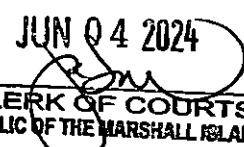


IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

**FILED**  
JUN 04 2024  
  
CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

DEO JEFFREY GOLD,

Plaintiff,

v.

REPUBLIC OF THE MARSHALL ISLANDS,

Defendant.

Supreme Court No. 2021-01023

OPINION

BEFORE: CADRA, Chief Justice; SEABRIGHT,\* and SEEBORG,\*\* Associate Justices

SEABRIGHT, Associate Justice:

**I. INTRODUCTION**

Following a jury trial, Deo Jeffrey Gold (“Gold”)<sup>1</sup> was convicted of Sexual Assault in the First Degree. He was subsequently sentenced to 12 years imprisonment, with 7 years to serve and 5 years suspended.<sup>1</sup> He now appeals, claiming that there was insufficient evidence admitted at trial to sustain his conviction.

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\* The Honorable J. Michael Seabright, United States District Judge, District of Hawaii, sitting by designation of the Cabinet.

\*\* The Honorable Richard Seeborg, Chief United States District Judge, Northern District of California, sitting by designation of the Cabinet.

<sup>1</sup> The Defendant is also referred to throughout the record as “Martin.”

For the reasons that follow, we disagree and AFFIRM Gold's conviction for Sexual Assault in the First Degree.

## **II. BACKGROUND**

### **A. Factual Background**

This case involves the sexual assault of Iromy Anmontha, a 20-year old resident of Laura. Anmontha, who lived with her parents and two-year old sister, testified that around 11:00 a.m. on September 23, 2020, she and her sister were home alone. Gold came to the house at the request of Anmontha's uncle, Darren Nuna, to ask if she had any cooked rice. She told him they did not have rice, and he left.

Gold then returned. He entered the room where Anmontha and her sister were sleeping, pulled the sheet off of her, put her on her back, held her arms down, and then raped her, with his penis entering her vagina. She was able to push him off, but after that, he pushed her hands under her back and continued raping her. Anmontha, who did not have the strength to break away "because he has more strength than me," told Gold to stop three times; Gold ignored her and instead responded several times that he would be fast. She was crying, and her sister awoke and began to cry as well. Anmontha, who had no relationship with Gold, believed that if she screamed, he might beat, threaten, or try to kill her and she would not be able to protect her sister.

After the assault, she wiped her vagina and saw that it was bleeding. She went to Darren Nuna and told him that Gold had entered the house and "disturbed" her. Nuna contacted the police. Anmontha explained that she did not go to the hospital to get her injuries checked because her uncle had told the police, and she thought that "it [was] enough" that the police knew.

Darren Nuna also testified at trial. On September 23, 2020, Nuna and Gold planned to eat lunch together, but they lacked rice. Nuna asked Gold to obtain rice at Gold's house. Gold left for a "long time," and when he returned he was sweaty. At some point after that, Anmontha came to Nuna crying. Nuna then asked Gold what he did to Anmontha—Gold responded that he "was playing with her" and had "punch[ed] her leg-the foot." Nuna then called the police.

Around noon on September 23, 2020, Rolando Navarro was working near Anmontha's house. He testified that he observed Gold outside Anmontha's house, call for her, and that when she failed to answer he entered the house. A short time later, Navarro saw Anmontha coming out of her house crying.

Gold also testified at trial. He admitted that he had sex with Anmontha, but stated that she did so willingly—that is, he claimed that the sex was consensual.

## **B. Procedural Background**

Gold was charged on December 30, 2020, with Sexual Assault in the First Degree (count 1) and Sexual Assault in the Second Degree (count 2). Gold pled not guilty to both counts, and a jury trial was held on May 19–21, 2021. The jury returned a verdict of guilty on both counts. Because count 2 is a lesser included offense of count 1, the court merged both counts, resulting in a single conviction for Sexual Assault in the First Degree.<sup>2</sup> Gold was sentenced to 12 years imprisonment, with 7 years to serve and 5 years suspended.

