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.***

**CARMELITA M. GUIAO,**
*Defendant-Appellant.*

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**Supreme Court No. 2013-SCC-0003-CRM**

Superior Court No. 12-0055

**OPINION**

**Cite as: 2016 MP 15**

Decided December 19, 2016

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James M. Zarones, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

Vincent T. Salas, Saipan, MP, for Defendant-Appellant.

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BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; JOSEPH N. CAMACHO, Justice Pro Tem.

CASTRO, CJ.:

¶ 1 Defendant-Appellant Carmelita M. Guiao ("Guiao") appeals her conviction and sentence for Assault with a Dangerous Weapon. Guiao argues the trial court erred by denying her motion for mistrial and improperly admitting testimony of a non-expert witness. For the reasons stated below, we AFFIRM the conviction and sentence.

## I. FACTS AND PROCEDURAL HISTORY

¶ 2 Guiao was charged and found guilty of Assault with a Dangerous Weapon in violation of 6 CMC § 1204(a). Facts underlying the conviction involve Guiao striking her live-in partner John Saimon ("Saimon") with a vehicle, after a brief altercation. Henry Litulumar was an eyewitness who offered immediate assistance to Saimon at the scene of the incident.

¶ 3 At trial, Adrian T. Mendiola ("Mendiola"), traffic investigator for the Department of Public Safety, testified for the Commonwealth of the Northern Mariana Islands ("Commonwealth"). Over defense counsel's objection, the court allowed Mendiola to testify, without qualifying him as an expert, about the significance of the skid and yaw marks observed at the crime scene.

¶ 4 At the close of evidence on the first day of trial, the court issued an order directing Saimon, who was in the process of testifying, to not speak with anyone about the case until he completed his direct and cross-examination.[1] Despite the order, that evening Assistant Attorneys General Shelli Neal ("Ms. Neal") and James McAllister ("Mr. McAllister") invited Saimon to their office. He was shown some photographs[2] and was informed that a police officer testified that Guiao stated she thought she ran over a dog.

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[1] The court first instructed the jurors:

> I want to remind you of the instructions I gave you earlier, until the trial is over you are not to discuss this case with anyone including your fellow Juror's [sic], members of your family, people involved in the trial or anyone else. Nor are you allowed to permit others to discuss the case with you. If anyone approaches you and tries to talk to you about this case please let me know about it immediately. Do not listen or read any news report of the trial. Finally, you are reminded to keep an open mind until all the evidence have been presented and received by you.

Tr. 126. Then the judge instructed Saimon: "Mr. Saimon, uh I'm going to excuse you for the day uh that same instruction goes to you, don't talk to anybo - - to anyone about this case until uh you are done with the direct and cross examination of your uh - - of you, okay." Tr.126.

[2] Guiao does not specify which pictures were shown to Saimon.

¶ 5 The following day, upon discovering that Saimon had met with Ms. Neal and Mr. McAllister, defense counsel made motions in the form of an oral request to dismiss the case with prejudice and for a mistrial, arguing that the violation of the court's order jeopardized Guiao's right to a fair trial. The court denied both motions, on the grounds that merely violating a court order does not warrant a mistrial, but it is the substance of the communication that occurred.

¶ 6 Rather than granting either of the motions, the court allowed the defense counsel to conduct voir dire of Saimon and then cross-examine him regarding the interview with the assistant attorneys in the presence of the jury.[3] During cross-examination, Saimon testified about his meeting with Ms. Neal and Mr. McAllister. When asked whether the discussion had any impact on his testimony, Saimon answered that it had not.[4]

¶ 7 The jury returned a guilty verdict against Guiao. She was sentenced to ten years in prison.

¶ 8 Guiao timely appealed and filed her opening brief. Because the brief was not in substantial conformity with NMI Supreme Court Rules 28(a)(9)(A) and 28(a)(9)(B), we ordered Guiao to file a supplemental brief to remedy the defect. Guiao subsequently filed her supplemental brief.

## II. JURISDICTION

¶ 9 We have jurisdiction over Superior Court final judgments and orders. NMI CONST. art. IV, § 3.

## III. STANDARD OF REVIEW

¶ 10 Guiao argues the court erred by denying her motion for mistrial and improperly admitting Mendiola's testimony. We review denial of a motion for mistrial for abuse of discretion. *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49. We review the trial court's ruling on the admission of evidence for abuse of discretion. *Commonwealth v. Camacho*, 2009 MP 1 ¶ 26. "An error in such decision [on the admission of evidence] is to be disregarded if it does not affect substantial rights of the defendant." *Commonwealth v. Bergonia*, 3 NMI 22, 28 (1992).

