

FIFTEENTH DIVISION

[CA-G.R. CR HC No. 05962, April 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RONALD USMAN Y SUMLAY, ACCUSED-APPELLANT.**

DECISION

LAZARO-JAVIER, A.C., J.:

This appeal seeks to reverse and set aside the Joint Decision^[1] dated September 24, 2007 of the Regional Trial Court, Pasig City, Branch 267, in Criminal Case Nos. 12355-D and 12356-D entitled "*People of the Philippines vs. Ronald Usman y Sumlay*", convicting appellant Ronald Usman Y Sumlay of violations of Sections 5 and 11, Article II of Republic Act 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Appellant was charged under the following Informations:

I. Criminal Case No. 12355-D - Violation of Section 5, paragraph 1 [Sale], Article II of RA 9165

That on or about the 14th day of April 2003, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there, willfully, unlawfully, and knowingly, sell, deliver, cause to pass upon and/or give away to PO2 Gerald Marlon R. Lagos, who acted as poseur-buyer, 0.40 gram of white crystalline substance contained in one (1) small heat-sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine hydrochloride, commonly known as Shabu, a dangerous drug, in consideration of the amount of Php500.00, in violation of the above cited law.

CONTRARY TO LAW.^[2]

II. Criminal Case No. 12356-D - Violation of Sec. 11, par. 2, No. 3 [Possession], Article II of RA 9165

That on or about the 14th day of April 2003, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, to possess any dangerous drug, did then and there, willfully, unlawfully, and knowingly, have in his possession, custody and control, 0.40 gram of white crystalline substance, contained in one (1) small heat-sealed transparent plastic sachet, which substance was found positive to the test for Methylamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law."

CONTRARY TO LAW.^[3]

The cases were consolidated and raffled to Branch 165, Regional Trial Court, Pasig City.

On arraignment, appellant pleaded not guilty to both charges.^[4]

During trial, Police Officer II Gerald Marion Lagos (PO2 Lagos) and Police Officer II Darwin Boiser (PO2 Boiser) testified for the prosecution, thus:

PO2 Gerald Marion Lagos.

1. He was a member of the Philippine National Police detailed at the District Anti-Illegal Drugs Special Operations Task Force of the Southern Police District, Fort Bonifacio, Metro Manila. On April 14, 2003, an informant came to their office and informed them about the illegal drug trading activities of appellant Ronald Usman y Sumlay alias "Ron". Thereafter, a team composed of PO2 Gerald Marion Lagos, PO2 Darwin Boiser, SPO2 Rey Millare, SPO4 Dalmacio Facunan, PO3 Delfin Macario, PO3 Salvio De Lima, and PO1 Walter Calderon was formed to conduct a buy-bust operation.^[5] Being designated as the poseur-buyer, he was given five P100.00 bills to be used as marked money to buy shabu from appellant. PO2 Boiser was designated as his immediate back up and SPO2 Millare, PO3 Macario, and DEU Chief Police Inspector Rodolfo Anicoche, as security back up.

2. After the briefing, the team proceeded to Manuel L. Quezon Street, Lower Bicutan, Taguig, Metro Manila whereby he and the informant initially conducted surveillance operations. They saw appellant frequenting 7-11 Convenience Store along M.L. Quezon Street. After seeing people going to appellant while the latter was inside his owner-type jeep, he and the informant approached appellant. The informant introduced him to appellant as a taxi driver and user of "shabu". Appellant then asked him who were his former sources of drugs, why he was going to buy from him, and how much. He told appellant that the prices from his sources were much higher and there was no available item. When he said that he was going to buy one-half gram, appellant told him to wait and meet him at the corner of Paraiso Street and General Santos Avenue, while the latter get the stuff at his house.^[6]

3. After about 30 minutes, appellant arrived in an owner type jeep with Plate No. PFP 915. Appellant told him to board the vehicle and then asked for his payment for the shabu. After receiving the marked bills, appellant gave him a plastic sachet containing shabu. He then made a miscall to PO2 Boiser, as the pre-arranged signal indicating the consummation of the buy-bust. Thereafter, the team rushed to the scene and introduced themselves as police officers. He frisked appellant and recovered the marked money and another plastic sachet of shabu from the left pocket of appellant's fatigue short pants. He confiscated the two plastic sachets of shabu and marked the one he bought as "GL-1-140403" and the other one he recovered as "GL-2-140403".

