

*ROP v. Kruger*, 8 ROP Intrm. 347 (Tr. Div. 2000)  
**REPUBLIC OF PALAU,**  
**Plaintiff,**

v.

**STEPHEN KRUGER,**  
**Defendant.**

TRAFFIC CITATION NO. 00-745

Supreme Court, Trial Division  
Republic of Palau

Decided: August 3, 2000

BEFORE: R. BARRIE MICHELSEN, Associate Justice.

### **Background**

On March 2, 2000, the Bureau of Public Safety issued Defendant Stephen Kruger a traffic citation for failure to signal when stopping or turning. On March 6, 2000, Defendant notified the Court of his intent to contest the citation, and paid the Clerk of Courts the \$20 “bail” prescribed by the “Traffic Bail Schedule” set forth on the back of the citation. Soon thereafter, he filed a motion to exonerate bail, and a motion to dismiss before the Court of Common Pleas.

By Order dated May 17, 2000, the Court of Common Pleas held that the parties’ pleadings raised “questions of law that are too complex for appropriate resolution in the Court of Common Pleas,” and transferred the case to the Trial Division of the Supreme Court.<sup>1</sup> Defendant filed renewed motions to exonerate bail and to dismiss, which expressly supersede the earlier motions filed in the Court of Common Pleas.

### **I. Motion to Exonerate Bail**

Defendant objects to bail being exacted in accordance with the bail schedule<sup>2</sup> set forth on the traffic citation, rather than by a “court or . . . official authorized to issue a warrant” as prescribed in 18 PNC section 602. The government does not oppose Defendant’s request to have bail set in accordance with statutory procedure.<sup>3</sup> This Court will accordingly determine bail in

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<sup>1</sup> “If after presiding over the case, the transferee judge of the Court of Common Pleas feels that the case is complex, involves an important legal issue or for some other reason believes that the case should be heard by the Trial Division, he may transfer it back to the Chief Justice with an explanation of his reasons.” *Special Order No. 3*.

<sup>2</sup> The genesis of the “bail schedule” is hard to trace. It does not appear to be a schedule established by the Palau Supreme Court.

<sup>3</sup> Bail procedures apply “[i]n the case of any person arrested for a criminal offense.” 18 PNC § 601. Because the parties do not dispute the applicability of this statute, and because the Court can discern no prejudice to either party or to the interests of justice from applying this

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this case by considering the purposes of bail and the criteria enumerated in section 604 of Title 18. In this case the predominant factor is the “nature and circumstances of the offense charged.” The Court finds it appropriate to release Defendant on his own recognizance pending a hearing on the contested citation. *See* ROP R. Crim. Pro. 46. The \$20 cash bail **L348** he deposited into the Clerk of Courts shall be returned to him.

## II. Motion to Dismiss

### A. Jurisdiction of the Court of Common Pleas

Defendant contends that the Court of Common Pleas lacks jurisdiction over criminal cases, and thus was without power to take any action in this case other than dismissing it. In support of this position, Defendant cites Article X, section 5 of the ROP Constitution, which provides that:

[T]he trial division of the Supreme Court shall have original and exclusive jurisdiction over . . . those matters in which the national government . . . is a party.

According to Defendant, because the ROP is the real party in interest when it seeks to enforce its criminal laws, the Trial Division of the Supreme Court has exclusive jurisdiction in this case, rendering the Court of Common Pleas powerless to act.

Because the grants of judicial power are vested by the Constitution, the OEK has no role in limiting or expanding the jurisdiction of the Supreme Court. *Dalton v. Borja*, 5 ROP Intrm. 95 (1995); *Yalap v. ROP*, 3 ROP Intrm. 61 (1992). However, the OEK does have the constitutional authority to establish “inferior courts of limited jurisdiction.” Palau Const. art. X, § 1. It appears that the OEK carefully considered the pertinent constitutional provisions when establishing the Court of Common Pleas as part of the National Judiciary Act of 1981, now codified at 4 PNC § 201 *et seq.*

First, it should be noted that the Act does not grant the Court of Common Pleas any criminal jurisdiction at all.<sup>4</sup> The section provides:

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statute, the Court will assume *arguendo* that the statute applies. Similarly, because the parties do not dispute it, the Court will assume *arguendo* that the amount deposited with the Clerk of Courts upon requesting an appearance before a judge to contest a traffic citation can properly be characterized as “bail.” While it is arguably distinguishable from ordinary bail in some respects, it apparently functions as a security to ensure a party’s appearance in court, and thus is at least analogous to bail. This Court will therefore refer to it as bail in the broad sense of the word that the traffic citation and the parties apparently ascribe to it.

