



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 17 March 2021 which reads as follows:

“G.R. No. 250136 (*People of the Philippines v. Jayson de Balmes y Blanco *a.k.a. “Jayson”*). –** After a review of the records, this Court resolves to **DISMISS** the Appeal¹ for failure to sufficiently show that the Court of Appeals (*CA*) committed any reversible error in its May 31, 2019 Decision² in CA-G.R. CR-HC No. 09302 which affirmed with modification the March 17, 2017 Decision³ of the Regional Trial Court, Marikina City, Branch 192 (*RTC*), finding Jayson De Balmes y Blanco *a.k.a. “Jayson”* (*accused-appellant*) guilty of violating Section 5, Article II of Republic Act (*R.A.*) No. 9165.

Antecedents

In an Amended Information⁴ dated June 22, 2015, accused-appellant, together with AAA,⁵ a minor, and Darwin Bulanhagui (*Darwin*), was charged with Illegal Possession of Drug Paraphernalia under Sec. 14, Art. II of R.A. No. 9165, to wit:

* Referred to as “*Jason De Balmes*” in some parts of the *rollo*.

¹ *Rollo*, pp. 19-20.

² *Id.* at 3-18; penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Ricardo R. Rosario (now a Member of this Court) and Perpetua T. Atal-Paño, concurring.

³ *CA rollo*, pp. 67-82; penned by Acting Presiding Judge Wilfredo L. Maynigo.

⁴ *Rollo*, p. 4.

⁵ The true name of the accused-appellant’s co-accused has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (*Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances*). The confidentiality of the identity of the co-accused is mandated by Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended by Republic Act No. 10630.

Criminal Case No. 2015-4761-D-MK

That on or about the 1st day of June 2015, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused and CICL, acting with discernment conspiring and confederating together, they (sic) mutually helping and assisting one another, without being authorized by law, to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in their possession, direct custody and control four (4) pieces of used aluminum foil strips with traces of shabu, one (1) glass improvised tooter and one (1) disposable lighter, which are instruments, apparatus or other paraphernalia fit or intended for smoking or introducing *shabu*, a dangerous drug, into the body in the proximate company of one another.

CONTRARY TO LAW.⁶

In another Amended Information⁷ dated June 22, 2015, accused-appellant and AAA were also charged with Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of R.A. No. 9165, to wit:

Criminal Case No. 2015-4762-D-MK

That on or about the 1st day of June 2015, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named child in conflict with law, acting with discernment conspiring and confederating together with the accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Jose Francisco C. Cabusao, acting as Poseur-Buyer, a small plastic transparent which was subsequently marked as 'J & R-BB 6/1/15' containing 0.08 gram of Methamphetamine Hydrochloride or *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.⁸

Accused-appellant pleaded "not guilty" during his arraignment on December 2, 2015. Trial on the merits ensued thereafter.⁹

Evidence for the Prosecution

The prosecution presented as witnesses Police Officer II Jose Francisco Cabusao (*PO2 Cabusao*), Police Chief Inspector Margarita M. Libres (*PCI Libres*), and Councilor Frankie Ayuson (*Councilor Ayuson*).

⁶ *Rollo*, p. 4.

⁷ *Id.* at 4-5.

⁸ *Id.*

⁹ *Id.* at 5; *CA rollo*, p. 75.

On June 1, 2015, at around 10:30 in the morning, a confidential informant (CI) reported to the Marikina City Police Station–Station Anti-Illegal Drugs Special Operation Task Group, regarding accused-appellant’s ongoing drug activities at 5th Street, Agora Compound, Barangay Santo Niño, Marikina City. Upon the instruction of Police Inspector Jerry Flores (P/Insp. Flores), PO2 Cabusao went to the target area to verify the report. At the target area, PO2 Cabusao noticed several people going in and out of a narrow alley. PO2 Cabusao reported back to P/Insp. Flores, who immediately conducted a briefing for a possible buy-bust operation against accused-appellant. The buy-bust team consisted of PO2 Cabusao as the poseur-buyer, Police Officer II Procopio Favillar (PO2 Favillar), and six (6) other police officers. PO2 Cabusao was given three (3) ₱100.00-bills as marked money. The pre-arranged signal was to make a phone call to P/Insp. Flores.¹⁰

