

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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2023 DEC 14 P 2:46

JONNIE NGELUK,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2023 Palau 26
Criminal Appeal No. 23-002
Appeal from Criminal Case No. 22-029

Decided: December 14, 2023

Counsel for Appellant Vameline Singeo
Counsel for Appellee Laisani Tabuakuro, Assistant
Attorney General

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

Appeal from the Supreme Court, Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Appellant Jonnie Ngeluk (“Ngeluk”) was convicted of Theft of Government Property in the First Degree (17 PNC § 2615). Ngeluk appealed her conviction, arguing that the evidence was insufficient to establish the requisite *mens rea* and the Trial Division committed reversible error.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

¹ The parties did not request oral argument in this appeal. Thus, the appeal is submitted on the briefs. See ROP R. App. P. 34(a).

BACKGROUND

[¶ 3] From 2017 to August 22, 2022, Ngeluk was the liaison for Palau to the Pacific Island Chief of Police Organization (“PICP”), representing the Director of the Bureau of Public Safety (“BPS”). Ngeluk coordinated national law enforcement programs and sought PICP grants for Palau. In 2018, she applied for a grant from the Cyber Safety Pasifika (“CSP”) program under the PICP for a computer lab to train, investigate, and raise awareness on cybersecurity and cybercrime issues in Palau.

[¶ 4] On February 3, 2022, a consignment from the PICP containing a mobile computer lab and various promotional materials arrived in Palau. By that time, Ngeluk had been reassigned to work at the Victims of Crime Advocate under the Ministry of Justice (“MOJ”). Ngeluk received the shipment and brought the items to her work cubicle at the MOJ and her home in Airai without informing the Director of the BPS. The total value of the equipment and goods was \$15,550.00.

[¶ 5] On April 26, 2022, the Director terminated Ngeluk’s appointment as the PICP liaison and appointed Detective Lebuu Gibbons as her successor. The Director requested an inventory of the items she had received from the PICP since 2017 and to turn those items over to Gibbons by May 2, 2022. By the May deadline, Ngeluk neither provided an accounting nor turned over any items to Gibbons. Ngeluk was suspended by the BPS and MOJ, and a search warrant for the mobile lab equipment and promotional materials was obtained and executed at her house and MOJ work cubicle on June 30, 2022.

[¶ 6] The Republic of Palau (“ROP”) charged Ngeluk with Theft of Government Property in the First Degree, 17 PNC § 2615, relating to the above-mentioned PICP shipment. Following a bench trial, the Trial Division found Ngeluk guilty of the charge, sentencing her to four years of probation, 100 hours of community service, and return and restitution of all government property as determined by the Probation Office. Ngeluk submitted a timely Notice of Appeal.

STANDARD OF REVIEW

[¶ 7] The Court “review[s] the sufficiency of the evidence underlying a criminal conviction for clear error, asking whether the evidence presented was sufficient for a rational factfinder to conclude that the appellant was guilty beyond a reasonable doubt as to every element of the crime.” *Ada v. Republic of Palau*, 2023 Palau 6 ¶ 6 (quoting *Wasisang v. Republic of Palau*, 19 ROP 87, 90 (2012)). In doing so, we do not reweigh or draw inferences from the evidence, instead we view the evidence “in the light most favorable to the prosecution” and “give due deference to the trial court’s opportunity to hear the witnesses and observe their demeanor.” *Ada*, 2023 Palau at ¶ 6; *Rechirei v. Republic of Palau*, 2022 Palau 7 ¶ 6.

DISCUSSION

[¶ 8] Under the Penal Code, Theft of Government Property in the First Degree is defined as “intentionally or knowingly embezzl[ing], steal[ing], [or] . . . convey[ing] . . . any . . . thing of value of the national government . . . or of any ministry, bureau or agency thereof.” 17 PNC § 2615. A person acts intentionally when it is her conscious object to engage in such conduct, and knowingly when she is aware of the nature of her conduct. 17 PNC § 207(a)(1), (b)(1); see *Tulop v. Republic of Palau*, 2021 Palau 9 ¶ 33.

[¶ 9] Ngeluk argues that the ROP failed to present sufficient evidence to prove that she had the requisite *mens rea* to commit theft of government property in the first degree. Stated differently, Ngeluk asserts the ROP failed to prove beyond a reasonable doubt that she intentionally or knowingly retained the mobile lab equipment and promotional materials from the PICP, or converted the same for her personal use.² Because Ngeluk’s challenge is limited to the mental element of theft, we limit our discussion to that element.

² There is little dispute that sufficient evidence showed Ngeluk took and retained control over government property. The PICP shipment was addressed to the BPS for its cybersecurity operations and training. Ngeluk testified that she brought the items to her work cubicle at the MOJ and, later, her home bedroom “for safekeeping.” However, the MOJ building is located beside the BPS and Gibbons testified that the Cyber Crime Unit had no storage issues for the mobile lab equipment. Moreover, without authorization from the Director of the BPS, Ngeluk disbursed promotional materials from the shipment and used and altered a laptop from the mobile lab.

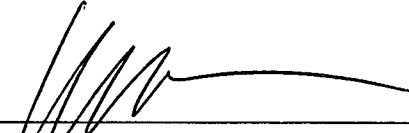
[¶ 10] Ngeluk claims that the trial court convicted her based on the mental state and knowledge of the Director of the BPS, and not whether she had the requisite intent to retain and convert the items to her personal use. She contends that there was “no element of deceit or an attempt to conceal or hide the items” as she was upfront about what she had received, conceded the items were in her possession, and was going to turn them over when she was available. This, however, relies on her version of the facts, which the trial court was not required to accept as true. In fact, the trial court did not find Ngeluk credible and rejected her explanation.

[¶ 11] Ngeluk’s intent to keep and exercise control over the mobile lab equipment and promotional materials can be inferred from the evidence that she repeatedly failed to be forthcoming about the items in her possession despite multiple requests by the Director. “[I]ntent is usually proved with circumstantial evidence.” *Rechirei*, 2022 Palau at ¶ 9 (citing *Republic of Palau v. Tascano*, 2 ROP Intrm. 179, 185 (1990)). As the PICP liaison, Ngeluk had a duty to keep an inventory of all items received. Yet, when requested by the Director, at least three times before her suspension, Ngeluk failed to provide an inventory of the mobile lab and promotional materials. Moreover, despite knowing that she no longer had authority to retain the items after receiving the Director’s memo dated April 26, 2022, which appointed Gibbons as the new PICP liaison, Ngeluk stated that she “ha[d] nothing in [her] possession to handover.” Consequently, the Director initiated an investigation, and a search warrant was obtained for her house and work cubicle at the MOJ. The lead investigator testified that part of the mobile lab, namely one laptop and projector, were found in Ngeluk’s bedroom and the promotional materials were seized from her work cubicle. Viewed in the light most favorable to the ROP, the evidence was more than sufficient to prove that Ngeluk kept the PICP items and intended to convert them to her personal use. Because there was no clear error in the trial court’s determination, we affirm.

CONCLUSION

[¶ 12] For the reasons set forth above, we **AFFIRM** Ngeluk’s conviction.

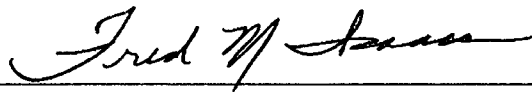
SO ORDERED, this 14th day of December 2023.



OLDIAIS NGIRAIKELAU
Chief Justice, presiding



JOHN K. RECHUCHER
Associate Justice



FRED M. ISAACS
Associate Justice