

SECOND DIVISION

[G.R. No. 231980, October 09, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ELIZALDE DIAMANTE Y JEREZA AND ELEUDORO CEDULLO III Y
GAVINO, ACCUSED-APPELLANTS.**

D E C I S I O N

LAZARO-JAVIER, J.:

THE CASE

This appeal assails the Decision^[1] dated February 9, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01171-MIN affirming the verdict of conviction of appellants Elizalde Diamante and Eleudoro Cedullo III for violation of Section 5, Article II of Republic Act (RA 9165) and imposing on them the corresponding penalties.

THE PROCEEDINGS BEFORE THE TRIAL COURT

THE CHARGE

By Information dated April 8, 2010, appellants were charged with violation of Section 5, Article II of RA 9165, viz:

That on or about 5:00 o'clock in the afternoon of April 6, 2010, at Barangay New Isabela, Tacurong City, Province of Sultan Kudarat, Philippines and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, in conspiracy with one another, did then and there willfully, unlawfully, and feloniously sell and deliver to IO1 Michelle P. Andrade one (1) sachet weighing more or less zero point one (0.1000) gram of Methamphetamine Hydrochloride commonly known as Shabu, a dangerous drug.

CONTRARY TO LAW.^[2]

The case was raffled to the Regional Trial Court (RTC)-Branch 20, Tacurong City.

On arraignment, appellants pleaded not guilty.^[3] Trial proper ensued.

The Prosecution's Version

The testimonies of Philippine Drug Enforcement Agency (PDEA) Agents Vincent Quilinderino, Michelle Andrade, and Forensic Chemist Lily Grace Mapa Ladeo may be summarized, in this wise:

On April 6, 2010, around 2 o'clock in the afternoon, PDEA Agent Noel Porras briefed Agent Michelle Andrade, Agent Vincent Quilinderino, and Agents Albariño, Arapoc, Calonia, and Manlaut on the intended buy-bust operation on a certain Zaldy. Agent Andrade was to act as poseur buyer, Agent Quilinderino, as arresting officer, and the

rest as back up. Agent Porras gave Agent Andrade P500.00 bill as buy-bust money which the latter marked with her initials "MPA."^[4]

The team went to their safe house in Tacurong City, Sultan Kudarat while Agent Porras fetched the confidential informant. Appellants Elizalde Diamante and Eleudoro Cedullo III agreed to meet the confidential informant in front of Julson Bakeshop along the national highway of Tacurong City. Agent Andrade and the confidential informant went to the meeting place on board a motorcycle while the rest of the team followed. Soon after, appellants arrived and talked to the confidential informant. The latter introduced Agent Andrade as his friend who wanted to buy shabu. Appellant Diamante asked Agent Andrade how much she wanted to buy. The latter quipped: "P500.00 lang kuya." Diamante, however, cautioned Agent Andrade and the confidential informant that they should continue their transaction in a safer place. Thus, appellants, Agent Andrade, and the confidential informant rode off towards a house, around 200 meters away. The rest of the team followed on board their vehicles.^[5]

Diamante invited Agent Andrade and the confidential informant inside the house where he handed Agent Andrade a plastic sachet containing white crystalline substance. The latter gave the buy-bust money to Diamante who, in turn, handed it to appellant Cedullo III. Diamante advised Agent Andrade that she can already use it inside the house. At this point, Agent Andrade called and informed Agent Porras that the transaction had been consummated.^[6]

When the rest of the team had closed in, appellants attempted to flee. Agent Quilinderino caught Diamante while Agent Porras caught Cedullo III. The PDEA agents introduced themselves and informed appellants of their constitutional rights. Agent Quilinderino frisked appellants and recovered the buy-bust money from Cedullo III. Agent Quilinderino also saw drug paraphernalia on top of the table, *i.e.* six (6) pieces of plastic sachets containing white crystalline substance, two (2) foil strips, two (2) improvised bamboo sealer, and improvised lighter, which he confiscated and marked. Agent Andrade, on the other hand, marked the plastic sachet she got from Diamante with "MPA-04-06-10" and gave it to Agent Quilinderino who prepared the inventory. Barangay Kagawad Jonathan Zerrudo signed the inventory of evidence while Agent Arapoc took pictures.^[7]

The team took the confiscated items and appellants to Tacurong City police station to have the incident blottered. Thereafter, the team went to the Punto Daily News office to show the confiscated items to media representative Richard Basilio. From there, the team proceeded to the Regional Office, Camp Fermin G. Lira, General Santos City where a request for examination was prepared.^[8]

Agents Quilinderino and Andrade brought the specimen and the request for its examination to the crime laboratory. These were received by PO2 Sotero Tauro, Jr. who turned it over to forensic chemist Lily Grace Mapa Ladeo.^[9]

Per Chemistry Report No. D-064-2010, the specimen yielded positive for methamphetamine hydrochloride, a dangerous drug.^[10]

The prosecution presented the following evidence: Affidavit of Apprehension,^[11] Affidavit of Poseur Buyer,^[12] Request for Laboratory Examination,^[13] Chemistry Report No. D-064-2010,^[14] Inventory of Evidence/Property,^[15] photographs taken

during the marking and inventory of the seized items,^[16] Chain of Custody Form,^[17] Photocopy of the buy-bust money,^[18] Photographs of appellants,^[19] and Affidavit of Justification.^[20]

The Defense's Version

Appellants testified that in the afternoon of April 6, 2010, they were both in the billiard hall in Barangay New Isabela, Tacurong City when Paul Maido invited them to a drinking spree. Appellants agreed and went with Maido to Romeo Navarra's house. Appellant Cedullo III, however, left for a brief moment to go home and feed his chickens. When he joined Diamante and Paul Maido at Navarra's house, armed men suddenly barged in and ordered them to remove their shirts and to lie face down on the floor. They were handcuffed and frisked. The men took the motorcycle key from Cedullo III. A woman then arrived holding a sachet. She said she bought the shabu from them. Thereafter, they were brought to the police station where they learned that Paul Maido was the real target but they were arrested instead as "palit ulo."^[21]

Romeo Kleint Navarra, son of Romeo Navarra corroborated appellants' testimony that nothing was recovered from them when they got frisked.^[22]

THE TRIAL COURT'S RULING

By Decision dated April 18, 2013, the trial court rendered a verdict of conviction, viz:

WHEREFORE, upon all the foregoing considerations, the court finds the guilt of accused Elizalde Diamante y Jereza and Eleudoro Cedullo III y Gavino to the crime of Violation of Section 5, Article II of RA 9165 beyond reasonable doubt and hereby sentences them to suffer the penalty of life imprisonment and to pay a fine of one million pesos (P1,000,000.00) each.

IT IS SO ORDERED.^[23]

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The trial court gave full credence to the testimonies of the prosecution witnesses who were PDEA agents performing their official functions. The trial court found the chain of custody to have been duly established and, thus, rejected appellants' denial and frame up.

THE PROCEEDINGS BEFORE THE COURT OF APPEALS

On appeal, appellants faulted the trial court when it overlooked the following alleged omissions in the buy-bust operation: the supposed plastic sachet containing shabu was not among those inventoried or photographed, there was no representative from the Department of Justice (DOJ) during the inventory; on the other hand, the barangay kagawad and the media representative only came after the inventory; and, the person who received the confiscated shabu from the crime laboratory was not presented in court. Appellant also faulted the trial court when it gave credence to the inconsistent testimonies of the prosecution witnesses pertaining to who frisked appellants and who recovered the buy-bust money.

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General Anna Esperanza R. Solomon and Associate Solicitor Erika Frances S. Buluran-Monzon countered in the main: 1) the elements of illegal sale of drugs were all proven; 2) there was substantial compliance with the chain of custody rule; 3) the presumption of regularity in the performance of the agents' official functions prevails over appellants' bare denial and frame up; and, 4) inconsistencies pertaining to who frisked appellants and who recovered the buy-bust money were irrelevant to the essential elements of the crime charged.^[24]

THE COURT OF APPEALS' RULING

By Decision dated February 9, 2017, the Court, of Appeals affirmed. It found that the buy-bust team faithfully complied with the chain of custody rule. It was established that the seized dangerous drug was the same one recovered from appellants, submitted to the crime laboratory for testing, and subsequently, presented in court as evidence. It also gave credence to the testimonies of the prosecution witnesses who as PDEA agents were presumed to have regularly performed their official functions.

THE PRESENT APPEAL

Appellants now seek affirmative relief from the Court and plead anew for acquittal. In compliance with the Court's Resolution dated March 12, 2018, appellants filed their Supplemental Brief reiterating their arguments before the Court of Appeals.^[25]

On the other hand, the OSG manifested that in lieu of supplemental brief, it was adopting its appellee's brief before the Court of Appeals.^[26]

THE CORE ISSUE

Was the chain of custody complied with?

RULING

We acquit.

Appellants were charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on April 6, 2010. The applicable law is RA 9165 before its amendment in 2014.

In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.^[27]

Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.

Section 21, paragraph 1 of RA 9165 reads:

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.** (Emphasis added)

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The Implementing Rules and Regulations of RA 9165, on the other hand, relevantly ordains:

Section 21. (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.** (Emphases added)

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Based on these provisions, the chain of custody rule consists of four (4) connecting links:

One. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer;

Two. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Three. The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Four. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.^[28]