

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY UNISA Y ISLAN, ACCUSED-APPELLANT.*G.R. No. 185721. September 28, 2011*

Ponente: PEREZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-185721/>**PEREZ, J.:**

On appeal is the Decision[1] dated 28 February 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 01559, affirming the Decision[2] dated 2 September 2005 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 205, in Criminal Case Nos. 03-504 to 03-505, finding herein appellant Ricky Unisa y Islan guilty beyond reasonable doubt of the offenses of (1) illegal sale of 0.02 gram of shabu, a dangerous drug, in violation of Section 5,[3] Article II of Republic Act No. 9165,[4] for which he was sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and (2) illegal possession of 0.43 gram of shabu, a dangerous drug, in violation of Section 11,[5] Article II of Republic Act No. 9165, for which he was sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a fine of P300,000.00.

Appellant Ricky Unisa y Islan was charged in two separate Informations[6] both dated 26 June 2003 with violation of Sections 5 and 11, Article II of Republic Act No. 9165, which were respectively docketed as Criminal Case No. 03-504 and Criminal Case No. 03-505. The Informations state as follows:

Criminal Case No. 03-504

That on or about the 24[th] day of June 2003, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [appellant], without authority of law, did then and there willfully and unlawfully sell, deliver and give away to another Methylamphetamine Hydrochloride, a dangerous drug weighing 0.02 gram contained in one (1) small heat-sealed transparent plastic sachet, in violation of the above-cited law.[7] [Emphasis supplied].

Criminal Case No. 03-505

That on or about the 24[th] day of June 2003, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [appellant], not being authorized by law, did then and there willfully and unlawfully have in his possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug weighing 0.43 grams (sic) contained in twenty (20) small heat-sealed transparent plastics sachets, in violation of the above-cited law.[8] [Emphasis supplied].

When arraigned, appellant, assisted by counsel de oficio, pleaded NOT GUILTY[9] to both charges.

At the Pre-Trial Conference, the parties agreed to dispense with the testimony of Police Inspector Hermosila Fermindoza (P/Insp. Fermindoza) after stipulating on her expertise as forensic chemist whose testimony would consist of proving receipt of the Request for Laboratory Examination[10] of the pieces of evidence seized from appellant, which pieces of evidence were placed inside a one-half brown mailing envelope and were appended thereto, to wit: (1) one small heat-sealed transparent plastic sachet containing white crystalline substance with markings "RU"; and (2) 20 more small heat-sealed transparent plastic sachets likewise containing white

crystalline substance with markings "RU-1" to "RU-20," as well as a pair of folding scissors with markings "RU-22," which were inside a black coin purse with white stripes. Similarly stipulated was that P/Insp. Fermindoza has conducted a chemical analysis of the substance and the analysis was reduced into writing[11] as evidenced by a Physical Science Report No. D-743-03s.[12]

A joint trial on the merits ensued thereafter.

The prosecution presented the testimony of Police Officers 1 Mark Sherwin Forastero (PO1 Forastero) and Percival Medina (PO1 Medina), both of whom are police operatives of the Drug Abuse Prevention and Control Office-Drug Enforcement Unit (DAPCO-DEU), Muntinlupa City.[13] PO1 Forastero and PO1 Medina were the designated poseur-buyer and arresting officer, respectively, in the buy-bust operation against appellant.

The facts, as culled from the records, are as follows:

On the basis of a series of reports received by DAPCO-DEU, Muntinlupa City, coming from concerned citizens concerning the illegal drug trade of alias Ricky in Quezon Street, Purok 7, Poblacion, Muntinlupa City, the police operatives of the aforesaid office conducted a surveillance and monitoring operation on 23 June 2003. The surveillance and monitoring operation confirmed that alias Ricky was, indeed, engaged in the sale of illegal drugs which usually took place late at night until dawn.[14]

Corollary thereto, on 24 June 2003, at around 8:00 p.m., P/Insp. Arsenio Silungan (P/Insp. Silungan), Chief of DAPCO-DEU, Muntinlupa City, formed a buy-bust team to conduct a buy-bust operation against alias Ricky. The buy-bust team was composed of the following police operatives, namely: PO1 Forastero, who was designated as the poseur-buyer; PO1 Medina, who was tasked as the arresting officer; Senior Police Officer 1 Zosimo Goce (SPO1 Goce), who was appointed as the team leader; SPO1 Joel Vega (SPO1 Vega); Senior Police Officer 3 Hector Macalla (SPO3 Macalla); a certain SPO3 Madriaga; PO1 Ronald Natuel (PO1 Natuel); PO1 Reynold Aguirre (PO1 Aguirre); a certain PO1 Gunayon; a certain PO1 Respicio; a certain PO1 Tan; and PO1 Joseph Tedd Leonor (PO1 Leonor); and two civilian agents, namely: Dalton Ibañez (Ibañez) and Charlie Isla (Isla), all of whom were assigned as perimeter back-up group.[15]

The buy-bust team, thereafter, prepared the buy-bust money consisting of two One Hundred Peso (P100.00) bills in the total amount of P200.00 bearing Serial Nos. JX 392195 and DY 711514, respectively. PO1 Aguirre signed the buy-bust money at the bottom thereof. They were also photocopied and recorded in the police blotter as Entry No. 03-180.[16] A Pre-Operation Report/Coordination Sheet was similarly prepared and transmitted to the Philippine Drug Enforcement Agency (PDEA) via facsimile.[17]

After all the necessary documentary requirements had been completed, the buy-bust team proceeded to the target area, i.e., Quezon Street, Purok 7, Poblacion, Muntinlupa City, on board two vehicles, to wit: Toyota Revo and Anfra Van with Plate Nos. SGS 492 and SFG 484, respectively. PO1 Forastero, PO1 Medina, SPO1 Goce, SPO3 Macalla, SPO3 Madriaga and the two civilian agents boarded the Toyota Revo while the rest of the buy-bust team boarded the Anfra Van.[18]

Upon reaching the area of operation at around 9:30 p.m., more or less, the buy-bust team strategically parked the Toyota Revo and the Anfra Van at Sitio Tipaurel and Poblacion, 50 meters away from each other. While inside the Toyota Revo, PO1 Forastero and PO1 Medina already saw their confidential informant some 40 meters away waiting for them. PO1 Forastero and PO1 Medina, nevertheless, stayed inside the Toyota Revo as they were still waiting for a text message coming from another asset who would confirm alias Ricky's presence at the target area. After an hour, the aforesaid asset texted SPO3 Macalla to inform the buy-bust team that alias Ricky was already at the target area.[19]

Accordingly, PO1 Forastero and PO1 Medina alighted from the vehicle. Upon seeing them, the confidential informant promptly approached and accompanied them to alias Ricky's place. At this juncture, the other members of the buy-bust team also alighted from their vehicles and followed PO1 Forastero, PO1 Medina and the confidential informant at a distance to provide perimeter security.[20]

After a 15-minute walk traversing a place along the train railways, PO1 Forastero, PO1 Medina and the confidential informant reached the exact place of alias Ricky in Quezon Street, Purok 7, Poblacion, Muntinlupa City. The rest of the buy-bust team then acted as perimeter guards. At a distance of about seven meters, the confidential informant saw a person wearing a white sando and black pants sitting by a lighted house with an open door whom he recognized and identified as alias Ricky. The confidential informant then pinpointed alias Ricky to PO1 Forastero and PO1 Medina. Thereafter, the confidential informant immediately approached alias Ricky and introduced him to PO1 Forastero and PO1 Medina as his relatives. After gaining the trust and confidence of alias Ricky, PO1 Forastero told the former that he would like to "score" P200.00 worth of shabu and he simultaneously handed to him the two P100.00-peso bills marked money amounting to P200.00. Alias Ricky received the marked money and, in turn, got and opened a black coin purse with white stripes from his left hand and took out a small heat-sealed transparent plastic sachet containing the suspected shabu and handed it to PO1 Forastero, which the latter accepted.[21]

At once, PO1 Forastero held alias Ricky's right hand and introduced himself as police officer. PO1 Medina then assisted PO1 Forastero in arresting alias Ricky by holding the latter's left hand. The other members of the buy-bust team, who were just within the vicinity, arrived. PO1 Medina recovered from the left hand of alias Ricky a black coin purse with white stripes containing 20 more small heat-sealed transparent plastic sachets with white crystalline substance suspected to be shabu and a small pair of folding scissors. The two marked P100.00-peso bills with Serial Nos. JX 392195 and DY 711514, respectively, amounting to P200.00, however, were recovered from alias Ricky's pocket by PO1 Forastero. The latter compared the recovered marked money with the photocopies thereof, which he brought with him in the buy-bust operation, and they matched.[22]

Subsequently, alias Ricky was informed of his constitutional rights. He was, thereafter, brought by the buy-bust team to their office where they came to know his full name to be Ricky Unisa y Islan, the herein appellant. The items seized from the latter, which remained in the possession of PO1 Forastero and PO1 Medina on their way to their office, were immediately marked upon their arrival thereat. PO1 Forastero placed the markings "RU" representing appellant's initials on the subject of the sale, i.e., one small heat-sealed transparent plastic sachet containing suspected shabu, while PO1 Medina marked with "RU-1" to "RU-20" (inclusive) the seized 20 more small heat-sealed transparent plastic sachets with white crystalline substance. The black coin purse with white stripes where the 20 more small heat-sealed transparent plastic sachets with white crystalline substance, together with a small pair of folding scissors, were found was likewise marked by PO1 Medina with "RU-21." The small pair of folding scissors was similarly marked by PO1 Medina with "RU-22." An inventory thereof was also made.[23]

Afterwards, a Request for Laboratory Examination[24] of the seized items and a Request for Drug Test[25] of appellant both dated 24 June 2003 were made. PO1 Forastero, PO1 Medina and PO1 Gunayon then forwarded the seized items to the Philippine National Police (PNP), Crime Laboratory, PNP Southern Police District, Fort Bonifacio, Taguig City, for laboratory examination.[26]

Appellant's drug test yielded positive result[27] as evidenced by Physical Science Report No. DT-889-03.[28] As regards the items seized from appellant, they were all found positive[29] for the presence of methylamphetamine hydrochloride or shabu, a dangerous drug, as evidenced by Physical Science Report No. D-743-03s.[30]

The defense presented the testimony of appellant and his common-law wife, Janice Deles (Janice). As expected, appellant denied all the accusations against him and, instead, offered a different version of what transpired on the day of his arrest.[31]

Appellant, a tricycle driver, claimed that on 24 June 2003, at around 8:00 p.m., while he was inside their house at PNR Site, Purok 7, Poblacion, Muntinlupa City, fixing a broken flashlight, PO1 Forastero and PO1 Medina suddenly barged in and arrested him for the alleged illegal sale of shabu, a dangerous drug. Appellant denied the same but the police officers insisted that their office received several calls regarding his illegal drug activities. Appellant was then immediately handcuffed by Ibañez, one of the civilian agents of DAPCO-DEU, Muntinlupa City, and was brought out of his house where they met SPO3 Macalla to whom Ibañez purportedly handed the P4,200.00, which the latter recovered from appellant while they were still inside the house. Appellant vehemently denied that such money was earned by him from selling shabu. Instead, he explained that the said money was a loan from a certain Corazon Arciaga to be used by his common-law wife as capital for selling fruits. Appellant was, thereafter, made to board the Toyota Revo and was brought to the office of DAPCO-DEU, Muntinlupa City, where his common-law wife followed him. There, appellant professed, SPO1 Vega forced him to acknowledge possession of the pieces of evidence allegedly retrieved from him. He refused to do so. He was, thereafter, put in jail.[32]

Appellant, nonetheless, admitted that it was only at the time of his arrest that he met the arresting police officers. He did not know them prior to his arrest. There was also no bad blood between him and the police. Also, despite appellant's allegation that Ibañez took his money and gave it to SPO3 Macalla, he did not file robbery charges against them.[33]

To bolster appellant's defense of denial, his common-law wife, Janice, corroborated his testimony.

Janice maintained that appellant was not in possession and was not engaged in the illegal sale of shabu. Janice declared that at the time and place in question, while she was dressing up their child after giving him medicine, Ibañez, together with PO1 Forastero and PO1 Medina, hastily barged into their house. Without any arrest warrant or search warrant, Ibañez instantly handcuffed and frisked appellant. Ibañez similarly took appellant's money, which the latter borrowed from a certain Corazon Arciaga, and handed it to SPO3 Macalla. At this juncture, Janice forcefully resisted appellant's arrest and likewise tried to retrieve the money but to no avail. The police officers successfully brought appellant out of their house and boarded him inside a vehicle. Janice continuously pleaded not to take appellant but her pleas remained unheeded. Janice then followed appellant up to the office of DAPCO-DEU, Muntinlupa City.[34]

The trial court found that all the elements of the offenses charged against appellant were satisfactorily proven by the prosecution. In its Decision dated 2 September 2005, the trial court held appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

WHEREFORE, premises considered, [appellant] Ricky Unisa is hereby found guilty beyond reasonable doubt of the offenses of illegal sale of 0.02 gram of methylamphetamine hydrochloride and possession of 0.43 gram thereof and sentences him as follows:

- For Crim. Case No. 03-504 (Violation of Sec. 5, Republic Act [No.] 9165, sale of dangerous drugs) - life imprisonment and to pay a fine of PESOS: FIVE HUNDRED THOUSAND (P500,000.00);
- For Crim. Case No. 03-505 (Violation of Sec. 11, Republic Act [No.] 9165, possession of 0.43 gram of methylamphetamine hydrochloride) - imprisonment ranging from twelve years and one day to fifteen years (applying the Indeterminate Sentence Law) and to pay a fine of PESOS: THREE HUNDRED THOUSAND

(P300,000.00).

Costs against [appellant].

Pursuant to Section 21(7), Republic Act [No.] 9165, Trial Prosecutor Brenn S. Taplac shall, after promulgation hereof, inform the Dangerous Drugs Board of the final termination of the case and request this court for the [turnover] of the dangerous drug subject matter thereof to the PDEA for proper disposition and destruction within twenty-four hours from its receipt.[35] [Emphasis supplied].

Disconcerted, appellant appealed the Decision of the trial court to the Court of Appeals via Notice of Appeal.[36]

In his brief, appellant assigned the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION'S WITNESSES WHOSE TESTIMONIES WERE FULL OF DISCREPANCIES AND INCONSISTENCIES.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE [APPELLANT] FOR VIOLATIONS OF SECTIONS 5 & 11 OF REPUBLIC ACT NO. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[37]

The Court of Appeals, in the assailed Decision dated 28 February 2008, affirmed appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165. The Court of Appeals held that all the essential elements of illegal sale and possession of shabu were duly proven by the prosecution. Appellant's defense of denial collapses in the face of positive identification by the prosecution witnesses who, as police officers, enjoy in their favor the presumption of regularity in the performance of their official duties. The Court of Appeals similarly declared that the defense failed to prove ill-motive on the part of the prosecution witnesses and the other members of the buy-bust team to impute a serious offense that would certainly jeopardize the life and liberty of appellant. The Court of Appeals also stated that the inconsistencies and/or discrepancies pointed to by appellant were too trivial and inconsequential to warrant the reversal of his conviction. Such inconsistencies and/or discrepancies did not negate the fact that a buy-bust operation was conducted and as a result of which appellant was caught in flagrante delicto selling and possessing shabu. The Court of Appeals, thus, decreed:

WHEREFORE, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED.[38]

Still unsatisfied, appellant comes to this Court contending that the trial court gravely erred in convicting him of the offenses charged despite the existence of several facts creating serious doubts as to the veracity thereof. Appellant posits that it was quite unusual and improbable for a police officer, like PO1 Medina, to correctly remember the six-digit serial numbers of the marked money used in the buy-bust operation, which was conducted about a year earlier than his testimony, but could not remember if he placed any marking thereon. It was also quite odd for PO1 Medina not to recall the date of his last successful buy-bust operation despite his vivid recollection of the serial numbers of the marked money used in the buy-bust operation against appellant.

Appellant further contends that the discrepancy and contradiction in the testimonies of PO1 Forastero and PO1 Medina cast doubts on the credibility of their testimonies. While PO1 Forastero maintained that he and PO1 Medina were both introduced to appellant as relatives of the confidential informant, PO1 Medina claimed otherwise.

Appellant also avers that the standard operating procedure that was supposed to be observed by the buy-bust team was tainted with irregularities, which created doubts on the authenticity of the buy-bust operation. Though it was P/Insp. Silungan who conducted the briefing on the manner of the buy-bust operation, it was PO1 Natuel who signed the Pre-Operation Report/Coordination Sheet that was transmitted to PDEA for and on behalf of P/Insp. Silungan. Moreover, the police officers who prepared the marked money merely photocopied and entered the same in their blotter, instead, of lacing it with ultra-violet powder despite the fact that a prior surveillance and confirmation operations have been conducted before the actual buy-bust operation.

Finally, appellant asserts that the police officers likewise failed to observe the requirements laid down in Section 21[39] of Republic Act No. 9165, particularly the photographing of the seized drugs in his presence or his representative or counsel, a representative from the media, a representative from the Department of Justice (DOJ) and any elected public official.

We sustain appellant's conviction for violation of Sections 5 and 11, Article II of Republic Act No. 9165.

We rely on the trial court's assessment of the credibility of witnesses, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.[40]

For a successful prosecution of the offense of illegal sale of dangerous drugs, like shabu, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.[41] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[42] Clearly, the commission of the offense of illegal sale of dangerous drugs, like shabu, merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.[43] In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.

The testimony of PO1 Forastero, who acted as the poseur-buyer in the buy-bust operation against appellant explicitly described how the sale transaction of shabu between him and appellant occurred. This commenced when the confidential informant approached appellant and introduced to the latter PO1 Forastero and PO1 Medina as his relatives. The same was followed by PO1 Forastero's query to appellant if he could "score" P200.00 worth of shabu, as well as the simultaneous handing over of the said amount consisting of two P100.00-peso bills buy-bust money to the latter. Appellant received the buy-bust money, got and opened a black coin purse with white stripes from his left hand, took out therefrom one small heat-sealed transparent plastic sachet with white crystalline substance, which was later on confirmed as methylamphetamine hydrochloride or shabu per Physical Science Report No. D-743-03s, and handed it to PO1 Forastero. The latter accepted the same. Such exchange of the buy-bust money and the small heat-sealed transparent plastic sachet with white crystalline substance later on confirmed as shabu between PO1 Forastero and appellant already consummated the sale transaction of illicit drugs.

Being the poseur-buyer, PO1 Forastero positively identified appellant, who was caught red-handed, to be the same person who sold to him one small heat-sealed transparent plastic sachet of shabu for a consideration of P200.00. When the small heat-sealed transparent plastic sachet of shabu was presented in court, PO1 Forastero identified it to be the same object sold to him by appellant because of the markings "RU" representing appellant's initials, which PO1 Forastero himself has written thereon. PO1 Forastero also identified in court the recovered buy-bust money from appellant consisting of two P100.00-peso bills amounting to P200.00 with the signature of PO1

Aguirre at the bottom thereof. PO1 Forastero was certain that the two P100-peso bills recovered from appellant were the buy-bust money because their serial numbers matched the photocopy thereof, which he had with him during the buy-bust operation.

Without a doubt, the prosecution, thus, established with the required quantum of proof, i.e., proof beyond reasonable doubt, appellant's guilt for the offense of illegal sale of shabu, a dangerous drug, in blatant violation of Section 5, Article II of Republic Act No. 9165.

As to the offense of illegal possession of shabu, a dangerous drug, it must be shown that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[44] These circumstances of illegal possession of shabu are obtaining in the present case.

Incident to appellant's lawful arrest resulting from the buy-bust operation, 20 more small heat-sealed transparent plastic sachets of shabu with an aggregate weight of 0.43 gram, which were the same kind of dangerous drug he was caught selling red-handed, were recovered in his possession by PO1 Medina, who assisted PO1 Forastero in arresting appellant. When the 20 more small heat-sealed transparent plastic sachets of shabu were presented in court, both PO1 Medina and PO1 Forastero identified them to be the same objects recovered from appellant while he was being frisked during his arrest for illegally selling shabu. PO1 Medina similarly affirmed that the markings "RU-1" to "RU-20" written thereon was done by him.

The record is also bereft of any evidence to show that appellant has the legal authority to possess the 20 more small heat-sealed transparent plastic sachets of shabu. The rule is settled that possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to the accused to explain the absence of knowledge or animus possidendi.[45] Unfortunately, the appellant in the present case miserably failed to discharge that burden. Appellant was not able to satisfactorily explain his absence of knowledge or animus possidendi of the shabu recovered in his possession.

In view thereof, this Court is fully convinced that appellant's guilt for the offense of illegal possession of shabu in violation of Section 11, Article II of Republic Act No. 9165, has also been aptly proven by the prosecution beyond the shadow of reasonable doubt.

Appellant contends that the following facts created serious doubts as to the veracity of the offenses charged against him and on the credibility of the prosecution witnesses and their testimonies, to wit: (1) PO1 Medina vividly remembered the six-digit serial numbers of the marked money used in the buy-bust operation conducted about a year earlier than his testimony but failed to recall if he placed any marking thereon and likewise failed to remember the date of his last successful buy-bust operation; and (2) discrepancy and contradiction existed in the testimonies of PO1 Forastero and PO1 Medina on whether both of them were introduced to appellant by their confidential informant.

Such contention is unavailing. PO1 Medina's failure to recall if he placed any marking on the buy-bust money, as well as the date of his last successful buy-bust operation, was neither fatal nor material for the prosecution of either illegal sale or possession of shabu as those facts had no bearing or had nothing to do with the elements of the offenses charged. More so, PO1 Medina was not the one who marked the buy-bust money but PO1 Aguirre, one of the members of the buy-bust team. Also, PO1 Medina was not the poseur-buyer who handled the buy-bust money but PO1 Forastero, who was able to positively identify the same during his open court testimony. With the foregoing, PO1 Medina's failure to recall if he ever put any marking on the buy-bust money should not be taken against him.

Even granting arguendo that the buy-bust money has not been marked, jurisprudence is clear that failure to mark the boodle money is not fatal to the cause of the prosecution. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation much less is it required that the boodle money be marked.[46] Similarly, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale.[47] Hence, the only elements necessary to consummate the crime of illegal sale of shabu is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the illicit drug as evidence.[48] Both elements were satisfactorily proven in this case.

Further, the discrepancy and contradiction in the testimonies of PO1 Forastero and PO1 Medina on whether both of them or only PO1 Forastero was introduced to appellant as relatives of the confidential informant, the same was too trivial, inconsequential and irrelevant to the elements of the offenses charged. It is too minor to warrant the reversal of the judgment of conviction against appellant. It neither affects the truth of the testimonies of prosecution witnesses nor discredits their positive identification of appellant. In contrast, such trivial inconsistencies strengthen rather than diminish the prosecution's case as they erase suspicion of a rehearsed testimony and negate any misgiving that the same was perjured.[49] As aptly observed by the Court of Appeals, thus:

Such inconsistencies and/or discrepancies do not negate the fact that a buy-bust operation was conducted and that they took part in it by acting as a poseur-buyer and a back-up, respectively, and by effecting the arrest of the [appellant] soon after the consummation of the sale of shabu to poseur-buyer PO1 Forastero. x x x.[50]

We find untenable appellant's assertions that the standard operating procedure supposed to be observed by the buy-bust team was tainted with irregularities as the Pre-Operation Report/Coordination Sheet that was transmitted to PDEA was merely signed by PO1 Natuel, a member of the buy-bust team, and not by P/Insp. Silungan, the one who conducted the briefing; and that the buy-bust money was merely photocopied and entered in the police blotter, instead, of being laced with ultra-violet powder.

To note, there are no provisions either in Republic Act No. 9165 or its Implementing Rules and Regulations requiring that (1) the Pre-Operation Report/Coordination Sheet that should be transmitted to PDEA must only be signed by the person who conducted the briefing; and (2) the buy-bust money to be used in the actual buy-bust operation must be dusted with ultra-violet powder. The Pre-Operation Report/Coordination Sheet and the use of dusted money are not indispensable to prove the illegal sale of shabu. These two are not part of the elements of the aforesaid offense. To repeat, in a prosecution for illegal sale of dangerous drugs, like shabu, what is important is the fact that the poseur-buyer received shabu from the accused-appellant and the same was presented as evidence in court,[51] which the prosecution in this case was able to do so. As has been previously discussed, all the elements of illegal sale of shabu were adequately proven and established by the prosecution.

Further, emphasis must also be given to the fact that PO1 Natuel was present during the briefing on the conduct of their buy-bust operation against appellant. He has personal knowledge therefore about the manner and other significant details of the said buy-bust operation. Thus, he can properly attest to the veracity and truthfulness of the contents of the Pre-Operation Report/Coordination Sheet that was transmitted to PDEA. And, even on the assumption that the Pre-Operation Report/Coordination Sheet that was transmitted to PDEA is disregarded such that it is as though no coordination with PDEA was made, still the genuineness and legitimacy of the buy-bust operation against appellant would stand. In *People v. Roa*,[52] this Court made the following pronouncements, thus:

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 [citation omitted] of Republic Act No. 9165

requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113 [citation omitted] of the Rules of Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA [citation omitted]. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.[53] [Emphasis supplied].

Equally, the only purpose for treating with ultra-violet powder the buy-bust money to be used in the actual buy-bust operation is for identification, that is, to determine if there was receipt of the buy-bust money by the accused in exchange for the illegal drugs he was selling. In the present case, although the buy-bust money were not laced with ultra-violet powder, still, the prosecution was able to positively identify that the two P100.00-peso bills recovered from appellant right after his arrest were the buy-bust money as the same were photocopied and entered in the police blotter before the actual buy-bust operation.

With the foregoing, the failure to sign the Pre-Operation Report/Coordination Sheet by the person who conducted the briefing and the failure to lace the buy-bust money with ultra-violet powder do not affect or in any way diminish the authenticity of the buy-bust operation against appellant. For it remains undeniable that a legitimate buy-bust operation was conducted against appellant leading to the latter's arrest for being caught in flagrante delicto selling and possessing shabu. More importantly, the prosecution was able to prove all the essential elements of the offenses charged against appellant.

The final argument of appellant that the police officers likewise failed to observe the requirements of Section 21, Article II of Republic Act No. 9165, primarily because the seized drugs were not photographed in his presence or his representative or counsel, a representative from the media, a representative from the DOJ and any elected public official, stands on hollow ground.

Section 21, paragraph 1, Article II of Republic Act 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; [Emphasis supplied].

The same is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(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. [Emphasis supplied].

In this case, the prosecution's failure to conduct the required photograph of the seized drugs in compliance with the provision of Section 21, Article II of Republic Act No. 9165, will not work to the advantage of appellant. Non-compliance thereto is not fatal and will not render appellant's arrest illegal or the items seized/confiscated from him inadmissible.[54] As can be observed, the implementing rules offer some flexibility when a proviso added 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." [55] Thus, what is of utmost importance 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.[56]

More so, even if the seized drugs were not marked at the place of arrest the same does not render the confiscated items inadmissible in evidence. In *Imson v. People*, this Court made the following pronouncements:

In *People v. Resurreccion* [citation omitted] the Court held that the failure of the policemen to immediately mark the confiscated items does not automatically impair the integrity of chain of custody. The Court held:

Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.

x x x x

x x x *People v. Sanchez*, however, explains that [Republic Act] 9165 does not specify a time frame for "immediate marking," or where said marking should be done:

"What Section 21 of [Republic Act] No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items -- to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence -- should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation."

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate Confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[57] [Emphasis supplied].

The function of the chain of custody requirement, therefore, is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[58]

In the present case, the chain of custody of the seized drugs does not appear to have been broken. After seizure of one small heat-sealed transparent plastic sachet of suspected shabu, which was the subject of the sale, and 20 more small heat-sealed transparent plastic sachets also of suspected shabu, which were recovered from appellant

on the occasion of his arrest, they remained in the possession of PO1 Forastero and PO1 Medina, respectively, on their way to their office where PO1 Forastero marked the one small heat-sealed transparent plastic sachet of suspected shabu subject of the sale with appellant's initials, i.e., "RU," while PO1 Medina marked the 20 more small heat-sealed transparent plastic sachets also of suspected shabu with "RU-1" to "RU-20," immediately upon their arrival thereat. Thereafter, the afore-named police officers, together with PO1 Gunayon, forwarded the seized drugs to the PNP Crime Laboratory, PNP Southern Police District, Fort Bonifacio, Taguig City, for laboratory examination, which yielded positive result for the presence of methylamphetamine hydrochloride or shabu, a dangerous drug, as evidenced by a Physical Science Report No. D-743-03s. The drugs seized from appellant and examined in the crime laboratory were subsequently offered as evidence in court where both PO1 Forastero and PO1 Medina positively identified and explained the markings thereon. These facts persuasively prove that the 21 small heat-sealed transparent plastic sachets of shabu presented in court were the same items seized from appellant during the buy-bust operation. Hence, the integrity and evidentiary value thereof were duly preserved.

In *People v. Gaspar*[59] citing *People v. De Guzman*,[60] this Court held that "in cases involving violations of the 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, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers." In this case, appellant failed to overcome the aforesaid presumption. More telling is appellant's own admission that he only met the prosecution witnesses for the first time when he was arrested and that there was no bad blood between them. This goes to show that the prosecution witnesses were not impelled with improper motive to falsely testify against appellant.

Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must necessarily fail.[61] Other than the testimony of appellant's common-law wife, whose testimony was rendered suspect because of her relationship with appellant, no other witness not related to appellant was ever presented to corroborate his claim.[62] Further, both prosecution witnesses positively identified appellant in open court to be the same person they caught red-handed selling and possessing shabu. Appellant's bare denial, therefore, cannot prevail over such positive identification made by the prosecution witnesses.[63] In the same way, appellant's denial cannot overcome the presumption that the police officers in this case have performed their duties in a regular and proper manner.[64] Besides, this Court held in a catena of cases that the defense of denial or frame-up, like alibi, has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[65]

As to penalty. Section 5, Article II of Republic Act No. 9165 clearly provides that the penalty for illegal sale of dangerous drugs, like shabu, regardless of its quantity and purity, shall be life imprisonment to death and a fine ranging from P5,000,000.00 to P10,000,000.00. In light, however, of the effectivity of Republic Act No. 9346,[66] the imposition of the supreme penalty of death has been proscribed.[67] Thus, the penalty of life imprisonment and a fine of P5,000,000.00 imposed upon appellant by the RTC and affirmed by the Court of Appeals for the offense of illegal sale of shabu is in order.

Section 11, Article II of Republic Act No. 9165, on the other hand, provides for the penalty for illegal possession of dangerous drugs, like shabu. For illegal possession of less than five grams of shabu, a dangerous drug, the penalty is imprisonment of 12 years and 1 day to 20 years and a fine ranging from P300,000.00 to P400,000.00. In this case, appellant's possession of shabu with an aggregate weight of 0.43 gram, that is, less than 5 grams, without any legal authority has been proven beyond reasonable doubt by the prosecution. Applying the Indeterminate Sentence Law, the penalty of 12 years and 1 day to 15 years and a fine of P300,000.00 imposed

upon appellant by the RTC and affirmed by the appellate court for the offense of illegal possession of shabu is also proper.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01559 dated 28 February 2008 finding herein appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.

Brion, (Acting Chairperson), Del Castillo,[*] Mendoza,**] and Sereno, JJ., concur.

[*] Per Special Order No. 1084 dated 13 September 2011.

**] Per Special Order No. 1107 dated 27 September 2011.

[1] Penned by Associate Justice Edgardo F. Sundiam with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Monina Arevalo-Zeñarosa, concurring. Rollo, pp. 2-17.

[2] Penned by Judge Myrna V. Lim Verano. CA rollo, pp. 48-57.

[3] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any or such transactions.

[4] Otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

[5] SEC. 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:

(1) x x x

(2) 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.

[6] Records, pp. 1 and 3.

[7] Id. at 1.

[8] Id. at 3.

[9] As evidenced by Certificates of Arraignment both dated 17 September 2003 and RTC Orders both dated 17 September 2003. Records, pp. 24-27.

[10] Id. at 18.

[11] Per Pre-Trial Order dated 1 December 2003. Records, pp. 61-63; TSN, 16 May 2005, p. 11.

[12] Records, p. 10.

[13] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 3; Testimony of PO1 Medina, TSN, 11 August 2004, p. 3.

[14] Id. at 6; Id. at 4-5.

[15] Id. at 5-7 and 14-16; Id. at 4-6; Court of Appeals Decision, rollo, p. 5; RTC Decision, CA rollo, p. 49.

[16] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 7; Testimony of PO1 Medina, TSN, 11 August 2004, pp. 5-6; Records, pp. 114, 117.

[17] Id. at 12-13; Id. at 8-10; Id. at 113.

[18] Id. at 15-17; Id. at 10-11 and 34.

[19] Id. at 17-19, 53-54 and 58-61; Id. at 11 and 33.

[20] Id. at 19 and 63; Id. at 12, 32 and 35.

[21] Id. at 20-22 and 64-66; Id. at 12-14 and 36-38.

[22] Id. at 22-24; Id. at 14-17.

[23] Id. at 29-33 and 40-41; Id. at 16-21 and 39-42.

[24] Records, pp. 24-27.

[25] Id. at 16.

[26] Testimony of PO1 Forastero, TSN, 14 June 2004, pp. 34-35 and 41; Testimony of PO1 Medina, TSN, 11 August 2004, pp. 21-23.

[27] Id. at 38-39; Id. at 24-26.

[28] Records, p. 120.

[29] Testimony of PO1 Forastero, TSN, 14 June 2004, p. 36; Testimony of PO1 Medina, TSN, 11 August 2004, p. 24.

[30] Records, p. 10.

[31] Testimony of appellant, TSN, 6 December 2004, pp. 3 and 18.

[32] Id. at 3-17, 21-22, 27 and 31.

[33] Id. at 5, 20 and 28.

[34] Testimony of Janice Deles, TSN, 16 February 2005, pp. 3-18 and 22.

[35] CA rollo, pp. 56-57.

[36] Rollo, pp. 18-19.

[37] Brief for the Accused-Appellant. CA rollo, p. 36.

[38] Rollo, p. 17.

[39] 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;

[40] *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003).

[41] *People v. Manlangit*, G.R. No. 189806, 12 January 2011,

[42] *People v. Gaspar*, G.R. No. 192816, 6 July 2011.

[43] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011.

[44] *People v. Gaspar*, *supra* note 42.

[45] *People v. Pendatun*, 478 Phil. 201, 212 (2004).

[46] *People v. Gonzales*, 430 Phil. 504, 515 (2002).

[47] *People v. Bongalon*, 425 Phil. 96, 117 (2002).

[48] *People v. Gonzales*, *supra* note 46 at 515.

[49] *People v. Garcia*, 424 Phil. 158, 184-185 (2002).

[50] Court of Appeals Decision. Rollo, p. 13.

[51] *People v. Requiz*, 376 Phil. 750, 760 (1999).

[52] G.R. No. 186134, 6 May 2010, 620 SCRA 359.

[53] *Id.* at 369-370.

[54] *Imson v. People*, G.R. No. 193003, 13 July 2011 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 436-437 and *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462, 468.

[55] *People v. Manlangit*, *supra* note 42.

[56] *Imson v. People* citing *People v. Concepcion* and *People v. Campos*, *supra* note 54.

[57] *Id.*

[58] *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521.

[59] *Supra* note 42.

[60] G.R. No. 177569, 28 November 2007, 539 SCRA 306.

[61] *People v. Sultan*, G.R. No. 187737, 5 July 2010, 623 SCRA 542, 558.

[62] *People v. Gopio*, 400 Phil. 217, 263-237 (2000).

[63] *People v. Bongalon*, *supra* note 47 at 120.

[64] *People v. Gaspar*, *supra* note 42.

[65] *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Mustapa*, 404 Phil. 888, 898 (2001); *People v. Johnson*, 401 Phil. 734, 750 (2000).

[66] Otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[67] *People v. Villahermosa*, G.R. 186465, 1 June 2011 citing *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 344.

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