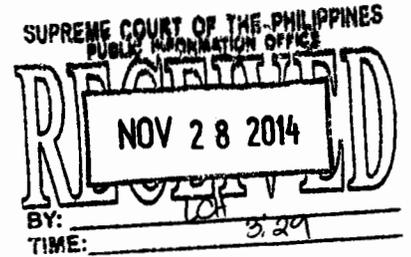




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated August 20, 2014, which reads as follows:

***“G.R. No. 195533 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. BONIFACIO CAMELO y DIAZ, Accused-Appellant.*”**

In two Informations both dated August 21, 2002 and docketed as Criminal Case Nos. Q-02-111419 and Q-02-111420, accused-appellant Bonifacio Caramelo y Diaz was charged as follows:

Criminal Case No. Q-02-111419

That on or about the 19th day of August 2002[,] in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point twenty[-]one gram (0.21) of white crystalline substance containing Methylamphetamine Hydrochloride[,] a dangerous drug.¹

Criminal Case No. Q-02-111420

That on or about the 19th day of August 2002[,] in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there, willfully, unlawfully, and knowingly have in [his] possession and control, two plastic [sachets] containing zero point zero eight gram (0.08) of white crystalline substance containing Methylamphetamine [H]ydrochloride[,] a

¹ Records, p. 2.

dangerous drug.²

Accused-appellant Caramelo pleaded “*not guilty*” to the above-quoted charges.

At the ensuing trial, the prosecution sought to present five witnesses, namely, Police Officer (PO) 3 Ferdinand Geli (Desk Officer on duty at the Novaliches Police Station 4), Engineer Leonard Jabonillo (Forensic Chemical Analyst), PO3 Romar Tagalog (a member of the buy-bust team), PO2 Noel Magcalayo (poseur-buyer), and PO2 Fernando Salonga (another member of the buy-bust team), to establish its case against accused-appellant Caramelo.

PO2 Magcalayo testified that the buy-bust operation was the result of a tip from an informant; that on August 19, 2002, at around 6:00 p.m., the above-named police officers, with two other operatives of Police Station 4 and the informant, went to Pugong Ginto Street, Barangay Sta. Monica, Novaliches, Quezon City, to conduct a buy-bust operation against a certain “*Boy Taba*,” said to be engaged in peddling and distributing illegal drugs; that upon reaching the target area, PO2 Magcalayo, the designated poseur-buyer, and the informant walked towards Pugong Ginto Street and stopped upon reaching the house at No. 20; that the two were met thereat by a man who answered to the name of “*Boy Taba*,” that the other members of the team positioned themselves within viewing distance of the three persons; that after PO2 Magcalayo and “*Boy Taba*” were introduced to each other by the informant, PO2 Magcalayo asked “*Boy Taba*” if he had any *shabu* for sale; that upon inquiring how much “*shabu*” was needed, “*Boy Taba*” reached for the payment, a 100-Peso marked bill, and handed over a small plastic sachet containing a white powdered substance; that immediately thereafter, PO2 Magcalayo held on to him and announced that he was under arrest for Violation of Republic Act No. 9165; that the other members of the buy-bust operation rushed to the scene to help arrest “*Boy Taba*” whose real name turned out to be Bonifacio Caramelo y Diaz, the accused-appellant in this case; that the 100-Peso marked bill was recovered from accused-appellant Caramelo’s right hand; that when the latter was bodily searched, two more small plastic sachets containing white powdered substance were confiscated from his right short pants pocket; that the first small plastic sachet was marked “*BDC-1*,” and that the two others that were found in accused-appellant Caramelo’s pocket were marked “*BDC-2*” and “*BDC-3*.”

² Id. at 4.

Before the police officers left the premises, however, they saw a group of four men inside the house at No. 20 playing “pusoy” and betting against each other; thus, those men were also arrested for illegal gambling, or Violation of Presidential Decree No. 1602, and their gambling paraphernalia and money accordingly confiscated. All the suspects and the confiscated materials were brought to the Police Station 4 and turned over to the Desk Officer on duty for processing.

PO2 Salonga confirmed the material points of the foregoing narration.

With respect to the testimonies of the other prosecution witnesses, the prosecution and the defense agreed to stipulate on the following matters:

PO3 Ferdinand Geli:

1. That PO3 Ferdinand [Geli] of CPD Police Station 4, Novaliches, Quezon City, was the investigator in this case;
2. That on August 20, 2002, he prepared the police letter referral to the Quezon City Prosecutor’s Office signed by P/Supt. Benedicto B. Lopez for inquest of the accused;
3. That pursuant to his investigation[,] he took down the Joint Affidavit of the arresting officers, namely: PO2 Noel Magcalayo, PO2 Fernando Salonga and PO2 Romar Tagalog;
4. That he was the one who took custody of the ₱100.00 buy/bust money with Serial No. KD741109;
5. That said witness prepared the request for laboratory examination of the specimen.³

Engr. Leonard Jabonillo:

1. That a request for laboratory examination was prepared and sent by the CPD Novaliches Police Station 4, signed by Nilo Pares Wong, Chief SDEU, which letter request together with the specimen was received by the Central Police District Crime Laboratory Office on August 19, 2002 as shown by the stamp receipt;

³ Id. at 52.

