



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 207635**

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
VILLARAMA, JR.,  
REYES, and  
PERLAS-BERNABE,\* JJ.

**DANTE DELA PEÑA<sup>1</sup> and DENNIS  
DELIMA,**

Promulgated:

Accused-Appellants.

February 18, 2015

X-----*Welford B. B. B.*-----X

**DECISION**

**VILLARAMA, JR., J.:**

Before this Court is an appeal from the April 16, 2013 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 01200 affirming the judgment<sup>3</sup> of the Regional Trial Court (RTC) of Cebu City, Branch 8, in Criminal Case Nos. CBU-83576, CBU-83577, and CBU-83578, finding accused-appellants Dante Dela Peña (Dela Peña) and Dennis Delima (Delima) guilty beyond reasonable doubt of violation of Republic Act No. 9165 (R.A. 9165), the Comprehensive Dangerous Drugs Acts of 2002.

The antecedents follow:

The three separate Informations filed on June 23, 2008 by the City Prosecutor's Office of Cebu City indicted Dela Peña and Delima for the following crimes, to wit:

In Criminal Case No. **CBU-83576**, the Information charged Dela Peña with violation of Section 5, Article II, R.A. 9165 for illegal sale of *shabu*,

\* Designated additional member per Raffle dated January 5, 2015.

<sup>1</sup> Dela Peña in other parts of the records.

<sup>2</sup> *Rollo*, pp. 3-15. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Gabriel T. Ingles and Ma. Luisa Quijano-Padilla concurring.

<sup>3</sup> *CA rollo*, pp. 88-98. Penned by Presiding Judge Macaundas M. Hadjirasul.

thus:

That on or about the 19<sup>th</sup> day of June, 2008, at around 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Dela Peña], with deliberate intent, and without authority of law, did then and there sell, deliver or give away to [a] poseur buyer one (1) heat[-]sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

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

In Criminal Case No. **CBU-83577**, the Information charged Dela Peña with violation of Section 11, Article II of R.A. 9165 for illegal possession of *shabu*, viz.:

That on or about the 19<sup>th</sup> day of June, 2008, at about 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Dela Peña], with deliberate intent, did then and there have in his possession and control four (4) heat[-]sealed transparent plastic sachet[s] of white crystalline substance weighing 0.02 gram [each] or a total of 0.08 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.

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

The Information in Criminal Case No. **CBU-83578** charged Delima with illegal possession of *shabu*. The accusatory portion alleged:

That on or about the 19<sup>th</sup> day of June, 2008, at about 11:45 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, [Delima] with deliberate intent, did then and there have in his possession and control one (1) heat[-]sealed transparent plastic sachet of white crystalline substance weighing 0.02 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.

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

Dela Peña and Delima separately entered pleas of “*Not Guilty*” upon arraignment.<sup>7</sup> Joint trial of the three cases was conducted by the RTC.

The prosecution presented the following witnesses: (1) Intelligence Officer 1 Ferdinand<sup>8</sup> Kintanar (IO1 Kintanar); and (2) Intelligence Officer 1 Baby Rallos (IO1 Rallos), both operatives of the Philippine Drug Enforcement Agency, Region VII (PDEA-7). Their testimonies were summarized by the appellate court, thus:

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<sup>4</sup> Records (Crim. Case No. CBU-83576), p. 1.

<sup>5</sup> Records (Crim. Case No. CBU-83577), p. 1.

<sup>6</sup> Records (Crim. Case No. CBU-83578), p. 1.

<sup>7</sup> Id. at 21; records (Crim. Case No. CBU-83577), p. 21.

<sup>8</sup> Ferdinand in some parts of the records.

When [IO1 Kintanar] x x x received a report from their confidential informant that [Dela Peña] was selling *shabu* in Barangay Sawang Calero, Cebu City, he immediately instructed OJT Steven Balles to conduct a surveillance, which confirmed the report. Then in the evening of June 19, 2008, a team of PDEA officers was formed to conduct a buy-bust operation [against Dela Peña]. The team was composed of ten PDEA members including IO2 David Mark Maramba as team leader, [IO1 Kintanar] and [IO1 Rallos]. IO1 Kintanar, who was tasked [to act] as poseur-buyer, was given three pieces of one hundred peso (Php100.00) bills as buy-bust money bearing serial numbers PQ242526, YF280219 and TV375522 which were all pre-marked with [IO1] Kintanar's initials "FK" at the lower right front portion of the bills. IO1 Kintanar then prepared an Authority to Operate [for the conduct of the] operation.

