

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO D. OYANGORIN, ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

The Case

Before this Court is an appeal filed under Rule 122 of the Revised Rules of Criminal Procedure which seeks to reverse and set aside the Decision[1] of the Regional Trial Court (RTC), Branch 13 of Cebu City, dated 25 May 2012, finding Accused-Appellant guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002. The decretal portion of the assailed Decision reads:

“WHEREFORE, judgment is hereby rendered finding accused Carlito D. Oyangorin GUILTY beyond reasonable doubt of violating Sec. 11, Article II of RA 9165 and sentences him to twelve (12) years and one (1) day to thirteen (13) years of imprisonment plus fine in the amount of P300,000.00.

The packet of shabu weighing 0.01 gram mentioned in the information and marked as Exhibit “A” for the prosecution is hereby ordered confiscated and destroyed.

SO ORDERED.”

FACTUAL ANTECEDENTS

The Prosecution charged Accused-Appellant before the trial court with violation of Section 11, Article II of Republic Act (R.A.) No. 9165 in an Information[2] that reads:

“That on or about the 2[nd] day of June 2009, at about 6:55 o’clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control one (1) heat sealed transparent plastic sachet of white-crystalline substance weighing 0.01 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

When arraigned, Accused-Appellant, assisted by his counsel, pleaded not guilty to the crime charged.[3] To prove its case, the prosecution presented two (2) witnesses, namely: Raul Pelostratos and Benigno Inso, both barangay tanods of Pahina Central, Cebu City. On the other hand, only the Accused-Appellant testified on his behalf.

The Version of the Prosecution

The Prosecution’s version of the events, which was primarily lifted from the testimonies of Raul Pelostratos and Benigno Inso, is summarized as follows:

On 2 June 2009, at around 6:55 in the evening, Barangay Tanods (B/T) Raul Pelostratos (Pelostratos) and Benigno Inso (Inso) were conducting a preventive foot patrol along Sanciango Street, Pahina Central, Cebu

City.[4] They were approached by a female concerned citizen and the latter informed them that there was a man in maong shorts and white t-shirt carrying a bladed weapon about 20 to 30 meters away from their location.[5]

They immediately proceeded to the reported area where they instantly spotted a man, later on identified as Accused-Appellant, fitting the description given by the female informant with his right hand holding a bladed weapon. Before they (Pelostratos and Inso) could approach Accused-Appellant, the latter threw the bladed weapon away from him. This prompted the barangay tanods to move towards Accused-Appellant. After introducing themselves as barangay tanods, they arrested him and checked his outer clothing for other possible weapon. He was then brought to the barangay hall for further investigation.[6]

At the barangay hall, Accused-Appellant was searched anew where a plastic sachet containing white crystalline substance was recovered from the right pocket of his maong shorts. This incident prompted B/T Pelostratos and Inso to bring Accused-Appellant to Carbon Police Station 5 together with the subject specimen after wrapping the same with paper. At the police station, the subject specimen, which was wrapped in paper, was turned over to the desk investigator who marked the same with Accused-Appellant's initials, "CDO-1". A Letter Request[7] for laboratory examination was prepared by Police Inspector Henry P. Eguia. Armed with the letter request, B/T Pelosteros and Inso brought the subject specimen to the crime laboratory for examination.

The result of the laboratory examination conducted by Police Senior Inspector Ryan Ace M. Sala revealed that the white crystalline substance recovered from Accused-Appellant tested positive for methamphetamine hydrochloride, also known as shabu, a dangerous drug.[8]

The Version of the Defense

Accused-Appellant, on the other hand, gave a different version of the events. He narrated that on 2 June 2009, he went to Carbon Public Market, Cebu City, to visit his cousin, nephew and niece.[9] After his visit, he immediately went home. Upon reaching Leon Kilat Street, he was blocked by three (3) barangay tanods.[10] He was allegedly confronted about being a robbery suspect.[11] He told the barangay tanods that he just came from his cousin's house. He was frisked at the place of his arrest and a knife was recovered in his possession.[12] He was then brought to the barangay hall where he was again frisked. When asked why he was carrying a knife, he answered that it was for his own protection.[13] Accused-Appellant denied the allegation that a pack of shabu was found in his possession.[14]

Ruling of the Trial Court

On 25 May 2012, the trial court rendered the assailed Decision finding Accused-Appellant guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) 9165. The trial court ruled that the seizure of the pack of shabu from Accused-Appellant's possession is justified since it was made as an incident to a lawful arrest. It added that Accused-Appellant consented to the conduct of the search on his person as he did not oppose or protest the same. Moreover, all the elements of the crime charged are present in the instant case, according to the trial court.

Aggrieved, Accused-Appellant, through counsel Public Attorney's Office (PAO), filed a Notice of Appeal[15]. On 10 July 2013, Accused-Appellant filed his Appellant's Brief[16] raising the following assignments of error, to wit:

I

THE COURT A QUO ERRED IN RULING THAT THE WARRANTLESS SEARCH WAS VALID.

II

THE COURT A QUO FAULTED IN AFFIRMING THE IDENTITY AND CHAIN OF CUSTODY OF THE

SEIZED SHABU DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT 9165.

Considering that the above assigned errors are interrelated, these will be discussed jointly.

In his brief, Accused-Appellant argued that there was no valid warrantless search. According to him, in searches incidental to a lawful arrest, the search must be made immediately after the arrest. In his case, however, he argued that after he was arrested for violation of Batas Pambansa Blg. 6, he was never frisked at the place of arrest but he was brought to the barangay hall and a late search was conducted. With respect to the chain of custody of the seized contraband, Accused-Appellant argued that it is not admissible in evidence against him since the strict requirements under Paragraph 1, Section 21, Article II of RA 9165 was not followed by the arresting officers.

The Office of the Solicitor General (OSG) argued in its Brief[17] that all the elements of illegal possession of dangerous drugs are present and were proven beyond reasonable doubt. Moreover, the OSG added that the search conducted over the person of Accused-Appellant was valid as it was incident to a lawful arrest. With respect to the admissibility of the seized contraband, the OSG argued that although the subject specimen was not marked by the apprehending officers in the presence of the persons required by law, nonetheless, its integrity and evidentiary value was preserved.

RULING

We resolve to ACQUIT Accused-Appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.

Search and Seizure; Exceptions

Accused-Appellant assails the legality and validity as evidence of the sachet of shabu that was recovered in his possession. He contended that the search conducted on his person by the barangay tanods, which yielded the sachet of shabu, was unlawful since it was not made immediately after his arrest.

Accused-Appellant's contentions do not hold water.

As a rule, for search to be reasonable under the law there must be a search warrant validly issued by an appropriate judicial officer. However, this rule is not absolute and inflexible for jurisprudence has recognized several exceptions to the search warrant requirement.[18] Among these exceptions is a search incidental to a lawful arrest.[19] This is also expressly recognized under Section 13, Rule 126 of the Revised Rules of Court which provides:

Section 13. Search incident to lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

For this rule to apply, it is imperative that there be a prior valid arrest.[20] Although, generally, a warrant is necessary for a valid arrest, the Rules of Court provides the exceptions therefor, to wit:

Sec. 5. Arrest without a warrant; when lawful. – A peace officer or a private person may, without a 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;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or 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.[21] xxx xxx (Emphasis supplied.)

The warrantless arrest of Accused-Appellant falls under paragraph (a) of the above-mentioned provision, also known as “in flagrante delicto” arrest, and is therefore, valid. 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.[22]

In the case at bar, Accused-Appellant was lawfully arrested by the barangay tanods after the latter saw him to be in possession of a bladed weapon for which he was subsequently charged for violation of BP Blg. 6. He was actually committing a crime in the presence of the barangay tanods, thus, his warrantless arrest is justified. As a consequence of his arrest, he was immediately searched for other dangerous weapons which he may have been concealing at that time. The purpose of allowing a warrantless search and seizure incident to a lawful arrest is “to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach”.[23] The search is not only limited to dangerous weapons but covers anything which may have been used or constitute proof in the commission of an offense.

The search conducted on Accused-Appellant at the place of his arrest was limited only to his outer clothing. Thereafter, he was brought to the barangay hall for further investigation where a more thorough search was conducted by the barangay tanods. It bears stressing that at the time the search was conducted, Accused-Appellant never objected nor opposed the same. He voluntarily submitted to the search. In fact, during his direct examination he testified that he agreed to go to the barangay hall together with the barangay tanods and he did not offer any resistance.[24]

Given that the arrest was valid, the subsequent search on Accused-Appellant’s person based on that arrest is also valid.

Notwithstanding the foregoing, Accused-Appellant’s acquittal is in order for failure of the prosecution to establish the chain of custody of the seized item.

