

GILBERT ZALAMEDA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 183656. September 04, 2009

Ponente: BRION, J.

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BRION, J.:

We review in this petition for review on certiorari the decision[1] and resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 30061 that affirmed the February 8, 2006 decision of the Regional Trial Court (RTC), Branch 64, Makati City.[3] This RTC decision found petitioner Gilbert Zalameda (petitioner) guilty of violating Section 11[4] of Republic Act (R.A.) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002), and sentenced him to suffer the indeterminate penalty of imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum. The trial court likewise found the petitioner and his co-accused Albert Villaflor (Villaflor) guilty of violating Section 12[5] of R.A. No. 9165, and sentenced them to suffer the indeterminate penalty of imprisonment for four (4) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum.

The prosecution charged the petitioner before the RTC with violation of Section 11, Article II of R.A. No. 9165 under the following Information:

Criminal Case No. 03-3559

That on or about the 14[th] day of September, 2003, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously possess one (1) heat sealed transparent plastic sachet containing zero point zero three (0.03) gram of Methylamphetamine Hydrochloride (shabu), which is a dangerous drug.

CONTRARY TO LAW.[6]

The petitioner and Villaflor were likewise charged before the same court with violation of Section 12, Article II of R.A. No. 9165. The Information for this charge reads:

Criminal Case No. 03-3560

That on or about the 14[th] day of September 2003, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, not being lawfully authorized to carry dangerous paraphernalia, did then and there willfully, unlawfully and feloniously have in their possession two (2) aluminum foil strips and three (3) unsealed transparent sachets with traces of Methylamphetamine Hydrochloride, three (3) other pieces of aluminum foils strips, one (1) stainless scissor and one (1) disposable lighter which are instruments, apparatuses or paraphernalia fit or intended for ingesting or introducing any dangerous drug into the body.

CONTRARY TO LAW.[7]

The petitioner and Villaflor pleaded not guilty to the charges.[8] During pre-trial, the prosecution and the defense stipulated on the following:

PRE-TRIAL ORDER

x x x

- That these cases were investigated by PO1 Alex Inopia;
- That after the investigation of PO1 Alex Inopia, he prepared the Final Investigation Report;
- That the Drug Enforcement Unit through SPO4 Arsenio Mangulabnan made a Request for Laboratory Examination;
- That the PNP Crime Laboratory through Police Inspector Karen Palacios conducted an examination on the specimen submitted;
- That Physical Science Report was issued by PNP Crime Laboratory Office detailing the findings of the Forensic Chemist; and
- The qualification of the Forensic Chemist.

The prosecution marked the following exhibits:

A Final Investigation Report

A-1 Signature of PO1 Alex Inopia

A-2 Signature of SPO4 Arsenio Mangulabnan

B Request for Laboratory Examination

B-1 Signature of SPO4 Arsenio Mangulabnan

C Duplicate Copy of Physical Science Report

C-1 Signature of Karen Palacios

D Original Copy of Physical Science Report

D-1 Signature of Karen Palacios

D-2 Signature of Engr. Richard Allan B. Mangalip

D-3 Signature of Juanita A. Ramos

The prosecution reserved its right to present and mark additional exhibits in the course of the trial.

The defense did not mark any exhibit but reserved the right to present and mark them in the course of the trial.

With the stipulation entered into by the prosecution and the defense, the testimony of Forensic Chemist Karen S. Palacios is dispensed with.

Pre-trial is terminated.[9]

Joint trial on the merits followed. The essential facts, based on the records, are summarized below.

At around 5:15 a.m. of September 14, 2003, SPO4 Mignelito Orbeta (SPO4 Orbeta), the desk officer of Precinct 1, Makati City, received a phone call from a concerned citizen regarding an on-going "pot session" at 2725 D. Gomez St., Barangay Tejeros, Makati City.[10] The house number was specified.[11]