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[3] The court instructed counsel for both parties to not disclose the violation of the court order to the jurors, but during cross-examination of Saimon, the violation was disclosed.

[4] However, during voir dire, Saimon stated that when he heard that Guiao thought she ran over a dog, it made him want to change his testimony because he felt upset and insulted.

## IV. DISCUSSION

¶ 11 Before we can address the merits of an appeal, we must first be presented with those merits to examine. "[A] reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *State v. Thomas*, 974 P.2d 269, 271 (Utah 1999) (internal quotation marks and citations omitted). Ordinarily, we do not give consideration to issues not adequately briefed on appeal. *Commonwealth v. Calvo*, 2014 MP 10 ¶ 7.[5] We have reiterated this rule, time and time again, which is expressed in NMI Supreme Court Rules 28(a)(9)(A) and 28(b). *E.g.*, *Calvo*, 2014 MP 10 ¶ 7; *In re Estate of Camacho*, 2012 MP 8 ¶ 13 n.7; *Guerrero v. Dep't of Pub.Lands*, 2011 MP 3 ¶ 24.

¶ 12 Rules 28(a)(9)(A) and 28(b) require that parties' briefs contain legal arguments and analysis "with citations to the authorities and parts of the record on which the appellant relies." NMI SUP. CT. R. 28(a)(9)(A). The requirement underscores the nature of our adversarial system, that as reviewing courts we are not "self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them." *Calvo*, 2014 MP 10 ¶ 7 (internal quotation marks and citations omitted). This imperative "is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one." *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring). Moreover, it is improvident to make rulings based on "undeveloped or poorly developed issues." *Calvo*, 2014 MP 10 ¶ 7.

¶ 13 An issue is insufficiently developed if it is raised in a conclusory manner, *Matsunaga v. Cushnie*, 2012 MP 18 ¶ 13, or "when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998). Asserting a contention, citing a case, then offering a conclusion, without offering applicable analysis, is deficient. *Calvo*, 2014 MP 10 ¶ 8; *see Commonwealth v. Minto*, 2011 MP 14 ¶ 46 n.8. A party must take the step to apply the facts of the case to the authorities offered in a non-conclusory manner. *Calvo*, 2014 MP 10 ¶ 8.

¶ 14 Here, Guiao's briefs are devoid of legal analysis and authority. The initial opening brief only cited portions of the trial transcript as authority to support her arguments. For example, in asserting that the violation of the trial court's order harmed her case, Guiao cited trial transcript page 126. In arguing that Mendiola's testimony was inadmissible, Guiao cited no authority.

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[5] In rare cases, we may consider issues, though inadequately briefed, if such consideration would have precedential value. *See In re Estate of Camcho*, 2012 MP 8 ¶ 13 n.7.

¶ 15 Because the brief was substantially deficient in legal authority and analysis, we gave Guiao an opportunity to remedy the defect through a supplemental brief. In her supplemental brief, Guiao cited *Capozzi v. United States*, NO. 98-10087-PBS, 2014 U.S. Dist. LEXIS 52731 (D. Mass. Apr. 16, 2014), and *Jenkins v. State*, 825 A.2d 1008 (Md. 2003), among others, arguing that the case should have been declared a mistrial because the assistant attorney general's violation of the court's order irretrievably tainted the primary witness for the prosecution.[6]

¶ 16 We find, however, that the series of cases cited by Guiao has no relevance to the appeal. *Capozzi* involves a writ of error coram nobis, and the issue in *Jenkins* involves juror misconduct. Neither of these issues are before us. Nor does Guiao explain why the cases are relevant or specify which portions of the cited cases are applicable to her arguments. Thus, even if the asserted cases had bearing on Guiao's appeal, we would have to act as self-directed boards of legal inquiry and research.

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[6] We assume, without deciding, that the court's order was a sequestration order under the NMI Rule of Evidence 615. Rule 615, in relevant part, states: "At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own." NMI Rule of Evidence 615 is substantially similar to Federal Rule of Evidence 615; thus, we find federal cases applicable. *See Ishimatsu v. Royal Crown Ins. Corp*., 2010 MP 8 ¶ 60 ("[W]hen our rules are patterned after the federal rules it is appropriate to look to federal interpretation for guidance."). Express language of Rule 615 does not prohibit attorneys from speaking with witnesses during trial. *E.g., United States v. Calderine-Rodriguez*, 244 F.3d 977, 984 (8th Cir. 2001); *United States v. Rhynes*, 218 F.3d 310, 316–17 (4th Cir. 2000). "Nor is it inherently unethical for a lawyer to speak to a witness once the witness has begun to testify." *Calderine-Rodriguez*, 244 F.3d at 984. However, the court, in the exercise of its discretion and inherent powers to control the court proceedings, may order other restrictions or conditions that go beyond the bounds of Rule 615, *e.g., Geders v. United States*, 425 U.S. 80, 87 (1976); *United States v. Magana*, 127 F.3d 1, 5 (1st Cir. 1997), so long as that exercise is reasonable and lawful. *See Dietz v. Bouldin*, ___ U.S. ___, 136 S. Ct. 1885, 1892 (2016) (stating that district courts have inherent power to control the proceedings before them but the exercise of that power must be reasonable and lawful). Such restrictions should be explicit, timely, and narrowly tailored "to achieve its purpose without hindering counsel in performance of their duties to clients and the courts." *Rhynes*, 218 F.3d at 321 n.13.

¶ 17 What legal analysis Guiao does present is merely cursory in nature. Her arguments lack meaningful assessment of her contentions. For example, while Guiao argues the violation of the order irretrievably tainted the prosecution witness, she fails to provide the relevant law as applied to the facts of her case:

> The Court should have granted a dismissal. *United States v. Celestine*, 2008 U.S. Dist. LEXIS 51925 (W.D. La. July 7, 2008). The matter should have been vacated because the primary witness for the prosecution, is irretrievably tainted. *Jenkins v. State*, 375 Md. 284, 825 A.2d 1008, 2003 Md. LEXIS 320 (Md. 2003); *Dorsey v. State*, 276 Md. 638, 350 A.2d 665, 1976 Md. LEXIS 1109 (Md. 1976). What the trial court did, in continuing the trial, can never be remedied. *Dillard v. State*, 415 Md. 445, 3 A.3d 403, 2010 Md. LEXIS 342 (Md. 2010); *State v. Chin*, 135 Haw. 437, 353 P.3d 979, 2015 Haw. LEXIS 139 (Haw. 2015).

Appellant's Suppl. Br. 1.

¶ 18 Again, in arguing that Mendiola's testimony was inadmissible, Guiao makes conclusory assertions without briefing the legality of her action:

> [T]he trial court erred in allowing the government's witness who was not qualified as an expert witness to testify on matters reserved for experts. Ostensibly, Officer Mendiola should have been qualified as an expert witness based on his credentials. *See Roberto v. De Leon Guerrero*, 4 N. Mar. I. 295, 1995 N. Mar. I. LEXIS 8 (N. Mar. I. 1995) [sic] The prosecution's evidence should have come from an expert. *Commonwealth v. Guerrero*, 2013 MP 16, 2013 N. Mar. I. LEXIS 16, 2013 DL 6662725 (N. Mar. I. Dec. 17, 2013) [sic] The prosecution never sought to have Officer Mendiola qualified as an expert and he did not testify as such. The trial court erred by allowing Officer Mendiola to testify as a lay witness under NMI R.Evid. [sic] 701. *Tutton v. Duffy*, 2013 U.S. Dist. LEXIS 98568, 2013 WL 3733587 (E.D. Cal. July 15, 2013); Commonwealth v. Perez, 2006 MP 24, 2006 N. Mar. I. LEXIS 24, 2006 WL 3742679 (N. Mar. I. Dec. 14, 2006).

Appellant's Suppl. Br. 2.

¶ 19 The Court does not function as an advocate of any party, but as arbiter of the law. *See Calvo*, 2014 MP 10 ¶ 7. We will, at times, supplement or extend legal arguments as needed with research, but we will not "construct an appellate case . . . out of whole cloth." *State v. Taylor*, 491 A.2d 1034, 1035 (Vt. 1985). In view of our determination that Guiao failed to cite pertinent authority or provide legal analysis to her arguments, we will not consider them upon appeal.

## IV. CONCLUSION

¶ 20 For the foregoing reasons, Guiao's conviction and sentence are AFFIRMED.

SO ORDERED this 19th day of December, 2016.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
JOHN A. MANGLONA
Associate Justice

/s/
JOSEPH N. CAMACHO
Justice Pro Tem