PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROBERTO T. GARCIA, APPELLANT.

G.R. NO. 172975. August 08, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the Court of Appeals Decision[1] of April 24, 2006 affirming the September 23, 2004 Judgment[2] of the Regional Trial Court (RTC) of Makati City, Branch 140, finding Roberto T. Garcia (appellant), along with his girlfriend, then a minor, Melissa B. Cruz (Melissa), guilty beyond reasonable doubt of violation of Sections 5[3] and 11,[4] Article II of Republic Act No. 9165 (RA 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portion of the Information filed against appellant and Melissa for violation of Section 5, RA 9165, which was docketed as Criminal Case No. 02-2323, reads:

> That on or about the 17[th] day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero nine (0.09) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.
>
> CONTRARY TO LAW.[5]

The accusatory portion of the Information against appellant for violation of Section 11, Article II, RA 9165, which was docketed as Criminal Case No. 02-2324, provides:

> That on or about the 17[th] day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point thirteen (0.13) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

The accusatory portion of the separate Information against Melissa for violation of Section 11, Article II, RA 9165, which was docketed as Criminal Case No. 02-2325, reads:

> That on or about the 17[th] day of August, 2002, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession, direct custody and control zero point zero six (0.06) gram, zero point zero six (0.06) gram and zero point zero nine (0.09) gram of Methylamphetamine Hydrochloride (shabu) which is a dangerous drug in violation of the above-cited law.

CONTRARY TO LAW.[7]

The following is the version of the prosecution:

On August 16, 2002, the Drug Enforcement Unit (DEU) of the Makati Police received a report from an informant detailing the rampant selling of methampethamine hydrochloride or shabu, a prohibited drug, along 5[th] Street, West Rembo, Makati City.[8] The informant specifically named "Bobby" and "Isa," who turned out to be appellant and Melissa, respectively, as being engaged in the illegal sale.[9]

The DEU of the Makati Police immediately formed a team to conduct a buy-bust operation. The team was composed of SPO2 Wilmer Antonio (SPO2 Antonio) as team leader, and SPO1 Antonio Fulleros, PO2 Virgilio Acosta, PO2 Vicente Barrameda (PO2 Barrameda) and PO2 Rodrigo Igno (PO2 Igno) as members.[10]

The team, together with the informant, immediately proceeded to the target area which they reached at around 10:30 p.m. of the same day, August 16, 2002. As appellant and Melissa were seen standing along 5[th] Street at around 12:30 in the morning of August 17, 2002, the informant, together with PO2 Barrameda who acted as poseur-buyer, approached the two. The informant thereupon introduced PO2 Barrameda as a buyer of shabu, and appellant immediately asked the former how much he needed. Replying, PO2 Barrameda said that he wanted to buy P100 worth of the drug, he simultaneously handing to appellant a P100 bill marked with "LMA,"[11] acronym for Leandro Mendoza Abel, Chief of the DEU.

As soon as appellant received the P100 bill, he secured from Melissa a small plastic sachet containing white granules which he handed over to PO2 Barrameda.[12]

PO2 Barrameda at once lighted his cigarette as a pre-arranged signal for the team members to arrest appellant and Melissa. PO2 Igno immediately approached the group, introduced himself as a policeman, and apprehended Melissa from whom he confiscated a small tin box which, when opened, yielded three (3) plastic sachets containing suspected shabu.[13] He gave the items to team leader SPO2 Antonio who marked the tin box with "MBC-4" and the three sachets with "MBC-1," "MBC-2," and "MBC-3" in front of appellant and Melissa.[14]

PO2 Barrameda thereupon arrested appellant after introducing himself as a police officer and apprising him and Melissa of their constitutional rights. The team recovered the marked P100 bill, together with another plastic sachet, from appellant's pocket.[15] Team leader SPO2 Antonio immediately marked the plastic sachet taken from appellant's pocket with "RTG-1" and the plastic sachet sold to poseur-buyer PO2 Barrameda with "RTG."[16]

The team thereafter brought appellant and Melissa to the police station for investigation. SPO2 Antonio turned over the marked money and the five (5) plastic sachets to investigator PO2 Leo Gabrang who prepared an investigation report as well as a request for laboratory examination of the contents of the sachets.

