

ROP v. Tascano, 2 ROP Intrm. 179 (1990)
REPUBLIC OF PALAU,
Appellee,

v.

JUANITA TASCANO,
Appellant.

CRIMINAL APPEAL NO. 5-89
Criminal Case No. 55-89

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: September 14, 1990

Counsel for Appellee: Yosiharu Ueda, T.C.

Counsel for Appellant: David F. Shadel

BEFORE: LOREN A. SUTTON, Associate Justice; ALEX R. MUNSON, Part-time Associate Justice, FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

O'BRIEN, Associate Justice Pro Tem:

This appeal challenges the sufficiency of the evidence to prove beyond a reasonable doubt that Defendant committed the crime of cheating, in violation of 17 PNC § 1903, which reads:

Every person who shall unlawfully obtain the property or money of another by false pretenses, knowing the pretenses to be false, and with the intent thereby to permanently defraud the owner thereof, shall be guilty of cheating, and, if the value of the property thus obtained be \$50.00 or more, shall be imprisoned for a period of not more than five years; or if the value of the property **1180** thus obtained be less than \$50.00, shall be imprisoned for a period of not more than six months, be fined not more than \$100.00, or both.

Defendant was alleged to have cheated the victim, Corazon Oliveros, out of \$89.00, by promising to assist her in obtaining a medical clearance certificate, a U.S. visa, and employment, and by failing to live up to her promise.

At the outset we note that the findings of a trial court are not to be set aside unless clearly erroneous. *Republic of Palau v. Sakuma. et al.*, Criminal Appeal No. 3-88, Slip Opinion at 9. (App. Div. Jan. 1990). This rule is sometimes stated differently, i.e. that a trial court's findings of

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fact are not to be set aside if there is “any reasonable evidence” to support them. *Estate of Obak Kloulubak*, 1 ROP Intrm. 701, 704 (App. Div. Sept. 1989). In *Jackson v. Virginia*, 443 U.S. 307, 318-319, 99 S.Ct. 2781, 2788-2789 (1979), the United States Supreme Court stated the rule as:

. . . the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt (citation omitted). Instead the relevant question is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt (citation omitted).

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See also, *Republic of Palau v. Tmetuchl, et al.*, 1 ROP Intrm. 443, 446 (App. Div. March 1988).

Defendant argues that the Trial Court wrongly failed to grant her motion for judgment of acquittal and erroneously convicted her despite the Government’s failure to prove that:

1. the prosecution of the offense commenced within three years of its occurrence;
- 2 she committed any false pretenses or that Plaintiff’s Exhibit 1 constituted a false pretense;
- 3 she actually defrauded the alleged victim; and
4. she had the specific intent to defraud.

The Statute of Limitations

Except for murder, prosecutions for crimes committed in the Republic must commence within three years of the commission of the crime, unless the perpetrator flees from justice, absents himself from the Republic, or secretes himself so that the police cannot find him. 17 PNC § 107. There is nothing in the record to suggest that Defendant fled, absented or secreted herself, so the Statute of Limitations applies to this case. However, the statutory bar must be pleaded by motion prior to trial, or it is waived. ROP R. Crim. Pro. 12(b)(1) and 12(f). Cf. *Kumangai v. Isechal*, 1 ROP Intrm. 587, 589 (App. Div. Apr. 1989). Since Defendant did not move below for a dismissal for failure to prosecute within three years, such defect, if any, was waived.

⌞182 Time as an Element of the Offense

Defendant further argues that Plaintiff failed to prove that she committed the offense within three years of the commencement of the prosecution in this case. Although it is true that at no time did the prosecutor specifically ask any of his witnesses during his case-in-chief when

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the offense occurred,¹ there was testimony from the victim from which the time of the offense can be ascertained. Ms. Oliveros testified on direct examination that she worked in Saipan for three years before coming to Palau (Tr. 4-5). On cross-examination, she said she first went to work in Saipan in 1985 or 1986 (Tr. 20). Since she testified that the offense took place while she was in Palau, it can be gleaned that the offense occurred in 1988 or 1989. So, the record is clear that prosecution occurred within three years of the crime.

