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SUPREME COURT
REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ALFONSO DIAZ, Appellant, v. REPUBLIC OF PALAU Appellee.	CRIMINAL APPEAL NO. 13-001 (Criminal Action No. 12-010) **OPINION**

Decided: June 24, 2014

Counsel for Mr. Diaz: Siegfried B. Nakamura
Counsel for the ROP: AAG Delaine D. Prescott-Tate

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

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

PER CURIAM:

Appellant Defendant Alfonso Diaz (Diaz) appeals his four count conviction for Failure to Produce Records of Broadcast, in violation of 15 PNC § 131(b). For the reasons stated below, we affirm the trial court's conviction.

BACKGROUND

Diaz owns Diaz Broadcasting Company, which broadcasts music, news, and commentary on radio station WWFM. Diaz received his license to broadcast from the

Division of Communication (DOC). Palau requires broadcast licensees to create and maintain a complete broadcast record. *See* 15 PNC § 131.[1] Specifically, § 131(b) divides broadcasts into two groups: live broadcasts and pre-recorded broadcasts. Live broadcasts—which the statute cumbersomely refers to as "not pre-recorded broadcasts," but which the parties agree is synonymous with "live"—must be recorded and maintained by licensees for a period of 15 days. In contrast, pre-recorded broadcasts do not have to be re-recorded when they are broadcast, but, like live broadcasts, they must be maintained for a period of 15 days in order to facilitate meaningful review. To that end, § 131 requires licensees to make their complete broadcast recordings available to the DOC for review upon request, and imposes criminal penalties for failing to comply.

On February 1, 2011, the DOC wrote to Diaz with such a request.[2] Specifically, it requested recordings for broadcasts for January 25, 2011, through January 28, 2011, from the hours of 7:00 a.m. to 10:00 a.m. The total sum of the requested hours was twelve. Diaz, however, only delivered approximately six hours of broadcast recordings. Believing that Diaz had failed to comply, the DOC sent a second and third request to Diaz for the full recordings, but he failed to produce them. The DOC referred the matter to the Attorney General's Office, which subsequently charged Diaz with four counts of Failure to Produce Records of Broadcast, in violation of 15 PNC § 131(b).

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[1] 15 PNC § 131 has since been amended by the OEK. We cite to the previous version, which was in effect during the time period at issue here.

[2] The DOC's request stemmed from a claim that Diaz's morning show, Ngerechelecheluu, allegedly contained slanderous comments about Roll'em Productions and one of Roll'em's on-air hosts.

At trial, Diaz admitted he was aware of this statute, that he had previously received many DOC requests, and that he has previously been convicted of violating this statute. As a defense during trial, Diaz argued that he is only obligated to record live broadcasts, that only part of the broadcast at issue was live, and that he had produced all live broadcasts pursuant to the statute. Diaz was found guilty and he timely appealed.

STANDARD OF REVIEW

The extent to which a broadcasting licensee is obligated to record and maintain broadcast recordings pursuant to 15 PNC § 131 is a question of law. We review a lower court's conclusions of law de novo. *See Wong v. Obichang*, 16 ROP 209, 211-12 (2009); *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

On appeal, Diaz argues that § 131(b) is ambiguous, or alternatively, unconstitutionally vague. We disagree and will address each argument in turn.

I. § 131(b) is not Ambiguous

Although Diaz acknowledges that §131 requires live broadcasts to be recorded in full, he argues that (1) the statute is ambiguous regarding the obligation to record or maintain pre-recorded broadcasts, and (2) that the term "pre-recorded" is ambiguous. "The first step in statutory interpretation is to look at the plain language of a statute. . . . [I]f statutory language is clear and unambiguous, the courts should not look beyond the plain language of the statute and should enforce the statute as written." *Lin v. ROP*, 13 ROP 55,

58 (2006) (internal citations and quotations omitted). Statutory terms are to be "interpreted according to the common and approved usage of the English language." 1 PNC § 202. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *Noah v. ROP*, 11 ROP 227, 233 (2004). 15 PNC § 131, entitled "maintenance of records of broadcast," states:

