

SIXTH DIVISION

[CA-G.R. CR NO. 34198, June 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GLORIA BORCE DEL MUNDO, ACCUSED-APPELLANT.**

D E C I S I O N

CRUZ, R.A., J.:

THE CASE

This is an appeal from the Decision^[1] dated January 12, 2011, the dispositive portion of the appealed Decision reads, as follows:

X X X

"WHEREFORE, judgment is rendered finding the accused Gloria Borce del Mundo GUILTY beyond reasonable doubt and she is hereby sentenced to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of P400,000.00.

"SO ORDERED."

X X X

as well as the Order^[2] dated April 12, 2011 denying accused's Motion for Reconsideration dated February 11, 2011, both rendered by the Regional Trial Court of Baguio City, Branch 61, in Criminal Case No. 29797-R.

THE ANTECEDENTS

Accused Gloria del Mundo y Borce was charged with the crime of violating Section 11 of Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, under Criminal Case No. 29797-R through an Information which reads as follows:

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"That on or about the 19th day of August 2009, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then and there willfully, unlawfully and feloniously have in her possession and control methamphetamine hydrochloride commonly known as "shabu" having a total weight of 0.55 grams, a dangerous drug, without the corresponding license or prescription, in violation of the aforecited provision of law.

"CONTRARY TO LAW."

X X X

When accused was arraigned, duly assisted by counsel, she pleaded not guilty to the offense charged against her. During the pretrial, the defense admitted the findings in Chemistry Report No. D-052- 2009 insofar as it pertains to her, and that she was subjected to physical examination.

During the trial, the prosecution presented PDEA Agents IO3 Maharani Gadaoni and IO1 Alvin Morales as witnesses. The trial court summarized prosecution's version as follows:

Executive Judge Claravall, after examining under oath and conducting searching questions on the applicant PDEA Agent Dick G. Dayao and his witness Pablo Cada Ablania, Jr., came to the conclusion that there were reasonable grounds to believe that violations of Section 6, 11 and 12 of Rep. Act No. 9165 have been committed or are to be committed by accused Gloria Borce del Mundo, Willy Borce and a certain "Clifford", and the Honorable Judge thus issued Search Warrant No. 511-02-09 commanding the PDEA to search No. 70 Purok 2, Lower Quirino Hill, Baguio City and seize all items in violation of Republic Act 9165.

Correspondingly, Officer Gil P. Castro, Chief of the Operations Division of PDEA-CAR, and IO3 Jeoffrey C. Tacio, Chief of the Intelligence Division of PDEA-CAR, formed a team composed of PDEA agents Maharani Gadaoni, Berto Chumanao, Maydette Mosing and Alvin Morales, all of whom were designated as searching officers while SPO4 Romeo L. Abordo, Sr. was designated as the inventory officer.

At around 8 o'clock PM of August 19, 2009, IO3 Tacio coordinated with the Baguio City Police Station 2 and a team from the PNP led by PCI Marvin Diplat was formed to join the PDEA team.

The composite team then went to the Barangay Hall of Lower Quirino Hill to ask the assistance of the barangay officials in the implementation of the search warrant. But it took sometime for the team to proceed to the area subject of the search warrant when some barangay officials refused to go with the PDEA team. The team then looked for Punong Barangay Peter Wasing for assistance.

At around 10 o'clock PM, the team proceeded to the house to be searched and informed the occupants thereof their purpose. The officers heard a sudden commotion from the outside and it was learned that an unknown occupant bailed out from a window and was gone. Some of the operatives went out to chase the person, later identified as Clifford Aquino, but it was unavailing.

Meanwhile, the accused and her brother Willy Borce, were left with no choice but to allow the search as commanded by the duly issued warrant, which was shown to the accused and Willy Borce by Dayao who likewise read the contents of the document. PDEA agent Castro explained the same to the occupants and thereafter, the team began the search in the presence of the accused, the occupants, Punong Barangay Peter Wasing and Barangay Kagawad Kirk M. Becasen.

Agent Morales searched accused Gloria del Mundo's room at the first floor and found four (4) heat sealed plastic sachets containing white crystalline

substance tucked under the mattress. The other rooms on the first floor yielded nothing. But upon the search of the living room, [Agent Gadaoni] [3] found a white plastic container containing a white unidentified powder behind the main door. She also found four pieces of lighters near the television set in the living room.

Agent Chumanao searched Willy Borce's room located near the main door in the basement of the house and found two rounds of live cal. 45 ammunition hidden among the clothes inside a plastic cabinet. He also found a navy blue belt bag behind the plastic cabinet which contained the following: two (2) pieces tooters, one (1) pair of scissors, two (2) pieces of lighters, two (2) pieces improvised burner, one (1) pieces improvised bottle burner, one (1) piece improvised water burner, seven (7) pieces used aluminum foil, eleven (11) pieces unused aluminum foil, nineteen (19) pieces small size transparent plastic sachet one (1) piece tweezers, eight (8) pieces of cracked hashish individually wrapped in newspaper.

On the other hand, Agent Mosing, searched another room and the room of Willy Borce's child located in the basement but she found nothing incriminating.

After the conduct of search, the seized items were properly marked, inventoried and photographed in the presence of Gloria Borce del Mundo and Willy Borce, Prosecutor Ruth P. Bernabe as representative of the DOJ, Ms. Venus Tanada from ABS-CBN, and Barangay Chairman Peter Wasing. All items were turned over to the evidence custodian.

