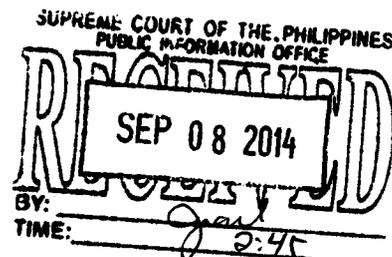




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 28, 2014 which reads as follows:*

**“G.R. No. 195524 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ARNOLD TABUZO y MINOZA, Accused-Appellant.**

The accused appeals the decision promulgated on May 28, 2010,<sup>1</sup> whereby the Court of Appeals (CA) affirmed the decision rendered on October 9, 2006 by the Regional Trial Court (RTC), Branch 58, in Cebu City, finding him guilty of a violation of Section 5 of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*), and sentencing him to suffer life imprisonment and to pay a fine of ₱500,000.00; and of a violation of Section 11, Art. II of RA No. 9165, and sentencing him to suffer imprisonment of 12 years and one day, as minimum, to 15 years, as maximum, and to pay a fine of ₱300,000.00.<sup>2</sup>

**Antecedents**

The State presented three witnesses, namely: Forensic Officer Sr. Insp. David Alexander Patriana, poseur buyer PO2 Goduardo Gamit, and back-up officer PO2 Jose Erwin Dumaguit.

PO2 Gamit testified that the Bravo Team mounted a buy bust operation against the accused, with himself as the poseur buyer; that he succeeded in buying from the accused five sachets of *shabu* worth ₱1,000.00 with the use of two marked ₱500.00 bills; that upon completing the transaction with the accused, he immediately held the latter’s hands and identified himself as a PDEA operative; that he had to fire his gun in the

<sup>1</sup> *Rollo*, pp. 3-25; penned by Associate Justice Pampio A. Abarintos (retired), with the concurrence of Associate Justice Ramon A. Cruz and Associate Justice Myra V. Garcia-Fernandez.

<sup>2</sup> *CA rollo*, pp. 15-29; penned by Presiding Judge Gabriel T. Ingles (now an Associate Justice of the Court of Appeals).

air to warn a group of at least 10 persons who had started rushing towards him and the accused; that his back-up officers soon came around; and that PO2 Dumaguít effected the arrest of the accused, informing the latter of his Miranda rights in the process.<sup>3</sup>

PO2 Dumaguít recalled that he was positioned 20 meters away from where PO2 Gamít and the accused were when he saw the two engage in a brief conversation, after which the accused left and returned after a few minutes and handed something to PO2 Gamít; that seeing the pre-arranged signal from PO2 Gamít, he rushed forward, effected the arrest of the accused and frisked him, telling him to empty his pockets; that he recovered from the accused a plastic container pack of *shabu*, paraphernalia and the two ₱500.00 peso bills marked with PO2 Gamít's initials; that he prepared the letter to request the laboratory examination of the seized articles; and that PO2 Gamít delivered the letter and the other recovered effects to the crime laboratory.<sup>4</sup>

Sr. Insp. Patriana conducted the laboratory examination on the seized drugs, and issued the chemistry report with the approval by the Chief of the Regional Crime Laboratory. His findings revealed the presence on specimen A and specimen B of methylamphetamine hydrochloride, a dangerous drug, but a negative result of that drug on specimen B-1.<sup>5</sup>

In his defense, the accused presented Fernandos Cabo, Mikko Abellana and himself.

Cabo claimed that the accused was his neighbor; that on the day in question, he was fetching water from the neighborhood artesian well when he spotted the accused from about four meters away talking with somebody; that he was surprised to see the accused suddenly run away pursued by some men; that the pursuers caught up with the accused and put handcuffs on him; that the men searched the person of the accused; and that he heard them ask him on the whereabouts of the persons selling *shabu*.<sup>6</sup>

Abellana stated that the accused was his uncle; that the accused was selling fruits and fetching water when some men approached and arrested him; that the persons were asking the accused about something; that they arrested him when he could not provide the information they sought; and that they found nothing when they frisked his pockets.<sup>7</sup>

- over -

196

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<sup>3</sup> Id. at 17-18.

<sup>4</sup> Id. at 18-19.

<sup>5</sup> Id. at 17.

<sup>6</sup> Id. at 21.

<sup>7</sup> Id.

The accused denied selling *shabu* to the policemen. He insisted that he was then only drawing water from the artesian well along with three others when two men came around to ask about Bingbing; that he responded by pointing to Bingbing's house; that they entered Bingbing's house, but soon came out after somebody came through the door and scampered away; that one of them fired a warning shot; that out of fear, he was about to run away also, but one of the men pointed his gun and commanded him to put his hands at his back and to lie prostrate on the ground; that one of them asked him where the *shabu* was; that another did a body search but found nothing on him; that they arrested him because he could not give the information they demanded about Bingbing's whereabouts; that he admitted knowing Bingbing as a neighbor engaged in the pushing of *shabu*; and that the *shabu* and paraphernalia presented as evidence did not belong to him.<sup>8</sup>

### **Ruling of the RTC**

On October 9, 2006, the RTC convicted the accused of the crimes as charged, and imposed the penalties earlier mentioned.<sup>9</sup>

### **Decision of the CA**

On appeal, the accused insisted that his guilt for each crime was not proved beyond reasonable doubt. He argued that the pre-operation report did not mention his name; that the evidence presented in court did not incriminate him; that the existence and identity of the confidential informant was even doubtful; that due to the non-presentation of the confidential informant in court, he could not rebut his identification of him; that he was the victim of an illegal instigation, not an entrapment, because the confidential informant, along with PO2 Gamit, had prodded him to sell the *shabu*; that the chain of custody was not fully established by clear evidence, like proper marking and inventory; that the link between him and the *shabu* was not established; and that the forensic chemist's negative findings on specimen B-1 supported his insistence that the *shabu* was planted evidence.<sup>10</sup>

However, on May 28, 2010, the CA promulgated its decision affirming the conviction of the accused by the RTC.<sup>11</sup>

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196

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<sup>8</sup> Id. at 22-23.

<sup>9</sup> Id. at 29.

<sup>10</sup> Id. at 47-53.

<sup>11</sup> Supra note 1.

**Issue**

The accused reiterates the errors and arguments tendered in the CA.

**Ruling of the Court**

The appeal has no merit.

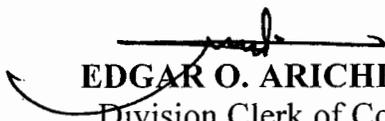
The CA concluded that the RTC correctly found that the buy-bust operation had been regularly conducted against the accused. Such finding by the trial court established that the accused had committed the crime of illegal sale of *shabu*, a dangerous drug. The negative result on specimen B-1 (consisting of crystalline substances weighing 4.38 grams) was of no consequence herein, for the fact of the result being negative on specimen B-1 did not necessarily mean that the *shabu* found in specimens A and B (with a combined weight of 1.20 grams) had been planted for the purpose of falsely incriminating him. That the drugs were planted was thus improbable. Nor did the omission of his name from the pre-operation report, and the non-submission of the pre-operation report in court become necessarily fatal to the establishment of the charge against him. Such omitted items were not indispensable in proving the regular conduct of the buy-bust operation. We also cannot share his belief that the non-presentation of the confidential informant as a witness during the trial proved the non-existence of informant. It is no longer debatable that the identification of the confidential informant, and his presentation as a witness during the trial were unnecessary in order to preserve his usefulness in crime detection and reduction. At any rate, presenting the confidential informant would be superfluous as far as establishing the illegal transaction between the accused and the poseur buyer during the valid entrapment was concerned, considering that the latter was himself an officer of the law who could definitely and credibly attest to the transaction.

Upon careful study of the submissions of the parties, therefore, the Court finds that the contentions of the accused did not justify the reversal of the convictions handed down by the RTC and affirmed by the CA. With the Prosecution having duly proved the chain of custody of the seized *shabu*, the conviction of the accused should stand. The affirmance by the CA was correct and well-founded.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on May 28, 2010; and **ORDERS** the accused to pay the costs of suit.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
 Division Clerk of Court  
 196

The Solicitor General (x)  
Makati City

Court of Appeals  
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(CA-G.R. CR H.C. No. 00693)

The Director  
Bureau of Corrections  
1770 Muntinlupa City

The Hon. Presiding Judge  
Regional Trial Court, Br. 58  
6000 Cebu City  
(Crim. Case Nos. CBU-70788,  
CBU-70789 and CBU-70790)

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