

*ROP v. Chin*, 10 ROP 178 (Tr. Div. 2001)  
**REPUBLIC OF PALAU,**  
**Plaintiff,**

v.

**SINGICH CHIN,**  
**Defendant.**

CRIMINAL CASE NOS. 00-157 & 00-304

Supreme Court, Trial Division  
Republic of Palau

Decided: October 22, 2001

ARTHUR NGIRAKLSONG, Chief Justice:

At the request of the Defendant, the Court held a *Daubert*<sup>1</sup> hearing before trial, as it must. *See Kumho Tire Co. v. Carmichael*, 119 S. Ct. 1167 (1999); *Gruca v. Alpha Therapeutic Corp.*, 51 F.3d 638 (7th Cir. 1995). After the hearing, the Defendant requested permission to file a brief in support of this motion to exclude the testimony and the test results of the drug analysis performed by the government's expert witness, Ms. Monica Ada, a Criminalist at the Guam Police Department. Ms. Ada's reports of June 6, 2000 and January 14, 2001 (government exhibits 8 and 9, respectively) and her testimony concluded that the items sold by the Defendant in two separate controlled buys and samples from Defendant's home and car contained methamphetamine hydrochloride (government exhibits 1(a), 1(b), 4, and 6). The Defendant contends that Ms. Ada's testimony and the test results are not reliable and do not meet the requirements for admission of expert testimony under *Daubert* and ROP R. Evi. 702. *See, e.g., United States v. Lee*, 25 F.2d 1997 (11th Cir. 1994). The Court orally denied Defendant's motion *in limine* and proceeded to the trial. A guilty verdict for the Defendant was entered on all counts.

*Daubert* requires the court to act as a "gatekeeper" of expert testimony. This requirement is to ensure that proffered expert testimony is both relevant and reliable. (Relevancy is obviously not an issue here.) *Daubert* offers factors for trial courts to consider when deciding whether expert testimony is reliable before admitting it. These factors, however, are "neither mandatory nor exclusive." *Kumho Tire*, 119 S. Ct. at 1171. The Court has wide latitude in its determination of what is reliable, and that determination is reviewed by the abuse of discretion standard. *Id.*

The Court finds Ms. Ada's reports and her testimony reliable. Ms. Ada's testimony

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<sup>1</sup>*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993).

¶179 identified the tests she performed, explained in detail how the tests were performed, (Tr. 21-47), and gave the reasons why they were performed. The testimony established the identity of the items to contain methamphetamine hydrochloride.

Defendant argues that Ms. Ada's expert testimony and the test results "are not reliable because her methodology or technique is scientifically flawed and that the instruments were not shown to have been working properly." Defendant's reply brief at 2.

First, the parties and their expert witnesses agree that the three machines used in conducting the tests were reliable: Gas Chromatography/Mass Spectrometer (GC/MS) No. 5972, GC/MS No. 5973, the Fourier Transform Infrared Spectrometry (FTIR), Model Analect Diamond 20. (Defendant's expert witness, however, professed to not being familiar with the FTIR model used (*see* Tr. 38)).

Second, Ms. Janie Arvizu, the defense's expert witness, did not perform any test on the drugs. She did not conduct an internal audit of the Guam Crime Lab. In sum, the defense did not present evidence to refute Ms. Ada's conclusion that the items contained methamphetamine hydrochloride. In fact, Ms. Arvizu testified that there was nothing in the Chemist's reports, worksheets or notes that refuted Ms. Ada's conclusions.

Third, Ms. Ada has performed over 34,000 tests of suspected methamphetamine samples during her nine-year employment with the Guam Police Department. Further, the Court finds Ms. Ada to be straightforward in her testimony, credible and very professional. All the defense's specific objections to the admission of Ms. Ada's expert testimony were effectively refuted by Ms. Ada's testimony (*see also* Tr. 46-158).

Ms. Ada meticulously explained the methodology used in the testing of the items (Tr. 21-47). This methodology has been used and accepted in many jurisdictions. *See, e.g., United States v. Bynum*, 3 F.3d 769 (4th Cir. 1993) (admitting testimony of results from Gas Chromatograph analysis to prove identity of controlled substance); *United States v. Smith*, 964 F.2d 1221 (D.C. Cir. 1992) (admitting visual comparison of instrument generated charts/graphs).

Ms. Ada first did a visual inspection of the substances in each plastic tube to see if they were visibly consistent with methamphetamine hydrochloride. Then, she conducted a marquet reagent color test to see if the substance can be classified as methamphetamine. This color test is only a presumptive one.

Both the visual inspection and positive color reaction show the presence of methamphetamine. Ms. Ada then took representative samples from the suspected drugs and ran them through two additional tests, the GC/MS and FTIR. There is a unique feature of methamphetamine that is identified by these two tests. All three tests independently verify Ms. Ada's conclusion that the substances contained methamphetamine hydrochloride.

The Defendant's argument that the machines employed in the tests were not working properly is unsupported. Ms. Ada tested the machines, using industry-standard procedures

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before and after the tests. She stated that if an instrument were not working properly, she would not have conducted any tests. She further testified that had an instrument not been working properly, she ¶180 would have known. Defendant's claim that the FTIR was supposed to be tested every day has no support by the standard industry practice.

The Defendant further argues that the visual analysis by Ms. Ada of the materials generated by the instrument is flawed. This argument is refuted by the Defendant's own expert who stated that there is nothing inconsistent between the documents (Ms. Ada's Report) and her expert testimonial conclusions that the items contain methamphetamine hydrochloride.

The Court finds that Ms. Ada's expert testimony and the test results are reliable. Defendant's motion to exclude government's exhibits 1a, 1b, 4, and 6 is denied.