

ROP v. Xue, 12 ROP 193 (Tr. Div. 2005)
REPUBLIC OF PALAU,
Plaintiff,

v.

HONG KUN XUE, aka XUE HONG KUN,
Defendant.

CRIMINAL CASE NOS. 04-244 & 04-310

Supreme Court, Trial Division
Republic of Palau

Decided: March 9, 2005

ARTHUR NGIRAKLSONG, Chief Justice:

The Court finds that the “joint business agreement” between Obodei Iyar and defendant Xue Hong Kun is a sham or “front” and that in actuality, the defendant owned and managed the Meyuns Massage Parlor and Restaurant (“business”) from April 1, 2002 to shortly after July 1, 2004. (Government Exhibit 4).

Obodei testified that this whole arrangement with the defedant was a “front.” His entire interest in the business was his \$350 a month fee. He obtained licenses for the business and signed papers hiring employees submitted to him by the defendant. Obodei did not have actual decision making power regarding the ownership or operation of the business. The defendant owned all properties in the business and managed the business as her own. In fact by expressed provision of the written agreement, Obodei was prohibited from interfering with how the defendant ran the business. *Id.* at ¶ 6(c).

Since the defendant is a non-citizen, she violated 28 PNC § 103(a) for engaging in a business without getting a foreign **1194** investment approval certificate and section 103(b) for acquiring the ownership of a business which had not obtained a foreign investment approval certificate. These crimes are count I and II of the information in Criminal Case No. 04-310.

Nestor Canaria testified that on July 1, 2004, he went to the Meyuns Massage Parlor and Restaurant at about 4:00 p.m. He ordered a beer and three women at the business approached him and asked if he wanted a massage. He said “yes” and chose one of the women. Once inside a room, the woman told him that the massage costs \$40.00 but if he wanted sex it would cost him \$100.00. Mr. Canaria paid the \$100.00. He also testified that he had availed himself of the same services for the same price previously.

This was also the day the police led by Officers Norman Bintorio and Richard Ngiratrang conducted a prostitution sting on the business. Bintorio gave his cell phone number to two confidential informants (“C.I.”) to call at an appropriate time after they got inside the business.

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When Bintorio's cell phone flashed, he and Ngiratrang dashed to the business. The doors to the business were closed. Bintorio knocked several times and someone finally opened the doors. Bintorio got inside the main entrance first, followed by Ngiratrang. The defendant and two other women were there at the main area. Bintorio identified themselves as police officers and told Ngiratrang to stay and watch the defendant and her companions while he went to check the rooms where the C.I. were. In Room 1, he found a naked woman with one of the C.I.s. The C.I. handed a condom to Bintorio saying the woman gave it to him. Bintorio told the C.I. that he could leave as he had done his job. Bintorio then went to Room 2 where he found another naked woman with the second C.I., who was shirtless. Bintorio told the woman to wear a towel and took her to the main area where the others were.

Bintorio and Ngiratrang identified themselves as police several times as they told everyone to remain in the main lobby so they could explain what they were doing. One of the women, known as "Mamasang" and the defendant started talking in Chinese to each other, then "Mamasang" got up, walked to Bintorio and pushed him toward the bar counter where she grabbed an object. Bintorio, thinking that the object might be evidence Mamasang could destroy or a weapon she could use to injure him, began to wrestle for the object. Mamasang resisted and both were on the floor with Bintorio in a crouched position trying to get the object from Mamasang's tight grip. The object turned out to be a condom. While Bintorio was in this crouched position, the defendant jumped on his back and began hitting his ears, his head, and his sides. As she was attacking him, Bintorio heard a clip of his sidearm loosened. Worried that the defendant might get his gun, he put his right hand on his sidearm which allowed her to continue hitting him. Ngiratrang asked Bintorio if he needed help and Bintorio said "no, just watch those others." Defendant not satisfied with the hits she had administered to Bintorio, left him momentarily and came back with a chair. As defendant was about to swing the chair at Bintorio who was crouched, Ngiratrang shouted "watch out." Bintorio jumped to his feet and the chair hit him on his side. Had Bintorio not gotten up, the chair might have hit him on the head. One of the metal legs of the chair hit his testicles. Defendant was about to hit Bintorio the second time, but Bintorio blocked the attempt. He felt pain on his side and had difficulty urinating for four days afterward.

With these findings, the Court finds **1195** defendant guilty of assault and battery with a dangerous weapon in count six, guilty of obstruction of justice in count seven and guilty of assault and battery in count eight of the information in Criminal Case No. 04-244.

Defendant and her husband, David Schluckebier, opened a joint savings account on November 25, 2002 with the Palau Construction Bank ("PCB"), with a \$5,500.00 deposit. PCB is not insured by the Federal Deposit Insurance Corporation. Schluckebier claimed the monies were proceeds of their wedding gifts. With the exception of this initial deposit, all the deposits were undisputed to have been in cash, mostly a \$1,000.00 or \$2,000.00 deposit. (Government's Exhibit 1). The balance of this account on April 15, 2004 was \$40,000.00. Schluckebier testified that the \$5,500.00 were both in cash and checks; one check from his mother, who is in a nursing home in the East Coast of the U.S., was in the amount of \$1,500.00 and another check the amount he does not remember may have come from his sister. Yet, when Schluckebier was confronted with a copy of the deposit slip showing the \$5,500.00 deposit in cash (Government's

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Exhibit 1) he could not explain the contradiction. He testified further that it was his practice to cash his government check whenever he could spare \$1,000.00 or more and take it to his wife who was always “happy to see \$1,000.00 cash.” He testified that the deposit of \$1,000.00 cash on December 27, 2002 was \$1,000.00 he cashed from his paycheck and gave to his wife to deposit. He testified that he was hundred per cent sure it was \$1,000.00 he gave his wife to deposit. When confronted with the cash receipt showing he was the one who made the deposit and with other contradictions in his testimonies, Schlukebier’s testimonies became speculative and uncertain. The Court gives no credit to Schlukebier’s testimonies. Understandingly, he wanted to assist his wife.

Defendant makes \$200.00 a month supposedly as the Restaurant Manager. At that salary, the most she could have made in two and half years is \$6,000.00 gross. In addition to the \$40,000.00 in her account with her husband at PCB, defendant had a sole account during the same period at the Bank of Hawaii with a balance of \$60,000.00 which she spent on hotels, clothes, airline tickets, dinners, etc. Subtracting her gross salary in 2 ½ years of \$6,000.00 and the reported \$30,000.00 for gross revenue of the business, there remains \$64,000.00 not accounted for.

With Schlukebier’s \$106,000.00 gross salary from his government job in the period concerned which he spent and the defendant’s more than \$100,000.00 income in the same period, both had a combined income of more than \$200,000.00. Even if Schlukebier’s entire salary was given to the defendant, about \$100,000.00 would still be unaccounted for. There is no evidence of other sources of the defendant’s income other than the illegal businesses herein.

The Court finds that defendant **¶196** knowingly acquired about \$64,000.00 proceeds from doing business without a foreign investment approval certificate for herself and for the business and in conducting the business of prostitution. The Court finds the defendant guilty of money laundering in Count III in Criminal Case No. 04-310.

The Court finds that defendant knowingly concealed the proceeds of the crimes by converting it to electronic currency unit and depositing it in different banks. The Court finds defendant guilty of money laundering in Count IV.

Finally the Court finds that defendant knowingly converted cash proceeds of doing business illegally to electronic currency unit to disguise its illegal source. The Court finds defendant guilty of money laundering in Count V.

Defendant’s knowledge, intent or purpose of acquiring, concealing and converting the proceeds of doing illegal business is inferred from “objective factual circumstances.” RPPL 6-4, § 3(b).