THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHRISTOPHER ALOYON Y ALEGRE, ACCUSED-APPELLANT.

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

Appealed[1] to this Court is an Omnibus Decision[2] dated November 11, 2011 of the Regional Trial Court, Branch 4, Butuan City finding accused-appellant Christopher Aloyon y Alegre guilty beyond reasonable doubt in Criminal Case Nos. 11181 and 11182 for violation of Sections 5 and 11, Article II of the Republic Act No. 9165 otherwise known as Comprehensive Dangerous Drugs Act of 2002.

The case stemmed from an incident averred in two (2) Informations[3] all dated May 20, 2005, as follows:

> That on or about 4:45 in the afternoon of May 10, 2005, at P3, Brgy. 15, San Ignacio, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero five one two (0.0512) grams a dangerous drugs to a poseur-buyer for a consideration of 500 pesos marked moneys, a dangerous drugs.
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> CONTRARY TO LAW: (Violation of Sec. 5 Art II of R.A. NO. 9165)
>
> That on or about 4:45 in the afternoon of May 10, 2005, at P3, Brgy. 15, San Ignacio, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody two (2) sachets of shabu weighing a total of zero point one six four two (0.1642) grams of methamphetamine hydrochloride, otherwise known as shabu which is a dangerous drug.
>
> CONTRARY TO LAW: (Violation of Sec. 11 Art II of R.A. NO. 9165)

On August 15, 2005, when arraigned on both cases, appellant with the assistance of a counsel pleaded not guilty.[4]

The prosecution presented SPO1 Estelito O. Gono (Gono for brevity), PO2 Rey Gabrielle Maderal (Maderal for brevity), SPO1 Irish Fe N. Benigian (Benigian for brevity) and PSI Norman Gales Jovita (Jovita for brevity) as witnesses to establish the following:

Gono's testimony:[5] On May 10, 2005, at 4:45 P.M. at Purok 3, Barangay 15, San Ignacio, Butuan City, he and other police officers conducted a buy-bust operation against appellant. He was with Maderal, Benegian, PO3 Delos Santos and PO2 Alvizo. Their police asset acted as poseur-buyer. Before the jump off, they prepared a PHP 500.00 bill as marked money. Benigian entered the serial number of the bill, HA253608, into the logbook at their office. They also caused the powder dusting of the bill.

At the time of the buy-bust operation, Gono, Maderal and Benigian were standing eighteen (18) meters away from poseur-buyer and appellant. They could clearly view the transaction between the latter as there was no obstruction from their sight. Poseur-buyer approached appellant. Shortly, the former gave the marked PHP 500.00 bill to

appellant who accepted the same and then gave poseur-buyer something that looked like a small sachet.

Poseur-buyer executed the pre-arranged signal after receiving the small sachet. Gono's group, after seeing the signal, approached the poseur-buyer and appellant. The poseur-buyer then walked towards Gono and handed the sachet to him. Appellant, on the other hand, went inside a video karera shop. Gono, Delos Reyes and the rest went inside the video karera shop while Maderal and Alvizo were posted outside the shop acting as security. The group who went outside the shop informed appellant that they were conducting a buy-bust operation against him. Delos Santos then brought appellant outside the shop as the indoors was narrow. Gono asked appellant where the marked money was and the latter replied that it was in the secret pocket of his short pants. Gono retrieved the bill from his pocket. He asked accused if there were other sachets of shabu, and appellant said there was none. Then, they conducted a body search on him, and they recovered two (2) sachets of shabu tucked inside his brief. Then they informed him of the reason of his arrest as well as his constitutional rights.

Thereafter, the buy-bust team brought him to their office at the Philippine Drug Enforcement Agency (PDEA), BCPO. In going there, it was Maderal, as evidence custodian, who carried the sachets of shabu. Upon arriving thereat, Maderal marked the first sachet, which was the product of the buy-bust operation, with his initials “RBM-A1” and the two (2) other sachets, which were seized in appellant's possession, with “RBM-B1” - “RBM-B2.” The team took a photo of the evidence with the accused. They prepared four (4) requests for laboratory addressed to the PNP Crime Laboratory, such as request for examination on the first sachet of shabu; request for examination on the other two (2) sachets of shabu; request for drug test on appellant; and request for the marked money. They also prepared certificate of inventory/confiscation receipt, affidavit of apprehension, and the sworn statements of Gono and Delos Santos. Thenceforth, Gono and Maderal brought appellant and the evidence to the crime laboratory for examination. It was actually Maderal who brought and delivered the written request and all the seized items to the Crime Laboratory.

Maderal was no longer presented at the trial. Instead, the parties entered into stipulations that Maderal received the sachets of shabu from Gono; she was the one also who made the markings on the sachets in both criminal cases; she brought the three sachets of shabu at the Crime Laboratory for examination; and she prepared the request for powder dusting of the marked money and for the chemical examination for the presence of ultraviolet rays on the marked money and on appellant. Benigian's testimony in open court was also dispensed with after the defense counsel agreed that Benigian was a member of the buy-bust team and that the Certificate of Inventory was prepared.

Jovita's testimony:[6] Jovita was a forensic chemical officer of the Surigao del Norte Provincial Crime Laboratory. He was presented as expert witness. He testified that he had received in his office the above-mentioned four (4) requests for laboratory. After the examination, the three (3) sachets yielded positive results for methamphetamine hydrochloride, a dangerous drug. He then reduced his findings into writing and prepared Chemistry Report No. D-066-2005 on the first sachet of shabu and Chemistry Report No. D-167-2005 on the other two (2) sachets. On the other tests, the PHP 500.00 bill tested positive of fluorescent powder while appellant got negative.

On the other hand, the defense presented appellant as sole witness in defense of himself.

Appellant was a trisikad driver. He lived with his wife, one child and parents-in-law in Purok 4, Barangay 17, San Ignacio, Butuan City. On May 10, 2005, at 4:45 PM, he was just at home. After a while, he went to the video karera shop, which was quite far from his house, located at Montilla Street, Purok 15, Barangay San Ignacio, Butuan City. He played video karera alone. After about thirty (30) minutes, two (2) policemen entered the shop and immediately frisked him. They ushered him outside the shop and searched his shortpants. They recovered two

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(2) pieces of PHP 50.00 bills. There were no barangay officials or representative from the media present at the time the police officers searched and apprehended him. Thereafter, they boarded a tricycle and went to BCPS. There, the police officers conducted a body-search on him again, and then he was put in jail.[7]

After the trial proceedings, the lower court rendered the assailed Omnibus Decision[8] dated November 11, 2011, the dispositive portion[9] of which reads:

> WHEREFORE, premises considered, in Criminal Case No. 11181, accused Christopher Aloyon y Alegre is found guilty beyond reasonable doubt for violation of Section 5, of Article II of Republic Act 9165, and is hereby sentenced to life imprisonment and to pay a fine of Five Hundred Pesos (P500,000.00), without subsidiary imprisonment in case of insolvency.
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> In Criminal Case No. 11182, accused is likewise found guilty beyond reasonable doubt for violation of Section 11 of Article II of Republic Act 9165, and is hereby sentenced to undergo imprisonment of the indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and a fine of three hundred thousand pesos (P300,000.00) without subsidiary imprisonment in case of insolvency.
>
> Accused shall serve his sentences in accordance with the Rule on service of sentence as embodied in the Revised Penal Code at Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte.
>
> The sachets of shabu subject of both Criminal Cases Nos. 11181 and 11182, are hereby declared forfeited in favor of the government to be dealt with in accordance with law.
>
> SO ORDERED.

On appeal, appellant raised the following assignment of errors:[10]

> I.
>
> THE COURT A QUO ERRED WHEN IT ADMITTED THE PROSECUTION'S EVIDENCE DESPITE BEING INADMISSIBLE IN EVIDENCE BEING A FRUIT OF THE POISONOUS TREE.
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> II.
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> THE COURT A QUO GRAVELY ERRED WHEN IT CONVICTED APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE THE SALE OF SHABU BEYOND REASONABLE DOUBT
>
> III.
>
> THE COURT A QUO ERRED WHEN IT CONVICTED APPELLANT DESPITE PROSECUTION'S FAILURE TO ESTABLISH COMPLIANCE OF SECTION 21 OF R.A. 9165 AND THE CHAIN OF CUSTODY REQUIREMENT.

In essence, the issue that should be resolved in this case is whether the prosecution has established the guilt of appellant beyond reasonable doubt.

The appeal has merit.

Non-presentation of the poseur-buyer.

Appellant argues that the alleged sale of shabu between him and the poseur buyer was not established because the poseur-buyer was not presented as witness; he was apprehended on the basis of mere suspicion; Gono's testimony that the poseur buyer bought sachets of shabu from him was hearsay and is inadmissible in evidence against him.[11]

There are two notable jurisprudence, which serve as guideposts in disposing this case. First is the People of the

Philippines v. Dionisio Tadepa,[12] wherein the Supreme Court declared the following:

> In the case at bench, we are not convinced that the state has presented sufficient evidence to engender that moral certitude exacted by the fundamental law to prove the guilt of the accused. Accordingly, we reverse his conviction on reasonable doubt. The prosecution built its case solely on the testimony of Team Leader Sgt. Alfiler who admitted that he was some seven (7) to eight (8) meters away from where the actual transaction took place. As a consequence, he said that he did not hear the conversation which transpired between Pat. Triste and the accused.

Second is the latest case of People of the Philippines v. Garyzaldy Guzon,[13] where the Supreme Court also acquitted the accused based on the following declaration:

> We emphasize that in a prosecution for illegal sale of dangerous drugs, the prosecution must convincingly prove that the transaction or sale actually transpired. In the instant case, the poseur-buyer in the buy-bust operation, a civilian, was the witness competent to prove such fact, given the testimony of PO2 Tuzon that at time the supposed sale happened, he and PO3 Manuel were positioned about 20 meters away from Guzon and the poseur-buyer. Although PO2 Tuzon testified during the trial on the supposed sale, such information he could offer was based only on conjecture, as may be derived from the supposed actions of Guzon and the poseur-buyer, or at most, hearsay, being information that was merely relayed to him by the alleged poseur-buyer. Given the 20-meter distance, it was unlikely for PO2 Tuzon to have heard the conversations between the alleged buyer and seller. True enough, his testimony provided that he and PO3 Manuel merely relied on an agreed signal, i.e., the poseur-buyer’s removal of his cap, to indicate that the sale had been consummated.

The factual circumstances of the two above-quoted cases and the instant case are intimately similar. Here, the poseur-buyer was not presented as prosecution witness. The poseur-buyer was the only credible witness to the alleged sale of shabu between him and appellant as he was alone in allegedly transacting with appellant. Gono and the other police officers were situated at a distance of eighteen (18) meters away from poseur-buyer and appellant. They could not hear the conversation between the two. They only saw their actions. Gono in fact admitted that with the distance, he could not certainly identify the object given by appellant to the poseur-buyer. He merely assumed that it was a sachet of shabu.[14] Hence, Gono and the other police officers were not privy to the transaction between the poseur and appellant, which render them disqualified to be eyewitnesses to the alleged transaction. So, whatever information or object received by Gono from the poseur-buyer could only be reduced to hearsay evidence, which is inadmissible in evidence against appellant. They only relied on the signal given by the poseur-buyer that the sale took place. Gono's testimony that he saw appellant give poseur-buyer something, which he suspected as a sachet of shabu, cannot be given evidentiary value because such testimony was based on suspicions or conjecture. The failure to present in court the poseur-buyer to corroborate such testimony is fatal to the cause of the prosecution. These clearly cast doubt on the identity and integrity of the sachets of shabu, allegedly sold and seized from appellant.

Non-compliance with Section 21 of R.A. No. 9165

Appellant contends that the arresting officers neither complied with the Section 21, Article II of R.A. No. 9165 in arresting him nor presented any justifiable reason for their imperfect conduct of the buy-bust operation. The arresting officers also failed to show that the integrity and evidentiary value of the seized items had been preserved.[15]

To prove that appellant is guilty of selling illegal drugs, Article II of R.A. No. 9165 requires the prosecution to prove the following elements:(1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. The most important is the proof that the transaction actually took place,

coupled with the presentation before the court of the prohibited or regulated drug.[16] Similarly, on illegal possession of prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[17] In either case, it is essential that the identity of the sachets of shabu be preserved and that the prosecution be able to prove to the Court that the sachets of shabu, which were presented at the lower court, are the same as those seized or confiscated from appellant.[18] In order to do so, the prosecution must observe and comply with the chain of custody rule.

Chain of Custody, under the Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165, 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.[19] Such record 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.[20] Thus, Section 21, paragraph 1 of Article II of R.A. No. 9165 prescribes the manner of ensuring that the identity and integrity of the seized illegal drugs are preserved:

> "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."

In the instant case, the alleged buy-bust operation was conducted without the presence of a representative from the media and the Department of Justice (DOJ) or any elected public official. During the alleged inventory and photograph of the seized drugs, again there was no representative from the media and the DOJ or any elected public official. The Confiscation Receipt[21] or inventory was signed only by the police officers themselves. All of the foregoing would only lead us to a conclusion that the sachets of shabu, which are essential elements in establishing the charged crimes, are not properly preserved.

In People of the Philippines v. Rogelia Jardinel Pepino-Consulta,[22] the Supreme Court stated the following:

> Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:
>
> (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[.]
>
> In the present case, the above-mentioned procedures were not observed at all by the police officers. Both PO2 Dizon and PO3 Tiongco clearly and categorically admitted during their respective cross-examinations that the five sachets of suspected shabu allegedly obtained from the buy-bust operation were not physically inventoried nor photographed in the presence of accused-appellant or her counsel, a representative from the media and the DOJ, and an elective official. In fact, they stated that the buy-bust operation was actually conducted without

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the presence of the said representatives.

Furthermore, the saving clause under the Implementing Rules and Regulation of R.A. No. 9165, which stated therein that non-compliance with the above-stated 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, cannot be applied in this case because the prosecution witness Gono failed to offer any reason to justify their failure to observe the guidelines laid down in Section 21, paragraph 1 of Article II of R.A. No. 9165.

Moreover, it is worth noting that appellant tested negative for the presence of bright orange ultra-violet fluorescent powder, which was dusted on the marked money, as shown by a Chemistry Report No. PI-023-2005[23] issued by the forensic chemical officer. The latter testified that the negative result indicated that appellant was not able to touch the marked money.[24] While this finding may not be conclusive of appellant's inculpability, still, there is a possibility that appellant may be innocent after all.

It is a well-entrenched rule that when the inculpatory facts and circumstances are capable of two (2) or more interpretations, 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 certainty and is not sufficient to support a conviction.[25]

WHEREFORE, premises considered, the Omnibus Decision dated November 11, 2011 of the Regional Trial Court, Branch 4, Butuan City is REVERSED and SET ASIDE.

Appellant Christopher Aloyon y Alegre is hereby ACQUITTED on reasonable doubt; accordingly, he is hereby ordered to be immediately released from confinement, unless he is detained for other lawful causes.

The Director of Prisons, Davao Penal Farm, Braulio E. Dujali, Davao del Norte, or his duly authorized representative, is hereby directed to immediately implement this Decision and to report to this Court his action thereon within five (5) days from receipt hereof.

SO ORDERED.

Lloren, J., Ch., and Santos, JJ., concur.

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[1] Rollo, pp. 20-42

[2] Rollo, pp. 43-68

[3] Records, p. 1 (Criminal Case No. 11181/11182)

[4] Rollo, p. 43

[5] TSN, September 21, 2006

[6] TSN, April 14, 2008

[7] TSN, March 16, 2011

[8] Rollo, pp. 48-68

[9] Rollo, pp. 67-68

[10] Rollo, p. 24

[11] Rollo, pp. 29-36

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[12] G.R. No. 100354 May 26, 1995

[13] G.R. No. 199901 October 9, 2013

[14] TSN, June 14, 2007

[15] Rollo, pp. 36-41

[16] cf. People Of The Philippines v. Ryan Blanco Y Sangkula, G.R. No. 193661, August 14, 2013.

[17] Osana Asiatico y Sta. Maria v. People of the Philippines, G.R. No. 195005, September 12, 2011

[18] People v. Fernando Habana, G.R. No. 188900, March 5, 2010.

[19] People v. Gomer S. Climaco, G.R. No. 199403, June 13, 2012.

[20] People v. Gomer S. Climaco, G.R. No. 199403, June 13, 2012.

[21] Records, Index of Exhibits, p. 6

[22] G.R. No. 191071, August 28, 2013

[23] Records, Index of Exhibits, p. 15

[24] TSN, April 14, 2008

[25] People of the Philippines v. Dionisio Tadepa, G.R. No. 100354 May 26, 1995

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