

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDILBERTO VILLACA-OL Y RUSIANA, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ea9ad07258f9/>

QUIJANO-PADILLA, J.:

This is an appeal[1] from the Decision[2] of Branch 30 of the Regional Trial Court of Negros Oriental, Dumaguete City, dated December 4, 2012 in Criminal Cases Nos. 19971 and 19970, finding the accused-appellant guilty beyond reasonable doubt for Violation of Sections 5[3] and 11[4], respectively, of Article II of R.A. 9165, otherwise known as the “The Comprehensive Dangerous Drugs Act of 2002”.

The Facts

Accused-appellant Edilberto Villaca-ol y Rusiana was charged by the City Prosecutor of Dumaguete City in two separate amended criminal Informations⁵ dated June 2, 2010, which read:

In Criminal Case No. 19971

“That on or about the 24[th] day of May, 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 two (2) heat-sealed transparent plastic sachets each containing 0.01 gram of white crystalline substance with total net weight of 0.02 grams (sic) of Methamphetamine Hydrochloride, otherwise known as “SHABU”, a dangerous drug.

That the accused has been found positive for the use (of) Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. CDT-031-10.

Contrary to Section 5, Article II of R.A. 9165.”[6]

In Criminal Case No. 19970

“That on or about the 24[th] day of May, 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 and keep One (1) heat-sealed transparent plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride, otherwise known as “SHABU”, a dangerous drug.

That the accused has been found positive for the use (of) Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. CDT-031-10.

Contrary to Section 11, Article II of R. A. 9165.”[7]

Upon arraignment[8] on June 10, 2010, the accused-appellant, duly assisted by a counsel, pleaded not guilty to the crimes charged.

Thereafter, trial on the merits ensued.

The Version of the Prosecution[9]

The facts as narrated by the plaintiff-appellee in its Brief[10] are as follows:

In the afternoon of May 24, 2010, a confidential informant informed the officers of the National Bureau of Investigation, Dumaguete District Office that there was a rampant peddling of illegal drugs at a certain old house situated near the chico tree along Flores Avenue, Zone 4, Barangay Looc, Dumaguete City.

Acting on a tip by a confidential informant, NBI Special Investigator Nicanor Ernesto Tagle at about 4:00 p.m., held a briefing for an anti-narcotics operation at the said area. The following were present at the briefing: SPO4 Douglas Ferrer, PO2 Glenn Corsame, the confidential informant and other members of Task Force 24, a group comprised of elements of the National Bureau of Investigation (NBI), Philippine National Police (PNP) and Philippine Drug Enforcement Agency (PDEA) which is tasked to battle the drug problem in Negros Oriental.

In the briefing, it was agreed that the confidential informant would act as the poseur-buyer with the rest of the operatives acting as backup. The confidential informant/poseur buyer would proceed to the area on his motorcycle while the operatives were to ride the NBI's vehicle. It was also agreed that the backup team would wait at the El Camino Blanco resto bar along Flores Avenue for the CI/poseur buyer's signal via text message, confirming a successful transaction. SI Tagle then prepared (four) 4 pcs. one hundred peso bills marked with his initials and gave them to the CI/poseur buyer to be used as buy bust money.

Around 4:30-4:45 p.m., the CI/poseur-buyer and backup team proceeded to the target area of Zone 4, Barangay Looc, Dumaguete City. As planned, the CI/poseur buyer immediately proceeded to the old house while the backup team proceeded to the El Camino Blanco resto bar to await the CI/poseur buyer's text message.

Shortly thereafter, SI Tagle received a text message that the CI/poseur buyer was about to purchase shabu. SI Tagle and the rest of the team hurried to the target site and positioned themselves within Ten (10) meters away from the old house. From this position, SI Tagle, SPO4 Ferrer and the rest of the team saw the CI/poseur buyer in the act of giving money to a man. In exchange for the money received from the CI/poseur buyer, the man handed to the latter two (2) sachets containing white crystalline substance, suspected to be shabu.

The buy bust team then rushed to the scene, prompting some of the bystanders in the area to yell “dakop! dakop!” (arrest! arrest!) and scamper away. The man, however, remained oblivious to the commotion, thus enabling PO2 Corsame and SPO4 Ferrer to hold on to him.

SPO4 Ferrer recovered from the man's hands one (1) sachet containing white crystalline substance and cash amounting to One Thousand Nine Hundred Pesos (P1,900.00), including the four (4) marked One Hundred Peso bills used as buy bust money. SPO4 Ferrer arrested the man and apprised the latter of his constitutional rights.

The CI/poseur buyer then turned over the two (2) sachets subject of the buy bust to SPO4 Ferrer. When the police officer asked for his name, the man identified himself as Edilberto Villaca-ol, herein appellant. SPO4 Ferrer marked the Two (2) sachets surrendered by the CI/poseur buyer as “EV-BB1 5-24-10” and “EV BB2 5-24-10,” respectively. He also marked the sachet retrieved from the appellant's hands as “EV-P 5-24-10”. The letters “EV” stood for appellant's initials; the letters “BB” for buy bust; the letter “P” stood for the crime of illegal possession of dangerous drugs; and the numbers “1” and “2” to differentiate the two sachets bought from appellant.

With the crowd becoming hostile, SPO4 Ferrer and his fellow operatives brought the accused-appellant to the NBI's office. There, PO2 Corsame prepared the inventory of seized items in the presence of SPO4 Ferrer and several witnesses who all signed the “Inventory/Receipt of Drugs and other Property Seized.” SI Tagle also signed as team leader and photographer, having taken the pictures for the inventory.

Thereafter, IO1 Amatong recorded the incident while SI Tagle and SPO4 Ferrer prepared and delivered to the

PNP Negros Oriental Provincial Crime Laboratory their written request for laboratory examination and drug test together with the seized items and the person of appellant. Forensic chemist PCI Llena personally received the written request, the seized items and the person of appellant at around eight o'clock in the evening that same day.

PCI Llena's Chemistry Report No. D-048-10 indicated that all three specimens, each of which weighed 0.01 gram, tested positive for methamphetamine hydrochloride. PCI Llena also did a laboratory examination on accused-appellant's urine which also tested positive for methamphetamine as stated in Chemistry Report No. CDT-031-10. Until the delivery of the three specimens to the trial court together with the two chemistry reports on June 2, 2010, the seized items remained in PCI Llena's custody.

The Version of the Accused-Appellant

Defense presented as its sole witness accused-appellant Villaca-ol. The parties agreed to adopt the testimony of Ronajoy Liu y Iligan who was arrested together with the herein accused-appellant and is also charged for violations of Sec. 11 and 12, of R.A. 9165. The defense version is summarized as follows:

On May 24, 2010, at around 4:00 p.m., accused-appellant went to Brgy. Looc, Dumaguete City to visit his friend Dequio Rubio. When he was on his way home, he passed through a shortcut. He passed by a small old house where he saw people playing cards. As accused-appellant was about to climb upstairs of the said house to see the activities, he heard a sound of a slamming of a door of a car. He saw people coming out of said vehicle with guns and people inside the old house who were playing cards started to scamper away. Appellant did not run as he did not participate in playing cards. There were around five (5) persons who came out of the car. SPO4 Ferrer conducted a search upon his person and nothing was recovered from him except his money in the sum of P1,500.00. At the time of said search, among those present were a certain Jun and a woman who was also searched and handcuffed, whom he later knew as Ronajoy Liu at the NBI office. He did not see anything recovered from Ronajoy. The arresting officers did not inform him of any rights. He and Ronajoy were brought to the NBI Office where they were made to sit down and face a table. PO2 Corsame faced them on the table and wrote something on a paper and he asked SPO4 Ferrer what he was going to do. SPO4 Ferrer told PO2 Corsame to divide the items (packets of shabu) between Appellant and Ronajoy. SPO4 Ferrer took out a Mentos container containing shabu in his pocket and poured some packets of said shabu on the table. The officers placed an adhesive tape on said items and wrote something on it. Appellant denies having and selling shabu as nothing was recovered from him. He was not able to file a case against the arresting officers because they were police officers and he had no money to file a case against them.[11]

The Ruling of the Regional Trial Court

In a Decision[12] dated December 4, 2012, the Regional Trial Court found the accused-appellant guilty beyond reasonable doubt of the crime penalized under Sections 5 and 11, Article II of R.A. 9165. In the assailed decision, the trial court found the evidence presented by the prosecution to be sufficient to establish the elements of the crimes charged. The trial court likewise found the chain of custody of the seized illegal drugs to have remained unbroken. The decretal portion of the decision reads:

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

1. In Criminal Case No. 19971, the accused Edilberto Villaca-ol y Rusiana is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.02 gram of shabu in violation of Section 5, Article II of R.A. 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 two (2) heat-sealed transparent plastic sachets with markings “EV-BB1 5-24-10” and “EV-BB2 5-24-10,”

each containing 0.01 gram of shabu for a total net weight of 0.02 gram of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 19970, the accused Edilberto Villacaol Y Rusiana 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 or R.A. 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 with markings "EV-P 5-24-10" 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 Edilberto Villaca-ol y Rusiana 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.

December 4, 2012, Dumaguete City, Philippines.[13]

Aggrieved with the decision, the accused-appellant timely filed this appeal[14] and raised the following assignment of errors, to wit:

I THE TRIAL COURT GRAVELY ERRED IN NOT FINDING NO BUY BUST OPERATION ACTUALLY TOOK PLACE DESPITE THE FATAL INCONSISTENCIES AND INCREDULITY IN THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH CAST SERIOUS DOUBTS AS TO TRUTHFULNESS OF THE EXISTENCE OF THE ALLEGED BUY BUST OPERATION.

II THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSES CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[15]

This Court's Ruling

The Appeal is meritorious. We cannot sustain accused-appellant's conviction for both sale and possession of dangerous drugs, as this Court hereby acquits Villaca-ol in view of the prosecution's failure to prove his guilt beyond reasonable ground.

In Reyes vs. Court of Appeals[16], the Supreme Court emphasized that a "conviction must stand on the strength of the prosecution's evidence, not on the weakness of the defense which the accused put up. Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course".[17]

In a catena of cases, the Supreme Court laid down the essential elements to be duly established for a successful prosecution of offenses involving the illegal sale of dangerous or prohibited drugs, like shabu, under Section 5, Article II of Republic Act No. 9165, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor.[18] Briefly, the delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the corpus delicti.[19]

On the other hand, for an accused-appellant to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[20]

In the present case, the foregoing elements have not been established by the prosecution with moral certainty. A careful assessment of the evidence on record reveals that there is no sufficient proof, enough to warrant a judgment of conviction, that accused-appellant actually sold shabu to the poseur-buyer. Worse, there are material discrepancies and inconsistencies in the testimonies of the prosecution's key witnesses SI Nicanor Ernesto Tagle and SPO4 Douglas Ferrer, which weaken the probative value of the prosecution evidence as a whole.

First, the testimonies of the said police officers do not affirm with certainty as to the details of the transaction. They could not even state with certainty as to how many sachets were seen allegedly handed by the accused-appellant to the poseur buyer.

SI Tagle testified as follows:

Q:

What was your confidential informant and the accused doing at the time when you saw them?

A:

When we arrived, we saw our confidential informant handing the bust money to Villaca-ol and Villaca-ol gave a sachet of shabu to our confidential informant.[21]

While SPO4 Ferrer narrated, to wit:

Q:

Now what happened after he gave money to the accused?

A:

In exchange, Sir, the subject gave two (2) sachets of shabu.[22] (emphasis supplied)

Second conflicting statements is the narration of SI Tagle as to what they actually saw during the alleged buy bust sale. Said police officer declared that they witnessed accused-appellant handing shabu to the poseur buyer:

Q:

What was your confidential informant and the accused doing at the time when you saw them?

A:

When we arrived, we saw our confidential informant handing the bust money to Villacaol and Villacaol gave a sachet of shabu to our confidential informant.[23]

However, during cross, when propounded a similar question, he had a different testimony.

Q:

So, initially, Officer, you did not witness the alleged transaction that took place between your poseur buyer and the accused, is that correct?

A:

We only saw the passing of the money sir.[24]

Third, SPO4 Ferrer claims that he was the only one who had custody over the items from the time it was confiscated to the time it was submitted to the PNP Crime Laboratory:

Q:

Now, Mr. Witness, since the time that you marked the inventory...I mean, since the time that you marked the three (3) sachets of shabu at “daan na balay” until the inventory, until you submitted the same to the crime laboratory, who had custody over the confiscated items?

A:

It's only me, Sir.[25]

However, when the court interrupted during the direct-examination of SI Tagle by Pros. Nakao, the officer testified on the contrary:

Q:

At any time, you were not able to hold the evidences here?

A:

During inventory sir.

Q:

You got hold of the specimens?

A:

No, only during the inventory when they were placed on the table.

Q:

What I mean is, were you able to touch it and have custody with it?

A:

It's all the time with Douglas Ferrer sir.

Q:

You have never an instance held them?

A:

I just checked when it was shown to me by Ferrer sir.

Q:

But you never touched it.

A:

I touched it sir. I just checked the contents of it sir.

Q:

So were you able to have custody of the items?

A:

No, ah, Douglas

Q:

When you touched it and you checked it, that means you were in custody of the items.....whether you hold it and return it, so you were part of the chain of custody because you were able to get it.

A:

Only when Douglas Ferrer recovered it and he showed it to me sir and returned it to him sir.

Q:

Did you at any instance hold it?

A:

Yes sir.[26]

In addition, during the direct-examination by Pros. Nakao, SI Tagle divulge that not only he had custody over the confiscated drug but also Officer Glenn Corsame:

Q:

So what happened after these sachets were pre-marked?

A:

I decided to transfer to NBI Office since the crowd became hostile in the area sir.

Q:

And what did you do at the NBI Office?

A:

So we proceeded to the NBI Office and conducted the inventory there.[27]

xxx xxx xxx

Q:

So who prepared the Certificate of Inventory?

A:

It was Glenn Corsame sir.

Q:

Who were present at the inventory?

A:

The DOJ representative Ramonito Astillero, media representative Neil Rio, and Barangay Kagawad Merlindo Tamayo sir.[28]

It is clear that the officers are incorrigible as to who have had custody over the confiscated drug. These substantial discrepancies goes to the very core of the identity and integrity of the corpus delicti of the charged offenses.

We agree with the defense when it stressed that with the foregoing substantial and numerous inconsistencies, the testimonies of SI Tagle and SPO4 Ferrer proved to be unreliable and unworthy of credence and cast doubts as to the truthfulness of their testimonies and the integrity of the corpus delicti. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.[29]

We believe that where there was material and unexplained inconsistency between the testimonies of two principal prosecution witnesses relating not to inconsequential details but to the alleged transaction itself which is subject of the case, the inherent improbable character of the testimony given by one of the two principal prosecution witnesses had the effect of vitiating the testimony given by the other principal prosecution witness.[30] In other words, the court ruled that it cannot just discard the improbable testimony of one officer and adopt the testimony of the other that is more plausible. In such a situation, both testimonies lose their probative value.

Moreover, in determining the credibility of prosecuting witnesses regarding the conduct of a legitimate buy-bust operation, the “objective” test as laid down in *People v. De Guzman*[31] is utilized. Thus:

“We therefore stress that the “objective” test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, 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. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the “buy-bust” money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law abiding citizens are not unlawfully induced to commit an offense. xxx”

The absence of the required personal knowledge on the part of the aforementioned arresting officers and witnesses for the prosecution is illustrated in this wise:

SI Nicanor Ernesto Tagle declared on direct-examination by Pros. Nakao:

Q:

How would you know that the transaction has (sic) already taken place since it was only the confidential

informant was tasked as the poseur-buyer?

A:

I would just wait for his text message sir.

Q:

You will wait for his text message.

A:

Yes sir.[32]

On the other hand, SPO4 Douglas Ferrer narrated in his direct examination by Pros. Nakao:

Q:

And you said that you will be conducting a buy-bust operation, who will be making the buy?

A:

The confidential informant.

Q:

Was he also present at the briefing?

A:

Yes, Sir.

Q:

Now, how would the other members of the team know that the informant would be making the actual transaction?

A:

Through text, Sir, of the cellphone.[33]

It is clear that the buy-bust team only relied upon the text of the confidential informant in determining whether the buy-bust operation had already been conducted. Hence, nobody is credible than the confidential informant himself who can testify to the alleged crime.

Applying this “objective” test to this present case, it is clear that the prosecution failed to present a complete picture of the buy-bust operation.

In addition to the foregoing, this Court declares that the non-presentation of the poseur-buyer to the witness stand weakened the State's case. We emphasize that in a prosecution for illegal sale of dangerous drugs, the prosecution must convincingly prove that the transaction or sale actually transpired.[34]

In the instant case, the civilian poseur-buyer during the buy-bust operation has personal knowledge to prove the

fact of the sale, as opposed to SI Tagle and SPO4 Ferrer who were positioned about ten meters away from the accused-appellant and the poseur-buyer. Hence, their testimonies relative thereto were based only on pure conjecture and assumption. At most, said testimony is plain and simple hearsay, having been gathered not from their own personal knowledge, but as relayed to them by the alleged poseur-buyer who was never presented in court. Given the ten-meter distance and considering that there were many bystanders around the area where the transaction transpired, it was unlikely for them to have heard the conversations between the alleged buyer and seller or witness the whole sale transaction.

Furthermore, the account of the arresting officers as to how they had allegedly witnessed the buy-bust sale as it was happening, is unworthy of belief and credence, as their testimonies were filled with incredibility and contrary to human experience.

To recall, prosecution witnesses, SI Tagle and SPO4 Ferrer claimed that they were situated at El Camino which was less than a kilometer away from the place of the buy-bust sale, while the poseur-buyer proceeded to said buy-bust area where the accused-appellant was situated. Said police officers went to the place of sale, when SI Tagle received a text message from the poseur-buyer, telling them that the latter is already transacting and that the appellant was about to show him the shabu.[35] SI Tagle's pertinent testimony is as follows:

Q: What happened after you waited, ah you arrived there and after you instructed him to proceed to the area?

A: After awhile, it was only minutes after that, I received a text message that he's transacting now and about to be shown a shabu by the subject.

Q: What did you do after you received the text from your confidential informant?

A: That's the time I informed everyone that we would be proceeding to the target area.

Q: What did you do after you received the text from your confidential informant?

A: That's the time I informed everyone that we would be proceeding to the target area.

Q: So what did you do?

A: So we rushed up to the target area using our vehicle and we stopped near the chicos area.

Q: How long did it take you to reach that particular area of "daan na balay" (old house) from the time that you received the text from the confidential informant?

A: Just less than a minute sir.

xxx xxx xxx

Q:

So how far were you from this place when you stopped?

A:

About 10 meters away sir.

Q:

So what happened?

A:

So when we arrived at the area, we saw our confidential informant handing the money to our subject sir.[36]

The defense could not have been correct when it stressed that with this testimony alone, it is highly improbable and doubtful that with a distance of 500 meters, the arresting officers were able to arrive that quickly and travel that rapidly, to be able to see the transaction taking place, when in fact, the poseur buyer had texted SI Tagle that he was already transacting and that the Appellant was about to show to him the shabu.

What propounds this incredible story, is the fact that the arresting officers admit that they were at a distance of ten (10) meters from the old house where the transaction took place and that the accused-appellant and the poseur buyer were situated on a porch with an elevation of three (3) to four (4) meters from the ground, and YET the said officers would still claim that they saw the handing of the marked money and as well as the delivery of the packet of shabu. It is but, highly unbelievable and incredible that the said officers would be able to see, from that distance and elevation, what the accused-appellant was handing to the poseur buyer considering that a plastic sachet containing 0.01 gram of shabu is so small or miniscule in size and no larger than an adult finger tip.

From the foregoing, it is crystal clear that at most what the police officers have witnessed was only people who looks like having a conversation and not the sale transaction in itself. Precisely, whether or not the said transaction actually occurred could not be clearly established unless the poseur-buyer who participated therein is presented in court. Besides, the witnesses of the prosecution are not even consistent in their narration of events, thereby casting serious doubts to their already insufficient testimony.

In *People v. Tadepe*[37], the Supreme Court explained that the failure of the prosecution to present in court the alleged poseur-buyer is fatal to its case. Said the Court in that case, the police officer, who admitted that he was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime.

In *People vs. Polizon*[38], the Supreme Court declared that-

We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua had no personal knowledge of the transaction that transpired between Lim and the appellant. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.

In drug-related prosecutions, the State not only bears the burden of proving the elements of the offenses of sale and possession of methamphetamine hydrochloride under R.A. 9165, but also carries the obligation to prove the *corpus delicti*, the body of the crime, to discharge its overall duty of providing the guilt of the accused beyond reasonable doubt. The prosecution fails to comply with the indispensable requirement of proving *corpus delicti* not only when it is missing but also when there are substantial gaps in the chain of custody of the seized drugs which raise doubts on the authenticity of the evidence presented in court.[39]

Furthermore, there are links that must be established in the chain of custody, namely: “first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer, third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court”.[40]

In this case, the prosecution was not able to substantiate clearly the integrity and evidentiary value of the confiscated shabu.

As above discussed, SPO4 Ferrer claims that he was the only one who had custody over the confiscated dangerous drugs but SI Tagle testified that he had touched it. Moreover, SI Tagle also declared that Glenn Corsame had prepared the Certificate of Inventory, thereby insinuating that the latter had custody over the said dangerous drugs.

Under these circumstances, the prosecution has not established beyond doubt an unbroken link in the chain of custody. The broken link in the chain of custody allow the possibility that a person, not in the chain, ever gained possession of the seized evidence.

Another dent on the prosecution's case can be gleaned from the prosecution witness, SPO4 Ferrer's testimony which demonstrate the possibility that he had co-mingled the confiscated illegal drugs, viz:

Q:

What happened, Officer, was that, when you recovered the plastic sachet from the possession of the accused, later the confidential agent also handed to you the two (2) plastic sachets that he recovered?

A:

Yes sir.

Q:

And that was the only time you marked the plastic sachets?

A:

Yes, sir.[41]

It is clear that SPO4 Ferrer did not mark the seized items immediately upon having custody thereof. Thus, We could not determine which plastic sachet of shabu was used in the illegal sale of dangerous drugs and which was in the possession of the accused-appellant.

In this regard, Section 21(a) of the Implementing Rules and Regulations of R.A. 9165 provides:

(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; (Emphasis supplied).

The failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not ipso facto result in the unlawful arrest of the accused or render inadmissible in evidence the item seized. This is due to the proviso added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved.[42] “What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused.”[43]

With the numerous discrepancies in the testimonies of SI Tagle and SPO4 Ferrer, it is highly improbable that We can assume that there has been a regularity in the performance of their duties.

With this Court’s reversal of accused-appellant’s conviction for sale of illegal drugs on the ground that the transaction itself has not been proven by the prosecution with moral certainty, We are constrained to likewise acquit accused-appellant for possession of the illegal drugs that were recovered from him in the subsequent search of his body incident to his warrantless arrest.

Taking into account the inconsistent testimonies of the prosecution witnesses as to the sale transaction, their implication that they did not actually hear the conversation between the police asset who acted as poseur-buyer and accused-appellant and that they only came to know that the sale transaction is about to begin when the civilian poseur-buyer gave them a text message, as well as the non-presentation of the said civilian poseur-buyer during trial who could have significantly corroborated their testimonies, the Court believes that there is no sufficient proof that accused-appellant has committed, was actually committing, or is attempting to commit an offense when he was arrested without a warrant by officers Corsame and SPO4 Ferrer and the rest of the buy-bust team. Hence, his arrest was illegal as it does not fall under Section 5, Rule 113 of the Rules of Court where an arrest made without a warrant issued by the court is lawful. Since the warrantless arrest was invalid, the subsequent search on accused-appellant’s body was not one which is incidental to a lawful warrantless arrest.[44] Thus, the packets of shabu that were seized from accused-appellant as a result of the subsequent frisk of his body are inadmissible in evidence against him for being “fruits of a poisonous tree”.[45]

All told, when the guilt of the accused-appellant has not been proven with moral certainty, as in this case, it is Our policy of long standing that his presumption of innocence must be favored and his exoneration be granted as a matter of right.[46]

Since Villaca-ol's guilt was not proved beyond reasonable doubt, We are, thus, impelled to reverse his conviction.

WHEREFORE, the appeal is hereby GRANTED. The Decision of the RTC of Negros Oriental, Branch 30, Dumaguete City, dated December 4, 2012 in Criminal Cases Nos. 19971 and 19970 finding Edilberto Villaca-ol guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 is hereby REVERSED and SET ASIDE.

