



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 192785

Present:

- versus -

CARPIO, *Chairperson,*  
VELASCO, JR.,  
DEL CASTILLO,  
MENDOZA, *and*  
LEONEN, *JJ.*

JOMER BUTIAL,  
*Accused-Appellant.*

Promulgated:

FEB 04 2015

X

RESOLUTION

DEL CASTILLO, *J.:*

The prosecution's evidence must establish that the illegal drug presented in court is the same illegal drug actually recovered from appellant.<sup>1</sup>

This is an appeal from the February 26, 2010 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03170 which affirmed *in toto* the December 3, 2007 Decision<sup>3</sup> of the Regional Trial Court (RTC) of Tabaco City, Branch 17 in Criminal Case No. T-3864 finding Jomer Butial (appellant) guilty of violating Section 5,<sup>4</sup> Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

\* Per Special Order No. 1910 dated January 12, 2015.

<sup>1</sup> *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248-249.

<sup>2</sup> CA rollo, pp. 132-142; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Florito S. Macalino.

<sup>3</sup> Records, pp. 206-226; penned by Judge Arnulfo B. Cabredo.

<sup>4</sup> Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

***Factual Antecedents***

On December 16, 2002, an Information<sup>5</sup> was filed against appellant, the accusatory portion of which reads as follows:

That on or about the 21<sup>st</sup> day of October, 2002, at 10:35 o'clock in the morning, more or less, at Purok 4, Barangay Sto. Cristo, Tabaco City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally sell, deliver and give away to a poseur-buyer, METHAMPHETAMINE HYDROCHLORIDE otherwise known as "SHABU", contained in two (2) transparent plastic sachets each weighing approximately 0.1 gm., without the necessary government authority, to the detriment of public welfare.

ACTS CONTRARY TO LAW.<sup>6</sup>

After appellant pleaded "not guilty" to the charge, pre-trial and trial ensued.

***Version of the Prosecution***

The prosecution presented as witnesses Gilbert Borlagdan (Borlagdan), PO2 Roy Martirez (PO2 Martirez), SPO4 Rosalino Bonavente (SPO4 Bonavente), SPO4 Benito Bognaloc and SPO1 Carlos H. Desuasido (SPO1 Desuasido).<sup>7</sup> From their testimonies, the following version emerged:

The Chief of Police of Tabaco City instructed PO2 Martirez and SPO4 Bonavente to conduct a buy-bust operation on appellant after receiving information that he was selling illegal drugs. Thus, on October 21, 2002, PO2 Martirez arranged for Borlagdan, a police asset, to act as a poseur-buyer and gave him four ₱100 bills as marked money. PO2 Martirez, SPO4 Bonavente and Borlagdan proceeded to *Purok 4*, Sto. Cristo, Tabaco City to entrap appellant.

Upon their arrival, Borlagdan walked towards a house which is under construction. PO2 Martirez and SPO4 Bonavente, on the other hand, hid behind houses which were about seven meters away from where Borlagdan was. Borlagdan approached appellant who was then working at the construction site and asked if he could purchase *shabu*. When an agreement was reached, Borlagdan handed over the marked money to the appellant while the latter, in turn, gave him two plastic sachets containing white crystalline substance. After the transaction, Borlagdan walked towards the place where PO2 Martirez and SPO4

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<sup>5</sup> Records, p. 9-10.

<sup>6</sup> Id. at 9.

<sup>7</sup> The testimony of another prosecution witness, Police Inspector Josephine Macura Clemen, the Forensic Chemist, was dispensed with after the parties stipulated on the existence and authenticity of her chemistry report on the examination done on the specimens allegedly seized from appellant.

Bonavente were hiding. When he passed by them, Borlagdan nodded his head as a signal that the sale was already consummated and gave the sachets to PO2 Martirez. Thereupon, the police officers came out of hiding. They immediately approached appellant who threw something on the ground. PO2 Martirez arrested appellant and brought him to the police station. SPO4 Bonavente who was left behind searched the place where he saw appellant throw something and found therein a plastic sachet containing white crystalline substance. He also summoned for the owner of the house being constructed and asked for appellant's belongings. He was given a backpack which he brought to the police station.

Meanwhile at the police station, PO2 Martirez ordered appellant to empty his pockets and recovered from him one of the four ₱100 bills used as marked money. PO2 Martirez then turned over the said marked money and the two plastic sachets to the police investigator. When SPO4 Bonavente arrived, he likewise gave appellant's backpack to the police investigator, who, in turn, searched the same. Found therein were more sachets containing white crystalline substance.

Two days later, five sachets with white crystalline substance were referred and delivered to the crime laboratory for examination which all tested positive for *shabu*, viz:

X X X X

**SPECIMEN SUBMITTED:**

Five (5) heat-sealed transparent plastic sachets marked as "A" through "E" each with white crystalline substance having the following markings and recorded net weights:

A = 3.7240 gram[s]	B = 0.8642 gram	C = 0.0513 gram <sup>8</sup>
D = 0.0336 gram	E = 0.0313 gram	

***Version of the Defense***

Appellant and two others, namely, Lourdes Benavides and Elsa San Buenaventura, both residents of *Purok 4*, Sto. Cristo, Tabaco who claimed to have witnessed appellant's arrest, testified for the defense. Their version of the incident is as follows:

While appellant was working at the construction site, Robert Sierra (Sierra) arrived and asked if there is a vacancy. When appellant said that he had to ask the owner first, Sierra departed. A few minutes later, PO2 Martirez and SPO4 Bonavente arrived and arrested appellant. They took him to the police station. Thereat, PO2 Martirez opened appellant's bag which was brought to the station by SPO4 Bonavente. After asking him to identify the same, PO2 Martirez placed something inside the bag and then closed it. Appellant was then ordered to open the bag. When he complied, pictures of him holding the bag and the plastic

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<sup>8</sup> Chemistry Report No.D-325-02, id.at 6.

sachets containing white crystalline substance were taken. PO2 Martinez also inserted a ₱100 bill into the back pocket of his pants and thereafter presented him to the Chief of Police.

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

The RTC gave credence to the testimonies of the prosecution's witnesses. It convicted appellant of the offense charged and disposed of the case in its December 3, 2007 Decision<sup>9</sup> as follows:

WHEREFORE, from the foregoing, accused Jomer Butial is hereby found GUILTY of Violation of Section 5, Article II, Republic Act [No.] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. Costs against accused.

SO ORDERED.<sup>10</sup>

Appellant filed a notice of appeal,<sup>11</sup> which was approved by the RTC.<sup>12</sup> Hence, the records of the case were transmitted to the CA where the appeal was docketed as CA-G.R. CR-H.C. No. 03170.

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

Finding the RTC's conviction of appellant to be well-supported by evidence, the CA, in its February 26, 2010 Decision,<sup>13</sup> ruled as follows:

WHEREFORE, the instant appeal is DISMISSED for lack of merit and the challenged Decision dated December 3, 2007 in Criminal Case No. T-3864 is AFFIRMED in TOTO.

SO ORDERED.<sup>14</sup>

Hence, this appeal.

### **Issues**

For the first time in this appeal, appellant questions his warrantless arrest. He posits that his arrest was illegal since he was not arrested in *flagrante delicto*. The police officers did not have personal knowledge that he was committing a crime as they were hiding behind houses seven meters away from the place where the alleged transaction took place and did not actually see the whole incident. This being the case, the sachets allegedly seized from him cannot be used in evidence

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<sup>9</sup> Id. at 206-226.

<sup>10</sup> Id. at 226.

<sup>11</sup> Id. at 228.

<sup>12</sup> Id. at 229.

<sup>13</sup> CA *rollo*, pp. 132-142.

<sup>14</sup> Id. at 142.

against him being “fruits of a poisonous tree.” Appellant also contends that the prosecution was unable to prove all the elements of the offense of illegal sale of drugs. He likewise points to the failure of the police officers to properly observe the procedure outlined in Section 21, RA 9165 and argues that the same constitutes a break in the chain of custody.

### Our Ruling

The appeal must be granted.

*The prosecution failed to show that the identity and integrity of the corpus delicti have been preserved.*

There is merit in appellant’s contention that not all elements of the offense of illegal sale of *shabu* were proven and that there were unexplained gaps and irregularities in the chain of custody of the seized items.

In a successful prosecution for the illegal sale of drugs, there must be evidence of the following elements: “(1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.”<sup>15</sup> The evidence of *corpus delicti* must also be established beyond doubt. In this case, the *shabu* “constitutes the very *corpus delicti* of the offense and in sustaining a conviction under [RA 9165], the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved.”<sup>16</sup> “The chain of custody requirement performs this function in buy-bust operations as it ensures that doubts concerning the identity of the evidence are removed.”<sup>17</sup>

The initial link in the chain of custody starts with the seizure of the plastic sachets from appellant and their marking by the apprehending officer. “Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, ‘planting,’ or contamination of evidence.”<sup>18</sup> A review of the records, however, reveals that the confiscated sachets subject of the illegal sale of *shabu* were not marked. PO2 Martinez, himself, admitted that he did not put any markings on the two plastic sachets that were handed to him by Borlagdan after the latter’s purchase of the same from appellant.<sup>19</sup> While he mentioned that the police investigator to whom he turned over the items wrote something down or made some initials thereon, he

<sup>15</sup> *People v. Lorenzo*, G.R. No.555 Phil. 394, 409 (2007).

<sup>16</sup> *People v. Alcuizar*, G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

<sup>17</sup> *People v. Capuno*, supra note 1 at 248.

<sup>18</sup> *Lopez v. People*, G.R. No. 188653, January 29, 2014.

<sup>19</sup> TSN, September 14, 2005, pp. 31 and 59.

nevertheless could not remember who wrote the initials.<sup>20</sup> And albeit later, PO2 Martirez identified the police investigator as SPO1 Desuasido,<sup>21</sup> the latter, however, when called to the witness stand, did not testify that he made any markings on the said sachets or, at the very least, that he received the same from PO2 Martirez. His testimony merely focused on the fact that he prepared the affidavit of a certain Baltazar.<sup>22</sup>

While SPO4 Bonavente testified that he put markings on several sachets of *shabu* allegedly seized from appellant, it cannot be gathered from his testimony that the ones he marked were those sachets subject of this case. Instead, what it suggests is that those he marked were the sachets belonging to appellant which he subsequently recovered, *i.e.*, the one allegedly thrown away by appellant and picked up by SPO4 Bonavente from the ground, and those found inside appellant's bag, *viz*:

[PROS. BROTAMONTE]- At that time[,] how was the buy-bust operation carried out?

[SPO4 Bonavente]- During that time we were in Sto. Cristo. When our asset got in the house and came out he sent positive sign that he already bought the prohibited drugs. So I and Roy Martirez immediately got inside the house.

Q- What happened next?

A- Upon seeing us[,] this Butial tried to escape and Roy Martirez grabbed him and they grappled with each other. I saw Butial throw pieces of sachets and I picked up said sachets which contained shabu.

Q- How many sachets?

A- Only one.

X XXX

Q- What happened next?

A- After two minutes[,] the owner of the house arrived. I asked him [for] the belongings of Butial and he picked up the bag in the corner and handed it to me.

X XXX

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<sup>20</sup> Id. at 30-31.

<sup>21</sup> Id. at 57.

<sup>22</sup> TSN, November 16, 2006, pp. 11-18.

Q- Upon arrival at the Tabaco Police Station[,] what happened there particularly, insofar as the bag was concerned?

A- I presented the bag to the desk officer for record purposes and to the duty investigator.

Q- What did you do with the bag after that?

A- The duty investigator searched the bag.

Q- Where were you when the bag was searched.

A- I was outside the investigation room and I was only informed that they found another sachet inside the bag.

X XXX

Q- Tell us if you actually witnessed the procedure of the search?

A- No. Sir. I just saw the sachet already on the table when I was informed by the desk officer.

Q- Having seen the evidence already on the table[,] what did you do, if any?

A- I told the desk officer to prepare the papers to preserve the items.

Q- To preserve the integrity and identity of the supposed items[,] what else did you undertake, if any?

A- I remember, I put my initials [on] the sachets.

Q- Can you still recall what items were those where you put your initials?

A- The sachets, sir.

Q- Can you still recall how many sachets were those?

A- I cannot recall.

Q- Those sachets that bear your initials, if the same will be shown to you again, will you be able to identify them by way of your markings or initials?

A- Yes, sir.

Q- I have here several sachets containing crystalline substance [e]ncased in two bigger transparent sachets which were turned over by the PNP Crime No. 5[,] please look at [these] and tell us if you could recognize [them]?

A- Yes, sir, I recognize [them].

X XXX

- Q- I am showing to you the contents of one bigger transparent plastic packet consisting of two small sachets with crystalline substance in [them]. Please look at [them] and tell us if you are familiar with [them].
- A- (Witness examining the very small sachets containing a very small amount of white crystalline substance).  
This is not my initial.
- Q- There is a marking which is not of the witness and said witness looking at the bigger transparent packet from which these two plastic sachets came from. Look at [them] and tell us if you could recognize [them].
- A- (Witness looking and examining the bigger plastic and recogniz[ing] the initials as [those] of Martinez).
- Q- How about [the other] marking?
- A- I do not know.
- Q- How about these three other plastic sachets containing crystalline substance which I just took out from the previously sealed plastic container?
- A- [These are] my initials.

COURT INTERPRETER:

Witness acknowledging that it is his signature and also his marking on the other bigger one. Two small and one bigger sachets. Smaller sachet with D-325-02 marked "A" with initial of Bonavente. Smaller sachet D-325-02 marked "B" with initial of Bonavente. Smallest sachet D-325-02 marked "C."<sup>23</sup> (Emphases supplied)

Moreover, the Request for Laboratory Examination<sup>24</sup> of the items seized suggests that the seized items were improperly handled. As may be recalled, the police officers submitted five sachets of *shabu* for laboratory examination. Aside from those three sachets marked by SPO4 Bonavente, the two other sachets were listed and described as follows in the said request:

x xxx

2. Evidence/Documents submitted:

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<sup>23</sup> TSN, June 21, 2006, pp. 5-10.

<sup>24</sup> Records, p. 165.



X XXX

- a. Two (2) transparent plastic packets containing white crystalline suspected to be Methamphetamine Hydrochloride (Shabu), approximately 0.1 gm. each, **and One (1) ₱100.00 with SN ES684504, all placed in a heat-sealed transparent plastic with marking [letter] “I” on both sides;**<sup>25</sup> (Emphasis supplied)

Notably, the portion “*and One (1) ₱100.00 with SN ES684504, all placed in a heat-sealed transparent plastic with marking [letter] “I” on both sides*” was obliterated by pen markings and the erasure was initialed by SPO1 Desuasido. But even without the said erasure, the two transparent plastic packets containing white crystalline substance appear to have no markings at all. Only the heat-sealed transparent plastic supposedly containing them has the marking letter “I,” which holds no significance as the making of the said marking is also not supported by any testimony during trial.

Clearly, the absence of markings creates an uncertainty that the two sachets seized during the buy-bust operation were part of the five sachets submitted to the police crime laboratory. The prosecution’s evidence failed to establish the marking of the two sachets of *shabu* subject of this case, which is the first link in the chain of custody and which would have shown that the *shabu* presented in evidence was the same specimen bought from appellant during the buy-bust operation. The lack of certainty therefore on a crucial element of the crime *i.e.*, the identity of the *corpus delicti*, warrants the reversal of the judgment of conviction.<sup>26</sup>

The failure of the prosecution to identify the *corpus delicti* is more glaring after considering that none of the five sachets submitted to the police crime laboratory for qualitative examination and turned out positive for *shabu* weighed close to the two plastic sachets that had an approximate weight of 0.1 gram each as stated in the Information. As previously mentioned, the police officers sent five sachets that were marked and given corresponding weights, *viz*:

A = 3.72040 g	B = 0.8642 g	C = 0.0513 g
D = 0.0336 g	E = 0.0313 g	

It therefore appears that the sachets of *shabu* confiscated during the buy-bust operation are totally different from the sachets forwarded to the police crime laboratory and thereafter presented in evidence.

As a final note, it does not escape the Court’s attention that there was also no testimony from the police officers that they conducted a physical inventory and took photographs of the sachets of *shabu* confiscated from appellant pursuant to

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<sup>25</sup> Id.

<sup>26</sup> *People v. Palomares*, G.R. No. 200915, February 14, 2014.

Section 21(1)<sup>27</sup> of Article II of RA 9165. Their sworn statements did not mention any inventory-taking or photographing of the same. They also did not bother to offer any justification for this omission.<sup>28</sup> At this point, it is apt to restate the Court's pronouncement in *People v. Pepino-Consulta*:<sup>29</sup>

[T]he Court cannot emphasize enough that zealousness on the part of law enforcement agencies in the pursuit of drug peddlers is indeed laudable. However, it is of paramount importance that the procedures laid down by law be complied with, especially those that involve the chain of custody of the illegal drugs. This is necessary in order to dispel even the most infinitesimal of doubts on the outcome of arrests any buy-bust operations, so as not to render naught the efforts and the resources put forth in the apprehension and prosecution of violators of our drug laws.<sup>30</sup>

**WHEREFORE**, the appeal is **GRANTED**. The February 26, 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03170 affirming the December 3, 2007 Decision of the Regional Trial Court of Tabaco City, Branch 17, in Criminal Case No. T-3864, finding appellant Jomer Butial guilty of Violating Section 5, Article II of Republic Act No. 9165, is **REVERSED and SET ASIDE** and a new one is entered **ACQUITTING** him of the charge. Criminal Case No. T-3864 is **DISMISSED**.

The Director of the Bureau of Corrections is ordered to immediately release appellant Jomer Butial from detention, unless he is confined for another lawful cause, and to report to this Court compliance within five days from receipt of this Resolution.

**SO ORDERED.**

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

<sup>27</sup> 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 drug 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.

<sup>28</sup> *People v. Palomares*, supra note 26.

<sup>29</sup> G.R. No. 191071, August 28, 2013, 704 SCRA 276.

<sup>30</sup> Id. at 303.

WE CONCUR:



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



**PRESBITERO J. VELASCO, JR.**  
*Associate Justice*



**JOSE CATRAL MENDOZA**  
*Associate Justice*



**MARVIC M.V.F. LEONEN**  
*Associate Justice*

**ATTESTATION**

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



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



## **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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*

