

Labarda v. ROP, 11 ROP 43 (2004)
DULCE CORAZON LABARDA,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 02-007
Criminal Case No. 02-88

Supreme Court, Appellate Division
Republic of Palau

Argued: December 2, 2003

Decided: January 9, 2004

144

Counsel for Appellant: Clara Kalscheur

Counsel for Appellee: Chris Boeder and Scott Banker

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

SALII, Justice:

This appeal concerns Dulce Labarda's ("Labarda") challenge to her conviction for aiding and abetting the unlawful entry of a Chinese citizen named He Yu into Palau while using a false passport. Labarda argues that the Trial Division erred in finding her guilty beyond a reasonable doubt on the basis of insufficient evidence. She also contends that the Trial Division exhibited bias or prejudice against her. For the reasons set **145** forth below, we affirm the judgment of the trial court.

BACKGROUND

On May 8, 2002, Labarda and He Yu arrived in Palau from the Philippines on the same flight. He Yu presented a Singapore passport, which identified her as a citizen of Singapore, and an entry form, which had been completed by a fellow passenger, to the immigration officer at the airport. Because He Yu's entry form did not list an address where she would be staying in Palau, the immigration officer retained her passport and told her to go to the immigration office in Koror the following day to report where she was staying and retrieve her passport. He Yu was taken into custody by police officers at her hotel on the afternoon of May 9 after she failed to

Labarda v. ROP, 11 ROP 43 (2004)

report to the immigration office. After she was interviewed by immigration officials, He Yu was charged with Unlawful Entry into the Republic of Palau in violation of 13 PNC § 1011.

Labarda arrived on the same flight as He Yu. After collecting her luggage, Labarda went through the customs inspection line, where a customs officer found He Yu's Chinese passport in her purse. Labarda testified that she found He Yu's passport while she was on the airplane and had intended to return it first to a flight attendant and then to the immigration officer at the airport. However, Labarda explained that she became disconcerted and forgot to report her possession of He Yu's passport when an immigration officer confiscated her own passport and instructed her to retrieve it the next day at the police station. She also stated that she had completed an entry form for another passenger on her flight at the request of a Japanese man. Labarda was ultimately charged with one count of Aiding and Abetting of Unlawful Entry into the Republic of Palau in violation of 13 PNC § 1011 and 17 PNC § 102.

Prior to trial, He Yu entered into a plea agreement with the prosecution, in which she pled guilty to using a false passport to enter Palau. As part of her plea agreement, He Yu was required to testify at Labarda's trial. He Yu testified that she is a citizen of the People's Republic of China and that she wanted to travel to Canada. She further testified that she made contact with a Japanese man and Labarda after she flew from China to Manila, and they agreed to smuggle her into Canada. He Yu stated that the Japanese man moved her into Labarda's residence, where she lived for several days. He Yu, the Japanese man, and Labarda then flew to Palau, and upon arrival, Labarda exchanged the false Singapore passport for He Yu's Chinese passport in the restroom at the Palau airport. In her defense, Labarda testified that she had never met He Yu before her arrest. Further, Labarda explained that she had decided to take a secret week-long vacation in Palau, a place she had never visited before, without making any hotel reservations or leaving any contact information with her fourteen- and eleven-year-old children, because she needed a rest due to personal problems.

DISCUSSION

Labarda first argues that the evidence presented at trial was insufficient to support her conviction. Specifically, she contends that the trial court's guilty verdict was based on an erroneous determination that He Yu's testimony was more credible than Labarda's testimony. Labarda asserts that the case was essentially a swearing match between He Yu and Labarda, and the trial court erred in believing He Yu instead of Labarda because **¶46** He Yu's testimony was full of inconsistencies and unexplained actions by He Yu.

In challenging the sufficiency of the evidence, Labarda argues against the trial court's findings of fact that led to her conviction. *See ROP v. Chisato*, 2 ROP Intrm. 227, 238 (1991). The trial court's factual findings in a criminal case will not be set aside unless they are clearly erroneous. *Ngirarorou v. ROP*, 8 ROP Intrm. 136, 137 (2000). When we determine a challenge to the sufficiency of the evidence in a criminal case, we must ascertain whether the conviction is clearly erroneous by viewing the evidence of record in the light most favorable to the prosecution, giving deference to the Trial Division's opportunity to assess the credibility of the witnesses, and studying the record to learn whether there is sufficient competent evidence to

Labarda v. ROP, 11 ROP 43 (2004)

support a rational fact-finder's conclusion of guilt beyond a reasonable doubt. *Chisato*, 2 ROP Intrm. at 239-40. If the evidence in a criminal case is sufficient to support a conclusion of guilt beyond a reasonable doubt, such a finding will not be disturbed on appeal. *ROP v. Ngiraingas*, 2 ROP Intrm. 78, 81 (1990). In fact, as the Court in *Chisato* noted:

[An appellate court] may not reverse [a trial court's factual findings] even though convinced that had it been sitting as the trier of fact it would have decided the case differently. Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.

Chisato, 2 ROP Intrm. at 239 (quoting *Anderson v. City of Bessemer*, 105 S. Ct. 1504, 1511 (1985)).

Utilizing this standard, we conclude that the trial court's verdict was not clearly erroneous and that it was supported by sufficient competent evidence on the record as a whole. He Yu's testimony was believed by the trial court, and Labarda has failed to give us any reason to believe that she was the more credible witness. Credibility determinations are for the trier of fact, and we must give deference to the Trial Division's assessment of the credibility of the witnesses due to the trial court's opportunity to hear the witnesses and observe their demeanor. *Chisato*, 2 ROP Intrm. at 240. It is the trial court's task as trier of fact to judge credibility, resolve conflicts in testimony, assess the weight and value to be given to the evidence, and determine the factual content of ambiguous testimony. See *Healey v. Chelsea Res., Ltd.*, 947 F.2d 611, 618 (2d Cir. 1991). It is not the proper function of the Appellate Division to make credibility determinations regarding witnesses. *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 181 n.6 (1997). While we may reverse a lower court's credibility findings, such an action is reserved for extraordinary cases. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999) (citing *ROP v. Tmetuchl*, 2 ROP Intrm. 443 (1988) and *Omelau v. ROP*, 3 ROP Intrm. 258, 260 (1993)). This is not such an extraordinary case. The trial court did not commit reversible error in crediting He Yu's testimony instead of Labarda's testimony where both witnesses were subject to cross examination and the trial court could observe their demeanor on the witness stand and assess their reasons for giving sometimes contradictory accounts of the events that took place. See, e.g., *Omelau v. ROP*, 5 ROP Intrm. 23, 24 (1994). In addition, He Yu's testimony was corroborated by other evidence such as Labarda's possession of the Chinese passport and her admission that she filled out another passenger's entry form. Therefore, the trial court's reliance on He Yu's testimony 147 cannot be said to have been clearly erroneous, and that testimony was sufficient to support Labarda's conviction.

Labarda also argues that her conviction should be overturned because the trial court exhibited bias or prejudice in favor of He Yu and against Labarda. Labarda cites several examples of statements or actions by the trial court that she claims indicate judicial prejudice. First, Labarda asserts that the trial court asked He Yu if she was cold as she was testifying, and when told that He Yu was nervous, the court expressed a conciliatory mood. However, when Labarda became upset on the witness stand, she contends that the trial court was anything but conciliatory when it granted her a recess. Labarda also claims that the trial court assisted the prosecution by questioning witnesses and stating that a Singapore passport could be used to enter

Labarda v. ROP, 11 ROP 43 (2004)

the United States without a visa, while the court hurried defense counsel through her examination of witnesses. Finally, Labarda contends that the trial court erred in permitting witnesses to testify as to Labarda's oral statements after the prosecution failed to produce a summary of those oral statements in discovery.

As long as a judge keeps an open mind and avoids deciding a case until after presentation of all the evidence, comments made by the judge during the course of proceedings will generally not be considered as indicative of disqualifying bias or prejudice. *Madsen v. Prudential Fed. Sav. & Loan Ass'n*, 767 P.2d 538, 546 (Utah 1988). Here, the trial judge told Labarda, "[i]f you need a break, you tell us. We can break so you can cry." (Trial Tr. at 200). However, a comment regarding the comfort of the witness is not sufficient to show prejudice. Even if the trial court's comment can be construed to imply that Labarda's tears were not genuine and she was not credible, it does not give rise to an inference of judicial bias. As this Court explained in a previous case:

[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings . . . do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving . . . or even hostile . . . ordinarily do not support a bias or partiality challenge.

Ongidobel v. ROP, 9 ROP 63, 66 (2002) (citing *Liteky v. United States*, 114 S. Ct. 1147, 1157 (1994)). The trial court can also question witnesses, and one permissible purpose of such questioning is to elicit facts inadvertently overlooked by the prosecution which are necessary to its case. ROP R. Evid. 614(b); *Liep v. ROP*, 5 ROP Intrm. 5, 8 (1994). Finally, even if the trial court's ruling as to the admissibility of the oral statements was erroneous, that ruling taken together with all of the other conduct mentioned above do not amount to a showing of prejudice. Adverse rulings against a litigant, even if erroneous, are insufficient to establish a judge's bias or prejudice against that litigant. *People v. Neumann*, 499 N.E.2d 487, 492 (Ill. Ct. App. 1986); *Band v. Livonia Assocs.*, 439 N.W.2d 285, 296 (Mich. Ct. App. 1989). A finding of partiality on the part of the trial court must come, if at all, "from an abiding impression left from a reading of the entire record," not selected excerpts. *Liep*, 5 ROP 148 Intrm. at 9 (quoting *Offut v. United States*, 75 S. Ct. 11, 12 (1954)). After an examination of the entire record in this case, we are not left with an abiding impression that the trial court was partial to the prosecution. Therefore, Labarda's conviction is sustained.