



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES

Plaintiff-Appellee,

G.R. No. 197250

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

- *versus* -

**REYNALDO “ANDY” SOMOZA y
HANDAYA,**

Accused-Appellant.

Promulgated:

JUL 17 2013

X-----X

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Accused-appellant Reynaldo “Andy” Somoza appeals from the Decision¹ dated June 22, 2010 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00741 denying his appeal from the Joint Judgment² dated May 30, 2007 of the Regional Trial Court (RTC) of Dumaguete City, Branch 30 in Criminal Case Nos. 17700 and 17701, which found him guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Informations filed against accused-appellant in the trial court read:

I. Criminal Case No. 17700

That on or about the 21st day of July, 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable

¹ Rollo, pp. 2-23; penned by Associate Justice Ramon A. Cruz with Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez, concurring.

² CA rollo, pp. 13-21.

Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to the NBI poseur buyer [one] (1) heat sealed transparent plastic [sachet] containing a total of 0.50 gram of white crystalline substance, of Methamphetamine Hydroc[h]loride, commonly called shabu, a dangerous drug.

Contrary to Sec[.] 5, Art. II of R.A[.] 9165.³

II. Criminal Case No. 17701

That on or about the 21st day of July, 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously possess and keep six (6) pieces of heat sealed transparent plastic sachets containing a total of 0.69 gram of white crystalline substance, of Methamphetamine Hydroc[h]loride, commonly called shabu, a dangerous drug.

Contrary to Sec[.] 11, Art. II of R.A[.] 9165.⁴

Accused-appellant pleaded not guilty to both charges when arraigned.⁵ After pre-trial was conducted, trial ensued.

The prosecution established that, sometime during the first week of July 2005, the National Bureau of Investigation (NBI) received confidential information that accused-appellant is engaged in the repacking and selling of *methamphetamine hydrochloride*, commonly known as *shabu*, and conducting his business in his residence at Barangay Looc, Dumaguete City.⁶ The NBI coordinated with the Philippine National Police (PNP) in Dumaguete City and discreet inquiries and surveillance were made to verify the information.⁷

Police Officer (PO) 1 Marcelina Bautista and PO1 Raymunda Moreno of the PNP Dumaguete City were tasked to do the surveillance.⁸ In the course of the surveillance, PO1 Bautista was able to gain the trust of accused-appellant to the point of pretending to agree to be his girlfriend.⁹ This led to a positive test buy of ₱600.00 worth of *shabu* from accused-appellant by PO1 Bautista and PO1 Moreno on July 20, 2005.¹⁰ With this development, in the morning of July 21, 2005, NBI Agent Chester Aldwin Celon applied for a warrant to search accused-appellant's residence for dangerous drugs. After the executive judge of the RTC of Dumaguete City granted the application and issued a warrant, the joint operatives of the NBI, the Philippine Drug Enforcement Agency (PDEA), and the PNP Dumaguete City had a briefing at the NBI office in Dumaguete City at around 2:00 in

³ Records, p. 3.

⁴ Id. at 96.

⁵ Id. at 107; Order dated January 30, 2006.

⁶ Id. at 59-60; Exhibit "I," Application for Search Warrant.

⁷ Id. at 63-66; Exhibits "J" and "K," Depositions of Witnesses.

⁸ Id.

⁹ *Rollo*, p. 5.

¹⁰ Records, pp. 64 and 66.

the afternoon of that same day to plan the manner of service of the warrant.¹¹

To facilitate the execution of the plan, PO1 Bautista sent accused-appellant a text message asking where he was. Accused-appellant replied that he was not at his house and instructed PO1 Bautista to proceed to Oracion Drive in Barangay Looc where he would wait for her by the roadside. With this development, the team adjusted their plan and decided to conduct a buy-bust operation before serving the warrant. PO1 Bautista and PO1 Moreno were designated as poseur-buyers with the rest of the members serving as backup.¹² The team was to be accompanied by Rogelio Talavera, *Kagawad* of Barangay Looc, and media representative Reysan Elloren.¹³

PO1 Bautista was given ₱1,000.00 in marked money consisting of a ₱500.00 bill and five pieces of ₱100.00 bills, all of which were photocopied before the operation. PO1 Bautista then sent accused-appellant another text message telling him that she would buy *shabu* from him at their meeting place.¹⁴

Thereafter, PO1 Bautista proceeded to Oracion Drive with PO1 Moreno. Accused-appellant met them and brought them to his friend's house near SIOM warehouse. Inside the house of accused-appellant's friend, PO1 Bautista bought ₱1,000.00 worth of *shabu* from accused-appellant. She gave him the marked money and he handed her two sachets of powdered white crystalline substance. At this point, PO1 Moreno excused herself and went out of the house to give the pre-arranged signal to the backup team.¹⁵

Meanwhile, accused-appellant suggested to PO1 Bautista that they use the contents of one of the sachets that she bought to help them get aroused. PO1 Bautista, not wanting to spoil the operation, acceded. Accused-appellant opened one of the sachets and used its contents by sniffing some of the powdered substance. He then asked PO1 Bautista to take her turn. To divert his attention and while the time away as she awaited the arrival of the backup, she told him that she wanted to have intercourse first before using drugs. Accused-appellant kissed PO1 Bautista and, while he was kissing her, the backup team came rushing in. However, someone from inside the adjacent house shouted to alert accused-appellant that he was going to be arrested. Accused-appellant scampered away and tried to scale a concrete fence but the law enforcers caught up with him. Before being captured, however, he threw away on the other side of the fence some of the marked

¹¹ *Rollo*, pp. 4-5.

¹² *Id.* at 5.

¹³ Testimonies of *Kagawad* Talavera and Elloren, TSN, February 27, 2007, p. 3, and of March 6, 2007, p. 3, respectively.

¹⁴ *Rollo*, pp. 5-6.

¹⁵ *Id.* at 6.

bills and a metallic tube containing a tooter.¹⁶ A coin purse with six sachets containing powdered crystalline substance was found in his pocket when he was searched. Only ₱800.00 worth of marked money, consisting of the ₱500.00 bill and three pieces of ₱100.00 bills, was recovered.¹⁷

NBI Agent Celon marked the items recovered from the scene immediately after accused-appellant's apprehension. The remaining sachet bought by PO1 Bautista was marked as "BB-RS-01,"¹⁸ the six sachets found in the coin purse as "POS-RS-01"¹⁹ to "POS-RS-06" and the metallic tube as "POS-RS-21 July 05." The marking was witnessed by *Kagawad* Talavera and media representative Elloren.²⁰

Accused-appellant was thereafter informed that the law enforcers have a warrant to search his house. He was brought to his house and his place was searched in the presence of *Kagawad* Talavera and media representative Elloren. However, the search yielded nothing but plastic sachets, lighter and foils.²¹

NBI Agent Celon proceeded to conduct an inventory of the items seized during the buy-bust operation. He prepared two receipts -- one for the sachet bought by PO1 Bautista from accused-appellant and the recovered marked bills worth ₱800.00, and another receipt for the six sachets and the metallic tooter. The inventory receipts were signed by *Kagawad* Talavera, media representative Elloren, Senior Police Officer (SPO) 1 Manuel Sanchez of PDEA, and Dumaguete City Assistant Prosecutor Nilo Sarsaba.²²

Accused-appellant was subsequently brought to the NBI office for booking and documentation. He was photographed with the seized items in front of him and the incident was entered in the PDEA blotter.²³

In the morning of the following day, July 22, 2005, NBI Agent Celon made a return of the search warrant with prayer to retain custody of the seized items.²⁴ The court approved the request and NBI Agent Celon received the items. He proceeded to bring them to the PNP Crime Laboratory in Dumaguete City for chemical examination. Police Senior Inspector (P/S Insp.) Maria Ana Dagasdass, forensic chemical officer, received the items and examined them.²⁵ She then prepared Chemistry Report No. D-133-2005 and a sworn Certification to the effect that the sachet marked as "BB-RS-01" contained 0.5 gram of *methamphetamine hydrochloride* and the six sachets marked as "POS-RS-01" to "POS-RS-06"

¹⁶ Id. at 6-7.

¹⁷ Testimony of PO1 Bautista, TSN, January 23, 2007, p. 7.

¹⁸ CA *rollo*, p. 50. This means "Buy Bust-Reynaldo Somoza-1 sachet."

¹⁹ Id. This means "Possession -Reynaldo Somoza-1st sachet."

²⁰ *Rollo*, p. 16.

²¹ Id. at 7.

²² Id. at 7-8.

²³ Id. at 8.

²⁴ Records, pp. 54-55; Exhibit "N," Return of Search Warrant.

²⁵ *Rollo*, pp. 8-9.

contained an aggregate of 0.69 gram of the same prohibited substance.²⁶

For his part, accused-appellant's defense was denial. He disclaimed possessing or selling *shabu* on the day he was arrested. According to him, on the said date, his friend Victor Asunio invited him to the latter's birthday party at Oracion Drive. When he arrived at the venue at around 2:00 in the afternoon, only Asunio and two ladies were there. The ladies turned out to be PO1 Bautista and PO1 Moreno. Asunio told him to wait for awhile as Asunio was still doing something. Asunio went out and, moments after, shouted a warning that accused-appellant would be arrested. Accused-appellant immediately went out of Asunio's house and ran away but several persons suddenly appeared, blocked his path and arrested him. He was handcuffed and bodily searched but the police officers found nothing. He was then shown a copy of a search warrant and told that it was for him. He was thereafter boarded in a police car and brought to his house. A search was made in his place but nothing illegal was found there. He was subsequently brought to the NBI office where he was photographed and documented.²⁷

In its Joint Judgment dated May 30, 2007, the trial court disregarded the accused-appellant's defense for its inherent weakness and gave full faith and credence to the testimony of the law enforcers. It found no improper motive or ill will on the part of said law enforcers to testify against him. Their testimonies, credible and consistent, corroborated by the statements of *Kagawad* Talavera and media representative Elloren and backed by object and documentary evidence sufficiently established the guilt of accused-appellant. The dispositive portion of the Joint Judgment reads:

WHEREFORE, in the light of all the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 17700, the accused Reynaldo "Andy" Somoza y Handaya is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.50 gram of shabu in violation of Section 5, Article II, of RA No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The one (1) heat-sealed transparent plastic sachet which contained the 0.50 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 17701, the accused Reynaldo "Andy" Somoza y Handaya is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.69 gram of shabu in violation of Section 11, Article II of RA No. 9165 and is hereby sentenced to suffer an indeterminate penalty of [imprisonment for] twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay

²⁶ Records, pp. 102-103; Exhibits "B" and "C."
²⁷ *Rollo*, pp. 9-10.

a fine of Four Hundred Thousand Pesos (₱400,000.00).

The six (6) heat-sealed transparent plastic sachets which contained the 0.69 gram of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.²⁸

Accused-appellant appealed his case to the Court of Appeals. He presented a lone assignment of error: the trial court erred in convicting him of the crimes charged because his guilt was not proven beyond reasonable doubt. He cited three things in support of his appeal. First, there was failure to present the full amount of the marked money used in the buy-bust operation as only ₱800.00 was presented. There was also no pre-operation report which would have stated the details of the buy-bust operation, including the serial numbers of the marked money. Second, it was not sufficiently established that the packs of *shabu* actually came from accused-appellant, as both PO1 Bautista and NBI Agent Celon claimed to have personally recovered the six sachets of *shabu*. Also, the chemical officer who identified the drug specimen mentioned the total weight of *shabu* as 0.44 gram only, not 0.69 gram as stated in the Information in Criminal Case No. 17701. Third, the regularity of the inventory-taking done at his house is questionable and affected the chain of custody of the *shabu*. The irregularity became more glaring considering the fact that no illegal drug was found in his house.²⁹

In its Decision dated June 22, 2010, the Court of Appeals found nothing irregular in the buy-bust operation. The non-presentation of the entire amount of ₱1,000.00 marked money did not diminish the integrity of the buy-bust process, especially considering the circumstance that accused-appellant threw the money while trying to evade arrest. Moreover, the successful prosecution of illegal sale of dangerous drugs does not hinge on the presentation of all the marked money used in the buy-bust operation, pursuant to *Cruz v. People*³⁰ which ruled that neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.

