

PEOPLE OF THE PHILIPPINES, PLAINTIFF VS. FRANCIS TABOY Y AQUINO ACCUSED-APPELLANT.

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GONZALES-SISON, M., J:

For review is the Joint Decision[1] dated March 12, 2013 of the Regional Trial Court (RTC), Third Judicial Region, Branch 68, Caloocan City in Criminal Case Nos. 12-01, 12-60, and 12-61.

Three (3) Informations docketed as Criminal Case Nos. 12-01, 12-60, and 12-61 were filed before the trial court charging the accused with Violation of Sections 5, 12 and 15, Article II, R.A. No. 9165 (illegal sale of dangerous drug, illegal possession of drug paraphernalia, and illegal use of dangerous drug) otherwise known as “Comprehensive Dangerous Drugs Act of 2002” committed as follows:

“Criminal Case No. 12-01
(Illegal Sale of Dangerous Drugs)

“That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously sell one(1) heat-sealed transparent plastic sachets (sic) containing Methamphetamine Hydrochloride commonly known as “shabu” a dangerous drug without being authorized by law, weighing 0.051 gram more or less to poseur buyer PO1 Jojie S. Navero.

Contrary to law.[2]

Criminal Case No. 12-60
(Illegal Possession of Drug Paraphernalia)

That on or about January 5, 2012 at around 3:45 P.M. at Camiling Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, then and there willfully, unlawfully and feloniously, have in possession and control drug paraphernalia's (sic) fit or intended for consuming dangerous drugs such as one (1) disposable lighter, one (1) stainless lighter and one (1) roll of aluminum foil without being authorized by law.

Contrary to law.”[3]

“Criminal Case No. 12-61
(Illegal Use of Dangerous Drugs)

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally without being authorized by law, use Methamphetamine Hydrochloride, known as shabu a dangerous drug and was found positive for use of said drug after conformatory test.

Contrary to law.[4]

When arraigned, accused, with the assistance of counsel de officio, entered a plea of not guilty to all the charges.[5]

After pre-trial, trial on the merits ensued. The prosecution offered documentary and testimonial evidence through its witnesses, namely: PS1 Angelito Angel (Forensic Chemist), PO2 Jojie S. Navero, PO3 Edgar Esteban, Brgy. Captain Renato de Mayo, and PO Jason Carbonell. The trial court summed up the prosecution's evidence in the following manner, to wit:

“Acting on the information of the confidential agent that he was going to buy shabu from accused Francis Tabor, P'Sr. Insp. Diosdado Lagasca, then Chief of Police, Camiling Police Station, immediately formed a buy-bust team to conduct buy-bust operation against accused Tabor on January 5, 2012. The buy bust team was composed of PO2 Jojie Navero who was tasked as poseur-buyer, SPO2 Librado Calma, who was assigned as the Team Leader and police officers Nestor Agustin, Edgar Esteban, and Alexander Juan who were designated as back-up security force.

The buy-bust team, thereafter, prepared the buy-bust money in the amount of P500.00 peso bill which they marked with the initial of their Chief of Police “DRL”. A PDEA Coordination sheet was similarly prepared and transmitted to the PDEA office.

After all the necessary documentary requirements had been completed, the buy-bust team members proceeded to the target area, i.e. Baltazar St., Barangay Caarosipan-Palimbo, Camiling, Tarlac.

Upon reaching the area of operation at around 3:45 p.m., PO2 Jojie Navero and the confidential agent posted themselves at the road near the accused's house while the back-up team posted themselves at the strategic locations.

Afterwards, PO2 Jojie Navero and the confidential agent saw accused Tabor coming out of his house. PO2 Navero and the informant then approached accused Tabor and they had an exchange of the buy-bust money and the plastic sachet of shabu. Without any communication at all, PO2 Navero handed to accused Tabor the buy-bust money while the latter gave the plastic sachet of shabu.

When accused Tabor sensed the approaching PO3 Esteban however, the former sped away on board his motorcycle. Policemen Nestor Agustin and Alexander Juan then chased accused Tabor. After a brief chase, Policemen Juan and Agustin cornered accused Tabor, arrested him and brought him to the barangay hall where accused's small backpack was found out to be containing drug paraphernalia such as disposable lighter, aluminum foil, scissor, several pieces of plastic sachets for repacking, monies, cellphones, and booklets containing the list of customers and debtors of illegal drugs trade.

Subsequently, PO2 Navero marked the seized plastic sachet of shabu with the initials of the accused and their team leader “FT/LC” at the barangay hall in the presence of Barangay Captain Renato de Mayo and Mayor Neil Agustin. Thereat, PO3 Esteban also prepared a confiscation receipt of the confiscated items which was signed by the said Barangay Captain, the Mayor and the accused himself.

Accused Tabor was thereafter brought by the buy-bust team to the Camiling Police station for investigation. The plastic sachet of shabu seized from the accused remained in possession of PO2 Navero.

Afterwards, a request for laboratory examination of the seized item and a request for Drug test of accused were made. PO2 Navero and PO3 Esteban then forwarded the seized item to the PNP Crime Laboratory, Camp Makabulos, Tarlac City where the same was examined by police chemist P/Insp. Angelito Angel. The accused was also subjected to urine test at the said PNP Crime Laboratory.

Accused's drug test yield positive result as evidenced by Chemistry report No. CDT-004-12 Tarlac issued by the PNP Crime Laboratory. As regards the item seized from accused, the same was found positive of shabu as per Chemistry report No. D-003-12 Tarlac.”[6]

The defense on the other hand presented the accused himself, the gist of his testimony, is as follows:

“Accused Francis Tabor, as expected, denied the accusation against him and, instead presented a different version of what transpired on the day of his arrest. He claimed that in the whole night of January 4, 2012 until 1:00 o'clock in the afternoon of the following day, he slept in the house of his sister Jovy Baguio at Baltazar Street, Barangay Caarosipan-Palimbo, Camiling, Tarlac due to lack of sleep from a drinking spree. After waking-up, he decided to go the house of his brother Geronimo Tabor which is besides (sic) the Salvador General Hospital, Palimbo-Caarosipan, Camiling, Tarlac. Upon reaching his brother's house and alighting from his motorcycle however, policeman Alexander Juan and his companion were running towards him with their guns drawn on him. He then raised his hands.

The policeman Juan and his companion then took his bag and brought him towards the national Romulo Highway. When they reached the said highway, the said policemen pushed him inside a waiting Revo driven by the Chief of Police. Once inside the van, the bodyguard of the Mayor slapped him and poked a gun on him. When the Chief of Police noticed the inhuman treatment made by the bodyguard on him, the former prevented the said bodyguard from further harming him.

Subsequently, the policemen on board the van brought him to the Camiling Police Station. Thereat, the policemen frisked him, took from him his cellphones and monies while the mayor's bodyguard boxed him again causing him to fall down.

Afterwards, SPO1 Calma appeared at the investigation room, brought out his bag and showed to him the plastic sachet of shabu allegedly taken from his bag. When he denied ownership of the said item, they opened his bag and emptied the same on the table. It turned out that his bag contained drug paraphernalia and his monies.

Thereafter, Barangay Captain de Mayo and the Mayor arrived at the police station where they were asked to sign the confiscation receipt.”[7]

By decision dated March 12, 2013, the trial court found the accused guilty beyond reasonable doubt of all the charges against him, the fallo thereof reads as follows, to wit:

“WHEREFORE, accused Francis Tabor y Aquino is found guilty beyond reasonable doubt for violation of Secs. 5, 12 and 15, Article II of RA 9165 (illegal sale of shabu, illegal possession of drug paraphernalia, and illegal use of prohibited drug, respectively) and hereby sentences him as follows:

- 1) in Criminal Case No. 12-01 for illegal sale of prohibited drugs – the penalty of life imprisonment and a fine of Php500,000.00;
- 2) in Criminal Case No. 12-60 for illegal possession of drug paraphernalia – the penalty of six (6) months and one (1) day to four years and a Fine of Php10,000.00;
- 3) in Criminal Case No. 12-61 for illegal use of prohibited drug – the penalty of six (6) months drug rehabilitation in a government drug rehabilitation center.

