

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT PANERIO Y AMPER, ACCUSED-APPELLANT,

Ponente: LOPEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/76e3dce2fe1c/>

LOPEZ, J.:

The Case

Before this Court is an appeal under Rule 122 of the Revised Rules of Criminal Procedure filed by accused-appellant Robert Panerio y Amper assailing the September 21, 2011 Judgment[1] of Branch 25[2] of the Regional Trial Court of Cagayan de Oro City in Criminal Case No. 2010-750. Accused-appellant was found by the court a quo guilty beyond reasonable doubt for Violation of Section 5, par. 1, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and he was sentenced to life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) with no subsidiary penalty in case of non-payment of the fine.

The Antecedent Facts

In an Information[3] dated July 12, 2010, accused-appellant Robert Panerio y Amper was indicted for Violation of Section 5(illegal sale of dangerous drugs), par. 1, Article II of R.A. 9165. The accusative portion of the Information reads:

That on or about the 8[th] day of July 2010 at about 1:30 in the morning, at Poblacion, Tagoloan, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and give away to poseur buyer, in a drug buy bust operation, two (2) plastic sachets weighing 0.02 gram and 0.01 gram , of METHAMPHETAMINE HYDROCHLORIDE (shabu), a dangerous drug, after receipt of the buy bust money.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty to the offense charged.[4]

Thereafter, trial on the merits proceeded.

The Version of the Prosecution

From the testimonies of the prosecution witnesses, namely, SPO3 Ariel Tactacon (SPO3 Tactacon), PO3 Roel Sereño (PO3 Sereño), PO3 Dennis Pienzenaves (PO3 Pienzenaves), PO1 Bernardo Lagoy, Jr. (PO1 Lagoy, Jr.), and Susan Monalem, it was established that on July 7, 2010, at around 3:00 o'clock in the afternoon, PO3 Sereño of the Tagoloan Police Station, Tagoloan, Misamis Oriental, received an information from a female confidential informant (CI) that accused-appellant Robert Panerio is engaged in selling shabu, an illegal drug, at Zone 6-B, Baluarte, Tagoloan, Misamis Oriental. PO3 Sereño immediately reported this information to his superior, PS/Insp. Fe Mabilen Barsobia, who in turn ordered him and his companion to validate the report. Thus, through the same CI, a test buy operation was made to accused-appellant and as a result thereof, the CI was able to purchased one (1) sachet of shabu worth P500.00 from the accused-appellant. Consequently, at about 8:00 o'clock in the

evening of the same date, the police authorities of the Tagoloan Police Station coordinated[5] with the Philippine Drug Enforcement Agency – Regional Office X (PDEA-X) and submitted a Pre-Operational Report[6] relative to the buy-bust operation plan upon the accused-appellant.[7]

Thereafter, a team composed of SPO3 Tactacon, PO3 Pienzenaves, PO1 Lagoy, Jr., and PO3 Sereño was formed in order to conduct a buy-bust operation using the same CI to act as the poseur buyer. At around 10:00 o'clock in the evening, a briefing on the buy-bust operation together with the CI was conducted at their office and it was agreed that the buy-bust operation will happen at Centerpoint Videoke Bar at Taliwan, Poblacion, Tagoloan. It was agreed that PO1 Lagoy, Jr. and PO3 Sereño will position inside the videoke bar while SPO3 Tactacon and PO3 Pienzenaves will position themselves outside the videoke bar. The team likewise prepared the marked money consisting of four (4) P100.00 bills and one (1) fake P1,000.00 bill to be use as the buy-bust money. The buy-bust money were all dusted with ultra-violet fluorescent powder by the PNP Crime Laboratory and were given to the CI. The team agreed on the pre-arranged signal which is for the CI to remove her jacket if the transaction is already consummated. The buy-bust operation and the marked money to be use were all entered in the Police Blotter.[8]

At about 10:30 in the evening, the police operatives proceeded to the Centerpoint Videoke Bar using a Starex van. PO3 Sereño coordinated with a certain Susan Monalem, the owner of the videoke bar, and he asked permission that he and PO1 Lagoy, Jr. be allowed to stay at the kitchen of the said establishment while waiting for the arrival of the accused-appellant. SPO3 Tactacon and PO3 Pienzenaves, on the other hand, stayed inside the vehicle parked at the back of the videoke bar while waiting for the accused-appellant.

