

[G.R. No. 179475, September 25, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANIEL SIBUNGA
Y AGTOCA, APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

Daniel Sibunga y Agtoca (appellant) was convicted by the Regional Trial Court of Baguio City, Branch 61 of violation of Section 5, Article II of Republic Act No. 9165 (the Comprehensive Dangerous Drugs Act).

The accusatory portion of the Information^[1] filed against appellant reads:

That on or about the 26th day of September 2003, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver one (1) piece of medium heat-sealed plastic sachet divided into two containing white crystalline substance or *Shabu* weighing 2.01 grams knowing fully well that said white crystalline substance or *Shabu* is a dangerous drug, in violation of the aforementioned provision of law. (Underscoring supplied)

From the evidence for the prosecution, the following version is established:

At about 7:00 p.m. of September 26, 2003, while PO3 Albert Lag-ey, together with PO2 Vincent Lagan of the PNP, was conducting surveillance at the People's Park, Baguio City, he received a tip via telephone from a civilian asset or informant that "Marty" and "Daniel" were looking for prospective buyers of *shabu*. He thus instructed the informant to arrange a meeting with the two. And he and PO2 Lagan relayed the information to Inspector Melchor Nawi Ong who immediately formed a buy-bust team of which they formed part, together with SPO4 Malateo. The team thereupon coordinated^[2] with the PDEA and submitted a Pre-operation Report.^[3] And Inspector Ong gave the team members the amount of P8,000.00 as "show money."^[4]

At 7:15 p.m. also on September 26, 2003, the members of the team motored to Bonifacio Street and met their informant in front of the Baguio Central University. As PO2 Lagan remained inside their vehicle, SPO4 Malateo, PO3 Lag-ey and the informant walked towards U Need Lumber,^[5] also in Bonifacio Street, where they were to meet "Marty" and "Daniel."

Soon, two persons approached the informant who introduced the two officers to them as prospective buyers of *shabu*. The stouter one, later identified to be

appellant, asked them how much they were buying to which SPO4 Malateo replied "*isang bulto lang.*" The younger one, later identified to be Marty Ampadi (Ampadi), at once brought out one heat-sealed plastic sachet containing crystalline substance from his pocket and handed it to Ampadi who thereupon demanded payment from SPO4 Malateo. At that instant, SPO4 Malateo and PO3 Lag-ey introduced themselves as police officers, took the sachet, and arrested the two whom they brought to the Drug Enforcement Unit of the Baguio City Police Office for documentation.

The crime laboratory confirmed the contents of the seized sachet as *methamphetamine hydrochloride*,^[6] hence, appellant's indictment.

As for Ampadi, the Public Prosecutor's Office recommended that he be charged for Illegal Possession of Dangerous Drug.^[7] However, it is not apparent from the records of the case whether Ampadi was charged.

At the trial, SPO4 Malateo and PO3 Lag-ey positively identified appellant as one of the two persons they arrested during the buy-bust operation. And SPO4 Malateo identified the sachet of *shabu* (Exhibit "K") which they seized.^[8]

Upon the other hand, appellant gave the following version:

On September 26, 2003, he, a resident of Bauang, La Union, went up to Baguio City. He repaired to a billiard hall along Bonifacio Street where he met Ampadi with whom he played for a bet of P150.00 per game. After playing, he, Ampadi and a certain Jun walked along Bonifacio Street in the course of which two men approached Jun and Ampadi and engaged them in a conversation. Suddenly, one who turned out to be SPO4 Malateo shouted "*arestado kayo.*" He (appellant) and Ampadi were then brought to the Drug Enforcement Unit (DEU). He was thereafter brought to the Baguio General Hospital where he was merely asked if he was in pain or if he had any tattoos on his body.^[9]

In fine, appellant claimed that he was framed up.

By Decision of January 24, 2006, the trial court convicted appellant, disposing as follows:

WHEREFORE, judgment is rendered finding accused Daniel Sibunga y Agtoqa **GUILTY** as charged and he is hereby sentenced to life imprisonment and to pay a fine of P500,000.00.^[10]

On appeal, the Court of Appeals, by Decision of June 1, 2007,^[11] affirmed that of the trial court's.

The appellate court discredited appellant's claim of frame-up, holding that in buy-bust operations, absent any clear and convincing evidence that members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies deserve full faith and credit, hence, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses prevail. ^[12]

The appellate court discredited too appellant's contention that since no payment for the *shabu* was given, no sale was consummated.

Hence, the present petition for review on certiorari.

Appellant questions the heavy reliance by the lower courts on the testimonies of SPO4 Malateo and PO3 Lag-ey despite the seeming inconsistency in their testimonies as to the actual weight/quantity of the drug that they were allegedly negotiating to buy. Thus he cites that while SPO4 Malateo testified that he told appellant and Ampadi that he wanted to buy "*isang bulto lang*,"^[13] PO3 Lag-ey testified that SPO4 Malateo answered that they were buying two (2) grams only.^[14]

And appellant stresses that during his testimony, SPO4 Malateo was not sure of the denomination of the P8,000.00-"show money," the latter at first claiming that it consisted of P1,000.00 bills, but later claiming that it consisted of P500.00 bills.^[15]

In any event, appellant claims that, if at all, his only participation in the transaction, based on the prosecution's evidence, was his alleged demand for the payment of the *shabu* from SPO4 Malateo.^[16]

The appeal is bereft of merit.

Respecting the above-cited inconsistencies in the police officers' testimonies, the same are neither substantial nor of such a nature as to cast serious doubts on their credibility. The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.^[17]

It bears pointing out that although initially PO2 Lag-ey testified, during his direct examination on July 14, 2005^[18] or close to two years after the buy-bust operation, that he heard SPO4 Malateo tell appellant that they were buying two grams of *shabu*, he later clarified during cross examination on the same date that what he meant was "*isang bulto*" and not two grams.^[19]

As for SPO4 Malateo's failure to correctly recall the denominations of the P8,000.00-"show money,"^[20] the same could just be a mere lapse of memory, given that the testimony was given on February 9, 2005 or one year and five months after the occurrence of the buy-bust transaction. Slight contradictions, after all, are badges against memorized perjury.^[21]

What is important is that SPO4 Malateo and PO3 Lag-ey's respective testimonies are consistent insofar as the presence of the elements of the crime is concerned.

As for appellant's argument that no consummated sale of drugs occurred since no money changed hands during the buy-bust operation, the same fails. The absence of marked money does not create a hiatus in the prosecution evidence as long as the drug subject of the illegal transaction (Exhibit "K") was presented at the trial court.^[22] There is no rule of law which requires that in buy-bust operations there must be