The contents of the sachets which were subjected to qualitative examination by Police Inspector Lourdeliza Gural-Cejes, Forensic Chemist of the Eastern Police District, were positive for shabu.[17]

At the witness stand, appellant gave the following version:

At around ten o'clock in the evening of August 16, 2002, he was engaged in a drinking spree inside the house of his friend Manny Buncab (Buncab) which is adjacent to his mother's at 11-J, 5[th] Street, West Rembo, Makati City.[18] He was then with his girlfriend-co-accused Melissa.

When Buncab went out to urinate, three persons entered the house, asked the name of appellant and told him to raise his hands.[19] The three frisked him from whom they recovered a knife. And they recovered from Melissa a cellphone and wallet.[20] They were then brought to the DEU office where they were informed that they were arrested for violation of Sections 5 and 11 of RA 9165.

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While in the DEU office, appellant saw for the first time a marked P100 bill and plastic sachets of shabu which were taken out from a drawer of the table of PO2 Igno.[21] The police officers then asked him to settle the case for the amount of Forty Thousand (P40,000) Pesos, but he failed to produce the same.[22]

His co-accused Melissa, who likewise took the witness stand, corroborated appellant's version of their arrest and the confiscation of their personal belongings, as well as appellant's claim about seeing the marked P100 bill being taken from a policeman's table.[23]

Melissa added that on appellant's arrest, she insisted to go with him to the DEU office to ensure that he would not be hurt by the policemen.[24]

Melissa likewise corroborated appellant's claim that they were asked to settle the case by producing some amount of money.

Finally, Melissa claimed that despite her information that she has an uncle who is a police officer, she was also indicted because "nayayabangan daw sila sakin."

Buncab, another witness for the defense, narrated as follows: At around ten o'clock in the evening of August 16, 2002, appellant and Melissa were in his (Buncab's) house having dinner.[25] He later went out of his house to answer the call of nature but when he was about to open the gate, several policemen arrived and asked him to open it. One of the policemen was Police Officer Fulleros who had previously arrested him for selling shabu.[26] He then escaped for fear that he might get involved in the trouble.[27]

Branch 140 of the RTC of Makati City, by Judgment[28] of September 23, 2004, found appellant and Melissa guilty beyond reasonable doubt of the crimes charged. The decretal text of the judgment reads:

> WHEREFORE, finding the accused ROBERTO GARCIA @ BOBBY guilty beyond reasonable doubt of Violation of Section 5 of Art. II of R.A. 9165, in Criminal Case No. 02-2323 judgment is hereby rendered sentencing ROBERTO GARCIA to suffer the penalty of life imprisonment and a fine of P500,000.00.
>
> Further finding the accused ROBERTO GARCIA Y TALOSIG @ BOBBY in Criminal Case No. 02-2324 in Violation of Section 11 Art. II of R.A. 9165 judgment is hereby rendered sentencing ROBERTO GARCIA to suffer the penalty of imprisonment of 12 years and 1 day to twenty years of reclusion temporal and a fine of P300,000.00.
>
> Finding the accused MELISSA CRUZ Y BACARRO @ ISA guilty beyond reasonable doubt of Violation of Section 5 of Art. II of R.A. 9165, in Criminal Case No. 02-2323 being a minor, who was 16 years old at the time of the commission of the offense, she is entitled to the mitigating circumstance of minority thus reducing the penalty to 1 degree lower than that imposed by law. Accused is therefore sentenced to suffer the penalty of imprisonment of 12 years and 1 day to 20 years of reclusion temporal and to pay a fine of P300,000.00.
>
> Further finding Accused MELLISA CRUZ BACARRO @ ISA guilty beyond reasonable doubt of Violation of Section 11 Art. II of R.A. 9165 in Criminal Case No. 02-2325, being a minor, who was 16 years old at the time of the commission of the offense, she is entitled to the mitigating circumstance of minority thus reducing the penalty to 1 degree lower than that imposed by law. Accused is therefore sentenced to suffer the penalty of imprisonment of 6 years and 1 day to 12 years of prision mayor and to pay a fine of P300,000.00.
>
> However, pursuant to Art. 192 of P.D. 603, judgment is hereby suspended and said minor [Melissa Cruz Bacarro @ ISA] is committed to the Department of Social Welfare, or any training institution operated by the government, or duly licensed agencies or any other responsible person, until she shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or agency or responsible individual under whose care she has been committed.

