

PEOPLE OF THE PHILIPPINES, APPELLEE, V. BERNARDO RENDON Y PASCUA @ "TATS"; APPELLANT.

G.R. No. 227873. November 14, 2018

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This appeal challenges the Decision[1] of the Court of Appeals dated 11 November 2015 in CA-G.R. CR-HC No. 06789, affirming the Decision[2] of the Regional Trial Court, Branch 203, Muntinlupa City, dated 14 March 2014, which convicted appellant Bernardo Rendon y Pascua @ "Tats" for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Facts

Appellant was charged with violation of Section 5, Article II of RA 9165. The Information reads:

That on or about the 6[th] day of November, 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another Methylamphetamine hydrochloride, a dangerous drug weighing more or less 0.01 gram, contained in one (1) heat sealed transparent plastic sachet in violation of the above-cited law.

Contrary to law.[3]

Upon arraignment, appellant pleaded not guilty.

The Court of Appeals narrated the facts as follows:

On 6 November 2009, at around 10:00 in the morning, PSSUPT Elmer M. Jamias (PSSUPT Jamias) received information that a certain alias Tats was involved in the sale of illegal drugs. Accordingly, a buy-bust operation against Tats was planned and a team was formed composed of PO3 Dennis Bornilla (PO3 Bornilla) as poseur-buyer and SPO2 Nestor Tercero (SPO2 Tercero) as back-up. The team proceeded to Purok 3, Barangay Bayanan, Muntinlupa City. At around 9:00 in the evening, the buy-bust team arrived at the designated area. Upon arrival thereat, the confidential informant called up Tats and ordered shabu worth P200.00. Tats agreed and the two were to meet in an alley in Purok 3. Upon reaching the meeting place, the confidential informant introduced PO3 Bornilla to Tats as his tropa in need of shabu. Tats then demanded for the payment of the shabu and PO3 Bornilla handed to Tats the marked money. In return, Tats gave PO3 Bornilla a transparent plastic sachet containing white chrystalline substance. At this point, PO3 Bornilla made the pre-arranged signal and introduced himself to Tats as a police officer. Tats was arrested and was taken to the police station. The seized item was then brought to the SPD Crime Laboratory in Makati for examination, which specimen tested positive for the presence of methylamphetamine hydrochloride or shabu.

Appellant raised the defenses of denial and frame-up. According to appellant, he worked as a construction worker. On that fateful day, while he was on his way home at around 1:00 in the morning, he passed by a wake, and decided to drop by so he can play kara-krus. After the game, he walked towards home. While walking, a man in sando and shorts pointed a gun at him and forcibly asked him to go with him. He was handcuffed, boarded a jeepney and taken to the Muntinlupa City Hall. There, he was allegedly made to admit to something he does not know of. Thereafter, he was charged with violation of Section 5, Article II of RA 9165 and the man who apprehended him was actually a police officer, PO3 Bornilla.

The Ruling of the Trial Court

The trial court found appellant guilty of the offense charged. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds accused Bernardo Rendon y Pascua @ "Tats" GUILTY beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to life imprisonment and a fine of P500,000.00.

The preventive suspension undergone by the accused shall be credited in his favor.

The Branch Clerk of Court is directed to turn-over the Methylamphetamine hydrochloride subject of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[4]

The trial court ruled that the police operatives employed entrapment, not instigation, to capture appellant in the act of selling shabu. Contrary to appellant's allegation, the prosecution established the chain of custody requirement under RA 9165. The trial court held that the Implementing Rules of RA 9165 offer some flexibility when a proviso added 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." Also, the trial court ruled that the non-presentation of the marked money is not fatal to the case of the prosecution.

The Ruling of the Court of Appeals

On appeal, the Court of Appeals upheld the trial court's conviction of appellant for the offense charged. The dispositive portion of the decision reads:

WHEREFORE, the appeal is DENIED.

IT IS SO ORDERED.[5]

According to the Court of Appeals, the prosecution successfully established appellant's guilt beyond reasonable doubt. All the elements for illegal sale of shabu are present in this case. Appellant was caught in flagrante delicto delivering one (1) piece of plastic sachet containing white crystalline substance to PO3 Bornilla, the poseur-buyer, for a consideration of P200.00. The white crystalline substance was confirmed to be methylamphetamine hydrochloride or shabu with a weight of 0.01 gram as per Physical Science Report No. D-519-09S. When the seized item was presented in court, it was identified by PO3 Bornilla to be the same object sold to him by appellant. Clearly, the prosecution established the fact of sale and the corpus delicti which are both material to the prosecution of illegal sale of dangerous drugs.

