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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division



Republic of the Philippines
Supreme Court
Manila

JUL 28 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 207001
Plaintiff-Appellee,

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,*
BERSAMIN,
REYES, and
TIJAM, JJ.

- versus -

RICHARD F. TRIPOLI and Promulgated:
ROMULO B. IMPAS,
Accused-Appellants. June 7, 2017

Wilfredo V. Lapitan

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DECISION

TIJAM, J.:

This is an appeal from the Decision¹ dated March 28, 2012 of the Court of Appeals (CA) in CA-G.R. CEB H.C. No. 00979, affirming the March 31, 2008 Decision² rendered by the Regional Trial Court (RTC) of Cebu City, Branch 10 in Criminal Case No. CB-65243, convicting accused-appellants Richard F. Tripoli (Tripoli) and Romulo B. Impas (Impas) for illegal sale of *shabu* under Section 5, Article II, Republic Act No. 9165 (RA

* Designated as additional member as per Raffle dated March 15, 2017.

¹ Penned by Associate Justice Abraham B. Borreta, and concurred in by Associate Justices Edgardo L. delos Santos and Nina G. Antonio-Valenzuela; *Rollo*, pp. 3-23.

² Penned by Judge Soliver C. Peras; *CA rollo*, pp. 53-67.

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9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellants were charged in an Information dated February 10, 2003 with illegal sale of dangerous drugs, as follows:

That on or about the 27th day of January 2003, at about 1:00 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused conniving and confederating together and mutually helping with (sic) each other, with deliberate intent and without being authorized by law, did then and there sell, deliver, or give away to a poseur buyer the following: two (2) heat-sealed transparent plastic packets containing white crystalline substance, having a total weight of 5.64 grams, locally known as "SHABU", containing methylamphetamine (sic) hydrochloride, a dangerous drug.

CONTRARY TO LAW.³

Accused-appellants pleaded not guilty upon arraignment.⁴ Trial on the merits ensued.

The testimony of P/Inspector David Alexander Patriana (P/Inspector Patriana) was dispensed with in view of the defense's admission of the expertise of the witness, the existence of the Chemistry Report, the subject specimen and the letter request, subject to the qualification that accused-appellants were not in possession nor were they the owners of the said specimens.⁵

The prosecution's evidence would evince that on January 26, 2003, a team of policemen from the Criminal Investigation and Intelligence Branch (CIIB), Cebu City Police Office, were briefed regarding a buy-bust operation to be conducted against Tripoli. PO2 John Pempee Arriola (PO2 Arriola) and the informant were designated as poseur-buyers and given two pieces of one hundred peso bills. The buy-bust money was placed in a package together with the "bodol" money and its serial numbers recorded in the police blotter.⁶

PO2 Arriola and the informant proceeded inside the Jollibee, Mango Avenue Branch to meet with Tripoli while the rest of the team stayed outside. SPO1 Roel Del Socorro (SPO1 Del Socorro) received a text message from PO2 Arriola informing him that the transaction was moved to the Queensland Motel. PO2 Arriola, the informant, and Tripoli went to

³ *Rollo*, p. 4; *CA rollo*, p. 53.

⁴ *CA rollo*, p. 53.

⁵ *Id.* at 54.

⁶ *Rollo*, p.5; *CA rollo*, p. 54.

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Queensland Motel and checked in at room 315 while SPO1 Del Socorro and PO2 Bezaleel Olmedo (PO2 Olmedo) stayed outside the motel.⁷

At around 8:00 p.m., PO2 Arriola informed SPO1 Del Socorro thru text message that Tripoli will be going out of the motel to get the *shabu* and will return before 1:00 a.m. When Tripoli left, SPO1 Del Socorro and PO2 Olmedo entered room 315 to join PO2 Arriola and the informant.⁸

