

FIRST DIVISION

[G.R. No. 187069, October 20, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO MAGPAYO, DEFENDANT AND APPELLANT.**

D E C I S I O N

PEREZ, J.:

On appeal is the Decision^[1] dated 9 October 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02858 which affirmed, with modification, the Judgment^[2] dated 30 March 2007 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, finding appellant Antonio Magpayo guilty beyond reasonable doubt of violating Sec. 5, Article II of Republic Act (R.A.) No. 9165^[3] and sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of P300,000.00.^[4]

The Amended Information against appellant reads:

"That on or about 10:00 o'clock in the evening of the 18th day of January 2003, at *Barangay 5*, Poblacion, Municipality of Alabat, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to a police officer who acted as poseur buyer five (5) heat-sealed transparent plastic sachets, each containing methamphetamine hydrochloride, with a total weight of 0.24 gram, and for which said accused received as payment four (4) marked P100 bills, with Serial Nos. EL902137, FF502736, JM490061 and HW957560."^[5]

Appellant pleaded not guilty on arraignment and trial on the merits thereafter ensued. The prosecution presented as witnesses the arresting officers, PO3 Alex Angulo (PO3 Angulo) and PO1 Isidro Realubit (PO1 Realubit), and the Forensic Chemist, PSI Zaide Fausto Abrera (PSI Abrera). From their respective testimonies, the following version of the events is gathered:

At around 10:00 in the evening of 18 January 2003, the officers on duty at the Alabat Police Station in Quezon received information from an asset that appellant was selling *shabu* in *Barangay 5*, Alabat, Quezon.^[6] A team composed of PO3 Angulo, PO1 Realubit and two others was immediately dispatched to the area by the Chief of Police, P/Inspector Amado Interino, Jr., to conduct a buy-bust operation.^[7] PO1 Realubit, PO3 Angulo and PO1 Felixberto Norbe positioned themselves in a dark place about five to seven meters away from appellant.^[8] PO1 Jimmy Gaya (PO1 Gaya), the designated poseur-buyer, approached appellant to carry out the buy-

bust. PO1 Gaya first handed the marked money to appellant who then handed him what was presumed to be *shabu*. After which, PO1 Gaya held appellant--the pre-arranged signal - to indicate that the sale had been consummated.^[9] The rest of the team immediately rushed to the scene, arrested appellant and frisked him for deadly weapon. The searched yielded four more plastic sachets containing a white crystalline substance.^[10]

The team thereafter brought appellant to the Alabat Police Station for investigation.^[11] There the team recovered the four P100 bills marked money, as well as unmarked cash amounting to P2,500.00 which Police Inspector Interino, Jr., required to be confiscated as proceeds from appellant's sale of *shabu*.^[12] The markings "ACA 01," "ACA 02," "ACA 03," "ACA 04" and "ACA 05" were then affixed to the five plastic sachets recovered from appellant before transmitting them to the Quezon Provincial Crime Laboratory Office for examination.^[13] The contents of the plastic sachets tested positive for Methamphetamine Hydrochloride or *shabu*.^[14]

Appellant denied the charge against him claiming that he was merely at the balcony of his house waiting for food when he was arrested.^[15] Gloria Martinez, appellant's sister, was presented to corroborate appellant's testimony. According to her, she was in her own house at that time when she heard appellant shouting for help because he was being arrested so she followed him and the arresting officers to the municipal hall of Atimonan.^[16] There she saw PO3 Angulo get four plastic sachets from his drawer and place it on top of his table as evidence against her brother. PO1 Realubit, on the other hand, produced the marked money; after which, PO3 Angulo conducted a body search on her brother and took the money found from his pockets.^[17]

The trial court found that the prosecution's evidence had proven appellant's guilt beyond reasonable doubt and convicted him as follows:

WHEREFORE AND IN VIEW OF ALL THE FOREGOING, Court finds accused Antonio Magpayo, GUILTY beyond reasonable doubt for the crime charged of Violation of Section 5, Article II or Republic Act 9165 and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php300,000.00

On appeal to the Court of Appeals , the decision of the trial court was affirmed by the appellate court with the modification that the fine imposed on appellant was increased to P500,000.00.

Hence, the instant appeal.

In the Resolution^[18] of the Court dated 28 October 2009, we required the parties to simultaneously file their respective supplemental briefs if they so desire.

In its Manifestation^[19] dated 23 December 2009, the Office of the Solicitor General (OSG) manifested that it will no longer file a Supplemental Brief considering that it has already exhaustively discussed the issues in its Appellee's Brief submitted to the

Court of Appeals.

Likewise, in his Manifestation (In Lieu of Supplemental Brief)^[20] dated 4 January 2009, appellant manifested that he will no longer file a supplemental brief and that he is adopting his Appellant's Brief as his Supplemental Brief.

Appellant assails, among other things, the failure of the buy-bust team to comply with the procedural requirements of Sec. 21 of the implementing rules of R.A. 9165, particularly the marking of evidence after seizure and confiscation, the conduct of a physical inventory and the prescribed witnesses to the buy-bust operation.^[21] Appellant alleged that no coordination with the Philippine Drug Enforcement Agency (PDEA) was made by the buy-bust team,^[22] contrary to the mandate by the above-mentioned provision.

We grant the appeal.

Admittedly, denial is an inherently weak defense, consistently viewed with disfavor by the courts, being a self-serving negative evidence.^[23] In view, however, of the constitutional presumption that an accused is innocent until the contrary is proven beyond reasonable doubt, the burden lies on the prosecution to overcome such presumption by presenting the required quantum of evidence.^[24] In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense.^[25]

In a prosecution for illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.^[26] Proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court.^[27]

In the case at bar, the buy-bust team committed lapses in the handling of the drugs taken from accused which seriously undermine the integrity of the seized substance.

Section 21 of R.A. 9165 provides that:

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.** (Emphasis supplied)

Further, Section 86 of the Implementing Rules and Regulations of R.A. 9165 states that:

(a) Relationship/Coordination between PDEA and Other Agencies - The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: ***Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations;*** *Provided, further,* that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; x x x.
(Emphasis supplied)

Strict compliance with the prescribed procedures is required because of the unique characteristic of illegal drugs, rendering them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

[28] Hence, the rules on the measures to be observed during and after the seizure, during the custody and transfer of the drugs for examination, and at all times up to their presentation in court. [29]

In the present case, the records do not show that the above-mentioned procedural requirements were complied with. No physical inventory and photographs of the seized items were taken. Likewise, no prior coordination with the PDEA, prior to and after the conduct of the buy-bust operation, was made.

While Section 21 (a) [30] of the Implementing Rules and Regulations of R.A. 9165 excuses non-compliance with the afore-quoted procedure, the same holds true only for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. Here, the failure of the buy-bust team to comply with the procedural requirements cannot be excused since there was a break in the chain of custody of the substance taken from appellant. It should be pointed out that the identity of the seized substance is established by showing its chain of custody. [31]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. [32]

Thus, the following are the links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the