ROP v. Techur, 6 ROP Intrm. 344 (1997)
REPUBLIC OF PALAU,
Plaintiff,

v.

JULIANA TECHUR,
Defendant.

CRIMINAL CASE NO. 256-96

Supreme Court, Trial Division
Republic of Palau

Order
Decided: July 7, 1997

Counsel for Plaintiff: Janine Udui, Assistant Attorney General

Counsel for Defendant: Marvin Hamilton

R. BARRIE MICHELSEN, Associate Justice:

At the end of the government's case, Defendant's motion for judgment of acquittal was granted. I stated I would issue an ⊥345 opinion further explaining why the evidence compelled this result.

Defendant Techur was charged with various counts regarding marihuana. It is illegal to possess marihuana. 34 PNC § 3104(c)(13) and 3302. Marihuana is defines as:

> all parts of the plant cannabis savita L., whether growing or not, the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except eh resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

34 PNC § 3002 (p).

At trial, the government's evidence that the substance alleged to be marihuana was, in fact, marihuana, was on the basis of a "field test." A description of how a "field test" is conducted by the officer was offered into evidence. It was also testified that of all prior cases where a substance tested positive in a "field test," the laboratory reports always substantiated the "field test" result.

The above evidence is insufficient to find this defendant guilty beyond a reasonable doubt.

First, to determine whether a substance possesses the character of marihuana as defined in 34 PNC § 3002, there needs to be scientific, technical, or other specialized knowledge to determine that fact. Rule 702 of the Rules of Evidence indicates that such evidence may be admitted through the testimony of an expect witness.

The officers' testimony presented at trial was that they have been trained to administer a "field test" for marihuana. They did not and cannot testify as to how the field test scientifically works, or the accuracy of the field test. Furthermore, the officers' testimony that field test results have always been substantiated by results of follow up laboratory testing is an inadequate showing. The testimony abut what the technicians, or their documents, tell the officer about follow up test results is ⊥346 objectionable hearsay. Although the statement was admissible because it was not objected to on that basis, its hearsay nature undercuts its probative weight.[1]

The presentation of scientific evidence is not difficult and travels over well-known ground. *See e.g.* "Identification of Marijuana" 13 POF 475. Proof 2; "Laboratory tests - Marijuana" 13 POF 420; "Instrumental analysis of Marijuana" 22 POF 385. For an example of properly introduced evidence regarding marijuana, *see State v. Miller*, 750 P.2d 1363 (Utah App. 1987). For an example in this court of proof of a controlled substance through laboratory results, *see Minor v. ROP* 5 ROP Intrm. 1 (1994).

Because of the absence of the necessary scientific proof that the substance was marijuana, it cannot be said that the evidence here proved beyond a reasonable doubt the defendant was guilty.

[1] Hearsay exceptions that were not explored are Rule 803(8), Rule 901(7) and, in conjunction with Rule 901(10), Rule 44 of the Civil Rules.