

Kosrae v. Benjamin  
17 FSM Intrm. 1 (App. 2010)

FSM SUPREME COURT APPELLATE DIVISION

STATE OF KOSRAE,	)	APPEAL CASE NO. K6-2008
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STANDON BENJAMIN,	)	
	)	
Appellee.	)	
_____	)	

OPINION

Argued: December 18, 2009  
Decided: December 18, 2009  
Opinion Entered: January 12, 2010

BEFORE:

Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court  
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court  
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellant: Snyder H. Simon, Esq.  
Assistant Attorney General  
Office of the Kosrae Attorney General  
P.O. Box 870  
Tofol, Kosrae FM 96944

For the Appellee: Harry Seymour, Esq.  
Office of the Public Defender  
P.O. Box 245  
Tofol, Kosrae FM 96944

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HEADNOTES

Appellate Review – Decisions Reviewable

An appellate court is obligated to examine the basis of its jurisdiction. Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010).

Appellate Review – Decisions Reviewable; Appellate Review – Standard of Review – Criminal Cases

The Kosrae Code provides that government appeals in a criminal proceeding are limited to only when the court has held a law or regulation invalid. It further provides that on a government appeal from a criminal proceeding the appellate court cannot reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation. Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010).

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Appellate Review – Decisions Reviewable

Generally, absent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case. Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010).

Appellate Review – Standard of Review – Criminal Cases; Criminal Law and Procedure – Double Jeopardy

Constitutional constraints would bar the appellate reversal of a not guilty finding since both the FSM Constitution and the Kosrae Constitution protect an accused from being twice put in jeopardy for the same offense. Kosrae v. Benjamin, 17 FSM Intrm. 1, 3 (App. 2010).

Constitutional Law – Interpretation; Constitutional Law – Kosrae – Interpretation; Criminal Law and Procedure – Double Jeopardy

When an FSM or Kosrae constitutional protection, such as the FSM or Kosrae double jeopardy protection, is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Kosrae v. Benjamin, 17 FSM Intrm. 1, 4 n.2 (App. 2010).

Appellate Review – Decisions Reviewable; Constitutional Law – Case or Dispute – Mootness

Even if the prosecution succeeded in convincing an appellate court that a trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying an accused found not guilty and that would make the prosecution appeal a moot appeal seeking an advisory opinion on statutory interpretation and the appellate court does not have jurisdiction to consider or decide moot appeals. Kosrae v. Benjamin, 17 FSM Intrm. 1, 4 (App. 2010).

Constitutional Law – Case or Dispute

The FSM Supreme Court does not have the jurisdiction or power to render advisory opinions since the Constitution only grants the court jurisdiction to decide actual or concrete cases or disputes. Kosrae v. Benjamin, 17 FSM Intrm. 1, 4 (App. 2010).

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COURT'S OPINION

MARTIN G. YINUG, Associate Justice:

When this came before us for oral argument we asked the parties to confine their initial arguments to the threshold issue of whether we have jurisdiction over this appeal. After considering the parties' arguments and their briefs during a recess, we ruled from the bench that we lacked jurisdiction to hear this appeal because it did not fall within the Kosrae statute authorizing prosecution appeals in criminal cases. We accordingly dismissed this appeal. This opinion memorializes our dismissal order and explains our reasoning.

I. BACKGROUND

On August 3, 2007, Standon Benjamin, an Utwe municipal police officer, and a state police officer responded to a complaint. A landowner, Sepe M. Mike, objected to their presence and an argument involving shoving ensued, during which Sepe Mike was either pushed or fell to the ground. Benjamin was charged in Kosrae State Court with assault and battery, disturbing the peace (two counts), assault (two counts), and misconduct in public office.

Trial was held on November 28, 2008. After both the prosecution and Benjamin had presented their cases-in-chief, Benjamin made a Rule 29 motion for acquittal on all counts. The trial court granted

the motion from the bench, holding that there was insufficient evidence to convict on any count.<sup>1</sup> On December 1, 2008, the prosecution, having taken issue with the trial judge's oral examples of the elements of assault and assault and battery given during his bench ruling of acquittal, appealed Benjamin's acquittal on the assault and battery and the assault charges. The prosecution presented for our appellate review its claim that the Kosrae State Court had misinterpreted the statutory criminal offenses of assault, Kos. S.C. § 13.302, and of assault and battery, Kos. S.C. § 13.303, by, in its view, engrafting new elements to the offenses and omitting other requisite elements, and thereby invalidated those statutes. The prosecution did not appeal Benjamin's acquittal on the other counts.

## II. APPELLATE JURISDICTION

Benjamin asserted that we lack jurisdiction to consider this appeal. The prosecution acknowledged that jurisdiction is a threshold issue. An appellate court is obligated to examine the basis of its jurisdiction. Alonso v. Pridgen, 15 FSM Intrm. 597, 598 n.1 (App. 2008). In dismissing a previous case in which the prosecution appealed from a Kosrae State Court acquittal, we held:

The Kosrae Legislature enacted the Kosrae Code, which provides that government appeals "in a criminal proceeding" are limited to "only when the Court has held a law or regulation invalid." Kos. S.C. § 6.404(5). It further provides that "[o]n a Government appeal from a criminal proceeding the appellate court may not reverse a finding of not guilty, but may reverse determination of invalidity of a law or regulation." Kos. S.C. § 6.403(3). The Legislature's intent is clear – that the prosecution cannot appeal factual findings or acquittals based on the trial court's factual findings, but that is what the prosecution is trying to do here.

Kosrae v. Langu, 16 FSM Intrm. 83, 87-88, *reh'g denied*, 16 FSM Intrm. 172 (App. 2008). Generally, "[a]bsent specific statutory authorization, the prosecution lacks the right to appeal an adverse ruling in a criminal case." 7 WAYNE R. LAFAVE, JEROLD ISRAEL, NANCY KING & ORIN S. KERR, CRIMINAL PROCEDURE § 27.3(b), at 34 (3d ed. 2007).

In this case, Benjamin was found not guilty after a trial on the merits because the trial court found that there was insufficient evidence to convict or to prove the government's case beyond a reasonable doubt. That finding cannot be interpreted as holding the assault and the assault and battery statutes invalid. Kosrae Code sections 13.302 and 13.303 remain as valid today as they were before the trial court decision. Thus Kosrae seemed to ask that we reverse not guilty findings. Since Kosrae Code subsection 6.403(3) specifically bars an appellate reversal of a not guilty finding, it does not permit us to either direct entry of a guilty finding or to order a new trial.

Furthermore, constitutional constraints would bar that outcome. Both the FSM Constitution, FSM Const. art. IV, § 7, and the Kosrae Constitution, Kos. Const. art. II, § 1(f), protect an accused from being twice put in jeopardy for the same offense. *See, e.g., Arizona v. Manypenny*, 451 U.S. 232, 246, 101 S. Ct. 1657, 1666, 68 L. Ed. 2d 58, 71 (1981) (constitutional ban against double jeopardy

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<sup>1</sup>The trial court, citing conflicting testimony about whether Benjamin had struck Sepe Mike and noting that she had a physical condition which causes her to fall down when she gets angry because it becomes difficult for her to breathe, found that the prosecution had not proven beyond a reasonable doubt all the elements of the assault and battery offense. Judgment of Acquittal at 2-3 (Dec. 8, 2008). The trial court, noting inconsistent testimony, further found that there was insufficient evidence to convict Benjamin of assaulting Sepe Mike, and further noting that there was no testimony that Benjamin had made any attempt to assault Manabu Mike, Sepe's husband, found Benjamin not guilty of the other assault charge. *Id.* at 4.

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bars a prosecution appeal following a verdict of acquittal); Fong Foo v. United States, 369 U.S. 141, 143, 82 S. Ct. 671, 672, 7 L. Ed. 2d 629, 631 (1962) (double jeopardy protection violated when appellate court ordered acquittal set aside even though the acquittal during trial may have been based on an egregiously erroneous foundation); Kepner v. United States, 195 U.S. 100, 133, 24 S. Ct. 797, 806, 49 L. Ed. 114, 126 (1904) (double jeopardy protection bars review of a verdict of acquittal); *cf.* Sanabria v. United States, 437 U.S. 54, 64, 98 S. Ct. 2170, 2179, 57 L. Ed. 2d 43, 53-54 (1978) ("when a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous").<sup>2</sup> Thus, even if the prosecution succeeded in convincing us that the trial court's rulings were erroneous, the prosecution would be constitutionally barred from retrying Benjamin. That would make this a moot appeal seeking an advisory opinion on statutory interpretation. See 7 LAFAVE ET AL., *supra*, § 27.3(a), at 33 n.7. We do not have jurisdiction to consider or decide moot appeals. Wainit v. FSM, 14 FSM Intrm. 476, 478 (App. 2006); Reddy v. Kosrae, 11 FSM Intrm. 595, 597 (App. 2003).

At oral argument, Kosrae clarified that it was not seeking to retry Benjamin or to have a guilty finding entered against him on the assault and assault and battery charges. Instead, Kosrae specifically asked that we render an advisory opinion instructing the trial court in the proper interpretation of the Kosrae assault and assault and battery criminal statutes. We do not have the jurisdiction or power to render advisory opinions, Zhang Xiaohui v. FSM, 15 FSM Intrm. 162, 167-68 (App. 2007); Fritz v. National Election Dir., 11 FSM Intrm. 442, 444 (App. 2003), since the Constitution only grants us jurisdiction to decide actual or concrete cases or disputes, FSM Const. art. XI, § 6.

### III. CONCLUSION

Accordingly, we dismissed this appeal.

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<sup>2</sup>When an FSM or Kosrae constitutional protection is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning. Neth v. Kosrae, 14 FSM Intrm. 228, 233 (App. 2006). The FSM and Kosrae double jeopardy protections are patterned after that in the U.S. Bill of Rights.