

## EIGHTEENTH DIVISION

[ CA-G.R. CR. HC. NO. 01685, February 26, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GESSIEL MAFFER ALIAS "TOTO BUKA" ALSO KNOWN AS  
"JESSIEL MAFFER", ACCUSED-APPELLANT.**

### D E C I S I O N

**INGLES, G. T., J.:**

#### THE CASE

This is an appeal from the Decision<sup>[1]</sup> dated 3 July 2013 of the Regional Trial Court , 6<sup>th</sup> Judicial Region, Br. 36 of Iloilo City convicting Gessiel Maffer alias "Toto Buka" also known as "Jessiel Maffer" of violation of Section 5, Art. II of RA 9165 in *Crim. Case No. 08-66249*.

#### THE ANTECEDENTS

By Resolution<sup>[2]</sup> dated 15 September 2008, the Prosecutor I of the Iloilo City Prosecution Office found probable cause to indict Gessiel Maffer for violation of Section 5, Art. II of RA 9165, and accordingly, recommended the filing of Information,<sup>[3]</sup> the accusatory charge of which reads as follows:

"That on or about the 28<sup>th</sup> day of August 2008, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, said accused Gessiel Maffer, did then and there willfully, unlawfully and criminally sell/deliver one (1)-heat sealed transparent plastic sachet containing 0.01 gram of methamphetamine hydrochloride (shabu), a dangerous drug, to a PNP poseur-buyer, in consideration of the amount of Five Hundred Pesos (Php500.00), inclusive of the One Hundred Pesos marked money bill bearing Serial Number GO189945, without authority to do so.

CONTRARY TO LAW."

Subsequently, the the first paragraph of the information was amended, to read,

"The undersigned City Prosecutor accused **GESSIEL MAFFER also known as "TOTO BUKA" and "JESSIEL MAFFER"**, whose date and place of birth cannot be ascertained of the crime of VIOLATION OF PAR. 1, SECTION 5, ARTICLE II, R.A. 9165 (Illegal Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs), committed as follows:

x x x x."<sup>[4]</sup> (Emphases supplied)

As can be gleaned from the RTC Order<sup>[5]</sup> dated 4 November 2008, the Amended Information filed by the Office of the Prosecution was read to Gessiel Maffer in the dialect known to her, and thereafter, and duly assisted by her counsel, she entered a plea<sup>[6]</sup> of not guilty.

After the issues have been joined, trial ensued.

### **Version of the prosecution**

The gist of the testimonies of following prosecution witnesses, namely: (1) IO1 Ailine Artus; (2) IO2 Daisy Sabanal; (3) IO1 Melinda Panaguiton; (4) IO1 Jonah Mirador; and (5) the forensic chemist P/Supt. Rea Villavicencio, may be summarized as follows:

On 25 August 2008, the Philippine Drug Enforcement Agency (PDEA) in Region 6, thru its Regional Director, received information from a confidential agent that Gessiel Maffer was actively selling shabu in her house located in Brgy. Baldoza prompting the agency to organize a team to conduct a casing and surveillance operation in order to confirm the veracity of the said information. The casing and surveillance operation lasted for three (3) days. During the casing and surveillance operation, IO1 Ailine Jo Artus together with the confidential informant who acted as her lover, transacted with Gessiel Maffer. First, it was the two of them who talked to Gessiel Maffer, afterwards, the confidential informant and Gessiel Maffer went inside the latter's house. On this occasion, they were able to buy shabu from Gessiel Maffer. They turned-over the suspected shabu to the persons in-charge who in turn submitted the same to the PNP Crime Laboratory. After having confirmed the veracity of the information, a team was formed to conduct a buy-bust operation. The team was composed of IO1 Ailine Jo Artus, IO1 Jose Ramir Batuigas, IO3 Jonah Arugay, IO1 Panaguiton, IO1 Sabanal and IO1 Cataluña, with IO1 Jonah Arugay as team leader.

IO1 Ailine Jo Artus was designated as poseur-buyer, IO3 Arugay as arresting officer and the rest of the team as back-up. Five P100.00 bills were prepared to be used as payment but only the P100.00 bill with serial number GQ189945 was marked. IO3 Arugay gave the marked bills to IO1 Artus. They still proceeded with the operation even if they were not sure if Gessiel Maffer would be in her house on the afternoon of 28 August 2008 because anyway on the morning of that same day their confidential informant already talked to Gessiel Maffer.

Again, IO1 Artus and the confidential informant were going to act as lovers. At about 2 PM to 3 PM on the same day, the two proceeded to Brgy. Baldoza and looked for Gessiel Maffer. Not finding her there, they proceeded to her house but she was nowhere to be found. They went to the La Paz Plaza which was about one (1) kilometer away from the house of Gessiel Maffer. After two (2) hours of waiting at the plaza, Gessiel Maffer did not show up, so they decided to go back to her residence. When they arrived in the area, they saw Gessiel Maffer sitting in front of a house, which was five (5) meters away from her house, playing with a child. When she saw them, she asked if they were the ones who were looking for her, to which they answered in the affirmative. Thereafter, they were told to follow her to her house. Upon arriving there, they were told to wait outside. Afterwards, Gessiel

Maffer came out of the house and handed IO1 Artus the suspected shabu. After receiving the item, IO1 Artus paid Gessiel Maffer with the prepared five (5)-P100.00 bills. After paying Gessiel Maffer, IO1 Artus immediately pressed the "dial" button on her mobile phone to call IO3 Arugay. IO1 Artus explained that even before the illegal sale transaction, she was already holding her mobile phone and that the number of IO3 Arugay was already on the screen.

The confidential informant manifested to Gessiel Maffer that he wanted to use the shabu they just bought. Gessiel Maffer, that time, might not have wanted her house to be used as drug den, so she left them and went to her neighbor to check if she could use the neighbor's house instead. One minute passed, Gessiel Maffer came out from her neighbor's house. After about another two to three minutes the back-up arrived and rushed towards them. They apprehended Gessiel Maffer and identified themselves as PDEA agents. They apprised her of her constitutional rights and then brought her to their office.

IO1 Artus took possession of the suspected shabu and then searched the person of Gessiel Maffer from where the following were recovered: two (2) brown wallets, one (1) lighter, one (1) coin purse, one (1) pair of scissors, two (2) keys, one (1) SIM card, one (1) crumpled aluminum foil, two (2) pieces P100.00 bills, one (1) piece P500.00 bill, two (2) pieces P20.00 bills and two (2) P2.00 bills. Thereafter, they brought Gessiel Maffer to their office. They were able to recover only two of the five-(5) P100.00 purchase money, one of which is the marked money.

The suspected shabu was marked in their office and not at the crime scene because there was already a commotion after Gessiel Maffer resisted arrest. The suspected drug was marked with "GM-1" where the "GM" stands for Gessiel Maffer. The other items were marked with the initials "GM-2" and "GM-3" and onwards. After the marking which was around 7PM, they conducted an inventory. Present during the inventory were media representative Julius Padilla, Prosecutor Melwen Sustento and Brgy. Capt. Benito Bonete, who, together with IO1 Artus, IO3 Arugay and IO1 Daisy Sabanal, signed the Certificate of Inventory. IO1 Sabanal took pictures of what transpired during the inventory.

After the inventory, IO1 Artus turned over the suspected drug to IO2 Sabanal. As to the non-drug items, including the marked money (Exhibit "R"), the same were turned-over by IO2 Sabanal to the evidence custodian, IO2 Maria Melinda Panaguiton.

IO2 Sabanal prepared the Request for Laboratory Examination and submitted the said document together with the suspected drug to the PNP crime laboratory.

The forensic chemist, P/Supt. Rea Villavicencio, examined the confiscated item and accordingly, made a report on her findings and conclusion thereon.

Gessiel Maffer was then turned-over to the police station.

### **Version of the defense:**

**Gessiel Maffer:**<sup>[7]</sup>

At around 5:30 o'clock on the afternoon of August 28, 2008, Gessiel Maffer went to

the basketball court located in Zone 2, Brgy. Baldoza, La Paz, Iloilo City to watch a game. While she was watching the game, two persons approached her and asked her if she knows a certain Alvin. Gessiel Maffer pointed to these persons where Alvin could be found. She then told the basketball players to stop playing for the meantime so that the policemen can pass although she did not know then that they are policemen because she was only joking when she told the players that they are.

