

## THIRD DIVISION

[ G.R. No. 183819, July 23, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO CORTEZ Y MACALINDONG A.K.A. "ARCHIE," ACCUSED-APPELLANT.**

## DECISION

**VELASCO JR., J.:**

### The Case

Accused-appellant Arsenio M. Cortez appeals from the Decision dated September 20, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02269, affirming the March 21, 2006 Decision in Crim. Case No. 13003-D of the Regional Trial Court (RTC), Branch 164 in Pasig City. The RTC found him guilty of violation of Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

### The Facts

In an Information dated October 28, 2003, Cortez was charged with the crime of violation of Sec. 5, Art. II, RA 9165, allegedly committed as follows:

On or about October 26, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to SPO2 Dante Zipagan, a police poseur-buyer, one (1) small heat-sealed transparent plastic sachet containing four (4) centigrams (0.04 gram) of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>[1]</sup>

When arraigned, Cortez entered a plea of "not guilty."

During the pre-trial conference and as shown by the Pre-Trial Order,<sup>[2]</sup> the defense admitted the authenticity and due execution of the prosecution's **Exhibit "B,"** the memorandum requesting laboratory examination of a substance suspected of being *shabu*, and **Exhibit "C,"** Physical Science Report No. D-2061-03E dated October 26, 2003. The defense also manifested that it would interpose the defense of denial.

To prove its case, the prosecution presented in evidence the testimonies of SPO2 Dante Zipagan and PO1 Michael Espares, both members of the Station Drug Enforcement Unit (SDEU), Pasig City Police Station. On the other hand, the defense presented Arsenio M. Cortez himself, and one Pedrito T. de Borja.

### Version of the Prosecution

On October 26, 2003, at about 2 o'clock in the morning, a confidential informant reported to the Pasig City Police SDEU that a certain "Archie" was selling *shabu* in the vicinity of Brgy. Buting, Pasig City. Upon being apprised of this bit of information, SDEU Chief P/Insp. Melbert Esguerra held a briefing, formed a four-man team to conduct a buy-bust operation, and designated SPO2 Zipagan to act as team leader poseur-buyer. Two (2) PhP 100 bills to be used as buy-bust money were handed to SPO2 Zipagan who then put his initials "DZ" on the bill notes. A pre-operation report was made and submitted to the Philippine Drug Enforcement Agency which then gave it control number 2610-03-01.

Thereafter, the team, composed of, among others, PO1 Espares and SPO2 Zipagan, with the informant, proceeded to the target area. SPO2 Zipagan and the informant proceeded ahead of the group. At the corner of San Guillermo and E. Mendoza streets, they located the target person whereupon the informant introduced the poseur-buyer to "Archie." When asked how much he wanted to buy, SPO2 Zipagan replied PhP 200 worth only and gave alias "Archie" the marked money. Thereafter, "Archie" took out from his right pocket and handed to SPO2 Zipagan a heat-sealed transparent plastic sachet containing a white crystalline substance. Thereupon, SPO2 Zipagan executed the pre-arranged signal, by removing his hat, signifying the consummation of the transaction. SPO2 Zipagan then introduced himself and announced the seller's arrest.

Meanwhile, the back-up police operatives, who were 10 meters away, upon noticing the pre-arranged signal, rushed toward their team leader to help him hold "Archie." SPO2 Zipagan then directed "Archie" to empty his pocket. From his left pocket, "Archie" brought out with his left hand the buy-bust money. PO1 Espares later testified having witnessed this particular episode.

Afterwards, the team hauled "Archie" to the Pasig City Police Station for investigation. The investigator, PO1 Clarence Nipales, then prepared a request for laboratory examination on the white crystalline substance subject of the buy-bust operation. SPO2 Zipagan executed a sworn statement in connection with the arrest of "Archie," who was later identified as accused-appellant Cortez.

