

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MILAGROS M. RODRIGUEZ, ACCUSED.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant Rommel Rodriguez, of the Judgment[1] dated October 9, 2009 of the Regional Trial Court, Branch 57, Cebu City which found accused-appellant guilty beyond reasonable doubt of Violation of Section 5 of RA No. 9165 or Dangerous Drugs Act of 2002 in Criminal Case No. CBU-74763 and his co-accused Milagros Rodriguez guilty beyond reasonable doubt of Violation of Sections 5 and 11 of RA No. 9165 in Criminal Case Nos. and CBU-72916 and CBU-72911.

Version of the Prosecution

Sometime in the third week of March, 2005, P/Supt. Glen Candelario Ares received reports from a concerned citizen regarding the illegal drug activities of accused-appellant Rommel Rodriguez.

P/Supt Ares then instructed SPO3 Abundio Cabahug, SPO1 Adolfo Morales, SPO1 Ruel Hortelano, PO3 Arnel Vender and PO3 Erwin Ferrer to validate the tip of the informant. The police officers then conducted a surveillance on accused-appellant and found the information credible. The group then prepared a buy-bust operation upon the station chief's instruction. PO3 Vender was designated as poseur-buyer and was supplied with buy-bust money consisting of two P100.00 bills.

Later, a pre-operation report was prepared on March 22, 2005 and submitted to the Philippine Drug Enforcement Agency VII. SPO3 Cabahug requested the desk officer of the station to record the buy-bust operation in the police blotter.

On March 24, 2005, at 6:40 PM, PO3 Vender and his group went to Sitio Simoun, Barangay Parian, Cebu City to conduct the planned buy-bust operation. PO3 Vender, together with a civilian informant proceeded to the store owned by Milagros Rodriguez, accused-appellant's grandmother. The other police officers posted themselves in different strategic positions.

PO3 Vender peeped through the screen of the store. Milagros Rodriguez approached him to ask what he wanted. PO3 Vender replied that he was looking for a certain "Doglat". Milagros asked him what he wanted from Doglat to which he answered that he wanted to buy shabu for his personal use. Milagros asked him how much shabu he wanted to purchase. PO3 Vender told her that he wanted to buy P200.00 worth of shabu. PO3 Vender then handed the marked money to Milagros. Milagros asked PO3 Vender to wait and she went inside the house.

Accused-appellant Rommel went out of the house and approached PO3 Vender to hand over a small plastic sachet containing white crystalline substance. PO3 Vender then scratched his head, the agreed pre-arranged signal to signify that the transaction was already consummated.

PO3 Vender's companions immediately rushed to the area. Accused-appellant pushed PO3 Vender and rushed

inside the house. He hurriedly climbed the stairs to the second floor of the house and disappeared. PO3 Vender tried to catch him but failed.

Meanwhile, SPO3 Cabahug held Milagros and informed her of her constitutional rights, telling her that she was being arrested for selling dangerous drugs. He then asked Milagros to surrender the black wallet found inside the pocket of her dress. SPO3 Cabahug recovered the marked money, and three more packs of shabu and thirty-nine (39) sticks of marijuana.

SPO3 Cabahug marked the sachet of white crystalline substance as “MRRR-BB” confiscated from accused-appellant. He likewise marked the three packs of shabu from “MR-A” to “MR-C” as well the 39 sticks of marijuana from “MR-1” to “MR 39” which PO3 Vender confiscated from Milagros. All markings were done inside Milagros' house. Thereafter, SPO3 Cabahug brought Milagros and the seized illegal drugs to the police station. SPO1 Hortelano took pictures of the illegal drugs while SPO3 Cabahug prepared a letter request to the PNP Crime Laboratory for the examination of the confiscated articles.

Around 10:00 PM, on the same date, the seized items were delivered to the PNP Regional Crime Laboratory 7, Camp Sotero Cabahug, Cebu City. P/Chief Inspector Mutchit Salinas, forensic chemist conducted an examination and found the specimen positive for methylamphetamine hydrochloride, a dangerous drug in Chemistry Report[2] No. D-369-2005.

