

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.

**JUAN B. CAMACHO,**  
Defendant-Appellant.

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SUPREME COURT NO. 06-0046-GA  
SUPERIOR COURT NO. 04-0261B

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**Cite as: 2009 MP 1**

Decided February 3, 2009

Joseph L.G. Taijeron, Jr., Assistant Attorney General, Commonwealth Attorney General's Office,  
for Plaintiff-Appellee  
Brien Sers Nicholas, Esq. Saipan, Northern Mariana Islands, for Defendant-Appellant  
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN  
A. MANGLONA, Associate Justice

DEMAPAN, C.J.:

¶ 1 Defendant Juan Borja Camacho (“Camacho”) appeals his conviction of two counts of first degree sexual abuse of a minor, arguing (1) there is insufficient evidence to support his convictions; (2) the trial court erred in admitting handwritten notations on a calendar found at his residence into evidence; (3) the trial court erred in denying his motion for acquittal; and (4) the trial court imposed a sentence that was “detrimental to the interest of justice” in violation of 6 CMC § 4102(d). We hold that because Camacho failed to submit any relevant portion of the trial transcript as part of his excerpts of record, we are unable to conduct a meaningful review of the sufficiency of the evidence. Likewise, without a trial transcript, we are unable to review whether the trial court erroneously denied Camacho’s motion for acquittal or erroneously admitted the handwritten notations into evidence. We further hold that the trial court did not err in imposing Camacho’s sentence. Accordingly, the trial court’s decision is AFFIRMED.

## I

¶ 2 On July 12, 2004, a twelve-year-old girl identified as C.P.T. (“the girl”) and her parents visited the residence of their neighbor, fifty-six-year-old Camacho. During the visit, Camacho expressed his desire to marry the girl. The girl’s father refused the proposition and left angrily. In doing so, he left the girl and her mother alone with Camacho. Eventually Camacho, the girl, and her mother entered Camacho’s bedroom. Camacho then told the girl’s mother to leave the bedroom. After the girl’s mother left the room, Camacho shut the door and locked it. The girl’s mother knocked on the door shortly thereafter to tell Camacho she needed to leave. Camacho told her to leave without the girl, and she did so.

¶ 3 While in his bedroom, Camacho told the girl to get on the bed and take off her clothes. Camacho warned the girl that he would harm her if she cried. Camacho stated that marriage did not entail going to a church or a court. Rather, he stated that he and the girl would be married by having sexual intercourse. When Camacho asked the girl if she accepted his marriage proposal, she responded that she did not. Camacho then took her clothes off, gave her a hickey, and had sexual intercourse with her.

¶ 4 After the girl returned home, her mother and sister noticed the hickey on her neck. The girl’s sister testified that the girl had never had a hickey before. She also testified that her mother rubbed vinegar on the hickey, which virtually removed it. Thereafter, the girl’s parents argued over whether they should take her to the hospital. While the girl’s father wanted to take her to the hospital immediately, her mother refused.<sup>1</sup>

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<sup>1</sup> At trial, the girl’s mother claimed rape is shameful and expressed concern that the girl would be embarrassed and commit suicide. At Camacho’s sentencing, the girl testified that she attempted suicide.

¶ 5 The next day, on July 13, 2004, Camacho visited the girl's residence and noticed the girl was crying. The mother told him that the girl wanted to go with her father to the hospital. Camacho responded that if he saw her in her father's vehicle, he would harm her father. Thereafter, the girl, her mother, and her siblings walked to Camacho's residence. The mother testified that they went to Camacho's residence because she and the father were still arguing over whether they should take the girl to the hospital. Soon after arriving, the girl's siblings left, leaving the girl and her mother alone with Camacho. Although the girl wanted to depart with her siblings, Camacho blocked the door with his hands and prevented her from leaving.

¶ 6 Camacho told the girl he was going to have sex with her again. He then threatened her, saying she would not like it if he had to force her into the bedroom. The girl testified that Camacho's demands made her feel worried and scared. The mother testified that Camacho then put his arm around the girl's neck and brought her inside his bedroom. According to the girl, Camacho shut his bedroom door, locked it, took off her clothes, and threatened he would hurt her if she moved his hands before he inserted his penis into her vagina. The mother testified that Camacho was alone in his bedroom with the girl for approximately five to ten minutes.

¶ 7 On July 17, 2004, Camacho wanted to have sex with the girl again. The mother testified that Camacho offered her \$1,500 for the girl to visit his residence. Camacho explained that if he could have sex with the girl that day, rest the next day, and then have sex with her again the following day, he would give his house and land to the girl.<sup>2</sup>

¶ 8 A relative called the Department of Youth Services ("DYS") on July 23, 2004 to report that Camacho sexually abused the girl on July 12 and July 13. Over the next few days, Julian Camacho, a DYS case worker with over ten years of interviewing experience, including over five years with the Child Protection Unit, met with the girl and some of her family members. As a result of his interviews, Julian Camacho believed that Camacho sexually abused the girl on two occasions. As a result, DYS reported the matter to the Department of Public Safety ("DPS"). DPS detective Vince Moreham interviewed the girl and began a criminal investigation based on what he learned from the girl and her mother.

¶ 9 Doctor Joe Livingston ("the doctor"), an expert witness at trial, examined the girl on July 29, 2004. The doctor testified that he worked at the Children's Assessment Center, which specializes in the treatment of sexually abused children. He stated that he treated child victims and completed a medical fellowship focusing on child abuse. He testified that he conducted 135 to 140 forensic evaluations for child sexual abuse. The doctor interviewed the girl and conducted

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<sup>2</sup> The record does not indicate whether the girl's mother accepted or rejected Camacho's proposition.

a physical examination. During his interview, the girl indicated that Camacho sexually abused her and provided the dates of the abuse. As a result of his medical evaluation, which included both the patient disclosure and the physical examination, the doctor formed a medical opinion that the girl was sexually abused.

¶ 10 On August 4, 2004, DPS searched Camacho’s two residences. In one home, police found several pictures of the girl, which were all admitted into evidence at trial. One picture was on Camacho’s piano, another picture was above Camacho’s bed, and the last picture was pinned to a curtain. In addition to the pictures of the girl, a calendar on Camacho’s desk was admitted into evidence. The calendar contained the handwritten notation, “make love to Chongky on 7/12/04 again, on 7/13/04.” Appellant’s Excerpts of Record (“ER”), Ex. 11. These dates corresponded to the dates of the alleged sexual abuse, and “Chongky” was the girl’s nickname. Although no handwriting analysis was conducted, a DPS detective testified that his investigation revealed no evidence that someone other than Camacho made the notations on the calendar. Camacho objected to the introduction of the calendar. The trial court, however, overruled the objection.

¶ 11 The jury found Camacho guilty of two counts of first degree sexual abuse of a minor.<sup>3</sup> Thereafter, the trial court sentenced Camacho to: (1) thirty years incarceration, all suspended except fifteen years, and a \$25,000 fine for the first count of first degree sexual abuse of a minor; (2) thirty years incarceration, all suspended except fifteen years, for the second count of first degree sexual abuse of a minor; and (3) six months incarceration and a \$500 fine for the two counts of disturbing the peace.<sup>4</sup>

## II

### *Sufficiency of the Evidence*

¶ 12 On appeal, Camacho contends there is insufficient evidence of sexual penetration to support his convictions for sexual abuse of a minor. The issue of whether there is sufficient evidence to support a finding of sexual penetration 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 reweigh the evidence; 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

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<sup>3</sup> Camacho was also convicted of disturbing the peace, but does not appeal the conviction.

<sup>4</sup> Camacho did not provide this Court with a transcript of any portion of the trial court proceedings. Thus, the foregoing factual history is a compilation of uncontested statements contained within the appellate briefs of both Camacho and the prosecutor.

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.” *Tropic Isles Cable TV Corp. v. Mafnas*, 1998 MP 11 ¶ 3.

¶ 13 Submitting an adequate record on appeal is crucial to any meaningful appellate review. In order to review the sufficiency of the evidence, we must be able to review the evidence proffered at trial. Consequently, the Commonwealth Rules of Appellate Procedure require appellants to submit an evidentiary record on appeal. Com R. App. P. 10; Com. R. App. P. 11(a).<sup>5</sup> The record on appeal must contain the “original papers and exhibits filed in the Superior Court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the Superior Court . . . .” Com. R. App. P. 10(a).

