

SECOND DIVISION

[G.R. No. 241631, March 11, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. RODEL
TOMAS Y ORPILLA, ACCUSED-APPELLANT.**

D E C I S I O N

J. REYES, JR., J.:

This is an appeal filed by accused-appellant Rodel Tomas y Orpilla (Tomas) from the Decision^[1] dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07245, affirming the Decision^[2] dated December 3, 2014 of the Regional Trial Court (RTC) Branch 5, Tuguegarao City, Cagayan, in Criminal Case No. 14122, finding Tomas guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act (R.A.) No. 9165,^[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information dated May 9, 2011, Tomas was charged with violation of Section 5, Article II of R.A. No. 9165.^[4] The accusatory portion of the Information, reads:

That on May 8, 2011, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused RODEL TOMAS y ORPILLA alias "ERICK", without authority of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell, and distribute two (2) heat-sealed transparent plastic sachets containing a total weight of 7.69 grams of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu," a dangerous drug, to IO1 BENJAMIN D. BINWAG, JR., who acted as a poseur buyer; that when the accused received the previously marked buy-bust money amounting to P62,000.00 consisting of two (2) pcs. genuine P1,000.00 peso-bill bearing serial Nos. AF343787 and CQ130665, and sixty (60) pcs. P1,000.00 peso-bill boodle money, which were placed in a white envelope from the said poseur buyer, accused in turn handed two (2) heat-sealed transparent plastic sachets containing the dangerous drugs wrapped in a printed paper to the said poseur buyer and this led to the apprehension and arrest of the accused and the recovery of the previously marked buy-bust money from his possession and control, and the confiscation of the dangerous drug at the Ground Floor of Brickstone Mall, Pengue-Ruyu, this city, by members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City, who formed the buy-bust team.

CONTRARY TO LAW.^[5]

Trial ensued following Tomas' entry of a "not guilty" plea.

To establish its case, the prosecution presented Intelligence Officer 1 Benjamin D. Binwag, Jr. (IO1 Binwag), IO1 Juneclide D. Cabanilla (IO1 Cabanilla), Barangay Chairman Jimmy Pagulayan (Barangay Chairman Pagulayan), Police Senior Inspector Glenn Ly Tuazon (PSI Tuazon), and Investigating Agent 3 Allan Lloyd B. Leaño (IA3 Leaño). The defense, on the other hand, presented Tomas and Dr. Marcelina Mabatan-Ringor (Dr. Mabatan-Ringor).^[6]

Version of the Prosecution

On May 8, 2011, at around 4:00 p.m., the Philippine Drug Enforcement Agency (PDEA) Regional Office No. 2 in Camp Adduru, Alimannao, Tuguegarao City received an information on the alleged illegal drug activity of a certain alias "Erick," later identified as Tomas. The confidential informant reported that Tomas was engaged in the illegal sale of *shabu* and was looking for prospective buyers. Acting on the tip, Regional Director III Juvenal Azurin directed IA3 Leaño to organize a team that will undertake the buy-bust operation. IA3 Leaño formed the buy-bust team and designated IO1 Binwag as the poseur-buyer, IO1 Cabanilla as immediate back-up agent, and agents Giovanni Alan and Rosenia Cabalza as support operators.^[7]

During the briefing, IA3 Leaño instructed the informant to call Tomas and arrange the purchase of two (2) "*bulto*" of *shabu*. When the phone call was made, Tomas agreed to the transaction and told the informant to prepare the payment and wait for his text message. IO1 Binwag prepared two pieces of genuine P1,000.00 with serial Nos. AF343787 and CQ130665, and sixty (60) pieces of fake P1,000.00 as the boodle money to be used in the entrapment operation.^[8]

At around 5:00 p.m., Tomas called the informant and told him that they would meet at the Happy Mobile Phone and Gadget Store at the ground floor of Brickstone Mall in Pengue-Ruyu, Tuguegarao City. The buy-bust team immediately rushed to the meeting place and positioned themselves nearby to observe while IO1 Binwag and the informant approached Tomas. The informant introduced IO1 Binwag to Tomas. When Tomas asked for the payment, IO1 Binwag handed him the white envelope containing the marked money. In exchange, Tomas gave IO1 Binwag two (2) heat-sealed plastic sachets of white crystalline substance wrapped in printed paper. IO1 Binwag scratched his head as a pre-arranged signal to his companions, introduced himself as a PDEA agent, and ordered Tomas to remain still. The members of the apprehending team arrived and arrested Tomas who tried to escape. Tomas was handcuffed and frisked by IO1 Cabanilla. The white envelope containing the marked money and one (1) Nokia cellphone were recovered from Tomas' possession. IA3 Leaño informed Tomas of his constitutional rights and the law he violated. Thereafter, the entrapment team brought Tomas and the seized plastic sachets containing white crystalline substance to their office at Camp Adduru.^[9]

At the PDEA Office, the Booking Sheet/Arrest Report accomplished and signed by Tomas, IO1 Binwag, and IO1 Cabanilla.^[10] The marking, physical inventory, and photographs of the confiscated plastic sachets were also done at the PDEA Office in the presence of Tomas, Barangay Chairman Pagulayan, and media representative Cayetano B. Tuddao. IA3 Leaño executed a Request for Laboratory Examination on Seized Evidence. IO1 Binwag submitted the request and the seized plastic sachets to the crime laboratory for analysis and examination.^[11] They were received by Senior Police Officer 2 Elyson Talattad who handed the request and specimen to PSI Tuazon. After the conduct of the laboratory examination, PSI Tuazon certified that

the specimen marked as "Exhibit A-1 BDB 05-8-11" weighing 3.39 grams and "Exhibit A-2 BAB 05-8-11" weighing 4.30 grams tested positive for methamphetamine hydrochloride, a dangerous drug. IA3 Leaño also prepared and signed a Request for Physical Examination requesting the Tuguegarao City People's General Hospital (TCPGH) to conduct a medical examination on Tomas. Based on the findings of Dr. Robin R. Zingapan, Medical Officer III, Tomas had no injury at the time he was examined.^[12]

Version of the Defense

On May 8, 2011, at around 2:00 p.m., Tomas was in front of a pharmacy in Brickstone Mall to purchase medicine for his father when two (2) persons in civilian clothing suddenly held and pulled his hands to his back and placed him in handcuffs. One of the men pushed him inside a white Toyota Revo and brought him to the Regional Command where he was mauled and forced to admit ownership of the plastic sachets of *shabu* which came from the shirt pocket of IO1 Binwag. Tomas claimed that his personal belongings were taken from him, which include cash in the amount of P26,000.00 and \$25, and his sister's ATM card.^[13]

The PDEA agents brought him to TCGPH for a check up but the physician who attended to him only took his blood pressure. This prompted him to seek the opinion of another doctor, Dr. Marcelina Mabatan-Ringor who issued a medical certificate with the following findings: "[1] contusion hematoma, 9x5 [cm.] lateral chest (L); [2] abrasion, 3 cm. infrascapular area (L); and [3] abrasion, 0.5 cm. medial aspect distal 3rd posterior forearm (R)."^[14]

In a Decision dated December 3, 2014, the RTC found Tomas guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165. The *fallo* states:

WHEREFORE, the court renders judgment finding the accused, RODEL TOMAS y Orpilla, GUILTY beyond reasonable doubt of violating Sec. 5, 1st paragraph of Art. II, R.A. No. 9165 and sentences him, in accordance with law to suffer imprisonment of Life Imprisonment and to pay a fine in the amount of four hundred thousand (P400,000.00) pesos.

The confiscated drugs are hereby forfeited in favor of the government. The Clerk of Court is hereby ordered to turn over the confiscated drugs to the Philippine Drug Enforcement Agency (PDEA) for their disposition in accordance with law together with a copy of this judgment.

SO ORDERED.^[15]

The RTC found that all the elements for the illegal sale of dangerous drugs were fully established by the prosecution. It gave credence to the testimonies of IO1 Binwag and IO1 Cabanilla which have satisfactorily shown that there was a sale of illegal drugs that took place. It noted that Tomas never questioned the apprehending officers' compliance with the chain of custody rule.

Aggrieved, Tomas filed a Notice of Appeal on December 16, 2014 which was given due course by the RTC in its Order dated January 22, 2015.^[16]

In its Decision dated May 31, 2017, the CA affirmed the findings of the RTC with modification in that the fine imposed on Tomas was increased to P500,000.00. It declared that the fact that the seized plastic sachets were marked at the Regional

Office of PDEA does not deviate from the elements required in the preservation of the integrity of the seized drugs. It did not give weight to Tomas' defense of denial or frame-up which was never substantiated by clear and convincing evidence. It emphasized that Tomas never imputed evil motives on the part of the members of the apprehending team to falsely testify against him. Consequently, the presumption of regularity in the performance of duty must be upheld.

Hence, the present appeal.

In a Resolution^[17] dated October 17, 2018, the Court noted the records forwarded by the CA and notified the parties that they may file their supplemental briefs.

On December 18, 2018, through a Manifestation (Re: Supplemental Brief),^[18] the Office of the Solicitor General, on behalf of the People of the Philippines, stated that the office was not filing a supplemental brief as the Brief for the Appellee^[19] dated December 7, 2015, filed with the CA, had sufficiently addressed the issues and arguments in appellant's brief.

The OSG maintains that the alleged failure to strictly comply with the requirements of the chain of custody under R.A. No. 9165 and its IRR does not necessarily render the seized items inadmissible nor does it impair its evidentiary weight. It asserted that the prosecution was able to establish every link in the chain of custody through the categorical and consistent account given by its witnesses in the handling of the confiscated illegal substance.

In turn, Tomas filed his Manifestation (in lieu of Supplemental Brief)^[20] on January 28, 2019 indicating that he is adopting his appellant's brief^[21] dated August 5, 2015, as his supplemental brief.

Tomas claims that his arrest was illegal and that the alleged seized items were inadmissible for being fruits of a poisonous tree. He specified the irregularities in the custody of the confiscated items, to wit: (1) the marking, photograph, and the inventory of the illegal drugs were not done immediately at the place of arrest; (2) no DOJ representative was present during the photograph and physical inventory; and (3) Barangay Chairman Pagulayan merely signed the Certificate of Inventory but did not witness the actual inventory of the seized items.

Our Ruling

The appeal is granted.

Three (3) elements must be shown to successfully prosecute a charge for illegal sale of dangerous drugs: first, the transaction or sale took place; second, the *corpus delicti* or the illicit drug was presented as evidence; and third, the buyer and the seller were identified.^[22]

Acting as the poseur-buyer, IO1 Binwag positively identified Tomas as the person he caught *in flagrante delicto* selling plastic sachets containing white crystalline substance suspected to be *shabu* in an anti-narcotics operation conducted by his team in the afternoon of May 8, 2011 in Brickstone Mall in Tuguegarao City. Tomas sold the *shabu* to him and received the marked money he handed as payment thereof. Evidently, the first and third elements were duly established by the prosecution in this case. But whether the second element was satisfied requires us

to examine the apprehending officers' compliance with the rule on chain of custody encapsulated in Section 21 of R.A. No. 9165, viz.:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending 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[.]

Later, Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 was issued prescribing the handling and disposition of seized dangerous drugs and a saving clause in case of non-conformity with the above rule:

(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.** (Emphasis supplied)

Section 21 points out the conditions for the conduct of the physical inventory and taking of photograph of the seized items such that:

1. it must be done immediately after seizure or confiscation;
2. it must be done in the presence of the following personalities: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and