

*Chieh-Chun Tsai v. ROP*, 9 ROP 142 (2002)  
**CHIEH-CHUN TSAI, a/k/a KENNY TSAI, and SHIRLEY TULOP,**  
**Appellants,**

v.

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

CRIMINAL APPEAL NO. 01-04  
Criminal Case Nos. 01-40 and 01-70

Supreme Court, Appellate Division  
Republic of Palau

Argued: June 12, 2002  
Decided: July 3, 2002

[1] **Appeal and Error:** Standard of Review

A lower court's conclusions of law are reviewed *de novo*.

[2] **Criminal Law:** Sufficiency of the Evidence

Review of the sufficiency of evidence supporting a conviction is limited to the question whether after viewing 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.

[3] **Appeal and Error:** Clear Error

Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

[4] **Appeal and Error:** Preserving Issues

Issues not raised below are waived on appeal.

[5] **Criminal Law:** Prostitution

The language of 17 PNC § 3603 leaves no doubt as to the elements of the offense of prostitution, nor to the fact that it has been made a crime.

[6] **Criminal Law:** Obstruction of Justice

A trier of fact could reasonably have concluded that a defendant obstructed justice by attempting to prevent witnesses' attendance at trial when, on very short notice, he took a group of employees

to the airport and attempted to get them on a departing flight.

[7] **Criminal Law:** Deportation

Deportation is a civil action, not a criminal one.

[8] **Criminal Law:** Obstruction of Justice

Palau's obstruction of justice statute is drafted in such a way as to criminalize only a limited range of obstructive conduct and does not include coercing a witness to sign a false affidavit.

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Steven Carrara

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

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Chieh-Chun Tsai ("Tsai") was tried and convicted of the offenses of attempted profiting from prostitution and obstruction of justice, and during the same trial Shirley Tulop ("Tulop") was convicted of the offense of obstruction of justice. In this appeal, Tsai attacks his convictions on several grounds, none of which are convincing. He also asserts that the trial court erred in ordering deportation as part of his sentence. We agree that deportation cannot be ordered as part of a sentence for these offenses. However, as we do not construe Tsai's sentence as including an order of deportation, we affirm both his convictions and sentence. Tulop's appeal concerns whether the evidence supports her conviction under Palau's obstruction of justice statute. We hold that the statute does not criminalize the acts the trial court found her to have committed, and therefore reverse that conviction.

## BACKGROUND

These consolidated cases stem from an investigation into labor and employment practices at an establishment called Hot Chili Karaoke in Malakal, which resulted in the filing of a variety of criminal charges. In Criminal Case No. 01-40 Tsai was accused of attempted profiting from prostitution, profiting from prostitution, and cheating. He was also a defendant in Criminal Case No. 01-70, which alleged his involvement in additional counts of cheating, attempted profiting from prostitution, as well as obstruction of justice. Tulop was charged in Criminal Case No. 01-40 with obstruction of justice.<sup>1</sup> The gravamen of the charges against Tsai was that he used his

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<sup>1</sup>Donna Wong-Etibek, was also a defendant in Criminal Case No. 01-40, and another consolidated case,

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position as manager of Hot Chili to cheat various Filipina employees out of their wages, and also sought to induce those employees to prostitute themselves, with the understanding that the proceeds were to be split with him. Furthermore, the government alleged that Tsai had sought to obstruct justice by attempting to get various witnesses against him (the Hot Chili employees who were the victims) home to the Philippines before trial, thus making them unavailable to testify for the government.

The prosecution's theory against Tulop was that she obstructed justice by inducing a Hot Chili employee to swear out a false affidavit. The trial court acquitted Tsai of all but one count of attempted profiting from prostitution and one count of obstruction of justice. Tulop was convicted of the obstruction charge. This appeal followed.

### STANDARD OF REVIEW

[1-3] A lower court's conclusions of law are reviewed *de novo*. See *Roman Tmetuchl Family Trust v. Whippis*, 8 ROP Intrm. 317, 318 (2001). By contrast, review of the sufficiency of the evidence supporting a conviction is limited to "the question whether, after viewing 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." *Ngiraked v. ROP*, 5 ROP Intrm. 159, 173 (1996). "Where there are two permissible views of the evidence, the factfinder's choice 144 between them cannot be clearly erroneous." *ROP v. Chisato*, 2 ROP Intrm. 227, 239 (1991) (internal quotations and citations omitted).

### ANALYSIS

#### I. Defendant Tsai

Tsai appeals both his convictions and sentence. First, he suggests that 17 PNC § 3601, the Anti-Prostitution Act ["the Act"], fails effectively to criminalize either prostitution or profiting from prostitution, and that the Act is too vague to be enforceable.

[4, 5] We initially note that because Tsai failed to raise these issues below, they can be considered waived. See *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994). Nothing of substance was lost by this waiver. Title 17, Section 3603(a) of the Palau National Code provides: "[a]ny person who commits the offense of prostitution shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000." Prostitution is defined as "knowingly engaging in, agreeing to engage in or offering to engage in sexual contact or sexual penetration in return for a pecuniary benefit or in exchange for any property or thing of value." 17 PNC § 3603(d). Tsai argues that the Act contains no prohibitory language. He suggests that there must be sections in the statute that specifically state: "no person shall engage in prostitution," and "no person shall profit from prostitution." We disagree. The language of

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Criminal Case No. 01-35. She was convicted of assault and battery as charged in the Information in Criminal Case No. 01-35 and with prostitution, as charged in Count I of the Information in Criminal Case No. 01-40. She filed an appeal but subsequently stipulated to its dismissal. She is not a party to this appeal.

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section 3603(a) leaves no doubt as to the elements of the offense of prostitution, nor to the fact that it has been made a crime.

With respect to the subsection of the Act which Tsai was charged with violating, the legislature provided that “[e]very person who advances or profits from prostitution . . . shall be guilty of a misdemeanor . . .” 17 PNC § 3603(c). As both the term “prostitution” and the term “profits from prostitution” are statutorily-defined, *see* 17 PNC §§ 3602(c) and (d), and Tsai does not suggest any deficiencies in the definition, the statute is not vague, and unequivocally criminalizes the conduct described.

Tsai also challenges the sufficiency of the evidence supporting his convictions. Several witnesses testified to the existence of a policy in which any proceeds from prostitution at Hot Chili Karaoke were to be split between Tsai and the prostitute involved, that Appellant Tsai importuned his employees to “go out with” Hot Chili Karaoke customers in a manner that clearly was intended to be sexual, and that on at least a few occasions actual prostitution occurred. On the basis of this record, a reasonable trier of fact could have found the essential elements of the offense of attempted profiting from prostitution had been proven beyond a reasonable doubt. Reversal on this ground is therefore unwarranted.

[6] Similarly, viewing the evidence in the light most favorable to the prosecution, Tsai’s obstruction of justice conviction must be affirmed as well. The crime of obstruction of justice includes “attempt[s] to prevent [witnesses’] attendance at trials . . .” 17 PNC § 2501. In this case, the government introduced testimony from various witnesses that Tsai, on very short notice and after having refused several prior requests, took a group of his employees to the airport and attempted to get them on a departing flight to the Philippines. The women were intercepted by law enforcement before they could depart. Tsai offered evidence to suggest that there were legitimate reasons for each woman to leave. Nonetheless, it was certainly **L145** reasonable for a trier of fact to conclude that Tsai’s motivations were transparent; he was attempting to remove potential adverse witnesses from the reach of the court. Such conduct clearly falls within the purview of the statute.

Finally, Tsai suggests that the trial court included a deportation order in his sentence, and deportation is not “statutorily authorized.” We construe this argument as a request to correct an illegal sentence pursuant to ROP R. Crim. Pro. 35(a).

[7] If the trial court included a deportation order as part of the sentence, that would be error, because deportation is not an authorized sentence. Section 3603(f) provides that a non-citizen convicted of a violation of the Anti-Prostitution Act shall be deported after “the completion of any sentence imposed by the section.” As deportation is to occur *after completion* of a sentence, it obviously is not *part* of a sentence. The distinction between sentencing and deportation proceedings found in section 3603 is consistent with the usual understanding that deportation is a civil action, not a criminal one. *See, e.g., United States v. Benitez-Villafuerte*, 186 F.3d 651, 657 (5th Cir. 1999) (collecting cases).

In the sentencing order in this case, the trial court assessed authorized fines but then

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added: “In accordance with the provisions of 17 PNC § 3603(f), Defendant’s entry permit shall be revoked and the Ministry of Justice shall initiate deportation proceedings pursuant to its rules and regulations upon completion of the sentence.” We do not construe this language as ordering Tsai’s deportation. Rather, it merely summarizes the steps that the Ministry of Justice may be statutorily required to take “upon completion of the sentence.” As such, this language is surplusage and not part of the actual sentence. Because we do not construe these last comments as an order of deportation, the sentence is not illegal, and we therefore affirm.

## **II. Tulop’s Conviction**

[8] Tulop frames her argument as a claim that there was insufficient evidence to support her obstruction of justice conviction. Upon closer examination, however, her claim essentially amounts to an argument that Palau’s obstruction of justice statute does not cover Tulop’s alleged conduct. We agree because the statute is drafted in such a way as to criminalize only a limited range of obstructive conduct. Aside from prohibiting unlawfully resisting or interfering with a law enforcement officer, the statute proscribes only “tampering with witnesses *by payment . . .* or attempt[ing] to prevent [their] attendance at trials . . . .” 17 PNC § 2501 (emphasis added). In this case, the evidence proved that Tulop coerced a witness to sign a false affidavit. Although this conduct is obviously worthy of punishment, it does not fit within any of the categories established by § 2501, and thus Tulop cannot be properly convicted of violating that statute. The judgment against her must therefore be reversed.

## **CONCLUSION**

For the foregoing reasons, Tsai’s convictions and sentence are affirmed. The conviction of Tulop is reversed, and hereby remanded to the Trial Division for entry of judgment of acquittal.