The Court of Appeals held that the buy-bust was not affected by the absence of a pre-operation report. Under the obtaining facts, no pre-operation report was prepared as the buy-bust operation was urgently conceived. Notwithstanding the swiftness of the execution of the strategy, the law enforcers described their operation in detail during trial.³¹

²⁸ CA rollo, pp. 20-21.

²⁹ Id. at 27-47.

³⁰ G.R. No. 164580, February 6, 2009, 578 SCRA 147, 154.

³¹ Rollo, pp. 14-15.

The Court of Appeals further ruled that the statements of PO1 Bautista and NBI Agent Celon were not contradictory. Only PO1 Bautista made the claim of personally recovering the six sachets of *shabu* from accused-appellant. NBI Agent Celon, on the other hand, simply stated that the metallic tube and the six sachets of *shabu* were the items recovered by the law enforcers from accused-appellant. Furthermore, the issue on who recovered the packets of *shabu* from accused-appellant is immaterial to the charges leveled against him.³²

There was also no disparity in connection with the weight of the *shabu*. The forensic chemical officer, P/S Insp. Dagasdas, never mentioned 0.44 gram. Instead, her sworn Certification and the accompanying Chemistry Report both indicated that her examination of the specimens submitted by NBI Agent Celon showed that the substance contained in the six sachets subject of Criminal Case No. 17701 was *shabu* with an aggregate weight of 0.69 gram.³³

The appellate court also rejected accused-appellant's assertion of a defect in the chain of custody of the drugs taken from him. The failure to make an immediate inventory at the scene of the buy-bust operation was not fatal to the prosecution's case as all of the prosecution's witnesses, including *Kagawad* Talavera and media representative Elloren, confirmed that the items seized from accused-appellant during the buy-bust were marked at the scene. The course of action taken by the law enforcers at the time of the buy-bust and during the subsequent search at accused-appellant's place was justifiable under the circumstances and properly preserved the probative value of the seized items. In addition, accused-appellant belatedly challenged the admissibility of the seized items on the ground of defective chain of custody only on appeal and not before the trial court.³⁴

The Court of Appeals agreed with the trial court that the prosecution was able to establish beyond reasonable doubt all the elements of both the illegal sale and illegal possession of dangerous drugs. Thus, it upheld the conviction of accused-appellant for both crimes. The decretal portion of the Decision dated June 22, 2010 reads:

WHEREFORE, premises considered, the appeal is **DENIED** and the Joint Judgment of the Regional Trial Court, Branch 30, Dumaguete City in Criminal Case Nos. 17700 and 17701 is hereby **AFFIRMED** *in toto*. No costs.³⁵

Accused-appellant is now before this Court insisting on the failure of the prosecution to prove his guilt beyond reasonable doubt.

This Court does not agree.

³² Id. at 15-16.

³³ Id. at 16.

³⁴ Id. at 16-19.

³⁵ Id. at 22.

The Court of Appeals has sufficiently addressed the concerns of accused-appellant. In fact, the trial and the appellate courts were unanimous in rejecting as implausible accused-appellant's defense.

Nevertheless, this Court is aware that accused-appellant's conviction cannot rest on the weakness of his defense but on the strength and merits of the case of the People against him.³⁶ Stated differently, accused-appellant need not prove his innocence as he enjoys the constitutional presumption of inculpability, the onus is on the State to prove his guilt beyond reasonable doubt.³⁷ In this case, the State has discharged the burden of proof required of it.

A successful prosecution of illegal sale of dangerous drugs requires that the following elements be established:

- (1) the identity of the buyer and the seller, the object and the consideration of the sale; and
- (2) the delivery to the buyer of the thing sold and receipt by the seller of the payment therefor.³⁸

On the other hand, there can be conviction for illegal possession of dangerous drugs only if the following elements are present:

- (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 possessed the drug.³⁹

In both cases of illegal sale and illegal possession of dangerous drugs, the prosecution must show the chain of custody over the dangerous drug in order to establish the *corpus delicti*, which is the dangerous drug itself.⁴⁰ Such chain of custody should show that the dangerous drug sold by or in the possession of the accused is the same dangerous drug seized from the said accused and taken into custody by the apprehending officer, marked and subjected to physical inventory by the apprehending officer, submitted to the PDEA or PNP forensic laboratory, subjected by the forensic laboratory examiner to laboratory examination the results of which are contained in a sworn certification, and presented to the court as evidence against the accused.⁴¹ This is to ensure the integrity and evidentiary value of the seized

³⁶ A finding of guilt must solely rest on the prosecution's own evidence, not on the weakness or even absence of that for the defense (*People v. Gatlabayan*, G.R. No. 186467, July 13, 2011, 653 SCRA 803, 824).

³⁷ The burden is always on the prosecution to prove his guilt beyond reasonable doubt, and not on him to prove his innocence (*Id.*).

³⁸ *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 347.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ The following are the links that must be established in the chain of custody in a buy-bust situation: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the

items and preclude the possibility of alteration, tampering or substitution of substance in the chain of custody of the dangerous drug. Nevertheless, a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused.⁴²

In this case, the RTC and the Court of Appeals both found that accused-appellant, as seller, sold 0.5 gram of *shabu* to the poseur-buyer, PO1 Bautista, for ₱1,000.00. He handed her two sachets of *shabu* upon his receipt of a ₱500.00 bill and five ₱100.00 bills from her.

Both the RTC and the Court of Appeals also found that the accused-appellant had in his possession six sachets containing *shabu* with an aggregate weight of 0.69 gram and that he had no authority to possess the dangerous drug.

This Court respects the identical findings of the trial and the appellate courts.

The established rule in appellate review is that the trial court's factual findings are accorded great respect and even conclusive effect, especially if such findings are affirmed by the Court of Appeals.⁴³ This Court finds no compelling reason to diverge from the rule. A review of the records reveals that the prosecution's retelling of the events as they transpired hews closer to the truth.

Accused-appellant is clutching at straws in insisting on the following: non-presentation of the full amount of the marked money, lack of pre-operation report, inconsistency in the testimonies on who recovered the sachets of *shabu* and what the total weight of the said sachets is, and irregularity of the inventory. The Court of Appeals has sufficiently addressed all these matters.

This Court has already held in *People v. Ambrosio*⁴⁴ that the non-presentation of the entire amount of the marked money is not a mortal blow to the prosecution's case. It has also been held that the non-presentation of the marked money,⁴⁵ or the presentation of mere photocopies of the marked money,⁴⁶ does not render the buy-bust operation illegal or invalid. Nor is the presentation of the marked money material in the prosecution of illegal sale

apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court (*People v. Fermin*, G.R. No. 179344, August 3, 2011, 655 SCRA 92, 106-107).

⁴² *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 594.

⁴³ *People v. Diu*, G.R. No. 201449, April 3, 2013.

⁴⁴ 471 Phil. 241, 263 (2004).

⁴⁵ *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 321.

⁴⁶ *People v. Ambrosio*, *supra* note 44.

of dangerous drugs as the omission to present the marked money may be overlooked as a peripheral matter.⁴⁷ As this Court ruled in *People v. Ara*⁴⁸:

In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proved and the drug subject of the transaction is presented before the court. x x x. (Citation omitted.)

Illegal sale of dangerous drugs is committed when the sale transaction is consummated,⁴⁹ that is, upon delivery of the illicit drug to the buyer and the receipt of the payment by the seller. While the marked money may be used to prove payment, it is not material in proving the commission of the crime. What is material is the proof that the sale transaction actually took place, coupled with the presentation in court of the *corpus delicti*,⁵⁰ the dangerous drug subject of the sale.⁵¹ Here, the prosecution has adequately established the occurrence of a sale transaction between accused-appellant and PO1 Bautista, and the sachet containing the contraband subject of the sale was presented in court.

The lack of pre-operation report had no effect on the legality and validity of the buy-bust operation. In the first place, a pre-operation report is not indispensable in a buy-bust operation.⁵² In the second place, the facts of the case show that the buy-bust operation was not part of the original plan -- to serve the search warrant on accused-appellant -- but was resorted to address the contingencies of the circumstances. The urgency of the situation reasonably excused the preparation of a pre-operation report. More importantly, a pre-operation report is ordinarily submitted by the local PNP or the NBI to comply with Section 86 of Republic Act No. 9165 which requires "close coordination with the PDEA on all drug related matters." Here, to require a pre-operation report for purposes of the buy-bust would constitute unnecessary bureaucratic red tape as there was already coordination by the NBI and the PNP Dumaguete City with the PDEA in the planning of the service of the warrant and in the decision to resort to a buy-bust operation.

As regards the alleged inconsistencies in the testimonies of prosecution witnesses on who recovered the six sachets of *shabu* and what the total weight of the said sachets is, the transcript of stenographic notes support the conclusion of the Court of Appeals that there were none of the alleged inconsistencies. It was PO1 Bautista who recovered the six sachets of *shabu* from accused-appellant and NBI Agent Celon marked the metallic tube and the six sachets of *shabu* after noting that they were the items recovered by the buy-bust team from accused-appellant.⁵³

⁴⁷ *People v. Ara*, supra note 45.

⁴⁸ Id. at 320-321.

⁴⁹ *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 356.

⁵⁰ *People v. Ambrosio*, supra note 44.

⁵¹ *People v. Remigio*, supra note 38.

⁵² *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 700-701.

⁵³ TSN, January 23, 2007, p. 7.

In connection with the weight of the *shabu* subject of Criminal Case No. 17701, P/S Insp. Dagasdas never mentioned 0.44 gram and she categorically stated that she prepared and issued a sworn Certification and Chemistry Report No. D-133-2005, both of which similarly indicated that the six sachets subject of Criminal Case No. 17701 contained *shabu* with an aggregate weight of 0.69 gram.⁵⁴

Finally, there was no break in the chain of custody of the dangerous drugs taken from accused-appellant. The prosecution has shown that the illicit drugs seized from accused-appellant are the same illicit drugs marked and subjected to physical inventory by NBI Agent Celon, submitted by him to the PNP forensic laboratory, received by forensic chemical officer P/S Insp. Dagasdas and subjected by her to laboratory examination, and presented by the prosecution to the trial court as evidence against the accused-appellant. The chain of custody was continuous and the identity, integrity and evidentiary value of the dangerous drugs seized from accused-appellant were preserved.

The inventory made at accused-appellant's house and not at the scene of the buy-bust operation did not adversely affect the chain of custody. The fact is that, as witnessed by *Kagawad* Talavera and media representative Elloren, the illicit drugs taken from accused-appellant were marked in his presence at the scene of the buy-bust operation immediately after his arrest. This marking may be considered as the preliminary phase of the inventory. Indeed, Section 21 of Republic Act No. 9165 which provides for the chain of custody of dangerous drugs seized by law enforcers is silent on the matter of marking of the seized drugs. In particular, its paragraph (1) only speaks of conducting a physical inventory and photographing of the illicit drugs "immediately after seizure and confiscation":

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs x x x.*

(1) The apprehending 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[.] (Emphasis supplied.)

Neither is marking of the confiscated drugs found in the implementing rules of the law which provides:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, x x x.*

⁵⁴

Records, pp. 102-103.

(a) 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[.]

Nonetheless, the Court has acknowledged the practical value of the process of marking the confiscated contraband and considered it as an initial stage in the chain of custody -- a process preliminary and preparatory to the physical inventory and photograph requirements in Section 21 of Republic Act No. 9165:

This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 [of Republic act No. 9165] and on allegations of robbery or theft.⁵⁵ (Citations omitted.)

“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. Consistency with the “chain of custody” rule requires that the “marking” of the seized items -- to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence -- should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.⁵⁶

“Immediate confiscation” has no exact definition.⁵⁷ Indeed, marking upon immediate confiscation has been interpreted as to even include marking at the nearest police station or office of the apprehending team.⁵⁸ In this case, the dangerous drugs taken from accused-appellant were marked in his presence immediately upon confiscation at the very venue of his arrest.

⁵⁵ *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 219.

⁵⁶ *Id.* at 218-219.

⁵⁷ *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836.

⁵⁸ *Id.*, citing *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009, 585 SCRA 668, 678.

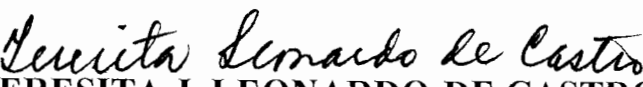
As marking is the initial stage of physical inventory, in effect, the physical inventory of the confiscated contraband commenced at the scene of the buy-bust and was completed at the house of accused-appellant.

Moreover, the prosecution has satisfied the requirement that the testimonies of all persons who handled the specimen are important to establish the chain of custody.⁵⁹ PO1 Bautista testified that she kept the sachet sold to him by accused-appellant, that she seized the other six sachets from accused-appellant and that she subsequently transferred all sachets in her possession to NBI Agent Celon. NBI Agent Celon stated that he received from PO1 Bautista the sachet bought by her and the sachets seized by her from accused-appellant, that he marked these items, that he inventoried them, that he requested authority from the court to retain custody of them, and that he submitted them to the PNP forensic laboratory. P/S Insp. Dagasdas attested that she received the specimens from NBI Agent Celon, that she conducted the laboratory examination and that she issued a sworn certification regarding the results of her examination. Thus, all persons who handled the *shabu* seized from accused-appellant testified on how they came to take custody of the illicit drugs, what they did with the said drugs and to whom they subsequently transferred such drugs. Their testimonies established a continuous chain of custody which preserved the identity, integrity and evidentiary value of the dangerous drugs seized from accused-appellant.

In sum, accused-appellant has been correctly found guilty beyond reasonable doubt of illegal sale of 0.50 gram of *shabu* in Criminal Case No. 17700 and of illegal possession of 0.69 gram of *shabu* in Criminal Case No. 17701. The respective penalties imposed on him are likewise proper and in accordance with law.

WHEREFORE, the Decision dated June 22, 2010 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00741 affirming the Joint Judgment dated May 30, 2007 of the Regional Trial Court of Dumaguete City, Branch 30 in Criminal Case Nos. 17700 and 17701 which found the accused-appellant Reynaldo “Andy” Somoza guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

⁵⁹

People v. Cruz, G.R. No. 185381, December 16, 2009, 608 SCRA 350, 367.

WE CONCUR:



MARIA LOURDES P. A. SERENO

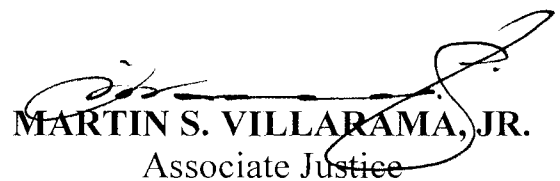
Chief Justice

Chairperson



LUCAS P. BERSAMIN

Associate Justice



MARTIN S. VILLARAMA, JR.

Associate Justice

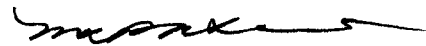


BIENVENIDO L. REYES

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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