IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

AUGUSTINO BLAILES,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2020 Palau 9
Criminal Appeal No. 19-001
Appeal from Traffic/Criminal Citation No. 19-0335

Decided: April 13, 2020

Counsel for Appellant ..... Vameline Singeo
Counsel for Appellee ..... Abiemwense Oyegun, AAG

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Court of Common Pleas, the Honorable Lourdes F. Materne, Associate Justice, presiding (sitting by designation).

OPINION[1]

PER CURIAM:

[¶ 1] Augustino Blailes appeals the trial court's judgment finding him guilty of a car window tint violation pursuant to 42 PNC § 903(a)(2). We reject his claim that the statute is unconstitutionally vague, and **AFFIRM**.

[1] The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] The Palau National Code regulates tinting of windshields. The statute in question in this appeal reads:

> [N]o vehicle may be operated with tinted front windows except that any percentage light transmission tint may be applied along the top edge of the front window so long as it does not extend below six (6) inches from the top when measured from the middle point of the bottom edge of the top windshield molding[.]

42 PNC § 903(a)(2). In addition to the prohibition contained in subsection (a)(2), subsection (b) makes it unlawful to set any "vehicle . . . in motion where the front windows are obstructed by tinting or any other material," except as consistent with subsection (a). *Id.* § 903(b).

[¶ 3] On March 18, 2019, Officer Isaiah Dolmers issued Blailes a citation for violating 42 PNC § 903(a)(2). In the comments section of the citation form, Officer Dolmers wrote, "[f]ront windshield tinted from top to bottom full face." Blailes contested the citation and proceeded to trial. At trial, Officer Dolmers testified that Blailes' entire front windshield was tinted, except for a "gap" of "[n]ot even an inch" less than six inches from the bottom edge of the top windshield molding. Trial Tr. at 13-14, 16. In total, the tint on Blailes' windshield measured approximately "thirty to thirty[-]three inches." Trial Tr. at 3. Officer Dolmers further testified that he had been instructed by his senior officer that he could charge Blailes with either 903(a)(2) or 903(b).

[¶ 4] Although Blailes appears not to have seriously disputed the factual basis of his citation, he argued that Section 903(a)(2) is unconstitutionally vague. The trial court rejected this argument, denied Blailes' motion for a judgment of acquittal, convicted him of the offense charged in the citation, and imposed a fine of $150. This timely appeal followed.

STANDARD OF REVIEW

[¶ 5] We review the trial court's legal conclusions regarding the constitutionality of the tint law *de novo*. *See Sobahan v. ROP*, 2017 Palau 6 ¶ 4.

DISCUSSION

[¶ 6] Blailes contends that Section 903(a)(2) is unconstitutionally vague.[2] Because the tint law does not involve freedom of expression or association, we assess his challenge "in light of the facts of the case at hand"—that is, if the statute is not unconstitutionally vague as to Blailes' specific conduct in this case, we will affirm. *Sobahan*, 2017 Palau 6 ¶ 6 (quoting *Ngirengkoi v. ROP*, 8 ROP Intrm. 41, 43 (1999)).[3]

[¶ 7] Generally, the party challenging a statute bears the burden of demonstrating that is it unconstitutional, because the Legislature "is presumed to intend to pass a valid act, and [] a law should be construed to sustain its constitutionality whenever possible." *Ngirengkoi*, 8 ROP Intrm. at 42. A "vague" criminal 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." *Diaz v. ROP*, 21 ROP 62, 65 (2014). A statute is impermissibly vague if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010) (quoting *United States v. Williams*, 553 U.S. 285, 304 (2008)).[4] The vagueness "principle does not invalidate every statute that a reviewing court believes could have been drafted with greater precision" because "'[m]any statutes will have some inherent vagueness.'"

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[2] On appeal, Blailes does not press his contention that the meaning of "front windows" in Section 903(a)(2) is ambiguous.

[3] In his reply brief, Blailes cites at length to *Grayned v. City of Rockford*, 408 U.S. 104 (1972) and *Kolender v. Lawson*, 461 U.S. 352 (1983). However, those cases involve challenges to laws impinging on free expression—a consideration absent in this case.

[4] Our vagueness jurisprudence is consistent with United States law. *Ngirengkoi v. ROP*, 8 ROP Intrm. 41, 42 (1999).

Ngirengkoi, 8 ROP Intrm. at 42 (quoting *Rose v. Locke*, 423 U.S. 48, 49-50 (1975)).

[¶ 8] The question before us, then, is whether the tint law at issue provides a person of ordinary intelligence with notice that the charged conduct in this case is proscribed. As noted above, the statute Blailes was cited for violating prohibits tinting a windshield except insofar as "tint may be applied along the top edge of the front window so long as it does not extend below six (6) inches from the top when measured from the middle point of the bottom edge of the top windshield molding." 42 PNC § 903(a)(2). As established by Officer Dolmers' unchallenged testimony at trial, Blailes' windshield was entirely covered with tint except for a "really small" "gap" of "[n]ot even an inch" less than six inches below the top of the windshield. Trial Tr. at 13-14, 16. We readily conclude that Section 903(a)(2) provides a person of ordinary intelligence with fair notice that covering his front windshield with any tint beyond a six-inch-wide strip at the top is prohibited. Even assuming that the word "extend" introduces some small degree of ambiguity (by suggesting that a break in the continuous tinting less than six inches from the top of the windshield takes the tinting outside the statute), we conclude that this does not defeat the statute's "fair notice" as applied to the facts of this case. A person of ordinary intelligence could not reasonably derive such a hyper-technical, narrow view of the statute's reach given its stated purpose of regulating tinted windows that "greatly hinder[] drivers' views and pose[] a danger to the safety of the public."[5] 42 PNC § 901. As a matter of commonsense, it is not reasonable to conclude that, being concerned with drivers having an unobstructed view of

[5] To the extent the Government argues that a statute cannot be vague so long as the statutory *purpose* can be discerned, we reject that approach. For example, a statute that has an announced purpose of "improving road safety" and criminalizes "bad behavior while driving" is no less vague simply because the legislature wished to accomplish a laudable goal. Vagueness is measured not by a legislature's good intentions but by the sufficiency of notice the statute gives to a citizen of prescribed and proscribed conduct. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010); *Diaz v. ROP*, 21 ROP 62, 65 (2014). At the same time, statutory provisions must be read in the context of the entire statute rather than in isolation. *See United States v. Morton*, 467 U.S. 822, 828 (1984) ("We do not . . . construe statutory phrases in isolation; we read statutes as a whole."). Thus, Section 903(a)(2) must be read in conjunction with Section 901. When read in the context of the entire statute, the word "extend" is neither ambiguous nor vague.

the road, the Olbiil Era Kelulau enacted a statute that permits drivers to fully tint their windshields provided that a "really small" "gap" less than six inches below the top of the windshield is present. *See* Antonin Scalia, *A Matter of Interpretation* 23 ("A text . . . should be construed reasonably, to contain all that it fairly means.").

[¶ 9] We also reject Blailes' argument that Officer Dolmers' lack of certainty as to whether Blailes should be charged with violating subsection (a)(2) or (b) indicates that subsection (a)(2) is unconstitutionally vague. Blailes contends that "the statute is so vague that even the police officer citing [Blailes] was not sure about its applicability." Opening Br. at 8. But the argument is a *non sequitur*. The fact that Blailes could have been cited under either § 903(a)(2) or § 903(b) does not render subsection (a)(2) impermissibly vague. As we already explained, a statute is unconstitutionally vague only when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Humanitarian Law Project*, 561 U.S. at 18. The mere fact that there may exist overlapping statues and that certain prohibited conduct may fairly be chargeable under either of two separate statutory provisions does not *ipso facto* call the validity of either provision into question. Consider a situation where there are two sections of a statute, one of which prohibits exceeding a posted speed limit, *see, e.g.*, Va. Code § 46.2-862(i), and another that categorically prohibits driving in excess of 80 miles per hour, *see, e.g.*, *id.* § 46.2-862(ii). A person driving at 85 miles per hour in a 65 mile per hour zone could hypothetically be charged with violating either section. Thus, the mere fact that Officer Dolmers was unsure about the most appropriate charge does not mean that § 903(a)(2) failed to provide "fair notice" of the prohibited conduct.[6]

[¶ 10] Nor does the possibility that Blailes could have been charged under either § 903(a)(2) or (b) demonstrate that Section 903(a)(2) is so standardless as to risk discriminatory enforcement. *See Humanitarian Law Project*, 561

[6] Whether Blailes indeed violated Section 903(b) is not before us, and we therefore need not opine as to whether Blailes' conduct also made him guilty of violating that subsection. We have determined that Section 903(a)(2) provides fair notice in this case, and the contention that another provision may have also applied to Blailes' conduct does not undermine our conclusion.

U.S. at 18. Unlike tint statutes that only provide entirely subjective standards for assessing a violation,[7] Section 903(a)(2), by prohibiting *all* tinting beyond the top six inches of the windshield, demonstrably provides an objective standard for measuring compliance.

CONCLUSION

[¶ 11] The judgment of the Court of Common Pleas is **AFFIRMED**.[8]

[7] *See, e.g., United States v. Woods*, Criminal Action No. 2:05-CR-300-MHT, 2006 WL 2338167, at *3 (M.D. Ala. Aug. 10, 2006) (noting that Alabama courts invalidated as unconstitutionally vague a tint statute that prohibited "tinting to the extent or manufactured in such a way that occupants of the vehicle cannot be easily identified or recognized").

[8] We note that the trial court's judgment erroneously identifies a non-existent statutory provision as the basis of the conviction and also erroneously identifies the judgment as having been issued by the Trial Division rather than the Court of Common Pleas. However, we readily conclude that these clerical errors were harmless. In particular, the miscitation of the statutory provision was harmless given the citation to the proper provision in the charging documents and the trial court's clear statement at trial that it was basing its judgment on the correct statutory provision. *See, e.g., United States v. Diaz-Gomez*, 680 F.3d 477, 482 (5th Cir. 2012). Although we could remand for the trial court to correct its errors, *see* ROP R. Crim. P. 1; 36, we determine that such a remand would be an unnecessary use of the trial court's limited judicial resources. Pursuant to Appellate Rule 36, we therefore modify the judgment to reflect that the conviction is based on Section 903(a)(2) and that it was issued by the Court of Common Pleas. *See* ROP R. App. P. 36 ("The Appellate Division may modify any sentence, judgment or order, except that a sentence may not be increased unless a new trial has been granted.").