

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NATHANIEL EBOL Y CARREON, ACCUSED-APPELLANT.

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SINGH, J.:[*]

This is an appeal from the Decision[1] dated 12 July 2012 of the Regional Trial Court (RTC), Branch 4, Butuan City convicting accused-appellant Nathaniel Ebol y Carreon alias “Pidong” of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 11305 and Section 12, Article II of Republic Act No. 9165 in Criminal Case No. 11306.

The RTC Case

On 15 August 2005, accused-appellant was charged with two (2) violations of Republic Act (R.A.) No. 9165. The Informations for the two (2) charges read:

Criminal Case No. 11305

“The undersigned accuses, Nathaniel Carreon Ebol alias 'Pidong' of the crime of Violation of Section 11, Article II of RA 9165, committed as follows:

'That at more or less 6:30 o'clock in the morning of August 14, 2005 at Brgy. 22, Bading, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession, control and custody three (3) sachets of Methamphetamine Hydrochloride otherwise known as shabu, with a total weight of zero point zero six nine zero (0.0690) grams more or less, which is a dangerous drug.'

CONTRARY TO LAW: (Violation of Section 11, Article II of RA 9165)

Butuan City, Philippines, August 15, 2005.”[2]

Criminal Case No. 11306

“The undersigned accuses Nathaniel Carreon Ebol alias 'Pidong' of the crime of Violation of Section 12, Article II of RA 9165, committed as follows:

'That at more or less 6:30 o'clock in the morning of August 14, 2005, at Brgy. 22, Bading, 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 possess or has under his control equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting or introducing any dangerous drugs into his body.'

CONTRARY TO LAW: (Violation of Section 12, 1[st]par. in relation to Section 26 par. (b) of Article II of R.A. 9165)

Butuan City, Philippines, August 15, 2005.”[3]

During the arraignment on 7 November 2005, accused-appellant pleaded “not guilty” to both charges in Criminal Cases Nos. 11305[4] and 11306.[5]

Trial ensued thereafter.

The evidence for the prosecution consisted of the oral testimonies of PO2 Von Heinrich R. Caponpon (PO2 Caponpon) and PO2 Virgilio P. Lumacang, Jr. (PO2 Lumacang), the arresting police officers; Police Chief Inspector Cramwell T. Banogon (PCI Banogon), the Forensic Chemist; and Joanario Hasain Raganas (Raganas), a former barangay kagawad.

The defense, for its part, presented the sole testimony of the accused-appellant Nathaniel C. Ebol.

The Facts

In its Brief, the Office of the Solicitor General (OSG) presented the prosecution's version of the facts which it reproduced from the appealed Decision, as follows:

“xxx [O]n August 14, 2005 at around 6:30 o'clock in the morning, xxx PO2 Heinrich Razada Caponpon together with P/Sr. Insp. Excelso Lazaga, Jr. (Lazaga), PO2 Jojo Asidera (Asidera), PO2 Virgilio P. Lumacang (Lumacang), Kag. Joanario Raganas and Kag. Delma Solis, were at the house of accused Nathaniel Carreon Ebol (Ebol) at Purok 5, Barangay 22, Bading, Butuan City, to execute Search Warrant No. 507-2005 issued by Hon. Judge Eduardo S. Casal of RTC, Br. 1 against alias 'Pidong.' Police Officer Lazaga, Jr., team leader of the group designated [PO2 Caponpon] as evidence custodian and PO2 Asidera as searcher of the team. On the other hand, PO2 Lumacang was designated as recorder of the team [TSN, Aug. 17, 2007, pp. 5-7]. In the presence of the aforesaid police officers and barangay kagawads the team searched the house of the accused. From the alleged search, the team recovered three (3) sachets of suspected shabu, fifteen (15) empty sachets of shabu, one (1) roll aluminum foil and folded aluminum foils, five (5) disposable lighters, a bamboo sealer, one (1) blade and one (1) lighter with metal case, and cash in the amount of One Thousand Five Hundred Eighty Pesos (p1,580.00) [TSN, Ibid., p. 7]. Afterwards, all the illegal items found during the search were placed on top of a table in the room of accused Ebol. Soon after, PO2 Lumacang prepared a Certificate of Inventory and a Certificate of Orderly Search and had them signed by PSI Lazaga, Jr., Kag. Raganas and Kag. Solis in the presence of the herein witness. Thereafter, PSI Lazaga, Jr. read the Miranda Doctrine to the accused and informed him also of the nature of the violation he committed [TSN, Id., pp. 7-13].

From the crime scene in going to the police station, witness had in his possession all the illegal items confiscated from the crime scene (TSN, Id., p. 12).

In the office, witness marked the three (3) sachets of suspected shabu with his initial, VRC, which stands for his full name, VON HEINRICH RAZADA CAPONPON. Accordingly, the aforesaid three (3) sachets of shabu were marked as VRC-1-05 up to VRC-3-05. Moreover, witness prepared the following. (sic) Affidavit of Apprehension, Returns of the Search Warrant, Withdrawal of the Seized Items and Request for Laboratory Examination of the specimens shabu and urine sampling of the accused [TSN, Id., p. 14].

Witness then brought and delivered the Request for Laboratory Examination for the specimen sachets of shabu and urine sample of the accused to the Crime Laboratory as shown by his signature affixed in one of the entries in the Rubber Stamp Mark in the Crime Laboratory [TSN, Id., p. 19].

Further, witness assured the court that the specimens shabu examined in the crime laboratory were the same specimen shabu they confiscated from the crime scene because from the crime scene to the crime laboratory no other person took custody of the aforesaid specimens except him [TSN, Id.].

xxx xxx xxx

PO2 Virgilio P. Lumacang, [together with the team] xxx conducted test buys against the accused and the same yielded positive result. [T]hey started the search of the bedroom of the accused after the arrival of the barangay officials of the place. In fact, the barangay officials were inside the bedroom of the accused when the search was conducted therein. xxx [A]ll the items listed in the Certificate of Inventory be (sic) prepared were seized

from the bedroom of the accused. Likewise, xxx pictures were taken on (sic) the accused in the team's office [TSN, Feb. 25, 2010, pp. 4-5]. xxx[W]hen the operatives entered inside the bedroom of the accused Policaprio Maguikay was also there. Nevertheless, xxx the room they searched is not an annex but part of the main building located downstairs [TSN, Ibid., p. 5].

Kag. Joanario Hasain Raganas xxx affixed his signatures in the Certificate of Inventory and Certificate of Conduct of Search prepared by PO2 Lumacang right in the bedroom of the accused. Further, witness averred that Kag. Solis affixed her signature in the aforesaid Certificate of Inventory and Certificate of Conduct of Search in his presence [TSN, Jan. 22, 2009, p. 7].

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PCI Cramwell T. Banogon, Forensic Chemist, xxx received through Police Non-Commission (sic) Officer PO2 Panaligan letter-request for laboratory examination along with the specimens shabu delivered by PO2 Caponpon on August 15, 2005 at around 10:55 o'clock in the morning. [He] then proceeded to the actual laboratory examination and found out that three (3) sachets of shabu marked by the police as VRC-1-05, VRC-2-05 and VRC-3-05 gave positive results for the presence of methamphetamine hydrochloride, a dangerous drug. Likewise, the three (3) empty sachets of shabu and one (1) strip tin foil also gave positive results for the presence of shabu. Thereafter, [he] reduced his findings in writing and denominated it as Chemistry Report No. D-112-2005 [TSN, Aug. 7, 2008, p. 6]"[6]

Denying the charges, accused-appellant in his own brief submitted the following as his version of the facts:

"APPELLANT testified that on August 14, 2005, he was a resident of Purok 5, Barangay Bading, Butuan City. In the year 2005, appellant was residing with his family at an annex room near his mother's house. On the other hand, living in his mother's house (a two-story house) were appellant's sister and a certain Policarpio Maguikay. Maguikay occupied the first floor while his mother and sister occupy the second floor. At around 5:45 o'clock in the morning of August 14, 2005, members of Task Force Racer went to the house of appellant's mother. At the afore-mentioned place and time, appellant Ebol was at the faucet which was just located along the road and in front of the house of appellant's mother. When the police officers went inside the property, they just passed by Ebol. The police officers were not able to recognize him. It was only after Ebol entered his mother's house and asked the police officers of their purpose that the latter were able to know the identity of the appellant.

Consequently, the police officers informed Ebol that they have a search warrant against him. Thereafter, they entered a room which was then occupied by Maguikay. At that point, despite the fact that Maguikay was still sleeping, the police officers, nevertheless, searched the room.

During the conduct of the search, police officers woke Maguikay up and instructed him to go outside the house. Thereafter, appellant was instructed to go inside Maguikay's room.

As the search warrant was for one alias 'Pidong,' the police had the appellant enter the room in exchange for Maguikay. Appellant objected to be referred to as 'Pidong' as his correct nickname is 'Tidong' and not 'Pidong.'

