

FOR PUBLICATION
IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHER MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JESSE SEMAN, et al.,
Defendants-Appellants.

OPINION

Cite as: Commonwealth v. Seman, 2001 MP 20

Appeal Nos. 98-024 & 98-025 (Consolidated)

Criminal Action No. 99-0001

Argued on December 12, 2000

Decided December 6, 2001

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice, JUAN T. LIZAMA, Justice *Pro Tem*,
VIRGINIA S. SABLAN-ONERHEIM, Justice *Pro Tem*

DEMAPAN, Chief Justice:

¶1 [1,2] Defendants Chris Leon Guerrero [hereinafter Leon Guerrero] and Norbert Pua [hereinafter Pua] [hereinafter collectively Defendants] appeal their convictions for misconduct in public office and assault and battery, in violation of 6 CMC § 3202 and 6 CMC § 1202(a), respectively. The appeal is based on the argument that insufficient evidence was presented during the bench trial. This Court has jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands and 1 CMC § 3102(a). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On or about November 30, 1997, Francisco Eugenio [hereinafter Eugenio] was allegedly beaten by Department of Public Safety [hereinafter DPS] officers while in custody for questioning at DPS's Central Office in Susupe. Eugenio was a suspect in a commercial burglary during which he allegedly struck a police officer with a crowbar. His arrest followed an island-wide manhunt which ended in a chase through the Dan Dan homestead. Subsequent to the arrest and alleged beating at DPS's Central Office, Eugenio was photographed and then taken to the Commonwealth Health Center [hereinafter CHC] for treatment.

¶3 Defendants and nine other police officers were each charged with misconduct in public office and assault and battery for the alleged beating of Eugenio.¹ Only Leon Guerrero and Pua were convicted of

¹ The charges against officer Hillary Tagabuel were based on aiding and abetting the commission of the assault and battery.

the charged crimes at the conclusion of the bench trial.²

¶4 The court made the following findings, which are relevant to this timely appeal, in its Written Decision Following Trial [hereinafter Decision]:

(1) Eugenio attempted to elude police in the Dan Dan area. As a result of his considerable flight efforts, Eugenio sustained scratches to his back and some bumps and bruises to his body. A civilian witness, Mr. Gabutin, admitted that while assisting the police in the pursuit of Eugenio, he hit Eugenio with a large flashlight. In his testimony, Eugenio had attributed that beating to police officers, rather than Mr. Gabutin.

(2) Eugenio continued to resist arrest after he was brought to the ground and, therefore, the force used by the officers at the scene to subdue him was not excessive.

(3) Eugenio's testimony was suspect because he was maced and his ability to identify any attackers was impaired for some time after the arrest.

(4) Officer Julian Camacho's testimony was suspect due to his conflicting testimony on whether he had been promised some lenient treatment in another case pending against him in exchange for supplying information against his fellow police officers. In fact, Officer Julian Camacho perceived that DPS Internal Affairs had promised him leniency even if no such promise was actually made by Internal Affairs. As such, Officer Julian Camacho had ample motivation to implicate police officers when describing events.

² The trial court dismissed the cases against defendants Diwain Stephan and Jesse Seman for lack of evidence. In contrast, Jack Camacho's Motion for Directed Verdict of Acquittal was granted by the court on similar evidentiary grounds. Defendants Jose Saures, Jesse Concepcion, and Jason Tarkong were found not guilty on the grounds that "there was no evidence beyond a reasonable doubt that [those] officers . . . had physical contact with the victim." Excerpts of Record Leon Guerrero [hereinafter Leon Guerrero E.R.] at tab C, 9. The court found Defendants James De Leon Guerrero, Hillary Tagabuel, and Joaquin Salas not guilty on similar grounds. Leon Guerrero E.R. at tab C, 6-7.

(5) Considering the injuries sustained by Eugenio at the arrest scene, the number of assault and batteries testified to by Officer Julian Camacho and Eugenio were not supported by the extent of Eugenio's injuries. Therefore, their testimony would only be considered to the extent it was supported by the evidence of the injuries contained in the CHC intake report and the photographs of Eugenio.

