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Clerk of Court

IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

KENDALL NORRIS McKINNEY,
Defendant-Appellant.

Supreme Court Case No.: CRA14-027
Superior Court Case No.: CF0535-13

OPINION

Cite as: 2016 Guam 3

Appeal from the Superior Court of Guam
Argued and submitted on July 24, 2015
Hagåtña, Guam

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

MARAMAN, J.:

[1] Defendant-Appellant Kendall Norris McKinney appeals a final judgment following his criminal convictions in a jury trial. At the close of the People's case, McKinney moved for a Judgment of Acquittal. The trial court denied McKinney's motion. The jury found McKinney guilty of one count of Burglary, one count of Theft of Property, and one count of Theft by Receiving. Specifically, McKinney argues that the evidence presented at trial was insufficient to sustain his criminal convictions. McKinney further asserts that the trial court erred in sentencing him to maximum consecutive terms of imprisonment for the Burglary and Theft by Receiving convictions. For the foregoing reasons, we affirm McKinney's criminal convictions and sentencing order.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case arises from a criminal conviction for Burglary, Theft of Property, and Theft by Receiving Stolen Property. Romeo and Aurora Reyes, a married couple, reside in Dededo, where their grandson, John Michael Lizama, lived in the back extension to their home. McKinney, a friend of Lizama, stayed in the back extension with him for a few days in 2013. The Reyeses owned a Chevrolet Trailblazer with distinct tire rims and a Mazda CX7. Around July 21, 2013, the Reyeses found their home broken into; two laptops and a television were missing. Additionally, Romeo noticed that his keys were unaccounted for. The house's doors and windows were not damaged.

[3] Before his Trailblazer went missing in August 2013, Romeo last saw it parked outside his house. Aurora drove her Mazda CX7 to work at Benavente Middle School and discovered her car stolen from the parking lot in July or August 2013.

[4] On September 11, 2013, police recovered the Trailblazer and Mazda CX7 at the Okkodo pipeline in Dededo, a place that Guam Police Department Officer Ronell Rivera identified as a common area to abandon stolen vehicles. Both vehicles were in the jungle area and had been stripped. Officer Robert Travis dusted the abandoned vehicles for fingerprints, but was unable to use them to make a fingerprint comparison because the fingerprints were incomplete or smudged. Officer Keane Pangelinan found one of the stolen Trailblazer tire rims at the recycling center.

[5] Pangelinan arrested McKinney at Jerald Santos's house. McKinney was thereafter indicted for one count of Burglary as a second-degree felony. The grand jury later issued a Superceding Indictment charging McKinney with Burglary as a second-degree felony; Theft of Property as a second-degree felony; and two counts of Theft by Receiving, both as second-degree felonies. Count One of the Theft by Receiving charge related to a Chevrolet Trailblazer, and stated:

> On or about the 29th day of August, 2013, in Guam**, KENDALL NORRIS MCKINNEY,** did commit the offense of ***Theft By Receiving***, in that he did intentionally receive, retain or dispose of the movable property of ***Romeo Reyes***, that is, *a 2006 Chevrolet Trailblazer*, knowing that it had been stolen or believing that it had probably been stolen, in violation of 9 GCA §§ 43.50(a) and 43.20(a).

Record on Appeal ("RA"), tab 31 at 2 (Superceding Indictment, Nov. 14, 2013). Count Two of the Theft by Receiving charge related to a Mazda CX7, and stated as follows:

> On or about the 11th day of September, 2013, in Guam, **KENDALL NORRIS MCKINNEY,** did commit the offense of ***Theft By Receiving***, in that he did intentionally receive, retain or dispose of the movable property of ***Aurora Reyes***, that is, *a 2012 Mazda CX7,* knowing that it had been stolen or believing that it had probably been stolen, in violation of 9 GCA §§ 43.50(a) and 43.20(a).

Id.

[6] The People filed a Motion to Amend the Superceding Indictment, seeking to change the date of the second count of Theft by Receiving from September 11, 2013, to on or about September 9, 2013. The court granted the government's motion to correct the date over McKinney's objection.