<sup>4</sup> The Code reviser has re-titled the section: “Court of Common Pleas; criminal jurisdiction.” This language does not appear in the Act. Section 14 of the Act [now 4 PNC § 207] had as the heading: “Minor criminal cases, hearings, certification.” In any event “[t]he classification of the titles, divisions, chapters, subchapters, and sections of this Code, and the headings herein, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction shall be drawn therefrom.”

In all criminal cases involving offenses against the laws of the several states or the Republic, including generally recognized local customs, where a maximum punishment which may be imposed does not exceed a fine of \$2,000.00 or imprisonment for five years, or both, the Chief Justice may assign such cases for hearing by a judge of the Court of Common Pleas. Upon hearing, the Chief Justice shall certify the decision of the Common Pleas judge. Appeal may be had in the Appellate Division of the Supreme Court.

4 PNC § 207.

Therefore, Section 207 is not a grant of jurisdiction, but merely permits the Chief Justice the discretion to assign a certain class of cases to be heard by the Court of Common Pleas. In those cases, Senior Judge Mokoll acts in the manner of a magistrate or master. That is why the statute requires the Chief 1349 Justice to “certify the decision” of the Court of Common Pleas.

In summary, the Court of Common Pleas was not in error when it did not dismiss the charge for want of jurisdiction, but rather transferred it to the Supreme Court for the reasons stated.

Since Defendant’s position is that the charges against him in this case must be heard in the Trial Division of this Court, and Judge Mokoll’s transfer to this court in effect granted him the right he was asserting, his other procedural and constitutional arguments regarding the Court of Common Pleas need not be reached.<sup>5</sup>

### **B. Sufficiency of the Traffic Citation as an Accusatory Instrument**

Defendant argues that the charges against him must be dismissed because the traffic citation is not a competent accusatory instrument upon which the government may prosecute charges against him in this Court. A traffic citation is defined as “a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the citation.” 18 PNC § 101(c). Based on this definition, Defendant argues that because he appeared in the Court of Common Pleas, “the function of the traffic citation . . . was fulfilled, and the traffic citation lost its legal effectiveness.” However, as is apparent from this definition, a citation not only commands the defendant’s appearance, but also contains a description of the charges against him. It therefore serves a role analogous to that of a criminal information by placing the defendant on notice of the charges. Thus, contrary to Defendant’s assertions, a citation’s purpose and “legal effectiveness” do not dissipate once the defendant appears to answer the charge.

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1 PNC § 205.

<sup>5</sup> Chief Justice has no constitutional authority to assign criminal cases to the Court of Common Pleas; no proof that Chief Justice ever assigned the case to the Court of Common Pleas; statutory authority to assign cases constitutionally overbroad; failure to show “good cause” as required by ROP R. Crim. Pro. 5.1(b) to transfer case.

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Defendant also asserts that cases tried before the Supreme Court must proceed based upon an information rather than a citation. To the contrary, however, Rule 7(a) of the ROP Rules of Criminal Procedure provides that “[a]ll offenses except those provided for in Rule 5.1(a) shall be prosecuted by information.” This case is clearly an offense provided for in Rule 5.1, and thus it need not be prosecuted by information.<sup>6</sup> Finally, Defendant argues that the citation does not conform to the signature requirements set forth in Rule 7(c)(1) of the Rules of Criminal Procedure. However, these requirements pertain only to the proper form of an information, and in this case which falls within the scope of Rule 5.1, the ROP was not required to proceed by information. Thus, the citation, which provides Defendant “fair and reasonably particular notice” of the charge against him, *see ROP v. Gotina*, 8 ROP Intrm. 56, 62 (1999), is a sufficient accusatory instrument upon which a prosecution may proceed in this Court.

### **Conclusion**

For the foregoing reasons, Defendant’s Motion to Exonerate Bail is hereby granted.  
1350 Defendant’s Motion to Dismiss is hereby denied.

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<sup>6</sup> It is immaterial that, as Defendant points out, Rule 7 does not explicitly specify that a traffic citation may substitute for an information. It clearly exempts offenses covered by Rule 5.1 from the requirement of an information, foreclosing Defendant’s argument that an information is necessary.