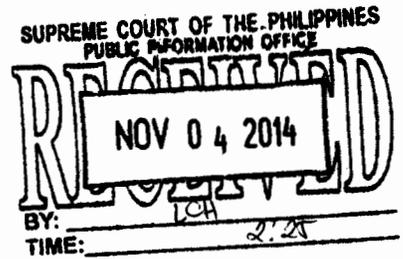




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated September 24, 2014 which reads as follows:*

***“G.R. No. 204918 - People of the Philippines, Plaintiff-Appelle, v. Ariel Cunanan y Mallari, Accused-Appellant.*”**

Accused-appellant Ariel Cunanan y Mallari appeals the Decision<sup>1</sup> dated March 5, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04334, which affirmed *in toto* the Decision dated January 25, 2010 of the Regional Trial Court (RTC), Branch 2 of the City of Manila, in Criminal Case Nos. 09-266464 and 09-266465, finding him guilty beyond reasonable doubt of the illegal sale and possession of methamphetamine hydrochloride, a dangerous drug more commonly known as *shabu*, defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Informations filed against accused-appellant before the RTC read:

[Criminal Case No. 09-266464]

“That on or about January 31, 2009, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale, dispense, deliver, transport or distribute to poseur-buyer SPO2 Renato

<sup>1</sup> CA rollo, pp. 86-96.

Rosero, one (1) heat-sealed transparent plastic sachet containing zero point zero one zero (0.010) gram of white crystalline substance known as "*shabu*," containing methylamphetamine hydrochloride, a dangerous drug."<sup>2</sup>

[Criminal Case No. 09-266465]

"That on or about January 31, 2009, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet, containing zero point zero one seven (0.017) gram of white crystalline substance, containing methylamphetamine hydrochloride, known as "*shabu*," a dangerous drug."<sup>3</sup>

Accused-appellant pleaded not guilty at his arraignment.

Per the Pre-Trial Order<sup>4</sup> dated February 20, 2009 issued by the RTC, the prosecution and defense agreed to stipulate on the following: (1) the genuineness and due execution of the Letter Request for Laboratory Examination<sup>5</sup> dated January 31, 2009 prepared by Police Chief Inspector (PC/Insp.) Vicente C. Arnante (Arnante), Station Commander of the Pandacan Police Station 10; (2) the qualifications of Police Senior Inspector (PS/Insp.) Elisa G. Reyes (Reyes), forensic chemist of the Philippine National Police (PNP), Manila Police District (MPD), Crime Laboratory Office Headquarters, who examined the chemical content of the white crystalline substance contained in the heat-sealed plastic sachets marked as "ACM-1" and "ACM-2;" (3) the genuineness and due execution of Chemistry Report No. D-065-09<sup>6</sup> dated January 31, 2009 executed by PS/Insp. Reyes; and (4) PS/Insp. Reyes' lack of personal knowledge of the ultimate source of the specimens she examined.

After the pre-trial conference, trial ensued.

The prosecution presented the testimony of Senior Police Officer (SPO) 2 Renato Rosero (Rosero), the poseur-buyer during the buy-bust operation, and object evidence consisting of the heat-sealed plastic sachets of suspected *shabu* marked "ACM-1" and "ACM-2" confiscated from accused-appellant. The prosecution also submitted documentary exhibits composed of the Affidavit of Apprehension dated January 31, 2009 jointly

<sup>2</sup> Records, p. 2.  
<sup>3</sup> Id. at 3.  
<sup>4</sup> Id. at 21-22.  
<sup>5</sup> Id. at 8.  
<sup>6</sup> Id. at 7.

executed by SPO3 Jesus Caballero (Caballero), SPO2 Rosero, Police Officer (PO) 3 Wifredo Millare (Millare), and PO3 Donil Maquirang (Maquirang); the Pre-Operation Report<sup>7</sup> and Coordination Form,<sup>8</sup> both dated January 30, 2009, prepared by PS/Insp. Rodolfo T. Samoranos, Sr. (Samoranos); a photocopy of three marked ₱100.00 bills<sup>9</sup> utilized in the buy-bust operation; and the exhibits which the parties agreed to stipulate on at the pre-trial conference.

The prosecution's version of the events which led to the arrest of accused-appellant is summarized below.

At around 9:00 in the morning of January 30, 2009, SPO2 Rosero<sup>10</sup> received an information from a confidential informant about the rampant illegal peddling of *shabu* near the riverside at Kahilum I, Pandacan, Manila, perpetrated by an alias "Ariel," "Dina," and "Jay-Jay Bakla." SPO2 Rosero conducted surveillance of the reported area between 10:00 in the morning to 12:00 noon of the same day by which he was able to confirm the tip given by the confidential informant. SPO2 Rosero reported the results of his surveillance to his superior, PS/Insp. Samoranos, who immediately organized a buy-bust operation with the coordination of the Philippine Drug Enforcement Agency (PDEA).

A buy-bust team was organized with SPO3 Caballero as team leader, SPO2 Rosero as the poseur-buyer, and PO3 Millare and PO3 Maquirang as back-up officers. SPO2 Rosero was given three ₱100.00 bills, respectively pre-marked as "M1," "M2," and "M3," to be used in the buy-bust operation.

SPO2 Rosero and the rest of the buy-bust team proceeded to the area of their operation at around 1:30 in the morning of January 31, 2009. Upon their arrival, SPO2 Rosero met the confidential informant while the other team members strategically positioned themselves around the area. Accused-appellant was standing near his house. SPO2 Rosero, accompanied by the confidential informant, approached accused-appellant, who asked them, "*Bibiyahé ba kayo?*" The confidential informant replied, "*Itong kasama ko ang bibili.*" SPO2 Rosero then offered and handed over the marked money to accused-appellant who, in exchange, delivered a heat-sealed plastic sachet containing white crystalline substance, suspected as *shabu*. At that point, SPO2 Rosero gave the pre-arranged signal by tapping

<sup>7</sup> Id. at 12.

<sup>8</sup> Id. at 13.

<sup>9</sup> Id. at 15.

<sup>10</sup> TSN, October 19, 2009, pp. 4-6.

the confidential informant's shoulder. SPO2 Rosero introduced himself as a police officer and immediately apprehended accused-appellant. The other members of the buy-bust team arrived to assist SPO2 Rosero.

When SPO2 Rosero bodily frisked accused-appellant, incidental to the latter's arrest, said police officer found another sachet of suspected *shabu* and the marked three ₱100.00 bills in accused-appellant's possession. SPO2 Rosero marked the sachet which he bought from accused-appellant as "ACM-1" and the sachet which was found in the possession of accused-appellant as "ACM-2" using a black pentel pen. After accused-appellant was apprised of his constitutional rights, he was brought to the Ospital ng Maynila for medical examination and then to Pandacan Police Station 10.

At the police station, accused-appellant was subjected to further investigation. SPO2 Rosero kept possession of the sachets of suspected *shabu* from the time he confiscated said sachets from accused-appellant until he turned over the same to the investigating officer, identified as PO3 Rodrigo Voluntate, Jr. (Voluntate). PC/Insp. Arnante prepared the request for laboratory examination of the contents of the said sachets. On January 31, 2009, PS/Insp. Reyes conducted her examination of the submitted specimens and in her Chemistry Report No. D-065-09, she stated that the contents of the sachet marked as "ACM-1" weighing 0.010 gram and the sachet marked as "ACM-2" weighing 0.017 gram both tested positive for methamphetamine hydrochloride.

Accused-appellant<sup>11</sup> belied the charges against him and claimed that he was just a simple *pedicab* driver. Accused-appellant testified that at around 2:00 in the morning of January 31, 2009, he was asleep in his house when, suddenly, several persons in civilian attire arrived and invited him to go with them to the police station for "verification." Accused-appellant's live-in partner witnessed accused-appellant's illegal arrest. By the time they reached the police station, the persons who accosted accused-appellant had already planted the evidence against accused-appellant.

To corroborate accused-appellant's testimony, the defense also called Danilo Enriquez<sup>12</sup> (Enriquez) to the witness stand. Enriquez was the former *Barangay* Chairman of Kahilum I, Pandacan, Manila, where accused-appellant resided. Enriquez claimed that at around 2:00 in the morning of January 31, 2009, he was conducting street patrol around the

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<sup>11</sup> TSN, October 29, 2009, pp. 2-5.

<sup>12</sup> TSN, December 7, 2009, pp. 2-5.



DOUBT OF THE CRIME CHARGED, DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUGS.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE POLICE OFFICERS' FAILURE TO COMPLY WITH SECTION 21 OF REPUBLIC ACT NO. 9165.<sup>14</sup>

The Court of Appeals rendered its Decision on March 5, 2012 with the following dispositive portion:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision of the Regional Trial Court of Manila, Branch 2, in Criminal Case Nos. 09-266464 and 09-266465 dated January 25, 2010, finding herein accused-appellant Ariel Cunanan y Mallari guilty beyond reasonable doubt of the crimes charged is hereby **AFFIRMED**.<sup>15</sup>

Hence, the present appeal. Plaintiff-appellee and accused-appellant respectively manifested to this Court that they had already exhaustively discussed their grounds and arguments before the Court of Appeals and are no longer filing any supplemental brief.<sup>16</sup>

Accused-appellant asserts his innocence and urges the Court to consider his candid testimony that he was merely sleeping in his house when three police officers arrived and forcibly boarded him into their car and brought him to the police station.

Accused-appellant likewise insists that the prosecution failed to establish the "chain of custody" of the sachets of *shabu* purportedly sold by him and confiscated from his possession, as required by Article II, Section 21 of Republic Act No. 9165. Accused-appellant points out that the prosecution did not present before the RTC the investigating officer to whom SPO2 Rosero purportedly turned over the confiscated sachets of *shabu*, as well as the other personnel who thereafter took custody of and brought the said sachets to the crime laboratory for examination. Accused-appellant maintains that the testimonies of these persons are indispensable in establishing the identity of the sachets of *shabu* presented against accused-appellant during trial.

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<sup>14</sup> CA *rollo*, p. 30.

<sup>15</sup> *Id.* at 95-96.

<sup>16</sup> *Rollo*, pp. 21-22, 24-25.

Accused-appellant further calls attention to the failure of the police officers to prepare an inventory report and/or to take pictures of the sachets of *shabu* immediately after their seizure at the crime scene. Accused-appellant avers that the police officers' non-compliance with Article II, Section 21 of Republic Act No. 9165 raises doubts as to whether the sachets of *shabu* seized from accused-appellant were the very same ones subjected to laboratory examination and presented in court.

The appeal is bereft of merit.

The issues raised by accused-appellant require the Court to delve into the factual matters of the case. Settled is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error. Since accused-appellant failed to show any arbitrariness, palpable error, or capriciousness on the findings of fact of the trial and appellate courts, these findings deserve great weight and are deemed conclusive and binding. Besides, an assiduous review of the records at hand shows that the Court of Appeals did not err in affirming accused-appellant's conviction for the offenses charged.<sup>17</sup>

In a prosecution for the illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is crucial to the prosecution for illegal sale of dangerous drugs is evidence of the transaction, as well as the presentation in court of the *corpus delicti*. On the other hand, in a prosecution for illegal possession of a dangerous drug, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.<sup>18</sup>

In the case at bar, the prosecution established beyond reasonable doubt all the essential elements of illegal sale and possession of *shabu*. SPO2 Rosero, the poseur-buyer, positively identified accused-appellant as the person who sold the *shabu* presented in court. SPO2 Rosero testified that he purchased and received the *shabu* from accused-appellant during a legitimate buy-bust operation and that another sachet containing *shabu* was

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<sup>17</sup> *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 450.

<sup>18</sup> *Aurelio v. People*, G.R. No. 174980, August 31, 2011, 656 SCRA 464, 473.

seized from accused-appellant's possession after he conducted a lawful search as an incident to a valid warrantless arrest. The marked money used in the buy-bust operation was recovered from accused-appellant and duly presented, and the *shabu* seized from accused-appellant was positively and categorically identified in open court. It was also shown that accused-appellant sold and possessed the *shabu* without authority, license or prescription.

The Court cannot accord merit to accused-appellant's claim that the foregoing events did not take place because he was only framed-up. Such argument brings to the fore the appreciation by the trial court of the credibility of witnesses, a matter it is most competent to perform having had the first hand opportunity to observe and assess the conduct and demeanor of witnesses. Settled is the rule that the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal.<sup>19</sup>

Moreover, accused-appellant's allegation that he is a victim of a frame-up, which has been held as a shop-worn defense of those accused in drug-related cases, is viewed by the Court with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence, which accused-appellant failed to do. Absent any proof of motive to falsely accuse him of such grave offenses, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over accused-appellant's bare allegation that he is a victim of frame-up.<sup>20</sup>

It is worthy to note that accused-appellant did not present his live-in partner to corroborate his claim that he was merely sleeping at home on the early morning of January 31, 2009 when the police officers in civilian clothes arrived and forcibly brought him to the police station. As for the testimony of Enriquez, the other defense witness, it is not inconsistent with the version of events established by the prosecution. The buy-bust operation took place near the house of accused-appellant and Enriquez arrived just in time to witness accused-appellant's arrest after the buy-bust.

The Court is convinced that the *shabu* seized from accused-appellant, the *corpus delicti* of the offenses charged, was preserved and presented before the RTC.

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<sup>19</sup> *People v. Mali*, G.R. No. 206738, December 11, 2013.

<sup>20</sup> *People v. Rivera*, 590 Phil. 894, 915-916 (2008).

The failure of the police officers herein to strictly comply with all of the requirements laid down in Article II, Section 21 of Republic Act No. 9165 regarding the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, is not fatal to the prosecution's case. The Implementing Rules and Regulations of Republic Act No. 9165 states that non-compliance with these requirements under justifiable grounds shall not render void and invalid such seizure of and custody over said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team. What is important is the preservation of 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 successful presentation of the prosecution of every link of chain of custody is sufficient to hold the accused liable for the offense charged.<sup>21</sup>

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.<sup>22</sup>

In the instant case, the testimonial, documentary, and object evidence of the prosecution established that SPO2 Rosero, immediately after accused-appellant's arrest and at the place of arrest, marked the sachet of *shabu* he bought from accused-appellant with "ACM-1" and the sachet of *shabu* he found in accused-appellant's possession during the body frisk with "ACM-2." SPO2 Rosero kept custody of the said sachets from the time he bought and confiscated them from accused-appellant until he turned them over to the investigating officer PO3 Voluntate at the Pandacan Police Station 10. The sachets, together with Station Commander PC/Insp. Arnante's request for laboratory examination of the contents thereof, were next turned over to PS/Insp. Reyes of the PNP-MPD Crime Laboratory. PS/Insp. Reyes personally tested the contents of the submitted sachets, which she confirmed to be *shabu*. Lastly, SPO2 Rosero positively identified in court the sachets of *shabu* which he bought and

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<sup>21</sup> *People v. Cadidia*, G.R. No. 191263, October 16, 2013, 707 SCRA 494, 512.

<sup>22</sup> *People v. Lucio*, G.R. No. 191391, June 19, 2013, 699 SCRA 173, 196.

confiscated from accused-appellant as the same ones tested in the crime laboratory and presented during trial.

Undeniably, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. Once more, what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. 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. In this case, accused-appellant bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties. Failing to discharge such burden, there can be no doubt that the drugs bought and confiscated from accused-appellant were the same ones examined in the crime laboratory and presented in court. Evidently, the prosecution established the crucial link in the chain of custody of the seized drugs.<sup>23</sup>

Lastly, accused-appellant's insistence on the indispensability of the testimonies of all persons who took custody of the sachets of *shabu* after SPO2 Rosero has no legal basis. There is nothing in Republic Act No. 9165 or in its implementing rules which requires each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand."<sup>24</sup>

Section 5 of Republic Act No. 9165 imposes the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 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, regardless of its quantity. Consequently, the RTC, as affirmed by the Court of Appeals, was correct in sentencing accused-appellant to life imprisonment and ordering him to pay a fine of ₱500,000.00 for the illegal sale of *shabu* in Criminal Case No. 09-266464.

Under Section 11 of Republic Act No. 9165, the penalties for possession of less than five grams of methamphetamine hydrochloride or

<sup>23</sup> *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 720.

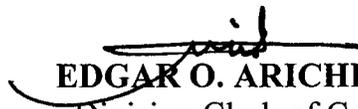
<sup>24</sup> *People v. Amansec*, G.R. No. 186131. December 14, 2011, 662 SCRA 574, 595.

*shabu* is imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00. Thus, the penalties imposed by the RTC upon accused-appellant, as affirmed by the Court of Appeals, of imprisonment of 12 years and 1 day as minimum to 17 years and 4 months as maximum; and to pay a fine of ₱300,000.00, being within the range set by law, are proper for the illegal possession by accused-appellant of 0.017 gram of *shabu* in Criminal Case No. 09-266465.

**WHEREFORE**, in view of all the foregoing, the Decision dated March 5, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04334, affirming *in toto* the Decision dated January 25, 2010 of the RTC Branch 2 of the City of Manila, in Criminal Case Nos. 09-266464 and 09-266465, is hereby **AFFIRMED**.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court  
185

The Solicitor General (x)  
Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR H.C. No. 04334)

The Director  
Bureau of Corrections  
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The Hon. Presiding Judge  
Regional Trial Court, Br. 2  
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(Crim. Case Nos. 09-266464 &  
& 09-266465)

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SR

*rfi*