

ROP v. Liu Man Chuen, 10 ROP 186 (Tr. Div. 2002)
REPUBLIC OF PALAU,
Plaintiff,

v.

LIU MAN CHUEN,
Defendant.

CRIMINAL CASE NO. 00-188

Supreme Court, Trial Division
Republic of Palau

Decided: July 1, 2002

ARTHUR NGIRAKLSONG, Chief Justice:

Defendant Eddy Liu was tried and convicted of one count of importing and one count of trafficking about 300 grams of methamphetamine or "ICE."

The Court finds the following facts. In November of 1999, the informant in this case was arrested for trafficking in methamphetamine. This informant subsequently agreed to cooperate with the Bureau of Public Safety to secure more lenient treatment. As part of this cooperation, the informant told Detective Felix Francisco that the defendant had offered to sell him/her one kilo of methamphetamine. This information was corroborated by the defendant's own trial testimony that he talked with the informant in October of 1999 about selling the informant one kilo of ICE, and that another conversation between the defendant and the informant that took place on November 11, 1999.

On that date, the informant, in the presence of Detective Francisco and Officer Harline Stark, called the defendant on the telephone and accepted the defendant's offer to purchase one kilo of ICE. This conversation was taped, and the tape and a transcript thereof were both admitted into evidence as Plaintiff's Exhibits 2(a) and (b). After an exchange of "hellos" and the informant's identification of him/herself, the substantive part of the conversation began with the informant saying "I think we're going to, I think I . . . I'm going to do, I can front the money first." The opening of this conversation shows that there had been a prior conversation between the defendant and the informant even prior to the informant's arrest in early November.

During this November 11 recorded conversation, the informant went on to say he/she would pay \$20,000 for a kilo of ICE, and asked how long it would take the defendant to deliver one. The defendant replied that he could do so in about a month and that he wished that the informant had called him earlier because he had just finished speaking with his suppliers.

You should tell me earlier, so I can talk. They just called me yesterday, you know! . . . They just call on the phone yesterday. . . . But the . . . ah . . . at least,

one month, at least, one month.

The defendant continued.

You, you know what? If you make yourself listen to me, very good now, now is very good already. Very, very close time of the year now! You know the, next time, every time, I talk to you, I'm not lying to you. I want to make it good for you. Because this phone we talk, long term, you and me. I ¶187 don't know why you delay, you know? Yeah

Before I can do time, but now, then you know. I just talk to them yesterday, you know! They say they still have, I think, they have stuff. But I think they're looking for money because now, I build my building, I little tied up, you know. Otherwise, I put already.

We do it last long. With you, with me, cause even six months, give you one, two, very easy for you, and for me. And for me safe and for you safe. I don't know why you not talk me like this, you know? But I can do, but I don't. I know you do have problem, but for me, if you do it like this for me, then I do very good for you also. You know

The defendant then asked the informant for a deposit.

I need to make sure you give the deposit, I'll sure I'll do my best.

The defendant again reassured the informant that the deal was for real.

But you think of me, I'm not lie to you

The defendant also explained how important this drug transaction was to him.

But no, I don't want to miss, missing this chance. This chance if you do it, after six month, I'll give one case, good for me. I can, you know, come with the boat, you come to the boat, nobody knows where it came from, you know. If you're OK, then you give me even three, four or five. Just another, just I know your interesting. I know you just called me, called and OK after call you say again, no good, you know. Make sure give me something, you cannot call again.

The informant replied:

OK! Let me, I'll try my best to . . . find the three or four thousand or five?

The informant told the defendant that he would call the defendant that evening.

This second telephone conversation that evening between the informant and the

ROP v. Liu Man Chuen, 10 ROP 186 (Tr. Div. 2002)

defendant was also recorded and transcribed. The tape and a transcription thereof were admitted into evidence as Plaintiff's Exhibits 3(a) and (b). The informant and the defendant agreed in this conversation to meet at the Bank of Hawaii parking lot where the informant would give to the defendant a deposit of \$3,000 for a kilo of ICE. The defendant acknowledged the receipt of this deposit in a taped conversation on November 16, 1999, during which a second deposit payment of \$12,000 was also agreed to. A tape of this November 16 conversation and a transcript thereof were admitted into evidence as Plaintiff's Exhibits 5(a) and (b). On November 18, 1999, a controlled delivery of the \$12,000 installment was made at the Palau L188 Pacific Resort parking lot. In return, the defendant was to deliver the ICE before Christmas.

On December 30, 1999, the informant called the defendant to inquire as to the whereabouts of the drugs. A tape of this conversation and a transcript thereof were admitted into evidence as Plaintiff's Exhibits 8(a) and (b). In that conversation, the defendant became suspicious that the telephone was taped and asked the informant if there was a recording device on the phone. When his own counsel asked him at trial why was he concerned if the conversation was tapped, the defendant said he did not want the police to know. This admission is significant in light of the defendant's claim that he did not know that possessing or trafficking in ICE was illegal in Palau.

On April 7, 2000, the informant called the defendant. This conversation was taped and transcribed. The tape and a transcription thereof were admitted into evidence as Defendant's Exhibit A. During this conversation, the informant told the defendant that it had been five months since they agreed to conduct their drug transaction and the defendant had still not delivered the goods.

CI: But Eddy this is five months already. It's a . . . I cannot wait anymore. . . . What is real result of this?

Eddy (Defendant): I know. It, it is coming OK? No! I already put OK! I already put materials (???). Many problem for the for the fortune delay because of the port and everything. Now the proof and everything that the materials send now. Now sending material, I . . . I . . . go there there the the put in. But the problem is the . . . the . . . two container I cannot put in because the weigh, eh . . . and the plywood. I cannot but now I find another way, eh . . . but the now the two are already, inside OK? Because I cannot wait for the boat because they say too much over head. They cannot could do it. But before that they might very afraid. But now people don't talk they OK, you know. Now, now I used the container.

CI: So it's coming on the container?

Eddy (Defendant): Yeah! Maybe three week, OK? Maybe if, if three week, I cannot, I cannot give you, I give you, double money, OK? I guarantee.

The defendant later repeated that if he could not deliver the drugs, he (the defendant) would return double the money the informant had already given him. Despite the defendant's

ROP v. Liu Man Chuen, 10 ROP 186 (Tr. Div. 2002)

repeated assurance that the “stuff” will be coming in a month, the informant pressed for a firmer commitment as to when he/she could expect to receive the ICE or double the money back. The informant reiterated that it had been five months without results and then he/she said:

CI: Don't don't lie to me because I can kill you! You don't know. You don't know. You don't know that. I can arrang [sic] your life.

¶189 Eddy (Defendant): I know.

CI: Even Johnson, everybody work for you.

Eddy (Defendant): I know, because now, I fix already because the timming [sic] because for me it's not easy, because they

CI: But hei! Yeah, when you take my money you said the very easy and now yu [sic] said not easy?

Eddy (Defendant): No, the timming [sic] because the timming [sic] you know, you don't know they threat my life already but it's OK. Now, now

CI: Same . . . story

Eddy (Defendant): Now already forund [sic] the, I can show the Bill of Lading because I have

The informant did not ask to see the Bill of Lading, however. Instead, he/she continued:

CI: So, if you lie to me, I we . . . you give me double money? Thirty thousand dollars (\$30,000.00).

Eddy (Defendant): If I cannot give you stuff, I give you the thirty thousand, OK? One month time exactly, OK.

CI: OK.

Eddy (Defendant): I tried, I tried very but I tried

CI: Eddy, I want to be your friend but the way you, you drive me nuts, I can kill you, you don't know that!

Eddy (Defendant): No, I have . . . I know.

CI: You don't know that! I'm a criminal man!

Even after the informant's death threat, the defendant never wavered from his plan and

his confidence in his ability to deliver the drugs this time.

CI: What about my stuff?

Eddy (Defendant): Yeah. [informant] OK.

CI: It's in there OK?

Eddy (Defendant): No, on, o, the way ah . . . I on the way arrange OK. But they allow us already. I thought but not, not in there, There that container but but by the time container come I will. I will arrange there, OK. But one month time. Guarantee, OK. Guarantee there because now already fix.

CI: I'm not joking. I'm very angry. You . . . lie to me. Your liar [sic]!

Eddy (Defendant): I know L190 his not his liar [sic], yeah, you know. If I lie I already told you but it's gets now, give me this time, OK. But this one is guarantee, OK. I even, I try to get my wish.

CI: OK.

Eddy (Defendant): But don't worry. You, you want I will buy.

CI: What you mean, don't worry?

Eddy (Defendant): You want, I guarantee I will fix.

CI: You been lying to me for five month. I'm not worry? You should worry [sic]. Not me! You should worry for your life.

Eddy (Defendant): I'm not lying. I'm not lying. I'm not lying for you. I wanna fix for you. I also wanna make money. Not only you. I want to make money also but you help.

CI: So, if you fail, you give ne [sic] thirty thousand dollars (\$30,000.00)?

Eddy (Defendant): If I fail, I give you thirty thousand dollars (\$30,000.00) but I tell you I will give you the stuff. I will give you. I'll guarantee I will give you the stuff.

CI: OK.

The conversation ended with the defendant saying:

Eddy (Defendant): Trust me because I

CI: I never trust you until you give to me.

Eddy (Defendant): Now it's good. Nobody bother me. I can, I can do my work, OK.

CI: OK.

Eddy (Defendant): Goodbye.

There was no discussion of any meeting or further conversation to be held the following day, April 8, 2000.

The informant testified that in early June the defendant informed him/her that the ICE had arrived and that it would take about a week to get it to the informant. On June 9, 2000, the defendant was arrested after he was observed making a controlled delivery of about 300 grams of methamphetamine to the informant in exchange for \$5,000 pre-recorded funds. This money was recovered from the defendant's black bag seized at the time of his arrest.

At trial, the defendant admitted that he imported the ICE from Hong Kong. Specifically, he stated that he placed the ICE in a door of a car that was placed in a container. When the ship came, defendant himself went and took the ICE from the car.

Despite this factual admission, the defendant has posited several arguments to negate his legal guilt. He explained that because the informant lied to him, he in turn **¶191** lied to him/her. That is, the defendant claimed that he did not intend to import and sell the ICE to the informant. Rather, because all his businesses had either failed or were failing, the defendant decided to get money in the form of the two deposits from the informant to pay his employees, intending to repay the informant when the defendant's businesses revived. The defendant asserted that he only actually formed the intent to import the ICE after the informant threatened his life during the taped conversation of April 7, 2000. The defendant also testified that his fear of the informant was reinforced on the night of April 8, 2000, when the defendant purportedly met the informant at the parking lot of the Bank of Hawaii. The defendant testified that the informant stuck a gun in the defendant's side at that meeting and demanded delivery of the drugs. Despite having been a resident of Palau since 1997, the defendant further claimed that he did not know that importing or selling ICE was illegal in Palau.

The Court rejects all of these claims by the defendant as being simply not credible. Specifically, the Court finds as a matter of fact that the defendant was fully aware that importing and selling of ICE was illegal in Palau. The Court further finds that the defendant resorted to the importation and trafficking of ICE because his businesses had either failed or were failing and his financial status was desperate and worsening. In other words, the court finds that far from trying to structure a sham drug transaction to bilk money from the informant, the defendant in fact intended to engage in the drug transaction to raise capital for his businesses. As the defendant himself reminded the informant in the April 7 conversation he, too, "wanna make

money” out of his agreement with the informant.

Finally, the court finds that the defendant was not fearful for his life even after the informant threatened him. The defendant admitted as much at trial. When the defendant was asked by his counsel if he was scared when the informant threatened to kill him, defendant first said “No, I am not afraid because if I pay him the money, he will not kill me.” It was only after giving this testimony that the defendant identified the threats as the only reason he imported and trafficked in about 300 grams of ICE. The Court finds the defendant’s former statement more credible than this latter one, particularly in light of its conclusion that the informant and the defendant never actually met at the Bank of Hawaii parking lot on April 8, 2000. The record simply does not support the defendant’s version of events and the Court specifically finds as a matter of fact that no such meeting occurred. There was no need for that meeting based on the taped conversation on April 7, 2000. That conversation ended with the informant giving the defendant one more month and the defendant saying “good” and indicating that he was pleased to be able to do the job without further interference or pressure from the informant. In addition, the informant was working with and being monitored by the Bureau of Public Safety during this period, and the Court finds it highly unlikely that the informant would be carrying a firearm, a serious crime, while assisting the Bureau of Public Safety. The Court finds that this “gun” story is purely a creation of the defendant to show improper inducement on the part of the government, and that it is not credible.

Defendant’s businesses were failing. He was desperate. He decided to import and traffic in ICE. Death threats did not induce him one bit. The criminal act was the defendant’s from the beginning to the end.