¶ 14 An appellant challenging a trial court finding or conclusion based on a claim of insufficient evidence is also required to submit a transcript of all relevant trial court proceedings. The Commonwealth Rules of Appellate Procedure state that “[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant *shall* include in the record a transcript of all evidence relevant to such finding or conclusion.” Com. R. App. P. 10(b)(2) (emphasis added). To properly review a claim of insufficient evidence, “we must be free to review the entire relevant evidentiary record to determine whether or not it supports the court’s finding or conclusion.” *In re Estate of Deleon Castro*, 4 NMI 102, 108 (1994). An appellant “should not feel free to argue that a court’s decision” is based on insufficient evidence without “proffering that very evidence before this Court in its excerpts of the record.” *Id.* Otherwise, the burden of providing the record on appeal to this Court “would unduly be placed upon the appellee and the reviewing court.” *Id.*

¶ 15 Our case law clearly indicates that an appellant bears the burden of providing an adequate record for review, and this Court is under no obligation to remedy an appellant’s failure to fulfill that responsibility. *Id.* at 108 n.19 (“It is counsel’s responsibility to see that the record excerpts are sufficient for consideration and determination of the issues on appeal . . . .”) (quoting *Deines v. Vermeer Mfg. Co.*, 969 F.2d 977, 979-80 (10th Cir. 1992)). An appellant’s responsibility for submitting relevant trial transcripts is particularly important when an appeal is based on a claim of insufficient evidence not only because it is required under Com. R. App. P. 10(b)(2), but also because of the fact-sensitive nature of such appeals. Thus, this Court has consistently held that where an appellant argues that a trial court finding or conclusion is “unsupported by . . . the

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<sup>5</sup> Rule 11(a) provides: “After filing the notice of appeal, or in the event that more than one appeal is taken, each appellant shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble the record.”

evidence, without submitting before this Court the relevant evidentiary record, *dismissal* or a *presumption of sufficient evidence* may be warranted.” *Id.* at 108 (emphasis added).

¶ 16 In *Commonwealth v. Lucas*, we rejected a criminal defendant’s claim of insufficient evidence due, in large part, to the defendant’s failure to submit relevant portions of the trial court transcript as part of the excerpts of record. 2003 MP 9 ¶¶ 25-28. In *Lucas*, a jury found the defendant guilty of illegally employing alien workers in violation of 3 CMC § 4361(g). *Id.* ¶ 5. On appeal, the defendant argued that there was insufficient evidence to support his conviction. *Id.* ¶¶ 25-26. In rejecting his claim, we reiterated that appeals based on insufficient evidence must comply with Rule 10(b)(2) of the Commonwealth Rules of Appellate Procedure. *Id.* ¶ 27. We concluded that “[c]ontrary to the dictates of Rule 10(b)(2),” the defendant submitted a “spotty” transcript, which did not include all relevant portions of the trial court proceedings. *Id.* The defendant’s failure to “present the entire transcript” made it “extremely difficult, if not impossible, for him to meet his burden of convincing this Court . . . that the trier of fact lacked sufficient evidence to convict [him] . . .” *Id.* Thus, we affirmed the defendant’s conviction. *Id.* ¶ 29.

¶ 17 Likewise, in *Commonwealth v. Repeki*, we refused to review the merits of a criminal defendant’s conviction after he failed to submit an adequate trial transcript on appeal. 2003 MP 1 ¶ 2, 16-18. In *Repeki*, the defendant was convicted of second-degree murder and sentenced to thirty-years incarceration. *Id.* ¶¶ 8-9. On appeal, the defendant argued that the trial court violated his Sixth Amendment right to a public trial when it closed the courtroom to most of the general public for the testimony of one witness. *Id.* ¶¶ 2, 16-17. However, we noted that because the defendant failed to submit relevant portions of the trial transcript, we had no way of independently reviewing what information was presented to the jury, what alternatives the trial court had to closing the courtroom to spectators, or what findings and conclusions the trial court made. *Id.* ¶ 20. Therefore, in upholding the trial court’s decision, we held that “[w]hen we are unable, from the record provided us, to adequately examine the actions of the trial court, we are unable to find error.” *Id.* ¶ 21 (citing *Sablan v. Blake*, 1998 MP 9 ¶ 6).

