



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,
Plaintiff-Appellee,

v.

JOYNER SCOTT SKED,
Defendant-Appellant.

Supreme Court Case No.: CRA22-012
Superior Court Case No.: CF0177-21-01

OPINION

Cite as: 2023 Guam 26

Appeal from the Superior Court of Guam
Argued and submitted on August 15, 2023
Hagåtña, Guam

Appearing for Defendant-Appellant:
Peter C. Perez, *Esq.*
Law Office of Peter C. Perez
DNA Bldg.
238 Archbishop Flores St., Ste. 802
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Marianne Woloschuk, *Esq.*
Assistant Attorney General
Office of the Attorney General
Prosecution Division
590 S. Marine Corps Dr., Ste. 901
Tamuning, GU 96913

E-Received

12/28/2023 4:53:00 PM

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

TORRES, C.J.:

[1] Defendant-Appellant Joyner Scott Sked appeals her convictions for Murder and Aggravated Assault along with their corresponding Special Allegations. She argues that the evidence was insufficient to convict her. She asks this court to vacate the convictions.

[2] We affirm in part, reverse in part, vacate in part, and remand to the Superior Court for further proceedings not inconsistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Third Party Testimony

[3] On April 1, 2021, Daniel Quinata Sanchez (“Sanchez”) gave Macrina Sanchez (“Macrina”) a ride from Fort Soledad to Humåtak in his daughter’s silver Toyota Corolla. Sanchez drove Macrina to a playground near her house, where Macrina got out of the car and planned to walk home. After getting out of the car, Macrina ran into Rudy Quinata and Joyner Scott Sked, who called for Sanchez to come back. Macrina testified that Sked greeted Sanchez with excitement but that Sanchez and Quinata, who was Sked’s boyfriend, appeared to speak angrily with one another. After the situation calmed, Sanchez, Quinata, and Sked left together.

[4] Later that evening, Quinata’s neighbor saw Sked, Quinata, and a third person he did not recognize outside Quinata’s house, where both Quinata and Sked lived. The neighbor described the third person as “a big guy, with like a dark tank top and a pony tail,” matching Sanchez’s description. Transcript (“Tr.”) at 85 (Jury Trial, Feb. 3, 2022). Sked identified the third man as Sanchez in her own trial testimony. At another point that evening, a different neighbor overheard a male voice yelling from Quinata’s residence for an hour, followed by complete silence. The

neighbor said that he had heard Quinata yell previously, and that it could have been Quinata yelling that night.

[5] Several neighbors also identified a silver Corolla, which was parked outside Quinata's house for three days, as being suspicious. One neighbor also noticed that Quinata's house lights suspiciously remained on for three days and called Quinata's sister, Doring Santiago, to check on things. Santiago came to investigate and discovered blood outside the residence and found the door locked from the outside. The neighbor called the police, who cut the lock and discovered blood spattered everywhere and Sanchez's body lying face down.

[6] The police found Sanchez's house "in disarray." Tr. at 65 (Jury Trial, Jan. 28, 2022). Sanchez's body had twenty-three stab wounds on both the front and back of the torso as well as massive head trauma. Next to his body were scissors and a hammer. A forensic expert later testified that the head trauma was consistent with the claw edge of a hammer and that the stab wounds were consistent with scissors. He determined that both the stab wounds and the head trauma Sanchez suffered occurred *ante mortem*, and that it was the "constellation" of the combined injuries that was the cause of death. Tr. at 127–28 (Jury Trial, Feb. 16, 2022).

[7] Also on April 3, around 5:30 pm, Frederick Dungca saw Sked walking on the road. He testified that "she was all dirty. The clothes she was wearing . . . you know, she looked like she needed a bath." Tr. at 85 (Jury Trial, Feb. 4, 2022). Because he knew her, he gave her a ride to his house, provided her with a change of clothes, and allowed her to shower. Dungca testified that Sked kept asking if Quinata was outside and told him that she had been in a threesome with Quinata and Sanchez. She then said that "four days ago," *id.* at 89, "something happened," and "somebody stabbed somebody," *id.* at 86–87. Dungca stated that Sked "was afraid" and "couldn't even put whole sentences together." *Id.* at 88.

[8] Dungca eventually started driving Sked to Pãgat because she had family there. On the drive, Sked behaved erratically: she “freak[ed] out” whenever she saw police and asked Dungca to pull over so she could hide in the trunk. *Id.* at 91. Later, they went through the McDonald’s drive-through in Tiyan, where Sked became agitated and argued with the cashier so much so that Dungca reversed out of the line without ordering. Dungca insisted on dropping Sked off elsewhere, and she asked to be taken to her ex-boyfriend John Cruz (“John”). Dungca dropped her off and quickly left before seeing if anyone was home.

[9] The next day, Dungca found the clothes that Sked was wearing when she first got to his house and turned them in to the police. There was a small bloodstain on the shirt that was too small to establish blood type, but which an expert in serology identified as human blood.

[10] On the morning of April 4, Michelle Cruz (“Michelle”) met Sked, a stranger to her, coming down the hill from the direction in which John Cruz lived and offered her breakfast and a drink. Michelle vaguely knew of Sked since Sked had previously dated her uncle, John Cruz, and the two women talked while they waited for John and Michelle’s other family members to wake up. Michelle’s mother, Lourdes, eventually woke up and talked to Sked. Sked asked Lourdes what she should do if “they found a dead body at her boyfriend’s house.” *Tr.* at 55 (Jury Trial, Feb. 15, 2022). Sked told Lourdes that “they’re blaming that it’s them or something, the neighbors, I guess, or something.” *Id.* at 56. Lourdes instructed her to call the police. She did not, but soon after, the police arrived. When Sked saw them, she said, “there’s my ride,” and went with them. *Id.* One of the arresting officers noted bruises and scratches on Sked’s knees that appeared to be two or three days old. Sked said she sustained the injuries fishing in the reef.

[11] Sked was incarcerated at the Department of Corrections where she met Sirena Yamasta. Sked told Yamasta that Sanchez had been found dead in Quinata’s home. Yamasta asked Sked if

Sanchez died of natural causes, and Sked said, “Now, Sirena, if he died of natural causes, I wouldn’t be in here.” Tr. at 12–13 (Jury Trial, Feb. 16, 2022). Yamasta was distraught since she knew Sanchez and his family well, and she started yelling and crying and calling for the guards. Sked laughed at Yamasta and threatened her by telling her “[she’s] next, and [she’ll] have a hard time putting [her] kids’ head back on their body.” *Id.* at 14. A few days later, after Sked’s magistrate hearing, Sked told Yamasta that she and Quinata agreed not to say anything, but that he had “put it all on me.” *Id.* at 16–17.

[12] Sked was charged with Murder (As a 1st Degree Felony) and Aggravated Assault (As a 2nd Degree Felony). Both charges included a Special Allegation of Possession or Use of a Deadly Weapon for the scissors found at the scene.

B. Sked’s Testimony

[13] After her motion for judgment of acquittal was denied, Sked elected to testify. Sked’s accounting of April 1, 2021, began similarly to the third-party testimonies—she and Quinata were out walking when they ran into Macrina and Sanchez. Sked was excited to see Sanchez and greeted him with a hug and a kiss on the cheek. They all talked for a while and then Sked, Quinata, and Sanchez got in Sanchez’s car to go and get beer. After picking up more beer, they went to Quinata’s house where they continued to drink and engaged in “oral sex and feeling.” Tr. at 30 (Jury Trial, Feb. 17, 2022). However, Sanchez was unable to “perform the way he wanted to,” and so they stopped and laughed it off. *Id.* at 30–31. Sanchez asked Quinata if “[Sked] could lay down with him” because he wanted to “hold someone.” *Id.* at 31. Quinata agreed and told Sked to lie down with Sanchez, which she did for a while before they got up and started dispersing around the house.

[14] At some point, Sanchez got up and walked to the door, apparently to leave. Sked heard a loud bang and saw Sanchez stumble inside with blood trickling from his forehead. Quinata was standing in the doorway in a “fighting stance,” and Sked ran past him out of the residence still in her bra and panties. *Id.* at 32–33. She stated, “I just took off. I didn’t want anything to do with – when [Quinata] gets like that, it’s better to just get out. . . . It’s better to just get far away.” *Id.* at 32. She went to the beach and hid there in the dark.

[15] An hour later, Sked saw Quinata walking down the road, and he “didn’t look mad anymore.” *Id.* at 33. Sked told Quinata she wanted to go back to his house, and he said “no, you can’t go back there.” *Id.* at 34. Quinata then flagged down a car that took them to Sked’s friend’s house in Hågat, where Sked got some clothes. The two then hitched a ride to Anigua, where Quinata took a shower and changed clothes at a friend’s house. There, Quinata told Sked they could not go back to his house because Sanchez was dead. Sked said all Quinata said was “he’s dead and I’m sorry.” *Id.* at 35.

[16] Sked and Quinata remained in Anigua for two days before leaving for Barrigada, where they “ended up just walking in the street.” *Id.* at 36–37. Quinata was behaving as if he were paranoid and scared, and kept “pushing [Sked] out in front of him . . . almost like he was using [her] to shield him.” *Id.* at 37. Sked separated herself from Quinata by running toward a house where a dog was barking, since she knew Quinata was afraid of dogs. Quinata called after her for a while, but Sked hid until Quinata eventually left.

[17] At this point, Sked was picked up by Frederick Dungca, who happened to be driving by. Sked said that her clothes were dirty from “going in and out of the jungle with [Quinata].” *Id.* at 38. Dungca took Sked to his house, where she showered and changed out of her dirty clothes. Dungca eventually drove her to her parents’ home to get money. Sked’s father informed her that

the police were looking for her, and she provided her parents with Dungca's mother's cell number to give to the police.

[18] From there, Sked and Dungca drove to McDonald's. Sked explained the incident to have resulted from Dungca's hearing difficulty: she was frustrated that he was talking over her while she tried to order and told him to shut up. The cashier thought Sked was speaking to her and the two argued, so Sked told Dungca to pull away.

[19] Sked then had Dungca take her to where John Cruz stayed in Mongmong, and he dropped her off. When John Cruz did not answer his door, Sked walked down the street where she met Michelle and Lourdes Cruz. Lourdes told Sked to call the police, but she did not because there was no landline there and because the only cell phone available was not working. Soon after, the police arrived at Michelle and Lourdes's house, and Sked said "that's my ride" because she knew the police were looking for her. *Id.* at 42–43. When an arresting officer asked about the injuries to her knees, Sked claimed that her legs were often scratched up and that the injuries on her knees upon arrest were probably from fishing in the days before Sanchez's death.

[20] Sked's version of her interactions while incarcerated was similar to Yamasta's. Sked testified that she introduced herself to Yamasta as Quinata's girlfriend and that when she told Yamasta that Sanchez's body was found in Quinata's house, Yamasta "became angry," and "[s]he called the officers and was asking them questions." *Id.* at 44. However, in Sked's version, Yamasta started the argument and was "calling [Sked] names and telling [her] [she] was going to rot in there." *Id.* Sked said that she retaliated and said "pretty awful things to her about her, threatened her, [and] threatened her kids." *Id.* at 45. Another difference in the testimonies was that Sked denied having agreed with Quinata to not say anything. Instead, Sked claimed that she said, "[Quinata] accused me," not that Quinata "told" on her. *Id.* at 81–82.

[21] The jury returned a guilty verdict on both charges and their accompanying Special Allegations. Sked was sentenced to life in prison for the Murder charge with the possibility of parole after fifteen years. She received a consecutive sentence of twenty years for the attached Special Allegation. The sentences for Aggravated Assault and its Special Allegation merged with those charges. She timely appealed.

II. JURISDICTION

[22] This court has jurisdiction over appeals from final judgments and orders of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-23 (2023)); 7 GCA §§ 3107, 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[23] “Where a defendant raises the issue of sufficiency of the evidence by a motion for judgment of acquittal, we review the trial court’s denial of the motion *de novo*.” *People v. George*, 2012 Guam 22 ¶ 47 (per curiam). “[W]e review the evidence in the light most favorable to the People and determine whether any rational trier of fact could have found the elements of the crime[s] beyond a reasonable doubt.” *People v. Rachulap*, 2022 Guam 9 ¶ 12 (alterations in original) (quoting *People v. Wia*, 2020 Guam 17 ¶ 35) “This is a ‘highly deferential standard of review.’” *People v. Song*, 2021 Guam 14 ¶ 18 (quoting *Wia*, 2020 Guam 17 ¶ 35). “[T]he 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)). We are “concerned with the existence or non-existence of evidence, not its weight, and this standard remains constant even when the People rely exclusively on circumstantial evidence.” *People v. Martin*, 2018 Guam 7 ¶ 23 (quoting *Song*, 2012 Guam 21 ¶ 29).

IV. ANALYSIS

A. A Rational Trier of Fact Could Have Found Sked Guilty of Murder

[24] Sked argues there was insufficient evidence to sustain her murder conviction. Appellant’s Br. at 16 (Feb. 24, 2023). Because she moved for a judgment of acquittal during trial, we review the trial court’s denial *de novo*. *George*, 2012 Guam 22 ¶ 47.

[25] Sked was charged with reckless-indifference murder, which is defined as recklessly causing the death of another human being under circumstances manifesting extreme indifference to the value of human life. 9 GCA §§ 16.20(a)(4); 16.40(a)(2) (2005). The instructions presented to the jury tracked this language, requiring a finding that Sked recklessly caused the death of Sanchez “[u]nder circumstances manifesting extreme indifference to the value of human life.” Record on Appeal (“RA”), tab 131 at 7A (Jury Instrs., Feb. 22, 2022).

[26] The large majority of Sked’s brief on appeal is devoted to arguments emphasizing there is no direct evidence proving that she killed Sanchez, either through witness testimony or forensic evidence.¹ See Appellant’s Br. at 16–17. However, while juries cannot “convict on mere suspicion and innuendo, . . . ‘[e]ntirely circumstantial’ evidence is sufficient to support a guilty verdict.” *People v. Pinaula*, 2023 Guam 2 ¶¶ 62, 63 (citations omitted).

[27] Sked points out that “[t]he jury was prohibited from convicting [her] based on suspicion, conjecture, or speculation.” Appellant’s Br. at 39. This is a correct statement of the law, and the trial court duly noted it in its jury instructions. See, e.g., *People v. Anastacio*, 2010 Guam 18 ¶ 18; RA, tab 131 at 1E (Jury Instrs.). There was, however, significant evidence presented to the jury directly tying Sked to the crime scene. Sked testified that she was with Sanchez on the night he

¹ Sked also argues in her brief that investigating officers did not identify the body at the crime scene as that of Daniel Sanchez. Appellant’s Br. at 17. While it is true that most of the testifying witnesses made no statements about the identity of the victim, Officer Eric Mondia, who investigated at the scene, adopted the prosecution’s identification of the body as that of Daniel Sanchez. Tr. at 56–57 (Jury Trial, Feb. 4, 2022).

was killed, Tr. at 30, 35 (Jury Trial, Feb. 17, 2022), and both she and Quinata were seen standing under the canopy at Quinata's residence with a man matching Sanchez's description while the silver Toyota Corolla that Sanchez had been driving was parked outside, Tr. at 19, 52, 83–85 (Jury Trial, Feb. 3, 2022). Neither Sked nor Quinata was seen driving the Corolla, and it remained parked at Quinata's residence from the time it was spotted by neighbors on April 1, 2021, until Sanchez's body was discovered on April 3, 2021. *Id.* at 83–84; Tr. at 20, 34, 38–39, 56–57 (Jury Trial, Feb. 4, 2022).

[28] There is also circumstantial evidence which would allow for the inference that Sked had some affirmative part in the murder. She showered and changed clothes more than once between leaving Quinata's residence and her arrest. Tr. at 86 (Jury Trial, Feb. 17, 2022). As Frederick Dungca drove her around, she “freak[ed] out” every time she saw police lights or heard sirens and attempted to hide in the trunk. Tr. at 91 (Jury Trial, Feb. 4, 2022). She asked Lourdes Cruz, a stranger, what she should do if a dead body was found at her boyfriend's house. Tr. at 55–57 (Jury Trial, Feb. 15, 2022). Sirena Yamasta testified that after she was locked up, Sked told her that Yamasta would be next. Tr. at 14 (Jury Trial, Feb. 16, 2022). Yamasta also claimed that Sked told her that she and Quinata had agreed not to say anything but that he had “put it all on [her].” *Id.* at 16–17. She had injuries on her knees. Tr. at 78 (Jury Trial, Feb. 4, 2022). Despite testifying that she ran out of the residence before the murder and that Quinata only ever told her that Sanchez was dead, Sked also somehow knew that Sanchez had been stabbed by the time she got to Dungca's residence. Tr. at 31–32, 73 (Jury Trial, Feb. 17, 2022). Finally, two weapons were used to murder Sanchez, and the forensic pathologist who conducted the autopsy determined that both the “chop wounds” and the “stab wounds” contributed to Sanchez's death. Tr. at 40, 127–28 (Jury Trial, Feb. 16, 2022).

[29] “The job of evaluating and weighing evidence is squarely and exclusively the province of the jury, and not of the trial court determining a motion for acquittal or an appellate court reviewing that determination.” *People v. Wusstig*, 2015 Guam 21 ¶ 26. Thus, this court is “not concerned with the weight of the evidence, but with its existence or non-existence.” *People v. Enriquez*, 2014 Guam 11 ¶ 22. Here, the jury could rationally have found the elements of the offense beyond a reasonable doubt. Daniel suffered deadly injuries from two different weapons, and it is reasonable for the jury to infer that two people each used one of those weapons. Taken together with the evidence connecting Sked to the crime scene and her unexplained knowledge that Daniel had been stabbed, the jury was able to convict Sked based on more than mere suspicion or innuendo. Additionally, it was reasonable for the jury to suspect that the injuries to Sked’s knees were sustained during an altercation and not from fishing on the reef.

[30] Because “‘entirely circumstantial’ evidence is sufficient to support a guilty verdict,” *Pinaula*, 2023 Guam 2 ¶ 63 (quoting *People v. McKinney*, 2016 Guam 3 ¶ 22), the jury did not have to treat the absence of forensic evidence—such as the fact that only small bloodstains were discovered on the clothes the police collected—as dispositive. It is possible to interpret Sked’s erratic behavior before her arrest and the threats she made to Yamasta as the expression of a guilty mind. The jury may also have inferred an admission of involvement from Yamasta’s testimony that Sked and Quinata agreed not to say anything.

[31] Though a different explanation of the evidence could be formulated, it is the jury’s job to weigh the evidence, not the court’s. Given the direct and circumstantial evidence presented at trial, the jury could have found that Sked recklessly caused Sanchez’s death in circumstances manifesting extreme indifference to the value of human life. We affirm her conviction for murder.²

² There is no essential element of Aggravated Assault (as a Second Degree Felony) which would not necessarily be proven if the essential elements of Murder (as a First Degree Felony) are shown. *Compare* 9 GCA §

B. There Was Insufficient Evidence for a Rational Trier of Fact to Find Sked Guilty of the Special Allegations of Possession or Use of a Deadly Weapon

[32] Sked contends that even if the underlying offenses stand, there is insufficient evidence to convict her for possession or use of a deadly weapon in the commission of a felony. Appellant’s Br. at 38–39. A guilty verdict requires a finding that Sked unlawfully possessed or used a deadly weapon in the commission of a felony. 9 GCA § 80.37 (2005). The jury instructions tracked this language, noting the deadly weapon, specifically, as scissors. RA, tab 131 at 7B, 7H (Jury Instrs.).

[33] We now evaluate whether the Special Allegations on the unlawful possession or use of a deadly weapon, namely the scissors, can be sustained. Sked raised the sufficiency of the evidence on the Special Allegations by moving for a judgment of acquittal during trial, so we review the trial court’s denial *de novo*. See *George*, 2012 Guam 22 ¶ 47.

[34] Sked argues that the evidence demonstrates that Quinata used both the scissors and the hammer. Appellant’s Reply Br. at 7 (June 30, 2023). “For the sake of argument,” she also suggests that, had she been involved, it could as easily have been with the hammer as the scissors, in which case the evidence would remain insufficient for conviction on the Special Allegations as charged. *Id.*

[35] The Special Allegations in the indictment state that Sked unlawfully possessed or used scissors in the commission of the felonies. Consequently, it must be proven beyond a reasonable doubt not only that Sked unlawfully possessed or used a deadly weapon in the commission of the felonies, but that the weapon she used was scissors. See *People v. Reselap*, 2022 Guam 2 ¶ 28 (finding sufficient evidence to uphold a use-of-a-deadly-weapon charge for only a machete when

19.20(a)(1) (2005), with 9 GCA §§ 16.20(a)(4), 16.40(a)(2). Likewise, the evidence supporting Sked’s conviction for Murder here is the same evidence which supports her conviction for Aggravated Assault. Because we determine the evidence is sufficient to prove Murder beyond a reasonable doubt, we also determine the evidence is sufficient to prove Aggravated Assault. However, as we explain in Part IV(C) below, the trial court should not have entered a judgment of conviction on the Aggravated Assault charge because doing so violated 9 GCA § 1.22(a).

the jury instructions stated “a machete or a rock” because “[t]he People presented sufficient evidence that a rational trier of fact could find beyond a reasonable doubt that [defendant] used solely the machete as a deadly weapon in committing the underlying felonies”). Sked correctly asserts that there is no direct testimony or DNA evidence connecting her to the scissors, and there is little in the record that indicates that Sked herself used or possessed the scissors found at the crime scene as a deadly weapon. However, while “mere suspicion and innuendo” may not sustain a conviction, *Anastacio*, 2010 Guam 18 ¶ 18, “‘entirely circumstantial’ evidence is sufficient to support a guilty verdict,” *Pinaula*, 2023 Guam 2 ¶ 63 (quoting *McKinney*, 2016 Guam 3 ¶ 22).

[36] Here, there is some circumstantial evidence. Sked placed herself at the crime scene, where Sanchez was later discovered lying next to scissors and covered in stab wounds consistent with that weapon. Tr. at 36, 56–57 (Jury Trial, Feb. 4, 2022); Tr. at 71 (Jury Trial, Feb. 16, 2022); Tr. at 30, 35 (Jury Trial, Feb. 17, 2022). She testified that she had run out of the residence at the first sign of trouble and only learned about Sanchez’s death much later. Tr. at 30, 35 (Feb. 17, 2022). However, Sked testified that she told Dungca she thought “somebody stabbed somebody,” and her knowledge of this information is unexplained in the record. *Id.* at 73. In fact, she confirmed that Quinata “only said that [Sanchez] was dead.” *Id.*

[37] At oral arguments, the People raised, for the first time, the suggestion that the nature of the stab wounds allowed the inference that Sked had caused them. They argued that because the Z-shaped wounds indicative of closed scissors were shallower than those wounds consistent with a single, more sharply pointed scissor blade, it was possible to infer that the weaker individual had wielded the weapon. Digital Recording at 10:22:42–10:23:38 (Oral Arg., Aug. 15, 2023). However, when a party fails to address an issue in her opening brief, she is deemed to have forfeited the issue. *See People v. Quinata*, 2023 Guam 25 ¶ 32 n.4; *People v. Roberson*, 2017

Guam 18 ¶ 10 (“[A]n appellant’s failure to develop his argument in his brief results in an abandonment of the issue for purposes of appeal.”); Guam R. App. P. 13(a). This issue was never briefed, and the record does not support the argument. Testimony was not developed which would have established that the Z-shaped wounds were generally shallower than those from the opened scissors, nor is there any testimony relating the wounds to the strength of the aggressor.

