

*Silmai v. ROP*, 10 ROP 139 (2003)  
**VICTOR SILMAI,**  
**Appellant,**

v.

**REPUBLIC OF PALAU,**  
**Appellee.**

CRIMINAL APPEAL NO. 02-01  
Criminal Case No. 00-355

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 11, 2003<sup>1</sup>

**1140**

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: David H. Matthews

BEFORE: LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice;<sup>2</sup> J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Victor Silmai appeals from his conviction on one charge of trafficking in methamphetamine. He asserts that his conviction should be overturned because the evidence presented to the Trial Division was not sufficient to support his conviction, and he contends that his sentence should be vacated because it is in violation of the constitutional prohibition on cruel, inhumane, or degrading punishment and excessive fines. We affirm.

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<sup>1</sup>Upon reviewing the briefs and record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. Pro. 34(a).

<sup>2</sup>The Honorable ALEX R. MUNSON, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

## **BACKGROUND**

On October 6, 2000, the Republic filed an Information charging Silmai with one count of trafficking in methamphetamine in violation of 34 PNC § 3301. Silmai was on parole at the time of the filing, after having served approximately two and a half years in jail on previous convictions for trafficking in methamphetamine. Silmai entered an initial appearance in Criminal Case No. 00-355 on October 13, 2000. He posted a \$10,000 bond, and the court released him from custody.

In an affidavit filed on December 13, 2000, Police Officer Julio Ringang stated that he received an anonymous phone call from an individual who claimed that Silmai was still selling methamphetamine from his house in Medalai, Koror. Officer Ringang set up a buy with a confidential informant who returned with a package of methamphetamine. An arrest warrant was issued. On January 11, 2001, the Republic filed another Information charging Silmai with one count of trafficking in methamphetamine. Silmai entered an initial appearance in Criminal Case No. 01-02 on January 15, 2001, and, after posting a \$25,000 bond, was released from custody.

The two cases were consolidated and the matter was tried before the Trial Division on November 19, 2001. The trial court found Silmai guilty of the charge of trafficking in methamphetamine in Criminal Case No. 00-355 and not guilty in Criminal Case No. 01-02. The court sentenced Silmai to 25 years' imprisonment and a fine of \$50,000. Silmai appeals, contending that the Republic did not submit sufficient evidence at trial to support his conviction and that his sentence violates Article IV, Section 10 of the Constitution.

## **DISCUSSION**

### **A. Insufficient Evidence**

Silmai's first claim of error is that the Republic did not present sufficient evidence to support his conviction. The standard for assessing the sufficiency of evidence requires us to determine whether, viewing the evidence **1141** in the light most favorable to the prosecution and giving due deference to the trial judge's opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found that the essential elements of the crime were established beyond a reasonable doubt. *Ngirarorou v. ROP*, 8 ROP Intrm. 136, 139 (2000).

There is sufficient evidence for a reasonable trier of fact to have concluded, beyond a reasonable doubt, that Silmai sold methamphetamine to the confidential informant. Officer Felix Francisco testified that he searched the informant and his car at Francisco's house before the buy and found no drugs. The officers then followed the informant from Officer Francisco's house to the defendant's residence. Officer Dolyn Tell testified that she witnessed the informant pull up to the defendant's residence, get out of his car, and walk to a jeep in which Silmai was sitting. Officer Tell witnessed the informant take something out of his pocket and extended it toward Silmai. Officer Tell did not see Silmai hand anything to the informant because the open door of Silmai's jeep blocked her view. After the alleged transaction, the officers followed the informant from Silmai's residence to Officer Francisco's house. Upon arrival, the informant handed

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Officer Francisco two tubes containing a substance that later tested positive for methamphetamine. Officer Francisco searched the informant and his car but did not find any other drugs or money on him.

While it is true that the Republic presented no direct eyewitness testimony that Silmai sold methamphetamine to the informant, the trial court could reasonably infer that such a transaction occurred from the circumstantial evidence presented at trial. The officers searched the informant prior to the controlled buy; they followed the informant to Silmai's residence where they witnessed an interaction between Silmai and the informant; and they followed the informant back from Silmai's residence. Upon return, the informant was in the possession of methamphetamine. When viewed in a light most favorable to the prosecution, such evidence provides sufficient support for a conviction.

