

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELIA SAUNAR, ACCUSED-APPELLANT.

G.R. No. 207396. August 09, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

A miniscule amount of dangerous drugs alleged to have been taken from the accused is highly susceptible to planting, tampering, or alteration. In these cases, "law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia."^[1]

This resolves an appeal from the September 26, 2012 Decision^[2] of the Court of Appeals, which affirmed the conviction of Delia Saunar (Saunar) for illegal sale of dangerous drugs.

In the Information dated April 24, 2006,^[3] Saunar was charged with violation of Article II, Section 5 of Republic Act No. 9165. The accusatory portion of the Information read:

That on or about the 27^[th] day of February 2006 at around 6:20 p.m. at Brgy. Kinali, [Municipality of Polangui, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously deliver, dispense and sell two heat[-] sealed plastic sachets [of] methamphetamine hydrochloride (shabu) weighing 0.0526 gram and 0.0509 gram to a poseur buyer, without authority of law, to the detriment of the public welfare.

ACTS CONTRARY TO LAW.^[4]

On June 8, 2006, Saunar was arraigned.^[5] She pleaded not guilty to the charge. Afterwards, pre-trial and trial ensued.^[6]

Based on the collective testimonies of its witnesses, the prosecution alleged that on January 5, 2006, the Special Operation Team of the 5^[th] Regional Criminal Investigation and Detection Group learned about the illegal drug activities of a certain "Lolita" Saunar^[7] in Polangui, Albay.^[8] The authorities acted on this tip and conducted surveillance operations on Saunar.^[9]

Before noon on February 27, 2006, the authorities received a report regarding Saunar's whereabouts.^[10] Captain Cesar Dalonos (Capt. Dalonos) formed a team composed of PO2 Ami Montales (PO2 Montales), SPO4 Rolando Barroga, SPO4 Fernando Cardona, and SPO2 Roger Seladis to conduct a buy-bust operation. PO2 Montales was designated as the poseur-buyer.^[11]

At around 6:00 p.m., the buy-bust team proceeded to Saunar's residence.^[12] PO2 Montales and the informant met Saunar by the gate while the rest of the police operatives positioned themselves a few meters from Saunar's house.^[13] PO2 Montales introduced herself as a buyer of shabu and handed Saunar the marked money.^[14] After a brief conversation, Saunar went inside the house. She returned moments later "with two (2) transparent plastic sachets containing white crystalline substance."^[15] PO2 Montales examined the plastic sachets and gave the pre-arranged signal by removing her sunglasses.^[16] This indicated the consummation of the transaction to the

other members of the buy-bust team.[17]

The buy-bust team closed in and arrested Saunar.[18] PO2 Montales then frisked Saunar to recover the marked money but only found a Nokia 5210, which she confiscated.[19] No photograph of the seized items was taken at the crime scene.[20] Saunar was then brought to Camp Simeon Ola for investigation.[21] It was only after the arrest that the authorities discovered that Saunar's real name was Delia.[22]

Upon reaching Camp Simeon Ola, PO2 Montales prepared a seizure receipt, which Saunar refused to sign.[23] Meanwhile, Capt. Dalanos invited representatives from the media and the Department of Justice and a barangay official to witness the marking and inventory.[24]

PO2 Montales marked the two (2) plastic sachets with her initials "AOM1" and "AOM2." [25] Afterwards, the seized items were inventoried and then placed in a larger transparent plastic bag.[26] The marking and inventory were both done in the presence of the three (3) witnesses from the media, the barangay, and the Department of Justice.[27] PO2 Montales brought the seized items to the crime laboratory for scientific examination.[28] The contents of the two (2) plastic sachets weighed 0.0496 grams and 0.0487 grams.[29] They tested positive for shabu.[30]

While the police officers were preparing the necessary documents for Saunar's prosecution, the seized cellular phone received several calls and text messages from different people who were looking for Saunar to place P1,000.00 and P2,000.00 worth of orders on something called "LADA." PO2 Montales introduced herself as Saunar's sister and tried to set up a meeting with them. However, the callers refused to talk to anyone but Saunar.[31]

For her defense, Saunar asserted that she was merely framed-up.[32] She testified that on the day of the alleged incident, the authorities raided her house looking for shabu. However, they only found her cellphone.[33] Although the police officers found nothing, Saunar was brought to Camp Simeon Ola and was forced to sign a seizure receipt, which indicated that two (2) sachets of shabu were taken from her. Saunar did not sign this seizure receipt.[34]

In the Judgment[35] dated March 21, 2011, the Regional Trial Court found Saunar guilty beyond reasonable doubt of illegal sale of dangerous drugs.[36] Accordingly, she was sentenced to suffer the penalty of life imprisonment and required to pay a fine of P500,000.00:[37]

WHEREFORE, judgment is hereby rendered:

1. FINDING the accused, DELIA SAUNAR y DOLOM, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II, Republic Act No. 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002" for selling and/or delivering two (2) small transparent plastic sachets containing 0.0496 gram and 0.0487 gram respectively of methamphetamine hydrochloride or "shabu," a dangerous drug, without authority of law; thereby, sentencing her to suffer the penalty of life imprisonment and to pay a fine of Five [H]undred Thousand Pesos (P500,000.00);

2. The two (2) small transparent plastic sachets containing 0.0496 gram and 0.0487 gram respectively of methamphetamine hydrochloride or "shabu" . . . involved in this case, are DIRECTED to be disposed/destroyed in accordance with Sec. 21, R.A. No. 9165 and in the presence of a representative from this court. Within twenty-four (24) hours from such destruction, the pertinent certification shall be submitted to this court.

Furnish a copy of this judgment to the Philippine Drug Enforcement [Agency] (PDEA), Central Office, Manila.

SO ORDERED.[38]

In its September 26, 2012 Decision,[39] the Court of Appeals affirmed Saunar's conviction.

On October 9, 2012, Saunar filed a Notice of Appeal,[40] which was given due course by the Court of Appeals.[41]

In the Resolution[42] dated August 5, 2013, this Court noted the records forwarded by the Court of Appeals and required the parties to file their respective supplemental briefs if they so desired.

On September 25, 2013, the Office of the Solicitor General, on behalf of the People of the Philippines, manifested that it would no longer file a supplemental brief.[43] A similar motion was made by Saunar on October 1, 2013.[44]

In her Appellant's Brief,[45] accused-appellant argues that the trial court glossed over the procedural errors committed by the apprehending officers. In particular, she argues that the authorities failed to comply with the chain of custody rule. Accused-appellant claims that there were gaps in the handling of the items allegedly seized from her.[46]

On the other hand, the Office of the Solicitor General argues in its Appellee's Brief[47] that although the requirements in Republic Act No. 9165 were not strictly complied with, the prosecution sufficiently established the identity, integrity, and evidentiary value of the seized drugs.[48]

The sole issue for this Court's resolution is whether the guilt of accused-appellant Delia Saunar for violation of Section 5 of Republic Act No. 9165 was proven beyond reasonable doubt.

The crime of sale of illegal drugs is consummated "the moment the buyer receives the drug from the seller." [49] The prosecution must prove beyond reasonable doubt that the transaction actually took place by establishing the following elements: "(1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment." [50]

Aside from this, the corpus delicti must be presented as evidence in court.[51] In cases involving dangerous drugs, "the corpus delicti is the dangerous drug itself." [52] Hence, its identity and integrity must likewise be established beyond reasonable doubt.[53] The obligation of the prosecution is to ensure that the illegal drugs offered in court are the very same items seized from the accused.[54] This would entail the presentation of evidence on how the seized drugs were handled and preserved from the moment they were confiscated from the accused until their presentation in court.[55] Non-compliance with this requirement creates doubt regarding the origin of the dangerous drugs.[56]

The chain of custody rule provides the manner by which law enforcers should handle seized dangerous drugs. Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, 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 [Philippine Drug Enforcement Agency] 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of

the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

Although "chain of custody" is not specifically defined under the law, the term essentially refers to:

"[T]he 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.[57] (Citation omitted)

The "duly recorded authorized movements" of the seized dangerous drugs may be ascertained through the testimonies of every person who handled them. *Mallillin v. People*[58] is instructive:

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 into 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.[59] (Emphasis supplied, citations omitted)

Although strict compliance with the chain of custody rule may be excused provided that the integrity and evidentiary value of the seized items are preserved,[60] a more exacting standard is required of law enforcers when only a miniscule amount of dangerous drugs are alleged to have been seized from the accused. The reason for this rule was clarified in *People v. Holgado*:[61]

In *Mallillin v. People*, this court explained that the exactitude required by Section 21 goes into the very nature of narcotics as the subject of prosecutions under Republic Act No. 9165:

Indeed, 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. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from, other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.

....

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained custody of the seized items is "negated." Republic Act No. 9165 requires compliance with Section 21.[62] (Citations omitted)

In this case, only 0.0496 grams and 0.0487 grams[63] or a total of 0.0983 grams of shabu were allegedly taken from accused-appellant. Such a miniscule amount of drugs is highly susceptible to tampering and contamination.

A careful review of the factual findings of the lower courts shows that the prosecution failed to discharge its burden of preserving the identity and integrity of the dangerous drugs allegedly seized from accused-appellant.

The prosecution failed to establish who held the seized items from the moment they were taken from accused-appellant until they were brought to the police station. The designated poseur-buyer, PO2 Montales, did not mention who took custody of the seized items for safekeeping:

Q:

Now what happened when you meet face to face with Lolita Saunar who is now identified as Delia Saunar?

A:

I was introduced as the buyer of shabu wo[r]th One Thousand Pesos (P1,000.00), then Lolita demanded the

money and she went inside her house and several minutes later, she went out and handed to me the two (2) plastic transparent sachet containing white crystalline substance suspected as shabu.

Q:

Upon or after it was handed to you, what happened next?

A:

After examining and determining the contents of the plastic sachets, I gave the pre-arranged signal to the other members of the team.

....

Q:

After you have apprehended the accused, were you able to take possession of this recovered cellphone from Delia Saunar, what did you do next if any?

A:

I showed it to our Team Leader including the two (2) sachets of suspected shabu.

Q:

After that, where did you proceed?

A:

And after that, we proceeded to our office at Camp Simeon Ola.[64]

Based on the testimony of PO2 Montales, the two (2) plastic sachets were only marked at Camp Simeon Ola.[65] Any of the apprehending officers could have taken custody of the seized items during transit. It is highly probable, therefore, that the two (2) sachets had been tampered with, altered, or contaminated. The belated marking of the seized items creates doubt on the identity and origin of the dangerous drugs allegedly taken from accused-appellant.

Although the requirement of "marking" is not found in Republic Act No. 9165, its significance lies in ensuring the authenticity of the corpus delicti. In *People v. Dahil*:[66]

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking " means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

It must be noted that marking is not found in R.A. No. 9165 and is different from, the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.[67] (Emphasis supplied, citations omitted)

While it may be true that the seized items were marked and inventoried in the presence of a media representative, an elected barangay official, and a representative from the Department of Justice,[68] there is no evidence

showing that these procedures were done in the presence of accused-appellant or her authorized representative or counsel. Moreover, none of the witnesses to the marking and inventory of the seized items was presented in court to testify.[69]

Further, it appears that the authorities failed to take photographs of the seized items. No photograph of the seized dangerous drugs was presented and offered as evidence before the trial court.[70] More telling is the finding of the Court of Appeals that although there were photographs taken at Camp Simeon Ola, "these were not photographs of the seized items." [71]

In addition, it was highly irregular for the police officers to use accused-appellant's cellphone while they were in the process of filing the criminal case against her. This conduct is violative of accused-appellant's right to privacy.