> (a) No person may operate an AM or FM radio station or television station in the Republic of Palau unless the person first obtains the appropriate license from the Division.
>
> (b) All AM or FM radio or television broadcasts the substance of which is not pre-recorded shall be recorded in full on audio or video tape, as the case may be, at the time of broadcast, and recordings of broadcasts shall be retained by the licensee and made available to the Division for inspection for not less than 15 days after the date of broadcast. The licensee shall maintain copies of pre-recorded broadcasts for inspection by the Division for not less than 15 days after the date of broadcast, unless otherwise authorized or required by the Division. The recordings must be clear and decipherable. No person may in any way edit or otherwise alter any recording. Any person who violates this subsection shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $500 and not more than $1,000. A person convicted of a second violation shall be fined not less than $1,000 and not more than $10,000, shall be imprisoned not more than six months, or both. A person convicted of a third or subsequent violation shall be fined not less than $10,000, shall be imprisoned for not more than one year, or both, and shall have his or her license suspended by the Division for a period of not less than six months or not more than one year.
>
> (c) Any person aggrieved by any AM or FM radio or television broadcast may request that the Division obtain a tape of the recording from the broadcast for that person's review. The Division shall liberally grant these requests when it appears that the request is made in good faith. If the Division grants the request, the aggrieved person shall have the right to bring an action in the Supreme Court to enforce this section.

> (d) Each licensee shall maintain a log book of all broadcasts. The log book shall record all subjects discussed, guests interviewed and programs broadcast on that radio station. Each day's entry shall be maintained for a period of at least two years after the entry is made. The log books shall be available for inspection by the Division.

Id.

As § 131's title suggests ("maintenance of records of broadcast"), the statute requires licensees to create and maintain a broadcast record. As discussed above, §131(b)'s plain language requires live broadcasts to be recorded and maintained, and pre-recorded broadcasts to be maintained, both for a period of 15 days. In addition, § 131(d) requires broadcast licensees to "maintain a log book of all broadcasts" that includes a "record [of] all subjects discussed, guests interviewed and programs broadcast on that radio station." Finally, any person "aggrieved by any AM or FM radio . . . broadcast" may request a recording through the DOC. 15 PNC § 131(c).

Diaz's reading of § 131—that he is only required to record and maintain live broadcasts, a reading which the trial court called "tortured,"—fails for three reasons. First, it requires us to accept that, while the parties agree that "not pre-recorded" is an unambiguous term that is synonymous with "live," the term "pre-recorded" is ambiguous. Second, it reduces §131(b) to repetitive and superfluous language. That is, if only live broadcasts are to be recorded in full and maintained for 15 days, then the statute need not continue as it does: "The licensee shall maintain copies of pre-recorded broadcasts for inspection by the Division for not less than 15 days after the date of broadcast, unless

otherwise authorized or required by the Division." *Id.*; *see also Ucherremasech v. Hiroichi*, 17 ROP 182, 190 (2010) (quoting 73 Am. Jur. 2d *Statutes* § 164) ("As a general rule, a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."). Third, Diaz's reading ignores §131's stated purpose: to maintain and make available a complete broadcast record.

We cannot ignore the statute as a whole. *Noah v. ROP*, 11 ROP at 233. If broadcast licensees were required only to maintain piecemeal broadcast recordings, there would be no possibility of meaningful review. While Diaz is correct that he is not required to re-record pre-recorded broadcasts, he must maintain copies of everything that he broadcasts for a period of 15 days after the air date.

II. §131 is not Unconstitutionally Vague

Diaz also contends that § 131 is unconstitutionally vague. A vague statute violates the Due Process Clause of Article IV, Section 6 of the Constitution, and violates a defendant's right to be informed of the nature of the accusation against him guaranteed in Article IV, Section 7.

> [A] legislature is presumed to intend to pass a valid act, and that a law should be construed to sustain its constitutionality whenever possible. Nonetheless, vagueness may make a criminal statute unconstitutional if it fails to adequately inform potential offenders of the proscribed conduct . . . . It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. However, this principle does not invalidate every statute that a reviewing court believes could have been drafted with greater precision. Many statutes will have some

> inherent vagueness . . . and even trained lawyers may find it necessary to consult legal dictionaries, treatises, and judicial opinions before they may say with any certainty what some statutes may compel or forbid.

Ngirengkoi v. ROP, 8 ROP Intrm. 41, 42 (1999) (internal citations and quotations omitted).

As discussed above, § 131 requires licensees to record and maintain live broadcasts as well as maintain pre-recorded broadcasts. The statute adequately informs Diaz of the proscribed conduct. As a corollary, the Information also adequately informs Diaz as it simply parrots the unambiguous statutory language ("Diaz . . . failed to make a full recording . . . broadcast available to the [DOC] for inspection . . . ."). To comply with the statute, Diaz only had to maintain, and produce 12 hours of live and/or pre-recorded broadcasts covering the hours requested. There is no vagueness here.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED.**

SO ORDERED, this 24th day of June, 2014.

ARTHUR NGIRAKLSONG
Chief Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice