



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

ADAM JIM HILL,
Defendant-Appellant.

Supreme Court Case No. CRA16-009
Superior Court Case No. CF0297-14

OPINION

Cite as: 2018 Guam 3

Appeal from the Superior Court of Guam
Argued and submitted on March 2, 2017
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Defendant-Appellant Adam Jim Hill appeals his conviction of one count of First Degree Criminal Sexual Conduct (“CSC”) and one count of Second Degree CSC. The sole basis for his claim of error on appeal is that the trial court did not properly instruct the jury on the element in the charges having to do with the age of the victim. Specifically, Hill alleges that the trial court did not instruct the jury that it had to find, as an essential element of the charges, that the victim was under the age of fourteen, but rather, it instructed the jury that the victim was *in fact* under fourteen years of age—thus taking away the victim’s age as an element that the jury needed to find for itself beyond a reasonable doubt. For the reasons discussed below, Hill failed to satisfy his burden to show the alleged error affected his substantial rights. Therefore, under a plain error analysis, we affirm his conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Hill was indicted on one count of First Degree CSC (as a 1st Degree Felony) and one count of Second Degree CSC (as a 1st Degree Felony). Testimony was elicited at trial regarding the age and birthdate of J.P., the minor alleged victim. J.P.’s mother testified that, at the time of trial, J.P. was 14, turning 15. J.P. testified that her birthdate is August 27, 2000. Although Hill’s trial counsel cross-examined both of these witnesses, the issue of J.P.’s age or birthdate was never questioned or raised as a point of contention during cross-examination. At the conclusion of each side’s closing arguments, the trial court verbally instructed the jurors in the following way, as to the first charge:

Elements of the offense, Charge 1, the crime charged is first degree criminal sexual conduct and the People must prove beyond a reasonable doubt that the defendant Adam Jim Hill, on or about the period between January 1st 2014 through January 31st 2014 inclusive in Guam, did intentionally engage in sexual penetration with another, to wit, by causing his finger to penetrate the genital openings of [J.P.] *who's [sic] date of birth is August 27, 2000*, a minor under fourteen years of age.

Transcript (“Tr.”) at 54-55 (Jury Trial, July 10, 2015) (emphasis added).

[3] As to the second charge, the trial court instructed:

Charge 2, the crime charged is second degree criminal sexual conduct and the People must prove beyond a reasonable doubt that the defendant Adam Hill, on or about the period between January 1st, 2014 through January 31st, 2014 inclusive, in Guam, did intentionally engage in sexual contact with another, to wit, by causing his finger to touch the primary genital areas of [J.P.] *who's [sic] date of birth is 8/27/2000*, a minor under fourteen years.

Id. at 55 (emphasis added).

[4] The relevant jury instructions, in printed form, read as follows:

6. ELEMENTS OF OFFENSES

6A. ESSENTIAL ELEMENTS OF FIRST DEGREE CRIMINAL SEXUAL CONDUCT

CHARGE ONE

The crime charged is first degree criminal sexual conduct. The People must prove beyond a reasonable doubt that the Defendant, Adam Jim Hill:

1. On or about the period between January 1, 2014 through January 31, 2014, inclusive;
2. In Guam;
3. Did intentionally;
4. Engage in sexual penetration with another, to wit, by causing his finger to penetrate the genital opening of [J.P.] (DOB: 08/27/00);
5. A minor under fourteen (14) years of age.

6B. ESSENTIAL ELEMENTS OF SECOND DEGREE CRIMINAL
SEXUAL CONDUCT

CHARGE TWO

The crime charged is second degree criminal sexual conduct. The People must prove beyond a reasonable doubt that the Defendant, Adam Jim Hill:

1. On or about the period between January 1, 2014 through January 31, 2014, inclusive;
2. In Guam;
3. Did intentionally;
4. Engage in sexual contact with another, to wit, by causing his finger to touch the primary genital area of [J.P.] (DOB: 08/27/00);
5. A minor under fourteen (14) years of age.

Record on Appeal (“RA”), tab 52 at 52-53 (Jury Instrs., July 10, 2015).

[5] The only concern raised by Hill had to do with Instruction 3G relative to what is not considered evidence—an instruction inapposite to the error claimed on appeal. Hill did not otherwise object to the jury instructions. The jury returned a verdict of guilty as to both charges, and the trial court sentenced Hill in accordance with that verdict. A judgment of conviction was entered, and Hill timely appealed.

II. JURISDICTION

[6] This court has jurisdiction over the appeal from a final judgment in a criminal case. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 115-140 (2018)); 7 GCA § 3107(b) (2005); *see also* 8 GCA § 130.15(a) (2005).

III. STANDARD OF REVIEW

[7] Hill’s sole challenge on appeal is that the jury instructions were improper. Because Hill did not object to the instructions at trial, this court reviews the issue for plain error. *See People v. Cruz*, 2016 Guam 15 ¶ 17 (“If no objections to jury instructions are made at the time of trial,

the standard of review is plain error.” (citation omitted)); *People v. Diego*, 2013 Guam 15 ¶ 9 (citation omitted); *People v. Jones*, 2006 Guam 13 ¶ 9 (citation omitted). “Plain error is highly prejudicial error,” and we will reverse only if “(1) there was an error; (2) the error is clear or obvious under current law; (3) the error affected substantial rights; and (4) reversal is necessary to prevent a miscarriage of justice or to maintain the integrity of the judicial process.” *People v. Gargarita*, 2015 Guam 28 ¶ 11 (quoting *People v. Felder*, 2012 Guam 8 ¶ 19).

IV. ANALYSIS

[8] Guam law defines First Degree CSC, in relevant part, as follows: “A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists: (1) the victim is under fourteen (14) years of age[.]” 9 GCA § 25.15(a)(1) (as amended by Pub. L. 32-012:2 (Apr. 11, 2013)). Second Degree CSC is defined, in relevant part, in this way: “A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists: (1) that other person is under fourteen (14) years of age[.]” 9 GCA § 25.20(a)(1) (as amended by Pub. L. 32-012:2 (Apr. 11, 2013)). For these offenses, the jury must find beyond a reasonable doubt that the victim was under fourteen years of age at the time of the offenses. Hill asserts that providing the alleged victim’s birthdate in the jury instructions made it appear as though it was a given fact rather than an element that the jury needed to find beyond a reasonable doubt. He argues that this was erroneous and prejudicial. While we agree with Hill that the trial court’s jury instructions were erroneous, we find such error did not affect his substantial rights, and we affirm his conviction.

A. Providing the Victim’s Birthdate in the Jury Instructions Was Error

[9] The failure to properly instruct a jury on an essential element of the charged offense creates the danger that the defendant has been deprived of his right to have the jury determine whether the People have proved beyond a reasonable doubt each and every element of the offense. *Rose v. Clark*, 478 U.S. 570, 595-96 (1986) (Blackmun, J., dissenting). Hill argues that the given jury instructions failed to advise the jury that it needed to find, as an essential element of both of the CSC charges, that the victim was under the age of fourteen at the time of Hill’s alleged criminal conduct.

[10] The first prong of the plain error analysis requires the court to determine whether there was error in the instructions. *See Gargarita*, 2015 Guam 28 ¶ 13. In this case, when instructing the jury on the elements of the crimes charged, the court identified the alleged victim as “[J.P.] *who’s [sic] date of birth is August 27, 2000 . . .*” Tr. at 54-55 (Jury Trial, July 10, 2015) (emphasis added); *see also* RA, tab 52 at 52-53 (Jury Instrs.) (“[J.P.] (DOB: 08/27/00)”).

[11] The Court of Appeals of Washington, in the case of *State v. Baxter*, 141 P.3d 92 (Wash. Ct. App. 2006), confronted the issue of whether the inclusion of the victim’s birthdate in the jury instruction for second degree assault of a child violated the provision of the state constitution that states: “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” 141 P.3d at 94 (quoting Wash. Const. art. IV, § 16). In that case, Baxter was charged with assault on his eight-year-old son. *Id.* The jury instructions, as charged by the trial court, on the elements required to convict included the birthdate of the son. *See id.* Baxter appealed his conviction, arguing similarly to Hill that the court erred in including the birthdate of the alleged victim in its instruction when the victim’s age was an essential element of the crime. *See id.* In that case, although the court ultimately affirmed the conviction under a harmless error

standard, the court found that the inclusion was erroneous in that it violated the state constitutional provision prohibiting judges from charging juries on matters of fact or commenting thereon. *Id.* (“Including a victim’s birth date in jury instructions, where the victim’s age is an element of the crime charged, is a manifest violation of this provision.” (citations omitted)).

[12] Although neither the Organic Act nor local statutory law contains a provision analogous to the referenced provision of the Washington Constitution, we find that this reasoning is sound and comports with other constitutional and statutory requirements necessary to secure a criminal conviction. “Under Guam law, ‘[n]o person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.’” *People v. Perry*, 2009 Guam 4 ¶ 10 (alteration in original) (quoting 8 GCA § 90.21(a) (2005)). “Thus, in a jury trial, ‘[t]he Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged.’” *Id.* ¶ 12 (alteration in original) (quoting *United States v. Gaudin*, 515 U.S. 506, 522-23 (1995)). We find that providing the birthdate of the alleged victim directly in the jury instruction regarding the elements of the crime is erroneous when the age of the victim is an essential element the jury needed to find for itself beyond a reasonable doubt.

B. The Error Did Not Affect Hill’s Substantial Rights

[13] In cases of instructional error, where a defendant fails to object at trial, our analysis of whether a defendant’s substantial rights were affected by any error is “guided by those cases that apply the harmless error analysis.” *See Perry*, 2009 Guam 4 ¶ 34; *id.* ¶ 40 (“We therefore conclude that the failure to give a proper each-and-every-element instruction is subject to a harmless error analysis as part of the plain error analysis” (citation omitted)). “The test for

harmless error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” *Id.* ¶ 34 (quoting *Neder v. United States*, 527 U.S. 1, 15 (1999)) (internal quotation marks omitted). However, one important difference between the two analyses is that under a plain error analysis, “[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.” *Id.* (emphasis omitted) (quoting *United States v. Olano*, 507 U.S. 725, 734 (1993)). Hill, therefore, bears the burden of demonstrating “that the error was prejudicial (i.e., that it affected the outcome of the case).” *See Felder*, 2012 Guam 8 ¶ 22 (citation omitted). To meet this burden, Hill “must make a specific showing of prejudice to satisfy the ‘affecting substantial rights’ prong [of the plain error analysis].” *Perry*, 2009 Guam 4 ¶ 40 (alteration in original) (quoting *Olano*, 507 U.S. at 735). In the present case, Hill simply asserts that because he has a fundamental right to due process, any violation of his due process rights is substantial and warrants reversal. Appellant’s Reply Br. at 3-4, 5 (Feb. 9, 2017). Beyond this statement, however, Hill makes no articulation as to how he was prejudiced by the erroneous instruction.

[14] During the trial, multiple witnesses testified as to the age and the birthdate of J.P., *see* Tr. at 15-16, 44-45 (Jury Trial, July 8, 2015), and Hill’s counsel, even with zealous cross-examination of these witnesses, did not challenge J.P.’s date of birth or age. On review of the entire record, we determine that Hill has not made a sufficient showing that the error of including J.P.’s date of birth in the jury instructions affected the outcome of the case. To the contrary, in this case, “the record affirmatively shows that no prejudice could have resulted” *Baxter*, 141 P.3d at 95-96. Having found that Hill fails the third prong of our analysis, we need not analyze the second and fourth prongs of the plain error analysis.

V. CONCLUSION

[15] The trial court committed error when it included the birthdate of the victim in its instructions to the jury when the age of the victim was an essential element the jury needed to find beyond a reasonable doubt. Because Hill did not object to these jury instructions at trial, the error argued on appeal is subject to a plain error analysis. The court holds that Hill has not met his burden of showing that the error affected his substantial rights. Hill's judgment of conviction is therefore **AFFIRMED**.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

ROBERT J. TORRES
Associate Justice

/s/

KATHERINE A. MARAMAN
Chief Justice