

## FIRST DIVISION

[ G.R No. 181441, November 14, 2008 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LARRY LOPEZ,  
APPELLANT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is an appeal from the 25 September 2007 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 02031. The Court of Appeals affirmed the 21 December 2005 Joint Decision<sup>[2]</sup> of the Regional Trial Court, Branch 96, Baler, Aurora, in Criminal Case Nos. 3188 and 3189 finding appellant Larry Lopez guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

#### The Facts

The prosecution charged appellant with violation of Sections 5 and 11 of RA 9165 in two Informations which read:

##### CRIMINAL CASE NO. 3188

That on or about 11:05 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully sell and convey unto a poseur buyer one plastic sachet containing 0.06 gram of shabu, a prohibited drug, for three (3) P100.00 and one (1) P200.00 marked bills without any license or permit from the authorities.

CONTRARY TO LAW.

##### CRIMINAL CASE NO. 3189

That on or about 11:00 o'clock in the morning of November 1, 2003 in Baler, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, unlawfully, feloniously and willfully have in his possession and control three (3) pieces of marlboro cigarettes packs, containing 6.20 grams of marijuana leaves and fruiting tops without any permit or license from the authorities.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution established that on 1 November 2003, at around 10:00 a.m., a certain barangay official went to the Baler Police Station reporting the peddling of illegal drugs by appellant. A buy-bust operation was planned where PO1 Romeo Miranda (PO1 Miranda) was assigned as poseur-buyer. PO1 Miranda accompanied a confidential agent in going to the residence of appellant to buy P500 worth of shabu. Appellant told them that he would deliver the shabu in front of Ditha's Hardware in half an hour. The members of the buy-bust team strategically stationed themselves near the place of the transaction. At around 11:05 a.m., the appellant, driving his tricycle, arrived and the confidential agent waved at him to stop. PO1 Miranda and the confidential agent approached appellant, they talked for a moment, and the exchange took place. The agent handed the marked money to appellant, who simultaneously handed the sachet of shabu. Immediately thereafter, the agent handed the shabu to PO1 Miranda who then held the appellant. The other members of the buy-bust team rushed to the crime scene and arrested appellant. After apprising appellant of the Miranda Rights, PO1 Sonny Guzman (PO1 Guzman) searched appellant's body which yielded dried marijuana leaves wrapped in two Marlboro cigarette packs and one cigarette foil.

Appellant, on the other hand, denied the charges and insisted that he was framed-up. Appellant claimed that at around 11:05 in the morning of 1 November 2003, he was driving his tricycle to bring his passengers, namely Teresita Fernando and Raymund Putol, to the cemetery. Upon reaching Ditha's Hardware, two men in civilian clothes blocked their way and identified themselves as policemen. Thereafter, appellant was suddenly and forcibly pulled down from the tricycle and handcuffed. After the policemen frisked appellant, they exclaimed "Positive" showing a sachet. Then, he was arrested and brought to the police station where he was interrogated and searched again.

The dispositive portion of the 21 December 2005 Joint Decision of the Regional Trial Court, Branch 96, Baler, Aurora, reads:

WHEREFORE, premises considered, the Court hereby renders judgment as follows:

1. Finding Larry Lopez y Parinia GUILTY beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 0.06 gram of shabu and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (P500,000.00);
2. Finding Larry Lopez y Parinia GUILTY beyond reasonable doubt of Violation of Section 11, Article II of R.A. 9165 for possession of 6.20 grams of dried marijuana leaves and hereby sentences him to suffer the penalty of imprisonment of Fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00).

The confiscated shabu and dried marijuana leaves are hereby ordered to be turned over to the Office of the Provincial Prosecutor of Aurora, which, in turn, shall coordinate with the proper government agency for the proper disposition and destruction of the same.

SO ORDERED.<sup>[4]</sup>

On appeal, appellant pointed out that there were inconsistencies on the following matters: (1) existence of a pre-arranged signal; and the (2) recollection by PO1 Miranda of the markings on the buy-bust money. Appellant also argued that the subsequent warrantless search and seizure was illegal because he was never caught in *flagrante delicto* selling shabu. Hence, the marijuana recovered from him was inadmissible.

### **The Court of Appeals' Ruling**

In a Decision dated 25 September 2007, the Court of Appeals affirmed the trial court's decision finding appellant guilty beyond reasonable doubt of the offenses charged. The appellate court found that PO1 Miranda satisfactorily explained his answer to the question regarding the pre-arranged signal. The appellate court also ruled that failure to recall the markings on the buy-bust money was probably due to the length of time between the date of the incident and the date of PO1 Miranda's testimony. At any rate, the markings on the marked money are immaterial because the presentation of the marked money is not even necessary for the successful prosecution of the offenses charged. The Court of Appeals also rejected appellant's claim of frame-up considering that there was no evidence of any ulterior motive for the police officers to falsely charge appellant of the offenses. It appears that the frame-up theory was a mere afterthought.

On the warrantless search and seizure, the Court of Appeals held that it is valid having been made after a lawful warrantless arrest, citing Section 12, Rule 126 of the Rules of Court.<sup>[5]</sup>

Hence, this appeal.

### **The Issue**

The sole issue in this case is whether appellant is guilty beyond reasonable doubt of violation of (1) Section 5, Article II of RA 9165 for the sale of 0.06 gram of shabu; and (2) Section 11, Article II of RA 9165 for the possession of 6.20 grams of dried marijuana leaves.

### **The Ruling of the Court**

The appeal lacks merit.

Sections 5 and 11, Article II of RA 9165 read:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of