The failure of the prosecution to strictly comply with the exacting standards in Republic Act No. 9165, as amended, casts serious doubt on the origin, identity, and integrity of the seized dangerous drugs allegedly taken from accused-appellant.

WHEREFORE, the Decision dated September 26, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 05003 is REVERSED and SET ASIDE. Accused-appellant Delia Saunar is ACQUITTED for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately RELEASED from detention unless she is confined for any other lawful cause. Let entry of final judgement be issued immediately.

Let a copy of this decision be furnished to the Bureau of Corrections, Correctional Institution for Women, Mandaluyong 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. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Carpio, (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

[1] People v. Holgado, 741 Phil 78, 81 (2014) [Per J. Leonen, Second Division].

[2] Rollo, pp. 2-33, The Decision, docketed as CA-G.R. CR-H.C. No. 05003, was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Normandie B. Pizarro and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

[3] CA rollo, p. 32.

[4] Id.

[5] Id.

[6] Id. at 33.

[7] Rollo, pp. 4-9.

[8] CA rollo, p. 34.

[9] Rollo, pp. 4-9.

[10] Id. at 4.

[11] CA rollo, pp. 33-34.

[12] Rollo, p. 4.

[13] Id. at 4-5.

[14] Id. at 5.

[15] Id.

[16] Id. at 8.

[17] Id.

[18] Id. at 5.

[19] Id.

[20] Id. at 5-6.

[21] Id. at 5.

[22] Id. at 6.

[23] Id. at 5.

[24] Id. at 5-8.

[25] Id. at 5.

[26] Id.

[27] Id. at 5-6.

[28] Id. at 6.

[29] CA rollo, p. 38.

[30] Rollo, p. 6.

[31] Id.

[32] Id. at 9-12.

[33] Id.

[34] Id. at 11-12.

[35] CA rollo, pp. 32-42. The Judgment, docketed as Crim. Case No. 5229, was penned by Acting Presiding Judge Alben C. Rabe of Branch 12, Regional Trial Court, Ligao City, Albay.

[36] Id. at 42.

[37] Id.

[38] Id.

[39] Rollo, pp. 2-33.

[40] Id. at 34-36.

[41] Id. at 37.

[42] Id. at 39.

[43] Id. at 41-43.

[44] Id. at 44-46.

[45] CA rollo, pp. 69-86.

[46] Id. at 79-84.

[47] Id. at 105-119.

[48] Id. at 111-116.

[49] People v. Tumalak, G.R. No. 206054, July 25, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/206054.pdf>> 4 [Per J. Brion, Second Division].

[50] Id.

[51] Id.

[52] People v. Casacop, 755 Phil. 265, 276 (2015) [Per J. Leonen, Second Division].

[53] Id.

[54] People v. Holgado, 741 Phil. 78, 93 (2014) [Per J. Leonen, Second Division] citing People v. Lorenzo, 633 Phil. 393 (2010) [Per J. Perez, Second Division].

[55] Mallillin v. People, 576 Phil. 576, 587 (2008) [Per J. Tinga, Second Division].

[56] People v. Holgado, 741 Phil. 78, 91 (2014) [Per J. Leonen, Second Division].

[57] People v. Ameril, G.R. 203293, November 14, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/203293.pdf>> 4 [Per J. Brion, Second Division].

[58] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

[59] Id. at 587.

[60] People v. Casacop, 755 Phil. 265, 277-278 (2015) [Per J. Leonen, Second Division].

[61] 741 Phil. 78 (2014) [Per J. Leonen, Second Division].

[62] Id. at 92-94.

[63] CA rollo, p. 39.

[64] Id. at 25.

[65] Id. at 5.

[66] 750 Phil. 212 (2015) [Per J. Mendoza, Second Division].

[67] Id. at 232.

[68] Rollo, pp. 5-6.

[69] Id. at 4.

[70] CA rollo, p. 39.

[71] Rollo, p. 23.

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