At around 9:00 in the evening of the same day, the buy-bust team proceeded to the target area and positioned themselves. The CI and PO2 Cabusao went to the narrow alley where accused-appellant’s house was located. Outside the house, the CI introduced PO2 Cabusao to accused-appellant as an interested buyer of *shabu* worth ₱300.00. Accused-appellant then allowed PO2 Cabusao and the CI enter his house. Inside the house, PO2 Cabusao and the CI saw AAA and Darwin sitting on the floor with different kinds of drug paraphernalia. Accused-appellant then asked AAA to give him a violet coin purse. PO2 Cabusao gave the marked money to accused-appellant, who placed it inside the violet coin purse. Afterwards, accused-appellant took out from the violet coin purse a small plastic sachet containing white crystalline substance and gave the same to PO2 Cabusao. PO2 Cabusao placed the sachet inside his bag and discreetly used his cellphone to call P/Insp. Flores. Accused-appellant, however, noticed PO2 Cabusao and asked “*may tinatawagan ka, pre?*” Accused-appellant attempted to run which prompted PO2 Cabusao to introduce himself as a police officer. PO2 Cabusao restrained accused-appellant, but AAA pushed him which allowed accused-appellant to escape. PO2 Favillar and the other police officers chased accused-appellant but they failed to catch him. Meanwhile, PO2 Cabusao opened the violet coin purse and recovered therein the marked money and two (2) plastic sachets containing white crystalline substance. PO2 Cabusao then arrested Darwin and AAA and seized the drug paraphernalia that were laid out on the floor.¹¹

Thereafter, PO2 Cabusao proceeded to mark and inventory the seized items in the presence of Darwin, AAA, Kagawad Jay Espidillion (Kagawad Espidillion), Media Representative Cesar Barquilla (Barquilla), and Councilor Ayuson. The sachet bought from accused-appellant was marked with “J & R-BB 6/1/15,” while the other two (2) sachets recovered from

¹⁰ Id. at 6-7.

¹¹ Id.

accused-appellant's coin purse were marked with "JAYSON 1-A- 6/1/15" and "JAYSON 1-B 6/1/15." The seized drug paraphernalia were also marked accordingly. PO2 Favillar took photographs of the marking and the conduct of the inventory, as well as the seized items and marked money.¹²

After the marking and inventory, the buy-bust team brought Darwin and AAA to the hospital for a medical check-up. PO2 Cabusao, who remained in possession of the seized items, prepared the requests for laboratory examination of the seized evidence and drug tests for Darwin and AAA. Thereafter, the buy-bust team went to the Eastern Police District Crime Laboratory where the seized items were turned over by PO2 Cabusao to PCI Libres, the forensic chemist, for analysis. In her Physical Science Report No. MCSO-D-099-15, PCI Libres confirmed that the contents of the plastic sachets turned over by PO2 Cabusao were positive for *shabu*.¹³

Accused-appellant was arrested sometime in November 2015 by virtue of a warrant of arrest.¹⁴

Evidence for the Defense

The defense presented accused-appellant and AAA as its witnesses.

Accused-appellant denied the charges against him and claimed that he left his house to go to a nearby store around 7:30 p.m. on June 1, 2015. On his way back, he saw several armed men in civilian clothes alighting from a brown Tamaraw FX and a white van, and enter three (3) houses inside the Agora Complex, including his house. The armed men then found AAA, accused-appellant's live-in partner, inside the house and ordered her to surrender the *shabu* she was keeping in her room. AAA denied having any *shabu* in her possession but the armed men still searched the house for *shabu*. Finding nothing, the armed men dragged AAA and Darwin out of the house and forced them to board the Tamaraw FX. They brought AAA and Darwin to the hospital for a medical check-up and then to the police station where they learned of the charges against them.¹⁵

Accused-appellant testified that he did not do anything when he saw AAA and Darwin being taken away by the armed men because he was

¹² Id. at 7-8.

¹³ Id. at 8-9.

¹⁴ CA rollo, p. 75.

¹⁵ Rollo, pp. 9-10.

surprised. It was only in November 2015 that he was arrested by virtue of a warrant of arrest issued by the RTC.¹⁶

The RTC Ruling

The RTC rendered a Decision on March 17, 2017 finding accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ACQUITTING the accused, RJD-CICL, of the crime charged in Criminal Case No. 2015-4762-D-MK and likewise ACQUITTING accused Darwin Bulanhagui y Masil in Criminal Case No. 2015-4761-D-MK.

