

FIRST DIVISION

[CA-G.R. CR. H.C. No. 06222, December 18, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO HERRERA Y OSORMAN, A.K.A. "WILLY", ACCUSED-
APPELLANT.**

DECISION

BRUSELAS, JR. J.:

Transmitted to the Court for review is a *Joint Decision*^[1] that found the accused-appellant Wilfredo Herrera y Osorman a.k.a. "Willy" ("Wilfredo") guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs. The decretal portion of which reads as follows:

"WHEREFORE, foregoing considered, the Court hereby renders judgment as follows:

In Criminal Case No. 16263-D-PSG, the Court finds accused Wilfredo Herrera y Osorman a.k.a. "Willy" guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P 500,000.00).

In Criminal Case No. 16264-D-PSG, the Court finds accused Wilfredo Herrera y Osorman a.k.a. "Willy" guilty beyond reasonable doubt of the crime of Violation of Section 11, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to thirteen (13) years and one (1) day, as maximum, and to pay a fine of Three Hundred Thousand Pesos (P 300,000.00).

The shabu subject of these cases are forfeited in favor of the government.

SO ORDERED."^[2]

On April 23, 2008, two (2) separate pieces of information for Violation of Sections 5^[3] and 11,^[4] Article II of Republic Act No. 9165,^[5] were filed against Wilfredo. The accusatory portions of the two pieces of information read:

Criminal Case No. 16263-D-PSG

"On or about April 21, 2008, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with Danilo Herrera y Osorman, a.k.a. "Danny" who is still at large, and both of them mutually helping and aiding one another, and not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to police officer Carlo Luna, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing one (1) centigram (0.01 gram), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the aforesaid law.

Contrary to law."^[6]

Criminal Case No. 16264-D-PSG

"On or about April 21, 2008, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing four (4) centigrams (0.04 gram), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the aforesaid law.

Contrary to Law."^[7]

The two cases were consolidated and heard jointly.^[8] When arraigned, accused Wilfredo pleaded "*Not Guilty*" to both charges. Accused Danilo Herrera remained at large and a fugitive from justice.

A *Joint Order* to consolidate Criminal Cases Nos. 16263-D and 16264-D was issued.

^[9] The hearing on the merits of the case thereafter ensued.

During the pre-trial conference, the parties agreed on the following stipulations of fact:

"(1) That the police officer prepared and submitted to the Crime Laboratory the Request for Laboratory Examination of the the specimen allegedly confiscated from the accused – (Existence ADMITTED with the qualification that the stuff allegedly subject of the forensic examination was not taken from the person of the accused and if ever it was taken from the accused, it was obtained illegally.);

(2) That the Forensic Chemistry Report showed positive result for shabu – (Existence ADMITTED with the qualification that the defense does not admit that the forensic chemist knows the origin of the specimen or

knows that it was seized from the accused);

(3) Affidavit of Arrest of SPO1 Carlo E. Luna – (Existence ADMITTED).”

[10]

The prosecution presented the following witnesses: (1) SPO1 Carlo Luna ("**SPO1 Luna**"), who acted as the poseur-buyer; (2) PO3 Mario Benito ("**PO3 Benito**"), a member of the buy-bust team; and (3) PCI Lourdeliza G. Cejes ("**PCI Cejes**"), the forensic chemist who examined the drug items. The defense, on the other hand, presented the lone testimony of accused-appellant Wilfredo.

The factual circumstances presented by the prosecution revealed that at around 9:00 o'clock in the evening of April 21, 2008, a police confidential informant (CI) arrived at the office of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF), Pasig City and reported the rampant selling of *shabu* by brothers alias "Willy" and alias "Danny" at Kapasigan, Pasig City.[11]

Acting on the report, Police Inspector Dennis David, Team Leader of SAID-SOTF, coordinated with the Philippine Drug Enforcement Agency (PDEA) for the conduct of a buy-bust operation against the suspects. Thereafter, PINSP David called for a meeting of the members of the SAID-SOTF and briefed them on the buy-bust operation against the suspects. SPO1 Luna was designated as the poseur-buyer and PO3 Mario Benito, as his immediate back up. PINSP David provided SPO1 Luna with one (1) P 200.00 bill bearing Serial No. ED 666525 to be used as the buy-bust money. SPO1 Luna marked the same with his initials "CEL". The team agreed that once SPO1 Luna gets hold of the suspect, the same shall be the signal for the back-up team members to come in and help SPO1 Luna arrest the suspects.[12]

The CI was summoned to ascertain the exact place where the suspects sold *shabu*. At around 10:45 of the said evening, the CI returned to the office of SAID-SOTG and confirmed that the suspects were selling *shabu* at their house at Callejon Roces St., Kapasigan, Pasig City. The buy-bust team was immediately dispatched to the target area. Upon arriving thereat, SPO1 Luna and the CI went straight to the house of the suspects. The other members of the buy-bust team positioned themselves in strategic locations.[13]

The CI knocked on the door of the house of the suspects and called out the names of alias "Willy" and alias "Danny". Shortly thereafter, alias "Willy" and alias "Danny" came out of the house. The CI said, "*iskor kami*" and then introduced SPO1 Luna to the Herrera brothers as his friend. When alias "Willy" asked for how much, SPO1 Luna answered, "P 200.00" and immediately, the latter handed the buy-bust money to the former.[14]

Upon receipt of the money, alias "Willy" pocketed the same and ordered alias "Danny": "*Bigyan mo ng tig P 200.00.*" Alias "Danny" then handed to alias "Willy" a plastic sachet of suspected *shabu* and the latter, in turn, handed the same to SPO1 Luna. Upon examining the contents of the plastic sachet, SPO1 Luna grabbed the hand of alias "Willy" and introduced himself as a police officer.[15]

PO3 Benito promptly came to the scene and helped SPO1 Luna arrest alias "Willy". SPO1 Luna also ran after alias "Danny" who then sprinted to their house and locked their door. The other members of the team helped force open the door of the Herreras to pursue alias "Danny" but to no avail as alias "Danny" was able to jump off their house and escape.^[16]

SPO1 Luna informed alias "Willy" of his constitutional rights and marked the plastic sachet of suspected *shabu* subject of the buy-bust with the markings: "WILLY/CEL BUY BUST 04-21-08 (with signature)". He also marked another plastic sachet of suspected *shabu* seized from the person of alias "Willy", with the markings: "WILLY/CEL 04-21-08 (with signature)".^[17]

After the inventory of the seized evidence, the police officers brought alias "Willy" and the seized evidence to the office of SAID-SOTF. Upon investigation made by SPO1 Peter Joseph Villanueva ("**SPO1 Villanueva**"), alias "Willy" was identified as accused-appellant Wilfredo Herrera and alias "Danny" as accused Danilo Herrera.^[18] After the investigation and documentation, SPO1 Luna and SPO1 Villanueva brought the confiscated evidence and the request for laboratory examination to the Eastern Police District Crime Laboratory, Marikina City.^[19]

The testimony of prosecution witness SPO1 Villanueva was dispensed with after the defense admitted the following offer of his testimony that: "(1) He was the investigator on the subject case; (2) He prepared the request for laboratory examination on the specimens confiscated and bought from the accused; (3) He prepared the request for drug test on both accused; (4) He brought the accused and the subject drugs to the PNP Crime Laboratory for examination; and (5) He turned over the subject drugs to Forensic Chemist, PCI Lourdeliza Cejes, in Marikina Crime Laboratory."^[20]

According to PCI Cejes, the seized, suspected sachets of *shabu* yielded positive results for *methamphetamine hydrochloride* or *shabu*, a dangerous drug, per Physical Sciences Report No. D-206-2008E which she issued on April 22, 2008.^[21] The latter contained the following findings:

"SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A - "A. Willy/CEL 04/21/08 Buy Bust with signatures"= 0.01 gram

B - "B. Willy/CEL 04/21/08 with signatures"= 0.04 gram

XXX XXX XXX

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug."^[22]

After the prosecution presented and completed the testimony of PCI Cejes, the parties likewise stipulated on the following facts: "(1) that the drug subject matter of these cases were turned over by PCI Cejes to SPO2 Ramon Rabino, Evidence Custodian of the EPD Crime Laboratory after the former conducted laboratory examination on the subject drugs; (2) that on June 10, 2008, SPO2 Rabino turned over the subject drugs to the Pasig City Prosecutor's Office and the same was received by Salve Cernero; (3) that Salve Cernero also turned over the subject drug to the Evidence Custodian of the Pasig City Prosecutor's Office as evidenced by the turn-over letter marked as Exhibit "L"; and (4) that the same drugs were brought by the Public Prosecutor to this Court and identified by the poseur-buyer and the arresting officer, SPO2 [sic] Joseph Villanueva."^[23]

The defense, on the other hand, presented a different version of the facts. Denying the charges against him, appellant Wilfredo took the witness stand and testified that at around 5:00 to 5:30 in the afternoon of April 21, 2008, while he was inside the house of his aunt Lilia Osorman at Callejon Rosas, Kapasigan, Pasig, men in civilian clothes suddenly entered the house looking for his brother Danilo Herrera. When he responded that Danilo was not staying in the said house, the men searched for him inside the house. Not finding his brother, the men handcuffed him; brought him to Pariancillo Police Headquarters where he was locked behind bars. Cases for violation of Article II, Sections 5 and 11 of R.A. 9165 were then filed against him.^[24]

The court *a quo* rendered the assailed decision finding Wilfredo guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of dangerous drugs under R.A. 9165.

Invoking his innocence, appellant Wilfredo appeals his conviction before the Court, and seeks his acquittal by raising the following assignment of errors:

"I.

THE COURT A *QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY;

II.

THE COURT A *QUO* GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL;

III.

THE COURT A *QUO* GRAVELY ERRED IN NOT APPLYING THE '*FRUIT OF THE POISONOUS TREE*' DOCTRINE WITH RESPECT TO THE ALLEGEDLY CONFISCATED SHABU;

IV.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS; and

IV.