

**VALENTIN ZAFRA Y DECHOSA AND EROLL MARCELINO Y REYES,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 190749. April 25, 2012*

Ponente: PEREZ, J.

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For review before this Court is the Decision of the Court of Appeals (CA) in CA-G.R. CR No. 31713 dated 30 October 2009,[1] affirming the decision of the Regional Trial Court (RTC), Branch 76, Malolos, Bulacan,[2] which found petitioners Valentin Zafra y Dechosa (Zafra) and Eroll Marcelino y Reyes (Marcelino) guilty beyond reasonable doubt of Possession of Dangerous Drugs in violation of Section 11, Article II of Republic Act (RA) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) and imposing on each of them the penalty of imprisonment of twelve (12) years and one (1) day as the minimum term, to thirteen (13) years as maximum, and of fine of Three Hundred Thousand Pesos (P300,000.00).

The Facts

The prosecution charged Zafra and Marcelino with violation of Section 11, Article II of RA No. 9165[3] before the RTC of Bulacan under the Information below:

That on or about the 12[th] day of June, 2003, 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 their possession and control dangerous drug consisting of two (2) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride (shabu) weighing 0.061[4] gram, in conspiracy with one another.[5]

The prosecution's lone witness, SPO4[6] Apolinario Mendoza (SPO4 Mendoza), Chief of the Investigation and Drug Enforcement Unit of the Philippine National Police of Balagtas, Bulacan, testified that on 12 January 2003, at around 4:30 in the afternoon, he conducted surveillance in front of a sari-sari store at the corner of Mirafior Subdivision and P. Castro Street in Balagtas, Bulacan, due to reported drug trafficking in the area. SPO4 Mendoza found there the group of Zafra, Marcelino, and a certain Marlon Daluz (Daluz) standing and facing each other.[7] In that position, he saw Zafra and Marcelino holding shabu, while Daluz was holding an aluminum foil and a disposable lighter.[8] Seeing this illegal activity, SPO4 Mendoza single-handedly apprehended them. He grabbed the shabu from the hands of Zafra and Marcelino, and confiscated the drug paraphernalia from Daluz. Then, he ordered the three to lie down; he frisked them. Boarding a tricycle, he brought them to the Balagtas Police Station,[9] where he personally marked the confiscated two (2) sachets of shabu, one with VSD, the initials of Valentin Zafra y Dechosa and the other with EMR, the initials of Eroll Marcelino y Reyes.[10]

On the following day, 13 June 2003, SPO4 Mendoza brought the accused and the items to the crime laboratory for urine sampling and laboratory examination, respectively.[11] The test of the items resulted to positive presence of methylamphetamine hydrochloride.[12]

The RTC, Branch 76, Malolos, Bulacan, in a decision dated 11 June 2008, convicted Zafra and Marcelino for the

crime of possession of shabu:

WHEREFORE, finding guilt of the accused beyond reasonable doubt in Criminal Case No. 2297-M-2003, accused VALENTIN ZAFRA y DECHOSA and accused EROLL MARCELINO y REYES are hereby CONVICTED for possession of sachets of methylamphetamine hydrochloride commonly known as shabu, with a weight of 0.31 gram and 0.30 gram, respectively, which are classified as dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002” and are each 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).[13]

Daluz, on the other hand, who was charged of possession of drug paraphernalia in violation of Section 12 of RA No. 9165 pleaded guilty to the charge and was released after serving his sentence of eight (8) months.[14]

Zafra and Marcelino appealed; but the CA affirmed in toto the RTC Decision:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. Accordingly, the assailed 11 June 2008 Decision of the Court a quo STANDS.[15]

Hence, this appeal on the following grounds: first, the arrest was unlawful; second, the prohibited drugs are inadmissible in evidence; third, Section 21 of RA No. 9165 was not complied with; and, finally, the prosecution failed to prove petitioners’ guilt beyond reasonable doubt.

The Court’s Ruling

We resolve to ACQUIT petitioners Zafra and Marcelino on the following grounds:

First, the prosecution’s lone witness, SPO4 Mendoza,[16] testified that, from a distance, he saw Zafra and Marcelino holding shabu by their bare hands, respectively, while Daluz was holding an aluminum foil and a disposable lighter.[17] Seeing this illegal activity, he single-handedly apprehended them.[18] He grabbed the shabu from the hands of Zafra and Marcelino, and confiscated the drug paraphernalia from Daluz.