[7] At trial, the People first called Robby Leon Guerrero to testify. Leon Guerrero related that McKinney stayed at Leon Guerrero's residence for about three weeks in August or September 2013. Leon Guerrero stated that he, McKinney and John Santos went to a house near Leon Guerrero's home in Dededo. John Eric Santos testified that McKinney and Leon Guerrero entered the house and returned with a box of clothes and a television. John Eric Santos further testified that upon returning to his family residence, McKinney left with the television and came back about an hour later without it.

[8] Leon Guerrero testified that while McKinney did not own a vehicle, he had seen McKinney driving a gold "Blazer" with black rims about a week before McKinney began living with him. Additionally, police searched the area of Leon Guerrero's residence where McKinney stayed and found credit cards and other documents that belonged to the Reyeses.

[9] Aurora also testified, and recalled that two laptops were taken from her house during the burglary, including a Guam Department of Education issued laptop. Mrs. Reyes stated that Lizama was no longer living in the back extension at the time of the break-in and that she explicitly told McKinney that he was not allowed to be at the residence. Aurora indicated that

she parked her Mazda in the parking lot at Benavente Middle School in July or August 2013, and discovered it missing later in the day. Aurora further stated that before her car disappeared, a set of keys had gone missing.

[10] Other witnesses included Thomas Taitano, Jerome Wusstig, Gene Johnson, and Jerald Santos. Taitano informed the jury that he helped in McKinney's attempt to sell rims. McKinney told Taitano that the rims were not stolen, but the fact that McKinney only possessed two rims made Taitano uneasy. Wusstig also testified that he saw McKinney with a set of rims. In a written statement to the police, Wusstig claimed that McKinney told him that he had taken a car from Benavente Middle School.

[11] Johnson, another person with whom McKinney lived for a brief time, related that he had seen McKinney with a silver laptop. Jerald Santos, a former student of Aurora Reyes, testified that McKinney attempted to sell him rims from a Chevrolet Trailblazer. Jerald Santos indicated that he had seen McKinney in possession of a set of keys that included keys to the Trailblazer and keys to the Reyes residence.

[12] At the close of the People's case, McKinney made an oral Motion for Judgment of Acquittal under 8 GCA § 100.10. The trial court denied this motion, reasoning that the court was "satisfied at this time that any rational trier of fact could have found that [sic] the essential elements of the crime beyond a reasonable doubt." Transcripts ("Tr.") at 91-92 (Closing Arguments, Jury Instructions, Dec. 30, 2013). The jury returned the following verdict: Charge One of Burglary as a Second Degree Felony, guilty; Charge Two of Theft of Property as a Second Degree Felony, not guilty; Theft of Property as a Third Degree Felony, a lesser included of Theft of Property as a Second Degree Felony, guilty; Count One of Theft by Receiving as a

Second Degree Felony, guilty; Count Two of Theft by Receiving as a Second Degree Felony, not guilty.

[13] The trial court sentenced McKinney to the following: ten years for Burglary as a Second Degree Felony; five years for Theft of Property as a Third Degree Felony to run concurrently with the sentence for Burglary; ten years for Theft by Receiving as a Second Degree Felony to run consecutively to his other sentences. Altogether, the trial court imposed a 20-year term of imprisonment on McKinney.

II. JURISDICTION

[14] This court has jurisdiction over appeals from a final judgment of the Superior Court pursuant to 48 U.S.C.A § 1424-1(a)(2) (Westlaw through Pub. L. 114-93 (2015)) and 7 GCA §§ 3107(b) and 3108(a) (2005). This is an appeal from a final judgment issued by the Superior Court on November 21, 2014.

III. STANDARD OF REVIEW

[15] After a jury trial, the standard of review for a claim of insufficient evidence "depends on whether the defendant preserves his claim by making a motion for judgment for acquittal at the close of the evidence." *People v. Maysho*, 2005 Guam 4 ¶ 6. If a defendant preserves his claim by moving for acquittal, the standard of review is *de novo*. *Id.* (citing *United States v. Carranza*, 289 F.3d 634, 641 (9th Cir. 2002)); *see also People v. Flores*, 2009 Guam 22 ¶ 10 ("[C]laims of insufficient evidence are matters of law that are reviewed *de novo*."). McKinney moved for Judgment for Acquittal at the close of evidence. Thus, the standard of review for McKinney's claim of insufficient evidence is *de novo*.