After about twenty (20) minutes, she saw people getting inside the basketball court and on the run shouting "PDEA", "PDEA". Then, the lady beside her grabbed her hand. Afterwards, she saw two persons running towards her and one of them threatened to strike her with a knife and told her not to resist. She continued resisting for about ten (10) minutes. Her nephew arrived and told them not to harm her because she is a lady and that she has not done anything wrong. Her nephew was told not to go near her.

She was brought to Camp Delgado in Iloilo City. She was accused of warning Alvin about the presence of the PDEA operatives and of their plan to go to where he [Alvin] was. Later, the PDEA operatives wanted her to accompany them to Alvin's place but she refused. She was brought to the La Paz Station and told to just rest there. While at the police station, she called her family who visited her. During the visit, her family noticed that she has scratches/ marks on her arms. During her detention at the La Paz police station, she did not dare report about the persons who threatened her at the basketball court because of fear. Eventually, she was told that she was the subject of the buy-bust operation. After two (2) months she was transferred to the BJMP.

### **Maryjane Mabaquiao:<sup>[8]</sup>**

She is the older sister of Gessiel Maffer. She narrated that on that fateful day, after watching a movie with Gessiel Maffer, they went to the town plaza where her son was playing a game of basketball. While they were watching the game, a man suddenly came over to where they were and held Gessiel Maffer by the shoulder. The man was brandishing a knife to keep the people from going near them. That is why, nobody came to help Gessiel Maffer. Then, a woman, who she saw took out a firearm from her shoulder bag, approached Gessiel Maffer and the man who was holding her. Both the man and the woman prevented Gessiel Maffer from leaving the place. Then, some PDEA agents arrived. She knew that they were PDEA agents because they were wearing shirts with a name tag and caps with the initials "PDEA" printed on them. The PDEA agents led Gessiel Maffer out of the basketball court but she did not follow them because she could not leave her twenty-one year old child who was with her at that time. She did not know what happened with Gessiel Maffer after that.

### **THE RULING<sup>[9]</sup> OF THE REGIONAL TRIAL COURT**

After considering the parties' evidence, the RTC concluded and disposed the case in this wise, viz -

"The evidence adduced by the prosecution has duly established all the elements of violation of Section 5, Article II, Republic Act No. 9165, as follows:

In fine, the Court finds that on the afternoon of August 28, 2008 in Brgy. Baldoza, Lapaz, Iloilo City, the herein accused sold and delivered a shabu, a dangerous drug weighing 0.01 gram to a poseur-buyer in consideration of the sum of Five Hundred Pesos (P500.00), without authority to do so, contrary to law.

WHEREFORE, judgment is hereby rendered finding accused Gessiel Maffer alias "Toto Buka" also known as Jessiel Maffer GUILTY beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165 and sentencing her to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand Pesos (P500,000.00).

The shabu (Exhibit "H") subject of the case and the other items (x x x) which have no apparent value and may be used for illegal purposes are confiscated in favor of the government and the Branch Clerk of Court is directed to turn over said items to the Philippine Drug Enforcement Agency, Region 6, for proper disposition pursuant to existing rules and regulations.

On the other hand, the other items confiscated from the accused (x x x) and the money (x x x) which are not illegal per se and have not been shown to be the effects of the crime are ordered to be returned to the accused.

The other money (Exhibit "R") which is part of the buy-bust money is ordered to be returned to PDEA.

SO ORDERED."<sup>[10]</sup>

In reaching this conclusion, the RTC found and held, that,

"To reiterate, accused interposed the defense of denial and insinuated frame-up on the part of the members of the Philippine Drug Enforcement Agency (PDEA), Region 6. However, said defenses were not substantiated by clear and convincing evidence. The Court finds it hard to believe that the members of PDEA would arrest the accused for unknown reason in a public place and in the presence of several persons who are from the same areas where she resides. Also, the Court could not understand why despite the presence of several persons at the place of arrest, accused could not present any other witness, aside from her sister, who could indeed corroborate her version. Thus, under said circumstances, the Court will adhere [to] the opt-reiterated (sic) ruling of the Supreme Court that 'the defense of denial or frame-up, like alibi, has been viewed by the Court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of 'Dangerous Drugs Act' and the jurisprudential rule in defense of denial is that 'if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence undeserving any weight in law.'

On the other hand, the Court is more convinced with the version of the