealth v. Quitano*, 2014 MP 5 ¶ 11 (internal quotation marks omitted) (quoting *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29).

¶ 19 "The requirement of corroboration arises from the high incidence of false confessions and the resulting need to prevent 'errors in convictions based upon untrue confessions alone.'" *Caja*, 2001 MP 6 ¶ 33 (quoting *Lopez-Alvarez*, 970 F.2d at 589). Post-offense admissions to facts or elements of a crime can be equally unreliable and therefore also require corroboration. *Lopez-Alvarez*, 970 F.2d at 589. Additionally, systems of law enforcement relying upon confessions "will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation." *Escobedo v. Illinois*, 378 U.S. 478, 488-89 (1964) (footnotes omitted).

¶ 20 The government need not "introduce independent, tangible evidence supporting every element of the *corpus delicti*. Instead, the state is required to support independently only the gravamen of the offense—the existence of the injury that forms the core of the offense and a link to a criminal actor—with tangible evidence."<sup>3</sup> *Lopez-Alvarez*, 970 F.2d at 591.<sup>4</sup> "Where the crime

---

<sup>3</sup> In other words, "the prosecution must introduce independent evidence that the criminal conduct at the core of the offense actually occurred—that the injury for which the accused confesses responsibility did in fact occur, and that some person was criminally culpable." *Lopez-Alvarez*, 970 F.2d at 592.

<sup>4</sup> The Commonwealth has adopted the Ninth Circuit's articulation of the *corpus delicti* doctrine as stated in *Lopez-Alvarez*. *Caja*, 2001 MP 6 ¶ 36 ("Consistent with federal authority and Trust Territory case law, we adopt the *Opper* test as set out by *Lopez-*

involves physical damage to person or property, the prosecution must generally show that the injury for which the accused confesses responsibility did in fact occur, and that some person was criminally culpable.” *Id.* (quoting *Wong sun v. United States*, 317 U.S. 471, 489 n.15 (1963)). However, the government does not need to independently prove that the accused was responsible. *Id.*

¶ 21 The Commonwealth’s two-pronged *corpus delicti* rule requires “the government [to first] ‘introduce sufficient evidence to establish that the criminal conduct at the core of the offense has occurred.’” *Caja*, 2001 MP 6 ¶ 34 (quoting *Lopez-Alvarez*, 970 F.2d at 592). Second, it must “introduce independent evidence tending to establish the trustworthiness of the admissions, unless the confession is, by virtue of special circumstances, inherently reliable.” *Id.* (quoting *Lopez-Alvarez*, 970 F.2d at 592) (internal quotation marks omitted).

¶ 22 Under *Caja*’s first prong, we conclude the Commonwealth produced sufficient independent evidence demonstrating “the criminal conduct at the core of the offense has occurred.”<sup>5</sup> *Caja*, 2001 MP 6 ¶ 26. Here, Fitial’s confessions to detectives Olopai and Saralu were substantially corroborated by the testimony of Zeng and Dr. Espinola and the surveillance video from New Chang Ming Market and the Mobil station. Zeng testified that he saw the men “punching or pushing . . . each other” outside of New Chang Ming Market. Tr. 49. Dr. Espinola further corroborated Fitial’s confession by testifying Keju had injuries on his face consistent with having been punched. Although none of the video footage captured Fitial striking Keju, the video corroborated Fitial’s story that he went to New Chang Ming Market on the night of January 1, encountered Keju, and chased him toward the Mobil station. And while none of the other witnesses to the encounter definitively saw striking occur, Romolor, Agustin, David and Taitano saw two men chasing a third. Furthermore, David, who was across the street, saw shadows that appeared to be tackling, punching, or pushing.

¶ 23 As to the second prong of *Caja*, we also conclude the Commonwealth produced sufficient corroborating evidence supporting the trustworthiness of the confession. The trustworthiness of a defendant’s admissions can be adequately supported where witness testimony confirms the accuracy of the admission. *See Valdez-Novoa*, 780 F.3d at 924 (defendant’s confession that he was removed from the United States twice before and had not applied for

---

*Alvarez, supra*, as the standard for establishing *corpus delicti*.”). Thus, reference to federal case law offers useful guidance.

<sup>5</sup> The government need not “introduce evidence that would be independently sufficient to convict the defendant in the absence of the confession;” rather, it needs only to provide sufficient evidence “to corroborate the defendant’s confession.” *United States v. Valdez-Novoa*, 780 F.3d 906, 923 (9th Cir. 2015) (citing *Smith v. United States*, 348 U.S. 147, 156 (1954); *Corona-Garcia*, 210 F.3d at 979; *Thomas v. United States*, 370 F.2d 621, 623 n.3 (9th Cir. 1967)).

permission to reenter supported by witness testimony and corroborated confession that he attempted to reenter the United States without permission). Here, several aspects of Fitial's confession were corroborated—the surveillance video and witness testimony supported Fitial's account that he encountered Keju at New Chang Ming Market and chased him at or around the Mobil station, Dr. Espinola's testimony indicated Keju had likely been struck on the face, and David's testimony was consistent with Fitial's admission that he punched Keju near Middle Road before Keju was struck by a car.

¶ 24 Furthermore, Fitial's confessions could be considered "inherently reliable." In *Valdez-Novoa*, the Ninth Circuit noted that the confession could "be considered 'inherently reliable,' because it was videotaped, voluntary, and occurred after [the officer] advised [the defendant] of his Miranda rights." 780 F.3d at 925 (quoting *Lopez-Alvarez*, 970 F.2d at 592) (internal citation omitted).<sup>6</sup> Here, Fitial's confessions were entirely voluntary and given after he had been advised of his Miranda rights. After giving his statement to Saralu, Fitial wrote his name on each page of his interview statement. Fitial also gave two separate confessions to two different detectives that were consistent with one another. Thus, there are sufficient indicia of reliability such that Fitial's confession could be considered "inherently reliable."

¶ 25 Because the Commonwealth produced sufficient evidence demonstrating that "the criminal conduct at the core of the offense has occurred," *Caja*, 2001 MP 6 ¶ 26, and that Fitial's confession was trustworthy, his confession could serve as the basis for the Assault and Battery conviction consistent with the doctrine of *corpus delicti*. We find no error under the first prong of plain error analysis and conclude the trial court did not plainly err by finding sufficient evidence supporting Fitial's conviction for Assault and Battery.

#### V. CONCLUSION

¶ 26 For the foregoing reasons, we AFFIRM Fitial's conviction for Assault and Battery.

SO ORDERED this 29th day of December, 2015.

/s/  
\_\_\_\_\_  
ALEXANDRO C. CASTRO  
Chief Justice

<sup>6</sup> "[T]he fact that the confession is recorded, voluntary, and the result of an interrogation that is conducted in a manner consistent with the constitutional protections afforded the accused supports a determination that it is 'inherently reliable' under *Lopez[-]Alvarez's* second prong." *Valdez-Novoa*, 780 F.3d at 925.

/s/  
JOHN A. MANGLONA  
Associate Justice

/s/  
PERRY B. INOS  
Associate Justice