

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIÑO ERWIN REDONA Y SAMOY AND DIANA BUCO Y MANDAP, ACCUSED-APPELLANTS.

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In a decision[1] dated January 31, 2013, this Court denied the appeal of accused-appellants from the decision of the trial court finding accused-appellant Niño Erwin Redona y Samoy guilty beyond reasonable doubt of possession of dangerous drug in violation of Section 11, Article II of RA 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002 and accused-appellant Diana Bucu y Mandap guilty beyond reasonable doubt of attempt to sell and give away dangerous drug in violation of Section 26, Article II of RA 9165 in relation to Section 5 of the same law.

Accused-appellant Niño Erwin Redona now seeks reconsideration of the decision of this Court on the ground that the evidence does not establish his guilt beyond reasonable doubt because:

- 1) The arrest of accused-appellant Redona was unlawful and the evidence obtained from him is inadmissible in evidence against him and;
- 2) The chain of custody rule was broken.

After examining the allegations in the instant Motion for Reconsideration[2], this Court finds that while the conviction of accused-appellant Diana Bucu should be upheld on the basis of the evidence of the prosecution showing her guilt beyond reasonable doubt of the offense of attempt to sell and give away dangerous drug pursuant to Section 26, Art. II of RA 9165, the conviction of accused-appellant Niño Erwin Redona for possession of dangerous drug in violation of Section 11, Article II of RA 9165 should be reversed and set aside after a second look at the records of the case and evidence presented by the prosecution.

A perusal of the records shows that the prosecution was not able to adequately prove that accused-appellant Redona was committing any offense before or during the time that he was arrested by prosecution witness SPO1 Amurao. Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to accused-appellant Redona as to rouse suspicion in the mind of SPO1 Amurao that accused-appellant had just committed, was committing, or was about to commit a crime, for the acts per se of staying in a vehicle or previously talking to a suspected criminal, i.e., co-accused Bucu before the latter met with the poseur buyer for the attempted sale of dangerous drug, cannot in any way be considered criminal acts. In fact, even if accused-appellant Redona had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for SPO1 Amurao to effect a lawful warrantless arrest under paragraph (a) of Section 5, Rule 113. Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, i.e., that an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.[3] Consider the following testimony of SPO1 Amurao:

“Q: While you were there at four in the morning of 25 August 2007 what if any information was received by your office in relation to your duties as drug operative?

A: An informant arrived in our office who was entertained by our Chief, Col. Napoleon Villegas, sir.

Q: This informant is this a male or female?

A: Male, sir.

Q: And what if any information did he give to your office on that particular morning?

A: As far as I remember he could order a “shabu” on that day, sir.

Q: How did you know that?

A: It was relayed to us during the briefing by our Chief, sir.

Q: And what if any other information did he give you in so far as the identity of the person from whom he was able to strike a deal?

A: He will give the description of the person whom the shabu will be ordered, sir.

Q: What description was given to you?

A: As far as I remember it fits the description of accused Diana Buco, sir.

Q: You said that there was an information given to your office by your informant?

A: Yes, sir.

Q: That he was able to strike a drug deal?

A: Yes, sir.

Q: And then to whom was your informant able to strike a deal if you know?

A: As far as I remember we contacted a certain Ronald, sir.

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Q: Now, how much money was given to Melendrez as buy-bust money?

A: As far as I remember, four (4) pieces of five hundred peso bill was given to Melendrez together with the boodle money, sir.

Q: So the money was given to Melendrez, why was Melendrez given the money?

A: Because he was assigned as the poseur buyer, sir.

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Q: Earlier ago you testified that the description fitted to the description of accused Diana Buco why was it that there was a description about Diana Buco?

A: Because according to the conversation between Ronald and the informant they will just ask somebody to bring the item, sir.

Q: How did you know that there was a conversation to that effect?

A: It was relayed to us during the briefing, sir.

Q: Who was the person who was supposed to bring the item as per conversation?

A: Based on the description a female will bring the item, sir.

Q: And where would the place be where the item would be delivered?

A: At Jollibee Food Chain, Alabang Zapote Road in Muntinlupa, sir.

Q: What time would be the item delivered in Jollibee?

A: To my knowledge around 4:00 P.M., sir.

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Q: Where did you position yourself?

