

**COMMONWEALTH OF THE  
NORTHERN MARIANA  
ISLANDS**

vs.

**Pedro TAITANO**

**Appellate No. CR 84-9018  
District Court NMI  
Appellate Division**

**Decided September 19, 1985**

**1. Appeal and Error - Criminal  
Convictions - Sufficiency of  
Evidence**

The standard of review to be applied to defendant's challenge to the sufficiency of the evidence is whether there is substantial evidence to support the conviction.

**2. Appeal and Error - Criminal  
Convictions - Sufficiency of  
Evidence**

A conviction is supported by sufficient evidence if, reviewing the evidence in the light most favorable to the government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

**3. Appeal and Error - Criminal  
Convictions - Sufficiency of  
Evidence**

The same test for review of sufficiency of the evidence supporting a conviction is applied in both jury and bench trials.

**4. Appeal and Error - Standard of  
Review - Criminal Convictions**

It is not the province of the court of appeals to reassess the credibility of witnesses and trial court's determination that the testimony of witness to beating incident was "credible and trustworthy" must be accepted.

**5. Appeal and Error - Criminal  
Convictions - Sufficiency of  
Evidence**

Conviction was not against the overwhelming weight of the evidence where trial court found prosecution witness' testimony credible and none of the three defense witnesses, unlike prosecution witness, was at the scene of the crime for the entire relevant time with adequate view.

**6. Appeal and Error - Affirmance**

An appellate court may affirm the district court on any basis fairly presented by the record that, as a matter of law, sustains the judgment.

**7. Appeal and Error - Criminal  
Convictions**

Insofar as the trial court's conviction of the defendant of disturbing the peace found sufficient support in the record, it is of no consequence that the trial court also convicted him on the alternative theory of aiding and abetting a disturbance of the peace.

**8. Judges - Bias**

The conduct of the trial judge which gives rise to charges of partiality is reviewed for abuse of discretion.

**9. Judges - Bias**

Where the defendant refused to waive his right to speedy trial and his right to assert government harassment, the court did not show bias toward the defendant by denying the government's motion to dismiss in light of the government's stated intention to refile the action.

**10. Judges - Bias**

The trial court may act to ensure that the record is accurate and the testimony relevant and complete and in doing so does not demonstrate bias to the defendant.

**11. Criminal Law - Double Jeopardy**

It has long been understood that separate statutory crimes need not be identical -- either in constituent elements or in actual proof -- in order to be the same within the meaning of the double jeopardy clause. U.S. Const., Amend. V; NMI Const., Art. I, §4(a).

**12. Criminal Law - Double Jeopardy**

In double jeopardy analysis, where 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 only one is whether one statute requires proof of an additional fact which the other does not. U.S. Const., Amend. V; NMI Const., Art. I, §4(a).

**13. Criminal Law - Double Jeopardy**

Where 'riot' is defined as placing others in fear or danger and 'disturbing the peace' is defined as unreasonably annoying or disturbing another person, the offense of disturbing the peace requires proof of an element (awareness of the victim) not required by the offense of riot subject to double jeopardy and defendant convicted of both was not. U.S. Const., Amend. V; NMI Const., Art. I, §4(a).

FILED  
Clerk  
District Court

SEP 19 1985

1 IN THE DISTRICT COURT

2 FOR THE NORTHERN MARIANA ISLANDS For The Northern Mariana Islands

3 APPELLATE DIVISION

By [Signature]  
(Deputy Clerk)

4  
5 COMMONWEALTH OF THE NORTHERN )  
6 MARIANA ISLANDS, )

7 Plaintiff-Appellee, )  
8 v. )

9 PEDRO TAITANO, )

10 Defendant-Appellant. )

DCA CASE NO. CR 84-9018

O P I N I O N

11 BEFORE: LAURETA, DUENAS and WATERS\*, District Judges

12 WATERS, District Judge

13  
14 Defendant, Pedro Taitano, appeals from his conviction after  
15 court trial before the Commonwealth Trial Court for aiding and  
16 abetting a disturbance of the peace, disturbance of the peace and  
17 riot.

18 I

19 On May 12, 1984 sometime after 10:00 p.m., Henry Sablan was  
20 badly beaten and shot by a group of between seven and ten  
21 individuals. This incident occurred on Saipan on a road adjacent  
22 to a social hall where a wedding party was in progress. On May  
23 18, 1984, the defendant, Pedro Taitano, was charged by Information  
24 with aggravated assault and battery, riot and disturbing the peace  
25 for his alleged involvement in the beating. A Second Amended  
26 Information dated July 2, 1984, charged the defendant with riot in

27 \* The Honorable Laughlin E. Waters, United States District Judge  
28 for the Central District of California, sitting by designation.

1 violation of 6 CMC § 3102 and disturbing the peace in violation  
2 of 6 CMC § 3101.