¶ 18 Notably, our interpretation of Com. R. App. P. 10(b)(2) mirrors federal courts’ interpretation of Fed. R. App. P. 10(b)(2).<sup>6</sup> A majority of United States Courts of Appeal hold that where an appellant fails to submit an adequate evidentiary record on appeal, Fed. R. App. P. 10(b)(2) requires summary affirmance, dismissal, or non-consideration of the issue in question. *See, e.g., United States v. Tedder*, 787 F.2d 540, 541 n.2 (10th Cir. 1986) (“We must therefore

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<sup>6</sup> Com. R. App. P. 10(b)(2) and Fed. R. App. P. 10(b)(2) are textually identical.

hold appellant to the requirements of Fed. R. App. P. 10(b) and conclude that, by failing to obtain a copy of the trial transcript, appellant waived any claim concerning the sufficiency of the evidence at trial.”); *United States v. Gerald*, 624 F.2d 1291, 1295 n.1 (5th Cir. 1980) (refusing to consider appellant’s objection to voir dire because the voir dire was not included in the trial court transcript).

¶ 19 In the present case, Camacho argues that there is insufficient evidence to support his convictions for sexual abuse of a minor. According to Camacho, the only evidence of sexual penetration the prosecution introduced at trial was the girl’s uncorroborated testimony and the doctor’s testimony. Camacho claims the girl’s testimony is inconsistent because she gave varying accounts of whether she bled after the sexual abuse. Similarly, Camacho argues that the doctor’s testimony is contradictory and does not support the jury’s finding of sexual penetration because he found no acute genital trauma.

¶ 20 Camacho cites portions of the trial transcript in his appellate briefs, indicating the transcript was ordered and prepared. However, he failed to comply with Rule 10(b)(2) in that he did not include any portion of the trial transcript as part of his excerpts of record. Without a transcript, we are unable to review the evidentiary record to determine whether it supports the jury’s finding of guilt. Specifically, we are unable to review what evidence was presented at trial, whether the girl’s testimony was uncorroborated, or whether the doctor’s testimony was contradictory. Additionally, we are unable to determine whether Camacho fairly and accurately portrayed the trial court proceedings in his appellate briefs. Because we are unable to adequately examine either the actions of the trial court or the evidence presented to the jury, we are unable to find error. Thus, Camacho fails to meet his burden of convincing this Court that the jury lacked sufficient evidence to convict him of sexual abuse of a minor.

¶ 21 Notwithstanding Camacho’s failure to submit a trial transcript, it is important to note that even if we accepted Camacho’s version of the evidence presented at trial as true, there is still sufficient evidence to support his convictions for sexual abuse of a minor. According to his briefs, the girl’s mother testified that Camacho took her daughter inside his bedroom on July 12, 2004 for five to ten minutes. The girl then testified that Camacho “put his penis into my vagina.” Defendant-Appellant’s Opening Br. at 15. After leaving Camacho’s residence, the girl returned home and both her mother and younger sister testified that they saw a hickey on her neck. The girl further testified that on the next day, July 13, 2004, Camacho again took her inside his bedroom and “put his penis again into [her] vagina.” *Id.* at 16. Furthermore, Camacho admits that “[a]t trial, the Government forcefully argued and presented evidence from practically all of

its witnesses that this alleged victim of 12 years old was fully penetrated on two (2) different occasions by an adult penis.” Defendant-Appellant’s Reply Br. at 3.

¶ 22 Camacho’s briefs also indicate that the doctor’s testimony supports Camacho’s conviction. The doctor testified that during their interview, the girl stated that Camacho had sex with her. Additionally, the doctor testified about the results of his physical examination. He stated that although he did not find acute trauma to the girl’s genitals, ninety-five percent of sexually abused children have no such trauma. Furthermore, the doctor testified that based on his specialized treatment of sexually abused children, and his 135 to 140 evaluations of child sexual abuse, he believed that the girl, in his medical opinion, was sexually abused.

¶ 23 Despite the evidence presented at trial, Camacho argues there is insufficient evidence to support his conviction because it was based primarily on the uncorroborated and inconsistent testimony of the girl. Commonwealth case law, however, belies Camacho’s claims. 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.

