



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 189840

Present:

- versus -

CARPIO, *Chairperson,*  
BRION,  
DEL CASTILLO,  
PERLAS-BERNABE, *and*  
LEONEN, \* *JJ.*

JAY MONTEVIRGEN y OZARAGA,  
*Accused-Appellant.*

Promulgated:

DEC 11 2013

*HW Cabalag/Infante*

X-----X

DECISION

DEL CASTILLO, J.:

Failure to physically inventory and photograph the *shabu* seized from an accused in the manner prescribed by law do not invalidate his arrest or render said drug inadmissible in evidence if its integrity and evidentiary value remain intact. It could still be utilized in determining the guilt or innocence of the accused.<sup>1</sup>

*Factual Antecedents*

On appeal is the Decision<sup>2</sup> dated July 31, 2009 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03208 which affirmed the Decision<sup>3</sup> dated December 18, 2007 of Branch 65, Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 05-1396 to 1397 convicting beyond reasonable doubt Jay Montevirgen y Ozaraga (appellant) for the crime of illegal sale and possession of *shabu* under Sections 5 and 11, Article II of Republic Act (RA) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002." *Madu*

\* Per Special Order No. 1627 dated December 6, 2013.

<sup>1</sup> *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 329.

<sup>2</sup> CA *rollo*, pp. 99-124; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Arcangelita M. Romilla Lontok and Myrna Dimaranan Vidal.

<sup>3</sup> Records, pp. 105-112; penned by Presiding Judge Edgardo M. Caldoná.

The Informations against appellant read as follows:

Criminal Case No. 05-1396

That on or about the 19<sup>th</sup> day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell distribute and transport, weighing zero point zero four (0.04) gram of Methylamphetamine Hydrochloride (Shabu), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>4</sup>

Criminal Case No. 05-1397

That on or about the 19<sup>th</sup> day of July 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control weighing zero point zero four (0.04) gram and zero point ten (0.10) gram or [a] total weight of zero point fourteen (0.14) gram of Methylamphetamine Hydrochloride (Shabu), which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>5</sup>

During arraignment, appellant pleaded “not guilty” in the two cases. After the pre-trial conference, a joint trial on the merits ensued.

***Version of the Prosecution***

On July 18, 2005, P/Supt. Marietto Valerio (P/Supt. Valerio) of the Makati City Police Station Anti-Illegal Drugs Special Operation Task Force received a report from a confidential informant that appellant was selling *shabu* in Malvar Street, *Barangay* South Cembo, Makati City. Thus, he immediately formed a team composed of police officers and personnel of the Makati Anti-Drug Abuse Council (MADAC) to conduct a buy-bust operation against appellant. The members of the entrapment team were PO3 Esterio M. Ruiz, Jr. (PO3 Ruiz), PO1 Percival Mendoza, PO1 Honorio Marmonejo (PO1 Marmonejo), *Barangay* Captain Rodolfo Doromal, Eugenio Dizer, Miguel Castillo, Leo Sese, and Anthony Villanueva. PO3 Ruiz was designated as poseur-buyer and was provided with two 100-peso bills marked money. PO1 Marmonejo, on the other hand,

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<sup>4</sup> Id. at 2.

<sup>5</sup> Id. at 4.

coordinated the operation with the Philippine Drug Enforcement Agency (PDEA), which issued a Certificate of Coordination.<sup>6</sup> The buy-bust team then proceeded to the subject area but could not locate appellant.<sup>7</sup>

The next day, July 19, 2005, the buy-bust team returned to Malvar Street and found appellant talking to three men. After these men departed, PO3 Ruiz, accompanied by the confidential informant, approached appellant. The confidential informant introduced PO3 Ruiz to appellant and told him that PO3 Ruiz wanted to buy *shabu*. Appellant asked PO3 Ruiz how much he wanted to buy and he replied, ₱200.00. Appellant pulled out from his pocket three plastic sachets containing white crystalline substance and told PO3 Ruiz to choose one. He complied and gave the marked money to appellant as payment. Appellant pocketed the remaining plastic sachets together with the marked money. PO3 Ruiz then took off his cap – the pre-arranged signal that the transaction had been consummated. The other buy-bust team members then rushed to the scene to assist PO3 Ruiz in apprehending appellant. The two other plastic sachets and marked money were recovered from appellant after PO3 Ruiz ordered him to empty his pockets. PO3 Ruiz then marked the plastic sachets – “EMR” for the one appellant sold to him and “EMR-1” and “EMR-2”<sup>8</sup> for the other two sachets confiscated from appellant.

