



Filed

Supreme Court of Guam, Clerk of Court

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff-Appellee,

v.

D.J. TOSIUO

**(aka DJ Peter Robert Tosiuo; aka David Peter Robert Tosiuo;
aka D.J.R. Tosiuo; aka D.J. BJ Saki Prick from Barrigada),**

Defendant-Appellant.

Supreme Court Case No. CRA25-012

Superior Court Case No. CF0428-24

OPINION

Cite as: 2026 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on October 30, 2025
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.¹

TORRES, C.J.:

[1] Defendant-Appellant D.J. Tosiuo appeals from a judgment of conviction entered after a jury found him guilty of Possession of a Firearm Without a Firearm Identification Card and Possession of an Unregistered Firearm. He argues the People failed to prove the seized firearm was operable or otherwise “capable of discharging loaded ammunition” within the meaning of Guam’s firearms statutes.

[2] We conclude that Guam’s firearms statutes and this court’s precedent did not require the People to prove present operability to sustain the identification and registration offenses. The evidence permitted the jury to find that the revolver remained a firearm under Guam law because it was designed to fire by explosive force and could be restored to full operating condition by replacing the broken mainspring. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Tosiuo’s firearm convictions arose after he drove a white Volkswagen through Dededo at approximately 70 miles per hour, passed several vehicles, entered the oncoming lane, and crashed into a concrete pole. After the vehicle was towed to the Dededo Precinct, Guam Police Department (“GPD”) Officer Mendiola observed a firearm on the dashboard, waited for crime-scene personnel, searched the vehicle, and seized the firearm. Officer Mendiola later identified it as a Smith & Wesson .357 Magnum revolver.

[4] GPD Detective Gogo testified that a records check showed Tosiuo did not have a Firearm Identification Card. Officer Mendiola testified that GPD’s Law Enforcement Records

¹ The signatures in this opinion reflect the titles of the Justices at the time this matter was argued and submitted.

Management System had “a tab . . . where we could do a firearm search.” Transcript (“Tr.”) at 57 (Jury Trial, Day 2, Sep. 17, 2024). He entered the revolver’s serial number, “hit search,” and “[n]o results came back to that firearm.” *Id.*

[5] The grand jury indicted Tosiuo on eight charges, including two firearm offenses: Possession of a Firearm Without a Firearm Identification Card, and Possession of an Unregistered Firearm. Before trial, the Superior Court dismissed several unrelated counts without prejudice. At trial, the People called GPD Criminalist James Aevertmann, who was certified without objection as an expert in firearms analysis. Aevertmann testified that the revolver was not in mechanical operating condition because of a broken mainspring and that no test fires were conducted. He explained that the revolver was not a toy or paperweight, was designed to fire a projectile by explosive force, and would return to full operating condition if the mainspring were replaced. On cross-examination, Aevertmann agreed he had not repaired or test-fired the revolver and could not say with “100 percent” certainty that it would actually fire without such testing. *Id.* at 94–95.

[6] The following portions of Aevertmann’s testimony are particularly relevant. On direct examination, Aevertmann testified:

Q [W]hat are the findings on the report?

A The results that I stated on the report is that the K1 firearm was examined and found to not be in mechanical operating condition due to a broken mainspring. Furthermore, no test fires were conducted.

Q And in your expert opinion, is that -- is the item being inoperable, does that in any way take it out of the classification of being a firearm?

A No.

. . . .

Q And what would happen if this firearm were repaired? What capability would it have then?

A If this firearm were to be repaired by replacing the mainspring, it would be back to a fully operating condition. So it would be capable of expelling a projectile.

....

Q And how do you justify your finding?

A I justified based on the fact that it was an object that was designed to fire a projectile by means of an explosive force.

....

Q So is an inoperable firearm designed to shoot bullets?

A Yes.

Q And is it designed to discharge loaded ammunition?

A Yes.

Id. at 90–92. On cross-examination, Aeevermann testified:

Q So the condition that that gun's in, even if it had a fully functioning mainspring, you have no idea whether it's capable of firing a projectile.

A That is correct.

Q Okay, because you have to do the test fire.

A Yes.

Q Right. You didn't repair that gun.

A No.

Q You didn't get a mainspring, right?

A No.

Q You didn't replace it in there.

A No, sir.

Id. at 94–95.

[7] After the People rested, Tosiuo moved for judgment of acquittal on the firearm counts, arguing that “capable of discharging loaded ammunition” required proof that the revolver could

actually fire. *Id.* at 100–07. The trial court denied the motion. The jury found Tosiuo guilty of the two firearm offenses, Unauthorized Use of a Motor Vehicle, and Operating a Motor Vehicle Without a Valid Operator’s License. Tosiuo timely appealed.

II. JURISDICTION

[8] We have jurisdiction over this appeal from a final judgment of the Superior Court of Guam. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 119-117 (2026)); 7 GCA §§ 3107, 3108(a) (2005); 8 GCA §§ 130.10, 130.15(a) (2005).

III. STANDARD OF REVIEW

[9] “Where a defendant raised 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. Song*, 2012 Guam 21 ¶ 26 (citing *People v. Anastacio*, 2010 Guam 18 ¶ 10). “In determining whether there exists sufficient evidence to sustain a defendant’s conviction, 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 beyond a reasonable doubt.” *Id.* (citing *People v. Tennesen*, 2009 Guam 3 ¶ 14, *overruled on other grounds by Barrett-Anderson v. Camacho*, 2018 Guam 20). “This is a ‘highly deferential standard of review,’” *id.* (quoting *People v. Tenorio*, 2007 Guam 19 ¶ 9), and either direct or circumstantial evidence—or a combination of both—may suffice to sustain a conviction, *People v. Jesus*, 2009 Guam 2 ¶ 62; *see also Song*, 2012 Guam 21 ¶ 29 (“[I]f there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.” (quoting *State v. Elmore*, 628 S.E.2d 271, 273 (S.C. Ct. App. 2006))). “[O]ur review must ‘give [] full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate

facts.” *Anastacio*, 2010 Guam 18 ¶ 18 (second alteration in original) (quoting *Jesus*, 2009 Guam 2 ¶ 60).

IV. ANALYSIS

[10] Tosiuo’s challenge is limited to whether the People proved the seized revolver qualified as a “firearm” under Guam law. *See* Appellant’s Br. at 10–13 (July 24, 2025). He argues the People had to repair or test-fire the revolver or otherwise prove that it could discharge ammunition in its condition at the time of possession. *Id.* at 11–13; Appellant’s Reply Br. at 1–2 (Oct. 2, 2025). The People respond that Guam law looks to design and capability and does not require proof of present operability. *See* Appellee’s Br. at 2–6 (Sep. 25, 2025). We agree with the People. Guam’s statutory text, structure, and precedent foreclose Tosiuo’s proposed operability requirement, and the trial evidence was sufficient to permit the jury to find that the revolver remained a firearm under Guam law.

[11] At the time of Tosiuo’s offenses, Title 10 defined a “firearm” as “any weapon, the operating force of which is an explosive.” 10 GCA § 60100(a) (2005). Subsection (b) defined a “pistol” or “revolver” as a firearm “designed to be fired with one hand” and “capable of discharging loaded ammunition or any noxious gas.” 10 GCA § 60100(b) (2005).² Subsection (b) used “capable,”

² At the time of Tosiuo’s offenses, section 60100(a)–(b) provided in relevant part:

(a) *Firearm* means any weapon, the operating force of which is an explosive. This definition includes pistols, revolvers, rifles, shotguns, machine guns, automatic rifles, noxious gas projectors, mortars, bombs, cannon and submachine guns. The specific mention of certain weapons does not exclude from the definition other weapons operated by explosives.

(b) *Pistol or revolver* means any firearm of any shape whatever and designed to be fired with one hand with a barrel less than twelve inches (12”) in length and capable of discharging loaded ammunition or any noxious gas.

10 GCA § 60100(a)–(b) (2005). The challenged offenses prohibited possessing a firearm without a valid Firearm Identification Card and knowingly possessing an unregistered firearm. *See id.* §§ 60106, 60110, 60114(a), 60121(e) (2005). After Tosiuo committed the offenses, the Legislature amended section 60100 through the passage of Public Law 38-031:2 (July 31, 2025). The current version of section 60100 available on the Compiler of Laws’ website notes that subsections (b) through (i) of section 60100 were implicitly repealed by P.L. 38-031:2. We do not opine on the

not the “operability” formulation Tosiuo advances. “Operability” concerns whether a thing works as intended at the moment, while “capable” concerns whether it possesses the attributes necessary to perform a function.³ The surrounding provisions support that reading: section 60101(c) excludes devices not designed or redesigned for use as weapons, while section 60117 regulates firearm repair. *See* 10 GCA §§ 60101(c), 60117 (2005). Together, those provisions distinguish devices not designed as weapons from firearms that remain subject to regulation while being repaired.

[12] Our caselaw confirms that the governing inquiry is design and capability, not successful test firing. *See People v. Camacho*, DCA Crim. No. 85-00074A, SC Crim. No. 765-84, 1987 WL 109395, at *3 (D. Guam App. Div. June 24, 1987); *Tennessen*, 2009 Guam 3 ¶¶ 18–21. In *People v. Camacho*, the Appellate Division held that testimony identifying the object as a police service revolver supplied sufficient circumstantial evidence that it was “capable of discharging loaded ammunition.” 1987 WL 109395, at *3. In *People v. Tennessen*, this court read “capable of discharging loaded ammunition” to include “capab[ility] before or after repair.” 2009 Guam 3 ¶ 18. There, this court rejected the argument that present operability had to be established through actual firing. This court reasoned that a contrary reading would undermine the statutory provision governing firearm repair and irrationally exclude weapons that remain dangerous and intimidating despite a temporary defect. *See id.* ¶¶ 18–19. The court held that a firearm is a weapon “designed by the manufacturer to shoot” and having “the appearance of . . . that capability.” *Id.* ¶ 20 (quoting

Compiler’s reading of the public law and its purported effect on subsections (b) through (i) because the 2025 amendment does not affect this prosecution. *See* 2 GCA § 2105 (2005) (“The repeal or amendment of any statute shall not affect any offense committed . . . prior to such repeal or amendment . . .”).

