

SECOND DIVISION

[G.R. No. 178757, March 13, 2009]

**RONALD CARINO AND ROSANA ANDES, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

TINGA, J.:

In this petition for review on certiorari,^[1] petitioners Ronald Carino and Rosana Andes assail the Decision^[2] of the Court of Appeals in CA-G.R. CR No. 29867 dated 13 March 2007, which affirmed the joint decision^[3] of the Regional Trial Court of Quezon City, Branch 103,^[4] finding petitioners Ronald Carino and Rosana Andes guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, a dangerous drug locally known as *shabu*.

Petitioners Carino and Andes were apprehended on two separate but related incidents on 20 June 2003 at the corner of G. Araneta and E. Rodriguez Avenues in Quezon City. The apprehending officers were allegedly members of the Central Police District (CPD)-Galas Police Station 11 and were part of the eight-man team^[5] that was dispatched by the police district authorities to conduct the "Oplan *Sita*"--an operation which had for its object the suppression of rampant robbery in the vicinity. It was in the course of this operation that both petitioners were arrested without a warrant for allegedly having in their possession plastic sachets containing *shabu*.

After the arrest and investigation, petitioners were charged in two separate informations^[6] with violation of Section 11, Article II of Republic Act No. 9165 (R.A. No. 9165).^[7] Both of them entered a negative plea on arraignment.^[8] The cases were thereafter jointly tried.

The prosecution offered the testimony of PO1 Joseph Tayaban (Tayaban) and PO1 Arnold Eugenio (Eugenio) to prove the charges against petitioners. Tayaban and Eugenio professed that they were the ones who arrested both petitioners.

Tayaban testified that the members of "Oplan *Sita*," on 20 June 2003, had started patrolling the area of coverage as early as 9:00 o'clock in the morning of that day. At around 2:00 o'clock in the afternoon, his colleague, Eugenio, spotted Carino, about a meter away from their location and holding a plastic sachet in his hand. Right there and then, they placed Carino under arrest and Eugenio immediately seized the plastic sachet.^[9] They asked Carino who the source of the plastic sachet was and the latter immediately identified petitioner Andes. They approached Andes, and she allegedly became hysterical when the policemen introduced themselves to her. It was then that Tayaban noticed the woman inserting something inside the pocket of her 5-year old male child. Tayaban was suspicious so he inspected the

right pocket of the child and found a plastic sachet inside it containing *shabu*.^[10] Petitioners were immediately brought to the Galas Police Station. The plastic sachets were allegedly submitted to the desk officer and then to the station investigator who in the presence of Tayaban marked each of the specimens with the initials "JT-RA" and "AE-RC."^[11] The markings purportedly represented the initials of Eugenio and Tayaban and the initials of petitioners from whom they were seized.

Eugenio corroborated the testimony of Tayaban in its material respects. He admitted that he was the one who grabbed Carino when he noticed that the latter was holding a plastic sachet in his hand. He suspected the sachet to be containing *shabu* and he immediately told Carino of his offense. At that point Carino allegedly dropped the plastic sachet, so he (Eugenio) picked it up and after examining the same concluded that it indeed contained *shabu*.^[12] He and his companions brought Carino to their team leader just across the street. The latter asked Carino who the source of the *shabu* was, and he was told that it was a certain woman.^[13] Some members of the team, including Tayaban, left Araneta Avenue and went to Banawe Avenue to the place where the woman allegedly could be found, but Eugenio was not able to catch up with them because he received a phone message moments later that the woman had already been arrested. He instead proceeded to the police station for the investigation.^[14]

The prosecution also submitted the results of the qualitative examination administered on the contents of the two plastic sachets seized from petitioners. The chemistry report signed by Engineer Leonard M. Jabonillo (Jabonillo), chemist and forensic analyst at the CPD Crime Laboratory Office, revealed that the specimens submitted for analysis yielded positive of methamphetamine hydrochloride content.^[15]

Both petitioners denied the charges. It was revealed during their testimony, however, that they had previously known each other as Carino was employed as a "*latero*" at the automobile repair shop owned by Andes's "*kumpare*."^[16]

Carino testified that he was on his way to work when he was arrested along E. Rodriguez Avenue. He was allegedly grabbed by the hand by one of the policemen and asked him to come with them to the police station. He denied having been frisked at any time between his arrest and conveyance to the police station.^[17] Quite boldly, he asserted that Tayaban was the source of the plastic sachet allegedly recovered from him as he in fact saw the said officer pull the sachet out of his own pocket at the time the arrest was taking place. At that point, Carino was asked who the source of the drug was, but when he replied that it was not his, one of the officers retorted, "*Nagmamaang-maangan ka pa.*" At the police station, he was allegedly mauled by Tayaban because he again denied ownership of the plastic sachet.^[18] When he was brought to the prosecutor's office for inquest proceedings, Carino continued, the fiscal allegedly told the police, "*Bakit hindi na lang natin i-further investigation ito? Wala namang ebidensiya sa kanya,*" suggesting that the police escort including Tayaban and Eugenio did not bring the supposed sachet of *shabu* seized from petitioners.^[19]

Petitioner Andes, for her part, narrated that she and her 5-year old son were on their way home from the bakeshop when suddenly, Tayaban and a certain police

officer Prado approached them and asked her whether she could identify the man inside the police car;^[20] that she obliged, so she proceeded to the where the car was parked and seeing petitioner Carino inside with his hands cuffed told the officers that the man was familiar to her because he was an employee at his "kumpare's" shop but she could not place his name;^[21] that she was then invited to come to the police station and once there, she saw Carino being frisked and the officers found nothing on him; and that she was also frisked by Tayaban but found nothing on her either.^[22] She also claimed that Tayaban and his companions demanded from her and Carino P10,000.00 for their release but they were detained because they could not and did not pay.^[23]

On 9 December 2005, the trial court rendered its joint decision^[24] in these cases finding both petitioners guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It sentenced petitioners to suffer the prison term of twelve years and one day as minimum to thirteen years as maximum as well as to pay the fine of P300,000.00.^[25]

Petitioners interposed an appeal with the Court of Appeals,^[26] but in its 13 March 2007 Decision the appellate court affirmed the findings and conclusions of the trial court.^[27] Petitioners moved for reconsideration^[28] but the same was denied.^[29]

In this Petition for Review on Certiorari,^[30] petitioners once again bid to establish that their guilt has not been proven beyond reasonable doubt. They capitalize on the alleged inconsistencies in the testimony of police officers Tayaban and Eugenio,^[31] as well as on the inadmissibility, for failure to establish the chain of custody, of the drug specimens supposedly seized from them on account of the failure of the forensic chemist who signed the chemistry report to testify in court.^[32]

The OSG, for its part, advances that the evidence was sufficient to prove the petitioners' guilt in this case especially considering that the alleged inconsistencies in the testimonies of the prosecution witnesses in this case can no longer be challenged because they had already been accorded credibility by the trial court.^[33] Besides, the OSG points out, petitioners advance no better defense than their self-serving claim of frame-up which must be dismissed in light of the presumption that the police officers involved in their apprehension have regularly performed their duty.^[34] As to the claim that the evidence should not be admitted for failure of the forensic chemist to testify, the OSG points out that the parties had already agreed at the pre-trial to dispense with such testimony inasmuch as they had already stipulated that the drug specimens were actually submitted to the laboratory for analysis and that the results thereof were then reduced in written report.^[35]

The Court grants the petition.

To begin with, prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.^[36] In these cases, it is therefore essential that the identity of the prohibited drug be established beyond

doubt.^[37]

The mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.^[38]

Chain of custody is defined as the 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.^[39] As a method of authenticating evidence, it requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.^[40] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[41] It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

In the case at bar, however, the prosecution evidence is insufficient to provide that assurance, for all the people who made contact with the sachets of *shabu* allegedly seized from petitioners, only Tayaban and Eugenio were able to testify in court as to the identity of the evidence. The desk officer at the police station to whom the specimens were purportedly surrendered by Tayaban and Eugenio was not even presented in court to observe the identity and uniqueness of the evidence. Even more to the point is the fact that the testimony of the investigator, who had taken custody of the plastic sachets after the same were reported to the desk officer, was likewise not offered in court to directly observe the evidence and admit the specific markings thereon as his own. The same is true with respect to Jabonillo, the forensic chemist at the crime laboratory who administered the chemical examination on the specimens and who could have testified on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody.

Aside from that, the prosecution has not in fact reasonably explained why these same witnesses were not able to testify in court. While indeed the OSG claims that the testimony of Jabonillo has already been dispensed with by the parties at the pre-trial stage, there however seems to be not a single hint in the pre-trial order which implies that the parties indeed dispensed with said testimony.^[42]

In view of these loopholes in the evidence adduced against appellant, it can be

reasonably concluded that the prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of petitioners' guiltlessness.

Be that as it may, while a testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness.^[43] The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination^[44] and even substitution and exchange.^[45] In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering--without regard to whether the same is advertent or otherwise not--dictates the level of strictness in the application of the chain of custody rule.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. Hence, the risk of tampering, loss or mistake with respect to an exhibit of this nature is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.^[46] The danger, according to *Graham v. State*,^[47] is real. In that case, a substance later analyzed as heroin was excluded from the prosecution evidence because it was previously handled by two police officers prior to examination who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.^[48]

Indeed, the Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over a narcotic specimen there could have been tampering, alteration or substitution of substances from other cases--by accident or otherwise--in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

Our drugs laws in fact establish reasonable safeguards for the protection of the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21^[49] of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs 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, and any elected public official who