

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHRISTOPHER DESUYO Y BUEN, ACCUSED-APPELLANT.

*G.R. No. 186466. July 26, 2010*

Ponente: PEREZ, J.

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### PEREZ, J.:

Accused-appellant Christopher Desuyo y Buen (Desuyo) is before Us on appeal from the Decision[1] of the Court of Appeals in CA-G.R. HC No. 02561 dated 29 August 2008, which affirmed his conviction[2] by the Regional Trial Court (RTC) of Sorsogon, Sorsogon, Branch 52 together with co-accused Santos De Hitta (De Hitta), for the crimes of illegal sale and illegal possession of shabu, a dangerous drug, in violation of Sections 5 and 11, Article II, of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.[3]

The facts:

Accused-appellant Desuyo was arrested together with co-accused De Hitta in the evening of 13 May 2003 by the operatives of the Criminal Investigation and Detection Group (CIDG) in Sorsogon City in the course of a buy-bust operation. They were subsequently charged by the City Prosecutor under two separate Informations filed on 15 May 2003 with the RTC for illegal sale and illegal possession of shabu, a dangerous drug.

The two (2) cases were raffled to Branch 52 of the RTC of Sorsogon, Sorsogon. Docketed as Criminal Cases Nos. 2003-5923 and 2003-5924, the charge sheet accused De Hitta and Desuyo of committing the following acts:

Criminal Case No. 2003-5923

That on or about 10:30 o'clock in the evening of May 13, 2003 in front of Manoy's Restaurant, Rizal St., City of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession, custody and control, one (1) plastic sachet of "Methamphetamine Hydrochloride" locally known as "shabu," with an aggregate weight of 0.0195 gram, without any legal authority to possess and have the same in their custody.[4]

Criminal Case No. 2003-5924

That on or about 10:30 o'clock in the evening of May 13, 2003 in front of Manoy's Restaurant, Rizal St., City of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously sell, deliver and convey, to a poseur-buyer, one (1) plastic sachet of "Methamphetamine Hydrochloride" locally known as "shabu" with an aggregate weight of 0.0158 grams, without any legal authority to sell and deliver the same.[5]

When arraigned, accused-appellant Desuyo and his co-accused De Hitta, assisted by counsel, pleaded not guilty in the two cases.[6] Pre-trial proceedings having been terminated, trial on the merits followed.

In the ensuing trial, the prosecution presented as witnesses: (1) SPO4 Dante Macadangdang (team leader of the buy-bust operation); (2) PO2 Humberto A. Bolaqueña, Jr. (buy-bust team member); (3) SPO2 Santos G. Garbin

(PDEA team leader); and (4) P/Insp. Cirox Omero (forensic chemist).

SPO4 Dante Macadangdang testified that he was the team leader of the CIDG team which conducted the buy-bust operation against Desuyo and De Hitta, narrating the sequence of events that evening as follows:

At around 10:00 o'clock in the evening of 13 May 2003, SPO4 Macadangdang conducted a briefing with his buy-bust team composed of the civilian informant, PO1 Bolaqueña, SPO4 Macadangdang, and SPO2 Santos Garbin of the PDEA. According to him, they received confidential information about drug transactions being done at the vicinity of Manoy's Restaurant along Magsaysay Street in Sorsogon City involving the security guard of said establishment.

He designated PO2 Bolaqueña as poseur-buyer and gave the latter two (2) pieces of P100.00 bills for the operation. At around 10:30 o'clock in the evening, the team proceeded to the target area. PO2 Bolaqueña, together with the informant, went to Manoy's restaurant. SPO4 Macadangdang and SPO2 Garbin stayed at the adjacent area, about five to six meters away and waited for the pre-arranged signal of PO2 Bolaqueña - the taking-off of his cap signifying that the transaction has been consummated. Upon the signal of PO2 Bolaqueña, the team approached him and arrested Desuyo and Santos De Hitta, who were both identified by SPO4 Macadangdang in court. The two accused-appellants were taken to the CIDG Office. A plastic sachet of shabu, a fan knife and other paraphernalia were recovered from De Hitta.

PO2 Humberto A. Bolaqueña, Jr., 28 years old, and a PNP Member of CIDG Albay testified on the police operations leading to the apprehension of accused- appellants.

According to the witness, he acted as poseur-buyer. The buy-bust operation was upon confidential information relayed by a civilian agent, that Desuyo and De Hitta were known peddlers of shabu plying the area of Manoy Fastfood located along Rizal Street in Sorsogon City. The police surveilled the area for two weeks and confirmed the report of the informant. Thereafter, a buy-bust team of police operatives was formed composed of SPO4 Dante Macadangdang, PO3 Bautista, PO2 Bolaqueña, a civilian agent, and a representative from PDEA. PO2 Bolaqueña was designated as poseur-buyer by SPO4 Macadangdang, who handed the former two (2) One Hundred Peso bills to be used in purchasing shabu during the operation. For identification purposes, PO2 Bolaqueña affixed his initials, HAB, on the bills.

At around 10:30 o'clock in the evening of 13 May 2003, the police operatives went to the location with the civilian informant. On reaching the place, PO2 Bolaqueña and the informant approached De Hitta while the other members of the team positioned themselves at the vicinity of the target area waiting for PO2 Bolaqueña's pre-arranged signal, the taking-off of his cap.

The civilian agent introduced PO2 Bolaqueña to de Hitta as a buyer of shabu. De Hitta then inquired how much PO2 Bolaqueña would like to purchase, to which the police officer replied, "P200.00 worth of shabu." Thereafter De Hitta asked them to wait. De Hitta went inside the gate of the building where Manoy's Fastfood was located and approached accused- appellant Desuyo, a security guard at the establishment, who was standing in front of the restaurant. Several minutes passed before De Hitta returned, accompanied by Desuyo who had a sachet of shabu with him. Thereupon, PO2 Bolaqueña handed the two (2) marked One Hundred Peso bills to De Hitta. Desuyo then handed over the sachet of shabu to PO2 Bolaqueña.

After Desuyo handed the sachet of shabu to PO2 Bolaqueña, the latter removed his cap as a pre-arranged signal to signify to the buy-bust team that the transaction had been consummated and the team members rushed towards where they were. Upon a body search of the two (2) accused, one (1) sachet of shabu, several empty plastic sachets, rolled aluminum foil and a fan knife were retrieved from De Hitta.

The P200.00 buy-bust money, a disposable lighter, aluminum foil, as well as an empty plastic sachet were recovered from Desuyo. The sachet bought from Desuyo was marked HAB1, while the one taken from De Hitta was marked HAB2.

SPO2 Santos G. Garbin, 45 years old, a member of the PNP and Team Leader of PDEA Sorsogon Special Enforcement Team confirmed that the buy-bust operation conducted by the CIDG on 13 May 2003 against De Hitta and Desuyo, whom he both identified in court, was coordinated with the PDEA. According to SPO2 Garbin, he acted as perimeter security in the operation. He and SPO4 Macadangdang were posted at the former Shell Gasoline Station in front of Manoy's Restaurant in Sorsogon City and waited for PO2 Bolaqueña's pre-arranged signal. SPO4 Macadangdang went closer to the area where the buy-bust was conducted but he stayed at his post in order to secure the area. He further testified that the two (2) suspects were apprehended and brought to the CIDG Office.

Finally, P/Insp. Cirox Omero, forensic chemist of the PNP Regional Crime Laboratory Office, testified that on 14 May 2003, he conducted a laboratory examination on two (2) specimens marked A (HAB1) and B (HAB2), which yielded the following results as reported in Chemistry Report No. D-178-2003[7] indicating the following:

SPECIMEN SUBMITTED:

Two (2) heat sealed transparent plastic sachets, each containing white crystalline substance having the following markings and recorded net weights:

A (HAB1) = 0.0158 gram B (HAB2) = 0.0195 gram

FINDINGS:

Specimen A and B contain Methamphetamine Hydrochloride, a dangerous drug.[8]

Specimen A consisted of 0.0158 gram of methamphetamine hydrochloride.

Specimen B contained 0.0195 gram of methamphetamine hydrochloride.

The defense had an entirely different version, presenting the following witnesses in court: (1) accused-appellant Christopher Desuyo; (2) co-accused Santos De Hitta; (3) Alwin Medina; and (4) Edmund Dionela.

Accused-appellant Desuyo and De Hitta denied the charges. Testifying before the trial court, Desuyo explained that he is a security guard at Manoy's Restaurant. On the night of 13 May 2003, he witnessed an altercation involving several men inside said establishment. Upon seeing the commotion, he went inside to check out what was happening and saw three (3) men forcing somebody (later on determined to be De Hitta) to go out with them. Desuyo confronted the three (3) men but one of them pointed a .45 caliber gun on him and forced him to go out of the restaurant. They were taken to Talisay, Sorsogon City where he was made to strip to determine if he had shabu hidden. No shabu was found on his person. The men who took them did not reveal that they were under arrest nor did they identify themselves as police officers. The men were not in uniform. It was only the next morning that they came to know that the three (3) men were police officers. Desuyo denied knowing De Hitta prior to the arrest and said he never had any transaction with De Hitta.

Corroborating the testimony of Desuyo, De Hitta was put on the witness stand. According to him, he went to Manoy's Restaurant on 13 May 2003 at around 10:30 o'clock in the evening to get water from the jug placed inside the restaurant. He went there after visiting his grandmother. After drinking a glass of water, he then went inside the comfort room and urinated. While inside the comfort room, a man with curly hair and light complexion, later on identified to be PO2 Bolaqueña, arrested him.

The man held him by the back of his shoulder and said: 'what are you throwing there, shabu?' and the man pulled him out of the rest room. The man was alone, did not identify himself, and offered no explanation as to why he was being arrested. He and Desuyo were taken to the CIDG office and escorted to a room where they were made to strip off all their clothes and the person who arrested them told them, 'You remove your clothes because you might be hiding shabu in your body.' Nothing was found on his person except for a fan knife which was confiscated but no receipt was issued for it. He further narrated that the police officer who searched him boxed him five (5) times on his stomach.

De Hitta, however admitted that three (3) months prior to the incident he was already aware that Desuyo was a security guard at Manoy's Restaurant as he had gone to Manoy's Restaurant to drink water for about seven (7) times during that three-month period.

When asked, De Hitta admitted that apart from this case, he has another case for Serious Physical Injuries pending before the MTC of Sorsogon, and a prior conviction for violation of Batas Pambansa No. 6 because he was caught in possession of a Batangas Knife.

Alwin Medina, a tricycle driver, testified he was at his usual parking place in front of the LBC Office waiting for passengers at around 10:00 to 11:00 o'clock in the evening of 13 May 2003. According to Medina, he knows Desuyo because he had talked to him on several occasions while waiting for passengers in the said place.

At around that time, Medina saw Desuyo standing beside tables and chairs outside Manoy's Restaurant. When he left at around 11:00 o'clock in the evening, Desuyo was still there, and no untoward incident involving the latter happened that night. Neither did he see De Hitta that night. The next day, he found out from other tricycle drivers that Desuyo was arrested the previous night.

Edmund Dionela, 34 years old, also a tricycle driver, testified that between 9:00 to 10:00 o'clock in the evening of 13 May 2003, his tricycle was parked at Manoy's Restaurant while he was waiting for passengers to ride his tricycle when an unusual incident happened. At around 10:30 o'clock in the evening, he saw two (2) male persons enter the restaurant and forcibly take a man whom he identified as De Hitta. As this was taking place, he saw Desuyo, who was standing at the corner, go towards the direction of De Hitta, but was accosted by another man and forcibly taken away. The man pointed a .45 caliber gun at Desuyo.

On 17 April 2006, the trial court rendered Judgment in Criminal Cases Nos. 2003-5923 and 2003-5924 finding Desuyo and De Hitta guilty beyond reasonable doubt of drug pushing and drug possession, viz.:

WHEREFORE, premises considered, finding accused SANTOS De HITTA and CHRISTOPHER DESUYO y BUEN GUILTY beyond reasonable doubt of the crimes charged against them in the two (2) separate Information, accused SANTOS De HITTA and CHRISTOPHER DESUYO y BUEN are hereby sentenced to suffer the following penalties to wit:

- (1) In Criminal Case No. 2003-5923, for both accused to suffer an imprisonment of TWELVE (12) YEARS AND ONE (1) DAY TO FIFTEEN (15) YEARS AND A FINE OF P300,000.00 and to pay the costs; and
- (2) In Criminal Case No. 2003-5924, for both accused to suffer the penalty of LIFE IMPRISONMENT and a fine of P500,000.00, and to pay the costs.

Accused, SANTOS De HITTA and CHRISTOPHER DESUYO y BUEN shall serve their sentence one after the other or in succession.

The shabu recovered is hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to turn over the same to the PDEA for proper disposal without further delay and that the P200.00 bills be returned to the head of the CIDG based in this City.[9]

Only Desuyo interposed an appeal with the Court of Appeals.

Brushing aside the alleged inconsistencies in the testimonies of the defense witnesses as cited by the defense and sustaining the trial court's finding of conspiracy, the appellate court, in its Decision dated 29 August 2008, confirmed the presence of all elements of the two (2) separate crimes of illegal sale and illegal possession of dangerous drugs, with the evidence establishing the culpability of Desuyo and De Hitta, to wit:

WHEREFORE, the assailed Decision dated 17 April 2006 of the Regional Trial Court, Fifth Judicial Region, Sorsogon City, Branch 52, in Criminal Case Nos. 2003-5923 and 2003-5924 is hereby AFFIRMED.[10]

Accused-appellant Desuyo is now before this Court assailing the Decision rendered by the Court of Appeals on the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT CONSPIRACY BETWEEN THE TWO (2) ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THE GLARING INCONSISTENCIES AND IMPROBABILITIES IN THE PROSECUTION'S TESTIMONIAL EVIDENCE

II.

THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE DANGEROUS DRUG AND PARAPHERNALIA ALLEGEDLY FOUND IN THE POSSESSION OF THE ACCUSED.

IV.

THE TRIAL COURT GRAVELY ERRED IN RELYING ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES, THUS GIVING CREDENCE TO THE TESTIMONY OF PO2 ROBIN MOLINA WHEN THE SAID PRESUMPTION HAD BEEN OVERTURNED BY THE ARRESTING OFFICERS' NON- COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. 9165.

Praying for his acquittal, Desuyo asserts that his guilt of the crimes charged has not been established and proven beyond reasonable doubt. He argues, albeit for the first time on appeal, that the evidence adduced by the prosecution failed to show compliance with the requirements of law for handling seized evidence under Republic Act No. 9165.

After a meticulous examination of the records, the Court finds that the appeal must fail.

Desuyo was accused of conspiracy in the illegal sale and illegal possession of a dangerous drug. Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] As a rule, conspiracy must be proved as convincingly and indubitably as the crime itself. It is not, however, necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime.

To recall the principles, conviction is proper in prosecutions involving illegal sale of regulated or prohibited drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[12] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug.[13] We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.[14]

For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (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 drug.[15]

Based on the foregoing, this Court finds that the collective testimonies of the witnesses as well as the other physical evidence proffered by the prosecution irrevocably support a conclusion that on the night of 13 May 2003, a buy-bust operation took place in the vicinity of Manoy's Restaurant in Sorsogon where accused-appellant Desuyo and his co-accused De Hitta were caught selling and possessing shabu, a dangerous drug, in patent violation of the Comprehensive Dangerous Drugs Act of 2002.

