Pamintuan v. ROP, 16 ROP 32 (2008)

LOLITA PAMINTUAN, TING FENG CHIANG, BAIYUE WANG, KATHERINE MARIO,
Appellants,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 07-001
Criminal Case Nos. 06-183 and 06-212

Supreme Court, Appellate Division
Republic of Palau

Decided: November 14, 2008[1]
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Counsel for Appellants: Johnson Toribiong, Garth Backe, Mark Doran, Oldiais Ngiraikelau

Counsel for Appellees: Lori Ann Zucco

BEFORE: Chief Justice ARTHUR NGIRAKLSONG; ALEXANDRA F. FOSTER, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

This is an appeal from a criminal action brought by the Republic of Palau ("Republic") against Ting Feng Chiang ("Chiang"), Lolita Pamintuan ("Pamintuan"), Baiyue Wang ("Wang"), and Katherine Manio ("Manio") (collectively "Defendants/Appellants" or "Appellants"). The Republic charged Defendants/Appellants with numerous criminal violations, including Disturbing the Peace; Trespass; Obstructing Justice; Advancing Prostitution; People Trafficking; Exploiting a Trafficked Person; Violating and Aiding and Abetting a Violation of the Foreign Investment Act; Violations of the Tax Code; Violations of Labor Laws and/or Regulations; and Money Laundering. The trial court found Defendants/Appellants guilty on many of these charges. On appeal, Defendants/Appellants argue that the trial court erred by (1) failing to provide interpretation to Defendants Wang and Chiang; (2) inappropriately applying RPPL 7-5 retroactively; (3) inappropriately admitting hearsay evidence against Wang at trial; (4) finding that in the cases of Appellants Wang and Manio, there was sufficient evidence produced at trial to prove all the elements of RPPL 7-5; (5) failing to conduct a Rule 44(d) inquiry after Chiang demonstrated the existence of an actual conflict of interest held by Chiang's counsel; (6) finding sufficient evidence that Pamintuan was guilty of people trafficking and advancing p.34 prostitution; (7) finding sufficient evidence to prove that the victims engaged in specific "sexual

[1]The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

contact," as defined by 17 PNC § 3602(f), or "sexual penetration," as defined by 17 PNC § 3602(g); and (8) finding sufficient evidence to prove that Manio aided and abetted the alleged crimes. In addition, Appellants Wang, Chiang and Manio assert that their charging documents were insufficient. The Court REVERSES the convictions of Wang and Chiang and REMANDS these matters for a new trial, because their statutory and constitutional rights to understand the trial proceedings was violated at the trial in this matter. The convictions of Pamintuan and Manio are hereby AFFIRMED.

BACKGROUND

On August 16, 2006, Appellee, the Republic of Palau (the "Republic"), filed a seven-count information in criminal case no. 06-183 charging Defendant/Appellant Chiang, with several criminal offenses, including disturbing the peace, riot, trespass, and obstructing justice. Subsequently, on September 21, 2006, the Republic filed a sixty-four count information against Defendants/Appellants in criminal case no. 06-212. These cases were consolidated for trial.

Chiang was accused of having committed numerous offenses, including Advancing Prostitution, in violation of 17 PNC § 3603; People Trafficking, in violation of RPPL 7-5, Section 6; Exploiting a Trafficked Person, in violation of RPPL 7-5, Section 8; Violations of the Foreign Investment Act, in violation of 28 PNC §§ 103(a) and 113(a); Violations of the Tax Code, in violation of 40 PNC § 1704; Violations of Labor law and/or regulations, in violation of 30 PNC § 187; and Money Laundering, in violation of 17 PNC §§ 3801 and 3804.

Defendant/Appellant Pamintuan was charged with Advancing Prostitution, in violation of 17 PNC § 3603; and seven counts of People Trafficking, in violation of RPPL 7-5, Section 6.

In Criminal Case No. 06-183, Defendant/Appellant Wang was charged with Disturbing the Peace, in violation of 17 PNC § 1201; Riot, in violation of 17 PNC § 1201; Trespass, in violation of 17 PNC § 2901; and Obstructing Justice, in violation of 17 PNC § 2501. In Criminal Case No. 06-212, Wang was charged with numerous crimes, but, at the time of trial, Wang faced only one count of Advancing Prostitution, in violation of 17 PNC § 3603; ten counts of People Trafficking, in violation of RPPL 7-5, Section 6; ten counts of Exploiting a Trafficked Person, in violation of RPPL 7-5, Section 8; two counts of Aiding and Abetting a Violation of the Foreign Investment Act, in violation of 28 PNC §§ 103 and 113; nine counts of Tax Code Violations, in violation of 40 PNC § 1704; and ten counts of Violations of Labor law and/or Regulations, in violation of 30 PNC § 187.

Manio was charged with Advancing Prostitution, in violation of 17 PNC § 3603; Exploiting a Trafficked Person, in violation of RPPL 7-5, Section 8; and Violations of Labor law and/or regulations, in violation of 30 PNC § 187.

p.35 The trial commenced on March 6, 2007, and lasted approximately fourteen days. On April 23, 2007, the trial division issued its written findings of fact and conclusions of law. It found Chiang guilty of disturbing the peace, trespass, and obstruction of justice in Criminal Case No. 06-183, and advancing prostitution, people trafficking, exploiting a trafficked person,

violating the Foreign Investment Act, violating the tax code, and violating the Labor laws/regulations in Criminal Case No. 06-212.

On May 8, 2007, the court sentenced Chiang in Criminal Case No. 06-183 to six months imprisonment for disturbing the peace, six months imprisonment for trespass, and one year imprisonment for obstruction of justice. As to Criminal Case No. 06-212, the court imposed one year imprisonment and a $5,000.00 fine for advancing prostitution, twenty years imprisonment and a $100,000.00 fine for each of the ten counts of people trafficking, five years imprisonment and $10,000.00 fine for each of the ten counts of Exploitation of a Trafficked Person, and one year imprisonment and a $10,000.00 fine for each of the two counts of violating the Foreign Investment Act, one year and $10,000.00 fine for each of the nine counts of Violation of the Tax Code, and six months imprisonment and a $2,000.00 fine for each of the ten counts of violating the labor laws and regulations. On May 8, 2007, Chiang began serving his 20 year jail sentence at the Koror jail.

The court found Pamintuan guilty on all the charges brought against her. The court sentenced Pamintuan to six months imprisonment and a fine of $5,000.00 for advancing prostitution and one year imprisonment for each of the seven counts of people trafficking. The entire sentence was suspended, however, except for one year imprisonment, a fine of $2,000.00, and deportation after serving her sentence of imprisonment.

