

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY BAIÑO Y MADERAL, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

This is an Appeal from the January 9, 2013 Judgment[1] of the Regional Trial Court Branch 27, Gingoog City in Criminal Case No. 2010-4402 for violation of Section 11, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Judgment decreed as follows:

WHEREFORE, premises considered, this Court finds accused Rey Maderal Baiño GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to suffer the penalty of imprisonment of thirteen (13) years as minimum to fifteen (15) years as maximum and to pay a fine of three hundred thousand pesos (Php300,000.00).

The Branch Clerk of Court, Atty. Alfredo Z. Gomez, is hereby directed to turn over the subject dangerous drugs to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and destruction.

SO ORDERED.

Accused Rey Maderal Baiño's conviction stemmed from an Information dated July 7, 2010.[2] The pertinent portion of the Information reads:

That on July 6, 2010, at more or less 1:30 o'clock in the afternoon, in Purok 1, Barangay 20, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there wilfully, unlawfully and feloniously possess and under his control, the following:

a)

Nineteen (19) pieces heatsealed (sic) transparent cellophane sachets of shabu having an estimated weight of 1.2 grams including the transparent cellophane sachets placed inside the plastic canister wrapped in a black electrical tape with cover color green;

b) Seventy-eight (78) pieces of P500.00 bills with Serial Numbers:

1 ZZ 412777
40 MF 436457

2 EG I56832 41 AB 932657

3 WL 517951 42 JY 576162

4 J 305303 43 AJ 352986

5 YT 563829 44 EH 635874

6 AM 591029 45 EF 975910

7 TX 511041 46 EN 280051

8 JX 979003 47 ZH 527444

9 AK 567403 48 M 893465

10 XM 032915 49 MH 408793

11 Z 023495

50 YG 312633

12 AW 418606 51 PG 736454

13 NH 816597 52 ZH 204856

14 PS 686934 53 P 85256

15 ZQ 928501 54 ZZ 689509

16 LD 646847 55 EF 876546

17 BZ 059622

56 YF 424985

18 EG 283377 57 EK 868703

19 AM 601687 58 ZZ 856932

20 YE 806047 59 YY 008122

21 KY 808657 60 ZR 188709

22 MT 733837 61 YX 212962

23 NJ 182344 62 ZQ 795607

24 EY 650697 63 EE 288589

25 GU 283329

64 W 548990

26 FG 534683 65 YZ 530547

27 TN 676360 66 KO 56595

28 YZ 281871 67 HX 119375

29 YC 764443 68 CL 014635

30 PC 125572 69 LF 103004

31 J 880202

70 YE 092113

32 AM 691136 71 EF 766839

33 PA 428767 72 ZX 754969
34 WS 875894 73 YX 987862
35 VP 823023 74 EK 935648
36 HW 967768 75 YX 657119
37 KY 701846 76 NU 749760
38 XR 416312 77 MH 401606
39 YZ 162427 78 KW 410735

c.) One (1) piece of P1,000.00 bill SN PK 182526;

d.) Two (2) pieces of P100.00 bill SN NX 965501 and TU 644871 xxx.

Duly assisted by counsel, accused pleaded not guilty to the offense charged during his arraignment on October 20, 2010.[3]

The facts of the case are as follows:

On July 2, 2010, RTC Branch 12 of Medina, Misamis Oriental, issued a search warrant addressed to any peace officer, worded as follows:

It appearing, to the satisfaction of the undersigned, after examining under oath, the applicant and his witnesses that there is probable cause to believe that a violation of RA 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 has been committed or is about to be committed and that there are good and sufficient reasons to believe that WIWIN BAIÑO, has, in his possession and custody undetermined quantity of illegal drugs of shabu, proceeds of the sale of illegal drugs and other relevant items in violation of RA 9165 or control, in his residence at Barangay 20, road to Fish Landing, Gingoog City, in violation of law.

YOU ARE HEREBY COMMANDED to make an immediate search, at any time of the day or night, of the above-described premises and forthwith to seize and take possession of the afore-described properties/goods and to bring the same to the undersigned to be dealt with as the law directs.

xxx

SPO3 Henry Legaspi of the Gingoog PNP, an intelligence officer detailed with the PDEA Region X and head of the operations, served the afore-quoted search warrant on July 6, 2010. He was assisted by his searching and arresting team. At about 1:30 pm, the team was already at the designated area of the search, particularly at Purok 1, Brgy. 20, Fish Landing, Gingoog City.[4] When the team went inside the subject house, the accused saw them and immediately ran to one of the rooms. SPO3 Legaspi and one PO2 Gundaya chased the accused and caught him.[5] They handcuffed[6] and brought the accused to the sala near their carenderia and ordered him to sit. SPO3 Legaspi asked the accused why he ran but the latter remained silent. But when SPO3 Legaspi asked the accused if he had any illegal drugs with him, the accused replied that he had a canister with him which he tried to surrender to the officer. However, SPO3 Legaspi told him to wait for the witnesses before handing over the items.[7]

Barangay Captain Mark Kho and Rita Endrina, a newspaper publication owner, were invited to witness the operation. They were present when the search warrant was read to the accused. After which, they frisked the police officers to deter any possibility of planting evidence. The search began only when the witnesses were

satisfied that the police officers had nothing on them. Before proceeding to search the sala and the rooms, SPO3 Legaspi instructed the accused to pull the canister out of his pants.[8] The accused obliged by voluntarily surrendering a canister containing nineteen (19) sachets of suspected illegal drugs.[9] The officers took pictures during the raid.

The search yielded several bills believed to be the proceeds of the sale of the illegal drugs. The officers seized them from the room inside the house. After all the items were placed on a table, the officers conducted an Inventory. PO2 Gundaya then issued a Certification wherein the accused, the media representative, and the Barangay Captain affixed their respective signatures. Aside from the aforementioned witnesses, the mother and older sister of the accused were likewise present. After the inventory, SPO3 Legaspi marked the seized items with his initials HBL 1 to 19.[10] The items were then placed in a plastic cellophane that was then stapled. The officers then brought the accused and the seized items to the police station which was about 5 to 7 minutes from the area.[11]

Due to time constraint, and considering that the only crime laboratory is located in Cagayan de Oro City, SPO3 Legaspi requested that the laboratory examination on the seized items be done the next day.[12] SPO3 Legaspi secured the seized items in his locker at their office. Before going to the crime laboratory, SPO3 Legaspi checked whether the items retrieved from his locker were the exact items taken during the operations.[13] Per Chemistry Report dated July 8, 2010, the examination yielded a positive result for the presence of methamphetamine hydrochloride or shabu, an illegal drug.

On the other hand, the accused recounts that at about 1:30 pm of July 6, 2010, he was at a room in their house at Brgy. 20, Purok 1 when his older sister called him out as somebody was looking for him. When he went out, the police officers immediately cuffed his hands and brought him to sit at their sala where he saw at the table a canister, a belt bag and sachets of shabu.[14] SPO3 Legaspi then removed his cuffs and took the canister from the table. He was told to hold the canister and SPO3 Legaspi led his hand towards the front side of his shorts making it appear that the canister came from him. He could not resist as he was scared. Somebody then took a picture of him with the canister.[15] His hands were again cuffed and a representative from the media and the Brgy. Captain arrived. PO2 Gundaya read to him the contents of the search warrant. Thereafter, he was again frisked, Then the house was searched. The police found nothing. Nevertheless, he was brought to the police station after he was asked to sign a piece of paper.[16]

During trial, the prosecution presented Rita Endrina, the media representative during the raid. On the witness stand, she attested that when she arrived at the area, the searching team and the other officers were already there; that she likewise saw the accused and another man seated at the sala with their hands cuffed; that she witnessed the search warrant being read to the accused; that she and the Barangay Captain frisked the police officers and found nothing on them; and that thereafter, the search started. She further attested that SPO3 Legaspi instructed the accused to take out all the things from his body; that it was then that the accused surrendered the seized items; and that the house was then searched but the officers were not able to find any other illegal article except that from the accused.[17]

In his testimony, PO2 Gudaya averred that the 19 sachets were marked by SPO3 Legaspi with his initials HBL 1 to 19[18] in the presence of the witnesses and the accused only at their station; and that the cellophane was again opened there and the items marked and properly sealed.[19] This is contrary to SPO3 Legaspi's testimony that after the Inventory the marking of the seized items immediately followed. But SPO3 Legaspi, on cross-examination, admitted that he already had the canister with him before he was frisked by the invited witnesses,[20] contrary to his narration on direct examination that the search on the accused happened only after the team was frisked by the witnesses. Nonetheless, he maintained that the voluntary surrender of the suspected

illegal item by the accused was done already in the presence of the witnesses.[21] He also insisted that he made his markings during the inventory.[22]

For the defense, Jovie Palen, the sister of the accused was presented.

Jovie Palen recalled that on the fateful day, she was tending to their carenderia; that Ray Lacre was there buying food when suddenly, the police arrived; that Ray was not allowed to leave and was told to sit in the sala and to put his belt bag on the table; that from Ray's bag, the police were able to retrieve a cellphone, lighter, canister and sachets of shabu; that the police then came looking for her brother (herein accused Rey Baiño); and that she called the accused from his room and when he came out, the police immediately arrested him.

Jovie Palen further alleged that the accused was brought to the sala and made to sit with Ray Lacre; that a police officer removed the handcuffs of the accused and manipulated his hand to grab and put the canister in his short pants; that only then did the media representative and the Barangay Captain arrive; and that, thereafter, a police officer read the warrant to the accused.[23]

Jovie Palen furthermore alleged that when the accused was asked to take the canister and make it appear that it was seized from him, the police officers, the media and the Barangay Captain were there to witness the incident; that, however, she could not think of a reason why the police officers would search their house nor was there any altercation between her brother and the authorities; that the owner of the canister is Ray and not her brother. However, on re-direct examination, Jovie Palen testified that she did not actually see the items being taken from the belt bag; and that she cannot determine whether the items belonged to Ray or if it was Ray and not the police officers who placed the items on the table.[24]

Accused Rey Baiño testified that he did not have any grudge on the police officers or altercation with them.[25] He maintained that during the time his hand was manipulated by the police officer to take the canister and make it appear that it was seized from him, the witnesses were not yet present. He added that the money were taken from his wallet and pocket.

The Regional Trial Court (RTC), Branch 27, Gingoog City rendered the assailed Judgment finding that the accused freely and consciously possessed the subject drugs. The RTC was convinced that the accused admitted to possessing the illegal drugs and voluntarily turned over the items to the police. The RTC also gave credence on SPO3 Legaspi's testimony as it was supported by the witnesses and the other police officers who were shown not to have ill-motives against the accused. The RTC found the allegation that the accused was only asked to insert the canister in his pocket as unbelievable because it was done in the presence of several witnesses which is foolish if one intends to plant evidence.

Hence this appeal before Us by the accused who raises the following issues, to wit:

I.

WHETHER OR NOT THE ARREST OF THE ACCUSED IS LEGAL;

II.

WHETHER OR NOT THE EVIDENCES OBTAINED ARE ADMISSIBLE; AND

III.

WHETHER OR NOT THE REQUIREMENT OF SECTION 21 OF RA 9165 WAS DULY OBSERVED.

The accused-appellant avers that upon the arrival at his residence, he was immediately arrested even before the search warrant could be implemented which is a violation of his right against warrantless arrest; consequently, the

drugs found in his possession are not admissible as evidence for being a product of an illegal search; and since the warrant was only to search the house of the accused, the items taken from his body is also inadmissible; lastly, it was another officer who made the inventory and not the person who actually recovered the items; that the marking was made only in the police station which was 3 km. from the scene without showing justifiable reason why they deviated from the procedural requirements of the law.

Our Ruling

We uphold the conviction.

Nothing from the records shows that the accused-appellant questioned the legality of his arrest before he was arraigned nor did he ask for the quashal of the Information against him. Such inaction is construed as a waiver of his right to put into issue the validity of his arrest in this instant appeal. This is in consonance with the Supreme Court ruling in the case of *People v. Racho*,^[26] where it was held that such delay defeats the accused's right to object to the irregularity of his arrest. In that case, the High Court explained:

The records show that 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 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. Appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.

The same ruling is applied in *Ambre v. People*,^[27] where it was held that the petitioner was deemed to have waived her objections to her arrest for not raising them before entering her plea. Accordingly, at this belated time, herein accused-appellant can no longer question the legitimacy of his warrantless arrest after having submitted himself to the court's jurisdiction and actively taking part in the proceedings therein. He is already estopped to raise that as an issue.

Anent the evidence against the accused-appellant, We find it admissible. We disagree with the accused-appellant's contention that since the warrant was to be implemented only in his house, whatever was seized from his body should be inadmissible. As a general rule, one's body cannot be searched or invaded without a search warrant.^[28] The procurement of a search warrant is required before a law enforcer may validly search or seize the person, house, papers or effects of any individual.^[29] Herein search warrant issued against the accused-appellant unequivocally commands the peace officers to make a search of the premises and take possession of the described illegal items based on a probable cause to believe that the accused-appellant has them in his possession and custody, actual or otherwise. The term possession is vague enough to embrace even those in constructive possession of the person.^[30] Perforce, a search on the person named on the warrant may likewise be conducted in line with determining his actual possession of the illicit drugs subject of the search. Moreover, the searching team was justified when they chased after the accused-appellant named on the search warrant, when the latter tried to run. Apparently, the accused-appellant tried to elude the authorities at first sight of them. The accused-appellant's attempt to flee caused the raiding team to arrest him lest they risk another possible evasion.

Granting that the body search was a consequence of the accused-appellant's arrest, We have already ruled for its validity. Consequently, the proceeds from the subsequent search are admissible.

We likewise hold that the required procedures in Section 21 of RA 9165 were substantially complied with by the police authorities.

Section 21 of RA 9165 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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. 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.

In the case before Us, there were certainly an inventory and a picture taking of not only the seized items but also of the search that transpired. Witnesses composed of a media representative and a local official were likewise invited to see the operation. Herein police officers' preparation and execution of the raid is more than substantial compliance of the mandated procedure. Although there are inconsistencies on where the marking was made, this is not material enough to hold that there was already a violation of the above-cited provision. It bears noting that substantial compliance of Section 21 (a) is well sanctioned. The strict application thereof may be dispensed with provided the integrity and the evidentiary value of the seized items had been preserved.[31] This condition is present in the instant case.

It is clear that only one person was in custody of the seized items all throughout the process, from its confiscation until the laboratory examination, and it was SPO3 Legaspi. He identified the same items in court. There was no doubt that it was him who marked the evidence. He was cautious enough to ensure that the same items he got from the accused-appellant were securely placed in his padlocked locker and the next day, again made certain that they were the same confiscated articles to be brought to the crime laboratory. We likewise see no reason to doubt his credibility considering that even the accused-appellant could not think of any reason why he would be falsely implicated on such a crime. This negates ill-motive on the part of the authorities and persuades Us to give full weight to their testimony.

In the case of *People v. Castro*,[32] the Supreme Court ruled:

...the integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with...

Concomitantly, it is Castro who bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers, as well as a presumption that said public officers properly discharged their duties. Since Castro failed to discharge such burden, it cannot be disputed that the drugs seized from him were the same ones examined in the crime laboratory. The prosecution, therefore, established the crucial link in the chain of custody of the seized drugs.

Herein accused-appellant failed to discharge the burden of showing that the evidence against him was tampered. The presumption on the integrity and evidentiary value of the seized items is, thus, sustained.

Further, marking upon immediate confiscation does not exclude the possibility that the marking can be at the

police station or the office of the apprehending team.[33] As explained by PO2 Gundaya, the items were already sealed albeit temporarily at the scene and the proper sealing followed only at the station to avoid prolonging the time, to lessen security risk and to minimize the hurt of the accused-appellant's family who were there to witness the arrest. In their station, they continued the markings of the seized items in the presence of the accused-appellant, his relatives and the other witnesses. We find the differing statements of the police officers as trivial considering that both were one in attesting that SPO3 Legaspi made the markings coupled with the proper inventory and photographs witnessed by disinterested individuals. What is essential was that the corpus delicti was seized in the presence of several witnesses, inventoried, photographed and marked by the same person, who received it from the accused-appellant, and who secured it in a place where only he has access and who has identified them during the trial.

With that recount of events, the chain of the custody of the seized items was still satisfactorily established.

The case of *People v. Langcua*,[34] elucidates:

...that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.

With the foregoing, We concur with the RTC that there was more than substantial compliance of the mandated procedure. The custodial link was clearly established and the integrity and evidentiary value of the seized items were well-preserved.

The elements of illegal possession of prohibited drugs are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[35] We find the afore-cited elements present in the case at bench. The prosecution has proved with moral certainty the guilt of accused-appellant for illegal possession of prohibited drugs.

WHEREFORE, the instant appeal is DISMISSED. The January 9, 2013 Judgment of the Regional Trial Court Branch 27, Gingoog City in Criminal Case No. 2010-4402 is hereby AFFIRMED.

SO ORDERED.

Camello, J. Ch., and Perez, JJ., concur.

[1] Records, pp. 25-32.

[2] Records, pp. 5-6.

[3] Records, p. 47.

[4] TSN, June 27, 2011, p. 9.

[5] Ibid, p. 10.

[6] TSN, July 18, 2011, p. 9.

- [7] November 19, 2012, p. 5.
- [8] Ibid, p. 6.
- [9] Supra, p. 16.
- [10] Supra, p. 36.
- [11] TSN, July 25, 2011, p. 22.
- [12] Supra, p. 10.
- [13] Supra, p. 11.
- [14] TSN, October 1, 2012, pp. 13-15.
- [15] Ibid, p. 16.
- [16] Ibid, p. 19.
- [17] TSN, May 16, 2012.
- [18] Supra, p. 45.
- [19] Ibid, p. 21.
- [20] TSN, July 18, 2011, p. 6.
- [21] Ibid, p. 9.
- [22] Ibid, p. 11.
- [23] TSN, September 3, 2012.
- [24] TSN, October 1, 2012.
- [25] TSN, October 1, 2012, p. 20.
- [26] G.R. No. 186529, August 3, 2010.
- [27] G.R. No. 191532, August 15, 2012.
- [28] Secretary of National Defense v. Manalo, G.R. No. 180906, October 7, 2008.
- [29] People v. Pasudag, G.R. No. 190621, February 10, 2014.
- [30] People v. Posada, G.R. No. 194445, March 12, 2012.
- [31] People v. del Rosario, G.R. No. 188107, December 5, 2012.
- [32] G.R. No. 194836, June 15, 2011.
- [33] People v. Alejandro, G.R. No. 176350, August 10, 2011.
- [34] G.R. No. 190343, February 6, 2013.
- [35] Asiatico v. People, G.R. No. 195005, September 12, 2011.

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