A: We parked in front of Jollibee at the parking space, sir.

Q: What about the Revo where Melendrez was boarded where was this Revo parked?

A: The same area in front of Jollibee, sir.

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Q: So after that what happened next?

A: At around 3:45 P.M. a Honda Civic colored cream arrived, sir.

Q: What happened next after a Honda Civic colored cream arrived?

A: A female alighted from the vehicle and she fitted the description of the person who will bring the item, sir.

Q: She fitted the description of the person who will bring the item, why what was the description given?

A: A short female person around 40 years old, sir.

Q: What else did you observe after a woman alighted from Honda Civic?

A: She approached Melendrez and the informant as if they conversed and they went inside the Jollibee, sir.

Q Where were Melendrez and the informant when the woman approached them?

A They were near the door of Jollibee, sir.

Q: How far were you from them when you observed them?

A: Around ten (10) meters away from them, sir.

Q: So what happened next?

A: They entered Jollibee and then PO3 Melendrez went upstairs, sir.

Q: How did you know that?

A: I saw it because the wall was made of glass, sir.

Q: You said Melendrez went to the second floor of Jollibee?

A: Yes, sir.

Q: Where was the woman then?

A: The woman was seated at the table near the wall, sir.

Q: Which floor was this table located?

A: Ground floor, sir.

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Q: So what happened next?

A: When Melendrez was going down Diana Buco stood up and then she went to the vehicle, sir.

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Q: So Melendrez went downstairs and the woman went back to the vehicle, the Civic so what happened next?

A: After that PO3 Melendrez radioed us and informed us that it was positive and then when he went down he saw that Diana Buco was not already in the area so he immediately followed Diana and went outside to arrest her, sir.

Q: So what happened next?

A: When he held Diana buco we were also almost there, sir.

Q: By the way you mentioned the name Diana Buco how did you know that the woman's name is Diana Buco?

A: After she was arrested we learned her name, sir.

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Q: So what about you what did you do?

A: I arrested Niño Erwin Redona who was then seated at the driver's seat, sir.

Q You said that Niño was on the driver's seat, which car was this Niño was on the driver's seat?

A: Honda Civic colored cream, sir.

Q: Same car?

A: Yes, sir.

Q: Why did you arrest Redona also?

A: Because PO3 Melendrez arrested Diana Buco so I arrested also her companion so I held him, sir.

Q: What was the purpose of holding this person, the driver?

A: Because he was with Diana Buco, sir.

Q: So when you said you held him what did you actually do to this person?

A: We introduced first ourselves as police officers and then I bodily searched him and I recovered from his right front pocket one (1) plastic sachet, sir.

Q: What was the purpose of you frisking the driver?

A: Because when Melendrez told us that it was positive we understood that the operation was positive, sir.

Q: Why, was this also positive because Redona is also positive?

A: Like what I said they came from one (1) car, sir.

Q: So what did you do next?

A: When I frisked him I recovered one (1) plastic sachet from his pocket, sir,.

Q What about the other companions where were they at that time?

A: They were beside us, sir.

Q: By the way, do you know what Melendrez recovered in connection with that operation at all?

A: Yes, sir he recovered a white envelope containing four (4) pieces of plastic sachet containing shabu.

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Q: So after that where did you bring these two (2) arrested persons?

A: We brought them in our office at AID Branch NCRPO, sir.

Q: The item that you said you confiscated from Redona who brought that item from Jollibee going to your office?

A: I was the one holding it from Jollibee up to our office, sir.

Q: What about the item which Melendrez recovered do you know who was in custody thereof from Jollibee going to your office?

A: It was in the possession of Melendrez because when we arrived in our office he brought it out, sir.”[4]

The factual circumstances of this case show that SPO1 Amurao did not acquire personal knowledge that a crime had been indisputably committed or was being committed by accused-appellant Redona. It is not enough that SPO1 Amurao had reasonable ground to believe that accused-appellant had just committed a crime; a crime must in fact have been committed first, which does not obtain in this case.[5] Accused-appellant's arrest, independent of the buy-bust operation targeting Bucu, was therefore not lawful as he was not proved to be committing any offense.[6] In the case of accused-appellant Redona, he was merely sitting inside a vehicle the whole time after he drove the vehicle to Jollibee where his co-accused Diana Bucu alighted from said vehicle. The only act or participation of Redona, as had been observed by SPO1 Amurao, was that of being the driver of the vehicle which brought the other accused Diana Bucu to Jollibee where the sale was to take place. SPO1 Amurao's testimony did not indicate that he had seen Redona in possession of drugs before he was arrested. There was no testimony from any of the prosecution witnesses that before Diana Bucu alighted from the vehicle driven by Redona, Bucu was carrying or possessing drugs together with Redona.

In *People vs. Rolando delos Reyes*,[7] search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; and (6) stop and frisk situations.

The first exception (search incidental to a lawful arrest) includes a valid warrantless search and seizure pursuant

to an equally valid warrantless arrest which must precede the search. In this instance, the law requires that there be first a lawful arrest before a search can be made — the process cannot be reversed. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes permissible warrantless arrests. Thus, a peace officer or a private person may, without warrant, arrest a person: (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (arrest in flagrante delicto); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners).

In that case,[8] the Supreme Court cited several cases involving in flagrante delicto arrests preceding the search and seizure that were held illegal, to wit:

“In *People v. Chua Ho San*, the Court held that in cases of in flagrante delicto arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting officer, therefore, must have personal knowledge of such fact or, as recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*, probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.”

As applied to in flagrante delicto arrests, it is settled that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an in flagrante delicto arrest. Clearly, to constitute a valid in flagrante delicto arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

The Supreme Court further elucidated in the aforecited case,[9] as follows:

“Evident from the foregoing excerpts that the police officers arrested accused-appellants and searched the latter’s persons without a warrant after seeing Rolando delos Reyes and Emmanuel de Claro momentarily conversing in the restaurant, and witnessing the white plastic bag with a box or carton inside being passed from Lantion-Tom to Emmanuel de Claro, to accused-appellant Rolando delos Reyes, and finally, to accused-appellant Reyes. These circumstances, however, hardly constitute overt acts “indicative of a felonious enterprise.” SPO1 Lectura, PO3 Santiago, and PO3 Yumul had no prior knowledge of the suspects’ identities, and they completely relied on their confidential informant to actually identify the suspects. None of the police officers actually saw what was inside that box. There is also no evidence that the confidential informant himself knew that the box contained shabu. No effort at all was taken to confirm that the arrested suspects actually knew that the box or carton inside the white plastic bag, seized from their possession, contained shabu. The police officers were unable to establish a cogent fact or circumstance that would have reasonably invited their attention, as officers of the law, to suspect that accused-appellants, Emmanuel de Claro, and Lantion-Tom

“has just committed, is actually committing, or is attempting to commit” a crime, particularly, an illegal drug deal.”

Without valid justification for the in flagrante delicto arrest of accused-appellant Redona, the search of his person incidental to said arrest, and the eventual seizure of the shabu from accused-appellant's possession, are also considered unlawful and, thus, the seized shabu is excluded in evidence as fruit of a poisonous tree. Without the corpus delicti for the crime charged, then the acquittal of accused-appellant Redona is inevitable.

WHEREFORE, the motion for reconsideration of accused-appellant Niño Erwin Redona y Samoy is GRANTED. The latter is ACQUITTED based on reasonable doubt of the offense charged and he should be immediately released from detention, unless his continued confinement is warranted by some other cause or ground.

The conviction of accused-appellant Diana Buco y Mandap of attempt to sell and give away dangerous drug in violation of Section 26, Article II of R.A. 9165 in relation to Section 5 thereof stands.

SO ORDERED.

De Leon, (Chairperson), and Cruz, JJ., concur.

[1] Rollo, pp. 251-271.

[2] Rollo, pp. 283-298.

[3] See People of the Philippines vs. Nazareno Villareal y Lualhati, G.R. No. 201363, March 18, 2013.

[4] TSN dated April 24, 2008 pp. 5-7; p. 9; pp. 11-12; pp. 14-21.

[5] See People of the Philippines vs. Nazareno Villareal y Lualhati, G.R. No. 201363, March 18, 2013.

[6] See People of the Philippines vs. Carlos Dela Cruz, G.R. No. 182348, November 20, 2008.

[7] G.R. No. 174774, August 31, 2011.

[8] Ibid.

[9] Ibid.

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