Ongidobel v. ROP, 9 ROP 63 (2002)
SWENNY ONGIDOBEL,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 01-01
Criminal Case No. 99-72

Supreme Court, Appellate Division
Republic of Palau

Decided: March 25, 2002[1]

[1] **Criminal Law:** Sufficiency of the Evidence

The standard for assessing the sufficiency of the evidence to support a conviction requires a determination whether, viewing the evidence in a light most favorable to the prosecution and given the trial judge's opportunity to hear the witnesses and observe their demeanor, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

[2] **Appeal and Error:** Clear Error; Standard of Review

The trial judge is the fact finder for all purposes, and his analysis should not be disturbed on appeal unless clearly erroneous.

[3] **Courts:** Judicial Bias
⊥64
Judicial remarks during the course of a trial that are critical, disapproving, or even hostile ordinarily do not support a bias or partiality challenge.

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Everett Walton

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice, presiding.

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[1]Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. Pro. 34(a).

Ongidobel v. ROP, 9 ROP 63 (2002)

MILLER, Justice:

Swenny Ongidobel appeals his convictions for forgery and for obstruction of justice for creating a false police report and causing Lieutenant Swenny Shiro of the Bureau of Public Safety to sign that report. Appellant was sentenced to a one-year suspended sentence and probation. Appellant now attempts to distinguish forgery from making a false statement and argues that he never "materially alter[ed] a writing," but rather submitted a report to the police that a police officer signed, an act that could not be construed as forgery. Appellant also contends that he could not have obstructed justice since any interaction between himself and the police officer did not constitute resistance to the "lawful pursuit of his duties," and did not occur in the context of a judicial proceeding. Last, Appellant contends he did not receive a fair trial due to judicial bias. For the reasons stated below, we affirm in part and vacate in part.

BACKGROUND

On October 17, 1997, Appellant's thirteen-year old daughter, Sylver, drove her family's car into a building. The medical reports showed that Sylver was intoxicated at the time of the accident, with a blood alcohol level of 0.182 percent.[2] On December 4, 1997, Police Officer Ricky Ngiraked prepared a narrative police report about the incident that was addressed "Whom It May Concern," printed on official letterhead and signed by Lt. Shiro. That report concludes that "[f]urther investigation showed that the driver was an unlicensed operator, traveling at excessive speed."[3] Thereafter, Appellant made insurance claims to Moylan's and to AFLAC insurance companies and was informed that AFLAC would not process the claim without a police report that stated that no drugs or alcohol were involved in the incident. Appellant then prepared a second version of the police report that was essentially identical to the first, but omitted the concluding paragraph about the operator's excessive speed, replacing it with "[t]he driver was not intoxicated nor under the influence of drugs." Appellant procured Lt. Shiro's signature on this second report and submitted it to AFLAC, but the claim was denied because the medical records still showed that Sylver's blood alcohol level was above the legal limit.

The Special Prosecutor prosecuted the case and charged Appellant with forgery and ⊥65 obstruction of justice. Appellant was convicted on both counts and sentenced to one-year suspended sentences for each offense, 50 hours of community service and, one year of probation.

DISCUSSION

[1, 2] The standard for assessing the sufficiency of the evidence to support a conviction requires us to determine whether, viewing 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 rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

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[2]In Palau, a person is presumed intoxicated if their blood alcohol level is 0.10 percent. *See* 42 PNC § 608.

[3]The record also contains a Traffic Accident Report Form, signed by Officer Ngiraked and approved by Lt. Elechuus that has a box checked that indicates Sylver "[h]ad been drinking - obv. drunk."

Ngirarorou v. ROP, 8 ROP Intrm. 136, 139 (2000) (internal quotes and citation omitted). "The trial judge is the fact finder for all purposes, and his analysis should not be disturbed on appeal unless clearly erroneous." *ROP v. Ngiraboi*, 2 ROP Intrm. 257, 259 (1991).

Ongidobel was convicted of forgery, in violation of 17 PNC § 1501, which states in relevant part that "[e]very person who shall unlawfully and falsely make or materially alter a writing or document of apparent legal weight and authenticity, with intent thereby to defraud, shall be guilty of forgery . . . ."

Appellant contends that he had a right to provide his version of the events and that by Lt. Shiro "reading, evaluating and signing [the second report], Shiro adopted it as his own." Appellant states that "[i]f [the second report] contains mistakes, the mistakes are attributable to Shiro because he adopted the contents of [the second report] as his own by signing [it], not from any act on Ongidobel's part." Accordingly, Appellant argues, there was no forgery.

This argument, however, relies on Appellant's version of the facts, which the trial judge was not required to accept as true, and obviously did not. Lt. Shiro testified that Ongidobel told him that copies of the first report were not available and that he needed a second police report to give the insurance company. He testified that he did not notice the differences between the two documents and that, had he known the difference, he would not have signed the second police report. Crediting this testimony, a reasonable trier of fact could have found that, far from persuading Lt. Shiro to accept his version of events,[4] Appellant created a nearly identical – but critically different – version of the initial report, and misled Lt. Shiro into believing that it was a duplicate of the document he had already signed. Appellant's conviction for forgery is therefore affirmed.

Appellant was also convicted of obstruction of justice in violation of 17 PNC § 2501, which states: "Every person who shall unlawfully resist or interfere with any law enforcement officer in the lawful pursuit of his duties, or shall unlawfully tamper with witnesses by payment or attempt to prevent their attendance at trials, shall be guilty of ⊥66 obstructing justice . . . ."

In response to the Appellant's arguments as to this count, the Government concedes that Appellant's conduct did not satisfy the elements of the crime of obstruction, but goes on to state that "since Appellant was sentenced to two one-year suspended prison terms to run concurrently, he was not prejudiced by the conviction on the obstruction of justice count." Because we agree with the Government that any ruling on this count would not affect Appellant's sentence, which has been fully served in any event, we see no need for further analysis of this issue.[5] We therefore accept the Government's concession and vacate the conviction for obstruction of

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[4]It bears noting that "Appellant's version" of events, to which he was not a witness, was prepared on official police letterhead, and purports to be the statement of Officer Ngiraked, but concludes with an observation – that Sylver was "not intoxicated"– that is contradicted by Officer Ngiraked's contemporaneous report. *See* n.2 *supra*.

[5]We question whether it is an appropriate practice for the Bureau of Public Safety to provide "to whom it may concern" letters for insurance purposes. It was this extra layer of paperwork that created the opportunity for the mischief that occurred here.

justice.

[3] Last, Appellant claims he was denied a fair trial because, at the conclusion of Sylver Ongidobel's testimony, the trial judge stated "take this witness out of here" and then, when Appellant was called to testify, said, "I hope you are not going to lie Mr. Ongidobel." Trial Tr. at 84. Assuming that these comments evince the trial judge's opinion of Sylver's credibility,[6] they do not give rise to an inference of judicial bias.

> [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings . . . do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile . . . ordinarily do not support a bias or partiality challenge.

Liteky v. United States, 114 S. Ct. 1147, 1157 (1994).

CONCLUSION

Accordingly, we AFFIRM the conviction for forgery and VACATE the conviction for obstruction of justice.

[6]We do not view the trial judge's admonition to Mr. Ongidobel as indicative of any prejudgment as to his credibility.