

## **TWENTIETH DIVISION**

**[ CA-G.R. CR. HC. No. 01788, January 09, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN REYES Y CUTAMORA, ACCUSED-APPELLANT.**

### **DECISION**

**HERNANDO, J:**

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. We decide this appeal, ever mindful of this constitutional presumption of innocence.

Accused-appellant Edwin Reyes y Cutamora appeals the October 21, 2013 *Decision*<sup>[1]</sup> of the Regional Trial Court (RTC) of Talibon, Bohol, Branch 52 in Crim. Case No. 12-2776, convicting him of the crime of Drug Pushing under Art. II, Sec. 5 of Republic Act (R.A.) No. 9165, to wit:

"WHEREFORE, considering the foregoing, the court hereby finds accused Edwin Reyes GUILTY beyond reasonable doubt for Drug Pushing in violation of Section 5 of Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

In accordance with the penalty set forth under the said law, the court hereby sentences accused Reyes to suffer the sentence of life imprisonment and to pay the fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00).

Since the accused is under detention at the BJMP, Ubay, Bohol, he shall be credited with the full period of his detention subject to an assessment by the BJMP Jail Warden thereat on his demeanor during the preventive detention.

SO ORDERED."<sup>[2]</sup>

### **FACTUAL ANTECEDENTS**

On August 29, 2012, accused was formally charged before the trial court with the crime of Drug Pushing under Art. II, Sec. 5 of R.A. No. 9165, allegedly committed as follows:

"That on or about the 27<sup>th</sup> day of April 2012 in the Municipality of Ubay, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with criminal intent to possess and/or sell, trade, dispense, deliver and/or distribute dangerous drugs, did then and there willfully, unlawfully, feloniously and knowingly have in his

possession, custody and control one (1) small heat-sealed transparent plastic sachet containing white crystalline substance of METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug, having a weight of 0.03 gram, did then and there willfully, unlawfully, feloniously and knowingly sell, push, deal, delivery, give away and hand-over it to a poseur-buyer for and in consideration of the amount of Five Hundred (P 500.00) Pesos, Philippine Currency, without the necessary authority or permit from competent authority; to the damage and prejudice of the Government of the Republic of the Philippines.

Acts committed in violation of the provisions of Sec. 5, Article II of R.A. 9165.”<sup>[3]</sup>

Accused was arrested on September 19, 2012 and is currently detained during the pendency of this appeal at the New Bilibid Prison, Muntinlupa City.<sup>[4]</sup> On arraignment, he pleaded not guilty to the crime charged.<sup>[5]</sup> Thereafter, trial on the merits ensued with the prosecution presenting the following relevant witnesses:

(a) Engr. Pinky S. Acog – Forensic Chemical Officer<sup>[6]</sup> of the Bohol Provincial Crime Laboratory Office, Tagbilaran City, testified that on April 28, 2012 at 1:00 p.m., her office (through SPO1 Jayger Casagan) received from PO2 Yuag, one small heat sealed transparent plastic sachet marked as ER dated 04-27-12 with signature, weighing 0.03 grams.<sup>[7]</sup> She examined the said specimen on the said date at around 3:00 p.m. and found it positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.<sup>[8]</sup>

On cross-examination, Pinky admitted that she was not present at the time when Jayger received the specimen from PO2 Yuag.<sup>[9]</sup> After she received the specimen from Jayger, she turned it over to their evidence custodian, SPO2 Florentino Diola, from whom she withdrew the same for the purpose of presenting it to the RTC.<sup>[10]</sup>

(b) SPO1 Jayger L. Casagan – assigned at Bohol Provincial Crime Laboratory Office, testified that on April 28, 2012 at 1:00 p.m., he personally received one small plastic sachet, containing white crystalline substance marked as ER and with a signature and date, 04-27-12, from PO2 Yuag of Ubay Police Station.<sup>[11]</sup> Jayger kept the said sachet inside his locker until two hours later when he turned it over Pinky for examination.<sup>[12]</sup>

(c) PO2 Glenn Pahamutang – a PNP member of Ubay Police Station, narrated on his role as the poseur-buyer in the buy-bust operation conducted against accused at the V-hire terminal of Brgy. Poblacion, Ubay, Bohol on April 27, 2012 at 9:45 p.m.<sup>[13]</sup> Prior to the said operation, he participated in a briefing conducted at Ubay Police Station, where he was given the PhP 500.00 bill to be used as marked money. Glenn identified the signature on the marked money as that of Chief of Police Andeza.<sup>[14]</sup>

PO2 Glenn explained that he contacted a police asset through text and the latter negotiated with accused.<sup>[15]</sup> On the evening of the buy-bust operation, he approached accused, gave him the PhP 500.00 bill and in return, accused gave him the sachet of shabu. After receiving the sachet, PO2 Glenn gave the pre-arranged

hand signal to his companions, PO3 Limaco and PO1 Cutaran, who were situated about five (5) meters away from him.<sup>[16]</sup> He narrated the events that transpired after accused was arrested, to wit:

"Q: And after the arrest on the person of the accused, what did you do as a team?

A: We brought him to the Police Station.

xxx

Q: You mean to say, you searched his pocket while the accused is already in the Police Station of Ubay, Bohol, is that what you mean?

A: While at the crime scene or the area, we already recovered the P500.00 bill.

xxx

Q: Now Mr. Witness, if I am going to show to you the small sachet of shabu, which according to you, given by accused to you after you turned over to the accused the P500.00 bill, marked money, can you identify the said object evidence or sachet, Mr. Witness?

A: Yes, sir."<sup>[17]</sup>

PO2 Glenn explained that after receiving the sachet from accused, he turned it over to police officer Limaco and Cutaran.<sup>[18]</sup> He was beside Chief of Police Andeza when the latter the marked the sachet at the police station with "ER" and the date 04-27-12.<sup>[19]</sup> Their police investigator, PO2 Yuag then brought the sachet to the PNP Crime Laboratory for examination.<sup>[20]</sup>

On cross-examination, PO2 Glenn admitted that at the time that he gave his companions the pre-arranged hand signal, he was not facing them.<sup>21</sup>

(d) PO2 Larkin Ian Yuag – assigned at Ubay Police Station, narrated that he was on duty at Ubay Police Station on the evening of April 27 and that upon receiving from police officer Pahamutang and PO2 Limaco the marked money and the seized sachet, he marked the sachet by placing his signature, "ER", and the date.<sup>[22]</sup> He affirmed that the handwritings on the sachet are his.<sup>[23]</sup> At the time when he prepared the receipt and inventory of the property seized, accused was in front of him, seated at the table of the chief of police.<sup>[24]</sup>

PO2 Larkin explained that at the time he placed the markings on the seized sachet the following were present: PO2 Pahamutang, PO1 Cutaran, 2 barangay councilors and a representative from the media.<sup>[25]</sup> After preparing an inventory of the items seized from accused, PO2 Larkin brought the seized sachet to his locker before submitting it to the PNP Crime Laboratory in Tagbilaran City.<sup>[26]</sup>

(e) PO2 Renato Cutaran – PNP member assigned at Ubay Police Station, testified that he recovered the marked money from accused, and then turned it over to PO3 Limaco.<sup>[27]</sup>

For his part, accused presented himself as a witness and testified that he worked as a habal-habal driver. He narrated that at around 9:00 p.m. of April 27, 2012, he was staying at the terminal for habal-habal located at the public market of Ubay, Bohol when he was arrested by PO2 Glenn Pahamutang and PO1 Renato Cutaran.<sup>[28]</sup>

On cross-examination, accused admitted that he had no previous misunderstanding with any of the police officers involved in his arrest.<sup>[29]</sup>

In its October 21, 2013 *Decision*, the RTC found accused guilty of the crime of Drug Pushing.<sup>[30]</sup> Accused filed a timely notice of appeal therefrom.<sup>[31]</sup> In his May 5, 2014 *Appellant's Brief*, accused-appellant assigns the following errors on the part of the RTC:<sup>[32]</sup>

### **ISSUE**

I. THE COURT A QUO MISERABLY ERRED IN RULING THAT THE PROSECUTION HAD SATISFACTORILY PRESENTED IN COURT THE "CORPUS DELICTI" OR THE ILLICIT DRUG AS EVIDENCE [SPO2 FLORENTINO DIOLA WAS NOT PRESENTED AS WITNESS HENCE THERE IS A BREAK IN THE CHAIN OF CUSTODY OF THE ALLEGED DRUG FROM SEIZURE TO ITS PRESENTATION IN COURT].

II. THE COURT A QUO MISERABLY ERRED IN ADMITTING IN EVIDENCE THE ALLEGED ILLEGAL DRUG WITHSTANDING [SIC] THE UNJUSTIFIED DEVIATION FROM PATENTLY ESTABLISHED PROCEDURE IN THE SEIZURE AND INITIAL CUSTODY OF ILLEGAL DRUGS [INVENTORY AND PHOTOGRAPH WAS DONE AT THE POLICE STATION FOR UNJUSTIFIED REASON].

III. THE COURT A QUO MISERABLY ERRED IN GIVING CREDENCE TO THE WITNESSES FOR THE PROSECUTION AMIDST GLARING INCONSISTENCIES IN THEIR TESTIMONIES [THE FAILURE OF POLICE OFFICERS CUTARAN AND YUAG TO IDENTIFY WHO MARKED THE MONEY BELIES THE ENTIRE BUY-BUST OPERATION].

### **THE COURT'S RULING**

*We grant this appeal.*

#### **I. The prosecution failed to prove the identity of the alleged illegal drug.**

Appellant does not raise any issues regarding the sale and delivery of the seized item for which he was arrested. He essentially argues that alleged irregularities in the police officers' custody of the item seized from him puts into question its identity, in relation to the sachet of *shabu* presented to the RTC. He faults the police officers' alleged failure: (a) to make an inventory; (b) to take photographs of the seized items; and (c) to mark the seized items, *immediately* at the crime scene.<sup>[33]</sup>

Appellant further argues that the prosecution's failure to present as witness, SPO2

Florentino Diola, who was among those who took custody of the alleged illegal drug, shows a substantial and fatal break in its chain of custody, thus creating doubt as to the identity of the substance presented as evidence.<sup>[34]</sup>

Appellee argues that the alleged irregularities are merely slight or nominal deviations from the requirements of the law and should not render appellant's arrest and the seizure of the items invalid since what is essential is the preservation of the integrity and evidentiary value of the seized items.<sup>[35]</sup>

Sec. 5, Art. II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, penalizes the sale of *shabu* as follows:

"SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug xxx.  
xxx"

The following essential elements are necessary in every prosecution for the illegal sale of *shabu*: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.<sup>[36]</sup> The transaction or sale must be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the "actual commission by someone of the particular crime charged."<sup>[37]</sup> In cases involving dangerous drugs, the *corpus delicti* is the presentation of the dangerous drug itself.<sup>[38]</sup>

Before We elaborate on these substantial points, We deem it proper to discuss a minor issue raised by appellant.

## **II. In the case of warrantless seizures, the law does not require for the inventory and taking of photographs to be done immediately at the crime scene.**

The 2002 *Implementing Rules and Regulations* (Implementing Rules) of R.A. No. 9165 expressly provides:

"SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs xxx for proper disposition in the following manner:

(a) The apprehending officer/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