Acting on this information, SPO4 Orbeta dispatched PO2 Faustino De Guia (PO2 De Guia), PO2 Renato De Guzman, (PO2 De Guzman), PO2 Gonzalo Acnam, PO1 Donie Tidang (PO1 Tidang), and one Major Ancheta to D. Gomez St., Barangay Tejeros to verify the report. They were in uniform.[12] They reached their intended destination at 5:25 a.m. which they found to be a house - three by six (3 x 6) meters - located along D. Gomez St. They found the door of the house slightly open.[13] PO2 De Guzman peeped inside and saw the petitioner and Villaflor sniffing smoke[14] - "may sinisinghot sila na usok"[15] - while sitting on a bed.[16] PO2 De Guzman gave a "thumbs-up" sign to his companions who joined him in immediately rushing inside the house. Villaflor was holding a tooter at that point, which he threw away.[17] The petitioner initially showed resistance when the police introduced themselves as law enforcers.[18] They frisked the petitioner and Villaflor in accordance with police procedure,[19] and recovered from the petitioner's right pocket a rectangular plastic sachet containing white crystalline substances.[20] The police likewise found on top of the bed aluminum foils (later confirmed to have traces of shabu), three (3) plastic sachets containing traces of white crystalline substance, a pair of scissors, a disposable lighter, a bag with a plastic zipper, and an improvised tooter.[21] The police handcuffed the petitioner and Villaflor, informed them of their rights and their violation of R.A. No. 9165, and brought them to the police station.[22]

At the police station, PO2 De Guzman marked the confiscated items,[23] and turned them and the suspects to SPO4 Arsenio Mangulabnan (SPO4 Mangulabnan). The latter prepared a request for laboratory examination;[24] immediately after, the seized items were brought to the PNP Crime Laboratory for analysis and examination. Police Inspector Karen S. Palacios (Police Inspector Palacios), Forensic Chemical Officer of the PNP Crime Laboratory, conducted an examination on the specimens submitted,[25] and found them to be positive for the presence of shabu.[26] Urine tests conducted on the petitioner and Villaflor also yielded a positive result.[27]

The petitioner presented a different version of the events and narrated that he and Villaflor were talking at around 11:47 p.m. of September 13, 2003 when four men in civilian clothes barged into his house on D. Gomez Street.[28] The door at that time was closed but not locked. These men ordered them to stand, and then handcuffed them.[29] PO2 De Guzman frisked him and found P100.00 in his pocket. PO1 Tidang then conducted a search on the room.[30] Afterwards, the police brought them to Precinct 1 where they were detained. At the police station, the police asked them whether they had money to give in exchange for their liberty (i.e. "pang-areglo"). The police initially demanded P20,000.00, but the petitioner and Villaflor answered that they did not have this amount.[31] The petitioner likewise denied that he and Villaflor were using drugs when the police entered his house.[32]

On cross examination, he testified that Villaflor was a friend of his sister, Julie; and that the latter requested Villaflor to borrow money from their (his sister's and his) mother, whose house was located in a nearby street.[33] The money was for the baptism of Julie's daughter scheduled for the next day.[34] He did not anymore accompany Villaflor to his mother's house because her mother was already asleep.[35] He declared that he did not personally know the persons who arrested them prior to their arrest.[36] He also added that PO2 De Guzman demanded P20,000.00 from him in exchange for his liberty.

The RTC, in its decision of February 8, 2006, convicted the petitioner and Villaflor of the crimes charged, and sentenced them, as follows:[37]

- In Criminal Case No. 03-3559, the accused GILBERT ZALAMEDA y SUMILE is found GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and is sentenced to suffer the indeterminate imprisonment of TWELVE (12) YEARS, ONE (1) DAY as minimum to FOURTEEN (14) YEARS as maximum pursuant to the Indeterminate Sentence Law, R.A. No. 4103, as amended, and to pay a fine of P300,00.00.

- In Criminal Case No. 03-3560, the accused GILBERT ZALAMEDA y SUMILE and accused ALBERT VILLAFLO y HUERTE are found GUILTY beyond reasonable doubt of the crime of violation of Section 12, Article II, R.A. No. 9165 and are sentenced to suffer the indeterminate sentence of FOUR (4) MONTHS and ONE (1) DAY as minimum, to TWO (2) YEARS, SEVEN (7) MONTHS, as maximum, and to pay a fine of P10,000.00.

In both cases, the period during which the accused were held under detention shall be considered in their favor pursuant to existing rules.

