



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 226152

Present:

- versus -

BERSAMIN, C.J.,
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

LUISITO CARTINA y GARCIA,
ALLAN JEPEZ y TUSCANO and
NELSON RAMOS, JR. y CARTINA,
Accused-Appellants.

Promulgated:
MAR 13 2019

X-----X

DECISION

DEL CASTILLO, J.:

This is an appeal from the April 28, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07425, affirming with modification the February 18, 2015 Decision² of the Regional Trial Court (RTC), Branch 64, Makati City in Criminal Case Nos. 12-1958 to 1959, 12-1960 and 12-1961.

Appellants Luisito Cartina y Garcia (Cartina), Allan Jepez y Tuscano (Jepez) and Nelson Ramos, Jr. y Cartina (Ramos, Jr.) were apprehended on two separate but related incidents on October 30, 2012 along Washington Street, *Barangay* Pio del Pilar, Makati City. The apprehending officers were members of a team of the Makati Anti-Drug Abuse Council (MADAC) tasked to conduct a buy-bust operation on Cartina who was reportedly engaged in illegal drug activities. After their arrest and investigation, Cartina was charged in two separate Informations with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165³ while Jepez and Ramos, Jr., through separate Information, were each indicted for violation of Section 11, Article II of the same law.

¹ CA rollo, pp. 107-120; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.
² Records, pp. 168-177; penned by Judge Gina M. Bibat-Palamos.
³ The Comprehensive Dangerous Drugs Act of 2002.

The accusatory portion of the Information charging Cartina with violation of Section 5 reads as follows:

Criminal Case No. 12-1958:

On the 30th day of October 2012, in the city of Makati, the Philippines, accused, not being authorized by law, without the corresponding license and prescription, did then and there willfully, unlawfully and feloniously sell, deliver and distribute zero point zero two (0.02) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of Php300.

CONTRARY TO LAW.⁴

For violation of Section 11, the crime was allegedly committed by Cartina in the following manner:

Criminal Case No. 12-1959:

On the 30th day of October 2012, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody, and control zero point zero five (0.05) and zero point zero two (0.02) [gram] of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

The Informations⁶ against Jepez and Ramos, Jr. contained substantially the same averments as that charging Cartina with violation of Section 11 of the same law, except for the quantity of methamphetamine hydrochloride allegedly possessed by Jepez which was zero point zero one (0.01) gram, while that of Ramos, Jr. was zero point zero three (0.03) gram.

Appellants, when arraigned on November 14, 2012, entered their respective pleas of not guilty. After the termination of the pre-trial, a joint trial on the merits ensued.

Version of the Prosecution

On October 30, 2012, after confirming the veracity of an information earlier received from a confidential informant (CI) that Cartina was selling *shabu* in Washington Street, Barangay Pio del Pilar, Makati City, Police Senior Inspector

⁴ Records, p. 1.

⁵ Id. at 5.

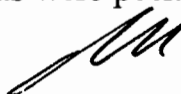
⁶ Id. at 7 and 9.

Armando L. Yu (PSI Yu) formed an entrapment team to apprehend the suspected drug dealer. The team was composed of PSI Yu as team leader, MADAC operatives Delno A. Encarnacion (MADAC operative Encarnacion), the appointed poseur-buyer, Alfonso R. Juan, Jr. (Juan, Jr.), Police Officer Renie E. Aseboque (PO2 Aseboque), as members and Jojnyfer Cureg (Cureg) as photographer, and others. For the undertaking, MADAC operative Encarnacion was provided with three (3) pieces of ₱100 bills to be used in the entrapment.

After a short briefing, the team was dispatched to the target area at around 10:00 p.m. of said date. At the place, MADAC operative Encarnacion and the CI saw Cartina and approached the latter while the back-up members were in strategic positions. The CI introduced MADAC operative Encarnacion to Cartina, who at the time was with two male companions, and a deal was made. MADAC operative Encarnacion handed Cartina the three ₱100.00 bills and, in return, the latter gave him a plastic sachet containing suspected *shabu*. After receiving the plastic sachet, MADAC operative Encarnacion placed a white towel at the back pocket of his pants as a pre-arranged signal to his colleagues. Right then and there, Cartina was placed under arrest and was informed of his constitutional rights. After Cartina was frisked, MADAC operative Encarnacion recovered two other plastic sachets from the left pocket and the ₱300.00 from the right pocket.

Meanwhile, the two male companions of Cartina who were identified as Jepez and Ramos, Jr., scampered away but were eventually subdued by Juan, Jr. and PO2 Aseboque. When asked to empty their pockets, one piece of small plastic sachet containing white crystalline substance were recovered from each of them. These items seized from Jepez and Ramos, Jr. were turned over to MADAC operative Encarnacion. They then brought appellants, together with the items seized to the *barangay* hall of *Barangay* Pio del Pilar for inventory and marking. Thereat, MADAC operative Encarnacion prepared an inventory receipt and marked the items with his initials "DAE," "DAE-1," "DAE-2," "DAE-3," and "DAE-4," in the presence of appellants, *Barangay Kagawad* Cesar S. Parrucho (*Kagawad* Parrucho) while Cureg took photographs.

