

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEOFILO RAGODON MARCELINO, JR. ALIAS "TERENCE"; AND ALIAS TEOFILO MARCELINO Y RAGODON, ACCUSED-APPELLANT.

G.R. No. 189325. June 15, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

On appeal is the Decision [1] dated July 14, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03172, which affirmed the September 27, 2006 Decision [2] in Criminal Case No. 13727-D of the Regional Trial Court (RTC), Branch 164 in Pasig City. The RTC found accused Teofilo Marcelino, Jr. guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

An Information was filed against accused, as follows:

On or about September 18, 2004, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did there and then willfully, unlawfully and feloniously, sell, deliver and give away to PO2 Peter V. Sistemio, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing fourteen (14) decigrams (0.14 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of said law.

Contrary to law. [3]

Upon arraignment, the accused pleaded "not guilty" to the charge against him. After the pre-trial conference, the trial on the merits ensued.

During the trial, the prosecution presented as evidence the testimonies of Police Officer 2 Peter V. Sistemio (PO2 Sistemio), Senior Police Officer 1 Arnold Yu (SPO1 Yu), and Police Chief Inspector Jaime O. Santos (P/CInsp. Santos), all members of the Philippine Drug Enforcement Agency (PDEA), Special Enforcement Service.

On the other hand, the defense presented, as witnesses, the accused; his sisters, Carmen and Maritess, both surnamed Marcelino; and Nelson M. Derilo.

The parties stipulated that the white crystalline substance of suspected methylamphetamine hydrochloride contained in the heat-sealed transparent plastic sachet, marked as Exhibit "A" PVS. 09/18/04, was the same specimen mentioned in Exhibits "C" [4] and "D," [5] thereby dispensing with the testimony of Police Senior Inspector Miladenia Origenes-Tapan (P/SInsp. Origenes-Tapan), Forensic Chemical Officer, Crime Laboratory, Philippine National Police, Camp Crame, Quezon City. [6]

The Prosecution's Version of Facts

On September 18, 2004, at around 6:00 a.m., a confidential informant arrived at the office of the PDEA, Special Enforcement Service in Barangay Pinyahan, NIA Road, Quezon City, and reported the illegal drug activities of a certain alias "Terence" in San Joaquin, Pasig City and in Taguig City. The informant told P/CInsp. Santos that alias "Terence" was looking for an interested buyer of shabu. [7]

The informant arranged a meeting with alias "Terence" at McDonald's restaurant in San Joaquin, Pasig City at 10:00 a.m. on the same day. P/CInsp. Santos, as team leader, formed a buy-bust team composed of PO2 Sistemio, as poseur-buyer; SPO1 Yu, as immediate back-up; and SPO3 Danny Pasamon, SPO3 Pricillo Agni, PO3 Benjamin Domingo, and PO2 Reywin Bariuad, as back-up. [8]

P/CInsp. Santos handed a PhP 100 bill to PO2 Sistemio, who then marked the upper right corner of the bill with his initials, "PVS." Thereafter, P/CInsp. Santos prepared a Pre-Operational/Coordination Report and coordinated with the Eastern Police District, Pasig City, before proceeding to the target area. [9]

The team arrived at the target place at around 9:45 a.m. Thereafter, PO2 Sistemio and the informant entered McDonald's, followed by SPO1 Yu, who sat about seven to nine meters away from PO2 Sistemio and the informant. The rest of the team positioned themselves outside the restaurant.

After about five minutes, alias "Terence" arrived and shook hands with the informant, who then introduced PO2 Sistemio as an interested buyer of shabu. PO2 Sistemio introduced himself as Peter and offered to buy PhP 1,000 worth of shabu. There and then, alias "Terence" brought out from his pocket a heat-sealed transparent plastic sachet of white crystalline substance. PO2 Sistemio handed alias "Terence" the marked PhP 100 bill tied with the boodle money. As soon as alias "Terence" placed the marked money in his right-hand pocket, PO2 Sistemio tapped Terence's shoulder as the pre-arranged signal that the transaction was consummated. He then introduced himself as a PDEA agent.

SPO1 Yu approached and informed alias "Terence" that he was under arrest. After reading alias "Terence" his constitutional rights, SPO1 Yu frisked him and recovered the PhP 100 marked money from his right-hand pocket. He was then brought to the PDEA Office in Quezon City and later identified as Teofilo Marcelino, Jr.