The seized transparent plastic sachet containing the white crystalline substance was forwarded to the Eastern Police District Crime Laboratory Office on St. Francis St., Mandaluyong City. P/Insp. Joseph M. Perrido, Forensic Chemical Officer, conducted a qualitative examination on the said specimen weighing 0.04 gram. The examined specimen tested positive for methamphetamine hydrochloride or *shabu*. The corresponding Report No. D-2061-03E contained the following pertinent entries:

#### SPECIMEN SUBMITTED:

A - One (1) heat-sealed transparent plastic sachet with marking 'AMC 10-26-03' containing 0.04 gram white crystalline substance.

x x x x

#### PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drug.

x x x x

#### FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

x x x x

## **CONCLUSION:**

Specimen A contain Methamphetamine Hydrochloride, a dangerous drug.<sup>[3]</sup> x x x

### **Version of the Defense**

Cortez denied committing the crime charged. His own version of what transpired may be summarized as follows:

He recounted that on October 26, 2003, between 12 o'clock midnight and 1 o'clock in the morning, he was in a house on Capt. Cortez St., Pateros, in bed with his live-in partner, Gina Flores, when he heard and answered a knocking sound outside. At the door was someone he met thrice who used to pawn things to him. Once allowed entry, the visitor offered to sell a cell phone. When Cortez expressed disinterest, the visitor took the cell phone unit out and pressed the dial button. At that moment, the door suddenly opened and two persons entered, followed later by two others.

Afterwards, Cortez was alternately brought out and in the house. All the while, he kept on inquiring what the case against him was all about only to be told to talk to the team leader. Finally, he was taken outside the house for a ride in a car driven by the cell phone seller. They stopped at a gasoline station and then boarded a tricycle which brought him to the Pasig City Police Station, where he was investigated and finally detained.

Pedrito, the second witness for the defense, testified in gist that in the morning in question, while he was on his way home after buying a cigarette, he saw four persons banging the door of Cortez's house. Moments later, he heard one of the intruders uttered, "Kilala ko yan, kilala ko yan (I know him. I know him.)." Then Cortez, followed by Flores, asked about the intrusion but did not get a satisfactory answer.

### **The Ruling of the Trial Court**

On March 21, 2006, in Crim. Case No. 13003-D, the RTC rendered judgment convicting Cortez of the offense charged and sentenced him as follows:

WHEREFORE, the Court finds accused Arsenio Cortez y Macalindong a.k.a. "Archie" GUILTY beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and fine of Five Hundred Thousand (P500,000.00) Pesos with all the accessory penalties under the law.

The plastic sachet containing *shabu* or methamphetamine hydrochloride (Exhibit "E-1") is hereby ordered confiscated in favor of the government and turned over to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.<sup>[4]</sup>

### **The Ruling of the Appellate Court**

Forthwith, Cortez went on appeal to the CA. On September 20, 2007, the CA rendered the assailed decision, disposing as follows:

WHEREFORE, premises considered, the Appeal is hereby DENIED. The challenged Decision is AFFIRMED in toto.

SO ORDERED.<sup>[5]</sup>

In so ruling, the appellate court dismissed suggestions of frame-up and Cortez's allegations regarding the inability of the prosecution to prove that the drug presented in court was the same drug seized from him.

Cortez filed a Notice of Appeal which the CA gave due course. This Court, by Resolution of September 3, 2008, required the parties to submit supplemental briefs if they so desired. To date, Cortez has not filed any brief, while the People manifested that it is no longer filing any supplemental brief. Cortez's inaction and the prosecution's manifestation indicate their willingness to submit the case on the basis of the records already on file, thus veritably reiterating their principal arguments raised in the CA, which on the part of Cortez may be formulated, as follows:

**THE [CA] ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT**

### **Our Ruling**

We sustain Cortez's conviction.

#### **Buy-Bust Operation is a Form of Entrapment**

As before the appellate court, Cortez decries that he was a victim of a frame-up, implying the illegality of the buy-bust operation undertaken by the Pasig City anti-drug operatives.

Cortez's challenge about the legality of a buy-bust operation is already a closed issue. In *People v. Bongalon*,<sup>[6]</sup> the Court elucidated on the nature and legality of a buy-bust operation, noting that it is a form of entrapment that is resorted to for trapping and capturing felons who are predisposed to commit crimes. The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.<sup>[7]</sup> Entrapment should be distinguished from instigation which has been viewed as contrary to public policy.

In American jurisdiction, the term "entrapment" generally has a negative connotation, because the idea to commit the criminal act originates from the police, as opposed to the accused having a predisposition to commit the crime.<sup>[8]</sup> In *Sorrells v. United States*, entrapment was defined as the "conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer."<sup>[9]</sup>

In *People v. Lua Chu and Uy Se Tieng*, the Court laid down the distinction between entrapment and instigation or inducement, to wit:

**ENTRAPMENT AND INSTIGATION.--**While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has

often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary.<sup>[10]</sup>

It is fairly clear that the concept of entrapment under the American criminal justice system bears a similarity to the concept of instigation or inducement under the Philippine judicial setting. Such that once the criminal intent arises from the police officers without any predisposition from the defendant to commit the crime, both jurisdictions consider the act as illegal. Entrapment in the Philippines is, however, not a defense available to the accused; instigation is, and is considered, an absolutorily cause.<sup>[11]</sup>

In determining the occurrence of entrapment, two tests have been developed: the subjective test and the objective test.<sup>[12]</sup> Under the "subjective" view of entrapment, the focus is on the intent or predisposition of the accused to commit a crime.<sup>[13]</sup> Under the "objective" view, on the other hand, the primary focus is on the particular conduct of law enforcement officials or their agents and the accused's predisposition becomes irrelevant.<sup>[14]</sup> The government agent's act is evaluated in the light of the standard of conduct exercised by reasonable persons generally and whether such conduct falls below the acceptable standard for the fair and honorable administration of justice.<sup>[15]</sup>

Courts have adopted the "objective" test in upholding the validity of a buy-bust operation. In *People v. Doria*, the Court stressed that, in applying the "objective" test, the details of the purported transaction during the buy-bust operation must be clearly and adequately shown, i.e., the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. We further emphasized that the "manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense."<sup>[16]</sup>

In the case at bar, the evidence clearly shows that the police officers used entrapment to nab Cortez in the act of selling *shabu*. As aptly found below, it was the confidential informant who made initial contact with Cortez when he introduced SPO2 Zipagan as buyer. SPO2 Zipagan then asked to buy PhP 200 worth of *shabu* and paid using the previously marked money. Cortez then gave SPO2 Zipagan a plastic sachet containing what turned out to be *shabu*. Then, upon the sending out of the pre-set signal, Cortez was arrested. The established sequence of events categorically shows a typical buy-bust operation as a form of entrapment. The police officers' conduct was within the acceptable standard of fair and honorable administration of justice.

### **Elements of the Crime Established; Chain of Custody Observed**

In his further bid for acquittal, Cortez advances the matter of custodial chain. As he asserted in his Brief,<sup>[17]</sup> the apprehending police officers failed, after the buy bust, to make an inventory of the seized item and mark the container of the substance allegedly recovered from him, thus raising doubts as to the identity of what was seized.

We disagree.

In *People v. Pendatun*, the Court reiterated the essential elements of the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another and (2) he knew that what he had sold and delivered was a prohibited drug.<sup>[18]</sup> All these elements were ably proved by the prosecution in the instant case. The fact of sale and eventual delivery by Cortez, as seller, of a substance later identified as *shabu* to SPO2 Zipagan, as buyer who paid PhP 200 for it, had been established. The Court considers the ensuing vivid account of SPO2 Zipagan on this point:

Q: When you arrived at the scene or the reported place, what transpired next, if any?

A: I asked the other operatives to position themselves in a viewing distance and I myself[,] together with the informant[,] proceeded to the corner of San Guillermo and Mendoza Street to locate the suspect.

Q: How far where your companions were from you and [the] suspect during the conduct of the actual buy-bust?

x x x x

A: More or less ten (10) meters.

x x x x

Q: Were you able to in fact locate the subject?

A: Yes, sir.

Q: How were you able to locate him[?] [Did] you know him personally before the operation?

A: Only the informant, sir, knew the suspect.

Q: And what transpired when you [located] the suspect?

A: I [was] introduced by the informant to the suspect that I will buy a *shabu*, sir.

Q: And what happened after that?

A: The suspect asked me if how much I will buy, sir.

Q: What did you tell him?

A: Only 200 pesos.

Q: And 200 pesos worth of *shabu* is how many in terms of grams?

A: I could not..... (discontinued)

Q: You do not know?

A: Yes, sir.

Q: And what did the subject person tell you or do after that?

A: I gave the money and then he dipped his right hand on his right pocket and gave me on (1) heat-sealed transparent plastic sachet containing white crystalline substance.

Q: When you said that the person gave you the one (1) transparent plastic sachet you meant that it was actually in your possession at the precise time, you already took possession of the sachet?

A: Yes, sir.

Q: Will you describe what was inside the plastic sachet at that time?

A: It contains white crystalline substance, sir.

Q: And at that very moment[,] what transpired after you have already obtained the plastic sachet from the suspect?

A: I gave my pre-arrange[d] signal to my other co-operatives.

