

Armaluuk v. ROP, 9 ROP 55 (2002)
FRANCISCO ARMALUUK,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 00-04
Criminal Case No. 00-203

Supreme Court, Appellate Division
Republic of Palau

Decided: January 28, 2002¹

[1] **Criminal Law:** Defenses

In a criminal case, the defendant's guilt or innocence does not turn on the negligence of another.

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

When assessing the sufficiency of the evidence supporting a criminal conviction, an appellate court determines whether, viewing the evidence in a light most favorable to the prosecution and giving deference to the trial judge's opportunity to hear 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.

[3] **Criminal Law:** Restitution

156

Criminal defendants are barred from raising the affirmative defense of contributory negligence in restitution proceedings, because restitution is a remedy of the State that is meant to rehabilitate a defendant and requires those convicted of crimes to take responsibility for the consequences of their actions.

Counsel for Appellant: Pro se

Counsel for Appellee: Yosiharu Ueda, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

MICHELSEN, Justice:

¹The Court, pursuant to Rule 34(a), has ordered that the case be submitted on the briefs without oral argument because oral argument would not materially assist the resolution of this appeal.

Armaluuk v. ROP, 9 ROP 55 (2002)

Francisco Armaluuk was convicted of negligent driving in violation of 42 PNC § 512. He was sentenced to pay a \$50.00 fine and ordered to pay restitution to repair the damage to the vehicle Mr. Armaluuk hit with his car. Mr. Armaluuk appeals, contending that the victim's alleged contributory negligence negates his guilt and also bars payment of restitution as part of the sentence. We affirm because contributory negligence is not a defense to a criminal charge nor is it a factor to consider during sentencing in those cases where restitution is authorized.

The evidence introduced at trial shows that while entering an intersection where a police officer was directing traffic, Mr. Armaluuk drove his vehicle into the wrong traffic lane and collided with the right rear fender and bumper of Melinda Ramarui's car. The police officer who witnessed the incident cited Mr. Armaluuk for negligent driving. After a trial at which Mr. Armaluuk represented himself, the Court of Common Pleas found Mr. Armaluuk guilty of the offense and sentenced him to pay restitution of \$250.00 to compensate Ms. Ramarui for the cost of repairing her vehicle. Mr. Armaluuk filed this timely appeal.

[1, 2] Mr. Armaluuk on appeal makes two related arguments. First, he challenges his conviction, arguing that there was insufficient evidence to convict because he introduced evidence of Ms. Ramarui's contributory negligence during the accident. In a criminal case, however, the defendant's guilt or innocence does not turn on the negligence of another. *See Joseph v. Trust Territory*, 4 TTR 412, 413 (Tr. Div. 1969); *Buikespis v. Trust Territory*, 5 TTR 135, 136 (Tr. Div. 1968). Rather, when assessing the sufficiency of the evidence supporting a criminal conviction, this court determines "whether, viewing the evidence in the light most favorable to the prosecution and giving 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." *Ngirarorou v. ROP*, 8 ROP Intrm. 136, 139 (2000) (internal citations omitted). The prosecution in this case introduced testimony from Ms. Ramarui and from the traffic officer. This testimony supported the prosecution's theory that Mr. Armaluuk did not follow the traffic officer's directions and entered the wrong lane at the intersection, thereby hitting Ms. Ramarui's car. Based on this evidence, we believe that a reasonable trier of fact could have found that Mr. Armaluuk negligently drove his vehicle and caused the accident.

[3] Mr. Armaluuk additionally argues that the trial court should not have sentenced him to pay restitution because of the evidence of Ms. Ramarui's alleged contributory negligence. Mr. Armaluuk cites no authority for this proposition. We note that at least two [L57](#) jurisdictions in the United States have considered, and rejected, similar arguments. *See Grey v. Allstate Ins. Co.*, 762 A.2d 891, 904 (Md. 2001); *State v. Knoll*, 614 N.W.2d 20, 24 (Wis. Ct. App. 2000). Indeed, Wisconsin courts have held that, although defenses pertaining to the *amount* of restitution to be awarded should be considered, "other civil defenses available in a civil action, such as contributory negligence . . . simply do not make sense in a restitution hearing." *Knoll*, 614 N.W.2d at 24 (quoting *State v. Sweat*, 561 N.W.2d 695, 701 (Wis. 1997)). The basis for this rule lies in the nature of restitution which, the Wisconsin Court of Appeals has explained, is a "remedy of the State," meant to "rehabilitate a defendant," and "requiring those convicted of crimes to take responsibility for the consequences of their actions." *Id.* If we were to accept

Armaluuk v. ROP, 9 ROP 55 (2002)

Mr. Armaluuk's contention that the victim's alleged contributory negligence should be considered, these purposes behind restitution would be thwarted. *See id.* at 24-25. Therefore, we now adopt the Wisconsin rule barring a criminal defendant from raising the affirmative defense of contributory negligence in restitution proceedings and conclude that the trial court was not required to examine Mr. Armaluuk's proffer of contributory negligence when deciding to award restitution to Ms. Ramarui.

Accordingly, the judgment of the trial court is affirmed.