

SECOND DIVISION

[G.R. No. 189840, December 11, 2013]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAY MONTEVIRGEN Y OZARAGA, ACCUSED-APPELLANT.

DECISION

DEL CASTILLO, J.:

Failure to physically inventory and photograph the *shabu* seized from an accused in the manner prescribed by law do not invalidate his arrest or render said drug inadmissible in evidence if its integrity and evidentiary value remain intact. It could still be utilized in determining the guilt or innocence of the accused.^[1]

Factual Antecedents

On appeal is the Decision^[2] dated July 31, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03208 which affirmed the Decision^[3] dated December 18, 2007 of Branch 65, Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 05-1396 to 1397 convicting beyond reasonable doubt Jay Montevirgen y Ozaraga (appellant) for the crime of illegal sale and possession of *shabu* under Sections 5 and 11, Article II of Republic Act (RA) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002."

The Informations against appellant read as follows:

Criminal Case No. 05-1396

That on or about the 19th day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above- named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell distribute and transport, weighing zero point zero four (0.04) gram of Methylamphetamine Hydrochloride (Shabu), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.^[4]

Criminal Case No. 05-1397

That on or about the 19th day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above- named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have

in his possession, direct custody and control weighing zero point zero four (0.04) gram and zero point ten (0.10) gram or [a] total weight of zero point fourteen (0.14) gram of Methylamphetamine Hydrochloride (Shabu), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.^[5]

During arraignment, appellant pleaded “not guilty” in the two cases. After the pre-trial conference, a joint trial on the merits ensued.

Version of the Prosecution

On July 18, 2005, P/Supt. Marietto Valerio (P/Supt. Valerio) of the Makati City Police Station Anti-Illegal Drugs Special Operation Task Force received a report from a confidential informant that appellant was selling *shabu* in Malvar Street, *Barangay* South Cembo, Makati City. Thus, he immediately formed a team composed of police officers and personnel of the Makati Anti-Drug Abuse Council (MADAC) to conduct a buy-bust operation against appellant. The members of the entrapment team were PO3 Esterio M. Ruiz, Jr. (PO3 Ruiz), PO1 Percival Mendoza, PO1 Honorio Marmonejo (PO1 Marmonejo), *Barangay* Captain Rodolfo Doromal, Eugenio Dizer, Miguel Castillo, Leo Sese, and Anthony Villanueva. PO3 Ruiz was designated as poseur-buyer and was provided with two 100-peso bills marked money. PO1 Marmonejo, on the other hand, coordinated the operation with the Philippine Drug Enforcement Agency (PDEA), which issued a Certificate of Coordination.^[6] The buy-bust team then proceeded to the subject area but could not locate appellant.^[7]

The next day, July 19, 2005, the buy-bust team returned to Malvar Street and found appellant talking to three men. After these men departed, PO3 Ruiz, accompanied by the confidential informant, approached appellant. The confidential informant introduced PO3 Ruiz to appellant and told him that PO3 Ruiz wanted to buy *shabu*. Appellant asked PO3 Ruiz how much he wanted to buy and he replied, P200.00. Appellant pulled out from his pocket three plastic sachets containing white crystalline substance and told PO3 Ruiz to choose one. He complied and gave the marked money to appellant as payment. Appellant pocketed the remaining plastic sachets together with the marked money. PO3 Ruiz then took off his cap – the pre-arranged signal that the transaction had been consummated. The other buy-bust team members then rushed to the scene to assist PO3 Ruiz in apprehending appellant. The two other plastic sachets and marked money were recovered from appellant after PO3 Ruiz ordered him to empty his pockets. PO3 Ruiz then marked the plastic sachets – “EMR” for the one appellant sold to him and “EMR-1” and “EMR-2”^[8] for the other two sachets confiscated from appellant.

Appellant was taken to the police headquarters where he was booked and the incident recorded in the police blotter. The items seized from him were turned over to the duty investigator who prepared a request for laboratory examination and then sent to the crime laboratory. The results revealed that the contents of the plastic sachets are positive for *shabu*.^[9]

Version of the Defense

Appellant testified that on July 19, 2005, at around 2 p.m., he was in his house with

his wife and child when he was roused from sleep by a man armed with a gun. Several other armed men entered his house. He was told that a buy-bust operation was being conducted. They searched his house then appellant was made to board a vehicle where he was showed a plastic sachet containing white crystalline substance that he believed to be *shabu*. He struggled to free himself and denied ownership thereof but his actions were futile. He was taken to *Barangay* Olympia, Makati City, where he was detained for 30 minutes, then brought to the crime laboratory for drug testing.^[10]

Defense witness Fancy Dela Cruz corroborated the testimony of appellant. She averred that at around 1:30 p.m. of July 19, 2005, two vehicles parked almost in front of her. Several men alighted from the vehicles and forced open the door of appellant's house. She inquired as to their intentions but was told not to intervene and to avoid involvement. She complied but heard one of the men telling appellant to get up and put on his clothes. The men then had appellant board one of the vehicles and sped away. She looked for appellant's wife and informed her of the incident.^[11]

Ruling of the Regional Trial Court

The RTC gave credence to the testimony of the prosecution witnesses on the events that transpired prior to and during the buy-bust operation. It rendered a verdict of conviction on December 18, 2007,^[12] viz:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 05-1396, the Court finds accused JAY MONTEVIRGEN y OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (P500,000.00) pesos;

2. In Criminal Case No. 05-1397, the Court finds accused JAY MONTEVIRGEN y OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (P300,000.00);

The period of detention of the accused should be given full credit.

Let the dangerous drug subject matter of these cases be disposed of in the manner provided for by law.

SO ORDERED.^[13]

Ruling of the Court of Appeals

On appeal, the CA concurred with the RTC's findings and conclusions and,

consequently, affirmed its judgment in the assailed Decision^[14] of July 31, 2009. The dispositive portion of CA's Decision reads:

WHEREFORE, the appeal is DENIED. The December 18, 2007 Decision of the Regional Trial Court of the City of Makati, Branch 65 is hereby AFFIRMED.

SO ORDERED.^[15]

Assignment of Errors

Still unable to accept his conviction, appellant is now before us raising the same interrelated errors he assigned before the CA, viz:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWIT[H]STANDING THE FAILURE OF THE A[P]PREHENDING TEAM TO PROVE [THE] INTEGRITY OF THE SEIZED DRUGS.^[16]

In his joint discussion of these errors, appellant contends that the police officers involved in the buy-bust operation failed to observe the proper procedure in the custody and control of the seized drug by not marking the confiscated specimens in the manner mandated by law. He claims that the arresting team did not immediately conduct a physical inventory of the seized items and photograph the same in the presence of his representative or counsel, representative from media, Department of Justice, and any elected public officials pursuant to Section 21 of the Implementing Rules and Regulations of RA 9165. He also argues that the Certificate of Coordination has no weight in evidence and cannot be used to prove the legitimacy of the buy-bust operation since it was issued for the failed entrapment operation the previous day, July 18, 2005.

Appellee, through the Office of the Solicitor General argues that the prosecution sufficiently established all the elements of illegal sale and possession of *shabu* against appellant. It asserts that the integrity and evidentiary value of the *shabu* seized from appellant were properly preserved by the arresting team.

Our Ruling

The appeal is unmeritorious.

Elements for the Prosecution of Illegal Sale and Possession of Shabu.

In every prosecution for the illegal sale of *shabu*, under Section 5, Article II of RA