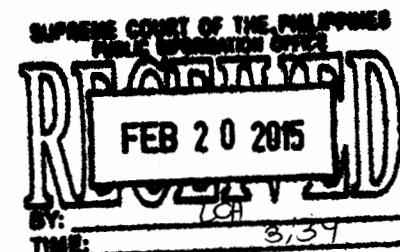




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 14, 2015, which reads as follows:

G.R. No. 190635 - PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. SAMUEL ESTROPE* y TANGHAL @ "SAMMY," Accused-Appellant.

This is an appeal¹ of the Decision² dated March 31, 2009 and the Resolution dated October 1, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03114, affirming the conviction of accused-appellant Samuel Estrope y Tanghal for violation of Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant, who himself was formerly the chief and evidence custodian of the Bulacan Crime Laboratory before being discharged from the service on account of the loss of several drug specimens under his custody, was charged in the following Informations:

CRIMINAL CASE NO. 464-M-2006

That on or about the 27th day of January, 2006 in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell, trade, deliver,

* Also referred to as Samuel Estorpe in some parts of the records.
¹ CA *rollo*, p. 264.

² *Rollo*, p. 2; penned by Associate Justice Ricardo R. Rosario with Associate Justices Estela Perlas-Bernabe (now a member of this Court) and Mariflor Punzalan-Castillo, concurring.

give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of methylamphetamine hydrochloride (shabu) weighing 0.10 gram.³

CRIMINAL CASE NO. 465-M-2006

That on or about the 27th day of January, 2006 in the [M]unicipality of Malolos, [P]rovince of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in his possession and control dangerous drug consisting of five (5) heat-sealed transparent plastic sachets of methylamphetamine hydrochloride (shabu) weighing 1.19, 1.06, 0.97, 0.11 and 1.39 gram or a total weight of 4.72 grams.⁴

Accused-appellant pleaded not guilty to the offenses charged. Trial thereafter ensued, wherein the prosecution presented the testimony of Police Officer (PO)1 Marlon Manalaysay. The Court of Appeals would later summarize the testimony of PO1 Manalaysay, as follows:

Based on a report from a confidential informant about the illegal drug activities of a certain *alias* "Sammy," the Provincial Drug Enforcement Group (PDEG) of Bulacan conducted a surveillance in Bgy. San Juan, Malolos City on 25 January 2006. The team, composed of, among others, prosecution witness PO1 Marlon Manalaysay and the other members of the PDEG-Bulacan, together with the confidential informant, proceeded to the vicinity of the house of the suspect. During the surveillance, the team observed that several identified drug users, some of whom were previously arrested by the PDEG-Bulacan, frequented the house of *alias* "Sammy."

The result of the surveillance was reported to the Chief of the PDEG-Bulacan, who, in preparation for a buy-bust operation, instructed the confidential informant to contact and set a deal with appellant for the purchase of the dangerous drug.

At 7:00 o'clock in the evening of 26 January 2006, the confidential informant returned to the office of the PDEG with the information that appellant would be selling to him One Thousand Pesos (₱1,000.00) worth of *shabu* at 4:30 in the morning of the following day, 27 January 2006, in Bgy. Sto. Rosario, Malolos City. After coordinating with the Philippine Drug Enforcement Agency (PDEA) and the local police of Malolos City, the same team which conducted the earlier surveillance organized a buy-bust operation to entrap the suspect. PO1 Manalaysay, who was designated as poseur buyer, was given two (2)

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³ Records, p. 2.

⁴ Id. at 24.

Five Hundred Peso (₱500.00) bills, which he marked with his initials, "MM."

As planned, the buy-bust team, accompanied by the confidential informant, went to Bgy. Sto. Rosario, Malolos City at 4:00 o'clock in the morning of 27 January 2006 and strategically positioned themselves. PO1 Manalaysay and the confidential informant then waited for *alias* "Sammy" to arrive. Around 4:20 in the morning, *alias* "Sammy" arrived in a white car. The confidential informant approached him as *alias* "Sammy" rolled down the window of his car. The confidential informant then introduced PO1 Manalaysay to *alias* "Sammy." *Alias* "Sammy," who turned out to be appellant Samuel [Estrope], asked for the agreed amount of One Thousand Pesos (₱1,000.00). PO1 Manalaysay gave the same to appellant, who in turn, handed to him the *shabu*. Before PO1 Manalaysay could execute the pre-arranged signal, however, appellant sped away with his car. PO1 Manalaysay pulled out his gun and shouted at appellant to stop. The other members of the team immediately responded by blocking appellant's path with their van. Appellant was then ordered to step out of his car and was frisked by PO1 Manalaysay. Recovered from appellant were the buy-bust money and a coin purse containing five (5) more sachets of *shabu*. Appellant, who was informed of his constitutional rights, was then arrested and was brought to the PDEG Office, where PO1 Manalaysay marked the confiscated items and prepared the inventory. Media [r]epresentatives Boy S. Cruz of Pilipino Star Ngayon and Ram Barcelona of Radio Station DWDD, witnessed the preparation of the inventory and affixed their signatures on the list of the seized items. On the other hand, appellant, who was also present, refused to sign the [i]nventory. A picture of appellant together with the confiscated items was likewise taken by media representative Boy S. Cruz.

