



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 MAR 06 2018
 BY: LCH
 TIME: 2:53

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218402

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 MARTIRES,* and
 TIJAM, JJ.

RAMIL GALICIA y CHAVEZ,
Accused-Appellant.

Promulgated:
FEB 14 2018

X-----X

DECISION

DEL CASTILLO, J.:

This resolves the appeal filed by Ramil Galicia y Chavez (appellant) assailing the March 22, 2013 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 04637 which affirmed the December 19, 2007 Decision² of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Criminal Case Nos. 14821-D, 14822-D, 14823-D, and 14824-D finding him guilty beyond reasonable doubt of violation of Sections 6, 11, 12, and 15, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 6, 11, 12, and 15, Article II of RA 9165 allegedly committed as follows:

CRIMINAL CASE NO. 14821-D
 (For violation of Section 6, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully, and feloniously maintain a drug den located at the compound along F. Soriano Street,

* Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

¹ CA rollo, pp. 352-372; penned by Associate Justice Jane Aurora C. Lantien and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr.

² Records, pp. 131-215; penned by Judge Abraham B. Borreta.

Barangay Palatiw, Pasig City, where dangerous drugs and/ or controlled precursors and essential chemicals are administered, delivered, stored for illegal purposes, distributed, sold, or used in any form, in violation of the above-cited law.

CONTRARY TO LAW.³

CRIMINAL CASE NO. 14822-D
(For violation of Section 11, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess or otherwise use any dangerous drugs, did then and there, willfully, unlawfully, feloniously, and knowingly have in his possession, custody, and control the following:

- a) 0.16 [gram] 'RLB-1'
- b) 0.15 [gram] 'RLB-2'
- c) 0.15 [gram] 'RLB-3'
- d) 0.13 [gram] 'RLB-4'
- e) 0.11 [gram] 'RLB-5'
- f) 0.19 [gram] 'RLB-6'
- g) 0.11 [gram] 'RLB-7'
- h) 0.15 [gram] 'RLB-8'

totalling 1.15 grams of Methamphetamine Hydrochloride, commonly known as 'shabu,' a dangerous drug, and twenty (20) unsealed transparent plastic sachets and four (4) aluminum foils (specimen J [RLB-10], specimen L [RLB-12], specimen M [RLB-13], specimen Q [RLB-17]), each containing traces of 'shabu' in violation of the above-cited law.

CONTRARY TO LAW.⁴

CRIMINAL CASE NO. 14823-D
(For violation of Section 15, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, knowingly, and feloniously use, sniff, inhale, or introduce to [his] body, in any manner, methamphetamine hydrochloride commonly known as 'shabu', a dangerous drug, in violation of the aforecited law.

Contrary to law.⁵

CRIMINAL CASE NO. 14824-D
(For violation of Section 12, Article II, RA 9165)

That on or about February 10, 2006, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did

³ Id. at 1-2.

⁴ Id. at 32-33.

⁵ Id. at 35.



then and there, willfully, unlawfully, feloniously, and knowingly have in his possession, custody, and control the following, to wit:

- a) One (1) digital Tanika black weighing scale
- b) One (1) digital Tanika blue weighing scale
- c) Seven (7) disposable lighters and
- d) Four (4) stainless scissors
- e) Five (5) improvised aluminum tooters

which are fit or intended for smoking, consuming, administering, ingesting, or introducing any dangerous drug into the body, in violation of the above-cited law.

CONTRARY TO LAW.⁶

Appellant pleaded not guilty to the offenses charged. Joint trial on the merits followed.

Version of the Prosecution

Arnel Tugade (Tugade), a camera man of the television program "Mission X," received an anonymous call regarding a *shabu tiangge* inside the Mapayapa compound along F. Soriano Street, Pasig City where there was rampant selling and use of *shabu*. Tugade verified the tip by bringing a camera in the compound where he conducted an undercover surveillance and filmed the drug-related activities he witnessed inside the said compound.

On January 30, 2006, Tugade went to the office of the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) to report the rampant selling and use of *shabu* within the said compound. Tugade showed the PNP Chief Director and other officers of the AIDSOTF a 15-minute video showing several persons selling and using *shabu* inside shanties found within the compound.

After watching the surveillance footage, Police Senior Inspector Ismael G. Fajardo, Jr. (P/Insp. Fajardo, Jr.) was instructed to conduct further surveillance of the activities inside the compound, P/Insp. Fajardo, Jr. assigned PO2 James Nepomuceno (PO2 Nepomuceno) to accompany Tugade inside the compound to take another video of the compound and to conduct a test-buy.

