

SECOND DIVISION

[G.R. No. 228958, August 14, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
EUTQUIO BAER @ "TIKYO," ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J.:[*]

Before the Court is an ordinary appeal^[1] filed by accused-appellant Eutiquio Baer @ "Tikyo" (accused-appellant Baer), assailing the Decision^[2] dated August 31, 2016 (assailed Decision) of the Court of Appeals-Cebu City Eighteenth Division (CA) in CA-G.R. CEB-CR. HC No. 01343, which affirmed the Decision^[3] dated January 12, 2009 rendered by Branch 18, Regional Trial Court of Hilongos, Leyte, (RTC) in Criminal Case No. H-1176, titled *People of the Philippines v. Eutiquio Baer @ "Tikyo,"* finding accused-appellant Baer guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"^[4] as amended.

While the RTC's Decision dated January 12, 2009 convicted accused-appellant Baer for violating Section 11, Article II of RA 9165, the RTC acquitted accused-appellant Baer for illegal sale of dangerous drugs under Section 5, Article II, of RA 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

In two separate *Information*, accused-appellant [Baer] was charged for violation of Sections 5 and 11 (illegal sale and possession of dangerous drugs, respectively), Article II of R.A. No. 9165. The *Information* respectively alleged:

Criminal Case No. H-1176

"That on or about the 3rd day of December 2002, at around 5:45 o'clock in the afternoon, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly have in his possession and control Seven (7) heat-sealed transparent plastic bags of Methamphetamine Hydrochloride locally known as "SHABU", a dangerous drug weighing 25.6 grams; One (1) small heat-sealed transparent plastic bag of Methamphetamine Hydrochloride weighing 1.6

grams and One Hundred Forty Two (142) decks of small heat sealed transparent plastic sachets of Methamphetamine Hydrochloride weighing 4.26 grams, with a total weight of 31.46 grams.

CONTRARY TO LAW."

Criminal Case No. H-1177

"That on or about the 3rd day of December, 2002 at around 5:42 o'clock in the afternoon, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there, willfully, unlawfully, knowingly and criminally sell, dispense one (1) deck of Methamphetamine Hydrochloride locally known as "SHABU" a dangerous drug, placed inside a small heat-sealed transparent plastic sachet weighing .04 gram to a poseur buyer worth One Hundred Pesos (P100.00) with Serial No. EQ986769 used as mark money.

CONTRARY TO LAW."

During his arraignment on May 29, 2003, accused-appellant [Baer] entered a plea of not guilty. Accused-appellant [Baer] was detained at the Hilongos, Sub-Provincial Jail while the case was pending before the trial court. Pre-trial conference was conducted and a Pre-Trial Order was issued by the trial court on July 9, 2003.

Thereafter, trial ensued.

Evidence for the Prosecution

The evidence of the prosecution, taken together, presented the following relevant facts:

On December 3, 2002, at around 5:45 in the afternoon, SPO[1] Agustin dela Cruz [(dela Cruz)], SPO4 Alfredo Ortiz (Ortiz) and PO3 Eufracio Tavera [(Tavera)], together with other members of the Provincial Anti-Narcotics Unit (PANU) and barangay officials Cerilo Gaviola [(Gaviola)] and Marcelo Estoque, went to Brgy. Inguihan, Bato, Leyte to serve a search warrant against accused-appellant [Baer]. Upon arriving at accused-appellant [Baer]'s place, they saw accused-appellant [Baer] and introduced themselves as members of PANU. They told him that they will search his rented stall inside the public market by virtue of a search warrant, the contents of which they read to accused-appellant [Baer].

In the presence of the police officers and barangay officials, accused-appellant [Baer] admitted that there were prohibited drugs in his place. Thereafter he escorted the team to his bedroom, retrieved a locked steel box under his bed and gave it to the team. Since the steel box was locked, a member of the team obtained a key from Virgilio Notarte (Notarte), who was detained at the municipal building. When the box was opened, it was found to contain seven big plastic sachets and 142 sealed decks of suspected shabu. The police officers confiscated those articles and made an inventory of the seized items, signed by accused-appellant

[Baer] and the witnesses to the search. A certification of search was also prepared.

After the search, the team brought accused-appellant [Baer] and the seized items to the municipal building where the confiscated items were marked (the seven big plastic sachets were marked "AD ET-1" to "AD ET-7," the small plastic sachet was marked with "D-476-2002 AD ET 1" while the 142 decks of shabu were marked "C-I" to "C-142."). Thereafter, the seized items were forwarded to the PNP Crime Laboratory for qualitative examination. PSI Pinky Sayson Acog conducted a laboratory examination of the subject specimens and issued Chemistry Report No. D-476-2002, showing that the subject specimens tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.

