

FILED

2013 OCT 25 PM 4:34

SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ALEXANDER JAMES CASTRO,
Defendant-Appellant.

Supreme Court Case No. CRA12-027
Superior Court Case No. CF0080-10

OPINION

Cite as: 2013 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted May 8, 2013
Hagåtña, Guam

Appearing for Defendant-Appellant:

Terence E. Timblin, *Esq.*
Yanza Flynn Timblin, LLP
446 E. Marine Corps Dr., Ste. 201
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:

Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
590 S. Marine Corps Dr., Ste. 706
Tamuning, GU 96913

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Defendant-Appellant Alexander James Castro appeals a judgment convicting him of one count of Aggravated Assault (As a Third Degree Felony), one count of Assault (As a Misdemeanor), and one count of Reckless Conduct (As a Misdemeanor). On appeal, Castro argues: (1) the trial court improperly admitted evidence of Castro's participation in mixed martial arts activities; (2) there was insufficient evidence to sustain a conviction of Aggravated Assault (As a Third Degree Felony); and (3) the trial court improperly considered and referred to Castro as a mixed martial artist and role model before imposing the sentence. For the reasons discussed below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] A grand jury returned a superseding indictment charging Defendant-Appellant Alexander James Castro with one count of Aggravated Assault (As a Second Degree Felony), three counts of Aggravated Assault (As a Third Degree Felony), two counts of Assault (As a Misdemeanor), and one count of Reckless Conduct (As a Misdemeanor) following a bar fight with Jarrett Dunham and others. Some of the charges alleged possession and use of a deadly weapon, namely: (1) a fire extinguisher and (2) Castro's hands, feet, or other parts of his body because he was proficient in hand-to-hand fighting techniques. RA, tab 32 at 2-3 (Superseding Indictment, May 19, 2010). Subsequently, Plaintiff-Appellee People of Guam ("the People") filed an amended superseding indictment that removed all allegations concerning the fire extinguisher and Castro's proficiency in hand-to-hand fighting techniques. The amended superseding

indictment charged Castro with one count of Aggravated Assault (As a Second Degree Felony), one count of Aggravated Assault (As a Third Degree Felony), one count of Assault (As a Misdemeanor), and one count of Reckless Conduct (As a Misdemeanor).

[3] The following facts were adduced through testimony at trial.

[4] Dunham met some friends for dinner at Chili's. After dinner and throughout the evening, Dunham and his friends visited several bars in Tumon.

[5] At one of those bars, Porky's, Dunham met his co-workers Jonathan Berrios, Tom Mundy, and Russell Morrow. Dunham and his co-workers left Porky's and headed to Coco's, a nearby bar. At around 4:00 a.m., Berrios, Mundy, and Morrow left Coco's and went to Club Hana; Dunham arrived a bit later.

[6] Right after entering Club Hana, Berrios, Mundy, and Morrow were stopped by Castro and Elbert Cruz, whom they had never met before. Castro and Cruz told Berrios that Mundy was staring at them as if Mundy had a problem with them. To defuse the situation, either Berrios or Mundy bought Castro, Cruz, and Kyle Reyes each a beer and a shot. Berrios then ordered himself a beer and sat down at a round, corner booth.

[7] Soon after, Dunham walked into Club Hana and joined Berrios at the booth. Castro, Cruz, and Reyes were behind the booth. Not long after Dunham sat down, Dunham informed Berrios that he overheard either Castro or one of Castro's friends say, "Let's eff 'em up before we leave." Transcripts ("Tr.") at 115-16 (Jury Trial, June 13, 2012). Moments later, Castro approached Berrios and asked for a light. Berrios responded by saying, "Hey, we overheard you, what you said, and I'm not stupid, man, you know. We don't -- we don't want no problems. We don't wanna fight." *Id.* at 116-17. Berrios's response appeared to anger Castro, who stared at

Berrios and Dunham for about ten seconds and continued to ask for a light. Castro then looked to another guy in another booth and said, "I'm about to hit these guys and leave." Tr. at 59 (Cont'd Jury Trial, June 12, 2012).

[8] Dunham and Berrios then backed up into their booth. As they did so, they overheard someone in the background yell, "[Castro], save it for the fight." *Id.* at 61. A lady who worked at the bar then stood between Dunham and Castro and yelled, "Get back. Get back." *Id.*

[9] Dunham pulled out his cellphone to call a friend, who did not answer. Someone who had been talking to Castro said, "You better be calling the cops 'cause we're about to kill you." *Id.* at 63. That person then swung at Dunham and missed. Castro soon after entered the booth and hit Berrios with his right hand, causing Berrios to fall. With his left hand, Castro then struck Dunham's right eye. Dunham described Castro's punch as the hardest he had ever been hit and the worst pain he had ever experienced in his life. Dunham explained that he thought his "eye was falling out" as if it "was like literally on [his] face." *Id.* at 64. After Castro hit him, Dunham jumped out of the booth, while covering his eye, into "a crowd of men" who were hitting and swinging at him. *Id.* at 64-65. Soon after, Dunham lost consciousness, and the last thing he remembered before losing consciousness was that people were hitting him in the back of his head.