(6) With regards to Eugene Babauta's testimony, the court found that no motive was shown that would cause him to fabricate or embellish his testimony. In contrast to Officer Julian Camacho, it appeared difficult for Eugene Babauta to testify against the Defendants. As such, the court found Eugene Babauta's testimony to be credible.

(7) Eugene Babauta testified that Pua had delivered a "right cross" to the victim's face. There was also testimony that Pua had bragged, during an early morning gathering of officers, about having "kneed" the victim. His bragging tended to corroborate that Pua came into contact with Eugenio and to establish Pua's state of mind on the night of the offense.

(8) Eugene Babauta also testified, as did Officer Julian Camacho and Eugenio, that Leon Guerrero attacked Eugenio by delivering a downward kick to his back as Eugenio was leaning forward and facing the floor. Leon Guerrero had martial arts training and the description of the method with which the kick was delivered suggested to the court that the kick was consistent with such training.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶5

The issues before this Court are:

- I. Whether the Commonwealth proved beyond a reasonable doubt that Leon Guerrero and Pua violated 6 CMC § 1202(a), assault and battery;
- II. Whether the Commonwealth proved beyond a reasonable doubt that Leon Guerrero and Pua violated 6 CMC § 3202, misconduct in public office.

¶6 [3,4] We review these issues *de novo*. See *Commonwealth v. Yan*, 4 N.M.I. 334, 336 (1996); *Commonwealth v. Palacios*, 4 N.M.I. 330, 333 (1996). The test of sufficiency of evidence is whether, after we examine the evidence presented at trial in a light most favorable to the Commonwealth, and then drawing all reasonable inferences in favor of the Commonwealth, the trier of fact could find that every element of the crimes charged had been proven beyond a reasonable doubt. *Yan*, 4 N.M.I. at 336.

ANALYSIS

I. Proof of Guilt Beyond a Reasonable Doubt

A. Defendant Leon Guerrero

¶7 Appellant Leon Guerrero argues that Eugene Babauta's testimony was motivated by self-preservation and is, therefore, suspect. Being suspect, Eugene Babuata's testimony should not have been persuasive to the trial court and should not have served as the basis of Leon Guerrero's conviction for assault and battery³ and misconduct in office⁴. As such, Leon Guerrero argues that reasonable doubt existed as to his guilt and Eugene Babauta's testimony provided insufficient evidence to sustain his conviction.

¶8 This Court is deeply troubled by the circumstances surrounding Leon Guerrero's conviction. Namely, the fact that Eugenio sustained numerous injuries by a myriad of individuals during his apprehension whose causes were not and cannot be specifically identified, that Officer Julian Camacho's

³ The crime of assault and battery is defined by 6 CMC § 1202(a) as follows: “(a) A person commits the offense of assault and battery if the person strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent.”

⁴ 6 CMC § 3202 provides in pertinent part: “[e]very person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office”

testimony and that of Eugenio was judged to be "suspect" by the court, that the CHC report which was utilized to support Officer Camacho's and Eugenio's testimony was inconclusive at best, that the physician who testified regarding the CHC report was not the physician who examined Eugenio, and that the photograph showing Eugenio's injuries did not identify the alleged injury caused by Leon Guerrero.

¶9 [5] However, this Court is guided by the letter of the law and the limitations of its appellate power when judging findings of fact. 1 CMC § 3103. In assessing whether there is sufficient evidence to prove an element of a crime, we review the evidence in the light most favorable to the prosecution to determine whether any reasonable trier of fact could have found the element beyond a reasonable doubt. *Commonwealth v. Delos Reyes*, 4 N.M.I. 340, 342 (1996). Essentially, when reviewing a non-jury criminal conviction, where the evidence consists largely of oral testimony contradictory in nature, due regard is given by this Court to the opportunity of the trial court to judge the credibility of the witnesses. *Commonwealth v. Kaipat*, 2 N.M.I. 322, 329 (1991).