Appellant was taken to the police headquarters where he was booked and the incident recorded in the police blotter. The items seized from him were turned over to the duty investigator who prepared a request for laboratory examination and then sent to the crime laboratory. The results revealed that the contents of the plastic sachets are positive for *shabu*.<sup>9</sup>

### ***Version of the Defense***

Appellant testified that on July 19, 2005, at around 2 p.m., he was in his house with his wife and child when he was roused from sleep by a man armed with a gun. Several other armed men entered his house. He was told that a buy-bust operation was being conducted. They searched his house then appellant was made to board a vehicle where he was showed a plastic sachet containing white crystalline substance that he believed to be *shabu*. He struggled to free himself and denied ownership thereof but his actions were futile. He was taken to *Barangay Olympia*, Makati City, where he was detained for 30 minutes, then brought to the crime laboratory for drug testing.<sup>10</sup>

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<sup>6</sup> Id. at 13.

<sup>7</sup> TSN, July 4, 2006, pp. 4-8.

<sup>8</sup> Id. at 10-13.

<sup>9</sup> Id. at 13-14; Exhibits “K” to “K-2,” “L” to “L-2” and “M” to “M-2,” Formal Offer of Evidence, id. at 66-70.

<sup>10</sup> TSN, June 19, 2007, pp. 3-5.

Defense witness Fancy Dela Cruz corroborated the testimony of appellant. She averred that at around 1:30 p.m. of July 19, 2005, two vehicles parked almost in front of her. Several men alighted from the vehicles and forced open the door of appellant's house. She inquired as to their intentions but was told not to intervene and to avoid involvement. She complied but heard one of the men telling appellant to get up and put on his clothes. The men then had appellant board one of the vehicles and sped away. She looked for appellant's wife and informed her of the incident.<sup>11</sup>

### ***Ruling of the Regional Trial Court***

The RTC gave credence to the testimony of the prosecution witnesses on the events that transpired prior to and during the buy-bust operation. It rendered a verdict of conviction on December 18, 2007,<sup>12</sup> viz:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 05-1396, the Court finds accused JAY MONTEVIRGEN y OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;

2. In Criminal Case No. 05-1397, the Court finds accused JAY MONTEVIRGEN y OZARAGA, GUILTY beyond reasonable doubt of the charge for violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00);

The period of detention of the accused should be given full credit.

Let the dangerous drug subject matter of these cases be disposed of in the manner provided for by law.

SO ORDERED.<sup>13</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA concurred with the RTC's findings and conclusions and, consequently, affirmed its judgment in the assailed Decision<sup>14</sup> of July 31, 2009. The dispositive portion of CA's Decision reads:

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<sup>11</sup> TSN, December 11, 2007, pp. 3-5.

<sup>12</sup> Records, pp. 105-112.

<sup>13</sup> Id. at 111-112.

<sup>14</sup> CA *rollo*, pp. 99-124.

WHEREFORE, the appeal is DENIED. The December 18, 2007 Decision of the Regional Trial Court of the City of Makati, Branch 65 is hereby AFFIRMED.

SO ORDERED.<sup>15</sup>

### ***Assignment of Errors***

Still unable to accept his conviction, appellant is now before us raising the same interrelated errors he assigned before the CA, viz:

#### **I**

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

#### **II**

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWIT[H]STANDING THE FAILURE OF THE A[P]PREHENDING TEAM TO PROVE [THE] INTEGRITY OF THE SEIZED DRUGS.<sup>16</sup>

In his joint discussion of these errors, appellant contends that the police officers involved in the buy-bust operation failed to observe the proper procedure in the custody and control of the seized drug by not marking the confiscated specimens in the manner mandated by law. He claims that the arresting team did not immediately conduct a physical inventory of the seized items and photograph the same in the presence of his representative or counsel, representative from media, Department of Justice, and any elected public officials pursuant to Section 21 of the Implementing Rules and Regulations of RA 9165. He also argues that the Certificate of Coordination has no weight in evidence and cannot be used to prove the legitimacy of the buy-bust operation since it was issued for the failed entrapment operation the previous day, July 18, 2005.

Appellee, through the Office of the Solicitor General argues that the prosecution sufficiently established all the elements of illegal sale and possession of *shabu* against appellant. It asserts that the integrity and evidentiary value of the *shabu* seized from appellant were properly preserved by the arresting team.

### **Our Ruling**

The appeal is unmeritorious.

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<sup>15</sup> Id. at 123.

<sup>16</sup> Id. at 33.

***Elements for the Prosecution of Illegal Sale and Possession of Shabu.***

In every prosecution for the illegal sale of *shabu*, under Section 5, Article II of RA 9165, the following elements must be proved: “(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*”<sup>17</sup> or the illicit drug in evidence. On the other hand, in prosecuting a case for illegal possession of dangerous drugs under Section 11, Article II of the same law, the following elements must concur: “(1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.”<sup>18</sup>

In this case, all the elements for the illegal sale of *shabu* were established. PO3 Ruiz, the poseur-buyer, positively identified appellant as the person he caught in *flagrante delicto* selling a white crystalline substance believed to be *shabu* in the entrapment operation conducted by the police and MADAC operatives. Upon receipt of the ₱200.00 buy-bust money, appellant handed to PO3 Ruiz the sachet containing 0.04 gram of white crystalline substance which later tested positive for *shabu*. “The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction x x x.”<sup>19</sup>

All the elements in the prosecution for illegal possession of dangerous drugs were also established. First, the two plastic sachets containing *shabu* subject of the case for the illegal possession of drugs were found in appellant’s pocket after a search on his person was made following his arrest in *flagrante delicto* for the illegal sale of *shabu*. It must be remembered that a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without a warrant.<sup>20</sup> Second, appellant did not adduce evidence showing his legal authority to possess the *shabu*. Third, appellant’s act of allowing the poseur-buyer to choose one from among the three sachets and putting back into his pocket the two sachets of *shabu* not chosen clearly shows that he freely and consciously possessed the illegal drugs. Hence, appellant was correctly charged and convicted for illegal possession of *shabu*.

Appellant’s defense of denial cannot prevail against the positive testimony of prosecution witnesses. There is also no imputation by appellant of any evil

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<sup>17</sup> *People v. Dilao*, 555 Phil. 394, 409 (2007).

<sup>18</sup> *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 342-343.

<sup>19</sup> *People v. Legaspi*, G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

<sup>20</sup> RULES OF COURT, Rule 126, Section 13.

motives on the part of the buy-bust team to falsely testify against him. Their testimonies and actuations therefore enjoy the presumption of regularity.

***Failure to Physically Inventory and Photograph the Shabu After Seizure and Confiscation is Not Fatal.***

Appellant draws attention to the failure of the apprehending police officers to comply with Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 regarding the physical inventory and photograph of the seized items. This provision reads as follows:

(1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In other words, the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized. There is a *proviso* in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused.<sup>21</sup>

Here, the absence of evidence that the buy-bust team made an inventory and took photographs of the drugs seized from appellant was not fatal since the prosecution was able to preserve the integrity and evidentiary value of the *shabu*. PO3 Ruiz, the poseur-buyer and apprehending officer, marked the seized items in front of appellant, the *barangay* captain and other members of the buy-bust team, immediately after the consummation of the drug transaction. He then delivered the seized items to the duty investigator, who in turn sent the same to the PNP Crime Laboratory for examination on the same day. During trial, PO3 Ruiz was able to identify the said markings and explain how they were made.

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<sup>21</sup> *People v. Manalao*, G.R. No. 187496, February 6, 2013, 690 SCRA 106, 119.

Clearly, there was no hiatus or confusion in the confiscation, handling, custody and examination of the *shabu*. The illegal drugs that were confiscated from appellant, taken to the police headquarters, subjected to qualitative examination at the crime laboratory, and finally introduced in evidence against appellant were the same illegal drugs that were confiscated from him when he was caught in *flagrante delicto* selling and possessing the same.

Appellant's contention that the buy-bust team should have coordinated with the PDEA on the day the entrapment operation occurred deserves scant consideration. Coordination with the PDEA is not an indispensable element of a proper buy-bust operation.<sup>22</sup> A buy-bust operation is not invalidated by mere non-coordination with the PDEA.<sup>23</sup>

### ***Penalty***

Under Section 5, Article II of RA 9165, the penalty for the unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. Since the penalty imposed by the RTC and affirmed by the CA is within the prescribed range, we affirm the lower courts' imposition of life imprisonment as well as the payment of fine of ₱500,000.00.

On the other hand, Section 11(3), Article II of the same law provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years plus a fine ranging from ₱300,000.00 to ₱400,000.00.

Appellant was found guilty of selling one sachet containing 0.04 gram of *shabu* and of possessing two other sachets of the same substance with a total weight of 0.14 gram. Hence, applying the above provisions, the penalty of imprisonment of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and the payment of fine of ₱300,000.00 imposed by the RTC and affirmed by the CA are also proper.

**WHEREFORE**, the appeal is **DISMISSED**. The assailed Decision dated July 31, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03208 affirming the conviction of Jay Montevirgen y Ozaraga by the Regional Trial Court of Makati City, Branch 65, for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **AFFIRMED**.

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<sup>22</sup> *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 696.


<sup>23</sup> *Id.*, quoting *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 369-370.



**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

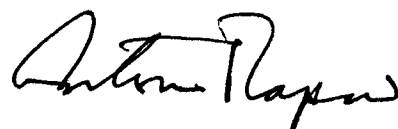
  
**ARTURO D. BRION**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice*