

OINGERANG v. TRUST TERRITORY

A. The judge who originally heard the case is to reopen it, then proceed as if the prosecution had not rested, consider any motion either side wishes to make, and take any additional proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced.

B. After taking such additional testimony, the judge is to finish the trial as if there had been no previous finding and sentence, allow the usual opportunity for 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 impose sentence.

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**KRISPIN OINGERANG, Appellant**

**v.**

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**

**Criminal Case No. 239**

**Trial Division of the High Court**

**Palau District**

**February 28, 1963**

Defendant was convicted in Palau District Court of disturbing the peace, in violation of T.T.C., Sec. 426, by going to cabin of woman ship passenger and requesting to buy liquor from her in manner also suggesting indecent request. Defendant appeals on ground that no illegal intent was shown. The Trial Division of the High Court, Chief Justice E. P. Furber, held that accosting woman passenger in manner shown was unjustifiable and clearly disturbed peace of passengers concerned.

Affirmed.

**1. Disturbing the Peace—Generally**

Crime of disturbing the peace covers large range of activities which annoy and disturb people affected to such an extent as to deprive them of right to peace and quiet and to provoke breach of the peace. (T.T.C., Sec. 426)

**2. Disturbing the Peace—Words**

Words may constitute offense of disturbing the peace if they are likely to bring about an altercation. (T.T.C., Sec. 426)

**3. Disturbing the Peace—Intent**

Fact that defendant was actuated by good motive in uttering words is not a defense to charge of disturbing the peace. (T.T.C., Sec. 426)

**4. Criminal Law—Appeals—Scope of Review**

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

**5. Appeal and Error—Generally**

Courts considering appeals in Trust Territory are not concerned with fine points of evidence.

**6. Appeal and Error—Evidentiary Error**

Appellate Courts in Trust Territory may not disturb judgment for error in admission or exclusion of evidence, or any other error, unless refusal to take such action appears inconsistent with substantial justice. (T.T.C., Sec. 337)

**7. Appeal and Error—Evidentiary Error**

Ordinary effect of lower court's receiving improper evidence is that on appeal improper evidence will be rejected and not considered, especially where such evidence is largely cumulative to that properly received.

**8. Disturbing the Peace—Intent**

Where accused in criminal prosecution accosted woman ship passenger, even for purpose of obtaining liquor, in manner suggesting indecent request, actions were unjustifiable and may be found to have disturbed the peace of passengers concerned. (T.T.C., Sec. 426)

*Assessor:*

JUDGE RUBASCH FRITZ

*Interpreter:*

HARUO I. REMELIUK

*Counsel for Appellant:*

WILLIAM O. WALLY

*Counsel for Appellee:*

BENJAMIN N. OITERONG

FURBER, *Chief Justice*

This is an appeal from a conviction of disturbing the peace in violation of Trust Territory Code, Section 426.

Although the appellant's notice of appeal purports to state three grounds, they all boil down to the claim that the evidence failed to prove the offense charged beyond a reasonable doubt, particularly because no illegal intent was shown on the part of the accused. Counsel for the ap-

pellant argued that the accused was merely trying to buy some liquor from the complainant and had no intention of causing any disturbance or of insulting the complainant, that the difficulty caused was entirely due to her failure to understand him.

Counsel for the appellee argued that the evidence showed the accused had made an indecent request of the complainant which had clearly very much upset her and deprived her and her companions of their right to peace and quiet, that a mere general intent to do an unjustifiable act which directly tended toward a disturbance of the peace was sufficient, so far as intent was concerned, to constitute the crime in question without any specific intent to disturb the peace, and that the evidence was, therefore, sufficient to support the conviction.

#### OPINION

There is little conflict in the testimony as to the basic facts involved. The evidence clearly shows that the accused, while a crew man on duty on the M/V Gunners Knot, went, around 10:00 or 10:30 p.m., to one of the passenger cabins where two women passengers and one male passenger were at the moment, asked to speak with one of the women passengers who then stepped to the door of the cabin where the accused made some request of her, holding a \$50 bill in his hand. The only conflict is as to just what the accused said to the complainant. According to her, he said he wanted to buy some of her time. According to him, he asked her if she had a short time and was planning to ask her for some liquor, but she got excited and, seeing the money in his hand, asked why he was flashing twenty dollars, he told her it was not twenty, but fifty dollars, and started again to ask if she could spare a short time, but she told him to "drop dead" before he could finish his sentence or get around to indicating what he

wanted. According to the accused's own statement he "scare the hell out of" the complainant.

[1-3] Disturbing the peace, as provided for in Section 426 of the Trust Territory Code, is a crime which has long been recognized in England and the United States and is well known to cover a large range of activities. As stated in Miller on Criminal Law, p. 483:

"The gist of the offense is the tendency of the defendant's act to annoy and disturb the people affected to such an extent as to deprive them of their right to peace and quiet and to provoke a breach of the peace."

Words can constitute the offense under some circumstances, if they are of such a nature as are likely to bring about an altercation. 8 Am. Jur., Breach of the Peace, § 8, notes 20 and 1. The fact that the defendant was actuated by a good motive in uttering them is not a defense. Thus it has been held that the fact that a minister, in using obscene and provoking language in the pulpit, was intending merely to rebuke the sin of impurity, was no justification for use of such language. 8 Am. Jur., Breach of the Peace, § 11, note 18.

[4] 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. 5 Am. Jur. 2d, Appeal and Error, §§ 839 and 840. *Kirispin and Takauo v. Trust Territory*, 2 T.T.R. 628 (not involving the appellant in the present case but a different man of similar name). *Takeo Yamashiro v. Trust Territory*, 2 T.T.R. 638.

[5-7] A memorandum from the captain of the ship to the District Administrator, Palau, concerning the incident here in question was admitted as Exhibit "A" over the objection of the accused. This exhibit clearly included a number of purely hearsay statements, which should not have

been admitted. Courts considering appeals in the Trust Territory, however, are not concerned with fine points of the law of evidence. Under Section 337 of the Trust Territory Code they are prohibited from disturbing a judgment for any error in the admission or exclusion of evidence (or any other error) "unless refusal to take such action appears to the court inconsistent with substantial justice". All trials in the Trust Territory courts are without jury and, therefore, ordinarily the effect of the lower court's receiving improper evidence is simply that on appeal the improper evidence will be rejected and not considered. This is particularly so where, as here, the evidence improperly admitted was largely cumulative to that properly received. 5 Am. Jur., 2d, § 799, notes 4 and 5, § 800, notes 6, 7, and 8. 53 Am. Jur., Trial, § 1125. See also *Borja v. Trust Territory*, 1 T.T.R. 280, par. 1 of Conclusions of Law.

[8] Disregarding Exhibit "A" entirely, this court is of the opinion that the evidence properly admitted was sufficient to justify the finding of the District Court. The accused seems to have well known that he had no business, as a crew member, to try to buy or beg liquor from a passenger on the ship. He testified himself that he was afraid he would get in trouble if the complainant did not give him liquor. To accost a woman passenger, even for this purpose and particularly in the manner in which he is shown to have done it, was unjustifiable and the accosting clearly did disturb the peace of the passengers concerned.

#### JUDGMENT

The finding and sentence of the Palau District Court in its Criminal Case No. 2255 are hereby affirmed.