

ABRAHAM MICLAT, JR. Y CERBO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 176077. August 31, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the Decision[1] dated October 13, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 28846, which in turn affirmed in toto the Decision of the Regional Trial Court (RTC), Branch 120, Caloocan City, in Criminal Case No. C-66765 convicting petitioner of Violation of Section 11, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The factual and procedural antecedents are as follows:

In an Information[2] dated November 11, 2002, petitioner Abraham C. Miclat, Jr. was charged for Violation of Section 11, Article II of RA No. 9165, the accusatory portion of which reads:

That on or about the 08[th] day of November 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully and feloniously have in his possession, custody and control [Methamphetamine] Hydrochloride (SHABu) weighing 0.24 gram, knowing the same to be a dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW. (Emphasis supplied.)[3]

Upon arraignment, petitioner, with the assistance of counsel pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.

To establish its case, the prosecution presented Police Inspector Jessie Abadilla Dela Rosa (P/Insp Dela Rosa), Forensic Chemical Officer of the Philippine National Police (PNP) Crime Laboratory, NPD-CLO, Caloocan City Police Station and Police Officer 3 Rodrigo Antonio (PO3 Antonio) of the Caloocan Police Station - Drug Enforcement Unit. The testimony of the police investigator, PO3 Fernando Moran (PO3 Moran), was dispensed with after petitioner's counsel admitted the facts offered for stipulation by the prosecution.

On the other hand, the defense presented the petitioner as its sole witness. The testimonies of Abraham Miclat, Sr. and Ma. Concepcion Miclat, the father and sister, respectively, of the petitioner was dispensed with after the prosecution agreed that their testimonies were corroborative in nature.

Evidence for the Prosecution

First to testify for the prosecution was P/Insp. Jessie Abadilla Dela Rosa, Forensic Chemical Officer of the PNP Crime Laboratory, NPD-CLO, Caloocan City Police Station who, on the witness stand, affirmed his own findings in Physical Science Report No. D-1222-02 (Exhs. "D," "D-1," and "D-2") that per qualitative examination conducted on the specimen submitted, the white crystalline substance weighing 0.05 gram, 0.06 gram, 0.07 gram, and 0.06 gram then contained inside four (4) separate pieces of small heat-sealed transparent

plastic sachets (Exhs. "D-4" to "D-7") gave positive result to the test for Methylamphetamine (sic) Hydrochloride, a dangerous drug.

Also, thru the testimony of PO3 Rodrigo Antonio of the Caloocan Police Station-Drug Enforcement Unit, Samson Road, Caloocan City, the prosecution further endeavored to establish the following:

At about 1:00 o'clock in the afternoon of November 8, 2002, P/Insp. Jose Valencia of the Caloocan City Police Station-SDEU called upon his subordinates after the (sic) receiving an INFOREP Memo from Camp Crame relative to the illicit and down-right drug-trading activities being undertaken along Palmera Spring II, Bagumbong, Caloocan City involving Abe Miclat, Wily alias "Bokbok" and one Mic or Jojo (Exhs. "E," "E-1," and (sic) "E-3," and "E-4"). Immediately, P/Insp. Valencia formed a surveillance team headed by SPO4 Ernesto Palting and is composed of five (5) more operatives from the Drug Enforcement Unit, namely: PO3 Pagsolingan, PO2 Modina, PO2 De Ocampo, and herein witness PO3 Antonio. After a short briefing at their station, the team boarded a rented passenger jeepney and proceeded to the target area to verify the said informant and/or memorandum.

When the group of SPO4 Palting arrived at Palmera Spring II, Caloocan City at around 3:50 o'clock that same afternoon, they were [at] once led by their informant to the house of one Alias "Abe." PO3 Antonio then positioned himself at the perimeter of the house, while the rest of the members of the group deployed themselves nearby. Thru a small opening in the curtain-covered window, PO3 Antonio peeped inside and there at a distance of 1½ meters, he saw "Abe" arranging several pieces of small plastic sachets which he believed to be containing shabu. Slowly, said operative inched his way in by gently pushing the door as well as the plywood covering the same. Upon gaining entrance, PO3 Antonio forthwith introduced himself as a police officer while "Abe," on the other hand, after being informed of such authority, voluntarily handed over to the former the four (4) pieces of small plastic sachets the latter was earlier sorting out. PO3 Antonio immediately placed the suspect under arrest and brought him and the four (4) pieces of plastic sachets containing white crystalline substance to their headquarters and turned them over to PO3 Fernando Moran for proper disposition. The suspect was identified as Abraham Miclat y Cerbo a.k.a "ABE," 19 years old, single, jobless and a resident of Maginhawa Village, Palmera Spring II, Bagumbong, Caloocan City.[4]

Evidence for the Defense

On the other hand, the [petitioner] has a different version of the incident completely opposed to the theory of the prosecution. On the witness stand, he alleged that at about 4:00 o'clock in the afternoon of November 8, 2002, while he, together with his sister and father, were at the upper level of their house watching the television soap "Cindy," they suddenly heard a commotion downstairs prompting the three (3) of them to go down. There already inside were several male individuals in civilian clothes who introduced themselves as raiding police operatives from the SDEU out to effect his (Abe) arrest for alleged drug pushing. [Petitioner] and his father tried to plead his case to these officers, but to no avail. Instead, one of the operatives even kicked [petitioner] at the back when he tried to resist the arrest. Immediately, [petitioner] was handcuffed and together with his father, they were boarded inside the police vehicle. That on their way to the Bagong Silang Police Station, PO3 Pagsolingan showed to [petitioner] a small piece of plastic sachet containing white crystalline substances allegedly recovered by the raiding police team from their house. At around 9:00 o'clock in the evening, [petitioner] was transferred to the Sangandaan Headquarters where he was finally detained. That upon [petitioner's] transfer and detention at the said headquarters, his father was ordered to go home.[5]

On July 28, 2004, the RTC, after finding that the prosecution has established all the elements of the offense charged, rendered a Decision[6] convicting petitioner of Violation of Section 11, Article II of RA No. 9165, the dispositive portion of which reads:

WHEREFORE, from the facts established, the Court finds the accused ABRAHAM MICLAT Y CERBO "GUILTY" beyond reasonable doubt of the crime of possession of a dangerous drugs (sic) defined and

penalized under the provision of Section 11, sub-paragraph No. (3), Article II of Republic Act No. 9165 and hereby imposes upon him an indeterminate penalty of six (6) years and one (1) day to twelve (12) years of imprisonment, in view of the absence of aggravating circumstances. The Court likewise orders the accused to pay the amount of Three Hundred Thousand Pesos (Php300,000.00) as fine.

Let the 0.24 gram of shabu subject matter of this case be confiscated and forfeited in favor of the Government and to be turned over to the Philippine Drug Enforcement Agency for proper disposition.

SO ORDERED. (Emphasis supplied.)[7]

Aggrieved, petitioner sought recourse before the CA, which appeal was later docketed as CA-G.R. CR No. 28846.

On October 13, 2006, the CA rendered a Decision[8] affirming in toto the decision of the RTC, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the appeal is hereby DISMISSED and the assailed Decision AFFIRMED in toto. Costs against the accused-appellant.

SO ORDERED. (Emphasis supplied.)[9]

In affirming the RTC, the CA ratiocinated that contrary to the contention of the petitioner, the evidence presented by the prosecution were all admissible against him. Moreover, it was established that he was informed of his constitutional rights at the time of his arrest. Hence, the CA opined that the prosecution has proven beyond reasonable doubt all of the elements necessary for the conviction of the petitioner for the offense of illegal possession of dangerous drugs.

Hence, the petition raising the following errors:

- WHETHER OR NOT A POLICE SURVEILLANCE TEAM SENT TO DETERMINE THE VERACITY OF A CAMP CRIME MEMORANDUM OF SHABU TRADING ACTIVITY AT CALOOCAN CITY, WHICH CONVERTED THEIR MISSION FROM SURVEILLANCE TO A RAIDING TEAM, CAN VALIDLY MAKE AN ARREST AND SEARCH WITHOUT A VALID WARRANT HAVING BEEN FIRST OBTAINED FROM A COURT OF COMPETENT JURISDICTION.
- WHETHER OR NOT PEEPING THROUGH A CURTAIN-COVERED WINDOW IS WITHIN THE MEANING OF "PLAIN VIEW DOCTRINE" FOR A WARRANTLESS SEIZURE TO BE LAWFUL.
- WHETHER OR NOT THE BELIEF OF PO3 ANTONIO THAT THE FOUR (4) PIECES OF PLASTIC SACHETS ALLEGEDLY BEING ARRANGED BY PETITIONER CONTAINED SHABU JUSTIFIED HIS ENTRY INTO THE HOUSE AND ARREST PETITIONER WITHOUT ANY WARRANT.
- WHETHER OR NOT ARRANGING FOUR (4) PIECES OF PLASTIC SACHETS CONSTITUTE AS A CRIME WITHIN THE MEANING OF SECTION 5 (3), RULE 113 OF THE RULES OF COURT.
- WHETHER OR NOT PETITIONER WAS PROPERLY APPRAISED (SIC) OF HIS CONSTITUTIONAL RIGHTS TO BE INFORMED OF THE CAUSE AND NATURE OF HIS ARREST AND RIGHT TO BE ASSISTED BY COUNSEL DURING THE PERIOD OF HIS ARREST AND CONTINUED DETENTION.
- WHETHER OR NOT THE CONVICTION BY THE LOWER COURT OF THE PETITIONER, AS AFFIRMED BY THE HONORABLE COURT OF APPEALS, ON THE BASIS OF AN ILLEGAL SEARCH AND ARREST, IS CORRECT.[10]

Simply stated, petitioner is assailing the legality of his arrest and the subsequent seizure of the arresting officer of the suspected sachets of dangerous drugs from him. Petitioner insists that he was just watching television with his father and sister when police operatives suddenly barged into their home and arrested him for illegal possession of

shabu.

Petitioner also posits that being seen in the act of arranging several plastic sachets inside their house by one of the arresting officers who was peeping through a window is not sufficient reason for the police authorities to enter his house without a valid search warrant and/or warrant of arrest. Arguing that the act of arranging several plastic sachets by and in itself is not a crime per se, petitioner maintains that the entry of the police surveillance team into his house was illegal, and no amount of incriminating evidence will take the place of a validly issued search warrant. Moreover, peeping through a curtain-covered window cannot be contemplated as within the meaning of the plain view doctrine, rendering the warrantless arrest unlawful.

Petitioner also contends that the chain of custody of the alleged illegal drugs was highly questionable, considering that the plastic sachets were not marked at the place of the arrest and no acknowledgment receipt was issued for the said evidence.

Finally, petitioner claims that the arresting officer did not inform him of his constitutional rights at any time during or after his arrest and even during his detention. Hence, for this infraction, the arresting officer should be punished accordingly.

The petition is bereft of merit.

At the outset, it is apparent that petitioner raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.[11] An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[12]

In the present case, at the time of petitioner's arraignment, there was no objection raised as to the irregularity of his arrest. Thereafter, he actively participated in the proceedings before the trial court. In effect, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.[13]

True, the Bill of Rights under the present Constitution provides in part:

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

However, a settled exception to the right guaranteed by the above-stated provision is that of an arrest made during the commission of a crime, which does not require a previously issued warrant. Such warrantless arrest is considered reasonable and valid under Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure, to wit:

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

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;[14]

For the exception in Section 5 (a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[15]

In the instant case, contrary to petitioner's contention, he was caught in flagrante delicto and the police authorities effectively made a valid warrantless arrest. The established facts reveal that on the date of the arrest, agents of the Station Drug Enforcement Unit (SDEU) of the Caloocan City Police Station were conducting a surveillance operation in the area of Palmera Spring II to verify the reported drug-related activities of several individuals, which included the petitioner. During the operation, PO3 Antonio, through petitioner's window, saw petitioner arranging several plastic sachets containing what appears to be shabu in the living room of their home. The plastic sachets and its suspicious contents were plainly exposed to the view of PO3 Antonio, who was only about one and one-half meters from where petitioner was seated. PO3 Antonio then inched his way in the house by gently pushing the door. Upon gaining entrance, the operative introduced himself as a police officer. After which, petitioner voluntarily handed over to PO3 Antonio the small plastic sachets. PO3 Antonio then placed petitioner under arrest and, contrary to petitioner's contention, PO3 Antonio informed him of his constitutional rights.[16] PO3 Antonio then took the petitioner and the four (4) pieces of plastic sachets to their headquarters and turned them over to PO3 Moran. Thereafter, the evidence were marked "AMC 1-4," the initials of the name of the petitioner. The heat-sealed transparent sachets containing white crystalline substance were submitted to the PNP Crime Laboratory for drug examination, which later yielded positive results for the presence of methamphetamine hydrochloride, a dangerous drug under RA No. 9165.

Considering the circumstances immediately prior to and surrounding the arrest of the petitioner, petitioner was clearly arrested in flagrante delicto as he was then committing a crime, violation of the Dangerous Drugs Act, within the view of the arresting officer.

As to the admissibility of the seized drugs in evidence, it too falls within the established exceptions.

Verily, no less than the 1987 Constitution mandates that a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable, and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[17] The right against warrantless searches and seizure, however, is subject to legal and judicial exceptions, namely:

1. Warrantless search incidental to a lawful arrest;
2. Search of evidence in "plain view";
3. Search of a moving vehicle;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and emergency circumstances.[18]

What constitutes a reasonable or unreasonable warrantless search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[19]

It is to be noted that petitioner was caught in the act of arranging the heat-sealed plastic sachets in plain sight of PO3 Antonio and he voluntarily surrendered them to him upon learning that he is a police officer. The seizure made by PO3 Antonio of the four plastic sachets from the petitioner was not only incidental to a lawful arrest, but

it also falls within the purview of the "plain view" doctrine.

Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The "plain view" doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent. (Emphasis supplied.)[20]

It is clear, therefore, that an object is in plain view if the object itself is plainly exposed to sight. Since petitioner's arrest is among the exceptions to the rule requiring a warrant before effecting an arrest and the evidence seized from the petitioner was the result of a warrantless search incidental to a lawful arrest, which incidentally was in plain view of the arresting officer, the results of the ensuing search and seizure were admissible in evidence to prove petitioner's guilt of the offense charged.

As to petitioner's contention that the police failed to comply with the proper procedure in the transfer of custody of the seized evidence thereby casting serious doubt on its seizure, this too deserves scant consideration.

Section 21, paragraphs 1 and 2, Article II of RA No. 9165 provides:

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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

x x x x.

Corollarilly, the implementing provision of Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165, provides:

(a) 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: 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.

x x x x.[21]

From the foregoing, it is clear that the failure of the law enforcers to comply strictly with the rule is not fatal. It does not render petitioner's arrest illegal nor the evidence adduced against him inadmissible.[22] What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." [23]

Here, the requirements of the law were substantially complied with and the integrity of the drugs seized from the petitioner was preserved. More importantly, an unbroken chain of custody of the prohibited drugs taken from the petitioner was sufficiently established. The factual antecedents of the case reveal that the petitioner voluntarily surrendered the plastic sachets to PO3 Antonio when he was arrested. Together with petitioner, the evidence seized from him were immediately brought to the police station and upon arriving thereat, were turned over to PO3 Moran, the investigating officer. There the evidence was marked. The turn-over of the subject sachets and the person of the petitioner were then entered in the official blotter. Thereafter, the Chief of the SDEU, Police Senior Inspector Jose Ramirez Valencia, endorsed the evidence for laboratory examination to the National Police District PNP Crime Laboratory. The evidence was delivered by PO3 Moran and received by Police Inspector Jessie Dela Rosa.[24] After a qualitative examination of the contents of the four (4) plastic sachets by the latter, the same tested positive for methamphetamine hydrochloride, a dangerous drug.[25]

An unbroken chain of custody of the seized drugs had, therefore, been established by the prosecution from the arresting officer, to the investigating officer, and finally to the forensic chemist. There is no doubt that the items seized from the petitioner at his residence were also the same items marked by the investigating officer, sent to the Crime Laboratory, and later on tested positive for methamphetamine hydrochloride.

For conviction of illegal possession of a prohibited drug to lie, the following elements must be established: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[26] Based on the evidence submitted by the prosecution, the above elements were duly established in the present case. Mere possession of a regulated drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession - the onus probandi is shifted to the accused, to explain the absence of knowledge or animus possidendi.[27]

It is a settled rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner.[28] Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth.[29]

In the present case, there is no compelling reason to reverse the findings of fact of the trial court. No evidence exist that shows any apparent inconsistencies in the narration of the prosecution witnesses of the events which transpired and led to the arrest of petitioner. After a careful evaluation of the records, We find no error was committed by the RTC and the CA to disregard their factual findings that petitioner committed the crime charged against him.

Against the overwhelming evidence of the prosecution, petitioner merely denied the accusations against him and

raised the defense of frame-up. The defense of denial and frame-up has been invariably viewed by this Court with disfavor, for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of the Dangerous Drugs Act. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.[30]

As to the penalty, while We sustain the amount of fine, the indeterminate sentence imposed should, however, be modified.

Section 11, Article II, RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, provides:

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:

x x x x.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x.

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.[31]

From the foregoing, illegal possession of less than five (5) grams of methamphetamine hydrochloride or shabu is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (P300,000.00) to Four Hundred Thousand Pesos (P400,000.00). The evidence adduced by the prosecution established beyond reasonable doubt that petitioner had in his possession 0.24 gram of shabu, or less than five (5) grams of the dangerous drug, without any legal authority.

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law; hence, the imposable penalty should be within the range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated October 13, 2006 of the Court of Appeals in CA-G.R. CR No. 28846 is AFFIRMED with MODIFICATION. Petitioner is sentenced to suffer the indeterminate sentence of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Sereno,[*] JJ., concur.

[*] Designated additional member, per Special Order No. 1028 dated June 21, 2011.

- [1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 140-51.
- [2] Id. at 40.
- [3] Id.
- [4] Id. at 76-77.
- [5] Id. at. 78.
- [6] Id. at 75-82.
- [7] Id. at 81-82.
- [8] Supra note 1.
- [9] Id. at 151.
- [10] Id. at 209-210.
- [11] Valdez v. People, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 622.
- [12] Rebellion v. People, G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.
- [13] People v. Santos, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 601.
- [14] Emphasis supplied.
- [15] People v. Tudtud, 458 Phil. 752, 775 (2003).
- [16] TSN, (PO3 Rodrigo Antonio), April 21, 2003, p. 5; rollo, p. 60.
- [17] 1987 Constitution, Article III, Sections 2 and 3 (2).
- [18] People v. Racho, G.R. No. 186529, August 3, 2010, 626 SCRA 633, 641.
- [19] People v. Nuevas, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 476.
- [20] People v. Lagman, G.R. No. 168695, December 8, 2008, 573 SCRA 224, 236, citing People v. Doria, 361 Phil. 595, 633-634 (1999).
- [21] Emphasis supplied.
- [22] People v. Pagkalinawan, G.R. No. 184805, March 3, 2010, 614 SCRA 202, 218, citing People v. Naquita, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448.
- [23] Id.
- [24] Rollo, p. 37.
- [25] Id. at 38.
- [26] People v. Teddy Batoon and Melchor Batoon, G.R. No. 184599, November 24, 2010.
- [27] People v. Sembrano, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 343.
- [28] People v. Tamayo, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564.
- [29] People v. Willie Midenilla, et al., G.R. No. 186470, September 27, 2010.

[30] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642.

[31] Emphasis supplied.

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