

## FIRST DIVISION

[ G.R. No. 189278, July 26, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ELIZABETH MARCELINO Y REYES, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

This is an appeal from the June 29, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03153 entitled *People of the Philippines v. Elizabeth Marcelino y Reyes*, which affirmed the Decision in Criminal Case Nos. 3048-M-2002 and 3049-M-2002 of the Regional Trial Court (RTC), Branch 76 in Malolos City, Bulacan. The RTC found accused-appellant Elizabeth Marcelino guilty of violating Sections 5 and 11 of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

#### The Facts

Two Informations charged accused-appellant as follows:

#### **Criminal Case No. 3048-M-2002**

That on or about the 31<sup>st</sup> day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) [heat-sealed] transparent plastic sachet of Methylamphetamine hydrochloride (shabu) weighing 0.494 gram.<sup>[1]</sup>

#### **Criminal Case No. 3049-M-2002**

That on or about the 31<sup>st</sup> day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride (shabu) weighing 3.296 [grams].<sup>[2]</sup>

During her arraignment, accused-appellant pleaded not guilty to both charges.

The defense agreed to the following stipulations<sup>[3]</sup> during the pre-trial:

- 1) the qualification and competence of Forensic Analyst Amilyn Flores-Maclid as an expert witness;
- 2) the existence of the request for laboratory examination signed by Police Senior Inspector Arthur Felix Asis and received by the Bulacan Provincial Crime Laboratory on November 1, 2002; and
- 3) the existence of Chemistry Report No. D-628-02 signed by Forensic Analyst Amilyn Flores-Maclid including the specimens examined by said Forensic Analyst attached to the Chemistry Report contained in a brown envelope with marking D-628-02-AFM consisting of two (2) heat-sealed transparent plastic sachets each containing white crystalline substance with markings and recorded net weights A(MDC-1)-0.494 gm. and B(MDC-2)-3.296 gms., respectively.

### **Version of the Prosecution**

At the trial, the prosecution presented SPO1 Marciano Dela Cruz<sup>[4]</sup> as its sole witness.

SPO1 Dela Cruz, a police officer stationed at the Balagtas Police Station in Bulacan, was part of a team that conducted a test-buy on October 30, 2002 to verify a report of accused-appellant Elizabeth engaging in illegal drug activities.<sup>[5]</sup>

When the test-buy confirmed that Elizabeth was indeed selling illegal drugs, a team was formed to conduct a buy-bust operation. SPO1 Dela Cruz was designated as poseur-buyer. He placed his initials "MDC" on a five hundred peso bill to be used as boodle money.<sup>[6]</sup>

On October 31, 2002, the buy-bust team headed for P. Castro St. Burol 1<sup>st</sup>, Balagtas, Bulacan at around half past seven in the evening. SPO1 Dela Cruz and his asset went to meet Elizabeth and asked to buy *shabu* worth five hundred pesos (PhP 500). Once Elizabeth had handed the *shabu* to SPO1 Dela Cruz, he gave the pre-arranged signal, prompting SPO3 Felix Dela Cruz to approach them. SPO3 Dela Cruz recovered the marked PhP 500 bill and another sachet of suspected *shabu* from Elizabeth. She was then apprised of her constitutional rights. SPO1 Dela Cruz subsequently marked the sachet that was sold to him as "MDC-1" and the sachet found on the person of Elizabeth as "MDC-2."<sup>[7]</sup>

A request was later submitted to the crime laboratory for a laboratory examination of the seized substances.<sup>[8]</sup> Chemistry Report No. D-628-2002 confirmed that the subject drugs were positive for *shabu*.<sup>[9]</sup>

### **Version of the Defense**

The defense offered the testimonies of Elizabeth and tricycle driver Rodrigo Lavixia, a neighbor.

In her defense, Elizabeth claimed that on October 31, 2002, she was at her home at P. Castro St., Burol 1<sup>st</sup>, Balagtas, Batangas with her grandson and her sister, Consuelo Reyes, when they suddenly heard a knock at the door. When Consuelo answered the door, three men suddenly entered the house and announced that they were police officers. [10]

Elizabeth recalled that the police officers who arrested her at her home were not the same ones that the prosecution presented as members of the buy-bust operation. She also claimed that when she got to the police station, a woman named Mila Trias told her, "*Ngayon nakikilala mo na kung sinong kinalaban mo.*" According to Elizabeth, she had a quarrel with Mila because she suspected Mila was having an affair with her husband. [11]

To corroborate Elizabeth's story, Lavixia testified that on October 31, 2002, at about 7:35 in the evening, he was parked outside the house of Elizabeth. He was waiting for passengers when, suddenly, two "owner-type" jeeps arrived carrying two passengers each. The passengers were all male and dressed in civilian clothes. All headed towards Elizabeth's house. Elizabeth opened the door and the men entered the house, with the door closing behind them. From the outside, Lavixia heard Elizabeth shouting as to why the men were searching her house. He approached the house and heard commotion inside. He heard sounds of objects falling. Later, he saw the men coming out of the house and boarding Elizabeth into one of their vehicles. [12]

### **The Ruling of the Trial Court**

On January 21, 2008, the RTC found Elizabeth guilty of the crimes charged based on what it found to be the credible testimony of SPO1 Dela Cruz. In Criminal Case No. 3048-M-2002 (illegal sale of drugs), the trial court found that all the elements of the crime were established by the prosecution with moral certainty. In Criminal Case No. 3049-M-2002 (illegal possession of dangerous drugs), the trial court ruled that the search conducted on Elizabeth was valid under the rule on search incidental to a lawful arrest.

The dispositive portion of the RTC Decision [13] reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, accused ELIZABETH MARCELINO y REYES is hereby CONVICTED:

[A] in Criminal Case No. 3048-M-2002, which charges accused with sale of [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 0.494 gram and a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer LIFE IMPRISONMENT, and to pay the FINE of Five Hundred Thousand Pesos (P500,000.00);

[B] in Criminal Case No. 3049-M-2002 which charges accused for

possession and control of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 3.296 grams and a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer the imprisonment of, applying the Indeterminate Sentence Law, TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM, and to pay the FINE of Three Hundred Thousand Pesos (P300,000.00) x x x.

### **The Ruling of the Appellate Court**

Dissatisfied with the RTC's Decision, Elizabeth appealed to the CA, arguing that the evidence presented against her was inadmissible, since it was acquired during her unlawful arrest. She likewise insisted that her guilt was not proved beyond reasonable doubt.

The CA in its Decision<sup>[14]</sup> affirmed the appealed RTC Decision. The appellate court ruled that Elizabeth was estopped from questioning the legality of her arrest, as it was being raised for the first time on appeal. It held that even the police officers had minor lapses in complying with Sec. 21, Art. II of RA 9165, there was still no doubt that the *shabu* presented during the trial was the same substance retrieved from her.

Aggrieved, Elizabeth filed a Notice of Appeal from the CA Decision.

On December 2, 2009, this Court notified the parties that they may submit their supplemental briefs. The People, represented by the Office of the Solicitor General (OSG), manifested that it was dispensing with the filing of a Supplemental Brief.

### **The Issues**

#### **I**

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT A SEARCH WARRANT WAS NOT NECESSARY

#### **II**

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE INTEGRITY AND IDENTITY OF THE *SHABU* WAS PRESERVED

### **The Ruling of this Court**

Accused-appellant Elizabeth reiterates that two test-buys were conducted before the actual buy-bust operation was launched. She thus contends that after the two test-buys, the police officers certainly had sufficient time to secure both a search warrant and a warrant of arrest but failed to do so. She argues that a buy-bust operation should never be used as a cover for an illegal warrantless search and arrest.