³ *See Operability*, *Black’s Law Dictionary* (12th ed. 2024) (“The ability (of a thing) to work more or less as intended <the operability of a weapon>.”); *Capable*, *Merriam-Webster’s Collegiate Dictionary* (12th ed. 2025) (“having attributes (such as physical or mental power) required for performance or accomplishment”).

People v. Jackson, 155 Cal. Rptr. 305, 307 (Ct. App. 1979)). Because the prosecution presented evidence satisfying that standard, it did not have to prove the weapons actually operated. *Id.* ¶ 21.⁴

[13] Federal courts construing analogous design-based language likewise hold that temporary inoperability does not, by itself, take a weapon outside the statutory definition of a firearm.⁵ California courts applying the design-and-appearance rule adopted in *Tennessee* similarly focus on whether the weapon was designed to shoot and appeared capable of doing so.⁶

[14] Here, the People offered the kind of design-and-capability proof Guam law requires. Criminalist Aevertmann identified the object as a Smith & Wesson .357 Magnum revolver, explained that it was designed to fire a projectile by explosive force, and attributed its mechanical inoperability to a broken mainspring. He further testified that replacing the mainspring would return the revolver to full operating condition and make it capable of expelling a projectile. The jury also viewed the revolver. This evidence satisfied *Tennessee*'s design-and-capability standard and provided at least as much support as the circumstantial showing found sufficient in *Camacho*. See *Tennessee*, 2009 Guam 3 ¶¶ 18, 20–21; *Camacho*, 1987 WL 109395, at *3–4.

[15] Tosiuo relies on testimony his trial counsel elicited from Aevertmann during cross-examination. Trial counsel asked whether Aevertmann could determine that the revolver was capable of firing, even with a functioning mainspring, without first test-firing it, and Aevertmann

⁴ Although *People v. Tennessee*, 2009 Guam 3, involved theft under Title 9, its operability analysis expressly applied 10 GCA § 60100(b) (2005) and the firearm-repair provision in 10 GCA § 60117 (2005). See *Tennessee*, 2009 Guam 3 ¶ 18.

⁵ See, e.g., *United States v. Rivera*, 415 F.3d 284, 286–87 (2d Cir. 2005) (holding a handgun with broken firing pin remained a “firearm” under 18 U.S.C.A. § 921(a)(3)(A) and collecting cases from the Fifth, Sixth, Seventh, Eighth, and Eleventh Circuits likewise concluding that an inoperable weapon remains a firearm); *United States v. Kuzma*, 967 F.3d 959, 968–69 (9th Cir. 2020) (explaining a weapon may remain “designed to shoot” despite a readily fixable defect, just as a car with a dead battery remains designed to be driven); see also *Bondi v. VanDerStok*, 604 U.S. 458, 470–73 (2025) (explaining section 921(a)(3)(A) reaches weapons designed to expel a projectile or readily convertible to do so).

⁶ See *People v. Jackson*, 155 Cal. Rptr. 305, 306–07 (Ct. App. 1979) (holding a defective pistol remained a firearm because it was manufactured to shoot and retained the appearance of firing capability); *In re Arturo H.*, 51 Cal. Rptr. 2d 5, 7 (Ct. App. 1996) (applying same design-and-appearance rule to an inoperable pellet gun).

agreed that he could not. Tosiuo argues that because the revolver was never repaired or test-fired, the People failed to establish the required capability. *See* Appellant’s Br. at 12–13. That exchange, however, addressed confirmation of actual operation through testing. It did not undermine Aeevermann’s separate testimony that the revolver was designed to fire by explosive force and could be restored to full operating condition by replacing the broken mainspring. The jury was entitled to weigh both portions of Aeevermann’s testimony together with the physical revolver. Viewing the evidence in the light most favorable to the People, a rational jury could find beyond a reasonable doubt that the revolver qualified as a firearm under section 60100. *See Song*, 2012 Guam 21 ¶ 26.

V. CONCLUSION

[16] The People did not have to prove present operability to sustain Tosiuo’s convictions. Title 10 GCA § 60100 (2005) and *Tennessee* make design and capability—including capability after repair—the controlling inquiry. Criminalist Aeevermann’s testimony that the revolver was designed to fire by explosive force and would return to full operating condition if its broken mainspring were replaced supplied a sufficient basis for the jury’s findings. We **AFFIRM**.

/s/

F. PHILIP CARBULLIDO
Associate Justice

/s/

KATHERINE A. MARAMAN
Associate Justice

/s/

ROBERT J. TORRES
Chief Justice