

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN ENTERA JAMITO, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal from the Decision[1] dated December 2, 2008, of the Regional Trial Court, 7[th] Judicial Region, Branch 58, Cebu City, finding accused-appellant Benjamin Jamito y Entera guilty beyond reasonable doubt for Violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in Crim. Case No. CBU-78248.

The Facts

On October 20, 2006, accused-appellant Benjamin Jamito y Entera [Jamito] was charged for violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information[2] reads as follows:

“ That on or about the 19th day of October, 2006, at about 6:30 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession and under his control the following:
One (1) transparent plastic sachet weighing 0.04 gram of white crystalline substance;

locally known as “shabu”, containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

On December 5, 2006, Jamito was arraigned and pleaded not guilty to the offense charged.[3]

The RTC in its Pre-Trial Order on December 5, 2006 stated that the issue to be resolved is whether or not the accused is guilty as charged.[4]

Trial on the merits followed.

VERSION OF THE PROSECUTION

Prosecution presented the arresting officers: SPO1 Metodio Aparis [SPO1 Aparis], PO3 Fortunato Macaranas [PO3 Macaranas] and PO1 Francis Lyle Flores [PO1 Flores]. The testimony of forensic chemist Police Senior Inspector Pinky Sayson was dispensed with considering the admission by accused-appellant that PSI Acog is an expert who executed Chemistry Report No. D-1670-2006 on October 20, 2006 and that she has no personal knowledge as to how, where and from whom the specimen consisting of one (1) heat-sealed transparent plastic pack marked as “BJE” was recovered.[5] Prosecution witnesses narrated that:

On October 19, 2006, SPO1 Aparis, PO3 Macaranas and PO1 Flores were at Sitio Mahayahay, A. Lopez Street, Calamba, Cebu City conducting a foot patrol in said area because the same was known to be rampant with shabu cases.[6] While roving the area, SPO1 Aparis saw accused-appellant Jamito examining something and when the

latter noticed the presence of the police officers, he immediately placed in his pocket the thing he was holding and attempted to flee. PO1 Flores gave chase to Jamito who eventually caught him.

After he was caught, SPO1 Aparis told him to empty his pockets and a heat-sealed plastic sachet containing a white crystalline substance suspected to be a dangerous drug known as shabu fell from Jamito's pocket which was picked up by SPO1 Aparis.[7] He was asked why he ran away and he just responded that he was afraid.

Jamito was then read his constitutional rights[8] and was brought to the police station. At the station, the contraband that was confiscated from him was marked as "BJE" by SPO1 Aparis.[9] Thereafter, SPO1 Aparis prepared a Letter Request for Laboratory Examination[10] which was delivered by the three arresting officers at the PNP Crime Laboratory on the same day of the arrest. The letter request was received by one PO3 Ramos.

The Chemistry Report which was prepared by PSI Pinky Sayson Acog bearing Chemistry Report No. C-1670-2006,[11] revealed that the specimen submitted in her office bearing the mark "BJE" weighing 0.04 gram tested positive for Methamphetamine hydrochloride, a dangerous drug.

The testimony of SPO1 Aparis was corroborated by PO3 Macaranas and PO1 Flores.

On December 17, 2007, prosecution formally offered Exhibits "A" to "C"[12] with their sub-markings which were all admitted by the RTC over the objections of Jamito.[13]

VERSION OF THE DEFENSE

Defense presented accused-appellant as its lone witness, who narrated that on October 19, 2006 at around 2:00 o'clock in the afternoon he was at his home. After he took a bath, a fight ensued between him and his live-in partner Lilian Saballa which was not resolved. So he decided to pack up his things to go to Barili.

Carrying his bag, he went out of the house and walked the streets to get a ride. While walking, he saw five persons in their plain clothes, running towards his direction, chasing someone. When he saw that one of them was carrying a firearm he got terrified at that sight and he ran as well.

Later on it was him that was being chased by the persons and was eventually prevailed upon. He later on found the said persons to be police officers after he was mauled and dragged to the police station. It was only on the following morning that he knew that he was charged for possession of illegal drugs.[14]

Accused-appellant did not offer any documentary evidence.

Hence, the RTC on December 2, 2008, rendered a decision convicting accused-appellant of the crime charged. The decretal portion of the decision, reads:

"Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to suffer the penalty of imprisonment from twelve (12) years to one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of P300,000.00. The full period of preventive detention shall be credited in the service of his sentence.

Exhibit "B" is confiscated in favor of the state for proper disposition.

SO ORDERED."[15]

From the adverse decision, Jamito comes to Us on appeal, with the following assignment of errors, to wit:

"I. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT; AND

II. THE TRIAL COURT ERRED IN AFFIRMING THE IDENTITY OF THE SEIZED DRUGS DESPITE

NON-COMPLIANCE WITH SECTION 21 OF R.A. 9165”[16]

Our Ruling

We shall discuss the issues raised by accused-appellant Jamito in seriatim.

Accused-appellant questions for the first time on appeal his warrantless arrest. He insists that the circumstances leading to his arrest, which was purely based on suspicion, was outlawed by no less than the Philippine Constitution. At the time he was arrested, he was not committing, attempted to commit or had just committed a crime justifying an in flagrante delicto arrest.

An appeal is generally limited to the errors assigned by petitioner. Issues not raised below cannot be pleaded for the first time on appeal.[17] As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[18]

In the instant case, the records show that accused-appellant never objected to the irregularity of his arrest before his arraignment. In fact, this is the first time that he raises the issue. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that accused-appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest. The legality of the arrest affects only the jurisdiction of the court over his person. Accused-appellant’s warrantless arrest therefore cannot, in itself, be the basis of his acquittal.[19]

Accused-appellant Jamito alleged further that the prosecution failed to establish corpus delicti for failure to observe the guidelines set forth under Section 21 of R.A. 9165.