Q: And what happened next?

A: I introduced myself to the accused and I [held] him [as] my two (2) co-operatives helped me in holding the said accused, sir.

Q: Did you announce your arrest on the accused?

A: Yes, sir.

Q: By the way, what was the name of this person from whom you bought this white crystalline substance contained in the plastic sachet?

A: He [was] identified later on as Arsenio Macalindong Cortez.

x x x x

Q: After you announced the arrest of the accused and you have obtained the illegal substance and recovered the buy-bust money, to where did you bring the accused?

A: In our office in Pasig City Police Station, sir.

Q: And [did] you conduct an investigation?

A: Yes, sir.

Q: In connection with the investigation conducted on the accused, what documentation from your recollection was ever prepared?

A: He made a request to examine the recovered evidence.

Q: Who made the request?

A: Our investigator, sir. x x x

Q: Are you familiar with the signature of your police investigator? By the way, who was the investigator who made the report?

A: PO1 Nipales.

Q: If said request will be shown to you will you be able to identify it?

A: Yes, sir.

x x x x

Q: You mentioned that the substance was confiscated from the accused [and] was forwarded to the crime laboratory, is that correct?

A: Yes, sir.

Q: Was there a report given by a crime laboratory on the examination conducted?

A: Yes, sir.

Q: When was the report returned or forwarded back to you[?] [W]as it on the same day?

A: I could not remember.

Q: But you were able to get a hold of the copy?

A: Yes, sir.

Q: How about the substance, was there any markings made on said substance before it was forwarded to the crime laboratory?

A: Yes, sir.

Q: Who made the markings?

A: I, sir.

Q: And if said markings or the substance contained the markings is again shown to you, will you still be able to identify [it] again?

A: Yes, sir.

Q: Showing to you this plastic sachet containing white crystalline substance with sub-markings.

I have this plastic sachet with white crystalline substance with markings AMC 10-26-03 with additional marking D-2061-03E enclosed in quotation letter A JMP. At the back portion Exhibit E-1 1-29-04. Can you go over this piece of evidence, plastic sachet containing white crystalline substances, you tell this Honorable Court which markings did you place among the markings which according to you [you] made on said plastic sachet?

A: Capital letter AMC, sir, and the date the accused [was] arrested.

x x x x

Q: Aside from that[,] were there any other markings made by you, the other markings D-2061-03E JMP, whose markings was that?

A: I do not know.

Q: **What relation has this piece of plastic sachet containing white crystalline substance, is that the same plastic sachet which was taken from the accused during the buy-bust operation?**

A: **Yes, sir, this is the same evidence.**

Q: Meaning, this was the crystalline substance which was shown to you by the accused during the buy-bust operation?

A: Yes, sir.

x x x x

Q: Do you know what was the result of the laboratory examination?

A: Yes, sir.

Q: Tell the court what was the result?

A: It gave positive result for methamphetamine hydrochloride.

Q: Were you able to get hold of the Physical Science Report of the said substance?

A: Yes, sir.

Q: If said result will be shown to you will you still be able to identify it?

A: Yes, sir.

Q: I'm showing to you this Physical Science Report No. D-2061-03E, is this the report you were referring to?

A: Yes, sir.

Q: Can you go over the result specifically the finding and the conclusion, please read for the benefit of the court the contents of the findings?

A: Findings: Qualitative findings conducted on the above-stated specimen gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.<sup>[19]</sup> x x x (Emphasis added.)

PO1 Espares, who provided back-up assistance to SPO2 Zipagan in the buy-bust operation, corroborated the foregoing testimony.

Without a trace of equivocation, the trial court held that the prosecution has proved the elements of the crime charged. The trial court wrote:

From the testimonies of the prosecution witnesses, the identities of the buyer and the seller were sufficiently shown. The object and consideration were also identified in open court. The buy-bust money was marked and formally offered in evidence x x x and the object which is the 0.04 gram of *shabu* was also identified and offered in evidence as Exhibit 'E-1'. The object which is the 0.04 gram of white crystalline substance was tested positive to the tests for methamphetamine hydrochloride, a dangerous drug, after a laboratory examination conducted by P/Insp. Joseph M. Perrido, a Forensic Chemical Officer of the PNP Crime Laboratory x x x. Report No. D-2061-03E submitted by said Forensic Chemical officer was marked and formally offered in evidence as Exhibits 'C' and 'C-1'. The testimony of the Forensic Chemical Officer was dispensed with by both the public prosecutor and the defense counsel after they made some stipulations. Moreover, the testimony of SPO2 Dante Zipagan as regards the transaction that took place on October 26, 2003 was corroborated by PO1 Michael Espares and supported by documentary as well as object evidence as enumerated beforehand.

Therefore, in the opinion of the court, the elements mentioned above are sufficiently proven by the prosecution.<sup>[20]</sup>

This brings us to the matter of the custodial chain.

It bears stressing that in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material.<sup>[21]</sup> It is, therefore, essential that the identity of the prohibited drug be proved with moral certainty. Even more than this, what must also be established with the same degree of certitude is the fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.<sup>[22]</sup>

As a mode of authenticating evidence, 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. In context, this would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.<sup>[23]</sup>

To be sure, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations (IRR) of RA 9165 on the handling and disposition of seized dangerous drugs provide as follows:

**SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 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** x x x. (Emphasis supplied.)

A close examination of the IRR of RA 9165 readily reveals that the custodial chain rule admits of exceptions. Thus, contrary to the brazen assertions of Cortez, the prescriptions of the IRR's Sec. 21 need not be followed with pedantic rigor as a condition *sine qua non* for a successful prosecution for illegal sale of dangerous drugs. Non-compliance with Sec. 21 does not, by itself, render an accused's arrest illegal or the items seized/confiscated from the accused inadmissible in evidence.<sup>[24]</sup> What is essential 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."<sup>[25]</sup>

In the instant case, there had been substantial compliance with the legal requirements on the handling of the seized item. Its integrity and evidentiary value had not been diminished. The chain of custody of the drugs subject matter of the case has not been shown to have been broken. The factual milieu of the case yields the following: After SPO2 Zipagan confiscated the 0.04 gram of *shabu* in question, as well as the marked money, following Cortez's arrest, the seized sachet of suspected *shabu* was without delay brought to the Pasig City police station and marked as AMC 10-26-03. Immediately thereafter, the confiscated substance, with a letter of request for examination, was referred to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. Per Report No. D-2061-03E, the specimen submitted contained methamphetamine hydrochloride. The examining officer, P/Insp. Perdido, duly marked the sachet with his initials, JMP. The contents of the seized plastic sachet had been found to be the same substance identified and marked as Exhibit "E-1" and adduced in evidence in court.

In *Malillin v. People*,<sup>[26]</sup> the Court stressed the importance of the testimonies of all persons, if available, who handled the specimen to establish the chain of custody. Thus, the prosecution offered the testimony of SPO2 Zipagan who first had custody of the seized *shabu*. The testimony of the next handling officer, P/Insp. Perdido, was, however, dispensed with after the public prosecutor and the defense counsel stipulated that Exhibit "E-1"<sup>[27]</sup> is the same specimen mentioned in Exhibits "B-1"<sup>[28]</sup> and "C-1,"<sup>[29]</sup> and that the said specimen was regularly examined by the said witness.<sup>[30]</sup>

It would, thus, appear that the chain in the custody of the illicit drug purchased from Cortez had been *prima facie* established as unbroken. Or at the very least, the integrity and evidentiary value of the seized item had not, under the premises, been compromised.

### Defense of Denial is Weak

Cortez's main defense of denial cannot prevail over the affirmative and credible testimony of SP02 Zipagan pointing Cortez as the seller of the prohibited substance. Denial, if not substantiated by clear and convincing proof, is negative and self-serving evidence and of little, if any, weight in law. As it can easily be fabricated, in fact a common standard line of defense in most prosecutions arising from violations of RA 9165,<sup>[31]</sup> denial is inherently weak.<sup>[32]</sup> And the Court is at loss to understand how Cortez can with a straight face set up the defense of

denial after having been caught in possession of the prohibited substance for which he received PhP 200 from SPO2 Zipagan.

The conclusion may perhaps be different if the police authorities have a motive in falsely charging Cortez with illegal peddling of *shabu*. But the element of ill motive does not obtain under the premises, as determined by the trial court:

Moreover, SPO2 Dante Zipagan and PO1 Michael Espares are police officers who are presumed to have regularly performed their duties in the absence of proof to the contrary (see Sec. 3(m), Rule 131 of the Rules of Court). The evidence offered by the defense failed to show any ill motive from the prosecution witnesses that would impel them to arrest the accused, Arsenio M. Cortez.<sup>[33]</sup>

Lest it be overlooked, Cortez declared not knowing any of the arresting police officers, having first met them only when they arrested him. This reality argues against the idea that these operatives would falsely testify, or plant evidence, against him. Cortez, on cross-examination, testified, as follows:

Q: Did Zipagan approach you to ask for anything?

A: No, sir.

Q: Did any of the three (3) other police officers who arrested you x x x [approach] you and [ask you for] anything?

A: No, sir.

Q: Did you previously know these three (3) police officers previous to your arrest?

A: No, sir.

Q: Do you know if all these four (4) police officers had an [axe] to grind against you or you had any misunderstanding against with them previous to your arrest?

A: This is the first time I saw the police officers.<sup>[34]</sup>

In all then, we uphold the presumption of regularity in the performance of official duties and find that the prosecution has discharged its burden of proving Cortez's guilt beyond reasonable doubt.

**WHEREFORE**, the appeal is **DENIED**. The CA Decision in CA-G.R. CR-H.C. No. 02269 finding accused-appellant Arsenio Cortez guilty of the crime charged is **AFFIRMED**.

**SO ORDERED.**

*Ynares-Santiago, (Chairperson), Carpio Morales<sup>\*</sup>, Chico-Nazario, and Peralta, JJ., concur.*

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<sup>\*</sup> As per Raffle dated July 8, 2009.

[1] CA *rollo*, p. 5.

[2] Records, p. 16.

[3] Id. at 54.

[4] CA *rollo*, p. 43.

[5] *Rollo*, p. 17.

[6] G.R. No. 125025, January 23, 2002, 374 SCRA 289, 306.

[7] *People v. Herrera*, G.R. No. 93728, August 21, 1995, 247 SCRA 433, 439.

[8] 22 C.J.S. CRIMLAW § 72.

[9] 287 U.S. 435, 454, 53 S.Ct. 210, 86 A.L.R. 249, 77 L.Ed. 413 (1932).

[10] 56 Phil. 44, 52-53 (1931).

[11] *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 694.

[12] 22 C.J.S. CRIMLAW § 77.

[13] *Sorrells*, supra note 9.

[14] See *People v. Smith*, 31 Cal. 4th 1207, 7 Cal. Rptr. 3d 559, 80 P.3d 662 (2003); *State v. Vallejos*, 1997-NMSC-040, 123 N.M. 739, 945 P.2d 957 (1997); *Elders v. State*, 321 Ark. 60, 900 S.W.2d 170 (1995); *State v. Babers*, 514 N.W.2d 79 (Iowa 1994); *State v. Nehring*, 509 N.W.2d 42 (N.D. 1993); *State v. Nakamura*, 65 Haw. 74, 648 P.2d 183 (1982); *State v. Little*, 121 N.H. 765, 435 A.2d 517 (1981); *State v. Berger*, 285 N.W.2d 533 (N.D. 1979); *People v. Barraza*, 23 Cal. 3d 675, 153 Cal. Rptr. 459, 591 P.2d 947 (1979).

[15] *Keaton v. State*, 253 Ga. 70, 316 S.E.2d 452 (1984); *Bruce v. State*, 612 P.2d 1012 (Alaska 1980).

[16] Supra note 11, at 698-699.

[17] CA *rollo*, pp. 26-37.

[18] G.R. No. 148822, July 12, 2004, 434 SCRA 148, 155-156; citing *People v. Cercado*, G.R. No. 144494, July 26, 2002, 385 SCRA 277; *People v. Pacis*, G.R. No. 146309, July 18, 2002, 384 SCRA 684.

[19] TSN, March 8, 2004, pp. 7-17.

[20] CA *rollo*, pp. 42-43.

[21] *Doria*, supra note 11, at 718.

[22] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

[23] Id.

[24] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[25] Id.; citing *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

[26] Supra note 22.

[27] CA *rollo*, p. 4. One (1) pc. heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.04 gram.

[28] Id. Request for Laboratory Examination.

[29] Id. Original copy of Report No. D-2061-03E.

[30] Records, p. 28.

[31] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 395 SCRA 317, 323; *People v. Barita*, G.R. No. 123541, February 8, 2000, 325 SCRA 22, 38.

[32] *People v. Dulay*, G.R. No. 150624, February 24, 2004, 423 SCRA 652, 662.

[33] CA *rollo*, p. 16.

[34] TSN, July 14, 2005, p. 11.