[38] Ultimately, the evidence cannot sustain a conviction for the Special Allegations that Sked unlawfully used or possessed the scissors to commit the murder or the aggravated assault. It may prove that Sked knew Sanchez was stabbed, but it is a step too far to infer that she herself used the scissors to stab Sanchez. Even allowing for all reasonable inferences “in the light most favorable to the People,” *Rachulap*, 2022 Guam 9 ¶ 12 (quoting *Wia*, 2020 Guam 17 ¶ 35), including Sked’s active participation in the murder, it cannot be said beyond a reasonable doubt that her participation included the use of the scissors rather than the hammer. We reverse the conviction for each Special Allegation.

C. Because, as Charged, Aggravated Assault is an Included Offense of Murder, Sked’s Conviction on the Aggravated Assault Charge Must Be Vacated

[39] One final issue, raised *sua sponte* by this court, is the trial court’s entry of a judgment of conviction for Aggravated Assault (as a Second Degree Felony).³ In its Judgment, the court stated:

The Court accepted the verdict of the jury, and based on this verdict, a **JUDGMENT OF GUILTY** is hereby entered for the **First Charge of Murder (As a First Degree Felony)** and its attached Special Allegation: Possession or Use of a Deadly Weapon; and the **Second Charge of Aggravated Assault (As a Second Degree Felony)** and its attached Special Allegation: Possession or Use of a Deadly Weapon.

RA, tab 153 at 1 (Judgment, Sept. 27, 2022).

³ The trial court also entered a judgment of conviction on the Special Allegation of Possession or Use of a Deadly Weapon attached to the Aggravated Assault charge. Because we reverse that conviction for insufficient evidence, we need not address the propriety of that conviction under 9 GCA § 1.22.

[40] The dual convictions for Murder and Aggravated Assault violate 9 GCA § 1.22. Under that provision:

When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other as defined in § 105.58 of the Criminal Procedure Code.

9 GCA § 1.22(a) (2005). Title 8 GCA § 105.58 provides that an offense is included in the offense charged when “[i]t is established by proof of the same or less than all the facts required to establish the commission of the offense charged.” 8 GCA § 105.58(b)(1) (2005).

[41] As charged, there is no essential element of Aggravated Assault (As a Second Degree Felony) which would not necessarily be proven if the essential elements of Murder (As a First Degree Felony) are established. Compare 9 GCA § 19.20(a)(1) (2005), with 9 GCA §§ 16.20(a)(4), 16.40(a)(2). Likewise, the evidence supporting Sked’s conviction for Murder here is the same evidence which supports her conviction for Aggravated Assault. Thus, as charged, Aggravated Assault is an included offense of Murder. While prosecution for both offenses was allowable under 9 GCA § 1.22, conviction for both offenses was not. And while the trial court did not sentence Sked for Aggravated Assault, instead stating that “any sentence would merge” with the Murder charge, RA, tab 153 at 2 (Judgment), we have repeatedly held that merger of the sentences is not proper under 9 GCA § 1.22, see, e.g., *People v. Acosta*, 2022 Guam 11 ¶ 56, 58; *People v. Afaisen*, 2016 Guam 31 ¶ 52.

[42] Because the conviction for Aggravated Assault violated 9 GCA § 1.22(a), the conviction must be vacated.

//

//

V. CONCLUSION

[43] We find there was sufficient evidence for a rational trier of fact to find Sked guilty beyond a reasonable doubt for Murder (As a First Degree Felony) and Aggravated Assault (As a Second Degree Felony), but there was insufficient evidence for a conviction on the Special Allegations of Possession or Use of a Deadly Weapon in the form of scissors. Because Aggravated Assault, as charged, is an included offense of Murder, the trial court’s entry of a conviction for Aggravated Assault violated 9 GCA § 1.22(a). Thus, we **AFFIRM** Sked’s Murder conviction, **REVERSE** the convictions for the two Special Allegations of Possession or Use of a Deadly Weapon, and **VACATE** the conviction for Aggravated Assault. The matter is **REMANDED** for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice