An Guiling v. ROP, 11 ROP 132 (2004)

AN GUILING,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 03-001
Criminal Case No. 03-01

Supreme Court, Appellate Division
Republic of Palau

Argued: January 16, 2004
Decided: April 30, 2004
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Counsel for Appellant: Elysia Solomon

Counsel for Appellee: Yosiharu Ueda, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

MICHELSEN, Justice:

An Guiling (hereinafter "Mr. An") appeals his conviction for disturbing the peace in violation of 17 PNC § 1201. Trial was held in the Trial Division,[1] and the charging document was a citation on a form authorized by 18 PNC § 101. Mr. An argues that the citation was constitutionally defective because it failed to plead the essential elements of the crime and additionally suggests that the evidence was insufficient to support a conviction. We affirm, because in the context of this type of offense, the citation sufficiently charged the offense to pass constitutional muster and because the evidence supported the court's verdict.

BACKGROUND

We review the evidence in the light most favorable to the prevailing party, which ⊥134 in this case is the Government. *Ngirarorou v. ROP*, 8 ROP Intrm. 136, 139 (2000). On New Year's Eve 2002, Mr. Friend Taima was in his house when he heard a commotion. He stepped outside

[1]Although typically such charge would be tried in the first instance in the Court of Common Pleas, because the position of Senior Judge of the Court of Common Pleas was vacant at the time of trial, Associate Justice Salii presided. This circumstance does not affect our analysis.

and observed what appeared to be an argument between Mr. An and one Leonel Esquibel, both of whom are employees of Mr. Taima's father. Because Mr. An spoke in a Chinese dialect, Mr. Taima did not understand what was being said, although to him, Mr. An appeared to be in an agitated state. After an unsuccessful attempt to calm the situation, Mr. Taima was concerned enough to call the police. When the police arrived, Mr. An had not yet regained his aplomb and was still loud and argumentative. The police subsequently arrested Mr. An, issued him a criminal citation, and some time later released him from custody.

At trial, Mr. An was represented by the Public Defender's Office. He testified in his own defense that he and Mr. Esquibel were merely greeting one another with Mr. An's arm around Mr. Esquibel's neck, and that they were not fighting or arguing. Mr. Esquibel also testified that they were not fighting. Another witness, Yu Qiao Yu, stated that Mr. An and Mr. Esquibel merely had their arms around one another in a sign of friendship.

After a trial, the court found him guilty of disturbing the peace and imposed a $15 fine.

ANALYSIS

1. Constitutional adequacy of the citation

Mr. An now contends (although he did not make this argument below) that the citation upon which he was tried and convicted failed to plead the essential elements of the crime and thus violated his constitutional right to be informed of the nature and cause of the accusation against him.

The Government asserts that Mr. An waived the issue by failing to raise it before trial as required by ROP Rule of Criminal Procedure 12(b)(2).[2] However, the requirement that a charging instrument sufficiently allege all essential elements of the offense charged may not be waived or dispensed with, and a defect is ground for reversal even when raised for the first time on appeal. *Cf. Sungino v. ROP*, 6 ROP Intrm. 70 (1997) (distinguishing between an objection to an "essential elements" defect in the charging instrument which could not be waived and a "factual specificity" defect which could be waived); *accord United States v. Clark*, 412 F.2d 885 (5th Cir. 1969); *United States v. Tornabene*, 222 F.2d 875 (3d Cir. 1955); *State v. Jendrusch*, 567 P.2d 1242, 1244 (Haw. 1977). We therefore will review whether there was a deficiency in charging the essential elements of the offense and consider that any objection to factual specificity has been waived.

The requirements for a citation are set forth in 18 PNC § 101(c):

> "Citation" means a written order to appear before a court at a time and place named therein to answer a criminal charge briefly described in the ⊥135 citation.

[2]Although Rule 12 only refers to "informations" and makes no mention of the exception found in Rule 5.1 for the prosecution of certain offenses by citation, we believe that Rule 12 must be construed to apply to citations as well. ROP R. Crim. P. 2. Neither party has suggested Rule 12 does not, or should not, apply here.

> It shall contain a warning that failure to obey it will render the accused liable to have a complaint filed against him upon which a warrant of arrest may be issued. The statement of the charge or charges in a citation or a copy thereof may be accepted by the court in place of an information in any misdemeanor tried in the first instance in the Court of Common Pleas.

By definition, a citation only requires a brief description of the criminal charge that the suspect must answer, and its use is limited to those misdemeanor cases that are to be tried in the Court of Common Pleas. Because of these limitations, citations will only be issued in cases involving less serious traffic infractions, relatively minor acts of assaultive behavior, petit larceny, trespasses upon another's property, and the like. Allegations of disturbing the peace would also fall within this category. As such, the law assumes that citations will include less detail than the pleading of more serious offenses.

Nonetheless, an accused is constitutionally entitled to "be informed of the nature of the accusation" charged regardless of the form of the charging document. Palau Const. art. IV, § 7. The constitutional right of a defendant to know the nature and cause of the accusation means that the offense charged must be set forth with sufficient certainty so that the defendant will be able to intelligently prepare a defense. *Franz v. ROP*, 8 ROP Intrm. 52 (1999). It must also be sufficiently specific to provide protection against being tried a second time for the same offense, in order to effect the constitutional prohibition against double jeopardy. Palau Const. art. IV, § 6.

Because citations are only used in the case of simple misdemeanors and, in the usual case, are written by police officers soon after the offense is committed, a reference to the time and place of the offense and the provision violated is sufficient to put the defendant on notice of charges relating to a particular incident. This procedure minimizes the burden on the Attorney General's Office in drafting individualized charges and benefits the defendant because the time between the issuance of the citation, the first court appearance, and any subsequent trial will be shortened.[3] At the same time, the defendant remains free to challenge pursuant to ROP R. Crim. P. 12(b)(2) any particular defects in the citation, and alternatively may request a bill of particulars, if necessary in a specific case, to prepare a defense.

In this case the charging document was a printed form captioned: "Republic of Palau Criminal Citation." The Defendant is identified by name at the top of the form as a person who, on the first day of January 2003 at 1:30 a.m., at Sora Taima's residence did commit a violation of law: "Title 17 PNC 1201–Disturbing the Peace." In that citation, "the accused," Mr. An, was ordered to appear in Court to answer to the charge. Mr. An signed at the bottom of the form where the printed language noted that signing the form was not an admission of guilt.

The above facts, specifically stated on the face of the citation, gave notice to Mr. An that, whatever the particular factual details were, he was charged with acts constituting ⊥136 disturbing the peace at a specific time and place. Although the offense of "disturbing the peace" may cover a wide variety of acts, the expression is a well-known legal term with a specific meaning.[4] Legal terms that have a settled meaning are to be read with that meaning and in that

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[3]For instance, this January 1, 2003, incident was tried February 14, 2003.

[4]"Interruption of the peace, quiet, and good order of a neighborhood or community, particularly by

context. 1 PNC § 202; *see also In re Goddard*, 8 ROP Intrm. 267 (2001) (construing the meaning of the provision concerning admission of the practice of law "before the courts"); *Ngirengkoi v. ROP,* 8 ROP Intrm. 41, 42 (1999) (construing the expression "indecent and improper liberties"). Hence Mr. An, having been provided with the specific date and place of the offense and being informed of the offense charged, had enough information to both prepare his defense and be protected from a second trial arising out of the same offense. We therefore conclude as a matter of constitutional law the citation was sufficient to charge a petty offense.[5]

2. Sufficiency of the evidence

We next consider Mr. An's contention concerning the adequacy of proof to support his conviction. In reviewing the sufficiency of the evidence for a criminal conviction, this court must determine whether, taking the evidence in the light most favorable to the prosecution and giving due 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. *Liep v. ROP*, 5 ROP Intrm. 5, 9 (1994) (citing *Minor v. ROP*, 5 ROP Intrm. 1, 3 (1994)).

17 PNC § 1201 reads:

> Every person who shall unlawfully and wilfully commit any acts which annoy or disturb other persons so that they are deprived of their right to peace and quiet, or which provoke a breach of the peace, shall be guilty of disturbing the peace, and upon conviction thereof shall be imprisoned for a period of not more than six months, or fined not more than $50.00, or both.

Mr. An asserts that the government failed to prove the requisite state of mind of willfulness because defense witnesses testified that Mr. An and Mr. Esquibel were merely engaged in a friendly hug. Mr. An also argues that wilfulness was not proved because Mr. Taima did not understand what Mr. An was saying to Mr. Esquibel that evening, and therefore he only assumed the two were arguing. It is immaterial, however, whether the defendant was arguing or hugging in determining the requisite state of mind for disturbing the peace.

"Willfully" is a word of many meanings but in this context generally means "no more than that the person charged with the duty knows what he is doing," not that "he must suppose that he is breaking the law" *Am. Surety Co. of N.Y. v. Sullivan*, 7 F.2d 605, 606 ⊥137 (2d Cir. 1925) (L. Hand, J.). The Model Penal Code states: "A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears." American Law Institute, Model Penal Code § 2.02(8) (1985). Black's Law Dictionary has defined "willful" to mean

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unnecessary and distracting noises." *Black's Law Dictionary* 477 (6th ed. 1990).

[5]Other jurisdictions have reached the same result in the context of traffic citations. *Slinkard v. State*, 577 S.E.2d 825, 829 (Ga. 2003); *People v. Tammen*, 237 N.E.2d 517, 518 (Ill. 1968); *State v. Martin*, 387 A.2d 592 (Me. 1978); *City of Independence v. Beth* , 458 S.W.2d 874 (Mo. App. 1970); *Cleveland v. Austin*, 55 Ohio App. 2d 215, 219 (1978).

"voluntary and intentional, but not necessarily malicious." *Black's Law Dictionary* 1593 (7th ed. 1999).

Nothing in the record suggests that Mr. An did not know what he was doing with regard to his interactions with Mr. Esquibel. Here, it is undisputed that Mr. An engaged in behavior that concerned Mr. Taima and deprived him of his right to peace and quiet to the point that he believed it necessary to call the police. In viewing the evidence in the light most favorable to the prosecution, regardless of whether the defendant was loudly hugging or assertively arguing, a reasonable trier of fact could have determined that the act which disturbed Mr. Taima's peace was performed willfully. There is no requirement to prove that his purpose was to break the law. Accordingly, we find the evidence sufficient to support Mr. An's conviction.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Trial Division.