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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

RAYMOND B. BLAS,
Defendant-Appellant.

SUPREME COURT NO. CR-04-0028-GA
SUPERIOR COURT NO. 04-00809

Cite as: 2007 MP 17

Decided August 21, 2007

Brien Sers Nicholas, Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellant.
Arin Greenwood, Assistant Attorney General, Commonwealth Office of the Attorney General, for Defendant-Appellee.

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

CASTRO, J:

¶ 1 Defendant Raymond B. Blas appeals his conviction for reckless driving and driving under the influence of alcohol. Because there is sufficient evidence to support that Blas was driving under the influence of alcohol, and because we previously held that dual triers of fact can reach opposing verdicts, we AFFIRM.

I

¶ 2 On December 25, 2003, Blas and four friends consumed two cases of beer at a beach on Saipan. The group left the beach in a truck that George Castro drove. Along the way, Blas convinced Castro to let him drive, at which point, Blas got behind the wheel.[1] Passengers in the truck testified that they traveled at an excessive rate of speed, swerving in and out of the driving lane. Eventually, Blas lost control of the truck and struck a telephone pole, throwing the occupants from the vehicle. Herman Maratita, a passenger, died.

¶ 3 The Commonwealth charged Blas with vehicular homicide, reckless driving, and driving under the influence of alcohol. On November 18, 2004, the jury heard the vehicular homicide charge, while the trial court heard the reckless driving and driving under the influence charges. On November 2, 2005, the jury returned a verdict acquitting Blas on the vehicular homicide charge, but the trial court found him guilty of reckless driving and driving under the influence of alcohol. Blas timely appealed.

II

¶ 4 Blas contends that there is insufficient evidence to find that he drove the truck, and that he did so while under the influence of alcohol. The issue of whether there is sufficient evidence to support that Blas drove the truck, and if he did, that he did so while under the influence of alcohol is reviewed de novo. *Commonwealth v. Yan*, 4 NMI 334, 336 (1996). "Our review must encompass all of the evidence, direct or circumstantial . . . ." *Commonwealth v. Ramangmau*, 4 NMI 227, 237 (1995). We do not re-weigh the evidence, but 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. We "will not reverse the finding unless, after reviewing

[1] Two passengers testified that Blas badgered Castro into letting him drive the truck. Blas refutes the testimony and complains there is insufficient evidence to indicate he drove the truck at the time of the crash. Although there is eyewitness testimony that he was the driver, Blas relies on a forensic interpretation of the accident scene to argue that he was not the driver.

all the evidence, we are left with a firm and definite conviction that a mistake has been made." *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 3.

¶ 5 Blas first argues that he was not the driver of the truck during the crash. He points to Officer Andrea Ozawa's ("officer") testimony, who stated that the individual farthest from the accident scene was most likely a passenger and not the truck's driver. Blas claims that he was thrown farthest from the truck, and therefore, not the driver. However, there is no indication of this in the record. Indeed, the officer was unable to answer this question when specifically asked at trial.

¶ 6 Blas also points to the statements of two witnesses, James Selepeo and Richard Saures, who both arrived at the accident shortly after its occurrence. Selepeo saw someone drag someone else towards the truck, while Saures testified that he saw Brysen Sablan drag Blas. Again, there is nothing in the record that indicates where the dragging started or how long it lasted. Neither Saures nor Selepeo indicated where Blas was or that they even knew Blas's original position before Brysen Sablan dragged him. Blas states that Ozawa's, Saures's, and Selepeo's testimony coupled with the officer's clearly shows that he was not the driver of the truck.

¶ 7 However, upon review of the record, there is sufficient evidence to find that Blas drove the truck, and he did so in a reckless manner. Rufino Maratita ("Maratita") and Castro, both passengers in the truck, testified that Blas was the driver during the crash. Both testified that he began driving the truck after he pestered Castro, the original driver, to drive. Additionally, both testified that Blas drove the truck at an extremely high rate of speed and in an extremely dangerous manner right before the crash. Finally, Maratita testified that he frantically attempted to get Blas's attention because of the high rate of speed and dangerous swerving.

¶ 8 Blas further argues that there is insufficient evidence to support that he drove under the influence of alcohol because no blood alcohol content ("BAC") was presented at trial. It is necessary only to introduce testimony as to facts based on observations of the driver's appearance and conduct which establish intoxication. *See Commonwealth v. Delos Reyes*, 4 NMI 340, 344 (1996). While there is no direct evidence of Blas's BAC at the time of the accident, there is ample testimony to support the finding that he was drinking heavily before the accident. Indeed, Castro testified that Blas drank six or seven cans of beer at the beach and that he could not walk in a straight line that night. Moreover, at least four other witnesses testified that they saw Blas drinking before the crash while others noted the strong odor of alcohol coming from Blas. We therefore hold that there is sufficient evidence to support that Blas drove the truck under the

influence of alcohol on the night of the crash.[2] *See United States v. Durham*, 464 F.3d 976, 983 n.11 (9th Cir. 2006) (noting that an appellate court "cannot substitute its own judgment of the credibility of a witness for that of the fact-finder").

III

¶ 9 For the foregoing reasons, we hereby AFFIRM Blas's conviction and sentence.[3]

Concurring:
Demapan, C.J., Manglona, J.

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[2] Blas also claims that it is reversible error for a judge and jury to reach opposing verdicts based upon the same evidence. However, we have repeatedly held that, "[t]he triers of fact in a Commonwealth dual trial (jury and judge) are not bound to each other in that the bench trial does not have to mirror the jury's decision." *See, e.g.*, *Commonwealth v. Crisostomo*, 2007 MP 7 ¶ 14. We, therefore, reject Blas's argument.

[3] On October 21, 2004, the Commonwealth filed an emergency criminal interlocutory appeal pursuant to Com. R. App. P. 27(g). The appeal resulted from the trial court's order quashing a witness summons. The Commonwealth argued that jurisdiction was proper under 6 CMC § 8101 and the collateral order doctrine. In response, Blas filed a motion to dismiss the interlocutory appeal for lack of jurisdiction. We granted Blas' motion because the Commonwealth had no right to appeal under 6 CMC § 8101 or the collateral order doctrine, but we granted the motion without the underlying analysis. In light of our opinion after the motion was granted, expanding our reasoning pursuant to 6 CMC § 8101 is no longer necessary. *See CNMI v. Pua*, 2006 MP 19 ¶¶ 9-10 (denying the Commonwealth's emergency interlocutory appeal pursuant to 6 CMC § 8101 for lack of jurisdiction); *Commonwealth v. Crisostimo*, 2005 MP 18 ¶ 12 (extending the final judgment rule to not permit jurisdiction under 6 CMC § 8101).

As for the collateral order doctrine, it does not apply to the Commonwealth's situation. The collateral order doctrine is an exception to the final judgment rule, which is confined to limited circumstances. *Pacific Amusement, Inc. v. Villanueva*, 2005 MP 11 ¶ 18. To fall within the doctrine, the appealed order must: "(1) have conclusively determined the disputed questions; (2) have resolved an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment." *Id.* ¶ 19 (citing *Commonwealth v. Hasinto*, 1 NMI 377, 384 n.6 (1990)).

We agree with the Commonwealth that prongs one and three of the doctrine are met. However, the Commonwealth fails to meet prong two. Under the second prong, "an order is collateral if an appeal would not interfere with the litigation in the [trial] court." *Palmer v. City of Chicago*, 806 F.2d 1316, 1319 (7th Cir. 1986). "An order that is collateral in this sense is appealable immediately if postponing appellate review till the end of the case would cause substantial irreparable harm to the party against whom the order was directed." *Id.* Put another way, "[s]o long as the matter is so collateral that it need not entail consideration of the merits, it may be reviewed immediately . . . ." *Orange County v. Hong Kong & Shanghai Banking Corp.*, 52 F.3d 821, 824 (9th Cir. 1995) (citation and quotation omitted). Thus, an order is "collateral" under the second prong if trial court proceedings can continue without interference while an appeal from the order remains pending. *See Johnson v. Jones*, 515 U.S. 304, 311 (1995) ("The requirement that the matter be separate from the merits of the action itself means that review *now* . . . seems less likely to delay trial court proceedings (for, if the matter is truly collateral, those proceedings might continue while the appeal is pending)."). For example, under this prong, an order directing immediate payment of interim attorney fees is collateral. *Palmer*, 806 F.2d at 1319-20. Indeed, the Commonwealth's appeal interfered with the litigation in the trial court. The Commonwealth filed its appeal during the middle of the jury trial and in order to avoid further delay in the trial court we issued our order granting the motion to dismiss. Such disruption in the trial court hardly meets the requirements that an appeal not interfere with the litigation. Moreover, especially under the facts in the instant case, we do not wish to have an appeal "disrupt the conduct of the trial and undermine the trial judge's responsibility for the management of the litigation." *Id.* at 1319. Accordingly, the Commonwealth's interlocutory appeal does not fall under the collateral order doctrine.