

SPECIAL EIGHTEENTH DIVISION

[CA-G.R. CR. HC. NO. 01313, October 30, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS.
ERNESTO BUARON JR. Y MENDOZA, ACCUSED-APPELLANT.**

DECISION

INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant Ernesto Buaron, Jr. of the Judgment^[1] dated December 27, 2010 of the Seventh Judicial Region, Branch 28, Mandaue City, in Crim Case No. DU-10792 which found accused-appellant guilty of Violation of Sec. 5, Article II of RA No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS:

Version of the Prosecution

On November 9, 2003, the Drug Enforcement Unit-Mandaue City Police Office (DEU-MCPO) received information from an asset that a certain Ernesto Buaron, Jr., herein accused-appellant was engaged in illegal drug activities in Looc, Mandaue City.

On November 10, 2003, PO1 Bimon Montebon and PO1 Dionisia dela Pena conducted a surveillance on accused-appellant. The two saw accused-appellant selling shabu at the videoke owned by his mother under the bridge in Looc, Mandaue City.

At around 10:00 AM on November 11, 2004, PO1 Montebon was informed by their office that a buy-bust operation was going to be conducted against accused-appellant. Thus, the DEU-MCPO prepared a pre-operation report and submitted it to the PDEA. Around 10:00 PM, a briefing was conducted at the MCPO wherein a buy-bust team was organized composing of PO1 Tiniola, PO1 Verano, SPO1 Elmer Enriquez and P/Supt Juanito Enguerra. PO1 Montebon and PO1 dela Pena were designated as poseur-buyers while the rest of the team members were to act as back-up force.

Around 12:00 midnight, the back-up police officers arrived in Looc, Mandaue City where PO1 Verano and PO1 Tiniola positioned themselves in the billiard hall at the side of the videoke bar. Twenty minutes later, PO1 Montebon and PO1 dela Pena arrived at the videoke bar and ordered drinks. While the two police men were having drinks at said place, accused-appellant looked at them, trying to figure out who they were.

Around 1:00 AM on November 12, 2004, accused-appellant approached the table of PO1 Montebon and PO1 Dionisio dela Pena and asked them if they wanted to buy shabu. PO1 Montebon replied that he wanted to buy shabu worth P100.00. Accused-appellant then gave him a small transparent plastic sachet which contained white substance suspected to be shabu. PO1 Montebon, on the other hand, handed over the buy-bust money to accused-appellant.

Immediately thereafter, PO1 dela Pena made the pre-arranged signal to the back up team while PO1 Montebon arrested accused-appellant at the same time informing the latter of his constitutional rights. Accused-appellant was subsequently brought to the MCPO and turned over to Elmer Enriquez, the investigator who marked the seized item with "EB". Meanwhile, SPO1 Elmer Enriquez delivered the said plastic sachet together with a letter request for laboratory examination to the PNP PRO-VII Regional Crime Laboratory. Forensic Analyst P/Insp Medardo Hingpit Palapo of the PNP PRO-VII Regional Crime Laboratory conducted an examination of the specimen recovered from accused-appellant which tested positive for shabu.

The Charge

In the Information^[2] dated November 13, 2003 filed against accused-appellant, he was charged with the crime of Violation of Section 5, Article II of RA No. 9165 as follows:

"That on or about the 12th day of November 2003, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, and without being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and give away to another "shabu" or methylamphetamine hydrochloride, weighing 0.03 grams, a dangerous drug.

CONTRARY TO LAW."

Accused-appellant was arraigned and pleaded "not guilty" to the crime charged.

Trial ensued. The prosecution presented the following as witnesses: PO1 Bimon Montebon, PO1 Dionisio Dela Pena and P/Supt Juanito Enguerra. On the other hand, Edita Buaron, accused-appellant's mother and himself testified for his defense.

Version of Accused-appellant

Accused-appellant testified that around midnight on November 12, 2003, he went to the store of his mother and bought Red Horse beer on credit. His house was more or less three meters away from his mother's store which was inside the waiting shed. He then proceeded to the billiard hall and stayed there for about two minutes where he heard a person noisily singing. Accused-appellant then returned to his mother's store and requested to tone down the noise because his wife was already asleep. Accused-appellant was about to go home when his father sent him to collect

payment from two drunken men. He attempted to collect from the short man who referred him to his companion who was then urinating at the pillar of the bridge. When accused-appellant demanded payment from him, he was asked if he knew a certain Edgar. Accused-appellant gave a negative answer but the fellow kept on asking if he knew Edgar. He raised his voice and got angry. Accused-appellant called him insane and insisted that he did not know a certain Edgar. The man suddenly grabbed and handcuffed him. Accused-appellant shouted and called for his mother who approached them and asked what happened. The man told accused-appellant's mother to keep quiet and instructed accused-appellant's father to follow them.. At the police station, accused-appellant testified that he was made to sign an unknown document and his picture was taken. He was then charged for selling shabu. Subsequently, accused-appellant was brought to precinct at Subangdaku where he was detained.

