

Mechol v. ROP, 9 ROP 17 (2001)
BECKWIN MECHOL,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 00-01
Criminal Case No. 99-216

Supreme Court, Appellate Division
Republic of Palau

Argued: September 7, 2001
Decided: October 8, 2001

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

The Appellate Division reviews findings of facts using the clearly erroneous standard.

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

If the trial court's account of the evidence is plausible in light of the record reviewed in its entirety, the appellate court may not reverse it.

[3] **Appeal and Error:** Clear Error; Standard of Review

The Appellate Division generally defers to the lower court's findings regarding the credibility of witnesses.

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

The Appellate Division reviews questions of law *de novo*.

[5] **Criminal Law:** Forgery

Unauthorized issuance of fishing permits by falsely signing the name of the Director of the Palau Maritime Agency constitutes forgery.

[6] **Constitutional Law:** Double Jeopardy; **Criminal Law:** Double Jeopardy

The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and multiple punishments for the same offense at a single trial.

[7] **Constitutional Law:** Double Jeopardy; **Criminal Law:** Double Jeopardy

If two convictions are based on different acts, then the Double Jeopardy Clause is not violated.

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Everett Walton

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

MILLER, Justice:

Appellant Beckwin Mechol was convicted of 52 counts of Forgery in violation of 17 PNC § 1501, one count of Embezzlement in violation of 17 PNC § 1904, and four counts of Misconduct in Public Office in violation of 17 PNC § 2301. Appellant was a licensing officer of the Palau Maritime Authority, which later became Palau Maritime Agency (“PMA”), part of the Ministry of Resources and Development. Most of the forgery counts for which Appellant was convicted charged that Appellant forged or copied the signature of his superior Demei Otobed, the Director of L18 PMA, on fishing permits without his authorization. Appellant was also convicted of forgery for altering photocopies of checks from Kuniyoshi Fishing Company (“KFC”) and fabricating letters, on Bureau of Natural Resources and Development letterhead, to the Director of the National Treasury, which purported to transmit the KFC checks. The Embezzlement count arose from Appellant’s taking one of the checks KFC gave him in return for the fishing permits, and never depositing it into the National Treasury. The Misconduct in Public Office charges correlated to each of the underlying crimes for which he was convicted.

Appellant makes three lines of argument on appeal: (1) the trial court’s fact-finding that Appellant committed forgery was clearly erroneous; (2) even if all the facts alleged by the Republic of Palau were true at trial, Appellant’s actions did not constitute forgery under the law; and (3) the trial court violated the Double Jeopardy Clause when it found that Appellant was guilty of forgery with respect to Counts 42, 49, 50 and 52-56. Appellant also argues that to the extent these underlying convictions are unfounded, his convictions for Misconduct in Public Office must also be reversed.¹

[1] Appellant’s first set of arguments is that the fact-finding by the trial judge is clearly erroneous. He argues that there was not enough evidence to show that Appellant falsely signed Demei’s signature and then later photocopied and attached Demei’s signature to the permits. Because this argument is contesting the trial court’s findings of fact, this Court reviews using the clearly erroneous standard. *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994).

[2, 3] Appellant’s argument focuses on Demei’s testimony, but Demei was not the only government witness. Silas Orrukem, PMA manager, and Arzenia Rechirei, another PMA

¹Although one of the headings of Appellant’s brief mentions Embezzlement, we can find no argument as to that count.

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employee, also offered testimony supporting the forgery charges.² “If the trial court’s account of the evidence is plausible in light of the record reviewed in its entirety, the appellate court may not reverse it.” *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 196 (1994). Moreover, the trial judge specifically found that the government witnesses were more credible than Appellant. When reviewing findings for clear error, the appellate court usually defers to the lower court’s findings regarding the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). Having considered the record as a whole, we do not find any basis to overturn the trial court’s findings of fact in this case.

[4] Appellant’s next argument is that the trial court erred in finding that Appellant committed forgery because the crime of forgery requires that Appellant committed an unlawful act, and nothing Appellant did was unlawful. This is a question of law, therefore the Court will review it *de novo*. *ROP v. Singeo*, 1 ROP Intrm. 551 (1989).

The crime of forgery is defined in 17 PNC § 1501: “Every person who shall unlawfully and falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent to thereby **19** defraud, shall be guilty of forgery” As to the bulk of the forgery counts, Appellant contends that even if Appellant did sign Demei’s name, this act may have been false, but was not unlawful. He argues that the actual preparation of fishing permits by Appellant was not unlawful since that was his job at PMA.

[5] Appellant’s argument fails because he does not recognize that only the Director or his designee was authorized to issue a permit. 27 PNC § 168(e) states that “upon notification by the foreign party of acceptance of the terms, conditions, and restrictions on the application and permit, the *Director or his designee* shall issue the permit.” (Emphasis added.) Appellant was not the Director, nor a designee of the Director. Therefore his act of signing the permits with Demei’s name was unlawful.

Appellant also contends that it was not unlawful to alter the dates on the checks or to sign his own name to the transmittal letters. These arguments also fail. First of all, it was not lawful for Appellant to alter government records in an apparent attempt to cover up prior acts. Second, the fact that Mechol may have signed his own name was irrelevant given that the documents themselves were found to be falsely created.

[6, 7] Appellant argues finally that the trial court erred by finding Appellant guilty of Counts 42, 49, 50 and 52-56, because he was found guilty of other counts involving the same permit numbers. He claims this is a violation of the Double Jeopardy Clause contained in Article IV, Section 6 of the Palau Constitution. “It has been recognized that the United States Constitution’s Double Jeopardy Clause, which is similar to Palau’s, protects against (i) a second prosecution for the same offense after acquittal or conviction; and (ii) multiple punishments for the same offense at a single trial.” *Kazuo v. ROP*, 3 ROP Intrm. 343, 346 (1993). If the two convictions are based on different acts then the Double Jeopardy Clause is not violated. Here, the trial judge

²Appellant makes a specific argument regarding Count 32 of the Information. Appellant claims Demei was never asked if he signed the permit. However, both Silas and Arzenia did testify about this specific permit.

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found that Appellant was guilty first of signing Demei's name unlawfully on the permits and later of photocopying his signature onto the same permits in an attempt to conceal his prior actions. These are two different acts, and therefore conviction for both does not violate the Double Jeopardy Clause.

For the foregoing reasons, we affirm the trial court's Judgment finding Appellant guilty of the above listed charges.