

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff/Appellee,

v.

LELAND T. MILLIONDAGA,
Defendant/Appellant.

Supreme Court Appeal No. CR-06-0007-GA
Superior Court Case No. 05-0010B

OPINION

Cite as: *Commonwealth v. Milliondaga*, 2007 MP 6

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Saipan, Northern Mariana Islands

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FOR PUBLICATION

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

CASTRO, Associate Justice:

¶ 1 Appellant Leland T. Milliondaga (“Milliondaga”) appeals his conviction of two separate counts of assault and battery. He maintains that his conviction for two counts of assault and battery violates his right against double jeopardy since both counts involve the same victim with continuous physical contact. Because the testimony at trial shows that there was continuous physical contact against the same victim with no intervening period of time, there is nothing in the record to support multiple convictions for assault and battery. On that basis, we AFFIRM IN PART, REVERSE IN PART, and REMAND to the trial court for re-sentencing.

I.

¶ 2 On January 15, 2004, after an argument regarding another woman, Milliondaga grabbed his wife’s shoulders and shoved her, then dragged her into bed and choked her. The trial court convicted Milliondaga on two separate counts of assault and battery in violation of 6 CMC § 1202(a). The trial court found that the first assault and battery occurred when Milliondaga pushed and shoved his wife. The second assault and battery occurred when Milliondaga choked his wife in bed.

¶ 3 On appeal, instead of filing an Appellee’s Brief, the Commonwealth conceded that the testimony presented at trial did not support multiple convictions of assault and battery as the testimony showed that there was continuous physical contact with no intervening period of time against the same victim.¹ The Commonwealth submits that

¹ See Appellee’s Response to Clerk’s Notice Dated January 29, 2007, and Confession of Error filed February 2, 2007.

the convictions on two separate counts should merge, and the record should reflect that Milliondaga was convicted of only one count of assault and battery.

II.

¶ 4 “No person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution.” N.M.I. Const. art. I, § 4(e). Our double jeopardy clause is patterned after the Double Jeopardy Clause of the United States Constitution,² which is applicable to the Commonwealth. *Commonwealth v. Oden*, 3 N.M.I. 186, 206 (1992) (citing Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, § 501(a)). We thus resort to federal case law which interprets the United States Constitution’s Double Jeopardy Clause to ensure that our interpretation of the CNMI Constitution’s double jeopardy clause provides at least the same protection granted defendants under the federal Double Jeopardy Clause. *Oden*, 3 N.M.I. at 206.

¶ 5 The federal Double Jeopardy Clause is construed to protect a person against: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. *Id.* (citing *Illinois v. Vitale*, 447 U.S. 410, 415 (1980)). In the instant case, we are concerned with multiple punishments for the same incident of assault and battery.

¶ 6 In determining whether a defendant has been punished twice for the same offense, the test from *Blockburger v. United States*, 284 U.S. 299, 304 (1932), is used. Under *Blockburger*, “[i]f ‘the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or

² The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person “shall be subject for the same offence to be twice put in jeopardy of life or limb.”

only one, is whether each provision requires proof of a fact which the other does not.”
Rutledge v. United States, 517 U.S. 292, 297 (1996) (quoting *Blockburger*, 284 U.S. at 304). Two provisions are not the same offense if each contains an element not included in the other. *Hudson v. United States*, 522 U.S. 93, 107 (1997). *Blockburger* “focuses on the proof necessary to prove the statutory elements of each offense, rather than on the actual evidence to be presented at trial.” *Vitale*, 447 U.S. at 416. In addition to examining the statutory elements of each offense, proper analysis of a double jeopardy claim requires the court to examine the specific charges against the defendant. *See Garrett v. United States*, 471 U.S. 773, 786 (1985) (stating that a successive prosecution issue requires a court to examine both the statute at issue and the charges which form the basis of the government’s prosecution).

¶ 7 For instance, in *Oden*, we held that defendant’s conviction for sexual abuse of a child and criminal oral copulation did not violate the double jeopardy clause’s prohibition of multiple punishments for the same offense. 3 N.M.I. at 207-08. Evidence showed that defendant not only performed oral copulation with the child victim, but that he engaged in sexual acts with his girlfriend in the presence of the child victim. *Id.* Since each offense was based on separate acts, defendant’s conviction did not constitute double jeopardy. *Id.* at 208.

¶ 8 On the other hand, in *United States v. Chipps*, 410 F.3d 438, 449 (8th Cir. 2005), defendant was convicted of two counts of simple assault. The trial court imposed six-month sentences for each simple assault conviction. *Id.* at 447. On appeal, defendant contended that both counts related to a single act such that punishment for both was double punishment for one crime in violation of his right against double jeopardy. *Id.*

The Eighth Circuit found that the simple assault conviction derived from an assault which occurred while inside defendant's house while, the second simple assault conviction related to assaultive conduct which occurred after the victim stumbled out the front door of defendant's house following defendant's initial onslaught. *Id.* As far as the court could tell, no more than a few seconds elapsed between both instances of assaultive conduct. *Id.* The Eighth Circuit held that, "[g]iven the uninterrupted nature of the attack on [the victim], we discern a single impulse underlying [defendant's] assaultive conduct. Thus, the jury could have legally convicted [defendant] of only one of the two simple assault charges." *Id.* at 449. The court concluded that because the sentences for the simple assault counts were concurrent, there was no need for re-sentencing, and the court directed the trial court to vacate the second of the two simple assault convictions. *Id.*

¶ 9 Milliondaga's case is similar to *Chippis*. The evidence shows that Milliondaga pushed his wife continuously from the living room into the bedroom, where he then pushed her onto the bed and choked her. Given the continuing nature of the assault, the same victim, at the same time and place, we discern that Milliondaga's actions derived from a single impulse. Milliondaga should not have been subjected to punishment on both counts of assault and battery when the evidence presented showed that both counts related to an uninterrupted attack on the victim.

III.

¶ 10 We hold that the testimony at trial only establishes one count of assault and battery, and the Commonwealth concedes as much. The trial court erred in finding Milliondaga guilty of two counts of assault and battery in violation of his constitutional right against double jeopardy. We, therefore, AFFIRM the conviction on the first count

of assault and battery and REVERSE the conviction on the second count of assault and battery. We further REMAND this matter to the trial court to enter the appropriate judgment of conviction and to re-sentence Milliondaga.³

DATED this 20th day of MARCH, 2007.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice

³ Milliondaga was sentenced to one year of incarceration, which was all suspended except for ten days, one year supervised probation, and a fine of \$300.