



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

1111 2017

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 179749

Present:

VELASCO, JR., J., Chairperson,
 BERSAMIN,
 REYES,*
 JARDELEZA, and
 CAGUIOA,** JJ.

- versus -

EDDIE BARTE y MENDOZA,
 Accused-Appellant.

Promulgated:

March 1, 2017

Wilfredo V. Lapitan

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DECISION

BERSAMIN, J:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such non-compliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.

The Case

Under review is the decision promulgated on September 26, 2006,¹ whereby the Court of Appeals (CA) affirmed the decision rendered on May 18, 2004 by the Regional Trial Court (RTC), Branch 28, in Mandaue City convicting the accused-appellant of violating Section 5, Article II of Republic Act No. 9165, as amended, and sentencing him accordingly.²

* On leave.

** Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

¹ *Rollo*, pp. 4-8; penned by Associate Justice Agustin S. Dizon (retired), and concurred in by Associate Justice Pampio A. Abarintos (retired) and Associate Justice Priscilla Baltazar-Padilla.

² *CA rollo*, pp.15-23; penned by Judge Marilyn Lagura-Yap.

Antecedents

The accused-appellant was charged in the RTC with a violation of Section 5, Article II of R.A. No. 9165, as amended, following his arrest for selling a quantity of *shabu* worth ₱100.00 to a police officer-poser buyer in the evening of August 10, 2002 during a buy-bust operation conducted in Consuelo Village, Mandaue City.

PO2 Rico Cabatingan, a witness for the Prosecution, declared that he and other police officers conducted the buy-bust operation at about 9:30 in the evening of August 10, 2002 on the basis of information received to the effect that the accused-appellant was engaged in the sale of *shabu*.³ During the pre-operation conference, PO2 Cabatingan was designated as the poser buyer, and his back-up officers were PO2 Baylosis and PO3 Ompad. P/Insp. Grado provided the buy-bust money with marked serial number to PO2 Cabatingan.⁴ The buy-bust team then proceeded to Consuelo Village at about 9:10 of that evening on board a Suzuki multicab driven by PO3 Ompad. At the target area, PO2 Cabatingan met with the accused-appellant, and informed the latter that he wanted to buy *shabu* worth “a peso.” Upon the accused-appellant’s assent to his offer, PO2 Cabatingan handed the buy-bust money to him, and in turn the latter gave to him a small sachet with white colored contents. PO2 Cabatingan then gave the pre-arranged signal by touching his head. The other officers rushed forward and identified themselves to the accused-appellant as policemen. They frisked and arrested him, and brought him to the police station.

PO2 Cabatingan identified the sachet marked “EBM”, which contained the white substance.⁵ He confirmed the request for laboratory examination. He delivered the confiscated substance, along with the request, to the crime laboratory, which later on found the substance to be positive for the presence of methamphetamine hydrochloride, a dangerous drug.

PO2 Cabatingan also identified the ₱100.00 bill used as the buy-bust money. He asserted that he, PO3 Ompad and PO2 Baylosis had conducted prior surveillance of the accused-appellant for three nights, by which they had confirmed that he was really selling *shabu*. The results of their surveillance also confirmed that the subject of their surveillance was the same person referred to by their informant.⁶

In his defense, the accused-appellant declared that he was sitting alone near the chapel of Basak, Mandaue City near their house in Consuelo Village

³ Id. at 15.

⁴ Id. at 15-16.

⁵ Id. at 16.

