Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

GIOVANNI OCFEMIA y CHAVEZ,
Accused-Appellant.

G.R. No. 185383

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
REYES,
PERLAS-BERNABE,* and
LEONEN,** *JJ.*

Promulgated:

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DECISION

LEONARDO-DE CASTRO, *J.*:

For review is the Decision[1] dated May 27, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02481, which affirmed the Decision[2] dated August 31, 2006 of the Regional Trial Court (RTC), Branch 13, of the City of Ligao in Criminal Case No. 4594, finding accused-appellant Giovanni C. Ocfemia guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

In the Information dated April 14, 2003, accused-appellant was charged before the RTC as follows:

> That at or about eight thirty o'clock in the morning of February 21, 2003, at Barangay San Rafael, Municipality of Guinobatan, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, having in his possession, custody and control

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* Per Special Order No. 1537 (Revised) dated September 6, 2013.
** Per Special Order No. 1545 (Revised) dated September 16, 2013.
1 *Rollo*, pp. 2-29; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Noel G. Tijam and Ramon M. Bato, Jr., concurring.
2 CA *rollo*, pp. 28-47; penned by Judge Angeles S. Vasquez.

> methamphetamine hydrochloride commonly known as "shabu," did then and there willfully, unlawfully and feloniously sell one piece of transparent plastic sachet weighing 0.0953 gram of shabu, a prohibited drug, to a poseur-buyer in consideration of the amount of Five Hundred Pesos (₱500.00), without any authority or permit from the concerned government agency to possess and sell the same.[3]

Accused-appellant pleaded not guilty when he was arraigned on May 29, 2003.[4]

The prosecution presented the testimonies of Police Superintendent (P/SUPT) Lorlie Nilo Arroyo (Arroyo),[5] Forensic Chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office at Camp General Simeon Ola in Legaspi City; Police Officer (PO) 2 Martin Benedict Aldea (Aldea);[6] and PO3 Emerito Zamora (Zamora).[7] The prosecution also proffered documentary and object evidence consisting of the Request for Laboratory Examination[8] of the "[o]ne (1) pc. transparent plastic sachet containing white crystalline substance, a suspected *shabu*," prepared by Police Senior Inspector (PS/INSP) Dennis Ariston Vargas (Vargas) of the Philippine Drug Enforcement Agency (PDEA), Albay Provincial Office; the Chemistry Report No. D-067-2003[9] dated February 21, 2003 issued by P/SUPT Arroyo; three plastic sachets[10] of varying sizes – inside the small plastic sachet was a smaller plastic sachet, and inside the smaller plastic sachet was the smallest plastic sachet, containing white crystalline substance; and two pieces of ₱100.00 marked bills.[11]

The entirety of the evidence for the prosecution presented the following version of events:

Based on a tip from a confidential informant, a team, headed by PS/INSP Vargas and composed of PO3 Zamora, PO2 Aldea, and other agents/officers from PDEA and the PNP Criminal Investigation and Detection Group (CIDG), conducted a buy-bust operation against accused-appellant in San Rafael, Guinobatan, Albay, on February 21, 2003. PO2 Aldea was designated to act as the poseur-buyer and was given five marked ₱100.00 bills to be used as buy-bust money.

Around 8:00 in the morning, the team, together with the informant, proceeded to accused-appellant's residence in San Rafael, Guinobatan, Albay. The team members strategically positioned themselves within the vicinity of accused-appellant's residence right before the informant and PO2

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3 Records, p. 25.
4 Id. at 41-42.
5 TSN, October 2, 2003.
6 TSN, January 30, 2004 and February 4, 2004.
7 TSN, May 5, 2004.
8 Records, p. 181.
9 Id. at 182.
10 Exhibits B-4 and B-5; Left in the custody of the RTC.
11 Records, p. 7.

Aldea transacted with accused-appellant. The informant called out to accused-appellant who came out of his house. The informant then introduced PO2 Aldea to accused-appellant as a buyer of *shabu*. PO2 Aldea handed the five marked ₱100.00 bills to accused-appellant. Accused-appellant went inside his house and came back a few minutes later to hand a heat-sealed small plastic sachet of *shabu* to PO2 Aldea. After examining the purchased item, PO2 Aldea took off his cap from his head, the pre-arranged signal for the rest of the team that the transaction had been consummated. PO3 Zamora and the other team members rushed to the scene, apprised accused-appellant of his constitutional rights, and apprehended accused-appellant. Incidental to accused-appellant's lawful arrest, PO3 Zamora bodily frisked accused-appellant and was able to retrieve only two of the five marked ₱100.00 bills from accused-appellant's possession. Thereafter, accused-appellant was brought to the police station.

At the police station, PO2 Aldea marked with his initials the sachet of *shabu* sold to him by accused-appellant. PO2 Aldea then submitted the said sachet of *shabu* to their crime laboratory, together with PS/INSP Vargas's letter-request for chemical analysis of the same. P/SUPT Arroyo conducted the chemical examination of the submitted specimen which tested positive for methamphetamine hydrochloride.

The defense presented the testimonies of accused-appellant[12] and his spouse, Daisy Ocfemia (Daisy),[13] and the transcript of the preliminary examination conducted by Judge Antonio C. Bagagñan (Bagagñan) of the Municipal Trial Court (MTC) of Guinobatan, Albay, on February 21, 2003.[14]

Daisy testified that her husband, accused-appellant, was engaged in the business of buying and selling of fighting cocks. Accused-appellant would usually leave their house at 6:00 in the morning and return at around 10:00 in the morning. Accused-appellant would leave again at around 3:00 in the afternoon and come home at around 9:00 or 10:00 in the evening. At around 7:00 to 8:00 in the morning of February 21, 2003, accused-appellant returned home, after accompanying their daughter to school, with two companions aboard a tricycle. Accused-appellant's companions introduced themselves as Captain Vargas and PO3 Zamora and they informed Daisy that accused-appellant would go along with them to Camp General Simeon Ola because a certain Cardona wanted to talk with accused-appellant. After that, Captain Vargas and PO3 Zamora left with accused-appellant. The following day, Daisy found out that accused-appellant was already locked up in prison allegedly for the illegal sale of *shabu*.

When accused-appellant took the witness stand, he denied the charge against him and claimed that he was framed-up by the police.

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12 TSN, August 10, 2005 and October 6, 2005.
13 TSN, July 13, 2005.
14 Records, pp. 17-21.

Accused-appellant averred that he was an "asset" of the police, having once joined the police in an entrapment operation in Legaspi City. On February 21, 2003, he joined the police in another buy-bust operation. At around 7:00 in the morning of the said date, PS/INSP Vargas, Senior Police Officer (SPO) 4 Fernando Cardona, and PO3 Zamora dropped by accused-appellant's house to ask accused-appellant to accompany them to Iriga City. Accused-appellant assented to the police officers' request and on their way to Iriga City, the police officers briefed accused-appellant about the operation. The police officers told accused-appellant that the suspect was a certain Danny Contreras (Contreras) and that accused-appellant would act as the poseur-buyer.

Accused-appellant went on to narrate that upon meeting Contreras at the latter's residence at around noontime, he handed ₱1,000.00 to Contreras. Contreras, in turn, instructed accused-appellant to wait in front of the Park View Hotel, which was about 10 meters from where PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora positioned themselves. Moments later, Contreras met accused-appellant in front of the said hotel and handed to accused-appellant the *shabu.* At this point, the police officers arrested Contreras and brought him to Camp General Simeon Ola. Accused-appellant then turned over the *shabu* to SPO4 Cardona.

Accused-appellant related further that at Camp General Simeon Ola, urine samples were taken from him and Contreras. Thereafter, accused-appellant was escorted by PO3 Zamora to the PDEA to talk to PO2 Aldea. PO2 Aldea disclosed to accused-appellant that accused-appellant would be charged with illegal sale of *shabu*; that PO2 Aldea would claim to be the poseur-buyer at the purported buy-bust operation against accused-appellant; and that PO2 Aldea would testify against accused-appellant. When accused-appellant protested, PO2 Aldea simply replied that it was an order from the latter's superior which could not be refused. Subsequently, accused-appellant was brought to Judge Bagagñan's office in Guinobatan, Albay.

According to accused-appellant, Judge Bagagñan conversed first with PS/INSP Vargas, SPO4 Cardona, and PO3 Zamora. When Judge Bagagñan talked to accused-appellant, the Judge said that he had already signed a document and there was nothing more he could do. Thereafter, accused-appellant was requested to immediately leave Judge Bagagñan's office, giving him no opportunity to ask what document the Judge had signed. SPO4 Cardona approached accused-appellant, asking the latter to please understand ("*Pare, pasensiya na.*") for he "did not want this to happen [,] it was them[,]"[15] referring to the other police officers.

The prosecution presented Judge Bagagñan, already retired by that time, as rebuttal witness. Judge Bagagñan confirmed on the witness stand

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15 TSN, August 10, 2005, p. 18.

that in the evening of February 21, 2003, he conducted the preliminary investigation in accused-appellant's case and that based on the evidence presented before him, he found probable cause to indict accused-appellant. Judge Bagagñan also recalled that after the preliminary investigation, accused-appellant confided that he was a police asset and that he was just being framed-up. Judge Bagagñan, however, brushed aside accused-appellant's claim believing that the same was already a matter of defense best threshed out during the trial.

On October 13, 2005, the RTC, then presided by Acting Presiding Judge William B. Volante (Volante), considered the case submitted for decision.[16]

In the meantime, the Court *en banc* approved on June 8, 2004 Administrative Matter (A.M.) No. 04-5-19-SC, entitled "Resolution Providing Guidelines in the Inventory and Adjudication of Cases Assigned to Judges who are Promoted or Transferred to Other Branches in the Same Court Level of the Judicial Hierarchy," which was reiterated and disseminated by the Office of the Court Administrator (OCA) to all trial judges for their proper observance through OCA Circular No. 90-2004. Pertinent provisions of the Resolution read:

> 3. A judge transferred, detailed or assigned to another branch shall be considered as Assisting Judge of the branch to which he was previously assigned. However, except as hereinbelow provided, the records of cases formerly assigned to him/her shall remain in his/her former branch.
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> 4. The judge who takes over the branch vacated by a transferred/detailed/assigned judge shall, upon assumption of duty and within one (1) week, conduct an inventory of all pending cases in the branch. The inventory shall state the docket number, title and status of each case. The inventory shall be submitted to the Office of the Court Administrator within five (5) working days from completion thereof.
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> **5. Should any case be left undecided by the transferred/detailed/assigned judge, the judge conducting the inventory shall cause the issuance to the parties of a notice of transfer/detail/assignment of the judge to which the case had been assigned, with a directive for the plaintiff/s to manifest, within five (5) days from receipt of such notice, whether or not he/she desires that the transferred judge should decide the case. The desire of the plaintiff, who may opt to have the case decided by the new judge, shall be respected. However, should the defendant oppose the manifestation of the plaintiff, the new judge shall resolve the matter in accordance with these Guidelines. Should the plaintiff fail to submit such manifestation within the said 5-day period, the presumption is**

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16 Records, p. 243.

that he/she desires that the case be decided by the transferred judge.

6. The manifestation of the plaintiff that the case should be decided by the transferred judge shall be forwarded to the Office of the Court Administrator which, upon receipt thereof, shall issue the proper directive. A directive requiring the transferred judge to decide the case immediately shall state any of these conditions:

a) If the new station of the transferred judge is within the province of the judicial region of his/her former station, the case shall be decided in such station by the transferred judge who shall adjust his/her calendar to enable him/her to dispose the undecided case at his/her own expense without sacrificing efficiency in the performance of his/her duties in his/her new station.

b) If the new station of the transferred judge is outside of the province in the judicial region of his/her former station, the records of the undecided case shall be delivered either by personal service or by registered mail, to the transferred judge and at his/her own expense.

In either case, the Office of the Court Administrator shall furnish the parties to the case with a copy of such directive and the transferred judge shall return to his former branch the records of the case with the decision that the new judge shall promulgate in his stead.

7. Should a motion for reconsideration of the decision or for new trial be filed by any party, the transferred judge shall resolve the same. However, if a motion for new trial is granted by the transferred judge, the new judge shall preside over the same, resolve the motion, and see to its final disposition. (Emphasis supplied.)

In an Order dated June 6, 2006, the RTC notified the parties that Acting Presiding Judge Volante had already been replaced by Presiding Judge Angeles S. Vasquez (Vasquez) and directed the parties to manifest within five days from notice whether they want the case to still be decided by Judge Volante, otherwise, it would already be decided by Judge Vasquez.[17] While the prosecution did not submit such a manifestation, accused-appellant filed his Manifestation[18] on July 13, 2006 informing the RTC that he wished for Judge Volante to decide the case.

On August 31, 2006, the RTC promulgated its Decision, penned by Judge Vasquez, convicting and sentencing accused-appellant of the crime charged, to wit:

WHEREFORE, the Court having been convinced of the guilt of the accused, Giovanni Ocfemia, beyond reasonable doubt hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and a

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17 Id. at 248.

18 Id. at 249.

> fine of Five Hundred Thousand Pesos (P500,000.00) with subsidiary imprisonment in case of insolvency.
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> The accused is likewise ordered to suffer the accessory penalties as provided for by law. The prohibited drug known as *Shabu* is ordered confiscated in favor of the government and the same is ordered destroyed by the PDEA in accordance with the existing regulation.[19]

Accused-appellant appealed to the Court of Appeals, arguing that:

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> The Honorable Judge who penned the assailed Decision did not observe the guidelines laid down in A.M. No. 04-5-19-SC contained in OCA Circular No. 90-2004, hence, he has of doubtful authority to render and promulgate the same. The result is a denial of due process.
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> II
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> The prosecution failed to establish beyond reasonable doubt the "*corpus delicti*." It was error on the part of the trial court to convict the accused.
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> III
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> The trial court erred in giving credence to the testimony of Martin Benedict Aldea and Ernesto Zamora, by misapplying the rule that public officers are presumed to have regularly performed their functions.
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> IV
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> The court erred in not giving credence to the defense that there was no buy-bust operation that took place in Guinobatan, Albay, on February 21, 2003, but instead, accused was used a[s] poseur-buyer in a buy-bust operation in Iriga City on the same date.
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> V
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> The prosecution[']s evidence fell short of the required quantum of proof that the guilt of the accused must be proved beyond reasonable doubt.[20]

Following an exchange of Briefs by the parties, the Court of Appeals rendered its Decision on May 27, 2008, with the following dispositive portion:

> **WHEREFORE**, in view of the foregoing, the decision dated August 31, 2006 of the Regional Trial Court of Ligao City, Branch 13 in Criminal Case No. 4594 is hereby **AFFIRMED**.[21]

Accused-appellant comes before this Court seeking the reversal of his conviction.

At the outset, accused-appellant posits that he was effectively denied due process of law. Accused-appellant points out that plaintiff-appellee

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19 CA *rollo*, p. 47.
20 Id. at 59-60.
21 *Rollo*, p. 28.

failed to file its manifestation as directed in RTC Order dated June 6, 2006, giving rise to the presumption that it preferred Judge Volante to decide the case. In his own Manifestation dated July 13, 2006, accused-appellant expressed his desire that the case be decided by Judge Volante for it was said Judge who received the evidence of the parties. Under A.M. No. 04-5-19-SC, Judge Vasquez should have endorsed the case to the OCA for appropriate action, yet said Judge still proceeded to decide the case without even giving any explanation for his non-observance of the guidelines.

The Court is not persuaded.

Preceding A.M. No. 04-5-19-SC was *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila*,[22] in which the Court first laid down the rules on cases left behind by a trial court judge:

> Basically, a case once raffled to a branch belongs to that branch unless reraffled or otherwise transferred to another branch in accordance with established procedure. When the Presiding Judge of that branch to which a case has been raffled or assigned is transferred to another station, he leaves behind all the cases he tried with the branch to which they belong. He does not take these cases with him even if he tried them and the same were submitted to him for decision. The judge who takes over this branch inherits all these cases and assumes full responsibility for them. He may decide them as they are his cases, unless any of the parties moves that his case be decided by the judge who substantially heard the evidence and before whom the case was submitted for decision. If a party therefore so desires, he may simply address his request or motion to the incumbent Presiding Judge who shall then endorse the request to the Office of the Court Administrator so that the latter may in turn endorse the matter to the judge who substantially heard the evidence and before whom the case was submitted for decision. **This will avoid the "*renvoir*" of records and the possibility of an irritant between the judges concerned, as one may question the authority of the other to transfer the case to the former.** If coursed through the Office of the Court Administrator, the judge who is asked to decide the case is not expected to complain, otherwise, he may be liable for insubordination and his judicial profile may be adversely affected. Upon direction of the Court Administrator, or any of his Deputy Court Administrators acting in his behalf, the judge before whom a particular case was earlier submitted for decision may be compelled to decide the case accordingly.
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> We take this opportunity to remind trial judges that once they act as presiding judges or otherwise designated as acting/assisting judges in branches other than their own, cases substantially heard by them and submitted to them for decision, unless they are promoted to higher positions in the judicial ladder, may be decided by them wherever they may be if so requested by any of the parties and endorsed by the incumbent Presiding Judges through the Office of the Court Administrator. The following procedure may be followed: *Firs*t, the Judge who takes over the branch must immediately make an inventory of the cases submitted for decision left behind by the previous judge (unless the latter has in the meantime been promoted to a higher court). *Second*,

[22] 354 Phil. 698, 704-706 (1998).

> the succeeding judge must then inform the parties that the previous judge who heard the case, at least substantially, and before whom it was submitted for decision, may be required to decide the case. In this event, and upon request of any of the parties, the succeeding judge may request the Court Administrator to formally endorse the case for decision to the judge before whom it was previously submitted for decision. *Third*, after the judge who previously heard the case is through with his decision, he should send back the records together with his decision to the branch to which the case properly belongs, by registered mail or by personal delivery, whichever is more feasible, for recording and promulgation, with notice of such fact to the Court Administrator.
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> Since the primary responsibility over a case belongs to the presiding judge of the branch to which it has been raffled or assigned, he may also decide the case to the exclusion of any other judge provided that all the parties agree in writing that the incumbent presiding judge should decide the same, or unless the judge who substantially heard the case and before whom it was submitted for decision has in the meantime died, retired or for any reason has left the service, or has become disabled, disqualified, or otherwise incapacitated to decide the case.
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> The Presiding Judge who has been transferred to another station cannot, on his own, take with him to his new station any case submitted for decision without first securing formal authority from the Court Administrator. **This is to minimize, if not totally avoid, a situation of "case-grabbing."** In the same vein, when the Presiding Judge before whom a case was submitted for decision has already retired from the service, the judge assigned to the branch to take over the case submitted for decision must automatically assume the responsibility of deciding the case. (Emphases supplied.)

Eventually, the Court observed in the Whereas Clauses of A.M. No. 04-5-19-SC that despite existing administrative circulars and its Resolution in *Mabunay*, "judges who are promoted or transferred to other stations leave many undecided cases, thereby unfairly creating additional workload for judges who are subsequently appointed thereto[,]" hence, the Court resolved to adopt guidelines under which "cases assigned to judges who have been transferred, detailed or assigned to any branch within or outside the judicial region of the same court or promoted to a higher court shall be managed and decided[.]"

It is clear from the foregoing that the reason behind A.M. No. 04-5-19-SC is primarily administrative, *i.e.*, to establish an orderly system for the management and disposition of cases of a trial court in the event of transfer, reassignment, or promotion of its presiding judge. It intends to prevent conflict between the transferred judge and the new judge, and confusion as to when, where, and how case records shall be transferred and decisions shall be promulgated in such cases. It does not touch upon any jurisdictional issue and, in general, does not have any effect on the validity of the decision or resolution of either the transferred judge or the new judge.

A.M. No. 04-5-19-SC actually recognizes that both the transferred judge and the new judge can decide the case but gives consideration to the preference of the parties. Indeed, Judge Volante was the presumed choice of plaintiff-appellee and the expressed option of accused-appellant to decide Criminal Case No. 4594. Under A.M. No. 04-5-19-SC, Judge Vasquez should have endorsed the case to the OCA, which, in turn, would have authorized Judge Volante to decide the case. Nonetheless, while Judge Vasquez may face administrative liability (after appropriate administrative proceedings) for his failure to comply with A.M. No. 04-5-19-SC, his Decision dated August 31, 2006 in Criminal Case No. 4594 is completely valid absent any showing that it had been rendered without or in excess of jurisdiction or in violation of accused-appellant's constitutional right to due process.

Contrary to accused-appellant's averment, he was not denied due process of law just because of Judge Vasquez's lapses in the observance of A.M. No. 04-5-19-SC. Worth reproducing herein are the pronouncements of the Court of Appeals on the matter:

> [C]ontrary to accused-appellant's argument, it bears to stress that he was not at all denied of due process. As held by the Supreme Court, due process means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Co vs. Calimag*, 334 SCRA 20, 26 [2000]). When a party has been afforded a chance to present his or her own side, he cannot feign [denial of] due process (*Pascual vs. People*, G.R. No. 160540, March 22, 2007). As in this case, accused-appellant was sufficiently given the opportunity to be heard, to defend himself and to confront his accusers on the offense hurled against him. Hence, due process was not denied to the accused-appellant by the mere issuance of a judge of a decision based on the records despite the fact that said judge was not the one who conducted the trial [and] receive the evidence of the parties.[23]

Furthermore, the situation wherein the judge rendering the decision in a case was not the same judge who heard the case and received evidence from the parties is not new or unique. In *People v. Paling*,[24] the Court upheld the validity of such a decision, ratiocinating that:

> The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial but merely relied on the records of the case does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion. Citing *People v. Competente*, this Court held in *People v. Alfredo*:
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> > **"The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction.** Even a cursory perusal of the Decision would

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23 *Rollo*, p. 17.

24 G.R. No. 185390, March 16, 2011, 645 SCRA 627, 636-637.

> show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon." (Emphasis in the original.)
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> Further, "it is not unusual for a judge who did not try a case in its entirety to decide it on the basis of the records on hand." This is because the judge "can rely on the transcripts of stenographic notes and calibrate the testimonies of witnesses in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law." Considering that, in the instant case, the transcripts of stenographic notes taken during the trial were extant and complete, there was no impediment for the judge to decide the case. (Citations omitted.)

Upon review, the Court concludes that the factual findings of RTC Judge Vasquez, as affirmed by the Court of Appeals, are sufficiently supported by the evidence on record.

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[25]

The prosecution herein was able to duly establish all the essential elements of the crime charged against accused-appellant. *First*, it was sufficiently shown that the PDEA and the PNP-CIDG jointly conducted a legitimate buy-bust operation against accused-appellant on February 21, 2003. PO2 Aldea, as the poseur-buyer, paid ₱500.00 to accused-appellant, who, in turn, handed to PO2 Aldea a small heat-sealed plastic sachet containing 0.0953 grams of *shabu*. *Second*, the very same sachet of *shabu* sold by accused-appellant to PO2 Aldea was presented as evidence by the prosecution during trial.

Accused-appellant though protests that the prosecution failed to prove with moral certainty that the sachet of *shabu* presented before the RTC was the same one he allegedly sold during the buy-bust operations since the police officers who had initial custody and control thereof neither showed an inventory nor a photograph taken of the same; and that assuming it was marked, the marking was not immediately done after its seizure and confiscation at the place where he was apprehended. Accused-appellant contends that the police officers disregarded Section 21(1) of Republic Act No. 9165 which requires that the drugs seized must be physically inventoried and photographed immediately after seizure and confiscation in the presence of the accused or his representative or counsel, a representative from the media, the Department of Justice (DOJ), and any elected public

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[25] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

official. On that premise, accused-appellant additionally argues that the prosecution cannot rely on the presumption of regularity in the performance of official duties by the police officers.

Accused-appellant's assertions are bereft of merit.

Jurisprudence has already decreed that the failure of the police officers to make a physical inventory, to photograph, and to mark the *shabu* at the place of arrest do not automatically render it inadmissible in evidence or impair the integrity of the chain of its custody.[26] Of particular significance to the present case is the following discussion of the Court on Section 21(1) of Republic Act No. 9165 in *People v. Resurreccion*[27]:

> Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.
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> The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 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.
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> As we held in *People v. Cortez*, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs provides as follows:
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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:
> >
> > (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**

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[26] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834.

[27] G.R. No. 186380, October 12, 2009, 603 SCRA 510, 518-520.

> **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 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** x x x."

Accused-appellant broaches the view that SA Isidoro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. ***People v. Sanchez*, however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done:**

> **"What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station 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."**
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> To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. (Emphases supplied, citations omitted.)

In this case, the chain of custody of the sachet of *shabu* sold by accused-appellant could be continuously traced from its receipt by PO2 Aldea, the poseur-buyer, during the buy-bust operation; its transfer to the police laboratory for examination; it being kept in police custody while awaiting trial; and its presentation as evidence before the RTC. PO2 Aldea himself marked the said sachet of *shabu* with his initials upon arriving at the police station with the arrested accused-appellant. He also personally submitted the same sachet of *shabu* to the PNP crime laboratory for forensic examination. When he testified before the RTC, PO2 Aldea identified the sachet of *shabu* and confirmed his initials thereon. P/SUPT Arroyo was the forensic officer who conducted the chemical examination of the contents of the sachet bearing PO2 Aldea's initials and she confirmed on the witness

stand that the said contents tested positive for methamphetamine hydrochloride. Thus, the integrity and evidentiary value of the sachet of *shabu* presented in evidence against accused-appellant was properly preserved in substantial compliance with Section 21(1) of Republic Act No. 9165.

Lastly, accused-appellant attempts to raise doubts on the veracity of the prosecution witnesses' testimonies. He calls attention to alleged inconsistencies between the narratives of PO2 Aldea and PO3 Zamora as to the details of the buy-bust operation, such as who actually marked and gave the five ₱100.00 bills used in the said operation to PO2 Aldea or who were their companions in their respective vehicles on the way back to Camp General Simeon Ola after the operation. Also cause for suspicion, according to accused-appellant, was PO3 Zamora's purported statement, during the preliminary investigation conducted by Judge Bagagñan, that he could not even recall the name of the poseur-buyer. In contrast, accused-appellant proffers his clear and consistent defenses of denial and frame-up. He explains that he could hardly be expected to provide evidence that he was merely an informant and poseur-buyer during the buy-bust operation against Contreras since such evidence is precisely in the possession of the police. Accused-appellant argues that the RTC erred in giving credence to the evidence of the prosecution rather than that of accused-appellant; and the Court of Appeals similarly erred when it simply relied on the assessment of witnesses' credibility by the RTC, because the jurisprudential doctrine that factual findings of the trial court are binding upon the appellate courts does not apply when the trial court judge who decided the case was not the same judge who held trial and heard the testimonies of the witnesses.

Once more, the Court is not swayed by accused-appellant's arguments.

The inconsistencies alluded to by accused-appellant in the prosecution witnesses' testimonies are trifling and pertain to minor details which do not affect any of the elements of the crime charged. Inconsistencies and discrepancies in the testimony referring to minor details and not upon the basic aspect of the crime do not diminish the witnesses' credibility. More so, an inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[28]

In addition, accused-appellant's defense of frame-up cannot prevail over the prosecution witnesses' positive testimonies on the conduct of a legitimate buy-bust operation against accused-appellant, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers, who caught accused-appellant *in flagrante delicto*, are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, as compared to the

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[28] *People v. Villahermosa*, G.R. No. 186465, June 1, 2011, 650 SCRA 256, 275-276.

accused's defenses of denial and frame-up, which have been invariably viewed with disfavor for the same can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,[29] which accused-appellant failed to produce in this case. As aptly pointed out by both the RTC and the Court of Appeals, accused-appellant could have bolstered his defenses by presenting witnesses who could attest that he was, in fact, a "confidential informant" or an "asset" of the police, or who could corroborate the existence of Danny Contreras. Accused-appellant's assertion that all evidence to exculpate him is in the custody of the police is only too convenient and fails to convince the Court to waive away the requisite burden of evidence. There is absolute lack of reason or motive for the police, and even Judge Bagagñan, to turn against accused-appellant, an alleged police informant/asset, and launch a concerted and elaborate plan to put accused-appellant in jail.

In consideration of all the foregoing, the Court finds no cogent reason to deviate from the judgment of conviction rendered against accused-appellant by the RTC and affirmed by the Court of Appeals.

The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Hence, the imposition by the RTC of the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) upon accused-appellant, likewise affirmed by the Court of Appeals, is correct.

WHEREFORE, the Decision dated May 27, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02481 is **AFFIRMED *in toto*.**

SO ORDERED.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

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29 *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
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