

SECOND DIVISION

[G.R. No. 181492, December 16, 2008]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SAMUEL
OBMIRANIS Y ORETA, APPELLANT.**

DECISION

TINGA, J.:

This is an appeal filed by Samuel Obmiranis y Oreta (appellant) who was charged with violation of Section 5 in relation to Section 26 of Republic Act (R.A.) No. 9165.

[1] He was allegedly caught in a buy-bust operation by elements of the Manila Western Police District (MWPD) while offering to sell methylamphetamine hydrochloride, a dangerous drug locally known as *shabu*. The criminal information filed with the Regional Trial Court (RTC) of Manila, Branch 2 [2] accused him as follows:

That on or about May 18, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly attempt to sell or offer for sale one (1) transparent plastic sachet containing TWO POINT EIGHT ZERO ZERO (2.800) grams of white crystalline substance known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law. [3]

At the pre-trial, both the prosecution and the defense stipulated on the qualification of Forensic Chemist Elisa Reyes and, thus, both parties dispensed with her testimony. The prosecution further admitted that the forensic chemist who analyzed the seized the confiscated substance—which yielded positive for methylamphetamine hydrochloride content—did not have personal knowledge of the ultimate source of the drug. [4]

Appellant was brought to trial after having entered a negative plea. [5] The prosecution then proceeded to prove the charge against him through the lone testimony of police officer Jerry Velasco (Velasco). Velasco was the alleged leader of the raiding team that apprehended appellant on 18 May 2004 at the corner of G.Tuazon and Jhocson Streets in Sampaloc, Manila. [6]

The narrative woven by Velasco established the following facts: On 17 May 2004, Police Superintendent Marcelino Pedrozo (Pedrozo) of the MWPD organized a buy-bust team on the information of a confidential informant that the latter was able to place an order for half a "*bulto*" of *shabu* with appellant. Velasco was designated as the team leader and the poseur-buyer, with Police Officers Wilfredo Cinco, Edgardo

Palabay, Roberto Benitez and one^[7] confidential informant as members.^[8] Pedrozo gave the team a marked 500-peso bill to be used as buy-bust money which was placed on top of a deck of boodle money. The team informed the Philippine Drug Enforcement Agency (PDEA) of the impending operation,^[9] entered the same in the blotter^[10] and proceeded to Bambang in G.Tuazon Street just before 12 a.m. of 18 May 2004—the appointed time and date that the confidential informant and appellant had agreed to meet. The informant joined Velasco in his car, and they awaited the arrival of appellant at the corner of G.Tuazon and Jhocson Streets.^[11] At around 12:30 a.m., appellant on board a car arrived at the scene and seeing the informant he approached the latter. The informant introduced Velasco to appellant and said that Velasco would like to buy one-half "*bulto*" of *shabu*. Velasco negotiated with appellant to lower the price but the latter refused. Velasco then insisted that he must first see the merchandise. Appellant went back to his car, took the item and brought it to Velasco. Velasco readily recognized the item as a plastic sachet containing a white crystalline substance. When appellant asked for payment, he seemed to have recognized Velasco's co-officer because he uttered the words, "*May pulis yata.*" At that point, he was arrested just as he was trying to get back to his car.^[12]

According to Velasco, he was the one who effected the arrest but it was Cinco who seized the plastic sachet from appellant. He further stated that immediately after the arrest, he and his team brought the seized item to the police headquarters and there, in his presence, Cinco marked the same with the initials "SOO." At the trial, he identified the plastic sachet as that seized from appellant as well as the marking made by Cinco on it. Furthermore, he admitted on cross-examination that there was no evidence custodian designated and that he could not remember if the seized item had been inventoried and photographed in the presence of the accused; that Cinco put the item in his pocket after the same was recovered and did not mark it on the spot and that the markings made on the buy-bust money had not been entered in the blotter.^[13]

The chemistry report issued at the instance of Pedrozo and signed by Forensic Chemical Officer Maritess Mariano of the PNP Crime Laboratory revealed that the specimen supposedly seized from appellant yielded positive of methylamphetamine hydrochloride content.^[14]

Taking the stand, appellant boldly asserted that he was merely framed up by the buy-bust team, and strongly denied having transacted the alleged sale of *shabu* with Velasco and the confidential informant. He claimed that he was taken by Velasco and his team not on 18 May 2004 but rather on 17 May 2004 at 7:00 p.m. along Santa Teresita Street, Sampaloc, Manila;^[15] that he was there to see his girlfriend who was residing in that area; that when he was arrested by two men in civilian clothes, he was not committing any crime; that he asked them why they were arresting him but neither of them gave an answer and instead one of them grabbed him by his shoulder and ushered him inside a police car; that once inside the car, one of the men pulled out a gun with which he hit his neck, kicked him and uttered, "*Makulit ka ha, yuko!*"; that he asked them why they were doing that to him when in fact he merely told them to park their car properly on the street; that they cuffed his hands at the back and the driver, Velasco, asked if he could give them P200,000.00; that he answered he did not have that much money; that they drove