[10] In the meantime, Berrios, who had been earlier knocked down by Castro's punch, eventually got up and started to fight Castro, the person closest to him. At some point during the fight, Berrios claimed that Castro came at him with a knife. Berrios grew "fuzzy" from "all the head-bashing[.]" and was knocked down once more. Tr. at 124 (Jury Trial, June 13, 2012). He

then decided to “ball up” by curling his body inward into a fetal position with his hand over his head to protect himself. *Id.* at 127.

[11] The fight was chaotic, and it lasted about three to five minutes. Around that point, the club owner yelled, “Everybody get out!” *Id.* at 103. After people started running out, Berrios noticed Dunham, who was slouched over and slipping in and out of consciousness. Berrios also noticed a fire extinguisher beside Dunham, and surmised that someone had hit Dunham with it. Berrios then saw Morrow, who came running in from outside the bar saying, “They got me.” *Id.* at 128.

[12] Guam Police Department Officer Leonard Aguon, who responded to the scene, noticed Morrow and Dunham lying on the ground. Officer Aguon met with Mundy and Berrios.

[13] The paramedics later arrived and treated Dunham as he recovered consciousness. When Dunham woke up, he recalled that the right side of his face felt like it was “melting off.” Tr. at 67-68 (Cont’d Jury Trial, June 12, 2012). Dunham was transported to the hospital and received thirteen stitches, located under his eye and on his nose. He was released from the hospital later that day.

[14] The following morning, the police took photographs of Dunham’s injuries. For about a week, Dunham was unable to close his eye because it was swollen. The white part of Dunham’s eye was yellow, causing him to be “like pretty much blind.” *Id.* at 70. Dunham also had bruising on his back and neck. Dunham went to Hawaii to receive further medical treatment for about three weeks, and he was unable to work for three months. Dunham now has scars on his face and a dent in the bone above his eye.

[15] Dunham did not identify his assailant until he saw a television advertisement featuring Castro, which prompted him to later perform searches on Google and YouTube. He learned that Castro was a mixed martial artist who weighs 145 pounds, stands about 5'5", writes with his right hand, and holds a professional boxing license from the Boxing and Wrestling Commission. Castro also competed in mixed martial arts events sponsored by the Pacific Extreme Combat organization, which require fighters to wear gloves when fighting.

[16] Castro was later charged for the Club Hana incident. At trial, Castro neither testified in his defense nor presented any evidence. Castro moved for a judgment of acquittal at the close of the People's case, which the trial court denied. The jury returned a verdict acquitting Castro of one count of Aggravated Assault (As a Second Degree Felony), but finding Castro guilty of one count of Aggravated Assault (As a Third Degree Felony), one count of Assault (As a Misdemeanor), and one count of Reckless Conduct (As a Misdemeanor).

[17] Following Castro's conviction, a presentence investigation report was filed, containing letters written in support of Castro. Castro also submitted two other letters written on his behalf for the court's consideration upon sentencing.

[18] The trial court sentenced Castro to five years of imprisonment, with two years suspended, for the Aggravated Assault (As a Third Degree Felony) charge. As to the charge of Assault (As a Misdemeanor), Castro was sentenced to one-day imprisonment to run concurrently with the Aggravated Assault sentence. The trial court also sentenced Castro to one-year imprisonment for the charge of Reckless Conduct (As a Misdemeanor) to run concurrently with the Aggravated Assault and Assault sentences. Judgment was entered, and Castro timely filed this appeal.

II. JURISDICTION

[19] We have jurisdiction to entertain this appeal pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-31 (2013)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[20] The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v. Jesus*, 2009 Guam 2 ¶ 18 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997) (“All evidentiary decisions are reviewed under an abuse-of-discretion standard.”)). “We review an evidentiary ruling for plain error when, on appeal, the defendant asserts a different basis for his objection than that asserted at trial.” *United States v. Chung*, 659 F.3d 815, 833 (9th Cir. 2011).

[21] “Where a defendant raised the issue of sufficiency of the evidence by a motion for judgment of acquittal, we review the trial court's denial of the motion *de novo*. *People v. Song*, 2012 Guam 21 ¶ 26 (citations and internal quotation marks omitted). In determining whether there exists sufficient evidence to sustain Castro's conviction, “we review the evidence presented at trial in the light most favorable to the People and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. This is a highly deferential standard of review.” *Id.*

[22] We review the sentence imposed by the trial court for an abuse of discretion. *People v. Camacho*, 2009 Guam 6 ¶ 14.

