

Sablan v. ROP, 5 ROP Intrm. 29 (1994)

**HENRY SABLAN,
Appellant,**

v.

**REPUBLIC OF PALAU,
Appellee.**

CRIMINAL APPEAL NO. 6-93
Criminal Case No. 78-92

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 15, 1994

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Nicolas Mansfield

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
PETER T. HOFFMAN, Associate Justice.

BEATTIE, Justice:

Henry S. Sablan appeals his conviction for embezzlement of a check payable to the National Treasury. Sablan claims there is insufficient evidence to support a finding that the government proved two essential elements of the offense of embezzlement: (1) that he intended to convert the government check to his own use and (2) that he had lawful possession of the check. We affirm.

130 FACTS

In January of 1992, appellant was Acting Chief of National Treasury's Division of Revenue and Taxation. On or about January 14, 1992, Delilah Deleon, the manager of the Manila Orient Restaurant, gave appellant a check payable to the National Treasury in the amount of \$866.14. The purpose of the check was to pay taxes owed by the restaurant. Deleon asked appellant to delay depositing the check because the restaurant's bank account was short of funds. Appellant consented and placed the check in a file he kept for the restaurant.

Later, appellant advised Mr. Temengil, the employee of Revenue and Taxation who was in charge of depositing money collected as road use taxes, that he wanted to cash a check out of the road use tax funds; that is, instead of going to the bank to cash a check he wanted to trade his check for money the Division of Revenue and Taxation had collected for road use taxes. This

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was apparently a fairly routine practice at Revenue and Taxation. However, instead of cashing a personal check, appellant gave Mr. Temengil the \$866.14 check he had received from Ms. Deleon as a tax payment. He then received \$866.14 in cash from the road use tax money.

Several days later, Revenue and Taxation was advised that the \$866.14 check was returned by the bank due to insufficient funds. At that time it was discovered that appellant had cashed the National Treasury's check to obtain funds for his personal use.

DISCUSSION

The Palau National Code provides that:

Every person who, after having lawfully obtained possession of the personal property of another, shall take and carry away said personal property without the owner's knowledge and consent, and with the intent to permanently convert it to his own use shall be guilty of embezzlement. . . .

17 PNC § 1904.

By cashing the check he received as a tax payment it would seem clear that appellant committed embezzlement. However, appellant contends that there was insufficient evidence that he intended to cash that check. He contends that it was all a mistake and that he meant to cash a check for \$850 which the Manila Orient Restaurant had given him as a refund of a reservation deposit he **L31** had made to reserve the restaurant for a party, which was later cancelled.

We review the trial court's findings using the "clearly erroneous" standard. Hence, we must 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." *Minor v. ROP*, Crim. App. No. 1-94, slip op. at 5 (Oct. 11, 1994). There is ample evidence from which a reasonable trier of fact could conclude that appellant intended to cash the check he cashed, despite his protestations that it was a mistake. Indeed, Ms. Deleon testified that after she gave appellant the \$850 refund check, he went to the restaurant and asked for cash instead. She gave him the cash and he signed a receipt for it. We therefore find no merit in appellant's contention that there is insufficient evidence of intent.

Appellant further contends that he never had lawful possession of the embezzled funds because Temengil, not appellant, had custody of the road use tax money. One of the elements of embezzlement is that the accused must have had lawful possession of the property he appropriated. Here, appellant had lawful possession of the \$866.14 check which he convert to his own use.

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CONCLUSION

We find sufficient evidence to support the Trial Court's finding that all elements of embezzlement were proven beyond a reasonable doubt and therefore we AFFIRM.