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<sup>2</sup> Although Gold appeals sufficiency of the evidence as to both counts, in fact he was only convicted and sentenced as to Count 1. Thus, we restrict our analysis to this single count of conviction—Sexual Assault in the First Degree.

### **III. STANDARD OF REVIEW**

We have explained the test for sufficiency of the evidence to support a conviction as follows:

A conviction is supported by the sufficiency of the evidence when after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. In viewing the evidence in the light most favorable to the prosecution, the court may not ask whether a finder of fact could have construed the evidence produced at trial to support acquittal. Instead, the court must construe evidence in a manner favoring the prosecution. Only after we have construed all the evidence at trial in favor of the prosecution do we take the second step, and determine whether the evidence at trial, including any evidence of innocence, could allow *any* rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.

*Republic v. Kijiner*, 3 MILR 123, 124 (2010) (internal citations and quotation marks omitted).

Our function is “not [to] view each piece of evidence separately, re-weigh the evidence, or second-guess the jury’s credibility calls.” *United States v. Seary-Colón*, 997 F.3d 1, 12 (1st Cir. 2021). The “assessment of the credibility of the witnesses is generally beyond the scope of review.” *Schlup v. Delo*, 513 U.S. 298, 330 (1995). That is, it is not for this Court to “decide which witness to credit”; instead we assume that the jury “credited those witnesses whose testimony lent support to the verdict.” *United States v. Soler-Montalvo*, 44 F.4th 1, 8 (1st Cir. 2022) (internal quotation marks omitted).

Further, for the offense of Sexual Assault in the First Degree “there is no requirement that the testimony of the victim be corroborated.” 31 MIRC § 213.8(2).

### **IV. DISCUSSION**

Gold makes two related arguments on appeal. First, citing *Kijiner*, he claims that there was insufficient evidence to convict. Second, he claims that “the Jurors as triers of fact, were so overwhelmed that these sexual allegations involved a young woman who cried during

trial, that they became irrational and didn't even consider the credibility of the witness or whether the evidence admitted" was sufficient to support a finding of guilt.

In support of his first claim, Gold argues that the "only evidence" offered by the Government was witness testimony and photos from Anmontha's house. He characterizes the trial as a case of "what 'she said' and what 'he said' happened in the room that afternoon." And he emphasizes that there was "no evidence offered during the trial, especially [a] medical report of any bodily injuries on the alleged victim, Ms. Anmontha, that the Appellant used force on her . . . ."

The crime of Sexual Assault in the First Degree, as charged in this case, makes it a felony if a "person knowingly subjects another person to an act of sexual penetration by strong compulsion." 31 MIRC § 213.1(1)(a). "Sexual penetration" includes vaginal intercourse. *Id.* at § 213.0(10). And "strong compulsion" is defined in § 213.0 as:

- (11) . . . the use of or attempt to use one or more of the following to overcome a person:
  - (a) a threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;
  - (b) a dangerous instrument;
  - (c) physical force.

Here, the evidence presented at trial, construed in favor of the prosecution, easily supports a finding that each element was proven beyond a reasonable doubt. Gold admitted to having sexual intercourse with Anmontha. Thus, the remaining question is whether this was done by "strong compulsion."

Construing the evidence in the light most favorable to the RMI, Gold raped Anmontha against her will. While Gold raped her, she tried to push him off, but Gold used force to continue with the sexual assault. She told him to stop three times, but he didn't. Instead, he

simply stated that he would be fast. Both Nuno and Navarro saw Anmontha crying after the incident, indicating she was in distress or pain. This testimony and eyewitness evidence is all consistent with Gold using physical force to sexually assault Anmontha.

Construed in the light most favorable to the RMI, Anmontha's account and the two eyewitness accounts support a conclusion that Gold sexually assaulted her by using physical force. Although Gold testified that the sexual encounter was consensual, the jury obviously rejected his testimony. It is not for this Court to "decide which witness to credit"; instead we assume that the jury "credited those witnesses whose testimony lent support to the verdict." *Soler-Montalvo*, 44 F.4th at 8 (internal quotation marks omitted).

Further, to the extent that Gold is arguing that there is some requirement for Anmontha to present medical evidence or other eyewitness testimony in order to meet the elements of the offense of Sexual Assault in the First Degree, this argument fails—the law does not require a victim's testimony to be corroborated. 31 MIRC § 213.8(2).

Gold's second and related argument is more difficult to discern. He appears to argue that given the emotional nature of the trial testimony, the jury was not able to judge and weigh the credibility of the witnesses, and this, in turn, led to a conviction based on insufficient evidence.

The court construes this argument as one being brought under RMI Rule of Evidence 403—that is, that evidence of a highly prejudicial nature was improperly introduced at trial, and absent that evidence there is insufficient evidence to convict.<sup>3</sup>

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<sup>3</sup> In full, Rule 403 states that "[a]lthough 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."

But Rule 403 does not offer protections against evidence that is offered to prove the very charge before the jury. For Rule 403 to be implicated in the first instance, evidence must be “unfairly prejudicial.” And evidence necessary to prove the elements of an offense—even a highly emotional one involving sexual assault—is not *unfairly* prejudicial. *See, e.g., United States v. Miller*, 61 F.4th 426, 429 (4th Cir. 2023) (stating that prejudicial evidence is admissible when it directly establishes an element of the offense); *cf. United States v. Valenzuela*, 57 F.4th 518, 523 (5th Cir. 2023) (stating that prejudicial evidence may be inadmissible under Rule 403 when the government does not require it to prove an element of the offense); *see also United States v. Farrington*, 499 F.3d 854, 859 (8th Cir. 2007) (“Evidence is not unfairly prejudicial because it tends to prove guilt, but because it tends to encourage the jury to find guilt from improper reasoning. Whether there was unfair prejudice depends on whether there was an ‘undue tendency to suggest decision on an improper basis.’”); *United States v. Burt*, 495 F.3d 733, 741 (7th Cir. 2007) (finding that although admission of chat log in child pornography prosecution may well have been “damning,” it was not unfairly prejudicial because the defendant was being prosecuted for exactly what the chat log depicted).

Further, by its nature, evidence in most sexual assault cases is likely to generate an emotional response in the jury. But this alone—when the evidence is appropriately cabined to explain the events and prove the element of the offense—cannot serve as a basis to exclude evidence under Rule 403. *See United States v. Evans*, 802 F.3d 942 (8th Cir. 2015). Here, Anmontha’s testimony was quite limited and directed to the specific events of September 23, 2020. The testimony was needed to provide the jury with a description of events and to prove

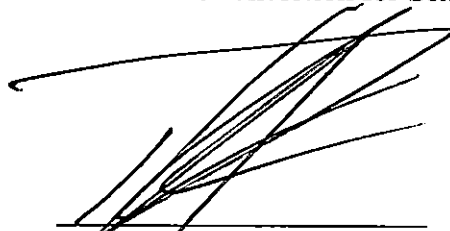
the elements of Sexual Assault in the First Degree. There was no error in admitting this evidence.<sup>4</sup>

Viewing the evidence in the light most favorable to the prosecution, the court thus affirms the conviction for Sexual Assault in the First Degree.

**V. CONCLUSION**

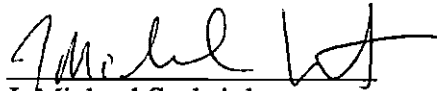
Accordingly, the Court AFFIRMS Gold's conviction for Sexual Assault in the First Degree.

Dated: June 4, 2024



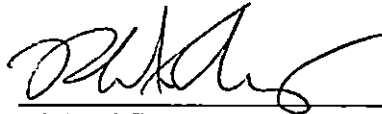
Daniel N. Cadra  
Chief Justice

Dated: June 4, 2024



J. Michael Seabright  
Associate Justice

Dated: June 4, 2024



Richard Seeborg  
Associate Justice

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<sup>4</sup> Because Gold failed to make a Rule 403 objection during Anmontha's testimony, this Court reviews the claimed error under a plain error standard. Regardless, whether reviewed for plain error or even de novo, there was no error.