

argument, make a new finding based on all the evidence; and, if the finding is guilty, allow the usual opportunity for hearing on the question of sentence, and then impose such new, lawful sentence as he deems just.

BEMOCH RECHEUNGEL and ANEMARY NGIRAILMAU,
Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 250

Trial Division of the High Court

Palau District

January 14, 1964

Defendants were convicted in Palau District Court of illegal sale of liquor and of giving liquor to a minor, in violation of Palau District Public Law 8-61. On appeal, defendants contend alleged sale was from store owner's private stock, not part of regular course of business, and that it did not constitute offense of selling alcoholic beverages without a license. The Trial Division of the High Court, Chief Justice E. P. Furber, held that law in question restricts not only sale in regular course of business, but all sales of liquor which have any commercial or public aspect.

Affirmed.

1. Criminal Law—Appeals—Scope of Review

In considering case on appeal, appellate court must test sufficiency of proof on basis of what trial court had right to believe, and not on what defendant in criminal prosecution wishes it believed.

2. Appeal and Error—Scope of Review

It is not function of appellate court to weigh evidence anew or pass on credibility of witnesses when trial court's findings are supported by substantial credible evidence, even though there is also evidence to contrary.

3. Liquor Control—Sale

Sale by individual of his own liquor is not excepted from broad words of Palau law forbidding sale of liquor to minor. (Palau District Public Law 8-61)

4. Liquor Control—Sale

Broad interpretation is generally given to word "sell" in connection with laws seeking to control distribution of intoxicating liquors.

5. Statutes—Construction

Courts have obligation to give effect to laws as made by legislative authorities and not to read into such law exemptions which may seriously hamper their enforcement.

6. Liquor Control—Sale

Intent of Palau law restricting sale of liquor is to restrict to persons licensed thereunder all sales of liquor which have any commercial or public aspect. (Palau District Public Law 8-61)

7. Liquor Control—Sale

Exhibiting of hard liquor on shelves of retail store, dispensing liquor and beer from store, and accepting payments or making charges therefor comes within field of activity which is prohibited under Palau law regarding sale of liquor, regardless of whether liquor or its proceeds are considered part of assets of store business. (Palau District Public Law 8-61)

8. Liquor Control—Sale

To constitute "selling" in violation of Palau law regulating sale of liquor, it is not necessary to show sale was in regular course of particular business. (Palau District Public Law 8-61)

<i>Assessor:</i>	JUDGE RUBASCH FRITZ
<i>Interpreter:</i>	SYLVESTER F. ALONZ
<i>Counsel for Appellants:</i>	WILLIAM O. WALLY
<i>Counsel for Appellee:</i>	E. TERMETEET

FURBER, *Chief Justice*

This is an appeal from a conviction of giving liquor to a minor, in violation of Palau District Public Law 8-61, Article VIII B, 3, in the case of the appellant Bemoch Recheungel, and from a conviction of illegal sale of liquor in violation of Palau District Public Law 8-61, Article V A, in the case of the appellant Anemary Ngirailmau.

Counsel for the appellants argued that the evidence showed the appellant Bemoch went to a store tended by the appellant Anemary Ngirailmau and obtained from her two bottles of Suntory whisky which belonged to the storekeeper personally and had been left over from some drinking by the owner of the store and some friends,

that Bemoch didn't know who stole one of these bottles and gave it to a small boy and, further, that when Bemoch paid Anemary, a day or so later, for these two bottles of whisky, she had given what she estimated the price to the owner of the store instead of putting it with the store funds. Counsel claimed that just paying the owner for the two bottles of whisky didn't constitute the offense of selling alcoholic beverages without a license under the public law in question.

Counsel for the appellee argued that testimony offered by the government showed clearly that a minor, age 15, had given the appellant Bemoch money to buy liquor for the minor, that Bemoch had bought it from the appellant Anemary at the store being tended by her, and had given it to the minor. He further pointed out that the government had also shown that hard liquor had been on exhibition on the shelves of the store and that beer kept there had been bought there by at least two persons. He argued that under these circumstances the sale of the two bottles of Suntory whisky at the store constituted a violation of the public law in question since the law was particularly designed for the regulation of stores.

The government's evidence-in-chief only tended to show the sale of one bottle of Suntory whisky by Anemary to Bemoch at the store and the giving of it by Bemoch to the minor in question, but the testimony offered by the accuseds showed clearly the delivery of two bottles of Suntory to Bemoch by Anemary, alleged from the store owner's private stock simply as a matter of personal accommodation, Bemoch's payment to Anemary of \$1.00 for them a day or so later and her payment of 70¢ to the store owner. What happened to the remaining 30¢ was not explained. Uncontradicted testimony showed that neither the store owner nor Anemary had a license to sell alcoholic beverages of any sort, and in rebuttal it was clearly shown,

as claimed by counsel for the appellee, that hard liquor had been on exhibition on the shelves of the store (although it did not appear that any was in public view at the time of the delivery of the two bottles of Suntory), that beer from the ice box in the store had been sold by Anemary at the store and cash received or charge made therefor, but that these sales had allegedly been made only to the store owner's friends.

OPINION

[1, 2] The conviction of the appellant Bemoch rests squarely upon conflicting testimony. The evidence favorable to the government, if believed, clearly and expressly covered every element of the crime. The trial judge had the opportunity to hear the witnesses and was in a much better position to judge of their credibility than this court can be merely from reading the record. As stated by this court in *Krispin Oingerang v. Trust Territory*, 2 T.T.R. 385:—

“In considering a case on appeal, the appellate court must test the sufficiency of proof on the basis of what the trial court had the right to believe, not on what the defendant wishes it believed.”

It is not the function of an appellate court to weigh evidence anew or to pass on the credibility of witnesses when the trial court's findings are supported by substantial credible evidence, even though there is also evidence to the contrary. 5 Am. Jur. 2d, Appeal and Error, §§ 839-841 inclusive. *Kirispin and Takauo v. Trust Territory*, 2 T.T.R. 628.

[3] The conviction in the case of the appellant Anemary depends, however, on the correct interpretation of the word “sell” in Article V A of the Palau public law in question known as the “Second Alcoholic Beverage Control Act of 1961”. Both counsel seemed to imply that this law is only intended to prohibit sale without a license as part of a course of business, the appellants' counsel claiming

expressly that it does not cover a sale by an individual of his own liquor. This court, however, is unable to find any exception of such sales from the broad words of the act. The provision in question reads as follows:—

“Except as authorized herein, no person shall import, or sell alcoholic beverages without a license.”

No claim is made that the alleged sale in question here comes within any express authorization in the law.

[4] The broad interpretation which has been given the word “sell” in connection with laws seeking to control the distribution of intoxicating liquors in the United States is clearly shown in 30 Am. Jur., Intoxicating Liquors, §§ 210–215, and 218. It may well be that the Palau Congress, as it was then called, in enacting this law, did not expect that an individual who occasionally and privately, as an accommodation to some friend, let him have a bottle or two of liquor either at cost or on the promise to replace it in kind, would be prosecuted. This might be on the theory either that it would be too small a matter to bother with or that no one who would want to complain about it would be likely to know about it. The legislative authorities, however, did not make any express exemption for such transactions. Furthermore, the transaction involved here was not that private.

[5–7] The courts have an obligation to give effect to laws as made by the legislative authorities and not to read into such laws exemptions which may seriously hamper their enforcement. It appears from the entire tenor of the law in question that the intent was to restrict to persons licensed thereunder all sales of liquor which had any commercial or public aspect (with certain express exceptions not material in this case). It is believed that the exhibiting of hard liquor on the shelves of a retail store—even if none was on exhibition at the time of a particular

sale—dispensing it and beer from the store—even if it be assumed that the dispensing was limited to the store owner's friends—and accepting payments or making charges therefor—whether or not a tip or profit was involved—comes clearly within the field of activity sought to be prohibited unless licensed, regardless of whether the liquor or its proceeds were considered a part of the assets of the store business.

[8] The court holds that to constitute selling in violation of Article V A of the Palau District Public Law 8-61, it is not necessary to show that the sale was in the regular course of a particular business, and accordingly holds that the sale involved here, under the circumstances shown, constituted a violation of the law.

JUDGMENT

The findings and sentences of the Palau District Court in its Criminal Cases Nos. 2456 and 2457 are affirmed.

BESEBES NGIRAIBAI, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 251

Trial Division of the High Court

Palau District

January 14, 1964

Defendant was convicted in Palau District Court of assault and battery with a dangerous weapon, in violation of T.T.C., Sec. 377-A. On appeal, defendant contends bottle and stick used in assault do not constitute dangerous weapons. The Trial Division of the High Court, Chief Justice E. P. Furber, held that likelihood of great bodily harm to victim justified trial court's finding that bottle and stick as used were dangerous weapons.

Affirmed.

1. **Assault and Battery With a Dangerous Weapon—"Dangerous Weapon"**
Dangerous weapon, within meaning of statute defining assault and battery with a dangerous weapon, is weapon likely, in natural course of