After the arrival of the barangay officials at around 8:00 o'clock in the morning, a second search was conducted. In the testimony of Ebol, when the police were about to search again the room, he was made to wait outside of the house. Among those who entered again the house were Asidera, Raganas and Sotis.

Thus, after almost half an hour, Police Officer Asidera came out and showed to appellant a lighter which purportedly contained the shabu."[7]

After trial, the RTC rendered a Decision[8] dated 12 July 2012 convicting the accused-appellant of violation of Sections 11 and 12, Article II of R.A. No. 9165. The fallo of the said judgment reads:

“WHEREFORE, premises considered, the Court finds accused Nathaniel Carreon Ebol alias “Pidong” guilty beyond reasonable doubt for violation of Sections 11 and 12 of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes the following sentence:

In Criminal Case No. 11305, for violation of Section 11, of Article II of Republic Act 9165, accused is hereby sentenced to undergo imprisonment of an indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine of three hundred thousand pesos (P300,000.00), without subsidiary imprisonment in case of insolvency.

In Criminal Case No. 11306, for violation of Section 12, of Article II of Republic Act 9165, accused is hereby sentenced to undergo imprisonment of an indeterminate penalty of six (6) months and one (1) day as minimum to four (4) years and to pay a fine of ten thousand pesos (P10,000.00), without subsidiary imprisonment in case of insolvency.

Accused shall simultaneously serve his sentences at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte.

The sachets of shabu and drug paraphernalia are hereby declared forfeited in favor of the government to be dealt (sic) in accordance with law.

The bail bonds put [up] by bondswoman Divina E. Villanueva in Criminal Case No. 11305, in the amount of Sixty Thousand Pesos (P60,000.00) per Official Receipt No. 1631182 A dated October 13, 2005 as well as in Criminal Case No. 11306 in the amount of Ten Thousand Pesos (P10,000.00) per Official Receipt No. 1631183 A, dated October 13, 2005, all (sic) deposited with the Office of the Clerk of Court, Regional Trial Court of Butuan City and Agusan del Norte, are hereby declared canceled and are accordingly returned to the bondswoman.

SO ORDERED.”

Hence, the instant appeal.[9]

The Issue

Accused-Appellant raised the sole error:

“WHETHER THE GUILT OF THE ACCUSED-APPELLANT WAS ESTABLISHED BEYOND REASONABLE DOUBT.”[10]

The Ruling of the Court

The Court affirms the conviction by the RTC of the accused-appellant.

For the successful prosecution of the crime of illegal possession of dangerous drugs, the following requisites must concur: (a) the accused was in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the drug.[11]

On the other hand, the elements of the offense of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs are as follows: (a) the possession or control by the accused of any equipment, apparatus or paraphernalia fit or intended for smoking, consuming, administering, injecting, or introducing any dangerous drugs into the body; and (2) the possession is not authorized by law.[12]

It bears stressing that violation of Section 12, Article II of R.A. No. 9165 is already consummated the moment appellant is found in possession of the said articles without the necessary license or prescription.[13] Now, what is primordial is the proof of the illegal drugs and paraphernalia recovered from the accused-appellant.

The Court finds that the elements for the conviction of the accused-appellant for illegal possession of dangerous drugs and paraphernalia were convincingly established by the prosecution.

The testimony of P02 Caponpon clearly narrated the transfer of custody of the seized drugs and paraphernalia:

“Prosecutor Guiritan: Did you know of him before the apprehension?

PO2 Caponpon: During our surveillance conducted on his person we only knew him by his alias “Pidong”.

Q:

How long was this surveillance done on the person of the accused?

A:

Three (3) weeks time before we applied for the search warrant, sir.

Q:

Now, the Alias “Pidong” you knew while on surveillance and before his apprehension, how is he related to the Nathaniel Carreon Ebol who is now the accused in these cases?

A:

He is one and the same person, sir, because during our surveillance we saw him to be the same person.

Q:

On August 14, 2005, at about 6:30 o'clock in the morning, where were you, Mr. Witness, if you recall?

A:

We were in the house of Nathaniel Carreon Ebol at Purok 5, Barangay 22, Bading, to execute the search warrant issued by the court.

Q:

Who were with you at the time?

A:

We composed of one team from the Task Force RACER and the team was led by Capt. Lazaga.

Q:

When you and your team arrived at the place as mentioned by you just awhile ago, who were present at the house when you arrived?

A:

Nathaniel Ebol, his mother, his son, and a certain Policarpio Maguikay.

Q:

By the way, before we forget, you mentioned of a certain Policarpio Maguikay. Are you referring to the same Policarpio Maguikay who pleaded guilty to violation of Section 15, Republic Act 9165 in Criminal Case No. 11304, Mr. Witness?

A:

Yes, sir, he is the same person.

Q:

Aside from those you mentioned, who were those others present at the time when the search was done?

A:

There were two (2) kagawad who were our witnesses then.

Q:

Will you name them?

A:

Kagawad Juana (sic) Raganas and Kagawad Delma Solis.

Q:

You mentioned of a search warrant, have you seen that search warrant before the same was served upon the accused?

A:

Yes, sir, I saw it because I was the one who applied for it.

Q:

I show to you a Search Warrant No. 507-2005, is this the one you are referring to, Mr. Witness?

A:

Yes, sir, this is the one.

xxx xxx xxx

Q:

In that search or raid, what was your role?

A:

I was the evidence custodian, sir.

Q:

And, who was your designated searcher?

A:

It was PO2 Asidera.

Q:

Who was designated as your recorder?

A:

PO2 Lumacang, sir.

Q:

During that search in the presence of those witnesses you mentioned just awhile ago, were there illegal things found at the residence of the accused?

A:

Yes, sir, found three (3) sachets and fifteen (15) emptysachets of shabu; one (1) roll aluminum foil, and there were folded aluminum foils; there were five (5) disposable lighters; a bamboo sealer; and there was also one blade and one (1) lighter with metal case; and cash in the amount of One Thousand five Hundred Eighty Pesos (P1,580.00).

Q:

How come you were able to know these things when according to you you were the evidence custodian?

A:

Because I was present during the search being the evidence custodian.

Q:

What did you do to the things your team found?

A:

After gathering all those illegal items found during the search, they were placed on top of a table in the room of Nathaniel Ebol and the things were inventoried by PO2 Lumacang being the recorder of the team.

Q:

At the time of the listing, where were you?

A:

I was beside him, sir.

Q:

I'll show to you a certificate of inventory found on page 5 of this records in Crim. Case No. 11305, is this the inventory you are talking about just awhile ago?

A:

Yes, sir. This is the same.

xxx xxx xxx

Q:

And at the bottom portion of this inventory are handwritten names and signatures over the handwritten names which read Juanario Raganas and Delma Solis, whose signature are these, Mr. Witness?

A:

These are the respective signatures of Kagawad Raganas and Solis, sir.

Q:

Why do you say that?

A:

Because I was there present when they signed it.

xxx xxx xxx

Q:

After the Certificate of Inventory was prepared, what else happened while still at the crime scene?

A:

In the crime scene, another document was prepared by PO2 Lumacang. It was the Certificate of the Orderly Conduct of Search.

xxx xxx xxx

Q:

Now, since you were beside the recorder, whose signature is this over and above the handwritten name which reads PSI Lazaga, Jr.?

A:

That is the signature of our Team Leader P/Sr. Insp. Lazaga, Jr.

Q:

Why do you say that?

A:

I was there present when he signed it.

xxx xxx xxx

Q:

After the illegal things were recorded in that inventory receipt and the certificate of orderly search was prepared, what did you do to the accused?

A:

PSI Lazaga, Jr., sir, read to the suspect the Miranda doctrine and informed him of the nature of the violation why he was arrested.

Q:

From the crime scene who got hold of those illegal items recovered, those listed in your certificate of inventory?

A:

I was the one who was in possession of the items seized being the evidence custodian of the team.

Q:

While already at your office, what did your team do as regards this apprehension?

A:

Documents were prepared, sir, such as Affidavit of Apprehension, Returns of the Search Warrant, Withdrawal

of the seized items and request for laboratory examination and then markings were placed on the items.

xxx xxx xxx

Q:

You mentioned of the fact that markings were made on the specimen shabu. What markings were made and who did the same?

A:

The markings placed on the three (3) sachets of shabu was my initial which reads VHC-1-05 up to VHC-3-05.

Q:

Now, you said a written request was prepared. Who prepared that written request. Who prepared that written request, by the way, to be specific?

A:

I was the one who prepared it.

Q:

I show to you a written request for laboratory examination. Is this the one you are referring to?

A:

Yes, sir, this is the one.

xxx xxx xxx

Q:

In this written request, Mr. Witness, will you show to us the portion in this document wherein the markings were made as to the three (3) sachets and tell us what are those markings?

A:

These markings, sir.

xxx xxx xxx

Q: While already at the office, what did you do to the person of the accused?

A: We also prepared for the request of his drug test for the purpose of having him detained considering that we have no detention cell in our Regional Office.

Q: From the office, who brought the written request for laboratory examination of the specimen as well as the drug test and the person of the accused to the Crime Laboratory?

A: I was the one who brought them, sir.

Q: And, at the Crime Laboratory, who actually signed to show that the specimen shabu as well as the urine specimen of the accused as well as the written request were submitted to the Crime Laboratory? Who signed there in that laboratory?

A: I was the one who signed, sir.

xxx xxx xxx

Q: In one of the entries of the rubber stamp is a handwritten name and a signature over it opposite the words Delivered by, whose signature is this, Mr. Witness?

A: That is my name and my signature, sir.

xxx xxx xxx

Q:

I heard you saying awhile ago that there was a return of the search warrant and withdrawal of the same that was also prepared by your team. I'll show to you, Mr. Witness, a return of the search warrant, a duplicate original copy, tell the Court if that is the one you are referring to?

A:

Yes, sir. This is the one.

xxx xxx xxx

Q:

In this return, who prepared this?

A:

I was the one who prepared that.

Q:

Now, being the one who prepared the same, whose signature is this over and above a computer-printed name which reads Excelso Lazaga, Jr., P/Sr. Insp.?

A:

This is the signature of our commanding officer, PSI Lazaga.

xxx xxx xxx

Q:

Who were with you, Mr. Witness, from the office to the Court, who brought that returns and the specimen accompanying it?

A:

I was the one, sir.

Q:

Were you alone?

A:

With PO2 Lamacang as my companion.

Q:

When you mentioned of PO2 Lamacang, you are referring to that same Lamacang, the recorder in that team?

A:

Yes, sir.

Q:

From the Court in going to the Crime Laboratory after those items were withdrawn which items are already marked Exh. "B-2", who brought it to the Crime Laboratory?

A:

I was the one, sir.

Q:

Together with whom?

A:

With PO2 Lumacang.

Q:

Now, since only the three (3) sachets of suspected shabu, three (3) empty sachets of shabu and one (1) folded aluminum foil were withdrawn, where are the rest?

A:

It is now in the custody of RTC Branch 1.

Q:

Why in Branch 1?

A:

Because that is the issuing court of the search warrant.

Q:

Now, being the one who brought the specimen shabu to the Crime Laboratory as well as the accompanying specimen, what is your assurance to this court that the things you brought to the Crime Laboratory were the same things, illegal items that were seized by your team during the enforcement of that search warrant?

A:

Because there was no other person who took custody of those items except me and that is the reason why my initials were placed as the marking on those items.”[14] (emphasis supplied)

To demonstrate the unbroken chain of custody, PO2 Lumacang corroborated the testimony of PO2 Caponpon, as follows:

“Prosecutor Guiritan: When Lazaga was inside the room, where was the accused?

PO2 Lumacang: The accused was also inside the bedroom.

Q:

How about the barangay officials?

A:

They were still outside the house because we were still in the act of fetching them.

Q:

Now, when was the search started, at the time when the barangay officials were there already, or you were still waiting for them?

A:

We conducted the search when the barangay officials were already present.

Q:

That's why. At the time of the actual search, where were the witnesses, the barangay officials?

A:

The barangay officials were inside the bedroom.

Q:

How about you?

A:

I was also inside the bedroom.

Q:

Were there things found inside the bedroom of the accused?

A:

Yes. There were things found inside the bedroom.

Q:

And what did you do to the things you found?

A:

We prepared the certificate of inventory and also the conduct of search, sir.

Q:

Who actually prepared the certificate of inventory?

A:

I was the one who prepared the certificate of inventory.

Q:

About the certificate of conduct of search?

A:

I was the one who prepared the certificate of conduct of search.

Q:

Where did you prepare these documents?

A:

I prepared the documents inside the bedroom of the accused.

xxx xxx xxx

Q:

In this inventory, Mr. Witness, there is a signature over a handwritten name, whose signature is this?

A:

That's the signature of P/Sr. Insp. Excelso Lazaga, sir.

Q:

Why do you say that?

A:

Because I was present when he signed that document, sir.

xxx xxx xxx

Q:

Now, from the scene, or from the house of the accused in going to the office, who got hold of those items listed in your inventory?

A:

It was PO2 Von Heinrich Caponpon who got hold of those items, sir.

Q:

And at the office, what else did you do to the specimen you seized?

A:

We prepared the returns of search warrant and withdrawal of items, sir.

Q:

Who brought those items, those returns of the warrant and the items to the court?

A:

It's PO2 Von Heinrich Caponpon who brought the said returns, sir.

Q:

And then who withdrew it from the court?

A:

Still, PO2 Von Heinrich Caponpon.

xxx xxx xxx

Q:

What was withdrawn from the Court by Caponpon whom you said he was with you?

A:

The things withdrawn from the court were three (3) sachets of suspect shabu; three (3) empty pieces of sachets of suspected shabu; and one (1) folded aluminum foil.

Q:

Who actually received it from the court?

A:

It was PO2 Caponpon, sir.

Q:

And from the Court, where did you go?

A:

We went directly to the crime laboratory.

Q:

From the court in going to the crime laboratory, who got hold of those things you mentioned awhile ago?

A:

It's PO2 Caponpon, sir.

Q:

And at the crime laboratory, who actually delivered the specimen, including the written request?

A:

It's PO2 Caponpon, sir.

Q:

Who actually signed in the crime laboratory to prove that the same was delivered?

A:

PO2 Caponpon, sir.

Q:

Now, in one of the entries of the rubber stamp is the entry which reads "Delivered by" and opposite the word "delivered by" is a handwritten name which reads PO2 Von Heinrich Caponpon and a signature over it. Whose handwritten name and whose signature is that over the handwritten name?

A:

It's the handwriting and signature of PO2 Von Heinrich Caponpon, sir.

Q:

And why do you say that that is the signature of Caponpon?

A:

Because I was with him when we delivered the items to the crime laboratory, sir.

Q:

You talked of returns. I have here a return already marked Exh. "B", Is this return which you said you brought together with Caponpon?

A:

Yes, this is the same return I mentioned while ago, sir.

xxx xxx xxx

Q:

Being the companion of Caponpon during the search until you reached the office, then to the court and then to the crime laboratory, what is your assurance to this court that the specimen shabu you brought to the court, to

the crime laboratory for examination were the same sachets you retrieved or recovered from the possession of the accused during the search?

A:

Only PO2 Caponpon got hold of the items seized, sir.”[15] (emphasis supplied)

PCI Banogon also testified on the transfer of the custody of the seized drugs and paraphernalia:

“Prosecutor Guiritan: Mr. Witness, who actually received from PO2 Caponpon the specimen shabu in this case based on this letter request?

PCI Banogon: It was actually received by PO2 Panaligan, Sir.

Q:

And from him to whom was it delivered?

A:

It was turned over to me as the Forensic Examiner from PO2 Panaligan.

Q:

At what time and date?

A:

At about past 10:55 in the morning of August 15, 2005 just after he logged into our records this letter request and verified the markings as well on the specimen submitted along with this particular letter request, Sr.

Q:

You mean from the time PO2 Panaligan received it from PO2 Caponpon it was immediately delivered to you?

A:

Yes, Sir, it was immediately turned over to me after all the necessary recordings, as well as verification on the letter request, together with the accompanying specimen has been done per standard operating procedure of our office.

Q:

After you got the specimen shabu from PO2 Panaligan, what did you do to it?

A:

I then proceeded to the actual laboratory examination thereof.”[16] (emphasis supplied)

The results of the laboratory examination reflected in Chemistry Report No. DT-112-2005 dated 15 August 2005[17] confirmed the presence of methamphetamine hydrochloride in the white crystalline substance inside the three (3) plastic sachets which were confiscated from the accused-appellant:

“SPECIMEN SUBMITTED:

A – One (1) large staple-sealed transparent plastic bag containing the following:

1. Three (3) heat-sealed transparent plastic sachets each containing white crystalline substance with the following markings and recorded net weights:

A-1 (VRC-1-05) = 0.0231 gram

A-2 (VRC-2-05) = 0.0194 gram

A-3 (VRC-3-05) = 0.0265 gram

2. Three (3) unsealed transparent plastic sachets each containing traces of white crystalline substance with markings “VRC-4a-05” through “VRC-4c-05” marked as “A-4” through “A-6.”

3. One (1) strip aluminum foil with markings “VRC-5-05” and marked as “A-7.” xxx

A - (FEG BR) = 0.0383 gram

B - (FEG-RC) = 0.0240 gram

C - (FEG RC) = 0.0346 gram

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. xxx

FINDINGS:

Screening and confirmatory tests conducted on specimens A-1 through A-7 all gave POSITIVE results to the test for the presence of Methamphetamine Hydrochloride, a dangerous drug. xxx

CONCLUSION:

Specimens A-1 through A-3 all contain Methamphetamine Hydrochloride, a dangerous drug. Specimens A-4 through A-7 all contain traces Methamphetamine Hydrochloride, a dangerous drug.” (emphasis supplied)

From the foregoing, the prosecution was able to sufficiently establish the elements both for possession of shabu, a dangerous drug, and possession of drug paraphernalia.

In every criminal prosecution for illegal drugs, the prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence.[18] The chain of custody is essential in establishing the link between the article confiscated from the accused to the evidence that is ultimately presented to the court for its appreciation.

The clear, straightforward and consistent testimonies of PO2 Caponpon and PO2 Lumacang were concurrent on material points and relevant details. To corroborate the unbroken chain of custody, PCI Banogon also testified that PO2 Panaligan received the specimen shabu from PO2 Caponpon and after making the necessary recording and verification, PO2 Panaligan immediately turned over to him the specimen shabu.[19] Absent any persuasive evidence showing that they testified falsely, the logical conclusion is that no such improper motive existed on the part of the police operatives, and their testimonies are worthy of full faith and credit.[20]

Accused-appellant argues in his brief that the searching police officers failed to comply with the requirements of Section 21, paragraph 1, Article II of R.A. No. 9165.

The arguments of accused-appellant must fail. Section 2, Article II of R.A. No. 9165 embodies the procedural safeguards intended to counter or prevent possible police abuses. The provision states:

“Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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.” (emphasis supplied)

A physical inventory of the drugs and paraphernalia confiscated from accused-appellant was actually made as evidenced by the “Certificate of Inventory”[21] which was signed by PSI Excelso L Lazaga, Jr., the team leader. The Certificate of Inventory was also signed by Kagawads Raganas and Delma T. Solis.

The failure of the prosecution to take photographs of the evidence confiscated in the presence of representatives of the media, although PO2 Lumacang testified to the taking and existence of photographs but failed to present them in court pursuant to said guidelines, does not automatically render accused-appellant's arrest illegal or the items seized from him inadmissible.[22] Non-compliance with the procedural requirements under R.A. No. 9165 and its Implementing Rules and Regulations relative to custody and photographing is not a serious flaw that will render void seizures and custody of drugs.[23] A proviso was added to the implementing rules of R.A. No. 9165 that:

“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 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;” (emphasis supplied)

It is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the corpus delicti, which the prosecution in the case a quo was able to do. From the testimonies of the police officers and the barangay kagawad, the prosecution established that the police, particularly PO1 Caponpon, was in custody of the drugs seized from the accused-appellant from the moment the dangerous drugs and paraphernalia were confiscated and the accused-appellant was arrested, during the time the confiscated items were transported to the police station, up to the time the seized items were marked and submitted to the crime laboratory for examination, until they were ultimately presented in court.

To solidify his arguments to establish that the chain of custody was broken from the initial custody for the failure of the police officers to mark the sachets of alleged shabu, accused-appellant invoked the cases of *People v. Erlinda Capuno*[24] and *People v. Alberto Alcuizar*.[25]

In the first case, the Supreme Court said “that marking after the seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimen will use the markings as reference.” However, the acquittal of the accused in the said case was not purely based on the failure of the police officers to mark the sachet of shabu after confiscation but because of the missing links in the chain of custody of the sachet of shabu after confiscation. PO1 Jiro and PO1 Antonio did not identify the person who received the seized contraband and PO1 Sanchez forwarded the same to the PNP Crime Laboratory. There was no testimony as to who received the seized contraband up to the time PO1 Sanchez submitted it to the PNP Crime Laboratory. On the contrary, in the present case, PO2 Caponpon made a detailed narration of the chain of custody of the seized drugs.

As for the second case, the significant portion of the discussion of the Supreme Court is reproduced:

“The first gap in the chain of custody was compounded by the vague recollection of SPO1 Agadier regarding

the transfer of custody of the shabu. This second gap in the chain of custody was evident in SPO1 Agadier's statements, thus:

xxx xxx xxx

Based on his testimony, it was not indicated who had initial control and custody of the plastic packs of shabu upon their confiscation. SPO1 Agadier merely claims that he turned them over to SPO1 Navales without specifying whether the latter received it while they were still inside the appellant's house or at the police station. It is also not clear who was in possession of the plastic packs of shabu while in transit. Moreover, SPO1 Navales did not testify to confirm the statement of SPO1 Agadier.

Verily, the failure of the police officers to mark the dangerous drugs immediately after their seizure and the vague recollection of SPO1 Agadier concerning the custody of the drugs from the residence of appellant up to the time it was submitted to the crime laboratory constitute a huge and significant gap in the chain of custody which substantially affects the identity of the corpus delicti.” (emphasis supplied)

Apparently, the cited jurisprudence relied upon by accused-appellant do not find any application to the instant case because of the testimony of PO2 Caponpon describing the unbroken chain of custody.

Thus, although the marking of the six (6) sachets of shabu was done at the police station[26] and not at the house of the accused-appellant, the same did not compromise the integrity of the seized evidence. Jurisprudence[27] has settled that the phrase “marking upon immediate confiscation” contemplates even marking at the nearest police station or office of the apprehending team.

More importantly, the integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-Appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. Accused-Appellant in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the searching police officers deserve full faith and credit. In fact, accused-appellant did not question the credibility of the prosecution witnesses. He anchored his appeal solely on the alleged broken chain of the custody of the seized drugs. The guilt of accused-appellant was thus proven beyond reasonable doubt, as the RTC correctly held.

Nevertheless, the Court will modify the penalty. Section 11, Article II of R.A. No. 9165 provides for the penalty of illegal possession of dangerous drugs, like shabu. For illegal possession of less than five grams of shabu, a dangerous drug, the penalty is imprisonment of 12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00. In this case, accused-appellant's possession of shabu with an aggregate weight of 0.0265 gram, that is, less than 5 grams, without any legal authority has been proven beyond reasonable doubt by the prosecution. Applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances, the penalty of imprisonment of 12 years and 1 day, as minimum, to 14 years, and 8 months, as maximum, and a fine of P300,000.00 should be imposed upon accused-appellant in Criminal Case No. 11305.[28]

On the other hand, the Court hereby agrees with the penalty imposed by the RTC for violation of Section 12, Article II of R.A. No. 9165 in Criminal Case No. 11306.

WHEREFORE, the appeal is hereby DENIED. The Decision dated 12 July 2012 in Criminal Cases Nos. 11305 and 11306 of Branch 4 of the Regional Trial Court of Butuan City is hereby AFFIRMED with MODIFICATION as to the penalty imposable in Criminal Case No.11305, which shall be an indeterminate sentence of 12 years and 1 day of imprisonment, as minimum, up to 14 years and 8 months of imprisonment, as maximum, and a fine of Php 300,000.00.

SO ORDERED.

Borja, J., Ch., and Badelles, JJ., concur.

[*] This Case was assigned to the Ponente on 1 April 2014 and she assumed her position only on 2 June 2014.

[1] Rollo, pp. 42-79; Records, Criminal Case No. 11305, pp. 282-319; Criminal Case No. 11306, pp. 163-200.

[2] Records, Criminal Case No. 11305, pp. 1-2.

[3] Records, Criminal Case No. 11305, pp. 1-2.

[4] Records, Criminal Case No. 11305, p. 44.

[5] Records, Criminal Case No. 11306, p. 47.

[6] Rollo, pp. 91-93; RTC Decision, Rollo, pp. 43-45.

[7] Rollo, pp. 32-33.

[8] Supra at Note 2.

[9] Records, p. 281.

[10] Rollo, p. 33.

[11] People v. Reymen L. Endaya, G.R. No. 205741, 23 July 2014.

[12] Gilbert Zalameda v. People of the Philippines, G.R. No. 183656, 4 September 2009.

[13] People of the Philippines v. Lorie Villahermosa, G.R. No. 186465, 1 June 2011.

[14] TSN, Direct examination of Von Heinrich Radaza Caponpon, 4 October 2007, pp. 5-20.

[15] TSN, Direct examination of PO2 Virgilio Lumacang, Jr., 11 May 2009, pp.7-13.

[16] TSN, Direct examination of PSI Cramwell T. Banogon, 7 August 2008, pp.5-6.

[17] Folder of Exhibits, Exhibit "G", p. 7.

[18] Reynaldo P. Belocura v. People of the Philippines, G.R. No. 173474, 29 August 2012.

[19] TSN, Direct examination of PCI Cramwell T. Banogon, 7 August 2008, p. 6.

[20] People of the Philippines v. Joy Alcala, G.R. No. 201725, 18 July 2014.

[21] Records, Exhibit D, p. 5.

[22] People of the Philippines v. Alfredo Cerdon, G.R. No. 201111, 6 August 2014.

[23] People of the Philippines v. Glenn Salvador, et al., G.R. No. 190621, 10 February 2014; People of the Philippines v. SPO3 Sangki Ara, G.R. No. 1855011, 23 December 2009.

[24] G.R. No. 185715, 19 January 2011.

[25] G.R. No. 189980, 6 April 2011.

[26] TSN, Cross examination of PO2 Virgilio P. Lumacang, 25 February 2010, p. 10.

[27] People v. Gerry Yable, G.R. No. 200358, 7 April 2014.

[28] Arnel Balarbar v. People of the Philippines, G.R. No. 187483, 14 April 2010; Rusiana Asiatico v. People of the Philippines, G.R. No. 195005, 12 September 2011.

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