IV. ANALYSIS

A. Admission of Evidence of Castro's Participation in Mixed Martial Arts Activities

[23] The superseding indictment filed on May 19, 2010, originally charged Castro with Aggravated Assault (As a Third Degree Felony) based on his proficiency in hand-to-hand fighting techniques under Title 10, Chapter 62 of the Guam Code Annotated, which governs karate and judo experts. *See* RA, tab 32 at 1 (Superseding Indictment); 10 GCA §§ 62100, 62104, 62106 (2005) (requiring registration of karate, judo, or other hand-to-hand fighting technique experts; defining these experts; and outlining consequences of registration). The People later amended the superseding indictment to drop that charge because the Department of Revenue and Taxation, the agency in charge of enforcing the scheme, did not have the program started yet. *See* RA, tab 179 at 1-2 (Am. Superseding Indictment, June 13, 2012); Tr. at 2 (Cont'd Jury Trial, June 12, 2012).

[24] Castro argues that once the People withdrew the Aggravated Assault (As a Third Degree Felony) charge that was based on Castro's proficiency in hand-to-hand fighting techniques, any evidence of Castro's mixed martial arts participation became irrelevant and prejudicial and therefore should not have been admitted at trial.¹ Appellant's Br. at 16-18 (Dec. 28, 2012). Although Castro does not state so directly, it appears that he bases his argument on Guam Rules of Evidence Rules 402 and 403.²

¹ Castro indicates that the People called two witnesses whose testimony tended to show that Castro was a mixed martial arts practitioner. Appellant's Br. at 17.

² Castro also notes that the People improperly stated that Castro "held a belt[.]" Appellant's Br. at 17; *see also* Tr. at 7 (Cont'd Jury Trial, June 18, 2012). Castro appears to suggest that this statement, which the prosecutor made during closing argument, was improper because there was no such evidence presented to the jury. Appellant's Br. at 17-18.

[25] In response, the People argue that evidence of Castro's mixed martial arts knowledge and expertise remained relevant. Specifically, the People submit that each of the remaining charges against Castro contains the element of recklessness and that Castro's mixed martial arts knowledge and expertise relates to the issue of Castro's awareness of the risk of substantial harm, a component of the element of recklessness. Appellee's Br. at 15 (Feb. 1, 2013).

1. Relevance – Guam Rules of Evidence Rule 402

[26] Rule 402 of the Guam Rules of Evidence ("GRE") provides:

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Organic Act of Guam, by the laws of Guam, by these Rules or other rules prescribed by the Supreme Court of Guam pursuant to statutory authority. Evidence which is not relevant is not admissible.

Guam R. Evid. 402.

[27] Castro disputes the relevance of any evidence of his participation in mixed martial arts. Appellant's Br. at 17. In particular, he contests the testimony of two witnesses whose "testimony tended to show that he was a [mixed martial arts] practitioner." *Id.*

[28] At trial, George Cruz, licensing supervisor for the general license and registration branch, regulatory division of the Department of Revenue and Taxation, testified that he received an application for a professional boxing license from Pacific Extreme Combat for Castro. Tr. at 55-59 (Cont'd Jury Trial, June 13, 2012). Cruz also testified that the application indicated that Castro weighed 145 pounds and stood about 5'5". *Id.* at 59. Cruz testified that the application

A prosecutor's introduction of a fact not in evidence during closing argument raises a wholly separate and distinct issue from whether the trial court abused its discretion when it admitted evidence of Castro's participation in mixed martial arts activities. Because Castro failed to specifically identify, raise, and brief that issue, we decline to analyze the matter and treat this as a waiver of the issue on appeal. See *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 78 (citing Guam Rules of Appellate Procedure Rule 13); *Rinehart v. Rinehart*, 2000 Guam 14 ¶ 23 ("[I]f a party mentions a matter but then fails to make a complete legal argument on the issue, then we will refuse to analyze the matter.").

was approved by the Boxing Commission, now known as the Guam Unarmed Combat Commission. *Id.* at 55, 60.

[29] Lenora M. Crisostomo, who served on the board of the Guam Unarmed Combat Commission, testified that she was Castro's friend and that she was familiar with the requirements for mixed martial arts events, including the requirement that participants wear gloves.³ *Id.* at 64-66. Crisostomo further testified that Castro participated in mixed martial arts events, some of which he won. *Id.* at 68.

[30] Notwithstanding the People's withdrawal of the Aggravated Assault (As a Third Degree Felony) charge, which was based on Castro's proficiency in hand-to-hand fighting techniques, the testimony regarding Castro's participation and expertise in mixed martial arts was relevant because the People had to show that Castro acted recklessly under the remaining charges. *See* RA, tab 179 at 1-2 (Am. Superseding Indictment); Tr. at 60 (Cont'd Jury Trial, June 18, 2012) (indicating that recklessness was an essential element of each charge). Title 9 GCA § 4.30(c) defines "recklessly" as follows:

A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

9 GCA § 4.30(c) (2005).

[31] To show that a defendant acted recklessly, the People must, among other things, demonstrate that the defendant "act[ed] in awareness of" a substantial risk. *Id.* The defendant

³ Castro objected to Crisostomo's testimony, asserting that it was irrelevant because the People withdrew the charge that was based on Castro's proficiency in hand-to-hand fighting techniques, and that evidence of such is limited to charges brought under the regulatory scheme of Title 10, Chapter 62 of the Guam Code Annotated, governing karate and judo experts. Tr. at 66-68 (Cont'd Jury Trial, June 13, 2012); Appellant's Br. at 18.

does not have to intend the result or be “practically certain” that the result will occur; rather, he need only be “aware” that the risk exists. *Song*, 2012 Guam 21 ¶ 46 (comparing section 4.30(a) and (b) with (c)). Without the defendant’s admission, the defendant’s awareness cannot be proven directly. *Id.* ¶ 47. Thus, a defendant’s subjective awareness of a risk may be inferred from the particular facts of a case, “including the defendant’s particular knowledge and experience.” *Id.* ¶¶ 47-48.

[32] As in most cases requiring proof of a culpable mental state, the People were unable to present direct proof of Castro’s state of mind. Still, Castro’s subjective awareness may be inferred in this case. Evidence of Castro’s mixed martial arts participation and expertise was relevant to prove the awareness component of recklessness because it encompasses his particular knowledge and experience. *See id.* (indicating that a defendant’s subjective awareness may be inferred from the defendant’s particular knowledge and experience). One can infer that Castro was aware that his punch to Dunham’s face could cause a substantial risk of bodily injury or serious bodily injury, knowing that an individual with his skills (1) is required to register and obtain a professional boxing license from the Department of Revenue and Taxation; (2) is required to wear boxing gloves when fighting, even in professional mixed martial arts events; and (3) has competed in and won professional mixed martial arts events.

[33] Notwithstanding, Castro argues that evidence of his mixed martial arts skills is limited to charges brought under the regulatory scheme of Title 10, Chapter 62 of the Guam Code Annotated, which governs karate and judo experts. Appellant’s Br. at 18. Despite Castro’s assertions, Chapter 62 does not contain such limiting language. *See* 10 GCA §§ 62100-62106. Moreover, as previously discussed, proof of recklessness and Castro’s subjective awareness of

the risk may be inferred from his mixed martial arts training, making Castro's participation and expertise in mixed martial arts relevant under GRE 402. Therefore, the trial court did not abuse its discretion in finding relevant the testimony of Cruz and Crisostomo regarding Castro's mixed martial arts activities.

2. Unfair Prejudice – Guam Rules of Evidence Rule 403

[34] Although evidence of Castro's participation and expertise in mixed martial arts was relevant, GRE 403 provides that such relevant evidence "may be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Guam R. Evid. 403 (emphasis added).

[35] Castro argues that the evidence of his participation and expertise in mixed martial arts was unfairly prejudicial to him because it "tended to make him out as unusually dangerous and elevated him from one of numerous participants in a drunken brawl to the star of the show." Appellant's Br. at 18. Although Castro argues this on appeal, at trial Castro did not object to the evidence as being unfairly prejudicial under GRE 403. Rather, at trial he objected to the relevance of the evidence, and the trial court overruled that objection, presumably under GRE 402. *See* Tr. at 66-68 (Jury Trial, June 13, 2012). Because Castro did not raise a GRE 403 objection at trial, we review this issue for plain error. *See People v. Mendiola*, 2010 Guam 5 ¶ 13.

[36] "Plain error is highly prejudicial error." *People v. Felder*, 2012 Guam 8 ¶ 19 (quoting *People v. Quitugua*, 2009 Guam 10 ¶ 11). We will not reverse unless (1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected the defendant's substantial

rights; and (4) reversal is required to prevent a miscarriage of justice or to maintain the integrity of the judicial process. *Id.* (citations omitted). Castro bears the burden to demonstrate that reversal is warranted. *See id.* (citing *Quitugua*, 2009 Guam 10 ¶ 11).

[37] “Exclusion for ‘unfair prejudice’ involves an undue tendency to suggest a decision on an improper basis, usually on emotions.” *State v. Duncan*, 830 P.2d 554, 560 (N.M. Ct. App. 1990); *see also United States v. Cunningham*, 694 F.3d 372, 390 (3d Cir. 2012) (finding that probative value of videos of pre-pubescent children being bound, raped, and violently assaulted was substantially outweighed by danger of unfair prejudice); *Fox v. Hayes*, 600 F.3d 819, 838-39 (7th Cir. 2011) (finding that probative value of suspect’s purported statement to police that he masturbated into a condom while watching an adult video on the night of his three-year-old daughter’s disappearance was outweighed by danger of unfair prejudice).

[38] “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence” *State v. Anderson*, 881 P.2d 29, 47 (N.M. 1994) (citing *Duncan*, 830 P.2d at 560); *see also State v. King*, 291 P.3d 160, 165 (N.M. Ct. App. 2012) (“The admission of evidence is not unfairly prejudicial simply because it damages a party’s cause.”). “[U]nfair prejudice’ as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn’t material. The prejudice must be ‘unfair.’” *Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613, 618 (5th Cir. 1977).

