

ELECHUUS v. TRUST TERRITORY

of allegations and proof that the irregularities were prejudicial or changed the results of the election or allegation and proof of facts from which this result is necessarily to be inferred. Thus, where it is alleged illegal votes were cast and it is not possible for either party to prove how the alleged illegal votes affected the result, the contestant, having the burden of proof, must fail. 26 Am. Jur. 2d, Elections, §§ 321, 338, and 342.

JUDGMENT

It is accordingly

Ordered that this action be and it is hereby dismissed as being beyond the jurisdiction of the courts of the Trust Territory.

MONGAMI ELECHUUS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 286

Trial Division of the High Court

Palau District

September 18, 1967

Appeal from conviction in Palau District Court of attempted cheating, in violation of T.T.C., Sec. 392. Defendant contracted with Melekeok Municipality to build a bridge, and was charged with cheating in connection with his submission of false list of number of hours worked and amounts earned by each of his employees. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that submission of statement was deliberate misrepresentation as to facts material to question of whether money should be paid out, and constituted attempt to commit crime of cheating.

Affirmed.

1. Cheating-Generally

Submission by defendant in criminal case of false statement of hours worked and amounts earned by his laborers under construction contract constitutes false pretense, regardless of what was due him under contract. (T.T.C., Sec. 392)

2. Cheating-Generally

Where defendant in criminal case submitted false statement of hours worked and amounts earned by his laborers in order to obtain payment under construction contract, he made deliberate misrepresentation as to past facts material to question of whether money should be paid out, and submission therefore constituted unity of intent and overt act required in attempt to commit crime. (T.T.C., Sees. 392,431)

3. Cheating-Generally

Obtaining money by false pretenses is crime under Trust Territory law, and finding of guilty of attempt to commit crime charged, as lesser included offense, is authorized by law. (T.T.C., Sec. 431; Rules of Crim. Proc., Rule 14(a))

4. Cheating-Generally

Where defendant is found guilty of attempting to obtain payments under construction contract by false pretenses, he is not thereby sentenced for failure to discharge contractual obligation, which is prohibited under Trust Territory law, since attempt to obtain money by false pretenses is entirely apart from question of whether defendant has discharged his contractual obligation. (T.T.C., Sec. 10)

FURBER, *Chief Justice*

This is an appeal from a conviction by the Palau District Court of attempted cheating, upon an information charging cheating in violation of Trust Territory Code, Section 392, the alleged intended victim being the Palau Legislature.

The appeal is most amazing from an American point of view and can only be understood as an extreme example of the feeling on the part of some Micronesians that paper work is of no significance, need have no relation to the facts, and is in effect just a form of nonsense engaged in to satisfy the peculiar desires of Americans and some Micronesian officials under American influence.

The case arises out of the construction, under a contract with the Melekeok Municipality, of a bridge in the causeway leading to a dock. The issues as to the cheating or attempted cheating of the Palau Legislature were somewhat obscured by the fact that both counsel at the trial

appear to have been much concerned to show whether the appellant's whole line of conduct in connection with this bridge involved a fraud on the Municipality of Melekeok. The basic facts, so far as the cheating of the Legislature is concerned, are not in dispute.

The appellant made an oral contract which was confirmed in writing the next day, so far as the purely fiscal terms were concerned, but without any detailed specifications as to the work to be done. Under the terms of the contract, the appellant was to be paid eight hundred ninety-nine dollars (\$899.00) for materials for the bridge one week from October 6, 1965, and one thousand fifty-one dollars (\$1,051.00) after the bridge had been completed. The Municipality was planning to pay for the work entirely from a grant-in-aid of one thousand nine hundred fifty dollars (\$1,950) by the Palau Legislature under Bill No. 20-65. The appellant claims he did not know this, but when he made demand for payment for materials he was referred to the District Administrator, who required that he submit invoices before authorizing any payment. The appellant thereupon produced a series of invoices, as a result of which on or about October 19, 1965, he obtained from the District Administrator, as executor of the funds under Bill No. 20-65, an order directing the Treasurer of the Palau Legislature to pay the appellant eight hundred fifty-two dollars and forty cents (\$852.40) for certain enumerated materials although in fact he had not contracted for nearly that amount of materials. One of the invoices was shown to have been prepared at the request of the appellant by a store that did not even carry or deal in the items listed in the invoice. On the strength of this order, however, the appellant drew that much from the Treasurer of the Palau Legislature. From that point on, the appellant certainly knew or ought to have known that the payments to him under the contract were coming from

funds appropriated by the Palau Legislature. There was much dispute as to just what work the appellant had undertaken to do on the bridge and as to whether he had done it or not, but these matters are not material to the issues in this particular case.

When the appellant had completed what work he did do on the bridge, he endeavored to collect the balance he considered due under the contract, namely, one thousand ninety-seven dollars and sixty cents (\$1,097.60) since he had only been paid eight hundred fifty-two dollars and forty cents (\$852.40) for the materials instead of the eight hundred ninety-nine dollars (\$899.00) named in the contract. According to him, he was then informed for the first time of what had been referred to as the "guidelines for withdrawing Grant-in-Aid funds under Bill No. 20-65". Regardless of when he first may have known about the guidelines, he admittedly, after seeing a statement of them, prepared and submitted under date of November 4, 1965, a supposed list of the number of hours worked and amounts earned by each of his employees in an effort to collect from the Grant-in-Aid funds the balance of one thousand ninety-seven dollars and sixty cents (\$1,097.60), which he believed due him under the contract. This supposed list purported to show that his total profit under the contract would be only one hundred sixty-one dollars and sixty cents (\$161.60). At the trial, he frankly admitted this statement of the number of hours worked and the amounts earned by his laborers was not true and that he knew it was not true at the time he made it. In fact, the eight hundred fifty-two dollars and forty cents (\$852.40) he had already received more than covered his total expense for both labor and materials for the bridge, so that he was planning to keep the whole of the one thousand ninety-seven dollars and sixty cents (\$1,097.60) as part of his profit. His claim is, however, that this should make no

ference since from his point of view, the balance was due him regardless of what he had spent for labor or materials. Dispute arose as to whether the work on the bridge had been properly done. Payment from the Grant-in-Aid funds was refused and the appellant sued the Municipality for the balance alleged due on the contract.

1, 2] The court considers it clear that one purpose of the so-called guidelines for withdrawal of these Grant-in-Aid funds was to prevent any of the municipalities to be aided from being imposed on unduly by persons seeking an inordinate profit and that the submission of the admittedly false statement of hours worked and the amounts earned by his laborers constituted a false pretense by which he sought to obtain money from the Palau Legislature, regardless of any question as to what, if anything, was due him from the Municipality. There can be no question of possible estimating here. The submission of this statement in order to obtain payment from the Grant-in-Aid funds was a deliberate misrepresentation as to past facts very material to the question of whether this money should be paid out. It is hard to imagine a more obvious case of the necessary unity of intent and overt act toward its accomplishment, required to constitute an attempt to commit a crime. 22 Am. Jur., False Pretenses, §§ 2, 4, 54, and 80.21 Am. Jur. 2d, Criminal Law, § 110.

It would appear that the trial court might well on the evidence have found the appellant guilty of cheating in obtaining the eight hundred fifty-two dollars and forty cents (\$852.40). That court, however, appears to have given the appellant the benefit of the possibility that the invoices submitted for that payment may have been estimates and instead found him guilty of the attempted cheating in endeavoring to obtain the one thousand ninety-seven dollars and sixty cents (\$1,097.60) from the Palau Legislature, which was shown beyond any reasonable

doubt by the uncontradicted testimony, including that of the appellant.

[3] Such an attempt is made a crime by Trust Territory Code, Section 431, and a finding of guilty of an attempt to commit the crime charged, as a lesser included offense, is expressly authorized by Rule 14a of the Rules of Criminal Procedure.

[4] The appellant in his brief cites in support of his appeal a provision of the Trust Territory Code, Section 10, providing that no person shall be imprisoned solely for failure to discharge a contractual obligation. It should be noted, however, that in this case, the accused is not being sentenced for failure to discharge a contractual obligation, but for attempting to obtain money by false pretenses, which is entirely apart from the question of whether he had discharged his contractual obligation.

Accordingly, the finding and sentence of the Palau District Court appealed from have been affirmed.