False Pretenses

“False pretenses” are false statements made with knowledge of their falsity. Black's Law Dictionary, 4 Ed., p. 724. As stated in our statute, to be guilty of the crime of cheating, there must be property or money obtained through the use of false statements **¶183** made with knowledge of their falsity and with intent to defraud the owner permanently of the property or money. The point at issue is whether Defendant made any false statements to the alleged victim.

The Government's evidence showed that Corazon Oliveros gave Defendant \$89.00 in return for Defendant's promise to assist her in obtaining a physical examination certificate, a visa, and employment, but that Defendant only gave her a partially filled out physical examination certificate. The defense evidence was that Ms. Oliveros requested Defendant to help her, but Defendant did not agree to help, did not receive any money from Ms. Oliveros and expressly informed Ms. Oliveros that she could not help her. The Trial Court did not find the defense evidence credible. There is sufficient reasonable evidence in the record to warrant a finding that Defendant made the promise and received money therefor, so that finding cannot be clearly erroneous. *Jackson v. Virginia, supra; Republic of Palau v. Sakuma, supra.*

Given the finding that Defendant promised to help Ms. Oliveros, the question is whether such promise constituted a false pretense. The verdict below means that the Trial Court so found, which implies that the Trial Court also believed that Defendant did not intend to keep the promise at the time it was made. By definition, the promise could not have been a false pretense if **¶184** Defendant intended to keep it. The question now becomes whether the finding that Defendant did not intend to keep the promise is clearly erroneous or whether there is any reasonable evidence in the record to support it.

The evidence shows that Defendant gave Ms. Oliveros a partially filled out set of bogus medical examination documents, but did not obtain employment or a U.S. visa for her. Perhaps the medical documents could have been completed and used to fraudulently obtain an entry permit or a work permit. In this sense, Defendant did keep her promise. However, it may just as well be true that the medical papers were worthless for any purpose. In that event, giving Ms. Oliveros the medical papers was just a lure to pull off the scam. The verdict implies that the Trial Court found this latter to be Defendant's intent, and such intent is supported by the evidence.

¹ Directing a witness' attention to the time when the event occurred is such a basic part of any direct examination that its omission should not be allowed by trial judges, whose duty is to see that trials are conducted fairly, orderly, and impartially.

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Defendant further argues that Plaintiff's Exhibit 1 does not constitute a false pretense because Ms. Oliveros knew the papers were bogus. Ms. Oliveros' knowledge is irrelevant. Defendant used the papers intending that Ms. Oliveros believe that Defendant was going to help Ms. Oliveros obtain employment in Palau or Saipan. So, Ms. Oliveros and Defendant both knew the papers were bogus, but Ms. Oliveros was led to believe that the papers were proof that Defendant was going to keep her promise to help her.

¶185 Actually Defrauding the Victim

It is clear from the Government's evidence that Ms. Oliveros paid money to Defendant in reliance on her promise to provide services, and that she did not obtain those services. Bearing in mind what has already been said, there is no question but that Ms. Oliveros was actually defrauded.

Specific Intent to Defraud

Evidence of specific intent is usually circumstantial. An appellate court, viewing the evidence in light most favorable to the prosecution, where such evidence is sufficient to support a finding of guilt beyond a reasonable doubt, will not disturb the finding on appeal. *Lizama v. Trust Territory*, 7 TTR 256, 258 (App. Div. 1975); *ROP v. Kikuo*, 1 ROP Intrm. 245, 257 (App. Div. Aug. 1985). In the case at bar, the evidence set up a contrast between two scenarios, one in which a request for help was granted and money was paid, and another in which a request for help was denied and no money was involved. The Trial Court chose to believe the former, with its logical implication of an intent to defraud. As pointed out above, the evidence supports that scenario. The facts and circumstances of this case easily lead to a finding that Defendant specifically intended to cheat Ms. Oliveros out of her money. Accordingly, the Appellate Court must not second guess the Trial Court or disturb its finding.

¶186 Denial of the Motion for Judgment of Acquittal

The Trial Court correctly denied Defendant's motion for judgment of acquittal at the close of the Government's case. Some evidence as to each element of the offense had been adduced, and a reasonable mind could have fairly concluded therefrom guilt beyond a reasonable doubt. *Curley v. United States*, 81 U.S. App. D.C. 389, 392, 160 F.2d 229, 232, cert. denied, 331 U.S. 837 (1967).

Conclusion

There being no merit to the claims of error advanced herein, the judgment below is hereby AFFIRMED.