¶10 [6,7,8] In this case, the trial judge believed the testimony of Eugene Babauta. Such a credibility decision is within the discretion of the trial court, despite the allegations and evidence of bias presented against Eugene Babauta. Questions of credibility are for the trier of fact to decide and are generally immune from appellate review. *United States v. Hodges*, 770 F.2d 1475, 1478 (9th Cir. 1985). By analogy to this situation, it has been held that an accomplice's testimony, although suspect, can support a conviction. *United States v. Hibler*, 463 F.2d 455, 458 (9th Cir. 1972). Indeed, the rule is that even though an accomplice is in a position to gain from the government by his testimony and even though there are inconsistencies in his story, as has been alleged against Eugene Babauta, an appellate court may not disregard the witness' testimony unless it is "inherently implausible." *See Lyda v. United States*, 321 F.2d

788, 794-95 (9th Cir. 1963); *United States v. Rojas*, 554 F.2d 938, 943 (9th Cir. 1977). While evidence was presented that Eugene Babauta may have been biased, by the favorable treatment he allegedly received from the Commonwealth, in light of the implied threat of his own criminal investigation, we cannot conclude that his testimony was inherently implausible. Accordingly, viewed in the light most favorable to the Commonwealth, the evidence is sufficient to support the trial court's verdict.

B. Defendant Pua

¶11 Pua, like Leon Guerrero, challenges his conviction by attacking the credibility of Eugene Babauta's testimony. Moreover, without elaborating further, Pua argues that the testimony of Officer Andrew Taimanao [hereinafter Taimanao] and Officer Anthony Ayuyu [hereinafter Ayuyu] contradicted Eugene Babauta's recollection of the night in question. In sum, Pua claims that the evidence presented by the Commonwealth was insufficient to convict him of assault and battery and misconduct in office because it is based on Eugene Babauta's "suspect" testimony.

¶12 [9] Again, we are asked to re-evaluate the credibility of a witness judged to be believable by the trier of fact. And, again, we must state that the trial court's assessment of Eugene Babauta's testimony cannot be disturbed by this Court unless his testimony is "inherently implausible." *See Lyda*, 321 F.2d at 794-95; *Rojas*, 554 F.2d at 943. While there may be inconsistencies in the evidence, particularly in the divergence between Eugene Babauta's and Taimanao's and Ayuyu's testimonies, those inconsistencies affect the witness' credibility rather than the legal sufficiency of the evidence. We must point out that "[c]hallenges to the credibility of a witness are not . . . challenges to the sufficiency of the evidence" *United States v. Latouf*, 132 F.3d 320, 330 (6th Cir. 1997), *cert denied*, 523 U.S. 1086, 118 S. Ct. 1542, 140 L. Ed. 2d 691 (1998) (*quoting United States v. Farley*, 2 F.3d 645, 652 (6th Cir. 1993),

cert. denied, 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993)). In sum, issues of witnesses' credibility are for the trier of fact to decide. *Id.*

¶13 [10] Specifically, while Eugene Babauta's in-court testimony conflicted with his previous statement to the police, with regards to which side of Eugenio's face Pua allegedly punched, we cannot state that it was "inherently implausible." Indeed, Taimanao and Ayuyu both provided testimony which, if it had been believed, would have exonerated Pua. However, the trial court, presented with all of the evidence in this matter, believed Eugene Babauta's testimony rather than that of Taimanao and Ayuyu. Such a decision is within the discretion of the trial court for, as previously stated, it is a clear principle that "[t]he trier of fact has a wide latitude in which to decide which witnesses to believe or disbelieve" *United States v. Clevenger*, 733 F.2d 1356, 1359 (9th Cir. 1984). We therefore find no basis for reversal after examining the evidence presented at trial in a light most favorable to the Commonwealth, and then drawing all reasonable inferences in favor of the Commonwealth. *Palacios*, 4 N.M.I. at 334.

CONCLUSION

¶14 Based on the foregoing analysis, we **AFFIRM** Leon Guerrero's and Pua's convictions.

DATED this 6th day of December 2001.

/s/ _____
MIGUEL S. DEMAPAN, Chief Justice

/s/ _____
JUAN T. LIZAMA, Justice *Pro Tem*

/s/ _____

VIRGINIA S. SABLAN-ONERHEIM, Justice *Pro*
Tem