

TWENTY-THIRD DIVISION

[CA-G.R. CR HC NO. 01075, January 29, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DENNIS SUMILI, ACCUSED-APPELLANT.**

D E C I S I O N

LLOREN, J.:

This is an Appeal from the Decision^[1] dated August 10, 2009 of the Regional Trial Court of Iligan City, 12th Judicial Region, Branch 3, convicting the accused-appellant Dennis Sumili for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which is quoted as follows:

WHEREFORE, premises considered, the court finds the accused Dennis Sumili GUILTY beyond reasonable doubt for Viol. of Sec. 5, Art. II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The Branch Clerk of Court (OIC) is directed to transmit to the Drug Enforcement Agency the plastic sachet of Methamphetamine Hydrochloride weighing 0.32 grams subject of this case for said agency's proper disposition.

SO ORDERED.^[2]

On June 30, 2006, appellant Dennis Sumili was charged with violation of Section 5, Article II of Republic Act No. 9165, the Information^[3], docketed as Criminal Case No. 12595, reads as follow:

That on or about June 7, 2006, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously sell one (1) sachet of Methamphetamine Hydrochloride, a dangerous drug commonly known as Shabu for the amount of P200.00

Contrary to and in violation of Sec. 5, ART. II, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

When arraigned, the appellant, assisted by counsel,^[4] pleaded NOT GUILTY. Thereafter, trial on the merits followed.

The facts as culled from the records:

The version of the prosecution is summarized by the Office of the Solicitor General as follows:

On June 7, 2006, the Philippine Drug Enforcement Agency (PDEA) Iligan City Sub-Office stationed at Camp Tomas Cabili, Tipanoy, Iligan City received a report about the illegal activities of one Dennis Sumili (appellant) who is actively engaged in the selling of *shabu*.

Having received the information, team leader SPO2 Edgardo Englatiera dispatched SPO2 Diosdado Cabahug to conduct a casing surveillance on the appellant to verify the report and subsequently to conduct a narcotic operation in the area.

After confirming the report, SPO2 Englatiera organized his team into two (2) groups and briefed them of the buy-bust operation that will be conducted on appellant. The first team was comprised of SPO2 Cabahug and Non-uniform Personnel (NUP) Carlito Ong while the second team was composed of SPO2 Casambaka, SPO2 Englatiera, NUP Blanco, NUP Ostia and the confidential agent.

SPO2 Englatiera also prepared a two hundred peso bill bearing a serial number L507313 and designated it as the money that will (sic) use for the buy-bust operation. He designated the PDEA confidential informant as the poseur-buyer.

By 5:10 in the afternoon of the same day, the two teams proceeded to Purok 6, Saray, Iligan City where appellant was allegedly selling *shabu*.

When the team arrived in the area, the poseur-buyer proceeded to the house of appellant to buy *shabu* while the police officers position themselves eight (8) meters away where they can observe the transaction between the appellant and the poseur-buyer.

From where they were hiding, the police officers saw the poseur-buyer approached the house of appellant. When the poseur-buyer reached for the front door of the house, appellant opened the door and the poseur-buyer in into the house.

After a few seconds, the poseur-buyer used his cell-phone and made a missed call, the pre-arranged signal that the transaction has been consummated, to SPO2 Cabahug. Upon instruction of SPO2 Englatiera, SPO2 Cabahug and NUC (sic) Ong rushed to the area to effect the arrest of appellant while the group of SPO2 Englatiera followed behind.

When the raiding team reached the house, appellant noticed their presence as the dog at the ground floor barked and SPO2 Cabahug fired his gun. Appellant then immediately escaped and jumped through the window of the house and threw the marked money at the roof beside his house. SPO2 Cabahug and NUP Ong ran after appellant but failed to apprehend him as he ran towards an unknown direction. Nevertheless, SPO2 Englatiera, who was left behind the house of appellant, was able to recover the marked money.

While still at the house of appellant, SPO2 Englatiera talked with the PDEA agent who acted as poseur-buyer. The latter handed over to SPO2 Englatiera the sachet of white crystalline substance bought from appellant. SPO2 Englatiera immediately marked the said item with SPO2

Cabahug's initial "DC-1". Thereafter, SPO2 Englatiera, together with the rest of the police officers, went back to the police station and prepared the request for laboratory examination.

On June 9, 2007, SPO2 Englatiera forwarded the recovered sachet of white crystalline substance to the PNP Crime Laboratory at Camp Tomas Cabili, Tipanoy, Iligan City for examination where it was confirmed to contain Methamphetamine Hydrochloride or Shabu.^[5]

[Citations omitted]

Evidence for the Defense

Appellant Dennis is a fishball vendor. He testified that on June 7, 2006 he was not around their house when the alleged buy-bust operation was carried out because he was at the market to buy the ingredients for his fishball. When he arrived home from the market, his wife told him that there were policemen looking for him. Appellant vehemently denied having engaged in the selling of *shabu*.^[6]

The daughter of the appellant, Sheila Marie Sumili also corroborated the testimony of the appellant that he was not present in their house at around 5:00 in the afternoon of June 7, 2006 because the appellant went to the market.^[7]

After trial, the court *a quo* rendered its Decision finding the appellant guilty of Violation of Section 5, Art. II of Republic Act No. 9165. On appeal,^[8] the appellant assigns the following as errors of the court *a quo*, to wit:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT;

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE BLATANT VIOLATION OF SECTION 21 OF RA 9165 COMMITTED BY THE ARRESTING TEAM.^[9]

The Ruling of this Court

Section 5 of Republic Act No. 9165 pertinently provide as follows:

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Section 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, including any and all species