Thereafter, the team returned to their office where a Joint Affidavit of Arrest was prepared. Senior Police Officer 1 Nildo T. Orsua (SPO1 Orsua), the investigator, also prepared the request for Laboratory Examination after the seized items were turned over to him. The Request, together with the seized items and the Chain of Custody Form, were brought by MADAC operative Encarnacion to the Southern Police District (SPD) Crime Laboratory and received by PO3 Elmar B. Manuel. Later upon examination, PSI Anamelisa S. Bacani of the SPD Crime Laboratory, per her Physical Science Report No. D-655-125, confirmed that the plastic sachets recovered from the appellants were positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.



Version of the Defense

The defense' version of the facts, as summarized by the CA, is as follows:

On [October 30,] 2012, while appellants Jopez and Ramos, Jr., were taking a bath near a 'poso' (water pump) located about three (3) meters away from the latter's house, with appellant Cartina about two (2) meters away, six (6) armed persons in civilian attire, whom they later on identified as MADAC operatives, approached and asked them about the location of one Cedric @ 'Mata.' After responding in the negative, the armed men allegedly mauled them and made them board a van. They were first brought to the MADAC office where the operatives showed them a plastic sachet containing white crystalline substance and were taken to the barangay hall thereafter where the men summoned a barangay kagawad. Thereat, their photos were taken with the plastic sachet containing white crystalline substance which they denied ownership of. They were thereafter brought to the Scene of the Crime Operatives and to the Pasay General Hospital and were detained afterwards. They denied the charges against them.⁷

Ruling of the Regional Trial Court

The RTC gave credence to the version of the prosecution. It ruled that all the elements of the crimes charged were duly proved and established. The RTC also held that the integrity and evidentiary value of the items seized from appellants were properly preserved by the buy-bust team under the chain of custody rule. It rejected appellants' defense of denial. By Decision dated February 18, 2015, the RTC convicted appellants. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 12-1958, finding the accused Luisito Cartina y Garcia, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and

2. In Criminal Case Nos. 12-1959 to 1961, finding each of the accused Luisito Cartina y Garcia, Allan Jopez y Tuscano and Nelson Ramos, Jr. y Cartina, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing each of them to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (400,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.⁸



⁷ CA rollo, p. 113.

⁸ Records, pp. 176-177.

Unsatisfied, appellants interposed an appeal with the CA.

Ruling of the Court of Appeals

The CA sustained appellants' conviction holding that the prosecution was able to establish all the essential elements of the crimes for which they were charged. It ruled in favor of the legality of the warrantless arrest and search of appellants. The CA was not convinced that there was failure to comply with Section 21 of RA 9165. It was shown that the law enforcers' chain of custody over the seized items was unbroken leading to the preservation of the integrity and evidentiary value of the illicit drugs. The dispositive portion of the April 28, 2016 Decision of the CA reads:

WHEREFORE, premises considered, the instant Appeal is DENIED and the Decision dated 18 February 2015 of Branch 64, Regional Trial Court of Makati City is hereby AFFIRMED with MODIFICATION, in that the penalty of life imprisonment upon appellant Luisito Cartina y Garcia, is imposed without eligibility for parole.

SO ORDERED.⁹

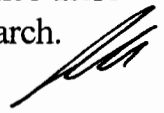
Hence, the present appeal.

Pursuant to our Resolution¹⁰ dated September 28, 2016, the parties manifested that they are just adopting their respective briefs filed with the CA as their Supplemental Briefs.

The Court's Ruling

At the outset, the Court takes note that, in the appellants' brief, there was no substantial discussion on Cartina's warrantless arrest, and the search and seizure of the illegal items, thereby implying his amenability to the findings and conclusions of the courts below that he was caught in *flagrante delicto* during a validly conducted buy-bust operation.

Much has been said in the brief, however, on the warrantless arrest, search and seizure on appellants Jopez and Ramos, Jr. They claim that, at the time of their arrest, they were merely conversing with Cartina and were not committing any overt physical act which would indicate that they were committing a crime. Since there was no valid warrantless arrest, there was likewise no valid warrantless search.



⁹ CA *rollo*, p. 120.

¹⁰ *Rollo*, p. 21.

We beg to disagree.

Indeed, a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. Said proscription, however, admits of exceptions, one of which is during a stop and frisk situation.

In *Sanchez v. People*,¹¹ a stop and frisk was defined and elucidated, thus:

x x x as the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.

