

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREDDIE HERRERA Y DORADO, ACCUSED-APPELLANT.

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

On appeal is the decision[1] dated April 27, 2012 of the Regional Trial Court of San Jose City, Branch 38 in Criminal Case No. 2038-2011-SJC finding the accused-appellant guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the said decision reads:

"WHEREFORE, premises considered, the accused Freddie Herrera y Dorado is hereby found guilty beyond reasonable doubt of violation of Section 5, Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The accused Marvin Pascual y Antimano is acquitted. Said accused is ordered released from custody relative to his case.

The 28.28 grams of marijuana subject of this case is confiscated in favor of the government to be dealt with as the law directs.

SO ORDERED."

The prosecution's version of the facts is as follows:

On August 27, 2011, PO3 Johnny Apostol and PO2 Ricky Salamanca received an information from their asset about the sale of prohibited drugs in Sto. Niño 3rd, San Jose City. A buy-bust operation was immediately planned under the leadership of Police Inspector Joey Cabatin while PO3 Apostol was designated to act as the poseur-buyer. In preparation for the actual buy-bust operation, a surveillance was conducted on the said place. Likewise, a request for ultraviolet powder dusting of the money to be used in the operation was made with the Nueva Ecija Provincial Crime Laboratory in Cabanatuan City.

At about 8 o'clock in the morning of August 30, 2011, their informant relayed that prohibited drugs would be sold in Sto. Niño 3rd, San Jose City on that day. At noon of the same day, after the standard briefing, the operatives proceeded to the place. PO3 Apostol went to a hut in Zone 7, Sto. Niño 3rd, San Jose City, where the sale would be taking place, while PO2 Salamanca, together with other police officers, positioned himself about four to five meters away therefrom, aboard a private vehicle. PO3 Apostol waited outside until the accused Freddie Herrera and Marvin Pascual arrived. A short talk ensued between PO3 Apostol and Herrera. Thereafter, PO3 Apostol handed Herrera two five hundred peso bills in exchange for one (1) medium sized transparent plastic bag containing a substance suspected to be marijuana. After the sale was consummated, PO3 Apostol introduced himself and Herrera was apprehended. The marked money was recovered and the plastic bag was marked as "FR.08-30-11" on the spot by PO2 Apostol. Herrera was then brought to a hospital for medical examination, and thereafter, to the PNP station of San Jose City for further investigation. Pascual, on the other hand, was able to escape, but the police was able to recover from him a cigarette box, which was subsequently marked as "MP

08-30-11", and a pipe marked as "MP 1". He was also later apprehended and detained.

On the following day, the seized plastic bag was forwarded by PO3 Apostol to Nueva Ecija Provincial Crime Laboratory Office in Cabanatuan City together with a request for laboratory examination. After the same was received in the said office, Police Superintendent Arlene Valdez Coronel immediately conducted a qualitative examination of the said specimen, which was later determined to contain 28.28 grams of marijuana. Her findings were indicated in the Chemistry Report No. D-222-2011 (NEPCLO). The urine sample of accused Herrera was also found positive of THC metabolites, a dangerous drug, and his hands, for ultra violet powder. The seized plastic bag remained under the custody of PO3 Apostol, who placed it inside another plastic container and held it, from the time of its seizure up to its submission to the crime laboratory.

Accordingly, an Information dated August 31, 2011, which was subsequently amended on September 29, 2011, charging Herrera and Pascual with the crime of violation of Section 5 of RA 9165, was filed with the trial court, which thus reads:

"That on or about August 30, 2011, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the accused FREDDIE HERRERA y Dorado and MARVIN PASCUAL y Antimano, conspiring together and mutually helping one another, did then and there, willfully, unlawfully and feloniously, and without being authorized by law, sell, deliver and give away to another (poseur-buyer) one (1) knot-tied transparent plastic bag of dried Marijuana fruiting tops with a total weight of TWENTY EIGHT POINT TWENTY EIGHT (28.28) grams, a dangerous drugs.(sic).

CONTRARY TO LAW."[2]

On arraignment, the accused-appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

Giving credence to the testimony of prosecution witness PO3 Apostol as having established with competent and convincing evidence all the elements of the crime charged, the trial court rendered a judgment of conviction against accused Herrera. Pascual, on the other hand, was acquitted. In ruling against the accused-appellant, the trial court ratiocinated:

"PO3 Apostol, who acted as the poseur-buyer, positively identified the accused Herrera as the person who dealt with him during the buy-bust operation. According to PO3 Apostol, it was the said accused who delivered to him, after two (2) pieces of P500.00 bills were given to the former, a medium size transparent plastic bag which, when forwarded to the PNP Crime Laboratory in Cabanatuan City, was found to contain 28.28 grams of marijuana. It was also from the said accused that PO3 Apostol recovered the two (2) P500.00 bills, with serial numbers UN720577 and TX083200, used during the buy-bust operation. The accused Herrera, as per Physical Identification Report No. PI-069-2011 (NEPCLO), was in fact found positive 'for the presence of brilliant yellow ultra violet fluorescent powder' on the palmar and dorsal portions of both his hands, the same substance for which the said marked bills were powder dusted with prior to the buy-bust operation.

The identity of the subject prohibited drug is also sufficiently established. At the scene, PO3 Apostol immediately marked the plastic bag delivered to him by the accused Herrera 'FR-08-30-11', placed it in another plastic container and held it in his hand until he reached the police station where the incident was entered in the blotter book and the item photographed in the presence of several persons, including the accused Herrera. From there, PO3 Apostol, equipped with a request for laboratory examination, brought the item to the crime laboratory where it was received at about 7:05 in the evening that same day by Police Superintendent Arlene Valdez Coronel who rendered a report about two hours later finding the item to contain marijuana. During the hearing on April 12, 2012, the accused Herrera, through counsel, admitted the existence of the subject prohibited drug then in the possession of the crime laboratory and the fact that the same could be identified by PO3 Apostol as the same item marked by the police during the buy-bust operation."

His motion for reconsideration having been denied[3], the accused-appellant filed the instant appeal and presented the following issues for the consideration of this Court, to wit:

"I. Whether or not the court a quo committed an error in finding that all the elements for the crime of Violation of Section 5 of R.A. No. 9165 are present and were proven beyond reasonable doubt in the instant case, and

II. Whether or not the chain of custody of the subject specimen in the instant case was sufficiently proven by the Prosecution and correctly appreciated by the original court."[4]

The accused-appellant objects to the trial court's finding that the elements of the crime of sale of illegal drugs was duly proven by the prosecution. He alleged that it was vague whether PO3 Apostol intended to purchase illegal drugs from him because what transpired after the former arrived at the scene of the crime, as related by prosecution, was a mere "short talk" between PO3 Apostol and the accused-appellant. He said that the records lacked in details what was that "short talk" all about.

It is quite distressing that the accused-appellant had to bank on his arguments on trivialities. The particular words uttered by the poseur-buyer in transacting with the pusher is not an essential element of the crime of sale of prohibited drugs. What is material is the proof that the transaction or sale actually took place. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction between the entrapping officer and the accused. In this case, PO3 Apostol gave two pieces of P500.00 to the accused-appellant, in return, the latter handed to the former a plastic bag which was later confirmed as containing marijuana, a prohibited drug. Nothing could be inferred from the said transaction than the deliberate sale of a prohibited drug. The fact that PO3 Apostol never mentioned that he approached the accused-appellant to purchase marijuana is not fatal since it was clearly shown that the accused-appellant gave the marijuana to PO3 Apostol in consideration of a certain amount. There is thus actual receipt of money and the delivery of the contraband.

To further challenge the validity and regularity of the buy-bust operation, the accused-appellant argue that the marked money used in the buy-bust operation was not presented in court and that there was lack of coordination with the Philippine Drug Enforcement Agency (PDEA).

We don't find these arguments persuasive enough to help the accused-appellant get out of his predicament. The only qualms of the accused-appellant is that the actual marked money used in the buy-bust operation was not presented during the trial, and that only a photocopy thereof was adduced in evidence. It is sufficient to state here that it is not essential for the prosecution to present the marked money as its absence does not create a hiatus in the evidence provided that the prosecution adequately proves the sale[5] and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[6] In the instant case, both were sufficiently shown by the prosecution.

As to the alleged lack of coordination with the PDEA by the police operatives in conducting the buy-bust operation, this does not make the operation irregular at all. Section 86[7] of RA No. 9165 deals with inter-agency relations of the PNP and other law enforcement agencies with the PDEA. It is an administrative provision designating the PDEA as the lead agency in dangerous drugs cases. But there is nothing in RA No. 9165 to suggests that it is the intention of the legislature to make an arrest in drugs cases illegal if made without the participation of the PDEA.[8] Jurisprudence has been consistent in stating that coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of

Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition sine qua non for every buy-bust operation. After all, a buy-bust is just a form of an in flagrante arrest sanctioned by Section 5, Rule 113 of the Revised Rules of Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.[9] Even the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86 (a) of the said IRR provides:

"(a) Relationship/Coordination between PDEA and Other Agencies — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court."

The other issue interposed by the accused-appellant is the alleged failure of the prosecution to prove that the standards in the chain of custody of illegal drugs in buy-bust operations was complied with primarily because forensic chemist Police Superintendent Arlene Valdez Coronel was not presented to testify during the trial. The accused-appellant argue that it was imperative for the said forensic chemist to identify the specimen in open court and to tell how she preserved the integrity of the same when it was in her custody. This argument deserves scant consideration. It has already been ruled in a number of cases that non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. As held in *People v. Fundales, Jr.*,^[10] citing the earlier case of *People v. Quebral*,

"The accused-appellants also point out that, since the chemist who examined the seized substance did not testify in court, the prosecution was unable to establish the indispensable element of corpus delicti. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The corpus delicti in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.

Besides, corpus delicti has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are prima facie evidence of the facts they state. Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained shabu is conclusive in the absence of evidence proving the contrary. x x x (Citations omitted.)

Thus, it is of no moment that Forensic Chemical Officer Mangalip was not presented as witness. The non-presentation as witnesses of other persons who had custody of the illegal drugs is not a crucial point against the prosecution. 'It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.' What is important is that the integrity and evidentiary value of the

seized drugs are properly preserved as it had been so in this case."

It should be noted that the Chemistry Report No. D-2222-2011 (NEPCLO)[11] prepared by forensic chemist Superintendent Arlene Valdez Coronel stated that she received on August 30, 2011 at 7:05 pm one (1) knot-tied transparent plastic bag with markings "FR 08-30-11" and containing 28.28 grams of dried suspected Marijuana fruiting tops which was requested to be examined by the Chief of Police of San Jose City Police Station. The one who delivered the said specimen was indicated as PO3 Apostol.[12] That after conducting qualitative examination, she concluded that the specimen contains Marijuana, a dangerous drug. The existence and due execution of the said document has already been admitted by the defense.[13] It must be emphasized that the chemistry report carries with it the presumption of regularity in the performance of duties and is presumed to be evidence of the facts stated therein. Meanwhile, the defense had admitted the existence of a plastic bag containing marijuana, and further stipulated that if PO3 Apostol would be shown the same, he could identify it as the same item which he marked as "FR 08-30-11".[14] Hence, there is no doubt that the plastic bag containing marijuana that was seized from the accused-appellant was the same plastic bag submitted to the court. Against the evidence of the prosecution, the accused-appellant offered nothing to dispute the same.

Based on the foregoing, this Court is convinced that the prosecution was able to establish that it had complied with the requirements in the chain of custody of the subject marijuana from the time it was seized during the buy-bust operation to the turn-over of the same to the chemist. As the evidence shows, after PO3 Apostol confiscated the plastic bag of marijuana, he immediately marked the same. Thereafter, the same specimen was placed in another plastic container by PO3 Apostol and then, armed with the proper request, hand carried it to the PNP Crime Laboratory Office in Cabanatuan City for qualitative examination. Upon receipt by forensic chemist Superintendent Arlene Valdez Coronel of the seized item, she immediately conducted the test, and the result proved that the same contained marijuana. This Court has nothing to doubt that the integrity of the prohibited drug seized from the accused-appellant was duly preserved.

Thus, the finding of guilt beyond reasonable doubt by the trial court of the crime of illegal possession of marijuana against the accused-appellant, thereby imposing the penalty of life imprisonment and a fine of P500,000.00, is proper and in order.

WHEREFORE, premises considered, the instant appeal is DISMISSED. Accordingly, the appealed decision of the court a quo in Crim. Case No. 2038-2011-SJC is AFFIRMED.

SO ORDERED.

Sorongon[*] and Corales[**], JJ., concur.

[*] Vice Justice Ricardo R. Rosario, per Raffle conducted on May 20, 2014.

[**] Vice Justice Leoncia R. Dimagiba, per Raffle conducted on May 20, 2014.

[1] Rollo, pp. 43-46.

[2] Original Records, p. 30.

[3] Rollo, pp. 47-50.

[4] Rollo, p. 23.

[5] *Lapuz vs. People*, G. R. No. 150050, June 17, 2004.

[6] *Suson vs. People*, G. R. No. 152848, July 12, 2006.

[7] Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. - The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

[8] *People vs. Fundales, Jr.*, G. R. No. 184606, September 5, 2012.

[9] *People vs. Roa*, G. R. No. 186134, May 6, 2010.

[10] See Note 7.

[11] Original Records, p. 6.

[12] Original Records, p. 5.

[13] Original Records, "Pre-Trial Order", pp. 58-60.

[14] See Order dated April 12, 2012 of the trial court, p. 75.

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