B. Cruel, Inhumane, or Degrading Punishment and Excessive Fine

Silmai's second claim of error is that the mandatory minimum sentence of 25 years imprisonment and the mandatory minimum \$50,000 fine proscribed by 34 PNC § 3301(b)(5) violates Article IV, Section 10 of the Palau Constitution which prohibits "torture, cruel, inhumane or degrading treatment or punishment, and excessive fines." In a recently-issued opinion, this Court concluded that the mandatory minimum sentence of 25 years imprisonment for the crime of importing methamphetamine is not unconstitutionally cruel, inhumane, or degrading punishment. *Eller v. ROP*, 10 ROP 122, 131 (2003). We see no reason to distinguish Silmai's sentence of imprisonment for trafficking methamphetamine from the same term for importing methamphetamine at issue in *Eller*.

Whether the \$50,000 minimum fine mandated by 34 PNC § 3301(b)(5) violates the Excessive Fines Clause of Article IV, Section 10 is a matter of first impression. As a monetary sanction incurred as the direct result of a criminal conviction, the \$50,000 penalty imposed by the Trial Division upon Silmai is assuredly a "fine." See *United States v. Bajakajian*, 118 S. Ct. 2028, 2033 ¶142 (1998).<sup>3</sup> Because it is a fine, the only remaining question is whether it is an unconstitutionally excessive one. See *id.* at 2036. We have never had an opportunity to apply the Excessive Fines Clause. See *Gotina v. ROP*, 8 ROP Intrm. 65, 67 (1999) ("[A]ppellants' arguments regarding their inability to pay the fines fail to raise a cognizable challenge under the Excessive Fines Clause."); see also *Flaga v. ROP*, 8 ROP Intrm. 79, 80 (1999). However, we have stated that the excessiveness inquiry "turns on the gravity of the offense rather than the ability to pay." *Flaga*, 8 ROP Intrm. at 79; *Gotina*, 8 ROP Intrm. at 66.

Because Palau's Excessive Fines Clause is derived from a comparable clause in the United States Constitution, we have found it appropriate to consider United States case law in construing the provision. *Gotina*, 8 ROP Intrm. at 65. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the

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<sup>3</sup>Thus, we need not enter into the controversy over the definition of "fine" engendered by the *Bajakajian* case. See *Bajakajian*, 118 S. Ct. at 2041 (Kennedy, J., dissenting) (stating that the majority's treatment of many fines as "remedial penalties" not subject to the Excessive Fines Clause is a "novel, mistaken approach").

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forfeiture must bear some relationship to the gravity of the offense.” *Bajakajian*, 118 S. Ct. at 2036. In performing this analysis, the United States Supreme Court found two considerations particularly relevant. First, courts should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes. *Id.* at 2037. Second, any judicial determination regarding the gravity of a particular offense “will be inherently imprecise.” *Id.* We agree that such considerations are highly relevant to an excessive fines analysis.<sup>4</sup>

Applying these considerations to the instant case, the conclusion that trafficking in methamphetamine is a grave offense that warrants a mandatory minimum fine of \$50,000 is a legislative determination entitled to “substantial deference.” *Bajakajian*, 118 S. Ct. at 2037. As we noted in *Eller*, the legislature was very concerned about the effects of importing, trafficking, and peddling methamphetamine on the well-being of the Republic. *Eller*, 10 ROP at 131 (citing legislative history of 34 PNC § 3301). We have no reason to doubt the legislature’s determination that methamphetamine trafficking is a grave offense. The legislature also believed that the best way to reduce trafficking was to increase the penalties in order to create a “strong deterrent effect.” *Id.* Thus, we are convinced that a \$50,000 fine bears a constitutionally adequate relationship to the gravity of the crime of trafficking methamphetamine. Accordingly, Silmai’s sentence and conviction are hereby affirmed.

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<sup>4</sup>*Cf. Gotina*, 8 ROP Intrm. at 59-60 (“However, it is for the legislature, and not the courts, to prescribe the types and limits of punishments for particular crimes, and the courts must defer to legislative policy judgments in that regard.”) (quoting *Bajakajian*, 118 S. Ct. at 2037).