¶ 24 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 witnesses’ credibility are for the trier of fact to decide. *Id.*

¶ 25 Just as we found in *Commonwealth v. Camacho* that uncorroborated testimony is sufficient to sustain a murder conviction, we similarly find that the girl’s allegedly uncorroborated testimony of sexual penetration is sufficient to sustain Camacho’s conviction of sexual abuse of a minor, as we do not find the girl’s testimony “inherently implausible.” *See Camacho*, 2002 MP 6 ¶ 110. We note that the jury was in a much better position to assess the girl’s credibility than this Court, and the “jury’s credibility determinations are . . . entitled to a



high level of deference.” *Commonwealth v. Castro*, 2007 MP 9 ¶ 11. In reviewing jury findings, we will not “substitute [our] judgment for that of the jury.” *Id.* ¶ 9. Even if there were inconsistencies in the girl’s testimony, as Camacho claims, we reiterate that evidentiary inconsistencies undermine a witness’s credibility, and not necessarily the sufficiency of the evidence. *See Seman*, 2001 MP 20 ¶12. The jury found the girl’s testimony to be credible, and Camacho presents no facts indicating that the girl’s allegations are implausible. Thus, even if we accepted Camacho’s version of the evidence presented at trial as true, there is still sufficient evidence to support his conviction for sexual abuse of a minor.

#### *Handwriting Authentication*

¶ 26 Camacho argues that the trial court erred in admitting the handwriting on the desk calendar.<sup>7</sup> He claims the notations on the calendar were irrelevant. Despite Camacho’s focus in his appellate brief on the legal relevancy of the handwriting, the logical starting point for considering his arguments is Com. R. Evid. 901.<sup>8</sup> Rule 901 requires a writing to be properly authenticated before its admission into evidence. The relevant authentication issue is whether the trial court had enough evidence under Com. R. Evid. 901 to find that Camacho wrote the handwritten material on the desk calendar. We review trial court decisions excluding or admitting evidence for abuse of discretion. *Camacho*, 2002 MP 6 ¶ 48 (citing *Pellegrino v. Commonwealth*, 1999 MP 10 ¶ 4). We will reverse only where a ruling to admit or exclude evidence constitutes an abuse of discretion. *United States v. Samet*, 466 F.3d 251, 255 (2d Cir. 2006); *Phoenix Assocs. III v. Stone*, 60 F.3d 95, 100 (2d Cir. 1995).

¶ 27 Rule 901(a) provides that “[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *See also Estate of Deleon Castro*, 4 NMI at 106 n.2. Rule 901 “requires only a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence.” *United States v. Harvey*, 117 F.3d 1044, 1049 (7th Cir. 1997) (citing *United States v. McGlory*, 968 F.2d 309, 328-29 (3d Cir. 1992)); *United States v. Dombrowski*, 877 F.2d 520, 525 (7th Cir. 1989); *United States v. Johnson*, 637 F.2d 1224, 1247 (9th Cir. 1980)). “If the court discerns enough support in the record to warrant a reasonable person in determining that the evidence is what it purports to be,

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<sup>7</sup> We note that Camacho’s argument regarding the calendar contains only one case citation, which is relevant only to the abuse of discretion standard of review. “[M]ere conclusory allegations with no citations to the record or any legal authority for support” does not constitute adequate briefing. *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005). In failing to provide any relevant statutes or case law, along with the corresponding legal citations, Camacho failed to include basic components of an appellate brief.

<sup>8</sup> Com. R. Evid. 901 is identical to its federal counterpart.

then Rule 901(a) is satisfied and the weight to be given to the evidence is left to the jury.” *United States v. Paulino*, 13 F.3d 20, 23 (1st Cir. 1994).

¶ 28 To authenticate handwriting, Rule 901(b) provides several “examples of authentication or identification . . . .” Com. R. Evid. 901(b). Under Rule 901(b)(2), handwriting may be authenticated through the testimony of a non-expert witness if the witness is familiar with the handwriting in a context outside the litigation. *See Samet*, 466 F.3d at 255 (“A lay witness who lacks prior familiarity with a person’s handwriting and forms an opinion on it for the first time in preparation for testimony as a witness does not offer helpful testimony.”). For example, in *United States v. Scott*, an agent of the Internal Revenue Service testified that, in trying to solve a tax-related crime, he analyzed the defendant’s handwritten letters, court pleadings, signature cards, money orders, and tax return applications. 270 F.3d 30, 48 (1st Cir. 2001). The agent stated he was familiar with the defendant’s handwriting and believed that the defendant wrote certain documents already in evidence. *Id.* Following his testimony, the court determined that the IRS agent’s testimony provided a sufficient basis for authenticating the handwriting in question. *Id.* In upholding the district court’s decision, the First Circuit held that because the IRS agent became familiar with the defendant’s handwriting by trying to solve a crime rather than for the purpose of the litigation, his testimony was properly admitted. *Id.* at 48, 50; *see also United States v. Tipton*, 964 F.2d 650, 655 (7th Cir. 1992) (finding a witness qualified to testify regarding the defendant’s signature and handwriting where the witness was familiar with the handwriting and signature as a result of observing many documents prepared and signed by the defendant); *United States v. Barker*, 735 F.2d 1280, 1281 (11th Cir. 1984) (affirming lower court’s decision to admit lay opinion testimony of two of the defendant’s co-workers who testified they were familiar with the defendant’s handwriting).

¶ 29 In addition, under Rule 901(b)(3), handwriting may be authenticated by having either an expert witness or the trier of fact compare handwriting that is being offered into evidence with handwriting that has already been authenticated. For example, in *United States v. Dozie*, the Fourth Circuit determined that under Rule 901(b)(3), expert opinion as to the authenticity of handwriting is not necessarily required, and where one document is properly authenticated, the jury can compare the writing on that document with the writing on another. 27 F.3d 95, 98 (4th Cir. 1994).

¶ 30 Rule 901(b)(4) states that a document’s “appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction” with the surrounding circumstances may provide sufficient indicia of reliability to support a document’s authentication. Many federal courts have described the distinctive characteristics necessary to properly

authenticate handwriting. For example, in *Paulino*, the First Circuit upheld the admission of a handwritten receipt found in the defendant's apartment, finding that the contents and surrounding circumstances of the receipt provided a sufficient basis for authentication. 13 F.3d at 23. The First Circuit noted that the receipt was stored neatly in the defendant's apartment, the receipt was likely to be saved only by the renter or landlord of the apartment, the defendant was in the apartment for at least two weeks prior to the confiscation of the receipt, and only the defendant possessed a key to the apartment. *Id.* Additionally, the court determined that the receipt was issued to the defendant, contained the defendant's name, and listed the defendant's address. *Id.* at 24. Moreover, the receipt referred to a criminal drug operation, and the defendant's apartment contained a variety of illegal drugs and drug paraphernalia. *Id.* Consequently, the First Circuit held that the "totality of the circumstances," combined with the deferential standard afforded to the district court, indicated that the receipt was properly authenticated. *Id.*

¶ 31 In *Harvey*, the Seventh Circuit determined that written materials found at a campsite containing a large cache of marijuana were properly authenticated under Fed. R. Evid. 901(b)(4). 117 F.3d 1044, 1050. Under Rule 901(b)(4), distinctive characteristics included the following: the written materials were found in an isolated and remote area where police observed no one other than the defendant, the materials were within the defendant's campsite, the materials were next to the defendant's bed, and the writings made numerous references to the defendant's dog. *Id.* Taken as a whole, these distinctive characteristics and circumstances were sufficient to support a finding that the defendant wrote the materials. *Id.*

¶ 32 In the present case, Camacho filed a motion *in limine* before trial requesting that the trial court exclude the handwriting on the calendar from evidence. In denying the motion, the trial court held it would "not prevent the calendar from being introduced into evidence without allowing the Commonwealth to lay a foundation as to its authenticity first." ER, Ex. 12 at 3. According the Camacho's brief, the trial court subsequently admitted the calendar at trial over his renewed objection. Defendant-Appellant's Opening Br. at 26.

¶ 33 In reviewing Camacho's appellate briefs and excerpts of record, we are unable to reach the merits of his claims and determine whether the handwriting was properly authenticated under Rule 901. As a preliminary matter, Camacho's appellate briefs fail to clearly raise the issue of authentication. In fact, Camacho does not include a single citation to Com. R. Evid. 901 anywhere in his briefs or provide us with any case law relevant to authentication. Rather, he focuses primarily on the legal relevancy of the handwriting, as well as the prejudicial effect of the calendar under Com. R. Evid. 403. Contrary to Camacho's assertions, the handwritten notations

on the calendar are both relevant and probative, as they refer to having sex with the girl on the specific dates that the girl alleges.

¶ 34 More significantly, Camacho failed to provide this Court with a relevant evidentiary record regarding the calendar's admittance. The Commonwealth Rules of Appellate Procedure state that "[w]hen an appeal is based upon a challenge to the admission or exclusion of evidence . . . a copy of the relevant pages of the transcript at which the evidence, offer of proof, ruling, or order and any necessary objection are recorded should be included." Com. R. App. P. 30(c)(1). Additionally, any "reference [in an appellate brief] . . . made to evidence, the admissibility of which is in controversy . . . shall be made to the pages of the excerpt at which the evidence was identified, offered, and received or rejected." Com. R. App. P. 28(e) (emphasis added).

¶ 35 Contrary to the express provisions of the Commonwealth Rules of Appellate Procedure, Camacho failed to include relevant portions of the trial transcript as part of his excerpts of record. Without the trial transcript, we are unable to determine whether Camacho objected to the admittance of the handwriting at trial and, if he did object, the basis of his objection. Additionally, we have no reasonable basis for questioning whether the prosecution complied with Rule 901 and properly authenticated the handwriting. Without evidence to the contrary, we will not presume that the trial court admitted an unauthenticated handwriting into evidence over Camacho's objection. Rather, as the appellant, Camacho bears the burden of proving the trial court abused its discretion in admitting the handwriting. Having failed to submit a trial transcript, Camacho failed to meet his burden of showing the trial court abused its discretion in admitting the handwritten notations on the calendar. We, therefore, must presume that sufficient evidence supports the trial court's authentication of the handwriting.

#### *Motion for Acquittal*

¶ 36 Camacho argues that the trial court improperly denied his motion for acquittal. The trial court's denial of a motion for acquittal is reviewed de novo. *Commonwealth v. Ramangmau*, 4 NMI 227, 237 (1995). The test for determining whether the trial court properly denied the motion "is the same as that for a challenge to the sufficiency to the evidence." *Id.*; Com. R. Crim. P. 29(a). Therefore, we must determine whether "any rational trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt." *Id.* Our review "must encompass all of the evidence, direct or circumstantial, viewed in the light most favorable to the government." *Id.*

¶ 37 Just as we must have the trial transcript to review a claim of insufficient evidence, *see* Com R. App. P. 10(b)(2), we likewise must have an adequate record to review the trial court's denial of a motion for acquittal, which is analyzed under a sufficiency of the evidence standard.

*See* Com. R. Crim. P. 29(a). The record Camacho presents does not include the post-trial motion for judgment of acquittal and his briefs do not cite to any portion of the included record. At oral arguments, Camacho stated he would provide excerpts from the trial court proceedings relevant to his post-trial motion for judgment of acquittal. Instead, he filed copies of the trial court’s docket sheets without the necessary proceedings that took place after the jury returned its verdict. Without the necessary excerpts of record, we are unable to review Camacho’s argument concerning the motion for acquittal. *See Villagomez v. Sablan*, 4 NMI 396, 399 (1996) (stating that failure to include all relevant evidence in the record warrants dismissal).

#### *Sentence*

¶ 38 Camacho posits that the Commonwealth Code does not include a mandatory minimum eight-year sentence, and that the trial court’s sentence should be set aside under 6 CMC § 4102(d) due to Camacho’s age, physical handicap, and lack of criminal history. A sentence will not be disturbed on appeal absent a clear indication that the trial court abused its discretion. *Commonwealth v. Camacho*, 2002 MP 6 ¶ 135 (citing *Ramangmau*, 1996 MP 17 ¶ 2).

¶ 39 The Commonwealth Code provides that “[s]exual abuse of a minor in the first degree is punishable by imprisonment for not more than 30 years, a fine of not more than \$50,000, or both, and the mandatory sentencing provisions of 6 CMC § 4102.” 6 CMC § 1306(b). Section 4102(d) reads, in pertinent part, that:

[A]ny person convicted of . . . sexual abuse of a minor in the first degree . . . shall be sentenced to serve a mandatory term of imprisonment of no less than . . . eight years if the person convicted has no record of prior felony conviction, which sentence *may not* be suspended *unless* the court determines that unique circumstances exist in the light of which imprisonment of the convicted person is inhumane, cruel or otherwise extremely detrimental to the interest of justice[.]

6 CMC § 4102(d) (emphasis added).

¶ 40 When we examine 6 CMC § 4102(d), we find that the use of the term “shall” is mandatory and has the effect of creating a duty. *Aquino v. Tinian Cockfighting Bd.*, 3 NMI 284, 292 (1992). “The word ‘shall’ is unambiguous and means ‘must.’” *N. Marianas Coll. v. Civil Serv. Comm’n II*, 2007 MP 8 ¶ 9 (citing *Aquino*, 3 NMI at 292). “The term ‘may,’ which connotes a permissive rather than a mandatory provision, is not used, nor is the term ‘should.’” *Id.* (citation omitted). Thus, when Section 4102(d) states that any person convicted of sexual abuse of a minor in the first degree “shall be sentenced to serve a mandatory term of imprisonment” of no less than eight years, we interpret the provision to mean that Camacho must serve a mandatory term of at least eight years, none of which may be suspended unless the trial court determines that imprisonment is inhumane, cruel or otherwise extremely detrimental to the interest of justice. However, if the trial court imposes a sentence of more than eight years, there

is no language requiring it to reduce or suspend a sentence due to a determination of inhumane, cruel, or otherwise extremely detrimental circumstances. Rather, the trial court, in its discretion, may choose to do so.

¶ 41 Irrespective of the trial court’s obligations under Section 4102(d), Camacho’s failure to submit a trial transcript as part of his excerpts of record again plagues his appeal. The trial court sentenced Camacho to thirty-years incarceration, all suspended except fifteen years, for each count of sexual abuse of a minor.<sup>9</sup> Camacho’s appellate briefs insinuate that the trial court’s sentence violated Section 4102(d) due to “his criminal history, his physical handicap, and his age.” However, without a trial transcript, there are no facts in the record indicating that Camacho’s sentence was “inhumane, cruel, or otherwise extremely detrimental to the interest of justice.” 6 CMC § 4102(d). Although the record indicates Camacho is fifty-eight years old, it is void of any facts related to Camacho’s criminal history or alleged physical handicap. However, even if we accept Camacho’s claims as true, we fail to see how he is enduring “inhumane, cruel, or otherwise extremely detrimental” circumstances based solely on the fact that he is fifty-eight years old, has an alleged physical handicap, and an allegedly clean criminal history outside of his conviction for sexual abuse of a minor. Therefore, the trial court did not err in imposing its sentence.<sup>10</sup>

### III

¶ 42 For the foregoing reasons, we find that Camacho’s failure to submit a trial transcript as part of his excerpts of record both undermines his claims and hinders this Court’s ability to review the evidence proffered at trial. Therefore, we will not disturb the trial court’s findings as to the sufficiency of the evidence, the admittance of the handwritten notations on the desk calendar, or its denial of Camacho’s motion for acquittal. Furthermore, we hold that the trial court did not err in imposing Camacho’s prison sentence, as it was not inhumane, cruel, or detrimental to the interest of justice. Accordingly, Camacho’s conviction and sentence is **AFFIRMED**.

SO ORDERED this 3rd day of FEBRUARY 2009.

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<sup>9</sup> The trial court ordered Camacho to serve his sentences consecutively.

<sup>10</sup> Finally, Camacho claims that the jury’s verdict should be reversed due to cumulative error. *See, e.g., Commonwealth v. Camacho*, 2002 MP 6 ¶ 120 (stating that “[i]n some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant”). Based on the foregoing analysis, we find no cumulative error to reverse Camacho’s conviction.

/s/  
MIGUEL S. DEMAPAN  
Chief Justice

/s/  
ALEXANDRO C. CASTRO  
Associate Justice

/s/  
JOHN A. MANGLONA  
Associate Justice