IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS, Plaintiff-Appellee, v. LANES MULLER, Defendant-Appellant.	Supreme Court No. 2022-01027 OPINION

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

SEABRIGHT, Associate Justice:

I. INTRODUCTION

Lanes Muller ("Muller") appeals his High Court conviction for Criminal Attempt to Commit Sexual Assault in the First Degree (count 1); Continuous Sexual Assault of a Minor (count 2); and Showing a Pornographic Movie to a Minor (count 3). On appeal, Muller contends that his convictions are not supported by sufficient evidence. For the reasons set forth below, we AFFIRM the convictions as to counts 1 and 2 and REVERSE the conviction as to count 3. We thus VACATE Muller's sentence and REMAND to the High Court for resentencing anew as to counts 1 and 2.

* 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.

II. BACKGROUND

A. Factual Background

This case involves the sexual assault of a minor, referred to as "GL" in this Opinion. Viewing the evidence in the light most favorable to the government, the facts at trial established the following: GL was born on May 20, 2011, and during all relevant times resided with her mother, Kijen Lakien ("Lakien"). Muller, 55 years old at the time of trial, was Lakien's boyfriend, and both GL and Lakien resided with Muller in Rita. During the period that she lived with Muller, Lakien left GL alone with Muller five times.

GL testified that Muller engaged in sexual activity with her on four separate occasions, between approximately November 2020 and January 10, 2021. As to the first incident, GL testified that "[Muller] grabbed [GL's] hand and made [her] touch his penis," and warned her that if she told someone, then GL and her mother "won't sleep at his house." As to the second incident, Muller "took off [GL's] clothes and started licking [her] pussy" with his tongue. When asked to point to the area that he licked, GL pointed between her legs. As to the third incident, GL stated that Muller "made me watch porn," undressed GL and himself, and then lied on top of her while naked.

The fourth and last incident occurred on January 10, 2021. GL testified that Muller "was on top of [GL] and he was trying to have sex" while they were both naked. At this time, Lakien returned to the house, observed Muller "on his knees and facing down towards [her] daughter, eating her out, [engaging in cunnilingus]" while GL "was lying down facing up and… covering her eyes." When GL saw Lakien, she "cried and ran up" to her. Lakien then took GL to the police station.

After arriving at the police station, Captain Vincent Tani obtained statements about the incidents from both GL and Lakien. GL was then taken to the hospital for examination by an obstetrics and mental health specialist.

Muller testified and denied all the allegations against him. For example, when asked about Lakien's testimony that she observed Muller "between [GL's] legs" on January 10, 2011, Muller testified that "it's not true. She's lying."

B. Procedural Background

On March 3, 2021, the Office of the Attorney General charged Muller with the following three criminal counts:

> Count 1: Criminal Attempt to Commit Sexual Assault in the First Degree
>
> That on or about January 10, 2021 at around 8:30 p.m. in Majuro, Marshall Islands, the defendant, Lanes Muller, did intentionally attempt to commit sexual assault in the first degree upon a minor.
>
> Such act is a violation of 31 MIRC Ch. 1, §5.0l(1)(c) and §213.l(1)(b), which read with §5.05(1)(d) is a felony in the second degree, punishable by imprisonment of not more than 10 years under §6.06(2)(b) and a fine of not more than $20,000 under §6.03(1)(a), or both.
>
> Count 2: Continuous Sexual Assault of a Minor
>
> That in or between approximately November 1, 2020 and January 9, 2021 in Majuro, Marshall Islands, the defendant, Lanes Muller, while having recurring access to the minor, engaged in three acts of sexual contact with the minor within a period of 3 months.
>
> Such act is in violation of 31 MIRC Ch. 1, §213.5(1), a felony in the first degree, punishable by imprisonment of not more than 25 years under §6.06(2)(a) or a fine of not more than $20,000 under §6.03(1)(a), or both.

Count 3: Showing a Pornographic Movie to a Child

> That on or about January 10, 2021 in Majuro, Marshall Islands, the defendant, Lanes Muller did intentionally play a pornographic video to [GL] aged 10.
>
> Such act is a violation of §1027(11) of the Child Rights Protection Act 2015, which is punishable by imprisonment of not more than 1 year, or a fine of not more than $5,000, or both under §1027(4).

Trial was held from March 8 through 10, 2022. On March 10, the jury found Muller guilty of counts 1 and 2, and the presiding High Court Justice found Muller guilty as to count 3.

On April 6, 2022, Muller was sentenced to 10 years' imprisonment for count 1, 25 years for count 2 with 5 years probated, and 12 months for count 3, with "all three sentences [] to be served concurrently," ultimately resulting in a total sentence of 20 years' imprisonment.

Muller timely appealed the High Court's proceedings to this Court.

III. STANDARD OF REVIEW

We previously explained the test for sufficiency of the evidence to support a conviction:

> 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, 1 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 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 offenses that fall under Article 213 of the Criminal Code—which covers the offenses charged in counts 1 and 2—"there is no requirement that the testimony of the victim be corroborated." 31 MIRC Ch.1 § 213.8(2).

IV. DISCUSSION

A. Sufficiency of the Evidence

Muller highlights inconsistencies in the certain trial testimony and calls into question the veracity of GL's testimony on the basis that she was "coached" as a witness. [1] But the "assessment of the credibility of witnesses is generally beyond the scope of review." *Schlup*, 513 U.S. at 330. And even if there is competing witness testimony, the Court "may not ask whether a finder of fact could have construed the evidence produced at trial to support acquittal; rather, our appellate inquiry must proceed strictly upon evidence construed in a manner favoring the prosecution." *Republic v. Antolok*, SCT No. 18-11 (Nov. 18, 2020) (internal quotation marks omitted). Accordingly, the Court analyzes the "sufficiency of the evidence" claim by asking whether "after viewing the evidence in the light most favorable to the prosecution, *any* rational

[1] For example, on cross-examination, GL stated that a police officer and Lakien told her to testify that Muller engaged in sexual acts with her, but then, on re-direct examination, GL testified that the police and Lakien also urged her to tell the truth.

trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Kijiner*, 1 MILR at 124.

