Ngirarorou v. ROP, 8 ROP Intrm. 175 (2000)
FELISTO NGIRARAROU,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 98-02
Criminal Case No. 203-97

Supreme Court, Appellate Division
Republic of Palau

Decided: April 20, 2000

Counsel for Appellee: Stephen Carrara

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice :

In this petition for rehearing, the government makes two arguments: that the Appellate Division 1) made findings of fact *de novo*, without deferring to the Trial Division's findings, and 2) erred in the emphasis it placed on the weight of the seized methamphetamine.

The government's petition is replete with references to an error of fact upon which its arguments are based. The government repeatedly refers to the two interactions at issue during the trial as the defendant's dealings with "known ice users." The record, however, contains no such facts. When the first officer who initially observed Ngirarorou testified about the reason he reported Ngirarorou's presence to his ⊥176 superiors, he stated that he knew the defendant because he had been under surveillance by the police for about four to six months. In response to the prosecutor's question of why the defendant had been under surveillance, the following colloquy ensued:

A: Because there was a report that came to . . .

Hamilton: Objection, Your Honor, it's a hearsay.

Q: It's not going for the truth, Your Honor, it's to set in context there how he knows, how the officers know Defendant.

Judge: Alright.

Hamilton: As long as it's admitted for one purpose other than the truth, Your Honor.

Salii: It's not going for the truth.

Judge: Yeah, that's right, it's not [to] prove anything. Go ahead.

The second officer, one of the two arresting officers, testified that he did not recognize the person to whom Ngirarorou was speaking. When the third officer, the other arresting officer, testified that he had received a report from the first officer about the defendant and other known ice users in a particular location, defense counsel objected again on the basis of hearsay. The prosecutor immediately responded that "[i]t's not going for the truth, Your Honor, it's establishing the . . . his impression when he got the radio call from [the first officer]." The judge responded: "Okay. Go ahead." Thus, there was no evidence that the defendant interacted with "known" drug users. The trial court correctly made no reference to the other individuals as drug users. The government errs in doing so now.

The government also first argues that we made *de novo* findings. This characterization misconstrues the review in our prior opinion. In our decision, we found that the Trial Division's material findings of facts were supported by the record. We then proceeded with the second analysis using those facts which were supported by the record. This is not a *de novo* compilation of the facts.

The second task in our review is a critically important role for an appellate court: the application of the law to a particular set of facts. The government errs in stating that only once has the Appellate Division found that the evidence was insufficient to support the conviction, citing to *ROP v. Ngiraingas*, 2 ROP Intrm. 78 (1990). *See also Blailes and Wasisang v. ROP* , 5 ROP Intrm. 36 (1994) (evidence insufficient to support convictions for attempted murder in the second degree). In *ROP v. Tmetuchl* , 1 ROP Intrm. 443 (1988), the Court reversed the convictions of three defendants for the murder of Palau's first president after determining that the trial court erred in finding that the elements of the crime ⊥177 had been proved beyond a reasonable doubt. The importance of such review can hardly be understated in light of the eventual convictions of those actually responsible for the assassination. *See ROP v. Ngiraked* , 5 ROP Intrm. 159 (1996).

Nonetheless, it is not the quantity of reversals of convictions that matters; it is the quality of the evidence. The government argues that the evidence included the delivery of drugs to known drug users in two instances. As stated above, there was no evidence that the defendant's interactions were with known drugs users. Nor is the content of the interactions known. The only direct evidence that the defendant was engaging in unlawful conduct came from the search of the defendant which revealed the nine plates of ice, a pipe, and cash. Because there was no direct evidence of any delivery of methamphetamine, one of the elements of trafficking, the conviction could be sustained only if the circumstantial evidence supported an inference of delivery.

At trial the government's witness testified that the smallest quantity at which ice was sold

was a $50.00 plate, and that a gram was equivalent to ten plates. The witness further testified that "[t]hey always weigh them as 0.1 gram per plate." In an effort to explain how it can be inferred that the defendant was guilty of trafficking, when the nine plates he possessed totaled less than .3 grams of ice, the government suggests that the defendant was either selling smaller amounts to poor customers, or was cheating the buyers. Neither of these theories was advanced by the government at trial, and these arguments are in contradiction of its own witness' testimony. As established by case law, the small amount of drugs and money and the pipe gave rise to the inference of personal use. The government simply did not carry its burden of proving beyond a reasonable doubt that the defendant was trafficking in methamphetamine.

The petition for rehearing is hereby DENIED.