

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR DENOMAN Y ACURDA, ACCUSED-APPELLANT.

*G.R. No. 171732. August 14, 2009*

Ponente: BRION, J.

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### BRION, J.:

We review the conviction of accused-appellant Edgar Denoman y Acurda (accused-appellant) for illegal sale of shabu under Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The Regional Trial Court (RTC), Branch 72, Malabon City, originally rendered the judgment[1] of conviction. The Court of Appeals (CA) affirmed the conviction in its own decision[2] dated January 16, 2006 in CA-G.R. CR H.C. No. 00305.

The accused-appellant was charged under two informations for violation of RA No. 9165 before the RTC. The first, docketed as Criminal Case No. 27283-MN, charged him with illegal possession of dangerous drug under Section 11, Article II of RA No. 9165. This Information reads:

That on or about the 30[th] day of July, 2002 in the City of Malabon, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control One (1) heat-sealed transparent plastic sachet containing white crystalline substance with net weight 0.04 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known "shabu", a dangerous drug.[3]

The second, docketed as Criminal Case No. 28387-MN, charged him with the crime of illegal sale of shabu under the following allegations:

That on or about the 17[th] day of February 2003 in the City of Malabon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver for consideration in the amount of P 100.00 to poseur buyer One (1) heat-sealed transparent plastic sachet containing white crystalline substance with a net weight of 0.03 gram which substance when subjected to chemistry examination gave positive result for Methylamphetamine Hydrochloride otherwise known as "shabu", a dangerous drug.[4]

The accused-appellant pleaded not guilty to both charges[5] which were jointly tried after pre-trial.

### THE FACTS

The prosecution showed that on two separate occasions, the accused-appellant was caught red-handed in the illegal possession of shabu and of drug pushing. The prosecution presented two (2) witnesses: P/A Ronald Ticlao (P/A Ticlao) and PO1 Alexander Carlos (PO1 Carlos) who both positively identified the accused-appellant as the person who handled the shabu (in P/A Ticlao's case) and sold the shabu (in PO1 Carlos' case).[6]

P/A Ticlao,[7] testifying in Criminal Case No. 27283-MN, related that on July 30, 2002 at 3:15 p.m. in Sulucan,[8] Malabon City, he and the other operatives of the Drug Enforcement Unit (DEU) of the Malabon

Police Station were engaged in a narcotics operation after receipt of reports of rampant selling of shabu in the area. In the course of their operation, P/A Tielao saw the accused-appellant and one Jomarie Damasco[9] each holding a plastic sachet which he suspected contained shabu. The operatives then immediately arrested the accused-appellant and his companion and brought them to the Pagamutang Bayan before proceeding to the police headquarters. The items seized from the accused-appellant were sent to laboratory examination, and they tested positive for shabu.[10]

The prosecution presented the following documentary evidence:

Exhibits "A" and "A-1"

- Blotter of Dispatch and Brought-in;

Exhibits "B" and "B-1"

- Improvised wrapper and shabu;

Exhibit "C"

- Request for Laboratory Examination;

Exhibit "D"

- Laboratory Report; and

Exhibits "E," "E-1" to "E-3"

- Affidavit of arrest/sworn statement.

In Criminal Case No. 28387-MN, PO1 Carlos[11] testified that he was a member of the DEU, Malabon Police Station. He related that upon being informed on February 17, 2003 at 6:45 p.m. by a confidential informant of illegal drug selling activities by one alias Edgar, the Malabon City police conducted a buy-bust operation on Sulucan St., Hulong Duhat, Malabon City. He was designated as poseur buyer, and he was given a P100.00 bill as buy-bust money. On arrival at the indicated place, PO1 Carlos and the confidential informant saw and approached the accused-appellant. After a short talk, the trio proceeded to a house located in the area where the accused-appellant presented to him a small plastic sachet which he suspected contained shabu. PO1 Carlos agreed to buy the small plastic sachet and gave the P100.00 bill to the accused-appellant as payment. Upon receipt of the plastic sachet containing the suspected shabu, he gave the pre-arranged signal, prompting his back-ups to come forward and arrest the accused-appellant. After the arrest, they brought the accused-appellant to the Pagamutang Bayan. The seized plastic sachet was sent to a forensic chemist for laboratory examination which showed positive results for shabu.[12]

The prosecution presented the following documentary evidence:

Exhibits "F" and "F-1"

- Blotter of Dispatch and Brought-in;

Exhibits "G" and "G-1"

- Xerox of P 100 bill;

Exhibits "H" and "H-1"

- Improvised wrapper and shabu;

Exhibit "I"

- Request of Laboratory Examination;

Exhibit "J"

- Laboratory Report; and

Exhibits "K", "K-1" to "K-4"

- Affidavit of arrest/sworn statement and signatures.

In both cases, the accused-appellant denied the accusations against him.[13] He claimed that he was a victim of frame-up and extortion. He also claimed that the police filed the charges against him because he failed to provide the whereabouts of a person named Rollie.[14]

The prosecution and defense agreed during the trial to dispense with the testimonies of the defense witnesses - Jomarie Damasco and Marife Demata - on the stipulation that these witnesses would simply corroborate the accused-appellant's testimony.[15] The two sides likewise dispensed with the rebuttal testimony of PO1 Carlos and sur-rebuttal testimony of the accused-appellant on the stipulation that they will simply repeat and insist on their respective versions of events.[16]

In a Joint Decision dated August 15, 2003,[17] the RTC found the accused-appellant guilty beyond reasonable doubt of drug pushing but was acquitted of the charge of illegal possession of shabu. The RTC sentenced the accused-appellant to life imprisonment and to pay a fine of P500,000 and to pay the costs.[18]

The accused-appellant appealed to the CA essentially challenging the RTC's findings of fact. He argued that: (1) the incredible testimony of PO1 Carlos should not be believed because of its inconsistencies and contradictions; and (2) the seized plastic sachet allegedly containing shabu was not properly marked and identified.

The CA fully affirmed the accused-appellant's conviction in its decision dated January 16, 2006.[19]

The CA found no reason to overturn the RTC findings anchored on PO1 Carlos' testimony for being a clear and straightforward narration of the antecedent events that transpired and that indubitably showed the arrest of the accused-appellant during a legitimate buy-bust operation.[20] On the basis of PO1 Carlos' testimony, the CA also brushed aside the accused-appellant's attack on the identity and integrity of the buy-bust money and the seized plastic sachet. [21]

The CA also rejected the accused-appellant's defenses of denial and frame-up, and gave greater credence to PO1 Carlos' testimony, relying on the presumption of regularity in the performance of official functions by the police officers who conducted the buy-bust operation.[22]

## THE ISSUE

In the petition now before us, the accused-appellant raises the core issue of whether sufficient evidence exists to support his conviction for illegal sale of shabu under RA No. 9165.

In his Appellant's Brief,[23] the accused-appellant questions the lower courts' reliance on PO1 Carlos' incredible story that the accused-appellant sold shabu to PO1 Carlos, a stranger to him. He also questions the worth of PO1 Carlos' testimony about the buy-bust sale in light of PO1 Carlos' failure to explain how he (PO1 Carlos) could have agreed to a pre-arranged signal with the confidential informant and the DEU operatives when he never expected that the illegal transaction would take place inside a house.

Lastly, the accused-appellant attacks the prosecution evidence for its failure to establish the proper chain of custody of the shabu allegedly seized from him.

In its Brief for the Appellee,[24] the Office of the Solicitor (OSG), representing the People, contends that the prosecution evidence amply supports the accused-appellant's guilt beyond reasonable doubt of drug pushing. The OSG emphasizes that on the issue of the witness' credibility, great respect must be given to the factual findings of the RTC, especially after the defense failed to adduce evidence of improper motive against the prosecution witness. The OSG further posits that the accused-appellant's defense of denial is self-serving and uncorroborated by any credible evidence from a disinterested witness. His denial should not also prevail over the positive, convincing and credible testimony of PO1 Carlos.

### OUR RULING

We find the appeal meritorious.

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the corpus delicti.[25] In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the corpus delicti, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[26] Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

Section 21, paragraph 1, Article II of RA No. 9165 and Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165 give us the procedures that the apprehending team should observe in the handling of seized illegal drugs in order to preserve their identity and integrity as evidence. As indicated by their mandatory terms, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case.[27] Parenthetically, in *People v. De la Cruz*,[28] we justified the need for strict compliance with the prescribed procedures to be consistent with the principle that penal laws shall be construed strictly against the government and liberally in favor of the accused.

Section 21, paragraph 1, Article II of RA No. 9165, 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. [Emphasis supplied]

This provision is further elaborated in Section 21(a), Article II of the IRR of RA No. 9165, which reads:

(a)

The apprehending office/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, 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]

In the present case, the records show that the buy-bust team did not observe even the most basic requirements of the prescribed procedures. While the markings, "AOC-BB/17-02-03," were made in the small plastic sachet allegedly seized from the accused-appellant, the evidence does not show the identity of the person who made these markings and the time and place where these markings were made.[29] Notably, PO1 Carlos' testimony failed to disclose whether a physical inventory and photograph of the illegal drug had been done. Further, nothing in the records also indicates whether the physical inventory and photograph, if done at all, were made in the presence of the accused-appellant or his representatives or within the presence of any representative from the media, DOJ or any elected official. Then again, PO1 Carlos' testimony also failed to show that any of these people has been required to sign the copies of the physical inventory, or that any of them was subsequently given a copy of the physical inventory.

We had occasions to discuss and expound in several cases on the implications of the failure to comply with Section 21, paragraph 1, Article II of RA No. 9165.

In *People v. Sanchez*,[30] we declared that in a warrantless seizure (such as in a buy-bust operation) under RA No. 9165, the physical inventory and photograph of the items can be made by the buy-bust team, if practicable, at the place of seizure considering that such interpretation is more in keeping with the law's intent of preserving the integrity and evidentiary value of the seized drugs.[31]

*People v. Garcia*[32] resulted in an acquittal because the buy-bust team failed to immediately mark the seized items at the place of seizure and failed to explain the discrepancies in the markings in the seized items. The underlying reason for the acquittal, of course, was the doubts raised on whether the seized items are the exact same items that were taken from the accused-appellant when he was arrested; the prosecution failed to satisfactorily establish the corpus delicti - a material element of the crime.

Another acquittal was *People v. Robles*,[33] where the Court considered the uncertainty of the origins of the seized drug given the lack of evidence showing compliance with the prescribed procedures on physical inventory, the photographing of the seized articles, and the observance of the chain of custody rule.

While the chain of custody has been a critical issue leading to acquittals in drug cases, we have nevertheless held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. The last paragraph of Section 21(a), Article II of the IRR of RA No. 9165 provides a saving mechanism to ensure that not every case of non-compliance will irretrievably prejudice the prosecution's case. To warrant application of this saving mechanism, however, the prosecution must recognize and explain the lapse or lapses in the prescribed procedures.[34] The prosecution must likewise demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.[35]

In the present case, the prosecution miserably failed to adduce evidence establishing the chain of custody of the seized illegal drugs, and failed as well to establish compliance with the saving mechanism discussed above.

In *Lopez v. People*,[36] we laid down the requirements that must be followed in handling an illegal drug seized:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how

and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. [Emphasis supplied]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[37] which implements RA No. 9165, defines chain of custody in this wise:

b."Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition;[Emphasis supplied]

While the identities of the seller and the buyer and the transaction involving the sale of the illegal drug were duly proven in this case by PO1 Carlos' testimony, we find the testimony deficient for its failure to establish the various links in the chain of custody. PO1 Carlos did not state the details material to the handling of the items seized from the accused-appellant. This glaring deficiency is readily obvious from PO1 Carlos' short testimony which glossed over the required details. To quote PO1 Carlos:

Q:

After you have purchased, what happened next?

A:

We arrested them.

x x x

Q:

After that?

A:

We apprised him of his rights and his violation then we brought him to the Pagamutang Bayan.

Q:

What was the result of the laboratory examination?

