

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>ARNEL S. ADA, <i>Appellant,</i> v. REPUBLIC OF PALAU, <i>Appellee.</i></p>

Cite as: 2023 Palau 6
Criminal Appeal No. 22-002
Appeal from Criminal Case 21-128

Decided: February 7, 2023

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	Rebecca Sullivan, Assistant Attorney General

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

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice.

OPINION¹

PER CURIAM:

[¶ 1] The Trial Division convicted Appellant Arnel S. Ada for illegal fishing activities in Palau’s territorial waters. This appeal raises four challenges to his convictions and sentence, asserting that the Trial Division improperly shifted the burden of proof and failed to consider *mens rea*, and that his sentence violates the constitutional prohibitions on double jeopardy and excessive fines.

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).

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

BACKGROUND

[¶ 3] Ada is the captain of a fishing boat, the John Tomas #8, registered in the Philippines. The John Tomas #8 was arrested on November 11, 2021 within 13 nautical miles of Fanna Island. The John Tomas #8 was carrying on its deck several Fish Aggregating Devices (FADs), several of which were also found in the water.

[¶ 4] Palau's Exclusive Economic Zone (EEZ) is a maritime boundary defined in 27 PNC § 144, which extends 200 miles from a defined baseline following the contours of the islands and barrier reefs. Under international law, the Palau government has exclusive management, conservation, and regulatory authority over all living resources within the EEZ. Similarly, Palau's Domestic Fishing Zone (DFZ) is a maritime area within the EEZ where fishing is statutorily regulated, and its coordinates are defined by statute. *See* 27 PNC § 148. To prove Ada's geographic location at the time of his arrest, the Republic of Palau brought forward testimony from the lead technical member for the Palau Territorial Boundaries Task Force, who testified that the John Tomas #8 was located both within the EEZ and the DFZ.

[¶ 5] On February 25, 2022, the Trial Division convicted Ada of one count of hovering in the EEZ, prohibited by 7 PNC 203(c)(1), one count of fishing in the EEZ, prohibited by 7 PNC § 203(a), one count of fishing gear and equipment not stowed/readily available for use while passing through Palau's territorial waters as prohibited by 7 PNC § 202(c), and one count of using a fishing boat to fish in Palau's DFZ, as prohibited by 27 PNC § 181(l).² The Trial Division sentenced Ada to a \$1,000 fine and a term of one year

² We note that the February 25, 2022 Judgment and Sentencing Order incorrectly references 7 PNC § 202(c) for Count 4 – Using a Fishing Boat to Fish in Palau's DFZ. However, because the charging document correctly references 27 PNC § 181(l), and thus provides Ada with proper notice of the specific crime he was alleged to have committed, Ada was not prejudiced by this minor typographical error. *See* ROP R. Crim. P. 52(a) (“Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.”); *see also Xiao v. Republic of Palau*, 2020 Palau 4 ¶ 25 (finding that typographical errors in charging documents are not grounds for reversal if the error did not mislead the defendant to his or her prejudice).

incarceration for each of the convictions of counts 1, 2, and 3, and a \$500,000.00 fine for count 4.

STANDARD OF REVIEW

[¶ 6] We review the sufficiency of the evidence underlying a criminal conviction for clear error, asking whether “the evidence presented was sufficient for a rational fact-finder[] to conclude that the appellant was guilty beyond a reasonable doubt as to every element of the crime.” *Xiao v. Republic of Palau*, 2020 Palau 4 (quoting *Wasisang v. Republic of Palau*, 19 ROP 87, 90 (2012)). In doing so, we must 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. *Aichi v. ROP*, 14 ROP 68, 69 (2007). The Appellate Division should not reweigh the evidence. *Id.* It should only determine whether there was any reasonable evidence to support the judgment. *Id.* (quotation marks omitted). Even if this Court would have decided the case differently than the trier of fact, the conviction must be upheld. *Id.*

DISCUSSION

[¶ 7] Ada argues that the trial court erred when it (1) improperly shifted the burden of proof from the government to Ada, (2) failed to consider Ada’s *mens rea*, (3) violated the Double Jeopardy Clause by convicting Ada of several counts for the same offense, and (4) imposed an excessive fine.

I. Burden of Proof

[¶ 8] The record in this case confirms that the Trial Division did not improperly shift the burden of proof from the government to Ada. It is firmly established that “the government b[ears] the burden of proof as to each element of the charged offenses.” *See Polloi v. Republic of Palau*, 9 ROP 186, 191 (2002). The Trial Division stated during trial,

The Defendant, as the captain of the John Tomas 8, the defense, he did not personally fish, he did not know as a captain of a fishing vessel in the maritime and (indiscernible...) involving fishing

the captain has that burden that is why you are the captain. To say he relied on his master or the, someone else on the crew who advised him where he was, the court rejects that as a defense. Again, as the captain of the fishing vessel you are expected and on to a higher standard knowledge as opposed to any other civilian on the vessel in the waters whether it is Palau or Philippines or anywhere else.

[¶ 9] The Trial Division merely stated that a vessel captain has a responsibility to know the location of his ship while at sea, which does not reflect a shift of the legal burden of proof at trial. The government was required to put forward evidence as to the location of the ship to meet its burden of proof, and the Trial Division properly heard and accepted this evidence. In fact, the written judgment issued by the Trial Division specifically finds that “[t]he Republic has met it[s] burden of proof beyond a reasonable doubt.” Therefore, Ada’s contention that the Trial Division misallocated the burden of proof is without merit. *See Obakerbau v. Nat’l Weather Serv.*, 14 ROP 132, 135 (2007) (“It is appellant’s burden to demonstrate, based on the record on appeal, that an error occurred in the trial court.”).

II. *Mens Rea*

[¶ 10] We find that the Trial Division did not have to assess *mens rea* because it is not an element of the crimes Ada was charged with having committed. Although proof of intent, or *mens rea*, may be required in some crimes, the statutes under which Ada was convicted do not include an intentional element on their face. 7 PNC § 203(c)(1) prohibits the acts of hovering and fishing in the EEZ, 7 PNC § 202 requires fishing vessels to stow their fishing gear and equipment while passing through Palau’s territorial water, and 27 PNC § 181(l) prohibits fishing in the DFZ. There is nothing in the plain text of the statutes requiring proof that Ada knew he was in Palau’s territorial waters before committing the violation. Ada even admits in his Opening Brief that these are “strict liability” crimes. Although Ada argues that we should construe the statutes as requiring *mens rea*, we only do so where statutes incorporate offenses from the common law, which is not the case here.

See Takada v. Trial Div. of Sup. Ct., 3 ROP Intrm. 262, 263 (1993). Thus, Ada’s assertion that the Trial Division should have taken *mens rea* into account is without merit.

III. Double Jeopardy

[¶ 11] Next, Ada contends that he received multiple punishments for the same offense at trial. The Constitution states that “[n]o person shall be placed in double jeopardy for the same offense.” ROP Const. art. IV, § 6. The double jeopardy clause prohibits (1) a second prosecution for the same offense; and (2) multiple punishments for the same offense at a single trial. *Gideon v. ROP*, 20 ROP 153, 163 (2013). Because Ada only had a single trial, we must consider whether he was punished more than once for the same offense.

[¶ 12] “Offenses are the ‘same’ where the same act or transaction gives rise to a violation of two distinct statutory provisions, unless each statutory provision requires proof of a fact which the other does not.” *Gideon*, 20 ROP at 164 (stating that Palau adopted the test set forth in *Blockburger v. United States*, 284 U.S. 299 (1932)). Thus, a double jeopardy challenge to multiple convictions invokes two inquiries: (1) whether the crimes charged involved distinct elements of proof; and (2) whether, as charged, the crimes arose from a single act or transaction. *Id.*

[¶ 13] In this case, it is beyond dispute that all of the offenses occurred during the same act or transaction, on the day Ada was arrested on the John Tomas #8. Nonetheless, the statutes all require different elements of proofs. The first count, 7 PNC § 203(c)(1), requires hovering in Palau’s EEZ, which is a different act than fishing in the EEZ as required by the second count in 7 PNC § 203(a). The third count, 7 PNC § 202(c), has a clearly distinguishable element of proof, as it concerns fishing equipment and its availability. Finally, the fourth count, 27 PNC § 181(l) requires fishing in Palau’s DFZ. Ada argues that the fourth count is equivalent to the second because Palau’s DFZ is entirely located within its EEZ, and that as such, one cannot be fishing in the DFZ without fishing in the EEZ. Although this is true, a fishing vessel may very well be licensed to fish in Palau’s EEZ but not in its DFZ. As such, violating 27 PNC § 181(l) does not necessarily include a violation of 7 PNC § 203(a). As a result, we find that Ada’s convictions did not violate double jeopardy protection.

IV. Excessive Fines

[¶ 14] Finally, Ada asserts that the 500,000.00 dollars fine imposed by the Trial Division for fishing in Palau’s DFZ is excessive. The prohibition against excessive fines has long been part of the law of Palau, *see* ROP Const. Art. IV, Sec. 10, (“ . . . excessive fines are prohibited”); 1 TTC § 6 (“[e]xcessive bail shall not be required, nor excessive fines imposed”), and is derived from the comparable clause in the United States Constitution. *See* U.S. Const. amend. VIII (“[e]xcessive bail shall not be required, nor excessive fines imposed”). “[T]he touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.” *Gotina v. Republic of Palau*, 8 ROP Intrm. 65, 66 (1999). Two considerations are particularly relevant: first, courts should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes; second, any judicial determination regarding the gravity of a particular offense “will be inherently imprecise.” *Silmai v. Republic of Palau*, 10 ROP 139, 142 (2003). Nonetheless, while the legislature’s opinion regarding the appropriate range of punishments available for a particular offense is relevant to the constitutional excessiveness inquiry, we must still review the OEK’s statutes for compliance with the Constitution. *See Ellender Ngirameketii v. Republic of Palau*, 2022 Palau 9 ¶ 45.

[¶ 15] We first note that the fine imposed by the Trial Division is within the statutory limits; it is in fact the statutory minimum set for that type of offense. *See* 27 PNC § 182(c) (mandating fines between \$500,000 and \$1,000,000 for 27 PNC § 182(l)). Although this statutory range is substantial, the legislative findings included in the statute underline that the Legislature is very concerned about the effects of illegal fishing by foreign vessels.³ Because illegal fishing

³ *See* RPPL 6-36, § 1 (“The Olbiil Era Kelulau finds that the Republic of Palau must take bolder steps to protect and develop the Republic’s marine resources for the benefit of the people of Palau. The Republic receives a very small percentage of the value of the tuna and other fish harvested from our waters by foreign fishing vessels. At the same time, foreign fishing vessels are depleting the Republic’s national waters of fish and other marine life at an alarming rate Foreign fishing vessels also create additional environmental and aesthetic problems. These vessels discharge waste and other pollution into the Republic’s waters, damaging marine life and threatening public health and safety.”).

has significant deleterious effects on Palau's economy, resources, environment, and public health and safety, a substantial fine is appropriate.

[¶ 16] Ada argues that the fine is excessive because he was not actually engaged in illegal fishing, but only carried fishing equipment on board of the vessel, that no resources were taken from the Palau's EEZ and DFZ, and that he was outside of Palau's EEZ boundaries. These arguments effectively challenge the Trial Division's factual findings that Ada was located within the EEZ and that a fishing device was found in the water next to the John Tomas #8. Sufficient evidence was presented in the trial for a rational fact-finder to conclude that Ada was guilty beyond a reasonable doubt: the Trial Division heard testimony from the Palau Territorial Boundaries Task Force and found that testimony credible. *See Wasisang*, 19 ROP at 90. Therefore, we deem the fine constitutionally appropriate in light of the gravity of the offense.

CONCLUSION

[¶ 17] We **AFFIRM** the Trial Division's judgment.

SO ORDERED, this 7th day of February 2023.