On January 31, 2006, PO2 Nepomuceno and Tugade went to the compound and conducted a surveillance. They were able to take video footage of several persons selling and using *shabu* inside the compound. They were also able to conduct a test-buy of *shabu* worth ₱300.00. The following day, PO2 Nepomuceno and Tugade conducted another test-buy inside the compound and

⁶ Id. at 38-39.

they were able to buy ₱100.00 worth of *shabu*. Both specimen were submitted to the PNP Crime Laboratory for examination and both tested positive for methamphetamine hydrochloride or *shabu*.

After reviewing the results of the laboratory examination, P/Insp. Fajardo, Jr. reported the same to Superintendent Eduardo Acierto (Supt. Acierto) who, in turn, made his own report to General Marcelo Ele (Gen. Ele). Gen. Ele verified the findings and ordered an aerial and ground surveillance of the compound. Further test-buys were again conducted in the area which confirmed the reported rampant selling and use of *shabu* therein.

Since the reported selling and use of *shabu* in the compound were confirmed, Gen. Ele instructed P/Insp. Fajardo Jr. to apply for a search warrant before the RTC. P/Insp. Fajardo, Jr. applied for a search warrant and presented PO2 Nepomuceno and Tugade as witnesses. Pictures of persons who were positively identified as sellers and maintainers of drug dens were submitted along with video footage taken by Tugade and the rest of the "Mission X" crew showing drug transactions and use of *shabu*.

On February 9, 2006, Executive Judge Natividad A. Giron-Dizon of the RTC of Quezon City issued Search Warrant No. 4271(06).⁷ Gen. Ele was tasked with the supervision and implementation of the search warrant while Supt. Acierto was the designated ground commander.

On February 10, 2006, around 200 men under the command of Supt. Acierto from the joint forces of the Philippine National Police (PNP) AIDSOTF, Special Operations Unit (SOU), Special Action Force (SAF), Traffic Management Group (TMG), and Scene of the Crime Operative (SOCO), joined by members of the media and representatives from the Department of Social Welfare and Development (DSWD), raided the Mapayapa Compound to serve Search Warrant No. 4271-06 against several persons who were alleged to have been engaged in selling and possessing dangerous drugs and *shabu* paraphernalia as well as maintaining a drug den inside the said compound. More than 300 persons were arrested in the raid, 212 of whom were charged in court for various violations under RA 9165. Appellant was one of the persons arrested and charged with the following violations: maintenance of a drug den in violation of Section 6, RA 9165; illegal possession of dangerous drugs and drug paraphernalia in violation of Sections 11 and 12 respectively, RA 9165; and use of dangerous drugs in violation of Section 15, RA 9165.

There were numerous shanties inside the compound requiring the raiding team to divide the compound into different target areas. Assigned to implement

⁷ Id. at 12.



the search warrant in Target No. 8 was the team of P02 Roberto Beascan⁸ (PO2 Beascan), SPO2 Roberto Agbalog (SPO2 Agbalog), P/Insp. Ancieto Pertoza⁹ (P/Insp. Pertoza) and P/Supt. Melecio M. Buslig, Jr. When the team entered the target area, persons found inside scampered away. P/Insp. Pertoza presented the search warrant to appellant who was then found inside the shanty designated as Target No. 8. together with his pregnant wife. Appellant attempted to flee but the team was able to place him under control. The team then proceeded to search the premises.

Appellant and his wife were inside the shanty during the search. Appellant was sitting in front of a drug paraphernalia when the team started to conduct its search. In the course of their search, the team found appellant's driver's license inside a wallet found in the sala. The team discovered that the address of the appellant as stated in his driver's license was F. Soriano St., Sto. Tomas, Pasig City, which was the same as the address of Target No. 8. The team likewise noticed that the appellant had a picture of himself inside the house although the same was not seized since it was not listed in the search warrant. When interviewed by the team, appellant admitted that he was the owner of Target No. 8 although this admission was made without the presence of counsel.

In the course of the search, the team was able to find and seize from the appellant plastic sachets containing crystalline substances, weighing scale, cellphone, assorted lighters, wallet containing dollars and a few coins, aluminum foil, and assorted cutters and scissors. The seized items were marked and inventoried in the Receipt of the Property Seized at Target No. 8. The seized items were handled by SPO2 Agbalog. Appellant was informed of his rights and thereafter arrested. Appellant, along with the other persons arrested in the compound, were then brought to Camp Crame.