the car around and told him that if he could not give them the money then he must just find for them someone who sells drugs in large-scale ("*Magturo ka ng nagbebenta ng droga, iyong malakihan ha!*"); that because he said he did not know anyone who was into selling drugs, he was taken to the U.N. Avenue police headquarters; that he was not detained at the headquarters but rather, he was brought to the second floor where the two arresting officers demanded P50,000.00 from him; that the demand was then reduced to P30,000.00 in exchange for the mitigation of his case.^[16] Olivia Ismael, another defense witness who introduced herself as a friend of appellant's girlfriend and who admitted having witnessed appellant's arrest, corroborated the material points of appellant's testimony.^[17]

In its 23 February 2006 Decision, the RTC found appellant guilty beyond reasonable doubt of the offense charged. He was sentenced to suffer the penalty of life imprisonment, and to pay a P500,000.00 fine without subsidiary imprisonment as well as the costs.^[18]

Appellant interposed an appeal with the Court of Appeals in which he reiterated that the prosecution was unable to establish his guilt beyond reasonable doubt in view of the failure to establish the chain of custody of the illegal drugs and that it was likewise unable to establish the consummation of the alleged sale of drugs.^[19] For its part, the People, through the Office of the Solicitor General (OSG), posited that the fact that all the essential elements of a consummated sale of dangerous drug had not been completely shown was immaterial because the charge involved a mere attempt or offer to sell which had been duly established by the prosecution.^[20] It also maintained that the chain of custody of the seized *shabu* had been duly established because the requirements in taking custody of seized narcotics provided for in Dangerous Drugs Board Regulation No. 1, series of 2002^[21] admit of liberal interpretation.^[22]

In its 4 September 2007 Decision,^[23] the Court of Appeals affirmed *in toto* the trial court's decision. Appellant's Notice of Appeal^[24] was approved, and the records of the case were elevated to this Court. This Court's 24 March 2008 Resolution^[25] allowed the parties to file their supplemental briefs, but only appellant complied; the OSG manifested instead that there was no need for its part to file a supplemental brief as the merits of the case had already been extensively discussed in its brief before the appellate court.^[26]

The appeal has to be granted.

In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.^[27] It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt.^[28] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it

ensures that unnecessary doubts concerning the identity of the evidence are removed.^[29]

Board Regulation No. 1, series of 2002 defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.^[30] It would thus include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the same would admit 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. The same 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.^[31] It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

The prosecution evidence in the case at bar, however, does not suffice to afford such assurance. Of all the people who came into direct contact with the sachet of *shabu* purportedly seized from appellant, only Velasco was able to observe the uniqueness thereof in court. Cinco, who, according to Velasco, took initial custody of the plastic sachet at the time of arrest and who allegedly marked the same with the initials "SOO" at the police station, was not even presented in court to directly observe the uniqueness of the specimen and, more importantly, to acknowledge the marking as his own. The same is true with respect to the laboratory personnel who could have but nevertheless failed to testify on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody. Aside from that, it was not reasonably explained why these same witnesses were not able to testify in court. While indeed the prosecution and the defense had stipulated on the qualification of the forensic chemist, dispensed with his testimony and admitted that said forensic chemist had no personal knowledge of the ultimate source of the drug submitted for examination, nevertheless, these stipulations and admission pertain only to a certain Elisa G. Reyes and not to Forensic Chemical Officer Maritess Mariano who, based on the chemistry report, was the one who examined the contents of the plastic sachet at the crime laboratory.

In view of these loopholes in the evidence adduced against appellant, it can be reasonably concluded that the prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of appellant's guiltlessness.

Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real

evidence is a narcotic substance. A unique characteristic of narcotic substances such as *shabu* is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.^[32] And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination,^[33] substitution and exchange —^[34] whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not.^[35] It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical.^[36] Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.^[37]

The Court certainly cannot reluctantly close its eyes to the possibility of substitution, alteration or contamination—whether intentional or unintentional—of narcotic substances at any of the links in the chain of custody thereof especially because practically such possibility is great where the item of real evidence is small and is similar in form to other substances to which people are familiar in their daily lives.^[38] *Graham v. State*^[39] in fact acknowledged this danger. In that case, a substance later shown to be heroin was excluded from the prosecution evidence because prior to examination, it was handled by two police officers who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court in that case pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It thus declared that the state must be able to show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition.^[40]

Reasonable safeguards are provided for in our drugs laws to protect the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21^[41] of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2^[42] of its implementing rules^[43] as well as in Section 2^[44] of the Dangerous Drugs Board Regulation No. 1, series of 2002.^[45]

These guidelines, however, were not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the statutory requirements in handling the evidence. Velasco, the leader of the raiding team, himself admitted that as soon as appellant was arrested, Cinco had taken custody of the plastic sachet of *shabu*, placed it in his pocket and brought the same together with appellant to the police