

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIEGFRED CABELLON Y CABAÑERO, ACCUSED-APPELLANT.

G.R. No. 207229. September 20, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

The marking and identification of the seized dangerous drug is an essential part of the chain of custody. Absent this step, a gap is created which casts a shadow of doubt on the identity and integrity of the dangerous drug presented as evidence, creating reasonable doubt, which must be resolved in favor of the accused.

This reviews the August 30, 2012 Decision[1] of the Court of Appeals in CA-G.R. No. CEB-CR HC No. 01081, affirming the conviction of accused--appellant Siegfred Cabellon y Cabañero (Cabellon) for violation of Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

This Court restates the facts as found by the lower courts.

In an Information[2] dated April 28, 2006, Cabellon was charged with violation of Section 5 of Republic Act No. 9165:

That on or about the 13[th] day of April 2006 at about 7:30 P.M. more or less, in Bulacao, City of Talisay, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there sell and dispose One (1) heat sealed plastic packet of white crystalline substance containing Methylamphetamine (sic) hydrochloride locally known as "SHABU", weighing 0.03 gram, a dangerous drugs.

CONTRARY TO LAW.[3]

Upon arraignment Cabellon pleaded not guilty.[4] Trial on the merits ensued.

Evidence for the prosecution showed that on April 13, 2006, a buy- bust operation was planned to capture Cabellon in the act of selling drugs. At 7:30 p.m., PO2 Junar Rey Barangan (PO2 Barangan), PO3 Rey Bucao (PO3 Bucao), and PO3 Reynato Abellar (PO3 Abellar) went to Sitio Jawod, Barangay Bulacao, Talisay City to commence the buy-bust operation. The police officers had a poseur-buyer with them.[5]

The asset poseur-buyer transacted with Cabellon in an alley, while the police officers observed them from a distance. Once they saw the poseur--buyer scratch his head, their pre-approved signal, the police officers descended upon Cabellon, who then ran away upon noticing the approaching officers.[6]

Cabellon ran and hid inside a nearby house and the police officers followed him. The police officers stumbled upon three (3) men sniffing shabu inside the house, one (1) of whom they apprehended while the other two (2) managed to escape. The police officers caught up with Cabellon inside the house, whom they thereafter frisked. They recovered the marked P100.00 and P50.00 bills from him.[7]

After Cabellon's arrest, the poseur-buyer handed over the sachet of shabu he purchased from Cabellon to PO3 Bucao.[8]

That same date, a sachet marked with "SCC 04/13/06" was turned over to the Philippine National Police Crime Laboratory for examination. The Request for Laboratory Examination was received by a certain PO1 Domael.[9]

P/S Insp. Mutchit G. Salinas (P/S Insp. Salinas), a forensic chemist, confirmed executing Chemistry Report No. D-698-2006. She testified that she had examined a heat-sealed plastic sachet of white crystalline substance labelled with "SCC 04/13/06." The chemistry report bore the signatures of P/S Insp. Salinas and P/Supt. Myrna P. Areola. The specimen weighed 0.03 grams and tested positive for methamphetamine hydrochloride (shabu).[10]

Cabellon was the only defense witness and he denied selling shabu to the poseur-buyer.[11]

He claimed that on April 13, 2006, at about 3:30p.m., he was buying barbecue when he saw his aunt, Jane Cabellon, crying. He asked her why she was crying and he told her that she had a fight with someone. He approached and slapped the lady his aunt had a fight with. The lady then warned him that he would be arrested for what he had done to her.[12]

Later that evening, at the barbecue station,[13] he was arrested and bodily searched by some police officers; however, nothing was recovered from him. He claimed that he was not informed by the arresting officers of the offense he supposedly violated.[14]

Cabellon was then brought to the police station and was asked to call somebody. He was also asked to pay for his release and for the settlement of the case filed against him. He was unable to pay or give a gift and declined to make the phone call; hence, he was charged and a case was filed against him.[15]

On October 27, 2008, the Regional Trial Court[16] found that the prosecution was able to prove all the elements for the illegal sale of shabu.[17] Furthermore, PO3 Bucao and PO2 Barangan identified the sachet sold by Cabellon to the poseur-buyer. The seized sachet's chain of custody from the time Cabellon was arrested until it was presented as evidence to the court was accounted for.[18] The fallo of the trial court Decision read:

ACCORDINGLY, this court finds the accused GUILTY as charged and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of [P]500,000.00.

Exhibit "B" is forfeited in favor of the State for proper disposition.

SO ORDERED.[19]

Cabellon filed an appeal before the Court of Appeals and raised several errors. He claimed that the trial court erred in upholding the validity of his arrest despite the blatant violation of his right against unreasonable searches and when it relied on the weakness of the defense evidence rather than on the strength of the prosecution evidence. Additionally, he averred that the prosecution failed to prove his guilt beyond reasonable doubt.[20]

On August 30, 2012, the Court of Appeals[21] dismissed the appeal and upheld the trial court decision.

The Court of Appeals held that the elements for the illegal sale of shabu were duly proven by the prosecution.[22]

The Court of Appeals also downplayed the supposed necessity of presenting the poseur-buyer as a witness in court since the testimonies of the members of the apprehending team had already sufficiently established the illegal sale between Cabellon and the poseur-buyer.[23]

The Court of Appeals likewise waived the stringent application of Section 21 of Republic Act No. 9165, considering the circumstances obtaining in the case. The Court of Appeals emphasized that the defense never questioned the integrity of the evidence during trial and only did so upon appeal.[24] The fallo of the Court of Appeals Decision read:

IN LIGHT OF THE FOREGOING, the appeal is DENIED. The decision dated October 27, 2008 of the Regional Trial Court (RTC), Branch 58, Cebu City in Criminal Case No. CBU-76737 convicting Siegfred Cabellon y Cabañero for the crime of Sale of Dangerous Drugs penalized under Section 5 of Republic Act No. 9165 is AFFIRMED in toto.

SO ORDERED.[25]

Cabellon filed a Notice of Appeal[26] on October 4, 2012, which was noted and given due course by the Court of Appeals in its April 29, 2013 Resolution.[27]

In its August 7, 2013 Resolution,[28] this Court notified the parties that they may file their respective supplemental briefs. Both parties manifested[29] that they were dispensing with the filing of a supplemental brief.

Cabellon alleges that the supposed illegal sale was never proven because the poseur-buyer was not presented to attest to the alleged sale. Furthermore, the police officers were positioned at a distance where they could not have seen the sale and could merely rely on the poseur-buyer's signal. Cabellon insisted that the fact of the sale was not proven beyond reasonable doubt.[30]

Cabellon also emphasizes that the police officers did not comply with the mandatory requirements under Section 21, paragraph 1 of Republic Act No. 9165, requiring the apprehending team to immediately physically inventory and photograph the seized drugs in the presence of the accused, a representative from media or the Department of Justice, and any elected official.[31]

Cabellon then points out that the prosecution was unable to show an unbroken chain of custody, PO3 Bucao testified that the poseur-buyer handed him the sachet after Cabellon was arrested, but he never testified as to whom he gave it next or who marked it.[32] Lastly, Cabellon asserts that he was not informed either of his constitutional rights upon his arrest or the reason for his arrest or detention.[33]

On the other hand, the prosecution claims that the poseur-buyer's failure to testify was not fatal to the case since PO3 Bucao testified that he saw the sale.[34]

The prosecution argues that there was substantial compliance with Section 21 of Republic Act No. 9165 because the integrity and evidentiary value of the seized item was properly preserved. The prosecution maintains that the circumstances surrounding the arrest, where he was arrested in a house with three (3) persons high on drugs, made it impossible to mark and inventory the sachet on the spot.[35] The prosecution also avers that the supposed violations of Section 21 of Republic Act No. 9165 were only raised for the first time on appeal.[36]

Finally, the prosecution denies that Cabellon was found guilty based on his weak defense and holds that it has proven the evidentiary integrity of the seized sachet proving Cabellon's guilt beyond reasonable doubt. It asserts that the prosecution witnesses have established Cabellon's guilt with their straightforward and candid testimonies.[37]

The only issue for this Court's resolution is whether or not accused--appellant Siegfred Cabellon's guilt was proven beyond reasonable doubt despite the non-observance of the required procedure under Section 21 of Republic Act No. 9165.

This Court grants the appeal and acquits Siegfred Cabellon y Cabañero.

In order to sustain a conviction for the illegal sale of dangerous drugs, these two (2) elements must be established by the prosecution: "(1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence." [38]

To prove that the illegal sale of shabu took place, the prosecution presented PO3 Bucao and PO2 Barangan, two (2) of the police officers who were part of the buy-bust operation team which apprehended the accused.

Both PO3 Bucao[39] and PO2 Barangan[40] testified that they had seen the accused talk with the poseur-buyer before the latter scratched his head, signalling that the transaction had taken place. The marked money was recovered from the accused,[41] while the poseur-buyer turned over the sachet with shabu he had bought from the accused to PO3 Bucao.[42]

While the prosecution may have proven that a transaction took place, it was not as convincing in its presentation of the alleged corpus delicti as evidence.

People v. Jaafar[43] underscored the importance of presenting the actual illicit drug or corpus delicti recovered as evidence since its existence is essential to convict the accused. Thus:

In all prosecutions for violations of Republic Act No. 9165, the corpus delicti is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[44] (Emphasis supplied)

Section 21 of Republic Act No. 9165 provides the manner by which law enforcement officers should handle seized dangerous drugs:

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[.] (Emphasis supplied)

Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165 further provides:

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:

(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 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[.] (Emphasis supplied)

While it may be true that strict compliance with Section 21 of Republic Act No. 9165 may be excused under justifiable grounds, the integrity and evidentiary value of the seized items must still be preserved by the apprehending officer.

This Court is not convinced that the prosecution was able to prove the identity of the shabu supposedly seized from the accused.

PO3 Bucao claimed that the poseur-buyer turned over to him the sachet purchased from the accused and that he had custody of the sachet until he reached the police station. He then handed the sachet to PO3 Abellar, who supposedly prepared the request for the chemical analysis of the seized item. However, PO3 Bucao failed to identify who placed the markings on the sachet:

(Pros. Canta) Q: How many packs of shabu did your poseur[-]buyer handed it (sic) to you?

(PO3 Bucao) A: Only one.

Q: Who kept this pack of shabu from the place of the arrest to the police station?

A: Myself.

Q: What did you do with this pack of shabu that you get (sic) from the accused?

A: After we reach in (sic) our station I gave it to PO3 Abellar the one pack of shabu.

Q: What did PO3 Abellar do with this one pack of shabu?

A: He made a request to the PNP Crime Lab for chemical analysis.

....

Q: I am showing to you this one pack of white crystalline substance with labeling "SCC" the date thereon, is that the evidence you are referring to?

A: Yes[,] sir.

Q: Who then made the marking "SCC" and the date?

A: I am not sure who made the marking.[45]

Even PO2 Barangan could not confirm who placed the markings on the sachet:

(PROS. CANTA) Q: I am showing to you this one pack of white crystalline substance marked as Exhibit B, with markings SCC with a date, can you tell us if this is the same evidence that your (sic) recovered from the accused?

A: Yes, sir.

Q: Why are you sure?

A: Because this is the one PO3 Bucao showed to me.

Q: And there are markings in this plastic pack containing this small plastic pack of shabu SCC and the date 04/13/06, who made that marking if you know?

A: I do not know[,] sir.[46]

People v. Nandi[47] expounded on the four (4) links that should be established by the prosecution to constitute an unbroken chain of custody:

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[48]

Undeniably, a noticeable gap exists in the chain of custody with the prosecution's failure to present evidence that the seized sachet was actually marked by any of the three (3) apprehending officers.

The prosecution likewise did not present evidence that the seized sachet was inventoried and photographed in the presence of the accused or his representative, a representative from the media or the Department of Justice, and an elected public official. Neither did it provide an explanation as to why the police officers did not follow the requirements provided under the law.

PO3 Bucao also testified that he turned over the unmarked seized sachet to PO3 Abellar, who then prepared the request to the Philippine National Police for chemical analysis.[49] However, a careful review of the Request for Laboratory Examination[50] dated April 13, 2006 shows that not only did it refer to a marked sachet, it was also signed by P/Superintendent Romeo Pagal Perigo, not PO3 Abellar, who supposedly prepared it.

The prosecution utterly failed to proffer evidence on who placed the markings on the sachet. Furthermore, it also failed to account for the seized sachet's transfer from PO3 Bucao to the Philippine National Police Crime Laboratory for laboratory examination, creating another gap in the chain of custody.

This blatant lack of compliance with the safeguards established in Republic Act No. 9165 is made even more egregious by the fact that the seized sachet only contained 0.03 grams[51] of shabu, no more than a grain of rice. The danger of tampering and planting of evidence was, thus, heightened, which should have put the lower courts on guard and not have so easily relied on the presumption of regularity accorded to police officers in the performance of their official acts. As this Court stated in People v. Holgado:[52]

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In Mallillin v. People, this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives." [53]

WHEREFORE, premises considered, the Decision dated August 30, 2012 of the Court of Appeals in CA-G.R. No. CEB-CR HC No. 01081 is REVERSED and SET ASIDE. Accused-appellant Siegfred Cabellon y Cabañero is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days

from receipt of this decision the action he has taken.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

November 29, 2017

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 20, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 29, 2017 at 2:20 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

ORDER OF RELEASE

TO: The Director
Bureau of Corrections
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on September 20, 2017 promulgated a Decision in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Decision dated August 30, 2012 of the Court of Appeals in CA-G.R. No. CEB-CR HC No. 01081 is hereby REVERSED and SET ASIDE. Accused-appellant Siegfried Cabellon y Cabanero is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this decision, the action he has taken.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the

Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release SIEGFRED CABELLON y CABAÑERO unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable PRESBITERO J. VELASCO, JR., Chairperson of the Third Division of the Supreme Court of the Philippines, this 20[th] day of September 2017.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] CA rollo, pp. 92-105. The Decision was penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Edgardo L. Didos Reyes and Zenaida T. Galapate-Laguilles of the Nineteenth Division, Court of Appeals, Cebu City.

[2] Id. at 10-11.

[3] Id. at 10.

[4] Id. at 51, RTC Decision.

[5] Id. at 52, RTC Decision.

[6] Id.

[7] Id.

[8] Id. at 53, RTC Decision.

[9] Id. at 51-52.

[10] Id. at 51 and 53. RTC referred to the substance as "methamphetamine hydrochloride."

[11] Id. at 53-54, RTC Decision.

[12] Id.

[13] TSN dated September 23, 2008, p. 4. TSN also refers to the date as "September 23, 2007."

[14] Id. at 54.

[15] Id.

[16] Id. at 51-58. The Decision, docketed as Criminal Case No. CBU 76737, was penned by Presiding Judge

Gabriel T. Ingles of Branch 58, Regional Trial Court, Cebu City.

[17] Id. at 55-57.

[18] Id. at 57.

[19] Id. at 58.

[20] Id. at 31.

[21] Id. at 92-105.

[22] Id. at 95-99.

[23] Id. at 100-101.

[24] Id. at 101-104.

[25] Id. at 105.

[26] Id. at 106-107.

[27] Id. at 111.

[28] Rollo, p. 22.

[29] Id. at 23-26 and 27-28.

[30] CA rollo, pp. 37-38.

[31] Id. at 38-39.

[32] Id. at 39-42.

[33] Id. at 48-49.

[34] Id. at 74.

[35] Id. at 76-77.

[36] Id. at 78-79.

[37] Id. at 79-81.

[38] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479 (2009) [Per J. Corona, First Division].

[39] TSN dated April 24, 2007, p. 4.

[40] TSN dated February 13, 2007, pp. 5-6.

[41] Id. at 7.

[42] TSN dated April 24, 2007, pp. 5-6.

[43] G.R. No. 219829, January 18, 2017
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf>> [Per J. Leonen, Second Division].

[44] Id. at 7, citing *People v. Simbahon*, 449 Phil. 74 (2003) [Per J. Ynares-Santiago, First Division] and *Mallillin*

v. People, 516 Phil. 576 (2008) [Per J. Tinga, Second Division].

[45] TSN dated April 24, 2007, p. 6.

[46] TSN dated February 13, 2007, p. 9.

[47] 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

[48] Id. at 144-145, citing People v. Kamad, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[49] TSN dated April 24, 2007, p. 6.

[50] RTC records, p. 8.

[51] Id. at 9.

[52] 741 Phil. 78 (2014) [Per J. Leonen].

[53] Id. at 99, citing Mallillin v. People, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

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