[16] "A double jeopardy claim is a question of law reviewed *de novo* . . . ." *People v. San Nicolas*, 2001 Guam 4 ¶ 8 (quoting *People v. Florida*, Crim. No. 96-00060A, 1997 WL 209044,

at *6 (D. Guam App. Div. Apr. 21, 1997)). Because McKinney argues that the trial court erred in sentencing him to consecutive terms of imprisonment for the same criminal act, the standard of review is *de novo*.

IV. ANALYSIS

A. Whether the Evidence was Sufficient to Sustain the Guilty Verdicts on the Charges of Burglary, Theft of Property, and Theft by Receiving Stolen Property

[17] McKinney challenges the sufficiency of the evidence for the guilty verdicts on the charges of Burglary, Theft of Property, and Theft by Receiving. Appellant's Br. at 10-16 (Mar. 25, 2015). This court has previously set forth the proper analysis for a sufficiency of the evidence challenge:

> "In reviewing the sufficiency of the evidence to support a criminal conviction," this court inquires as to "whether the evidence in the record could reasonably support a finding of guilt beyond a reasonable doubt." *People v. Sangalang*, 2001 Guam 18 ¶ 20 (citations omitted); *People v. Reyes*, 1998 Guam 32 ¶ 7; *People v. Leon Guerrero*, 2001 Guam 19 ¶ 32. Because "this is a highly deferential standard of review," "[w]hen a criminal defendant asserts that there is insufficient evidence to sustain the conviction, this court reviews the evidence *in the light most favorable to the prosecution to ascertain whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.["]* *Sangalang*, 2001 Guam 18 ¶ 20 (emphases added) (citations and internal quotation marks omitted); *see also United States v. Birges*, 723 F.2d 666, 672 (9th Cir. 1984).

People v. Guerrero, 2003 Guam 18 ¶ 13. In other words, when reviewing a jury conviction for sufficiency of the evidence, the reviewing court must find "that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" in order for a challenge to the sufficiency of the evidence to be successful. *See Tucker v. Palmer*, 541 F.3d 652, 656 (6th Cir. 2008) (quoting *Parker v. Renico*, 506 F.3d 444, 448 (6th Cir. 2007)) (reviewing a habeas corpus petition).

1. Burglary

[18] The first conviction McKinney challenges is Burglary. The Amended Superceding Indictment alleged that:

> On or about the 21st day of July, 2013, in Guam, **KENDALL NORRIS MCKINNEY** did commit the offense of ***Burglary***, in that he did enter in the habitable property of ***Romeo and Aurora Reyes***, with the intent to commit the crime *theft* therein, at a time when the premises were neither open to the public nor the Defendant licensed or privileged to so enter, in violation of 9 GCA §§37.20(a) and 37.20(b), and 4.60.

RA, tab 61.1 at 1 (Am. Superceding Indictment, Dec. 24, 2013). The indictment is consistent with the essential elements of the burglary statute, which states:

> A person is guilty of burglary if he enters . . . any habitable property, building, or a separately secured or occupied portion thereof . . . with intent to commit a crime therein, unless the premises are at the time open to the public or the defendant is licensed or privileged to enter . . . .

9 GCA § 37.20(a) (2005). Thus, the proper question is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found, beyond a reasonable doubt, that on or about July 21, 2013, in Guam, McKinney entered the habitable property of the Reyeses with the intent to commit a crime therein at a time McKinney was neither licensed nor privileged to enter there.

[19] The California Supreme Court held that the intent element is "rarely susceptible of direct proof and must usually be inferred from all the facts and circumstances disclosed by the evidence." *People v. Holt*, 937 P.2d 213, 245-46 (Cal. 1997) (citations and internal quotation marks omitted). In *People v. Abilez*, the court further expressed that "'[t]here is no better proof that [defendant] entered the [victim's house] with intent to commit robbery than a showing he did in fact commit robbery after his entry.'" 161 P.3d 58, 85 (Cal. 2007) (alterations in original) (quoting *People v. Du Bose*, 89 Cal. Rptr. 134, 139 (Ct. App. 1970)).