[39] Evidence of Castro’s participation and expertise in mixed martial arts was probative of recklessness, an essential element that the People had to prove under each of the charges against Castro. Accordingly, the damaging nature of the legitimate probative force of this evidence does not amount to unfair prejudice. *See, e.g., United States v. Caraway*, 534 F.3d 1290, 1301 (10th

Cir. 2008) (finding that testimony concerning book found on defendant's property containing instructions and illustrations for making explosive devices was not unfairly prejudicial because book was highly probative of defendant's mechanical skills, his prior construction of bombs, and items found on his property that matched bomb components).

[40] Castro appears to argue that evidence of his participation and expertise in mixed martial arts may present the possibility of a decision based on the perceived stigma that individuals who participate in mixed martial arts are unusually dangerous. Appellant's Br. at 18. Nevertheless, the standard under GRE 403 is whether the danger of unfair prejudice *substantially outweighs* the probative value of the evidence. See Guam R. Evid. 403. Castro has not shown that the legitimate, probative value of the evidence is substantially outweighed by the danger of unfair prejudice. See *Caraway*, 534 F.3d at 1301 (affirming district court's decision to admit evidence alleged to be unfairly prejudicial after the defendant failed to show that the evidence's probative value is substantially outweighed by the danger of unfair prejudice). Castro has offered nothing aside from his bald assertion that the evidence "tended to make him out as unusually dangerous," Appellant's Br. at 18, in order to show that exclusion of the evidence is justified under GRE 403. We therefore find no error by the trial court.

[41] The trial court was within its considerable discretion in admitting the evidence of Castro's participation and expertise in mixed martial arts for the legitimate purpose of proving the awareness component of recklessness. See, e.g., *Anderson*, 881 P.2d at 47 ("Although we agree that the aura of infallibility surrounding DNA evidence does present the possibility of a decision based on the perceived infallibility of the evidence, we conclude that the damaging

nature of the DNA evidence and the potential prejudice caused by this evidence does not require exclusion.”). Castro has failed to satisfy the first prong of the plain error test.

B. Castro’s Motion for Judgment of Acquittal as to the Aggravated Assault (As a Third Degree Felony) Charge

[42] Castro claims that there was insufficient evidence to sustain a conviction on the Aggravated Assault (As a Third Degree Felony) charge because no rational trier of fact could have found beyond a reasonable doubt that Castro’s punch caused Dunham serious bodily injury. Appellant’s Br. at 18-20; Tr. at 10 (Cont’d Jury Trial, June 14, 2012) (“[W]e think that it’s highly improbable that that fist could have -- from the distance that it was thrown, if thrown at all, could have done the damage that’s alleged to Mr. Dunham.”). As such, Castro argues that the trial court erred in denying his motion for judgment of acquittal on the Aggravated Assault (As a Third Degree Felony) charge. Appellant’s Br. at 18-20.

[43] We have previously stated:

Under Guam law, the trial court “on motion of a defendant or on its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment . . . after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.”

Song, 2012 Guam 21 ¶ 27 (quoting 8 GCA § 100.10 (2005)).

[44] “The trial court determines whether a motion for judgment of acquittal should be granted by applying the same test used when the sufficiency of the evidence is challenged.” *Id.* (citing *People v. Tennesen*, 2009 Guam 3 ¶ 14). “Since the denial of a motion for judgment of acquittal is predicated on the sufficiency of the evidence, the resolution of the propriety of the denial necessarily encompasses a review of the sufficiency of the evidence.” *Id.*

[45] On appeal, we review the evidence presented at trial in the light most favorable to the People to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *Tennessee*, 2009 Guam 3 ¶ 14). In conducting this analysis, we must afford the People “the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom.” *Id.* ¶ 28 (citing *People v. Anastacio*, 2010 Guam 18 ¶ 17). Importantly, it is the “defendant [who] bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict.” *Id.* (citation and internal quotation marks omitted).

[46] “When ruling on a motion for judgment of acquittal, the trial court is concerned with the existence or nonexistence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence.” *Id.* ¶ 29 (citations omitted). Under this standard, “[a] trial court should grant a motion for judgment of acquittal when the evidence merely raises a suspicion that the accused is guilty.” *Id.* (citations omitted). “However, if there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find [that] the case was properly submitted to the jury.” *Id.* (quoting *State v. Elmore*, 628 S.E.2d 271, 273 (S.C. Ct. App. 2006)) (internal quotation marks omitted).

1. Sufficient Evidence Existed to Prove that Castro’s Conduct Caused Dunham Serious Bodily Injury Beyond a Reasonable Doubt

[47] “A person is guilty of aggravated assault [as a third degree felony] if he . . . recklessly causes . . . *serious bodily injury* to another.” 9 GCA § 19.20(a)(2), (b) (2005) (emphasis added). As such, in the case of Aggravated Assault (As a Third Degree Felony), the People must have

shown that Castro recklessly caused *serious bodily injury* to Dunham. *See* Tr. at 62 (Cont'd Jury Trial, June 18, 2012).