2. That upon receipt of said letter request and specimen, a qualitative examination was conducted by Engr. Jabonillo and found the specimen to be positive for [M]ethylamphetamine [H]ydrochloride, a dangerous drug;
3. That said findings of Engr. Jabonillo was reduced into writing as embodied in Chemistry Report No. D-987-2002 prepared and signed by Engr. Leonard Jabonillo;
4. That attached to the said chemistry report is a sealed brown envelope and inside the same are three (3) heat-sealed transparent plastic sachets containing white crystalline substance with the following markings: A(BDC-1), B(BDC-2) and C(BDC-3)[,] respectively; and
5. That the witness has no personal knowledge as to the source of the alleged specimen he examined.⁴

PO3 Romar Tagalog:

1. That said police officer was a member of the buy-bust team that conducted an operation against the accused on August 19, 2002;
2. That his only participation in their operation was a back-up; and
3. That he has no participation in the actual arrest of the accused and recovery of the specimen subject of these cases.⁵

To counter the above, the defense offered the lone testimony of accused-appellant Caramelo, who narrated a different set of facts. The latter claimed that on August 19, 2002, at 4:00 in the afternoon, he was playing a card game with four other people in the house of his co-worker, when two police officers (PO2 Magcalayo and one Nelson Sy) in plainclothes entered the house and demanded ₱3,000.00 from all of them; that when he questioned such demand, one of the police officers got mad, handcuffed him and his companions, detained them at Police Station 4, and charged his fellow players with illegal gambling, while he was charged with illegal sale and possession of dangerous drugs under Sections 5 and 11, respectively, of Republic Act No. 9165.

After trial, the RTC found accused-appellant Caramelo guilty beyond reasonable doubt of the crimes charged. The dispositive of the August 7, 2008 Judgment reads:

⁴ Id. at 53.

⁵ See Order dated December 7, 2004; records, p. 65.

WHEREFORE, premises considered, the Court finds accused Bonifacio Caramelo y Diaz guilty beyond reasonable doubt of:

- a. In Criminal Case No. Q-02-111419, Violation of Section 5 of R.A. 9165 for selling 0.21 gram of *shabu* to police poseur buyer and therefore he is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00;
- b. In Criminal Case No. Q-02-11[1]420, Violation of Section 11 of R.A. 9165 for illegally possessing, without proper permit or license, 0.08 gram of *shabu* and therefore he is sentenced to suffer the penalty of 12 years and 1 day of imprisonment and to pay a fine of ₱300,000.00.

The confiscated drugs are ordered disposed of in accordance with law.⁶

On appeal, in a Decision dated August 27, 2010, the Court of Appeals affirmed the Judgment of the RTC in all aspects but the penalty imposed in Criminal Case No. Q-02-111420, viz:

WHEREFORE, in view of the foregoing, the August 7, 2008 Judgment of the Regional Trial Court (RTC) of Quezon City, Branch 79, is hereby **AFFIRMED** with **MODIFICATION** as to Criminal Case No. Q-02-111420 in that accused-appellant is sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.⁷

Hence, the present appeal.

Accused-appellant Caramelo insists that he was playing "*pusoy*" at the time of his arrest; and that no buy-bust operation occurred. Consequently, he argues that his warrantless arrest was illegal; hence, the two sachets found on his person were inadmissible in evidence against him. He also claims that he was not provided with counsel during his investigation.

As an alternative, accused-appellant Caramelo asserts that even if a lawful buy-bust operation was conducted, his acquittal should have been inevitable in view of the police operatives' supposed noncompliance with the procedure dictated by Section 21 of the law on the custody and

⁶ CA rollo, p. 28.

⁷ Rollo, p. 25.

disposition of confiscated/seized/surrendered dangerous drug as well as the non-preservation of the integrity of the contents of the seized small plastic sachets.

The Office of the Solicitor General (OSG) for respondent People of the Philippines essentially argues, however, that positive identification by the eyewitness of the sale of illegal drugs to the poseur-buyer outweighs the defenses of denial and frame-up; that the issue pertaining to the legality of accused-appellant Caramelo's arrest and supposed lack of counsel cannot be raised for the first time on appeal; that the chain of custody of the physical evidence was satisfactorily established; and that noncompliance with the requirements laid in Section 21(1) of Republic Act No. 9165 will not disprove the fact of illegal sale of prohibited drugs between the accused and the police operative/poseur-buyer.⁸

The appeal is bereft of merit.