The RTC Ruling:

Thereafter, on December 27, 2010, the RTC, Branch 28, Mandaue City rendered Judgment against accused-appellant, the pertinent portion of which reads:

"WHEREFORE, this Joint Judgment is rendered finding accused Ernesto Buaron, Jr. y Mendoza guilty beyond reasonable doubt for sale of shabu, a dangerous drug. Pursuant to Section 5, Article II, RA 9165, this Court hereby imposes upon Ernesto Buaron, Jr. y Mendoza, the penalty of life imprisonment and a fine of Three Hundred Thousand Pesos (P 300,000.00) together with accessory penalties under Section 35, Article II thereof and costs.

Ernesto Buaron, Jr. y Mendoza shall be given full credit of the period of his preventive suspension.

The Court directs the destruction of the plastic pack of shabu marked as Exhibit "A" and the return of the buy-bust money to PO1 Bimon Montebon and PO1 Dionisio dela Pena.

IT IS SO ORDERED."

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as sole error, thus:

"THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

THIS COURT'S RULING:

We affirm accused-appellant's conviction.

Valid warrantless arrest

Accused-appellant first posits that he was not committing a crime when he was arrested and that he was merely trying to collect payment from the police officers for the beer they consumed in the videoke bar. As such, he asserts that his warrantless arrest was illegal which makes any evidence confiscated from him as fruit of a poisonous tree.

We reject accused-appellant's assertion.

In ***People v. Villamin***, [3] involving an accused arrested after he sold drugs during a buy-bust operation, the Court ruled that it was a circumstance where a warrantless arrest is justified under Rule 113, Sec. 5 (a) of the Rules of Court. The same ruling applies to the instant case. When carried out with due regard for constitutional and legal safeguards, it is a judicially sanctioned method of apprehending those involved in illegal drug activities. It is a valid form of entrapment, as the idea to commit a crime comes not from the police officers but from the accused himself. The accused is caught in the act and must be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal. The illegal drug seized was not the "fruit of the poisonous tree" as the defense would like this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Sec. 13 of the Rules of Court, which pertinently provides:

SEC. 13

"A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant."

Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was likewise not needed to conduct it.

Here, the prosecution has established that accused-appellant was caught in *flagrante delicto* selling shabu during a buy-bust operation conducted against him. A buy-bust operation has long been held as a legitimate method of catching offenders and is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[4] There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. Furthermore, if a police operation requires immediate implementation, time is of the essence and only hasty preparations are sometimes possible. What is important is whether the speed of preparation compromised the rights of the accused. [5]

In the case at bar, the trial court correctly upheld the testimonies of the police officers who conducted the buy-bust operation. It did not err in applying the presumption of regularity in the performance of duty by law enforcement agents.

The prosecution sufficiently proved all the elements of the illegal sale of shabu as follows: (1) identity of the buyer and seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.^[6] Accused-appellant was convicted by the court a quo on the basis of the evidence resulting from the buy-bust operation undertaken by police officers. During the trial, police officers who conducted the buy-bust operation testified in a categorical manner regarding accused-appellant's sale of the shabu to the poseur buyers. Members of the buy-bust team identified the accused-appellant as the one who sold the shabu and received the marked money from the poseur-buyers. The prosecution established that the marked money was then handed over to accused-appellant. The delivery of the illegal drug to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. The testimonies of prosecution witnesses prove that the transaction or sale actually took place. Likewise, the prosecution was able to account that the evidence recovered from accused-appellant with the markings "EB" was the same evidence presented in court.

The credence given by the court a quo regarding the prosecution witnesses' testimonies is further warranted by the absence of any showing that they were impelled by some evil motive in rendering such testimony. Accused-appellant testified that he did not know the police officers nor did he have a quarrel with any of them. We conform to the rule that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive to falsely charge accused-appellant of a serious offense, or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.^[7] Notably, no complaints were filed against the police officers for any alleged planting of evidence or frame-up of accused-appellant. There is also nothing in the records to suggest that the police officers were ill-motivated to fabricate a case against accused-appellant. Accused-appellant failed to produce convincing proof that the prosecution witnesses had any malicious or ulterior motive when they testified, or that the evidence submitted by the prosecution had been tampered with. In fact, the defense failed to present any credible witness to corroborate his version of events.

Moreover, as between the testimonies of accused-appellant and the police officers, testimonies of the latter are more credible. Police officers, are after all, presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or that they are motivated by ill-will.^[8] Thus, accused-appellant's defense of denial should fail in light of the positive identification and testimonies made by the prosecution witnesses. The records show that the prosecution witnesses testified in a straightforward manner regarding the identity of the seller of illegal drugs. Well-settled is the rule that greater weight is given to the positive testimony of the prosecution witnesses rather than the denials of the accused.

Chain of custody of seized drugs

Furthermore, accused-appellant argues that the prosecution failed to sufficiently