Evidence for the Defense

On the other hand, the testimonies of the defense witnesses, accused-appellant [Baer] and Raul Solante, presented a different version of the events.

In the afternoon of December 2, 2002, accused-appellant was standing near the door of his stall at the public market, watching a basketball game. While doing so, Notarte alias "Ondo" approached accused-appellant [Baer] and requested if Notarte could leave the steel box he was carrying at accused-appellant [Baer]'s stall. Accused-appellant [Baer] refused Notarte's request since they just knew each other. Nevertheless, Notarte placed the steel box on top of a table and departed. Because Notarte had already left, accused-appellant [Baer] brought the steel box inside his rented stall. He then left to go fishing with his employer. However, when he was about to cross the basketball court, several police officers approached him and asked if he was aware of the steel box left by Notarte. Accused-appellant [Baer] answered in the affirmative and escorted them to his place and surrendered the steel box. All the while, the police officers did not present any document or search warrant to accused-appellant [Baer], nor inform him of the consequences of surrendering the steel box.

Because the steel box was locked, the police officers went to the municipal hall and obtained the key from Notarte. When the steel box was opened, it was found to contain several items that looked like "tawas." The police officers immediately listed the contents of the box, took a [one-hundred-peso] bill from accused-appellant [Baer] and placed it on the table. After the incident, accused-appellant [Baer] was brought to the municipal hall and placed inside a prison cell where Notarte was also detained.^[5]

The Ruling of the RTC

On January 12, 2009, the RTC rendered its Decision convicting accused-appellant Baer for illegal possession of dangerous drugs under Section 11, Article II of RA 9165, while acquitting him of the charge of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, accused **EUTIQUIO BAER** is hereby found **GUILTY in Violation of Sec. 11 ART. II R.A. 9165 (Possession of Dangerous Drug Under Criminal Case No. H-1176) Beyond Reasonable Doubt** and hereby sentenced to suffer **LIFE IMPRISONMENT** and a fine of **Four Hundred Thousand Pesos (P400,000.00). Cost against the accused.**

For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt in Criminal Case No. H-1177 accused **EUTIQUIO BAER** is hereby **ACQUITTED**.

In the service of his sentence accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.^[6]

Feeling aggrieved, accused-appellant Baer filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Baer. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED**. The 12 January 2009 Decision of Branch 18 of the RTC of Hilongos, Leyte in Criminal Case No. H-1176 is **AFFIRMED**.

SO ORDERED.^[7]

In sum, the CA held that since the steel box where the alleged drug specimens were supposedly retrieved was located in the rented stall belonging to accused-appellant Baer, the latter had constructive possession of the allegedly seized illegal drugs. Further, the CA found that the integrity and evidentiary value of the allegedly seized drug specimens were duly preserved by the prosecution.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting accused-appellant Baer for violating Section 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Baer for failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant Baer was charged with the crime of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165.

Illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not

authorized by law; and (3) the accused freely and consciously possessed the drug.
[8]

*The first element
of illegal
possession
of dangerous
drugs is wanting;
there
is no
constructive
possession of
illegal drugs on
the part of
accused-
appellant Baer.*

Jurisprudence holds 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.^[9]

In the instant case, it is not disputed whatsoever that the alleged seized drug specimens were not actually possessed by accused-appellant Baer. The transparent plastic bags and sealed decks allegedly containing *shabu* were not found on the person of accused-appellant Baer. As held by the CA, the drug specimens were considered to have been under the **constructive possession** of accused-appellant Baer.

Based on the evidence on record, the Court disagrees with the findings of the RTC and CA. The Court finds that the supposed drug specimens were **NOT** constructively possessed by accused-appellant Baer.

According to the testimony of the prosecution's witness, SPO1 dela Cruz, seven big sachets and 142 sealed decks of *shabu* were found inside the **locked steel box** retrieved from the place where the search warrant was executed.

On cross-examination, SPO1 dela Cruz readily admitted that when the authorities confronted accused-appellant Baer as to the locked steel box, accused-appellant Baer made it clear to the apprehending team that the said box was not his. He had no knowledge as to the contents of the steel box and was not capable of opening the said container because it was owned by one Ondo Notarte (Notarte).^[10] **The prosecution does not refute or contest that the steel box which allegedly contained the supposed confiscated drug specimen was owned by Notarte and not owned by accused-appellant Baer, and that the latter was not capable of opening the same.**

In fact, much emphasis must be placed on the admitted fact that it was the members of the PANU who were able to open the steel box, considering that accused-appellant Baer did not own the container and that the latter had no ability to open it. The key that was used to open the steel box did not come from accused-