The court found Wang guilty of all the charges brought against her except for the charge of Riot. Wang was sentenced to six months imprisonment for Disturbing the Peace; six months imprisonment for Trespass, and one year imprisonment for Obstruction of Justice. In addition, she was sentenced to one year imprisonment and a $5,000.00 fine for Advancing Prostitution, twenty years of imprisonment and a $10,000.00 fine for each of the ten counts of Exploiting a Trafficked Person, one year imprisonment and a $10,000.00 fine for each of the counts of Violation of the Tax Code, and six months imprisonment and a $2,000.00 fine for each of the ten counts of Violation of the Labor laws and/or regulations. Wang's sentences were ordered to be served concurrently, suspended except for twenty years imprisonment and a $50,000.00 fine. Wang was also ordered to pay $18,356.71 in restitution.

Manio was found guilty on all the charges brought against her. She was sentenced to six months imprisonment and a $5,000.00 fine for Advancing Prostitution, one (1) year imprisonment for each of the seven counts of Exploiting a Trafficked Person, and six (6) months imprisonment for each of the seven counts of Violation of Labor Laws and/or Regulations. The sentences were ordered to run concurrently, suspended except for the first three (3) years imprisonment and the $5,000.00 fine.

p.36 **STANDARD OF REVIEW**

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). "Under the clear error standard, the lower court will be reversed 'only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.'" *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.* , 9 ROP 162, 164 (2002) (citation omitted). The trial court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

A. Failure to Understand Proceedings/Lack of Interpreter

Appellants Wang and Chiang's primary argument is that their statutory and constitutional rights to understand the proceedings against them were violated at trial when the trial court failed to appoint an interpreter, despite having notice of their inability to sufficiently understand the English language. This issue has never been confronted before by this Court, thus this is a matter of first impression. According to 18 PNC § 401(f), "[e]very defendant in a criminal case before a court of the Republic shall be entitled to have proceedings interpreted for his benefit when he is unable to understand them otherwise."

Moreover, the Constitution of the Republic of Palau guarantees a right to due process of law. "The government shall take no action to deprive any person of life, liberty, or property without due process of law . . . ." PALAU CONST. art. IV, § 6. A defendant's constitutional right to procedural due process includes the right to notice of the specific charge and an opportunity to be heard in a trial of the issues raised by that charge. *Franz v. ROP*, 8 ROP Intrm. 52, 55 (1999). There is no precedent in this court finding that the right to due process includes the right to interpretation. However, case law in the United States to this effect is convincing. While the U.S. Supreme Court has not explicitly held that there is a due process right to an interpreter, many of the federal circuit courts have held that there is such a right. *See e.g. U.S. ex rel. Negron v. New York*, 434 F.2d 386 (2nd Cir. 1970) (finding that, where one accused of a crime does not understand or speak English well enough to adequately comprehend or communicate in the proceedings, the accused's federal and state constitutional rights to fundamental fairness and due process of law require that an interpreter be provided to translate the proceedings into the accused's own language).

In the matter before this Court, the trial court was aware that Defendant Wang did not speak English. When trial commenced on March 6, 2007, the trial court asked the parties before opening statements if there were any preliminary matters that needed to be addressed. In response, Wang's attorney stated that she now desired a new lawyer and would like to personally address the court. Counsel added that Wang "would need to speak through her interpreter, Jason Rui." While Rui translated, Wang stated her reasons in her native language of Mandarin. After listening to Wang, the trial court denied her request, and asked Rui to translate its decision.

p.37 After opening statements, but immediately before the Republic's first witness took the

stand, counsel for co-defendant Chiang stood up and asked the court to provide interpretation of the proceedings for the benefit of both Wang and Chiang. The court, however, denied the request.

Mr. Toribiong : I have one preliminary matter, your honor. A translation problem. My client speaks very little English. I would like to make sure he understands the entire proceeding.

Judge : And that would be what you are retained for.

Mr. Toribiong : I have our own translator but I would like to make sure that it's on the record that for both my client and his [referring to Wang's lawyer] . . .

Judge : . . . that you want?

Mr. Toribiong : accurate translation, everything said, not just a summary summary [sic]. So ahh...

Court : Literal translation by the clerk?

Mr. Toribiong : So we should have an official translator just to make sure everything is known. Does the court have a translator?

Ms. Johnson : Are you requesting a translator?

Mr. Toribiong : Yes.

Judge : No. Well, you can request it, but it's your responsibility.

Mr. Toribiong : That's not my responsibility. It's a criminal case. I have my own translator, but that's not my job. My job is to help my client . . .

Judge : One of your jobs was to make sure this was brought up early on.

Mr. Toribiong : My clients are entitled to know the proceedings to this case.

Judge : You have your translator here, yes?

Mr. Toribiong : I have one but he's working with my client.

Judge : He is what?

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Mr. Toribiong : He is helping my client and myself. He can be used but I need him for my client.

Judge : What is your request?

Mr. Toribiong : To get a translator. It's a criminal case and the court must provide a translator. Isn't that true? He's entitled . . .

Judge : . . . let me ask, was this made known before that Defendant would need translation?

Mr. Toribiong : (unintelligible)

Ms. Johnson : Actually, your honor, unless you would like to correct me, I am aware of no rule that requires the provision of a translator. The fact is that Defendants work and lived in a country where they subjected themselves to the laws of the country where court proceedings are conducted in English and Palauan. The Defendant has a translator. He is not prejudiced.

Mr. Toribiong : I believe in every criminal case, a Defendant must know what goes on in court . . .

Judge : And your client will know what is going on in this courtroom because you yourself have brought your translator, yes?

Mr. Toribiong : Yes, so if that's the case (unintelligible) . . .

Judge : That's the case.

Rui provided translation of the questions and answers of the Republic's first witness, Detective Margaret Martin, and a portion of the Republic's next witness, Rebecca Mabalot. Before Rui was sworn in as an interpreter on March 6, 2007, however, he informed the trial court that he would be leaving Palau on March 9, 2007, and would not return until March 21, 2007. The next three witnesses testified in Mandarin with the assistance of interpreters brought in by the Republic, Chou Po Shan and Alanzo Johanis. After that, however, for the next ten days of trial, covering the testimony of fourteen witnesses (around half of whom were Wang's accusers), no interpretation was provided. Interpretation was also not provided during the four hours of closing arguments on April 3, 2007, the reading of the verdict on April 23, 2007, or at sentencing on May 8, 2007.

The Republic does not contest that such rights exist or bestow upon the defendants the general rights to understand the proceedings p.39 against them and have a fair opportunity to defend themselves at trial. It does, however, argue that it is not the responsibility of the trial court to provide such translation. In any event, the Republic argues that such analysis is irrelevant because the Appellants waived their rights to have the proceedings translated when they did not renew their motion for a court-appointed interpreter at the point that Rui was no longer available for translation.