The OIC Clerk of Court of this Court is directed to transmit the subject items of these cases to the PDEA for proper disposal.

SO ORDERED.”[8]

In convicting the accused of illegal sale of prohibited drugs and illegal possession of drug paraphernalia, the trial court ratiocinated that the prosecution has shown that all corresponding elements thereof were present. It debunked accused's defense of denial or frame up because he failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The trial court went on saying that considering that the accused's drug test yielded a positive result, he is likewise guilty of illegal use of prohibited drugs.

Unfazed, accused, now appellant, comes to this Court via this instant appeal and assigns the following errors for Our resolution, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S VERSION.

II.

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AND SEARCH OF HIS PERSON AS ILLEGAL.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES.

IV.

THE COURT A QUO GREAVELY ERRED IN FINDING THE ACCUSED-APPELANT GUILTY OF THE CRIME CHARGED DESPITE THE BROKEN CHAIN CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.[9]

Appellant questions the validity of the buy-bust operation and points out the following irregularities which he claim attended its conduct: (1) lack of communication or conversation in the consummation of the sale of the illegal sale between him and PO2 Navero (2) lack of warrant of arrest and unreasonable search and seizure and, (3) non-compliance with the procedures laid down under Section 21 of RA 9165. Appellant claims that the first irregularity does not conform to the natural course of things whilst the other irregularities discredit the presumption of regularity in the performance of official duties accorded to police officers.

The appeal was strongly opposed by the People through the Office of the Solicitor General (OSG). It maintains that the trial court committed no reversible error in disregarding the defense of denial by the appellant and in holding that the prosecution has proved beyond reasonable doubt the guilt of appellant to the offenses charged. All the elements of illegal sale and possession of dangerous drugs were duly established by the prosecution and the positive result of the presence of shabu in the urine of appellant confirmed that he uses the illegal drug. [10]

The Court sustains appellant's conviction and the penalties meted against him.

Section 5, Rule 113 of the Rules of Court provides for lawful warrantless arrests, viz:

"Sec. 5. Arrest without 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 in fact 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; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

The law requires that the person to be arrested under the foregoing proviso performs some overt act that indicate that he has committed, is actually committing or is attempting to commit an offense.[11]

Section 5(a) is what is known as arrest in flagrante delicto. For this type of warrantless arrest to be valid, 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. A common example of an arrest in flagrante delicto is one made after conducting a buy-bust operation.[12]

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[13] Obviously, the operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided that due regard to constitutional and legal safeguards are undertaken.[14]

In *People vs. Victorino*[15] the Supreme Court ruled that in determining the credibility of prosecuting witnesses regarding the conduct of a legitimate buy-bust operation, the "objective" test is followed, viz:

“[T]he "objective" test in buy-bust operation demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer for purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.”

After careful scrutiny of the records of the case, the Court finds the prosecution to have presented a complete picture of the buy bust operation conducted on January 5, 2012 upon appellant. This is clearly shown in the transcribed stenographic notes (TSN's) of PO2 Navero, the poseur-buyer, viz:

“PO2 Navero

Q: During the briefing, you claimed you were designated as the poseur buyer. How much shabu will be bought to (sic) subject Francis Tabor?

A: Five hundred (P500.00) worth of shabu, sir.

Q: Who gave the money if there was a money?

A: From the Chief of Police Lagasca, sir.

Q: So the money came from your Chief of Police Diosdado Lagasca?

A: Yes, sir with the marking DRL.

Q: What do you mean by DRL?

A: Diosdado R. Lagasca, sir.

xxx

Q: When you and your confidential asset proceeded to the place Brgy. Caarosipan Palimbo Baltazar Street, where are your other co-police officers?

A: Just nearby, sir?

xxx

Q: When you reached the place, you and the asset, what did you do if there was any?

A: We waited for Francis Tabor to come out to have an exchange near the street, sir.

Q: Where is Francis Tabor at that time?

A: In their house, sir?

Q: In Baltazar Street?

A: Yes, sir.

Q: Francis Tabor went out of his residence at Baltazar Street?

A: Yes, sir.

Q: What did your asset do when this Francis Tabor already went out of his residence?

A: We went near, sir?

Q: When you say we, you are referring to you and your asset?

A: Yes, sir.

Q: Were you able to come near this Francis Tabor?

A: Yes, sir.

Q: When you were already near to Francis Tabor, what happened if there was any?

A: Nagkaliwaan. (Exchange)

Q: Prior to the exchange, was there any communication between Tabor and your asset?

A: None, sir . Q: How about between you and Tabor?

A: None, sir.

Q: So you and your asset came near to this Tabor. As you claimed kaliwaan, what do you mean by kaliwaan?

A: I gave the P500 bill to Tabor, while the accused handed to me the subject item.

Q: After you handed the P500 bill to Tabor, did you personally receive the sachet from Tabor?

A: Yes, sir.

Q: After personally receiving the sachet from Tabor, what did you do if there was any?

A: I noticed that a person named PO3 Esteban is getting near him and he immediately started the engine of his motorcycle.

Q: Was Tabor, at that (sic) time he handed to you the sachet, on top of the motorcycle or riding on the motorcycle?

A: Yes, sir.

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Q: By the way if this Tabor is in court, will you be able to identify the said person?

A: Yes, sis.

Q: Where is Francis Tabor?

A: The second person, sir.

(The witness pointed to a person who when asked his name he identified himself as Francis Tabor).[16]

xxx

Q: When this Tabor started the engine of the motorcycle he is riding, what happened next?

A: He was chased by my companion.

Q: Was he able to get away or fled or escaped?

A: Yes, sir, he was cornered near the barangay hall.

Q: How far is that barangay hall from the place where you were able to purchase shabu from him?

A: About 8 meters, sir.

Q: What did you do with the sachet that you were able to purchase from Tabor?

A: I held it sir, sir.

Q: Up to where?

A: Up to the place where he was arrested.

Q: When you reached the place where Tabor was cornered what did you do with the sachet you were holding which you claimed you earlier purchased from Tabor?

A: When he was arrested we went to the barangay hall and place (sic) the markings.

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Q: How far or how near is that place where Tabor was cornered and arrested to the place where you claimed there was a listing and marking?

A: In front of the barangay hall, sir.

xxx

Q: Less than two meters?

A: Yes, sir.”[17]

xxx

The Court

Q: Is that sachet placed in that brown envelope the same sachet which you bought from the accused?

A: Yes, sir.

Q: Why do you say it is the same sachet?

A: Because of the marking which was placed on it, sir?

xxx

Q: What did you place?

A: FT/LC, sir.[18]

xxx

Q: [W]hat is FT means or what is that (sic) initials?

A: Francis Tabor/Librado Calma.[19]

The foregoing testimony of PO2 Navero was substantially corroborated by PO3 Esteban, one of his back-ups. PO3 Esteban likewise attested the surveillance they conducted prior to the actual buy-bust operation.[20]

Indeed, the testimonies of PO2 Navero and PO3 Esteban narrated vividly in detail not only the entrapment operation they had conducted that led to the arrest of the appellant and the seizure of the dangerous drug but also the surveillance of the area where the appellant plied his trade as a drug pusher. In fact, based on the said testimonies, the prosecution successfully proved, the following essential elements necessary for conviction of illegal sale of shabu: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof.[21] PO2 Navero convincingly testified that the plastic sachet of shabu subject of the sale was brought to, and duly identified in the trial court. He positively identified appellant as the one who sold to him one plastic sachet of shabu and to whom he gave the boodle money during

the entrapment operations. He likewise identified the plastic sachet of shabu when presented in the trial court to be the same object sold to him by appellant. He further identified the markings “DRL” found on the said object to be the initials of appellant and Librado Calma which he placed thereon at the time the appellant was caught and brought to the barangay hall. These clear and positive testimonies of PO2 Navero, corroborated by PO3 Esteban, are sufficient proof that an illegal transaction or sale of shabu took place.