After the inventory, the accused [4] were placed under arrest and were informed of their constitutional rights by Agent Gadaoni. The team then proceeded to the PDEA office and made the necessary documentations.

The four (4) sachets seized by Agent Morales from the room occupied by the accused Gloria were submitted for laboratory examination, one (1) of which yielded a positive result of the presence of methamphetamine hydrochloride, a dangerous drug.

For her part, accused [5] denied the charge against her. She testified that on August 19, 2009, men who identified themselves as PDEA Officers entered their house and announced that they were implementing a search warrant which was read in front of them. The search warrant was directed against her, her brother Willy Borce and a certain Clifford who she claims she did not know. All the persons in the respective rooms were ordered to come out to the living room and the adults were separated from the minors. The accused, her child and his spouse were left seated in the sala while the PDEA agents searched the rooms. She did not accompany the search team in the rooms. She denied that the PDEA agents were accompanied by barangay officials, and she knew this for a fact because it was her child who went to contact the barangay officials. The PDEA Agents arrived at the house around 8:00 to 8:30 in the evening while the barangay officials Kagawad Kirk Becasen and Barangay Chairman Peter Wasing arrived at about 11:00 PM. When the agents searched the first room, they were in the company of Kagawad Becasen. When asked by the agents, accused told them that she occupies the third room. The agents proceeded to the third room. Her son asked the barangay chairman and the PDEA agents why they were searching the third room with no barangay official present, so Barangay

Chairman Wasing stood up and went to the third room but as he was about to go in the room, the PDEA agent shouted "*meron*". The agents allegedly found four (4) sachets which they brought to the sala. Accused denies that she owns the four (4) sachets or that she knew who owns them. The agents went out of the gate and then returned with her brother and the things taken from the basement. The fiscal arrived at about 1:00 AM and they made documents and took pictures, but they were not shown the documents nor made them sign them. They likewise did not leave a copy of these documents to the other occupants of the house. She was then brought to their office.

Accused denies that somebody jumped out the window of the house because there are no other exits in their house except the main door, and all the windows have grills. She surmised that she was impleaded in the crime because the PDEA wanted to pin down his brother Willy Borce, whom the PDEA had considered as notorious in illegal drug activities but which noosed her in the process instead.

Barangay Kagawad Peter Wasing was presented as witness for the accused. He testified^[6] that at around 10:00 PM of August 19, 2009, he was informed via cellphone by Kagawad Kirk Becasen of an ongoing raid at Lower Quirino Hill. Kagawad Becasen fetched him and they went to the house of Gloria Del Mundo. When they arrived, the PDEA agents were all over the place. One of the PDEA agents approached him and introduced themselves as PDEA agents, informed him that they were conducting a search and he was shown the search warrant. When he went inside the house, the accused was at the living room with her son. He denied that he searched with the agents because there were already too many agents inside the room so he stayed at the sala. Kagawad Becasen searched with them at the first room. The other agents searched the second room and found some crystalline substance. He was not called to the room when the agents saw the items; he was merely showed the items that the agents found therein. He was eventually called to the room together with the media. The agents were holding the alleged shabu and put it in something like a cabinet. The media took pictures and videotaped the items. After that, the leader of the team instructed them to go down to the basement. When they eventually went back to the first floor, the agents called for Fiscal Bernabe for the inventory and he arrived around 1:00 AM or 2:00 AM. After the agents finished the inventory, they let Barangay Chairman Wasing sign the documents pertaining to the items that were found.

On January 12, 2011, the RTC rendered the assailed Decision finding accused guilty beyond reasonable doubt of the crime charged. It observed that:

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"The prosecution was able to show the flow of events that validated its claim that Search Warrant No. 511-02-09 was properly implemented. It was only when the barangay officials were present did the PDEA start to search the house. The testimony of accused Gloria del Mundo bolstered the prosecution's case by showing that the implementing team performed their duties in a regular and orderly manner. The cross examination conducted by Prosecutor Soriano was well pointed that the accused herself made this Court arrive at the conclusion that the PDEA regularly performed their official duties. Thus, this presumption of the regularity in the performance of official duties has successfully been established towards the guilt of the accused."

After accused's Motion for Reconsideration was denied by the RTC through its Order dated April 12, 2011, she filed a notice of appeal.

ASSIGNMENT OF ERRORS

Accused, as the appellant before Us, made her sole assignment of error in her brief, to wit:

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FACT THAT HER GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT.

To bolster her assigned error, she harps on the following, that:

- I. The search was conducted not in the presence of the accused nor of the other lawful occupants of the house.
- II. The testimonies of prosecution witnesses are marred with substantial inconsistencies that negate the credibility of the prosecution witnesses as opposed to the un rebutted credibility of defense witnesses.
- III. Prosecution evidence failed to establish chain of custody of the shabu allegedly seized from accused.
- IV. There are irregularities in the performance of the duties of the PDEA officers.

These arguments, being interrelated, shall be discussed *in seriatim*.

OUR RULING

We find no merit in this appeal.

Accused-appellant was charged with the crime of illegal possession of drugs, punishable under Section 11, Article II of R.A. No. 9195. For her to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.^[7]

The phrase "having possession of" included constructive possession, that is, "the relation between the owner of the drug and the drug itself when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition."^[8]

In point of law, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict. Otherwise stated, the finding of the illicit drugs and paraphernalia in the house owned by the appellant raised the presumption of knowledge and, standing alone, was sufficient to convict.^[9]

There is abundance of jurisprudence as to the concept of constructive possession. In *People v. Torres*,^[10] it was held that there was constructive possession of prohibited