Thereafter, the buy-bust team, accompanied by their confidential informant, proceeded to Barangay Sawang Calero. Upon their arrival there, the team searched for [Dela Peña] in the area. When they finally found him standing along the road with [Delima], IO1 Kintanar and the confidential informant approached him while the rest of the members strategically positioned themselves where, from their vantage point, they could clearly see the transaction.

The informant and IO1 Kintanar informed [Dela Peña] of their intention to buy *shabu*. IO1 Kintanar handed the marked money to Dela Pe[ñ]a, who, in turn, handed a small sachet of suspected *shabu*. Delima, who was beside [Dela Peña], also showed a sachet of suspected *shabu* to IO1 Kintanar but the latter ignored him. Immediately, IO1 Kintanar executed the pre-arranged signal by scratching his head, indicating that the sale was consummated.

The rest of the team members immediately approached the group and arrested [Dela Peña and Delima]. IO1 Kintanar seized from Dela Pe[ñ]a the buy-bust money and four (4) sachets of suspected *shabu*. On the other hand, [IO1 Rallos, who] arrested Delima x x x recovered from [the latter] a small sachet of *shabu* which he turned over to IO1 Kintanar. The buy-bust team apprised the duo of their constitutional rights and thereafter brought them, together with the confiscated items, to the PDEA-7 office where the said items were marked by IO1 Kintanar. The plastic sachet of *shabu* which was the subject of the sale, was marked "DSDP-BB 6/19/08" whereas the four sachets recovered from Dela Pe[ñ]a were marked as "DSDP-01 6/19/08" to "DSDP-04 6/19/08", respectively. The one small sachet seized from Delima was likewise marked as "DCD-01 6/19/08". The confiscated items were photographed, recorded in the blotter and listed in a Certificate of Inventory in the presence of [Dela Peña and Delima] and was duly witnessed and signed by Barangay Captain Jerome B. Lim of Barangay Sta. Cruz and media representative Chito O. Aragon.

x x x At 1:50 in the afternoon of the following day, IO1 Kintanar delivered the laboratory request and the confiscated plastic sachets of suspected *shabu* to the crime laboratory which was received by PO3 El Abesia. On the same day, Forensic Chemist Rendielyn L. Sahagun issued Chemistry Report No. D-663-2008 stating that the subject six plastic sachets with a total weight of 0.12 gram of white crystalline substance marked as "DSDP-BB 6/19/08", "DSDP-01 6/19/08", "DSDP-02 6/19/08", "DSDP-03 6/19/08", "DSDP-04 6/19/08" and "DCD-01 6/19/08", respectively, tested

positive for *Methamphetamine Hydrochloride* or *shabu*.<sup>9</sup>

The presentation as witness of Rendielyn L. Sahagun (FC Sahagun), the Forensic Chemist of the Philippine National Police (PNP) Regional Crime Laboratory Office 7, Cebu City, was dispensed with after the parties stipulated during the pre-trial conference that: (1) she is qualified to conduct an examination on the specimen submitted to determine the presence of dangerous drugs; (2) the items described in the Letter Request for laboratory examination (Exhibit “B”) are the very same specimen listed in Chemistry Report No. D-663-2008 (Exhibit “C”); and (3) the contents of the plastic sachets with the markings “*DSDP-BB 6/19/08*”, “*DSDP-01 6/19/08*”, “*DSDP-02 6/19/08*”, “*DSDP-03 6/19/08*”, “*DSDP-04 6/19/08*”, and “*DCD-01 6/19/08*” were confirmed to be positive for *Methamphetamine Hydrochloride* after a chemical examination. Likewise, the defense waived its objection to the admissibility of Chemistry Report No. D-663-2008, and the seized sachets of *shabu*.<sup>10</sup>

Both appellants interposed the defense of denial.

Dela Peña asserted that he merely took shelter in a nearby store because of the heavy rain that morning of June 19, 2008. Meanwhile, a group of persons arrived and inquired from Dela Peña the whereabouts of the person they were chasing. They thereafter frisked, mauled, and brought him to the PDEA-7 office.<sup>11</sup>

For his part, Delima testified that he was driving a “*sidecar*”<sup>12</sup> at 11:45 p.m. of June 19, 2008 when two strangers approached and frisked him. Although no illegal item was confiscated from him, the said persons, who turned out to be PDEA operatives, arrested him. He met Dela Peña for the first time at the PDEA-7 office.<sup>13</sup>

Giving credence to the version of the prosecution witnesses who have no ill-motive to testify against Dela Peña and Delima,<sup>14</sup> and finding that the prosecution established the elements of the crimes charged,<sup>15</sup> the RTC found Dela Peña and Delima guilty beyond reasonable doubt of the crimes charged. The *fallo* of the Decision dated March 30, 2010 reads:

WHEREFORE, finding them guilty beyond reasonable doubt of the offenses of which they are being respectively indicted, a judgment is hereby rendered:

- 1) Sentencing [Dela Peña] to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE in the amount of

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<sup>9</sup> *Rollo*, pp. 5-7.

<sup>10</sup> See Pre-Trial Orders dated October 9, 2008, records (Crim. Case No. CBU-83577), pp. 25-27 and records (Crim. Case No. CBU-83578), pp. 25-27.

<sup>11</sup> *Rollo*, p. 7.

<sup>12</sup> TSN, February 2, 2010, p. 4.

<sup>13</sup> *Rollo*, p. 7.

<sup>14</sup> *CA rollo*, p. 95.

<sup>15</sup> *Id.* at 96.

P500,000.00 in Criminal Case No. CBU-83576 for violation of Section 5, Article II of [R.A. 9165];

- 2) Sentencing [Dela Peña] to suffer the penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FIFTEEN (15) YEARS and to pay a FINE in the amount of P300,000.00 in Criminal Case No. 83577 for violation of Section 11, Article II of [R.A. 9165]; and
- 3) Sentencing [Delima] to suffer the penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FIFTEEN (15) YEARS and to pay a FINE in the amount of P300,000.00 in Criminal Case No. 83578 for violation of Section 11, Article II of [R.A. 9165].

The subject sachets of shabu marked “DSDP-BB” 6/19/08 (Exhibit “A”), “DSDP-01” 6/19/08 to “DSDP-04” 6/19/08 (Exhibits “B” to “B-3”); and “DCD-01” 6/19/08 (Exhibit “A” Delima) are declared forfeited in favor of the Government, to be disposed of pursuant to the provisions of R.A. 9165 and related rules and regulations.

SO ORDERED.<sup>16</sup>

Dela Peña and Delima sought to reverse their conviction before the CA. They maintained that the RTC erred as follows:

#### I

x x x IN CONVICTING [DELA PEÑA] OF THE CRIME CHARGED DESPITE THE FACT THAT THE ELEMENTS x x x FOR SALE OF ILLEGAL DRUGS WERE NOT ESTABLISHED

#### II

x x x IN CONVICTING [DELA PEÑA AND DELIMA] DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THE CORPUS DELICTI<sup>17</sup>

The CA affirmed the RTC Decision. However, the CA modified the penalties in Criminal Case Nos. CBU-83577 and CBU-83578 by lowering the maximum periods of the imposed penalties from fifteen (15) years to fourteen (14) years and eight (8) months, to wit:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The Decision dated March 30, 2010 of the [RTC] in Criminal Case Nos. CBU-83576 to 83578 finding [Dela Peña] guilty of violating Sections 5 and 11, and [Delima] of violating Section 11, Article II of [R.A.] 9165 otherwise known as [the] Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED** with the following **MODIFICATIONS**:

- 1) In Criminal Case No. 83577, [Dela Peña] is sentenced to suffer the indeterminate penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FOURTEEN (14) YEARS and EIGHT (8) MONTHS and to pay a FINE in the

<sup>16</sup> Id. at 98.

<sup>17</sup> Id. at 23.

amount of P300,000.00 for violation of Section 11, Article II of [R.A. 9165]; and

2) In Criminal Case No. 83578, [Delima] is sentenced to suffer the indeterminate penalty of IMPRISONMENT for a period of TWELVE (12) YEARS AND ONE DAY TO FOURTEEN (14) YEARS and EIGHT (8) MONTHS and to pay a FINE in the amount of P300,000.00 for violation of Section 11, Article II of [R.A. 9165].

No pronouncement as to costs.

SO ORDERED.<sup>18</sup>

Insisting on their innocence, Dela Peña and Delima interposed the present appeal. In separate manifestations,<sup>19</sup> the parties stated that they will no longer file supplemental briefs.

The issue to be resolved is whether Dela Peña and Delima's guilt for the crimes charged was established by the prosecution beyond reasonable doubt.

After a circumspect review of the evidence on record, we affirm the conviction of Dela Peña and Delima.

**The elements of the crimes charged  
were established beyond reasonable  
doubt**

The elements necessary for the prosecution of a charge for illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165 are: (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>20</sup>

On the other hand, the elements of the crime of illegal possession of dangerous drug are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.<sup>21</sup>

All the elements of the crimes of illegal sale and illegal possession of *shabu*, a dangerous drug, were clearly proven by the prosecution through the credible testimony of IO1 Kintanar. The identity of the parties to the sale transaction (Dela Peña and IO1 Kintanar) involving the subject sachet of *shabu* worth ₱300.00 and the consummation of the sale were duly established by IO1 Kintanar. IO1 Kintanar's testimony likewise established

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<sup>18</sup> *Rollo*, p. 14.

<sup>19</sup> *Id.* at 22-23, 26-28.

<sup>20</sup> *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529; *People v. Alberto*, 625 Phil. 545, 554 (2010).

<sup>21</sup> *Id.* at 530.

the illegal possession of sachets of *shabu* by Dela Peña and Delima. No ill-motive was shown by the defense for IO1 Kintanar to unjustly implicate Dela Peña and Delima in the present cases. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, like IO1 Kintanar in the present case, the presumption is that he was not actuated and his testimony is entitled to full faith and credit.<sup>22</sup>

IO1 Kintanar, who acted as the poseur-buyer, recounted the details of the successful entrapment operation conducted against Dela Peña, as well as how he saw Delima holding one sachet of *shabu*, thus:

Q What happened when you [and the confidential informant] arrived at [Barangay Sawang Calero]?

A We initially looked for [Dela Peña] at his hang[-]out.

Q And were you able to find [Dela Peña] at his hang[-]out, Mr. Witness?

A Yes, sir.

Q What happened when you found out where [Dela Peña] was?

A We approached him and negotiated for the selling of shabu.

Q You mentioned “we” who was your companion when you approached [Dela Peña]?

A I was with the Confidential Agent, sir.

Q [A]nd what transpired when you approached [Dela Peña]?

A After negotiation, [Dela Peña] asked me how much shabu would I buy and I told him that I will purchase a three hundred pesos worth of shabu.

x x x x

PROSECUTOR GIDAYAWAN:

After you manifested to [Dela Peña] that you would be buying three hundred pesos worth of shabu, what was his reply?

A [Dela Peña] asked for the money.

x x x x

COURT:

How did you approach [Dela Peña]?

A When I approached [Dela Peña], I asked in Bisaya “*na-a tay butang diha, bay?*” Do you have stuffs? And [Dela Peña] answered, Yes. He asked how much, that’s when I told him that I was going to buy three hundred pesos worth of shabu.

x x x x

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<sup>22</sup> *People v. Rivera*, 458 Phil. 856, 874 (2003).

## PROSECUTOR GIDAYAWAN:

After that [negotiation] with [Dela Peña] when you were asked and you said three hundred pesos, Mr. Witness, what did you do next?

A I gave [Dela Peña] three (3) one hundred peso-bills and in turn he gave me a sachet of shabu.

Q Which came first, you handing the money to [Dela Peña] or [Dela Peña] handing to you the shabu?

A [Dela Peña] asked me first for the money, sir.

Q [A]nd did you give [Dela Peña] the money?

A Yes, sir.

Q [A]nd did [Dela Peña] receive the money?

A Yes, sir.

Q **In exchange for the three hundred pesos, what did [Dela Peña] give you in return?**

A **[Dela Peña] gave me a sachet of shabu, one sachet, sir.**

x x x x

Q Now, after [Dela Peña] gave you this one (1) pack of shabu, what happened next?

A I examined it and **I noticed [Delima], also showing to me a sachet of shabu** as if tempting me that if you don't like that, you can buy this.

Q Now, this [Delima], when did he come to that area, Mr. Witness, before [Dela Peña] gave you the shabu or while the [negotiation] was still going on between you and [Dela Peña]?

x x x x

A At the start of the [negotiation], all the time he was beside [Dela Peña].

## COURT:

In other words, when you found [Dela Peña], [Delima] was beside him?