Interestingly, even if there was no communication between appellant and PO2 Navero in the consummation of the illegal sale of shabu the testimonies of the said prosecution witnesses passed the “objective test” in a buy-bust operation. As aptly observed by the People, to wit:

“It is a matter of record that prior to the actual buy-bust operation against appellant, there was a pre-arranged sale of shabu worth P500.00 between appellant and the confidential asset. This fact sufficiently explains why during the actual buy-bust operation there was no need for any further conversation since both appellant and PO2 Navero knew that the latter will be buying P500.00 worth of shabu from the appellant.

The fact that appellant was already aware of the pre-arranged sale is shown by his actions during the actual drug deal where he was not at all surprised when the confidential asset and PO2 Navero approached him and they immediately had a simultaneous exchange or “nagkaliwaan” of the shabu from appellant and the marked money from PO2 Navero.

Moreover, the immediate exchange of the shabu and marked money between appellant and PO2 Navero was mainly facilitated by the presence of the confidential asset during the sale, who was apparently familiar to appellant. Thus, the transaction was not exclusively between the strangers.”[22]

In *People vs. Lim*,[23] the Supreme Court has held that there is no rigid or textbook method of conducting buy-bust operations. It is of judicial notice that drug pushers sell their wares to any prospective customer, stranger or not, in both public and private places, with no regard for time. They have become increasingly daring and blatantly defiant of the law. Thus, the police must be flexible in their operations to keep up with the drug pushers. Practice buy-bust operations will not only hinder police efforts to apprehend drug pushers, but would even render them inutile, as these would only forewarn the drug pushers.

Guided with the foregoing, the Court holds and rules that the choice of effective ways to apprehend drug dealers is within the ambit of police authority. This is because police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations.[24] Considering then that drug transactions are usually conducted stealthily and convertly, the “kaliwaan system” or the simultaneous exchange of money for the drugs employed by the police officers in here is perfectly valid.[25]

Having found that appellant was indeed caught in flagrante delicto selling an illegal drug to PO2 Navero during a buy-bust operation, it was definitely legal for the buy-bust team to apprehend him on the spot[26] thus, making the arrest lawful even without warrant.

It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner.[27] In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive.[28] Appellant failed to present clear and convincing evidence to overturn this presumption. Except for his bare allegations, appellant did not present proof to support his claim that the police officers were impelled by improper motives to falsely impute serious crime against him. Neither appellant was able to prove his defenses of denial and frame-up. In order to prosper, such defenses must be proved with strong and convincing evidence. This Court has invariably viewed the common and standard defense of denial and frame in drug cases with disfavor for

being easily concocted.[29] Besides, as between the categorical testimony that rings of truth on one hand, and a bare denial on the other, the former is generally held to prevail.[30] As such, the veracity of the police officers' testimonies is beyond question.[31]

Further, even if there were irregularities that attended the arrest of appellant, he can no longer question the validity thereof as there is no showing that he objected to the same before his arraignment. Neither did he take steps to quash the Informations on such ground. He only raised this issue upon his appeal to the Court. By this omission, any objections on the legality of his arrest are deemed to have been waived by him.[32]

Anent appellant's claim of unreasonable search and seizure, it is true that under the Constitution, "a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding." This proscription, however, admits of exceptions, one of which is a warrantless search incidental to a lawful arrest.[33] Paragraph (a), Section 13, Rule 126 of the Rules of Court equally, provides that:

"Sec. 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."

Pursuant to the above-mentioned specific rule, the subsequent search and seizure made by the members of the buy-bust team upon appellant was likewise valid. Accordingly, the drug paraphernalia, i.e. disposable lighter and aluminum foil, seized from him as an incident of his lawful arrest are admissible against him which is in violation of Section 12, Article II of Republic Act No. 9165 following the pronouncement of the Supreme Court in the case of *People vs. Villahermosa*,[34] viz:

"In the same vein, it cannot be denied that on the occasion of her arrest for having been caught in flagrante delicto selling shabu, a plastic bag was also recovered in her possession containing the following drug paraphernalia, to wit: 14 pieces of unused transparent plastic sachets, three disposable lighters, an improvised tooter and five strips of aluminum foil. Possession of the same was in clear violation of Section 12, Article II of Republic Act No. 9165.