In his affidavit, however, SPO4 Mendoza stated, that:

Na, nitong nakaraang Hunyo 12, 2003 ng 4:30 ng hapon humigit kumulang, sa P. Casto St., Barangay Borol-1, Balagtas Bulacan, habang ako ay nagsasagawa ng surveillance sa Suspected Drug Pusher sa nasabing lugar ay aking nakita ang tatlo (3) kalalakihan na nakatalikod sa isang corner ng tindahan sa P. Castro St., na nakilala ko na sina Valentine D. Zafra @ Val, Eroll R. Marcelino @ Eroll, at Marlon B. Daluz @ Marlon na pawang mga residente ng Borol-1, Balagtas, Bulacan.

Na, ako ay lumapit na naglalakad kina Valentine Zafra, Errol Marcelino at Marlon Daluz at sa aking paglapit sa kanilang tatlo ay aking nakita at naaktuhan inabot ni Valentine Zafra kay Eroll Marcelino ang isang (1) plastic sachet ng shabu may timbang na 0.30 grams, at isa pang plastic sachet ng shabu na si Marlon Daluz ay hawak ang isang disposable lighter at 2 piraso ng aluminum foil na inaayos na nilalagyan ng lupi at 7 piraso ng empty plastic sachet. (Emphasis supplied)[19]

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On cross examination, SPO4 Mendoza testified that it was Zafra and not Daluz, who was holding the aluminum foil (contrary to his earlier testimony that Zafra was holding shabu);[20] that Daluz (whom he claimed during the direct examination to be holding the aluminum foil) and Marcelino were holding handkerchiefs and on top of them were shabu;[21] When the defense confronted SPO4 Mendoza about the inconsistency, he told the court that his version during his direct testimony was the correct one.[22]

While, it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal,[23] such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance.[24] In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of petitioners.

Certainly, SPO4 Mendoza's credibility has to be thoroughly looked into, being the only witness in this case. While in his affidavit, SPO4 Mendoza claimed that he saw the sachet of shabu (0.30 gram) because Zafra was in the act of handing it to Marcelino, his testimony during the direct examination reveals another version, that is, from a distance, he saw Zafra and Marcelino holding shabu, respectively, hence, he approached them from behind and confiscated the shabu from both of them and the paraphernalia from Daluz. How he saw a 0.30 gram of shabu from a distance in a busy street, baffles this Court. Asked, however, on cross examination, who among the three were holding the shabu and drug paraphernalia, SPO4 Mendoza failed to be consistent with his earlier testimony and pointed to Daluz as the one holding shabu with a handkerchief in his hand and Zafra as the one in possession of drug paraphernalia. These inconsistencies are not minor ones, and, certainly, not among those which strengthens the credibility of a witness. Possession of drug paraphernalia vis-à-vis shabu, are two different offenses under RA No. 9165. That Zafra was holding drug paraphernalia and not shabu is material to this case, to the accusation against him, and to his defense.

Second, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of Mendoza's official duty.[25]

It is noteworthy, however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.[26] Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.[27]

Third, SPO4 Mendoza was the lone arresting officer, who brought the petitioners to the police station,[28] who himself marked the confiscated pieces of evidence sans witnesses, photographs, media, and in the absence of the petitioners. His colleagues were nowhere.[29] And, worse, he was the same person who took custody of the same pieces of evidence, then, brought them on his own to the crime laboratory for testing.[30] No inventory was ever done;[31] no inventory was presented in court.

The solo performance by SPO4 Mendoza of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of corpus delicti, which is the illegal object itself in serious doubt. No definite answer can be established regarding the question as to who possessed what at the time of the alleged apprehension. More significantly, we are left in doubt whether not the two sachets of shabu allegedly seized from the petitioners were the very same objects offered in court as the corpus delicti.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty.[32] The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction.[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt.[35] More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.[36] The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[37]

Section 21, paragraph 1, Article II of RA No. 9165 reads:

(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.

Section 21(a) Article II of the Implementing Rules and Regulations of RA No. 9165 reads:

(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 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.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[38] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.[39] These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[40]

The records readily raise significant doubts as to the identity of the sachets of shabu allegedly seized from Zafra and Marcelino. SPO4 Mendoza's claim that the two sachets of shabu presented in court were the same ones confiscated from the petitioners, cannot be taken at its face value, solely on the presumption of regularity of one's performance of duty. SPO4 Mendoza blatantly broke all the rules established by law to safeguard the identity of a corpus delicti. There was even no mention about the details of the laboratory examination of the allegedly seized drugs. To allow this to happen is to abandon everything that has been said about the necessity of proving an unbroken chain of custody. SPO4 Mendoza cannot alone satisfy the requirements in RA No. 9165 which is anchored on, expressly, the participation of several personalities and the execution of specified documents.

And, while jurisprudence has refined the enumerated duties of an apprehending officer in a drug case and has thus described the equivalent requirements for a proper chain of custody of the corpus delicti, still, the case at bar cannot pass the constitutional requirement of proof beyond reasonable doubt.

We reiterate, that this Court will never waver in ensuring that the prescribed procedures in the handling of the seized drugs should be observed. In *People v. Salonga*,^[41] we acquitted the accused for the failure of the police to inventory and photograph the confiscated items. We also reversed a conviction in *People v. Gutierrez*,^[42] for the failure of the buy-bust team to inventory and photograph the seized items without justifiable grounds. *People v. Cantalejo*^[43] also resulted in an acquittal because no inventory or photograph was ever made by the police.

We reached the same conclusions in the recent cases of *People v. Capuno*,^[44] *People v. Lorena*,^[45] and *People v. Martinez*.^[46]

The present petition is the sum total of all the violations committed in the cases cited above.

Lest the chain of custody rule be misunderstood, we reiterate that non-compliance with the prescribed procedural requirements does not necessarily render the seizure and custody of the items void and invalid; the seizure may still be held valid, provided that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items are shown to have been properly preserved.[47] These conditions, however, were not met in the present case as the prosecution did not even attempt to offer any justification for the failure of SPO4 Mendoza to follow the prescribed procedures in the handling of the seized items. As we held in *People v. De Guzman*,[48] the failure to follow the procedure mandated under RA No. 9165 and its Implementing Rules and Regulations must be adequately explained. The justifiable ground for the non-compliance must be proven as a fact. The Court cannot presume what these grounds are or that they even exist.

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[49] The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.[50] *In dubio pro reo*. [51] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[52]

WHEREFORE, premises considered, we REVERSE and SET ASIDE the Decision of the Court of Appeals dated 30 October 2009 in CA-G.R. CR No. 31713. Petitioners Valentin Zafra y Dechosa and Eroll Marcelino y Reyes are hereby ACQUITTED for the failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately RELEASED from detention, unless they are confined for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Carpio, (Chairperson), Brion, Sereno, and Reyes, JJ., concur.

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose Catral Mendoza (now an Associate Justice of the Supreme Court) and Marlene Gonzales Sison, concurring. CA rollo, 126-141.

[2] Penned by Presiding Judge Albert R. Fonacier. *Id.* at 66-78.

[3] Possession of Dangerous Drugs.

[4] Based on the findings of the RTC decision, the two (2) sachets of methylamphetamine hydrochloride (shabu) weighing 0.31 and 0.30 gram, respectively, which totals to 0.61 and not 0.061 gram.

[5] Records, p. 9.

[6] TSN, 27 June 2005, p. 2, identifies Mendoza with the rank of SPO4 though the RTC and the Court of Appeals decision identifies him with the rank of SPO3.

[7] *Id.* at 7-8.

[8] *Id.* at 7.

[9] *Id.* at 9.

- [10] TSN, 23 January 2006, p. 3.
- [11] Id. at 3-4.
- [12] Id. at 4.
- [13] CA rollo, p. 78.
- [14] Records, pp. 113-114.
- [15] CA rollo, p. 141.
- [16] Records, pp. 13-30.
- [17] Id. at 74.
- [18] RTC Decision, CA rollo, p. 48.
- [19] Id. at 54.
- [20] TSN, 29 May 2006, p. 3.
- [21] Id at 5.
- [22] Id at 6.
- [23] *People v. Casimiro*, G.R. No. 146277, 20 June 2002, 383 SCRA 390, 398; citations omitted.
- [24] Id.
- [25] RTC Decision, CA rollo, p. 37.
- [26] *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 623.
- [27] Id. at 623-624.
- [28] TSN, 27 June 2005, p. 9.
- [29] Petition. Rollo, p. 24.
- [30] Id. at 23-24.
- [31] Id. at 24.
- [32] *Malillin v. People*, supra note 26 at 631.
- [33] Id. at 631-632.
- [34] Id. at 632.
- [35] Id.
- [36] Id.
- [37] Id.
- [38] Id.
- [39] Id.
- [40] Id. at 632-633.

[41] G.R. No. 186390, 2 October 2009, 602 SCRA 783, 794-795.

[42] G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101.

[43] G.R. No. 182790, 24 April 2009, 586 SCRA 777, 783-784.

[44] G.R. No. 185715, 19 January 2011, 640 SCRA 233.

[45] G.R. No. 184954, 10 January 2011, 639 SCRA 139.

[46] G.R. No. 191366, 13 December 2010, 637 SCRA 791.

[47] *Id.* at 813.

[48] G.R. No. 186498, 26 March 2010, 616 SCRA 652, 662.

[49] *Malillin v. People*, *supra* note 26 at 639.

[50] *Id.*

[51] *Id.*

[52] *Id.*

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