

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB CR NO. 01972, June 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONCORDIO V. ESPIDIDO, ACCUSED-APPELLANT.**

DECISION

QUIJANO-PADILLA, J.:

This is an appeal assailing the Judgment^[1] dated June 18, 2012, of the Regional Trial Court, 7th Judicial Region, Branch 57, Cebu City, finding accused-appellant Concordio V. Espidido guilty beyond reasonable doubt for violation of Sections 11 and 12, Article II of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002, docketed as Criminal Case No. CBU-87439 and Criminal Case No. CBU-87440, respectively.

On November 11, 2009, accused-appellant was charged with violations of Section 11 (illegal possession of dangerous drugs) and Section 12 (possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs) of Article II of RA 9165. The Informations read as follows:

CRIMINAL CASE NO. CBU-87439

(For violation of Section 5, Article II of RA 9165)

“That on the 7th day of November, 2009, at about 12:40 o'clock in the afternoon, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control two (2) heat-sealed transparent plastic sachets of white crystalline substance each containing 0.02 and 0.03 grams, with a total net weight of 0.05 grams, locally known as “*shabu*” containing methamphetamine hydrochloride, a dangerous drug.^[2]”

CRIMINAL CASE NO. CBU-87440

(For violation of Section 12, Article II of RA 9165)

“That on or about the 7th day of November 2009, at about 12:40 noon, more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with the deliberate intent, and without any lawful purpose, did then and there have in his possession and control, the following:

- a) One (1) disposable lighter;

- b) Four (4) rolled aluminum tin foil;
- c) Three (3) handrolled tissue paper wicks; and
- d) One (1) transparent plastic container box

which is instrument and/or equipment for or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.^[3]”

During his arraignment on December 10, 2009, accused-appellant, with the assistance of his counsel, pleaded not guilty to the offenses charged.^[4] Thereafter, the parties agreed to terminate the pre-trial^[5] and set the case for trial on the merits.^[6]

VERSION OF THE PROSECUTION

On November 7, 2009, prosecution witnesses PO2 Marvin Sanson [PO2 Sanson] and PO1 Percival Eborlas [PO2 Eborlas] proceeded to D. Jakosalem Street, Cogon, Ramos in order to verify a tip on the rampant illegal gambling in the said area. When the police officers in their civilian clothes reached the interior portion of the said area, they saw a group of young male individuals aggregating nearby. Sensing their presence, all of the said persons scampered away except accused-appellant who was holding a plastic box.^[7]

From where PO2 Sanson was, he could clearly see that the plastic container held by accused-appellant contained drug paraphernalia causing the police officers to immediately put the latter under arrest and informed him that he violated Section 12, Article II of RA 9165. During the course of the inventory of the confiscated items made by PO2 Sanson, he further discovered that the container has two [2] heat-sealed transparent sachets believed to be *shabu*. Thus, he informed accused-appellant that he had likewise violated Section 11, Article II of the same RA 9165.^[8]

The two [2] sachets of *shabu* were inventoried at the crime scene and duly marked as “CE-1” and “CE-2”. The said items were then submitted to the Philippine National Police [PNP] for examination.^[9] Forensic Chemical Officer Mutchit G. Salinas of the PNP Crime Lab, issued Chemistry Report No. D-1054-2009^[10]

confirming that the specimen submitted yielded positive with the presence of Methamphetamine hydrochloride, a dangerous drug.

After the prosecution rested, it offered Exhibits “A” to “H”^[11] with all their sub-markings which were all duly admitted by the court *a quo*.^[12]

VERSION OF THE DEFENSE

Accused-appellant recounted that on November 7, 2009, he was at the apartment of Jill Sanchez in order to sell branded bags, clothes and jewelry.^[13] While he was showing her his goods at the *lanai* of her apartment, he saw two [2] men approaching him carrying handcuffs and he immediately recognized them as police

officers.^[14] The police officers told him to go with them to Fuente Police Station^[15] without telling him of his offense.^[16]

When they arrived at the police station, he was made to choose by PO2 Sanson among Sections 5, 11 or 12 and that is when he knew he was charged with possession of illegal drugs.^[17] He was previously charged with violation of Section 11, Article II of RA 9165 sometime in 2008 but it was dismissed.^[18]

Jill Sanchez could no longer corroborate his story because after she married a Japanese national she subsequently migrated to Japan.^[19]

On June 18, 2012, the RTC rendered its Decision^[20] convicting accused-appellant for violation of Sections 11 and 12, Article II of RA 9165. The dispositive portion of the Decision, reads:

“WHEREFORE, in view of the foregoing, the Court finds accused Concordio Espidido guilty beyond reasonable doubt of the crimes charged and is hereby sentenced to suffer the following penalties:

1. twelve (12) years and one (1) day to fifteen (15) years and a fine of P300,000.00 for Violation of Section 11, Article II of RA 9165 and
2. Six (6) months and one (1) day to two (2) years and a fine of P20,000.00 with subsidiary imprisonment in case of insolvency for Violation of Section 12 of the aforesaid law.

Accused is credited for the period during his preventive imprisonment.

The packets of *shabu* and *shabu* sniffing paraphernalia are forfeited in favor of the government.

SO ORDERED.”

Hence, accused-appellant on appeal, raised the lone assignment of error, thus:

“THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.^[21]”

Our Ruling

Accused-appellant in support of his appeal advanced that due to the inconsistencies at some points of the police officers' testimonies, it created a doubt as to the veracity of their statements.^[22] Accordingly, the police officers testified that they saw a group of individuals gathered and upon sensing their presence, scampered at different directions and the bewildered accused-appellant holding a plastic case containing illegal drug paraphernalia with illegal drugs was left at the scene. It is therefore contrary to human behavior that if it was the accused-appellant who was really carrying the illegal drug paraphernalia and the illegal drugs that he did not run with the group.^[23]

Prosecution further points out another inconsistency wherein PO2 Sanson testified that on November 7, 2009 he was with PO2 Eborlas only but the latter testified that on that same day, they were with another officer, PO2 Cunan, which inconsistency, unexplained, marred the truthfulness of the statements made by the police officers.

Apart from that, prosecution failed to establish the chain of custody of the confiscated illegal drug in the instant case. Taking into consideration the aforementioned inconsistencies and the failure to establish chain of custody, accused-appellant must be acquitted based on reasonable doubt.

We sustain the judgment of conviction.

While there are indeed minor contradictions in PO2 Eborlas and PO2 Sanson's testimonies wherein PO2 Eborlas declared that they were with another police officer PO2 Cunan on one hand and on the other hand PO2 Sanson testified that he was with PO2 Eborlas only, the said inconsistencies are nevertheless inconsequential and do not detract from the proven elements of the offense of illegal possession of dangerous drugs and illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs.^[24] As correctly ruled by the RTC, the prosecution had established beyond reasonable doubt the elements of Section 11, Article II of RA 9165, to wit:

"(a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug;

(b) such possession is not authorized by law; and

(c) the accused freely and consciously possessed the drug.^[25]"

As well as the elements of Section 12, Article II of RA 9165, to wit:

"(1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and

(2) such possession is not authorized by law.^[26]"

It is now too well-settled to require extensive documentation that "inconsistencies in the testimonies of witnesses, which refer only to minor details and collateral matters, do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused. Significantly, in the case at bench, the testimonies of the said witnesses for the prosecution were in harmony with respect to their positive identification of accused-appellant as the one who was in possession of illegal paraphernalia and with the illegal drug, as well as to the other surrounding circumstances that transpired during the said operation.^[27]

PO2 Sanson's account on what transpired on November 7, 2009 is as follows:

"Q: Do you recall where were you on November 7, 2009 at around 12:40 pm?

A: Yes, sir.

Q: Where were you?

A: We were proceeding at D. Jakosalem Street, Cogon, Ramos, sir, in order to verify the report about rampant illegal gambling thereat.

Q: Now did you reach the area?

A: Yes, sir.

Q: Who were your companions at that time?

A: PO2 Eborlas, sir.

Q: And while in the said area, what happened there?

A: Upon reaching the interior portion of the said area sir, we saw a group of young male individuals and upon sensing our presence, they scampered to different directions leaving one male individual.^[28]

Q: What did you do upon seeing group of youngsters scampered away upon noticing your presence?

A: It caught our attention, sir, and prompted us to verify what they were doing in the said place.

Q: So, what did you discover?

A: One male individual who was left behind and who did not run, upon verifying him, we saw him holding a plastic box.

Q: So, upon seeing that he was holding a plastic box, what did you and your companion do?

A: Upon seeing that transparent box, sir, I saw clearly the drug paraphernalia inside.

Q: What did you do upon knowing that there were drug paraphernalia inside the transparent plastic box?

A: We immediately effected his arrest, sir.

Q: Where is the plastic box as well as the drug paraphernalia you recovered from the male person?^[29]

A: We saw it on his right hand, sir, when we confiscated the item.

Q: Were you able to get the name of the arrested person?