It bears stressing that violation of Section 12, Article II of Republic Act No. 9165 was already consummated the moment appellant was found in possession of the said articles without the necessary license or prescription. What is primordial is the proof of the illegal drugs and paraphernalia recovered from the petitioner" (Emphasis Ours)

In an effort to convince this Court of his non-culpability of illegal sale of dangerous drug and illegal possession of drug paraphernalia, appellant contends that the chain of custody of the dangerous drug and the drug paraphernalia is broken.

WE ARE NOT PERSUADED

Before the Court will discuss whether the chain of custody was broken in this case, it must also be noted that the alleged violation of Section 21 of R. A. No. 9165 was not raised before the trial court but was instead raise for the first time here, on appeal. In no instance did appellant raise at the trial court that there were lapses in the safekeeping of seized drug and drug paraphernalia that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal, when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[35]

Keeping in mind however that an appeal in a criminal proceeding throws the whole case open for review, it

becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.[36]

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165; and (b) there was an unbroken link (not perfect link) in the chain of custody with respect to the confiscated items[37]. Section 21(1), Article II of R.A. No. 9165 prescribes the procedure to be observed by the authorities in handling the illegal drug and/or drug paraphernalia confiscated.

“Section 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:

(1) 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;

xxx

This provision is elaborated on under Section 21(a) of the IRR[38] which provides a saving clause in case the prescribed procedure is not complied with. Under this saving clause, non-compliance with these requirements under justifiable grounds as long as the integrity and the 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. The procedures underscore the value of establishing the chain of custody vis-à-vis the dangerous drugs and/or drug paraphernalia[39]. Section 1(b) of DDB Regulation No. 1, Series of 2002 defined chain of custody involving the dangerous drugs and other substances in the following terms, to wit:

“b. Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.”

In here, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated illegal drug and drug paraphernalia have not been compromised. The testimonies of SPO2 Navero, SPO3 Esteban and PSI Angel Forensic Chemist) clearly reveal that SPO2 Navero had temporary custody of the seized illegal drug with marking “FT/LT” the moment it was seized from appellant, whilst in transit to the barangay hall of Barangay Hall of Palimbo Caarosipan, Camiling, Tarlac, up to the Philippine National Police (PNP) Crime Laboratory for examination. Their combined testimonies likewise pointed to PSI Angel as the one who personally received the illegal drug. PSI Angel in turn categorically testified that he received the illegal drug and after examination thereof, which yield positive result for the presence of methamphetamine hydrochloride, he placed and sealed it in a brown envelope by using a masking tape containing the specimen D-003-12 ASA. PSI Angel likewise testified that after he sealed the envelope, he turned it to their custodian for safekeeping and when he withdrew and

retrieve the envelope for presentation to the trial court, the condition of the envelope was the same and the content thereof which consisted the subject plastic sachet of shabu was still inside.[40]

Verily, the prosecution has established beyond doubt an unbroken link in the chain of custody of the illegal drug and drug paraphernalia, and the established unbroken link in the chain of custody precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence.

Hence, the fact that was no coordination with the PDEA and Pre-Operation Report conducted before the buy bust operation, and no photographs taken of the seized items will not render the said items inadmissible against the appellant. Besides, a buy-bust operation is not invalidated by mere non-coordination with the PDEA.[41] Even the lack of pre-operation report had no effect on the legality and validity of the buy-bust because it is not indispensable in a buy-bust operation.[42] In addition, the non-compliance with the procedural requirements under Republic Act No. 9165 and its Implementing Rules and Regulations relative to the custody, photographing and drug-testing of the apprehended persons, are not serious flaws that can render void the seizures and custody of drugs in a buy-bust operation. [43]

On a final note, the finding and conclusion of the trial court that appellant is liable for violation of Section 15, Article II, RA 9165(illegal use of prohibited drug) must be upheld. The following elements, to wit: (1) the accused was arrested; (2) the accused was subjected to drug test; and (3) the confirmatory test shows that he used a dangerous drug, were clearly established by the prosecution. Indeed, after appellant was arrested, he underwent a drug test where his urine sample was tested positive of the presence of shabu.

All told, there is no reason for the Court to disturb the findings and conclusion of the trial court that appellant is guilty beyond reasonable doubt of the charges against him. As to the penalties, We likewise sustain them for they are in accordance with Sections 5,[44] 12,[45] and 15[46] of Article II, R. A. No. 9165.

WHEREFORE, premises considered, the Court RESOLVES to DISMISS the appeal by appellant. The assailed Joint Decision dated March 12, 2013 of the RTC, Third Judicial Region, Branch 68, Caloocan City in Criminal Case Nos. 12-01, 12-60, and 12-61 is AFFIRMED.

SO ORDERED.

Salazar-Fernando, R. A., Chairperson and Cruz, R.A., JJ., concur.

[1] Records, Vol. I, pp. 85-92.

[2] Id., p. 1.

[3] Records, Volume II, p. 1.

[4] Id., p. 2.

[5] See notes 2 and 4 at pp. 44 and 15.

[6] See note 1 at pp. 86-88.

[7] Id., pp. 88.

[8] Id., penned by Presiding Judge Jose S. Vallo.

[9] Rollo, Brief for the Accused-Appellant, pp. 50-72 at p. 52.

[10] Id., Brief for the Appellee, pp. 92-109.

- [11] People vs. Racho, G.R. No. 186529, August 3, 2010.
- [12] People vs. Collado, et al., G.R. No. 185719, June 17, 2013.
- [13] People vs. Honrado, et. al. G.R. No. 182197, February 27, 2012.
- [14] Ampatuan vs. People, G.R. No. 183676, June 22, 2011.
- [15] G.R. No. 192261, November 16, 2011 citing People vs. De Guzman, G.R. No. 151205, June 9, 2004.
- [16] TSN, dated May 17, 2012, pp. 5-7.
- [17] Id., pp. 8-9.
- [18] Id., p. 14.
- [19] TSN, dated July 10, 2012, p. 17.
- [20] TSN, dated November 15, 2012, pp. 3-7.
- [21] People vs. Marcelo, G.R. No. 181541, August 18, 2014.
- [22] See note 10, at pp. 98-99.
- [23] G.R. No. 187503, September 11, 2009.
- [24] People vs. Lim, id.
- [25] People vs. Victorino, supra.
- [26] See People vs. Araneta, G.R. No. 191064, October 20, 2010.
- [27] People vs. Andres, G.R. No. 193184, February 7, 2011.
- [28] Ampatuan vs. People, G.R. No. 183676, June 22, 2011.
- [29] People vs. Mendoza, G.R. No. 189327, February 29, 2012.
- [30] People vs. Llamado, G.R. No. 185278, March 13, 2009.
- [31] People vs. Andres, supra.
- [32] People vs. Collado, supra.
- [33] People vs. Collado, id.
- [34] G.R. No. 186465, June 1, 2011.
- [35] People vs. Campomanes, et al., G.R. No. 187741, August 8, 2010.
- [36] See People vs. Buban, G.R. No. 170471, May 11, 2007.
- [37] People vs. Alivio, G.R. No. 177771, May 30, 2011
- [38] (a) The apprehending office/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 the 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;

xxx.”

[39] *People vs. Alivio*, supra.

[40] TSN dated April 24, 2012, pp. 5, 7-10.

[41] *People vs. Mantalaba*, G.R. No. 186227, July 20, 2011.

[42] *People vs. Somoza*, G.R. No. 197250, July 17, 2013.

[43] *People vs. Daria, Jr.* G.R. No. 186138, September 11, 2009.

[44] Sec 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.- The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[45] Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[46] Section 15. Use of Dangerous Drugs. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

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