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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

SHU JIE TIAN,
Defendant-Appellant.

Supreme Court No. 2018-SCC-0007-CRM
Superior Court No. 17-0118

OPINION

Cite as: 2019 MP 9

Decided December 12, 2019

J. Robert Glass, Jr., Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

Stephen J. Nutting, Saipan, MP, for Defendant-Appellant.

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

INOS, J.:

¶ 1 Defendant-Appellant Shu Jie Tian ("Tian") appeals her conviction for three counts of Disturbing the Peace and three counts of Assault and Battery. She asserts they were (1) supported by insufficient evidence, and (2) against the manifest weight of the evidence. For the following reasons, we AFFIRM.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Babul Miah ("father"), Bulbul Miah ("son"), and MD Rana Shiek ("nephew") (collectively "family") did construction work for Jin Zhong Cheng ("Mr. Jin"). The family had been calling Mr. Jin regarding their unpaid wages, because he previously indicated they could collect. When their telephone calls went unanswered, they went to Mr. Jin's construction compound to see whether they could collect. Mr. Jin was not there, but Tian, who worked for Mr. Jin as a cook and accountant, was present.

¶ 3 The family tried calling Mr. Jin again, but he did not answer. The nephew then began video recording the area around the barracks with his cellphone, claiming to showcase the family's work. Tian witnessed this and called Mr. Jin who was indifferent as to whether or not the nephew recorded around the barracks. When the nephew focused his cellphone on Tian inside the kitchen, Tian asked the nephew to stop video recording her and to delete the footage, but the nephew ignored her.

¶ 4 A struggle over the cellphone ensued. Although the accounts of the struggle differed, Tian attempted to take the phone from the family to erase the video recording of her. She chased after the nephew and tried to grab the cellphone from his hand by pulling his arm. The father then took the cellphone from the nephew, after which Tian grabbed the father's arm to try to retrieve the cellphone. At that moment the son joined the struggle. Tian claims the son pushed her away from the father causing her to fall to the ground. The son, on the other hand, claims he tried to help the father by removing Tian's grasp on the father's arm and collar, and in the scuffle, Tian lost her balance and fell to the ground. After picking herself up and seeing that the father was still holding the cellphone, she moved toward the father and pulled and grabbed his arm. The son and nephew rejoined the struggle, and Tian fell to the ground a second time. One of the two employees, Wen Jun, who was inside the barracks, heard the argument and went outside to see what was going on.

¶ 5 The Commonwealth charged Tian with three counts of Assault and Battery under 6 CMC § 1202(a)[1] and three counts of Disturbing the Peace

[1] 6 CMC § 1202(a) ("Section 1202(a)") reads:

> A person commits the offense of assault and battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to

under 6 CMC § 3101(a).[2] The trial court found Tian guilty on all six counts. Tian appeals.

II. JURISDICTION

¶ 6 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 7 Although Tian raises two issues, we only address the first. We review the sufficiency of the evidence claim ("sufficiency claim") from the bench trial de novo. *See United States v. Atkinson*, 990 F.2d 501, 503 (9th Cir. 1993) (en banc); *see also United States v. Grace*, 367 F.3d 29, 34 (1st Cir. 2004). Because we decline to review the second issue of whether the conviction was against the manifest weight of the evidence, we need not specify a standard of review.

IV. DISCUSSION

A. Sufficiency of the Evidence

¶ 8 Tian claims the Commonwealth failed to present sufficient evidence to prove the charges beyond a reasonable doubt. The Commonwealth claims Tian's failure to move for a judgment of acquittal ("JOA") requires this Court to review the sufficiency claim for plain error. Tian maintains we review the sufficiency claim de novo. Before reaching the substance of the claim, we must determine the appropriate standard of review.

i. Standard of Review

¶ 9 The Commonwealth argues that to preserve a sufficiency claim on appeal, a party must move for a JOA in a jury trial. The Commonwealth implies, however, that our jurisprudence is unclear as to whether NMI Criminal Procedure Rule 29 ("Rule 29"), regarding JOA motions, applies in the bench trial context. The Commonwealth surveys appeals from bench trials in which this Court did not articulate whether sufficiency claims in bench and jury trials should be reviewed differently. Although the Commonwealth acknowledges these inconsistencies in our caselaw, it concludes that we must review for plain error. We aim to clarify these inconsistencies, and accordingly look to the rule governing JOA motions and caselaw interpreting that rule.

¶ 10 Rule 29 governs JOA motions. It provides that a party may move for a JOA after the close of evidence, and the court may enter a JOA "of one or more offenses . . . if the evidence is insufficient to sustain a conviction of such

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> another, or has sexual contact with another without the person's consent.

[2] 6 CMC § 3101(a) ("Section 3101(a)") reads:

> A person commits the offense of disturbing the peace if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace.

offense or offenses." NMI R. CRIM. P. 29(a). A motion for a JOA may also be made after a verdict of guilty if made within seven days of discharging the jury. NMI R. CRIM. P. 29(c).

¶ 11 In *Commonwealth v. Ogumoro*, we held a JOA motion is necessary to preserve sufficiency claims in jury trials, which are then subject to de novo review. 2017 MP 17 ¶ 12; *see also Commonwealth v. Ramangmau*, 4 NMI 227, 237–38 (1997) (reviewing sufficiency claim from a jury trial de novo when defendant moved for a JOA at the close of the evidence and within seven days after entry of judgment).[3]

¶ 12 Next we address the appropriate standard of review for sufficiency claims from bench trials. In *Commonwealth v. Abuy*, an appeal of a traffic case, we reviewed de novo a sufficiency claim from a bench trial. 2001 MP 8 ¶ 6 (relying on *United States v. Sharif*, 817 F.2d 1375, 1377 (9th Cir. 1987)). Then, in *Commonwealth v. Fitial*, an appeal from a bench trial, we elaborated on what was required when moving for a JOA, but ultimately reviewed Fitial's failure to preserve his sufficiency claim for plain error. 2015 MP 15 ¶ 15. We held that when a party moves for a JOA to preserve a sufficiency claim, the Court conducts a de novo review on appeal. *Id*. Sufficiency claims not preserved at trial are reviewed for plain error. *Id*. Thus, we are presented with another inconsistency. In addition, nearly all federal circuits have reviewed de novo sufficiency claims in bench trials, even where a party fails to move for a JOA.[4] We thus examine the standard of review applied in the majority of circuits.

¶ 13 In *United States v. Grace*, the First Circuit squarely addressed the issues now before us. 367 F.3d 29 (1st Cir. 2004). Specifically, it grappled with whether the party needed to move for a JOA to preserve the sufficiency claim and trigger de novo review. The court held that JOA motions are an unnecessary prerequisite for preserving the standard of review in bench trials. FRCP 29 contemplates a juror's failure to strictly apply jury instructions, or to base jury verdicts "entirely on the evidence developed at the trial." *Id.* at 34. A JOA motion ensures that trial judges consider whether the jurors erred. Thus, FRCP 29 functions to protect parties from "improper" or "irrational verdict[s] of the jury." *Id*. (citing *Moore's Federal Practice* § 629.02[4] (3d ed. 2002)).

¶ 14 *Grace* also determined that bench trials, unlike jury trials, do not require a party to move for a JOA because a not guilty plea preserves a sufficiency claim. *Id*.; *see also United States v. Whitlock*, 663 F.2d 1094, 1097 n.24 (D.C.

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[3] In *Commonwealth v. Ahn*, the NMI Appellate Division noted that JOA motions are only used in jury trials and not in bench trials "since to do so would be pointless." 3 CR 35, 42 (Dist. Ct. App. Div. 1987). There, it gauged whether the trial court abused its discretion when it indicated it would deny a motion to set aside the verdict and enter a JOA. *Id*. at 40.

[4] Rule 29 mirrors Federal Rule of Criminal Procedure 29 ("FRCP 29"). As such, we find interpretations of the Federal Rules of Criminal Procedure persuasive. *See Ramangmau*, 4 NMI at 229 n.3.

Cir. 1980) (per curiam) (failing to move for a JOA in a bench trial does not preclude preservation of a sufficiency claim); *Hall v. United States*, 286 F.2d 676, 677 (5th Cir. 1960) (moving for a JOA is unnecessary in a bench trial because a "plea of not guilty asks the court for a [JOA]"). The court reasoned "[i]t is odd to suggest that trial judges must be given the opportunity with a [FRCP] Rule 29 motion to protect themselves from their own capriciousness." *Grace*, 367 F.3d at 34. "A plea of not guilty is the 'functional equivalent' of a [FRCP] Rule 29 motion in a bench trial." *Id*. (citation omitted). Trial courts "must conduct the same analysis of law and evidence whether it evaluates a motion for a [JOA] under [FRCP] Rule 29 or adjudicates a not guilty plea." *Id*. The First Circuit therefore reviewed a sufficiency claim from a bench trial de novo when the party failed to move for a JOA.

¶ 15 The Ninth Circuit announced similar reasoning in *United States v. Atkinson*990 F.2d at 503. Following the lead from the Fifth, Sixth, Seventh, and D.C. Circuits, it overruled its precedent suggesting plain error review for a sufficiency claim from a bench trial. *Id.* The Ninth Circuit concluded that the judge "act[s] as the trier of both fact and law" and "implicitly rules on the sufficiency of the evidence" when it renders a guilty verdict. *Id*. A motion for a JOA is unnecessary because a not guilty plea brings the sufficiency claim to the court's attention. *Id*.

¶ 16 We find the reasoning articulated in *Grace* and *Atkinson* persuasive. A plea of not guilty in a bench trial is the functional equivalent of a Rule 29 motion because it is an assertion that there is insufficient evidence to find the defendant guilty. We hold that a JOA motion in a bench trial is unnecessary to preserve sufficiency claims and trigger de novo review. We set aside our standard of review determinations in *Fitial* to the extent it is inconsistent with this decision.

ii. Sufficiency of the Evidence

¶ 17 Tian argues that because of numerous inconsistencies between the family's pretrial statements and their testimony at trial, the court did not have sufficient evidence to convict her. For instance, both the son and nephew stated in their pretrial statements that the altercation with Tian caused the father to fall to the ground. *See* App. 3, 6. Yet, at trial, the father testified he did not fall at any point during the altercation. *See* Tr. 99. Tian additionally asserts that certain statements are unsupported by the evidence. For example, the photographs of the family's injuries do not support the description of the extent and the nature of the altercation. Based on these and other inconsistencies, Tian argues that a reasonable trier of fact would conclude that the evidence presented failed to prove she committed these crimes beyond a reasonable doubt.

¶ 18 Challenges to the sufficiency of the evidence require examining "whether any rational trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt." *Ramangmau*, 4 NMI at 237; *Commonwealth v. Camacho*, 2002 MP 6 ¶ 108. In making such a determination, we must examine the record in the light most favorable to the

Commonwealth. *Commonwealth v. Quitano*, 2014 MP 5 ¶ 34; *Commonwealth v. Minto*, 2011 MP 14 ¶ 38. Such a review "must encompass all of the evidence, direct or circumstantial." *Minto*, 2011 MP 14 ¶ 38 (citation omitted). We resolve any conflicts in the evidence in favor of the verdict. *Commonwealth v. Guerrero*, 2011 MP 13 ¶ 10 (per curiam). We do not weigh conflicting evidence or consider the credibility of witnesses. *Ho Chan Jung v. Mode Tour Saipan Corp*., 2017 MP 18 ¶ 26. Finally, 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. Demapan*, 2008 MP 16 ¶ 35.

¶ 19 Because Tian's conviction involves general intent crimes, we examine the facts to determine whether she intended her actions. *Commonwealth v. Atalig*, 2002 MP 20 ¶ 67 (determining assault and battery constitutes a general intent crime); *Commonwealth v. Inos*, 2013 MP 14 ¶¶ 19–20 (disturbing the peace is also a general intent crime). When evaluating Tian's mens rea under Sections 1202(a) and 3101(a), the Commonwealth must prove she intended to act, rather than to produce a particular result through her actions. To satisfy Section 1202(a), "a defendant may not 'specifically intend' to act unlawfully, but he [must] 'intend' to commit the act." *Atalig*, 2002 MP 20 ¶ 66. Here, Tian effectively admitted to making physical contact with the family, which a rational factfinder could construe as "strik[ing], beat[ing], wound[ing], or otherwise do[ing] bodily harm." 6 CMC § 1202(a); *see Ramangmau*, 4 NMI at 237. Tian admitted to pulling and grabbing at both the nephew's and father's arms to get the cellphone. Tr. 28–30. Wen Jun, a worker at the construction compound, also testified that she saw Tian and the family grabbing over the cellphone. Tr. 5–7. This testimony corroborates Tian's own admissions of knowingly struggling and making physical contact with the family. A rational factfinder could also construe these actions as those that "unreasonably annoy[] or disturb[] another" and "deprive[] his or her right to peace and quiet," and that Tian intended those actions constituting a disturbance of the peace. 6 CMC § 3101(a). Therefore, Tian's intent met the requisite mens rea requirement for assault and battery and disturbing the peace.[5]

¶ 20 We find the evidence sufficient to support the conviction because a rational trier of fact could find the elements of assault and battery and disturbing the peace beyond a reasonable doubt. The same can be said when we look at the facts in favor of the verdict and the Commonwealth. Furthermore, contrary to Tian's assertions, we cannot weigh conflicting evidence or consider the credibility of witnesses. *Jung*, 2017 MP 18 ¶ 110. Accordingly, we affirm

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[5] In addition to thinking it was rude and contrary to her Chinese custom to video record her without permission, Tian claims that she went after the cellphone because she thought the family had improper motives in video recording her. We recognize motives may inform factfinders of Tian's reasons for acting. They do not, however, negate her intention to act, which we find here.

the finding because we are not firmly and definitely convinced the trial court erred. *Demapan*, 2008 MP 16 ¶ 35.

B. Manifest Weight of the Evidence

¶ 21 In the alternative, Tian argues that if we find sufficient evidence supported her conviction, we should also find that the judgment against her was against the manifest weight of the evidence. She acknowledges that the manifest weight of the evidence standard has not been adopted in this jurisdiction, but urges that we now adopt it based on the practice of other courts, including the United States Supreme Court. *See Tibbs v. Florida*, 457 U.S. 31 (1982); *State v. Thompkins*, 678 N.E.2d 541, 549 (Ohio 1997); *State v. Smith*, 684 N.E.2d 668, 691 (Ohio 1997); *State v. Martin*, 20 Ohio App. 3d 172, 175 (1st Dist. Oh. Ct. App. 1983). The Commonwealth asserts that reweighing the evidence and considering the credibility of witnesses would contravene CNMI precedent.

¶ 22 We reject Tian's proposal to adopt a manifest weight of the evidence standard of review for three reasons. First, we have touched upon whether this Court will reweigh evidence in the context of a motion for a new trial. *Fitial v. Kim*, 2001 MP 9 ¶ 19. There, we explicitly stated "this Court will not second-guess the trial court's evaluation of witness credibility, nor will it reweigh evidence presented to the trial court." *Id*. ¶ 18 (quotation altered). We reiterate our refusal to reweigh evidence.

¶ 23 Second, Tian's reliance on the U.S. Supreme Court's decision in *Tibbs* and other state cases is misplaced.[6] While *Tibbs* discusses the weight of the evidence, its holding in fact turned on the Double Jeopardy Clause. *Tibbs*, 457 U.S. at 32. Furthermore, opinions relying on state law are not binding on this court, particularly when we have existing precedent on the particular subject.[7]

¶ 24 Finally, we have already announced a clearly erroneous standard when evaluating factual findings. The clearly erroneous standard evaluates whether the trial court erred in its factual findings, and allows this Court to "take new or additional facts, consider issues of fact de novo, or set aside findings of fact." 1

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[6] Tian bases her proposition on *Tibbs*, 457 U.S. 31 (1982), but misstates its holding and inaccurately attributes a citation to it. *See* Opening Br. 8. Tian attributed to *Tibbs* a citation from an Ohio case, to the effect that a trial court "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Martin*, 20 Ohio App. at 175.

[7] In the absence of existing CNMI caselaw, we are instructed to look to the restatements first for guidance. In particular, 7 CMC § 3401 states, in relevant part:

> [T]he rules of common law, as expressed in the restatement of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary.

CMC § 3103. Under this standard, this Court reviews the entire record to determine whether the trial court made a mistake. *In re Estate of Yong Kyun Kim*, 2001 MP 22 ¶ 9. We gauge "whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently." *Id.* (citing *Rogolofoi v. Guerrero*, 2 NMI 468, 476 (1992)). In doing so, "we will not disturb the trial court's factual findings, or reweigh the evidence below. Such is not an appellate function." *In re Estate of Guerrero*, 3 NMI 253, 263 (1992); *see also Kim*, 2001 MP 9 ¶ 18; *Northern Mariana Islands v. Reyes*, 4 NMI 340, 344–45 (1996) (citing 1 CMC § 3103). A finding based on the credibility of witnesses "if not internally inconsistent, can virtually never be clear error." *Kim*, 2001 MP 22 ¶ 10 (citation omitted). Adopting a manifest weight of the evidence standard would give this Court the power to reweigh evidence and take into account the credibility of witnesses, which would substantively violate the clearly erroneous standard.[8]

¶ 25 We reject Tian's proposal to adopt a manifest weight of the evidence standard and give due regard to the trial court's assessment of the evidence. We will not disturb a trial court's findings of fact unless they are clearly erroneous or contain witness testimony that is incredible or unsubstantial on its face.

V. CONCLUSION

¶ 26 For the foregoing reasons, we AFFIRM Tian's conviction for three counts of Assault and Battery and three counts of Disturbing the Peace.

SO ORDERED this 12th day of December, 2019.

/s/
ALEXANDRO C. CASTRO
Chief Justice

[8] In *Reyes v. Reyes*, 2004 MP 1 ¶ 103, we determined that the Commonwealth Legislature unduly interfered with the Judiciary's function of deciding disputes because it directed all Commonwealth courts to issue opinions within one year. We reasoned that, in unduly interfering with the Judiciary's function of deciding disputes, the statute violated Article IV, Section 3 of the NMI Constitution because it was clearly inconsistent with the independence afforded to a constitutional court and, thus, violated the separation of powers doctrine.

Similarly, 1 CMC § 3103 ("Section 3103") appears to violate the separation of powers doctrine insofar as the Legislature is unduly interfering with the Judiciary's function of reviewing evidence. However, we leave this issue for another day because the parties did not brief whether Section 3103 violates the separation of powers doctrine.

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
PERRY B. INOS
Associate Justice