IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

RUDY FEGURGUR QUINATA,
Defendant-Appellant.

Supreme Court Case No. CRA22-010
Superior Court Case No. CF0177-21

OPINION

Cite as: 2023 Guam 25

Appeal from the Superior Court of Guam
Argued and submitted on August 14, 2023
Hagåtña, Guam

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

CARBULLIDO, J.:

[1] Defendant-Appellant Rudy Fegurgur Quinata appeals his first-degree murder conviction. He identifies two potential errors in his trial: (1) a lack of sufficient evidence to sustain his conviction; and (2) juror misconduct depriving him of his right to a fair trial. There was sufficient evidence to support his conviction. However, the trial court abused its discretion in failing to hold an evidentiary hearing when presented with a plausible claim of juror misconduct. Because we cannot be sure Quinata's right to a fair trial was protected, we vacate his conviction and remand for a new trial.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] Quinata and his girlfriend, Joyner Scott Sked, are accused of murdering Daniel Quinata Sanchez ("Sanchez"), a former mayor of Humåtak. At trial, Quinata's theory of the case was that Sked was the true killer because "she's a psychopath . . . and . . . the type of person that would permit a heinous crime like this." Transcript ("Tr.") at 42 (Jury Trial, Mar. 24, 2022) (sidebar argument of defense counsel). The People countered that Quinata was at least partially responsible. The following evidence was presented at trial.

[3] On April 1, 2022, Macrina Sanchez ("Macrina") was hanging out with some friends at Fort Soledad in Humåtak. The group was later joined by Sanchez, who was driving a silver Toyota Corolla. Eventually, it was decided that Sanchez would take Macrina home since he was already planning to leave and head in that direction. Sanchez drove Macrina to a playground near her house in Humåtak, where Macrina got out of the car and planned to walk home. As she got out of the car, Macrina ran into Quinata and Sked, both of whom she recognized. Sked asked Macrina

who dropped her off, and Macrina told her it was Sanchez. Learning that Sanchez was behind the wheel, Sked yelled and flagged the car down; when Sanchez got out, Sked "jumped up on him and hug[ged] him." Tr. at 54–55 (Jury Trial, Mar. 18, 2022). Everyone chatted for a while, and Macrina remembers Quinata saying he was tired and wanted to go home. Eventually, Quinata, Sked, and Sanchez all left together in the Corolla.

[4] Later that night, in Humåtak, Josiah Aguon heard his dogs barking and went outside to see why they were making noise. Outside, he saw a "gray car" along with Quinata, Sked, and a third person by Quinata's shack. *Id.* at 27. Aguon did not recognize this third person but noted he was wearing a tank top, had long hair tied in a ponytail, and was shorter than Quinata. According to witness testimony, Sanchez was around five and a half feet tall, whereas Quinata is over six feet tall. Sometime during the night, H.B., Aguon's cousin living in the same house, heard yelling. She testified that the person yelling sounded like Quinata. After a brief argument, the yelling stopped and she went to bed, not hearing anything else for the rest of the night.

[5] By April 3, Dorothea Santiago, a neighbor, had noticed a gray car parked by Quinata's shack. She did not recognize the vehicle and so by the afternoon, she went over to check on things. When she got to the shack, she called out for Quinata and got no response; she tried to go inside, but it was locked by a padlock on the door. Santiago also noticed blood on the ground. She then showed the scene to the neighbors, one of whom called the Guam Police Department ("GPD"). At some point, GPD called Chelsea Gofigan, Sanchez's daughter, asking her if she owned a silver Toyota Corolla. Sanchez had borrowed the car from her a few days before. When she arrived at Quinata's shack, Gofigan identified the silver car there as her Corolla.

[6] Officer Joseph Mansapit was the first on the scene and conducted a welfare check. There was a "foul odor" coming from the shack, but the door to the home was padlocked with chains.

Tr. at 101, 103 (Jury Trial, Mar. 17, 2022). Officer Teodoro Parinasan secured a stepladder, which he used to get a look under the tarp serving as the roof of the shack. He saw a man with long hair lying face down in the shack. Eventually, firefighters arrived with bolt cutters and cut the padlock.

[7] With the padlock cut, Officer Parinasan entered the shack and noticed a bloodied hammer and scissors lying near the body. He also noted that the body had several puncture wounds to the back, head, and chest. Given where the body was found and that people had seen Sanchez with them a couple of days before, GPD labeled both Quinata and Sked as persons of interest in their investigation.

