

CHUUK STATE SUPREME COURT TRIAL DIVISION

CHUUK STATE,)
)
 Plaintiff,)
)
 vs.)
)
 KANIF KOKY, NIU ESENSON KOKY,)
 AKSON AKE, and ROTTO AKE,)
)
 Defendants.)
)
 _____)

CSSC CR NO. 010-2014

ORDER RE: THE APPLICATION OF THE MERGER DOCTRINE

Keske Marar
Associate Justice

Decided: June 18, 2014

APPEARANCES:

For the Plaintiff: Kullian William
State Prosecutor
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For the Defendant: Bethwell O'Sonis, Esq.
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For the Defendant: Ken Uehara
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For the Defendant: Charleston L. Bravo
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HEADNOTES

Criminal Law and Procedure – Double Jeopardy

The principal purpose of the protection against double jeopardy established by the FSM Constitution is to prevent the government from making repeated attempts to convict an individual for

the same alleged act. Chuuk v. Koky, 19 FSM R. 479, 480 (Chk. S. Ct. Tr. 2014).

Criminal Law and Procedure – Double Jeopardy

The test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. Similarly, where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is no cumulative or multiple punishments that might violate the double jeopardy clause. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

Criminal Law and Procedure – Double Jeopardy

A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

Criminal Law and Procedure – Assault and Battery; Criminal Law and Procedure – Double Jeopardy

If both the use-of-a-slingshot offense and assault-with-a-dangerous-weapon offense are proven with respect to the same act, the court will enter a conviction on only the greater offense of assault with a dangerous weapon. Chuuk v. Koky, 19 FSM R. 479, 481 (Chk. S. Ct. Tr. 2014).

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COURT'S OPINION

KESKE MARAR, Associate Justice:

At the arraignment hearing held on January 23, 2014, the parties were requested to submit briefs on the application of the merger doctrine to the instant case.¹ On June 2, 2014, briefs were submitted by the Office of the FSM Public Defender on behalf of the defendants, Esenson Koky, Akson Ake, and Rotto Ake ("Defendants"), and the Office of the Attorney General on behalf of the plaintiff, Chuuk State.

After carefully reviewing the parties' briefs and applicable authorities, the Court finds as follows:

Article III, Section 5 of the Chuuk State Constitution provides that "[n]o person may be compelled to give evidence that may be used against such person in a criminal case, or be twice put in jeopardy for the same offense." Article IV, Section 7 of the FSM Constitution provides that "[a] person may not be compelled to give evidence that may be used against him in a criminal case, or be twice put in jeopardy for the same offense." The principal purpose of the protection against double jeopardy established by the FSM Constitution is to prevent the government from making repeated attempts to convict an individual for the same alleged act. FSM v. Zhang Xiaohui, 14 FSM Intrm. 607, 615 (Pon. 2007) (citing Laion v. FSM, 1 FSM Intrm. 503, 521 (App. 1984)).

In FSM v. Zhang Xiaohui, the court explained that:

where the same act or transaction constitutes a violation of two distinct statutory

¹ Defendant Esenson Koky was charged with assault with dangerous weapon (Count 15) and unlawful use of slingshot (Count 24). Defendant Akson Ake was charged with assault with dangerous weapon (Count 16) and unlawful use of slingshot (Count 25). Defendant Rotto Ake was charged with assault with dangerous weapon (Count 17) and unlawful use of slingshot (Count 25).

provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of a fact which the other does not. If the test is met a dual conviction will not violate the constitutional protection against double jeopardy. . . . Similarly, where a trial court orders concurrent sentences of two convictions of different offenses flowing from a single wrongful act, there is no cumulative or multiple punishments that might violate the double jeopardy clause. *Id.* at 524; FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 179 (Pon. 1997) (no violation of double jeopardy if each offense charged requires proof of a fact which the other does not).

14 FSM Intrm. at 615. The court went on to explain that if both a lesser included and greater offense were proven with respect to the same act, the court should then enter a conviction on only the greater offense. *Id.* A defendant cannot be sentenced on both a higher and lesser included offense arising out of the same criminal transaction. *Id.* (citing Palik v. Kosrae, 8 FSM Intrm. 509, 516 (App. 1998)).

In this case, the parties do not dispute that the use of a slingshot² is a lesser included offense of assault with a dangerous weapon.³ Pl. Br. at 2; Def. Br. at 8. In fact, the parties agree that if the Defendants are convicted of assault with a dangerous weapon (slingshot), they cannot be convicted of use of a slingshot, a lesser included offense. This Court agrees.

Accordingly, if the use of a slingshot offense and assault with a dangerous weapon offense are proven with respect to the same act, the Court will enter a conviction on only the greater offense.

* * * *

² A defendant is found guilty of the "use of a slingshot" if he uses a slingshot. See Chk. S.L. No. 10-09-04, § 4.

³ A defendant will be found guilty of "assault with a dangerous weapon" if he (1) attempts to cause or purposely causes; (2) bodily injury to another person; and (3) with a dangerous weapon. Chk. S.L. No. 6-66, § 407.