

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MARIAN CORECHE Y CABER, APPELLANT.*G.R. No. 182528. August 14, 2009*

Ponente: CARPIO, J.

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This is an appeal from the Decision[1] of the Court of Appeals dated 19 November 2007, affirming the conviction of appellant Marian Coreche y Caber (appellant) for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), the Comprehensive Dangerous Drugs Act of 2002, for selling and possessing the prohibited drug methamphetamine hydrochloride or shabu.

The Facts

The prosecution's evidence showed that between 4:00 to 4:30 in the morning of 10 September 2003, SPO1 Herminio V. Arellano (Arellano), PO1 Juanito L. Tougan (Tougan), and PO1 Noel P. Pineda (Pineda), members of the Philippine National Police (PNP) of San Mateo, Rizal station, received a tip from an unnamed informant that appellant was peddling shabu. The police officers decided to conduct a sting operation. After Arellano prepared the sting money, consisting of two (2) one hundred peso bills marked "HVA," the three officers and their informant proceeded to appellant's house on San Mateo Street, Dulongbayan, San Mateo, Rizal. Arellano and the informant posed as buyers, while Tougan and Pineda posted themselves nearby as back-up. After appellant and another woman opened the door, the informant asked appellant for "two pesos" worth of shabu and handed appellant the marked bills. Appellant took the money, turned to the other woman and said "Emily, pahinge ka nga ng dalawang piso" ("Emily, can I have two pesos' worth"). After receiving from Emily a plastic sachet supposedly containing shabu, appellant gave the sachet to the informant. Arellano immediately arrested appellant and recovered from her the marked bills and two more plastic sachets. Tougan, who had drawn nearer, arrested the other woman, later identified as Emily Coreche (Emily), appellant's sister and co-accused. Tougan recovered from Emily two plastic sachets containing what was suspected to be shabu.

The police officers brought appellant and Emily to the San Mateo police station for detention. The plastic sachets taken from appellant and Emily were marked. The station chief, Police Senior Inspector Jesus Fetalino, requested the PNP laboratory for chemical analysis of the sachets' contents.

The specimens tested positive for methamphetamine hydrochloride.

Appellant and Emily were separately charged before the Regional Trial Court of San Mateo, Rizal, Branch 76 (trial court), with violation of Section 11 of RA 9165 for possession of methamphetamine hydrochloride.[2] Appellant was further charged with violation of Section 5 of RA 9165 for the sale of methamphetamine hydrochloride.[3] Appellant and Emily posted bail and, during arraignment, entered not guilty pleas. Emily was tried in absentia for failing to appear at the trial.

Denying the charges, appellant claimed never to have transacted with Arellano in a drug deal. According to appellant, Arellano, Tougan, and Pineda went to her house in the early morning of 10 September 2003 and tried to mulct P50,000 to free Emily whom the police officers had arrested. When appellant could not produce the amount, the police officers detained her and Emily at the San Mateo police station and filed the charges in question.

The Ruling of the Trial Court

In its Decision dated 6 July 2006, the trial court convicted appellant of the charges.[4] The trial court gave credence to the prosecution evidence and found it sufficient to prove beyond reasonable doubt appellant's violation of Sections 5 and 11 of RA 9165. The trial court rejected appellant's defense for lack of credence in the face of the presumption of regularity in the performance of official duties accorded to the actions of Arellano, Tougan, and Pineda.

Appellant appealed to the Court of Appeals, contending that the trial court erred in ruling that the prosecution discharged its burden of proving her guilt beyond reasonable doubt. Appellant argued that the testimonies of Arellano and Pineda were far from credible because they failed to coordinate with the Philippine Drug Enforcement Agency, did not conduct surveillance prior to the sting operation, and failed to give details on the marking of the seized shabu. Appellant also called the appellate court's attention to gaps in the chain of custody of the seized plastic sachets and their contents.

The Ruling of the Court of Appeals

In its Decision dated 19 November 2007, the Court of Appeals sustained the trial court. The appellate court saw no reason to disturb the trial court's assessment of the credibility of the prosecution witnesses. Turning the table on appellant, the Court of Appeals noted that appellant's denial and defense of frame-up strain credulity, no improper motive having been shown on the part of the police officers who took part in the sting operation.

Hence, this appeal. In separate manifestations, the parties waived the filing of supplemental briefs.

The Issue

The issue is whether appellant is guilty of sale and possession of methamphetamine hydrochloride under Sections 5 and 11, respectively, of RA 9165.

The Ruling of the Court

We find merit in the appeal and accordingly reverse the Court of Appeals.

The Prosecution Failed to Prove

Beyond Reasonable Doubt the Corpus Delicti

In drug-related prosecutions, the State not only bears the burden of proving the elements of the offenses of sale and possession of methamphetamine hydrochloride under RA 9165,[5] but also carries the obligation to prove the corpus delicti, the body of the crime,[6] to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt.[7] The prosecution fails to comply with the indispensable requirement of proving corpus delicti not only when it is missing[8] but also when there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.[9]

Failure to Mark at the Arrest Site

the Shabu Allegedly Seized from Appellant

Created the First Gap in the Chain

of Custody

Crucial in proving chain of custody is the marking^[10] of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties,^[11] the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa*^[12] and *People v. Casimiro*,^[13] we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa*^[14] and *People v. Dismuke*^[15] that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.^[16]

The records of this case show that the plastic sachets allegedly seized from appellant were indeed marked (as "HVA, HVA-1 and HVA-2"). However, there is nothing on record to show when and where this was done. The policeman who arrested appellant, Arellano, testified only as to the following: (1) after he arrested appellant, he retrieved from her "two pieces of P100 bills and another two sachets of suspected shabu"; (2) he "prepared a document regarding the plastic sachet [sic] for examination"; and (3) the contents of five plastic sachets marked HVA, HVA-1 and HVA-2 and JLT-1 tested positive for methamphetamine hydrochloride, thus:

[Prosecutor Gonzales]

Q.

What if any, happened next?

[Arellano]

A.

After I was able to hold the hands of the woman with short hair [appellant], she was able to free herself and told me, "Sir, maawa ka nag-iipon lang ako ng pampyansa para sa aking asawa," sir.

Q.

After that, what happened?

A.

I asked her to empty her pocket, sir.

Q.

Did that person comply with your order?

A.

Yes, sir.

Q.

What did she do, if she did anything?

A.

She showed to me the contents of her pocket and I was able to retrieve from her the two pieces of P100.00 bills and another two sachets of suspected shabu, sir.

Q.

And thereafter, what happened next?

A.

After I was able to retrieve from her the evidence, we brought her to our station for investigation, sir.

Q.

You said there was a previous transaction between your informant and the person with short hair, tell us what happened to the plastic sachets of shabu that had been the subject of the sale between your informer and the woman with short hair [appellant]?

A.

We prepared a document regarding the plastic sachet for examination, sir.

Q.

What plastic sachets?

A.

All of the plastic sachets, sir.

x x x x

Q.

You said that the plastic sachets which had been confiscated and as well as the subject of the sale had been sent to the Crime Laboratory for examination, what evidence, if any, do you have that the said specimens or objects had been submitted for examination?

A.

We prepared a laboratory request, sir.

x x x x

Q.

If that laboratory request will be shown to you, will you be able to identify the same?

A.

Yes, sir.

Q.

I am showing to you Exhibit D, which is a request for laboratory examination of the specimens which had been

identified as one heat-sealed transparent plastic sachet marked HVA for Section 5, two heatsealed transparent sachets containing suspected shabu marked HVA-1 and HVA-2 for Section 11 confiscated from suspect, No. 1 two (2) heatsealed transparent plastic sachets containing suspected shabu marked as JLT-1, what is the relation of this document to that you said is the request for laboratory examination on the object confiscated from the persons of the accused as well as the subject of the sale?