2. Serious Bodily Injury

[48] Title 9 GCA § 16.10(c) defines “serious bodily injury” as follows: “[B]odily injury which creates: serious permanent disfigurement; a substantial risk or [sic] death or serious, permanent disfigurement, severe or intense physical pain or protracted loss or impairment of consciousness or of the function of any bodily member or organ[.]” 9 GCA § 16.10(c) (2005). Under the statute, serious bodily injury can manifest in various ways, and only one of the enumerated injuries is required for serious bodily injury to be met. *Id.*

[49] Castro essentially argues that the People did not produce sufficient evidence to prove that Castro’s reckless conduct caused serious bodily injury to Dunham. Appellant’s Br. at 19-20. Castro explains that “the only injury that would constitute serious bodily injury would be the damage to Mr. Dunham’s right eye,” and that this damage “could only have been inflicted by a blunt object such as a fire extinguisher and that the blunt object had to have been wielded by someone other than Castro.”⁴ *Id.* (emphasis omitted).

[50] In response, the People argue that serious bodily injury can manifest in various ways under 9 GCA § 16.10(c) and that the People produced sufficient evidence of serious bodily injury to Dunham by way of Castro’s punch. Appellee’s Br. at 21-22.

[51] Based on the evidence presented at trial, a rational trier of fact could have found that Castro’s punch caused serious bodily injury to Dunham beyond a reasonable doubt. The

⁴ Castro argues that his punch could not inflict serious bodily injury on Dunham because he is only 145 pounds, 5’5”, and “is not Manny Pacquiao [sic][.]” Appellant’s Br. at 20.

evidence, viewed in the light most favorable to the People, showed that Castro, with his left hand, punched Dunham's right eye. *See* Tr. at 64, 67, 70 (Cont'd Jury Trial, June 12, 2012).

a. Severe or Intense Physical Pain

[52] Bodily injury that creates severe or intense physical pain constitutes "serious bodily injury." 9 GCA § 16.10(c). The evidence presented at trial showed that Dunham suffered serious bodily injury in the form of severe or intense physical pain. Dunham described Castro's punch as the hardest he had ever been hit and the worst pain he had ever experienced in his life. Tr. at 64, 67, 70 (Cont'd Jury Trial, June 12, 2012). Dunham also stated that he thought his "eye was falling out" as if it "was like literally on [his] face." *Id.* at 64. Dunham later testified that for a week he was unable to close that same eye due to swelling, during which time the white part of his eye became yellow, causing him to be "pretty much blind." *Id.* at 70.

b. Protracted Loss or Impairment of the Function of any Bodily Member or Organ

[53] Bodily injury that creates protracted loss or impairment of the function of any bodily member or organ constitutes "serious bodily injury." 9 GCA § 16.10(c). Dunham's testimony regarding the severity of the swelling to his right eye such that he was unable to close it for a week as well as the injury causing him to be "pretty much blind," Tr. at 70 (Cont'd Jury Trial, June 12, 2012), was sufficient to prove that Dunham suffered serious bodily injury in the form of protracted loss or impairment of the function of a bodily member or organ.

c. Protracted Loss or Impairment of Consciousness

[54] Bodily injury that creates a protracted loss or an impairment of consciousness constitutes "serious bodily injury." 9 GCA § 16.10(c). The People assert that the evidence presented at trial showed that Dunham suffered serious bodily injury in the form of impairment of consciousness.

See Appellee's Br. at 22 ("The jury heard evidence that Dunham passed out after being hit by Castro."). However, based on the testimony presented, it is unclear whether Castro's punch impaired Dunham's consciousness. After Castro punched Dunham in the right eye, Dunham was able to cover his right eye while he jumped out of the booth in which he was standing. Tr. at 64-65 (Cont'd Jury Trial, June 12, 2012). He then moved through "a crowd of men" that were hitting and swinging at him, was hit in the back of the head by people, and soon after lost consciousness. *Id.*

[55] In conducting a review of the evidence, however, this court must afford the People "the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *Song*, 2012 Guam 21 ¶ 28 (citing *Anastacio*, 2010 Guam 18 ¶ 17). The specific facts of this case support a reasonable inference that Castro's punch impaired Dunham's consciousness. The evidence showed that Castro hit Dunham with such force that Dunham described Castro's punch as the hardest he had ever been hit and causing the worst pain he had ever experienced in his life. Tr. at 64, 67, 70 (Cont'd Jury Trial, June 12, 2012). Dunham also stated that he thought his "eye was falling out" as if it "was like literally on [his] face." *Id.* at 64. Dunham then lost consciousness not long after Castro struck him in the eye and was hit by others. *Id.* at 64-65. The nature of Dunham's injuries to his right eye⁵ also supports the inference that Castro struck him with a great amount of force. *Id.* at 70, 72, 76. Based on this evidence, viewed in the light most favorable to the People, we find that a rational trier of fact can conclude beyond a reasonable doubt that Castro's punch impaired Dunham's consciousness.

⁵ Dunham now has a scar under his right eye and a dent in the bone above his eye from an orbital rim fracture. Tr. at 76 (Cont'd Jury Trial, June 12, 2012); Tr. at 35 (Jury Trial, June 13, 2012).

d. Serious, Permanent Disfigurement

[56] Bodily injury that creates serious, permanent disfigurement constitutes “serious bodily injury.” 9 GCA § 16.10(c). The evidence presented at trial showed that Dunham suffered serious bodily injury in the form of serious, permanent disfigurement. Specifically, Dunham now has a permanent scar under his right eye and a dent in the bone above his eye. Tr. at 76 (Cont’d Jury Trial, June 12, 2012); Tr. at 35 (Jury Trial, June 13, 2012).

[57] Based on the testimony presented at trial, viewed in the light most favorable to the People, a rational trier of fact could have found beyond a reasonable doubt that Castro’s punch caused serious bodily injury to Dunham from any one of the injuries that resulted. This is so even if it is possible that a different finder of fact could have reached a different conclusion. *See Song*, 2012 Guam 21 ¶ 58 (citing *Jesus*, 2009 Guam 2 ¶ 61). We conclude that the trial court did not err in denying Castro’s motion for judgment of acquittal on the Aggravated Assault (As a Third Degree Felony) charge.

C. Consideration and Referral to Castro’s Background as a Mixed Martial Artist and as a Role Model to the Youth at Sentencing

[58] Castro argues that the trial court abused its discretion in imposing his sentence when it punished him more severely than his co-defendants as a result of his background as a role model for youth and a mixed martial artist.⁶ Appellant’s Br. at 20. Castro explains that the trial court

⁶ Castro notes that he received a sentence of incarceration while his codefendants, Kyle Ray Cabe Reyes and Elbert Tajalle Cruz, Jr., both of whom were also charged with Aggravated Assault (As a Third Degree Felony), received probation. Appellant’s Br. at 16. Despite this disparity, “[t]here is no constitutional requirement that identical punishment be meted out for like crimes.” *People v. Diaz*, 2007 Guam 3 ¶ 67 (citation omitted). In fact, this court has recognized that “[i]t is within the discretion of the trial court to impose disparate sentences upon codefendants.” *Id.* (quoting *United States v. Endicott*, 803 F.2d 506, 510 (9th Cir. 1986)).

repeatedly referenced his background as a youth role model and mixed martial artist, thus creating “an aura of influence that [Castro] never sought.”⁷ *Id.*

[59] In response, the People assert that the trial court did not abuse its discretion in sentencing Castro because it properly (1) sentenced Castro within the statutory limits and (2) referenced and considered Castro’s background as a youth role model and mixed martial artist. Appellee’s Br. at 23-24.

1. The Trial Court Sentenced Castro within Statutory Limits

[60] Guam law provides the trial court with the discretion to sentence a person who has been convicted of a third-degree felony to imprisonment for a period of not more than five years. *See* 9 GCA § 80.30(c) (2005) (“In the case of a felony of the third degree, the court may impose a sentence of not more than five (5) years.”). “[T]he imposition of sentences within the statutory limits lies almost entirely within the discretion of the trial judge.” *Diaz*, 2007 Guam 3 ¶ 67; *see also Wasman v. United States*, 468 U.S. 559, 563 (1984) (“It is now well established that a judge or other sentencing authority is to be accorded very wide discretion in determining appropriate sentence.”).

[61] The trial court sentenced Castro within the statutory limits, as he was sentenced to five years of imprisonment for the Aggravated Assault (As a Third Degree Felony) charge, with two

⁷ Unrelated to the specific issue at hand, Castro notes that the presentence investigation report provided to the trial court contained “misinformation” regarding Castro because it states that Castro struck Dunham with a fire extinguisher. Appellant’s Reply Br. at 1-2 (Feb. 12, 2013). Castro suggests that the trial court may have considered this misinformation. *Id.*

Castro, however, should have commented on this “misinformation” earlier. Title 9 GCA § 80.14 provides that a copy of the presentence investigation report shall be furnished to the offender or his counsel two days before the trial court imposes sentence in order to afford the offender or his counsel an opportunity to comment on the report. 9 GCA § 80.14 (2005). Nothing indicates that Castro or his counsel brought this “misinformation” to the trial court’s attention during Castro’s opportunity to comment.

years suspended. RA, tab 216 (Judgment, Sept. 11, 2012); *see also* 9 GCA § 80.30(c); *Camacho*, 2009 Guam 6 ¶ 40 (“The fact that [the defendant] was sentenced within the statutory range for his crime defeats any argument that he was sentenced to more time than he should have been.”). In fact, the trial court’s sentence may even be seen as an equitable compromise between the maximum sentence urged by the People on the one hand, and the probationary period urged by the defense on the other. Appellee’s Br. at 25.

2. The Trial Court Properly Considered and Referred to Castro’s Background

[62] A sentencing court must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant, given the crime committed. *Wasman*, 468 U.S. at 563. “[H]ighly relevant—if not essential—to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.” *Id.* at 564 (second alteration in original) (citation and internal quotation marks omitted). A trial court’s discretion in sentencing is therefore “largely unlimited either as to the kind of information he may consider, or the source from which it may come.” *United States v. Pugilese*, 805 F.2d 1117, 1122 (2d Cir. 1986) (citation and internal quotation marks omitted). “Allowing consideration of such a breadth of information ensures that the punishment will suit not merely the offense but the individual defendant.” *Wasman*, 468 U.S. at 564.

[63] Here, the transcripts from the sentencing hearing reveal that the trial court considered a number of factors when it sentenced Castro, including “all the letters of support from family and friends and from the business community” enclosed in the presentence investigation report, in

addition to the two letters submitted by Castro to the trial court before the sentencing hearing.⁸ Tr. at 23-26 (Sentencing Hr'g, Aug. 6, 2012).

[64] One of the letters submitted by Castro described him as a former “undefeated mix martial arts fighter” and a “mentor to the youth,” who is “focus[ed] . . . on his professional fighting career” and “has realized that . . . his persona as a fighter has a significant influence on the youth of today.” RA, Castro’s Add’l Submissions on Sentencing, Letter 1 at 1-2 (Aug. 3, 2012). That letter further indicated that Castro has “become a mentor and coach to younger fighters hoping to make it in the sport of mixed martial arts and jiu jitsu.” *Id.* at 3. The other letter submitted by Castro stated that Castro is “a leader in the gym and when other[] kids need[] a helping hand . . . Alex is always first to be there for them.” RA, Castro’s Add’l Submissions on Sentencing, Letter 2 at 1. It further indicated that Alex “has built up a gym from nothing just so the kids on the street will have a place to train[] and stay out of trouble[].” *Id.*

[65] The trial court’s repeated mention of Castro as a mixed martial artist and as a role model to the youth at sentencing were made in reference to these letters, many of which portrayed Castro in this light. Contrary to Castro’s assertions, the trial court did not, on its own, construct and impose “an aura of influence” upon him. Appellant’s Br. at 20. Rather, the trial court merely acknowledged Castro’s influential role in the community based upon what was represented to the trial court in these letters.

[66] Moreover, the trial court’s references to Castro’s background at the sentencing hearing were not the sole determinative factor upon which the trial court’s decision was based. The

⁸ We recognize that the presentence investigation report is not a public record. *See* 9 GCA § 80.14 (2005). We note that the two letters submitted by Castro to the trial court, from which we quote below, were not part of the presentence investigation report; thus, they are matters of public record.

sentencing hearing transcript reveals that the trial court gave due consideration to other factors when sentencing Castro, including “all the evidence in the case” and the “gravitate [sic] situation of what happened on that particular day.” Tr. at 23 (Sentencing Hr’g). The trial court’s explicit consideration of these other factors, aside from Castro’s background as a mixed martial artist and youth role model, further discredits Castro’s assertion that the trial court impermissibly sentenced Castro on the mere basis of his background.

[67] Since the trial court has such wide discretion at sentencing to consider all circumstances that shed light on a convicted person’s background, history, and behavior, *Pugilese*, 805 F.2d at 1122, the trial court was within the bounds of its discretion when it referenced and considered Castro’s background as a mixed martial artist and as a role model to the youth. We therefore find that the trial court did not abuse its discretion in sentencing Castro, and reversal of the conviction is not warranted on these grounds.

V. CONCLUSION

[68] The trial court properly admitted as relevant, pursuant to GRE 402, evidence of Castro’s participation and expertise in mixed martial arts activities. On plain error review, that evidence was probative of recklessness, an essential element that the People had to prove at trial, and the probative value of such evidence was not substantially outweighed by the danger of any unfair prejudice to Castro under GRE 403. Viewing the evidence in a light most favorable to the People, we find that there was sufficient evidence to show that Castro’s reckless conduct caused serious bodily injury to Dunham. The trial court therefore properly denied Castro’s motion for judgment of acquittal. We further find that the trial court sentenced Castro within the statutory

limits and did not abuse its discretion in considering and referring to Castro's background as a mixed martial artist and youth role model.

[69] Accordingly, we **AFFIRM**.

Original Signed: **Robert J. Torres**
By

Original Signed: **Katherine A. Maraman**
By

ROBERT J. TORRES
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

Original Signed: **F. Philip Carbullido**
By

F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam.

OCT 25 2013

By: **Charlene T. Santos**
Deputy Clerk
Supreme Court of Guam