

Aichi v. ROP, 14 ROP 68 (2007)
REKIS AICHI,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 06-001
Criminal Action No. 03-286

Supreme Court, Appellate Division
Republic of Palau

Argued: April 16, 2007
Decided: April 16, 2007

Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Lori Ann Zucco

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable ARTHUR NGIRAKLSONG, Chief Justice,
presiding.

WEEKS, Justice:

Appellant Rekis Aichi appeals his conviction for one count of trafficking in a controlled substance. Aichi claims the evidence presented at trial was insufficient to establish beyond a reasonable doubt that he **169** trafficked methamphetamine. Having considered the arguments of the parties, we affirm the judgment of the Trial Division.

BACKGROUND

On July 1, 2003, informant Carl Remeliik contacted police officer Kenny Mers about an arranged purchase of 0.5 grams of methamphetamine from Aichi for the price of \$350. Later that evening, Mers and other police officers arrived at Remeliik's house in Peleliu. After Remeliik contacted Aichi, Remeliik met a car on the road in front of his house with Aichi in the passenger seat. Aichi opened the passenger door and gave an item to Remeliik, who then gave Aichi the money. Remeliik signaled Mers that the transaction was complete and the police officers arrested Aichi. Remeliik gave Mers a clear plastic tube with blue stripes. Later, Remeliik gave a statement recorded by Mers stating that Remeliik gave \$350 to Aichi and Aichi gave him 0.5 grams of methamphetamine in a plastic straw. Back in Koror, Mers cut a side of the plastic tube

Aichi v. ROP, 14 ROP 68 (2007)

and extracted a small amount of a clear substance that tested as positive for methamphetamine in the field test. Mers sealed the tube and placed it into a plastic bag, writing on the bag that it was one clear plastic tube with blue stripes containing a clear substance of methamphetamine with a weight of 0.7 grams. The bag was taken to the Guam criminal laboratory for testing where Monica Palomo Ada opened the plastic bag and found a clear plastic tube with blue stripes intact with no cuts or markings. Ada concluded the substance was 0.4373 grams of methamphetamine.

On January 10, 2006, Chief Justice Ngiraklsong convicted Aichi of one count of trafficking in a controlled substance. On March 16, 2006, Aichi received a sentence of twenty-five years in jail and a fine of \$50,000. Aichi timely appealed, claiming that the evidence presented at trial was insufficient to establish beyond a reasonable doubt that he trafficked methamphetamine.

STANDARD OF REVIEW

This Court's review of the sufficiency of the evidence to support a conviction is very limited. *Oiterong v. ROP*, 9 ROP 195, 201 (2002). We cannot set aside the findings of the Trial Division unless they are clearly erroneous. *Id.* We review 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); *Ebas v. ROP*, 12 ROP 59, 60 (2005). The Appellate Division "should not reweigh the evidence but only determine 'whether there was *any* reasonable evidence to support the judgment.'" *ROP v. Sakuma*, 2 ROP Intrm. 23, 31 (1990) (citing *ROP v. Kikuo*, 1 ROP Intrm. 254, 257 (1985) (emphasis added)). Under this standard, even if we would have decided the case differently if we were sitting as the trier of fact, the conviction must be upheld. *See id.*

DISCUSSION

Aichi does not challenge the sufficiency of the great weight of the evidence proving the essential elements of the crime. **170** Instead, he raises three discrepancies in the handling of the plastic tube and argues that the evidence is insufficient to prove that the plastic tube taken from him on Peleliu is the same plastic tube that was tested by Mers in Koror and by the laboratory in Guam.

Aichi first argues there is a discrepancy between Mers and Remeliik's descriptions of the plastic tube. Remeliik described it as a "plastic straw" while the police report written by Mers described it as a "Clear plastic tube w/blue stripe." Aichi attempts to draw a distinction between the descriptions because Remeliik did not say the straw had a blue stripe.¹ Remeliik gave a short oral statement and as a civilian he is not expected to give the detailed description Mers gave in the police report. The descriptions do not contradict one another because Remeliik's description is simply less detailed than the description by Mers. No discrepancy exists between the plastic tube descriptions.

¹The parties agree that "plastic tube" and "plastic straw" are synonymous.

Aichi v. ROP, 14 ROP 68 (2007)

Aichi next argues there is a discrepancy as to the weight of the methamphetamine. Remeliik said he purchased 0.5 grams, Mers weighed it as 0.7 grams, and the laboratory weighed it as 0.4373 grams. The weight given by Remeliik is not scientific as he did not weigh the straw and estimated the amount based on Aichi's assurances that it was 0.5 grams. The weight given by Mers is higher than the laboratory because he weighed the straw and methamphetamine together and the scale in the Koror police office has fewer quality controls than the Guam laboratory. The minor discrepancies between the weights do not cast doubt on the chain of custody.

Aichi finally argues that the plastic tube cut by Mers for the field test in Koror is not the same plastic tube tested by the laboratory because Ada found no cuts or markings on the plastic tube. A reasonable trier of fact could determine that when Mers stated that he "cut a side of the straw" he meant he cut off the tip of the straw and then resealed it, leaving no visible cut. The lack of cuts on the plastic tube does not render the evidence against Aichi insufficient.

CONCLUSION

In viewing the evidence in the light most favorable to the prosecution, a reasonable trier of fact could have found the essential elements of the crime were established beyond a reasonable doubt. The minor discrepancies raised by Aichi are not cause to find any error in the findings made by the Trial Division. Accordingly, the Trial Division's judgment is affirmed.