

*Minor v. ROP*, 5 ROP Intrm. 1 (1994)  
**FELIX MINOR,**  
**Appellant,**

v.

**REPUBLIC OF PALAU,**  
**Appellee.**

CRIMINAL APPEAL NO. 1-94  
Criminal Case No. 82-93

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: October 11, 1994

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Nicolas D. Mansfield, AG

Before: JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice;  
JANET HEALY WEEKS, Associate Justice<sup>1</sup>

BEATTIE, Justice:

Felix Minor was convicted of attempted trafficking in crystalline methamphetamine, a controlled substance known as "ice," in violation of 34 PNC §§ 3301(a) and 3305. He was sentenced to ten years imprisonment, with all but one year suspended. Minor contends on appeal that the trial court admitted unauthenticated documents into evidence and that the evidence was insufficient to support the trial court's finding that he was guilty of attempted trafficking. We affirm in part and reverse in part.

#### FACTS

A carton containing a cooler of prawns arrived from Manila at the Continental Air Micronesia office in Koror on the afternoon of Thursday, May 13, 1993. The carton was addressed to Minor with a return address of "Alex Ginete, Mnl Phils." The cooler inside the carton was also addressed to Minor. This perishable cargo was consigned to Consolidated Transportation Services, Inc. (CTSI). Minor was the ultimate consignee listed on the air waybill.

A customs officer inspecting the cooler found a suspicious soft spot in the lid. He examined the lid and, using his knife, was able to observe that the foam insulation had been removed from the cooler lid to create a secret compartment. In the secret compartment he found

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<sup>1</sup> Part-time Associate Justice sitting by designation.

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two plastic bags containing a substance **12** similar in appearance to crushed ice. Subsequent laboratory tests showed that the substance was crystalline methamphetamine, an illicit drug known as "ice." About 125 grams of "ice" were found in the secret compartment. An expert witness testified that a person in possession of more than three grams of "ice" usually intends to distribute it.

After the discovery of the "ice" in the secret compartment in the cooler lid, a police officer was called to the scene and decided that they should return the following morning and contact Minor. When the police and customs officers returned Friday morning, the CTSI agent, Roberto Encinares, telephoned Minor. A woman answering Minor's phone said that he was not in, but that she would leave a message. Minor returned the call half an hour later. The CTSI agent told Minor that he had just received a shipment of perishable freight from the Philippines. Minor said that he was not expecting any cargo from the Philippines. Minor denied that the shipment was his and said that he would accept delivery only at his home and only if the CTSI agent brought along a customs officer to open the package.

Finally, at Minor's request, the CTSI agent put a Palauan customs officer on the phone so Minor could express himself better. Minor gave the customs officer authority to open the package and told the him that he thought someone was "framing him." Minor testified that he was afraid that there might be some illegal material inside the box and thought it might be a repeat of an incident at the airport three months earlier, when the police arrested him for attempting to import "ice." This charge was pending on the Friday morning in question, although the government would later dismiss this charge because one of the law enforcement agents admitted to perjury in connection with obtaining a search warrant. Minor refused to claim the shipment or pick up the cooler.

The next week police officers executed a search warrant of Minor's house. In his basement they found a cooler with a lid that had a secret compartment formed by cutting out part of the Styrofoam from the lid, just like the lid on the cooler containing the "ice." Minor admitted that this cooler was his property and had been used for a shipment from the Philippines. The police also found documents indicating that Minor had previously received several other shipments from Alex Ginete from the Philippines, including Continental Air Micronesia air waybills listing Ginete as shipper of prawns to Minor as consignee. The police also found records showing that Minor had made almost \$14,000 in cash payments to Ginete. Minor testified that he had known Ginete for many years and that they were "like brothers."

**13** The trial court found Minor guilty of attempting to traffick <sup>2</sup> a controlled substance, in violation of 34 PNC § 3301(a)(1) and 34 PNC § 3305. He was sentenced to ten years imprisonment, although the execution of this sentence was suspended except for the first year of imprisonment.