Meanwhile, the seized items were forwarded to the PNP Crime Laboratory where results yielded positive for methamphetamine hydrochloride. Likewise, Forensic Chemist P/Insp. Angel Timario reported that the urine sample taken from appellant tested positive for the presence of dangerous drugs.

Version of the Defense

For his defense, appellant claimed that in the morning of February 10, 2006, he was with his pregnant wife on their way to a hospital for a check-up. They were about to board a tricycle when men in uniform who looked like soldiers stopped them and ordered them to go inside the Mapayapa Compound.

⁸ Spelled as "Biascan" in some parts of the records.

⁹ Spelled as "Partosa" in some parts of the records.



Inside the compound, appellant was ordered to join a group of men who were arrested and were lying face down on the ground. His wife was brought to an area inside the compound where she joined several other females who were also arrested. They were all brought to Camp Crame and were thereafter processed and were charged with various violations under RA 9165.

Ruling of the Regional Trial Court

On December 19, 2007, the RTC of Pasig City, Branch 154 rendered judgment finding appellant guilty as charged. The RTC was convinced that the prosecution, through the testimonies of the arresting officers who conducted the search, was able to establish the guilt of appellant beyond reasonable doubt.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

In the cases for violation of Section 6, R.A. 9165 (maintenance of a den)

x x x x

The accused Rosalino Babao and **Ramil Galicia** are hereby found GUILTY beyond reasonable doubt of violation of Section 6 of R.A. 9165 and they are hereby sentenced to suffer life imprisonment; they are also ordered to pay a fine of ₱1,000,000.00 EACH.

x x x x

In the cases for violation of Section 11 of R.A. 9165 (possession of dangerous drugs)

The following accused are hereby found GUILTY beyond reasonable doubt of the charge of possession of dangerous drugs as charged against them in the information to wit:

Ronnie Catubig	Crim. Case No. 14618-D
Aiko Escullar	Crim. Case No. 14621-D
Ramil Galicia	Crim. Case No. 14822-D and
Roy Bohol Montefero	Crim. Case No. 14617-D

and each of them is hereby sentenced to suffer an indeterminate penalty of SEVENTEEN (17) YEARS and ONE (1) DAY to TWENTY (20) YEARS of imprisonment.

x x x x

Each of them is also ordered to pay a fine of ₱400,000.00



In the cases for violation of Section 12 of R.A. 9165 (possession of drug paraphernalia)

The accused ROSALINO BABAO, **RAMIL GALICIA** and ABUBACAR MAUNA SALIC are hereby found GUILTY beyond reasonable doubt of violation of Section 12 of R.A. 9165 (possession of drug paraphernalia). They are hereby sentenced to suffer the indeterminate penalty of imprisonment of ONE (1) YEAR and ONE (1) DAY to THREE (3) YEARS of imprisonment.

Each of them is also ordered to pay a fine of ₱10,000.00

x x x x

In the cases for violation of Section 15 of R.A. 9165 (use of dangerous drugs)

The following accused are hereby found GUILTY, it being established beyond reasonable doubt after a confirmatory test that they used dangerous drugs (shabu/marijuana), to wit:

x x x x

20. **Ramil Galicia** - Crim. Case No. 14823-D

x x x x

They are hereby ordered to undergo rehabilitation in a government rehabilitation center for a period of ONE (1) YEAR or until they are fully cured/rehabilitated.

x x x x

SO ORDERED.¹⁰

Aggrieved by the RTC's Decision, appellant appealed to the CA.

Ruling of the Court of Appeals

On March 22, 2013, the CA affirmed the RTC's Decision and held as follows:

WHEREFORE, premises considered, the Decision dated 19 December 2007 issued by the Regional Trial Court of Pasig City, Branch 154, in Criminal Case Nos. 14821-D, 14822-D, 14823[-D], and 14824[-D] is hereby AFFIRMED

SO ORDERED.¹¹

¹⁰ Id. at 210-215.

¹¹ CA rollo, pp. 371-372.

Dissatisfied with the CA's Decision, and after denial of his Motion for Reconsideration, appellant filed a Notice of Appeal¹² dated December 19, 2014 manifesting his intention to appeal the CA Decision to this Court.

