

NINTH DIVISION

[CA–G.R. CR No. 36117, March 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDMUND BULAUTAN Y MAUAYAN, ACCUSED-APPELLANT.**

D E C I S I O N

DICDICAN, J.:

Before this Court is an appeal^[1] seeking the reversal and setting aside of the Decision^[2], dated September 20, 2013, rendered by Branch 5 of the Regional Trial Court in Tuguegarao City finding accused-appellant Edmund Bulautan y Mauayan guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs defined and penalized by RA 9165.

The antecedent facts, as culled from the records, are as follows:

Police Inspector Kevin Bulayungan filed an application for issuance of a search warrant after he received an information that there were prohibited drugs inside the residence of the accused-appellant Edmund Bulautan in Solana, Cagayan. Executive Judge Vilma T. Pauig thereupon issued a search warrant and the Chief of Police of the Solana Philippine National Police (PNP) assigned SPO2 Lito Baccay and PO3 Elizalde Tagal to join the Regional Special Operations Group (RSOG), headed by Inspector Kevin Bulayungan, in implementing the search warrant. The team then went to the house of barangay chairman Jane Busilan and the latter assigned Kagawads Jerry Soliva and Herald de Polonia to join as search witnesses.

Thus, on October 3, 2003, the search team went to the house of the accused-appellant. When they arrived, they were met by the accused-appellant's two children and housekeeper. They were informed that the accused-appellant was not at home as he was in Tuguegarao City. The team explained to the children and the housekeeper the reason for their presence. They were then allowed inside the house of accused-appellant and they proceeded to the latter's room. SPO2 Lito Baccay commenced the search and, after a few minutes of opening a plastic shelf, he discovered three (3) heat-sealed plastic sachet containing white crystalline substance suspected to be shabu. The items were shown to the children and the housekeeper and were photographed. The three (3) heat-sealed plastic sachets were given by SPO2 Lito Baccay to the team leader, Inspector Kevin Bulayungan. After inspecting the sachets, Inspector Kevin Bulayungan gave them to PO3 Elizalde Tagal who wrapped the confiscated items with a piece of paper to be brought to the Solana PNP Station. The accused-appellant thereafter arrived and was immediately placed under arrest. He was shown the search warrant but he refused to receive the same.

Senior Inspector Myrna Madriaga Tulauan, forensic chemist, later confirmed that the three sachets found in the house of the accused-appellant contained

methamphetamine hydrochloride. The first sachet contained 0.08 grams, the second sachet contained 0.10 grams and the third sachet contained 0.04 grams.

An Information, dated November 7, 2003, was eventually filed against the accused-appellant, charging him with violation of Article II, Section 11 (3) of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The accusatory portion thereof reads as follows:

"That on or about October 3, 2003, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, EDMUND BULAITAN Y MAUAYAN, without authority, did then and there, willfully, unlawfully and feloniously have in his possession and under his control and custody three (03) pieces of heat sealed plastic sachet containing Methamphetamine Hydrochloride, a dangerous drug commonly known as shabu which he kept inside his residence/dwelling at Centro Northeast, Solana, Cagayan weighing 0.22 grams which dangerous drug was confiscated by elements of the PNP Solana, Cagayan, which conducted a search at the residence/dwelling of the accused by virtue of Search Warrant No. 21 issued by Executive Judge, Honorable VILMA T. PAUIG of RTC Branch II, Tuguegarao City, Cagayan which resulted to the confiscation of the above-mentioned dangerous drug as the accused while in possession thereof do not have the necessary permit and/or authority.

CONTRARY TO LAW."^[3]

When arraigned^[4], the accused-appellant, assisted by his counsel Atty. Rolando Acacio, pleaded not guilty. Trial on the merits then ensued after the pre-trial of the case was through.

The accused-appellant proffered the defense of denial. He denied owning and knowing the presence of the dangerous drugs which were discovered in his house by the policemen. He recounted that, in the early morning of October 3, 2003, he and his wife left home to go to Tuguegarao City to tend to their meat shop there. Eventually, he received a call from their daughter, informing them of the presence of the policemen in their house. Thus, the accused-appellant went home. Upon reaching the gate of his house, he was met by the policemen and he was arrested by them. He was informed that shabu was recovered from his house. He further testified that he knows Joseph Juan, the person who executed an affidavit in support of the application for issuance of the search warrant that was issued against him and that Joseph Juan wanted to get even with him because the accused-appellant's wife testified against Joseph Juan in a theft case.

In the assailed Decision, dated September 20, 2013, the trial court convicted the accused-appellant of violation of R.A. No. 9165. The dispositive portion of the decision reads as follows:

"**WHEREFORE**, in view of the foregoing, judgment is hereby rendered finding the accused **EDUARDO BULAITAN y MAUAYAN GUILTY** beyond reasonable doubt of the crime of illegal possession of dangerous drugs defined and penalized by R.A. 9165 and is hereby sentenced to suffer a penalty of **TWELVE (12) YEARS and ONE DAY of prision**

mayor to FOURTEEN (14) YEARS, TWO (2) MONTHS and ONE (1) DAY of reclusion temporal and to pay a fine of PHP 300,000.00.

The confiscated methamphetamine hydrochloride is hereby ordered destroyed in accordance with the rules and law on the matter.

SO ORDERED.”^[5]

Not satisfied with the foregoing decision, the accused-appellant interposed the instant appeal before this Court raising the following errors that were purportedly committed by the trial court, to wit:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF POSSESSION OF ILLEGAL DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM HAVING BEEN OBTAINED IN VIOLATION OF THE CONSTITUTIONAL PROVISIONS RELATIVE TO THE CONDUCT OF THE SEARCH DONE IN HIS ABSENCE.

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE GUILT OF THE ACCUSED- APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PRESERVE AND PROVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS.

^[6]

In sum, the primordial issue raised by the accused-appellant is whether or not the evidence adduced against him in the trial court is sufficient to sustain his conviction for violation of R.A. 9165.

The accused-appellant contends that it was established that he was not present in his house at the time when the search therein was conducted on October 3, 2003. The accused-appellant's daughter, Maria Edmalyn Bulautan, was allegedly not able to witness any of the circumstances of the search being conducted as she was talking with him on the phone, fifty meters away, in another house while the search was ongoing. The search was also purportedly made without the presence of barangay councilmen.

The accused-appellant likewise claims that the integrity of the items confiscated from his house is doubtful. Hence, the accused-appellant argues that the initials of SPO2 Lito Baccay were not written on the seized items. Instead, the items bore the initials "ET" which pertain to PO3 Elizalde Tagal. The accused-appellant also asserts that the drugs were not inventoried and photographed in his presence as required by R.A. No. 9165. The number of sachets mentioned by the prosecution's witnesses also differed, thus all the more allegedly affecting the authenticity of the evidence of the prosecution.

After a careful and thorough review of the facts, together with the laws and jurisprudence applicable to this case, we sustain the accused-appellant's conviction.

Illegal possession of shabu is penalized under Section 11 of Article II of RA 9165 which, in part, provides:

"Section 11. *Possession of Dangerous Drugs*. - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

X X X

"Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

X X X

"(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride marijuana resin or marijuana resin oil, methamphetamine hydrochloride or 'shabu,' or other dangerous drugs such as, but not limited to, MDMA or 'ecstasy,' PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana."

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.
[7]

All the elements for the crime as charged are present in the case. The prosecution witnesses testified and proved that the policemen, by virtue of a search warrant, discovered in the house of the accused-appellant three heat-sealed plastic sachets containing shabu, a dangerous drug, for which the accused-appellant does not have the necessary permit nor authority to possess. Verily, on April 24, 2007, PSI Kevin Bulayungan testified on direct examination as follows:

"Q: And by the way, what was the result of that search that was conducted in the house of the accused Edmund Bulaitan on October 3, 2003?

"A: We recovered three (3) pieces of heat sealed plastic sachet containing white crystalline substance, sir." [8]

The accused-appellant however questions the evidentiary value of the seized items.

We find that the prosecution was able to prove the unbroken chain of custody of the items seized. PO3 Elizalde Tagal, who testified on August 1, 2006, and PSI Kevin

Bulayungan, who testified on April 24, 2007, both narrated that it was SPO2 Lito Baccay who discovered the sachets of shabu and they were turned over to PSI Kevin Bulayungan, who then gave them to PO3 Elizalde Tagal for markings. The sachets were then marked with the initials "ET".

The accused-appellant contends that, since it was SPO2 Baccay who initially found the sachets, the latter's initials ("LB") should have been written on the sachets and not PO3 Tagal's initials ("ET").

Clearly, such questions on markings will not exonerate the accused-appellant. During PO3 Elizalde Tagal's testimony on direct examination in the court *a quo*, it was categorically pointed out that the policemen were all together when the sachets were discovered. Bolstering the fact of unbroken chain of custody, PO3 Tagal testified as follows:

"Q: Who discovered these three (3) heat-sealed plastic sachets, Mr. Witness?

"A: SPO2 Lito Baccay, Ma'am.

"Q: And how far were you from him when he opened the plastic shelf and discovered three (3) plastic sachets with suspected shabu?

"A: More or less two (2) to three (3) meters, Ma'am.^[9]

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"Q: After these plastic sachets were recovered, what happened next?

"A: The searcher gave it to our team leader, Ma'am.

"Q: When you said the searcher gave it to your team leader the plastic sachets that were discovered, who is this team leader that you are referring to?

"A: Police Inspector Kevin Bulayungan, Ma'am.

"Q: And how far were you when you saw this searcher turn over to Police Inspector Kevin Bulayungan these plastic sachets recovered?

"A: More or less one (1) meter, Ma'am.

"Q: After your team leader received these plastic sachets, what did you do if any?

"A: He turned it over to me, Ma'am."^[10]

Meanwhile, on cross-examination, PSI Kevin Bulayungan further testified as follows:

"Q: Do you know what PO2 Elizalde P. Tagal did with the seized items after the recording of the same?