Constitutional Presumption of Innocence; Weight of Evidence

The Constitution guarantees the accused’s presumption of innocence until proven guilty. It provides that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[25]

Section 2, Rule 133 of the Rules of Court likewise states that, in a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Chain of Custody over the Seized Contraband; Not Established

Accused-Appellant argued that the procedure set forth under Section 21 of Republic Act No. 9165 was not followed. He specifically harps on the failure of the arresting officers to mark the seized item in his presence and no photograph and inventory of the seized item was taken. He added that there were no representatives from the media, the DOJ and any elected public official. Moreover, he contended that the forensic chemist was not presented in court to testify on how the subject item was handled after it was tested and prior to its presentation in

court.

Accused-Appellant's contentions are meritorious.

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. [26]

In cases of illegal possession of dangerous drugs, the chain of custody over the dangerous drug must be shown to establish the corpus delicti. This is because the dangerous drug itself constitutes the very corpus delicti of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the corpus delicti must definitely be shown to have been preserved.[27] Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[28]

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165, to wit:

(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which implements said provision, provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. x x x (Emphasis supplied.)

The Supreme Court in the case of *Malillin vs. People*[29] stressed the importance of the chain of custody in this wise:

“Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary

doubts concerning the identity of the evidence are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.” (Emphasis supplied.)

While ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain.[30] The implementing rules of Republic Act No. 9165 provides for an exception, when non-compliance with the chain of custody is justified provided the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. However, this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds.[31]

In the case at bar, there are substantial gaps and irregularities in the chain of custody which raise doubts as to the identity and integrity of the corpus delicti. What is more, the prosecution failed to present any justifiable ground as to why the chain of custody was not strictly followed which militates against its case.

It is admitted that the seized item was not marked by the apprehending officers in the presence of Accused-Appellant. As borne out by the records, the police investigator marked the seized item inside a room in the police station while Accused-Appellant waited outside. Only the arresting officer, B/T Pelostratos was inside the room. Moreover, the seized item was not marked by the arresting officer immediately after its confiscation. When B/T Pelostratos recovered the illegal item at the barangay hall, he did not mark it right away but instead, brought it to the police station. There was a considerable lapse of time between the seizure of the illegal item and its marking at the police station. The prosecution failed to show how the item was handled in the interim.

Furthermore, the marking on seized item was improperly made which militates against the prosecution's case. “Marking” has been defined as the placing of the apprehending officer or the poseur buyer of his/her initials and signature on the item/s seized.[32] The marking has to be made by the apprehending officer because he usually has initial contact with the confiscated evidence, and in order to prevent planting and contamination of evidence.[33] In this case, the marking was not made by the apprehending officer, B/T Pelostratos. While the latter was the one who confiscated the illegal item, the marking, however, was made by a police investigator whose identity remains undisclosed since B/T Pelostratos forgot the name of the former. It cannot be denied that the police investigator who allegedly marked the seized item was a stranger both to the fact of arrest of the Accused-Appellant and the eventual confiscation of the illegal item. The purpose why the apprehending officer is required to make the marking in order to forestall planting and contamination of evidence has not been met.

It is also admitted that no physical inventory and photograph of the seized contraband was taken in the presence of Accused-Appellant, and that no representative from the media, the DOJ and any elected public official were present. Non-compliance by the apprehending officers with the foregoing requirements is fatal to the prosecution's case.

In *People vs. Lim*[34], *Bondad vs. People*[35] and *People v. Ruiz*[36], the Supreme Court acquitted the accused in those cases for failure of the prosecution to comply with the procedures under Republic Act No. 9165 and its Implementing Rules and Regulations as no physical inventory was ever made, and no photograph of the seized items was taken.

In *People vs. Orteza*[37], the Supreme Court explained the implications of the failure to comply with Paragraph 1, Section 21, Article II of Republic Act No. 9165, to wit:

In *People vs. Laxa*, where the buy-bust team failed to mark the confiscated marijuana immediately after the apprehension of the accused, the Court held that the deviation from the standard procedure in anti-narcotics operations produced doubts as to the origins of the marijuana. Consequently, the Court concluded that the prosecution failed to establish the identity of the corpus delicti.

The Court made a similar ruling in *People vs. Kimura*, where the Narcom operatives failed to place markings on the seized marijuana at the time the accused was arrested and to observe the procedure and take custody of the drug.

