

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAY ANCHETA, )  
 )  
 Defendant. )  
\_\_\_\_\_ )

CRIMINAL CASE NO. 2020-2500

ORDER MEMORIALIZING VERDICT RENDERED IN OPEN COURT

Dennis L. Belcourt  
Associate Justice

Trial: August 30, 2022  
Decided: September 5, 2022  
Entered: September 14, 2022

APPEARANCES:

For the Plaintiff: Quintina Letawerpiy, Esq.  
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For the Defendant: Jesse S. Mihkel, Esq.  
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#### HEADNOTES

##### Criminal Law and Procedure – Standard of Proof

For guilt to be found, each and every element of a crime must be proven beyond a reasonable doubt. This is a constitutional due process requirement. This means that even if a judge on a case believes it more likely than not that a defendant did some act that is a crime, if the judge has a doubt that is based in reason that the defendant did not, the judge must acquit the defendant. This is a high burden on the government to surmount. FSM v. Ancheta, 23 FSM R. 648, 650 (Kos. 2022).

##### Criminal Law and Procedure – Standard of Proof; Statutes – Construction

Criminal statutes are strictly construed in favor of the accused. If the law is not clear or if there is more than one meaning that can reasonably be given to a statute, the tendency is to give the statute the meaning that favors the accused. FSM v. Ancheta, 23 FSM R. 648, 650 (Kos. 2022).

##### Criminal Law and Procedure – Human Trafficking

When the payments were not made to the girl's father as charged and were made after intercourse and were thus not made to induce the father's consent, an accused charged with violating 11 F.S.M.C. 615 will be acquitted. FSM v. Ancheta, 23 FSM R. 648, 650-51 (Kos. 2022).

##### Criminal Law and Procedure – Human Trafficking

A conviction for violating 11 F.S.M.C. 618 does not require that the accused have trafficked the victim, but it does require that she was trafficked by someone and that the accused knowingly was involved in exploiting her as a trafficked person. FSM v. Ancheta, 23 FSM R. 648, 651 (Kos. 2022).

##### Criminal Law and Procedure – Human Trafficking

When the prosecution charges that someone other than the accused was the victim's trafficker but evidence beyond a reasonable doubt is lacking that the alleged trafficker caused the alleged prostitution to occur, the accused will be acquitted of exploiting a trafficked person. FSM v. Ancheta, 23 FSM R. 648, 651 (Kos. 2022).

##### Criminal Law and Procedure – Human Trafficking; Criminal Law and Procedure – Sexual Offenses

Prostitution is illicit sexual services performed for financial or material benefit. Sexual services as a quid pro quo for money is a classic and obvious example. FSM v. Ancheta, 23 FSM R. 648, 652 (Kos. 2022).

##### Evidence

The court is limited to what is admitted into evidence. FSM v. Ancheta, 23 FSM R. 648, 652 (Kos. 2022).

##### Criminal Law and Procedure – Human Trafficking

When proof of prostitution is key to the human trafficking charges against the accused and the prostitution cannot be proven beyond a reasonable doubt, the accused will be acquitted of the human trafficking charges. FSM v. Ancheta, 23 FSM R. 648, 652 (Kos. 2022).

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COURT'S OPINION

DENNIS L. BELCOURT, Associate Justice:

This matter came before the Court for a hearing on rendering of the verdict on September 5, 2022. FSM Assistant Attorney General Quintina Letawerpiy, Esq. appeared on behalf of the Plaintiff, Federated States of Micronesia. Attorney Jesse Mihkel, Esq. from the FSM Public Defender's Office appeared on behalf of Defendant Ancheta, also present on that day.

Defendant Jay Ancheta having pled not guilty to the charges against him, trial in this matter commenced immediately on August 30, 2022 and concluded on the same day. The Plaintiff FSM called six witnesses, and rested after their testimony. Afterwards, the Defendant made an oral motion for a judgment of acquittal. The Court recessed, and upon resumption of the proceedings, the Court denied the Defendant's motion. The Defendant then proceeded forward with its case calling one witness, Defendant Jay Ancheta. After his testimony, the defense rested. The parties then presented their closing arguments orally, and the Court took the matter under advisement.

The Court rendered its verdict on September 5, 2022, as follows:

For guilt to be found, each and every element of a crime must be proven beyond a reasonable doubt. This is a constitutional due process requirement that has been recognized by the FSM Supreme Court as applicable to the FSM since early in this court's history. What this means is that even if as a judge on a case I believe more likely than not that a defendant did some act that is a crime, if I have a doubt that is based in reason that he or she did not, I must acquit the Defendant. It is a high burden on the government to surmount.

Criminal statutes are strictly construed in favor of the accused. What that means is that if the law is not clear, if there is more than one meaning that can reasonably be given to a statute, the tendency is to give the statute the meaning that favors the accused.

There are three parts of a violation of 11 F.S.M.C. 615, which is the subject of Count I of the information:

1. WHAT: the accused knowingly recruited, transported, transferred, harbored or received another person
2. WHY: the accused did so for the purpose of exploitation consisting of (for this matter) the obtaining of financial or other material benefit from the prostitution of another person, defined in 11 F.S.M.C. 612(6) as "illicit sexual services performed for financial or material benefit."
3. HOW: did the accused do so by threat, use of force, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

The issue for Count I is as follows:

Did Defendant receive Shra Benkin Daniel for the purpose of obtaining a material benefit for illicit sexual services performed in exchange for money, by giving payments to achieve the consent of her father Benkin Daniel?

My conclusion for Count I is as follows:

I find the "how" component lacking. I do not find a violation of 11 F.S.M.C. 615 as argued by the Government, because Defendant's payments (1) were not made to Benkin Daniel and, (2) were made after intercourse and therefore were not made to achieve Benkin Daniel's consent. Each element must be proven

beyond a reasonable doubt, and because the evidence shows Defendant only paid Shra after the sex occurred, I do not believe beyond a reasonable doubt that the payments he made were made “to achieve the consent of” Benkin Daniel. Thus, I have a reasonable doubt as to the Count 1 and therefore acquit.

Turning to Count II, the elements of an 11 F.S.M.C. 618 Violation (Offense of Exploiting a Trafficked Person) are that the accused

1. knowingly engaged or participated in or profited from
2. the exploitation of
3. a trafficked person

Section 618 does not require for a conviction that Defendant have trafficked Shra Benkin Daniel, but it does require that Shra was trafficked by someone and that Defendant knowingly was involved in exploiting her as a trafficked person.

The prosecution contends that Benkin Daniel was Shra’s trafficker. So I turn to whether Benkin Daniel trafficked his daughter under the provisions of Section 615.

I state the issue as follows: Did Benkin Daniel knowingly bring (i.e., recruit, transport, etc.) Shra into prostitution at the Orion camp for the purposes of the obtaining of financial or other material benefit from the prostitution of Shra and did he do so by threat, force, abduction, fraud, deception, abuse of power, etc.?

Answer: the “how” basis is not met. If Shra did in fact perform sexual services constituting prostitution as defined in section 612(6), evidence beyond a reasonable doubt is lacking as to whether Benkin Daniel caused that to happen by the means enumerated in 615.

Benkin Daniel testified that in 2014 Shra lived with him, that he was providing for her and that she was dependent on his care for her and for all aspects of her life and well-being.

The court also heard testimony from law enforcement officers based on their investigations and interviews that Benkin Daniel drove his daughters to the area of the Orion camp for sex with workers for money. None of the information was based on personal knowledge, but one source of information for the officers was Defendant himself, who apparently stated he heard such information from his Orion coworkers.

In his testimony, Benkin Daniel confirmed taking his daughters to the camp two to three times in 2014. However, Mr. Daniel stated that the purpose of the trips was to visit Marion, his daughter adopted to Sepe and Manibu Mike, owners of the land under the Orion camp. He also testified that there were times his daughters went into the Orion camp office to watch TV.

Sepe Manibu Mike testified that she recalled Benkin Daniel’s daughters coming to the area on their own, without their father ( in her words, “*eltal sifwanna tukuh*”). On one occasion, Mrs. Manibu Mike chased Shra off the premises when they entered the office, admittedly not knowing what she was doing in the office.

Avowedly in a position of power over his daughters, did Benkin Daniel by an abuse of his power over daughter Shra recruit or otherwise bring her into prostitution with Defendant or others?

Based on the testimony, I cannot find beyond a reasonable doubt that Mr. Daniel brought Shra to the camp for purposes of exploitation by abuse of power or, for that matter, other means stated in section 615. Missing from the record is testimony from percipient witnesses—such Shra herself or Benkin Daniel himself, or relatives, or neighbors—to show how he got her to come to the camp, and whether it was the result of abuse of power or other “hows” set forth in section 615. Accordingly, I have a reasonable doubt on whether Shra was trafficked by her father Benkin Daniel. Therefore, because if Shra was not proven beyond a reasonable doubt to have been trafficked, section 618 is not met for Defendant, I acquit on Count 2.

Finally, I turn to whether there is evidence of exploitation.

Common to both counts against Defendant is the allegation that Defendant participated in the prostitution of her. This is the exploitation, the “why” part of trafficking under section 615 and a part of section 618 as well.

Prostitution is defined in section 612(6) as “illicit sexual services performed for financial or material benefit.” Sexual services as a quid pro quo for money is a classic and obvious example. At trial, Defendant testified that he gave Shra money for car rental expenses and to also to help Shra out because she was his girlfriend. He testified that they texted and called each other and shared ideas. The import of his testimony, he would have us believe, is that they had a genuine relationship not based on sex, and that the money and the sex were not connected.

The problem with Defendant’s testimony according to the prosecution is that it conflicts with statements he made to police officers who were investigating this case and a related criminal case in state court. Signed, written versions of the statements were apparently obtained, although they were not offered for introduction as evidence. This Court is limited to what is admitted into evidence.

However, this Court could and did hear testimony as to what Defendant’s prior oral statements to police were. Defendant’s statements to the officers as recounted by them was that the payments he made were in fact connected with the sex.

When asked about the written statement he signed for Investigator Taulung and the apparent conflict, Defendant’s testimony was that he was busy working cars. The Court understands this to mean that he did not read the statement carefully.

This Court observed Defendant’s testimony and demeanor and listened to the recording of his testimony several times. There was at least one inconsistency in the testimony itself. Defendant was not very clear or articulate in the English language and accordingly was at a disadvantage in getting his thoughts across. It is highly possible that the police officers got his statement right but there is also a distinct possibility that his difficulty in communication in English may have resulted in the police officers getting it wrong, which Defendant did not catch because, like many people, he does not read what he signs.

This Court considers it substantially likely that Defendant’s payments to Shra were made in exchange for sex. In the absence of other corroboration, however, this court harbors a reasonable doubt based on the possibility that the officers were mistaken in their understanding of what Defendant told them, that in truth Defendant did make the payments to help Shra.

Proof of the act of prostitution, including the quid pro quo nature of the sex act and the payment of money, is a key to proof of guilt of Defendant under both 11 F.S.M.C. 615 and 618. My finding of a reasonable doubt in this regard is a further reason why I acquit on both counts I and II.

In conclusion, Defendant is acquitted on both counts and relieved of the pretrial release conditions imposed in this matter. His passport is hereby ordered returned to him.

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