The parties focus much of their briefs on who is required to pay for an interpreter for a defendant who is in need of translation. Appellee, in particular, maintains that "Defendants Chiang and Wang ask this Court to adopt a bright-line rule that would require, essentially, that

every foreign national in Palau have a court-appointed interpreter, at the Court's expense, to assist them in their criminal trials, even when they bring their own interpreters with them to assist them during trial." This statement is overbroad.[2]

The critical issue is not whether the appropriate individual paid for or provided a translator, but whether Defendants Wang and Chiang's rights were violated in the proceedings below. Appellee, citing *U.S. v. Edouard* , 485 F.3d 1324, 1337-38 (11th Cir. 2007), asserts that the burden of determining who provides interpretation and at whose expense is a balancing test best left to the discretion of the trial court. Appellee maintains that the trial court made the necessary determination when it found that Defendants were able to provide their own translator, Rui. This argument, however, is insufficient because, even if the trial court determined that the cost of translation was the responsibility of the attorneys, it did not further require the attorneys to satisfy this requirement in order to ensure that the Defendants' rights were not violated. Defendants' access to and usage of Rui's services was only available during the first three days of the trial. Furthermore, Rui was only available to one of the two Mandarin-speaking Defendants. The following ten days of trial, including closing arguments and the verdict, were conducted without any translation. Moreover, Appellee fails to demonstrate where the balancing test described in *Edouard* was conducted by the trial court.

In addition, the Republic argues that Appellants abandoned their constitutional and statutory rights to have the proceedings translated when they did not renew their motion for a court-appointed interpreter at the point during the trial when Rui was no longer available for translation. p.40 The Republic, however, fails to point to any law that suggests that such rights may be abandoned. In fact, courts have found that a defendant's right to understand the proceedings is considered so fundamental to a fair trial that any waiver or abandonment of the right to interpretation can only come expressly from the defendant. *United States ex rel. Negron*, 434 F.2d at 389-90; *Garcia v. State* , 149 S.W.3d 135, 142-45 (Tex.Crim.App. 2004) (reasoning that "[i]t would be illogical to require a non-English-speaking defendant to assert his right to an interpreter in a language he does not understand when he may very well be unaware that he has the right in the first place."); *People v. Carreon*, 151 Cal.App.3d 559, 582 (Cal. App. 1984).

In the absence of such an express waiver, Defendants Wang and Chiang's statutory rights to an interpreter were violated by the trial court, under 18 PNC § 401(f). Regardless of who was to bear the cost of the translation, it was the trial court's duty to halt proceedings until an interpreter was present. Section 401(f) requires that every defendant have the opportunity to understand the proceedings against him. For the majority of the trial against these two defendants, this right was violated. Thus, the Court reverses and remands the convictions of

[2]While we do not base our decision on who was required to pay for and provide translation, we wish to clarify the procedure for such in this jurisdiction. It is the duty of the criminal defendant or his or her counsel to inform the court that he or she is unable to understand the English language significantly in advance of criminal proceedings. Once the court is made aware of this fact, criminal proceedings may not proceed without an interpreter. Unless the defendant's indigence is proven to the court, it is the defendant's obligation to provide and pay for translation. Here, there was no indication to the court that defendants Wang and Chiang were indigent. In addition, their counsel was not court appointed. Thus, it was their duty to provide their own translation. The issue for appeal, however, is whether the trial court erred in proceeding with trial despite the absence of a translator.

Wang and Chiang on this statutory basis.

In addition, we find that the Palauan Constitution guarantees criminal defendants the right to an interpreter if they are unable to meaningfully understand the English language, and adopt the decision by the Second Circuit Court of Appeals in *United States ex rel. Negron v. New York*. 434 F.2d at 389. Therefore, Wang and Chiang's due process rights to interpretation were violated when the trial court proceeded with trial absent the presence of an interpreter. Moreover, as this right is one rooted in fundamental fairness and integrity of court, it shall not be abandoned absent an express waiver. *U.S. ex rel. Negron* , 434 F.2d at 390 (stating "simply to recall the classic definition of a waiver- 'an intentional relinquishment or abandonment of a known right,' is a sufficient answer to the government's suggestion that Negron waived any fundamental right by his passive acquiescence in the grinding of the judicial machinery and his failure to affirmatively assert the right")(citing *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). We therefore reverse and remand the convictions of Wang and Chiang on constitutional, as well as statutory, grounds.

B. Retroactive Application of RPPL 7-5

Wang, Pamintuan and Manio challenge their convictions for People Trafficking, arguing that the trial court inappropriately applied the statute retroactively. Wang and Pamintuan challenge their People Trafficking convictions, and Manio her Exploiting a Trafficked Person convictions, involving Mary Gonzales and Arlene Guevarra. They each maintain that both Gonzales and Guevarra testified that they arrived in Palau on December 8, 2004 and started working at Carnival that same night. They note, however, that RPPL 7-5, was not signed into law until May 4, 2005. Therefore, because Gonzales and Guevarra were trafficked prior to RPPL 7-5's enactment, its application to Appellants is unconstitutional under Article IV, Section 6.

RPPL 7-5, Anti-People Smuggling and Trafficking Act, Section 6, states the following:

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> Every person who knowingly or recklessly recruits, transports, transfers, harbors or receives any person or persons for the purpose of exploitation by threat, use of force, abduction, fraud, deception, abuse of power, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, shall be guilty of people trafficking, and upon conviction thereof shall be fined not more than $250,000, or imprisoned not more than 25 years or both.

Article IV, Section 6 of the Palau Constitution states that "[n]o person shall be held criminally liable for an act, which was not a legally recognized crime at the time of its commission, nor shall the penalty for an act be increased after the act was committed." PALAU CONST. art. IV, § 6. This clause, known as the *Ex Post Facto* clause, is violated when a law defining a crime or increasing punishment for a crime is applied to events that occurred before its enactment to the "disadvantage" of the offender. *Collins v. Youngblood* , 110 S.Ct. 2715, 2718 (1990). "In the case of continuing offenses . . . the Ex Post Facto clause is not violated by application of a statute to an enterprise that began prior to, but continued after, the effective date of the statute." *United*

States v. Garfinkel , 29 F.3d 1253, 1259 (8th Cir. 1994) (internal quotations and alterations omitted). If the evidence is sufficient to prove that the scheme continued past the effective date of the statute, the conviction does not violate the *Ex Post Facto* clause. *Id.* at 1259-60.

A threshold matter in relation to Wang and Pamintuan's claims is whether the People Trafficking statute describes a "continuing offense." Wang argues that People Trafficking is not a "continuing offense." Specifically, she asserts that "[a]pply[ing] the rules of statutory construction, it is clear the words 'recruiting, transporting, transferring, harboring, or receiving" purposefully follow the path a victim travels while being trafficked – from originally being 'recruited' to eventually being 'received' by the trafficker." Because the word "harbors" comes before the word "receives" in the statute, Wang asserts that the law is meant to pertain to those persons who assist the traffickers in moving the victim to their final destination. Wang argues that according to the statute, any of the events that happen after the victim has reached his or her final destination would equal Exploiting a Trafficked Person, not People Trafficking.

The Republic disagrees, arguing that the Court should only consider the plain meaning of the words in the statute. The Republic argues that the term "harbors" in that statute means "to give or take refuge" or "to be the home or habitat of." Under this definition, the Republic asserts that Wang continuously harbored Gonzales and Gueverra from May 2005 to August 2006 for the purpose of exploitation, thus RPPL 7-5 is applicable. In addition, the Republic argues that Pamintuan aided and abetted the continued "harboring" of Gonzales and Guevarra when she did nothing after Gonzales alerted her some time in 2005 of the illegal deductions and restrictions, p.42 and the prostitution perpetrated at Carnival. The Republic argues that:

> [e]ven if we assume, arguendo, that [Pamintuan] knew nothing about the prostitution ring when she first recruited Ms. Gonzales, she did, however, later in 2005, learn about what was taking place at Carnival when Gonzales told her what she was subject to at Carnival. [Pamintuan] continued to participate in the prostitution ring long after April 26, 2006, the date the anti-trafficking statute was enacted, which included the participation of Ms. Gonzales in prostitution, and she refused to do anything to help Gonzales when fully alerted to what was taking place.

We agree with Appellees. Issues of statutory interpretation are reviewed *de novo*. *Bandarii v. Ngerusebek Lineage* , 11 ROP 83, 85 (2004). The steps involved in statutory interpretation were explained by this Court in *Lin v. ROP*, 13 ROP 55 (2006).

> The first step in statutory interpretation is to look at the plain language of a statute. *Wenty v. ROP* , 8 ROP Intrm. 188, 189 (2000). The Palau National Code provides that "[w]ords and phrases . . . shall be read with their context and shall be interpreted according to the common and approved usage of the English language." 1 PNC § 202. It is well-established that if statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written. *Senate v. Nakamura* , 7 ROP Intrm. 212, 216 (1999); *United States v. Gonzales* , 520 U.S. 1, 6 (1997) (citing

> *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992)); 73 Am. Jur. 2d *Statutes* § 113 (2001) (citing *Robinson v. Shell Oil Co.* , 519 U.S. 337 (1997) and *U.S. v. James*, 478 U.S. 597 (1986)). "Where a statute is so plain and unambiguous that it is not susceptible of more than one construction, courts construing the same should not be concerned with the consequences resulting therefrom. The undesirable consequences do not justify a departure from the terms of the act as written." 73 Am. Jur. 2d *Statutes* § 171 (citations omitted). Only in situations where the plain statutory language would lead to absurd results sufficient to "shock the general moral or common sense," and particularly where a strict reading of the statute would render a law a nullity, courts may proceed with caution p.43 in such rare and exceptional circumstances to supply plainly omitted words or phrases to the statute. *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). *See also* 73 Am. Jur. 2d *Statutes* § 123 (2001) (citations omitted).

Id. at 58. Although "penal statutes are to be construed strictly against the government and liberally in favor of the accused . . . the scope of a penal statute cannot generally be extended beyond the plain meaning of the unambiguous language used." *Id.* at 61.

Here, the language of RPPL 7-5 expresses no limitation that would indicate the legislature's intention to limit the acts described in Section 6 to include only those that follow the path a victim travels while being trafficked. Instead, the language of the statute clearly states that "[e]very person who . . . harbors . . . any person or persons for the purpose of exploitation by threat, use of force, abduction, fraud, deception, abuse of power, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, shall be guilty of people trafficking." RPPL 7-5, § 6. Reading the statute literally does not render it either meaningless or absurd, thus it is not subject to interpretation by the courts. Moreover, despite Appellant Wang's suggestion to the contrary, the crimes of Exploiting a Trafficked Person and People Trafficking can easily cover two separate groups of individuals without reading Appellants' suggested limitation into the statute.

Lastly, the Republic contends that Manio's argument is more tenuous than the other Appellants' because from May, 2005, to August, 2006, Manio knew that Gonzales and Gueverra had been deceived into coming to Palau and were being forced to prostitute themselves, yet she continued to participate in their exploitations. We agree.

Manio asserts that she cannot be guilty of exploiting a trafficked person if such person came to Palau before the effective date of RPPL 7-5. Section 8 of RPPL 7-5 defines the offense of Exploiting a Trafficked Person as follows: "Every person who knowingly or recklessly engages in, participates in, or profits from the exploitation of a trafficked person shall be guilty of exploitation of a trafficked person . . . ." The statute defines "trafficked person" as "any person who is the victim or object of an act of people trafficking." RPPL 7-5 § 2(k). "People trafficking" is defined as "the recruitment, transportation, transfer, harboring or receipt of a person for the purposes of exploitation . . . ." RPPL 7-5 § 2(h). Thus, the date as to when the victims were trafficked is immaterial to the crime of Exploiting a Trafficked Person. As long as Manio knew after May 4, 2005, the date that RPPL 7-5 was signed into law, that Gonzales and

Gueverra were the victims of people trafficking, as defined by the statute, and continued to exploit them, she is guilty of the crime of exploiting a trafficked person. Manio's challenge is without merit.

C. Constitutional Adequacy of Charging Documents

1. Wang and Chiang

Wang and Chiang appeal their convictions of violating 40 PNC § 1701(c) p.44 ("False and Fraudulent Returns"), arguing that the Republic inappropriately omitted an essential element of this crime in the Information. 40 PNC § 1701(c) states that "any person who files a return containing false information *with the intent to evade a tax* , or any portion thereof shall upon conviction, be imprisoned for not more than three years, fined not more than $10,000.00, or both, and be subject to any other penalties that may be assessed under this chapter." (emphasis added). In their charging documents, Counts Thirty-Eight through Forty-Six alleged that Appellants Wang and Chiang "did *willfully* file false and/or fraudulent statements for payment of income tax withheld from the employees of Carnival restaurant and karaoke, in violation of 40 PNC § 1704 and 17 PNC § 102."[3] (emphasis added). Because the Republic omitted the essential element of an "intent to evade tax," Wang and Chiang argue that they are entitled to a reversal of their convictions and sentences as to these counts. Wang specifically notes that she was directly prejudiced by the Republic's omission because the trial court failed to make any finding that she "intended to evade tax." *See* Findings of Fact and Conclusions of Law at 11 (stating that Wang and Chiang "knowingly filed fraudulent tax returns and as such, are GUILTY of violating the Tax Law as charged.").

In response, the Republic argues that the charging documents against Wang and Chiang did not contain defects. It asserts that Counts Thirty-Eight through Forty-Six allege that Appellants "did *willfully* file false or fraudulent statements . . . ." (emphasis added). The Republic argues that the term "willfully" incorporates the requisite mental state of the crime. The Republic maintains that "'[w]illfully' certainly implies 'intent to evade a tax.'" Further, the Republic suggests that "[c]learly the intentional or willful element in the statute is to avoid imposing criminal liability for mere mistake."

A charging document must allege all the elements of the charged crime. *An Guiling v. ROP*, 11 ROP 132, 134 (2004). "[T]he requirement that a charging instrument sufficiently allege all essential elements of the offense charged may not be waived or dispensed with, and a defect is grounds for reversal even when raised for the first time on appeal." *Id.* at 134. An accused is constitutionally entitled to "be informed of the nature of the accusation" charged regardless of the form of the charging document. PALAU CONST. art. IV, § 7. The constitutional right of a defendant to know the nature and cause of the accusation means that the offense charged must be set forth with sufficient certainty so that the defendant will be able to intelligently prepare a defense. *Franz v. ROP*, 8 ROP Intrm. 52, 54-55 (1999).

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[3]Although reference is made to § 1704, the charged offense actually constitutes a violation of § 1701(c). An "[e]rror in the citation or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice." ROP R. Crim. Pro. 7(c)(2).

"A criminal information is sufficient if it contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend." *Sungino v. ROP*, 6 ROP Intrm. 70, 70-71 (1997) (internal citations p.45 and quotations omitted). "Where . . . an offense requires a particular mental state, the mental state is an essential element of the offense that must be pled and proven. Therefore, this objection was not required to be made before trial." *Id.* at 72. An information, however, is not defective when it fails to expressly state the requisite mental state if the mental state is incorporated into the information. *Id.* at 73.

The term "willful" is defined as "voluntary and intentional, but not necessarily malicious." BLACK'S LAW DICTIONARY 888 (8th ed. 1004) at 1630. The term "intent" is defined as "the state of mind accompanying an act." *Id.* at 825. Thus, intent is more broad, and includes all of the possible mental states, including willfulness. This does not necessarily mean that the terms can be used interchangeably. However, the issue here is whether the charging document was sufficient to put defendants on notice of the crimes against them. *Sungino*, 6 ROP Intrm. at 70-71. The Court finds that it was.

In *An Guiling v. ROP*, the Court found that a citation stating only the date, time and name of the offense, was sufficient to provide defendant notice of the crime charged against him. 11 ROP at 136. In *An Guiling*, the citation was for disturbing the peace, which the Court found to be a defined legal term. *Id*. Legal terms that have settled meanings are to be interpreted in the context of those legal meanings, and because "disturbing the peace" is precise enough in its legal context, the defendant had adequate notice to prepare a defense. *Id*. In the matter presently before the court, the charging document likewise presented sufficient legal precision to adequately inform the defendants of the charge against them. The document named the crime and statutory citation charged, and further specified that defendants "did *willfully* file false and/or fraudulent statements for payment of income tax withheld from the employees of Carnival restaurant and karaoke." From this document, it is clear what crime is being charged and what acts, in what context, are alleged to constitute the crime. Defendants could clearly prepare an adequate defense based on this information. Therefore, we deny appellants claims for relief on this basis. While we do not find that a reversible violation occurred, the Court advises the Government to use more precise statutory language in the future.

2. Manio

Manio argues that she was not sufficiently put on notice of the charge that she violated Labor regulations because the relevant charging document stated that she "made" or aided and abetted the "making" of "unauthorized restrictions, obligations, and/or wage penalties" in violation of Labor Regulation 21.1. The specific Labor Regulation, however, does not use the term "making," but instead uses the term "imposing." Due to this error in the charging document, Manio argues that her conviction of violating Labor Regulation 21.1 was improper.

The Republic maintains that Manio's challenge to the charging document fails for numerous reasons. First, it asserts that the word "making" and "imposing" can be used interchangeably in this circumstance because "it is clear that part of 'making someone do something' like abide by unauthorized rules or enforcing unauthorized rules, or 'imposing' unauthorized rules, is covered by the word 'making . . . .'" Second, it argues that the mistake

p.46 is harmless, as it did not mislead the defendant to the defendant's prejudice. Third, the Republic argues that the charging document, even with the mistaken term, contains all of the elements of the offense and makes specific reference to Section 21.1 of the Labor Regulations, thus sufficiently putting Manio on notice of the charge. We agree.

The relevant charging document states the following: "Defendants . . . did willfully violate Section 21.1 of the Labor regulations by *making* unauthorized restrictions, obligations and/or wage penalties." Labor regulation 21.1 provides that an "[e]mployer shall not *impose* upon employees restrictions, obligations, wage penalties or the like, that are not in the employment contract or that are contrary to the laws of the Republic of Palau."

An "[e]rror in the citation or its omission shall not be ground for dismissal of the information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice." ROP R. Crim. Pro. 7(c)(2). "A criminal information is sufficient if it contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend." *Sungino*, 6 ROP Intrm. at 70-71.

Other than noting the usage of the term "making" instead of "imposing" in the charging document, Manio fails to demonstrate that she was misled or prejudiced by this error. In fact, she does not even claim that she was misled by the usage of the term "making," but merely that the error on its face is reason to overturn her conviction. Manio's claim is without merit.

D. Hearsay Admitted at Trial

Appellant Wang argues that the trial court erred when it allowed hearsay evidence to be admitted at trial. Specifically, Appellant challenges the admission of numerous statements from customers of Carnival as evidence of prostitution and people trafficking. The Republic first attempted to admit a customer statement during the testimony of Rebecca Mabalot. Mabalot testified that on her first night working at Carnival, a Filipino fisherman told her: "I already bought you." The trial court later asked for clarification on what exactly the fisherman told her, and Mabalot stated that the fisherman told her: "I already pay to (Wang)." Wang objected, and in arguing for the statement's admission, the Republic argued that the statements were admissible under the operative facts exception. The trial court initially sustained the objection, but later reversed itself and allowed the admission of the statement and other statements by customers regarding prostitution and people trafficking throughout the trial. The other admitted statements that Wang challenges are: "One-hundred fifty." (Testimony of Na Zhou, Disk 1, 3/8/07 at 9:30:30 (answering question about how much a customer told her he paid for her)); "The customer talked to Kathy [Manio] . . .that he want to take me out." (Testimony of Jeneliou Talania, Disk 2, 3/12/07 at 1:07:00)); "Kathy didn't tell me but the customer said that he paid $200 . . . . He paid Kathy the $200 and Kathy gave it to Christina [Wang] . . . .He said it was payment . . . for me . . . payment, payment to take me out." *Id*.; "He told me and then he told Kathy [that he wanted to have sex with me]." *Id*. at 1:20:45; "He took me out when he asked Christina and she agreed." (Testimony of Mary Gonzales, Disk 2, 3/13/07 at 10:49:00); "The p.47 customer paid $350 and didn't give me anything." *Id.* at 10:53:50; "The customer came back and told me I was paid for." *Id.*; "My customer said so [that he paid $200 to Christina]."

(Testimony of Cecilia Barrientos, Disk 3, 3/14/07 at 8:41:48); "After that I talked to him. I asked him how much he gave Christina. He said two hundred, and I asked why two hundred, and he said it was what Christina said." *Id.* at 8:45:47; "No, I already paid." (Testimony of Joy Binelan, Disk 3, 3/20/07 at 1:46:04 (regarding customer's statement to her)); "I already pay so you have to go with me." *Id.* at 1:54:20. In addition, Wang asserts that because none of the customers were named, she was denied her constitutional right to confront her accusers.

In contrast, the Republic contends that the admissions of the statements were appropriate. Citing *People v. Dell* , 232 Cal.App.3d 248 (1991), the Republic asserts that these types of statements are routinely admitted in prostitution trials, in particular against defendants who are accused of advancing prostitution or pandering. It argues that Wang incorrectly asserts that all of the case law in this area pertains to the statements of prostitutes to undercover police officers. Citing *State v. Connally*, 899 P.2d 406, 407 (Hawaii App. 1995), the Republic notes that the trial court in that matter not only admitted an undercover police officer's testimony regarding a prostitute's statements, but also testimony regarding the john's statement in response to her offer of sex. In light of the ruling in *Connally*, the Republic asserts that the trial court here did not abuse its discretion.

The trial court's decision to admit certain evidence will not be disturbed unless the Court finds it to be an abuse of discretion. *Rechucher v. ROP*, 12 ROP 51, 53 (2005). "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ROP R. Evid. 801(c). It is not admissible at trial except as provided by the rules of evidence. ROP R. Evid. 802. Some courts have found statements of solicitation by prostitutes to be "verbal acts," and thus not hearsay.

> Words of solicitation for prostitution are essentially words of offer and acceptance in the formation of a contract for sex in exchange for money. When trying to prove the existence of an oral contract the words the offeror uttered in making the offer clearly are admissible as nonhearsay to prove an essential element of the contract.

Dell, 232 Cal. App.3d at 261.

In this case, none of the relevant statements introduced at trial related to an offer or acceptance. Unlike the statements discussed in *Connally*, the statements were not "evidence of verbal acts demonstrating that Defendant made the requisite offer [to engage in sexual conduct with another person for a fee]." *Id.* at 410. Instead, the statements were offered to show that Wang was guilty of exploiting the victims, which is an element of the crime of people trafficking.

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In Palau, in order to prove that a defendant committed the offense of people trafficking, the statute requires that the evidence show that the defendant "knowingly or recklessly recruits, transports, transfers, harbor or receives any person or persons *for the purpose of exploitation* . . . ." RPPL 7-5 § 6 (emphasis added). The term "exploitation" is defined as "sexual servitude, exploitation of another person by and through prostitution, forced labor

services, or slavery." RPPL 7-5 § 2(d). The term "servitude" is defined as "the condition of a slave or serf : a state or subjection to an owner or master." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2076 (1981). Under the Anti-Prostitution Act of Palau, "prostitution" is defined as "knowingly engaging in, agreeing to engage in or offering to engage in sexual contact or sexual penetration in return for a pecuniary benefit or in exchange for any property or thing of value." 17 PNC § 3602(d).

In light of these definitions, it is not necessary that the Republic prove that the customers actually paid money to have sex with the victims. Instead, sexual servitude can be shown by the fact that the victims perceived the contested statements by the customers to mean that they had to go with the customers and have sexual contact with them. Whether the customer actually paid Wang money or lied about such payment is irrelevant if the victims perceived the situation as meaning that they were under the control of the customer and Wang.

The trial court found that Wang "exploited the victims by withholding their salaries through a debt system designed to force them to prostitute themselves, by withholding of their passports, and through threats of use of force." Moreover, the discussion at trial regarding these statements, and defense counsel's objections to them, failed to disclose exactly what the Republic intended to prove through the statements. Therefore, the Court's determination that the statements were admissible was not an abuse of discretion because the statements were arguably not hearsay. They were not offered to prove the truth of the matter asserted: that the customers had actually paid Wang money in order to have sex with the victims. Appellants' claims are thus denied in this respect.

E. Evidence of "Dominant Motive"

Wang and Manio contend that there was insufficient evidence produced at trial to prove all the elements of RPPL 7-5, §§ 6 and 8. Specifically, they assert that the Republic failed to show that any of the acts of people trafficking allegedly committed were done "for the purpose of exploitation." Due to this lack of evidence, Wang asserts that her convictions of people trafficking should be reversed. In addition, Manio contends that this lack of evidence makes all the convictions of people trafficking in this case improper, consequently making her conviction of exploiting a trafficked person improper as well.

Due to the lack of instructive Palauan case law regarding what is required to show that an act is done "for the purpose of exploitation," Wang and Manio argue that this Court should look to United States case law, specifically *Mortensen v. United States*, 64 S.Ct. 1037 (1944). In *Mortensen*, the U.S. Supreme Court, in interpreting a former provision of the White Slave Traffic Act (popularly known as the Mann p.49 Act), held that the "intention that the woman or girls shall engage in the conduct outlawed . . . must be found to exist before the conclusion of the interstate journey and must be the *dominant motive* of such interstate movement." *Id* at 1040 (emphasis added). Wang and Manio argue that because the evidence at trial showed that the victims performed a significant amount of waitress-type work while they were at Carnival, the Republic failed to demonstrate that forced prostitution was the "dominant motive" or purpose when they were originally recruited to work at Carnival. In response, the Republic maintains

that according to more recent case law, prostitution need only be "one of the dominant motives." *See United States v. Miller* , 148 F.3d 207 (2nd Cir. 1998) (discussing a court's analysis of 18 U.S.C. §§ 2422 and 2423(a), statutes that were devised from the White Stave Traffic Act, 18 U.S.C. § 398); *United States v. Sirois*, 87 F.3d 34 (2nd Cir. 1996) (same).

> RPPL 7-5, Anti-People Smuggling and Trafficking Act, Section 6, states the following:
>
> Every person who knowingly or recklessly recruits, transports, transfers, harbors or receives any person or persons for the purpose of exploitation by threat, use of force, abduction, fraud, deception, abuse of power, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, shall be guilty of people trafficking, and upon conviction thereof shall be fined not more than $250,000, or imprisoned not more than 25 years or both.

In Palau, no case law or legislation has established the limitation described in *Mortensen*, *Miller* or *Sirois*. Moreover, in light of the legislative history of Palau's Anti-People Smuggling and Trafficking Act (the "People Trafficking Act"), this Court is reluctant to establish such a limitation.

