

WINA KEITH, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 7-74
Trial Division of the High Court
Marshall Islands District
May 6, 1975

Appeal following conviction of selling beer on a Sunday. The Trial Division of the High Court, Brown, Associate Justice, held that testimony of three police officers that a person told them he had purchased the beer, and of two that they saw the person with beer, as against testimony of the person and defendant that there had been no sale, was insufficient for conviction.

1. Appeal and Error—Generally

An appellate court deals primarily with questions of law, does not weigh conflicting evidence and will not disturb a trial courts judgment if there is reasonable evidence to support it.

2. Liquor Control—Sale

In prosecution for selling beer on a Sunday, guilt beyond a reasonable doubt was not shown where two police officers testified that they saw person with beer and that he told them he had bought it from defendant, a third police officer testified that person told him he had purchased the beer, and person and defendant testified that there had been no purchase.

3. Evidence—Prior Inconsistent Statements

Prior inconsistent statements can serve only to impeach.

4. Evidence—Prior Inconsistent Statements

Prior inconsistent statements cannot be considered as substantive evidence for the truth of the matters stated, and admitting them for such a purpose is unconstitutional in a criminal action.

<i>Interpreter:</i>	MILTON ZACKIOS
<i>Reporter:</i>	MISSY F. TMAN
<i>Counsel for Appellant:</i>	JOHN HEINE
<i>Counsel for Appellee:</i>	BEIA LALEJ

BROWN, Associate Justice

Appellant was charged with and convicted of selling or offering to sell beer on a Sunday in violation of D-U-D

Municipal Ordinance No. 72-1 (i) and now appeals, the sole ground for appeal being that the evidence was insufficient to establish guilt beyond a reasonable doubt.

At trial, two police officers testified that on a Sunday they observed Billiam Torelan coming out of, or standing adjacent to appellant's place of business, "Treasure Isles", an establishment that sold beer. Billiam was carrying a bag which contained four cans of beer, and in response to questioning by the officers said that he had purchased the beer from appellant that day. Later, at the police station, a third officer heard Billiam again make the same statement. There was no testimony that any of these three witnesses observed a purchase or delivery of the beer.

Billiam testified that he is an electrician and had done some work for appellant the previous day, taking payment for his services in beer. He drank some of the beer and left the remainder at appellant's store and picked it up the following day when he was apprehended by the two police officers.

Appellant's testimony was consistent with that given by Billiam. Further, he stated that the "Treasure Isles" is his residence as well as his place of business, and that no selling of alcoholic beverages takes place on Sundays.

[1] An appellate court deals primarily with questions of law. It does not weigh conflicting evidence, and if there is reasonable evidence in support of the trial court's judgment, it will not be disturbed. *Adelbai v. Ngirchoteot*, 3 T.T.R. 619, 623; *Sedek v. Esedep*, 4 T.T.R. 167, 168. While an appellant court might reach a different conclusion than did a trial court, that fact, standing alone, does not justify an appellate court's substituting its own determination for that of the trial court; but the decision of the trial court must be based upon reasonable evidence, otherwise the decision cannot stand.

[2-4] The question, then, is whether or not the evidence here was sufficient to establish guilt beyond a reasonable doubt. It must be concluded that it was not. None of the police officers who testified saw anything that would tend to establish appellant's guilt. All that was seen was Billiam in possession of four cans of beer on a Sunday, and that proved no offense. While each testified that Billiam had stated he had purchased the beer from appellant on a Sunday, Billiam testified to the contrary, and his prior inconsistent statements could serve only to impeach; for prior inconsistent statements cannot be considered as substantive evidence for the truth of the matters stated. *People v. Odom*, 456 P.2d 145 (Cal.); *People v. Washington*, 458 P.2d 479 (Cal.). Making prior inconsistent statements of a witness admissible for the truth of the matters stated is unconstitutional in a criminal action. *People v. Johnson*, 441 P.2d 111 (Cal.). Thus, for the trial court to have found any offense, it had to rely upon the testimony of Billiam, and his testimony furnished no ground upon which a finding of guilt could be made.

Since there was insufficient evidence to establish guilt beyond a reasonable doubt, the judgment of the trial court is reversed.