At the PDEA Office, PO2 Sistemio marked the sealed sachet subject of the buy-bust operation with the date "09/18/04" and his initials "PVS," and turned it over to the team leader, P/CInsp. Jaime O. Santos. [10]

The subject sachet was then personally delivered by P/CInsp. Santos, accompanied by PO2 Sistemio and SPO1 Yu, to the Crime Laboratory at Camp Crame, Quezon City for qualitative examination, at around 4:00 p.m. of the same day. The report of P/SInsp. Origenes-Tapan stated that the plastic sachet containing a white crystalline substance weighing 0.14 gram was positive for methylamphetamine hydrochloride or shabu.

Version of the Defense

Accused interposed the defense of denial.

He averred that, on September 18, 2004, accused and his siblings, Carmen and Maritess, were in the San Joaquin, Pasig City market area about 25 meters from McDonald's, looking for a cellular phone housing, when he was approached by two persons who asked if he was alias "Terence." Though he answered in the negative, he was handcuffed and forced to go with them inside a Tamaraw FX where two (2) other passengers were waiting. One of the persons frisked the accused and placed something in his pocket.

The men left with the accused onboard the Tamaraw FX, thus, prompting his sisters to go home and report the incident to their mother. Meanwhile, the accused was brought to the PDEA Office in Quezon City where he was repeatedly asked about his occupation and parents. After forcing him to admit that he was Terence, they took his

fingerprints and made him sign a document.

Defense witness Nelson Derilo, a cigarette vendor at the San Joaquin, Pasig City market area, testified that around 10:00 a.m. of September 18, 2004, he noticed a commotion. He saw two women shouting in protest and another man being pulled by two persons in front of McDonald's. The man was taken on board a Tamaraw FX vehicle, leaving the two women crying. [11]

Ruling of the Trial Court

After trial, the RTC convicted the accused. The dispositive portion of its September 27, 2006 Decision reads:

WHEREFORE, the court finds the accused Teofilo Ragodon Marcelino, Jr. alias 'Terence' and alias Teofilo Marcelino y Ragodon GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 and hereby impose upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (Php 500,000.00) Pesos with the accessory penalties provided for under Section 35 of the said law.

The plastic sachet containing shabu is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

With costs against accused.

SO ORDERED. [12]

Accused appealed to the CA, arguing that the trial court failed to prove his guilt beyond reasonable doubt of the crime charged.

Ruling of the Appellate Court

On July 14, 2009, the CA affirmed the judgment of the RTC. It ruled that the prosecution was able to establish beyond reasonable doubt the elements of illegal sale of dangerous drugs.

Citing *People vs. Yang*, [13] among other cases, the CA held that in an illegal sale of drugs, the crime is committed as soon as the sale transaction is consummated. It is sufficient to show that the illicit transaction took place and that the corpus delicti is presented in court as evidence.

Accused-appellant timely filed a notice of appeal of the CA Decision; thus, We have this appeal. Accused-appellant puts forth the following errors:

I.

The Court of Appeals erred in giving full credence to the testimonies of the prosecution witnesses even if they were marred with inconsistencies.

II.

The Court of Appeals erred in finding the accused-appellant guilty beyond reasonable ground of the crime charged.

Accused-appellant contends that the trial court erred in convicting him beyond reasonable doubt of the crime of violation of Sec. 5 of RA 9165 despite the inconsistencies in the testimonies of prosecution witnesses. First, accused-appellant points out that P/CInsp. Santos testified that only four (4) team members of the buy-bust team went to McDonald's, while SPO1 Yu averred that there were more than four (4) members in the team. Second, PO2 Sistemio and SPO1 Yu maintained that the informant was with them waiting for alias "Terence"; while P/CInsp. Santos stated that the informant went in and out of McDonald's, trying to get in touch with alias "Terence" through a mobile phone. Third, PO2 Sistemio testified that accused-appellant immediately approached

them at the table, whereas SPO1 Yu testified that the informant first pointed out accused-appellant and the latter approached them. Fourth, PO2 Sistemio testified that after the transaction, he placed the subject drug in his pocket, while SPO1 Yu stated that PO2 Sistemio held the drug from the time they left the crime scene until they reached the PDEA Office in Quezon City. Fifth, SPO1 Yu testified that he frisked accused-appellant and recovered the buy-bust money from the latter's pocket. On the other hand, PO2 Sistemio stated that SPO1 Yu asked accused-appellant to pull out all the contents of his pocket. Furthermore, accused-appellant pointed out that SPO1 Yu was seated several meters away from the transaction and was only able to see accused-appellant handing something wrapped in newspaper but that he was not able to determine its contents. [14]

Our Ruling

The appeal is bereft of merit.

