

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

ALFREDO E. REYES,
Defendant-Appellant.

Supreme Court No. 2014-SCC-0006-CRM

Superior Court No. 13-0180C

OPINION

Cite as: 2016 MP 3

Decided April 8, 2016

Vincent J. Seman, Saipan, MP, for Defendant-Appellant.

Barbara P. Cepeda and Betsy Weintraub, Assistant Attorneys General, Office of
the Attorney General, Saipan, MP, for Plaintiff-Appellee.

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

INOS, J.:

¶ 1 Defendant-Appellant Alfredo E. Reyes (“Reyes”) appeals his conviction and sentence for Sexual Abuse of a Minor in the First Degree and Assault and Battery. He argues the trial court erred by failing to read substantive jury instructions following the close of evidence and by denying his request for a presentence investigation report (“PSI”). For the following reasons, we AFFIRM Reyes’s conviction but VACATE his sentence and REMAND for resentencing.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 The Commonwealth charged Reyes with fifteen criminal counts: three counts of Sexual Assault in the First Degree, three counts of Sexual Abuse of a Minor in the First Degree, three counts of Incest, three counts of Assault and Battery, and three counts of Child Abuse. These charges stemmed from three separate incidents involving Reyes and his daughter.

¶ 3 Before the Commonwealth presented its case-in-chief, the court instructed the jury, which included substantive jury instructions for the three counts of Sexual Assault in the First Degree and the three counts of Sexual Abuse of a Minor in the First Degree.

¶ 4 At trial, the victim testified that Reyes forced her to engage in sexual activity with him on three separate occasions. Each time, Reyes removed his clothes, directed her to undress, and forced himself upon her. The victim testified she felt pain in her private parts each time.

¶ 5 After the Commonwealth rested, the court granted Reyes’s motion for a judgment of acquittal and dismissed the three counts of Child Abuse because they merged into the Sexual Abuse of a Minor in the First Degree counts. After Reyes rested, the court granted his renewed motion for a judgment of acquittal and dismissed the three counts of Sexual Assault in the First Degree and the three counts of Incest under the merger doctrine. The only remaining jury counts were the three counts of Sexual Abuse of a Minor in the First Degree.

¶ 6 Before closing arguments, the court instructed the jury to remove three pages from the instruction packets that pertained to the dismissed jury counts, and it instructed the jury that they were “not [to] speculate about why the charges [were] no longer part of [the] trial” but were to “consider the evidence presented only as it relates to [the] remaining charge[s].” Tr. 420. Following closing arguments, the court again gave the above instruction and provided additional instructions to not draw inferences from Reyes’s decision not to testify and to disregard instructions removed from the packet. The court further explained the verdict forms and identified the three remaining jury counts of Sexual Abuse of a Minor in the First Degree. The court did not read the

substantive jury instructions at any time following the close of evidence, and Reyes did not request the court do so.

¶ 7 The jury found Reyes guilty on three counts of Sexual Abuse of a Minor in the First Degree and the court found him guilty on three counts of Assault and Battery. Reyes requested a PSI which the court denied, commenting that the case was straightforward. Subsequently, the court sentenced Reyes to thirty years imprisonment for each of the three counts of Sexual Abuse of a Minor in the First Degree and one year imprisonment for each of the three counts of Assault and Battery. All sentences ran concurrently, for a total of thirty years, and each sentence was imposed “without the possibility of probation, parole, early release, work release, weekend release or any other similar program.” *Commonwealth v. Reyes*, Crim. No. 13-0180 (NMI Super. Ct. Jan. 22, 2014) (Sentencing Order 2–3).

II. JURISDICTION

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

III. STANDARDS OF REVIEW

¶ 9 Reyes raises two issues on appeal. First, he argues his conviction should be reversed because the trial court failed to read substantive jury instructions following the close of evidence. Because Reyes failed to raise the issue at trial, we review for plain error. *Commonwealth v. Hocog*, 2015 MP 19 ¶ 24. Second, Reyes contends his sentence must be vacated because the trial court denied his request for a PSI. We review the denial of a request for a PSI for abuse of discretion. *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 9.