The Charge

In the Informations dated May 18, 2005, accused Milagros Rodriguez and accused-appellant Rommel Rodriguez were charged with the crime of Violation of Section 5 Article II of RA No. 9165, respectively, as follows:

CRIM CASE NO. CBU-72916

“That on or about the 24th day of March, 2005, at about 6:50 PM in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused conniving and confederating together and mutually helping with Rommel Rodriguez who is at large and who will be prosecuted separately as soon apprehended, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur-buyer one (1) heat sealed transparent plastic packet weighing 0.06 gram of white crystalline substance locally known as “SHABU” containing methylamphetamine hydrochloride a dangerous drug.

CONTRARY TO LAW.”

CRIM CASE NO. CBU-74763[3]

“That on or about the 24th day of March, 2005 at about 6:40 PM, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused conniving and confederating and mutually helping with a certain Milagros Rodriguez who has already been charged with Crim Case No. CBU-72911 before RTC Branch 57, Cebu City with deliberate intent and without being authorized by law, did then and there sell, deliver or give away to a poseur-buyer one (1) heat sealed plastic pack, containing a total weight of 0.06 gram of white crystalline substance containing Methylamphetamine Hydrochloride, locally known as “shabu”, a dangerous drug.

CONTRARY TO LAW.”

Too, accused Milagros Rodriguez was charged with Violation of Section 11, of RA No. 9165, in Criminal Case No. CBU-72911, thus:

“That on or about the 24[th] day of March, 2005, at about 6:40 PM, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession use and control the following, to wit:

- a) three (3) heat sealed transparent plastic packets of white crystalline substance containing 0.14 grams;
 - b) thirty (39) sticks (sic) of handrolled marijuana cigarette containing 4.62 grams
- locally known as "SHABU" containing methylamphetamine hydrochloride and marijuana respectively a dangerous drug without license or prescription from any competent authority.

CONTRARY TO LAW."

Accused-appellants were arraigned and pleaded "not guilty" to the crimes charged against them. The cases were consolidated.

Joint trial ensued. The prosecution presented the following as witnesses: P/Chief Insp. Mutchit Salinas, PO3 Arnel Vender and SPO3 Abundio Cabahug. On the other hand, the defense presented accused-appellants.

Version of the Defense

Accused-appellant declared that on the date and time in question he was at his residence in Villagonzalo, Cebu City. He was told by his sister of the arrest of their grandmother for the alleged selling of shabu and that the policemen were looking for him. According to accused-appellant, he did not visit his grandmother at the police station during her arrest. When he visited her in jail, his co-accused advised him not to visit her anymore because he had a pending warrant of arrest. Accused-appellant was subsequently arrested by policemen of the Police Station 3 by virtue of a warrant of arrest.

The RTC Ruling:

Thereafter, on October 9, 2009, the RTC, Seventh Judicial Region, Branch 57, Cebu City rendered Judgment[4] against accused-appellants, the pertinent portion of which reads:

"Wherefore, finding the guilt of the accused beyond reasonable doubt, accused Milagros Rodriguez and Rommel Rodriguez are hereby sentenced to suffer each the penalty of life imprisonment and a fine of five hundred thousand pesos for Violation of Section 5, Article II of RA 9165 .

Accused Milagros Rodriguez is also sentenced to suffer the penalty of twelve (12) years and one (1) day to fifteen (15) years and a fine of three hundred thousand pesos for Violation of Section 11, Article II of RA 9165.

The one plastic packet of shabu (subject of sale), three packets of shabu and the 39 sticks of marijuana sticks (possession) are all forfeited in favor of the government.

SO ORDERED."

Accused-appellant filed a Motion for reconsideration thereto which was denied in an Order[5] dated December 17, 2009.

Aggrieved, accused-appellant Rommel Rodriguez now comes to this Court seeking a reversal of his conviction and assigning as errors, thus:

- I. "THE COURT A QUO ERRED IN CONVICTING THE APPELLANT NOTWITHSTANDING THE MATERIAL INCONSISTENCIES IN THE TESTIMONY OF THE PROSECUTION WITNESSES; and
- II. THE COURT A QUO ERRED IN CONVICTING THE APPELLANT NOTWITHSTANDING THE QUESTIONABLE HANDLING OF THE CORPUS DELICTI OF THE OFFENSE WHICH GIVES RISE TO THE QUESTION OF ITS INTEGRITY."

THIS COURT'S RULING:**I. Buy bust operation**

It is the contention of accused-appellant that there are material inconsistencies in the testimonies of the prosecution witnesses which pertain to the buy-bust operation itself rendering his guilt of the crime charged against him as doubtful. First, accused-appellant avers that there is an inconsistency with the alleged date when the information regarding the alleged illegal activity was said to be received which created a domino effect in the allegations regarding the proceedings conducted. The report was allegedly received on March 23, 2005 but the pre-operations report was dated March 22, 2005. The buy-bust operation was allegedly conducted on March 24, 2005 and that the team members claimed that they conducted surveillance for three days. Both PO3 Vender and PO Cabahug testified that the surveillance was conducted for three successive days when the report was only received a day before the buy-bust operation. This is a glaring discrepancy which cannot be ignored.

Further, PO Vender claims that the buy-bust operation was conducted with PO Cabahug, SPO1 Morales, SPO1 Hortelano, and PO3 Ferrer present while PO Cabahug has a different version, testifying that the buy bust operation was conducted with the aid of a civilian informant. In contrast thereto, PO Vender did not mention any civilian informant and in fact, attested that he was the only one who went to the house of Milagros at the time in question to buy shabu. Lastly, accused-appellant points out that the poseur buyer himself admitted that when he saw the former, the transaction was already done, thus:

“ Andral: How about Rommel Rodriguez, where was he at that the time when you saw Milagros Rodriguez inside the store?

A; Rommel Rodriguez was inside the residence of Milagros Rodriguez. When I saw him, the transaction was already done.” TSN , March 22, 2006

Thus, accused-appellant asserts that this is a marked inconsistency which strongly warrants his acquittal.

We reject accused-appellant's contention.

As opposed to the claim of accused-appellant, a buy-bust operation was established by the prosecution.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves full faith and credit. When the police officers involved in the buy-bust operation have no motive to falsely testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly. The trial court in this case correctly upheld the testimony of the prosecution witnesses, the police officers who conducted the buy-bust operation.[6]

Here, the testimonies of the prosecution witnesses were consistent in proving that a buy-bust operation was conducted on March 24, 2005 with accused-appellant as the target. PO3 Vender narrated the circumstances leading to the consummation of the sale of illegal drugs. As borne out by the records, PO3 Vender, the poseur-buyer went to a store owned by Milagros Rodriguez in Sitio Simoun, Barangay Parian, Cebu City. He was approached by Milagros and he told her that he was looking for accused-appellant and that he wanted to buy P200.00 worth of shabu. PO3 Vender then handed over to Milagros the P200.00 marked money after which she entered the house. After a few minutes, accused-appellant went out of the house and gave PO3 Vender a sachet containing white crystalline substance. On the other hand, SPO3 Abundio Cabahug testified as to his own part in the buy bust operation. Their testimonies formed a coherent whole and did not at all detract from the main thing which occurred on that day in question – the sale of illegal drugs. In short, their testimonies corroborated on

material points.

Essentially, the testimony of PO3 Vender was able to meet the requirement which the Supreme Court laid down in *People v. Ong*, G.R. No. 137348, 21 June 2004, in that, he was able to present a complete picture detailing the buy-bust operation — from the initial contact between the poseur-buyer and the seller, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. His testimony revealed how the team members came to know about accused-appellant's drug trade; the manner of negotiation for the purchase of shabu, the exchange of consideration between him and accused-appellant; the part of Milagros Rodriguez as well as the handing over to him of the subject of the sale.

The testimonies pointed out by accused-appellant to create doubt as to the conduct of the buy-bust operation must be construed together with the rest of the testimonies of the prosecution witnesses. The inconsistencies alleged by accused-appellant are immaterial matters which do not affect the credibility of the prosecution witnesses. The alleged date of the report regarding the alleged illegal drug activities, omission of the civilian informant's participation in the buy-bust operation, and the source of information that accused-appellant was engaged in illegal drug activities are irrelevant matters and have nothing to do with the elements of the crime.

Such minor inconsistencies strengthen, rather than weaken the credibility of the witnesses as it erases any suspicion of a rehearsed testimony. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the malefactor.[7] The positive and straightforward testimony of PO3 Vender is replete with details and consistent even on cross-examination which supports the RTC's conclusion that a lawful buy-bust operation was indeed conducted by the police operatives. Furthermore, PO3 Vender's attestation was corroborated by SPO3 Cabahug. Their testimonies are worthy and entirely in accord with human experience. Time and time again, the Court has ruled that the prosecution witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.

