



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 191391

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

BENEDICT HOMAKY LUCIO,
Accused-Appellant.

Promulgated:
JUN 19 2013

X ----- X

DECISION

PEREZ, J.:

This is an appeal filed by herein accused Benedict Homaky Lucio (Lucio) from the Decision¹ of the Court of Appeals (CA) affirming the decision of conviction rendered by the Regional Trial Court, Branch 61 of Baguio City for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.²

Factual Antecedents

The prosecution presented a buy-bust case.

¹ Penned by Associate Justice Antonio L. Villamor with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Japar B. Dimaampao concurring. *Rollo*, pp. 2-19.

² An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes.

On 31 March 2004, at around 7:00 o'clock in the evening, a male informant went to the office of Philippine Drug Enforcement Agency-Cordillera Administrative Region (PDEA-CAR) in Baguio City to give information regarding an illegal sale or distribution of dangerous drugs, particularly dried marijuana being done in *Barangay* Lucnab, Baguio City by a couple identified as Wilma and Ben. Upon receiving this information, PO1 Cesario Castro (PO1 Castro), then on-duty as a member of PDEA-CAR, immediately referred the informant to his senior officers, Police Senior Inspectors Edgar S. Apalla (PSI Apalla) and Paul John Mencio (PSI Mencio).³ PSI Apalla and PSI Mencio interviewed the informant regarding the alleged illegal activities of the couple. Giving merit to the statement of the informant, PSI Apalla and PSI Mencio decided to conduct a buy-bust operation.⁴ Thereafter, a buy-bust team was formed composed of PO1 Castro, as the poseur-buyer, SPO4 Arthur Lucas (SPO4 Lucas) as the arresting officer, Officer Lito Labbutan (Officer Labbutan) as the seizing officer and PO1 Harold Estacio (PO1 Estacio) as the back-up officer. Correlative to his duty as poseur-buyer, PO1 Castro was given two (2) pieces of five hundred peso (₱500.00) bill marked money by PSI Apalla to be used in buying marijuana from the couple.⁵ PO1 Castro then placed his initials in the marked money and gave it to PO3 Dorotheo T. Supa (PO3 Supa) for the purpose of writing the details of the money in the blotter of Police Precint 3, Pacdal, Baguio City and coordinating the PDEA's buy-bust operation with the police.⁶

At around 8:15 in the evening, the members of the buy-bust team, together with the informant proceeded to the area of operation in *Barangay* Lucnab, Baguio City on board the PDEA's service vehicle.⁷ Upon arrival, the informant led PO1 Castro to the shanty of the couple, while the back-up police officers followed from behind.⁸ The informant then called for the name Ben several times.⁹ A male individual came out from the shanty and asked what their business was.¹⁰ Both standing in front of the door, the informant introduced PO1 Castro to Ben (identified as the accused Benedict Homaky Lucio during trial) as a taxi driver from Manila interested in buying marijuana to be transported back to Manila.¹¹ Afterwards, PO1 Castro and Lucio transacted which led to the latter's offer that he was selling the marijuana brick for ₱1000.00 each. Lucio further offered that he would sell

³ TSN, 22 February 2005, pp. 4-5; Direct Examination of PO1 Castro.

⁴ Id. at 9.

⁵ Id. at 9-10.

⁶ TSN, 16 March 2005, p. 15; Cross Examination of PO1 Castro; Records, p. 361. RTC Decision.

⁷ Id. at 21-22.

⁸ Id. at 23 and 26-27.

⁹ Id. at 28.

¹⁰ Id. at 30.

