



Republic of the Philippines
SUPREME COURT
 Manila

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

DEC 19 2017

THIRD DIVISION

EDWINA RIMANDO y FERNANDO,
 Petitioner,

G.R. No. 229701

Present:

- versus -

VELASCO, JR., J., Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO,* JJ.

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

November 29, 2017

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DECISION

VELASCO, JR., J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision¹ dated September 6, 2016 and Resolution² dated January 31, 2017 in CA-G.R. CR No. 36422. The CA affirmed the Decision³ dated February 6, 2014 of the Regional Trial Court (RTC), Branch 137 of Makati City, in Criminal Case No. 12-1761.

An Information was filed against Romeo Rimando y Cachero and Edwina Rimando y Fernando charging them with violation of Article 168 of the Revised Penal Code (RPC), to wit:

On the 14th day of September 2012, in the City of Makati, the Philippines, accused conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously, with intent to use, have in their possession, custody and control false and counterfeit 100 pieces U.S. Dollars which are bank notes, knowing that said notes are all falsified and counterfeit.

* On leave.

¹ *Rollo*, pp. 40-70. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

² *Id.* at 72.

³ *Id.* at 90-100. Penend by Presiding Judge Ethel V. Mercado-Gutay.

CONTRARY TO LAW.⁴**The Facts**

We quote the narration of facts of the CA, as follows:

Prosecution's Evidence:

Alex Muñoz, Bank Officer I of the Investigation Division, Task Department, Bangko Sentral ng Pilipinas (BSP) Complex, East Avenue, Diliman, Quezon City, testified that:

- a) He was tasked to conduct investigations, make arrests and conduct searches and seizures in all cases adversely affecting the integrity of currencies pursuant to BSP Circular 599, Series of 2008. He recognized appellants because the latter were arrested for violation of Art. 168 of the RPC;
- b) Sometime in July 2012, his office received information from their confidential informant that a certain Pastor Danny and Datu Romy and their cohorts were involved in the distribution, manufacture, and printing of counterfeit US dollar notes. They validated the information by conducting a surveillance on the suspects, including appellant Romeo Rimando, also known as Datu Romy;
- c) On September 5, 2012, the confidential informant introduced him to the group of counterfeiters at Farmer's Market, Araneta Center, Cubao, Quezon City. His team subsequently conducted a test-buy around 3 o'clock in the afternoon. He was able to buy 3 pieces of USD100 counterfeit notes for P500 per piece. He knew that the notes were fake because he had been trained to detect counterfeit currencies;
- d) In the morning of September 14, 2012, Romeo Rimando called him and offered to sell 100 pieces of USD100 counterfeit notes at P500 per piece. His office formed a team to conduct an entrapment operation;
- e) It was agreed that he and appellants' group would meet at Savory Restaurant along Makati Avenue. Before proceeding to the venue, they coordinated with the Tactical Operation Center of Philippine National Police (PNP). By 2:00 in the afternoon, they were already at the restaurant. When Romeo Rimando arrived, he was accompanied by appellant Edwina Rimando. Members of the entrapment team were strategically positioned in the area;
- f) Romeo Rimando talked to him. He asked Romeo Rimando about the counterfeit notes. Romeo Rimando handed him the counterfeit notes while he gave Romeo Rimando the marked money. After receiving the marked money, Romeo Romando went over to appellant Edwina Rimando and placed the money inside her bag. Appellants started to walk away when he gave the prearranged signal—placing his eyeglasses on top of his head. The team then closed in and arrested appellants.

⁴ Id. at 41.



Reynaldo Paday, Senior Currency Specialist, Investigation Division, Cash Department, BSP, testified that:

- 1) He was part of the team that conducted the test-buy on September 5, 2012 at Farmer's Market. He was assigned to assist poseur buyer Alex Muñoz and secure the confidential informant during the test-buy. He was about 150 meters from Alex Muñoz when the test-buy took place;
- 2) Alex Muñoz bought 3 pieces of USD100 counterfeit notes. Afterwards, the team went back to the office and he made an initial verification of the 3 notes. He later issued a temporary certification that said notes were fake;
- 3) On September 14, 2012 their team conducted an entrapment operation at Savory Restaurant in Makati Avenue. He was tasked to secure the perimeter and assist Alex Muñoz, who was waiting for the suspect. He observed that an old man talked with Alex Muñoz. Afterwards, Alex Muñoz put his eyeglasses on top of his head, the prearranged signal;
- 4) After they had closed in, he grabbed Romeo Rimando and told the latter he was under arrest. Appellant Edwina Rimando, who accompanied Romeo Rimando, was also arrested by one of the agents. They proceeded to the vehicle and conducted an inventory of the 100 pieces of counterfeit notes and marked money. He examined and verified the 100 pieces of notes and concluded that they were counterfeited;

Sylvia Tamayo, Assistant Manager of the Currency Analysis and Redemption Division, Cash Department of the BSP, confirmed that she issued a Certification dated September 17, 2012. She certified that the 100 pieces US dollar bills were counterfeit, viz:

This is to certify that the one hundred (100) pieces 100 US Dollar notes submitted for verification as to their genuineness by Mr. Reynaldo L. Paday, Senior Currency Specialist, Investigation Division, Cash Department per memorandum of even date and more particularly described as follows:

Denomination	Serial Number	No. of pieces	Amount
100-US Dollar Note	AE73685100B	2	US\$200.00
-do-	AE73685101B	2	200.00
-do-	AE73685102B	2	200.00
-do-	AE73685103B AE73685110B	8	800.00
-do-	AE73685112B AE73685114B	3	300.00
-do-	AE73685116B AE73685151B	36	3,600.00
-do-	AE73685152B	2	200.00
-do-	AE73685153B	3	300.00
-do-	AE73685154B	3	300.00
-do-	AE73685155B	3	300.00

-do-	AE73685156B AE7368159B	4	400.00
-do-	AE73685170B AE73685177B	8	800.00
-do-	AE73685178B	1	100.00
-do-	AE73685179B AE73685178B	1	100.00
-do-	AE73685180B	1	100.00
-do-	AE73685182B AE73685197B	16	1,600.00
-do-	AE73685199B AE73685201B	3	300.00
-do-	AE73685246B	1	100.00
-do-	AE73685249B	1	100.00
		100 pcs.	US\$10,000.00

had been found to be COUNTERFEIT after examination conducted by the Currency Analysis and Redemption Division, this Department and are therefore being retained by Bangko Sentral ng Pilipinas pursuant to BSP Circular No. 61, Series of 1995. The abovementioned notes had been stamped "COUNTERFEIT" (Subject Romeo Rimando y Cachero a.k.a. "Datu Romie" and Edwina Rimando y Fernando).

Glenn Peterson, Special Agent of the US Secret Service in Guam testified: the 100 pieces of US Dollar bills were referred to him for examination. He examined each note under a magnifying glass. Unlike genuine US Dollar notes which were printed, using Intaglio and Typographic Printing Method, the 100 counterfeit bills were printed with the use of an inkjet printer.

Appellants' Evidence:

Appellant Edwina Rimando, a freelance real estate agent, testified:

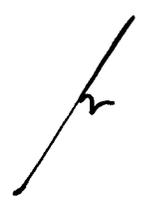
- a) At 2:00 in the afternoon of September 14, 2012, she was in Makati Tower Hotel in Kalayaan Street Makati City. She was invited there by a certain Pong to meet a certain Emily about an old coins transaction. Her husband, Romeo Rimando, was with her. Emily invited them to eat at a Pizza Hut behind the hotel. Once there, they just sat on the sofa. Emily left them to smoke and make a call. She followed Emily outside and the latter told her to look for another restaurant. They walked towards Kalayaan and Burgos. While waiting for the stop light to change, she and her husband were suddenly apprehended by the group of Alex Muñoz. Pong and Emily suddenly disappeared. They were forced to ride a silver Toyota Innova;
- b) She and her husband were handcuffed. Agent Armida Superales took her bag and said: "*Boss, negative.*" She also saw Agent Superales take out from her side something wrapped in plastic and put it inside the bag. When they reached the BSP premises in Quezon City, Agent Superales opened the bag and declared that there were US dollar bills and a bundle of marked money inside. She and Agent Superales had an argument;