When examined, the contents of the confiscated plastic sachets tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug. The sachet subject of the sale was found to contain zero point ten (0.10) gram of *shabu*, while those found in appellant's possession weighed 1.19, 1.06, 0.97, 0.11 and 1.39 gram each or a total weight of 4.72 grams of *shabu*. Appellant admitted the veracity of the report of the laboratory examination but not the fact that he was the source thereof.⁵

The prosecution did not present any other witness in view of the following stipulations by the defense:

1. Forensic Chemical Officer **Antonieta A. Abillonar** – testimony dispensed with when the parties stipulated on her qualification and competence as an expert witness, and the veracity of the Chemistry Reports issued by her.

⁵ *Rollo*, pp. 6-8.

2. **Boy S. Cruz** of Pilipino Star and **Ram Barcelona** of DWDD (radio station) – testimony dispensed with on the stipulation that said witnesses affixed their signatures on the list of items allegedly seized from accused-appellant when they were at the office of the Provincial Drug Enforcement Group and not at the scene of the crime; and that pictures were taken by Cruz in said office and not at the scene of the crime.

3. **PO3 Tomas Nachor, Jr.** – testimony dispensed with upon the stipulation that he prepared the document denominated as Technical Inspection and Inventory Report dated January 27, 2006, consisting of two pages.

4. **PO2 Ruel Chan** – testimony dispensed with upon the stipulation that he can testify on the identity of the dangerous drugs subject of the case but not on the source thereof.

5. **LTO representative** – testimony dispensed with upon the stipulation on the existence of the traffic citation ticket Temporary Operator's Permit No. 7402735-4 issued on January 31, 2006.

The defense presented accused-appellant and tricycle driver Roselio Dugtong. Their testimonies were summarized by the Court of Appeals, as follows:

Professing innocence, appellant interposed the defense of denial. He alleged that he was at the place of the incident at 4:00 o'clock in the morning of 27 January 2006 because he was to rescue his wife's cousin, a certain Pipo Aldaba, who was allegedly being harassed by armed men. Pipo Aldaba, who aside from being the cousin of his wife was the son of his close friend, allegedly called up at the wee hours of the morning and asked if appellant could come over and lend him assistance. Appellant allegedly called up Pipo Aldaba's father but no one answered the latter's telephone, so that appellant was purportedly prevailed upon to go to his house to give assistance to Pipo Aldaba.

Appellant narrated that he was driving along Sto. Rosario, Malolos City, when a gray van suddenly blocked his path and a number of armed men ordered him to alight from his car. He was allegedly frisked but nothing was recovered from his possession except his cellular phone. He introduced himself as Captain Estrope, former Chief of the Bulacan Crime Laboratory Office, but, still, he was arrested and brought to the PDEC Office, for no reason at all. Appellant recognized some of the arresting officers as PO1 Manalaysay, PO2 Ruel Chan, and PO3 Enrique Rullan, whom he all knew from way back when he was still the Chief of the Bulacan Crime Laboratory. He was also allegedly surprised

to see Pipo Aldaba in the van of the police officers. Pipo Aldaba was allegedly bruised and was crying.

Appellant further alleged that PO2 Ruel Chan and PO3 Enrique Rullan may have filed the case against him because of a previous grudge when appellant, who was the Chief of the Crime Laboratory of Bulacan, denied the request of these police officers to alter the result of a laboratory examination on the specimen confiscated by them. Appellant also alleged that a member of the arresting team, a certain Pabalinas, tried to extort money from him and his wife in the amount of Three Hundred Thousand Pesos (₱300,000.00) in exchange for his liberty but they did not give in to said demand. When asked, appellant admitted that he did not bother to file a case for extortion against Pabalinas because he feared for his life and that of his family.

On cross-examination, appellant divulged that he was formerly the Chief and the evidence custodian of Bulacan Crime Laboratory and that he was discharged from the service on account of the loss of several drug specimen under his custody.

The defense presented another witness in the person of a certain Roselio Dugtong, a tricycle driver, who testified that he witnessed the arrest of appellant. He narrated that a van blocked the way of appellant, who introduced himself to the arresting officers as Captain [Estrope]. Appellant was allegedly frisked and a cellular phone was found and confiscated from him. Appellant was allegedly arrested and made to board the van and was taken towards the direction of Poblacion.⁶

On October 31, 2007, the Regional Trial Court (RTC), Branch 76 of Malolos, Bulacan rendered its Joint Judgment convicting accused-appellant of the crimes charged. The dispositive portion of the Joint Judgment reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, accused SAMUEL ESTROPE y Tanghal @ Sammy is hereby CONVICTED:

[A] in Criminal Case No. 464-M-2006, which charges accused with the sale of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as *shabu*, weighing 0.10 gram and a dangerous drug, in violation of Sec. 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002, and is SENTENCED to suffer LIFE IMPRISONMENT, and to pay the FINE of Five Hundred Thousand Pesos (₱500,000.00);

[B] in Criminal Case No. 465-M-2006, which charges accused for possession and control of dangerous drug consisting of five (5) heat

⁶ Id. at 8-11.

sealed transparent plastic sachets of methylamphetamine hydrochloride commonly known as *shabu*, weighing 1.19, 1.06, 0.97, 0.11 and 1.39 grams, or a total weight of 4.72 grams and are all dangerous drugs, in violation of Sec. 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer the imprisonment of, applying the Indeterminate Sentence Law, TWELVE (12) YEARS AND ONE (1) DAY, AS MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM, and to pay the FINE of Three Hundred Thousand Pesos (₱300,000.00);

As to the specimen subject of these cases, the same are hereby confiscated in favor of the government. The Clerk of Court is directed to dispose of the said specimen in accordance with the existing procedure, rules and regulations.

As to accused'[s] second motion for the release of his motor vehicle filed on July 31, 2007 and followed up by a manifestation in support of the motion to release vehicle filed on October 3, 2007, the same are hereby DENIED for lack of merit.

However, in view of the second paragraph of Section 20 which requires this court to immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense, schedule the hearing of said matter on November 15, 2007 at 8:30 a.m. of which both the public prosecutor and accused'[s] counsel Atty. Gonzales are notified of the said schedule. Inasmuch as the right of the accused to be present during the trial had ceased after promulgation of this joint judgment, there is no more impediment for the immediate commitment of accused to the National Penitentiary.

Furnish both parties of this joint judgment and the Provincial Jail Warden.⁷

Accused-appellant's Motion for Reconsideration was then denied in a Joint Order dated December 27, 2007. Accused-appellant's appeal, docketed as CA-G.R. CR-H.C. No. 03114, was likewise denied by the Court of Appeals in the assailed Decision dated March 31, 2009. Hence, this appeal, where accused-appellant claims that there were several procedural lapses in his arrest and investigation, particularly:

1. There was no clear and duly recorded authorized movement and custody of the seized drug from the time of seizure to receipt in the forensic laboratory to presentation in court for destruction;

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Records, pp. 264-265.

2. There were no photographs as required by Section 21, paragraph 1 of Republic Act No. 9165;

3. The inventory was made in the police station, not in the place where the items were seized; and

4. No *barangay* official witnessed the incident.

In addition, accused-appellant incorporates his arguments in his Brief before the Court of Appeals, wherein he argues that:

1. The proper procedure for the conduct of the surveillance was not conducted;

2. It is against human nature to assign a person known to the accused to act as poseur-buyer (since accused-appellant and PO1 Manalaysay have the same *alma mater* which is the Philippine College of Criminology);

3. There was no indication that there was a sale since the buy-bust money was not dusted with ultraviolet powder;

4. The Miranda doctrine was not proven to have been observed since PO1 Manalaysay's testimony was not corroborated by another witness who heard it being recited; and

5. The coin purse recovered from accused-appellant which allegedly contained the five sachets of *shabu* was not presented as evidence.

After a thorough review of the records, we find no reason to reverse the conviction of accused-appellant Estrope.

As we have pointed out in several cases, while Section 21, paragraph 1, Article II of Republic Act No. 9165 dictates the procedural safeguards that must be observed in the handling and custody of confiscated drugs, the implementing rules and regulations of the law provides that non-compliance with the procedure will not nullify such seizures:

(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 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 the 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[.]**

In the case at bar, prosecution witness PO1 Manalaysay testified that the seized items were immediately marked in the office upon the arrival of the team together with the accused-appellant. Members of the media, who were likewise present in the office, took photographs of the items recovered from accused-appellant. PO1 Manalaysay narrated how the seized items were handled from the time the plastic sachets of *shabu* were recovered from accused-appellant and marked at the police station, to the time they were referred to the forensic chemist for examination. PO1 Manalaysay thereafter identified the items seized from accused-appellant, without any objection from the defense or further questions on the custody of the specimen during the three-day cross-examination.⁸ Accordingly, accused-appellant failed to seasonably question the manner of disposition of the items recovered from his person. Such a lapse is fatal to accused-appellant's cause for this Court has held that:

Whatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because accused did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal.⁹

With respect to accused-appellant's allegations concerning the preparations on the buy-bust operation, we observe that accused-appellant does not even dispute that the police officers conducted a prior surveillance. Accused-appellant merely alleges that the surveillance was not in accordance with the prescribed guidelines, particularly that all steps taken before, during and after the conduct of the operations be documented and properly authenticated. According to accused-appellant, the Pre-Operation Report does not even contain maps, sketches, photographs, background

⁸ TSN, June 15, 2006; TSN, July 13, 2006; TSN, August 10, 2006.

⁹ *People v. Octavio*, G.R. No. 199219, April 3, 2013, 695 SCRA 192, 206.

investigation/record checks reports or affidavits of the persons they allegedly talked with.¹⁰

This Court finds these allegations concerning alleged irregularities in the surveillance of accused-appellant insufficient to discredit the buy-bust operation conducted. On the contrary, we have previously ruled that prior surveillance itself is not even necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied at the target area by the informant.¹¹

Accused-appellant's allegation that he was not apprised of his constitutional rights and his arguments to prove that the buy-bust operation did not in fact take place (no dusting of buy-bust money with ultraviolet powder; not presenting the coin purse from which the five sachets of *shabu* were recovered; and that it was against human nature to assign a person known to him as poseur-buyer) are all factual assertions which this Court does not, as a general rule, pass upon. In cases involving illegal drugs, which depend largely on the credibility of the police officers who conducted the buy-bust operations, we generally defer to the trial court's assessment of the evidence as it had the opportunity to directly observe the witnesses and their demeanor on the witness stand.¹² To stress, we reviewed the records of the case and found no glaring error or gross misapprehension of facts as would lead us to overturn the factual findings of the RTC and the Court of Appeals.

As furthermore observed by the Court of Appeals, the fact that accused-appellant personally knows PO1 Manalaysay as a police officer does not support his theory that he could not have sold narcotics to the latter. This Court has indeed held that:

We have found in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.¹³

¹⁰ CA *rollo*, p. 98.

¹¹ *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 338.

¹² *People v. Monceda*, G.R. No. 176269, November 13, 2013, 709 SCRA 355, 366-367; *People v. Alivio*, G.R. No. 177771, May 30, 2011, 649 SCRA 318, 328.

¹³ *People v. Requiz*, 376 Phil. 750, 759-760 (1999).

Neither should the police officers' omission of dusting the buy-bust money with ultraviolet powder be considered fatal to the prosecution. This Court has, in fact, ruled that the presentation itself of the marked money in evidence is not indispensable:

The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.¹⁴

Accordingly, we affirm the conviction of accused-appellant by the trial court and the Court of Appeals. With regard to the penalties imposed by the trial court and upheld by the Court of Appeals, Article II, Section 5 of Republic Act No. 9165 provides that the penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. The imposition by the trial court of the penalty of life imprisonment and the order to pay a fine of ₱500,000.00 are therefore correct.

Section 11, on the other hand, prescribes that the penalty for possession of less than five grams of dangerous drugs is imprisonment of 12 years and one day to 20 years, plus a fine ranging from ₱300,000.00 to ₱400,000.00. Applying the Indeterminate Sentence Law, the minimum term shall not be less than the *minimum fixed by law* and the maximum term shall not exceed the *maximum as prescribed by the same law*. Resultantly, the imposed penalty of 12 years and one day as minimum to 13 years as maximum, plus a fine of ₱300,000.00, is in order.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03114 is hereby **AFFIRMED**.

SO ORDERED." **PERLAS-BERNABE, J.**, took no part; **PERALTA, J.**, additional member per raffle dated December 3, 2014,

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

8th 300

¹⁴ *Cruz v. People*, 597 Phil. 722, 729 (2009).

The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR H.C. No. 03114)

The Hon. Presiding Judge
Regional Trial Court, Br. 76
Malolos City 3000 Bulacan
(Crim. Case Nos. 464-M-2006 &
465-M-2006)

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