Shortly before 1:00 a.m., they heard a knock on the door. SPO1 Del Socorro and PO2 Olmedo hid inside the bathroom leaving the door slightly open so they could see who would enter the room and easily hear the conversation. SPO1 Del Socorro and PO2 Olmedo saw Tripoli enter the room with Impas. Impas handed the two plastic packets of *shabu* to PO2 Arriola, who gave "bodol" money to Tripoli. SPO1 Del Socorro and PO2 Olmedo went out of the bathroom and immediately arrested the two accused after a short scuffle. The marked buy-bust money and "bodol" money were recovered from Tripoli. They were apprised of their constitutional rights and were brought to CIIB office at Camp Sotero Cabahug.⁹

The two plastic packets were turned over to PO3 Filomeno Mendaros (PO3 Mendaros), who marked both with the initials of the accused-appellants (RT/RI-BB-1 and RT/RI-BB-2). The Chief of CIIB Police Senior Inspector Rodolfo Calope Albotra, Jr. requested the PNP crime laboratory to conduct an examination of the contents of the two plastic packets for the presence of methamphetamine hydrochloride or *shabu*. PO2 Dhonel Salazar (PO2 Salazar) delivered the request and the confiscated two plastic packets to the PNP crime laboratory which were received by PO3 Rias. P/Inspector Patriana conducted a laboratory examination and issued Chemistry Report No. D-139-2003 stating that the two plastic packets marked RT/RI-BB-1 and RT/RI-BB-2 contained a total weight of 5.64 grams of white crystalline substance which tested positive for methamphetamine hydrochloride or *shabu*.¹⁰

For the defense, Tripoli declared that he worked as an asset for his former classmate PO2 Salazar. On January 26, 2003, PO2 Salazar asked him to go to the CIIB Office where he found SPO1 Del Socorro, PO2 Arriola, PO2 Olmedo and PO2 Salazar discussing a buy-bust operation to be conducted on a certain "Erwin". He was told to join the buy-bust operation and was tasked to convince Erwin to sell *shabu* to PO2 Arriola. He knew Erwin because he accompanied Erwin's friend Patoc the day before to conduct a test-buy in Erwin's house.¹¹

⁷Rollo, pp. 5-6; CA rollo, pp. 54-55.

⁸Rollo, p. 6; CA rollo, p. 55.

⁹Rollo, pp. 6-7; CA rollo, p. 55.

¹⁰Rollo, p. 7; CA rollo, pp. 55-56.

¹¹Rollo, pp. 7-8; CA rollo, p. 56.

He accompanied PO2 Arriola, but instead of going to Erwin's house at the Ponce Compound, they proceeded to Queensland Motel. They checked-in and Tripoli was instructed to go to Ponce Compound and inform Erwin that a *shabu* buyer was waiting for him in Queensland Motel. He and Erwin went back to the Queensland Motel and after negotiations, PO2 Arriola gave the PhP10,000 "bodol" money, including the buy-bust money, to Erwin. Tripoli was instructed to accompany Erwin to the latter's house to get the *shabu*. Erwin asked him to wait for him as he would get the *shabu* elsewhere. Tripoli waited for several hours for Erwin until a stranger, whom he later knew as Romulo Impas (Impas), arrived and warned him that his life was in danger and that Erwin will not be coming back. Impas then accompanied him back to Queensland Motel and reported what happened. Tripoli and Impas returned to the CIIB Office, where they were interrogated and arrested.¹²

Impas testified and corroborated Tripoli's testimony. He heard from the bystanders in the Ponce Compound that they will hurt Tripoli, whom they believed was a police asset. Impas approached Tripoli and warned him that his life was in danger. He then offered to accompany Tripoli back to Queensland Motel. They entered the room and saw two people inside. There was a knock at the door by someone who identified himself as a police officer. Tripoli was asked where the PhP10,000 was, to which he replied, that it was with Erwin. Thereafter, they were brought to the police station where they were interrogated.¹³

The RTC found merit in the prosecution's witnesses' testimonies. It also noted that though the prosecution failed to present the "bodol" money, it held that "delivery", which is one of the acts punishable in Section 5, Article II of RA 9165, is present in the instant case. It disposed, thus:

WHEREFORE, PREMISES CONSIDERED, this Court finds both accused RICHARD TRIPOLI Y FALCON and ROMULO IMPAS Y BALCONAN, GUILTY of violating Section 5, Article II of Republic Act No. 9165. Each is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of P500,000.00.

The two plastic packs found to be positive for the presence of methamphetamine hydrochloride are ordered confiscated and shall be destroyed in accordance with law.

SO ORDERED.¹⁴

¹² Rollo, pp. 8-9; CA rollo, pp. 56-57.

¹³ Rollo, p. 9.

¹⁴ CA rollo, p. 67.

The CA sustained the conviction of the accused-appellants. It ruled that the failure to mark the two pieces of one hundred peso bills as buy-bust money and the "bodol" money, and its non-presentation in court, are not fatal to the cause of the prosecution. It likewise ruled that the failure to show that the police officers conducted the required physical inventory, photographed the evidence seized, and immediately marked the seized items does not automatically impair the integrity of the chain of custody. It ruled that the prosecution was able to prove that the chain of custody of the seized prohibited drugs remained intact from the time the drugs were recovered until they were submitted to the crime laboratory for testing and then to the court. The CA disposed, as follows:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated March 31, 2008 of the Regional Trial Court of Cebu City, Branch 10 in Criminal Case No. CBU-65243 for Violation of Section 5, Article II, Republic Act No. 9165 is AFFIRMED.

SO ORDERED.¹⁵

Tripoli filed this appeal before Us, reiterating his arguments that his guilt was not proven beyond reasonable doubt because the informant was not presented in court; the *corpus delicti* and the chain of custody was not duly established; the presumption of innocence prevails over the presumption of regular performance of official duties; the chemistry report does not prove the guilt of the accused-appellant beyond reasonable doubt; and the accused-appellant was not properly informed of his constitutional rights.

The Office of the Solicitor General (OSG) countered that the presentation of the informant is not a requisite in the prosecution of drug cases and that what is important is the preservation of the integrity and the evidentiary value of the seized drugs.

We find no merit in the appeal.

The essential elements for illegal sale of *shabu* are as follows: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.¹⁶ The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.¹⁷ These elements are present in this case.

¹⁵Rollo, pp. 22-23.

¹⁶*People v. Jayson Curillan Hambora*, G.R. No. 198701, December 10, 2012.

¹⁷*People v. Sic-Open y Dimas*, G.R. No. 211680, September 21, 2016.



Accused-appellants' argument that the failure to present the informant is fatal to the prosecution's cause fails to impress. There is no need to present the informant/poseur-buyer/police asset.

First, the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded.¹⁸

Second, the identities of the accused-appellants were also confirmed by SPO2 Del Socorro and PO2 Olmedo. While the Court sanctions an acquittal for failure to present the informant, it does so when the police officers involved had no personal knowledge of the transaction. Here, the witnesses were inside the hotel room where the sale had transpired. Although they were in the bathroom when the accused-appellants entered the room, they left the door ajar so that they could hear and see what was happening. There was, therefore, no need for the presentation of the informant since the other witnesses presented had personal knowledge of the transaction as well.

With regard to the accused-appellants' argument that Section 21 of RA 9165 was ignored, We find that the requirements of Section 21 of RA 9165 were substantially complied with.

The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items such that doubts as to the identity of the evidence are eliminated. "To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence."¹⁹

As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and

¹⁸ *People v. Rosauero*, G.R. No. 209588, February 18, 2015.

¹⁹ *People v. Araza*, G.R. No. 190623, November 17, 2014.

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easily open to tampering, alteration or substitution, either by accident or otherwise.²⁰

This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, is the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."²¹

In this case, accused-appellants point to the police officers' failure to mark the evidence at the crime scene, lack of inventory and photographs as affecting the integrity of the chain of custody. However, such failure does not, by itself, void the arrest of the accused-appellants or impair the integrity of the chain of custody.

The case of *People v. Cardenas*²² states the same:

We held thus in *Zalameda v. People of the Philippines*:

Jurisprudence teems with pronouncements that failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. **What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.** In the present case, we see substantial compliance by the police with the required procedure on the custody and control of the confiscated items, thus showing that the integrity of the seized evidence was not compromised. We refer particularly to the succession of events established by evidence, to the overall handling of the seized items by specified individuals, to the test results obtained, under a situation where no objection to admissibility was ever raised by the defense. All these, to the unprejudiced mind, show that the evidence seized were the same evidence tested and subsequently identified and testified to in court. In *People v. Del Monte*, we explained:

We would like to add that **non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence.** Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is

²⁰*People v. Renato Lapasaran*, G.R. No. 198820, December 10, 2012.

²¹*People v. Arturo Enriquez*, G.R. No. 197550, September 25, 2013.

²²G.R. No. 190342, March 21, 2012.

relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will {sic} accorded it by the courts. x x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight evidentiary merit or probative value to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case. (Emphasis supplied.)

Here, the prosecution effectively established that the chain of custody of the seized dangerous drugs from the time of seizure, marking, submission to the laboratory for testing, and presentation in court remained intact. PO2 Arriola was the one who received the two packets of *shabu* from Impas. After their arrest and when the team brought the accused-appellants to the police station, the two packets were given to PO3 Mendaros who marked them. PO2 Salazar then delivered the laboratory request and the two packets of *shabu* to the crime laboratory which was received by PO3 Rias. P/Inspector Patriana conducted the testing of the two packets, and the same were presented and identified in court. Clearly, the prosecution was able to substantially comply with the rules, showing by records and testimony, the whereabouts of the seized items from the time of its seizure.

Tripoli insists that the lack of proof of a physical inventory of the items seized and failure to photograph them in the presence of the accused and of other personalities specified by Section 21 (a), Article II of the IRR of RA 9165 raise uncertainty and doubts as to the identity and integrity of the articles seized from the accused whether they were the same items presented at the trial court that convicted him. Based on this non-compliance by the arresting officers, the defense insists the acquittal of the accused.

Consequently, although We find that the police officers did not strictly comply with the requirements of Section 21, Article II of the IRR implementing RA 9165, the non-compliance did not affect the evidentiary weight of the drugs seized from the accused, because the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

Finally, the accused-appellants only raised the issue of non-compliance with RA 9165 for the first time in the CA. As such, the Court cannot now dwell on the matter because to do so would be against the tenets

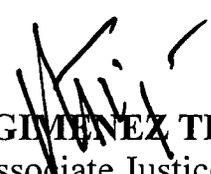


of fair play and equity. In the case of *People v. Bartolome*²³, although it appears that the buy-bust team did not literally observe all the requirements, like photographing the confiscated drugs in the presence of the accused, a representative from the media and from the Department of Justice, and any elected public official who should be required to sign the copies of the inventory and be given a copy of it, whatever justification the members of the buy-bust team had to render in order to explain their non-observance of all the requirements would remain unrevealed because the accused did not assail such non-compliance during the trial.

It was likewise held in *People v. Ros*²⁴ that “the law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds that may excuse the police officers involved in the buy-bust operation x x x from complying with Section 21 will remain unknown, because appellant did not question during trial, the safekeeping of the items seized from him. Indeed, the police officers’ alleged violations of Sections 21 and 86 of RA 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant (at) least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.” The same is true for this case.

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated March 28, 2012 of the Court of Appeals (CA), Cebu City in CA-G.R. CEB-CR-H.C. No. 00979, which affirmed the March 31, 2008 Decision of the RTC of Cebu City, Branch 10, in Criminal Case No. CB-65243, convicting accused-appellants Richard F. Tripoli and Romulo B. Impas for violation of Section 5, Article II, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is hereby **AFFIRMED**.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

²³ G.R. No. 191726, February 6, 2013.

²⁴ G.R. No. 201146, April 15, 2015.

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest 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.

PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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