[8] Elsewhere in Humåtak, Phillip Harrison was doing his routine collecting litter along the bay. That day (April 3), he came across a cell phone lying above the high-tide mark of the water. When he grabbed the phone, he saw it was still functioning and that the lock screen was a picture of a happy couple; he wanted to return their phone. Though he could not unlock the phone, at some point the phone received an incoming call, and Harrison noted that number. He then used his phone to return the call. On the line was Joe Sanchez ("Joe"), who told Phillip that the phone belonged to Quinata and that police were looking for it; Harrison turned the phone over to Joe later that day.

[9] Also on the evening of April 3, Maurice Powell of Santa Rita heard a frantic knock at his door. Quinata (Powell's wife's uncle) was at his door, shirtless and looking "a little agitated, a little irritated." Tr. at 7–8, 12 (Jury Trial, Mar. 21, 2022). Quinata asked for some money, and Powell's wife gave him four dollars. Quinata was at the house for about five minutes and left after receiving the money.

[10] Quinata next appeared in Barrigada. There, Vaun Laguana was relaxing in his garage, having drinks with his brother. Suddenly, a stranger (Quinata), walked into his garage and asked

Laguana for a ride to Hagåtña. Laguana refused, even when Quinata offered money for the ride. Things got a little heated, but Quinata eventually apologized and left. Fifteen minutes later, Laguana saw Quinata running on the road outside his house, but he did not see him again after that.

[11] Quinata next came upon Gerard Damian. Damian was in Barrigada delivering food to his parents on the night of April 3. There, he saw Quinata walking through his cousin's yard towards his parents' house. When Damian asked why he was there, Quinata responded that he wanted to call the police and turn himself in. However, Damian became concerned when Quinata approached the house instead of waiting by the road. When Quinata got too close to the garage, Damian tackled him and held him down until the police arrived. According to Damian, while he was holding Quinata down, Quinata kept saying, "I just want to turn myself in, I just want to get arrested." Tr. at 12 (Jury Trial, Mar. 23, 2022). Police eventually arrived and escorted Quinata to the Central Precinct Command.

[12] The People charged Quinata with first-degree murder along with a special allegation of use of a deadly weapon. Quinata was also charged with aggravated assault, which also included a special allegation of use of a deadly weapon.

[13] Dr. Martin Ishikawa is the forensic pathologist who conducted the autopsy. He testified that Sanchez's cause of death was the multiple injuries he sustained to his head and torso. According to Dr. Ishikawa, some wounds could have been caused by a hammer, and others could have been caused by a pair of scissors. He also testified that Sanchez's wounds could have been inflicted by a woman in her twenties.

[14] After a little over two weeks of deliberation, the jury found Quinata guilty of murder. The jury, however, did not come to a unanimous decision on either the special allegation of possession

or use of a deadly weapon in commission of the charged murder or the second charge of aggravated assault. Accordingly, the Superior Court dismissed these charges without prejudice.

[15] A day after the jury reached its verdict, one of the jurors emailed the Jury Commissioner of the Superior Court of Guam and reported that during deliberations, another juror had mentioned that he knew Quinata had been incarcerated because he recognized Quinata from a "goodwill game" involving people from the Department of Corrections. Excerpts of Record ("ER") at 9 (Email Correspondence, Apr. 15, 2022). Thus, the jury was aware that Quinata had a previous conviction. According to the email, after the disclosure of Quinata's criminal history, the foreperson reminded the jurors that their verdict should be based only on the facts and testimony presented. *Id.* Despite the foreperson's admonishment, the same juror referenced Quinata's criminal history at least three more times. *Id.* at 10. The last time this occurred, the foreperson again reminded the jurors to consider only what they heard at trial. *Id.*

[16] The Superior Court held a non-evidentiary status hearing to discuss what effect the email would have on the verdict. While both parties and the judge agreed that any inquiry into the jury deliberations would have to be limited, Quinata still argued the disclosure of his criminal history was "prejudicial and harmful." Tr. at 2–6 (Status Hr'g, May 4, 2022). The trial court rejected this argument and found that any harm was "cured" because the foreperson reminded the jury to consider only trial evidence. *Id.* at 6–7. The Superior Court entered a judgment of conviction and sentenced Quinata to life imprisonment with the possibility of parole. This timely appeal followed.