3 Prior to the commencement of the court trial in this matter,  
4 counsel for the government filed a motion to dismiss. That  
5 motion was denied. Trial was held over a three-day period, and  
6 on July 6, 1984, the court found the defendant guilty of aiding  
7 and abetting a disturbance of the peace, disturbing the peace,  
8 and riot.

9 Defendant has raised the following issues on appeal: 1)  
10 whether his conviction was supported by the evidence; 2) whether  
11 the trial court was biased against him; and 3) whether his  
12 conviction for both riot and disturbing the peace violated the  
13 Double Jeopardy Clause of the Fifth Amendment.

14 II

15 [1-3] The standard of review to be applied to defendant's challenge  
16 to the sufficiency of the evidence is whether there is  
17 substantial evidence to support the conviction. United States v.  
18 Nolan, 700 F.2d 479, 485 (9th Cir. 1983). A conviction is  
19 supported by sufficient evidence if, reviewing the evidence in  
20 the light most favorable to the government, any rational trier of  
21 fact could have found the essential elements of the crime beyond  
22 a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 318-19  
23 (1979); United States v. Marabelles, 724 F.2d 1374, 1377 (9th  
24 Cir. 1984). The same test is applied in both jury and bench  
25 trials. United States v. Spears, 631 F.2d 114, 117 (9th Cir.  
26 1980).

27 The evidence presented by the government consisted primarily  
28 of the testimony of Donald Pangelinan. Pangelinan testified that  
he was on the road outside of the wedding party on the night of

1 May 12, 1984. Sometime between 10:00 and 11:00 p.m., he saw a  
2 white Suzuki jeep driven by Henry Sablan stop in the middle of  
3 the road. He testified that three individuals who he was able to  
4 identify pulled Sablan out of the jeep and began beating and  
5 kicking him. Pangelinan further testified that these three were  
6 shortly joined by a nearby group of several persons and that all  
7 of those persons continued the beating. He unequivocally  
8 identified the defendant as one of the persons in the group and  
9 stated that the defendant did beat Sablan.

10 [4] Defendant argues preliminarily that the testimony of Donald  
11 Pangelinan was so inherently improbable that it was not entitled  
12 to belief. This is based primarily on the fact that Pangelinan  
13 could not remember whether seven or four people had joined the  
14 original three in the beating of Henry Sablan. The trial court  
15 made an explicit finding that Pangelinan's testimony was  
16 "credible and trustworthy." "[I]t is not the province of the  
17 Court of Appeals to reassess the credibility of witnesses."  
18 United States v. Lujan-Castro, 602 F.2d 877, 878 (9th Cir.),  
19 cert. denied, 444 U.S. 945 (1979). Consequently, the trial  
20 court's determination must be accepted.

21 [5] Defendant's main contention is that, even if accepted,  
22 Pangelinan's testimony is against the overwhelming weight of  
23 evidence. Defendant asserts that the three witnesses called on  
24 his behalf all testified that the defendant did not participate  
25 in the beating. A review of the record establishes that this is  
26 not correct. Of the three witnesses called by the defense, one  
27 testified that he did not witness the incident in question, one  
28 testified that he was too far from the incident to identify the  
participants, and the third testified that he left the area

1 shortly after the beating began. The only witness at the scene  
2 for the entire relevant time who had an adequate view was Donald  
3 Pangelinan. His testimony, which the trial court specifically  
4 found to be credible, identified the defendant as one of the  
5 participants. It cannot be said that the conviction here was  
6 against the overwhelming weight of evidence.

7 [6,7] Defendant also raises the issue of whether the trial court  
8 could have found the defendant guilty of aiding and abetting a  
9 disturbance of peace on the basis of allegedly equivocal  
10 testimony of one of the government witnesses. We need not reach  
11 this question. An appellate court may affirm the district court  
12 on any basis fairly presented by the record that, as a matter of  
13 law, sustains the judgment. United States v. Burnette, 698 F.2d  
14 1038, 1048 (9th Cir.), cert. denied, 461 U.S. 936 (1983).  
15 Insofar as the trial court's conviction of the defendant of  
16 disturbing the peace found sufficient support in the record, it  
17 is of no consequence that the trial court also convicted him on  
18 the alternative theory of aiding and abetting a disturbance of  
19 the peace.

20 III

21 [8] Defendant claims that the trial court was biased against him.  
22 This assertion is based on the fact 1) that the trial court  
23 refused to grant the government's motion to dismiss unless the  
24 defendant waived his right to a speedy trial and his right not to  
25 be harassed by further prosecutions, and 2) that the court  
26 allegedly harassed and confused defendant's counsel and gave  
27 leading hints during the cross-examination of Pangelinan. The  
28 conduct of the trial judge which gives rise to charges of  
partiality is reviewed for abuse of discretion. United States v.

1 Greene, 698 F.2d 1364, 1374-75 (9th Cir. 1983).

2 [9.1D] As to defendant's first contention, the colloquy between the  
3 court and counsel in connection with the government's motion to  
4 dismiss clearly demonstrates that the court was concerned with  
5 the government's stated intention to refile the action at a later  
6 date, after the trials of the allegedly more culpable defendants.  
7 On several occasions, the trial court indicated that such a  
8 course of action could conceivably prejudice the defendant's  
9 rights to a speedy trial. When the defendant's counsel stated  
10 that his client was unwilling to waive his rights under the  
11 Speedy Trial Act or waive his right to assert government  
12 harassment at a later date, the court proceeded with the trial.  
13 The refusal to grant the government's motion was based upon an  
14 apparently valid concern in connection with the defendant's right  
15 to a speedy trial. In light of the government's stated intention  
16 to refile the action, the trial court's denial of the motion to  
17 dismiss cannot be deemed to be an abuse of discretion.  
18 Defendant's second contention, that the trial court acted  
19 improperly during counsel's cross-examination of Pangelinan,  
20 finds no support. The trial court's interjections complained of  
21 on appeal appear to be little more than efforts by the court to  
22 assist in assuring that the record was accurate and that the  
23 testimony was relevant and complete.

#### 24 IV

25 The defendant was convicted and sentenced for both disturbing  
26 the peace under 6 CMC § 3101 and riot under 6 CMC § 3102. These  
27 sections read as follows:

#### 28 Section 1301. Disturbing the Peace

(a) A person commits the offense of

1           disturbing the peace if he or she unlawfully and  
2           willfully does any act which unreasonably annoys  
3           or disturbs another person so that the other  
4           person is deprived of his or her right to peace  
5           and quiet, or which provokes a breach of the  
6           peace.

7           (b) A person convicted of disturbing the  
8           peace may be punished by imprisonment for not  
9           more than six months.

10           Section 1302. Riot

11           (a) A person commits the offense of rioting  
12           if he or she assembles with two or more other  
13           persons and together with the latter, by force,  
14           violence, loud noise, shouting or threats,  
15           places others in fear or danger.

16           (b) A person convicted of rioting may be  
17           punished by imprisonment for not more than six  
18           month.

19           The defendant argues that his conviction under both sections  
20           violates the Double Jeopardy Clause of the Fifth Amendment and  
21           Article 1, Section 4(a) of the Northern Mariana Islands  
22           Constitution. Defendant's position is that one cannot riot  
23           without also disturbing the peace and thus conviction for both is  
24           impermissible.

25           [11] The Double Jeopardy Clause provides that no person shall "be  
26           subject for the same offense to be twice put in jeopardy of life  
27           or limb." "It has long been understood that separate statutory  
28           crimes need not be identical -- either in constituent elements or

1 in actual proof -- in order to be the same within the meaning of  
2 constitutional prohibition." Brown v. Ohio, 432 U.S. 161, 164  
3 (1977). The established test for determining whether two  
4 offenses are sufficiently distinguishable to permit the  
5 imposition of cumulative punishment was stated in Blockburger v.  
6 United States, 284 U.S. 299, 304:

7 [12] The applicable rule is that, where the same act  
8 or transaction constitutes a violation of two  
9 distinct statutory provisions, the test to be  
10 applied to determine whether there are two  
11 offenses or only one is whether each provision  
12 requires proof of an additional fact which the  
13 other does not.

14 [13] The government here argues that the crimes of disturbing  
15 the peace and riot are distinct offenses under this test.  
16 Although a defendant will often disturb the peace while  
17 participating in a riot, the former offense requires proof that  
18 the defendant "unreasonably annoys or disturbs another person"  
19 which is not required to be demonstrated in order to convict one  
20 of riot. Riot requires that others be placed in "fear or  
21 danger," and the government argues that this can occur without  
22 unreasonably annoying or disturbing these others. The  
23 government cites as an example the placing of sleeping persons  
24 in danger. This would constitute a riot under section 3102 but  
25 would not constitute a breach of the peace under section 3101  
26 since no person was annoyed or disturbed. The government's  
27 hypothetical points to the difference in the elements necessary  
28 to prove a violation of each of the sections. Under the  
Blockburger test, this is all that is needed to avoid running

1 afoul of the Double Jeopardy Clause.

2 The judgment of the trial court is affirmed.

3  
4 DATED: 19 Sept. 1985 Alfred Laureta  
5 ALFRED LAURETA

6  
7 DATED: 13 Sept 85 Cristobal C. Duenas  
8 CRISTOBAL C. DUENAS

9 DATED: 6 Sep 85 Laughlin E. Waters  
10 LAUGHLIN E. WATERS

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28