> Cost against the accused.
>
> SO ORDERED.[29] (Emphasis in the original; underscoring supplied)

By Manifestation[30] filed on January 10, 2005, Melissa, through counsel, informed the trial court that she was withdrawing her Motion for Reconsideration of its decision. The trial court noted the Manifestation by Order of January 20, 2005.[31]

Only appellant thus appealed the trial court's judgment to the Court of Appeals which, as priorly stated, affirmed the same by Decision of April 24, 2006.

Hence, appellant's present appeal.

Appellant, by Manifestation[32] dated September 22, 2006, informed that he was no longer filing a supplemental brief.

In his Appellant's Brief filed before the appellate court, appellant faulted the trial court in not finding that he was illegally arrested.[33] He insisted that none of the circumstances justifying a warrantless arrest under Section 5 of Rule 113 of the Revised Rules on Criminal Procedure[34] was present. He faulted too the trial court in finding him guilty beyond reasonable doubt of the offenses charged,[35] given, so he claimed, the incredible testimonies of the prosecution witnesses.[36]

The appeal fails.

Appellant was caught in flagrante delicto - in the act of selling a sachet containing substances which turned out to be positive for shabu to poseur-buyer PO2 Barrameda. And as soon as he was arrested, he was frisked by the arresting officers in the course of which a sachet also containing substances which too turned out to be positive for shabu was found in his pocket.

Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. Having committed the crime of selling shabu in the presence of the buy-bust operation team, and having been found to be in possession of another sachet of shabu immediately thereafter, appellant's arrest without warrant is, unquestionably, justified.

For a successful prosecution of a charge for illegal sale of a prohibited drug, the following elements must concur: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[37] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the object evidence.[38] Such requirements are present in this case.

The illegal sale of shabu is established by the clear testimony of PO2 Barrameda who acted as the poseur-buyer in the standard police buy-bust operation.

PO2 Barrameda's testimony was corroborated on material points by PO2 Igno who was just 10 to 15 meters away from the locus criminis.

That the informant was not presented by the prosecution does not prejudice the State's case as all the elements of illegal sale and possession of shabu by appellant were satisfactorily proved by testimonial, documentary and object evidence. At best, the testimony of the informant would only have been corroborative of the testimonies of PO2 Barrameda and PO2 Igno. It is not indispensable. People v. Uy[39] explains:

> The failure to present the informer did not diminish the integrity of the testimony of the witnesses for the prosecution. Informers are almost always never presented in court because of the need to preserve their

> invaluable service to the police. Their testimony or identity may be dispensed with since his or her narration would be merely corroborative, as in this case, when the poseur-buyer himself testified on the sale of the illegal drug. (Underscoring supplied)

Appellant did not even ascribe any motive for the possible fabrication of charges against him by the police whom he admittedly met for the first time at the time of his arrest.[40] The absence of any improper motive strongly tends to sustain the conclusion that none existed to falsely charge appellant. The presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority[41] is thus worthy of full faith and credit.

This Court is, of course, aware that in some cases law enforcers resort to the practice of planting evidence in order to, inter alia, harass. But the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption stated in the immediately preceding paragraph.

Besides, the defense of denial or frame-up, like alibi, is viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[42]

Appellant's questioning of the lack of prior surveillance by the police officers before the conduct of the buy-bust operation to thus render the operation invalid fails. There is no requirement that a surveillance should first be conducted before a buy-bust operation, especially where the operatives are accompanied to the scene by their informant,[43] or where the police officers have reasonable ground to believe that the informer and the information given are reliable and that a crime is indeed being perpetrated.[44] The buy-bust operation is formed by the police officers precisely to test the veracity of the tip and to apprehend the perpetrator, if he in fact commits the offense, before he further endangers society.

As for the evidence for the defense, the testimonies of its witnesses are even conflicting and/or failing the test of credibility.

Thus, during his cross-examination, appellant claimed that before going to the house of Buncab, he and Melissa met at the billiard hall and proceeded to the house of his (appellant's) mother; and thereafter, they were invited to the house of Buncab to have a drink.[45] Melissa, on cross-examination, however, testified that she alone went to the house of Buncab where she met appellant.[46]

Appellant asserted that he and Buncab had been friends for a year already. When asked what Buncab does for a living, however, he replied that he knew nothing about it.[47]

Melissa testified that she talked with appellant through cellphone while he was in the house of Buncab.[48] She, however, claimed that when appellant was arrested in the house of Buncab, only a knife was taken from him. When asked what happened to the cellphone of appellant, she claimed that it was lost â”€ how and when, she did not elaborate.[49]

What better confirmation, however, of the incredible version of the defense than appellant's co-accused Melissa withdrawing her motion for reconsideration of the trial court's decision.

WHEREFORE, the Court of Appeals Decision of April 24, 2006 is AFFIRMED.

Costs against appellant.

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SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 2-13. Penned by Associate Justice Sesinando Villon and concurred in by Associate Justices Edgardo Cruz and Rosalinda Asuncion-Vicente.

[2]Records, pp. 192-199. Penned by Judge Leticia P. Morales.

[3]SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] SEC. 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

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(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis supplied)

[5] Records, p. 2.

[6] Id. at 4.

[7] Id. at 6.

[8]TSN, January 14, 2004, p. 24.

[9] TSN, March 27, 2003, p. 6.

[10]TSN, January 14, 2004, p. 25; Vide also records, p. 10.

[11]Records, p. 14.

[12]TSN, January 14, 2004, p. 32.

[13]TSN, March 27, 2003, p. 11.

[14] TSN, August 7, 2003, p. 17.

[15]TSN, January 14, 2004, p. 36.

[16] Id. at 39-40.

[17]Records, p. 13.

[18]TSN, March 4, 2004, p. 4.

[19]Id. at 6-7.

[20]Id. at 8.

[21]Id. at 11-12.

[22] Ibid.

[23] TSN, April 1, 2004, p. 8.

[24] Id. at 7.

[25]TSN, July 7, 2004, p. 5.

[26] Id. at 6-7.

[27]Id. at 8.

[28]Records, pp. 192-199.

[29]Id. at 199.

[30] Id. at 216.

[31]Id. at 217.

[32] Rollo, pp. 20-21.

[33]CA rollo, p. 41.

[34] SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

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[35] Rollo, p. 47.

[36]Id. at 49.

[37]People v. Macabalang, G.R. No. 168694, November 27, 2006; Suson v. People, G.R. No. 152848, July 12, 2006, 494 SCRA 691, 699; People v. Hindoy, G.R. No. 132662, May 10, 2001, 357 SCRA 692, 704; People v. De Vera, G.R. No. 112006, July 7, 1997, 275 SCRA 87, 92.

[38]People of the Philippines v. Macabalang, G.R. No. 168694, November 27, 2006.

[39] G.R. No. 128046, March 7, 2000, 327 SCRA 335, 351-352; vide also People v. Ganenas, G.R. No. 141400, September 6, 2001, 364 SCRA 582, 590.

[40] TSN, March 4, 2004, p. 19.

[41] People v. Hindoy, G.R. No. 132662, May 10, 2001, 357 SCRA 692, 700; vide also People v. Uy, G.R. No. 128046, March 7, 2000, 327 SCRA 335, 349; People v. Magno, G.R. No. 126049, Sept. 25, 1998, 296 SCRA 443, 450.

[42] People v. Uy, G.R. No. 128046, March 7, 2000, 327 SCRA 335, 350; vide also People v. De Leon, G.R. Nos. 132484-85, November 15, 2002, 391 SCRA 682, 699.

[43] People v. Ganenas, G.R. No. 141400, September 6, 2001, 364 SCRA 582, 590; People v. Alao, G.R. No. 126516, January 19, 2000, 322 SCRA 380, 388-389 citing People v. Lacbanes, G.R. No. 88684, March 20, 1997, 270 SCRA 191; People v. Ganguso, G.R. No. 115430, Nov. 23, 1995, 250 SCRA 268, 278-279; and People v. Tanca, G.R. No. 110357, Aug. 17, 1994, 235 SCRA 455, 463.

[44] People v. Macabalang, G.R. No. 168694, November 27, 2006.

[45] TSN, March 4, 2004, pp. 16-17.

[46] TSN, April 1, 2004, p. 10.

[47] TSN, March 4, 2004, p. 21.

[48] TSN, April 1, 2004, p. 11.

[49] Ibid.

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