

Iyekar v. ROP, 11 ROP 204 (2004)
OLSINGCH IYEKAR,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 02-008
Criminal Case No. 00-115

Supreme Court, Appellate Division
Republic of Palau

Argued: May 31, 2004
Decided: July 28, 2004

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: David Matthews

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN,
Associate Justice, presiding.

SALII, Justice:

Appellant Olsingch Iyekar was convicted by the trial court of two counts of trafficking in a controlled substance, to wit, methamphetamine, in violation of 34 PNC § 3301, and one count of conspiracy to distribute a controlled substance in violation of 34 PNC § 3305. Iyekar argues that there was no “reasonable evidence” to support his conviction. Because we find that the evidence was sufficient to convict Iyekar, we affirm the conviction.

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BACKGROUND

The trial court in this case was presented with two opposing accounts of what transpired on the day on which Iyekar was arrested. The prosecution offered the testimony of several police officers establishing a controlled buy of methamphetamine from Roman Ambai on September 24, 1999. After receiving a tip that Ambai dealt methamphetamine, the police approached a confidential informant to make a purchase from Ambai. The police provided the confidential informant with \$600 with which to buy the drugs. The confidential informant then contacted Ambai and set up a buy at the Asahi baseball field parking lot. Ambai arrived alone in his taxi. Money was exchanged, and Ambai left. About ten minutes later, Ambai returned, this time with

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Iyekar as passenger. Ambai got out of his car, walked over to the informant, and gave him one gram of methamphetamine.

Later that same day, the police asked the informant to perform a second controlled buy. The police once again provided the informant with \$600, and the informant contacted Ambai to buy more drugs. This time Ambai arrived by himself. The informant gave Ambai the money, and Ambai told the informant to meet him at Bkul a Tiull. Ambai met the informant at Bkul a Tiull, near Iyekar's house, and gave him a gram of methamphetamine. After the police confirmed that the informant received methamphetamine, they stopped Ambai's car and arrested both him and his passenger, Iyekar. Iyekar was found to have \$855 in bills that were identified as being part of the money given by the police to the informant. Ambai possessed \$320 that matched the money given to the informant. No drugs were found on either Ambai and Iyekar.

Ambai testified that his taxi was dispatched to pick up Iyekar at the fisheries on September 23, 1999. Ambai testified that during the taxi ride, Iyekar told Ambai that he had methamphetamine for sale. The next day, the confidential informant called Ambai to buy drugs. Ambai testified that he drove to Iyekar's house where he gave Iyekar money in exchange for one gram of methamphetamine. Both Ambai and Iyekar then drove to the baseball field where Ambai delivered the drugs to the informant. Ambai then took Iyekar to a store and then dropped him off at home. Later that day Ambai received a second call from the informant requesting to purchase more methamphetamine. Ambai received money from the informant and then drove with the informant to Iyekar's house. Ambai testified that he met with Iyekar outside the house and exchanged \$500 for a gram of methamphetamine. Ambai gave the methamphetamine to the informant and drove off with Iyekar toward Malakal. Shortly thereafter, the police arrested them.

Iyekar's testimony differed in several regards. Iyekar testified that he lived in Peleliu and was not even in Koror on September 23, 1999. He and his wife came to Koror sometime after noon on September 24, 1999, to bring food for a funeral. They moored at the waiting house at Uchul a Ngas and unloaded the coolers of food. Iyekar's children arrived to pick them up, but after transferring the food into their cars, there was not enough room for Iyekar. Instead of riding with them, he caught a ride in Ambai's taxi. Iyekar testified that during the drive to Iyekar's house, Ambai asked him to provide marijuana from Peleliu so that Ambai could send it to Guam. Iyekar agreed to sell four pounds of marijuana for \$2000. Ambai gave Iyekar \$500 as down payment for the marijuana and promised additional funds L206 later. After he arrived, Iyekar's family asked him to buy drinks to go with the food they brought. Iyekar left with Ambai to go to a store. However, on the way to the store, Ambai stated that he first needed to stop at the Asahi baseball field. They parked at the field and Ambai met with the confidential informant. After meeting with the informant, Ambai drove Iyekar to a store and then back to Iyekar's house. Iyekar paid Ambai \$20 for the ride and told him to return to the house at 5 p.m. to further discuss the marijuana purchase.

Ambai returned later in the day as Iyekar and his wife were preparing to return to Peleliu. Iyekar testified that he got into Ambai's taxi for a ride back to the dock, at which time Ambai gave him another \$400 and promised to pay the remaining sum when Iyekar brought the

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marijuana. As they were driving toward Malakal, the police pulled the car over and arrested both Ambai and Iyekar. Iyekar testified that the \$855 found on him were funds paid by Ambai for marijuana, less the money he paid for the taxi ride and for drinks and cigarettes. Iyekar claimed that he did not enter into a transaction for methamphetamine or even realize that Ambai had delivered drugs on the same day he was in Koror.

STANDARD OF REVIEW

Iyekar argues that the testimony of the key government witness did not constitute “reasonable evidence.” The assessment of whether there is “reasonable evidence” to support a judgment has previously been employed as a component in a broader sufficiency of the evidence analysis. See *ROP v. Tmetuchl*, 1 ROP 443, 446 (1988) (citing *ROP v. Kikuo*, 1 ROP Intrm. 254 (1985)). The term “reasonable evidence” can be traced back to its origin in a Trust Territory civil case, *Adelbai v. Ngirchoteot*, 3 TTR 619, 623 (1968). Although the term has since been transplanted as part of a sufficiency of the evidence inquiry in several criminal cases, it has no legal meaning independent of the conventional sufficiency analysis as expounded in *Minor v. ROP*, 5 ROP Intrm. 1, 3 (1994). To the extent our prior cases may be read to adopt a separate “reasonable evidence” standard for run-of-the-mill sufficiency of the evidence claims, those decisions have been abrogated by *Minor* and its progeny. As such, we interpret Iyekar’s issue on appeal to be an attack on the sufficiency of the evidence.

The standard for assessing the sufficiency of the evidence to support a conviction requires the Appellate Division to determine whether, viewing the evidence in the light most favorable to the prosecution and giving due deference to the trial court’s opportunity to hear the witnesses and observe their demeanor, any reasonable trier of fact could have found that the essential elements of the crime were established beyond a reasonable doubt; where this standard is met, conviction must be upheld even if the Appellate Division is convinced that it would have decided case differently if sitting as trier of fact. *Omelau v. ROP*, 5 ROP Intrm. 23, 23 (1994); *Liep v. ROP*, 5 ROP Intrm. 5, 9 (1994); *Minor*, 5 ROP Intrm. at 3.

ANALYSIS

If believed, the testimony of Ambai, along with the money found in Iyekar’s possession, was sufficient to establish that Iyekar distributed methamphetamine to Ambai. However, Iyekar argues that Ambai is so lacking in credibility that no reasonable trier of fact could have found Iyekar guilty beyond a reasonable doubt. That in extraordinary circumstances a credibility issue **1207** may warrant the reversal of a criminal conviction on appeal is established by *ROP v. Tmetuchl*, 1 ROP Intrm. 443 (1988). Although Ambai’s testimony contains several inconsistencies, the record as a whole does not warrant reversal.

In *Tmetuchl*, the key witness linking the three defendants to the murder of President Remeliik had, prior to trial, told three different stories to the police, two of which did not inculcate the defendants at all; had told at least three different versions of the facts incriminating the defendants; and had failed three separate polygraph tests, twice recanting her statements and admitting she had lied only to re-recant twice more and again incriminate the defendants. With

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that background, it was fair for the court to conclude, as one member of the panel put it, that “[b]y the time of trial [the government’s key witness] had completely destroyed her own credibility.” 1 ROP Intrm. at 496 (King, J., concurring and dissenting).

The same conclusion cannot be reached in the instant case. It is true that Ambai testified inconsistently with prior statements given to the police, and he provided often conflicting accounts of what transpired on the day of his arrest. Furthermore, Ambai had an arguable bias in testifying the way he did: by implicating Iyekar, Ambai’s own exposure to criminal liability may have been reduced. To acknowledge that Ambai’s credibility was subject to legitimate attack, however, does not by itself make it so untrustworthy that no reasonable fact-finder could credit his testimony. Here, the testimony of several police officers provided circumstantial evidence of Iyekar’s guilt. Although Ambai was the sole witness directly linking Iyekar to the distribution of methamphetamine, he was still subjected to a vigorous cross-examination by defense counsel. It was then up to the trial court, having observed Ambai’s demeanor on the witness stand and having heard all of the evidence, to consider potential bias, to assess the reasons for inconsistent testimony, and to decide whether Ambai should be believed or not. The trial court having made that determination, we are in no position, on the basis of a cold record, to say that it was an unreasonable one.

For the foregoing reasons, Iyekar’s conviction is hereby **AFFIRMED**.