

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

MICHAEL JACKSON,
Defendant-Appellant.

Supreme Court No. 2013-SCC-0027-CRM

Superior Court No. 10-0197

OPINION

Cite as: 2015 MP 16

Decided December 30, 2015

Michael Sato, Assistant Public Defender, Office of the Public Defender, and Mun Su Park, Saipan, MP, for Defendant-Appellant.

James B. McAllister, Assistant Attorney General, and Clayton Graef, Assistant Attorney General, Saipan, MP, for Respondent-Appellee.

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

CASTRO, C.J.:

¶ 1 Defendant-Appellant Michael Jackson (“Jackson”) appeals his criminal convictions. Jackson asserts the trial court erred by (1) reading the substantive jury instructions prior to the evidentiary phase of the trial, (2) allowing the victim to testify via closed-circuit television, (3) denying his request to order a pre-sentence investigation report, (4) and imposing maximum sentences for all counts despite mitigating factors. For the reasons discussed below, we REVERSE Jackson’s convictions and REMAND for a new trial.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Jackson was charged with one count of Kidnapping, one count of Sexual Assault in the First Degree, and one count of Assault. At the beginning of the trial, the court gave substantive jury instructions for Kidnapping and Sexual Assault in the First Degree before opening statements, to which Jackson’s counsel objected. At that time, the court also gave the jurors a packet of instructions to take with them into the jury room. During trial, the minor victim, who was fifteen years old at the time of the incident but seventeen years old during trial, testified in a separate courtroom away from the jury and public.¹ The minor victim remained in the courtroom with the judge, Jackson, and counsels. At the close of evidence, the court did not repeat the instructions given at the beginning of trial. Instead, it provided supplemental instructions on the lesser-included offense charge and explained to the jury that it should read that charge in conjunction with the preliminary instructions.

¶ 3 Following trial, the jury convicted Jackson of Kidnapping and Sexual Assault in the First Degree, and the court found him guilty of Assault. Jackson then requested the trial court to order a presentence investigation report. The trial court denied the request because it felt the case was “straightforward.”

¶ 4 At the sentencing hearing, Jackson asked for a twenty-year sentence. The court sentenced him to the maximum for all counts, totaling forty years and six months, to be served consecutively, without the possibility of parole, probation, early release, work or weekend release, or other similar programs.

¶ 5 Jackson now appeals.

II. JURISDICTION

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

III. STANDARD OF REVIEW

¹ The minor victim testified in Courtroom 220, with the judge, prosecutors, defense counsel, and Jackson present. The Jury and public were in Courtroom 217.

¶ 7 Jackson raises several issues on appeal, but we only address two dispositive issues: (1) whether the trial court erred by allowing the victim to testify via closed-circuit television and (2) whether the trial court erred in giving preliminary substantive jury instructions without repeating them after the close of evidence. The trial court’s decision to allow testimony via closed-circuit television is reviewed for abuse of discretion. *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 12. The jury instruction issue involves two separate standards of review. We review the trial court’s decision whether to reiterate jury instructions at the close of proof for abuse of discretion. *See Commonwealth v. Sanchez*, 2014 MP 3 ¶ 11 (noting that courts have “substantial latitude in tailoring jury instructions”). We review the timing of the trial court’s substantive jury instructions de novo because it involves our interpretation of the Rules of Criminal Procedure. *Commonwealth v. Santos*, 2014 MP 20 ¶ 7. We leave undecided the remaining issues because the jury instruction error yields the same relief the others would garner if granted.

IV. DISCUSSION

A. Closed-Circuit Television

¶ 8 Jackson contends the trial court abused its discretion by allowing the victim, who was seventeen at the time of trial, to testify via closed-circuit television pursuant to 6 CMC § 1318. He argues that only witnesses under the age of sixteen at the time of trial may testify. Further, he asserts the court’s misapplication of § 1318 violated his Sixth Amendment right to confrontation.²

¶ 9 A court abuses its discretion when it “base[s] its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Commonwealth v. Campbell*, 4 NMI 11, 16 (1993) (quoting *Lucky Dev. Co., Ltd. v. Tokai, U.S.A., Inc.*, 3 NMI 79, 84 (1992)). When interpreting statutes, we give statutory provisions their plain meaning if it is “clear and unambiguous.” *Aurelio v. Camacho*, 2012 MP 21 ¶ 15 (quoting *Calvo v. N. Mariana Islands Scholarship Advisory Bd.*, 2009 MP 2 ¶ 21). “A statute is considered ambiguous when it is capable of more than one meaning.” *Commonwealth v. Taisacan*, 1999 MP 8 ¶ 6.