Issue

The issue in this case is whether appellant is guilty of maintenance of a drug den, illegal possession of dangerous drugs and drug paraphernalia, and use of dangerous drugs. According to appellant, the RTC erroneously convicted him in view of the fact that the prosecution failed to prove his guilt beyond reasonable doubt in all the offenses charged.

Our Ruling

The appeal is partly meritorious.

In Criminal Case No. 14821-D, the prosecution failed to prove that appellant was guilty of maintenance of a drug den.

Appellant was charged with maintenance of a drug den in violation of Section 6, Article II of RA 9165, which provides:

SEC. 6. Maintenance of a Den, Dive or Resort. -- The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any dangerous drug is used or sold in any form.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive, or resort where any controlled precursor and essential chemical is used or sold in any form.

The maximum penalty provided for under this Section shall be imposed in every case where any dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in such a place.

Should any dangerous drug be the proximate cause of the death of a person using the same in such den, dive or resort, the penalty of death and a fine

¹² Id. at 405-407.



ranging from One million (₱1,000,000.00) to Fifteen million pesos (₱15,000,000.00) shall be imposed on the maintainer, owner and/or operator.

If such den, dive or resort is owned by a third person, the same shall be confiscated and escheated in favor of the government: Provided, That the criminal complaint shall specifically allege that such place is intentionally used in the furtherance of the crime: Provided, further, That the prosecution shall prove such intent on the part of the owner to use the property for such purpose: Provided, finally, That the owner shall be included as an accused in the criminal complaint.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a 'financier' of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a 'protector/coddler' of any violator of the provisions under this Section.

A drug den is defined under Section 3(1) of RA 9165 as follows:

(1) Den, Dive or Resort. - A place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold or used in any form.

For an accused to be convicted of maintenance of a drug den, the prosecution must establish with proof beyond reasonable doubt that the accused is maintaining a den where any dangerous drug is administered, used, or sold. It must be established that the alleged drug den is a place where dangerous drugs are regularly sold to and/or used by customers of the maintainer of the den. As correctly pointed out by the appellate court:

To convict an accused under this section, the prosecution must show that the place he is maintaining is a den, dive, or resort where dangerous drug is used or sold in any form. Hence, two things must be established, thus: (a) that the place is a den – a place where any dangerous drug and/or controlled precursor and essential [chemical] is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form; (b) that the accused maintains the said place. **Hence, it is not enough that the dangerous drug or drug paraphernalia were found in the place.** More than a finding that dangerous drug is being used thereat, there must also be a clear showing that the accused is the maintainer or operator or the owner of the place where the dangerous drug is used or sold.¹³ (Emphasis supplied)



¹³ CA rollo, pp. 361-362.

In this case however, the evidence relied upon by the RTC to convict the appellant of maintenance of a drug den consists of the following: (1) existence of drug paraphernalia inside the shanty known as Target No. 8; (2) the appellant's driver's license allegedly found in the living room; and (3) appellant's picture found inside the shanty.¹⁴

The prosecution presented the testimonies of PO2 Beascan and SPO3 Agbalog to establish that appellant was maintaining a drug den. They testified that when they served the search warrant for Target No. 8, they saw drug paraphernalia inside the shanty, appellant's driver's license and picture. PO2 Beascan narrated as follows:

[PROSEC. TOLENTINO:]

Q: When you searched the area, what did you find out?

A: [W]hen we searched target no. 8, we found some plastic sachets containing crystalline substance, weighing scale, cell[ph]one, assorted lighters, wallet containing dollars and some coins.

x x x x

Q: And after these items were seized, what did you do with the person with whom you presented the search warrant?

A: We told him his rights.

Q: You mean to tell us you arrested him?

A: Yes, sir.

Q: What did you do next?

A: We proceeded to our office, sir.

Q: And to whom did you turn over the person of Ramil Galicia?

A: To our office, sir[.]

Q: By the way, how did you come to know his name?

A: By virtue of the ID we recovered from the target area, sir.

Q: What kind of ID was that?

A: Driver's license, sir.

Q: Where did you find that driver's license?

A: Inside the target area, sir.

Q: In what part of the target area?

A: In a small living room, sir.

Q: What else did you find in that target area no. 8?

A: Weighing scale, drug, aluminum foil.¹⁵

¹⁴ Records, pp. 189-190.

¹⁵ TSN, March 7, 2007, pp. 2-4.

During cross-examination, PO2 Beascan added:

Q: Now, Mr. Witness, during the time that you implemented the search warrant, you also said that you found specifically among others the driver's license of the accused Ramil Galicia. Where exactly did you find that driver's license?

A: It is contained in a wallet, sir.

Q: [W]here did you find that wallet containing the driver's license?

A: In the sala, sir.

Q: Were you able to see for yourself the driver's license?

A: Yes, sir.

x x x x

Q: What was the address indicated in the driver's license?

A: **I cannot recall the address, sir.**

Q: Is it the same address as the address where you implemented the search warrant?

A: **No, sir.**

x x x x

Q: So you are not sure if the address indicated in the driver's license is the same address as the one written on the search warrant you implemented as F. Soriano street?

A: I am not sure, sir.

x x x x

Q: Since you are not sure whether the accused is really the owner of that target no. 8 because your only connection to this matter is the driver's license, [is it] also possible that the accused is only a visitor?

A: No, sir, because he has a picture inside the house.¹⁶

After scouring through the records of the case, the Court finds that the prosecution failed to clearly establish that the appellant was guilty of violation of maintenance of a drug den. From the testimonies of the arresting officers, it is clear that the prosecution failed to establish that the shanty where appellant was found was a place where dangerous drugs were **sold or used**. The prosecution's witnesses merely testified that when they entered Target No. 8, they found drug paraphernalia inside the shanty and sachets of crystalline substance in the person of the appellant. The prosecution failed to allege and prove an essential element of the offense - that dangerous drugs were being sold or used inside the shanty located at Target No. 8. What was clear was that appellant was caught in possession of *shabu* and drug paraphernalia. There was nothing in evidence that

¹⁶ Id. at 8-11.

would indicate that the arresting officers saw that dangerous drugs were being sold and/or used at Target No. 8 in the course of the search of the premises. Since there was no evidence that dangerous drugs were sold and/or used in the shanty located at Target No. 8, appellant may not be held liable for violation of Section 6, Article II, RA 9165 on maintenance of a drug den.

Moreover, the Court is not convinced that the appellant's driver's license and picture allegedly found inside the shanty can serve as a valid basis for convicting him of maintenance of a drug den. First, these items do not prove that the shanty was being used as a drug den. The driver's license and picture only bolster the allegation of appellant's ownership or occupation of the shanty. It did not establish the fact that the shanty was a drug den. Second and more importantly, these items were not offered in evidence and were not part of the records of the case. The arresting officers testified that they did not seize the driver's license and picture because the search warrant they enforced only authorized them to confiscate dangerous drugs and drug paraphernalia. Consequently, the Court will not convict an accused based on evidence that does not appear on the record of the case. Mere assumptions or conjectures cannot substitute the required quantum of evidence in criminal prosecution.

An accused enjoys the presumption of innocence enshrined in the Bill of Rights. Proof beyond reasonable doubt is the quantum of evidence required to sustain appellant's conviction of maintenance of a drug den. Based on all the foregoing, the Court is constrained to acquit the appellant of violation of Section 6, Article II, RA 9165 for insufficiency of the prosecution's evidence.

***Use of dangerous drugs is absorbed by
illegal possession of drugs.***

Section 15, Article II, RA 9165 on use of dangerous drugs, provides:

A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): ***Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.***

It is clear from the above that the Section 15 does not apply when a person charged with violation of Section 15, Article II, RA 9165 on use of dangerous



drugs, is also found to have possession of such quantity of drugs provided under Section 11 of the same law. This means that appellant may not be charged separately of violation of Section 11 on illegal possession of dangerous drugs and of Section 15 on use of dangerous drug since it is clear from the above that the provisions of Section 11 shall apply. Illegal possession of dangerous drugs absorbs the use of dangerous drugs. This is especially true in this case since appellant was not caught in the act of using drugs. Instead he was caught in the act of possessing drugs and drug paraphernalia. For this reason, the Court dismisses Criminal Case No. 14823-D against appellant on use of dangerous drugs as the same is absorbed by Section 11 on illegal possession of dangerous drugs.

Appellant is guilty of illegal possession of dangerous drugs and drug paraphernalia.