- c) The agents took Romeo Rimando to another room while she was left at the front desk. Alex Muñoz and Reynaldo Paday interrogated her and she was asked to admit that the counterfeit notes came from her. She was afraid because they were threatening her. They told her she could not do anything because there were no witnesses around. The agents also informed her that they had a companion who was a shooter. She just kept silent. She was further told that if she admitted the crime, she would be made a civilian agent, given cash rewards, and set free after the inquest;

Appellant Romeo Rimando, a scrap agent, testified:

1. On September 14, 2012, he and his wife were somewhere along Makati Avenue. They went there upon invitation by a certain Pong who wanted to transact with them about old coins. They all met at Makati Tower Hotel with a certain Emily. According to Pong, Emily was a trusted buyer of a hotel guest;
2. They met and talked at the ground floor of the hotel. Afterwards, Emily invited them to have lunch at a nearby Pizza Hut. There was no table available at the restaurant so Emily suggested they go to Andok's on Jupiter Street. On the road, they were arrested by a group of 10 agents who had 3 vehicles.
3. He and his wife were handcuffed and forced into a Toyota Innova. Emily and Pong were walking ahead of them and did not notice that they were already arrested. When Emily and Pong looked back, the two did not concern themselves with what transpired. They were taken to a parking lot near the Makati Tower Hotel. Inside the Innova, he saw through the back mirror that Pong and Emily were talking to the operatives;
4. On their way to BSP, their cellphones were taken. Agent Superales grabbed his wife's shoulder bag. They were told that it was SOP to confiscate their belongings. He saw Agent Superales put into his wife's bag a plastic wrapped bundle of US dollar bills and marked money worth P50,000.00;
5. When they arrived at BSP, Alex Muñoz brought him to the storeroom. Alex Muñoz took out his pistol and placed it on top of the table. Alex Muñoz also had a plastic bag and said it was going to be used on him. He was interrogated and told to just admit that the confiscated notes belonged to them;
6. His wife was interrogated by Reynaldo Paday. Afterwards, he and his wife got seated at a table with Alex Muñoz. Alex Muñoz was writing his initials on the dollar bills. Photographs were taken of him, his wife, and the alleged confiscated items;
7. The process ended at 2 o'clock the following day. They were told that they could sleep on the chairs. Later that day, they were taken for inquest.⁵

⁵ Id. at 42-50.



Accordingly, the RTC rendered the assailed Decision dated February 6, 2014. The dispositive portion states:

WHEREFORE PREMISES CONSIDERED, this court finds and declares both accused ROMEO RIMANDO y CACHERO and EDWINA RIMANDO y FERNANDO GUILTY beyond reasonable doubt of the offense as defined in Art. 168, and penalized in Art. 166 paragraph 1 of the Revised Penal Code; and hereby sentence each of them to suffer an indeterminate penalty of Eight (8) years and One (1) day of *prision mayor* in its medium period as minimum to Ten (10) years Eight (8) months and One (1) day of *prision mayor* in its maximum period as maximum; to pay a fine of P5,000.00 and to pay the cost.

The Branch Clerk of Court is directed to burn the one hundred three (103) pieces of counterfeit US\$100 dollar notes subject of the offense.

SO ORDERED.

Before the CA, accused-appellants assigned the following errors, to wit:

I.

The RTC gravely erred in finding that all the elements of the crime charged have been established beyond reasonable doubt.

II.

The RTC gravely erred in admitting in evidence exhibits "E" to "E-99" (counterfeit US dollar notes) since there were doubts as to whether a valid entrapment operation took place and whether the counterfeit notes presented in court were the same ones allegedly confiscated from the accused-appellants.

III.

The RTC gravely erred in admitting in evidence against accused-appellants exhibits "F" to "F-2" (counterfeit US dollar notes) since there was no proof that they owned or possessed the said counterfeit notes as the same were recovered from pastor Danny and not from the accused-appellants.

IV.

The RTC gravely erred in giving full faith and credence to the testimonies of agents Alex Muñoz and Reynaldo Paday despite their contradictory statements.⁶

The CA, in its Decision dated September 6, 2016, affirmed *in toto* the Decision of the RTC, to wit:

⁶ Id. at 75.



ACCORDINGLY, the appeal is DENIED. The assailed Decision dated February 6, 2014 is AFFIRMED in all respects.

SO ORDERED.

Initially, Romeo signified his intention to appeal his case. However, he decided to withdraw his appeal through a letter dated March 16, 2017.⁷

On October 7, 2016, Edwina filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court.

Issue

Whether or not the CA erred in affirming the conviction of petitioner Edwina Rimando.

Ruling of this Court

Inarguably, the resolution of the issues raised by petitioner in her Brief requires us to inquire into the sufficiency of the evidence presented, including the credibility of the witnesses, a course of action which this Court, as a general rule, will not do, consistent with our repeated holding that this Court is not a trier of facts. Well-settled is the rule that only questions of law should be raised in petitions filed under Rule 45. This Court is not a trier of facts and will not entertain questions of fact as the factual findings of the appellate court, when supported by substantial evidence, are final, binding or conclusive on the parties and upon this Court.⁸

But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away.⁹ It is the unique nature of an appeal in a criminal case that the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.¹⁰

After a careful review of the records of the case, we sustain the ruling of the CA with respect to the validity of the entrapment operation conducted by the BSP agents and its findings as to the existence of all the elements of the crime of illegal possession and use of false treasury bank notes as defined under Article 168 of the Revised Penal Code. The CA did not also commit grave abuse of discretion in giving credence to the testimonies of the prosecution witnesses and on the basis thereof, convicted Romeo.

⁷ Id. at 14.

⁸ *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002).

⁹ *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1.

¹⁰ *People v. Balagat*, G.R. No. 177163, April 24, 2009, 586 SCRA 640, 644-645.

Having charged that petitioner acted in conspiracy with Romeo, it was, however, incumbent upon the prosecution to prove that both the accused had come to an agreement concerning the commission of the crime and decided to execute the agreement.

In holding that petitioner conspired with Romeo, the CA quoted with approval the trial court's observation, to wit:

Notwithstanding that Edwina's participation on September 14, 2012 seemed merely to accompany her husband Romeo, the commonality of intent to pass on and sell counterfeit US\$ notes was evident and inferable from the following circumstances: (1) it was husband Romeo who offered to sell the counterfeit US\$ notes to the agent of the BSP; (2) Edwina accompanied her husband to Makati City coming all the way from their residence in Quezon City; (3) upon arrival at the designated meeting place, which was in front of the Original Savory restaurant along Makati Avenue, she merely distanced herself from her husband and Agent Muñoz but did not leave them alone entirely; (4) when her husband handed over to her the marked money, she willingly accepted and placed it inside her handbag; (5) upon receipt of the marked money she and her husband proceeded to leave the place together.¹¹

We do not agree.

It bears stressing that conspiracy requires the same degree of proof required to establish the crime beyond reasonable doubt. Thus, mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate is not enough to constitute one a party to a conspiracy.¹² In this regard, our ruling in *Bahilidad v. People*¹³ is instructive, thus:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his

¹¹ *Rollo*, p. 68.

¹² *People v. De Chavez*, G.R. No. 188105, April 23, 2010, 619 SCRA 464, 476-477.

¹³ G.R. No. 185195, March 17, 2010, 615 SCRA 597.

co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.

In the instant case, we find petitioner's participation in the crime not adequately proved with moral certainty. There were no overt acts attributed to her adequate to hold her equally guilty of the crime proved.

Article 168 of the RPC, under which petitioner was charged, provides:

ART. 168. *Illegal possession and use of false treasury or bank notes and other instruments of credit.* Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

The elements of the crime charged for violation of said law are: (1) that any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person; (2) that the offender knows that any of the said instruments is forged or falsified; and (3) that he either used or *possessed with intent to use* any of such forged or falsified instruments.¹⁴

None of these elements are present in the case of petitioner. The prosecution was not able to prove that she was even aware of the counterfeit US\$ notes. Moreover, there was no showing that petitioner had a hand or active participation in the consummation of the illegal transaction. In fact, petitioner was not present during the test-buy operation conducted by the team of Alex Muñoz nor was she spotted during the surveillance.

Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy.¹⁵ To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.¹⁶ Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.¹⁷

¹⁴ *Tecson v. Court of Appeals*, G.R. No. 113218, November 22, 2001, 370 SCRA 181, 188.

¹⁵ *People v. Desoy*, G.R. No. 127754, August 16, 1999, 312 SCRA 432, 445; *Abad v. Court of Appeals*, 353 Phil. 247, 253 (1998).

¹⁶ *People v. Tabuso*, G.R. No. 113708, October 26, 1999, 317 SCRA 454, 459; *People v. Alas*, 340 Phil. 423, 436 (1997).

¹⁷ *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, 755.



The fact that petitioner accompanied her husband at the restaurant and allowed her husband to place the money inside her bag would not be sufficient to justify the conclusion that conspiracy existed. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed an overt act in pursuance or in furtherance of conspiracy.¹⁸

This Court has held that an overt or external act

is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.¹⁹

The record is bereft of any hint that petitioner cooperated in the commission of the crime under Article 168 of the RPC. Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with her husband Romeo to commit the crime. Hence, in the absence of conspiracy, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty²⁰ and is not sufficient to support a conviction.²¹ Exoneration must then be granted as a matter of right.²² Thus, petitioner's acquittal is in order.

WHEREFORE, the Decision of the Court of Appeals dated September 6, 2016 is **REVERSED** and **SET ASIDE**. Petitioner Edwina Rimando is hereby **ACQUITTED** on the ground that her guilt was not proven beyond reasonable doubt.

¹⁸ *People v. Santiago*, G.R. No. 129371, October 4, 2000.

¹⁹ *People v. Lizada*, G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 95.

²⁰ *People v. Marcos*, G.R. No. 115006, March 18, 1999, 305 SCRA 1, 13.

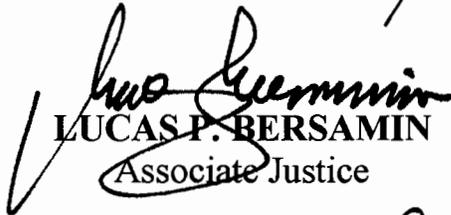
²¹ *People v. Lomboy*, G.R. No. 129691, June 29, 1999, 309 SCRA 440, 465.

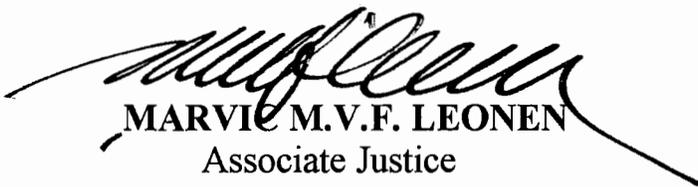
²² *Monteverde v. People*, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice

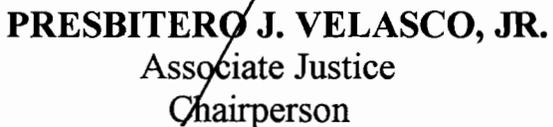

MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

(On Leave)
ALEXANDER G. GESMUNDO
Associate Justice

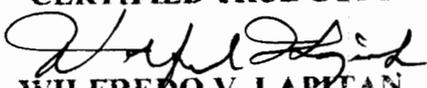
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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WILFREDO V. LADITAN
Division Clerk of Court
Third Division


MARIA LOURDES P. A. SERENO
Chief Justice