II. JURISDICTION

[17] This court has jurisdiction over an appeal from a final judgment of conviction under 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-23 (2023)); 7 GCA §§ 3107 and 3108(a) (2005); and 8 GCA §§ 130.10 and 130.15(a) (2005).

III. STANDARD OF REVIEW

[18] When a defendant raises the issue of sufficiency of the evidence by a motion for judgment of acquittal, this court reviews the trial court's denial of the motion *de novo*. *People v. Wia*, 2020 Guam 17 ¶ 9. To review a claim for insufficiency of the evidence, "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[s] beyond a reasonable doubt." *People v. Kotto*, 2020 Guam 4 ¶ 29 (quoting *People v. Song*, 2012 Guam 21 ¶ 27). The People "must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom." *People v. Song*, 2012 Guam 21 ¶ 28 (quoting *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)).

[19] "A judge's decision to hold a hearing to investigate alleged juror misconduct is reviewed for an abuse of discretion." *People v. Castro*, 2002 Guam 23 ¶ 9 (quoting *Wilson v. Vermont Castings, Inc.*, 170 F.3d 391, 395 n.5 (3d Cir. 1999)).[1] The decision to grant or deny a new trial for juror misconduct is also reviewed for abuse of discretion. *Id.* ¶ 11; *United States v. Smith*, 424 F.3d 992, 1011 (9th Cir. 2005). When alleged juror misconduct involves the "possession of extraneous information[,] . . . a defendant is entitled to a new trial if there is a reasonable possibility that the extrinsic information could have affected the verdict." *Castro*, 2002 Guam 23 ¶ 8 (citations omitted). Put another way, "the 'ultimate question is whether it can be concluded beyond a reasonable doubt that extrinsic evidence did not contribute to the verdict.'" *United States v. Montes*, 628 F.3d 1183, 1188 (9th Cir. 2011) (quoting *Bayramoglu v. Estelle*, 806 F.2d 880, 887 (9th Cir. 1986)).

[1] While this court has yet to develop its own test for evaluating when a verdict is or is not affected by extraneous evidence, it considers both the *Jeffries* and *Dickson* tests from the Ninth Circuit to be acceptable. *Castro*, 2002 Guam 23 ¶ 16. Here, however, the trial court did not consider the factors from either of these tests. Thus, this court is unable to properly evaluate the trial court's analysis, and instead focuses its analysis on established precedent.

IV. ANALYSIS

[20] Typically, when a defendant raises the issue of sufficiency of evidence, this court must address that claim. A finding of insufficient evidence entitles a defendant to an acquittal of that charge, along with the protection of double jeopardy. *See People v. Anastacio*, 2010 Guam 18 ¶ 16. Since acquittal would be a more favorable outcome than a remand for a new trial, we first address Quinata's sufficiency-of-the-evidence argument before moving to the alleged juror misconduct.

A. Sufficiency of the Evidence

[21] Quinata first asserts there was insufficient evidence to sustain his murder conviction. In Guam, murder can be defined as recklessly causing the death of another human being under circumstances manifesting extreme indifference to the value of human life. *See* 9 GCA § 16.40(a)(2) (2005) (defining murder as criminal homicide); 9 GCA § 16.20(a)(4) (defining criminal homicide). The jury instructions tracked the statute, requiring a finding that Quinata recklessly caused the death of Sanchez under circumstances manifesting extreme indifference to the value of human life.

[22] In his brief, Quinata argues that, at trial, "nothing was probative as to [him] ever assaulting Daniel Sanchez with the hammer." Appellant's Br. at 24 (Mar. 20, 2023). Quinata further notes no direct evidence showed he killed Sanchez. *Id.* Yet, as correctly pointed out by the People, "[e]ntirely circumstantial evidence may be sufficient [to sustain a conviction]." *People v. Pinaula*, 2023 Guam 2 ¶ 62 (citing *People v. Quintanilla*, 2020 Guam 8 ¶ 11; *People v. Martin*, 2018 Guam 7 ¶ 26); Appellee's Br. at 38 (June 27, 2023). Therefore, a lack of direct evidence is not enough to justify an acquittal for a defendant.