⁶ Id. at 17.

at around 9:30 in the evening of August 10, 2002 when police officers suddenly came and arrested him. In undertaking his arrest, the officers pointed their guns at him and forced him to go with them. They brought him to the police precinct on a Suzuki multicab, and upon their reaching the station, the arresting officers searched his person and found his ID inside his wallet. He was not informed of the reason for his arrest. He was subsequently detained. The arresting officers only informed him of the charges against him on the next day.⁷

As stated, on May 18, 2004, the RTC rendered its decision⁸ convicting him as charged. It gave full credence to the testimony of PO2 Cabatingan, and ruled that the Prosecution thereby established that the accused-appellant had sold *shabu* to PO2 Cabatingan,⁹ to wit:

The court is aware of the procedure under Section 21, Article II of the new law on physical inventory and photograph of the seized drug in the presence of the accused or his representative or counsel, a media representative and the Department of Justice and any elected official who must all sign the inventory and furnished with a copy thereof. The same provision of law also directs the conduct of a qualitative examination (in addition to the quantitative examination), ocular inspection of the seized drug with 72 hours from filing of the criminal case and its destruction, saving only a representative sample, within 24 hours thereafter in the presence of the accused and the persons enumerated therein.

Although no evidence has been produced to prove compliance of the procedure, the Court believes that it is not fatal to the State's cause on the validity of the entrapment. "*In deciding cases, the Supreme Court does not matter-of-factly apply and interpret laws in a vacuum, laws are interpreted always in the context of peculiar factual situation of each case.*" The lack of readiness of the government to implement these measures may not be an excuse for the non-observance of the procedure but the same factual reality should not also be the sole basis to overcome the presumption of regularity of performance of police duties where the testimonies of the policemen concerned, PO2 Cabatingan and PO2 Baylosis, have been found to be credible. Section 21 relates to the procedure after the accused has been arrested. It would be too sweeping to conclude that the failure to comply with the instructions under Section 21 would necessarily result to a finding of irregularity in the actual conduct of the buy-bust operation.

x x x x

WHEREFORE, this JUDGMENT is hereby rendered finding the accused EDDIE BARTE Y MENDOZA guilty beyond reasonable doubt for sale of shabu, a dangerous drug. Pursuant to Section 5, Article II of RA 9165, this Court hereby imposes upon EDDIE MENDOZA, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos

⁷ Id. at 19.

⁸ Supra note 2.

⁹ Id. at 20-21.

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[P500,000.00] together with the accessory penalties under Section 35, Article II thereof.

The pack of shabu is hereby ordered confiscated for proper disposition.

IT IS SO ORDERED.¹⁰

On appeal, the CA promulgated the assailed decision on September 26, 2006,¹¹ holding and decreeing:

In the instant case, it can well be stressed that the paramount consideration in transactions involving sale of prohibited drugs was how the buy bust operation was conducted. It is worthy and important to note as the trial court noted that the arresting officers acted within the bounds of law and jurisprudence in the conduct of the buy-bust operation, which led to the appellant's arrest. Consequently, the lower court properly and fittingly relied on the legal presumption that the official duties had been regularly performed by the police officers and for which reason the conviction of the accused has to be adjudged.

In essence, we find no cogent reason to disturb or reverse the conclusion of the trial court that the appellant's guilt had been proven beyond reasonable doubt.

WHEREFORE, the Decision dated 18 May 2004 is hereby **AFFIRMED in toto**.

SO ORDERED.

After the CA denied the accused-appellant's motion for reconsideration on August 8, 2007,¹² he now appeals.

Issue

Was the guilt of the accused-appellant for the crime charged proved beyond reasonable doubt?

Ruling of the Court

After thorough review, we consider the appeal to be impressed with merit. Thus, we acquit the accused-appellant.

¹⁰ Id. at 22-23.

¹¹ Supra note 1, at 7-8.

¹² *Rollo*, pp. 10-11.

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In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused.¹³ In this instance, therefore, the Court is not limited to the assigned errors, but can consider and correct errors though unassigned and even reverse the decision on grounds other than those the parties raised as errors.¹⁴

Courts are cognizant of the presumption of regularity in the performance of duties of public officers. This presumption can be overturned if evidence is presented to prove either of two things, namely: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.¹⁵ This case sprang from the buy-bust operation conducted by several police officers against the accused-appellant based on the tip from a caller whose identification was only through the alias of *Ogis*. Surveillance was made following such tip, but the same was unrecorded and no other proof was presented to corroborate the policemen's conclusion that the man known as *Ogis* was the same man they were looking for during the surveillance.

It is a matter of judicial notice that buy-bust operations are "susceptible to police abuse, the most notorious of which is its use as a tool for extortion."¹⁶ The high possibility of abuse was precisely the reason why the procedural safeguards embodied in Section 21 of R.A. No. 9165 have been put up as a means to minimize, if not eradicate such abuse. The procedural safeguards not only protect the innocent from abuse and violation of their rights but also guide the law enforcers on ensuring the integrity of the evidence to be presented in court.

In the prosecution of the crime of selling a dangerous drug, the following elements must be proven, to wit: (1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, the essential requisites of

¹³ *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 157; *People v. Feliciano*, G.R. Nos. 127759-60, September 24, 2001, 365 SCRA 613, 629; *People v. Quimzon*, G.R. No. 133541, April 14, 2004, 427 SCRA 261, 281; *People v. Cula*, G.R. No. 133146, March 28, 2000, 329 SCRA 101, 116.

¹⁴ *Epifanio v. People*, G.R. No. 157057, June 26, 2007, 1 SCRA 552, 560; *Pangonorom v. People*, G.R. No. 143380, April 11, 2005, 455 SCRA 211, 220; *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 597-598; *People v. Ulit*, G.R. Nos. 131799-801, February 23, 2004, 423 SCRA 374, 389; *People v. Lucero*, G.R. Nos. 102407-08, March 26, 2001, 355 SCRA 93, 101-102; *Eusebio-Calderon v. People*, G.R. No. 158495, October 21, 2004, 441 SCRA 137, 146; *People v. Alzona*, G.R. No. 132029, July 30, 2004, 435 SCRA 461, 471; *People v. Taño*, G.R. No. 133872, May 5, 2000, 331 SCRA 449, 460; *People v. Llaguno*, G.R. No. 91262, January 28, 1998, 285 SCRA 124, 147; *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 174.

¹⁵ *People v. Remarata*, G.R. No. 147230, April 29, 2003, 401 SCRA 753, 754.

¹⁶ *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 267.

illegal possession of dangerous drugs that must be established are the following, namely: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug.¹⁷

Inasmuch 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 means that on top of the elements of possession or illegal sale, the fact that the substance possessed or illegally sold was the very substance presented in court must be established with the same exacting degree of certitude as that required sustaining a conviction.¹⁸ The prosecution must account for each link in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it was presented in court as proof of the *corpus delicti*. In short, the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed.¹⁹

The chain of custody as an important procedural safeguard is defined under Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, as follows:

Chain of Custody means 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 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.

The necessity of maintaining an unbroken chain of custody and the mechanics of the custodial chain requirement were explained in *Malillin v. People*,²⁰ thus:

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

¹⁷ *People v. Enriquez*, G.R. No. 197550, September 25, 2013, 706 SCRA 337, 349-350.

¹⁸ *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 697.

¹⁹ *Supra* note 17 at 350.

²⁰ G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

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.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

Based on the foregoing, we regard and declare as unwarranted the RTC's position that the absence of proof showing the compliance by the arresting lawmen with the procedure outlined under Section 21 of RA No. 9165 was not fatal to the entrapment. Such non-compliance with the procedural safeguards under Section 21 was fatal because it cast doubt on the integrity of the evidence presented in court and directly affected the validity of the buy-bust operation. It put into serious question whether the sachet of *shabu* had really come from the accused-appellant, and whether the sachet of *shabu* presented in court was the same sachet of *shabu* obtained from the accused-appellant at the time of the arrest. Testimonies provided by the police officers and the presumption of regularity in the performance of their duties did not override the non-compliance with the procedural safeguards instituted by our laws. Indeed, anything short of observance and compliance by the arresting lawmen with what the law required meant that the former did not regularly perform their duties. The presumption of regularity in the performance of their duties then became inapplicable. As such, the evidence of the State did not overturn the presumption of innocence in favor of the accused-appellant.

