

SPECIAL TWENTIETH DIVISION

[CA-G.R. CR-HC No. 01533, June 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX
MENDEZ RAFOLS, ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal on the Judgment^[1] of the Regional Trial Court (RTC), Branch 7, Cebu City dated July 11, 2012 in Criminal Cases Nos. CBU-81836 and CBU-81837 finding accused-appellant Alex Mendez Rafols guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act (RA) 9165 and sentencing him to life imprisonment and a fine of P500,000.00; and imprisonment of 12 years and 1 day to 15 years and a fine of P300,000.00, respectively for the offenses.

The Antecedents

Accused-appellant Alex Mendez Rafols (Rafols) was indicted in Criminal Cases Nos. CBU-81836 and CBU-81837 for violating Sections 5 and 11, respectively, of Article II of Republic Act 9165.^[2] The separate Informations are quoted, as follows:

That on or about the 5th day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) small heat sealed plastic pack of white crystalline substance weighing 0.04 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[3]

That on or about the 5th day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent plastic sachets of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.

CONTRARY TO LAW.^[4]

When arraigned, appellant pleaded not guilty to the offenses charged.^[5]

During the trial, the prosecution built its case on the following facts:

Acting upon the information of their confidential informant regarding Rafols' illegal drug activities in Sikatuna, Riverside, Cebu City, the team headed by Levi S. Ortiz (Dir. Ortiz), Director II at the Philippine Drug Enforcement Agency (PDEA), conducted a buy-bust operation on December 5, 2009 pursuant to an Authority to Operate.^[6]

During the operation, IA3 George Cansancio (Cansancio) acted as *poseur* buyer. He and the informant alighted from the team's vehicle while the other members discreetly followed them. The informant guided Cansancio to Rafols who was standing in an alley. After the informant led Cansancio to Rafols, the latter asked the former if he wanted to buy shabu. Cansancio positively replied and gave to Rafols the money^[7] marked prior to the operation with "LSO," the initials of Dir. Ortiz. Rafols then gave Cansancio a plastic sachet containing white crystalline substance believed to be shabu, which Rafols took from a silver container that he got from his pocket. After receiving the sachet, Cansancio made the pre-arranged signal of a missed call to another team member, FO3 Gingoyon, who then helped arrest Rafols.

The team recovered the buy-bust money from Rafols' hand and confiscated the silver container containing six (6) other sachets of shabu taken during the body frisk that was conducted on him. The team then brought Rafols to the PDEA office. On their way thereto, Cansancio was the one who held the seized articles in his hand. At the PDEA office, the items were inventoried^[8] and marked by Dir. Ortiz in the presence of Rafols, *barangay tanods* and media representative.^[9] Thereafter, these were sent to the Philippine National Police crime laboratory (PNP crime lab) for examination.^[10]

Rendielyn Sahagun (Sahagun), forensic chemist of the PNP crime lab, testified that she got the specimens from desk officer Noble who, in turn, received it from Cansancio together with PDEA's letter-request dated December 6, 2007. The qualitative examination on the specimens yielded positive results for the presence of methylamphetamine hydrochloride, a dangerous drug. The results were reduced into writing per Chemistry Report No. D-1188-2007.^[11] After the examination, Sahagun placed the specimens in a brown envelope for safekeeping and attached it to the letter request. She placed markings on the envelope which she identified during the trial.

Meanwhile, Rafols who was the lone witness for the defense, testified that on the date of the incident and at around 9:15 in the evening, he went to his nephew's eatery to ask money to buy medicine for his mother. When he was on his way to buy the medicine, two men blocked his way and arrested him. Rafols' neighbor allegedly told the two men that Rafols was the one who threw a bottle during the fight in a nearby house. The men then brought Rafols to the PDEA office. When Rafols asked what crime he committed, they did not answer him. At the PDEA office, one of the agents got a pack from his pocket while another took a P100.00 bill from his wallet. The agents showed the items to Rafols and when the latter inquired about it, the agents replied that it was shabu and marked money. Rafols insisted that he only saw one (1) sachet of shabu and the other six (6) packs presented in court were not shown to him. When asked by the prosecutor if he did not bother to ask why there were 7 packs of shabu when previously there was only one, Rafols said he did ask but the PDEA agents gave no reply. Upon inquiry from the prosecutor, Rafols also

admitted that he had previously been arrested in Riverside, the same place where his arrest in this case was made, and charged for possession of illegal drug. He, however, claimed that the evidence was planted.

After the proceedings, Rafols was found guilty beyond reasonable doubt of the the crimes charged. The dispositive portion of the trial court's Decision reads, *viz.*:

WHEREFORE, in view of the foregoing, accused Alex Mendez Rafols is hereby convicted beyond reasonable doubt of the crimes charged and is sentenced to suffer the following [penalties]:

1. life imprisonment and a fine P500,000.00 for Violation of Section 5, Article II of RA 9165;
2. twelve (12) years and one (1) day to fifteen (15) years and a fine P300,000.00 for Violation of Section 11, Article II of RA 9165;

The total seven (7) packs of shabu are forfeited in favor of the government.

SO ORDERED.^[12]

Aggrieved by the decision, Rafols appealed to Us on the lone error that:

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

This Court's Ruling

The appeal is unimpressed with merit.

Rafols contended that he was unlawfully arrested. He questioned PDEA's Authority to Operate, citing that his name did not even appear thereon. He also pointed out the supposed contradicting testimonies of Cansancio and Ortiz regarding the conduct of surveillance prior to the buy-bust operation. While Cansancio narrated that there was no prior surveillance and their information came only from the informant, Ortiz contradicted this by testifying that a surveillance was made a week prior to the operation. Rafols also argued that his previous arrest negated the charge against him for sale of illegal drugs. Such circumstance would have made him more careful and belied the prosecution's claim that he was the one who asked Cansancio if he wanted to buy shabu.

Rafols' question on the legality of his arrest cannot succeed. His challenge simply came too late in the day. Granting that he was illegally arrested, Rafols should have, prior to his arraignment, moved to quash the informations against him on this ground. However, he allowed himself to be arraigned and tried without pursuing the issue. He cannot, therefore, invoke it now to question his conviction as he was deemed to have waived his right to assail the same when he voluntarily entered his plea. Apropos is the pronouncement in the case of *Zalameda vs. People of the Philippines*,^[13] thus:

The established rule is that an accused may be estopped from assailing the legality

of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made before he enters his plea; otherwise the objection is deemed waived.

The non-indication of Rafols' name in the Authority to Operate did not affect the validity of his arrest. A perusal of the Authority to Operate shows that the same is a document specifying the details of the operation that PDEA intended to undertake. It contains information that are highly restricted. Considering the confidential character of its contents, it was only logical not to indicate the name of the subject in the authority to operate to avoid compromising PDEA's operation.

The supposed inconsistency in the testimonies of the prosecution witnesses regarding the conduct of a prior surveillance will not purge Rafols of the charge. Whether or not there was a surveillance before the buy-bust operation is immaterial. It has been expressly ruled that the absence of a prior surveillance does not affect the legality of the buy-bust operation; a prior surveillance is not necessary, especially where the police operatives, as in this case, were accompanied by their informant during the entrapment.^[14]

Rafols' previous arrest also for a drug related charge would not necessarily make him more circumspect in his dealings. It is not hard to believe that he was the one who asked Cansancio if the latter wanted to buy shabu. Peddlers of illicit drugs have been known, with ever increasing casualness and recklessness, to offer and sell their wares for the right price to anybody, be they strangers or not; what matters being not the existing familiarity between the buyer and the seller, or the time and venue of the sale, but the fact of agreement as well as the act constituting the sale and delivery of prohibited drugs.^[15]

Rafols also assailed the non-compliance with the chain of custody rule. According to him, PDEA agents disregarded mandatory rules when they did not immediately mark the confiscated items at the area where he was arrested. Rafols also pointed out that Cansancio did not testify on how he preserved the integrity and evidentiary value of the items from seizure until these were brought to the PDEA office. Rafols likewise assailed the supposed unexplained lengthy lapse of time from the receipt of the items at the PDEA office to its turn-over to the PNP crime lab. He further contended that there were gaps in the chain when police officer Noble, the one who received the specimens at the crime lab, did not testify; and the prosecution did not prove who had custody of the specimens after examination until these were presented in court.

There was nothing irregular in PDEA's act of marking the confiscated items at their office and not at the area where Rafols was arrested. "Marking" is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest.^[16]

RA No. 9165 is silent on the matter regarding the marking of the seized drugs. It