A.

This is the request for laboratory examination we prepared, sir.

Pros. Gonzales:

Witness identifying Exhibit D, your Honor.

Q.

What was the result of this request, if you know?

A.

It gave positive result for methamphetamine hydrochloride, sir.[17] (Emphasis supplied)

On the other hand, Tougan, who arrested Emily, specified that he marked the plastic sachets he seized from Emily at the San Mateo police station, thus:

Pros. Gonzales:

Q.

At the station, what happened to the plastic sachets which you said were confiscated from the person of the accused?

[Tougan]

A.

I marked it with my initial JLT-1, sir.

Q.

And this transparent plastic bag of shabu marked as JLT-1 referred to whom [sic]?

A.

The one I confiscated from Emily Coreche, sir.[18] (Emphasis supplied)

Tougan's clear admission that he marked the plastic sachet at the police station gives rise to the strong inference that like him, Arellano also marked the plastic sachets he took from appellant at the San Mateo police station.

In *Zarraga v. People*,^[19] we reversed a guilty verdict for violation of Section 5 of RA 9165 (sale of shabu) largely due to the conflicting testimonies of the police officers who conducted the sting operation on when and where the seized drugs were marked. There, we observed that:

[T]here are material inconsistencies in the testimonies of Guevarra and Luna particularly with regard to when and where the markings on the shabu were made. Guevarra testified that he handed the shabu to Manglo and that he put markings on the substance.

x x x x

Guevarra's account leaves a gap as regards when the shabu was marked, i.e., whether it was marked before or after it was handed over to Manglo. He also did not say specifically in what place he put the identifying marks. Luna's testimony on this score fills the gap and, more, it creates reasonable doubt as to the identity of the corpus delicti.

x x x x

Luna unequivocally declared that he and Guevarra wrapped the shabu in tissue only at the office and that the latter put markings on the tissue and plastic wrapper, suggesting that Guevarra did not follow the standard procedure of marking the confiscated items immediately after the accused were apprehended.[20] (Emphasis supplied)

Equivocal Evidence on Post-Chemical Examination Custody of the Seized Drugs Created the Second Gap in the Chain of Custody

The prosecution's failure to prove that the sachets of shabu presented in court were marked immediately after they were allegedly seized from appellant is compounded by the equivocal evidence on the specimens' post-examination custody. According to the prosecution, the plastic sachets seized from the accused were transferred to the custody of Police Senior Inspector Isidro L. Cariño (Cariño) of the Eastern Police District (EPD) Laboratory for chemical analysis of their contents. In lieu of Cariño's testimony, the prosecution and defense stipulated on the following facts, as contained in the Order of the trial court dated 18 February 2004:

- 1) That upon the request of the San Mateo Police Station, PSI Isidro Cariño conducted an examination over five (5) heat sealed transparent plastic bags each with 0.20 gram. and the rest 1.20 gram each respectively;
- 2) That after the said examination had been conducted by the said witness, the result is positive for methylamphetamine [sic] hydrochloride, a dangerous drug;
- 3) That the same had been reduced into writing under Chemistry Report No. D-1742-03E;
- 4) That the said witness signed the same and approved by Pol. Chief Insp. Jose Arnel Marquez;
- 5) That after the examination, the specimens had been placed in a transparent plastic bag with markings D-1742-03E and initialed by the said witness;
- 6) That he is a Pol. Sr. Inspector and Forensic Chemical Officer of the Eastern Police District, Mandaluyong City;
- 7) That the witness had no personal knowledge as to the origin or source of the specimen subject of the examination.[21] (Emphasis supplied)

When taken together with the contents of Chemistry Report No. D-1742-03E,[22] what the stipulation proves is that upon chemical analysis by Cariño, the contents of five plastic sachets marked "HVA thru E (JLT1)"[23] tested positive for "methylamphetamine [sic] hydrochloride." This fact leaves unanswered the question of post-examination custody. Did the plastic sachets remain in Cariño's safekeeping? Were they transferred to another location until they were presented in court? The stipulation in the fifth paragraph that "after the examination, the specimens had been placed in a transparent plastic bag with markings D-1742-03E and initialed by the said witness [Cariño]" merely settles the issue of how the specimens were packaged after testing, not who took custody of them.[24]

The Presumption of Innocence Prevails Over the Presumption of Regular Performance of

Official Duty

In sustaining the prosecution's case, the lower courts inevitably relied on the evidentiary presumption that official duties have been regularly performed.[25] This presumption, it must be emphasized, is not conclusive.[26] Not only is it rebutted by contrary proof, as here, but it is also inferior[27] to the constitutional presumption of innocence.[28] All told, we find merit in appellant's claim that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt due to substantial gaps in the chain of custody, raising reasonable doubt on the authenticity of the corpus delicti.

The disposition of this appeal once more underscores the need for trial courts to conduct a more exacting scrutiny of prosecution evidence to meet the stringent standard of proof beyond reasonable doubt with due regard to relevant jurisprudence. In the long run, this redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.

WHEREFORE, the Decision dated 19 November 2007 of the Court of Appeals is REVERSED. Appellant Marian Coreche y Caber is ACQUITTED of the charges in Criminal Case No. 6989 and Criminal Case No. 6990 on the ground of reasonable doubt.

The Director of the Bureau of Corrections is ORDERED to immediately RELEASE appellant Marian Coreche y Caber from custody, unless she is detained for some other lawful cause, and to report to this Court compliance within five (5) days from receipt of this Decision.

Costs de officio.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring.

[2] The Informations alleged (Records, p. 147):

Crim. Case No. 6988 (against Emily Coreche):

That on or about the 10[th] day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, direct custody and control a total of 2.40 grams of white crystalline substance contained in two (2) heat sealed transparent plastic sachets which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

Crim. Case No. 6989 (against appellant)

That on or about the 10[th] day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in her possession, direct custody and control a total of 2.40 grams of white crystalline substance contained in two (2) heat sealed transparent plastic sachets which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

[3] The Information in Criminal Case No. 6990 (against appellant) alleged (Records, p. 147):

That on or about the 10[th] day of September 2003 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized

by law, did then and there willfully, unlawfully and knowingly sell[,] deliver and give away to another 0.20 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet which gave positive result to the test for Methylamphetamine Hydrochloride, a dangerous drug.

[4] The trial court also convicted Emily. The dispositive portion of the ruling provides (Records, pp. 156-157):

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

- In Criminal Case No. 6988 finding accused Emily Coreche GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drug (Violation of Section 11, 2nd par, [s]ub-par 3, Article II, R.A. 9165) and sentencing her to suffer the penalty of imprisonment of Twelve (12) years and one (1) day to Twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (P300,000.00);

- In Criminal Case No. 6989 finding accused Marian Coreche GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drug (Violation of Section II, 2nd par, [s]ub-par 3, Article II, R.A. 9165) and sentencing her to suffer the penalty of imprisonment of Twelve (12) years and one (1) day to Twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (P300,000.00);

- In Criminal Case No. 6990 finding accused Marian Coreche GUILTY beyond reasonable doubt of the crime of Sale of Dangerous Drug (Violation of Section 5, 1st par, Article II, R.A. 9165) and sentencing her to suffer the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00).

The plastic sachets of "shabu" subject matter of these cases are hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

[5] The elements for the sale of dangerous drugs are (1) the accused sold the dangerous drug to the buyer for a consideration and (2) the accused delivered the dangerous drug to the buyer (see *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194). The elements for possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug (*People v. Dela Cruz*, G.R. No. 182348, 20 November 2008, 571 SCRA 469).

[6] *People v. Garcia*, G.R. No. 173480, 25 February 2009; *People v. Sanchez*, supra; *People v. Magat*, G.R. No. 179939, 29 September 2008, 567 SCRA 86. Corpus delicti has also been broadly defined to refer to the commission of the crime itself (see *Rieta v. People*, 479 Phil. 943 [2004]).

[7] *People v. Garcia*, supra; *People v. Lacap*, 420 Phil. 153 (2001); *People v. Chang*, 382 Phil. 669 (2000).

[8] *People v. Rigodon*, G.R. No. 111888, 8 November 1994, 238 SCRA 27.

[9] RA 9165 does not define "chain of custody" but the administrative guidelines implementing the law refer to chain of custody as "[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition." (Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002)

[10] In criminal procedure, "marking" means the "placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items/s seized" (*People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569

SCRA 164).

[11] *People v. Lim*, 435 Phil. 640 (2002).

[12] 414 Phil. 156 (2001) (involving marijuana specimens which were marked only at the police station).

[13] 432 Phil. 966 (2002) (involving marijuana brick which was marked only at the police headquarters).

[14] G.R. No. 91014, 31 March 1993, 220 SCRA 670.

[15] G.R. No. 108453, 11 July 1994, 234 SCRA 51.

[16] RA 9165 is silent on when and where marking should be done. On the other hand, its implementing rules provide guidelines on the inventory of the seized drugs, thus: "the physical inventory x x x shall be conducted at the place where the search warrant is served; or at the nearest police station or at the office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures" (Section 21(a) of Implementing Rules and Regulations). In *People v. Sanchez* (G.R. No. 175832, 15 October 2008, 569 SCRA 194), we drew a distinction between marking and inventory and held that consistent with the chain of custody rule, the marking of the drugs seized without warrant must be done "immediately upon confiscation" and in the presence of the accused.

The concern with narrowing the window of opportunity for tampering with evidence found legislative expression in Section 21(1) of RA 9165 on the inventory of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the time, witnesses, and proof of inventory by imposing on the apprehending team having initial custody and control of the drugs the duty to "immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." Although RA 9165 is silent on the effect of non-compliance with Section 21(1), its implementing guidelines provide that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." We have interpreted this provision to mean that the prosecution bears the burden of proving "justifiable cause" (*People v. Sanchez*, *id.*; *People v. Garcia*, G.R. No. 173480, 25 February 2009).

[17] TSN, 6 November 2003, pp. 7-9.

[18] TSN, 19 March 2004, p. 6.

[19] G.R. No. 162064, 14 March 2006, 484 SCRA 639.

[20] *Id.* at 647-650.

[21] *Records*, p. 57.

[22] *Id.* at 44.

[23] Significantly, although Report No. D-1742-03E stated that the five specimens turned over by the San Mateo station were marked "HVA thru E (JLT1)," Arellano testified that he marked the plastic sachets taken from appellant as "HVA, HVA-1 and HVA-2" (TSN, 6 November 2003, p. 9). For his part, testified that he marked the plastic sachets he took from Emily as "JLT-1" (TSN, 19 March 2004, p. 6).

[24] In the bail hearing of 3 December 2003, the prosecution and defense also stipulated on ño's testimony and, unlike the stipulation in the hearing of 18 February 2004, the 3 December 2003 stipulation provided in the fourth

paragraph that "the specimens subject of the examination are now in the possession of the EPD Lab" (Records, p. 45). The variance between the two stipulations is material. Nearly two months separate the two stipulations and the tenor of the 18 February 2004 stipulation does not foreclose the possibility of post-testing transfer of custody, not to mention that as the latest agreement of the parties, the stipulation of 18 February 2004, supersedes the stipulation of 3 December 2003 and binds the prosecution.

[25] Rollo, pp. 15-17.

[26]The presumption reads: "Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted or overcome by other evidence: x x x (m) That official duty has been regularly performed." (The Revised Rules on Evidence, Section 3, Rule 131; underlining supplied, italicization in the original).

[27] People v. Cañete, 433 Phil. 781 (2002).

[28] Section 14, par. (2), Article III, 1987 Constitution.

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