Too, the allegation that accused-appellant was seen only when the sale was already consummated is incorrect. PO3 Vender's testimony reveals that it was accused-appellant who gave him the sachet of shabu, viz:

“Pros Andal: How about Rommel Rodriguez where was he at that time when you saw Milagros Rodriguez inside the store?

A: Rommel Rodriguez was inside the residence of Milagros Rodriguez when I saw him, the transaction was already done.

Q: So when you arrive at the vicinity of the house of Milagros Rodriguez to conduct buy-bust operation, what did you do then immediately when you arrived at the place?

A: I stand at the sari-sari store of Milagros Rodriguez and she approached me and I said that I was looking for somebody named Doglat.

Q: Who is that Doglat Mr. witness?

A: The nickname of Rommel Rodriguez.

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Pros Andal: After having informed Milagros Rodriguez that you were looking for Rommel Rodriguez what did Milagros do?

A: She asked me what I want from Rommel Rodriguez.

Q: And what did you say to her?

A: I said to her I want to buy shabu for my consumption.

Q: After hearing what you said, what did Milagros Rodriguez do?

A: She got my money and said that I will just wait and she will get shabu inside.

Q: How much did she get from you?

A: P200.00

Court: (to witness)

Q: You mean you handed the money? A: Yes your honor.

Pros Andal: Where did Milagros Rodriguez proceed after receiving the money from you?

A: She got inside her residence.

Q: And how long did you wait out there?

A: Not so long sir.

Q: About how many minutes or seconds?

A: One or two minutes.

Q: After one or two minutes, what happened?

A: Rommel Rodriguez got out from inside and went outside the house and handed over to me the small plastic sachet.”[8]

It bears to stress that as long as the testimonies of the witnesses corroborate each other on material points, the minor inconsistencies therein cannot destroy their credibility.[9] The alleged flaws pointed out by accused-appellant in the instant case are insufficient to overturn the judgment of conviction against him since those testimonies are consistent on material points. In order to secure a reversal of the appealed judgment, such inconsistencies should pertain to that crucial moment when accused-appellant was caught selling shabu, and not to peripheral matters. In sum, the seeming inconsistencies referred to by accused-appellant are of no consequence. What is important is that the prosecution was able to establish the key elements needed for a conviction.

Elements of sale of illegal drugs

The records show that the prosecution succeeded in establishing with moral certainty all the elements of the illegal sale of shabu, as ruled in *Cruz vs People*, GR No. 164580, February 6, 2009, as follows: 1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. The presence of these elements is sufficient to support accused-appellant's finding of guilt.

In this case, accused-appellant was convicted by the court a quo on the basis of the evidence resulting from the buy-bust operation undertaken by police operatives. During the trial, police officers who conducted the buy-bust operation testified in a straightforward manner regarding accused-appellant's sale of the shabu to the poseur buyer. PO3 Vender, a member of the buy-bust team positively identified accused-appellant as the one who gave the illegal drugs to the former. The delivery of the illegal drug to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. The testimonies on record show that the prosecution witnesses were able to testify positively and categorically that the sale actually took place. Also, the prosecution was able to account that the evidence recovered from accused-appellant with the pertinent markings were the same evidence presented in court.

II.

Chain of custody not broken

In another vein, accused-appellant maintains that there were irregularities in the handling of the corpus delicti of the offense.

First, accused-appellant points out that the failure to mark the items at the scene of the crime and the absence of a certificate of inventory renders doubtful the corpus delicti of the items presented in court.

Second, accused-appellant contends that there appears to be no certificate of inventory or photographs of the items as required by the mandatory rules, citing *People vs Frondoza*, GR No. 177164, June 30, 2009. He avers that the marking of the seized drugs immediately after they are seized from the accused is crucial in proving the chain of custody. Accused-appellant argues that the consequences of the failure to make an inventory is brought to the fore in light of the fact that the black wallet allegedly recovered from accused Milagros Rodriguez was not made part of the evidence submitted in this case and does not bear any markings.

Moreover, accused-appellant avers that there was no proper documentation as to how the items changed hands and who received said items in every link of the chain. Accused-appellant claims that from the evidence it appears that PO3 Vender recovered the items but turned them over to PO Cabahug who did not have personal knowledge of the items seized. Nevertheless, PO Cabahug made the markings thereon at the Police Station. When the items were in the custody of PO Cabahug from the place where it was seized in the police station, it was PO Vender who turned it over to the Crime Laboratory for examination. Accused-appellant contends that the identity of the people who allegedly handled the items is not sufficient because there should be an accompanying documentation to support the transfer and custody thereof. All these irregularities make doubtful the corpus delicti of the offense.

Accused-appellant's arguments are misplaced.

For resolution of this Court is whether or not sufficient evidence exists to support the conviction of accused-appellant for violation of Section 5 of Article II of R.A. No. 9165. The issue is one of credibility of the prosecution witnesses. In prosecutions for illegal sale of dangerous drugs, the presentation in evidence of the seized drug, as an integral part of the corpus delicti, is most material. It is therefore vital that the identity of the illegal drugs be proved with moral certainty.

Ideally, the procedure on the chain of custody should be perfect and unbroken. However, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain.[10] As elucidated in *People v. Cortez* G.R. No. 183819, July 23, 2009 and *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, RA 9165 and its subsequent Implementing Rules and Regulations (IRR) do not require strict compliance as to the chain of custody rule. The items seized from the accused will not be rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. The Supreme Court held that what is material is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. Therefore, non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons, is not a serious flaw that can render void the seizures and custody of drugs.[11]

Here, the chain of custody did not suffer from serious defects as accused-appellant argued. The recovery and handling of the seized drugs showed that, first, PO3 Vender, acting as poseur-buyer proceeded to the store of Milagros Rodriguez in Barangay Parian, Cebu City where he met her. He told Milagros that he was looking for a certain "Doglat" and that he wanted to buy shabu worth P200.00. PO3 Vender handed over the money to Milagros who in turn told him to wait when she went inside the house. Later, accused-appellant went outside the house and gave to PO3 Vender a small plastic sachet containing white crystalline substance. PO3 Vender then scratched his head, the pre-arranged signal showing that the transaction was consummated. Thereafter, PO3 Vender's companions rushed to the area. Accused-appellant pushed PO3 Vender and hurriedly went inside the house. PO3 Vender then handed over to SPO3 Cabahug the confiscated sachet of shabu. PO3 Vender then ran after accused-appellant.

SPO3 Cabahug marked the sachet as “MRRR-BB” along with the three packs of shabu with “MR-A” to “MR-C” while the thirty-nine sticks confiscated from Milagros were marked with “MR-1” to “MR-39”. SPO3 Cabahug subsequently brought the seized illegal drugs to the police station. On the other hand, SPO1 Hortelano took pictures of the illegal drugs and SPO3 Cabahug prepared a letter request for the PNP Crime Laboratory for examination of the seized items. On the same day, around 10:00 PM, the seized articles were delivered to the PNP Regional Crime Laboratory VII in Camp Sotero, Cebu City. P/Chief Inspector Mutchit Salinas conducted an examination and found that the specimen labeled “MRRR-BB” was positive for methylamphetamine hydrochloride.

Records reveal that the subsequent transfers of the seized substances show that the integrity and evidentiary value of these items were properly preserved by the apprehending officers from the time said items were seized from accused-appellant to the time these were transferred to the police officer, forensic chemical officer and finally, to the court a quo. Accordingly, there can be no doubt that the drugs seized from accused-appellant are the same substances examined in the crime laboratory and presented in court.

Generally, non-compliance with Sec. 21 will not render an accused's arrest illegal or the items seized or confiscated from the accused inadmissible. In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification, as the Supreme Court has held in the past, must be established with moral certainty and is a function of the rule on chain of custody. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[12]

The required procedure on the seizure and custody of drugs is provided by Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

“(1) The apprehending team having initial custody and control of the drugs shall, 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.”

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which reads:

“(a) The apprehending officer/team having initial custody and control of the drugs shall, 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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, 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.”

Strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by

accident or otherwise. [13] In this case, the prosecution was able to show that the chain of custody was not broken. What is more, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The accused has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers. [14] Accused-appellant failed in this respect.

With regards to the defect in the inventory of the items confiscated from accused-appellant, Yolly Teodosio vs. Court of Appeals and People of the Philippines[15] is instructive wherein the Supreme Court made light of the argument that the prosecution's case was weakened by the fact that the police officers did not issue a receipt for the confiscated drugs and declared that issuing such a receipt is not essential to establishing a criminal case for selling drugs as it is not an element of the crime. To be able to create a first link in the chain of custody, what is required is that the marking must be made in the presence of the accused and upon immediate confiscation. But immediate confiscation had no exact period. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. [16] The marking in this case was immediately done in the presence of the co-accused at the time of arrest. Indeed, there was substantial compliance by the arresting officers with the required procedure on the custody of seized illegal drugs.

Also, police stations and barangays are usually not equipped with cameras. The omission on the part of the police officers to take photographs or even make an inventory of the drugs seized from accused-appellant should not be considered fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs.[17]

Verily, Section 21 thereof need not be followed with pedantic rigor and that what is essential is the preservation of the integrity and evidentiary value of the seized items since it would be utilized in the determination of the accused-appellant's guilt or innocence.” Moreover, jurisprudence is abundant with pronouncements that non-compliance with Section 21 will not necessarily render an accused-appellant's arrest as illegal or the items seized from him as inadmissible.[18] Indeed, there was substantial compliance with the required procedure on the custody and control of the confiscated items, hence showing that the integrity of the seized evidence was not compromised. We refer to the succession of events established by evidence, to the overall handling of the seized item to the test results obtained. The chain of custody of the subject drugs was not broken as revealed by the factual circumstances of this case. In *People v. Del Monte*[19], the Supreme Court explained at length:

“We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight - evidentiary merit or probative value - to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.”

Procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from an accused when he was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case.

However, Section 21(a), Article II of the IRR offers some flexibility in complying with the express requirements under paragraph 1, Section 21, Article II of R.A. No. 9165, i.e., "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." [20] *People vs Sanchez* [21], however, clarified that this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds. It was also held in *Sanchez*, that in such circumstance, the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved. In the case in controversy, the police officers sufficiently explained the minor lapses in procedure.

To summarize, proof beyond reasonable doubt, as found by the RTC was established against accused-appellant. Finding no showing that certain facts of relevance and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied, we find no cogent reason to overturn the trial court's judgment.

Penalties

Anent the penalties imposed for violation of Section 5, Article II of Republic Act No. 9165, we affirm the penalty imposed by the trial court. Under Republic Act No. 9165, the unauthorized sale of shabu carries with it 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), regardless of the quantity and purity of the substance involved. [22]

WHEREFORE, the appeal is DENIED. The Judgment dated October 9, 2009 of the Regional Trial Court, Branch 57, Cebu City in Crim Case No. CBU-74763 is AFFIRMED.

Costs against accused-appellant.

SO ORDERED.

Maxino, P.A.A., and [*]Lagura-Yap, M.B., JJ., concur.

[1] Rollo, p. 49

[*] Acting Junior Member in lieu of J. Renato C. Francisco's leave of absence as per Office Order No. 29-14- GTI dated 22 December 2014.

[2] Records, p. 80

[3] Records, p. 1

[4] Rollo, p. 49

[5] Rollo, p. 154

[6] *People vs Valencia* GR No. 143032, October 14, 2002

[7] *People vs Cleopas, et al* GR No. 121998, March 9, 2000

[8] TSN, March 22, 2006, pp. 7-9

[9] *People v. Emilio Rabutin*, G.R. Nos. 118131-32, May 5, 1997

[10] *People vs Amansec*, GR No. 186131, December 14, 2011

[11] *People v. Daria*, G.R. No. 186138, September 11, 2009.

[12] People v. Garcia, G.R. No. 173480, February 25, 2009

[13] People v. Kamad, G.R. No. 174198, January 19, 2010.

[14] People v. Macatingag, G.R. No. 181037, January 19, 2009.

[15] G.R. No. 124346, June 8, 2004,

[16] People vs Gum-oyen, 585 SCRA 678

[17] People vs Llamado, GR No. 185278, March 13, 2009

[18] People vs Teodoro, GR No. 185164, June 22, 2009

[19] G.R. No. 179940, April 23, 2008

[20] People vs Garcia, GR No.173480, February 25, 2009

[21] G.R. No. 175832, October 15, 2008.

[22] People vs Bernabe, GR No. 180505, June 29, 2010

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