

Ebas v. ROP, 12 ROP 59 (2005)
NGIRAROROU EBAS, aka Clifford Ebas,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 03-002
Criminal Case No. 00-375

Supreme Court, Appellate Division
Republic of Palau

Decided: January 18, 2005¹

Counsel for Appellant: Ernestine K. Rengiil

Counsel for Appellee: Christopher S. Boeder

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
ALEX R. MUNSON, Part-Time Associate Justice.

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

PER CURIAM:

Ngirarorou Ebas was convicted of one count of trafficking methamphetamine in violation of 34 PNC § 3301. In this appeal, Ebas contends that there was insufficient evidence to support his conviction. Finding that a rational jurist could have found the essential elements of methamphetamine trafficking beyond a reasonable doubt, we AFFIRM his conviction.

The evidence adduced at trial showed the following:

On October 10, 2002, Police Detective Felix Francisco observed a confidential informant (“CI”) meet with Ebas. Ebas got inside the CI’s car, with the interior lights on. The CI then counted out 300 dollars in cash and handed the money to Ebas. Ebas told the CI to wait for him at the T&O store. About 45 minutes later, at T&O, in a transaction witnessed by three police officers, Ebas handed the CI a straw with substance inside. After receiving the straw, the CI met with Officer Flory Esebei and turned the straw over **L60** to his custody.

¹The parties waived oral argument. This Court agrees that argument would not materially advance the resolution of this appeal.

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Police Officer Esebei then brought the straw to Detective Francisco's house, where he handed it to Police Officer Cedric Tatingal. Officer Tatingal locked up the straw in Detective Francisco's desk, where it remained for several days, prior to Detective Francisco conducting a field test on the straw's contents. Detective Francisco then sealed the evidence and gave it to Officer Esebei who locked it in the evidence room.

On December 7, 2000, Officer Esebei took the evidence to Guam to be analyzed. In Guam, Zenobia Lynn, a criminalist in the Guam Police Department analyzed the contents of the straw and determined that it was methamphetamine. Following a three-day trial in which nine witnesses testified, Ebas was convicted of methamphetamine trafficking.

On appeal, Ebas contends that there was insufficient evidence introduced at the trial level to support his conviction. This court reviews the sufficiency of the evidence only 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 the essential elements of the crime were established beyond a reasonable doubt." *Minor v. ROP*, 5 ROP Intrm. 1, 3 (1994). Under this standard, even if the Appellate Division would have decided the case differently if it were sitting as the trier of fact, the conviction must be upheld. *See id.*

Ebas specifically contends that the testimony of the police officers and the confidential informant was conflicting and inconsistent. Ebas first asserts that Detective Francisco testified that he was positioned by a cement wall near Ebas' house when he observed the money exchange between Ebas and the CI. However, the CI testified that the CI and Ebas conducted their money exchange near a mango tree. Accordingly, Ebas postulates that it was not possible for Detective Francisco to witness the money exchange if he was parked by the cement wall and not by the mango tree. Ebas does not, however, explain why logistically it was not possible to view a drug exchange by the mango tree if the Detective was stationed by the cement wall. Moreover, the transcript reveals that the CI thought that the Detective could view the transaction from the cement wall. In any event, the CI himself testified that he gave Ebas money.

Ebas also contends that the testimony of the witnesses was inconsistent regarding the drug exchange itself. According to Ebas, it would have been difficult for the officers to see the actions they testified that they saw. However, Ebas offers no support for this conclusory statement.

Ebas further contends that Officer Esebei's testimony that he followed the CI to T-Dock road to retrieve the straw is in conflict with the CI's testimony that the CI drove toward the WALU station in Ngermid and handed the straw to Officer Esebei there. Ebas asserts that the CI's testimony demonstrates that the CI could have picked up the straw at any point between when he met with Ebas and Ngermid. Accordingly, Ebas argues that because the testimony was inconsistent and some of the testimony offered could lead to reasonable doubt as to whether Ebas sold the CI drugs, the evidence adduced at trial court be interpreted to establish reasonable doubt.

The trial court, however, credited the L61 identification testimony of the CI and the police officers that Ebas was present at the scene. The trial court considered the arguments that

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some of the testimony of the CI was contradictory to that of the police officers, but found that such contradiction did not establish reasonable doubt because the contradictions did not support the defense theory that Ebas was set up. Furthermore, all witnesses testified to the same general series of events. Although there were some minor details where their testimony diverged, these details did not impact the core description of the events, which the trial court found to be a credible description. It is not the function of the appellate court to reweigh the evidence, merely to determine whether there was any reasonable evidence to support the judgment. *ROP v. Sakuma*, 2 ROP Intrm. 23, 31 (1990). Here, the testimony of the police officers and the confidential informant was substantially similar regarding the key events of the evening, and thus, there was evidence to support the judgment. We affirm.