

ROP v. Avenell, 13 ROP 272 (Tr. Div. 2006)
REPUBLIC OF PALAU,
Plaintiff,

v.

**CAMERON JAMES AVENELL, MATTHEW YOUNG, RICHARD SUMOR, DAVID
TANSEY, and IAN McCOMBE,**
Defendants.

CRIMINAL ACTION NO. 06-073

Supreme Court, Trial Division
Republic of Palau

Decided: June 9, 2006

ARTHUR NGIRAKLSONG, Chief Justice:

Mr. Cameron Avenell and Mr. Matthew Young, the remaining defendants, were charged for removing pieces of artifacts from shipwrecks. These shipwrecks have been declared by law to be preserved as “Palau Lagoon Monuments.” 19 PNC § 302.

The Government charged defendants for their conduct with counts based on the Palau Lagoon Monument Act. For the same conduct, the Government also charged the defendants with counts based on other statutes **1273** like the statutes on grand larceny and malicious mischief. Defendant Young challenged the counts based on statutes other than the Palau Lagoon Monument Act as legally inapplicable. The Court denied Mr. Young’s challenges in a separate decision.

Before the beginning of the closing argument, the Court on its own motion, considered the application of counts seven, fourteen, twenty-one and twenty-eight. After its consideration of the issue and after counsel had been heard, the Court orally dismissed these counts as inapplicable. The Court’s reasons follow.

Counts seven, fourteen, twenty-one and twenty-eight are based on 7 PNC § 206 and 207 (a) and (b). The relevant provisions read:

206. Unlawful acts.

It shall be unlawful for any vessel to engage within the territorial waters of the Republic in fishing, the harvesting of trochus, or the removal of scrap iron or animal, vegetable, marine, or mineral resources without authorization by an officer or agent of the national government.

207. Penalty for violations; seizures and forfeiture of vessel.

(a) If any owner, master, person, company, corporation, charterer, party to a charter agreement, or other person having command or charge of a vessel fails to comply with the provisions of this chapter, obstructs or interferes with the exercise of any powers conferred by this chapter, or engages in any unlawful act under this chapter, he shall be fined not more than \$50,000.00, or imprisoned not more than two years, or both.

(b) Any vessel involved in the commission of unlawful acts, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the Republic as provided in chapter 3 of this title.

Emphasis added.

The Government argued that the statute in its “broad” sense covers the conduct of the defendants. Defendant Avenell argued that the statute is vague and should either be struck down as unconstitutional on its face or in its application to the facts of this case. The Court finds both these arguments unpersuasive.

The issue is whether the statute covers defendants’ conduct of removing artifacts from the shipwrecks. The Court sees nothing vague about the clear intent of the statute by its unambiguous language. And when a statute is clear on its face, the Court need not search for other interpretations. “[W]here the language is plain and admits of no more than one meaning, the duty of interpretation does not arise.” *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992); *accord The Senate v. Nakamura*, 7 ROP Intrm. 212, 217 (1999).

“In ascertaining the plain meaning of the statute, the Court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.” *K Mart Corp. v. Cartier, Inc.*, 108 S. Ct. 1811, 1818 (1988) (citations omitted). The title of the law is “Admiralty and Maritime.” Chapter 1 is on “Vessels.” Chapter 2 is entitled “Regulation and Control of Shipping.” Chapter 2 has six sections. Section 201 is entitled “Definitions,” and it defines “hovering vessels,” “innocent passage,” “territorial waters,” and “unlicensed vessels.” Section 202 is titled “Permission to enter territorial waters.” Section 203 is titled “Innocent Passage,” Section 204 is on “Examination of unlicensed vessels,” and Section 205 is on “Examination of hovering vessels.” Section 206, the section at issue, is on “Unlawful acts” and it states in clear language who can commit these unlawful acts. “It shall be unlawful for any vessel to engage...” “Vessel” in section 206 is consistent with the subject matters of the previous sections of chapter 2 and chapter 1, as well as the subject matter of the entire statutory title, “Admiralty and Maritime.”

1274

The government argues that the defendants are the “persons” who were in charge of the “vessel,” as described in section 207, and that the defendants used the vessel’s tender to go to the location where they removed the artifacts which constitute “marine or mineral resources” under section 206. The Court would describe this reading of the statute as the “cut and paste rule,” which finds support in the words used but does not comport with the clear language of the statute

ROP v. Avenell, 13 ROP 272 (Tr. Div. 2006)

as applying only to vessels. No rule of statutory construction is ever justified when it defeats the clear intent of the statute. 2A Norman J. Singer, *Statutes and Statutory Construction* § 47.25 at 332.

The government jumps to the conclusion that defendants are persons under section 207 prematurely. The word “person” in section 207 relates only to the penalty for violating the statute. Although only a vessel can commit unlawful acts, penalties are to be paid by those in charge or command of a vessel. Thus, prior to consideration of who is liable, it must be shown that a vessel has committed an unlawful act.

Finally, the case law that has interpreted the statute all deal with ships/vessels. *See Superluck Enterprise, Inc. v. ROP*, 4 ROP Intrm. 290, 293-94 (Tr. Div.1994); *ROP v. M/V Aesarea*, 1 ROP Intrm. 429 (1988); *ROP v. F/V Chang Tel Tung*, (*Criminal Case No.44-85* , Oct.1985). In all these cases, it was assumed the statute applied to vessels. It was clear on the face of the statute then as it is here and now. Accordingly, the Court rejects the government’s “cut and paste” reading of the statute.

In addition, the Court rejects Defendant Avenell’s argument that the statute is unconstitutionally vague or should be at least read in his favor. There is nothing vague about the statute. It applies to “vessels,” and the payment of a \$50,000.00 fine by a person in charge or command of the vessel is incidental to who can commit the crime.

Accordingly, counts seven, fourteen, twenty-one and twenty-eight are dismissed against defendant as inapplicable.