A Yes, sir.<sup>23</sup>

After the illegal drug transaction was consummated, IO1 Kintanar executed the pre-arranged signal by scratching his head, and IO1 Rallos with the other members of the buy-bust team rushed toward them. IO1 Rallos handcuffed Dela Peña and Delima.<sup>24</sup>

<sup>23</sup> TSN, November 7, 2008, pp. 9-12. Emphasis and underscoring added.

<sup>24</sup> TSN, June 16, 2009, p. 11.



Thereafter, IO1 Kintanar frisked Dela Peña, and confiscated from his pocket four (4) sachets containing *shabu*, thus:

Q And after you arrested and got hold of [Dela Peña], what did you [do] next to him?

A When I got hold of him, IO1 Rallos handcuffed both of them and that was the time when I searched [Dela Peña], sir.

Q And what was the result of your search?

A **I discovered from [Dela Peña's] right pocket four (4) sachets of shabu x x x.**<sup>25</sup>

IO1 Rallos, likewise, discovered one sachet of *shabu* inside the pocket of Delima confirming IO1 Kintanar's testimony that he saw Delima holding a sachet of *shabu*, viz.:

Q Now, when you arrested, or can you tell us the circumstances when you arrested [Delima], Mr. Witness?

A Upon arriving at the place where the transaction took place, sir, IO1 Kintanar told me that [Delima] also had in his possession [a sachet of] shabu because he saw it during the transaction, so he told me to [get] hold of [Delima], sir.

Q And when you took hold of [Delima], what did you do next, Mr. Witness?

A I handcuffed [Delima] and also [Dela Peña], sir.

Q And after you handcuffed them, what did you do next, if any?

A I searched Dennis Delima, sir.

Q And what was the result, if any, to the search?

A **[I] found from [Delima's] pocket one sachet containing white crystalline substance believed to be shabu, sir.**<sup>26</sup>

The contents of the plastic sachet sold by Dela Peña to IO1 Kintanar and the four sachets found in the former's possession, as well as, the single sachet seized from Delima, all tested positive for *Methamphetamine Hydrochloride* or *shabu*, a dangerous drug, upon the laboratory examination conducted by FC Sahagun. Her findings are contained in Chemistry Report No. D-663-2008, the genuineness and due execution of which was admitted by the defense.<sup>27</sup> Verily, the report of a government forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity as to its preparation.<sup>28</sup> Being an official record made in the performance of FC Sahagun's official duty, the entries in Chemistry Report No. D-663-2008 are *prima facie* evidence of the facts they state.<sup>29</sup> Dela Peña and Delima

<sup>25</sup> TSN, November 7, 2008, p. 16. Emphasis supplied.

<sup>26</sup> TSN, June 16, 2009, p. 11. Emphasis added.

<sup>27</sup> Supra note 10.

<sup>28</sup> *People v. Quebral, et al.*, 621 Phil. 226, 233-234 (2009).

<sup>29</sup> REVISED RULES OF COURT, Rule 130, Sec. 44. See *People v. Presas*, G.R. No. 182525, March 2, 2011, 644 SCRA 443, 453-454.

failed to overcome with competent evidence the positive findings for *shabu* of the contents of the subject sachets as contained in Chemistry Report No. D-663-2008.

In Criminal Case No. CBU-83576, Dela Peña asserted that no buy-bust operation was conducted because an illegal drug peddler will not sell *shabu* to a total stranger<sup>30</sup> in a public place which is open to view.<sup>31</sup> Contrary to Dela Peña's posture, peddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not.<sup>32</sup> Moreover, drug pushing when done on a small-scale, like the instant case, belongs to those types of crimes that may be committed any time and at any place.<sup>33</sup>

Factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual findings, are accorded high respect, if not conclusive effect, especially if affirmed by the CA,<sup>34</sup> except when facts or circumstances of weight and influence were overlooked or the significance of which was misappreciated or misinterpreted by the lower courts.<sup>35</sup> Our judicious review of the records revealed no reason for us to deviate from the factual findings of the RTC, as affirmed by the CA, that a legitimate buy-bust operation was successfully conducted against Dela Peña on June 19, 2008.

The lack of documentary proof of the surveillance conducted on Dela Peña,<sup>36</sup> the failure of the PDEA-7 operatives to record in their blotter the serial numbers of the buy-bust money,<sup>37</sup> and the failure of the prosecution to present as evidence the pre-operation report,<sup>38</sup> failed to create a dent on the prosecution's evidence. A surveillance,<sup>39</sup> pre-operation report,<sup>40</sup> and buy-bust money<sup>41</sup> are not elements of, and are not vital to the prosecution for illegal

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<sup>30</sup> See Appellant's Brief, p. 5, CA rollo, p. 27.

<sup>31</sup> Id. at 6, id. at 28.

<sup>32</sup> *People v. Robelo*, G.R. No. 184181, November 26, 2012, 686 SCRA 417, 425; *People v. Casolacan*, 478 Phil. 363, 372 (2004).

<sup>33</sup> *People v. De Guzman*, 564 Phil. 282, 291 (2007), citing *People v. Isnani*, G.R. No. 133006, June 9, 2004, 431 SCRA 439, 455.

<sup>34</sup> *People v. Garalde*, 549 Phil. 841, 856 (2007).

<sup>35</sup> See *People v. Lucero*, G.R. No. 188705, March 2, 2011, 644 SCRA 457, 478.

<sup>36</sup> Appellant's Brief, p. 6, CA rollo, p. 28.

<sup>37</sup> Id. at 5, id. at 27.

<sup>38</sup> Id., id.

<sup>39</sup> A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof. The police officers may decide that time is of the essence and dispense with the need for prior surveillance. *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 239.

<sup>40</sup> The lack of pre-operation report had no effect on the legality and validity of the buy-bust operation because it is not indispensable in a buy-bust operation. *People v. Daria, Jr.*, 615 Phil. 744, 759 (2009), cited in *People v. Somoza*, G.R. No. 197250, July 17, 2013, 701 SCRA 525, 542.

<sup>41</sup> The absence of marked money does not run counter to the presented proof of illegal sale of *shabu*. Lack of marked money is not an element to the crime of illegal sale of *shabu*. The marked money used in the buy-bust operation, although having evidentiary value, is not vital to the prosecution of the case. It is merely corroborative in nature. *People v. Ampatuan*, G.R. No. 188707, July 30, 2014, p. 8.

sale of *shabu*. What is material to the prosecution of illegal sale of dangerous drugs is the proof that the illegal sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>42</sup>

Anent Criminal Case Nos. CBU-83577 and CBU-83578, the cases for illegal possession of *shabu*, both Dela Peña and Delima failed to overcome the presumption that they have knowledge or *animus possidendi* of the *shabu* found in their respective possession. Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession.<sup>43</sup> Except for their self-serving denial, the accused could not present any viable defense. The defense of denial or frame-up has been invariably viewed with disfavor for it can easily be concocted and is a common defense ploy in prosecutions for violation of R.A. 9165.<sup>44</sup> In the absence of clear and convincing evidence to substantiate it, said defense deserves outright rejection.

Moreover, both Dela Peña and Delima failed to show that they have the authority and/or license to possess the *shabu* found in their person, a fact within their peculiar knowledge. It is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.<sup>45</sup> Hence, in failing to produce their license and/or authority to possess the *shabu*, Dela Peña and Delima were correctly found guilty for violation of Section 11, Article II, of R.A. 9165.

**The prosecution established the unbroken chain of custody of the sachets of *shabu* seized from Dela Peña and Delima**

In the prosecution of a case for violation of R.A. 9165, both for illegal sale and illegal possession of dangerous drugs, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.<sup>46</sup> The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.

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<sup>42</sup> *Id.*, citing *People v. Concepcion, et al.*, 578 Phil. 957, 976 (2008); *People v. Macabalang*, 538 Phil. 136, 148 (2006); *People v. Astudillo*, 440 Phil. 203, 224 (2002); *People v. Chang*, 382 Phil. 669, 684 (2000).

<sup>43</sup> *People v. Villahermosa*, G.R. No. 186465, June 1, 2011, 650 SCRA 256, 274, citing *People v. Pendatun*, 478 Phil. 201, 212 (2004).

<sup>44</sup> *People v. Gutierrez*, 622 Phil. 396, 409 (2009).

<sup>45</sup> *People v. Macalaba*, 443 Phil. 565, 576 (2003), quoting *People v. Manalo*, G.R. No. 107623, February 23, 1994, 230 SCRA 309, 319.

<sup>46</sup> *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 159.

Here, the unbroken chain of custody of the sachets of *shabu* seized from Dela Peña and Delima was established by the prosecution through the testimonies of IO1 Kintanar and IO1 Rallos, from the time of their confiscation and delivery to the crime laboratory for examination until their presentation in court.

As borne out by the evidence, IO1 Rallos immediately handed to IO1 Kintanar the sachet he seized from Delima.<sup>47</sup> IO1 Kintanar kept the sachet handed by IO1 Rallos separated<sup>48</sup> from the sachets sold by and confiscated from Dela Peña. The subject sachets were marked with the initials of the person from whom they originated and the date of the buy-bust operation: “DSDP-BB 6/19/08”, “DSDP-01 6/19/08”, “DSDP-02 6/19/08”, “DSDP-03 6/19/08”, “DSDP-04 6/19/08”, and “DCD-01 6/19/08”. Nothing in the records will show that IO1 Kintanar yielded, at any instance, possession of the subject sachets to another PDEA operative, after he acquired custody thereof,<sup>49</sup> on their way to the PDEA-7 office<sup>50</sup> until he submitted them to the PNP Crime Laboratory.<sup>51</sup> As stipulated by the defense, IO1 Kintanar brought the sachets described in the Request for Laboratory Examination to the PNP Crime Laboratory Office-7, Cebu City. Upon qualitative analysis of the submitted sachets at the crime laboratory, FC Sahagun found their contents positive for *Methamphetamine Hydrochloride* or *shabu*, a dangerous drug, as stated in Chemistry Report No. D-663-2008.<sup>52</sup> IO1 Kintanar identified the subject sachets to be the same ones bought (“DSDP-BB 6/19/08”) and seized (“DSDP-01 6/19/08”, “DSDP-02 6/19/08”, “DSDP-03 6/19/08”, and “DSDP-04 6/19/08”) from Dela Peña and Delima (“DCD-01 6/19/08”) through the markings inscribed, and his signature in each plastic sachet.<sup>53</sup>

Anent the failure of FC Sahagun to testify on the security measures taken after she examined the specimen,<sup>54</sup> the defense agreed to dispense with the Forensic Chemist’s testimony, effectively waiving the opportunity to question her on the matter. Unfortunately, Dela Peña and Delima are barred from belatedly raising this objection for the first time before the CA. Lapses in the safekeeping of seized illegal drugs that affected their integrity and evidentiary value should be raised at the trial court level. When a party desires the court to reject the evidence offered, he must so state the same in the form of objection. Without such objection, the accused cannot raise the question for the first time on appeal.<sup>55</sup>

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<sup>47</sup> TSN, June 16, 2009, pp. 11-12.

<sup>48</sup> Id. at 12-13. This belied the contention of the defense that the sachet of *shabu* seized by IO1 Rallos was not segregated by IO1 Kintanar with those sachets he confiscated from Dela Peña (Appellant’s Brief, p. 8, CA *rollo*, p. 30).

<sup>49</sup> One sachet was sold to him by Dela Peña; he confiscated 4 sachets from the pocket of Dela Peña; and one sachet was handed to him by IO1 Rallos. TSN, November 7, 2008, pp. 16-17.

<sup>50</sup> TSN, November 7, 2008, p. 18.

<sup>51</sup> Id. at 17.

<sup>52</sup> Records (Crim. Case No. CBU-83578), p. 5.

<sup>53</sup> TSN, January 14, 2009, pp. 7-8.

<sup>54</sup> Appellant’s Brief, p. 10, CA *rollo*, p. 32.

<sup>55</sup> See *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 370, quoting *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

On the alleged non-compliance with Section 21<sup>56</sup> of R.A. 9165 on the conduct of physical inventory,<sup>57</sup> the CA aptly ruled that a physical inventory was conducted<sup>58</sup> and photographs<sup>59</sup> were taken, thus:

x x x Records show that the confiscated items were listed in a Certificate of Inventory which was duly signed by a media representative and elected public official. Photographs were even taken showing that the appellants were present when the media representative and elected official signed the certificate of inventory.<sup>60</sup>

In any event, we emphasized in *People v. Abedin*<sup>61</sup> that what is of utmost importance is to preserve the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused. The failure of the law enforcers to comply strictly with Section 21 of R.A. 9165 is not fatal, and its non-compliance will not render the arrest of an accused illegal or the items seized or confiscated from him inadmissible.

Neither the use of the initials of Dela Peña (“*DSDP*”) and Delima (“*DCD*”) in marking the confiscated sachets at the PDEA-7 office instead of the *locus criminis*, create a cloud on the integrity and the evidentiary value of the seized items.

“*Marking*” initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence.<sup>62</sup> Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team,<sup>63</sup> like what occurred in the present case. In the same vein, the fact that the markings used in the subject sachets were the initials of Dela Peña and Delima and not the initials of the arresting PDEA agent is not a ground to acquit the appellants. In the similar case of *People v. Cardenas*,<sup>64</sup> where the seized plastic sachets containing *shabu* were marked with the initials of accused-appellant, his conviction for illegal sale of

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<sup>56</sup> SEC. 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[.]

<sup>57</sup> Appellant’s Brief, p. 9, CA *rollo*, p. 31.

<sup>58</sup> See the Certificate of Inventory ( Exhibit “G”), records (Crim. Case No. CBU-83578), p. 6.

<sup>59</sup> Exhibit “H” and series, id. at 13.

<sup>60</sup> *Rollo*, p. 11.

<sup>61</sup> G.R. No. 179936, April 11, 2012, 669 SCRA 322, 337, citing *People v. Naquita*, 582 Phil. 422, 441-442 (2008); *People v. Del Monte*, 575 Phil. 576, 586 (2008).

<sup>62</sup> See *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>63</sup> *People v. Angkob*, G.R. No. 191062, September 19, 2012, 681 SCRA 414, 426, citing *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836.

<sup>64</sup> G.R. No. 190342, March 21, 2012, 668 SCRA 827.

dangerous drugs was nonetheless affirmed. Further, the defense cannot raise for the first time on appeal the question of whether the markings were made in the presence of Dela Peña and Delima. Lapses that affected the integrity and evidentiary value of the seized illegal drugs should be raised at the trial court level.<sup>65</sup> In any case, marking of the evidence, just like the security measures mandated under Section 21 of R.A. 9165, is aimed to ensure that the integrity and evidentiary value of the confiscated illegal drugs will be preserved. With the preservation of the integrity and evidentiary value of the six sachets seized from Dela Peña and Delima, as previously discussed, the lapses allegedly committed by the PDEA-7 operatives in the marking thereof, will not suffice to reverse their conviction.

To sum up, from the time the illegal drugs were seized from Dela Peña and Delima, up to their delivery to the crime laboratory for chemical examination, until their presentation in evidence before the RTC, the integrity of said items was preserved. No evidence was adduced by the defense showing that they were tainted in any manner. Verily, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.<sup>66</sup> Dela Peña and Delima failed to discharge their burden of proving that the evidence was tampered to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that the public officers properly discharged their duties.<sup>67</sup>

All told, the prosecution established beyond reasonable doubt, the guilt of Dela Peña in Criminal Case Nos. CBU-83576 and CBU-83577, and of Delima in CBU- 83578, for violation of Sections 5 and 11 of R.A. 9165.

We uphold the penalties imposed by the CA as they are within the range of the penalties provided for under Sections 5<sup>68</sup> and 11(3)<sup>69</sup> of R.A. 9165, as well as the prevailing jurisprudence in similar cases.<sup>70</sup>

**WHEREFORE,** premises considered, the present appeal is **DISMISSED.** The Decision dated April 16, 2013 of the Court of Appeals in

<sup>65</sup> See *People v. Mendoza*, supra note 55.

<sup>66</sup> *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 719, citing *People v. Ventura*, 619 Phil. 536, 555 (2009).

<sup>67</sup> See *People v. Miranda*, 560 Phil. 795, 810 (2007).

<sup>68</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.

<sup>69</sup> SEC. 11. *Possession of Dangerous Drugs.* x x x  
x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of ... methamphetamine hydrochloride or "shabu" x x x.

<sup>70</sup> *People v. Sabadlab*, G.R. No. 186392, January 18, 2012, 663 SCRA 426; *Asiatico v. People*, G.R.No. 195005, September 12, 2011, 657 SCRA 443.


CA-G.R. CR HC No. 01200 is **AFFIRMED**.

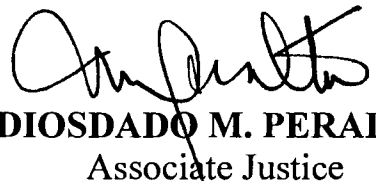
With costs against the accused-appellants.

**SO ORDERED.**


  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

WE CONCUR:

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


  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

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

### ATTESTATION

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

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

