

[CA-G.R. CR NO. 36089, February 05, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR FLORES Y POLINTAN, ACCUSED-APPELLANT.

D E C I S I O N

DIAMANTE, FRANCHITO N., J.:

Assailed before this Court is the September 12, 2013 Decision^[1] of Angeles City Regional Trial Court (RTC), Branch 57, in Criminal Case No. DC 04-366, finding accused-appellant Edgar Flores Y Polintan ("Edgar" for brevity) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165.

An Appellant's Brief was filed on April 28, 2014 and the Appellee's Brief was subsequently filed on October 24, 2014. Accused-appellant Edgar's "Manifestation In Lieu of Reply Brief"^[2] averring that, for reasons therein stated, he elected not to file a reply brief to the plaintiff-appellee's brief is hereby noted. In view thereof, the instant case is deemed submitted for decision.

The facts are as follows:

An Information dated November 10, 2004^[3] for violation of Section 11, Article II of R.A. No. 9165 was filed against accused-appellant Edgar. The Information reads:

"That on or about the 8th day of November, 2004 in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority whatsoever, did then and there willfully, unlawfully and feloniously have in his possession and control two (2) pieces of small size heat sealed transparent plastic sachets each containing more or less ONE (1) GRAM OF SHABU or a total of TWO (2) GRAMS OF SHABU (Methamphetamine Hydrochloride), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW."

When arraigned, accused-appellant Edgar, then assisted by his appointed counsel *de officio*, Atty. Joselito Castro, pleaded not guilty. Trial on the merits thereafter followed.

The evidence for the prosecution consisted of the testimony of PO3 Erickson Mendoza. In the Brief for the plaintiff-appellee,^[4] the Solicitor General summarized the facts as follows:

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2. On 8 November 2004, Police Officer 2 Victorino Chua (PO2 Chua) of the Angeles City Philippines National Police (PNP) Office City Drug

Enforcement Unit (CDEU), received information from a confidential asset regarding the sale by a certain Dong and Edgar (the accused-appellant herein) of dangerous and prohibited drugs, particularly methamphetamine hydrochloride or "shabu", in Barangays Tabun and Capaya of Angeles City. PO2 Chua then promptly relayed the same to the Angeles City PNP Chief, C/Insp. Eufemio Espino (Chief Espino).

3. Thereupon, Chief Espino formed a team, composed of Chief Eufemio himself, PO2 Chua, Police Officers Ernie Guarin, Torres, and NUP Capanas, as well as Police Officer 3 Erickson Mendoza (PO3) Mendoza, to conduct a buy-bust operation. The confidential asset who tipped off the illicit activities of Dong and accused-appellant also joined the team. Chief Espino likewise provided PO2 Chua, who acted as the poseur-buyer, the Php500.00 bill marked money, with serial no. AA016965.

4. The team made a brief stop at the Angeles City Police Station No. 3 for coordination where they were joined by Police Capt. Arnaldo Nunag's (Capt. Nunag) team to assist the buy-bust operation.

5. The team formed by Chief Espino and the team led by Capt. Nunag then proceeded to a gated compound across Moldex Subdivision or Metro Clark in the boundary of Barangays Capaya and Tabun. PO2 Chua, together with the confidential asset, then met with Dong the seller of the shabu, just outside Dong's apartment. At that moment, the other police officers were more or less 20 meters away from PO2 Chua, the confidential asset, and Dong.

6. After a short conversation, PO2 Chua handed the marked money to Dong, who then entered his apartment. When Dong re-emerged therefrom, he handed PO2 Chua a small heat-sealed transparent plastic sachet containing more or less five tenths (0.5) of a gram of *shabu*.

7. Upon receipt of the small heat-sealed transparent plastic sachet containing more or less five tenths (0.5) of a gram of *shabu*, PO2 Chua gestured the pre-agreed hand signal, i.e. waving his hands, to his colleagues in the vicinity. At that juncture, the team swooped down on Dong, who, however, was able to escape.

8. During the commotion, a man (later on identified as herein accused-appellant), came out from the apartment brandishing a calibre .38 revolver. Realizing that he was outnumbered, accused-appellant rushed back inside the apartment. The team then barged into the apartment and was able to arrest accused-appellant. His brother, Alfredo Flores (A. Flores), who was inside the apartment, was likewise arrested.

9. Simultaneously, the team found and seized two (2) small heat-sealed transparent plastic sachets containing more or less one gram of *shabu* as well as drug paraphernalia atop a table inside the living room (or sala) of the apartment of accused-appellant. At that time, accused-appellant was more or less four (4) meters away from the table from where the two (2) small heat-sealed transparent plastic sachets containing shabu were confiscated. The calibre .38 revolver earlier held by accused-appellant

was also seized.

10. Upon seizure and confiscation of the two (2) plastic sachets containing more or less one gram of shabu, PO3 Mendoza marked the same as "ESM-1" and "ESM-2" (PO3 Mendoza's initials). Meanwhile, the plastic sachet handed by Dong to PO2 Chua was marked by PO2 Chua with "VFC".

11. Thereafter, PO3 Mendoza prepared and signed the inventory of Seized/Confiscated Items (Inventory Receipt). PO2 Chua and Raul C. Suscano, a representative from the media, likewise signed the same. Accused-appellant and his brother A. Flores refused to sign the Inventory Receipt.

12. After the marking of and inventory-taking of the seized items, accused-appellant and his brother were brought to the CDEU Office for documentation.

13. At the CDEU, PO3 Mendoza likewise executed a Certification of Field Test dated 8 November 2004 stating their initial findings on the seized items. In addition, PO3 Mendoza, together with PO2 Chua executed an Affidavit of Apprehension detailing the results of their buy-bust operation.

14. Thereafter, the seized items were brought to the PNP Regional Crime Laboratory Office 3 (PNP Reg. Crime Lab 3), for testing. The results of the test confirmed that the contents of the plastic sachet with marking "VFC" and the two (2) plastic sachets respectively marked as "ESM-1" and "ESM-2" were methamphetamine hydrochloride or *shabu*."^[5]

After the prosecution presented its witness and the filing of its Formal Offer of Evidence^[6] to which on October 8, 2012, the defense filed its Comment and Objection thereto dated June 20, 2012,^[7] the defense was directed to adduce its evidence.^[8]

The evidence for the defense consisted of the testimony of accused-appellant himself. The defense' version of the events, as summarized in its Brief,^[9] is as follows:

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5 In the morning of 8 November 2004, accused EDGAR FLORES ("Edgar") was visiting Junior Macalino ("Junior") in the latter's apartment at Barangay Capaya, Angeles City. When he arrived thereat, Junior was not around so he borrowed the house keys from his brother, Alfredo Flores ("Alfredo").

5.1. At around 11:00 o'clock a.m. of the same day, he was sleeping inside Junior's house when Alfredo came to get the house keys. Five (5) to seven (7) individuals then entered house, took Edgar's cellular phone and ordered the latter and Alfredo to lie down on the ground. They asked for Edgar's name and when they discovered that he was not the one they were looking for, they searched the house. Afterwards, they showed him

a plastic sachet that they allegedly recovered from the salt container. They went out of the house and returned with a handgun, which they tried to use by shooting near the door of the house.

5.2 Edgar and Alfredo were taken to the police station, where they were asked to sign papers which they knew nothing about. The following day, Alfredo was released.

5.3 It was only during arraignment that Edgar learned of the case filed against him.”^[10]

On September 12, 2013, the court *a quo* promulgated its Decision^[11] convicting accused-appellant Edgar of the crime charged, the dispositive portion of which reads:

“WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds accused **EDGAR FLORES y POLINTAN GUILTY** of the offense as charged and hereby sentences him to suffer the penalty of imprisonment of **TWELVE YEARS AND ONE DAY**, as minimum, to **FOURTEEN YEARS AND EIGHT MONTHS**, as maximum , of Reclusion Temporal for violation of section 11 of R.A. 9165 and a fine of Php300,000.00.

SO ORDERED.”

On September 13, 2013, accused-appellant Edgar filed a Notice of Appeal^[12] which was given due course by the trial court in an Order dated October 11, 2013.^[13] In his Brief, accused-appellant submitted a lone assigned error that:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II OF R.A. NO. 9165 NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[14]

We deny the appeal.

The elements in illegal possession of dangerous drug are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.^[15]

As to the third element, the High Court, in the case of *Andy Quelnan y Quino vs. People of the Philippines*^[16] has clarified that possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Thus, exclusive possession or control is not necessary.

Consequently, the fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. With that, the prosecution

must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion, as well as the character of the drug. Since knowledge by the accused of the existence and character of the drug in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.^[17] Hence, the existence of *animus possidendi*, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances.^[18]

In the case at bench, accused-appellant Edgar asseverated that he was not in possession, control or custody of the prohibited drugs considering that he was arrested around four (4) meters away from the alleged sachets of shabu.^[19] He likewise posited that since he and his brother were both residents of the apartment where the illegal items were seized, either of them could have owned or possessed the said sachets of shabu. For failure, therefore, of the prosecution to prove that he was in actual control or custody of the same, accused-appellant Edgar reiterated that he deserves an acquittal.^[20]

We do not agree.

In the case of *People of the Philippines vs. Carlos dela Cruz*,^[21] the High Court cited several jurisprudence in relation to the concept of constructive possession. Thus:

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In *People v. Torres*, [W]e held that there was constructive possession of prohibited drugs even when the accused was not at home when the prohibited drugs were found in the master's bedroom of his house. In *People v. Tira*, [W]e sustained the conviction of the accuseds husband and wife for illegal possession of dangerous drugs. Their residence was searched and their bed was found to be concealing illegal drugs underneath. We held that the wife cannot feign ignorance of the drugs' existence as she had full access to the room, including the space under the bed.

In *Abuan v. People*, [We] affirmed the finding that the accused was in constructive possession of prohibited drugs which had been found in the drawer located in her bedroom.

xxx xxx” [Emphasis supplied]

From the foregoing, it can be gleaned that the finding of illicit drugs [and paraphernalia] in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.^[22] Succintly stated, it is only necessary that the accused must have dominion and control over the contraband.^[23] It bears stressing that in the present case, accused-appellant failed to rebut such presumption arising from his knowledge and possession of the prohibited drugs. For one, the trial court had established that accused-appellant Edgar was the person occupying the apartment