RA 9165 provides:

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.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and its payment. The presence of these elements was proved by the trial court and later affirmed by the appellate court in the present case. The delivery of the illegal drug to the poseur-buyer and the receipt by the seller of marked money successfully consummate the buy-bust transaction. [15]

PO2 Sistemio narrated the arrest in a straightforward manner. He testified that on September 18, 2004 at around 6:00 a.m., a confidential informant arrived at the PDEA Office in Quezon City and informed them of the drug activities of one alias "Terence." The informant was able to arrange a meeting with "Terence" at 10:00 a.m. at McDonald's, Pasig City. Based on the information, P/CInsp. Santos coordinated with the Eastern Police District and formed a buy-bust team before proceeding to McDonald's.

They arrived at the area at around 9:45 a.m. PO2 Sistemio and the informant waited inside McDonald's, while SPO1 Yu was seated about seven to nine meters away. After waiting for about five minutes, alias "Terence" approached their table and shook hands with the informant who then introduced him to PO2 Sistemio as the one interested in buying shabu. PO2 Sistemio introduced himself as Peter and offered to buy PhP 1,000 worth of shabu. Alias Terence took from his pocket a heat-sealed transparent plastic sachet and showed PO2 Sistemio its contents. Thus, PO2 Sistemio testified in court:

Q:

x x x [W]hat did you do?

A:

Then I said to alias Terence, bakit konti yata?

Q:

What was the reply if any?

A:

Then alias Terence replied, "sa krisis ngayon, mataas ang presyo, kukunin mo ba ito?" alias Terence told me.

Q:

What did you tell him?

A:

And I said, "oo. Kukunin ko". Then after that alias Terence handed me the transparent plastic sachet containing white crystalline substance suspected shabu, then after that, sir, I accepted that. Alias Terence, sir, demanded the money.

x x x x

Q:

Now what did Terence do after you confirmed that you were buying indeed the shabu which was shown to you inside the transparent plastic sachet?

A:

Sir, he handed to me the plastic sachet.

Q:

What did you do after in return?

A:

Sir, after that, alias Terence demanded for the payment. I handed to him the marked money together with the boodle money.

Q:

And where did you place the marked buy-bust money together with the boodle money?

A:

Sir, inside his pocket.

Q:

Which pocket?

A:

Right pocket, sir.

x x x x

Q:

Now, after you obtained one (1) plastic sachet containing white crystalline substance which was suspected as shabu and you gave the buy-bust money to alias Terence and who in turned [sic] kept it or placed it inside his right pocket, what happened next?

A:

Sir, I tapped the shoulder of alias Terence.

Q:

Which shoulder, left or right?

A:

Right, sir.

Q:

So what happened after you tapped his shoulder?

A:

After that, SPO1 Arnold Yu rushed towards us and effect the arrest of alias Terence. [16]

In corroboration, police back-up and arresting officer SPO1 Yu testified [17] that the moment he saw PO2 Sistemio tap the shoulder of accused-appellant to indicate the consummation of sale, he immediately approached their table to announce the arrest and apprised accused-appellant of his constitutional rights. As he testified:

Q:

How would you know as an immediate back up of Sistemio, if the buy-bust operation was consummated already?

A:

By tapping his shoulder, sir.

Q:

That was the pre-arranged signal?

A:

Yes, sir.

Q:

Tapping the shoulder of whom?

A:

Teofilo, sir.

Q:

Now going back to the time you saw the three of them conversing, what happened next, or what did you see?

A:

Noong nag-uusap sila sir, noong medyo matagal nang nag-uusap sila, siguro mga fifteen (15) minutes, tinap ni Sistemio yung balikat nito kaya lumapit na ako, ineffect ko na yung arrest.

Q:

After about fifteen (15) minutes, you finally saw Sistemio tapped the shoulder of alias Terence?

A:

Yes, sir.

Q:

And after that pre-arranged signal, you immediately rushed to where they were?

A:

Yes, Sir.

Q:

And you announced the arrest of alias Terence?

A:

Yes, sir.

x x x x

Q:

Where was the object of the sale at that point, if you know?

A:

It was in the possession of Peter Sistemio, sir.

Q:

How did you know that it was with Sistemio?

A:

Terence handed it to Sistemio, sir.

Q:

When for the first time did you see, Mr. Witness yung pag about [sic]

A:

When we were inside, sir.

Q:

You mean to say that while you were 7 to 9 meters away from them, you actually saw the transaction, the handing over of the object to Sistemio?

A:

Yes, sir.

Q:

What was that which you saw the accused handing over to Sistemio?

A:

Naka plastic po kasi yon, sir, yung inabot sa kanya,

Q:

Did you see what's inside the plastic?

A:

No, sir.

x x x x

Q:

How did you know that that was a plastic sachet inside?

A:

When we went to the headquarters... because the poseur buyer was examining it to determine if it was positive

x x x.

x x x x

Q:

How about the money used by Sistemio in buying the object, did you see the buy-bust money?

A:

Yes, sir.

Q:

When did you see it?

A:

In our office, sir.

Q:

When you went back or prior to the operation?

A:

Before, sir, na pumunta kami sa operation.

Q:

During the operation when you went to arrest the accused, where was the buy-bust money at that point, if you know?

A:

I recovered it from the right side pocket of alias Terence, sir.

Q:

Why, how were you able to take possession of the buy-bust money from the right side pocket of the accused's pants?

A:

Noong maposasan namin siya, sir, ako yung naghanap.

Q:

You effected the frisking of the person?

A:

Yes, sir.

Q:

Did he allow you to do so or did he resist?

A:

No, sir, he did not resist.

Q:

And can you describe the buy-bust money which you confiscated from the possession of the accused?

A:

P100.00 with marking PVS.

x x x x

Q:

Showing you the one P100.00 bill with Serial No. PR996327, examine this and tell us if that is the same buy-bust money you saw at the office and in the possession of the accused after the operation

A:

Yes, sir, this is the buy-bust money given by Major Santos to Peter Sistemio.

x x x x

Q:

Do you know who brought the object of the sale from the scene of the incident or the arrest to the headquarters?

A:

Peter Sistemio, sir. [18]

Generally, in cases involving violations of the Dangerous Drugs Act, the testimonies of prosecution witnesses, who are police officers, are given credence for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. [19] In the present case, the testimonies of the arresting officers as to what happened during the day the buy-bust was conducted were candid and expressed in a straightforward manner; thus, in the absence of any improper motive, said statements are given full faith and credit. [20]

Accused-appellant has made much of what he perceived as inconsistencies in the testimonies of the members of the buy-bust team. It must be pointed out, however, that the alleged discrepancy is to be expected. It is doctrinally settled in a long line of cases that minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence. [21] To note, the testimony of P/CInsp. Santos was given only on April 28, 2005 or several months after the buy-bust operation was conducted; thus, it is plausible that he could not recall all the members of the September 18, 2004 buy-bust operation. To emphasize, the number of members is not central to

the issue of illegal sale of shabu. What is material for the prosecution in illegal sale of drugs is the proof that the transaction actually took place, together with the presentation in court of the evidence of corpus delicti. [22]

In the present case, the prosecution was able to prove that upon seizing the white crystalline substance, PO2 Sistemio had custody of the substance until it was marked at the station with his initials and personally turned over to the crime laboratory for qualitative evaluation. Thereafter, P/SInsp. Origenes-Tapan stated in her laboratory report that the plastic sachet containing a white crystalline substance, weighing 0.14 gram, was positive for methylamphetamine hydrochloride. When the Court asked why the marking was done in the PDEA Office instead of in the crime scene, PO2 Sistemio explained that it was their standard operation procedure to mark the seized items in the PDEA Office. He further testified that he was not carrying any pen at the time the buy-bust operation was conducted. [23] Thereafter, the parties stipulated that the white crystalline substance presented in court was the same substance specified in the request for laboratory examination and report.

Sec. 1(b) of the Dangerous Drugs Board Resolution No. 1, Series of 2002, implementing RA 9165, defines "chain of custody" as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition." [24]

In *People v. Kamad*, [25] We acknowledged that the following links must be established in the chain of custody in a buy-bust situation: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

It was proved in court that at the PDEA Office, PO2 Sistemio marked the sealed sachet subject of the buy-bust operation with the date "09-18-04" and his initials PVS and turned it over to their Chief, P/CInsp. Santos. PO2 Sistemio then executed an affidavit of arrest (Exhibit "A"), and prepared a request for physical examination (Exhibit "E"), drug testing (Exhibit "G"), and crime laboratory examination of the confiscated item (Exhibit "C"). P/CInsp. Santos, along with PO2 Sistemio and SPO1 Yu, brought the subject specimen to the Crime Laboratory at Camp Crame, Quezon City for examination. Thereafter, the parties stipulated that the specimen presented before the court was the same specimen subjected to the laboratory exam.

During cross-examination, PO2 Sistemio further testified that the marking of the evidence was witnessed by the team leader, P/CInsp. Santos, and SPO1 Yu, who affixed their signatures on the documents. [26]

P/SInsp. Origenes-Tapan stated in her Chemistry Report [27] that the plastic sachet containing a white crystalline substance weighing 0.14 gram was positive for methylamphetamine hydrochloride, otherwise known as shabu.

As per Order dated November 11, 2004 of the RTC, P/SInsp. Origenes-Tapan's testimony was dispensed with after the parties stipulated that the heat-sealed transparent plastic sachet containing white crystalline substance of suspected methamphetamine hydrochloride was the same as the specimen presented in court as Exhibits "C" and "D." Thus, all things taken together, the PDEA officers were able to establish the chain of custody from the time the shabu was confiscated up to the time it was presented in court for identification.

In *People v. Antonio*, [28] this Court consistently emphasized that the findings of the trial court, in the absence of

any glaring error, gross misapprehension, arbitrary and unsupported conclusion of facts, are given great weight, because it is in a better position to observe the deportment and manner of witnesses during trial. We shall also observe this ruling here.

Under Sec. 5, RA 9165, the selling of shabu, regardless of the quantity and quality, is punishable by life imprisonment to death and a fine of PhP 500,000 to PhP 10,000,000. However, with the effectivity of RA 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of death penalty has been proscribed. Thus, the penalty shall be life imprisonment and fine. The penalty of life imprisonment and a fine of PhP 500,000 imposed by the Pasig City RTC and affirmed by the CA is well within the range provided by law. We find no reason to disturb such imposition.

WHEREFORE, the appeal is hereby DENIED. The CA Decision in CA-G.R. CR-H.C. No. 03172 finding accused-appellant guilty of the crime charged is AFFIRMED IN TOTO.

SO ORDERED.

Velasco, Jr., (Acting Chairperson),[*] Leonardo-De Castro, Bersamin,**] Del Castillo, and Perez, JJ., concur.

[*] Per Special Order No. 1003 dated June 8, 2011.

[**] Additional member per Special Order No. 1000 dated June 8, 2011.

[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Remedios A. Salazar-Fernando and Magdangal M. De Leon.

[2] Penned by Judge Librado S. Correa.

[3] CA rollo, p. 12.

[4] Request for laboratory examination.

[5] Initial laboratory request.

[6] Records, p. 30, Order dated November 11, 2004.

[7] CA rollo, 13.

[8] Id.; rollo, pp. 4-5.

[9] TSN, November 18, 2004, Direct Examination of PO2 Sistemio.

[10] Id. at 16.

[11] TSN, August 3, 2006.

[12] CA rollo, pp. 17-18.

[13] G.R. No. 148077, February 6, 2004, 423 SCRA 82.

[14] Id. at 34-36.

[15] People v. Gonzales, G.R. No. 143805, April 11, 2002, 380 SCRA 689.

[16] TSN, November 18, 2004, pp. 11-13.

[17] TSN, November 25, 2004, pp. 13-17.

[18] Id. at 12-22.

[19] *People v. Trinidad*, G.R. No. 193184, February 7, 2011.

[20] *People v. Lim*, G.R. No. 187503, September 11, 2009, 599 SCRA 712.

[21] *People v. Caco*, G.R. Nos. 94994-95, May 14, 1993, 222 SCRA 49.

[22] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010; *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430; *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375.

[23] Id.

[24] See *People v. Capuno*, G.R. No. 185715, January 19, 2011 and *People v. Lorena*, G.R. No. 184954, January 10, 2011.

[25] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[26] TSN, November 18, 2004, p. 18.

[27] Chemistry Report No. D-621-04, Exhibit "L."

[28] G.R. No. 128900, July 14, 2000, 335 SCRA 646.

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