[23] As for circumstantial evidence, while it is true that "mere suspicion and innuendo" are insufficient to sustain a conviction, *Anastacio*, 2010 Guam 18 ¶ 18 (citation omitted), that does not change that the People "must be afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn therefrom," *Song*, 2012 Guam 21 ¶ 28 (quoting *Sisk*, 343 S.W.3d at 65).

[24] Quinata claims "[t]here's no circumstantial evidence at all connecting [him] to the murder." Appellant's Br. at 24. "The People dispute this characterization of the evidence." Appellee's Br. at 39. At trial, the People called witnesses to testify that they saw Quinata with Sanchez and Sked the evening of April 1. Tr. at 54, 57 (Jury Trial, Mar. 18, 2022). For example, a witness saw Quinata, Sked, and a third person at Quinata's shack. *Id.* at 27–28. While the witness did not recognize the third person, his description matched the description of Sanchez. *Id.* None of the neighbors saw anyone by Quinata's shack again until April 3, when a neighbor went to investigate an unknown car parked outside Quinata's place and saw Sanchez's body inside the shack. *See* Tr. at 30–31, 71–73, 75–76 (Jury Trial, Mar. 17, 2022).

[25] At the very least, the above evidence is enough to support an inference that Quinata was around Sanchez when he died. Quinata does not dispute this. *See* Appellant's Br. at 21 ("The prosecution only proved that [Quinata] may have been present when the [sic] Daniel Sanchez was killed."). Thus, the primary question remaining is whether the evidence supports the inference that Quinata killed Sanchez.

[26] At trial, evidence indicated that on the evening of April 3, Quinata showed a noticeable amount of erratic behavior. First, he went to the Powell home looking a little agitated and irritated, and he asked Powell for money. Tr. at 7–8, 11–12 (Jury Trial, Mar. 21, 2022). Next, he appeared at a stranger's house, and asked for a drink and a ride. *Id.* at 20–21. He was turned away but

fifteen minutes later, the stranger saw Quinata again, this time running down the road. *Id.* at 20–21, 23. Quinata ended his night in Barrigada, where he again approached a stranger's house, this time asking to make a phone call. Tr. at 9–10 (Jury Trial, Mar. 23, 2022). When an altercation ensued, and he was being held down, Quinata allegedly said, "I just want to turn myself in, I just want to get arrested." *Id.* at 12.

[27] Further, witness testimony established that there appeared to be an argument at Quinata's shack that night, and a witness testified that one of the voices sounded like Quinata's. Tr. at 39 (Jury Trial, Mar. 18, 2022). Officer Mondia testified that Sked told him that Sanchez and Quinata got into a fight, and Quinata punched Sanchez.[2] Tr. at 173 (Jury Trial, Mar. 17, 2022). Additionally, from the scene at the shack, police believe there was a struggle, and possible weapons were found near the body. *Id.* at 149, 152, 161. Finally, Quinata's phone was found abandoned by Humåtak Bay, not far from the place where Sanchez was killed. Tr. at 74 (Jury Trial, Mar. 18, 2022).

[28] Taken together, this evidence is enough to support an inference that Quinata killed Sanchez. Testimony indicated that Quinata and Sanchez fought, and a jury could infer that at some point this fight escalated. Possible weapons were also found right next to the body, and a jury could infer that the two people last seen with Sanchez used the weapons to kill him. As for the required *mens rea*, Quinata's actions on April 3 appeared erratic. Although he counters that his actions on April 3 showed only that he "may have been guilty of hindering apprehension and wanted to turn himself in for that," Appellant's Reply Br. at 2 (July 18, 2023), this is not the only

[2] Quinata notes that this statement was hearsay within hearsay. Appellant's Reply Br. at 1 (July 18, 2023). While true, there was no objection raised at trial, nor was this issue raised in Quinata's opening brief. Thus, any objections to this testimony have been forfeited, and we decline to exercise our discretion to review this issue. *See People v. Borja*, 2017 Guam 20 ¶ 28 (citing *Estate of Concepcion v. Siguenza*, 2003 Guam 12 ¶¶ 10–11). And in any case, even were we to find this statement to be hearsay, "erroneously admitted evidence is properly considered in a challenge to the sufficiency of the evidence." *People v. Camacho*, 2016 Guam 37 ¶ 45 (quoting *Lockhart v. Nelson*, 488 U.S. 33, 41–42 (1988); *Best v. United States*, 66 A.3d 1013, 1019–20 (D.C. 2013)).

possible inference. His actions *also* support a reasonable inference he felt guilty for committing murder.

