

SECOND DIVISION

[G.R. No. 238613, August 19, 2019]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JEFFREY VICTORIA Y TARIMAN, ACCUSED -APPELLANT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal^[1] assails the Decision of the Court of Appeals in CA-G.R CR-H.C. No. 07849 dated June 28, 2017,^[2] affirming appellant's conviction for violation of Section 5, Article II of Republic Act (RA) 9165.^[3]

The Proceedings Before the Trial Court

The Charge

By Information dated January 3, 2005, appellant was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 30th day of December 2004, in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to sell any dangerous drug, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to PO1 Hector D. Lico, who acted as poseur buyer, 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which was found positive to the test for Methamphetamine Hydrochloride, also known as "*Shabu*" a dangerous drug, in violation of the above-cited law."

CONTRARY TO LAW.^[4]

The case was raffled to the Regional Trial Court (RTC) - Branch 73, Antipolo City.

On arraignment, appellant pleaded *not guilty*.

During the trial, PO3 Froilan Loyola, PO1 Dexter Pangilinan, PSI Lourdeliza C. Cejes, and PO1 Hector Lico testified for the prosecution. Appellant Jeffrey Victoria was the lone witness for the defense.^[5]

The Prosecution's Version

PO3 Loyola testified that on December 28, 2004, acting on a confidential informant's report, P/Supt. Jaime B. Piloneo ordered his subordinate officers to conduct

surveillance on a certain Jeffrey Victoria who was purportedly selling *shabu* at the corner of Ma. Clara St. and Ocampo St., Brgy. Sta. Ana, Taytay, Rizal. The next day, around 8 to 10 o'clock in the evening, the officers observed appellant standing in the area while several persons on motorcycles approached and made quick exchanges with him. According to the confidential informant, these were sales of *shabu*.^[6]

On December 30, 2004, the police officers conducted a buy-bust operation with him (PO3 Loyola) as team leader, PO1 Lico as poseur-buyer, and PO1 Pangilinan as back-up. They prepared the buy-bust money consisting of a Php 100.00 bill marked with his initials "FRL." The confidential informant also accompanied the team.^[7]

At the place of operation, PO3 Loyola instructed PO1 Lico and the confidential informant to approach appellant. PO3 Loyola saw PO1 Lico hand over the buy-bust money to appellant who, in turn, turned over something to PO1 Lico. At that point, PO1 Lico gave the pre-arranged signal by lighting a cigarette.^[8]

PO3 Loyola and the rest of the team immediately approached and introduced themselves as police officers. PO1 Lico gave PO3 Loyola the transparent plastic sachet which he received from appellant. PO3 Loyola asked appellant to take out the contents of his pocket and recovered from the latter the marked money. After informing appellant of his constitutional rights, the police officers brought him to the police headquarters.^[9]

PO1 Pangilinan corroborated PO3 Loyola's testimony. He testified that the recovered plastic sachet was marked by the officer-on-case with the initials "RVM" at the police station.^[10] Thereafter, the officers prepared a request for laboratory examination and sent the sachet to the crime laboratory.^[11]

The prosecution and defense stipulated on the testimony of forensic chemist PSI Lourdeliza Cejes *viz*: she was assigned at the Eastern Police District Crime Laboratory Office; received a letter request dated December 31, 2004 for qualitative examination of the seized item; and conducted the qualitative examination of the seized item. PSI Cejes prepared the report showing that the confiscated item tested positive for the methamphetamine hydrochloride, a dangerous drug known as *shabu*.^[12]

Lastly, PO1 Lico testified that he acted as poseur-buyer during the buy-bust operation. He and the confidential informant approached appellant while the rest of the team remained in the vehicle about ten to fifteen (10-15) meters away. When the two approached appellant, the latter greeted them, "*O, Jay-R, kukuha ba kayo?*" He responded "*Oo, piso lang*" referring to Php100.00 worth of *shabu*. Appellant then pulled out one (1) plastic sachet from his pocket and handed it to him, saying "*Last na 'yan. Kukuha na lang ako.*" He (PO1 Lico) thereafter lit his cigarette to signal that the sale had been consummated. He introduced himself to appellant as a police officer and held the latter by his belt until other members of the team reached them. The rest of his testimony essentially corroborated PO3 Loyola's narration.^[13]

On cross, PO1 Lico testified that his companions were deputized by the Philippine Drug Enforcement Agency to operate without coordination with the agency; he did

not see what were exchanged between appellant and the persons on motorcycles who passed by and relied on the confidential informant's report that the transactions were sales of *shabu*; and they did not secure the presence of any barangay official or media to witness any part of the operation.^[14] More, PO1 Lico did not know whether an inventory was conducted and who brought the specimen to the PNP Crime Laboratory. He only knew it was PO3 Loyola who handled the specimen from the area of operation until they reached the police station.^[15]

The prosecution marked in exhibit the following evidence: *Sinumpaang Salaysay* nina PO2 Froilan R. Loyola, PO1 Hector D. Lico, PO1 Dexter B. Pangilinan; Php 100.00 bill with marking "FRL" (photocopy); Request for Laboratory Examination; Physical Sciences Report No. D-815-04E; Turned-over Letter dated January 3, 2005.^[16]

The Defense's Evidence

Appellant denied the allegations against him. On December 30, 2004, around 7 o'clock in the evening, he was playing billiards at a hall three (3) streets away from E. Mateo St., Taytay, Rizal when three (3) police officers arrived. They searched the people in the place, albeit they did not have any document to justify the operation. They slapped and hit him with a pool cue before bringing him out of the billiard hall to board a tricycle. They took him to the municipal hall and covered his face with a rag before putting him in jail. It was only during the inquest proceedings when appellant learned that he was being charged with selling drugs.^[17]

The Trial Court's Ruling

As borne by its Decision dated July 15, 2015,^[18] the trial court rendered a verdict of conviction, viz:

WHEREFORE, taking all the foregoing consideration, judgment is hereby rendered finding accused Jeffrey Victoria y Tariman GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, Republic Act No. 9165 and sentences him to suffer LIFE imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) pesos.

The Acting Branch Clerk of Court is directed to immediately transmit to the Philippine Drug Enforcement Agency (PDEA) the subject specimen confiscated from the accused for said agency's appropriate disposition.

SO ORDERED.^[19]

It ruled that all the elements of the crime were sufficiently established and that the chain of custody was duly observed. On the other hand, appellant merely interposed a sweeping denial without presenting clear and convincing evidence to support his claim. As against the positive testimonies of the prosecution, appellant's plain denial failed.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction

despite the prosecution's failure to establish the elements of the offense and the procedural lapses and gaps in the chain of custody,^[20] viz:

First, the alleged sale of the drugs was not properly established. The supposed buy-bust money was excluded in evidence by the trial court for being a mere photocopy;^[21]

Second, the arresting officers failed to mark the seized item at the place of the arrest.^[22] It was the officer-on-case who marked the sachet at the police station;^[23]

Third, the inventory and photograph requirements under Section 21, RA 9165 were not accomplished. PO3 Loyola even admitted that the specimen was immediately submitted to the PNP Crime Laboratory after it was marked;^[24]

Fourth, the stipulation of both parties on to the testimony of PCI Cejes did not cover how the specimen was handled. Hence, the custodial chain was broken;^[25] and

Finally, appellant's defenses of alibi and frame-up must stand in view of the aforesaid procedural lapses.^[26]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Herman R. Cimafranca and State Solicitor Sheila Marie V. Sison-Javier defended the verdict of conviction. It argued that testimonial, documentary, and object evidence established appellant's sale of dangerous drugs: PO3 Loyola and PO1 Lico positively identified appellant as the person who sold *shabu* to the poseur-buyer; exclusion of the buy-bust money as evidence is immaterial for it is merely corroborative; and the *corpus delicti* was presented and identified in court.^[27]

More, the procedural lapses appellant cited did not affect the admissibility and evidentiary weight of the drugs recovered from him. The failure of the police officers to mark the sachet of *shabu* at the place of seizure did not automatically impair the integrity of the chain of custody. Too, police officers are presumed to have acted regularly in the performance of their official functions, absent any proof to the contrary or any ill will.^[28]

At any rate, appellant failed to object to the admissibility of the seized item. Since he did not challenge the custody or preservation of the *corpus delicti* during the trial below, he cannot be allowed to do so at this late stage.

The Court of Appeals' Ruling

By Decision dated June 28, 2017, the Court of Appeals affirmed.^[29] It found that the chain of custody was not broken and that the *corpus delicti* was established with reasonable certainty.^[30] It agreed with the OSG that the marked money was not an essential element in proving the crime of selling illegal drugs; the lack of coordination with the PDEA and failure to photograph and inventory were not fatal to the prosecution's cause; appellant failed to adduce sufficient evidence to substantiate his defense of denial and frame-up; and the presumption of regularity

of performance of official duties must stand.^[31]

The Present Appeal

Appellant now asks the Court for a verdict of acquittal.^[32]

In compliance with Resolution dated July 11, 2018, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.^[33]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory, and photograph of the seized item?

Ruling

We acquit.

In criminal cases, an appeal throws the entire case wide open for review.^[34] Thus, even with the failure of appellant to object against the admissibility of the seized *shabu* or to challenge the custody disposition or preservation thereof, the Court is not barred from reviewing the irregularities appellant raised on appeal.

Here, petitioner is charged with unauthorized sale of dangerous drug allegedly committed on December 30, 2004. The governing law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

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:

(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;**