¹¹ Id. at 34.

the brick for ₱800.00 each if PO1 Castro would buy at least five (5) bricks. PO1 Castro then asked for a sample to determine the quality of the marijuana which prompted Lucio to ask his female companion Wilma Padillo Tomas (Wilma) to get one inside. Upon examination of the brick handed by Wilma, PO1 Castro requested Lucio and Wilma if he could see other samples.¹² Lucio heeded to his request and allowed him to go inside and look for something of bigger size. Inside the shanty, PO1 Castro noticed a white nylon sack just behind the door with marijuana bricks inside. Lucio pointed at the nylon sack and asked if he can choose the brick he wanted. PO1 Castro examined one from the sack but opted to choose the one given by Wilma. During this time, the informant only entered half of his body to observe the transaction while Wilma stood in the middle of the half-opened door.¹³ Afterwards, Lucio and PO1 Castro went out in order to examine the brick because the shanty was only lighted by a candle. PO1 Castro decided to buy one (1) brick of marijuana from the accused and handed the two (2) five hundred bills to Lucio as payment.¹⁴

After handling the money, he then switched off his flashlight several times as his pre-arranged signal that transaction has been consummated. Immediately thereafter, the arresting and back-up officers hiding from behind approached them and arrested Lucio and Wilma. The officers then informed the couple that they were being arrested for selling marijuana and informed them of their constitutional rights in Tagalog and Ilocano.¹⁵ Lucio immediately denied ownership of the marijuana bricks.¹⁶ A body search was conducted against Lucio and the marked money, still being held by him, was recovered.¹⁷ Thereafter the officers confiscated the sack containing the marijuana bricks and made an inventory of the bricks inside the shanty in the presence of the couple¹⁸ which yielded thirty six (36) marijuana bricks on initial count, thirty (35) bricks inside the sack and one (1) brick sold to PO1 Castro.

Lucio and Wilma, together with the confiscated marijuana bricks, were brought by the arresting officers to the PDEA Office for proper documentation and identification.¹⁹ Inside the office, PO1 Castro then put his initial “GCPC,” signature “GCP Castro” and the date on the marijuana brick sold to him as well as on the confiscated 35 marijuana bricks.²⁰ Other

¹² TSN, 15 March 2005, pp. 9-11; Direct Examination of PO1 Castro.

¹³ Id. at 14-17.

¹⁴ TSN, 16 March 2005, p. 34; Cross Examination of PO1 Castro.

¹⁵ TSN, 15 March 2005, pp. 19-21; Direct Examination of PO1 Castro.

¹⁶ Id. at 22.

¹⁷ Records, p. 58. Joint Affidavit of Arrest.

¹⁸ TSN, 15 March 2005, pp. 22-23; Direct Examination of PO1 Castro.

¹⁹ Id. at 25.

²⁰ Id. at 4; Records, p. 59. Inventory of Seized Item.

members of the buy-bust team also affixed their initials on the bricks for proper identification as evidenced by the markings “*LPL*” as the initial of Officer Labbutan as the seizing officer, “*HPE*” as the initial of PO1 Estacio as the back-up element and “*AAL*” as the initial of SPO4 Lucas as the arresting officer.²¹ Inside the office, a recounting of the confiscated bricks was done in the presence of the Prosecutor E. Sagsago, the buy-bust team, the *Barangay* Officials and media personalities who thereafter affixed their signatures on the Inventory of the Seized Item²² prepared in relation to the operation.²³ Thereafter, the seized marijuana bricks were sent to the PNP Crime Laboratory Service-CAR for laboratory examination. The laboratory examination conducted by Forensic Officer Emilia Gracio Montes yielded positive results for marijuana, a dangerous drug on all the thirty-five bricks tested.²⁴

The other prosecution witnesses SPO4 Lucas and Officer Labbutan corroborated the statements of PO1 Castro on materials points.²⁵

The defense interposed frame-up.

On his part, accused Lucio denied both illegal sale and possession of marijuana bricks that occurred on 31 March 2004 at Lucnab, Baguio City. He testified that on 28 March 2004, he met his uncle Alex Accatan (Alex), a cousin of his father, at the trading post at Km. 5, La Trinidad, Benguet. He was there with his live-in partner Wilma to bring vegetables; while Alex was there to get some vegetables for his pigs. During the course of their conversation, Alex told him and Wilma that he has a house located at Lucnab, Baguio City and invited them to come on 31 March 2004 as his son will be graduating from elementary education.²⁶ For them to know how they can reach the house on the 31st, Alex asked them go with him on that day to his residence. At around 3:00 in the afternoon, they all went to Alex’s house as planned where the couple met for the first time Alex’s wife. After a brief talk, Lucio and Wilma went back to their residence at Bugias, Ifugao.²⁷

On 31 March 2004, Lucio and Wilma went to the house of Alex as requested and arrived there at around 4:30 in the afternoon. Upon arrival, Lucio was told by his uncle’s minor child that Alex went to Teacher’s

²¹ Records, p. 59; Inventory of Seized Item.

²² Id.

²³ Id. at 57-58.

²⁴ Records, p. 66; Initial Laboratory Examination Report.

²⁵ TSN, 27 September 2005; TSN, 26 October 2005.

²⁶ TSN, 30 January 2006, pp. 6-7; Direct Examination of Lucio.

²⁷ Id. at 8.

Camp. As it was already getting late, Lucio called his uncle through his cellular phone and was told by the latter that they can spend the night at the house of his neighbor identified as Kollit. This Kollit, as told by his uncle, permitted them to use the house.²⁸ He was then instructed to get the key from his uncle's daughter Arlene Accatan (Arlene). Lucio and Wilma proceeded to the house of Kollit to rest but left their small bag inside the house of Alex.²⁹

While resting inside, somebody knocked at the door and shouted the name, "Kollit, Kollit." Lucio answered that Kollit was not there but the persons outside responded by kicking the door open and entered the house. These persons inquiring about Kollit introduced themselves as policemen and asked about marijuana. When the accused denied any knowledge, these policemen, whom he noticed as armed, searched the room and recovered a sack under the bed.³⁰ Afterwards, Lucio was handcuffed to the left hand of PO1 Estacio and was brought to another house located below the place of Kollit.³¹ The policemen inquired again about Kollit and destroyed the door of the second house adjacent to the first house where Lucio and Wilma were resting.³² Thereafter, the couple were brought to the PDEA Office where they were told that marijuana was recovered from them. They denied ownership of the marijuana found inside the sack and reiterated their plea that they were only allowed to sleep inside the house of Kollit.³³

Lucio and Wilma were brought to the Baguio General Hospital for physical examination. Upon their return to the PDEA Office, the PDEA Officers then called a media representative, a member of the Department of Justice and a *barangay* official for inventory witnessing. Afterwards, pictures of the sack allegedly recovered from them together with the two pieces of five hundred peso (₱500.00) bill were taken.³⁴

Alex corroborated the testimony of Lucio that he invited him and his companion Wilma into his house on 31 March 2004 when they met at the trading post on 28 March 2004.³⁵ He narrated that when Lucio called him, he was doubtful if the latter was already at his residence or just on his way. Alex told Lucio that if he would still be going, there might be several visitors in his home at that time. He added that he can get the key of his

²⁸ Id. at 11-12.

²⁹ Id. at 13-14.

³⁰ Id. at 15-17.

³¹ Id. at 17.

³² TSN, 6 February 2006, pp. 9-10; Continuation of the Direct Testimony of Lucio.

³³ Id. at 10-11.

³⁴ Id. at 11-12.

³⁵ TSN, 13 February 2006, pp. 3-4; Direct Examination of Alex.

neighbor's house from his daughter Arlene. He identified the name of his neighbor Kullit³⁶ as Arthur Basilan.³⁷

Upon returning home, he was surprised to know that Lucio was arrested by policemen and was being investigated for a sack of marijuana allegedly taken from him.³⁸

Another witness for the defense is Martisio Paguli, the *Barangay* Chairman of Lucnab, Baguio City. He testified that at around 9:00 in the morning of 1 April 2004, he received a message that somebody was arrested in his *purok*. He then proceeded to the PDEA Office and was asked by PSI Mencio to identify Lucio and Wilma. He replied that he did not know them and that was the first time he saw the two accused.³⁹ He was able to talk to Lucio who informed him of his name and that the purpose of his visit to Lucnab was to attend the graduation of Alex's son.⁴⁰ He also identified that a certain Arthur Basilan owned the house where Lucio and Wilma were arrested.⁴¹

Wilma and Arlene, daughter of Alex, were also presented to corroborate the testimony of Lucio regarding the real circumstances of what transpired on 31 March 2004.⁴²

Lucio and Wilma were eventually charged with Illegal Sale and Possession of Dangerous Drugs punishable under Sections 5 and 11 of Article II of R.A. No. 9165. Two sets of information were eventually filed by the Office of the Prosecutor of Baguio City. The accusatory portion of the Information in violation of Section 5 of Article II of R.A. No. 9165 reads:

Criminal Case No. 22910-R

That on or about the 31st day of March, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [referring to Lucio and Wilma] conspiring, confederating and mutually aiding one another and without the authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver one (1) brick of dried marijuana leaves, weighing 741.7 grams for

³⁶ Termed as Kollit by Lucio.

³⁷ TSN, 13 February 2006, pp. 10-12; Direct Examination of Alex.

³⁸ Id. at 13-14.

³⁹ TSN, 15 February 2006, p. 8; Direct Examination of Martisio Paguli.

⁴⁰ Id. at 9.

⁴¹ Id. at 13-14; Cross Examination of Martisio Paguli.

⁴² TSN, 16 November 2006; Cross Examination of Wilma; TSN, 27 April 2006; Direct Examination of Arlene.

One Thousand Pesos (₱1,000.00), Philippine Currency, to PO1 Gil Cesario P. Castro, a member of the PNP who acted as poseur buyer, knowing fully well that said dried marijuana leaves, is a dangerous drug, in violation of the aforementioned provision of law.⁴³

On the other hand, the accusatory portion of the Information in violation of Section 11 of Article II of R.A. No. 9165 reads:

Criminal Case No. 22911-R

That on or about the 31st day of March, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [referring to Lucio and Wilma] conspiring, confederating and mutually aiding one another and without the authority of law, did then and there willfully, unlawfully and feloniously have in their possession and control thirty five (35) bricks of dried marijuana leaves with approximate total weight of twenty four (24) kilos, a dangerous drug, without the corresponding license or prescription, in violation of the aforecited provision of law.⁴⁴

When arraigned, both accused pleaded not guilty to the offenses charged.

Ruling of the Trial Court

The trial court on 12 December 2006 rendered a decision,⁴⁵ the dispositive portion reads:

WHEREFORE, judgment is rendered finding the accused Benedict Homaky Lucio **GUILTY** beyond reasonable doubt in both cases and he is sentenced to suffer Life Imprisonment in each case and likewise to pay a fine of P500,000.00 in each case and the costs.

The accused Wilma Padillo Tomas is **ACQUITTED** in both cases on grounds of reasonable doubt and she is hereby **ORDERED RELEASED** from the custody unless being held for some other offense requiring her continued detention.⁴⁶

The trial court justified the guilty verdict against Lucio as it was convinced that the elements of both illegal sale and possession of dangerous

⁴³ Records of Criminal Case No. 22910-R, p. 1.

⁴⁴ Records of Criminal Case No. 22911-R, p. 1.

⁴⁵ Records, pp. 360-375.

⁴⁶ Id. at 375.

drug were sufficiently established by the prosecution.⁴⁷ It also recognized the credibility of the testimonies of the police officers pertaining to the buy-bust operation⁴⁸ and the positive identification of the accused as the seller of the bricks of marijuana.⁴⁹

Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court, the dispositive portion⁵⁰ reads:

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 61, Baguio City, in Criminal Case Nos. 22910-R & 22911-R finding appellant Benedict Homaky Lucio guilty of Violation of R.A. 9165 is AFFIRMED *in toto*.

It ruled that all the elements of illegal sale and illegal possession of dangerous drug were proven by the prosecution. It also upheld the credibility of the witnesses and placed highest respect on the findings of facts of the trial court. It likewise disregarded the absence of surveillance or test buy prior to the buy-bust operation as well as the strict compliance of the requirements to establish chain of custody under Sec. 21 of R.A. No. 9165.

Our Ruling

After a careful review of the evidence, we affirm the ruling of conviction of both the trial court and CA.

In *People v. Llanita*⁵¹ citing *People v. Unisa*,⁵² the Court ruled that in order to successfully prosecute an offense of illegal sale of dangerous drugs, like shabu, the following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.

In illegal sale, what the prosecution needs to present is proof that a transaction or sale actually took place, coupled with the presentation in court

⁴⁷ Id. at 368.

⁴⁸ Id. at 369-370.

⁴⁹ Id. at 370-371.

⁵⁰ CA *rollo*, pp. 149-150.

⁵¹ G.R. No. 189817, 3 October 2012.

⁵² G.R. No. 185721, 28 September 2011, 658 SCRA 305, 324 citing *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 653 SCRA 673, 686.

of evidence of the *corpus delicti*. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale with moral certainty.⁵³

Upon examination of the testimonies of PO1 Castro on both his direct and cross examinations, we are convinced of Lucio's guilt on both charges.

The following narrates the course of buying and selling to constitute illegal sale:

- Q: While you were transacting with the other accused Benedict Homaky Lucio where were you again situated?
A: Just in front of their shanty, Sir.
Q: Who was beside you?
A: The male Informant, Sir.

x x x x

- Q: What was the gist of your conversation then with Benedict Lucio?
A: We were transacting with the marijuana he was selling it for [P]1,000.00 per brick so during our conversation I made some bargain, Sir.⁵⁴

x x x x

His cross-examination supplants further details:

- Q: And so after huddling (sic) you decided to buy just one (1) brick?
A: Yes, Sir.
Q: And you said that you delivered the buy-bust money to one of the accused?
A: Yes, Sir.
Q: How did you deliver it?
A: I handed to him the two (2) 500.00 peso bills, Sir.
Q: Where did he place it?
A: He was holding it, Sir.⁵⁵

⁵³ *People v. Reyna Llanita and Sotero Buar*, supra note 51.

⁵⁴ TSN, 15 March 2005, pp. 8-9; Direct Examination of PO1 Castro.

⁵⁵ TSN, 16 March 2005, p. 34; Cross Examination of PO1 Castro.

In this case, the police officers positively identified Lucio as the one who transacted and sold marijuana bricks to PO1 Castro in exchange of the marked money consisting of two (2) five hundred peso (₱500.00) bills. As per Chemistry Report of Police Inspector Emilia Gracio Montese, the submitted items consisting of thirty five suspected marijuana bricks to the Benguet Provincial Crime Laboratory Office for examination yielded positive results for presence of dangerous drugs.⁵⁶ The marijuana brick marked as Exhibit A was likewise presented in court with the proper identification by PO1 Castro.

Lucio's conviction on illegal possession is likewise affirmed. To prosecute Lucio of illegal possession of dangerous drugs, there must be a showing that (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.⁵⁷

It must be noted that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*, which is sufficient to convict him, unless there is a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to Lucio to explain the absence of knowledge or *animus possidendi*.⁵⁸ In this case, the illegal possession came about when Lucio allowed PO1Castro to look for other bricks inside the sack. The following narration shows wilful possession of illegal drugs:

Q: What did you actually tell him?

A: I told him it cost a lot, Sir.

Q: And so what did he say?

A: He said that if I will take at least five (5) bricks of marijuana he will give it for P800.00 per brick, Sir.

Q: So for five (5) bricks that would be about...

A: P4,000.00, Sir.

Q: What did you say to that?

A: I asked him to look for the sample of the marijuana in order to determine if it is with good quality, Sir.

Q: What did he do to comply with your request?

A: He asked Wilma Padillo to get sample inside their shanty, Sir.

Q: What happened next?

A: Wilma Padillo reached for the half opened door just behind the door of their shanty that sample, Sir.⁵⁹

x x x x

⁵⁶ Records, p. 66.

⁵⁷ *People v. Sembrano*, G.R. No. 185848, 16 August 2010, 628 SCRA 328, 342-343 citing *People v. Lagman*, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.

⁵⁸ *People v. Unisa*, supra note 52 citing *People v. Pendatun*, 478 Phil. 201, 212 (2004).

⁵⁹ TSN, 15 March 2005, pp. 9-10; Direct Examination of PO1 Castro.

- Q: From the time that it was given to you by the accused Wilma Padillo, who had custody of it if you know?
- A: I took hold of this as my sample but at the same time requested the couple to see if there are some other things because it appears to be like it doesn't look like one (1) kilo.
- Q: What did the two (2) say to that request of yours?
- A: I requested if Benedict would allow me to go inside their shanty and to look for something that has a bigger size, Sir.
- Q: What happened next after that?
- A: He acceded, he allowed me to enter inside their shanty, Sir.⁶⁰

x x x x

- Q: What happened next?
- A: When I entered their shanty, I noticed a white nylon sack just behind the door with some marijuana bricks inside, Sir.
- Q: Is that the same door where Benedict and Wilma were standing?
- A: Yes, Sir.
- Q: And that is the same door you were facing while you were talking with Benedict and Wilma?
- A: Yes, Sir.
- Q: How were you able to see this white nylon sack?
- A: Benedict pointed it, Sir.
- Q: When he pointed it did you see anything?
- A: He said that I can choose what brick I wanted, Sir.
- Q: How did he say it?
- A: In Ilocano, Sir.
- Q: Tell us how he told it in Ilocano?
- A: "Agpili ka latta ditan", Sir.

COURT: Which means "just choose from the sack."

- Q: After he said that what happened next?
- A: I carefully choose one but I opted to get hold of the previous one that was given to me and told "daytoy laengan", Sir.⁶¹

To recapitulate the elements, Lucio was in possession of marijuana bricks identified to be prohibited drugs, such possession was not authorized by law and he freely and consciously possessed the said drugs.

In his appellant's brief, Lucio questions the full credence given by the lower courts to the version of the prosecution despite their irregularities and inconsistencies. Among the lapses asserted was the lack of previous surveillance prior to the buy-bust operation. No test buy was conducted to

⁶⁰ Id. at 13-14.

⁶¹ Id. at 15-16.

confirm the truthfulness of the statements given by the informant which prompted the operation.⁶²

It must be stressed that prior surveillance is not a prerequisite for the validity of an entrapment operation. This issue in the prosecution of illegal drugs cases, again, has long been settled by this Court. We have been consistent in our ruling that prior surveillance is not required for a valid buy-bust operation, especially if the buy-bust team is accompanied to the target area by their informant.⁶³

In *People v. Eugenio*,⁶⁴ the Court held that there is no requirement that prior surveillance should be conducted before a buy-bust operation can be undertaken especially when the policemen are accompanied to the scene by their civilian informant. Prior surveillance is not a prerequisite for the validity of an entrapment or a buy-bust operation, there being no fixed or textbook method for conducting one. When time is of essence, the police may dispense with the need for prior surveillance. The buy-bust operation conducted by PO1 Castro and the rest of them, together with their civilian informant is justified by the urgency of the situation.

Another point argued is the inconsistency of the recollection of events by PO1 Castro, PO1 Labbutan and SPO4 Lucas with regard to the recovery of the marked money from the accused. PO1 Castro recalled that it was recovered from the hand of Lucio while PO1 Labbutan and SPO4 Lucas testified that the same was recovered from the pocket of the accused after a body search.⁶⁵

We cannot sustain his argument. In order for a discrepancy or inconsistency between the testimonies of witnesses to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused x x x. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.”⁶⁶

As stated in *People v. Albarido*:⁶⁷

⁶² CA rollo, p. 55; Brief for the Accused-Appellant.

⁶³ *People v. Abedin*, G.R. No. 179936, 11 April 2012, 669 SCRA 322, 338 citing *People v. Lacbanes*, 336 Phil. 933, 941 (1997).

⁶⁴ 443 Phil. 411, 422-423 (2003).

⁶⁵ CA rollo, p. 56; Brief of the Accused-Appellant.

⁶⁶ *People v. Gonzaga*, G.R. No. 184952, 11 October 2010, 632 SCRA 551, 570 citing *People v. Lazaro, Jr.*, G.R. No. 186418, 16 October 2009, 604 SCRA 250, 272.

⁶⁷ 420 Phil. 235, 244 (2001).

It is elementary in the rule of evidence that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed. Further, in *People vs. Maglente*, this Court ruled that inconsistencies in details which are irrelevant to the elements of the crime are not grounds for acquittal. x x x.⁶⁸

In this case, the question as to what part of the body of the accused did the police officers recover the money does not dissolve the elements of illegal sale and possession as minor inconsistencies do not negate or dissolve the eyewitnesses' positive identification of the appellant as the perpetrator of the crime.⁶⁹ Minor inconsistencies in the narration of PO1 Castro, PO1 Labbutan and SPO4 Lucas do not detract from their essential credibility as long as their testimony on the whole is coherent and intrinsically believable.⁷⁰

The accused also put into issue the capacity of the back-up officers to witness the alleged transaction as the place was very dark and without electricity. He argues that the only source of light was a candle inside the shanty.⁷¹

We disagree. The fact that the area and shanty were poorly lighted did not prevent the members of the buy-bust team to witness the transaction. During his cross examination, prosecution witness SPO4 Lucas was able to describe the surrounding environment at the time of the transaction.

- Q: Are there lights along the way going to the shanty of the accused?
 A: From the road to the houses there are lights but there is no light near the shanty, sir.
 Q: What do you mean sa taas?
 A: Because the shanty house is located below, sir.
 Q: What then illuminates the shanty, are there light[s] near the house of the accused?
 A: There is because there is a street light, sir.
 Q: So a light coming from a post illuminates the vicinity of the shanty?
 A: Yes even the neighbors illuminates the shanty dahil ang lapit lang ng bahay dito yung kapitbahay mo dito lang sa baba yung shanty house, sir.
 Q: Now you said that when the back up team followed secretly the C.I. and thee poseur buyer.

⁶⁸ *People v. Asilan*, G.R. No. 188322, 11 April 2012, 669 SCRA 405, 418.

⁶⁹ *People v. Daen, Jr.*, G.R. No. 112015, 26 March 1995, 244 SCRA 382, 390.

⁷⁰ *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364.

⁷¹ CA rollo, 56-57; Brief for the Accused-Appellant.

- A: Yes, sir.
- Q: So that they were ahead with you?
- A: Not too far, sir.
- Q: And according to you the rest of the team [hide] behind big trees and tall grasses?
- A: Yes, sir.
- Q: That is why the accused were not able to notice your presence?
- A: No, because we were almost seven meters from the shanty house, sir.
- Q: And you were able to see the transaction between the accused?**
- A: Yes, because there is light at the shanty house and the transaction is being conducted outside the shanty, sir.**
- Q: Now you said that after the transaction between the poseur buyer and the accused Homacky, you immediately rush to the place and arrested the accused, correct?
- A: When the poseur buyer signal that's the time when we the back up team rush to the scene and effect the arrest of the suspect, sir.⁷²
(Emphasis supplied)

The accused also put in issue the withdrawal of the chemistry reports on the urine tests conducted on the accused. The accused noted as an intriguing circumstance why it was withdrawn as part of the prosecution's exhibit.⁷³

In the presentation of evidence, the prosecution or the defense has the discretion on what to present as evidence or choose whom it wishes to present as witnesses in order to establish its cause of action. For example, the prosecution's failure to present the chief investigator in court is not fatal to its cause.⁷⁴

In his final effort to evade conviction, the accused challenged the establishment of chain of custody of illegal drugs.

In *People v. Kamad*,⁷⁵ the following elements are necessary in order to establish the chain of custody in a buy-bust operation:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

⁷² TSN, 17 October 2005, pp. 10-13; Cross Examination of SPO4 Lucas.

⁷³ CA rollo, p. 57; Brief for the Accused-Appellant.

⁷⁴ *People v. Ulama*, G.R. No. 186530, 14 December 2011, 662 SCRA 599, 612.

⁷⁵ *People v. Kamad*, G.R. No.174198, 19 January 2010, 610 SCRA 295.

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 by the forensic chemist to the court.⁷⁶

Upon review, we are convinced that the prosecution had sufficiently proved all the elements to establish chain of custody of illegal drugs. In his direct examination, PO1 Castro positively identified the marijuana brick sold to him through the markings “GCPC GCP Castro” and date “3/31/04” placed on the brick also identified as Exhibit A.⁷⁷ The rest of the marijuana bricks subject of illegal possession case were likewise marked with AAL, LPL GCPC and HPE and dated as “3/31/04” numbered from B-1 to B-35.⁷⁸ Upon taking custody of the marijuana bricks, the marijuana bricks were brought to the PDEA Office for proper investigation and documentation.⁷⁹ The same were properly inventoried and recounted in the presence of the fiscal and the arresting team.⁸⁰ Thereafter, a request for examination of the marijuana bricks was sent to the PNP Crime Laboratory to determine presence of illegal drug.⁸¹ As per Chemistry Report identified as Exhibit “G” made by Forensic Chemist Officer Emilia Gracio Montes, Exhibits “A” and “B,” consisting of the marijuana brick sold to PO1 Castro as well the thirty five bricks confiscated, all resulted positive of presence of dangerous drug.⁸²

There was a question regarding the physical condition of the marijuana bricks when they were allegedly bought and confiscated compared to when they were presented in court. It was argued that the bricks were wrapped in newspapers when bought, but when presented in court, they were already found with packing tape and contained in a plastic bag.⁸³

This observation cannot be taken against the prosecution. It is only natural that the bricks were no longer be wrapped in newspapers as they were opened by the forensic chemist for testing purposes. It was explained by the prosecution that when the bricks were brought back to the prosecutor’s office, a portion of the bricks was cut in order to take representative samples.

⁷⁶ Id. at 307-308.

⁷⁷ TSN, 15 March 2005, p. 4; Direct Examination of PO1 Castro.

⁷⁸ Records, p. 59.

⁷⁹ TSN, 15 March 2005, p. 25; Direct Examination of PO1 Castro.

⁸⁰ Id. at 27.

⁸¹ Id. at 28.

⁸² Records, p. 66.


⁸³ CA *rollo*, p. 56; Brief for the Accused-Appellant.

It has been ruled time and again that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165⁸⁴ does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.⁸⁵

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.⁸⁶

WHEREFORE, the instant appeal is **DENIED**. Accordingly, the decision of the Court of Appeals dated 14 December 2009 in CA-G.R. CR-H.C. No. 02676 is hereby **AFFIRMED**. No cost.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

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Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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;

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⁸⁵

Imson v. People, G.R. No. 193003, 13 July 2011, 653 SCRA 826, 835.

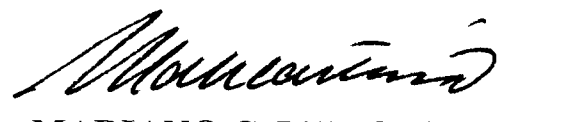
⁸⁶


People v. Unisa, supra note 52 at 334-335 citing *People v. Dela Rosa*, G.R. No. 185166, 26 January 2011 further citing *People v. Rosalda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 521.

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

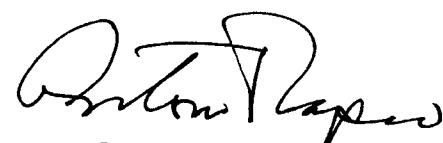

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision were 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, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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