¶ 10 Here, the language in § 1318 is clear and unambiguous. Section 1318 provides, in relevant part:

In a criminal proceeding under this title involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court (1) may appoint a guardian ad litem for the child; (2) on its own motion or on the motion of the party presenting the witness or on the motion of the guardian ad litem of the child, may order that testimony of the child be taken by closed circuit television or through one-way

² On the prosecution’s motion, the trial court determined that § 1318 applied to the victim considering her age at the time of the offense and her inability to testify effectively at trial.

mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

The use of the word "child" throughout this statute, entitled "Testimony of Children in Criminal Proceedings," suggests that the Legislature sought to protect witnesses who were still children at the time of the proceeding.³ The provision clearly defines "child" as a person under the age of sixteen. Based on a plain reading of the statute, it is clear and unambiguous that § 1318 only applies to child witnesses under the age of sixteen at the time of trial.

¶ 11 Jackson further argues that his right to confrontation was violated when the court incorrectly applied § 1318. Section 1318 allows the use of closed-circuit television for child witnesses who find it difficult to communicate effectively under normal courtroom procedures.

If the court authorized use of closed circuit televised testimony under this subsection, (1) each of the following may be in the room with the child when the child testifies: (A) the prosecuting attorney; (B) the attorney for the defendant; and (C) operators of the closed-circuit television equipment; (2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

6 CMC § 1318(c).

¶ 12 Because the victim was having trouble communicating effectively throughout her testimony, the court allowed her to testify in a separate courtroom, away from the jury and general public, with only the judge, Jackson, and counsels present. "[T]he right guaranteed by the Confrontation Clause . . . 'insures that the witness will give his statements under oath[,] . . . forces the witness to submit to cross-examination, . . . [and] permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement . . .'" *Maryland v. Craig*, 497 U.S. 836, 845–46 (1990) (quoting *California v. Green*, 399 U.S. 149, 158 (1970)). Here, the victim testified under oath; Jackson had the opportunity to cross-examine the victim; and the judge, jury, and Jackson were able to view the victim's demeanor while she testified. Therefore, although we find that the trial court erred in its application of § 1318, we find no violation of Jackson's Sixth Amendment right to confrontation.

³ Several years can pass between the commission of a sexual offense and the criminal proceedings. If the relevant inquiry was the witness's age at the time of the offense, then the repeated statutory references to "the child" would be inappropriate. For instance, if five years elapse between a sexual assault and a criminal proceeding, and the victim was fifteen years old at the time of the offense, then the victim would be twenty years old at the criminal proceeding. Reference to the victim as a child would be inaccurate.

B. Jury Instructions

¶ 13 Jackson also argues the trial court violated Rule of Criminal Procedure 30 (“Rule 30”) by giving substantive jury instructions at the beginning of trial and failing to repeat them at the close of evidence. He further asserts the jury was unfairly influenced by the early introduction of substantive jury instructions and, as a result, did not give equal weight to the supplemental instructions of lesser-included offenses.

¶ 14 It is the trial court’s duty to give all necessary instructions to the jury. See *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 40 (“The law is quite clear that the trial court has a duty to instruct the jury, and such instructions may not be incomplete, but should ‘instruct in all essential questions of law whether requested or not.’” (quoting *Commonwealth v. Esteves*, 3 NMI 447, 454 (1993))). Under Rule 30, courts have broad discretion of when to instruct the jury.⁴ “[A] trial judge, as governor of the trial, enjoys wide discretion in the matter of charging the jury.” *Arizona v. Johnson*, 351 F.3d 988, 994 (9th Cir. 2003) (internal quotation marks and citations omitted).⁵ Courts may give preliminary substantive instructions to inform the jury of the basic legal principles. See *United States v. Stein*, 429 F. Supp. 2d 648, 650 (S.D.N.Y. 2006) (permitting the use of preliminary instructions without adverse comment). Preliminary instructions are given to prepare the jury for and “guide them through trial.” *United States v. Ruppel*, 666 F.2d 261, 274 (5th Cir. 1982).

¶ 15 Although preliminary jury instructions are helpful in educating the jury of its duty and the basic principles of law, they are not to be substituted for a comprehensive final set of instructions. *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004) (citations omitted). “When both sides have rested and have completed their arguments to the jury, the . . . judge must repeat the initial instructions as part of the court’s charge” *Ruppel*, 666 F.2d at 274. We briefly addressed the issue of reiterating jury instructions at the end of a case in *Santos*. Because Santos waived this argument by failing to present it in his opening brief, he did not provide a basis for reversal in that instance. *Santos*, 2014 MP 20 ¶ 10. There, we concluded the trial court erred by failing to reiterate substantive jury instructions at the end of trial. *Id.* We agreed with the court in *United States v. Stein* that “[Federal Rule of Criminal Procedure 30] requires definitive instructions after the close of proof.” *Santos*, 2014 MP 20 ¶ 10 (quoting *Stein*, 429 F. Supp. 2d at 650).

¶ 16 In reviewing jury instructions, we must “consider whether the instructions as a whole were misleading or inadequate to guide the jury’s determination.” *Commonwealth v. Demapan*, 2008 MP 16 ¶ 12 (quoting

⁴ Rule 30 states in part “[t]he court may instruct the jury before or after the arguments are completed or at both times.” NMI R. CRIM. P. 30.

⁵ When interpreting NMI Rules of Criminal Procedure, interpretations of similar Federal Rules of Criminal Procedure are persuasive. *Commonwealth v. Laniyo*, 2012 MP 1 ¶ 6.

Commonwealth v. Esteves, 3 NMI at 454). After examining the record as a whole, we find that the instructions in this case accurately stated the principles of law and responsibilities of the jury. However, we find that the trial court erred in not repeating substantive jury instructions at the close of evidence. In our view, Rule 30 requires the trial court to give a comprehensive set of jury instructions at the end of the case, even at the cost of repeating earlier instructions. Closing instructions allow the jury to focus on the law, the evidence, and its responsibilities in order to arrive at a proper determination. Because of the importance of ensuring the jury's understanding of the law and the requirements of Rule 30, we conclude that the failure to reiterate substantive jury instructions at the end of the trial is reversible error.

¶ 17 Courts have required the repetition of substantive jury instructions at the end of the case. For example, in *State v. Johnson*, 842 P.2d 1287, 1289 (Ariz. 1992), the court held that failure to re-read preliminary instructions at the close of evidence was error. The *Johnson* court recognized the need to rectify the trial court's practice of not repeating jury instructions at the close of evidence. *Id.* “[J]udges *must* instruct juries on basic legal principles . . . following the evidence and before the commencement of deliberations . . . even though a jury has been instructed prior to the presentation of evidence . . .” *Id.*; *see also State v. Nelson*, 587 N.W.2d 439, 444 (S.D. 1998) (“Reading a complete set of instructions after the evidence ensures that the jury hears and considers all the applicable law before deliberations.”).

¶ 18 In *Nelson*, the trial court gave substantive preliminary instructions, provided the jury with a copy of written instructions, and failed to reiterate substantive instructions at the close of evidence. *Id.* at 442. The *Nelson* court held that failing to give instructions at the close of the evidence was error. *Id.* at 447. Like *Nelson*, the court in the instant case did not repeat the substantive jury instructions given at the beginning of trial. Instead, the jury was given a packet of instructions to take with them into the jury room. Instructing the jury is one of the most fundamental duties of the court, and error is not obviated by distributing written instructions. *Johnson*, 842 P.2d at 1289. Otherwise, we would be left to wonder if each juror actually read the instructions before deliberation. Here, the court informed the jurors that further detailed instructions will be given at the end that will “control [their] deliberations.” Tr. 26-27. However, at the close of proof, it did not reinstruct on the charges, presumption of innocence, or reasonable doubt.

Common sense and experience tell us that jurors give special credence to the pronouncements of judges. Preliminary instructions prepare a jury for trial and constitute an orientation by which the jury is made to understand its duties and responsibilities. Instructions given just before the jury deliberates will likely make more of an impression than those given prior to the presentation of evidence. A few extra minutes to reinstruct on basic legal principles is the modest cost of this additional

safeguard to the rights of an accused.

Johnson, 842 P.2d at 1289. (internal citations omitted). “[W]e have an obligation to ensure that the judicial process is properly accomplished.” *Id.* We should not ignore these procedures “out of personal preference or convenience, or for any other unjustifiable cause.” *Id.* We find *Nelson* and *Johnson* persuasive, and hold that substantive jury instructions should be given at the close of proof, regardless of whether it was given at the beginning of the case.

¶ 19 Jackson further asserts that he was denied a fair trial because the instruction on the lesser-included offense was not given with the other substantive jury instructions. He contends that the jury could not have given the lesser-included offense instruction the same weight as the preliminary substantive instructions on the greater offenses. We do not address this issue as it was not sufficiently argued in the briefs or at oral argument.

IV. CONCLUSION

¶ 20 For the reasons stated above, we REVERSE Jackson’s convictions and REMAND for a new trial.

SO ORDERED this 30th day of December, 2015.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice