

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EXEQUIL AMIGO BANATANTO, ACCUSED-APPELLANT,

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant, of the Joint Judgment[1] dated August 1, 2012 of the Regional Trial Court, Seventh Judicial Region, Branch 30, Dumaguete City, Negros Oriental which found accused-appellant guilty beyond reasonable doubt of Violation of Sections 11 and 5 of Article II of RA No. 9165 or the Dangerous Drugs Act of 2002 in Criminal Case Nos. 19872 and 19873.

Version of the Prosecution

Around 2:00 PM on February 22, 2010, Special Investigator (SI) Ferdinand Kintanar, Provincial Chief of the Philippine Drug Enforcement Agency (PDEA), Dumaguete City received information from a confidential informant that accused-appellant Exequil Banatanto whose surname was erroneously reported as “Manatanto” was involved in illegal drug business in Barangay Looc, Dumaguete City.

Around 3:00 PM on the same day, SI Kintanar organized a team and conducted a briefing for the conduct of a buy bust operation against accused-appellant. The team members marked the buy bust money. SI Kintanar was designated as poseur buyer.

Around 4:00 PM that same afternoon, the buy bust team proceeded to Zone 4, Barangay Looc, Dumaguete City together with the confidential informant. Upon arriving at the target area, the team members observed two persons on the right side of the road and one of them was identified by the informant as accused-appellant.

SI Kintanar and the informant subsequently approached their target and relayed their intention to purchase P 500 worth of shabu. Accused-appellant then led them to a nearby alley approximately ten (10) meters from the road, and demanded money for a sachet of shabu in his hand. Upon the exchange of items, SI Kintanar made a missed call to his team members to signal that the sale had been consummated. The rest of the team members then appeared and arrested accused-appellant. He was then searched. SI Kintanar recovered from accused-appellant another sachet of shabu which he marked with accused-appellant's initials “EM-01 2-22-2010” along with the sachet subject of the sale marked as “EM-BB 2-22-2010”. SI Kintanar marked the seized items with “EM” due to the initial information he received that accused-appellant's name was Exequil Manatanto.

Thereafter, SI Kintanar conducted an inventory of the items on site in front of accused-appellant and a barangay official of Looc. No representative from the DOJ and the media could come to the area since it was getting dark. SI Kintanar continued the proceedings at the PDEA Office where the said representatives caught up with the other team members and subsequently signed the certificate of inventory.

After the inventory proceedings, SI Kintanar prepared the laboratory request form and personally delivered the same with the seized sachets containing suspected shabu to PCI Josephine Llena of the PNP Crime Laboratory.

PCI Llena conducted tests on the contents of the sachets she received. In Chemistry Report[2] No. D-027-10, the results yielded positive for shabu. Thereafter, the foregoing items were delivered as evidence to the trial court.

The Charge

In the Informations dated February 23, 2010, and March 3, 2010 accused-appellant was charged with the crime of Violation of Sections 5 and 11 of Article II of RA No. 9165, respectively, as follows:

CRIM CASE NO. 19873[3]

“That on or about the 22[nd] day of February, 2010 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did then and there willfully, unlawfully, and feloniously sell to a poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.01 gram of methamphetamine hydrochloride, otherwise known as “shabu”, a dangerous drug.

Contrary to Sec. 5, Art. II, RA 9165.”

CRIM CASE NO. 19872[4]

“That on or about the 22[nd] day of February, 2010 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously possess one (1) heat-sealed transparent plastic sachet containing 0.01 gram of methamphetamine hydrochloride, otherwise known as “shabu”, a dangerous drug.

That the urine sample taken from the accused contains Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. CDT-017-10.

Contrary to Sec. 11, Art. II, RA 9165.”

Accused-appellant was arraigned and pleaded “not guilty” to the crimes charged against him. The two cases were consolidated.

Joint trial ensued. The prosecution presented the following as witnesses: SI Ferdenand Kintanar and SI Marion Manzanaris. On the other hand, accused-appellant testified for his defense.

Version of Accused-appellant

Accused-appellant narrated that before his arrest, he was a resident of Boloc-boloc. He attested that on February 22, 2010, he was then at Zone 4, Dumaguete City to bring his grandson Aiso Banatanto who was studying at Looc Elementary School. While accused-appellant was waiting at his cousin Vicente Samoza's house for his grandson's dismissal from class at 4:00 PM, a certain Nicholas arrived and requested him to get something at Benny Kitay's house. He went to Benny's house and he was handed a cigarette wrapped in a paper which he brought to Nicolai. Nicolai suddenly wrestled with him. SI Kintanar arrived seconds thereafter and likewise held accused-appellant. He was arrested and brought to the road where an inventory was conducted. Accused-appellant noticed one Emilia Amatong but he did not know her. All the while, he had no idea why he was arrested and he was not even searched after his arrest. Accused-appellant denied selling drugs on the date he was arrested.

The RTC Ruling:

Thereafter, on August 1, 2012, the RTC, Seventh Judicial Region, Branch 30, Dumaguete City rendered a Joint Judgement[5] against accused-appellant, the pertinent portion of which reads:

“Wherefore, in light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 19873, the accused Exequil Amigo Banatanto is hereby found GUILTY beyond

reasonable doubt of the offense of illegal sale of 0.01 gram of shabu in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00)

The one heat sealed transparent plastic sachet containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 19872, the accused Exequil Amigo Banatanto is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.01 gram of shabu in violation of Section 11, Article II of RA No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The one (1) heat sealed transparent plastic sachet containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Exequil Amigo Banatanto shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.”

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

I.“THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR VIOLATION OF SECTION 5, ARTICLE II, OF RA 9165 NOTWITHSTANDING THE EXISTENCE OF DOUBT AS TO THE CONSUMMATION OF THE TRANSACTION BETWEEN ACCUSED-APPELLANT AND POSEUR-BUYER;

II.THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT FOR VIOLATION OF SECTION 11, ARTICLE II OF RA 9165 NOTWITHSTANDING THE PRESENCE OF DOUBT AS TO THE VALIDITY OF THE WARRANTLESS SEARCH MADE BY THE POLICE OFFICERS,

III.THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY EVEN WHEN THERE IS DOUBT AS TO THE AUTHENTICITY OF THE EVIDENCE ADMITTED AGAINST HIM.”

THIS COURT'S RULING:

I.

Buy bust operation

Accused-appellant asserts that there is nagging doubt that the sale of illegal drugs was actually consummated when he was arrested by the police officers. Accused-appellant points out in SI Manzanaris' testimony, thus:

“Q: So where did you go after the briefing?

A: We went to Barangay Looc, sir, Zone 4.

Q: And while you were in Barangay Looc, can you tell us what transpired?

A: Yes sir, during the briefing, there was an instruction that SI Kintanar will send a missed call from my phone indicating that the transaction with the subject is in progress for the sale of illegal drugs.”

Accused-appellant posits that the buy-bust team already agreed to arrest him even before the consummation of the crime. He claims that as to what stage of progress was agreed upon by the buy bust team is unknown but the plain language used cannot be mistaken to mean a complete or consummated transaction. Hence, accused-appellant

asseverates that when the rest of the team members moved to the place where he was positioned, there was in fact, no delivery of illegal drugs and no payment thereof. It is accused-appellant's submission that the hastened arrest made by the buy bust team could be motivated by their bias against him based on their unfounded knowledge that he had been involved and arrested for an illegal drug transaction in the past. According to accused-appellant, this casts doubt on his guilt warranting his acquittal.

Accused-appellant's submission is misplaced.

Contrary 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 the buy-bust operation was conducted on February 22, 2010 with accused-appellant as the target. SI Kintanar narrated the circumstances leading to the consummation of the sale of illegal drugs and the possession of another sachet of illegal drugs, viz:

“Q: So what did you do along the main road of Flores Avenue?

A: When we arrived at Zone 4, we noticed two (2) persons standing on the right side of the road and the informant told me that one of those persons was the accused Banatanto and we approached them.

Q: And when you approached them, what did you do?

A: when we approached them, the confidential informant informed them that we are interested in purchasing shabu worth five hundred pesos.

Q: To whom did you and your informant give this information that you are interested to buy shabu worth five hundred pesos?

A: To both persons, the accused here and the unidentified companion of the accused.

Q: And was there any reply coming from these two persons?

A: It was only accused Banatanto who signaled us to follow him in an alley ten (10) meters away from the main road.

Q: And did you follow as directed by this person you identified as Banatanto?

A: Yes sir.

Q: What happened in the interior portion?

A: While we were in the interior portion, accused Banatanto demanded to us the five hundred peso buy bust money and at the same time handed to me a sachet of shabu which I accepted and in return I handed to him the five hundred peso bill buy bust money.

Q: And what happened next after the exchange of money and the sachet of shabu?

A: After that, I inquired from him if he still have stocks of shabu as I am interested in buying more and at the same time missed call Agent Manzanaris as our pre-arranged signal that a transaction was already consummated.

Q: So was there any reply coming from Banatanto when you inquired if there are other stocks that you can purchase?

A: Yes sir, he replied in the affirmative and asked us how much and it was also during that time that I've

noticed Agent Manzanaris and the rest of the team arrived to assist me.

Q: What did you do?

A: When I noticed Manzanaris to be very near to us, I already grabbed accused Banatanto and declared to him that I am a PDEA agent and that he is under arrest.

Q: What did he do when you grabbed his hands and informed him that he is under arrest?

A: He offered no resistance, sir.

Q: Did you also tell him why he was being arrested?

A: Yes sir, for violation of Republic Act 9165 for selling dangerous drugs.

Q: What else did you tell him if any?

A: That's all sir, because it was Agent Manzanaris who handcuffed him and apprised him of his rights.

Q: So after you have announced that you are a PDEA officer and made the arrest, what did you do next?

A: After he was handcuffed by Agent Manzanaris and read his rights, before I actually physically searched him, to preserve the integrity of the sachet of shabu and which I purchased from, I marked it with initials EM-BB dated 2-22-2010 with my signature.

Q: Can you tell us if this marking that you said you placed on the sachet of shabu which you purchased from him has any significance?

A: Yes sir.

Q: What did this marking mean if any?

A: Supposedly sir, it represents, the initial Exequil Banatanto but the initial information we received prior to the operation from our confidential informant that his family name was Manatanto so I put the markings EM. "[7]

The two prosecution witnesses testified as to the incident which transpired on February 22, 2010. SI Kintanar who served as poseur-buyer testified about a sale of shabu consummated between him and accused-appellant while SI Manzanaris testified that he assisted in arresting accused-appellant and handcuffed him. SI Manzanaris corroborated SI Kintanar's narration pertaining to the markings of the seized sachets of shabu. He likewise bolstered SI Kintanar's attestation that the latter conducted a body search on accused-appellant and another plastic sachet of suspected shabu was found in his right front pocket as well as the marked money. It can be said that each of these police officers gave a different perspective of the buy-bust from his own viewpoint, that is, from the roles each played in the 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, SI Kintanar's testimony was able to meet the requirement 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; and the handing over to him of the subject of the sale.

The testimonies zeroed in 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. The inconsistencies pointed out by accused-appellant are trivial matters that would not affect the credibility of the prosecution witnesses. 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.[8] The positive and straightforward testimony of SI Kintanar is replete with details and consistent even on cross-examination which supports the RTC's conclusion that a lawful buy-bust operation was conducted. Moreover, the testimony of SI Kintanar was corroborated by SI Manzanaris. Their testimonies are credible and entirely in accord with human experience. In fact, they both affirm the respective roles of the team members during the operation, as shown by their account of the extent of what they had observed. Time and time again, the Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.

To stress, 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 inconsistencies and/or 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. It bears elucidating that 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, not to peripheral matters. In sum, the seeming inconsistencies referred to by accused-appellant are inconsequential. What is important is that the prosecution was able to establish the key elements needed for a conviction.

Elements of sale and possession of illegal drugs

It appears that the prosecution succeeded in establishing with moral certainty all the elements of the illegal sale of shabu, as laid down in *Cruz vs People*, GR No. 164580, February 6, 2009, viz: 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.

Verily, 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. SI Kintanar, a member of the buy-bust team identified accused-appellant as the one who sold the illegal drugs and received the marked money from the poseur-buyer. 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. Too, the prosecution was able to account that the evidence recovered from accused-appellant with the pertinent markings were the same evidence presented in court. The discrepancy in the initials of accused-appellant on the markings of the seized drugs was sufficiently explained by SI Kintanar and cannot weaken the evidence against the former.

Equally important, the prosecution has established the presence of all the elements of the crime of illegal possession of shabu. To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[10] Here, the prosecution sufficiently proved that the drugs were found in his right front pocket, thus, under his full control. Accused-appellant also had no legal authority to possess such drugs. Further, mere possession of a dangerous drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession. [11] Accused-appellant's bare denial does not suffice to prove his lack of knowledge or possession or animus possidendi of the seized

drugs.

II.

Validity of
warrantless search

Accused-appellant argues that without a successful buy-bust operation, there was no justification for his arrest and therefore, the search made upon his person was illegal. The alleged drugs recovered from accused-appellant cannot be used as evidence against him, being fruit of a poisonous tree. Accused-appellant noted that the court a quo held that he was estopped from assailing the illegality of his arrest when he failed to move for the quashal of the information before entering his plea. He claims, though, that a waiver of an illegal warrantless arrest does not signify a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. And, to determine admissibility of the seized drugs in evidence, accused-appellant avers that it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful. He stresses that the search conducted without a warrant is justified only if it were incidental to a lawful arrest.

We cannot agree.

Notably, accused-appellant failed to question the legality of his arrest before he was arraigned. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea, otherwise, the objection is deemed waived. Besides, accused-appellant actively participated in the proceedings before the court a quo. When he was arraigned, he entered a plea of not guilty for the crimes charged against him. There is no showing that before he was arraigned, he filed any motion to quash the information and now it is too late in the day to assail the legality of his arrest.

In the case at bar, the prosecution was able to establish that accused-appellant was caught in flagrante delicto selling shabu and also in possession of shabu. In *People vs Sy Chua*,^[12] the Supreme Court ruled that in flagrante delicto arrests, 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. Emphasis should be laid on the fact that the law requires that the search be incidental to a lawful arrest. Therefore it is beyond cavil that a lawful arrest must precede the search of a person and his belongings. Accordingly, for this exception to apply two elements 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.

Since accused-appellant's arrest is among the exceptions to the rule requiring a warrant before effecting an arrest and the evidence seized from the accused-appellant was the result of a warrantless search incidental to a lawful arrest, the results of the ensuing search and seizure were admissible in evidence to prove his guilt of the offense charged. *People vs Zheng Bai Hui*,^[13] is the case in point wherein the High Court held that:

“What we said in *People vs. Liquen* is sufficient to dispose of this argument: In the case at bar, the buy-bust operation was formed by the police officers precisely to test the veracity of the tip and in order to apprehend the perpetrator. Having caught the culprit red-handed as a result of the buy-bust operation, Garcia and his team-mates were not only authorized but were also under obligation to apprehend the drug pusher even without a warrant of arrest. Section 5 (a) of Rule 113 of the Revised Rule on Criminal Procedure, reads in part as follows: "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;" Clearly, the situation in the case at bar is one where a person commits a crime in the presence of a police officer; hence, the latter may validly arrest the offender even without first obtaining a warrant of arrest.”

The police officers categorically testified that when accused-appellant was searched, he was caught red-handed in possession of shabu. A plastic sachet which contained white crystalline substance which was later confirmed to be shabu was found in the front right pocket of his pants.

Denial

Therefore, accused-appellant's defense is mere denial which should likewise fail in light of the positive identification and declarations made by the prosecution witnesses. Well-settled is the rule that greater weight is given to the positive testimony of the prosecution witnesses rather than the denials of the accused.[14] Mere denial just like alibi is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. To merit credibility, denial must be buttressed by strong evidence of non-culpability. It is well-settled that positive identification, where categorical, consistent and not attended by any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[15]

Another presumption accused-appellant failed to overcome relates to the prosecution's witnesses. In the absence of proof of motive to falsely impute a crime as serious as drug pushing against 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.[16] The presumption holds true for the police officers in this case, as accused-appellant could not provide a credible and believable account on why he was being falsely accused. An allegation of frame-up and extortion by the police officers is a common and standard defense in most dangerous drugs cases. It is, however, viewed by this Court with disfavor, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing. Here, there is nothing in the records to suggest that the police officers were ill-motivated to fabricate a case against accused-appellant. Accused-appellant failed to adduce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with.

III.

Chain of custody not broken

It is the contention of accused-appellant that the chain of custody of seized drugs must be shown to establish the corpus delicti. According to accused-appellant, the prosecution failed to comply with the indispensable requirement of proving the corpus delicti especially in this case where there are substantial gaps in the chain of custody of the seized drugs thereby raising doubts as to the authenticity of the evidence presented in court. Accused-appellant asserts that the chain of custody presented by the prosecution suffers from incompleteness and irregularities warranting his acquittal.

Accused-appellant submits that the conduct of the inventory was not strictly followed in accordance with Sec. 21 of RA No. 9165 and its Implementing Rules. He contends that the records show that although there was an inventory conducted at the time of his arrest, there was no media and DOJ representatives present to witness the same. Accused-appellant maintains that no justifiable ground was offered by the police officers for this lapse in the mandatory rules. SI Kintantar testified that:

“Q: How long did you wait for the other witnesses, Mr. Witness?

A: When I noticed that the place was getting dark and I could hardly see the inventory anymore, that's why we decided to proceed to PDEA and I could no longer approximate the time we waited for them.

Q: Would you agree with me, officer, that at 5:50 in the afternoon of that day, you were already at the PDEA Office as reflected in your PDEA blotter?

A: Yes that was the estimate of our time of arrival by the agent who prepared the blotter, sir.”

From the foregoing, accused-appellant insists that it is not believable that SI Kintanar could hardly see the inventory he made because as the trial court observed, the photographs show that during the inventory conducted at the place of arrest, the sun was still up. They were already at the PDEA office before 6:00 PM which means that there was no reason not to wait for the DOJ and media representatives who were already summoned to witness the inventory. This shows deliberate disregard for the requirements of the law which cannot be excused.

Further, accused-appellant opines that the markings made by SI Kintanar casts doubt on the authenticity of the drugs admitted as evidence. SI Kintanar attested that “EM” in the markings EM-BB dated 2-22-2010 and EM-01 dated 2-22-2010 placed on the plastic sachets were supposed to represent the initials of Exequil Banatanto but the initial information was that the last name of accused-appellant was Manatanto such that EM was used and not EB. However, accused-appellant asseverates that in the testimony of SI Manzanaris, he claimed that when he first received a call from SI Kintanar, he already identified the person in interest as a certain Exequil Banatanto. SI Manzanaris explained that SI Kintanar told him that he earlier received an information from the informant that the name of the person referred to in the report was Exequil Manatanto. According to accused-appellant, this discrepancy failed to justify the error made in the markings which casts doubt as to the authenticity of the corpus delicti of the offense.

Accused-appellant thus asserts that the unjustifiable gap in the chain of custody renders questionable the authenticity of the drugs introduced as evidence.

Accused-appellant's submission is misplaced.

For determination of this Court is whether or not sufficient evidence exists to support the conviction of accused-appellant for violation of Sections 5, and 11 of Article II of R.A. No. 9165. In prosecutions for illegal possession and 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.[17] As explained 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 arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Sec. 21, Article II of RA 9165. The Supreme Court elucidated 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.[18]

In the instant case, the chain of custody did not suffer from serious flaws as accused-appellant argued. The recovery and handling of the seized drugs showed that, first, SI Kintanar marked the sachet of shabu which he purchased from accused-appellant at the crime scene. SI Kintanar also marked the sachet of shabu which he recovered from accused-appellant through body search after his arrest. SI Kintanar then conducted an inventory of these items in the presence of accused-appellant and a barangay kagawad. The inventory was continued at the

PDEA office where the representatives from the DOJ and the media proceeded. Photographs of the confiscated items were taken. After an inventory was made, SI Kintanar prepared a letter request for the laboratory examination of the illegal drugs and submitted the same to the Negros Oriental Provincial Crime Laboratory. PCI Llena, the forensic chemist and officer-in-charge of the Crime Laboratory found that the white crystalline substance found inside the seized sachets were positive for shabu.

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. Consequently, 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.[19]

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. [20] In the instant case, the prosecution was able to show that the chain of custody was never broken. The requirements of the law have been substantially established in this case. 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. [21] Accused-appellant failed in this respect.

Anent the alleged defect in the inventory of the items confiscated from accused-appellants ie. signing of the inventory receipt without all those required by law to be present or the immaterial discrepancy in the markings of the sachets of shabu - such infirmities do not automatically warrant the accused's acquittal. We are guided by *Yolly Teodosio vs. Court of Appeals and People of the Philippines*[22], wherein the Supreme Court even 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. [23] The marking in this case was immediately done in the presence of accused-appellant 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.

Besides, 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.[24] Verily, there was substantial compliance with the required procedure on the custody and control of the confiscated items, thus 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*[25], 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."

Thus, 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." [26] *People vs Sanchez* [27], 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 case, 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.

In sum, 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

With respect to 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. [28]

Anent the penalty imposed for violation of Section 11, Article II of Republic Act No. 9165, the penalty of imprisonment of 12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00 are to be imposed, if the quantities of dangerous drugs are less than five (5) grams of shabu. Following the provisions of Republic Act No. 4103, otherwise known as the "Indeterminate Sentence Law" (ISLAW) the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and a fine of P300,000.00 is appropriate. Thus, we agree with the trial court in imposing such penalty.

WHEREFORE, the appeal is DENIED. The Joint Judgment dated August 1, 2012 of the Regional Trial Court, Seventh Judicial Region, Branch 30, Dumaguete City, Negros Oriental in Crim Case Nos. 19872 and 19873 is AFFIRMED.

SO ORDERED.

Francisco, R.C., and Lopez, J.Y.,[*] JJ., concur.

[1] Rollo, p. 13

[2] Rollo, p. 23

[3] Records, p. 48

[4] Records, p. 3

[5] Rollo, p. 13

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

[7] TSN, May 29, 2012, pp. 5-6

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

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

[10] *People vs Alcuizar*, GR No. 189980, April 6, 2011

[11] *People vs Sembrano*, GR No. 185848, August 16, 2010

- [12] GR No. 136066-67, February 4, 2003
- [13] GR No. 127580, August 22, 2000
- [14] People v. Chua, GR No. 133789, August 23, 2001
- [15] People vs Ranin, 555 SCRA 297
- [16] People v. Llamado, G.R. No. 185278, March 13, 2009.
- [17] People vs Amansec, GR No. 186131, December 14, 2011
- [18] People v. Daria, G.R. No. 186138, September 11, 2009.
- [19] People v. Garcia, G.R. No. 173480, February 25, 2009
- [20] People v. Kamad, G.R. No. 174198, January 19, 2010.
- [21] People v. Macatingag, G.R. No. 181037, January 19, 2009.
- [22] G.R. No. 124346, June 8, 2004,
- [23] People vs Gum-oyen, 585 SCRA 678
- [24] People vs Teodoro, GR No. 185164, June 22, 2009
- [25] G.R. No. 179940, April 23, 2008
- [26] People vs Garcia, GR No.173480, February 25, 2009
- [27] G.R. No. 175832, October 15, 2008.
- [28] People vs Bernabe, GR No. 180505, June 29, 2010

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