A:

Positive, sir.[38]

Thus, PO1 Carlos failed to testify about the following critical links in the chain of custody -

(a) The first link

The links in the chain of custody start with the seizure of the plastic sachet containing the suspected shabu bought in the buy-bust sale. The short testimony of PO1 Carlos in this regard merely showed that after making the arrest, the accused-appellant was taken to the Pagamutang Bayan and thereafter to the police station. His testimony was

glaringly silent regarding the handling and disposition of the seized plastic sachet and its contents after the arrest. He did not also identify the person who had care of the seized plastic sachet during the ride to the Pagamutang Bayan, and from there to the police station.

(b) The second link

The second link in the chain of custody - the turnover of the seized plastic sachet containing the shabu from the buy-bust team to the police investigator - was not supported by evidence. As we mentioned earlier, while markings were made on the seized plastic sachet recovered from the accused-appellant, the prosecution failed to adduce any evidence identifying the person who made the markings and the place and occasion when these markings were made.[39] Similarly, the prosecution also failed to present evidence pertaining to the identity of the person who submitted the seized plastic sachet to the police investigator. Although the records show that the request for laboratory examination of the seized plastic sachet was prepared by one Monchito Glory Lusterio as Chief Police Inspector of the DEU, the evidence does not show that the Chief Police Inspector was the police investigator who received the marked plastic sachet from the buy-bust team.[40]

A close examination of the records likewise shows that the buy-bust sale occurred on February 17, 2003 while the request for laboratory examination was prepared a day after or on February 18, 2003.[41] The evidence does not show who had temporary custody of the seized items during this intervening period of time and before it was taken to the Philippine National Police (PNP) Crime Laboratory for examination.

(c) The third link

Evidence showing the custody of the seized plastic sachets at the PNP Crime Laboratory stage has not been adduced. Notably, the identity of the person who took the seized shabu to the crime laboratory and the identity of the person who received the seized shabu for laboratory examination were not disclosed. The records show that one Albert S. Arturo, as Chief Forensic Chemist, examined the specimens submitted in the request dated February 18, 2003; it does not appear however that he was the person who received the specimens when they were turned over by the Malabon City police. At most, the evidence on hand only identified him as the one who actually examined the specimens submitted by the Malabon City police.

(d) The fourth link

Sections 3[42] and 6[43] (paragraph 8) of Dangerous Drugs Board Regulation No. 2, Series of 2003,[44] requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain. The records of the case are bereft of details showing that this board regulation was ever complied with; the records also do not indicate how the specimen was handled after the laboratory examination and the identity of the person who had the custody of the shabu before its presentation in court.

The above enumeration and discussion show the glaring gaps in the chain of custody - from the seizure of the plastic sachet until the shabu was presented in court - and the prosecution's failure to establish the identities of the persons who handled the seized items.

We are not unmindful of the evidence on record showing that PO1 Carlos identified the shabu offered in evidence as the very same shabu recovered from the accused-appellant. We cannot accord weight to PO1 Carlos' identification, however, in light of our above discussions and findings.[45] To repeat, the lapses in the required procedures do not provide us any reasonable certainty that the shabu that was offered in court as evidence is the same shabu that was allegedly seized from the accused-appellant. In the absence of concrete evidence on the illegal drug bought and sold, the body of the crime - the corpus delicti - has not been adequately proven.

In light of this conclusion, we see no need to discuss the strength of the accused-appellant's defenses and the veracity of his evidence. Neither do we see any need to pass upon the merits of the other arguments raised by the accused-appellant, since the prosecution failed to overcome the accused-appellant's right to be presumed innocent of the crime charged.

As our last point, we are aware that the RTC's findings of fact, when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. This rule, however, finds application only where the lower courts did not overlook or misapprehend facts of weight and substance in their review and appreciation of the presented evidence.[46]

In this case, the exception rather than the general rule applies given the RTC and CA's failure to recognize material facts and fatal omissions on the part of the buy-bust team. Both courts simply relied on the presumption of regularity in the performance of official duties - a presumption that does not arise when lapses in procedure are evident from the record,[47] in this case, the failure to comply with Section 21, paragraph (1) of Article II of RA No. 9165 and its implementing rules. This same lapse resulted in no less than the failure to establish the existence of the corpus delicti. In the absence of this element, no conviction for the illegal sale of shabu under Section 5 of RA No. 9165 can be sustained.

WHEREFORE, premises considered, we hereby REVERSE and SET ASIDE the Decision dated January 16, 2006 of the Court of Appeals in CA-G.R. CR H.C. No. 00305. Accused-appellant Edgar Denoman y Acurda is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director, Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five days from receipt of this Decision.

**SO ORDERED.**

[\*]Carpio, [\*\*]Carpio Morales, (Acting Chairperson), Del Castillo, and Abad, JJ., concur.

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[\*] Designated additional Member of the Second Division per Special Order No. 671 dated July 28, 2009.

[\*\*] Designated Acting Chairperson of the Second Division per Special Order No. 670 dated July 28, 2009.

[1] Penned by Judge Benjamin M. Aquino, Jr.

[2] Penned by Associate Justice Arturo G. Tayag (now retired), with Associate Justice Jose L. Sabio, Jr. and Associate Justice Jose C. Mendoza, concurring; rollo, pp. 2-15.

[3] Records, p. 1

[4] Id., p. 40.

[5] Id., p. 6.

[6] TSN, April 21, 2003, p. 2 and TSN, May 15, 2003, p. 4.

[7] Direct Examination, TSN, April 21, 2003, pp. 2-5.

[8] Also spelled as Sulukan in the records.

[9] Also referred to as Jomari Damasco in the records.

- [10] Records, pp. 4-5.
- [11] Direct Examination, TSN, May 15, 2003, pp. 3-5, and TSN, June 23, 2003, pp. 2-8.
- [12] Records, pp. 43 and 46.
- [13] TSN, May 23, 2003, p. 8, and TSN, July 4, 2003, p. 7.
- [14] TSN, May 23, 2003, pp. 5-7, TSN, June 5, 2003, p. 3, and TSN, July 4, 2003, pp. 6-7.
- [15] Joint Order dated June 6, 2003 and Order dated July 11, 2003; records; pp. 72 and 94.
- [16] Orders dated July 18, 2003 and July 31, 2003; records, pp. 98 and 104.
- [17] *Id.*, pp. 106-112.
- [18] *Id.*, pp. 111-112.
- [19] Rollo, p. 14.
- [20] *Id.*, pp. 6-7.
- [21] *Id.*, p. 9.
- [22] *Id.*, pp. 6-7, 9 and 13.
- [23] CA rollo, pp. 70-81.
- [24] *Id.*, pp. 122-140.
- [25] *People v. Partoza*, G.R. No. 182418, May 8, 2009.
- [26] *People v. Robles*, G.R. No. 177220, April 24, 2009.
- [27] *People v. Garcia*, G.R. No. 173480, February 25, 2009.
- [28] G.R. No. 177222, October 29, 2008.
- [29] Records, p. 44.
- [30] G.R. No. 181545, October 08, 2008.
- [31] *Id.*
- [32] G.R. No. 173480, February 25, 2009.
- [33] *Supra* note 27.
- [34] *People v. Sanchez*, G.R. No. 175832, October 15, 2008.
- [35] *Id.*
- [36] G.R. No. 172953, April 30, 2008.
- [37] Guidelines On The Custody And Disposition Of Seized Dangerous Drugs, Controlled Precursors And Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.
- [38] TSN, June 23, 2003, pp. 6-7.

[39] Records, p. 44.

[40] Ibid.

[41] Id., p. 43.

[42] Chain of Custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from time of collection to receipt by the laboratory. Within the laboratory, appropriate chain of custody records must account for the samples until disposal.

[43] 8. Chain of Custody -- A laboratory shall use documented chain of custody procedures to maintain control and accountability of specimens. The date and purpose shall be recorded on an appropriate Custody and Control Form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized collection staff shall be responsible for each specimen in their possession and shall sign and complete the Custody and Control Forms.

[44] Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines.

[45] TSN, June 23, 2003, p. 5.

[46] People v. Robles, supra note 27.

[47] People v. Garcia, supra note 28.

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