[20] McKinney must also have been neither licensed nor privileged to be in the Reyes residence at the time of the burglary. "A person's presence may be unlawful because of a revocation of the privilege to be there." *State v. Kutch*, 951 P.2d 1139, 1142 (Wash. Ct. App. 1998) (citing *State v. Collins*, 751 P.2d 837, 839-40 (Wash. 1988)). In *Kutch*, the court of appeals upheld a verdict for burglary, finding that the defendant committed an unlawful entry based on the victim's express revocation of the defendant's privilege to enter the store. *Id.*

[21] Evidence in the record demonstrates that McKinney entered into the Reyes residence on or about July 21, 2013. Several witnesses testified that they travelled with McKinney to the Reyes residence and saw McKinney enter the house. Tr. at 34, 37 (Jury Trial, Day 1, Dec. 18, 2013); Tr. at 48 (Jury Trial, Day 4, Dec. 23, 2013). John Eric Santos testified that he saw McKinney walk out of the Reyes residence with a television. Tr. at 48 (Jury Trial, Day 4). Aurora testified that on the day of the burglary, a television was stolen. Tr. at 103 (Jury Trial, Day 2, Dec. 19, 2013). John Eric Santos testified that on the day of the burglary, McKinney left the Santos residence with the television and came back an hour later with money but without the television. Tr. at 49, 51 (Jury Trial, Day 4). Lastly, Aurora's testimony established that she told McKinney that he was not welcome at her house when she saw him there. Tr. at 118 (Jury Trial, Day 2). A rational trier of fact could conclude from the evidence in the record that McKinney entered the Reyeses' habitable property with intent to commit a crime therein at a time when McKinney was neither privileged nor licensed to be in the house.

[22] The basis of McKinney's challenge is that the evidence is merely circumstantial. However, this court has stated that "[i]n a sufficiency of the evidence analysis, courts determine whether there is sufficient direct and/or circumstantial evidence from which reasonable inferences can be drawn to support each element of the crime or crimes charged." *People v.*

Jesus, 2009 Guam 2 ¶ 62 (citing *People v. Flores*, 2004 Guam 18 ¶ 6). Furthermore, "entirely circumstantial" evidence is sufficient to support a guilty verdict. *See United States v. Boskic*, 545 F.3d 69, 85 (1st Cir. 2008) (citations and internal quotation marks omitted); *see also Tucker*, 541 F.3d at 657 ("In assessing the adduced proof, the Court may sustain a conviction based upon nothing more than circumstantial evidence.").

[23] Due to the evidence in the record and the highly deferential standard, we hold that the evidence in the record could have led a reasonable trier of fact to find all the essential elements of Burglary beyond a reasonable doubt.

2. Theft of Property

[24] The second charge McKinney challenges is Theft of Property. The trial court instructed the jury on Theft of Property as a Third Degree felony, a lesser included offense of Theft of Property as a Second Degree Felony, providing:

> The People must prove beyond a reasonable doubt that the Defendant, **KENDALL NORRIS MCKINNEY**: 1) On or about the 21st day of July, 2013; 2) In Guam; 3) Did unlawfully take, obtain and exercise unlawful control over the movable property of **Romeo and Aurora Reyes**; that is a *laptop, a television, and other items*; 4) With the intent to deprive, **Romeo and Aurora Reyes**, thereof, the amount involved is less than $1,500.00 but exceeds $500.00.

RA, tab 69 (Jury Instruction No. 7D, Dec. 31, 2013). The jury convicted McKinney of the lesser included offense. Tr. at 3 (Verdict, Dec. 31, 2013). Thus, the proper determination is whether, viewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found, beyond a reasonable doubt, that on or about July 21, 2013, in Guam, McKinney did unlawfully take, obtain and exercise unlawful control over the Reyeses' laptop, television, and other items with the intent to deprive them of the items, the value of which exceeded $500.00 but was less than $1,500.00.

[25] As to the intent element, the Supreme Court of Hawaii noted that intent is seldom established by direct evidence, stating that a "defendant's intent to deprive another of his property may reasonably be inferred from defendant's acts, conduct, and inferences fairly drawn from all the circumstances." *State v. Hong*, 611 P.2d 595, 597 (Haw. 1980). That court upheld the denial of a motion for acquittal based on the defendant's "exclusive possession of recently stolen property." *Id.* at 598.

[26] Guam law uses the fair market value[1] in determining the value of property involved in the theft. *See* 9 GCA § 43.20(e) (2005). The prosecution has the duty of entering its proof of value into the record. *See People v. Camacho*, Crim. No. 89-00125A, 1990 WL 320363, at *2 (D. Guam App. Div. Oct. 30, 1990). In *Camacho*, the owner of a bull testified that his bull was worth $3,000.00 to him and that he had been offered $2,000.00 for the bull. *Id.* at *1. The court in *Camacho* found that it had no admissible evidence to determine the value involved in the theft, reasoning that an "owner's testimony is admissible only if it goes to the issue of objective market value," and that an owner's testimony regarding subjective value is "irrelevant." *Id.* at *1-2 (citing *United States v. Laughlin*, 804 F.2d 1336, 1340 (5th Cir. 1986)).

[27] In this case, Aurora testified that McKinney was unwelcome at her residence and unauthorized to be there on the day her laptops and televisions went missing. Tr. at 118 (Jury Trial, Day 2). Other testimony established that after McKinney removed a television from the Reyes residence, he left the Santos residence with the television and came back with money but without the television. Tr. at 49, 51 (Jury Trial, Day 4). Several other accounts demonstrated that after the burglary, McKinney was in the exclusive possession of a silver Sony Vaio laptop.

[1] Fair market value has been defined as the "highest price obtainable from a willing buyer and by a willing seller, neither of whom was forced to act." *People v. Pena*, 135 Cal. Rptr. 602, 604 (Ct. App. 1977); *see also State v. Clark*, 537 P.2d 820, 824 (Wash. Ct. App. 1975).

Tr. at 7 (Jury Trial, Day 3, Dec. 20, 2013); Tr. at 14, 17 (Jury Trial, Day 5, Dec. 26, 2013). Romeo testified that the television cost about $352.00, and Aurora testified that her husband gave her daughter $1,500.00 to purchase the laptop. Tr. at 74, 104 (Jury Trial, Day 2). Unlike *Camacho*, victim testimony in this case provides sufficient evidence related to the objective value of the stolen items because it refers to the cost of the items rather than their subjective worth. Lastly, the police found credit cards, checkbooks, and other documents belonging to the Reyeses among McKinney's belongings in the shack at the Leon Guerrero residence. Tr. at 60-61 (Jury Trial, Day 6)

[28] McKinney argues that there is no evidence demonstrating that the television taken from the Reyeses' residence was not his or that he deprived the Reyeses of their television. Appellant's Br. at 15. There is, however, victim testimony stating that on the day of the burglary, a television and laptop, among other things, were missing. Tr. at 78, 103, 118 (Jury Trial, Day 2). Additionally, there is witness testimony that demonstrates that on the day of the burglary, McKinney walked out of the residence with a television. Tr. at 49, 51 (Jury Trial, Day 4). The evidence in the record, viewed in the light most favorable to the prosecution, could lead a rational trier of fact to conclude that all the essential elements of Theft of Property as a Third Degree Felony were proved beyond a reasonable doubt. Thus, there was sufficient evidence to support the jury's guilty verdict on the charge of Theft of Property as a Third Degree Felony.

3. Theft by Receiving

[29] McKinney asserts that there is "no evidence that [he] received, retained or disposed of Mrs. Reyes's Mazda, on or about September 9, 2013." Appellant's Br. at 14. The sufficiency of the evidence challenge and arguments on appeal for the Theft by Receiving charge related entirely to the Mazda. *Id.* at 13-15. However, McKinney was acquitted of this count. The

confusion first arose when McKinney asserts he was found Not Guilty of Charge Three, Count One of Theft by Receiving (As a 2nd Degree Felony), and Guilty of Charge Three, Count Two of Theft by Receiving (As a 2nd Degree Felony). *Id.* at 3-4. McKinney then proceeds throughout the entirety of his brief attacking his "conviction" of Count Two of Theft by Receiving, all the while referencing the Mazda. *Id.* at 10, 13-19. The People apparently did not notice this error, and likewise state that "McKinney was acquitted in reference to the count of Theft by Receiving involving the Trailblazer." Appellee's Br. at 16 n.2 (Apr. 13, 2015).