In this appeal, accused-appellant Caramelo's defenses of denial, frame-up and extortion are essentially anchored on the credibility of the witnesses of the prosecution and their testimonies that a buy-bust operation was actually conducted.

As a rule, credibility is the sole province of the trial court.⁹ It is well-settled that:

[W]hen the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. x x x.¹⁰

In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, the RTC's findings on the matter of credibility of witnesses will not be disturbed on appeal,¹¹ especially when such findings have been affirmed by the Court of Appeals.

⁸ CA rollo, p. 114.

⁹ *People v. Nelmidia*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 413.

¹⁰ Id.

¹¹ Id.

All the same, this Court has examined the records of this case but found no indication that the trial and the appellate courts overlooked or failed to appreciate facts that, if considered, would change the outcome of this case.

Accused-appellant Caramelo's defenses of denial, frame-up and extortion cannot prevail over the prosecution witnesses' positive testimonies, coupled with the presentation in court of the *corpus delicti*. Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that in cases involving violations of Republic Act No. 9165, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.

Here, there was none. Although accused-appellant Caramelo alleged that PO2 Magcalayo tried to extort money from him and his supposed companions, he was unable to support his allegation. Thus, his allegation, absent any proof, remains just that, an allegation. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof.¹² Therefore, the lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of prosecution witnesses, should overcome accused-appellant Caramelo's self-serving and uncorroborated extortion claim. Moreover, the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.¹³ Again, accused-appellant Caramelo presented no such evidence.

Thus, we uphold the RTC and the Court of Appeals' ruling that the eyewitness account of PO2 Magcalayo, as confirmed by the other witnesses of the prosecution, and the presentation of the seized sachets of *shabu*, positively and categorically established the occurrence of a buy-bust operation by the police operatives of Novaliches Police Station 4; and that accused-appellant Caramelo was arrested on such occasion.

¹² *Domingo v. Robles*, 493 Phil. 916, 921 (2005); *Ongpauco v. Court of Appeals*, 488 Phil. 396, 401 (2004).

¹³ *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

To successfully prosecute cases of illegal sale of dangerous drugs penalized under Section 5 of Republic Act No. 9165, it is necessary that the following elements be established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment thereto.¹⁴ As for the illegal possession of drugs punished under Section 11 of the same law, the elements thereof are: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹⁵

In this case, the conviction of accused-appellant Caramelo was proper as the prosecution was able to show the concurrence of all the elements of both offenses through the combined testimonial, documentary, and object evidence that it presented. All the elements for the illegal sale of *shabu* were established. PO2 Magcalayo, the poseur-buyer, positively identified accused-appellant Caramelo as the person he bought the *shabu* from during the entrapment operation they conducted. Upon receipt of the ₱100.00 buy-bust money, accused-appellant Caramelo handed to him the sachet containing 0.21 gram of white crystalline substance which later tested positive for the dangerous drug commonly known as *shabu*. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.¹⁶

As to the charge of illegal possession of dangerous drugs, all the elements thereof were also established. Firstly, the two plastic sachets containing *shabu* subject of the case for the illegal possession of drugs were found in accused-appellant Caramelo's short pants pocket after a search on his person was made following his arrest *in flagrante delicto* for the illegal sale of *shabu*. Secondly, he failed to adduce evidence that he was legally authorized to possess the *shabu*. And, thirdly, the presence of the two sachets in his short pants pocket was a sign that he freely and consciously possessed the dangerous drug. Thus, accused-appellant Caramelo was correctly charged and convicted for illegal possession of *shabu*.

Accused-appellant Caramelo similarly draws attention to the failure of the apprehending police officers to comply with Section 21(1), Article II of Republic Act No. 9165 regarding the physical inventory and photograph of the seized items. He contends that the prosecution failed to establish the

¹⁴ *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 339.

¹⁵ *Id.* at 342-343.

¹⁶ *People v. Legaspi*, G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

chain of custody of the seized items because the police operatives failed to strictly comply with Section 21(1) of Republic Act No. 9165.

This is incorrect.

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.¹⁷

Jurisprudence abounds with declarations that failure to strictly comply with Section 21(1), Article II of Republic Act No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible.¹⁸ 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.¹⁹ In this case, there is substantial compliance by the police operatives with the required procedure on the custody and control of the seized dangerous drugs, thus showing that the integrity thereof was not compromised. The succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, all point to the preservation of the integrity of the contents of the three sachets seized from accused-appellant Caramelo. To quote the Court of Appeals:

We do not however see any serious flaws on the chain of custody as accused-appellant argues. It was established by the prosecution, as follows: (1) three plastic sachets were seized by PO2 Magcalayo from accused-appellant x x x; (2) markings of BDC-1, BDC-2 and BDC-3 were made by PO2 Magcalayo on each of the plastic sachets x x x; (3) PO2 Magcalayo turned the items over to the duty Desk Officer/Investigator PO3 Ferdinand Geli x x x; (4) a Request for Laboratory Examination was then made by PO3 [Ferdinand] Geli signed by Nilo Pares Wong, Chief SDEU x x x; ([5]) PO3 Geli then turned over the letter-request as well as the specimen to the Central Police District Crime Laboratory x x x; ([6]) the request and the specimen were received by the Central Police District Crime Laboratory Office through SPO2 Gaiub and then received by the Chemistry Section of the said Office through Forensic Chemist Engr. Jabonillo, who also examined the items x x x; ([7]) As per Jabonillo's findings, the specimen was found positive for methylamphetamine hydrochloride x x x; ([8]) that said findings were reduced into writing as embodied in Chemistry Report No.

¹⁷ *People v. Gum-Oyen*, 603 Phil. 665, 674 (2009).

¹⁸ *People v. Naquita*, 582 Phil. 422, 441-442 (2008); *People v. Mateo*, 582 Phil. 390, 401 (2008); *People v. Del Monte*, 575 Phil. 576, 586 (2008); *People v. Pringas*, 558 Phil. 579, 593 (2007); *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

¹⁹ *People v. Teodoro*, 608 Phil. 296, 309 (2009).

D-987-2002 x x x[;] and lastly[,] ([9]) these seized items were identified in open court during the trial x x x. There can be no doubt that the prosecution established the crucial link in the chain of custody of the sold and seized sachets of shabu, from the time they were first bought and seized from accused-appellant, until they were brought for examination and later on presented in Court. These links in the chain are undisputed and therefore, the integrity of the seized drugs remains intact and their evidentiary values have not been compromised.²⁰

From the foregoing, it is clear that there was no break in the chain of custody of the seized dangerous drug. From the confiscation, handling, custody and examination of the *shabu*, the prosecution was able to show that the illegal drugs that were confiscated from accused-appellant Caramelo, taken to the police headquarters, subjected to qualitative examination at the crime laboratory, and finally introduced in evidence against him were the same illegal drugs that were confiscated from him when he was caught *in flagrante delicto* selling and possessing the same.

The foregoing notwithstanding, it is best to clarify that:

[N]on-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. x x x.

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.²¹

Relative to accused-appellant Caramelo's claim that his arrest was illegal and the sachets of *shabu* confiscated from him are inadmissible in evidence against him, and the same holds true for the investigation that followed at the police station, the Court of Appeals fittingly held that:

²⁰ *Rollo*, pp. 21-22.

²¹ *Zalameda v. People*, 614 Phil. 710, 741-742 (2009).

It is a well-established rule that an arrest made after a buy-bust operation does not necessitate a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court x x x.

x x x x

x x x In the instant case, accused-appellant was indeed caught *in flagrante delicto* in selling illegal drugs to a policeman posing as a poseur-buyer. When accused-appellant was thereafter frisked, two sachets of shabu were again found in his possession. Upon that very moment of the operation, the buy-bust team was justified in making a warrantless arrest as accused-appellant has just committed a crime of illegal sale and illegal possession of dangerous drugs. It follows then that all pieces of evidence seized and confiscated therein were admissible.

x x x [B]y entering a plea upon arraignment and by actively participating in the trial, an accused is deemed to have waived any objection to his arrest and warrantless search (*People vs. Ayangao*, 427 SCRA 428, 432-433, 2004).

And as to the penalties imposed by the Court of Appeals, We find the same proper.

Section 5, Article II of Republic Act No. 9165 penalizes the crime of unauthorized sale of *shabu*, regardless of the quantity and purity thereof, with life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00). In this case, the imposed penalty of life imprisonment and a fine of ₱500,000.00 was properly affirmed by the Court of Appeals for illegal sale of *shabu*.

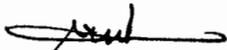
On the other hand, Section 11, Article II of Republic Act No. 9165, penalizes the crime of illegal possession of less than five grams of *shabu* with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Herein, the Court of Appeals correctly modified the penalty imposed by the RTC, *i.e.*, instead of a straight penalty of imprisonment of twelve (12) years and one (1) day, the appellate court amended it to an indeterminate sentence of twelve (12) years and one (1) day, as minimum, to fourteen (14) years as maximum, a period within the range of penalties prescribed by the law, plus a fine of ₱300,000.00.

- over -

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the August 27, 2010 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03484.

SO ORDERED.” VILLARAMA, J., on leave; **PERALTA, J.,** acting member per Special Order No. 1750 dated August 11, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court *skillo*
74

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Makati City

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Manila
(CA-G.R. CR H.C. No. 03484)

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The Hon. Presiding Judge
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1100 Quezon City
(Crim. Case Nos. Q-02-111419 &
Q-02-111420)

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