

G.R. No. 174481 – THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, v. CRISTY DIMAANO y TIPDAS, accused-appellant.

Promulgated:

10 FEB 2016



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DISSENTING OPINION

BRION, J.:

I disagree with the *ponencia* in his conclusion that accused-appellant Cristy Dimaano y Tirdas (*Cristy*) should be convicted of illegal attempt to transport dangerous drugs under Section 5, in relation to Section 26, of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On November 13, 2002, Non-Uniformed Personnel Florence S. Bilugot (*NUP Bilugot*), while being detailed as frisker at the initial check-in departure area of the Manila Domestic Airport Terminal 1, frisked Cristy as a standard operating procedure for departing passengers. When NUP Bilugot felt a bulging hard object near Cristy's buttocks, she asked what it was. Cristy replied it was a sanitary napkin. Suspicious, NUP Bilugot requested that they proceed to the ladies' comfort room for a thorough inspection.

NUP Bilugot then asked Cristy to remove her panties. On the panties' crotch was a panty liner on top of a sanitary napkin, and between these was **a plastic sachet as big as a shampoo packet**. Seeing it contained a white crystalline substance similar to "tawas" inside the packet, NUP Bilugot asked Cristy what it was. Cristy allegedly replied that it was *shabu*. When NUP Bilugot asked if she owned it, Cristy replied that she was just asked to bring it. NUP Bilugot then secured the plastic sachet and turned it over to Senior Police Officer 2 Reynato Ragadio (*SPO2 Ragadio*).

SPO2 Ragadio, however, recalled receiving from NUP Bilugot **two (2) transparent plastic sachets**, which NUP Bilugot placed inside a plastic bag. Together with NUP Bilugot, SPO2 Ragadio brought Cristy to the Philippine Center for Aviation and Security (*PCAS*) where the arresting officers wrote their respective initials on the two plastic sachets.

Investigators detailed at the PCAS examined the contents of the two plastic sachets. One sachet contained three (3) smaller sachets while the other contained four (4) smaller ones. Thirty minutes later, the Philippine



Drug Enforcement Agency (*PDEA*) investigators arrived to collect the confiscated items on which they had placed their initials. Cristy was brought to the *PDEA* office at the Ninoy Aquino International Airport thereafter.

The prosecution charged Cristy with violation of Section 5 in relation to Section 26 of R.A. No. 9165 before the Regional Trial Court (*RTC*), Branch 119, Pasay City, in an Information that provides:

That on or about the 13th day of November, 2002, at the Manila Domestic Airport Terminal I, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, being then a departing passenger for Cebu, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession and attempt to transport 13.96 grams of Methyllamphetamine (sic) Hydrochloride (*shabu*), a dangerous drug.

Contrary to law.¹

Cristy pleaded not guilty to the charge during her arraignment.

Cristy waived her right to present her evidence during trial. Instead, her counsel filed a memorandum and argued that the prosecution failed to establish her guilt beyond reasonable doubt on the following grounds:

1) The discrepancy in the testimonies of NUP Bilugot and SPO2 Ragadio casts serious doubt in establishing the identity of the dangerous drug. NUP Bilugot testified that he was able to obtain a **plastic sachet** from Cristy's panty, SPO2 Ragadio, on the other hand, said that he received **two (2) plastic sachets** from NUP Bilugot after they came out of the ladies' comfort room; and

2) The element of intent to transport was not established because the prosecution failed to present her airline ticket, which was also confiscated from her, to prove that she was departing from Manila to Cebu.

In its decision dated March 5, 2005, the *RTC* found Cristy guilty beyond reasonable doubt of attempting to transport *shabu*. The trial court explained that, despite the discrepancies in the testimonies of NUP Bilugot and SPO2 Ragadio, the chain of custody, nevertheless, remained unbroken. Immediately after NUP Bilugot seized the *shabu* from Cristy, she immediately turned over the same to SPO2 Ragadio, who was just outside the door of the ladies' comfort room. **The trial court added that SPO2 Ragadio's testimony that he received from NUP Bilugot two (2) plastic sachets, which were further placed inside a bigger plastic packet, explained why NUP Bilugot said that she obtained only one (1) plastic sachet from Cristy.**

¹ CA rollo, p. 9.

As to the element of intent to transport, the RTC justified that since Cristy was apprehended prior to her departure at the Domestic Airport, the presentation of the airline ticket was unnecessary.

Accordingly, the RTC sentenced Cristy to suffer the penalty of life imprisonment and ordered her to pay a fine of ₱500,000.00.

In its decision of May 30, 2006, the CA affirmed the RTC's ruling. The appellate court was not convinced by Cristy's arguments because aside from her allegations, Cristy did not present any evidence to support her claim.

The CA upheld the RTC's findings that the difference in the testimonies of NUP Bilugot and SPO2 Ragadio did not destroy the credibility of the prosecution witnesses because the testimony given by the latter proved that the chain of custody over the confiscated items remained unbroken. The CA quoted SPO2 Ragadio's explanation that he and the PCAS investigator examined the drugs in the presence of Cristy.

With respect to the airline ticket, the CA agreed with the trial court that the prosecution did not need to present it just to prove Cristy's intention to transport illegal drugs. The fact that Cristy was apprehended at the initial check-in departure area of the Manila Domestic Airport already proved that she was bound for Cebu to transport dangerous drugs.

Before this Court, Cristy maintains that the prosecution failed to establish the identity of the illegal drugs allegedly seized from her because there were material inconsistencies in the crucial first link in the chain of custody.

The Ponencia's Ruling

Despite the inconsistencies as to the number of plastic sachets confiscated, the *ponencia* agreed with the lower courts that the chain of custody was not broken because NUP Bilugot immediately turned over whatever she discovered hidden in Cristy's underwear to SPO2 Ragadio right after coming out of the ladies' comfort room. Moreover, the *ponencia* appreciated the explanation that the two (2) plastic sachets were placed inside a bigger plastic sachet.

The *ponencia* ruled that failing to mark all of the seven (7) smaller plastic sachets is a mere nominal deviation from the requirements under Section 21 because the two (2) larger plastic sachets, containing the seven (7) smaller ones, were duly marked with the initials of NUP Bilugot and SPO2 Ragadio.

In affirming Cristy's conviction, the *ponencia* held that the prosecution proved the essential element of the crime *illegal attempt to transport dangerous drugs*; Cristy would have successfully moved 13.96

grams of *shabu* from Manila to Cebu had she not been apprehended at the initial check-in area at the Manila Domestic Airport.

The Dissent

I vote to *acquit* the accused-appellant on the ground of reasonable doubt.

It is basic in criminal prosecution that an accused is presumed innocent of a charge unless his guilt is proven beyond reasonable doubt. In cases involving dangerous drugs, proof beyond reasonable doubt demands that **unwavering exactitude is observed in establishing the *corpus delicti*** – the body of the crime whose core is the confiscated illicit drug.² In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it would be.³ It would thus include a testimony about every link in the chain – from the moment the item was seized to the time it was offered in court as evidence – such that every person who handled the same would admit as to how and from whom it was received; where it was and what happened to it while in the witness' possession; the condition in which it was received; and the condition in which it was delivered to the next link in the chain.⁴ **The same witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.**⁵ It is from the testimony of every witness who handled the evidence where a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.⁶

Over the years, we have recognized the following links that must be established to ensure the preservation of the identity and integrity of the confiscated drug: ***first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁷

² *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248.

³ *Id.*; See *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 149; *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 576 Phil. 576, 587.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

To my mind, the prosecution miserably failed to prove the crucial first link in the chain of custody because it failed to logically reconcile the discrepancy on **how many sachets were really confiscated from Cristy** and how many sachets were actually turned over to SPO2 Ragadio.

To recall, NUP Bilugot testified that he recovered and identified **only** one (1) transparent plastic sachet containing *shabu*:

Q. After you saw the napkin, what else did you see after she low[er]ed her panty?

A. One thing place(d) in a sachet attached to the panty.

Q. What was attached to the panty?

A. A sachet, sir.⁸

x x x x

Q. What about the plastic sachets that you recovered, if you see those plastic shabu, would you be able to identify it?

A. Yes, sir.

Q. How would be able to identify?

A. We place(d) our initials, sir.

Q. And what is the marking that you placed in the plastic sachet?

A. My initial, FSB.

Q. And that signifies what?

A. Florence S. Bilugot.⁹

Q. I am showing to you madam witness a plastic sachet containing three plastic sachets containing shabu which was previously marked as Exhibit "B," "B-1," "B-2," "B-3," and "B-4," kindly go over the same, Miss Witness, and tell us what is the relation of this plastic sachet to those you found in the possession of the accused?

A. **During that time I recovered one plastic sachet only from her, sir.** [emphasis supplied]

Q. And did you come to know how many plastic sachets of shabu that were contained in that one plastic sachet?

A. No, sir.

Considering that the plastic sachet recovered from Cristy was transparent, NUP Bilugot could also have easily noticed that there were plastic sachets inside a bigger plastic sachet. As pointed out by the *ponencia*, NUP Bilugot could not remember whether this single sachet contained several other sachets. In fact, Bilugot said it contained crystalline substance similar to "tawas," thus, she saw what the transparent sachet contained.

⁸ TSN, September 9, 2003, p. 11.

⁹ *Id.* at 13.

SPO2 Ragadio, on the other hand, declared on the witness stand that NUP Bilugot handed to him *two* plastic sachets. SPO2 Ragadio in fact confirmed that he placed his initials on *two* sachets.

Taken all together, the inconsistency as to how many plastic sachets were really recovered from Cristy and eventually turned over to SPO2 Ragadio, and the incomplete testimony of NUP Bilugot cast serious doubt as to the identity of the drugs presented in court.

Minor inconsistencies pertain only to a collateral matter, which does not have anything to do with the essential elements of the offense with which an accused is charged. On the other hand, contradictions and inconsistencies, which are irreconcilable and pertain to substantial matters, cast doubt over the veracity of the charge against the accused. Testimonial inconsistencies are substantial where they have something to do with the essential elements of the crime involving dangerous drugs.

In the present case, the difference between the quantity of *shabu* confiscated from Cristy and turned over to SPO2 Ragadio is a substantial inconsistency because it goes into establishing the *corpus delicti* of the crime.

I also cannot share the *ponencia*'s position that the non-marking of the seven (7) smaller sachets was a mere "nominal deviation" from the requirements under Section 21 of R.A. 9165.

Marking means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.¹⁰ Crucial in proving the unbroken chain of custody is the marking of the seized drugs or other related items because failure to do so casts reasonable doubt on the authenticity of the *corpus delicti*. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.¹¹

Here, what was marked were only the two (2) plastic sachets containing the seven (7) smaller sachets – not the latter, which would be more appropriate given the number of sachets supposedly recovered from Cristy. We cannot accept the *ponencia*'s explanation that the marking of the seven sachets could contaminate them since it would have required the opening of the two heat-sealed sachets that contained these seven sachets.

We point out that the 7 smaller sachets were also heat-sealed. The marking procedure would have only required the placing of the initials on these 7 plastic sachets; it would not involve opening of these sachets. To my

¹⁰ *People v. Edaño*, G.R. No. 188133, July 7, 2014, 729 SCRA 255, 267.

¹¹ *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 100, citing *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

mind (and contrary to the *ponencia's* position), the marking of the other sachets would ensure all the more the preservation of the integrity and evidentiary value of the seized specimen.

Notably, SPO2 Ragadio testified that he and NUP Bilugot wrote their respective initials (*i.e.*, “RBR” and “FSB”) on the two sachets. Police Inspector Abraham B. Tecson, however, stated that he received from Police Chief Inspector Roseller Fabian two plastic sachets marked with “FSB,” “RDR,” and “RSA.” It was not clear who owned the initials RDR and RSA.

The *ponencia's* narration of facts also stated that three investigators from the PDEA placed their initials on the two plastic sachets. If SPO2 Ragadio and NUP Bilugot placed their initials on the two sachets before the PDEA investigators placed theirs, then there should have been 5 initials on the sachets. We reiterate that P/Insp. Fabian testified that the sachets bore only the initials “FSB,” “RDR” and “RSA.”

As a result of the lapses and/or irregularities that attended the marking procedure, we cannot agree with the *ponencia's* view that Cristy's guilt of the crime charged had been proven with moral certainty. Simply put, the prosecution failed to establish that the seven sachets were the same sachets confiscated from her.

The presumption of regularity in the performance of official duty applies only when there is no deviation from the regular performance of duty.¹² The regular performance as to the initial contact with the dangerous drug is outlined in the first paragraph of Section 21 of R.A. No. 9165:

- (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;

x x x x

I reiterate that marking is the starting point in the custodial link, thus it is vital that this procedure be properly done because succeeding handlers of the specimens will use the markings as reference. Therefore, any deviation from this vital process requires a justification from the apprehending team for their noncompliance.

Corollarily, the facts narrated by the *ponencia* did not show that the seized drugs had been inventoried and photographed in the presence of the accused or the person/s from whom such items were confiscated and/or

¹² *People v. Casabuena*, G.R. No. 186455, November 19, 2014, citing *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 822.

seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official by persons who had contact with the confiscated plastic sachets, *i.e.*, NUP Bilugot, SPO2 Ragadio, investigators from the Philippine Center for Aviation and Security, and investigators from the PDEA. Notably, the defense did not offer any justifiable ground why these officials failed to comply with the required vital processes in the safekeeping of drugs. We stress that it is not for this Court to provide the justifiable ground that would excuse the police officers from non-observance of the required procedure in the handling and custody of the seized drugs.

All told, the prosecution failed to meet the quantum of proof required in establishing that the prohibited drugs identified in court were the same prohibited drugs allegedly found inside Cristy's underwear. In effect, we have in this case a counterpart of the "*tanim bala*" that has raised a lot of complaints at the airport; here, it is "*tanim shabu*."

Under the circumstances, Cristy should be **ACQUITTED** because the prosecution failed to overcome the constitutional presumption of innocence by not proving beyond reasonable doubt the *corpus delicti* of an illegal attempt to transport dangerous drugs.


ARTURO D. BRION
Associate Justice