On the other hand, accused Jayson de Balmes y Blanco alias Jayson is hereby CONVICTED of the crime of drug pushing defined in Criminal Case No. 2015-4762-D-MK and as such, he is hereby sentenced to suffer the penalty of life imprisonment. However, accused Jayson de Balmes y Blanco alias Jayson is acquitted of the crime of illegal possession of drug paraphernalia defined in Criminal Case No. 2015-4761-D-MK.

SO ORDERED.¹⁷

The RTC acquitted accused-appellant of the charge of illegal possession of drug paraphernalia because he did not have direct custody and control of drug paraphernalia at the time of the buy-bust operation. As to the charge of illegal possession of dangerous drugs, the RTC gave credence to PO2 Cabusao's testimony that he was able to buy ₱300.00 worth of *shabu* from accused-appellant. The RTC was convinced of the testimony given by PO2 Cabusao for it provided details of the transaction with accused-appellant.

Aggrieved by the decision, accused-appellant appealed to the CA.

The CA Ruling

In the now assailed decision, the CA affirmed accused-appellant's conviction with modification as to the penalties imposed, thus:

We **MODIFY** the Decision dated 17 March 2017 of the Regional Trial Court, Branch 192, Marikina City, thus: upon proof beyond reasonable doubt, we convict the appellant Jayson de Balmes y Blanco [a.k.a.] Jayson of the crime of violation of Article II, Section 5, R.A. No. 9165, and

¹⁶ CA rollo, p. 78.

¹⁷ Id. at 82.

sentence him to suffer the penalty of life imprisonment, and order the appellant Jayson de Balmes y Blanco a.k.a. Jayson to pay the fine of ₱500,000.00.

IT IS SO ORDERED.¹⁸

The CA affirmed the RTC's finding that all the elements of illegal sale of dangerous drugs were established by the prosecution. PO2 Cabusao personally dealt with accused-appellant and bought from him a plastic sachet containing white crystalline substance, which later on tested positive for *shabu*, for ₱300.00. The CA also ruled that the integrity and evidentiary value of the seized items were preserved by the apprehending officers. The marking and inventory were immediately done at the place of arrest and were witnessed by accused-appellant's co-accused AAA and Darwin, and by *Kagawad* Espidillion, Councilor Ayuson, and Barquilla. PO2 Cabusao was in custody of the seized items from the time of confiscation until their turn over to PCI Libres for chemical analysis. The parties stipulated on the receipt by PCI Libres of the seized items and their condition, as documented in the chain of custody form, which PCI Libres signed.

Hence, this appeal whereby accused-appellant contends that: (1) his identity was not proven since, he was not identified in open court as the same person described as alias "Jayson;" (2) PCI Libres' failure to testify on the manner of handling the evidence is fatal to the prosecution's case; and (3) the absence of an investigator assigned to the case is violative of the 2014 Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation.

Was the prosecution able to establish accused-appellant's guilt beyond reasonable doubt for the crime of illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165?

The Court's Ruling

The appeal lacks merit.

To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁹

¹⁸ Id. at 130.

¹⁹ *People v. Ismael*, 806 Phil. 21, 29 (2017).

In this case, PO2 Cabusao, the poseur-buyer, had positively identified accused-appellant as the person who sold him a plastic sachet containing white crystalline substance, which was later confirmed to be *shabu*, for a consideration of ₱300.00. Thus, the prosecution sufficiently established that the illegal sale of dangerous drugs had been consummated. In *People v. Encila*,²⁰ this Court ruled that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.²¹

However, accused-appellant asserts that the first element of the crime is lacking. He argues that the failure by the prosecution witnesses to identify him in open court as the one described as alias “Jayson” in the amended informations was fatal to the prosecution’s case.

Accused-appellant is mistaken.

As a rule, in-court identification is essential only when there is doubt that the person alleged to have committed the crime and the person charged in the information and subject of the trial are one and the same.²² While positive identification by a witness is required by the law to convict an accused, it need not always be by means of physical courtroom identification, especially in cases when the public prosecutor fails to ask the witness to point to the accused in open court.²³

Indeed, based on the records of this case, the public prosecutor failed to ask PO2 Cabusao to identify accused-appellant in open court. This failure, however, does not affect the weight of PO2 Cabusao’s testimony. PO2 Cabusao had personal knowledge of accused-appellant’s identity considering that he personally transacted with accused-appellant during the buy-bust operation. PO2 Cabusao’s straightforward and categorical testimony had established accused-appellant as the seller of the *shabu* to whom he gave the marked money.

Moreover, accused-appellant never denied that he was the person indicted in the amended informations and subject of the proceedings. In fact, during his cross-examination, accused-appellant confirmed that the subject of

²⁰ 598 Phil. 165 (2009).

²¹ *Id.* at 181.

²² See *Montelibano v. Yap*, 822 Phil. 262, 275 (2017).

²³ *Id.*, citing *People v. Quezada*, 425 Phil. 877, 889 (2002).

the proceedings was a drug case for which he was arrested as the accused by virtue of a warrant of arrest:

SR. ASST. CITY PROS. STO. DOMINGO:

Q: Mr. Witness, you stated when asked by the defense counsel why you were imprisoned, you answered because of a warrant, is that correct?

WITNESS:

A: Yes, sir.

Q: Warrant for what case is that?

A: For a drugs case sir, because they asked my name from my wife.

Q: You are referring then that particular warrant is for a case which is related to the case for which your live-in partner was accosted by the police officers?

A: Yes, sir.

Q: That case in effect is the one being heard right now, is that correct?

A: Yes, sir.

Q: Do you know that this is a drug case?

A: Yes, sir.²⁴

Taking all circumstances into consideration, including PO2 Cabusao's positive identification of accused-appellant, the Court is convinced that the prosecution was able to establish accused-appellant's identity as the same person charged in the amended informations and as the accused in the subject proceedings.

The Court also finds accused-appellant's assertion that there was a gap in the chain of custody, due to PCI Libres' failure to testify on the manner she handled the seized specimen, as unmeritorious. The Court notes that the parties had already stipulated that PCI Libres personally received the seized specimen, the condition of which was documented in the chain of custody form signed by PCI Libres, and in the request for laboratory examination. Moreover, the testimony of PCI Libres was specific and categorical on how she handled the seized specimen when she conducted the qualitative examination thereon.

Finally, the Court is satisfied that the prosecution has proven that the chain of custody of the items seized from accused-appellant remained unbroken. PO2 Cabusao immediately marked and conducted an inventory of the seized items at the place where accused-appellant's co-accused were apprehended. Accused-appellant's absence during the marking and inventory

²⁴ TSN, May 2, 2016, pp. 10-11.

did not affect the admissibility of the seized items because he escaped while being arrested. Besides, the marking and inventory were witnessed by accused-appellant's co-accused, *Kagawad* Espidillion, Councilor Ayuson, and Barquilla, which complied with the requirements of Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. 10640. PO2 Favillar, on the other hand, took photographs while the seized items were being marked and inventoried. Thereafter, AAA and Darwin were brought to the hospital for a medical check-up and the seized items were turned over to PCI Libres for forensic examination.

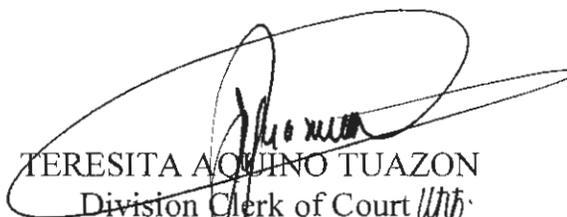
From the time of confiscation until their turn over to PCI Libres, PO2 Cabusao remained in possession of the seized items. Hence, the absence of an investigator did not affect the chain of custody since the only ones who had custody of the seized items were PO2 Cabusao and PCI Libres, and the manner of handling and condition of the seized items were documented in the chain of custody form. Verily, the prosecution adequately showed that the integrity and evidentiary value of the seized items were preserved and the procedures under Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640, were complied with.

In sum, the prosecution has proven accused-appellant's guilt beyond reasonable doubt for the crime of illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165. Hence, the Court sees no reason to reverse the findings of the CA.

WHEREFORE, the appeal is **DISMISSED**. The May 31, 2019 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 09302, finding accused-appellant Jayson de Balmes y Blanco *a.k.a.* "Jayson" guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, is **AFFIRMED**. He is hereby **SENTENCED** to serve the penalty of Life Imprisonment and to **PAY** a fine of Five Hundred Thousand Pesos (₱500,000.00).

SO ORDERED." (Delos Santos, J., designated additional member per Raffle dated March 8, 2021, vice Rosario, J.)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
27 MAY 2021

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HON. PRESIDING JUDGE (reg)
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