Wenty v. ROP, 8 ROP Intrm. 188 (2000)
BURTON WENTY,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 98-05
Criminal Action No. 287-97

Supreme Court, Appellate Division
Republic of Palau

Argued: March 8, 2000
Decided: May 9, 2000

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: James Dixon, Assistant Attorney General

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

NGIRAKLSONG, Chief Justice:

Defendant Burton Wenty was found guilty of trafficking in methamphetamine and possession of marijuana. We affirm the Trial Division's holding that 34 PNC § 3106(c)(2) does not require the government to prove that the quantity of methamphetamine had a potential for abuse associated with a stimulant effect on the central nervous system.

BACKGROUND

Wenty was charged with, *inter alia* , trafficking in methamphetamine. At trial, the government presented evidence that three plastic tubes found in Wenty's home contained methamphetamine. Wenty argued that the trafficking in methamphetamine count should be dismissed because an essential element of 34 PNC § 3106(c) was proof that the substance found contained a quantity of methamphetamine that has a potential for abuses associated with a stimulant effect on the central nervous system, and that the government failed to present any evidence of this element.

The trial court disagreed, finding that although the general language of subsection (c) in the statute required that the substance have a potential for abuse associated with a stimulant effect, subsection (2) of (c) qualified that requirement for methamphetamine, providing for "any quantity" to be a violation. The trial court found Wenty guilty, and he now appeals his

conviction.

DISCUSSION

Wenty was convicted of violating 34 PNC § 3301, which makes it "unlawful for any person knowingly or intentionally: (1) to manufacture, deliver or possess with intent to manufacture, deliver or dispense, a controlled substance . . . ." Controlled substances are listed by schedules, and methamphetamine is listed in Schedule II, found at 34 PNC § 3106. The pertinent part of that statute reads as follows:

> The controlled substances listed in this section are included in Schedule II:
>
> * * *
>
> (c) any material, compound, mixture, or preparation which ⊥189 contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
>
> (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
>
> (2) any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
>
> (3) any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
>
> (A) Phenmetrazine and its salts.
> (B) Methylphenidate.

34 PNC § 3106.

Appellant argues that the elements necessary for proof of a violation of 34 PNC §3106(c)(2) include the "potential for abuse associated with a stimulant effect on the central nervous system" phrase found in (c) but not in (2), and that the Trial Court erred in holding that such proof was not a requirement for a conviction.

We review the Trial Division's interpretation of a statute *de novo*. *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995). Statutes should be interpreted so that their manifest purposes or objectives can be accomplished. *ROP v. Ngiraboi*, 2 ROP Intrm. 257, 264 (1991). In statutory interpretation, the starting point is the language of the statute itself. *Lewis v. United States*, 100 S.Ct. 915, 918 (1980).

The analysis of this issue begins with a look at the plain language of the statute. The phrase Wenty is contesting modifies "substances," and serves to define "substances." The

legislature, in enacting this statute, determined that the substances listed in subsections (1) through (3) have the potential for abuse associated with a stimulant effect on the central nervous system. It is not a phrase that adds an element to be proved for each offense, but a clarification of the word preceding the phrase. If the contested phrase modified the words that begin subsection (c), "any material, compound, mixture, or preparation," then Wenty's argument might have merit.

Arizona's statute criminalizing the sale of methamphetamine contains the exact wording found in Palau's statute. A defendant there raised the same challenge, that the government had not offered any proof that the substance sold had "a potential for abuse associated with a stimulant effect on the central nervous system," and thus presented no evidence as to an essential element of the crime. *See State v. Light* , 852 P.2d 1246, 1247 (Ariz. Ct. App. 1993). The court there denied the appeal, holding that "[t]he state need not prove that methamphetamine has a potential for abuse associated with a stimulant effect on the central nervous system because the legislature has already made the determination that it does." [1] We agree with ⊥190 the Arizona court's reasoning, and likewise hold that this argument is without merit.

Appellant also argues that an ambiguity in a criminal statute should be resolved in favor of the defendants. Where there is no ambiguity and the legislative intent is clear from the language of the statute, there is no need to construe the statute as ambiguous. *See Ngiraboi*, 2 ROP Intrm. at 263. Because the intent of the legislature is evident from the plain language of the statute, there is no ambiguity.

We affirm the Trial Division's ruling.

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[1] *Accord, State v. Pecina*, 908 P.2d 52, 56 (Ariz. Ct. App. 1995) (same). *See also State v. Collinsworth*, 539 P.2d 263, 267 (Idaho 1975) (holding that a state statute reading that "any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system * * * (7) Phencyclidine," did not require the government to prove that phencyclidine had a potential for abuse associated with a depressant effect to the central nervous system because the legislature had already so determined); *United States v. White*, 560 F.2d 787, 790 (7th Cir. 1977) (holding that a federal statute reading that "any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system * * * (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers" did not require the government to prove the amphetamine that the defendant distributed had a stimulant effect on the central nervous system, as Congress had made that determination).