[30] The Verdict Forms, Judgment, and Transcripts all indicate that McKinney was convicted of Theft by Receiving, Count One (involving a 2006 Chevrolet Trailblazer), and acquitted of Theft by Receiving, Count Two (involving a 2012 Mazda CX7). RA, tab 75 (Verdict Form 5); RA, tab 76 (Verdict Form 6); RA, tab 107 at 2 (Am. Judgment, Jan. 14, 2016); Tr. at 3 (Verdict).[2] Even the Notice of Appeal indicates that McKinney was convicted of Count One of Theft by Receiving. RA, tab 99 (Notice of Appeal, Nov. 26, 2014).

[31] Pursuant to the Guam Rules of Appellate Procedure ("GRAP"), an Appellant's brief must contain an argument, which must state the "Appellant's contentions and reasons for them" with citations to authorities and the record. Guam R. App. P. 13(a)(9)(A). "Issues raised in a brief which are not supported by argument are deemed abandoned . . . ." *People v. Quinata*, 1999 Guam 6 ¶ 26 (quoting *Acosta–Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992)); *see also United States v. Turner*, 898 F.2d 705, 712 (9th Cir. 1990). This issue presented in this case is unique because the briefs do not address or challenge the sufficiency of the evidence convicting McKinney of Theft by Receiving the Trailblazer.

[2] Furthermore, Jury Instruction 7G referenced the Trailblazer when setting forth "The Essential Elements of Theft By Receiving Stolen Property as a Second Degree Felony . . . Charge 3, Count 1." Tr. at 129 (Closing Arguments, Jury Instructions). Jury Instruction 7H referenced the Mazda when setting forth "The Essential Elements of Theft By Receiving Stolen Property as a Second Degree Felony . . . Charge 3, Count 2." *Id.*

[32] A court has inherent authority to determine whether an issue should be considered on appeal. *State v. Roberts*, 345 P.3d 1226, 1234 (Utah 2015) (citations omitted) (compliance with appellate requirements is subjective and "left to the discretion of the appellate court"). Generally, however, "'[i]t is not this Court's job to conduct legal research on [a party's] behalf, to guess as to [a party's] precise position, or to develop legal analysis that may lend support to that position.'" *Griffith v. Butte Sch. Dist. No. 1*, 244 P.3d 321, 332 (Mont. 2010) (quoting *Johansen v. Dep't of Natural Res. & Conservation*, 955 P.2d 653, 658 (Mont. 1998); *State v. Gomez*, 158 P.3d 442, 448 (Mont. 2007)).

[33] Accordingly, this court declines to address whether there was sufficient evidence to convict McKinney of Theft by Receiving for Count One.[3]

B. Sentencing Consecutive Terms of Imprisonment

[34] McKinney next argues that the trial court erred in sentencing him to consecutive maximum terms of imprisonment for the convictions of Burglary and Theft by Receiving. Appellant's Br. at 16. Specifically, McKinney asserts that the trial court erroneously sentenced him consecutively for three crimes arising under the same criminal act. *Id.* at 19. McKinney also contends that the stolen Mazda constitutes proceeds from the "other items" contained in Theft of Property charge. *Id.* at 18. According to McKinney, because he was convicted of Theft of Property (theft of other items), he cannot be subsequently punished for Theft by Receiving the proceeds (the Reyeses' Mazda) of the Theft of Property. *Id.* at 18-19. As McKinney has predicated these arguments on an acquitted count, we decline to address this issue.

[3] McKinney may attempt to seek recourse through a Writ of Habeas Corpus, although we express no opinion on the merits or ultimate outcome of such a petition.

V. CONCLUSION

[35] There was sufficient evidence to sustain the criminal convictions of Burglary and Theft of Property. As McKinney failed to adequately apprise this court as to whether there was sufficient evidence to convict him of Theft by Receiving, Count One, and also whether the trial court erred in sentencing him to maximum consecutive terms of imprisonment, we decline to address those issues. For the foregoing reasons, we **AFFIRM** McKinney's criminal convictions and sentencing order.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice