

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff-Appellee,

- versus -

MIKE OMAMOS y PAJO,

Accused-Appellant.

G.R. No. 223036

Present:
CARPIO, Chairperson
PERLAS-BERNABE,
CAGUIOA,
REYES, J., JR.
LAZARO-JAVIER, JJ.

Promulgated:

10 JUL 2019

M. Cabalag for JCTO

X-----X

DECISION

LAZARO-JAVIER, J.:

THE CASE

This petition assails the Decision¹ dated August 19, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01124-MIN affirming appellant's conviction for violation of Section 5, Article II of Republic Act 9165 (RA 9165).

The Proceedings Before the Trial Court

The Charge

In Criminal Case No. 2008-438, appellant Mike Omamos y Pajo was charged under the following Information, viz:

¹ Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justice Henri Jean Paul B. Inting (now a member of this court) and Rafael Antonio M. Santos. *Rollo*, pp. 3.

J

That on July 16, 2008, at about 1:45 o'clock in the afternoon, at Carmen Public Market, Carmen, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver and give away one (1) heat-sealed red plastic bag containing partially dried marijuana fruiting tops, weighing 110.1 grams, a dangerous drug, in consideration of P1,020.00, but only one (1) piece of P20.00 bill, bearing Serial number UT337396, was used as marked money dusted with ultraviolet fluorescent [sic] powder on a buy bust operation conducted by City Anti-Illegal Drugs Task Force of Cagayan de Oro City Police Office, Cagayan de Oro City."

CONTRARY TO LAW.²

On arraignment, petitioner pleaded "not guilty". Trial ensued.

The Prosecution's Evidence

PSI Erma Condino Salvacion, PO3 Manuel Pacampara, PO3 Joel Tabalon, PO3 Jimmy Vicente, and SPO4 Jerry Abella testified for the prosecution. They gave the following factual account:

On July 16, 2008, about 1:45 in the afternoon, a team of police officers conducted a buy-bust operation at Carmen Public Market, Cagayan de Oro City. PO3 Vicente led the team composed of PO2 Pacampara, PO2 Tabalon, PO3 de Oro, and PO3 Tagam. The operation took off from an informant's tip that appellant Mike Omamos y Pajo will be bringing in large quantity of dried marijuana leaves from Talakag, Bukidnon.

The team met the informant at the Carmen Public Market. He told his team that appellant had arrived and was standing near the office of the City Economic Enterprise Department (CEED). The team assigned the informant as a poseur-buyer. The pre-arranged signal was for the informant to take off his bull cap.

The informant met appellant at the agreed location where they talked. Then, the informant handed appellant marked P20.00 bill and fake P1,000.00 bill. In turn, appellant handed a bag of dried marijuana leaves to the informant who opened the bag. After confirming it contained marijuana, he took off his bull cap.

As soon as they saw the pre-arranged signal, the police officers, who had positioned themselves about four (4) to eight (8) meters away, closed in, introduced themselves as police officers, and placed appellant under arrest. They informed appellant of his offense

² Record, p. 3.

and apprised him of his constitutional rights. They recovered from him the marked P20.00 bill and the fake P1,000.00 bill. They brought him for investigation to the City Anti-Illegal Drugs Task Force (CAIDTF) Office at the Maharlika Police Station.

PO3 Pacampara held the heat-sealed the plastic bag containing the seized item. He marked it "Exhibit-A MPO", affixed his signature to it, and wrote thereon the date of arrest. The seized item went through chemical testing which yielded positive for *cannabis sativa*.

The testimony of PSI Salvacion, Forensic Chemist of the PNP Crime Laboratory, Patag, Cagayan de Oro City was dispensed with after the parties stipulated on the tenor and purpose of her testimony.

Likewise, the testimony of SPO4 Jerry Abella was dispensed with after the parties stipulated that: (1) it was SPO4 Abella who authorized the police officers to conduct the buy-bust operation; (2) he ordered the marking of the specimen and its delivery to the PNP Crime Laboratory for examination; and (3) he did not participate in the actual buy-bust operation.

The prosecution presented in evidence the Letter Request for Laboratory Examination,³ Chemistry Report No. D-133-2008,⁴ Chemistry Report No. C-031-2008,⁵ Pre-operation Report dated July 16, 2008,⁶ and Coordination Form dated July 16, 2008.⁷

The Defense's Evidence

Appellant invoked denial and frame-up.

He stated that on July 16, 2008, about 10 o'clock in the morning, he was on his way to a fiesta celebration in his grandmother's house near the Coliseum Mabuhay, Carmen, Cagayan de Oro City. While standing on Zayas Street, he got suddenly accosted by two (2) drunk men who dragged and forcibly boarded him into a taxicab.

Inside the taxicab, the men demanded money from him. He told them he had none as he was only a *trisikad* driver. They brought him to the Maharlika Police Station, Carmen, Cagayan de Oro City where he got detained. He was allegedly made to choose – whether they would charge him with robbery or violation of RA 9165. He was then ordered to hold a P20.00 bill and marijuana with both his hands while the police took pictures of him. He did as he was told because a police officer was holding him by the neck. He denied that the police informed him of his Constitutional rights.

³ *Id.* at 99-100.

⁴ *Id.* at 101.

⁵ *Id.* at 103.

⁶ *Id.* at 109.

⁷ *Id.* at 110.

The Trial Court's Decision

By Decision dated January 31, 2013,⁸ the trial court found appellant guilty as charged, sentenced him to life imprisonment and fine of ₱1,000,000.00, viz:

WHEREFORE, premises considered, this Court hereby finds the accused MIKE OMAMOS Y PAJO GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of One Million Pesos [1,000,000.00], without subsidiary imprisonment in case of non-payment of Fine. The period of preventive detention shall be credited in full in favor of the accused for the purpose of the service of his sentence.

SO ORDERED.

According to the trial court, during the buy-bust operation, appellant was caught in *flagrante delicto* selling the illegal drugs. It gave full credence to the testimonies of the arresting police officers because their personal accounts of what transpired during the buy-bust operation appeared to be clear, candid, and straightforward. It was not shown that they were impelled by any ill motive to falsely testify against appellant.

Too, it ruled that in the absence of evidence to the contrary, the presumption that the chain of custody rule was complied with must stay in place.

The Proceedings before the Court of Appeals

Appellant faulted the trial court for finding him guilty of the offense charged despite the prosecution's alleged failure to establish the chain of custody of the *corpus delicti*.⁹

On the other hand, the Office of the Solicitor General (OSG) through then Assistant Solicitor General Sarah Jane T. Fernandez,¹⁰ Senior State Solicitor Henry Gerald P. Ysaas, Jr. and Associate Solicitor Luz Danielle O. Bolong countered: the prosecution had established the elements of illegal sale of dangerous drugs. The testimony of PO3 Pacampara, the pre-operational documentation handled by SPO4 Abella and the chemical findings of SPI Salvacion bolstered the fact that indeed appellant sold dangerous drugs to the poseur-buyer in the person of the informant.¹¹

⁸ CA rollo, pp. 31-39.

⁹ CA rollo, pp. 19-30.

¹⁰ now Associate Justice of the Sandiganbayan.

¹¹ CA rollo, pp. 44-61.

Further, the arresting police officers complied with Section 21 of RA 9165. Thus, the integrity and identity of the drug specimen had been duly preserved.¹²

The Court of Appeals' Ruling

By Decision dated August 19, 2015, the Court of Appeals affirmed.

The Present Appeal

Appellant now asks the Court to reverse the assailed dispositions of the Court of Appeals and prays anew for his acquittal.

He faults the Court of Appeals for concluding that he failed to present convincing exculpatory evidence; crediting the arresting officers with the presumption of regularity in the performance of their official duty; and sustaining in evidence the admission of the seized dangerous drugs despite violation of the chain of custody rule.

In refutation, the OSG essentially reiterates its arguments before the trial court.

Issue

Did the arresting police officers comply with the chain of custody rule?

Ruling

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.¹³ The dangerous drugs seized from appellant constitutes such *corpus delicti*. It is thus imperative that the prosecution establish that the identity and integrity of the dangerous drugs were duly preserved in order to support a verdict of conviction.¹⁴ It must prove that the substance seized from appellant is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

Here, the Information alleged that the offense was committed on July 16, 2008. The governing law, therefore, is RA 9165, Section 21 (1), *viz*:

- (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

¹² *Id.*

¹³ *People v. Calates*, G.R. No. 214759, April 4, 2018.

¹⁴ *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 20, *citing People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

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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.

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz*:

(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;

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XXXX

These provisions embody the chain of custody rule. It is 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 and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.¹⁵


*People v. Hementiza*¹⁶ reiterated that the following four links in the chain of custody must be proved:

First, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

Second, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

¹⁵ *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172, 184.

¹⁶ 807 Phil. 1017, 1030 (2017).



Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the first and fourth links.

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. 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.¹⁷

Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.¹⁸ Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.¹⁹

PO3 Manuel Pacampara, Jr. testified that he marked the dangerous drugs in the police station and not at the place of arrest, *viz*:

Q: Why did you say that this is the one?

A: I was the one who heat-sealed this cellophane.

Q: Do you have any marking on this?

A: I was the one who made these markings.

Q: And, what is your marking there?

A: Exhibit A MPO and then signature and also the date of the arrest, Your Honor.²⁰

x x x

Q: You stated that after the arrest, you took the marijuana and gave it to your evidence custodian PO3 de Oro?

A: Yes, ma'am.

Q: You brought it to your office after the arrest?

A: We then proceeded to the office.

Q: And, you marked the marijuana there?

¹⁷ *People v. Patricio*, G.R. No. 202129, July 23, 2018.

¹⁸ *People v. Ismael*, 806 Phil. 21, 31 (2017).

¹⁹ *People v. Ramirez and Lachica*, G.R. No. 225690, January 17, 2018 citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

²⁰ TSN, February 10, 2009, p.9.

A: Yes, Ma'am.²¹

X X X

The failure of the arresting officers to immediately mark the seized drugs engendered serious doubts on whether the marijuana leaves bought by the poseur-buyer from appellant were indeed the very same ones indicated in the Chemistry Report. Too, there was no mention of appellant's presence during the marking.

In *People v. Lumaya*²², the Court acquitted the accused when the prosecution failed to establish an unbroken chain of custody because the seized drug and buy bust money were not marked at the place where the accused was arrested. The Court noted that from the time of seizure up until the dangerous drug was brought to the office of the arresting officers, alteration, substitution or contamination of the seized item could have happened.

Further, in *People v. Dela Victoria*,²³ the Court acquitted the accused because as in this case, the marking was done without the presence of appellant, his representative or his counsel.

The first link also includes compliance with the physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.

Here, PO3 Pacampara, was evasive when asked whether an inventory was accomplished, thus:

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Q: Was there an inventory prepared of the items seized?

A: We prepared a request for laboratory examination of the marijuana that we recovered.

Q: But you prepared an inventory?

A: I think, the custodian officer at that time prepared the inventory.²⁴

xxx

On whether photographs of the seized drug were taken, he answered in the affirmative but claimed he was not able to secure their printouts, viz:

xxx

Q: How about pictures? Did you take any picture of the accused together with the items seized?

A: Actually, we took pictures; But, I was not able to develop it.²⁵

xxx

²¹ *Id.* at 12.

²² G.R. No. 231983, March 7, 2018.

²³ G.R. No. 233325, April 16, 2018.

²⁴ CA rollo, p. 72.

²⁵ *Id.*



Indeed, there is nothing on record showing the required inventory and photography were complied with. The prosecution's formal offer of evidence did not bear them. Nor did the prosecution explain the absence of these requirements or its inability to comply with them.

In *People v. Alagarme*²⁶ and *People v. Arposeple*,²⁷ the Court ruled that the failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused. For under these circumstances, the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

In fine, the **first link** had been incipiently broken not once but thrice in view of the omission to comply with **first**, the required marking at the place of arrest in the presence of appellant during such marking, **second**, the inventory and **third**, the photograph of the confiscated dangerous drug.

The **fourth link** refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.²⁸ In drug related cases, it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.²⁹

Here, the testimony of PSI Salvacion was dispensed with because the defense admitted her proposed testimony. It appears that the proposed testimony, as contained in her affidavit,³⁰ only covered her findings on the drug sample submitted by PO3 Pacampara. She did not discuss how she handled the dangerous drug from the time she received it until the time it got presented in court. There was further no description of the method she utilized in analyzing the chemical composition of the drug sample.

In *People v. Dahil and Castro*,³¹ the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, *viz*:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general

²⁶ 754 Phil. 449, 462 (2015).

²⁷ G.R. No. 205787, November 22, 2017, 846 SCRA 150, 177-178.

²⁸ *Supra* note 16.

²⁹ Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

³⁰ Record, p. 106.

³¹ 750 Phil. 212, 221-222 (2015).

stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

In fine, the final link, just like the first one, had also been breached.

Surely, these lapses in the chain of custody rule had cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty.

In another vein, while the chain of custody should ideally be perfect and unbroken, this is almost always impossible to obtain.³² In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.³³

Here, the arresting police officers did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. True, marking was done but the same was defective as the required witnesses under Section 21 (1) of RA 9165 were not present. In sum, the condition for the saving clause to become operational was not fulfilled. For this reason, there is no occasion for the proviso “as long as the integrity and the evidentiary value of the seized items are properly preserved”, to even come into play.

In cases involving sale of dangerous drugs, life imprisonment to death await violators. Thus, to eradicate wrongful arrests and, worse, convictions, safeguards against abuses of power in the conduct of drug-related arrests must strictly be implemented. The pernicious practice of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the “Dangerous Drugs Act of 1972,” could again be resurrected if the lawful requirements were otherwise lightly brushed aside.³⁴

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.³⁵

³² *Largo v. People*, G.R. No. 201293, June 19, 2019.

³³ See Section 21 (a), Article II of the IRR of RA 9165.

³⁴ *People v. Luna*, G.R. No. 219164, March 21, 2018.

³⁵ *Id.*



Taken together, the lapses in the procedure laid down in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Omamos during the buy-bust operation. Since the prosecution miserably failed to discharge this burden, appellant is entitled to a verdict of acquittal on ground of reasonable doubt.

ACCORDINGLY, the appeal is **GRANTED** and the Decision dated August 19, 2015 in CA-G.R. CR-HC No. 01124-MIN, **REVERSED** and **SET ASIDE**.

Mike Omamos y Pajo is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Mike Omamos y Pajo from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

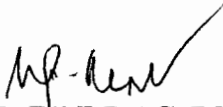
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

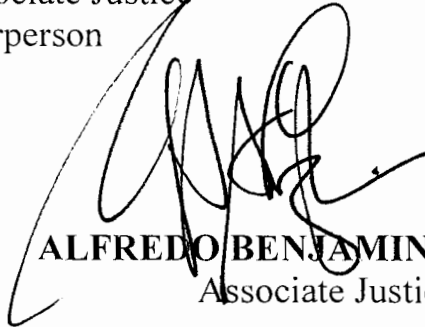
WE CONCUR:



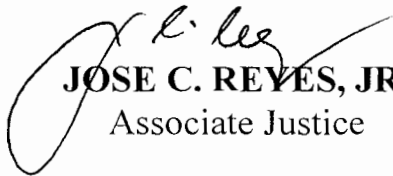
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JOSE C. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