Furthermore, although non-compliance with the prescribed procedural requirements would not automatically render the seizure and custody of the contraband invalid, that is true only when there is a justifiable ground for such non-compliance, and the integrity and evidentiary value of the seized items are properly preserved. Any departure from the prescribed procedure must then still be reasonably justified, and must further be shown not to have affected the integrity and evidentiary value of the confiscated contraband. Otherwise, the non-compliance constitutes an irregularity, a red flag, so to speak, that cast reasonable doubt on the identity of the *corpus delicti*.²¹

²¹ Supra note 17, at 353-354.

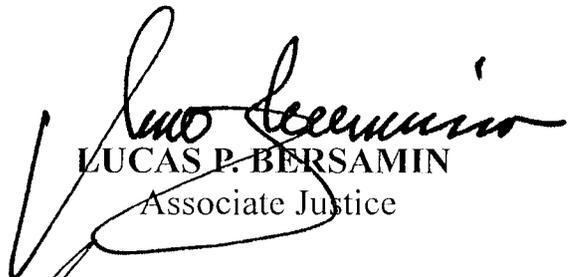
Here, the State's agents who entrapped the accused-appellant and confiscated the dangerous drug from him did not tender any justifiable ground for the non-compliance with the requirement of establishing each link in the chain of custody from the time of seizure to the time of presentation. The conclusion that the integrity and evidentiary value of the *shabu* confiscated were consequently not preserved became unavoidable. The failure to prove the chain of custody should mean, therefore, that the Prosecution did not establish beyond reasonable doubt that the sachet of *shabu* presented during the trial was the very same one delivered by the accused-appellant to the poseur buyer.

WHEREFORE, the Court **ACQUITS** accused **EDDIE BARTE y MENDOZA** of the violation of Section 5, Article II of Republic Act No. 9165, as amended, for failure to prove his guilt beyond reasonable doubt; and **DIRECTS** the Director of the Bureau of Corrections to forthwith release **EDDIE BARTE y MENDOZA** from custody unless he is detained thereat for another lawful cause, and to report on his compliance herewith within five days from receipt.

No pronouncement as to costs.

SO ORDERED.

WE CONCUR:



LUCAS P. BERSAMIN
Associate Justice

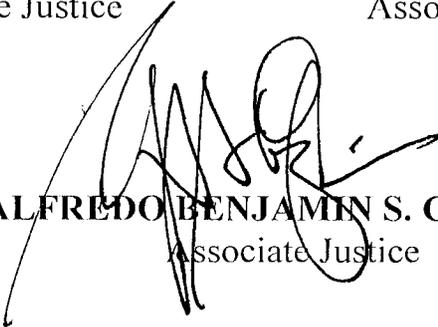


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Leave)
BIENVENIDO L. REYES
Associate Justice



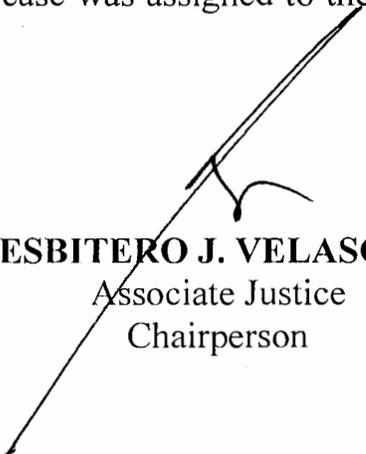
FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

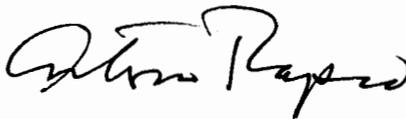
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



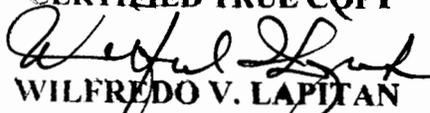
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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.



ANTONIO T. CARPIO
Acting Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 31 2017