The People Trafficking Act, when drafted, was not based on the White Slave Traffic Act or United States statutes 18 U.S.C. §§ 2422 and 2423(a). Instead, the People Trafficking Act was based on, *inter alia*, the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons ("UN Protocol"). The UN Protocol is referred to in the preamble of the People Trafficking Act, which states the law was enacted

> [t]o provide criminal penalties for smuggling people and trafficking people in accordance with the Republic of Palau's international commitments, including the Nasonini Declaration, the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime.

p.50 RPPL 7-5, Preamble. In fact, the language of the People Trafficking Act tracks the language of the UN Protocol almost verbatim. [4] In contrast, the White Slave Traffic Act criminalized the

[4]The UN Protocol reads as follows:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of the person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation,

act of

> knowingly transport[ing] in interstate commerce "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice."

Mortensen, 64 S.Ct. at 1040. United States statutes 18 U.S.C. §§ 2422 and 2423(a) carry similar language, focusing solely on transporting people in interstate commerce to engage in prostitution or any other sexual activity for which a person can be charged with a criminal offense. These laws are much narrower than the People Trafficking Act or the UN Protocol, thus the limitation of requiring that prostitution be the "dominant motive" in the U.S. laws seems reasonable. For this same reason, however, and the fact that the People Trafficking Act is based on the UN Protocol and not United States law, it would be inappropriate for the Court to read certain limitations into the People Trafficking Act that were not intended.

Appellants Wang and Manio have failed to show that the legislature of Palau or the foundations of the UN Protocol intended a similar limitation in their anti-people trafficking laws. The reason that Palau often looks to U.S. case law for guidance when deciding legal questions is because often times Palau's laws and regulations are based on United States laws. This, however, is not the case in this instance. For this reason, the trial court did not clearly err in finding sufficient evidence to convict Wang of people trafficking and Manio of exploiting a trafficked person. Appellants' arguments are without merit.

> forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs[.]
>
> G.A. Res. 55/25, U.N. General Assembly, 55th Sess., at 32, U.N. Doc. A/Res/55/22/Annex II (2001).

F. Conflict of Chiang's Attorney

Chiang argues that he is entitled to a reversal of his convictions because the trial court p.51 failed to conduct a Rule 44(d)[5] inquiry after Chiang demonstrated the existence of an actual conflict of interest held by Chiang's counsel. Specifically, Chiang notes that on September 26, 2006, counsel for Chiang orally advised the trial court that he also represented co-defendant Pamintuan in the same criminal case. The trial court, however, did not conduct a Rule 44(d) inquiry in order to determine if a potential conflict of interest existed. Chiang argues that, according to *Cuyler v. Sullivan* , 100 S.Ct. 1708 (1980), a reversal may be had when the court "knows or reasonably should have known that a particular conflict exists."

In contrast, the Republic argues that this Court should not entertain Appellant Chiang's ineffective assistance of counsel claim because the record is not sufficiently developed on this issue. The Republic notes that Chiang filed a writ of habeas corpus in Civil Action 07-329. Justice Materne conducted a hearing on the matter and ultimately granted the writ. The Republic has appealed this decision in Civil Appeal No. 08-001. Therefore, the Republic asserts that Chiang's claim in this appeal should be dismissed in favor of his pending writ of habeas corpus proceedings.

The Republic maintains that Chiang's claim is one regarding ineffective assistance of counsel, thus it is inappropriately raised in this appeal and should be saved for the appeal of Chiang's writ of habeas corpus. This argument, however, is mistaken, as Chiang is challenging how the *trial court* reacted to what he argues was an obvious conflict of interest at trial, not the assistance that he received at trial through his counsel. The issues raised by Chiang in this appeal involve the trial court's failure to administer a Rule 44(d) inquiry. Although his challenge implies that Chiang believes that he suffered from ineffective assistance of counsel, this issue, at least in this appeal, is not directly what Chiang claims is the error that occurred during his trial.

First, Chiang misstates the holding in *Cuyler*. In *Cuyler*, the U.S. Supreme Court stated that "[u]nless the trial court knows or reasonably should know that a particular conflict exists, the court need not initiate an inquiry." *Id.* at 1717. In fact, the Court opined that "[a]bsent special circumstances . . . trial courts may assume either that multiple representation entails no conflict or that the lawyer and his clients knowingly accept such risk of conflict as may exist." *Id.*

> Indeed, . . .trial courts necessarily rely on large measure upon the good faith and good judgment of defense counsel. "An 'attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial.'"

Id. (citations omitted). Notwithstanding, Palau's p.52 Rules of Criminal Procedure specifically require a trial court to NOT make such an assumption and to actively inquire about the existence

[5]Rule 44(c) (Joint Representation) of the Palau Rules of Criminal Procedure was renumbered to Rule 44(d) in the amendments to the Rules promulgated on August 23, 2004. No substantive change was made to the rule.

of a conflict in specifically defined situations.

> Rule 44(d) of the Palau Rules of Criminal Procedure states the following:
>
> Whenever two or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court *shall* promptly inquire with respect to such joint representation and *shall* personally advise each defendant of his right to the effective assistance of counsel, including separate representation. *Unless it appears that there is good cause to believe no conflict of interest is likely to arise*, the court *shall* take such measures as may be appropriate to protect each defendant's right to counsel.

(emphasis added). The record does not indicate that the trial court conducted this inquiry. At the initial appearance and bail hearing, defense counsel for Chiang and Pamintuan, Johnson Toribiong, advised the trial judge that he represented both defendants and that he would "advise the court shortly whether [he had] a conflict, otherwise [he would] continue to represent [Pamintuan]." (Chiang's Appendix F at 1-2.) The trial court responded: "[a]ll right." *Id.* at 2. It is not clear from Toribiong's statement that the possible conflict to which he was referring was caused by his simultaneous representation of two of the defendants in the same criminal matter or his relationship with Pamintuan. Regardless, the trial court seems to have relied on Toribiong to determine whether any conflict existed.

Assuming the trial court followed the ramifications defined in Rule 44(d) and made a factual determination that there was good cause to believe that no conflict of interest was likely to arise, such determination was clearly erroneous. The trial court was aware of the charges in this case and aware that Chiang and Pamintuan were represented by the same counsel. In a case where numerous defendants are charged with differing levels of involvement in the same crimes and each defendant knows facts regarding each other's involvement, no reasonable trier of fact could conclude that good cause existed to believe that no conflict of interest was likely to arise. A Rule 44(c) inquiry was necessary and required, but such inquiry was not effectuated by the trial court. Thus, Chiang's appeal is granted in this respect.

G. Sufficiency of the Evidence

1. Pamintuan

Pamintuan asserts that the Republic failed to prove that she is guilty of people trafficking and advancing prostitution. Specifically, Pamintuan argues that the communications between her and the victims were just "small p.53 talks" and "wise advice," none of which amount to the commission of the crimes of People Trafficking and Advancing Prostitution. In addition, she notes that there is no evidence that she compelled a person by coercion to engage in prostitution or that she profited from such coercive conduct or profited from the prostitution of a person less than eighteen years old.

In response, the Republic asserts that there was sufficient evidence presented at trial for the trial court to find Pamintuan guilty of advancing prostitution and people trafficking. In fact, Pamintuan concedes that at trial the victims testified that Pamintuan recruited them from the Philippines, picked them up at the airport, spoke with them about going out with customers, not getting pregnant, and wearing sexy clothes, and dropped them off at Carnival. Additionally, the Republic notes the testimony presented at trial that indicated that Pamintuan was aware of what was happening at Carnival. For example, Gonzales testified that sometime in 2005, she went to Pamintuan's house and told her about the salary deductions, the restrictions on food and weight, and about the prostitution. (Disk 2, 3/13/07 at 1:45:15-1:47:13 and 3:01:37-3:05:06.) With this knowledge, other evidence presented at trial showed that in late 2005 and early 2006, Pamintuan recruited victims Binelan, Talania, Mabalot, and dela Pena to work at Carnival.

In Palau, a person may be found guilty of advancing prostitution if he or she "advances or profits from prostitution by compelling a person by coercion to engage in prostitution, or profits from such coercive conduct by another, or advances or profits from prostitution of a person less than eighteen years old . . ." 17 PNC § 3603(b). The statute further explains that:

> A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons to engage in the act of prostitution, permits premises under his or her control to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

17 PNC § 3602(a).

Viewing all of the evidence in a light most favorable to the prosecution, a rational trier of fact could easily find that Pamintuan advanced prostitution and trafficked people by recruiting and supplying the waitresses, even after she knew that they were being coerced into prostitution. The trial court's findings were not erroneous, were supported by sufficient evidence, and should not be reversed.

2. Manio

Manio argues that there was insufficient evidence presented at trial to prove that the victims engaged in specific "sexual contact," as defined by 17 PNC § 3602(f), or "sexual penetration," as defined by 17 PNC § 3602(g). Although the victims each testified that they "had sex," Manio asserts that this is not enough to prove the elements beyond a reasonable doubt p.54 that she advanced prostitution, in violation of 17 PNC § 3602(f) and 17 PNC § 3602(g).

In contrast, the Republic maintains that sufficient evidence was presented at trial to prove beyond a reasonable doubt all the elements of 17 PNC § 3602(f) and 17 PNC § 3602(g). The Republic notes that in the New Oxford Dictionary, the definition of "to have sex" is "sexual intercourse." This information was presented to the trial court in the Republic's closing argument on April 3, 2007. In addition, the Republic asserts that the definition of prostitution

encompasses not only engaging in sexual contact or penetration, but also agreeing to engage in or offering to engage in such acts. Whether or not the act occurred, it argues, is irrelevant when there is evidence of the offer or agreement for the act to occur. The Republic contends that there was sufficient evidence presented at trial to support the trial court's findings.

It is the trial court's task as the trier of fact to determine the factual content of ambiguous testimony. *Labarda v. ROP* , 11 ROP 43, 46 (2004). "Under the clear error standard, the lower court will be reversed 'only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.'" *Dilubech Clan*, 9 ROP at 164. In light of the extensive testimony offered by each of the victims at trial regarding (1) their being taken to the hotel rooms of Carnival customers or escorted to rooms located above Carnival; (2) their being forced to have sex with the customers or suffer deductions in their pay; and, (3) in one instance, a victim pleading with a customer to not have sex with her, Manio has failed to show that no reasonable trier of fact could have reached the same conclusion as the trial court. Thus, the trial court did not clearly err in finding that the victims engaged in specific "sexual contact," as defined by 17 PNC § 3602(f), or "sexual penetration," as defined by 17 PNC § 3602(g). In addition, Manio argues that this Court should overturn her conviction of "aiding and abetting" because the Republic failed to show the specific intent required of the crime. Manio asserts that at trial the Republic failed to show any evidence that she recruited, transported, transferred, harbored, or received any of the victims in this matter, or that she knew about such offenses. For this reason, Manio maintains that there was no evidence that she shared the requisite intent to be convicted as an aider and abetter because she could not have known that the victims were being "exploited."

In contrast, the Republic notes that the trial court found that Manio at times coerced the victims to engage in prostitution and withheld their passports. (Findings of Fact and Conclusions of Law 11-12.). It asserts that there was sufficient evidence for a reasonable trier of fact to conclude that when each new girl showed up, Manio knew that they would be forced to prostitute themselves.

Manio is confused about the crimes of which she was convicted. Manio was convicted of "aiding or abetting" the violation of the Foreign Investment Act. In addition, the trial court found her guilty of Advancing Prostitution and Exploiting a Trafficked Person. (Findings of Fact and Conclusions of Law 12). Thus, her contention that the Republic failed to show any evidence that she recruited, transported, p.55 transferred, harbored, or received any of the victims in this matter is irrelevant because those are elements of the crime of People Trafficking; a crime of which she was not convicted.

Assuming that Manio intends to challenge the sufficiency of the evidence presented at trial in regard to her convictions of Advancing Prostitution and Exploiting a Trafficked Person, her claim that the Republic failed to show any evidence that she knew about such offenses is without merit. The trial court noted in its Findings of Fact and Conclusions of Law that Manio

> eventually took on more managerial responsibilities on behalf of [Wang] . . . [she] became more involved with the conveying of instructions from [Wang] to the

> Filipina waitresses, she reported infractions to [Wang], and at times, she collected passports from the workers for [Wang]. . . .she received an additional $100 a month in salary beginning around the time she took on additional duties at Carnival.

Manio does not dispute these findings but merely asserts that the Republic failed to demonstrate that she had the required intent. The only mental state required by the two offenses is that the act be done "knowingly."[6] Thus, with nothing further, Manio has failed to show that the trial court's findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

CONCLUSION

The Court finds that Wang's and Chiang's statutory and constitutional rights to an interpreter were violated at the trial in this matter and that the trial court erred in failing to conduct p.56 a conflict of interests analysis with respect to Chiang's counsel. Their convictions are hereby **REVERSED** and **REMANDED** for a new trial. The convictions of Pamintuan and Manio are hereby **AFFIRMED**.

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[6]17 PNC § 3602(a) provides the following:

> A person "advances prostitution" if, acting other than as a prostitute or a patron of a prostitute, he *knowingly* causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons to engage in the act of prostitution, permits premises under his or her control to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(emphasis added). RPPL 7-5, Section 8 provides that:

> Every person who *knowingly* or *recklessly* engages in, participates in, or profits from the exploitation of a trafficked person shall be guilty of exploitation of a trafficked person . . . .

(emphasis added).