The Supreme Court has long settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Sec. 21 of RA 9165, for as long as the chain of custody remains unbroken.[20] In the recent case of *People v. Oniza, et al.*[21] the Supreme Court set forth the links of the chain of custody to establish, thus:

“It should establish the following links in that chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Still, jurisprudence has established a rare exception with respect to the first required link—immediate seizure and marking of the seized items in the presence of the accused and others—namely, that (a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved.”

It is not clear from the evidence that the marking, which was done in the police station, was made in the presence of the accused or his representative.

Thus, the following are the declarations of the arresting officers, thus:

PO1 Flores

“Q: You said that you immediately went to your office at that time?

A: Yes after apprising him of his constitutional rights.

Q: And in your office you (immediately) prepare(d) the documentation and markings, why did you make the markings at that time in your office not in the place of arrest?

A: That was our S.O.P.

Q: What were the markings placed?

A: "BJE"

Q: You said Aparis made the marking who were he (sic) made the marking?

A: Three (3) of us we were watching the markings."[22]

PO2 MACARANAS

"Q: How could you determine that the pack of shabu was the one that you recovered?

A: Through the marking.

Q: Who made the markings?

A: Aparis.

Q: Where were you when the marking was placed?

A: I was in front of him.

Q: And it was done in your office?

A: Yes sir."[23]

SPO1 APARIS

"Q: Who placed the marking?[24]

A: Me sir.

Q: When was the marking placed?

A: At the police station when we arrived.

Q: Why not in the place where the accused was arrested?

A: We were not able to bring the marking pen."[25]

Although the Supreme Court have previously ruled that the marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team, the same must always be done in the presence of the accused or his representative. In the instant case, the prosecution was not able to establish whether the accused was there or not at the time of the marking. Thus, there is already a gap in determining whether the specimens that entered into the chain were actually the ones examined and offered in evidence.[26]

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, planting, or contamination of evidence.[27]

Moreover, the police officers did not bother to offer any reason or justification for their failure to make an inventory and take pictures of the drugs immediately after their seizure in the presence of the accused and the

other persons designated by the law. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law. The procedures outlined in Section 21 of R.A. 9165 are not merely empty formalities— these are safeguards against abuse, the most notorious of which is its use as a tool for extortion.[28]

Next, although the arresting officers were the one who delivered the letter request for examination to the PNP Crime Laboratory together with the evidence, it was not established who received their letter request together with the contraband at the crime laboratory. Moreover, the prosecution stipulated with the accused that the police chemist “has no personal knowledge as to how, when and from whom the specimen consisting of one heat-sealed transparent plastic pack marked as BJE was recovered” and that she has no knowledge of the custody of the same.[29] Lastly, there was no evidence showing the turnover from the forensic chemist to the RTC.

Thus, the gaps in the chain of custody creates a reasonable doubt as to whether the specimens seized from the accused were the same specimens brought to the laboratory and eventually offered in court as evidence. Without adequate proof of the corpus delicti, the conviction cannot stand.[30]

Accordingly, the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a person charged with a crime, but moral certainty is required as to every proposition of proof requisite to constitute the offense. A conviction cannot be sustained if there is a persistent doubt on the identity of the drug.[31]

WHEREFORE, in view of the foregoing, the Decision December 2, 2008, of the Regional Trial Court, 7[th] Judicial Region, Branch 58, Cebu City in Crim. Case No. CBU-78248 is hereby REVERSED and SET ASIDE. Accused-appellant Benjamin Jamito y Entera is hereby ACQUITTED of the charge for violation of Sec. 11 of Art. II of RA 9165 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby ORDERED to immediately RELEASE the accused-appellant from custody, unless he is detained for some other lawful cause. The responsible officer is ORDERED to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Delos Santos, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Records, pp. 80-84, penned by the then Honorable Judge Gabriel T. Ingles

[2] Records, p. 1

[3] Records, p. 13

[4] Records, p. 13

[5] TSN, August 13, 2007, pp. 2-3

[6] TSN, December 17, 2007, p. 4

[7] TSN, September 10, 2007, p.4

[8] TSN, September 10, 2007, p. 5

- [9] TSN, December 3, 2007, p. 7
- [10] Records, p. 56
- [11] Records, p. 57
- [12] TSN, December 17, 2007, pp. 6-7
“A”- Letter Request dated October 19, 2006;
“B”- Pack of shabu with marking; and
“C”- Chemistry Report No. D-1670-2006
- [13] Records, p. 58
- [14] TSN, November 3, 2008, pp. 2-7
- [15] Records, pp. 83-84
- [16] Rollo, p. 17
- [17] Manalili v. CA, G.R. No. 113447, October 9, 1997
- [18] Maxicare PCIB Cigna Healthcare, et al v. Contreras, G.R. No.194352, January 30, 2013
- [19] People v. Racho, G.R. No. 186529, August 3, 2010
- [20] People v. Amarillo, G.R. No. 194721, August 15, 2012
- [21] G.R. No. 202709, July 3, 2013
- [22] TSN, September 10, 2007, p. 5
- [23] TSN, September 24, 2007, p. 4
- [24] TSN, December 3, 2007, p. 4
- [25] TSN, December 3, 2007, p. 5
- [26] People v. Salonga, G.R. No. 194948, September 2, 2013
- [27] People v. Salonga, G.R. No. 194948, September 2, 2013
- [28] People v. Oniza, et al., G.R. No. 202709, July 3, 2013
- [29] TSN, August 13, 2007, pp. 2-3
- [30] People v. Salonga, G.R. No. 194948, September 2, 2013
- [31] People v. Salonga, G.R. No. 194948, September 2, 2013

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