

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELIZABETH MARCELINO Y REYES, ACCUSED-APPELLANT.

G.R. No. 189278. July 26, 2010

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the June 29, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03153 entitled *People of the Philippines v. Elizabeth Marcelino y Reyes*, which affirmed the Decision in Criminal Case Nos. 3048-M-2002 and 3049-M-2002 of the Regional Trial Court (RTC), Branch 76 in Malolos City, Bulacan. The RTC found accused-appellant Elizabeth Marcelino guilty of violating Sections 5 and 11 of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Two Informations charged accused-appellant as follows:

Criminal Case No. 3048-M-2002

That on or about the 31[st] day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) [heat-sealed] transparent plastic sachet of Methylamphetamine hydrochloride (shabu) weighing 0.494 gram.[1]

Criminal Case No. 3049-M-2002

That on or about the 31[st] day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride (shabu) weighing 3.296 [grams].[2]

During her arraignment, accused-appellant pleaded not guilty to both charges.

The defense agreed to the following stipulations[3] during the pre-trial:

- 1) the qualification and competence of Forensic Analyst Amilyn Flores-Maclid as an expert witness;
- 2) the existence of the request for laboratory examination signed by Police Senior Inspector Arthur Felix Asis and received by the Bulacan Provincial Crime Laboratory on November 1, 2002; and
- 3) the existence of Chemistry Report No. D-628-02 signed by Forensic Analyst Amilyn Flores-Maclid including the specimens examined by said Forensic Analyst attached to the Chemistry Report contained in a brown envelope with marking D-628-02-AFM consisting of two (2) heat-sealed transparent plastic sachets each containing white crystalline substance with markings and recorded net weights A(MDC-1)-0.494 gm. and

B(MDC-2)-3.296 gms., respectively.

Version of the Prosecution

At the trial, the prosecution presented SPO1 Marciano Dela Cruz[4] as its sole witness.

SPO1 Dela Cruz, a police officer stationed at the Balagtas Police Station in Bulacan, was part of a team that conducted a test-buy on October 30, 2002 to verify a report of accused-appellant Elizabeth engaging in illegal drug activities.[5]

When the test-buy confirmed that Elizabeth was indeed selling illegal drugs, a team was formed to conduct a buy-bust operation. SPO1 Dela Cruz was designated as poseur-buyer. He placed his initials "MDC" on a five hundred peso bill to be used as boodle money.[6]

On October 31, 2002, the buy-bust team headed for P. Castro St. Burol 1[st], Balagtas, Bulacan at around half past seven in the evening. SPO1 Dela Cruz and his asset went to meet Elizabeth and asked to buy shabu worth five hundred pesos (PhP 500). Once Elizabeth had handed the shabu to SPO1 Dela Cruz, he gave the pre-arranged signal, prompting SPO3 Felix Dela Cruz to approach them. SPO3 Dela Cruz recovered the marked PhP 500 bill and another sachet of suspected shabu from Elizabeth. She was then apprised of her constitutional rights. SPO1 Dela Cruz subsequently marked the sachet that was sold to him as "MDC-1" and the sachet found on the person of Elizabeth as "MDC-2." [7]

A request was later submitted to the crime laboratory for a laboratory examination of the seized substances.[8] Chemistry Report No. D-628-2002 confirmed that the subject drugs were positive for shabu.[9]

Version of the Defense

The defense offered the testimonies of Elizabeth and tricycle driver Rodrigo Lavi×ja, a neighbor.

In her defense, Elizabeth claimed that on October 31, 2002, she was at her home at P. Castro St., Burol 1[st], Balagtas, Batangas with her grandson and her sister, Consuelo Reyes, when they suddenly heard a knock at the door. When Consuelo answered the door, three men suddenly entered the house and announced that they were police officers. [10]

Elizabeth recalled that the police officers who arrested her at her home were not the same ones that the prosecution presented as members of the buy-bust operation. She also claimed that when she got to the police station, a woman named Mila Trias told her, "Ngayon nakikilala mo na kung sinong kinalaban mo." According to Elizabeth, she had a quarrel with Mila because she suspected Mila was having an affair with her husband.[11]

To corroborate Elizabeth's story, Lavi×ja testified that on October 31, 2002, at about 7:35 in the evening, he was parked outside the house of Elizabeth. He was waiting for passengers when, suddenly, two "owner-type" jeeps arrived carrying two passengers each. The passengers were all male and dressed in civilian clothes. All headed towards Elizabeth's house. Elizabeth opened the door and the men entered the house, with the door closing behind them. From the outside, Lavi×ja heard Elizabeth shouting as to why the men were searching her house. He approached the house and heard commotion inside. He heard sounds of objects falling. Later, he saw the men coming out of the house and boarding Elizabeth into one of their vehicles.[12]

The Ruling of the Trial Court

On January 21, 2008, the RTC found Elizabeth guilty of the crimes charged based on what it found to be the credible testimony of SPO1 Dela Cruz. In Criminal Case No. 3048-M-2002 (illegal sale of drugs), the trial court found that all the elements of the crime were established by the prosecution with moral certainty. In Criminal

Case No. 3049-M-2002 (illegal possession of dangerous drugs), the trial court ruled that the search conducted on Elizabeth was valid under the rule on search incidental to a lawful arrest.

The dispositive portion of the RTC Decision[13] reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, accused ELIZABETH MARCELINO y REYES is hereby CONVICTED:

[A] in Criminal Case No. 3048-M-2002, which charges accused with sale of [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 0.494 gram and a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer LIFE IMPRISONMENT, and to pay the FINE of Five Hundred Thousand Pesos (P500,000.00);

[B] in Criminal Case No. 3049-M-2002 which charges accused for possession and control of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 3.296 grams and a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer the imprisonment of, applying the Indeterminate Sentence Law, TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM, and to pay the FINE of Three Hundred Thousand Pesos (P300,000.00) x x x.

The Ruling of the Appellate Court

Dissatisfied with the RTC's Decision, Elizabeth appealed to the CA, arguing that the evidence presented against her was inadmissible, since it was acquired during her unlawful arrest. She likewise insisted that her guilt was not proved beyond reasonable doubt.

The CA in its Decision[14] affirmed the appealed RTC Decision. The appellate court ruled that Elizabeth was estopped from questioning the legality of her arrest, as it was being raised for the first time on appeal. It held that even the police officers had minor lapses in complying with Sec. 21, Art. II of RA 9165, there was still no doubt that the shabu presented during the trial was the same substance retrieved from her.

Aggrieved, Elizabeth filed a Notice of Appeal from the CA Decision.

On December 2, 2009, this Court notified the parties that they may submit their supplemental briefs. The People, represented by the Office of the Solicitor General (OSG), manifested that it was dispensing with the filing of a Supplemental Brief.

The Issues

I

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT A SEARCH WARRANT WAS NOT NECESSARY

II

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE INTEGRITY AND IDENTITY OF THE SHABU WAS PRESERVED

The Ruling of this Court

Accused-appellant Elizabeth reiterates that two test-buys were conducted before the actual buy-bust operation was launched. She thus contends that after the two test-buys, the police officers certainly had sufficient time to secure

both a search warrant and a warrant of arrest but failed to do so. She argues that a buy-bust operation should never be used as a cover for an illegal warrantless search and arrest.

She also imputes grave doubts on whether SPO1 Dela Cruz observed the requirements of RA 9165 on inventory and photographing of the illegal substance, arguing that said police officer did not state where and when he marked the sachets of shabu.

The OSG, on the other hand, argues that no search warrant and warrant of arrest were needed, a buy-bust operation being recognized as a valid form of entrapment. Citing jurisprudence, the OSG claims that it is ridiculous for the buy-bust team to first obtain a search warrant when a crime is committed before their eyes.

As to the other contention of Elizabeth, the OSG refutes this by saying that the identity of the seized substance was adequately established by the prosecution, as this was properly marked and its paper trail ascertained, from the request for laboratory examination to the physical science report on the illegal substance and the actual presentation in court.

We affirm Elizabeth's conviction.

The appellate court correctly ruled that Elizabeth cannot question her arrest for the first time on appeal. And even if we were to allow her to raise such issue, her appeal must still fail.

Search warrant and warrant of arrest not needed

In *People v. Villamin*,^[15] involving an accused arrested after he sold drugs during a buy-bust operation, the Court ruled that it was a circumstance where a warrantless arrest is justified under Rule 113, Sec. 5(a) of the Rules of Court.^[16] The same ruling applies to the instant case. When carried out with due regard for constitutional and legal safeguards, it is a judicially sanctioned method of apprehending those involved in illegal drug activities. It is a valid form of entrapment, as the idea to commit a crime comes not from the police officers but from the accused himself. The accused is caught in the act and must be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.^[17]

The illegal drug seized was not the "fruit of the poisonous tree" as the defense would like this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Sec. 13 of the Rules of Court, which pertinently provides:

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.

Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was likewise not needed to conduct it.

Chain of custody

The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated will not result in accused-appellant's acquittal of the crimes charged. Non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible.^[18]

We discussed in *People v. Pagkalinawan*^[19] both what the law provides and the level of compliance it requires:

Sec. 21 of the Implementing Rules and Regulations of RA 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:

(a)The apprehending officer/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, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. x x x (Emphasis supplied.)

As can be gleaned from the language of Sec. 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render appellant's arrest illegal nor the evidence adduced against him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

Here, the chain of custody was established through the following links: (1) SPO1 Dela Cruz marked the seized sachet with "MDC-1" for the sachet that was the subject of the buy-bust, and "MDC-2" for the sachet found on accused-appellant's person; (2) a request for laboratory examination of the seized items "MDC-1" and "MDC-2" was signed by Police Senior Inspector Arthur Felix Asis; (3) the request and the marked items seized were received by the Bulacan Provincial Crime Laboratory; (4) Chemistry Report No. D-628-02 confirmed that the marked items seized from accused-appellant were shabu; and (5) the marked items were offered in evidence as Exhibits "C-1" and "C-2."

As there is no proof to support the claim that the integrity and the evidentiary value of the seized shabu have been compromised at some stage, we find no reason to overturn the finding of the trial court that what were seized from Elizabeth were the same illegal drugs presented in the trial court. As it is, there was substantial compliance with the requirements under RA 9165, and the prosecution adequately established that there was an unbroken chain of custody over the shabu seized from Elizabeth.

Also working against Elizabeth's cause is the presumption of regularity accorded those involved in the buy-bust operation. It is a settled rule 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.[20] Accused-appellant failed to overcome this presumption by showing clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.[21]

Penalty Imposed

Criminal Case No. 3048-M-2002 (illegal sale of drugs)

The penalty for sale of illegal drugs under RA 9165 is the following:

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 of such transactions.

Criminal Case No. 3049-M-2002

RA 9165 penalizes possession of dangerous drugs as follows:

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

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "shabu"; otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

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

Finding the sentence handed by the lower court in both criminal cases to be within the range provided under RA 9165, we affirm accused-appellant Elizabeth's sentence for both charges.

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03153 finding accused-appellant guilty of violation of Secs. 5 and 11 of Article II, RA 9165 is AFFIRMED IN TOTO.

SO ORDERED.

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

[1] Rollo, p. 3.

[2] Id.

[3] Id. at 4.

[4] Also referred to as "SPO4 De La Cruz" in the CA Decision.

[5] CA rollo, p. 54.

[6] Id.

[7] Id. at 54-55.

[8] Id.

[9] Id. at 56.

[10] Id.

[11] Id.

[12] Id. at 56-57.

[13] Id. at 118-119. Penned by Judge Albert R. Fonacier.

[14] Rollo, p. 14. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose L. Sabio, Jr. and Vicente S.E. Veloso.

[15] G.R. No. 175590, February 9, 2010.

[16] 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.

[17] People v. Villamin, *supra* note 15.

[18] People v. Alberto, G.R. No. 179717, February 5, 2010.

[19] G.R. No. 184805, March 3, 2010; citations omitted.

[20] People v. Fabian, G.R. No. 181040, March 15, 2010.

[21] People v. Concepcion, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 444.

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