[29] In a sufficiency-of-the-evidence challenge, "[t]his court does not ask itself whether it believes that the evidence at trial established guilt beyond a reasonable doubt." *Anastacio*, 2010 Guam 18 ¶ 18 (citing *People v. Yingling*, 2009 Guam 11 ¶ 14). Instead, a guilty verdict "removes the presumption of innocence to which a defendant had formerly been entitled and replaces it with a presumption of guilt," giving deference to the jury verdict. *See Song*, 2012 Guam 21 ¶ 28. While this case may not be supported by the strongest possible circumstantial evidence, and another jury could have reached a different conclusion, the jury returned a guilty verdict that could be reasonably supported by the evidence indicating Quinata's whereabouts on April 1, the possibility of a fight, the weapons found by the body, and Quinata's aberrant actions on April 3.[3] We therefore hold there is sufficient evidence to sustain Quinata's murder conviction.

B. Juror Misconduct

[30] Quinata's strongest argument is the one regarding juror misconduct. However, before addressing the merits of that claim, we must first discuss the issue of forfeiture.

1. Forfeiture does not bar the lack-of-evidentiary-hearing argument

[31] At the initial hearing discussing potential juror misconduct, defense counsel did not specifically object to the failure to hold a full evidentiary hearing, and the trial judge said he did not believe one would be necessary. The lack of a specific objection is not fatal, however, as we agree with the Ninth Circuit that "the only motion [a] defendant need make to trigger the need for

[3] Quinata continually argues that because the jury was hung on the special allegation, that proves his innocence for the murder charge. Appellant's Br. at 21–22; Reply Br. at 2. This is unconvincing. The People give a very plausible rebuttal that some jurors could have thought Quinata used the scissors to kill Sanchez, rather than the hammer. *See* Appellee's Br. at 41–42.

a hearing is a motion for a new trial or mistrial." *United States v. Angulo*, 4 F.3d 843, 848 (9th Cir. 1993).

[32] Even so, Quinata did not explicitly raise the issue of failure to hold a full evidentiary hearing in his opening brief either. Rather, he labeled the trial court's error as "denying a mistrial based on juror misconduct." Appellant's Br. at 22; *see also id.* at 27. While still not clear, he gets closer to raising the failure to hold an evidentiary hearing in his reply brief. *See* Reply Br. at 5 ("The trial court was required to instruct the non-moving party (The People) to prove there was no prejudice that affected the verdict. Since the trial court decided not to hold a hearing on the issue and just rule from the bench, this requirement was not met."). While issues not raised in the opening brief are generally considered forfeited on appeal,[4] this court can decide to review such issues "in the exercise of our discretion." *See People v. Borja*, 2017 Guam 20 ¶ 28 (citing *Estate of Concepcion v. Siguenza*, 2003 Guam 12 ¶¶ 10–11).

[33] Quinata quotes *People v. Castro*, 2002 Guam 23, to lay out when a hearing is required. Appellant's Br. at 28 (quoting *Castro*, 2002 Guam 23 ¶ 8). Later in his opening brief, Quinata does argue that once a *prima facie* claim of prejudicial extraneous information (such as a defendant's criminal history) has been introduced to the jury, the People bear the burden of showing that this information did not contribute to the verdict. *Id.* at 29–30. The most

[4] This court, like many others, has not always been consistent in describing a failure to brief an issue as forfeiture, rather than waiver. *See, e.g.*, *United States v. Campbell*, 26 F.4th 860, 871–72 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 95 (2022). Still, the forfeiture/waiver distinction is a notable one. Forfeiture occurs through neglect or accident, whereas waiver is an intentional act to give up certain rights. *See People v. Chong*, 2019 Guam 30 ¶¶ 9–10; *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 146–47 (3d Cir. 2017). Additionally, waived issues cannot be reached by courts; they are considered settled. *See Chong*, 2019 Guam 30 ¶ 9; *Campbell*, 26 F.4th at 872. Forfeited issues, on the other hand, can be considered at the discretion of the court. *Campbell*, 26 F.4th at 872–73. Though some of our past cases have described a party's failure to raise issues in the opening brief as "waiver" of those issues, *e.g.*, *Borja*, 2017 Guam 20 ¶ 28, it is more precise to label that action as "forfeiture." Using the term "forfeiture" better aligns with our actual practice, since we have consistently stated we have discretion to consider issues not raised in an opening brief. *E.g.*, *id.* It also aligns with how federal circuits term the act of failing to raise issues in an opening brief. *E.g.*, *Campbell*, 24 F.4th at 873–87; *Barna*, 877 F.3d at 148. Thus, going forward, we will describe a party failing to address an issue in an opening brief to have *forfeited*, not waived, the issue.

straightforward way for the People to meet this burden would be at an evidentiary hearing. In any event, we have the discretion to consider arguments not raised by an appellant in his opening brief. *Borja*, 2017 Guam 20 ¶ 28 (citing *Estate of Concepcion*, 2003 Guam 12 ¶¶ 10–11). At worst, the issue of a lack of an evidentiary hearing was brought to the People's attention, and it is related to the overall argument being raised by Quinata—juror misconduct. Considering this is a criminal case where the defendant's liberty is at stake, even if Quinata forfeited the issue of a lack of an evidentiary hearing by failing to squarely address it in his opening brief, we exercise our discretion to reach the issue in this opinion.[5]

2. The trial court abused its discretion by failing to hold an evidentiary hearing

[34] In *Castro*, this court addressed juror misconduct. 2002 Guam 23. There, we said, "once the trial court becomes aware that the jury possessed extrajudicial information, it is required to hold a hearing to determine 'the probable effect of the information on the jury, the materiality of the extraneous material, and its prejudicial nature.'" *Id.* ¶ 8 (quoting *People v. Palomo*, No. CR96-00070A, 1997 WL 209048, at *5 (D. Guam App. Div. Apr. 21, 1997), *aff'd*, 139 F.3d 907 (9th Cir. 1998)). In these hearings, "the court hears admissible juror testimony and determines 'the precise nature of the extraneous information.'" *Montes*, 628 F.3d at 1187 (quoting *United States v. Bagnariol*, 665 F.2d 877, 885 (9th Cir. 1981) (per curiam)). The People do not dispute that extraneous information was introduced during jury deliberations. Appellee's Br. at 43–44. A straightforward reading would indicate that a hearing should have been held.

[5] We remind litigators before this court to be clear in their briefs and explain *specifically* why their client is entitled to a particular outcome. This is not only fair for the opposing side, to be able to respond to the arguments at issue, but it also necessary for this court. We decide the issues that are before us in a given case, with the benefit of careful briefing by both sides to reach an outcome. This process is frustrated when we are left to make assumptions about the arguments presented by a party.

[35] The Ninth Circuit has clarified, however, that evidentiary hearings are not always required for alleged juror misconduct. That court has given a few different variations of the test it uses to determine whether an evidentiary hearing is required. One formulation instructs courts to "consider the content of the allegations, the seriousness of the alleged misconduct or bias, and the credibility of the source." *Angulo*, 4 F.3d at 847 (citing *Hard v. Burlington N. R.R.*, 812 F.2d 482, 485 (9th Cir. 1987), *abrogated on other grounds by Warger v. Shauers*, 574 U.S. 40 (2014)). Another posits that hearings are unnecessary where "the court is able to determine without a hearing that the allegations if true would not warrant a new trial." *United States v. Budziak*, 697 F.3d 1105, 1111 (9th Cir. 2012) (citing *United States v. Navarro-Garcia*, 926 F.2d 818, 822 (9th Cir. 1991)). Reconciling these standards, we hold that an evidentiary hearing is required when there are credible allegations of juror misconduct which, if true, could require a new trial.

[36] Applying this standard to the current case, the trial court abused its discretion by not holding an evidentiary hearing. The juror's email alleged that information about Quinata's criminal past was introduced during jury deliberations. As we noted in *Castro*, "[p]roof that one juror had informed other jurors of defendant's prior conviction would constitute a prima facie showing of prejudice."[6] 2002 Guam 23 ¶ 14 (quoting *United States v. Swinton*, 75 F.3d 374, 382 n.6 (8th Cir. 1996)). The People do not challenge the authenticity of the email, and with no other information, we also have no reason to doubt the email's validity. Because there was a credible allegation of juror misconduct that, if true, could result in a new trial, the trial court abused its discretion by failing to hold an evidentiary hearing.

[6] While we stated in *Castro* that "[a] presumption of prejudice arises when the jury has received extraneous information," 2002 Guam 23 ¶ 14, we also noted that a Third Circuit case applied the presumption "only when the extraneous information is of a considerably serious nature," *id.* (quoting *United States v. Lloyd*, 269 F.3d 228, 238-39 (3d Cir. 2001)).

[37] We agree with the parties and the trial court below that much of a jury's discussion and thought processes is "sacrosanct" and cannot be evaluated by a court. Tr. at 2–6 (Status Hr'g, May 4, 2022). But this does not mean there was nothing to be gleaned by holding a hearing. Most obvious is that the juror's email is unsworn hearsay; it is not a statement given in court under penalty of perjury. Confirming that the reporting juror stands by his testimony under oath would be a legitimate use of an evidentiary hearing, as well as confirming whether the other members of the jury recall events in the same way. Additionally, the juror email says the extraneous information came up "*at least*" four times. ER at 10 (Email Correspondence, Apr. 15, 2022) (emphasis added). Having other jurors testify could help confirm how many times this information came up, whether it was said only in passing or as a substantial point, and how far along juror deliberations were when the information was introduced.[7]

[38] Nor does it matter that an apparent curative instruction[8] was given to the jury. Such instructions can cure the defect of extraneous information in some circumstances. *Cf. People v. Aguon*, 2020 Guam 24 ¶¶ 29–30 (finding a curative instruction can ameliorate prejudice in the context of prosecutorial comments and other stricken evidence); *Castro*, 2002 Guam 23 ¶¶ 34-36 (analyzing trial court's application of curative-instruction factor from test employed in *Jeffries v. Wood*, 114 F.3d 1484 (9th Cir. 1997)). The court's duty at this stage, however, is simply to determine whether an evidentiary hearing is necessary. Thus, the focus of the inquiry should be on the *allegations* themselves, not the context around the allegations. The allegation here is that extraneous information was introduced. There could be other contextual factors—such as curative

[7] The trial court could also confirm how the alleged offending juror described the defendant: Did he say why he was incarcerated? Did he say how long his sentence was? This is admissible—and relevant—information for a trial court to consider in evaluating whether to grant a new trial.

[8] We need not and do not comment on whether statements from the jury foreperson—rather than the judge—can constitute an operative curative instruction. In this case, even assuming the foreperson's statements were curative instructions, an evidentiary hearing would have been required.

instructions—supporting a finding that a new trial is unnecessary. But the point of an evidentiary hearing is to compile *all* those contextual factors to reach an ultimate conclusion. *See United States v. Resko*, 3 F.3d 684, 691–92 (3d Cir. 1993) (requiring district courts to investigate serious allegations of juror misconduct and specify the grounds for the courts' ultimate conclusion on the issue).

[39] Having concluded that failing to hold an evidentiary hearing was an abuse of discretion, we must now determine the proper remedy. One option would simply be to remand this case for the evidentiary hearing to take place; this is a common approach taken by the Ninth Circuit. *See, e.g.*, *Angulo*, 4 F.3d at 848. Yet at least one court found that, due to the passage of a substantial amount of time, justice required a new trial be granted. *See People v. Lafferty*, 578 N.Y.S.2d 56, 57 (App. Div. 1991). We decline to adopt a bright-line rule for how much time must pass for a new trial to be granted. Rather, we shall make such determinations case by case. Here, over a year and a half has passed since the jury was dismissed. We are not convinced that trying to gather the jurors back after so long to have them recall specific details of their conversations during deliberations would satisfy the demands of justice. As we cannot be assured Quinata received a fair trial, we vacate his conviction and remand for a new trial.

V. CONCLUSION

[40] Regarding sufficiency of the evidence challenges, great respect is owed to the original jury verdict. The People may not have presented an unassailable case of murder, but they provided a sufficient one. Thus, we **AFFIRM** the denial of the motion for judgment of acquittal. But the trial court abused its discretion in failing to hold an evidentiary hearing to evaluate a credible claim of juror misconduct. Due to the passage of time, we do not believe holding a hearing now could

convince us Quinata's rights were protected. Thus, we **VACATE** his conviction and **REMAND** for a new trial.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice