

## FIRST DIVISION

[ G.R. No. 199689, March 12, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HERMANOS CONSTANTINO, JR. Y BINAYUG, A.K.A. "JOJIT,"  
ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This appeal challenges the Decision<sup>[1]</sup> dated July 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03353, affirming the Decision<sup>[2]</sup> dated April 15, 2008 of the Regional Trial Court (RTC), Branch 5 of Tuguegarao City, Cagayan, in Criminal Case No. 10516, which found accused-appellant Hermanos Constantino, Jr. y Binayug, a.k.a. "Jojit" (Constantino), guilty of the crime of illegal sale of methamphetamine hydrochloride, more popularly known as *shabu*, under Article II, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information<sup>[3]</sup> filed before the RTC charged Constantino, as follows:

That on January 20, 2005, in the City of Tuguegarao, Province of Cagayan and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law and without permit to sell, transport, deliver and distribute dangerous drugs, did then and there willfully, unlawfully and feloniously sell, transport, distribute and deliver two (2) heat-sealed transparent plastic sachets containing 0.14 gram of Methamphetamine Hydrochloride commonly known as "shabu", a dangerous drug to a member of the PNP, Tuguegarao City who acted as a poseur-buyer; that after receiving the two (2) plastic sachets, the poseur- buyer simultaneously handed to the accused the marked money consisting of one (1) piece of FIVE HUNDRED PESO BILL (P500.00) with Serial No. QP278070 and five (5) pieces of ONE HUNDRED PESO BILL with Serial Nos. SM989053, PS724429, XM484584, BB048002, and EK6900025 or a total of P1,000.00 and this led to the apprehension of the accused and the confiscation of the dangerous drug together with the buy-bust money by the said apprehending law enforcers of the Tuguegarao City Police Station who formed the buy bust team in coordination with the PDEA.

When arraigned on July 8, 2005, Constantino pleaded not guilty to the crime charged.<sup>[4]</sup> Thereafter, pre-trial and trial on the merits ensued.

Evidence for the prosecution presented the following version of events:

On January 20, 2005, at around 2:00 in the afternoon, Police Superintendent (P/Supt.) Mariano Rodriguez (Rodriguez), the Chief of Police of Tuguegarao City, received a report from a confidential informant (CI) that a certain Jojit was selling illegal drugs in the said city. P/Supt. Rodriguez immediately formed a buy-bust group composed of Senior Police Officer (SPO) 2 Noel Taguiam (Taguiam), SPO2 Alexander Tamang (Tamang), SPO1 Arthur Blaquera (Blaquera), Police Officer (PO) 3 Edwin Hernandez (Hernandez), and PO3 Rolando Domingo (Domingo). PO3 Domingo was designated as the poseur-buyer. The buy-bust money, consisting of one P500.00 bill and five P100.00 bills, were dusted with fluorescent powder and their respective serial numbers were recorded in the police blotter.<sup>[5]</sup>

Around 8:00 in the evening of the same day, the team proceeded to Reynovilla St., Caritan Centro, Tuguegarao City, the place where, according to the CI, Jojit was selling *shabu*. PO3 Domingo positioned himself beside a street light while the rest of the team hid behind a nearby concrete fence. After waiting for about 45 minutes, Constantino arrived on board a tricycle. PO3 Domingo recognized Constantino as the Jojit described by the CI. PO3 Domingo approached Constantino and asked him if he was Jojit. When Constantino replied in the affirmative, PO3 Domingo next asked, "*Mayroon ka bang stuff?*" ("Do you have stuff?") In response, Constantino inquired of PO3 Domingo how much he wanted to buy. PO3 Domingo said he wanted to buy P1,000.00 worth of *shabu*, simultaneously handing over the buy-bust money to Constantino, who, in turn, handed two plastic sachets to PO3 Domingo. Thereupon, PO3 Domingo turned his cap backwards, the pre-arranged signal for the consummated sale. Upon seeing the signal, the other members of the buy-bust team approached the scene at once and arrested Constantino, from whom SPO2 Taguiam recovered the buy-bust money.<sup>[6]</sup>

Thereafter, Constantino was brought to the police station where the recovered drugs and money were turned over to the investigator, SPO2 Tamang.<sup>[7]</sup> The recovered drugs were then marked with the initials "A-1" and "A-2." The incident was recorded in the police blotter with an inventory of the recovered drugs and money.<sup>[8]</sup>

Later that evening, at around ten o'clock, P/Supt. Rodriguez and SPO2 Tamang submitted to the Philippine National Police (PNP) Crime Laboratory Services, Camp Marcelo Adduru, Tuguegarao City, a request for laboratory examination of two plastic sachets with white crystalline substance marked as "A-1" and "A-2" to determine the presence of dangerous drugs;<sup>[9]</sup> as well as both hands of Constantino, one piece P500.00 bill, and five pieces P100.00 bills, to determine the presence of the ultra violet powder.<sup>[10]</sup> Per Chemistry Report No. D-08-2005<sup>[11]</sup> and Physical Identification Report No. PI-04-2005,<sup>[12]</sup> prepared by Police Senior Inspector (P/SInsp.) Mayra Matote Madria,<sup>[13]</sup> Forensic Chemist, the contents of the two plastic sachets tested positive for Methamphetamine Hydrochloride; while the other specimens tested positive for the presence of bright-yellow ultraviolet fluorescent powder.

Constantino denied the accusation against him and asserted that he was merely framed-up.

According to Constantino, at around 8:00 in the evening on January 20, 2005, he was enjoying a joyride with his friend, Jeff Abarriao, on the latter's motorcycle, within the vicinity of Caritan Centro. After 30 minutes, Constantino decided to go home. While walking along Reyno or Reynovilla St., two vehicles suddenly stopped, one in front and the other behind him. Five men, all in civilian clothes, alighted from the two vehicles. Two of the men held Constantino's hands, while another poked a gun at him, asking him where he came from and ordering him to bring out the *shabu*. Constantino answered that he did not know what the men were talking about. The men then forced Constantino into one of the vehicles. Inside the vehicle, one of the men frisked and searched Constantino, and told him that he was being arrested for selling *shabu*. The men, who were now apparently police officers, brought Constantino to the Tuguegarao City Police Station. At the police station, the police officers took Constantino's cellphone and wallet. Also at the police station, one of the arresting police officers brought out two pieces of plastic sachets and money and turned it over to one of his companions. At around 9:30 in the evening, the police officers brought Constantino to the PNP Crime Laboratory, but nothing happened because he heard that the person who was supposed to conduct the examination was not around, so, Constantino was brought back to the police station.

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The following day, January 21, 2005, the police officers again brought Constantino to the PNP Crime Laboratory. Along the way, one of the police escorts forced Constantino to hold a certain amount of money. Constantino tried to resist but he could not really do anything because he was handcuffed. After his examination, Constantino was detained and was told that he was suspected of selling *shabu*.

The RTC promulgated its Decision on April 15, 2008, finding Constantino guilty as charged. The trial court rejected the arguments of the defense, thus:

1. The Prosecution failed to give a detailed account of the arrangement with the accused for the purchase of the *shabu*.

The Court's response: The testimony of PO3 Domingo was detailed enough, corroborated by other witnesses. It is the defense that has failed to show in what crucial detail the prosecution's account is wanting.

2. The police officers categorically admitted that they did not personally know the accused until they were at the alleged place of transaction.

The Court's response: Substantive law does not require this; the rules of evidence do not. Did they know he was Jojit? Yes, from the description given the informant. Domingo asked whether he was Jojit. He answered "Yes".

3. The arresting officers failed to comply with the requirements of Article II, Section 21 of R.A. 9165 that requires that an inventory be taken and that photographs be taken of the items seized.

The Court's comment: The Police Blotter Entry No. 0270 enumerates the items seized. This, the Court holds to be substantial compliance. Even assuming, without admitting, that not all the requirements may not have

been complied with, these omissions do not operate to exclude the evidence nor to cause suppression thereof. They are directory, not mandatory provisions.

4. The chain of custody was not established with certainty.

The Court's comment: The chain is not difficult to trace, and has been established by evidence, thus:

- a. Exhibit "B": The police blotter recording that on 20 January 2005 at 2100 hours, mentioning the two sachets of shabu which according to the blotter the accused admitted he handed over to Domingo; Domingo had testified that the markings A-1 NBT and A-2 NBT were placed on the sachets by Investigator Alexander Tamang;
- b. Exhibit "F": Dated January 20, 2005, a request to the PNP Crime Lab Services for the examination of "two plastic sachet (sic) with white crystalline substance marked A1 and A2";
- c. Exhibit "D": Chemistry Report No. D-08-2005 completed 21 January 2005 reporting a qualitative examination of the contents of two heat-sealed sachets marked as A1 NBT and A2 NBT and identifying the substance as "Methamphetamine Hydrochloride".

5. There was no prior coordination with PDEA.

The Court's response: None was needed. Exhibit "H" clearly evidences that SPO1 Blaquera was authorized to conduct anti-drug operations. Domingo also answered the question about coordination with PDEA when he testified: "During that time 3 representatives of the Intelligence Operatives were deputized in the PDEA in the persons of Noel Taguam, Arthur Blaquera and the Chief of Police."

Hermanos testified in his behalf and his testimony can be reduced to the following story:

1. He went on a joy-ride that night with his friend aboard a motorcycle;
2. Tiring, he alighted and started to walk along Reyno Villa Street;
3. He was accosted by police officers who, at the time, he did not know to be police officers;
4. They took him to the police station and produced the sachets;
5. Next day, while on the way to the Crime Lab, they forced him to hold marked bills, although he was cuffed.

All told, it is a story that is meant to endeavor to explain the circumstances around the accused's arrest and apprehension. For one thing, it is self-serving; for another, we are not told any reason why the police officers should have wanted to apprehend him – a supposedly

guiltless man; third, the Court never heard the testimony of his friend with whom he was supposed to have had a joy-ride that night. In sum, his story does not convince this Court.<sup>[15]</sup> (Citations omitted.)

The RTC imposed the following sentence upon Constantino:

**WHEREFORE**, the Court finds the accused guilty beyond reasonable doubt of Violation of Sec. 5, Art. II of R.A. 9165 and sentences him to suffer the penalty of

**LIFE IMPRISONMENT** and a fine of P500,000.00.<sup>[16]</sup>

Maintaining his innocence, Constantino appealed to the Court of Appeals, arguing that:

1. The trial court gravely erred in giving full credence to the testimonies of the prosecution witnesses despite the patent irregularities in the conduct of the buy-bust operation.
2. The trial court gravely erred in convicting accused-appellant despite the prosecution's failure to establish that chain of custody of the drug specimens allegedly confiscated from the accused-appellant.
3. The trial court gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the identity of the prohibited drugs constituting the *corpus delicti* of the offense.

In its Decision dated July 29, 2011, the Court of Appeals affirmed *in toto* the judgment of conviction of the RTC against Constantino. The appellate court held that Constantino's defense of frame-up was not worthy of credence as his version of the incident was not at all corroborated. Constantino was caught *in flagrante delicto* selling *shabu* to PO3 Domingo, who acted as the poseur-buyer, therefore, he was legally arrested without a warrant. The appellate court also found that the chain of custody of the *shabu* had been preserved from the time said drugs were confiscated from Constantino to the time the same drugs were delivered to the crime laboratory and thereafter retrieved and presented as evidence before the trial court. Lastly, the appellate court stressed that between the positive and categorical declarations of the prosecution witnesses, on one hand, and the unsubstantial denial or negative statements of the appellant, on the other hand, the former generally prevails; and that negative averments, unsubstantiated by clear and convincing evidence, deserve no weight in law, especially *vis-a-vis* the time-tested presumption of regularity of performance of official duty on the part of the apprehending officers.

In the end, the Court of Appeals decreed:

**WHEREFORE**, the Decision of the Regional Trial Court of Tuguegarao City, Branch 5, dated 15 April 2008, in Criminal Case No. 10516, is **AFFIRMED**.<sup>[17]</sup>