## DISCUSSION

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<sup>2</sup> The offense of trafficking includes possession of a controlled substance with the intent to dispense it. 34 PNC § 3301(a)(1)

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Minor contends that the trial court erred in admitting the air waybill and certain other shipping documents that accompanied the carton because the documents were not properly authenticated.<sup>3</sup> However, the government presented testimony that showed that these documents accompanied the carton and cooler in which the "ice" was discovered. This was enough to authenticate them by establishing that the documents were what they purported to be--documents that accompanied the shipment. ROP Rules of Evidence, Rule 901(a). The lack of direct evidence concerning who prepared or issued the documents go to the weight to be given to the documents, not the admissibility. Any questions concerning the ultimate weight to be given to these documents were questions of fact for the trial court to determine.

Minor next contends that the evidence presented at trial was insufficient to support a finding that he was guilty of attempted trafficking in a controlled substance. The standard for assessing the sufficiency of evidence to support a conviction requires us to determine whether, viewing the evidence in the light most favorable to the prosecution and giving due deference to the trial judge's opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found that the essential elements of the crime were established beyond a reasonable doubt. *Republic of Palau v. Chisato*, 2 ROP Intrm. 227, 238-40 (1991); see also *Republic of Palau v. Sisior*, Crim. App. No. 4-92, slip op. at 5 (Mar. 8, 1994). Accordingly, if this standard is met, the conviction must be upheld even if we are convinced that had we been the trier of fact we would have decided the case differently.

We find that sufficient evidence supports the trial court's determination of guilt. The cooler containing the "ice" ¶4 was addressed to Minor, as was the carton in which it was contained. The air waybill that accompanied the carton also listed Minor as the ultimate consignee of the shipment. The air waybill and the carton both showed Alex Ginete to be the shipper. Minor testified that he had a close relationship with Ginete and he admitted receiving other shipments from him. Finally, a cooler having a lid with a similar secret compartment was found in Minor's basement. Minor admitted that this cooler was his property and had been used for a previous shipment from Ginete.

#### THE SENTENCE

After conviction, the trial court sentenced Minor years imprisonment with all but the first year suspended on certain conditions. A sentence for an attempt to commit trafficking may not exceed the maximum punishment prescribed for trafficking. 34 PNC § 3305.

The Palau Controlled Substances Act classifies methamphetamine as a schedule II controlled substance. 34 PNC § 3106(c)(2). Trafficking in a substance classified in schedule II which is a narcotic drug is punishable by not more than ten years imprisonment. 34 PNC § 3301(b)(1) (emphasis supplied). Trafficking in any other substance classified in schedule II is punishable by not more than five years imprisonment. 34 PNC § 3301(b)(2). Insofar as pertinent herein, the Controlled Substances Act defines a "narcotic drug" as opium, opiates and

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<sup>3</sup> Minor contends that exhibit 10, a Palau plant and animal quarantine permit, was likewise erroneously admitted into evidence, but the record shows that, although it was initially admitted, it was later stricken as irrelevant.

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any extracts, derivatives, or chemical equivalent thereof and coca leaves and any derivative or chemical equivalent. 34 PNC § 3002(q). Methamphetamine is not a "narcotic drug" as defined in the Controlled Substances Act.

It follows that, in imposing a sentence of ten years imprisonment, the trial court exceeded its sentencing authority. The maximum imprisonment authorized is five years as set forth in 34 PNC § 3301 (b)(2). Although this issue was not raised by any party, we consider it nevertheless because the error was so plain and affects the substantial rights of Minor. ROP Crim Pro. Rule 52(b); see also *United States v. Green*, 735 F.2d 1203, 1205 (9th Cir. 1984).

The judgment of the trial court is AFFIRMED as to the finding of guilt and REVERSED as to the sentence imposed. The case is REMANDED to the trial court for re-sentencing consistent with this opinion.