At about 1:00 o'clock in the morning of the following day or on July 8, 2010, the accused-appellant and the CI arrived and went inside the videoke bar. In the meantime, PO3 Sereño and PO1 Lagoy, Jr. took turn in peeping through a hole at the kitchen door located about two (2) to three (3) meters away from where the accused-appellant and the CI were seated and they watched and observed on what transpired between the accused-appellant and the CI. They observed that the accused-appellant and the CI were talking, although they could not hear what they were talking about, while drinking Red Horse beer. At about 30 minutes later, it was PO1 Lagoy, Jr. who saw the actual exchange of the money and the alleged illegal drug and he signaled to PO3 Sereño that the agreed pre-arranged signal was already given by their CI. Immediately thereafter, PO1 Lagoy, Jr. and PO3 Sereño rushed towards the accused-appellant and recovered from the latter the P1,000.00 faked money and upon further search on accused-appellant's pocket, they recovered the other four (4) marked money, a disposable lighter, two (2) pieces P100.00 bill, one (1) P200.00 bill, two (2) simpacks, a black cellular phone, and the key of the motorcycle used by accused-appellant.

The CI, on the other hand, went outside the videoke bar using the back door and turned over to PO3 Pienzenaves the two (2) transparent cellophanes containing white crystalline substance she bought from the accused-appellant and she hurriedly walked away. PO3 Pienzenaves and SPO3 Tactacon immediately went inside the videoke bar to help PO1 Lagoy, Jr. and PO3 Sereño arrest the accused-appellant. While inside the bar, an inventory[9] was made on the confiscated items including the two (2) transparent cellophanes given by the CI which were subsequently marked as "RMS-1" and "RMS-2" by PO3 Sereño. Photographs were also taken inside the videoke bar on the seized items and the inventory was witnessed by Susan Monalem, the bar owner, and a certain Rommel Matia-ong. The two (2) witnesses were likewise made to sign the inventory list prepared by the police operatives at the crime scene right after the arrest of the accused-appellant.

Moreover, while accused-appellant was handcuffed and was being frisked by the police, Susan Monalem, the owner of the videoke bar, pointed out to the arresting police officers the motorcycle driven by the accused-appellant in coming to the videoke bar. The motorcycle was parked outside the videoke bar and when the

police operatives went outside, PO3 Sereño opened the U-box of the motorcycle in the presence of Susan Monalem and some by-standers and found a plastic cap with one (1) sachet of white crystalline substance inside it and he also found one (1) aluminum foil. These items were likewise included in the inventory of the seized items, and were correspondingly marked as “R” and “R-1,” respectively.

Immediately thereafter, the accused-appellant was brought to the police station. The incident was again entered in the police blotter[10] and the seized items were again inventoried and pictures were taken thereat. Likewise, the corresponding laboratory requests[11] for the chemistry examinations of the seized items and of the person of the accused were prepared by the police officers and immediately thereafter, the accused and the specimens to be subjected for laboratory examination were brought to the PNP Crime Laboratory in Patag, Cagayan de Oro City.

The laboratory results for the two (2) sachets containing white crystalline substance recovered during the buy-bust operation and marked as “RMS-1” and “RMS-2” weighing 0.02 gram and 0.01 gram, respectively, all gave positive results to the test for the presence of Methamphetamine Hydrochloride or shabu, a dangerous drug. Likewise, the sachet with white crystalline substance recovered at the U-box of the motorcycle used by accused-appellant and marked as “R” also gave positive result to the test for the presence of Methamphetamine Hydrochloride or shabu.[12]

Corollarily, the UV Palmar examination conducted on the both hands of accused-appellant gave positive result for the presence of bright green ultraviolet fluorescent powder on the palmar and dorsal aspects of his hands. Likewise, the marked money used and recovered during the buy-bust operation all revealed positive results for the presence of bright green ultraviolet fluorescent powder.[13]

The Version of the Defense

Accused-appellant denied the accusation imputed against him. He testified that at about 7:30 o’clock in the evening of July 7, 2010, he was at his house at Baluarte, Tagoloan, Misamis Oriental, having a drink with his father, mother and aunt Myrtel Rosel. At about 11:00 o’clock in the evening, a certain Marites, a distant relative of his, texted him and requested him to fetch her at Puerto, Cagayan de Oro City as there was no more available transportation for her to come home at Baluarte, Tagoloan. He then borrowed the motorcycle of his aunt and proceeded to Puerto in order to fetch the said Marites. On their way back to Tagoloan, Misamis Oriental, the said Marites instructed him to stop over at the Pasalubong Center at Tagoloan in order to buy some cellphone load. They stayed for about 10-15 minutes at the Pasalubong Center and he was able to consume six (6) bottles of beer. Thereafter, the said Marites suggested that they will proceed to the Centerpoint Videoke Bar in Tagolaon and have some more drink.

When they reached the videoke bar, they ordered Red Horse beer. After consuming two (2) bottles of Jumbo Red Horse beer, he persuaded the said Marites to come home because his aunt might use the motorcycle which he just borrowed. The said Marites then gave him P1,000.00 bill to pay the beer they ordered. When he received the money, he noticed that there was a yellow tape on it and the texture was different, so, he told Marites that the money she gave him might be a fake money. Suddenly, four (4) policemen came in using the backdoor while the said Marites immediately stood up and went outside the bar. He begged Marites not to leave him but she nonetheless left him. He was then handcuffed and he inquired from the policemen what his fault was but the policemen did not give him a coherent answer. Subsequently, the policemen searched him, undressed him and took away his key, wallet and cellphone. He was then made to sit down while the policemen went outside towards his parked motorcycle and opened the U-box of the motorcycle. He was subsequently brought to the Municipal Hall of Tagoloan, Misamis Oriental.

The Ruling of the Regional Trial Court

After due proceedings, the court a quo rendered the assailed decision dated September 21, 2011, finding the accused guilty beyond reasonable doubt of the crime charged. The dispositive portion of the assailed Judgment reads:

WHEREFORE, premises considered, this Court hereby finds the accused ROBERT PANERIO, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT, and pay a Fine in the amount of P500,000.00 without subsidiary imprisonment in case of non-payment of Fine.

Let the penalty imposed on the accused to be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that no man is above the law, and that crime does not pay. The pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.

Hence, the present appeal.

Assignment of Error

Accused-appellant assigned the lone error in his appellant's brief thus:

THAT THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING THE ACCUSED ON THE BASIS THAT THE ACCUSED DID NOT COMMIT SAID CRIME AT THE TIME HE WAS ARRESTED AND THE DRUGS AND ITS PARAPHERNALIAS (SIC) WERE ILLEGALLY OBTAINED BECAUSE THERE WAS NO SEARCH WARRANT AND WARRANT OF ARREST ISSUED BY A COMPETENT COURT.

This Court's Ruling

We find no merit to the appeal.

The elements necessary for a prosecution for violation of Section 5, Article II of RA 9165 or sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the corpus delicti.[14] The term corpus delicti means the actual commission by someone of the particular crime charged.[15]

In the case at bar, all the elements necessary for the conviction of the accused-appellant for violation of the provision on illegal sale of dangerous drugs under RA 9165 are present. The collective testimonies of the prosecution witnesses, as well as the documentary evidence offered in court, provide a detailed picture of the sequence of the events that lead to the consummation of the transaction.

Records undoubtedly show that accused-appellant was caught in flagrante delicto selling shabu during the buy-bust operation conducted by the police operatives of Tagoloan Police. It should be noted that before the buy-bust operation was conducted by the police operatives, a test-buy operation was made on the person of the accused-appellant using the same CI who informed the Tagoloan Police regarding the illegal drug pushing activity of the accused-appellant. The test buy was made to verify the said information. Significantly, the sachet of white crystalline substance bought by the CI from the accused-appellant during the test buy operation gave positive result for methamphetamine hydrochloride or shabu. As a result thereof, the Tagoloan Police coordinated with the PDEA-X in order to conduct a buy-bust operation and eventually, conducted an entrapment operation upon the

person of the accused-appellant.

The buy-bust operation was successful and was carried out in accordance with the law. It was PO1 Lagoy, Jr. who saw the actual exchange of the items from the accused-appellant which were found out later on to be shabu, an illegal drug, and the marked money used as payment thereof by the CI acting as the poseur buyer. The pertinent portion of the testimony of PO1 Lagoy, Jr. on this matter reads:

PROS. LLOREN

Q: While sitting at the kitchen, what happened?

A:

At 1:00 o'clock in the morning, the confidential agent and the subject person arrived.

Q:

And then after they arrived, what happened?

A:

We saw that they ordered one bottle of Red Horse.

Q:

What happened next?

A:

After few minutes, at 1:30 in the morning, we saw the suspect and the confidential agent exchanged.

Q:

What did they exchange?

A:

The money from the confidential agent and the alleged shabu from the suspect person and after I saw the exchange, our confidential agent removed his jacket as our pre-arranged signal.

Q:

Who saw the CI removing his (sic) jacket?

A:

I was the one.

Q:

After the confidential agent removed his (sic) jacket, what did you do?

A:

I informed immediately PO3 Sereño of what I saw and we immediately came out from the kitchen and frisked the subject person.

Q:

How did you tell PO2 Sereño that there was already the pre-arranged signal, can you recall the words?

A:

I told him in visayan dialect, “Sarge, Nakita na nako nagexchange na sila, gihubo na ang kacket sa atong confidential agent” (Sarge, I saw them already exchanging and our confidential agent already removed his jacket)

x x x

Q: So, after you told PO2 Sereño, what did you do or what happened after?

A: We immediately came out from the kitchen.

Q: Who went out first?

A: PO3 Sereño

Q: And you followed?

A: Yes, sir.

Q: What happened?

A: I frisked the suspect and I was the one who handcuffed him.[16]

Verily, PO1 Lagoy, Jr. testified in a straight and categorical manner the actual exchange of the items and the marked money between the accused-appellant and the CI. The transaction was within his view when it actually happened.

Corollarily, it should be emphasized that the subject of the sale consisting of the two (2) sachets of white crystalline substance weighing 0.02 gram and 0.01 gram which were turned over by the CI to the police immediately after the consummation of the transaction were all found positive for methamphetamine hydrochloride or shabu. These illegal drugs were all marked, presented, identified and testified to by the police officers who conducted the buy-bust operation. There is no doubt as well that the integrity of the illegal drugs or

shabu taken from the accused-appellant was preserved during the entire operation and that the drugs taken from the accused-appellant were the same drugs submitted to the laboratory and presented to the court.

PO3 Piencenaves was the one who received the two (2) sachets of shabu from the CI who acted as the poseur buyer immediately after the consummation of the sale during the buy-bust operation. He testified thus:

PROS. LLOREN

Q:

After your confidential informant arrived, what happened next?

A:

After about thirty (30) minutes, she went out through the back door and gave to me two (2) transparent cellophane(s) which contained the items.

Q:

What did she say as soon as she got out the back door?

A:

She said nothing, Sir.

Q:

When she gave you the items that you mentioned, what did she say to you?

A:

She said nothing, Sir.

Q:

What did she hand over to you again?

A:

The two (2) small transparent cellophane(s) which contain (the) alleged shabu, Sir.

Q:

Where did she get this?

A:

She said she got it from Robert Panerio, Sir.

Q:

As soon as she handed over the shabu to you, what did you do next?

A:

I and SPO3 Tactacon immediately got inside the videoke bar to help PO3 Sereño and PO1 Lagoy, Sir.

x x x

Q:

As soon as you went inside the videoke bar, what did you do?

A:

PO3 Sereño and PO1 Lagoy were already inside the videoke bar and they conducted the accounting of the items that were seized, Sir.

Q:

And, what did you do with the shabu handed to you by the Confidential Informant?

A:

I gave it to PO3 Sereño, Sir.

Q:

Why PO3 Sereño?

A:

Because he was the one handling the case, Sir.

Q:

Did you clearly see the shabu handed over to you?

A:

Yes, Sir.

Q:

Can you still recall it, the shabu handed over to you by the Confidential Informant?

A:

Yes, Sir.

Q:

Can you please describe it?

A:

It was transparent small cellophane that contain(s) crystalline form, Sir.

Q:

What identifying mark was affixed on this shabu, if you can still recall?

A:

I cannot remember the identifying mark because it was I think PO3 Sereño who made it, Sir.

Q:

From the time you received the shabu from the Confidential Informant until you gave it to PO3 Sereño, how many minutes transpired, if you can still recall?

A:

That was immediately after I received those items I and SPO3 Tactacon got inside the videoke bar and gave it to PO3 Sereño, Sir.

Q:

I am showing to you two (2) sachets of shabu, please tell us if these are the same items?

A: Yes, Sir, these are the same items.

Q: How did you know that these are the same?

A: Because I saw these items when our Confidential Informant gave it to me, Sir.[17]

Likewise, PO3 Sereño testified in court. He was the one in-charge of the whole buy-bust operation. He testified on what transpired before, during, and after the operation. He was the one who received the information from their CI regarding the drug pushing activities of the accused-appellant; he was the one who was responsible for the validation on the report through the test buy operation conducted on the accused-appellant; he was among those police officers who coordinated with the PDEA on the planned buy-bust operation to be conducted on the person of the accused-appellant; he was also one of those who brought the marked money to be used for the buy-bust operation to the PNP Crime Laboratory for powder dusting; he was also the one who subsequently gave the briefing to the buy-bust team; and he was the one who marked the seized items from the accused-appellant including the two sachets of shabu which were turned over by the CI to PO3 Piencenaves and which were accordingly turned over to him and marked with his initial "RMS-1" and "RMS-2", respectively. All these events were candidly and categorically testified to and all the items he marked were all identified by him in court.

It is important to note also that the seized items including the sachets of shabu subject of the buy-bust operation were marked, inventoried and photograph at the Centerpoint Videoke Bar and witnessed by Susan Monalem, the videoke bar owner, and a certain Rommel Matia-ong. Susan Monalem was also presented in court and she confirmed the fact that she witnessed the buy-bust operation conducted in her establishment and she subsequently signed the inventory list of the seized items at the bar. Right after the buy-bust operation, the accused-appellant and all items recovered from him including the subject shabu were brought to the Tagoloan Police Station. Another inventory on the seized items was made thereat and the result of the buy-bust operation was again recorded in the police blotter. It was also PO3 Sereño who brought the subject items for laboratory examination.

Pertinent portion of the testimony of PO3 Sereño reads:

PROS. LLOREN

Q:

I am showing to you two (2) sachets of shabu marked as exhibits "A-1" and "A-2"; are these the same sachets of shabu which are the subject of the buy-bust operation?

A:

Yes, Sir. These are the same sachets of shabu which are the subject of the buy-bust operation.

Q:

How did you know that these are the same sachets of shabu?

A:

I was the one who marked these with "RMS-1" and "RMS-2".

x x x

Q:

So after preparing the Inventory, what did you do or what happened?

A:

We prepared the inventory of seized items in that buy-bust operation.

Q:

Who were the witnesses?

A:

Susan Monalem and Rumel Matia-ong.

Q:

The signatures appearing above their respective names, whose signatures are these?

A:

These are their signatures.

Q:

Why do you know that these are their signatures?

A:

I was present when they affixed their signatures.

Q:

And after that, Mr. Witness, what happened next?

A:

We took photographs at the area and we also took pictures in our office.

x x x

Q:

Aside from taking photographs in the office, what else did you do?

A:

We recorded in our police blotter our buy-bust operation.

x x x

Q:

Mr. Witness, you said that you requested for the laboratory examination of the drug evidence; who prepared the request for laboratory?

A:

I was the one who made the request for laboratory examination but it was PSI Barsobia who signed the request.

x x x

Q:

Now, you also said that you requested for the laboratory examination of the drug evidence; I am showing to you a request for laboratory examination on buy-bust operation, dated July 8, 2010; is this the request that you are talking about?

A:

Yes, Sir. This is the one.

Q: And, you were the one who brought this to the PNP Crime Lab?

A: Yes, Sir.[18]

In sum, this Court found both the documentary and testimonial evidence of the prosecution credible and the guilt of the accused was proven beyond reasonable doubt. The identity of the prohibited drugs that were taken from the accused-appellant was proven with moral certainty by the prosecution.

It should be stressed however that, in this case, the accused-appellant does not question the unbroken chain of evidence. His only contention is that the buy-bust team did not secure a warrant of arrest and a search warrant before the buy-bust operation; hence, the evidence presented against him were obtained illegally and therefore inadmissible in evidence. This notwithstanding, an assiduous and thorough review of the entire case again, the records indubitably show that the court a quo was correct in convicting the accused-appellant for violation of Section 5, Article II of RA 9165. His guilt was proven beyond reasonable doubt by the prosecution.

Corollarily, considering that accused-appellant was indicted for illegal sale of prohibited drugs only under Section 5, Article II of RA 9165 and he was not charged for illegal possession of dangerous drugs, the sachet of shabu found inside the U-box of the motorcycle used by accused-appellant and which was also searched by the police operatives immediately after the buy-bust operation, is immaterial for the conviction of the accused-appellant in

this case. While the prosecution included the said sachet of shabu as its evidence against accused-appellant, yet, it should be emphasized that this sachet of shabu is not the subject of the buy-bust operation. With or without this evidence, accused-appellant's conviction's stand as his guilt for illegal sale of dangerous drugs under Section 5, Article II of RA 9165 during the buy-bust operation was proven by the prosecution with moral certainty.

It is important to note also that except for the bare denial of the accused-appellant of the buy-bust operation, he basically offered nothing to overturn the prosecution's evidence against him. Settled is the rule that accused-appellant's defense of denial, without substantial evidence to support it, cannot overcome the presumption of regularity of the police officers' performance of official functions.[19]

In *People v. Llamado*,[20] it was explicitly ruled that in cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary. Moreso, in the absence of proof of motive to falsely impute such a serious crime against the accused-appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over accused-appellant's self-serving and uncorroborated denial.

In this regard, the defense failed to show any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as in the case of the accused-appellant who was young, being only 26 years old when the violation was committed. In fact, the court a quo commiserated with the fate of the accused-appellant who in exchange of the pecuniary gain and benefit he derived from the sale of the illegal drugs, would be spending the rest of the days of his life in prison. The court a quo was even hopeful that the conviction of the accused-appellant would serve as an example and lesson to those who have the propensity and proclivity to commit the same forbidden act. Significantly, if these were simply trumped-up charges against him, it remains a question why no administrative charges were brought against the police operatives. It is equally settled that in weighing the testimonies of the prosecution witnesses vis-à-vis those of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[21]

There is likewise no merit to the contention of the accused-appellant that he should be acquitted of the crime charged because the police authorities had no search warrant and warrant of arrest during the buy-bust operation and the evidence allegedly taken from him were illegally obtained.

It should be emphasized that a buy-bust operation is a form of entrapment and an arrest after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest." [22] Likewise, anything recovered during the entrapment proceeding is admissible in evidence. In *People v. Sembrano*, [23] it was elucidated that:

On the legality of the warrantless arrest, We reiterate that appellant was arrested during an entrapment operation where he was caught in flagrante delicto selling shabu. When an arrest is made during an entrapment operation, it is not required that a warrant be secured in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court allowing warrantless arrests, to wit:

Section 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

x x x

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, such as the one involving appellant, deserves judicial sanction. Consequently, the warrantless arrest and warrantless search and seizure conducted on the person of appellant were allowed under the circumstances. The search, incident to his lawful arrest, needed no warrant to sustain its validity. Thus, there is no doubt that the sachets of shabu recovered during the legitimate buy-bust operation, are admissible and were properly admitted in evidence against him. (*Italics added.*)

Also, the Supreme Court in *Ambre v. People*,^[24] is most instructive when it ruled thus:

Section 2, Article III^[25] of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision. Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.^[26]

This exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exception established by jurisprudence is search incident to a lawful arrest. In this exception, the law requires that a lawful arrest must precede the search of a person and his belongings. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. Section 5, Rule 113 of the Rules of Criminal Procedure, however, recognizes permissible warrantless arrests:

"Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) x x x

Section 5, above, provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect in *flagrante delicto*; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

In arrest in *flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid in *flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. (*Italics added.*)

There is no doubt therefore that all the requisites constituting a valid warrantless arrest and warrantless search and seizure are attendant in the case under consideration. The actual exchange of the marked money and the illegal drugs by the accused-appellant and the CI during the buy-bust operation was made within the view of the PO1 Lagoy, Jr., one of the arresting officers, who was positioned about two (2) to three (3) meters away from the

accused-appellant and the CI. Accordingly, the search and seizure upon the person of the accused-appellant made immediately after his arrest is likewise valid and the items recovered from him are admissible in evidence.

The accused-appellant further contends that the arresting officers made some conflicting statements on the number of shabu handed to them by the CI and for this inconsistencies, he should be acquitted.

We disagree. The conviction of a person for selling a dangerous drug is not dependent on the number of sachet of illegal drugs or the quantity thereof subject of the sale. It is the existence of dangerous drugs which is the condition sine qua non for conviction for the illegal sale of dangerous drugs, it being the very corpus delicti of the crime.[27] What is therefore punished under Section 5, Article II of RA 9165 is the delivery of the illegal drugs by the seller and the payment thereof by the buyer. As long as the transaction is complete and the corpus delicti is presented and established beyond reasonable doubt in court, the person caught in the act of selling the same should be convicted for violation on the provision of illegal sale of dangerous drugs under RA 9165. Otherwise stated, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the illicit drugs as evidence.[28] Both elements were satisfactorily proven in the present case.

Likewise, in a last ditch effort to exonerate himself, accused-appellant contends that he should be acquitted because the prosecution failed to present in court the alleged illegal drug bought by the CI from him during the test buy operation.

We are not persuaded. Contrary to the asseveration of the accused-appellant, the non-presentation of the illegal drug bought by the CI from the accused-appellant during the test buy operation is immaterial for his conviction considering that accused-appellant was caught in flagrante delicto selling illegal drugs during the subsequent buy-bust operation using the same CI as the poseur buyer. Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation.[29] A test buy operation, just like a prior surveillance, is not even a pre-requisite for the validity of an entrapment operation especially so if the buy-bust team is accompanied by the confidential informant, as in this case.

Thus, the court a quo was correct in convicting the accused-appellant for violation of Section 5, Article II of RA 9165 and accordingly, it correctly imposed the penalty of life imprisonment on the accused-appellant.

The sale of shabu is punishable under Section 5, Article II of RA 9165, viz.:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - 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) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x

Under the provisions of said law, the sale of any dangerous drug, e.g. shabu, regardless of its quantity and purity, 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).[30] With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. In this regard, the penalty applicable to accused-appellant shall only be life imprisonment and fine without eligibility for parole.

WHEREFORE, premises foregoing, the instant appeal is hereby **DISMISSED** for lack of merit. The assailed September 21, 2011 Judgment of the RTC of Cagayan de Oro City, Branch 25, is hereby **AFFIRMED** in toto.

SO ORDERED.**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch and Inting, JJ., concur.

-
- [1] Original Records, pp. 128-138.
- [2] Penned by Hon. Judge Arthur L. Abudiente.
- [3] Original Records, p. 3.
- [4] Order dated July 28, 2010, Id., p. 27.
- [5] Coordination Form, Exhibit “M” of the Prosecution, Id., p. 97.
- [6] Exhibit “N” of the Prosecution, Id., p. 98.
- [7] Certificate of Coordination issued by the PDEA-X, Exhibit “L” of the Prosecution, Id., p. 96.
- [8] Entry NR4881 dated 072230H July 2010, Exhibit “O” of the Prosecution, Id., p. 99.
- [9] Exhibit “K” of the Prosecution, Id., p. 95.
- [10] Entry NR4882 dated July 082230H July 2010, Exhibit “O” for the Prosecution, Id., p. 99.
- [11] Exhibits “D”, “F” and “G” for the Prosecution, Id., pp. 87,89 & 90, respectively.
- [12] Exhibit “E” for the Prosecution, Id., p. 88.
- [13] Exhibit “I” for the Prosecution, Id., p. 91.
- [14] People v. Almodiel, G.R. No. 200951, September 5, 2012.
- [15] Cruz v. People, G.R. No. 164580, February 6, 2009.
- [16] TSN dated February 23, 2011, pp. 8-9.
- [17] TSN dated December 8, 2010, pp. 7-10.
- [18] TSN dated November 24, 2010, pp. 13-16.
- [19] People v. Manlangit, G.R. No. 189806, January 12, 2010.
- [20] G.R. No. 185278, March 13, 2009.
- [21] People v. Remerata, G.R. No. 147230, 449 Phil. 813, 822 (2003).
- [22] People v. Agulay, G.R. No.181747, September 26, 2008.
- [23] G.R. No. 185848, August 16, 2010.
- [24] G.R. No. 191532, August 15, 2012.

[25] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[26] Sec.3 (2), Art. III, 1987 Constitution.

[27] *People v. Robles*, G.R. No. 177220, April 24, 2009.

[28] *People v. Cruz*, G.R. No. 187047, June 15, 2011.

[29] *Cruz v. People*, G.R. No. 164580, February 6, 2009.

[30] *People v. Serrano*, G.R. No. 179038, 6 May 2010.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.