

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. EDGARDO DELA ROSA Y EMPAMANO @ "BOY"; CRISELDA HUERTO Y DOCOT @ "CECIL"; AND RONALDO HUERTO Y DOCOT, ACCUSED-APPELLANTS.

G.R. No. 238338. October 01, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 29, 2016 rendered by the Court of Appeals (CA) in CA-G.R. CR HC No. 07579, which affirmed in toto the Decision[3] dated May 18, 2015 of the Regional Trial Court of Makati City, Branch 64 (RTC): (a) in Criminal Case No. 14-518 finding accused-appellants Edgardo Dela Rosa y Empamano @ "Boy" (Edgardo), Criselda Huerto y Docot @ "Cecil" (Criselda), and Ronaldo Huerto y Docot (Ronaldo; collectively, accused-appellants) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002;" and (b) in Criminal Case No. 14-519 finding accused-appellant Edgardo guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165.

The Facts

The prosecution alleged that on April 26, 2014, a buy-bust team composed of members of the Station Anti-Illegal Drugs (SAID) Special Operations Task Group of Makati City was formed to respond to a tip[5] regarding a male and a female peddling illegal drugs along Makati Avenue, Barangay Poblacion, Makati City. After coordinating with the Philippine Drug Enforcement Agency (PDEA),[6] the team, together with their asset, proceeded to the target area where Edgardo, whom the asset called "Mang Boy," sold a plastic sachet containing suspected shabu to Police Officer 1 Jojo Valdez (PO1 Valdez), the designated poseur-buyer. Also present during the buy-bust transaction and arrested together with Edgardo were Edgardo's wife, Criselda, and brother-in-law, Ronaldo.[7] A search on the person of Edgardo yielded four (4) more plastic sachets containing suspected shabu. Thus, after accused-appellants were apprised of their rights, the arresting officers brought them and the seized items to the barangay hall where the items were marked,[8] photographed, and inventoried[9] in the presence of Barangay Captain Benhur Cruz (Brgy. Captain Cruz).[10] Thereafter, the confiscated items were brought to the crime laboratory for examination[11] and tested positive[12] for Methamphetamine Hydrochloride. Consequently, all three (3) accused-appellants were charged with violation of Section 5, Article II of RA 9165 for Illegal Sale of Dangerous Drugs (0.10 gram),[13] while Edgardo was further charged with violation of Section 11, Article II of RA 9165 for Illegal Possession of Dangerous Drugs (0.41 gram).[14]

In defense, Edgardo and Criselda denied the charges and claimed that on April 25, 2014, they, together with Ronaldo, were inside a bingo boutique along Makati Avenue when police officers suddenly took them outside and eventually, handcuffed them. They were then taken to the SAID office where they were detained for three (3) days. Thereafter, they were asked to confess to their crimes and further, shown plastic sachets allegedly recovered

from them.[15]

In a Decision[16] dated May 18, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, and accordingly, sentenced each of them to life imprisonment and to pay a fine of P500,000.00, without subsidiary imprisonment in case of insolvency. In addition, the RTC convicted Edgardo for violation of Section 11, Article II of RA 9165, and hence, sentenced him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of P400,000.00, without subsidiary imprisonment in case of insolvency.[17] The RTC found that the elements of the crimes charged were sufficiently established by the prosecution and that the integrity and evidentiary value of the seized items had been properly preserved.[18]

On appeal,[19] the CA affirmed the judgment of conviction in a Decision[20] dated November 29, 2016.[21] Apart from echoing the findings and conclusions of the RTC, the CA stressed that non-compliance with the provisions of Section 21, Article II of RA 9165 does not automatically render void and invalid the seizure and custody of the confiscated items, so long as the integrity and evidentiary value thereof have been properly preserved by the arresting officers.[22]

Hence, this appeal[23] seeking the reversal of accused-appellants' conviction for the crimes charged.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[24] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime.[25] Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[26]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[27] As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640,[28] "a representative from the media AND the Department of Justice (DOJ), and any elected public official";[29] or (b) if after the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service OR the media." [30] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." [31]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." [32] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." [33]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] As such, the failure of the apprehending team to strictly comply with the same would not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and

(b) the integrity and evidentiary value of the seized items are properly preserved.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[37] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[39]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[40] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing full well that they would have to strictly comply with the chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings a quo; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review." [44]

Records show that although the inventory of the seized items was conducted in the presence of Brgy. Captain Cruz (an elected public official), no representatives from the DOJ and the media were present to witness the same. During trial, PO1 Valdez, one of the members of the buy-bust team and the designated poseur-buyer, explicitly admitted that:

ATTY. PUZON:

Q:

You arrived at the Brgy. Hall at around?

WITNESS:

A:

Around 2:00 in the morning of April 26, Ma'am.

Q:

And upon arrival, you immediately prepared the Inventory Receipt, is that correct?

A:

Yes, Ma'am.

x x x x

Q:

And during that time, the preparation of the Inventory was only witnessed by [Barangay Captain] Benhur Cruz?

A:

Yes, Ma'am.

Q:

There was no representative coming from DOJ?

A:

None, Ma'am.

Q:

Likewise, there was no representative coming from the media?

A:

None, Ma'am.

x x x x[45] (Emphases supplied)

Neither do the records reflect that these witnesses were present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof. As earlier discussed, the prosecution is put to task to justify the absence of the required witnesses during the conduct of inventory and photography or, at the very least, show that the arresting officers exerted genuine and sufficient efforts to secure their presence. Unfortunately, no such justification or demonstration was even proffered in this case. In consequence, the Court is constrained to conclude that the integrity and evidentiary value of the seized items have been compromised, which performe already warrants accused-appellants' acquittal. That being said, the Court finds it unnecessary to delve into the other matters raised.

WHEREFORE, the appeal is GRANTED. The Decision dated November 29, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07579 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellants Edgardo

Dela Rosa y Empamano @ "Boy," Criselda Huerto y Docot @ "Cecil," and Ronaldo Huerto y Docot are ACQUITTED of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (Chairperson), A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.
Caguioa, J., on official business.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

[1] See Notice of Appeal dated December 27, 2016; rollo, p. 17.

[2] Id. at 2-16. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz, concurring.

[3] CA rollo, pp. 61-67. Penned by Judge Gina M. Bibat-Palamos.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] TSN, September 9, 2014, p. 18.

[6] See Coordination Form with Control No. 0414-00287 dated April 25, 2014; records, p. 80.

[7] See rollo, pp. 5-6.

[8] The item sold by Edgardo was marked "BOY" while the four (4) plastic sachets recovered from his person were marked "BOY-1" to "BOY-4;" id. at 6.

[9] See Inventory Receipt dated April 27, 2014; records, p. 83.

[10] See rollo, p. 6.

[11] See Memorandum Request for Laboratory Examination dated April 26, 2014; records, p. 84.

[12] See Chemistry Report No. D-418-14 dated April 27, 2014; id. at 86.

[13] See id. at 2-5.

[14] See id. at 6-8.

[15] See rollo, pp. 7-8.

[16] CA rollo, pp. 61-67.

[17] Id. at 67.

[18] Id. at 65-67.

[19] See Notice of Appeal dated May 26, 2015; id. at 19.

[20] Rollo, pp. 2-16.

[21] Id. at 16.

[22] Id. at 14.

[23] Id. at 17.

[24] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[25] See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[26] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012). See also *People v. Manansala*, id.

[27] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 25; *People v. Sanchez*, supra note 24; *People v. Magsano*, supra note 24; *People v. Manansala*, id.; *People v. Miranda*, supra note 24; and *People v. Mamangon*, supra note 24. See also *People v. Viterbo*, supra note 25.

[28] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN or THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[29] Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[30] Section 21, Article II of RA 9165, as amended by RA 10640.

[31] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[32] See *People v. Miranda*, supra note 24. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, supra note 26, at 1038.

[33] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[35] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[36] Section 21 (a), Article 11 of the IRR of RA 9165 pertinently states: "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."

[37] Section 1 of RA 10640 pertinently states: "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."

[38] *People v. Almorfe*, supra note 35.

[39] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[40] See *People v. Manansala*, supra note 24.

[41] See *People v. Gamboa*, supra note 26, citing *People v. Umipang*, supra note 26, at 1053.

[42] See *People v. Crispo*, supra note 25.

[43] Supra note 24.

[44] See *id.*

[45] TSN, September 9, 2014, pp. 21-23.

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