The dangerous drug subject matter of Criminal Case No. 03-3559 consisting of 0.03 gram of Methylamphetamine Hydrochloride or shabu and the pieces of drug paraphernalia recovered from the accused and subject of Criminal Case No. 03-3560 are hereby transmitted to the Philippine Drug Enforcement Agency (PDEA) for its appropriate disposition.

SO ORDERED.

The petitioner appealed to the CA and this appeal was docketed as CA-G.R. CR No. 30061. The CA affirmed the RTC decision in its decision of March 18, 2008.[38] The petitioner moved to reconsider this decision, but the CA denied his motion in its resolution of July 15, 2008.[39]

In the present petition,[40] petitioner alleges that the items confiscated from him were inadmissible, and that the prosecution failed to prove the existence of the illegal drug.

For the State, the Office of the Solicitor General (OSG) counters with the argument that the testimonies of PO2 De Guzman and PO2 De Guia were straightforward and consistent on material points.[41] In addition, the warrantless arrest conducted by the police was valid as the petitioner and Villaflor were caught sniffing shabu. Since the arrest was lawful, the search made incidental to the arrest of the two accused was also lawful.[42]

The OSG further argues that the prosecution was able to show all the elements of the crimes charged.[43] The police also complied with the procedure in the custody and disposition of seized drugs under Section 21 of R.A. No. 9165 and its Implementing Rules.[44]

Finally, the OSG contends that the petitioner's bare denial constitutes self-serving negative evidence which cannot prevail over the categorical and positive testimony of the prosecution witnesses.[45]

We DENY the petition for lack of merit. The records of the case records support the conclusion that a lawful arrest, search and seizure took place, and that the prosecution fully discharged its burden of establishing all the elements necessary for conviction for the crimes charged beyond reasonable doubt.[46]

The prosecution duly established
the elements of the crimes charged

Illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 carries the following elements: (1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.[47] On the other hand, the elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. The evidence for the prosecution showed the presence of all these elements.

PO2 De Guzman, in his testimony of January 28, 2004, narrated the circumstances that led them to go to the

house of the petitioner;[48] how he saw the petitioner and Villaflor in the act of "sniffing smoke";[49] and how they arrested and searched the petitioner and seized evidence they discovered in plain view.[50]

PO2 De Guzman duly and positively identified the petitioner as the person he saw sniffing shabu with Villaflor, and as the same person from whose right pocket he recovered a rectangular plastic sachet containing white crystalline substances. He also narrated how the police inadvertently found various drug apparatus and paraphernalia scattered on top of the petitioner's bed. Per Report No. D-1142-03S of Police Inspector Palacios, the plastic sachet recovered from the petitioner was examined and found to contain 0.03 gram of methylamphetamine hydrochloride, a prohibited drug. The two aluminum foil strips and three unsealed transparent plastic sachets recovered on top of the petitioner's bed also tested positive for the presence of shabu. Thus, the petitioner knowingly possessed shabu - a prohibited drug - and had under his control various drug paraphernalia without legal authority to do so, all in violation of Sections 11 and 12 of R.A. No. 9165.

PO2 De Guzman's testimony also presented a complete picture of the police operation - from the time the desk officer received a tip regarding an ongoing pot session at the petitioner's house on D. Gomez Street; to the time the police went there and arrested the petitioner and Villaflor; until they returned to the police station and marked the confiscated items. PO2 De Guia corroborated PO2 De Guzman's testimony on all material points. The defense did not contest the admissibility of the seized items as evidence during trial. Significantly, the petitioner failed to produce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with.[51]

PO2 De Guzman testified in a spontaneous, straightforward and categorical manner, proving all the elements of the crimes charged; he never wavered despite the grueling cross-examination by the defense counsel.

The Petitioner's Defenses

a. The Legality of the Petitioner's Arrest

The petitioner alleges that since the warrantless arrest conducted by the police was illegal, the items seized from him as a result of said arrest were inadmissible.

This argument totally lacks merit.

We stress at the outset that the petitioner failed to question the legality of his warrantless arrest. The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made before he enters his plea; otherwise the objection is deemed waived.[52]

In any event, we carefully examined the records and now hold that the warrantless arrest conducted on the petitioner was valid. Section 5, Rule 113 of the Rules on Criminal Procedure lists the situations when a person may be arrested without a warrant, thus:

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;
- 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.

Paragraph (a) of Section 5 is commonly known as an in flagrante delicto arrest. For a warrantless arrest of an accused caught in flagrante delicto to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[53]

After carefully evaluating the evidence in its totality, we hold that the prosecution successfully established that the petitioner was arrested in flagrante delicto.

We emphasize that the series of events that led the police to the petitioner's house and to his arrest were triggered by a "tip" from a concerned citizen that a "pot session" was in progress at the petitioner's house located on D. Gomez Street. Under the circumstances, the police did not have enough time to secure a search warrant considering the "time element" involved in the process (i.e., a pot session may not be for an extended period of time and it was then 5:15 a.m.). In view of the urgency, SPO4 Orbeta immediately dispatched his men to proceed to the identified place - 2725 D. Gomez Street - to verify the report. At the place, the responding police officers verified from a slightly opened door and saw the petitioner and Villaflor "sniffing smoke" to use the words of PO2 De Guzman, or "sumisinghot ng shabu" as PO2 De Guia put it. There was therefore sufficient probable cause for the police officers to believe that the petitioner and Villaflor were then and there committing a crime. As it turned out, the petitioner indeed possessed a prohibited drug and, together with Villaflor, was even using a prohibited drug and likewise illegally possessed drug paraphernalia, contrary to law. When an accused is caught in flagrante delicto, the police officers are not only authorized but are duty-bound to arrest him even without a warrant.

In the course of the arrest and in accordance with police procedures, the petitioner and Villaflor were frisked, which search yielded the prohibited drug in the petitioner's possession. The police, aside from seeing Villaflor throw away a tooter, also saw various drug paraphernalia scattered on top of the petitioner's bed. These circumstances were sufficient to justify the warrantless search and seizure that yielded one (1) heat-sealed plastic sachet of shabu. In this regard, Section 13, Rule 126 of the Rules of Court states:

Section 13. Search Incident to Lawful Arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

The seizure of the various drug paraphernalia is likewise beyond question. Under the plain view doctrine, objects falling in the "plain view" of an officer who has a right to be in the position to have that view are subject to seizure and may be presented as evidence. This 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 the evidence in plain view is inadvertent; and (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.[54]

All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were dispatched by their desk officer; they arrested the petitioner and Villaflor as they had reason to believe that they were illegally using and possessing a prohibited drug and drug paraphernalia. The search of the petitioner incident to his arrest yielded the confiscated crystalline substance which later proved to be shabu. In the course of their lawful intrusion, they inadvertently saw the

various drug paraphernalia scattered on the bed. As these items were plainly visible, the police officers were justified in seizing them.

The petitioner also harps on the fact that the police did not conduct a prior surveillance to verify the tipped information. We emphasize that the "tip" has reference to an ongoing pot session - an activity that does not usually last for an extended period. We have held that when time is of the essence, the police may dispense with the need for prior surveillance.^[55] Simply stated, a prior surveillance is not necessary where the police operatives are pressed for time to capture a suspected offender, as in this case. Thus, the absence of a surveillance did not undermine the validity of the petitioner's arrest.

b. Denial and Extortion

The petitioner denied that he and Villaflor were caught sniffing shabu, and maintained that they were just talking to each other when the police arrived at his house at 11:47 p.m. of September 13, 2003. According to the petitioner, Villaflor was in his house because he (Villaflor) had been requested by Julie (the petitioner's own sister) to borrow money from their mother, Milagros, who lives in a nearby street. The money was for the baptism of Julie's daughter, scheduled for the next day.^[56] The petitioner maintained that he did not bring Villaflor to Milagros' house as soon as he (Villaflor) arrived in the evening of September 13, 2003 because it was already late and Milagros was already asleep.^[57] He maintained that he and Villaflor were arrested and detained on September 13, 2003 and not on September 14, 2003.^[58]

As the lower courts did, we find the petitioner's story unworthy of belief.

We find the petitioner's claim that he was arrested and detained in the evening of September 13, 2003 to be self-serving and uncorroborated by any separate competent evidence. The petitioner, in fact, admitted that he has no proof of such detention in his testimony of March 31, 2004.^[59] The justification that the petitioner offered for Villaflor's presence at his place, in the absence of any corroborating evidence, is likewise questionable. Allegedly, Villaflor was asked by Julie to borrow from Milagros money to be used in a baptism to be held on the following day. No reason exists in the records explaining why Villaflor would proceed to the petitioner's house and stay there, given the urgency of his task and given that, by the petitioner's own admission, Milagros was expecting Villaflor that night. The questionable status of this basic component of the denial, to our mind, renders the whole denial itself questionable. The latin maxim "falsus in unus, falsus in omnibus"^[60] best explains our reason.

The petitioner's denial must likewise fail in light of the positive identification and declarations made by the prosecution witnesses. As we stated earlier, these witnesses testified in a straightforward and categorical manner regarding the identities of the malefactors. They did not waver despite the defense counsel's rigid questioning.

Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense. As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed. One such positive evidence is the result of the laboratory examination conducted by the PNP Crime Laboratory on the various drug and drug paraphernalia recovered from the petitioner and Villaflor which revealed that the following confiscated items tested positive for the presence of shabu: (a) one heat-sealed transparent plastic sachet with marking "GSZ" containing 0.03 gram of white crystalline substance; (b) two aluminum foil strips both with markings "AHV," each containing white crystalline substance; and (c) three unsealed transparent plastic sachets all with markings "RSG" each containing white crystalline substance. In addition, the drug tests conducted on the petitioner and Villaflor both yielded positive results.

Petitioner's claim of extortion is similarly untenable. An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases. It is viewed by this Court with disfavor, for it can be easily concocted. To substantiate such a defense, the evidence must be clear and convincing.[61] In the present case, the petitioner was unable to support his allegation of extortion with any other evidence. The petitioner also admitted that he did not know the policemen previous to the arrest, hence negating any improper motive on the part of the police. Such lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of prosecution witnesses, should prevail over the petitioner's self-serving and uncorroborated extortion claim. It is also worth noting that the petitioner has not filed a single complaint against the police officers who allegedly attempted to extort money from him.

c. Non-presentation of the Informant

The petitioner argues that the informant was never presented in court to corroborate the testimonies of the prosecution witnesses.

We do not find this argument convincing.

The settled rule is that the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative.[62] Moreover, informants are usually not presented in court because of the need to hide their identities and preserve their invaluable service to the police.[63] Thus, we held in *People v. Boco*:[64]

Under the circumstances, we do not find any necessity for additional corroborating testimony, particularly that of the confidential informant. Intelligence agents, due to the nature of their work, are often not called to testify in court so as not to reveal their identities publicly. Once known, they could no longer be used again and, worse, may be the object of revenge by the criminals they implicate. The prevailing doctrine is that their testimonies are not essential for conviction, nor are they indispensable to a successful prosecution. With the testimonies of the arresting officers, they would be, after all, merely corroborative and cumulative.

d. The Integrity and Evidentiary Value of the
Examined and Presented Seized Items

The petitioner alleges that the prosecution failed to establish the evidence's chain of custody because the police operatives failed to strictly comply with Section 21(1) of R.A. No. 9165. He adds that the police did not immediately mark, photograph and inventory the drugs and drug paraphernalia at the place where they were seized.

We disagree.

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.[65]

Contrary to what the petitioner wants to portray, the chain of custody of the seized prohibited drug was shown not to have been broken. After the seizure of the rectangular plastic sachet containing white crystalline substance from the petitioner's possession and of the various drug paraphernalia on top of the petitioner's bed, the police immediately brought the petitioner and Villaflor to the police station, together with the seized items. PO2 De Guzman himself brought these items to the police station and marked them. The plastic sachet containing white crystalline substance was marked "GSZ"[66] (Exh. "F"); the improvised tooter aluminum foil strips and aluminum foil with traces of methylamphetamine hydrochloride were marked "AHV"[67] (Exh. "G" and "H"); the three pieces of unsealed transparent plastic sachet were marked "RSG"[68] (Exh. "I", "I-1", and "I-2"); the disposable lighter was marked "RSG" (Exh. "J"); the stainless pair of scissors was marked "RSG" (Exh. "K"); the transparent

plastic sachet containing three aluminum foil strips was marked "RSG" (Exh. "L"); and the Monsieur bag was marked "RSG" (Exh. "M"). These confiscated items were immediately turned over to SPO4 Mangulabnan, who in turn, forwarded them to the PNP Crime Laboratory, Southern Police District for examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Forensic Chemist Palacios concluded that Exhibits "F," "G," "H," "I," "I-1," and "I-2" tested positive for the presence of methylamphetamine hydrochloride.[69] When the prosecution presented these marked specimens in court, PO2 De Guzman positively identified them to be the same items he seized from the petitioner and which he later marked at the police station, from where the seized items were turned over to the laboratory for examination based on a duly prepared request.[70] We quote the pertinent portions of the records:

x x x

PROSECUTOR ALEX BAGAOISAN:

Q:

Now Mr. Witness, you mentioned earlier that when you frisked accused Zalameda, you were able to recover from his possession a sachet containing white crystalline substance?

PO2 RENATO DE GUZMAN:

A:

Yes, sir.

Q:

If that sachet containing white crystalline substance will be shown to you, will you be able to identify the same?

A:

Yes, sir.

Q:

I am showing to you, Mr. Witness, a sachet, which contains white crystalline substance. Will you please go over the same and tell us what relation does this have to the sachet containing white crystalline substance, which you said was recovered from accused Zalameda?

A:

This is the plastic sachet that I have recovered from the possession of accused Zalameda, sir.

Q:

Why are you certain that this is the same sachet containing white crystalline substance, which you recovered from accused Zalameda?

A:

I put markings, sir.

Q:

What markings?

A:

I placed GSZ.

Q:

Where did you place this marking?

A:

Inside the headquarters, sir.

Q:

Could you tell us what does this marking GSZ stand for?

A:

Gilbert Sumile Zalameda, sir.

Q:

May I request, Your Honor, that this white crystalline substance contained in a plastic sachet with markings GSZ be marked as Exhibit F, Your Honor. Now, you mentioned also that you were able to recover drug paraphernalia from the bed.

A:

Yes, sir.

Q:

You mentioned of an improvised tooter aluminum foil?

A:

Yes, sir.

Q:

I have here several pieces of evidence. Will you please step down and identify the improvised tooter aluminum foil you have mentioned?

A:

This one, sir.

Q:

And why are you certain that this is the same improvised tooter aluminum foil that you recovered from the accused?

A:

I placed markings sir.

Q:

What is the markings that you placed?

A:

AHV, sir.

Q:

What does AHV stand for?

A:

Albert Huerte Villaflor, sir.

Q:

May I request, Your Honor that this improvised tooter aluminum foil identified by the witnesses be marked as exhibit G with markings AHV. Now, you also mentioned of one aluminum foil, which was made as a tray, could you identify that particular object evidence that you have mentioned?

A:

Yes, sir, this is the one.

Q:

And why are you certain that this is the same aluminum foil, which was used as a tray?

A:

I also placed markings, sir.

Q:

What markings did you place in this particular object evidence?

A:

AHV, sir.

Q:

May I request, Your Honor, that this aluminum foil identified by the witness with markings AHV be marked as exhibit H. You mentioned of three pieces plastic sachets containing white crystalline substance. Now could you point to us these sachets that you have mentioned?

A:

Yes, sir. These are the plastic sachets.

Q:

And why are you certain that these are the same sachets which you said contained traces of shabu?

A:

I placed the markings, sir.

Q:

What markings did you place?

A:

My initial, sir, RSG.

Q:

May I request, Your Honor, that these three pieces of plastic sachets containing traces of shabu be marked as exhibit I, I-1, and I-2. Now, you also mentioned of disposable lighter. Will you please identify the disposable lighter that you have mentioned?

A:

Yes, sir, this is the one.

Q:

May I request, Your Honor, that the disposable lighter identified by the witness with markings RSG be marked as Exhibit J. How about the scissors, could you identify the scissors that you have recovered?

A:

Yes, sir. This is the one.

Q:

The witness identified stainless scissors, which we request to be marked as Exhibit K. Aside from these object evidence, what other object evidence did you find on the bed?

A:

I also found three rolled aluminum foil, sir.

Q:

Will you be able to identify those three aluminum foils that you have mentioned?

A:

Yes, sir.

Q:

Please point them out to us.

A:

Here, sir.

Q:

May I request, Your Honor, that these three rolled aluminum foils with markings RS be marked as Exhibit L. Now, why are the markings different, there is the marking RSG, there is a marking AHV? [sic]

A:

For identification, sir.

Q:

You also mentioned a bag. Will you please identify that bag?

A:

Here, sir.

Q:

We request, Your Honor, that the bag identified by the witness be marked as Exhibit M. Now, you also mentioned that you brought Zalameda to the headquarters.

A:

Yes, sir.

Q:

How about accused Albert Villaflor?

A:

We also brought him to the headquarter[s].

Q:

What did you do at the precinct?

A:

Our desk officer prepared the necessary paper to turn over the two suspects to the investigator.

Q:

So, did you come to know what happened after that?

A:

The investigator prepared a request addressed to the crime lab. for laboratory examination of the confiscated evidence, sir.

Q:

How about the accused, what did you do with them after the investigation?

A:

The investigator also made a request for drug test examination addressed to the Crime Laboratory.

Q:

And did you come to know what was the result of the examination conducted?

A:

Yes, sir.

Q:

And what was the result?

A:

The result is positive, sir.

Q:

What do you mean positive?

A:

Positive, sir, for methylamphetamine hydrochloride or shabu, sir.

Q:

How about the drug test?

A:

The accused also gave positive result.

x x x[71] [Emphasis ours]

Thus, the prosecution established the crucial link in the chain of custody of the seized items from the time they were first discovered until they were brought for examination. Besides, as earlier stated, the petitioner did not contest the admissibility of the seized items during trial. The integrity and the evidentiary value of the drug seized from the petitioner were therefore duly proven not to have been compromised.

We also reject the petitioner's claim that the non-presentation of the forensic chemist was fatal to the prosecution's case. The petitioner never raised in issue before the trial court the non-presentation of Police Inspector Palacios. In fact, the defense during the pre-trial agreed to dispense with her testimony.[72] It must also be stressed that Police Inspector Palacios is a public officer, and her report carries the presumption of regularity. Besides, Section 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are prima facie evidence of the facts therein stated.[73] Police Inspector Palacios' findings that Exhibits "F," "G," "H," "I," "I-1," and "I-2" were found positive for the presence of shabu are, therefore, conclusive in the absence of evidence proving the contrary.

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165[74] does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.[75] In the present case, we see substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court. In *People v. Del Monte*,[76] we explained:

We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. x x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight - evidentiary merit or probative value - to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.

The Proper Penalties

The petitioner was caught in possession of 0.03 gram of shabu or methamphetamine hydrochloride. The illegal possession of dangerous drugs is punished under Section 11, paragraph 2(3), Article II of R.A. No. 9165, which provides:

(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 x x x methamphetamine hydrochloride or "shabu" x x x

We sustain the penalty imposed by the RTC and affirmed by the CA in Criminal Case No. 03-3559, as it is within the range provided for by law.

Meanwhile, Section 12, Article II of R.A. No. 9165 provides that the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and any other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

The courts a quo sentenced the petitioner to suffer the indeterminate penalty of four months and one day, as minimum, to two years and seven months, as maximum in Criminal Case No. 03-3560. Pursuant to Section 12 of R.A. No. 9165, we increase the minimum to six (6) months and one (1) day imprisonment.

WHEREFORE, premises considered, the Court of Appeals decision and resolution dated March 18, 2008 and July 15, 2008, respectively, in CA-G.R. CR No. 30061 are AFFIRMED with the MODIFICATION that in Criminal Case No. 03-3560, petitioner Gilbert Zalameda is SENTENCED to suffer the indeterminate penalty of six (6) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum.

The CA decision finding the petitioner guilty of violation of Section 11 of R.A. No. 9165 in Criminal Case No. 03-3559 is AFFIRMED in all respects.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Del Castillo, and Abad, JJ., concur.

[1] Penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr.; rollo, pp. 87-96.

[2] *Id.*, pp. 108-109.

[3] Penned by Judge Delia H. Panganiban; *id.*, pp. 60-68.

[4] Sec.11. Possession of Dangerous Drugs.

[5] Sec. 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.

[6] CA records, p. 10.

[7] *Id.*, p. 11.

[8] Records, pp. 18-19.

[9] Pre-trial Order, *id.*, pp. 33-34.

[10] TSN, January 28, 2004, pp. 3-4, 15-16.

- [11] Id., pp. 3 and 24.
- [12] Id., pp. 4, 23-24.
- [13] Id., pp. 4-5.
- [14] Id., p. 5.
- [15] Id., p. 23.
- [16] Id., p. 9.
- [17] Id. , pp. 5 and 27.
- [18] Id. , pp. 19-20.
- [19] Id. , pp. 6 and 20.
- [20] Id. , pp. 6 and 21.
- [21] Id., pp. 7-9.
- [22] Id., pp. 7 and 20.
- [23] Id., p. 10.
- [24] Id. , p. 14; See also Pre-Trial Order, records, pp. 33-34.
- [25] Id.
- [26] See Physical Science Report No. D-1142-03S, records, p. 55.
- [27] TSN, January 28, 2004, pp. 14-15.
- [28] TSN, March 31, 2004, pp. 4-5.
- [29] Id., p. 8.
- [30] Id., pp. 9-10.
- [31] Id., pp. 11-13.
- [32] Id., p. 14.
- [33] Id., pp. 25-26.
- [34] Id., p. 27.
- [35] Id., p. 29.
- [36] Id., pp. 31-32.
- [37] RTC Decision, rollo, pp. 67-68.
- [38] Id., pp. 87-96.
- [39] Id., pp. 108-109.
- [40] Id., pp. 10-36.
- [41] Comment, id., p. 132.

- [42] Id., p. 134.
- [43] Id., p. 133.
- [44] Id., pp. 136-137.
- [45] Id., p. 138.
- [46] See *People v. Rivera*, G.R. No. 182347, October 17, 2008.
- [47] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430.
- [48] TSN, January 28, 2004, pp. 3-4.
- [49] Id., p. 5.
- [50] Id., pp. 6-14.
- [51] See *People v. Hernandez*, G.R. No. 184804, June 18, 2009.
- [52] See *People v. Divina*, G.R. No. 174067, August 29, 2007, 531 SCRA 631.
- [53] See *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393.
- [54] See *People v. Salanguit*, G.R. Nos. 133254-55, April 19, 2001, 356 SCRA 683.
- [55] See *Quinicot v. People*, G.R. No. 179700, June 22, 2009.
- [56] TSN, March 31, 2004, pp. 4-6.
- [57] Id., p. 29.
- [58] Id., pp. 4 and 11.
- [59] Id., p. 19.
- [60] False in part, fake in everything.
- [61] See *People v. Boco*, G.R. No. 129676, June 23, 1999, 309 SCRA 42.
- [62] See *People v. Lopez*, G.R. No. 172369, March 7, 2007, 517 SCRA 749.
- [63] See *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513.
- [64] G.R. No. 129676, June 23, 1999, 309 SCRA 42.
- [65] See *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009.
- [66] The initials of petitioner Gilbert S. Zalameda.
- [67] The initials of Albert H. Villaflor.
- [68] The initials of PO2 Renato S. De Guzman.
- [69] See Physical Science Report No. D-1142-03S, records, p. 55.
- [70] TSN, January 28, 2004, pp. 10-15.
- [71] TSN, January 28, 2004, pp. 10-15.
- [72] Pre-Trial Order, *supra*.

[73] See *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570.

[74] See *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430; *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 375; *People v. del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828; *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621.

[75] See *People v. Teodoro*, G.R. No. 185164, June 22, 2009.

[76] G.R. No. 179940, April 23, 2008, 662 SCRA 627.

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