

## THIRD DIVISION

[ G.R. No. 184037, September 29, 2009 ]

**ANTONIO LOPEZ Y DELA CRUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**NACHURA, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision<sup>[2]</sup> dated January 31, 2008, which affirmed the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Mandaluyong City, Branch 214, dated July 21, 2006, convicting petitioner Antonio Lopez y dela Cruz (petitioner) of the crime of Illegal Possession of Drugs.

Petitioner was charged in an Information,<sup>[4]</sup> dated April 24, 2003, that reads:

That on or about the 23rd day of April 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, found positive to the test for Methamphetamine Hydrochloride commonly known as "*shabu*," a dangerous drug.

CONTRARY TO LAW.

The prosecution, through the testimony of arresting officer, Police Officer 2 Apolinario Atienza (PO2 Atienza), a member of Task Force *Mapalakas* of the Mandaluyong City Police Station, established that on April 23, 2003 at about 3:00 a.m., while conducting a routinary foot patrol along Pantaleon Street, *Barangay* Hulo, Mandaluyong City, PO2 Atienza saw petitioner at a distance of seven (7) meters walking in his direction; that, as the place was well-lit, he saw petitioner, walking with head bowed, looking at his hand, which held a plastic sachet containing a crystalline substance; and that he approached petitioner, held the latter's hand and asked, "*Ano yan?*" but petitioner did not answer. Thereafter, PO2 Atienza introduced himself to petitioner as a member of the Mandaluyong police, arrested him, and informed him of his constitutional rights to remain silent and to counsel. He then brought petitioner to the Mandaluyong Medical Center for a check-up. He also confiscated the plastic sachet and brought it to the police station. He prepared a request and then placed the markings "APA"-his initials•on the plastic sachet.<sup>[5]</sup>

Chemistry Report No. D-737-03E<sup>[6]</sup> prepared by Police Senior Inspector and

Forensic Chemical Officer Annalee R. Forro, whose testimony was made subject of stipulation by both parties,<sup>[7]</sup> revealed the following results:

SPECIMEN SUBMITTED:

A - One (1) heat-sealed transparent plastic sachet with markings "APA" containing 0.10 gram of white crystalline substance.

x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave **POSITIVE** result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

CONCLUSION:

Specimen A contains **Methamphetamine Hydrochloride**, a dangerous drug.

The testimony of PO1 Julius B. Bacero (PO1 Bacero), companion of PO2 Atienza, was also dispensed with, as both the prosecution and the defense stipulated on the following: a) that he was a member of the Philippine National Police (PNP) assigned to the Mandaluyong City Police Force; b) that he was one of the members of the buy-bust team as backup, which operated against petitioner on April 23, 2003 along Pantaleon St., *Barangay* Hulo, Mandaluyong City; c) that as a back-up, his duty was only to secure the premises; and d) that he had no personal knowledge as to the circumstances surrounding the arrest of petitioner, as the former only saw the latter when he was already being brought by PO2 Atienza to their vehicle.<sup>[8]</sup>

The testimony of Senior Police Officer 1 Jaime Masilang -- who took the statement of the arresting officers, prepared and forwarded the referral letter, the arrest report, the affidavit of arrest, and the request for a drug test to the Prosecution Office, and put the markings on the evidence recovered -- also became the subject of stipulation.<sup>[9]</sup>

As sole witness for the defense, petitioner testified that, on April 23, 2003 at around 2:00 to 3:00 a.m., he went to a bakery about 30 meters away from his house in *Barangay* Hulo to buy *pandesal*. Suddenly, two vehicles stopped in front of him. PO2 Atienza and his companion, PO1 Bacero, alighted from the vehicle and frisked him. When PO2 Atienza found nothing in his possession, the two police officers pushed him inside their vehicle and handcuffed him. He was then brought to the office of one Major Kalag. Petitioner insisted that he was framed and that the *shabu* was taken by PO2 Atienza from the drawer of the table of Major Kalag. Afterwards, he was detained at the Criminal Investigation Division and charged with illegal possession of *shabu*. On cross-examination, petitioner testified that, prior to his arrest, he did not know Major Kalag or PO2 Atienza, or the two had any ill motive against him.<sup>[10]</sup>

On July 21, 2006, the RTC rendered a Decision finding petitioner guilty of the crime of illegal possession of drugs. The RTC gave credit to the positive testimony of PO2 Atienza, who was able to recall the incident vividly and to identify the evidence in open court. The RTC held that the acts of PO2 Atienza enjoyed the presumption of regularity in the performance of his official duty. Thus, the RTC disposed of the case in this wise:

WHEREFORE, the prosecution having successfully established the guilt of the accused beyond reasonable doubt[,] he is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY** and to pay a fine of **Three Hundred Thousand Pesos (P300,000.00)**.

Accused is credited in full of the preventive imprisonment [he has] already served in confinement.

Let the physical evidence subject matter of this case be confiscated and forfeited in favor of the State and referred to the PDEA.

SO ORDERED.<sup>[11]</sup>

Aggrieved, petitioner appealed to the CA.<sup>[12]</sup> On January 31, 2008, the CA affirmed the decision of the RTC. The CA held that the *shabu* was not a product of an illegal search and, therefore, admissible in evidence. The CA opined that the plain-view doctrine was applicable to the seizure of the *shabu*, ratiocinating that the prohibited substance was within the plain view of PO2 Atienza who was on a routinary foot patrol, and that the police officer inadvertently came across petitioner, who was caught in *flagrante delicto*. Moreover, the CA held that petitioner was estopped from questioning the failure of the arresting officers to comply with Section 21<sup>[13]</sup> of Republic Act (R.A.) No. 9165,<sup>[14]</sup> in view of the admission by the defense of the Chemistry Report prepared by the Forensic Chemical Officer which positively identified the sachet's contents as *shabu*. Affirming the findings of the RTC, the CA likewise accorded the police officers the benefit of the presumption of regularity in the performance of their official duties.

Subsequently, petitioner filed a Motion for Reconsideration<sup>[15]</sup> which the CA, however, denied in its Resolution<sup>[16]</sup> dated August 1, 2008.

Hence, this Petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE CRIME CHARGED DESPITE THE FACT THAT HIS ARREST WAS MADE WITHOUT A WARRANT.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONER GUILTY OF THE OFFENSE CHARGED DESPITE THE INADMISSIBILITY OF THE EVIDENCE FOR HAVING BEEN OBTAINED IN VIOLATION OF SECTION 21 OF REPUBLIC ACT NO. 9165.

### III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN GIVING SCANT CONSIDERATION TO THE EVIDENCE PRESENTED BY THE PETITIONER, WHICH IS MORE CREDIBLE THAN THAT OF THE PROSECUTION.<sup>[17]</sup>

Petitioner, through the Public Attorney's Office, avers that PO2 Atienza is not a member of the Drug Enforcement Unit of the PNP and has no training with respect to drug cases; thus, the latter was not in a position to immediately identify the plastic sachet as containing *shabu*. Furthermore, at the time of arrest, petitioner was merely holding a plastic sachet, an act that did not constitute a crime that would justify his warrantless arrest; that considering the time and place where the arrest took place, it was improbable and incredible for PO2 Atienza, at a distance of seven (7) meters, to have easily determined that the plastic sachet, so small in size, contained *shabu*. Petitioner submits that in the absence of evidence and corroborating testimony of any other witness, his alleged culpability, based on the sole testimony of PO2 Atienza, shows that there was lack of probable cause, at the outset, to arrest him. Accordingly, the search made on petitioner, as an incident to the illegal arrest, was likewise illegal.

Moreover, petitioner claims that PO2 Atienza's failure to comply with the provisions of R.A. No. 9165 casts doubt on the validity of the arrest and the admissibility of the evidence allegedly seized from him. He says that Section 21 of R.A. No. 9165 and Section 2<sup>[18]</sup> of Regulation No. 1 of the Dangerous Drugs Board, Series of 2002, were violated. In addition, the plastic sachet containing the *shabu* was marked inside the police headquarters and not at the scene of the crime.

Petitioner asseverates that these violations cast a serious doubt on the identity and integrity of the *shabu* allegedly confiscated from him. In the same manner, there was utter failure on the part of the prosecution to prove the crucial link in the chain of custody of the *shabu*, which constitutes the *corpus delicti* of the offense. Lastly, petitioner argues that the presumption of regularity in the performance of official duty of police officers should not by itself prevail over the presumption of innocence and the constitutionally protected rights of an individual.<sup>[19]</sup>

On the other hand, respondent People of the Philippines, through the Office of the Solicitor General (OSG), asserts that petitioner's warrantless arrest is valid pursuant to Section 5(a), Rule 113 of the Rules of Criminal Procedure, commonly referred to as the rule on *in flagrante delicto* arrests; that petitioner was validly searched because he was caught *in flagrante delicto* or in "plain view" committing an offense; and that any objection involving petitioner's arrest, which should have been made before he entered his plea, is deemed waived because petitioner had been arraigned, participated in the trial and presented his evidence. The OSG also claims that non-compliance with the requirements of Section 21 of R.A. No. 9165 is not