More recently, in *Zarraga vs. People*, the Court held that the material inconsistencies with regard to when and where the markings on the shabu were made and the lack of inventory on the seized drugs created reasonable doubt as to the identity of the corpus delicti. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the shabu. (Emphasis supplied.)

Finally, the non-presentation of the forensic chemist to testify as to how he handled the specimen after receiving and examining it but before it was presented to the trial court is also fatal to the prosecution's case. In *People vs. Catentay*[38], the Supreme Court acquitted the accused because the prosecution did not present the forensic chemist to attest to the fact that the substances presented in court were the same substances he found positive for shabu. The Supreme Court held:

“In this case, although the plastic sachets that the forensic chemist received were heat-sealed and authenticated by the police officer with his personal markings, the forensic chemist broke the seal, opened the plastic sachet, and took out some of the substances for chemical analysis. No evidence had been adduced to show that the forensic chemist properly closed and resealed the plastic sachets with adhesive and placed his own markings on the resealed plastic to preserve the integrity of their contents until they were brought in court. xxx xxx The plastic sachets apparently showed up at the pre-trial, not bearing the forensic chemist's seal, and was brought from the crime laboratory by someone who did not care to testify how he came to be in possession of the same. The evidence did not establish the unbroken chain of custody.” (Emphasis supplied.)

The foregoing facts and circumstances create doubt as to whether the sachet of shabu allegedly seized from Accused-Appellant was the same one that was released to the PNP Crime Laboratory for examination and subsequently presented in the trial court. Thus, an element in the criminal case for illegal possession of dangerous drugs, the corpus delicti, was not proven and the Accused-Appellant must then be acquitted based on reasonable doubt.

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court, Branch 13 of Cebu City dated 25 May 2012 in Criminal Case No. CBU-86304, is hereby REVERSED and SET ASIDE. Accused-Appellant CARLITO D. OYANGORIN is hereby ACQUITTED based on reasonable doubt. He is

ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

We DIRECT the Director of the Bureau of Corrections to implement this Decision and to report to this Court on the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

Ingles, G.T., Chairperson., and Lagura-Yap, M.B., JJ., concur.

[1] Records, pp. 72-75.

[2] Ibid., pp. 1-2.

[3] Ibid., p. 11.

[4] TSN dated April 5, 2011, pp. 3-6.

[5] Ibid.

[6] Ibid., pp. 6-9.

[7] Index of Exhibits for the State, p. 1.

[8] Ibid., p. 2.

[9] TSN dated May 24, 2012, p. 2.

[10] Ibid., p. 3.

[11] Ibid., p. 4.

[12] Ibid., p. 5.

[13] Ibid.

[14] Ibid., p. 7.

[15] Records, pp. 80-81.

[16] Rollo, pp. 49-69.

[17] Rollo, pp. 81-102.

[18] Valeroso vs. CA, G.R. No. 164815, September 3, 2009 citing People vs. Tudtud, G.R. No. 144037, September 26, 2003.

[19] Ibid.

[20] People vs. Mariacos, G.R. No. 188611, June 16, 2010.

[21] Revised Rules on Criminal Procedure, Rule 113.

[22] People vs. Villareal, G.R. No. 201363, March 18, 2013 citing Valdez vs. People, G.R. No. 170180, November 23, 2007.

[23] People vs. Calantiao, G.R. No. 203984, June 18, 2014, citing People vs. Valeroso, G.R. No. 164815, September 3, 2009.

[24] TSN dated May 24, 2012, p. 5.

[25] Section 14 (2), Article III, 1987 Constitution.

[26] People vs. Climaco, G.R. No. 199403, June 13, 2012, citing People vs. Alcuizar, G.R. No. 189980, April 6, 2011.

[27] People vs. Alcuizar, G.R. No. 189980, April 6, 2011.

[28] Ibid.

[29] G.R. No. 172953, 30 April 2008.

[30] Ambre vs. People, G.R. No. 191532, August 15, 2012 citing People vs. Mendoza, G.R. No. 189327, February 29, 2012.

[31] People vs. Sanchez, G.R. No. 175832, October 15, 2008.

[32] People vs. Sanchez, G.R. No. 175832, October 15, 2008.

[33] Ibid.

[34] G.R. No. 141699, August 7, 2002.

[35] G.R. No. 173804, December 10, 2008.

[36] G.R. No. 173480, February 25, 2009.

[37] G.R. No. 173051, July 31, 2007.

[38] G.R. No. 183101, July 6, 2010.

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