Appellant was charged with illegal possession of dangerous drugs after being caught with eight sachets of *shabu* with a total amount of 1.15 grams in his possession. Likewise, appellant was charged with illegal possession of drug paraphernalia for having possession of seven disposable lighters, five improvised aluminum foil tooters, four sheets aluminum foil, and two weighing scales. The relevant provisions of the law provides as follows:

Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or 'shabu';
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or 'ecstasy', paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:



- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or 'shabu' is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or 'shabu', or other dangerous drugs such as, but not limited to, MDMA or 'ecstasy', PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or 'shabu', or other dangerous drugs such as, but not limited to, MDMA or 'ecstasy', PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

SPO2 Agbalog testified that he confiscated the eight sachets of *shabu* from the appellant whom he identified in open court. His testimony was, as follows:

Q: And with these seized items [which] specially contains this plastic sachet, 8 packs containing crystalline substance, immediately upon



seizing the same or confiscating the same at Target No. 8, what did you do?

A: I turned it over to Robert Biascan, sir.

Q: And what did this police officer do after you have turned it over to him?

A: He made the markings, sir.

Q: I am showing to you a plastic sachet, brown envelop will you please go over the same and tell us what is this in relation to this plastic sachet containing this shabu that you have found in Target No. 8?

A: These are the same items that we have confiscated, sir.

Q: And those were confiscated from where, Mr. Witness?

A: From the accused Ramil Galicia, sir.

Q: Where, from the person or in the place?

A: From the person of the accused, sir.

x x x x

Q: What were the items that you have confiscated from the accused?

A: These items, sir. These 8 plastic sachets, sir.¹⁷

With regard to the alleged drug paraphernalia found in the possession of appellant, PO2 Beascan testified that aside from the plastic sachets of *shabu*, they also found drug paraphernalia consisting of aluminum foil used for heating *shabu*, improvised aluminum foil tooters used for inhaling the smoke emitted when *shabu* is heated, disposable lighters, and weighing scales.

The Court finds that the prosecution sufficiently established appellant's possession of drugs and drug paraphernalia. Both PO2 Beascan and SPO3 Agbalog categorically declared that they found the drugs and the drug paraphernalia in the possession of the appellant during the course of the implementation of the search warrant.

Chain of custody of the seized drugs and drug paraphernalia.

With regard to the alleged failure of the police officers to comply with the procedure required in the seizure of drugs, the records show that the prosecution was able to establish an unbroken chain of custody over the seized drugs -- from the seizure and confiscation of the *shabu* up to the delivery of the same to the crime laboratory and presentation in Court. As correctly held by the CA, the police officer properly preserved the integrity and evidentiary value of the seized items when SPO2 Agbalog and PO2 Beascan seized and marked the sachets of *shabu* with the markings "RLB-1 to RLB-8" and "RLB-9-RLB17" for the aluminum foil tooters. Thereafter, the items were inventoried under the Receipt of

¹⁷ TSN, April 18, 2007, pp. 7-8.

Property Seized.¹⁸ PO2 Beascan then delivered the items to the PNP Crime Laboratory for examination. In the Initial Laboratory Report No. D-122-06 dated February 11, 2006 by Forensic Chemist P/Insp. Alejandro C. De Guzman, “RLB-1” to “RLB-8” as well as the aluminum foil tooters marked as “RLB-10”, “RLB-12”, “RLB-13”, and “RLB-17” tested positive for the presence of Methamphetamine Hydrochloride.¹⁹ Finally, the same sachets and aluminum foil tooters were presented and turned over to the court where SPO2 Agbalog declared that the said items were the same items that were seized from the appellant.

The failure of the prosecution to present the forensic chemist to testify on how the seized items were handled and taken into custody is not fatal to the admissibility of the seized drugs and its paraphernalia. In *People v. Padua*,²⁰ the Court held:

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that 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. x x x

What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, the Court upholds the findings of the CA that the *shabu* and its paraphernalia that were presented in court were the same items seized from the appellant with its integrity and evidentiary value uncompromised.

Based on the evidence on record, the Court finds no reason to disturb the findings of the CA in Criminal Case Nos. 14822-D and 14824-D on illegal possession of dangerous drugs and drug paraphernalia.

WHEREFORE, the March 22, 2013 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 04637 is **AFFIRMED with the following MODIFICATIONS**:

1. In Criminal Case No. 14821-D for violation of Section 6, Article II, Republic Act No. 9165, appellant Ramil Galicia y Chavez is **ACQUITTED** for insufficiency of evidence;

2. Criminal Case No. 14823-D for violation of Section 15, Article II, Republic Act No. 9165 is **DISMISSED**.

¹⁸ Records, pp. 15-16.

¹⁹ CA *rollo*, p. 369. See also records, p. 29.


²⁰ 639 Phil. 235, 251 (2010).



SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On official leave)
SAMUEL R. MARTIRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice