

TWENTIETH DIVISION

[CA-G.R. CR NO. 01362, March 28, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO GARCES @ "MOKLO", ACCUSED-APPELLANT,**

D E C I S I O N

LAGURA-YAP, J.:

Alfredo Garces (accused-appellant) appeals the Decision^[1] dated January 28, 2008 rendered by the Regional Trial Court, Branch 13, Cebu City in Criminal Case No. CBU-69905-06. The accused-appellant is convicted of Violation of Section 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act.

The dispositive portion^[2] of the decision, reads:

WHEREFORE, judgment is hereby rendered finding accused Alfredo Garces GUILTY beyond reasonable doubt of the crime of Violation of Section 11, Art. II, RA 9165 and sentences him to TWELVE YEARS and ONE (1) DAY to FIFTEEN (15) YEARS imprisonment, plus fine in the amount of Three Hundred Thousand (P300,000) Pesos .

However, for failure of the prosecution to prove his guilt beyond reasonable doubt for violation of Section 12, Art. II, RA 9165, he is ACQUITTED in Crim. Case No. CBU-69906.

The shabu is hereby ordered confiscated in favor of the government and destroyed pursuant to the provisions of RA 9165.

With cost against the accused in CBU-69905.

The Information^[3] filed on June 21, 2004, against accused Alfredo Garces under Criminal Case No. CBU-69905-06, alleges:

That on or about the 15th day of JUNE 2004 at about 11:30 o'clock in the evening more or less, at Sitio Paglaum, Bulacao, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose, did then and there, have in his position, use and control: one (1) heat-sealed transparent plastic sachet of white crystalline substance locally known as "SHABU" containing Methamphetamine hydrochloride, weighing 0.05 grams, a dangerous drug/s, without license or prescription from any competent authority.

CONTRARY TO LAW.

The accused entered a "NOT GUILTY" plea during the arraignment^[4] on February 1, 2005.

The evidence for the prosecution is summarized as follows:

On June 15, 2004, at about 11:30 in the evening, the team of SPO1 Causon, PO3 Cabuenas, PO3 Sebellita and PO2 Bacarisas went to Sitio Paglaum, Bulacao, Talisay City, Cebu. The Policemen received an information from a concerned citizen that a person was in possession of a firearm at a billiard hall. When they arrived, they saw accused Alfredo Garces. They asked him to raise his t-shirt. They saw a 22 caliber firearm tucked in his shorts. They also asked the suspect to pull out something from his pocket. They saw shabu and one tin foil. The accused was arrested and booked for violation of RA 8294 (illegal possession of firearm) and Sections 11 and 12, Article II, RA 9165, for possession of shabu and paraphernalia. The suspected shabu was found positive for the presence of methamphetamine hydrochloride. As the accused pleaded guilty for the crime of possession of firearm, he did not question the legality of his arrest for possession of firearm.

Evidence for the defense is also summarized hereunder:

On June 15, 2004, at around 11:30 in the evening, he was drinking with his neighbor Randy at Timy's store. While drinking, he was suddenly held by Bobby Bacarisas, the police officer who told him that he was the robbery suspect in Bulacao. He tried to get free because it was not true. He was not bringing with him a 0.22 caliber firearm or the deck of shabu and tin foil. Thereafter, he was brought to Bulacao Subdivision where he was mauled. He was asked who his cohorts were in the robbery heist. Then he was brought to Pardo Riverside. They wanted him to tell them where the cellphone robbery was transacted. He replied in the negative. He was subsequently charged with robbery, however, it was dismissed.

After the trial, the RTC promulgated⁵ its judgment of conviction against the accused. Aggrieved, he filed a Notice of Appeal⁶ dated March 4, 2008.

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT COMMITTED AN ERROR IN RULING THAT THE SHABU WAS CONFISCATED DUE TO A SEARCH INCIDENTAL TO A LAWFUL ARREST.

II

THE TRIAL COURT FAULTED IN AFFIRMING THE IDENTITY OF THE SEIZED DRUGS DESPITE NON-COMPLIANCE WITH SECTION 21 OF RA 9165.

III

THE TRIAL COURT ERRED IN ITS RULING SINCE THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT THAT THE ACCUSED COMMITTED THE SAID CRIME.

The accused-appellant argues that the scope of warrantless search is not without limitations. In *People vs. Leangsin*^[7] and *People vs. Cubcubin, Jr.*,^[8] the Honorable Supreme Court had the occasion to lay down the parameters of a valid warrantless search and seizure as an incidental to a lawful arrest. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapon that the latter might use in order to resist arrest or effect his escape. In the instant case, the confiscated shabu was not recovered due to a search incidental to a lawful arrest. After the firearm was confiscated, they searched the accused and requested him to pull out something from his pocket and that was the time they saw the shabu. Hence, the alleged recovery of shabu was not due to search incidental to a lawful arrest. There is even no testimony that they recovered the shabu because of the said search.

The accused-appellant claims that the prosecution failed to establish the corpus delicti of the crime of illegal possession of dangerous drugs. The trial court never discussed how the chain of custody was established. There is nothing in the decision which would show who was in custody from the time that it was confiscated until it was delivered to the crime laboratory. No evidence was adduced on who marked the confiscated shabu. The lone prosecution witness PO2 Bacarisas cannot identify the police officer who marked the confiscated shabu. It is difficult to identify the police officer who marked the confiscated shabu because only the initials of the name of the accused-appellant are placed thereon. There was no physical inventory conducted in the presence of the accused, their representative or counsel, a representative from media and the DOJ. Also there was no photograph taken of the seized shabu.

Police Officer PO2 Bacarisas turned over the shabu to SPO1 Causon after he recovered it, but nowhere in his testimony is it mentioned when, where and to whom he turned over the shabu. No account was made on who received the shabu and the letter request at the PNP Crime Laboratory. The testimony of PO2 Bacarisas was not clear on who was in custody of the specimen (shabu) after it was submitted to the crime laboratory.

Finally, the accused-appellant posits the view that it would be contrary to human experience that several persons were present inside a billiard hall while in the presence of an armed person. According to prosecution witness PO2 Bacarisas, the only description given of the armed person was that the latter was wearing brown short and white t-shirt. However, it was only during the cross-examination that PO2 Bacarisas said that a concerned citizen mentioned the name of the accused-appellant as the armed person. These are inconsistencies that will cast doubt to the testimonies of the accused.

The Solicitor General in his Appellee's Brief counter argues that the accused-appellant had already entered his plea to the crimes charged. Thus, he had effectively waived his right to question any irregularity which might have accompanied his arrest and the unlawful restraint of his liberty.

According to the Solicitor General, the prosecution was able to establish the elements of the crime of illegal possession of dangerous drugs. First, the accused-appellant was in possession of a small white pack containing white crystalline substance, later known as "shabu". Second, there is nothing on record that the accused-appellant is authorized to possess the same. Third, possession of a