4. They then proceeded to their headquarters where he turned over the marked money to their investigator, PO2 De Lima, and the corresponding request for laboratory examination of the specimens contained in the 2 plastic sachets was prepared. He personally delivered the 2 specimens and the letter-request to the crime laboratory office. He only saw the initial result^[7] of the laboratory

examination, but not the final report.^[8] He had never encountered a suspect or a target publicly announcing that he was selling dangerous drugs.^[9]

On cross, PO2 Lagos said: He first received information regarding appellant's alleged illegal activities a week before the actual buy-bust operation. He confirmed the information by validating it with other informants and conducting his own surveillance. He did not conduct a buy-bust operation against appellant as he did not yet have a direct informant who had access to appellant. Appellant was not actually selling drugs when they met and went home to get illegal drugs only after he asked to buy some.^[10]

PO2 Darwin Boiser.

a. He was a member of the Philippine National Police, assigned at the District Anti-Illegal Drugs Task Force of the Southern Police District, Fort Bonifacio, Taguig, Metro Manila. On April 14, 2003, their team was formed to conduct a buy bust operation against appellant Ronald Usman alias Ron. A briefing was conducted and coordination was made with the Philippine Drug Enforcement Agency (PDEA). The marked money to be used in the buy bust operation was given to PO2 Lagos.

b. Their team was dispatched at Seven Eleven, Lower Bicutan, Taguig City. When they arrived at the area, PO2 Lagos was already standing in front of Seven Eleven. Through a text message, PO2 Lagos told him that they will transfer to another place along Paraiso St., Gen. Santos, Taguig City. When the team proceeded to said area, appellant arrived in an owner-type jeep on which PO2 Lagos subsequently boarded. Upon receiving a missed call from PO2 Lagos, he rushed to the scene and assisted in arresting appellant.

c. PO2 Lagos recovered the marked money from appellant and found another plastic sachet of shabu when appellant was asked to empty his pocket. They apprised appellant of his constitutional rights and proceeded back to their office. PO2 Lagos put markings on the two plastic sachets of shabu recovered from appellant and delivered them to the crime laboratory, together with the corresponding request for laboratory examination.^[11]

On cross, he said: He was more or less 15 meters away from the owner type jeep when the transaction between appellant and PO2 Lagos happened. He only went to the owner type jeep after receiving the pre-arranged signal from PO2 Lagos. He was not aware if an inventory of the items they have seized were prepared.^[12]

The parties stipulated: (a) Maria Ana Rivera-Dagasdas was the forensic chemist who examined the subject specimens and she did not know where the specimens were taken after that; and (b) SPO2 Salvio de Lima was a member of the buy-bust team who arrested appellant, investigator of the case, and the one who prepared the documents in this case.^[13]

The prosecution likewise presented the following evidence: PO2 Lagos and PO2 Boiser's Joint Affidavit of Arrest^[14], Request for Laboratory Examination^[15], Request for Drug Test^[16], Physical Science Report^[17], Booking and Information Sheet^[18], two small heat-sealed transparent plastic sachets each containing 0.40 gram of shabu^[19], and the marked money consisting of 5 pieces of one hundred peso bills^[20]. According to the Physical Science Report, the confiscated items were

found positive for methylamphetamine hydrochloride or shabu. PO2 Lagos and PO2 Boiser identified in open court the 2 plastic sachets containing shabu to be the same items which they recovered from appellant^[21], the Physical Science Report as the document issued by the crime laboratory office containing the result of the laboratory examination^[22], and the marked money which the team used in buying shabu from appellant.^[23]

For its part, the defense was not able to present any witness since appellant escaped from the custody of his escort, JO1 Henry Pang-Ay after coming from the court on February 23, 2004.^[24] An order of arrest^[25] and an alias order of arrest^[26] were issued against appellant.

By Joint Decision dated September 24, 2007, the trial court convicted appellant as charged, viz:

WHEREFORE, in view of the foregoing considerations, accused RONALD USMAN y SUMLAY is found and declared GUILTY beyond reasonable doubt of the crime of "Violation of Section 5, 1st Paragraph, Article II of Republic Act No. 9165", in Criminal Case No. 12355-D, he is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (PhP500,000.00).

Furthermore, accused RONALD USMAN y SUMLAY is likewise found GUILTY beyond reasonable doubt of the crime of "Violation of Section 11, 2nd Paragraph, No. 3 of Republic Act No. 9165", in Criminal Case No. 12356-D, and since the quantity of the shabu/methylamphetamine hydrochloride involved in this case is less than five (5) grams, he is hereby sentenced to suffer an indeterminate sentence ranging from TWELVE (12) years and ONE (1) day as minimum to FOURTEEN YEARS (14) years as maximum, and to pay a fine of Three Hundred Thousand Pesos (PhP300,000.00).

Upon the other hand, the two (2) plastic sachets of white crystalline substance with a weight of 0.40 gram each, which were found positive to the test for methylamphetamine hydrochloride commonly known as shabu, which are the subject matter of the present cases are hereby ordered transmitted to the custody of the Philippine Drug Enforcement Agency (PDEA) subject and/or pursuant to existing Rules and Regulations promulgated thereto, for its proper disposition.

Costs de oficio.

SO ORDERED.^[27]

On September 24, 2007, the decision was promulgated in absentia as appellant was then at large.^[28] On September 13, 2012, the decision was declared ineffective because it was not recorded in the criminal docket of the Office of the Clerk of Court, RTC-Pasig City^[29]. It was promulgated anew on November 9, 2012 at the National Bilibid Prisons, Muntinlupa City,^[30] where appellant was committed^[31] following his arrest^[32] on July 24, 2009.

On November 13, 2012, appellant moved for reconsideration^[33] which the trial court denied under Order dated November 26, 2012^[34].

Appellant now faults the trial court for convicting him of the offenses charged despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He harps on the prosecution's purported failure to preserve the integrity and establish the identity of the *corpus delicti* due to the supposed non-compliance with the mandatory procedure in drug operation and the essential requisites of chain of custody. He argues that the items confiscated from him are inadmissible in evidence in view of the alleged lack of: (1) properly signed inventory/photographs of the suspected shabu taken immediately after arrest and seizure, in his presence and in the presence of representative from media, DOJ, etc.; (2) quantitative examination of the specimen allegedly confiscated from him; (3) final certification after the issuance of the initial laboratory report; (4) testimony about every link in the chain of custody from the time the item was picked up to the time it was offered in evidence. Appellant also claims that his arrest in flagrante delicto and escape are not sufficient proofs of his guilt beyond reasonable doubt.^[35]

The Office of the Solicitor General, through Senior State Solicitor Penafrancia C. Carpio Devesa, counters: Appellant's arrest is valid and the pieces of evidence seized are admissible because appellant was apprehended in a legal buy-bust operation. The alleged non-compliance with Section 21, RA 9165 is not fatal and does not automatically render inadmissible the items seized from appellant inasmuch as the integrity, identity, and evidentiary value of the seized items was duly preserved and the chain of custody thereof was shown to have been unbroken. The positive testimonies of the prosecution witnesses are entitled to great weight.^[36]

The appeal lacks merit.

Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165 provides the following guidelines in the custody and control of confiscated drugs:

(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;** x x x^[37]

Indeed, Section 21^[38] of RA 9165 need not be followed as an exact science. Accordingly, the Supreme Court has, in many cases, allowed substantial compliance