IV. DISCUSSION

A. Timing of Substantive Jury Instructions

¶ 10 Reyes first asserts the trial court erred by failing to reread substantive jury instructions following the close of evidence. He claims there was a substantial risk of jury confusion because three counts of Sexual Assault in the First Degree were dismissed during the trial; thus, the operative instructions at the end of trial were not identical to those that were read at the beginning.

¶ 11 Because Reyes failed to raise the jury instruction issue at trial, we review for plain error.¹ *Hocog*, 2015 MP 19 ¶ 24. We examine whether: “(1) there was

¹ At oral argument, citing our opinion in *Commonwealth v. Jackson*, 2015 MP 16 ¶ 18, Reyes asserted the trial court’s compliance with NMI Rule of Criminal Procedure 30 should be reviewed de novo. In *Jackson*, we reviewed the substantive jury instructions issue for an abuse of discretion. 2015 MP 16 ¶ 7. Because a court abuses its discretion by “bas[ing] its ruling on an erroneous view of the law,” *id.* ¶ 9 (quoting *Commonwealth v. Campbell*, 4 NMI 11, 16 (1993)), we were required to interpret Rule 30 to establish the correct view of the law. Thus, we reviewed Rule 30 de novo to determine whether it required substantive jury instructions be given following the close of evidence. *Id.* ¶ 7; see *Commonwealth v. Santos*, 2014 MP 20 ¶ 7 (issues

error; (2) the error was plain or obvious; [and] (3) the error affected the appellant's substantial rights.” *Commonwealth v. Hossain*, 2010 MP 21 ¶ 29 (internal quotation marks omitted) (citing *United States v. Olano*, 507 U.S. 725, 732–34 (1993)). We exercise our discretion to remedy a plain error “only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Commonwealth v. Salasiban*, 2014 MP 17 ¶ 10 (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)).

¶ 12 The trial court errs when it deviates “from a legal rule that has not been intentionally relinquished or abandoned by the appellant.” *Id.* ¶ 11 (citing *Olano*, 507 U.S. at 732–33). An “error is plain if it is not subject to reasonable dispute at the time” of review. *Id.* (citing *Puckett*, 556 U.S. at 135; *Commonwealth v. Quitano*, 2014 MP 5 ¶ 27).

¶ 13 Trial courts must give substantive jury instructions following the close of evidence. *Hocog*, 2015 MP 19 ¶ 26; *Commonwealth v. Jackson*, 2015 MP 16 ¶ 18. Courts can “give substantive [jury] instructions at the beginning of the case, but such instructions must be reiterated following the close of evidence.” *Hocog*, 2015 MP 19 ¶ 26 (citing *Jackson*, 2015 MP 16 ¶ 18). Here, like *Hocog* and *Jackson*, the trial court failed to reread substantive jury instructions at the close of evidence. Thus, the court erred and the error was plain.

¶ 14 “An error affects substantial rights ‘if there is a “reasonable probability” it affected the outcome of the proceeding.’” *Id.* ¶ 27 (quoting *Salasiban*, 2014 MP 17 ¶ 11). In *Hocog*, the appellant asserted his substantial rights were affected because the court’s failure to reiterate substantive jury instructions could have resulted in jury confusion. *Id.* We found the appellant’s argument speculative because he did not “explain why the jury would be more inclined to find him not guilty if the instructions had been read after the close of evidence.” *Id.* Likewise, *Reyes* asserts the failure to reiterate substantive instructions likely resulted in jury confusion.

¶ 15 *Reyes* distinguishes *Hocog* by noting that nine of the fifteen charges against him were dismissed, which could leave jurors confused as to which instructions to apply, particularly in light of the similarities between the various charges. However, he offers no argument regarding what the jurors could have potentially been confused about. The instructions for the dismissed charges were removed from the jurors’ packets and the jury was twice instructed to disregard those charges. The court also directed the jury to disregard instructions that were removed from their packets. There is no indication the jurors were confused by the dismissal of charges or by the removal of instructions from their packets. Furthermore, *Reyes* does not show how

requiring interpretation of the NMI Rules of Criminal Procedure are reviewed de novo).

Here, it is undisputed that the court failed to comply with Rule 30. The sole question before us, with regard to Rule 30, is whether we should exercise our discretion to remedy a plain error that was not brought to the trial court’s attention.

consideration of the discarded instructions or dismissed charges could have caused the jury to convict when it would otherwise find him not guilty. Thus, Reyes's claim that the court's error could have led to jury confusion is merely speculative.

¶ 16 *United States v. Fuchs* offers an example of an instructional error that affected the defendants' substantial rights. 218 F.3d 957, 962–63 (9th Cir. 2000). In *Fuchs*, the Ninth Circuit found reversible plain error where the district court failed to issue a statute of limitations jury instruction. *Id.* There, the appellants were convicted of conspiring to commit an offense against the laws of the United States. *Id.* at 961. On appeal, the court concluded the failure to instruct the jury on the statute of limitations was an error affecting the defendants' substantial rights because "of the ten overt acts alleged in the indictment, the acts that most strongly support a finding of conspiracy fell outside the statute of limitations." *Id.* at 963. Thus, there was a likelihood the jury's verdict could have been "based on acts improperly included as part of the conspiracy because they were barred by the statute of limitations." *Id.*

¶ 17 Unlike the instructional error in *Fuchs*, the trial court's failure to reiterate substantive jury instructions did not affect Reyes's substantial rights because there was ample evidence supporting the jury's verdict. In order to prove Sexual Abuse of a Minor in the First Degree, 6 CMC § 1306(a)(2) requires the Commonwealth demonstrate the defendant was eighteen years of age or older; engaged in sexual penetration with someone who was under the age of eighteen; and was the alleged victim's natural parent, stepparent, adopted parent, or legal guardian. The Commonwealth introduced evidence that at the time of the offense, Reyes was at least eighteen years old, the victim was fifteen or sixteen years old, and Reyes was the victim's natural parent. Critically, the victim specifically testified that on each occasion, Reyes removed his clothing, directed the victim to undress, forced himself upon her, and caused pain in her private parts. Because there was ample evidence supporting a Sexual Abuse of a Minor in the First Degree conviction, we conclude Reyes fails to demonstrate a reasonable probability the error affected the outcome of the proceeding.

B. Denial of Request for PSI

¶ 18 Reyes argues the trial court erred by denying his request for a PSI. The Commonwealth concedes that the court's denial of his request was erroneous. NMI Rule of Criminal Procedure 32 requires the court order a PSI before imposing a sentence or granting probation unless the defendant waives the PSI with the court's permission. NMI R. CRIM. P. 32(c)(1). However, the court need not order a PSI if it "finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record." *Id.*

¶ 19 The relevant facts of this case are similar to those in *Fu Zhu Lin*. There, the appellant requested a PSI and the "court denied the request because the case was straightforward." *Fu Zhu Lin*, 2014 MP 6 ¶ 39. We concluded the trial court's reason for denying the PSI was inadequate because PSIs are not

intended to analyze the complexity of a case but instead “ensure ‘careful and individualized’ sentencing of the defendant that includes evaluation of factors beyond the crime itself.” *Id.* ¶ 41 (citing *United States v. Dinapoli*, 519 F.2d 104, 108 (6th Cir. 1975)). We held that absent the defendant’s explicit waiver, the trial court must order a PSI unless it conducts a de facto PSI before denying the request or it explains how the record contains the information a PSI would otherwise provide. *Id.* ¶ 42. Because the trial court did neither, we found an abuse of discretion. *Id.* ¶ 45.

¶ 20 Similar to *Fu Zhu Lin*, the court in the present case justified its denial of a PSI because of the straightforwardness of the case. Further, it neither explained how the record contained the information that a PSI would have included nor did it conduct a de facto PSI on the record. Thus, the trial court abused its discretion by denying Reyes’s request for a PSI.

V. CONCLUSION

¶ 21 For the foregoing reasons, we AFFIRM Reyes’s convictions for Sexual Abuse of a Minor in the First Degree and Assault and Battery, VACATE his sentence, and REMAND for resentencing.

SO ORDERED this 8th day of April, 2016.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice