

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOVI PORNILLOS Y HALLARE, APPELLANT.

G.R. No. 201109. October 02, 2013

Ponente: ABAD, J.

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ABAD, J.:

The main issue in this drugs case centers on the wide discrepancy between the weight of the substance seized from the accused and the weight of the substance subject of forensic test.

The Facts and the Case

The Provincial Prosecutor of Camarines Sur charged Jovi Hallare Pornillos (Pornillos) before the Regional Trial Court (RTC) of Iriga City in Criminal Case IR-6733 with selling 0.2204 gram of shabu in violation of Section 5, Article II of Republic Act (R.A.) 9165.

The prosecution's version is that on May 14, 2004 Capt. Dennis Vargas briefed his police team on a buy-bust operation it was to carry out against Pornillos. He handed two P500.00 bills to PO2 Leonardo Garcia, whom he designated as poseur buyer. PO2 Garcia marked the bills with his initials, "LMG," and recorded their serial numbers in their logbook.[1]

Arriving at Nabua, Camarines Sur, on May 15, 2004, the team cased the area. The police informant, with PO2 Garcia in tow, approached Pornillos' house then knocked on the door. Pornillos opened it and asked the informant if he was there for shabu. PO2 Garcia replied that he wanted to buy P1,000.00 worth of shabu. Pornillos handed over the shabu and got the money. PO2 Garcia then identified himself and arrested Pornillos. The rest of the team converged on them. After apprising Pornillos of his rights, Capt. Vargas frisked him and seized the marked money in his pocket. PO2 Garcia marked the shabu in the plastic sachet with his initials "LMG" and turned over the same to the evidence custodian, PO1 Danilo Prianes.[2]

The arresting team brought Pornillos to the PDEA office.[3] Capt. Vargas and PO2 Garcia prepared the inventory in the presence of Pornillos, the media representative from DZGB, and the Barangay Chairman of Ems Barrio, Legaspi City, Irma Trivianes.[4] PO1 Prianes took pictures of the proceedings.[5] PSI Vargas then made a request for the laboratory examination of the seized substance.[6] The examination yielded positive results for methamphetamine hydrochloride.[7]

Pornillos' version, on the other hand, is that he was sleeping in his room on May 15, 2004 when his wife woke him up. When he went out into the dining room, he there saw PO2 Aldea, PO2 Garcia, and another man. They asked him for his source of shabu. When he could not give them a name, PO2 Garcia handcuffed him. Capt. Vargas entered the dining room from the back door and frisked Pornillos. He got his wallet that had P6,000.00 in it. He took out two P500.00 bills and handed these to PO2 Garcia. The officers took his cellphone and flashlight.[8]

The police brought Pornillos, along with his wife and child, to Camp Simeon Ola. Along the way, they asked him

again to name a shabu seller but he denied knowing any seller. At the police camp, Pornillos denied ownership of the small plastic sachet shown him.[9] Later, Capt. Vargas demanded P80,000.00 in exchange for his release.[10]

Celestino Tañamor testified that on May 15, 2004, he was drinking with his uncles about five meters from Pornillos' house when two men arrived looking for Pornillos. One of Tañamor's companion accompanied them to Pornillos' house. A little while later, Tañamor saw a handcuffed Pornillos emerge from his house with the others. Three more men arrived and they all left with Pornillos.[11]

On September 12, 2007 the RTC found Pornillos guilty beyond reasonable doubt of selling 0.2204 grams of shabu in Violation of Sec. 5, Article II of R.A. 9165, sentenced him to life imprisonment, and ordered him to pay a fine of P500,000.00.[12]

The Court of Appeals (CA) affirmed[13] the RTC Decision in CA-G.R. CR-HC 03027. It found, like the RTC, the testimonies of PO2 Garcia, PO2 Aldea, and PI Clemen worthy of belief. The prosecution, said the CA, established all the elements of the offense. Pornillos' denial and claim of frame-up could not overcome the positive testimonies of the police officers involved in the buy-bust operation. The police immediately marked the seized items for proper identification and had these inventoried in the presence of Pornillos, a representative of the media, and an elective official as required by Section 21. It has been held that conducting the inventory at the nearest police station constitutes compliance with the law.[14]

But the CA is in error in one important point. It said that the chain of custody of the seized drugs does not appear to be unbroken. But the PDEA report to the Provincial Prosecutor's Office,[15] the booking sheet and arrest report,[16] the Certificate of Inventory,[17] and the laboratory examination request[18] all put down the seized shabu as weighing 0.4 gram. The forensic chemist reported and testified, however, that the police actually submitted only 0.2204 gram of shabu for laboratory testing, short by 0.1796 gram from what the police inventoried.

In *People v. Aneslag*,[19] the Information alleged that the accused sold 240 grams of shabu but the forensic test showed that the drugs weighed only 230 grams, short by 10 grams. The prosecution offered a sound explanation for the 4.16% loss. The trial court ordered two separate tests of the subject shabu packs. As a consequence the two chemists took out separate samples from each of the seized packs of shabu, resulting in the weight loss.

Here, however, the percentage of loss was not that small. The content of the sachet was inventoried at 0.4 gram but yielded only 0.2204 gram during the laboratory test, short by 0.1796 gram. It suffered a loss of 45% or nearly half of the original weight. The prosecution has three theories: only two chemists served the entire region giving rise to possible error; the police and the crime laboratory used different weighing scales; and the failure of the laboratory to take into account the weight of the sachet container.[20] But these are mere speculations since none of those involved was willing to admit having committed weighing error. Speculations cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering with the prosecution evidence. The Court cannot affirm the conviction of Pornillos on compromised evidence.

WHEREFORE, the Court GRANTS the appeal, SETS ASIDE the Decision of the Court of Appeals dated November 18, 2010 in CA-G.R. CR-HC 03027 as well as the Decision of the Regional Trial Court of Iriga City, Branch 35 in Criminal Case IR-6733, and ACQUITS the accused-appellant Jovi Pornillos y Hallare of the crime charged on ground of reasonable doubt.

The Court orders his immediate RELEASE from custody unless he is being held for some other lawful cause and ORDERS the Director of the Bureau of Corrections to immediately implement this Decision and to inform the Court within five days from its receipt of the date appellant was actually released from confinement. Costs de

oficio.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Reyes,[*] and Leonen, JJ., concur.

[*] Designated Acting Member, in lieu of Associate Justice Jose C. Mendoza, per Special Order 1557 dated September 19, 2013.

[1] TSN, April 26, 2005, pp. 3-4.

[2] Id. at 5-7.

[3] TSN, June 27, 2005, p. 29.

[4] Exhibit “G-2.”

[5] Exhibits “J” to “J-5.”

[6] TSN, April 26, 2005, p. 11.

[7] Exhibit “A.”

[8] TSN, July 17, 2006, pp. 3-8.

[9] Id. at 13-14.

[10] TSN, July 24, 2006, p. 5.

[11] TSN, May 29, 2006, pp. 4-6, 8, 11.

[12] Penned by Presiding Judge Alfredo D. Agawa.

[13] Rollo, pp. 2-10. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[14] *Marquez v. People*, G.R. No. 197207, March 13, 2013.

[15] Records, p. 5.

[16] Id. at 7.

[17] Id. at 15.

[18] Exhibit “E.”

[19] G.R. No. 185386, November 21, 2012, 686 SCRA 150.

[20] TSN, April 26, 2005, p. 51.

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