A close look at the sequence of events narrated by the prosecution witnesses indicates that the sale of the prohibited drug in fact took place, with the sale being adequately established. Accused-appellant Desuyo was definitely identified by PO2 Bolaqueña as the one who physically handed the sachet of shabu to the poseur-buyer during the buy-bust operation, determining thereby that he conspired with co-accused De Hitta in the illegal activity. The seized items, proven positive to be shabu, were properly identified and presented before the court.

As testified by the poseur-buyer PO2 Bolaqueña, De Hitta received the P200.00 payment for the shabu, while accused-appellant Desuyo was the one who delivered and physically handed over the sachet of shabu to PO2 Bolaqueña. That act at that very moment is the corpus delicti of the offense. Upon frisking of co-accused De Hitta, which is incidental to a lawful arrest, another sachet of shabu was retrieved from the latter. PO2 Bolaqueña's account, particularly on the fact of sale and retrieval of shabu, were corroborated by SPO4 Macadangdang.

While there is no showing of direct evidence that accused-appellant agreed with De Hitta to commit the crime, their acts and the attendant circumstances surrounding the commission of the crime disclose a common design that would make all of them co-principals in the crime committed. As already cited direct evidence is not essential in proving conspiracy.[16] The contemporaneous acts of Desuyo with De Hitta all point to a unity of acts and a common design making Desuyo a co-principal.

In weighing the testimonies of the prosecution witnesses vis-à-vis those of the defense, the trial court gave more credence to the version of the prosecution. We find no reason to disagree. Well-settled is the rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[17] Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conduct the "buy-bust" operation and appellate courts, upon established precedents and of necessity, rely on the assessment of the credibility of witnesses by the trial courts which have the unique opportunity, unavailable to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Incidentally, the issues raised by the defense mention a certain PO2 Molina. Notably, however, there is nothing in the records to indicate the participation of any PO2 Molina.

The testimony of Medina, the tricycle driver, is negative testimony which proves nothing more than that he did not see any untoward incident occur inside Manoy's restaurant at the time and date of the buy-bust operation. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of accused-appellant, the former must prevail. It is a well-settled rule that affirmative testimony is far stronger than negative testimony, especially so when it comes from the mouth of a credible witness.[18] Medina's negative testimony is in fact contradictory to the purported version of Desuyo who admits that an incident did occur that evening in the vicinity of Manoy's. Even the testimony of Dionela, another Tricycle driver who testified for the defense, does not negate that the incident inside Manny's was a buy-bust operation.

Accused-appellant's twin defenses of denial and frame-up, as in the case of his co-accused, hold little weight

vis-à-vis the strong evidence gathered by the prosecution in proving his complicity to the offenses. Frame-up, like denial, is viewed by this Court with disfavor for it can easily be concocted.[19] The Court also takes into consideration the failure of the defense to prove any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as the one imputed against Desuyo. His allegations that he was beaten up is belied by the absence of proof to that effect. Desuyo did not present any medical record that he was physically abused.

Finally, Desuyo protests that the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165,[20] was not complied with to the letter of the law. Non-compliance, he argues, makes the shabu allegedly retrieved from him inadmissible in evidence.

But, as this Court has held in recent cases, i.e. *People v. Agulay*, [21] *People v. Pringas*,[22] and in the more recent case of *People v. Quebral*,[23] failure to comply strictly with those requirements will not render the seizure of the prohibited drugs invalid for so long as the integrity and evidentiary value of the confiscated items are properly preserved by the apprehending officers. Noteworthy as well is the proviso in the particular section of the Implementing Rules which states that 'non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.' The evident purpose of the procedure provided for is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of or innocence of the accused.

The body of evidence adduced by the parties supports the conclusion that the integrity and evidentiary value of the seized evidence were preserved and safeguarded through an unbroken chain of custody established by the prosecution - from the arresting officer, to the investigating officer, and then to the forensic chemist. At the time of arrest, the seized items consisting of the two (2) plastic sachets containing white crystalline substance suspected to be shabu were segregated and individually marked as "HAB1" and HAB2," corresponding to PO2 Humberto Bolaqueña, Jr.'s initials.[24] The marked sachets were immediately forwarded to the PNP Crime Laboratory for examination.[25] The request for laboratory examination and transfer of the confiscated sachets to the PNP crime laboratory was prepared by SPO4 Macadangdang.[26] Upon chemical analysis, Police Inspector Cirox Omero found the specimens positive for Methamphetamine Hydrochloride, otherwise known as shabu, a dangerous drug.[27] Specimen A (marked as HAB1) contained 0.0158 grams of shabu, while Specimen B (marked as HAB2) contained 0.0195 grams of shabu.

Parenthetically, the defense raised its objection and questioned the integrity of the shabu allegedly seized from him only on appeal. Failure to raise this issue during trial is fatal to the case of the defense, as this Court had succinctly explained in *People v. Sta. Maria*:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[28]

Under the law, the illegal sale of shabu carries with it 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), regardless of the quantity and purity of the substance. On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (P300,000.00) to Four Hundred Thousand Pesos (P400,000.00).

Reviewing the penalties imposed by the trial court as affirmed by the Court of Appeals, we find them to be in order.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02561 dated 29 August 2008 which affirmed the decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, convicting accused-appellant CHRISTOPHER DESUYO y BUEN of Violation of Sections 5, Article II, Republic Act No. 9165 in Criminal Case No. 2003-5924, and for Violation of Section 11, Article II, Republic Act No. 9165 in Criminal Case No. 2003-5923 is hereby AFFIRMED. No costs.

**SO ORDERED.**

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo De Castro, and Del Castillo, JJ., concur.

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[1] Penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., CA rollo, pp. 117-131.

[2] Penned by Judge Raul E. De Leon, Id. pp. 29-32.

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

Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof: x x x Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(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 x x x.

[4] Records, Vol. 1, p. 1.

[5] Records, Vol. 2, p. 1.

- [6] Records, Vol. 1, p. 16.
- [7] Exhibit "C," Records, p. 1.
- [8] Exhibit "C," Records, p. 6.
- [9] CA rollo, p. 29.
- [10] Id. at 14.
- [11] *People v. Bryan Ferdinand Dy*, 425 Phil. 608, 642 (2002); *People v. Obillo*, 411 Phil. 139, 153 (2001).
- [12] *People v. Partoza*, G.R. No. 182418, 8 May 2009, 587 SCRA 809, 816.
- [13] *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 893.
- [14] *People v. Taboga*, G.R. No. 144086-7, 426 Phil. 908, 922 (2002).
- [15] *People v. Lagman*, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.
- [16] *Fernan v. People*, G.R. No. 145927, 24 August 2007, 531 SCRA 1, 47.
- [17] *People v. Remerata*, 449 Phil. 813, 822 (2003).
- [18] *People v. Manchu*, G.R. No. 181901, 28 November 2008, 572 SCRA 752, 764.
- [19] *Chang v. People*, G.R. No. 177237, 17 October 2008, 569 SCRA, 711, 733.
- [20] Section 21 (a) paragraph 1, Article II, Republic Act No. 9165:

(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;

Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

(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 officers/team, shall not render void and invalid such seizures of and custody over said items.

- [21] G.R. No. 181747, 26 September 2008, 566 SCRA 571.
- [22] G.R. No. 175928, 31 August 2007, 531 SCRA 828.
- [23] G.R. No. 185379, 27 November 2009, 606 SCRA 247, 256-257.
- [24] TSN, 2 December 2005.
- [25] Id. at 24-25.

[26] Chemistry Report No. P. 178, 2003, Vol. 1.

[27] Id.

[28] People v. Sta. Maria, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

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