

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL ANDRES Y TRINIDAD, ACCUSED-APPELLANT.

*G.R. No. 193184. February 07, 2011*

Ponente: MENDOZA, J.

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### MENDOZA, J.:

This is an appeal from the January 20, 2010 Decision[1] of the Court of Appeals (CA), which affirmed the December 3, 2007 Decision[2] of the Regional Trial Court, Branch 171, Valenzuela City (RTC), finding accused Michael Andres y Trinidad (Andres) guilty beyond reasonable doubt of having violated Section 5 and Section 11, Article II of Republic Act (R.A.)

No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," for the illegal sale of 0.53 gram of shabu and illegal possession of 0.43 gram of shabu.

Two (2) separate informations for violation of Section 5 and Section 11, Article II of R.A. No. 9165 were filed against accused Andres. During the trial, the prosecution presented two (2) witnesses, namely: Senior Police Officer 2 Lucio Flores (SPO2 Flores) and Police Officer 2 Gaspar Talaue (PO2 Talaue), while the defense presented Andres as its lone witness. The respective versions of the parties were summarized in the subject decision of the CA as follows:

In the trial that ensued, the prosecution's evidence showed that in the morning of 25 March 2003, PDEA's (Philippine Drug Enforcement Agency) confidential agent informed PSI Paterno C. Panaga [PSI PANAGA] that "a project he was working on was ready for entrapment operation." After which PSI Panaga called for a briefing and organized a team composed of SPO2 Alfredo Bernardo, SPO2 Lucio Flores, PO2 Adaviles, PO2 Tolivas, PO2 Talaue, and PO1 Rosales. Designating PO2 Gaspar Talaue [PO2 Talaue], as the poseur-buyer, PSI Panaga handed him the marked money. At around 11 o'clock in the morning, the team, together with the confidential agent, proceeded to Poblacion Street, Malinta, Valenzuela City. SPO2 Lucio Flores [SPO2 Flores], acting as back-up, positioned himself about five (5) to ten meters from the three while the other members of the team stood in front of the Valenzuela City Hall where they could still see the transaction.

When the appellant Michael Andres arrived, he approached PO2 Talaue and the informant. After a short conversation, accused-appellant asked the poseur-buyer how much he was going to purchase, to which PO2 Talaue replied, "isang libo lang." After the police officer showed accused-appellant the money, the latter took the shabu from his pocket and handed it to PO2 Talaue. Upon receiving one piece of transparent plastic sachet containing the suspected shabu, PO2 Talaue gave the pre-arranged signal and his back-up, SPO2 Flores, approached them and frisked accused-appellant. As a result of the buy-bust operation, SPO2 Flores recovered the buy-bust money consisting of two one hundred peso bills with Serial Nos. BT766967 and JF988321 and one plastic sachet of shabu which was marked by PO2 Talaue with GCT-03-25-03 "B." On the other hand, the shabu, object of the sale, was also marked by PO2 Talaue with his initials and date of the arrest with additional marking "A."

After his arrest, accused-appellant was brought to the office of the Barangay Chairperson to whom the alleged confiscated shabu was shown. When accused-appellant was brought to their headquarters, the necessary

requests for dusting of ultra-violet, medical examination and drug-testing were made. As stipulated during the pre-trial conference, Forensic Chemist May Andrea A. Bonifacio conducted a qualitative examination of the seized items and, thereafter, noted the following findings:

"SPECIMEN SUBMITTED:

A (GCT-03-25-03 "A") = 0.53 gram

B (GCT-03-25-03 "B")

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug. Xxx"

Accused-appellant, for his part, denied the charges of illegal possession and illegal sale of dangerous drugs and insisted that no buy-bust operation ever took place. He asserted that he was on his way to the terminal on board his tricycle when somebody on a vehicle motioned him to stop. When he did, four (4) male passengers in civilian clothes alighted and told him to get off his tricycle, one of whom accused him of selling illegal drugs which he denied. When about to be frisked, he asked the police officer to show him his hands but the latter retorted, "putang ina wala akong ilalagay sa iyo." Thus, while in handcuffs, accused-appellant and his tricycle were searched but the police officers did not find anything. Thereafter, he was dragged to the car and was forced to put two sachets in his own pocket. He was allegedly told to admit that these two sachets came from him, otherwise, he would be "salvaged" upon reaching the barangay outpost. He claimed that he had not been involved in any drug-related case and that he had no previous encounter with any of the four men who arrested him.

On December 3, 2007, the RTC handed down a joint decision finding Andres guilty beyond reasonable doubt of violating Section 5 and Section 11, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court hereby finds accused MICHAEL ANDRES y TRINIDAD GUILTY beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, for the illegal sale of 0.53 gram of shabu and illegal possession of 0.43 gram of shabu as charged in Criminal Case Nos. 341-V-03 and 342-V-03, respectively.

Consequently, for violating Sections 5, Article II of Republic Act No. 9165, the said accused is hereby sentenced to suffer the penalty of life imprisonment plus a fine in the amount of One Million Pesos (P1,000,000.00).

For violating Section 11 of Article II of Republic Act No. 9165, accused Andres is further sentenced to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and pay the fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

The penalties herein imposed on the accused shall be served by him successively and the period during which the said accused was placed under preventive imprisonment shall be credited in his favor.

Meanwhile, the Branch Clerk of Court of this Court is hereby directed to turn over to PDEA the evidence in these cases for proper disposition of the said office.

SO ORDERED.

The RTC gave full faith and credit to the testimonies of the arresting officers and gave no credence to the claim of Andres that he was framed-up for lack of corroborating evidence.

Aggrieved, Andres appealed the RTC decision to the CA praying for the reversal and setting aside of the judgment of conviction anchored on the following

**ASSIGNMENT OF ERRORS:**

I

THE TRIAL COURT ERRED IN FINDING THAT THE LAW ENFORCERS REGULARLY PERFORMED THEIR OFFICIAL DUTIES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S LACK OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

On January 20, 2010, the CA rendered the subject decision affirming in toto the decision of the RTC. It ruled, among others, that the testimonies of the arresting officers were convincing and the buy-bust operation was not a fabrication. The CA was of the view that the prosecution was able to prove all the elements of illegal sale and illegal possession of dangerous drugs. The series of events unmistakably showed that the chain of custody of the subject drugs was established proving that the pieces of evidence were correctly preserved and identified. It further stated that the procedural lapses committed by the police officers were not sufficient to render void the seizure of, and custody over, the confiscated items.

Hence, this appeal.

ISSUE

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN RULING THAT THE ACCUSED MICHAEL ANDRES Y TRINIDAD IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

**The Position of the Accused**

Accused Andres argues that the presumption of regularity in the performance of duty by the police officers cannot apply in this case because the alleged sale of illegal drugs was not established and no buy-bust operation took place. The single testimony of PO2 Talaue proved nothing because it was not corroborated. Moreover, the confidential informant was not presented in court to corroborate his testimony. With respect to the custody and disposition of confiscated drugs, Andres claims that the procedural requirements of Section 21, paragraph 1, Article II of RA No. 9165 were not followed.

**The Court's Ruling**

The Court finds no merit in the appeal.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the CA.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[3]

In the case at bench, there is no doubt that the prosecution successfully established all the elements of illegal sale of drugs prohibited under Section 5, Article II of R.A. No. 9165.

The records show that Andres was caught in flagrante delicto selling a dangerous drug, methamphetamine hydrochloride or shabu, to PO2 Talaue on March 25, 2003 in the vicinity of Poblacion, Valenzuela City.

PO2 Talaue testified that, upon receiving a tip from a police informant about Andres' illegal drug activities, an entrapment team was immediately formed and he was assigned to act as poseur-buyer. The buy-bust team and the informant went to the target area and positioned themselves for the entrapment. Andres arrived shortly and approached PO2 Talaue for the sale of the illegal drug. After a brief conversation, the marked money held by PO2 Talaue and the small plastic sachet of crystalline substance brought by Andres exchanged hands. After the deal was made, PO2 Talaue gave the pre-arranged signal. The police back-up rushed to the scene and immediately arrested Andres. The authorities then brought Andres to the Barangay Hall of Malinta while the marked money was brought to the Philippine National Police (PNP) Crime Laboratory for ultra violet powder dusting.

While on the witness stand, PO2 Talaue positively identified Andres as the seller of the confiscated shabu. He also identified the confiscated sachet which was marked, preserved as evidence and laboratory-tested to contain shabu.

SPO2 Flores corroborated the testimony of PO2 Talaue. He identified himself as a member of the back-up team during the entrapment operation. He narrated that immediately after the buy-bust operation, he was able to recover one small plastic sachet of crystalline substance from Andres which was marked CGT 3-25-03, and the marked money consisting of two (2) hundred peso bills with Serial Nos. BT766867 and JF988321. He corroborated the testimony of PO2 Talaue that after the arrest, Andres was brought to Camp Crame for investigation and then to the Crime Laboratory for ultraviolet powder dusting, physical/medical examination and drug testing.

The clear and positive testimony of PO2 Talaue, corroborated by that of SPO2 Flores, is more than sufficient to prove that an illegal transaction or sale of shabu took place. SPO2 Flores was only about five (5) meters away from PO2 Talaue and the informant. He was able to give a clear and consistent account of what transpired during the buy-bust operation especially the fact that illegal drugs were actually found in the possession of Andres after his arrest.

The Court gives full faith and credence to the testimonies of the police officers and upholds the presumption of regularity in the apprehending officers' performance of official duty. 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.[4]

On the other hand, Andres failed to present clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. Except for his bare allegations, there is no solid proof whatsoever to support his claim that the police officers were impelled by improper motives to testify against him. Hence, the veracity of their testimonies is beyond question.

Neither was Andres able to prove that he was a victim of a frame-up. The Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.[5]

Meanwhile, the non-presentation of the confidential informant is not fatal to the prosecution's case. The presentation of an informant is not a requisite in the prosecution of drug cases. The failure to present the informant does not vitiate the prosecution's cause as his testimony is not indispensable to a successful prosecution

for drug-pushing since it would be merely corroborative of, and cumulative with, that of the poseur-buyer who was presented in court and testified on the facts and circumstances of the sale and delivery of the prohibited drug.

At any rate, informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that, except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that the informant himself acted as the poseur-buyer and the only one who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.[6] In this case, the confidential informant's testimony was no longer necessary precisely because PO2 Talaue's detailed testimony was based on his personal knowledge of what actually happened during the buy-bust operation.

Aside from attacking the rule on the presumption of regularity in the performance of official duty, Andres desperately argues that the procedural

requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165[7] with respect to the custody and disposition of the confiscated drugs were not followed. Unfortunately, this argument has no leg to stand on.

First, the Court agrees with the CA that Andres did not raise this as an issue in the trial court.

Second, Andres only made a general statement in his appeal brief without specifically stating what procedural requirements were not complied with by the apprehending police officers.

Third, the stipulations[8] entered into by the parties during the pre-trial conference disprove his claim that the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165 were not complied with by the police officers. The stipulations show that the chain of custody of the confiscated drugs was preserved.

WHEREFORE, the January 20, 2010 Decision of the Court of Appeals, in C.A. G.R. CR-H.C. No. 03504, is hereby AFFIRMED.

### **SO ORDERED.**

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

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[1] Rollo, pp. 2-16. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justice Sesinando E. Villon and Associate Justice Jane Aurora C. Lantion.

[2] CA rollo, pp. 38-44.

[3] *People v. Joseph Serrano and Anthony Serrano*, G.R. No. 179038, May 6, 2010.

[4] *People of the Philippines v. Elizabeth Marcelino y Reyes*, G.R. No. 189278, July 26, 2010.

[5] *People of the Philippines v. Marianito Gonzaga y Jomaya*, G.R. No. 184952, October 11, 2010.

[6] *People of the Philippines v. Marilyn Naquita y Cibulo*, G.R. No. 180511, July 28, 2008, 560 SCRA 430.

[7] (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 Republic Act No. 9165, which implements said provision, 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; x x x 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.

[8] a) The jurisdiction of the Court over the person of the accused and the offense;

b) The identity of the accused-i.e., whenever any of the witnesses mention the name Michael Andres y Trinidad, they refer to the accused in these cases;

c) P/Sr. Insp. Paterno C. Panaga was the officer-on-case who received the evidence marked as Exhibits "B" and "C" from PO2 Gaspar C. Talaue, the poseur buyer and from SPO2 Lucio R. Flores;

d) That P/Sr. Insp. Panaga caused the preparation of letter-request for laboratory examination of the evidence, marked as Exhibit "A"; the letter-request to conduct dusting of ultraviolet powder on two genuine P100.00 bills; letter-request to conduct test to determine presence of ultraviolet on the bills recovered; and the letter-request for drug dependency test, marked as Exhibit "I"; and letter-request to conduct physical/medical examination on accused, marked as Exhibit "J";

e) P/Sr. Insp. Panaga turned over the aforesaid letter-requests together with the evidence to PO2 Talaue for delivery to the PNP Crime Laboratory in Camp Crame, Quezon City;

f) PO2 Talaue delivered the letter-requests together with the evidence and the accused to PNP Crime Laboratory in Camp Crame, Quezon City;

g) P/Insp. May Andrea A. Bonifacio received the letter-requests and the evidence at the PNP Crime Laboratory in Camp Crame, Quezon City;

h) P/Insp. Bonifacio is a duly qualified Forensic Chemist assigned at the PNP Crime laboratory in Camp Crame, Quezon City;

i) After receiving the letter-request and the evidence, P/Insp. Bonifacio conducted the requested examination;

j) After examination, P/Insp. Bonifacio found out that the evidence turned over to her were positive for Methamphetamine Hydrochloride (shabu), a regulated drug;

k) P/Sr. Insp. Panaga and P/Insp. Bonifacio have no personal knowledge as to the source of evidence and the circumstances surrounding its confiscation custody and safekeeping; and

l) the existence of all the letter-request for examination.

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