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

**MOSES YOBECH,**
*Appellant*,
**v.**
**REPUBLIC OF PALAU,**
*Appellee.*

Cite as: 2020 Palau 26
Criminal Appeal No. 19-005
Appeal from Criminal Case No. 19-077

Argued: October 16, 2020
Decided: November 17, 2020

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... Laisani Tabuakuro, AAG

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Court of Common Pleas, the Honorable Honora E. Remengesau Rudimch, Senior Judge, presiding.

## OPINION

PER CURIAM:

[¶ 1] On April 1, 2019, Moses Yobech was arrested after he crashed his motor vehicle into another vehicle in Malakal. He was tried in the Court of Common Pleas and found guilty of one count of Negligent Driving and one count of Driving Under the Influence of Intoxicating Liquor (DUI). This appeal followed.

[¶ 2] On appeal, Yobech raises three issues. First, he argues that the Court of Common Pleas lacked jurisdiction over his prosecution. Second, he argues that the statutory procedures of 4 PNC § 207 were not followed because his

prosecution was not properly assigned to the Court of Common Pleas and his conviction was not properly certified. Lastly, he argues that the Republic did not produce sufficient evidence to sustain a conviction for DUI. We address each contention in turn and, discerning no reversible error, **AFFIRM**.

## JURISDICTION

[¶ 3] By statute, non-exclusive jurisdiction over certain criminal prosecutions is vested in the Court of Common Pleas:

> In all criminal cases involving offenses against the laws of the several states or the Republic, including generally recognized local customs, where the maximum punishment which may be imposed does not exceed a fine of $10,000.00 or imprisonment for five years, or both, the Chief Justice may assign such cases for hearing by a judge of the Court of Common Pleas. Upon hearing, the Chief Justice shall certify the decision of the Common Pleas judge. Appeal may be had in the Appellate Division of the Supreme Court.

4 PNC § 207.

[¶ 4] Yobech argues that 4 PNC § 207 is unconstitutional because the Constitution grants original and exclusive jurisdiction over all criminal prosecutions to the Trial Division through the following language:

> The trial division of the Supreme Court shall have original and exclusive jurisdiction over all matters affecting Ambassadors, other Public Ministers and Consuls, admiralty and maritime cases, and those matters in which the national government or a state government is a party.

Palau Const. Art. X, § 5. Yobech contends that, for the purposes of this constitutional provision, the Government is a "party" to all criminal prosecutions and, accordingly, all criminal prosecutions must be heard in the Trial Division. Because his prosecution did not occur in the Trial Division, Yobech argues that he was convicted by a court that lacked jurisdiction over his prosecution.

[¶ 5] Yobech is not the first criminal defendant to bring this argument. An almost identical argument challenging the Court of Common Pleas'

jurisdiction over criminal prosecutions was rejected by the Trial Division over two decades ago. *See ROP v. Kruger*, 8 ROP Intrm. 347, 348-49 (Tr. Div. 2000). Yobech's argument sets forth a question of law. Accordingly, we decide it de novo. *Khair v. ROP*, 2019 Palau 18 ¶ 8. For the reasons set forth below, we hold that the Court of Common Pleas' exercise of jurisdiction over criminal prosecutions is not incompatible with Article X, Section 5, of the Palau Constitution.

[¶ 6] Our precedent counsels against interpreting the word "party" in Article X, Section 5, of the Constitution to include the Government's role in a criminal prosecution. In interpreting the word "party" in this constitutional provision in the civil context, we have previously held that:

> [T]he "original and exclusive jurisdiction" clause of Article X § 5 applies only to cases where the national government or a state government is a real party in interest, that is, when it has a substantial interest in the subject matter, rather than merely a "nominal, formal or technical interest in the claim."

*KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305, 311 (1993) (quoting *Maryland Cas. Co. v. King*, 381 P.2d 153, 156 (Okla. 1963)). Thus, in *Diberdii Lineage*, we concluded that the national government was not a "party" for purposes of the original and exclusive jurisdiction clause when it appeared before the Land Claims Hearing Office because the national government's interest in the subject property was "at best only nominal, or technical." *Id.* at 312. In arriving at this holding, we relied on U.S. case law interpreting similar jurisdictional grants. *Id.* at 309-12. Consistent with that case law, we narrowly construed the meaning of the word "party" in Article X, Section 5, of our Constitution.

[¶ 7] We find it sensible and appropriate to extend the reasoning from *Diberdii Lineage* to the criminal prosecution context. The word "party" in the original and exclusive jurisdiction clause is properly construed narrowly. As we identified in *Diberdii Lineage*, similar jurisdictional grants have been extensively interpreted in U.S. case law. *See Diberdii Lineage*, 3 ROP Intrm. at 309-12. The U.S. Constitution provides that "[t]he judicial Power shall extend . . . to Controversies . . . between a State and Citizens of another State" and that "[i]n all Cases . . . in which a State shall be [a] Party, the supreme

Court shall have original Jurisdiction." U.S. Const. Art. III, § 2. A statutory provision provides that the U.S. Supreme Court has original jurisdiction over "[a]ll actions or proceedings by a State against the citizens of another State or against aliens." 28 U.S.C. § 1251(b)(3).

[¶ 8] This language has not been interpreted to confer original jurisdiction in the U.S. Supreme Court when one state criminally prosecutes a citizen of another state. Indeed, this penal exception to the U.S. Supreme Court's original jurisdiction was recognized long before the drafting or adoption of the Palau Constitution. *See, e.g.*, 17 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 4046 ("The oldest and clearest limitation is that original jurisdiction does not extend to actions to enforce criminal or other penal laws."); *Wisconsin v. Pelican Ins. Co. of New Orleans*, 127 U.S. 265, 297-300 (1888). While the language in Article X, Section 5, of our Constitution is not an exact match to the language from Article III, Section 2, of the U.S. Constitution or 28 U.S.C. § 1251, the contexts are sufficiently analogous that long-standing interpretations of the latter guide our interpretation of the former.

[¶ 9] Because we conclude that the national government, in bringing a prosecution for a minor criminal offense, is not a "party" within the meaning of the original and exclusive jurisdiction clause of Article X, Section 5, of the Constitution, we reject Yobech's argument that 4 PNC § 207 is an unconstitutional grant of jurisdiction to the Court of Common Pleas.

## ASSIGNMENT AND CERTIFICATION

[¶ 10] In his Reply Brief, Yobech argues that his conviction is void because his prosecution was not properly assigned to the Court of Common Pleas and the conviction was not properly certified in accordance with the procedure set forth in 4 PNC § 207. *See supra* ¶ 3. We do not find merit in Yobech's claim.

[¶ 11] At the outset, we note that this Court generally does not entertain arguments raised for the first time in a reply brief. *See*, *e.g.*, *Anderson v. Kim*, 2018 Palau 23 ¶ 5 ("The reply brief is not the appropriate forum for an appellant to make her initial arguments."). However, as Yobech's argument calls into question the propriety of all criminal decisions of the Court of Common Pleas, we exercise our discretion to address its merits. As statutory

interpretation is a question of law, we decide it de novo. *ROP v. Kangichi*, 2019 Palau 2 ¶ 10.

[¶ 12] The Constitution vests in the Supreme Court the authority to promulgate rules "governing the administration of the courts" and "practice and procedure in civil and criminal matters." Palau Const. Art. X, § 14. Consistent with that constitutional grant of power, the Supreme Court promulgated the Rules of Criminal Procedure. The relevant rule, Rule 5.1, was amended in 2017 to read as follows:

> (a) **Minor Offense Defined.** A minor offense is any crime or offense defined by statute as a misdemeanor, petty misdemeanor, or violation.
>
> (b) **Charging Document and Venue.** A minor offense may be prosecuted by information, complaint, or citation. Any information, complaint, or citation charging only minor offenses shall be filed and tried in the first instance in the Court of Common Pleas.
>
> (c) **Appeal.** Unless a notice of appeal is filed, the order or judgment of the Court of Common Pleas shall become final. All appeals from judgments or orders of the Court of Common Pleas shall be to the Appellate Division of the Supreme Court, pursuant to the Rules of Appellate Procedure.

ROP R. Crim. P. 5.1.

[¶ 13] By statute, the Chief Justice is authorized to assign prosecutions to the Court of Common Pleas through the following language: "the Chief Justice *may* assign such cases for hearing by a judge of the Court of Common Pleas." 4 PNC § 207 (emphasis added). The statutory language is permissive, and the statute does not set forth any procedure for how such assignment must be accomplished. It is an authorization rather than a limitation. Nothing in the statute requires that prosecutions be assigned to the Court of Common Pleas on a piecemeal basis. Rule 5.1(b) simply assigns every prosecution of a minor offense to the Court of Common Pleas. There is no conflict between Rule 5.1(b) and 4 PNC § 207.

[¶ 14] Whereas the statute's assignment provision grants an authorization to the Chief Justice, the certification provision imposes a requirement: "the

Chief Justice *shall* certify the decision of the Common Pleas judge." 4 PNC § 207 (emphasis added). As a matter of statutory interpretation, the meaning of the word "certify" is not self-evident.

[¶ 15] One possible interpretation is that, to "certify" a decision, the statute requires the Chief Justice to personally review and verify the substance of the decision. We think it is unlikely that is the sort of certification procedure that the OEK had in mind. First, as a practical matter, such a requirement would impose a considerable burden on the Chief Justice. Moreover, it is nonsensical to impose an additional layer of substantive review for the Court of Common Pleas' decisions in criminal prosecutions of minor offenses, but not to impose a similar safeguard on criminal prosecutions of major offenses heard by the Trial Division.

[¶ 16] Additionally, in the very next sentence after the certification requirement, the statute states that "[a]ppeal may be had in the Appellate Division of the Supreme Court." 4 PNC § 207. Reading the statute to require the Chief Justice, who is a member of the Appellate Division, to personally verify the substance of every decision of the Court of Common Pleas in a criminal prosecution would be troublesome in light of this appellate review provision. By involving himself in the substance of a decision at the Court of Common Pleas level, the Chief Justice would then need to recuse himself from participating as an appellate justice reviewing the same decision.

[¶ 17] We also have serious doubts about the OEK's ability to impose such a procedural requirement on the Chief Justice. Again, the Constitution grants the Judiciary the power to promulgate rules regarding its own administration, practice, and procedure. Palau Const. Article X, § 14. If we were to conclude that 4 PNC § 207 dictates an onerous judicial procedure that requires individualized substantive review by the Chief Justice, we doubt that the statute would be compatible with Article X, Section 14, of the Constitution.

[¶ 18] Instead, we think it is more likely that, in the context of 4 PNC § 207, the word "certify" does not impose a substantive verification requirement on the Chief Justice. Rather, it possesses a meaning more similar to "finalize" and is merely administrative. Such an interpretation is sensible as a practical matter. By not involving the Chief Justice in the substance of the decision, he may participate in reviewing the decision on appeal. Such an interpretation is

also sensible as a matter of statutory interpretation, particularly given the placement of the certification requirement in the statute: once a decision becomes final, it may then be appealed.

[¶ 19] And, quite significantly, this interpretation is in accord with the constitutional avoidance doctrine. "When faced with interpreting an ambiguous statute in which one plausible interpretation would cast serious doubt on the constitutionality of the statute and another plausible interpretation would not, the doctrine of constitutional avoidance counsels us to select the interpretation that does not place the statute in jeopardy of invalidation." *Koror State Legislature v. KSPLA III*, 2020 Palau 15 ¶ 14. As explained above, interpreting the word "certify" to impose anything more than a ministerial requirement on the Chief Justice would cast serious doubt on the constitutionality of the statute.

[¶ 20] Thus, we conclude that the certification requirement in 4 PNC § 207 does not require individualized or substantive review by the Chief Justice of every decision in a criminal prosecution before the Court of Common Pleas. Instead, it is an administrative requirement by which the Chief Justice certifies that a decision is appealable. So interpreted, Rule 5.1(c) fulfills the certification requirement by stating that a decision of the Court of Common Pleas is appealable to the Appellate Division and becomes final unless it is appealed.

[¶ 21] In short, the Rules of Criminal Procedure, as promulgated under the authority of Article X, Section 14, fulfill the statutory assignment and certification procedures set forth in 4 PNC § 207. Although Rule 5.1 uses neither the word "assign" nor the word "certify," it accomplishes both. We therefore reject Yobech's claim that the statutory requirements were unfulfilled in his prosecution and conviction.

## SUFFICIENCY OF THE EVIDENCE

[¶ 22] Our review of a claim that the evidence was insufficient to support a conviction is "very limited." *Kumangai v. ROP*, 9 ROP 79, 82 (2002). The pertinent question on appellate review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

*Chieh-Chun Tsai v. ROP*, 9 ROP 142, 143 (2002) (internal quotation marks omitted). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.* at 143-44 (internal quotation marks omitted).

[¶ 23] Yobech alleges that the evidence cannot sustain his DUI conviction because the Government did not sufficiently prove that he was under the influence of alcohol. The basis for this argument is the fact that the arresting officer did not conduct a field sobriety or blood alcohol test.

[¶ 24] The arresting officer testified that he responded to an accident near an intersection in Malakal. Trial Tr. at 4:26-27. The officer encountered Yobech at the scene of the accident and Yobech confirmed that he was the driver. *Id.* at 6:10-15. The officer smelled alcohol on Yobech's breath and observed "red blood shot eyes." *Id.* at 6:16; 11:12. During the encounter, Yobech was leaning against his vehicle, and the officer testified that Yobech was unable to walk on his own. *Id.* at 11:19-20; 12:9-27; 16:11-22. The officer's reason for not conducting a field sobriety test at the scene was for the "safety of the Defendant." *Id.* at 13:10-13. The Court of Common Pleas heard evidence that Yobech had crashed into a sign and sped off before hitting the other vehicle. *Id.* at 8:10-20; 21:4; 24:15-25:7. The driver of the other vehicle also testified that Yobech's vehicle was partially in the wrong lane. *Id.* at 21:23-24.

[¶ 25] While blood alcohol or field sobriety tests are strong evidence that a defendant was under the influence of alcohol, they are not the only sufficient evidence. Given the facts presented on this record, there clearly exists evidence sufficient to sustain the Court of Common Pleas' finding that Yobech was driving under the influence of alcohol. Not only did he smell of alcohol, but he had been driving erratically, could not stand, and had bloodshot eyes. There was no clear error in the Court of Common Pleas' determination that Yobech was under the influence of alcohol.

## CONCLUSION

[¶ 26] For the reasons stated above, the Court concludes that (1) the Court of Common Pleas properly exercised jurisdiction over Yobech's prosecution; (2) Yobech's prosecution and conviction complied with the assignment and

certification provisions of 4 PNC § 207; and (3) Yobech's conviction was supported by sufficient evidence. The Court of Common Pleas' judgment is **AFFIRMED**.