Using this legal framework, the Court addresses each count in turn.

1. Count 1

Count 1—based on the events of January 10, 2021—charges "Criminal Attempt to Commit Sexual Assault in the First Degree," in violation of Criminal Code § 213.1(1)(b), which makes it a felony for a person who "knowingly engages in sexual penetration with another person who is younger than fourteen years of age." The Criminal Code defines "sexual penetration" as:

> vaginal intercourse, anal intercourse, fellatio, cunnilingus, analingus, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight. Emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

31 MIRC Ch. 1 §213.0(10).

Here, the evidence adduced at trial included Lakien's observation of Muller engaging in cunnilingus with GL, then nine years of age. GL corroborated this, at least in part, when she testified that Muller "was on top of me and he was trying to have sex" while both were naked. Viewing the evidence in the "light most favorable to the prosecution," the Court affirms count 1.

2. Count 2

Count 2 charges "Continuous Sexual Assault of a Minor under the Age of Fourteen," in violation of Criminal Code § 213.5(1), which makes it a felony if a person:

> (a) either, resides in the same home with a minor under the age of fourteen years, or has recurring access to the minor; and

(b) engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.[2]

Sexual contact is defined as "any touching of the sexual or other intimate parts of a person, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts." 31 MIRC Ch. 1 §213.0(9).

Here, there is no dispute that Lakien and GL, then nine years of age, were residing in the same house as Muller where he had recurring access to her. Further, viewing the evidence in the light most favorable to the prosecution, the trial testimony supported three separate incidents of sexual penetration or sexual contact. First, Muller engaged in an act of sexual contact during the first incident when he grabbed GL's hand and "made [her] touch his penis." Muller next engaged in an act of sexual penetration when he engaged in cunnilingus with GL. And finally, Muller engaged in an act of sexual contact when he took off GL's clothes and his own and then lay on top of her while naked. Viewing this evidence in the "light most favorable to the prosecution," the Court affirms count 2.

3. Count 3

Count 3 charges "Showing a Pornographic Movie to a Child," in violation of the Child Rights Protection Act § 1027(1), which states that "[i]t shall be prohibited to show, sell, give as a gift, rent or promote to a child films, newspapers, magazines and other types of

[2] Section 213.5(2) states, in part, that "[no] other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this Section, unless the other charged offense occurred outside the time frame of the offense charged under this Section or the offense is charged in the alternative." Here, the time frame alleged for count 2 is "between approximately November 1, 2020 and January 9, 2021." Thus, count 2 specifically excludes the conduct charged in count 1 (which occurred on January 10, 2021).

publications, in which cruel behavior, violence, erotica and pornography are promoted and which pose a threat to the development of a child."

Assuming there was sufficient evidence that Muller showed pornography to GL, there was a total lack of evidence that the viewing of that pornography posed a "threat to the development" of GL. That is, given the lack of the introduction of any evidence of this element, no rational trier of fact could have "found the essential elements of the crime beyond a reasonable doubt." *Kijiner*, 1 MILR at 125. As a result, the court REVERSES the conviction as to count 3.

B. Remand for Resentencing

"Resentencing usually should be de novo when a Court of Appeals reverses one or more convictions and remands for resentencing." *United States v. Quintieri*, 306 F.3d 1217, 1228 (2d Cir. 2002) (italics omitted); *see also United States v. Jett*, 982 F.3d 1072, 1080 (7th Cir. 2020) (stating that "the 'sentencing package' doctrine exists to allow a sentencing judge to reconfigure a sentence for the remaining counts when an appellate court reverses a conviction on some but not all counts following the initial sentencing"); *United States v. Campbell*, 106 F.3d 64, 68 (5th Cir. 1997) ("Sentencing is a fact-sensitive exercise that requires district court judges to consider a wide array of factors when putting together a 'sentencing package.' When an appellate court subsequently reverses a conviction (or convictions) that was part of the original sentence, the district court's job on remand is to reconsider the entirety of the (now-changed) circumstances and fashion a sentence that fits the crime and the criminal.").

This approach recognizes that the sentencing court will craft a sentencing package that ensures the punishment imposed promotes the goals of sentencing and fits the specific case before the court. Thus, when a portion of the sentence is vacated, the sentencing court should be

free to determine whether to reconstruct the sentence or impose the same sentence. The Court adopts this "sentencing package" rule as the law of the RMI, and REMANDS for resentencing on counts 1 and 2. The High Court may exercise its discretion in determining whether to hold a sentencing hearing anew, or to sentence based on the existing record.[3]

V. CONCLUSION

Accordingly, the Court AFFIRMS convictions for counts 1 and 2, REVERSES the conviction for count 3, VACATES the sentence, and REMANDS for a new sentencing as to counts 1 and 2 consistent with this Opinion.

Dated: July 6, 2023

/s/ Daniel N. Cadra
Daniel N. Cadra, Chief Justice

Dated: July 6, 2023

/s/ J. Michael Seabright
J. Michael Seabright, Associate Justice

Dated: July 6, 2023

/s/ Richard Seeborg
Richard Seeborg, Associate Justice

[3] Because the Court is remanding for resentencing, the Court does not address Muller's argument that the High Court erred in the length of the sentence imposed. After resentencing, Muller may elect to appeal any sentence imposed as to counts 1 and 2.