

# SUPREME COURT'S JUDGMENT

delivered in Stockholm on 5 March 2026

Case no.  
B 5628-24

## **PARTIES**

### **Appellant**

E.A.

Counsel and public defender: Attorney D.M.

### **Respondent**

Prosecutor-General

Box 5553

114 85 Stockholm

## **THE MATTER**

Narcotics offence

## **RULING APPEALED**

Judgment of the Court of Appeal for Western Sweden of 2024-06-17  
in case B 7859-23

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## **JUDGMENT**

The Supreme Court modifies the judgment of the court of appeal only insofar as E.A. is found guilty of offences only in accordance with Section 1, first paragraph (6) of the Penal Law on Narcotics (1968:64) as worded prior to 1 July 2023.

D.M. shall receive compensation from public funds for the defence of E.A. in the Supreme Court of SEK 10,311. Of the amount, SEK 8,249 relates to work and SEK 2,062.25 relates to value added tax. The state shall bear the cost.

## **CLAIMS IN THE SUPREME COURT**

E.A. has claimed that the Supreme Court shall sentence him only for possession without intent to distribute of 2.77 grams of cocaine and 13.1 grams of amphetamines and, in any event, impose a less severe sanction.

The Prosecutor-General has opposed modification of the judgment of the court of appeal.

## **REASONS FOR THE JUDGMENT**

### **Background**

1. E.A. was prosecuted for a narcotics offence. According to the statement of the criminal act charged, on 21 June 2022, he unlawfully and for the purposes of distribution, possessed 981 grams of cannabis resin, 2.77 grams of cocaine and 13.1 grams of amphetamines.
2. The act had been preceded by what is often referred to as provocative measures by the police. The provocative measures stemmed from the police noting an advertisement regarding the sale of narcotics which had been sent out on a messaging service. In the advertisement,

amphetamines, cocaine and cannabis resin were offered with information regarding prices for various quantities. As regards cannabis resin, the price was stated, among other things, for one kilo and two kilos. The advertisement contained contact information in the form of a telephone number.

3. Following the consent of the prosecutor, a police officer sent a text message to the telephone number set forth in the advertisement and stated that he was interested in buying one kilo of cannabis resin. In the subsequent conversation conducted both via text messages and voice conversations, the police officer and seller reached an agreement regarding a price for the narcotics and the time and place for transfer. When they met, approximately one and a half hours later, the seller was arrested. On that occasion, he was in possession of the narcotics set forth in the statement of the criminal act charged. The person turned out to be E.A.

4. E.A. confessed that it was he who had been in contact with the police officer and that, in conjunction with the meeting, he intended to transfer the cannabis resin to the same but objected that he would not have been in possession of the narcotics had it not been for the provocative measures. Due to the fact that the battery in his telephone was poor, he had borrowed the telephone on which the police officer contacted him and acquired the cannabis resin only after the police officer had contacted him. The cocaine and amphetamines had been obtained from the person who provided him with the cannabis resin, and the intention was to discard the narcotics because they were of poor quality.

5. The district court and court of appeal found that E.A. was in possession of narcotics for the purposes of distribution and that the police, by virtue of the provocative measures, had not prompted him to commit any offence which he would not have otherwise committed. According to the

courts, the measures were instead intended to acquire evidence that E.A. was already in possession of narcotics. The courts found E.A. guilty of a narcotics offence in accordance with Section 1, first paragraph (5) and (6) of the Penal Law on Narcotics (1968:64) as worded prior to 1 July 2023. The court of appeal determined the sanction to be a term of imprisonment of nine months.

### **What is at issue in the Supreme Court**

6. The question in the case is whether the provocative measures on the part of the police are to affect the assessment of the indictment against E.A.

### **How can provocation affect the assessment of the responsibility of the person induced?**

7. The starting point in Swedish law has long been that the fact that an offence was induced by the police did not affect punishability but that it could be taken into account in sentencing where the police measures were clearly improper (*cf.*, among others, the “*Empty Suitcases*” case, NJA 1985, p. 544). Subsequently however, it became clear that such a view was incompatible with the requirements of the European Convention for a fair trial (*cf.*, in particular, the judgment of the European Court of Human Rights in *Teixeira de Castro v. Portugal*, 9 June 1998, Reports of Judgments and Decisions 1998-IV).

8. Against this background, the Supreme Court adopted a position in the “*Rembrandt’s Self-Portrait*” case, NJA 2007, p. 1037, as to the manner in which an objection regarding entrapment is to be addressed on a national level. It is apparent from the ruling that the fact that an offence is induced by the police in such a manner that irreparably undermines fairness in the trial shall be deemed to entail that a substantive requirement for criminal liability is absent. This entails that prosecution in such cases cannot be

brought and, in the event it is nonetheless brought, the court shall reject the action. Thus, in principle, the effects are the same as though the case is statute-barred.

9. The Supreme Court further stated that, in cases other than those in which provocation bars punishability, there may be cause to consider the provocation in mitigating a sentence and, ultimately, by remitting the sanction in accordance with the provisions of Chapter 29, Sections 5 and 6 of the Swedish Criminal Code.

10. Following the case, the European Court of Human Rights has developed its case law concerning what is to be regarded as such entrapment as constitutes a bar to legal proceedings (see, for example, the judgments of the European Court of Human Rights in *Bannikova v. Russia*, no. 18757/06, 4 November 2010 and *Akbay and Others v. Germany*, nos. 40495/15 and 2 others, 15 October 2020). However, there is nothing in this case law which gives cause to diverge from the position adopted in the “*Rembrandt’s Self-Portrait*” case.

### **When is there an impediment to legal proceedings involving induced offences?**

11. Whether or not the provocative measure may be said to have entailed that the person was prompted to commit an offence which he or she would not have otherwise committed is determinative in the assessment of whether there is an impediment to prosecute an act as a consequence of a provocation.

12. A first assessment to be made is whether the police at all prompted the person to commit a specific offence to which the legal proceedings pertain. In order for such to be the case, it is required that the police, in a considerable way, have influenced the person to commit the offence, e.g.

instigating the act, making a request for something the possession of which is prohibited or by providing a person with a particularly advantageous opportunity to commit the offence. Whether or not the police interact directly with the person or if such takes place indirectly through intermediaries is irrelevant in this context (*cf.* the “*Rembrandt’s Self-Portrait*” case).

13. If one concludes that the police have prompted the person to commit the specific offence, a determination must be made as to whether prosecution of the offence may nonetheless be approved on the basis that the person who was the subject of the provocative measures would have committed a comparable offence even if the measures had not been taken. In this assessment, consideration should be given above all as to whether there is concrete evidence in the investigation which shows that the person, also prior to the provocative measures, was involved in such criminality of which the relevant offence may be said to be an extension. This means that it is primarily in cases of criminal activity that can be said in some sense to be ongoing, or at least already initiated, that an offence induced by the police may be prosecuted.

14. In this context, it may be relevant whether the initiative for the act ultimately came from the police or from the person subjected to the provocative measures. Another factor that may be significant is whether the person was pressured by the police to commit the offence. When dealing with narcotics or other items the possession of which is prohibited, it may also be relevant whether the person demonstrated an ability to obtain on short notice the prohibited item and whether the person already had knowledge of details regarding that to which the possession related at the time of the provocative measures, e.g. how it was packaged or the price for various quantities. To some extent, the fact that the person was previously

found guilty of an offence of this type may be ascribed weight. (*Cf.*, here, e.g. *Akbay and Others v. Germany* §§ 111–119.)

**When should provocative measures be taken into account in conjunction with the determination of sanctions?**

15. As stated above, even if the provocative measures cannot be deemed to entail that there is an impediment to prosecuting an act, there is cause in certain situations to take into account the use of provocative measures in the determination of penalty or the choice of sanction and, ultimately, in the remission of the sanction. Such cause can – notwithstanding that mitigation of a sentence cannot be excluded in other cases – arise primarily in two situations.

16. The first situation pertains to cases where the provocative measures cannot be deemed to entail that the person has been prompted to commit an offence which he or she would otherwise have not committed (*cf.* paras. 11–14 above) but where they have entailed that the person committed a more serious offence than he or she would have otherwise committed. One example can be that, although it is established that a person, even before the provocative measures were undertaken, was continuously involved in the sale of narcotics, the police prompted the person to sell entirely different quantities than he or she had previously done. Ultimately, in such situations, the court also has responsibility for ensuring that the fact that the individual was prompted to commit a more serious offence than he or she would have otherwise committed does not lead to other, negative consequences for him or her, e.g. that the larger quantity gives rise to a more severe classification or that the offence has a longer limitation period. (*Cf.*, in this respect, the judgment of the European Court of Human Rights in *Grba v. Croatia*, no. 47074/12, §§ 102 and 103, 23 November 2017.)

17. Another situation in which mitigation of a sentence may arise is when the provocative measures, even if they do not entail inducing the offence, may be regarded as so inappropriate that they should be taken into account in the determination of the penalty (*cf.*, here, the “*Entrapment*” case, NJA 2011, p. 638).

18. Room for remitting the sanction in these types of cases is limited and may arise primarily in cases where the penalty value is low.

### **The assessment in this case**

#### *There is no impediment to prosecution*

19. It is undisputed that it was E.A. who was contacted by the police at the telephone number stated in the advertisement regarding the sale of narcotics. It is also clear that the police ordered the quantity of cannabis resin which E.A. had in his possession at the delivery location.

20. The investigation does not provide any certain conclusion on the issue of whether E.A., as early as when the provocative measures were initiated, possessed the narcotics. However, it is apparent from the conversation that E.A. could almost immediately offer the requested cannabis resin in accordance with the sales advertisement. He could also provide photographs of the cannabis resin in the same packaging as the cannabis resin he was arrested with and even provide certain detailed information regarding the cannabis resin such as the weight of individual packages. In addition, he could see to the actual delivery of the cannabis resin without any real delay.

21. To this may be added the fact that the same telephone number was used around the same time to enter into other narcotics deals, that the telephone which E.A. claimed was his contained both messages concerning narcotics sales as well as the relevant advertisement, and that the car which



he must have used to get to the delivery location was found to contain empty packages of the type in which the cannabis resin was packaged.

22. Even if it was the police who initiated the transaction, there is nothing in the case which suggests that the police exercised any influence over E.A.'s actions in such a manner other than acting like any other narcotics buyer.

23. Taken as a whole, the investigation leaves no room for any conclusion other than that E.A. used the telephone number he was contacted on for the purpose of delivering narcotics in accordance with the sales advertisement which gave rise to the police measures. Under these circumstances, the provocative measures do not constitute an impediment to prosecute the possession offence. Accordingly, E.A. shall be convicted of possession of the narcotics specified in the indictment with the intention to distribute them.

*There is no cause to allow the provocative measures to affect the determination of the penalty*

24. The police measures have pertained to a quantity which falls well within the framework of what was offered for sale through the advertisement. Against this background, there is no support for the conclusion that the police prompted E.A. to deal with larger quantities than he would have otherwise done. Nor is there otherwise anything to suggest that there is cause to take into account the police measures in the determination of penalty. On these bases, there is no cause to depart from the assessments made by the court of appeal on the question of the determination of penalty and choice of sanction.

*Overall conclusion*

25. The provocative measures carried out by the police do not affect the assessment of E.A.'s act. However, E.A. shall, as the statement of the criminal act charge is formulated, be convicted of a narcotics offence only in accordance with Section 1, first paragraph (6) of the Penal Law on Narcotics as worded prior to 1 July 2023.

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Justices of the Supreme Court Stefan Johansson, Dag Mattsson, Petter Asp (reporting Justice), Stefan Reimer and Johan Danelius participated in the ruling.  
Judge referee: Christoffer Stanek.