The Court of Appeals rejected appellant's denial for being self-serving and unsubstantiated. The Court of Appeals likewise found that the chain of custody was unbroken. PO3 Bornilla testified that he was in possession of the plastic sachet of shabu from the time of the buy-bust operation up to the marking of the seized item in the police

station. This is the first link in the chain of custody. The second link is from the time the seized item was brought from the police station to the Crime Laboratory for examination, when PO3 Bornilla turned over the substance to PO3 Relos. The third link is when PO3 Relos turned over the seized item to the forensic chemist and the examined specimen was presented to the trial court. The Court of Appeals ruled that despite the police's failure to strictly observe the requirements of Section 21 on the custody of the seized item, since there was only a media representative, there was substantial compliance with the procedure under Section 21 (a) of the Implementing Rules and Regulations of RA 9165. The Court of Appeals stressed that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. Finally, the Court of Appeals held that the non-presentation of the confidential informant is not fatal to the prosecution, since informants are usually not presented in court because of the need to hide their identity and maintain their valuable service to the police. The Court of Appeals also ruled that the non-presentation of the marked money is not fatal to the case of the prosecution since the marked money is merely corroborative in nature.

The Issue

The issue in this case is whether appellant is guilty of the offense charged.

The Ruling of the Court

We resolve to acquit appellant based on reasonable doubt due to the prosecution's failure to comply with the requirements of the chain of custody rule under Section 21 of RA 9165, as amended.

Section 21 of RA 9165 states:

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; x x x (Emphasis supplied)

On 15 July 2014, Republic Act No. 10640 (RA 10640) amended Section 21 of RA 9165. The pertinent provision states:

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 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 [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 and custody over said items.

x x x (Emphasis supplied)

RA 10640 mandates that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: (1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.

In *People v. Ocampo*,^[6] this Court ruled that the presence of the three witnesses is required to guarantee against the unlawful planting of evidence and of frame-up. The three witnesses are necessary to remove any taint of irregularity or illegitimacy in the conduct of the apprehension of the accused in the buy-bust operation.^[7]

In *People v. Sipin*,^[8] this Court stressed that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of RA 9165 including the mandatory presence of the three witnesses.^[9] This Court held that the failure to follow mandated procedure in drugs cases must be adequately explained, and must be proven as a fact under the rules.^[10] The Rules require that apprehending officers do not simply mention a justifiable ground for the absence of the required witnesses, but clearly state the ground in their sworn affidavit, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.^[11] Section 1 (A. 1.10) of the Chain of Custody Implementing Rules and Regulations provides:

A. 1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented. (Emphasis supplied)

This Court in *People v. Sipin* also ruled what constitutes justifiable reasons for the absence of any of the three witnesses, to wit:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.^[12]

Likewise, in *People v. Lim*,^[13] promulgated on 4 September 2018, this Court listed mandatory guidelines that must be followed by the prosecution, including police officers, apprehending officers, and fiscals to prove chain of custody under Section 21 of RA 9165, as amended, to wit:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the

requirements of Section 21(1) of RA 9165, as amended, and its IRR (Internal Rules and Regulations).

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. (Emphasis supplied)

In the present case, the Receipt/Inventory of Property Seized dated 6 November 2009 was allegedly furnished to the appellant, who was present during the search, seizure and inventory of the dangerous drug.[14] However, the inventory was only witnessed by a certain Manny Alcala, a media representative, and there was no local elected government official or Department of Justice representative. PO3 Bornilla admitted this omission in his testimony, thus:

Q:

Officer Bornilla, are you familiar with the rule that aside from a representative from the media there must be a representative from the Department of Justice and an elected local government official who should witness the inventory, are you familiar" with that rule?

A:

Yes, sir.

Q:

Did you comply with that rule?

A:

Yes, sir.

Q:

What made you say so?

A:

We were only able to invite Manny Alcala, a representative from the media, but because of lack of time we were not able to wait for the others.

Q:

But did you invite some?

A:

Yes, sir.

Q:

Now, you said that due to lack of time, what do you mean by that, why, where do you have to go?

A:

Because, sir, it was already late in the evening and we were in a hurry to finish the document so we can submit it, sir.

Q:

Submit to the?

A:

Crime Lab, sir.

Q:

And after crime lab, where will you bring this afterwards for inquest?

A:

Fiscal po.

A: x x x x[15]

PO3 Bornilla justified the absence of the other required witnesses by stating that the police could no longer wait for the said witnesses because of time constraints in bringing the seized substance for laboratory examination and for the inquest of the appellant. However, in their Malayang Pinagsamang Sinumpaang Salaysay (Joint Affidavit) SPO2 Tercero and PO3 Bornilla stated that at around 10:00 in the morning of the day of the buy-bust operation, they were already ordered by their Chief, PSSUPT Jamias, to conduct a surveillance or a possible buy-bust operation against appellant. This means that the buy-bust team had ample time to invite the required witnesses and ensure their presence during the buy-bust operation. Yet, it is not clear from the same affidavit whether the other required witnesses were indeed invited to be present during the buy-bust operation.

In their Joint Affidavit, SPO2 Tercero and PO3 Bornilla further stated that the inventory was conducted by the arresting officers in the presence of their team leader, investigator and appellant only. There is no indication that the inventory was undertaken in the presence of the other required witnesses, thus:

5. Na, ang nakuhang ebidensya sa kaniya ay inimbentaryo naming mga Arresting Officers sa aming tanggapan at kinunan ng litrato sa harap ng aming Team Leader, imbestigador, at suspek matapos na maisagawa ang ilang mga dokumento ay dinala na namin sa SPD Crime Laboratory, sa Makati City para sa kaukulang pagsusuri at pag-iingat at ito naman ay napatunayang POSITIBONG SHABU, a dangerous drug (Duly marked with "RB");

x x x x[16] (Emphasis supplied)

Even the Affidavit of Attestation of PO3 Dionisio G. Gastanes, Jr., the assigned investigator, lacks any explanation regarding the absence of the required witnesses. The affidavit merely contains a sweeping statement that the "proper procedural steps were undertaken," without enumerating the steps the police undertook to preserve the integrity of the seized items, thus:

Likewise, proper procedural steps were undertaken by me as such investigator to make sure that the evidence confiscated were properly marked and documented and that its integrity properly preserved pursuant to Section 21, RA 9165 and its implementing rules;

x x x x[17]

Clearly, there was no sufficient justification or explanation for the non-observance of the three witness rule under Section 21 of RA 9165, as amended, in the sworn statements or affidavits submitted by the prosecution. PO3 Bornilla's explanation in his testimony, which is lack of time to wait for the other witnesses, fails to convince us. As stated, the buy-bust team had ample time to invite and ensure the presence of the required witnesses during the buy-bust operation, but they did not do so. Thus, following Section 21 of RA 9165, as amended, the Chain of Custody Implementing Rules and Regulations, and the guidelines of this Court in *People v. Lim*,^[18] this Court finds that appellant should be acquitted based on reasonable doubt.

WHEREFORE, we GRANT the appeal. The Decision of the Court of Appeals dated 11 November 2015 in CA-G.R. CR-HC No. 06789, affirming the Decision of the Regional Trial Court, Branch 203, Muntinlupa City, dated 14 March 2014, finding appellant Bernardo Rendon y Pascua @ "Tats" guilty of violating Section 5, Article II of Republic Act No. 9165, is REVERSED and SET ASIDE. Accordingly, appellant Bernardo Rendon y Pascua @ "Tats" is ACQUITTED on reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention, unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Director of the New Bilibid Prisons, Bureau of Corrections in Muntinlupa City for immediate implementation. The said Director is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Rollo, pp. 2-14. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Socorro B. Inting concurring.

[2] CA rollo, pp. 11-30. Penned by Presiding Judge Myra B. Quiambao.

[3] Records, p. 1.

[4] CA rollo, p. 30.

[5] Rollo, p. 14.

[6] G.R. No. 232300, 1 August 2018.

[7] Id., citing *People v. Sagana*, G.R. No. 208471, 2 August 2017, 834 SCRA 225.

[8] G.R. No. 224290, 11 June 2018.

[9] Id.

[10] Id.

[11] Id.

[12] Id. See also *People v. Lim*, G.R. No. 231989, 4 September 2018; *People v. Reyes*, G.R. No. 219953, 23 April 2018, and *People v. Mola*, G.R. No. 226481, 18 April 2018.

[13] G.R. No. 231989.

[14] Records, p. 15.

[15] TSN, 11 September 2012, pp. 15-16.

[16] Records, p. 8.

[17] Id. at 9.

[18] Supra note 13.

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