Edilberto Villaca-ol is ACQUITTED of the crimes charged on the ground of reasonable doubt and ORDERED IMMEDIATELY RELEASED from custody, unless he is being held for some other lawful cause. The responsible officer is ORDERED to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[1] See Appellant's Brief, rollo, pp. 38-59.

[2] Penned by Judge Rafael Crescencio C. Tan, Jr., rollo, pp. 60-75.

[3] 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.

xxx xxx xxx

[4] Section 11. Possession of Dangerous Drugs. - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

xxx xxx xxx

[5] Records, p. 68 (for Crim. Case No. 2010-19971); and p. 63 (for Crim. Case No. 201019970).

[6] See Amended Information dated June, 2010, records p. 68.

[7] See Amended Information dated June 10, 2010, records p. 63.

[8] See Certificate of Arraignment, records p.80(for Crim.Case 19970) and p.81(for Crim. Case 19971).

[9] See the Brief for the Plaintiff-Appellee, Counterstatement of Facts, rollo, pp.101-104.

[10] See the Brief for the Plaintiff-Appellee, rollo pp. 65-77.

[11] TSN, November 5, 2012.

[12] Decision, rollo, pp. 60-75.

[13] See Decision, Rollo, p. 74.

[14] See Accused-appellant's Brief, Rollo, pp.38-59.

[15] Id., p. 40.

[16] G.R. No. 180177, April 18, 2012, 670 SCRA 148.

[17] Id. Citing People vs. Obeso, G.R. No. 152285, October 24, 2003, 414 SCRA 447, 460; People vs. Decillo, G.R. No. 121408, October 2, 2000, 341 SCRA 591, 598-599.

[18] People vs. Torres, G.R. No. 191730, June 5, 2013 citing People vs. Bara, G.R. No. 184808, 14 November 2011, 660 SCRA 38, 43; People vs. Gaspar, id.; People vs. Cruz, G.R. No. 187047, 15 June 2011, 652 SCRA 286,

298; *People vs. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 463; *People vs. Santos*, supra note 25 at 592-593.

[19] *People vs. Torres*, G.R. No. 191730, June 5, 2013, citing *People vs. Bara*, id.; *People vs. Cruz*, id.

[20] *People vs. Montivergen*, G.R. No. 189840, December 11, 2013 citing *People vs. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

[21] TSN, September 25, 2012, p. 9.

[22] TSN, October 9, 2012, pp. 7-8.

[23] TSN, September 25, 2012, p. 9.

[24] TSN, September 25, 2012, p. 17.

[25] TSN, October 9, 2012, P. 16.

[26] TSN, September 25, 2012, pp. 16-17.

[27] Id., p. 14.

[28] Id.

[29] *Zarraga vs. People*, G.R. No. 162064, March 14, 2006.

[30] *Agustin vs. People*, G.R. No. 158788, April 30, 2008 citing *People vs. Gonzales*, G.R. Nos. 67801-02, September 10, 1990.

[31] G.R. No. 151205, June 9, 2004.

[32] TSN, September 25, 2012, p. 5.

[33] TSN, October 9, 2012, p. 5.

[34] *People v. Orteza*, 555 Phil. 700, 706 (2007)

[35] TSN, September 25, 2012, pp. 7-8.

[36] Id., p. 8.

[37] 314 Phil 231 (1995)

[38] G.R. No. 84917, September 18, 1992, 214 SCRA 56.

[39] *People vs. Coreche*, G.R. No. 182528, August 14, 2009.

[40] *People v. Salvador*, G.R. No. 190621, February 10, 2014 citing *People v. Kamad*, G.R. No. 174198, January 19, 2010.

[41] TSN, October 9, 2012, p. 20-21.

[42] *People v. Salvador*, G.R. No. 190621, February 10, 2014, citing *People v. Rivera*, G.R. No. 182347, October 17, 2008.

[43] *People v. Salvador*, G.R. No. 190621, February 10, 2014, citing *People v. Manalao*, G.R. No. 187496, February 6, 2013.

[44] "Sec. 5. Arrest without a 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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.”

[45] *People v. Martinez*, G.R. No. 191366, 13 December 2010.

[46] *People v. Wilson Lim, et.al.*, G.R. No. 141699, 07 August 2002.

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.