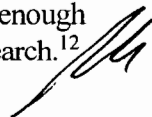
In the case under review, sufficient facts engendered in the minds of the police officers that Jepez and Ramos, Jr. were in the act of committing a crime. Consider the following instances: the police officers were on a mission to entrap Cartina who was verified to be engaged in selling illegal drugs; Jepez and Ramos, Jr. were with Cartina when the officers saw the latter at the target area; when the poseur-buyer introduced himself as a MADAC operative, the duo immediately fled from the scene; and when they were subdued, they were searched and each was found in possession of a plastic sachet containing suspected *shabu*. Indubitably, Jepez and Ramos, Jr. were then illegally committing the crime of possession of dangerous drugs in the presence of the police officers. The seized items were therefore admissible in evidence.

In this regard, we share the observation of the Office of the Solicitor General which is quoted hereunder:

The search made on Jepez and Ramos falls squarely within 'stop and frisk' searches where the police officer may stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband upon probable cause. It must be noted that Jepez and Ramos were present during the buy-bust transaction and when Encarnacion introduced himself as a MADAC operative and arrested Cartina, Jepez and Ramos tried to flee. Appellants Jepez and Ramos' actuations constitute sufficient probable cause for the police officers to hold them down and conduct a search on their persons. The aforementioned acts of appellants create enough 'suspiciousness' for the police to validly hold them down and conduct a search.¹²

¹¹ 747 Phil. 552, 572 (2014), citing *People v. Chua*, 444 Phil. 757, 773-774 (2003).

¹² *CA rollo*, pp. 93-94.



Appellants' next argument is centered on the arresting officers' failure to comply with the requirements for the proper custody of seized dangerous drugs under RA 9165. They claim that the officers failed to make a physical inventory and take photographs of the seized items in the presence of a representative from the Department of Justice (DOJ) and the media thus raising uncertainty about the identity of the seized items presented in evidence.

We find appellants' argument well-founded.

The procedural guidelines that the arresting officers must observe in the handling of seized illegal drugs to ensure the preservation of the identity and integrity thereof is embodied in Section 21, paragraph 1, Article II of RA 9165 which states:

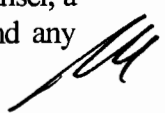
SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 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.

This is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which reads:

SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

In the present case, there was a clear non-observance of the above-mentioned procedure. MADAC operative Encarnacion categorically admitted during his cross-examination that, aside from *Kagawad* Parrucho, there was no representative from the media and the DOJ present during the inventory of the seized items. His testimony during the cross-examination pertinently stated thus:

ATTY PUZON

Who was present at that time of the preparation of the Inventory Receipt?

WITNESS

Me, accused Cartina, Jopez and Ramos, and my immediate back up PO2 Renie Aseboque and Alfonso Juan, and Brgy. Kagawad Parrucho, and the photographer.

ATTY. PUZON

All of these persons that you mentioned were likewise present at that time of the signing of the Inventory Receipt?

WITNESS

Yes, ma'am, they were present.

ATTY. PUZON

Who was the barangay official present during the inventory?

WITNESS

Brgy. Kagawad Cesar Parrucho, ma'am.

ATTY. PUZON

While you were preparing for the Inventory Receipt, there was no representative coming from the DOJ, correct?

WITNESS

None, ma'am.

ATTY. PUZON

There was no representative coming from the media?

WITNESS

None, ma'am.



ATTY. PUZON

Likewise at that time the accused has no representative or counsel of his own during the time of the preparation of the Inventory Receipt?

WITNESS

None, ma'am.

ATTY. PUZON

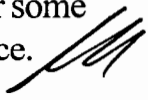
That would be all for the witness, Your Honor.¹³

“RA 9165 and its [IRR] both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved.”¹⁴

In the present case, the police officers did not bother to offer any excuses or sort of justification for their omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law.¹⁵

“[W]hen there is gross disregard of the procedural safeguards prescribed in the substantive law (RA 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. x x x Accordingly, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.”¹⁶

WHEREFORE, the appeal is **GRANTED**. The appealed April 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 07425 which affirmed with modification the February 18, 2015 Decision of Makati City, Regional Trial Court, Branch 64, is **REVERSED and SET ASIDE**. Appellant Luisito Cartina y Garcia, is hereby **ACQUITTED** of the charges in Criminal Case Nos. 12-1958 and 12-1959 while appellants Allan Jopez y Tuscano and Nelson Ramos, Jr. y Cartina are **ACQUITTED** of the charges in Criminal Case Nos. 12-1960 and 12-1961, respectively, on the ground of reasonable doubt.

The Director General of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** appellants from custody unless they are detained for some other lawful cause and submit his compliance within ten (10) days from notice. 

¹³ TSN, July 31, 2013, pp. 44-45.

¹⁴ *People v. Miranda*, 788 Phil. 657, 668 (2016).

¹⁵ *People v. Oniza*, 713 Phil. 521, 529 (2013).

¹⁶ *People v. Ancheta*, 687 Phil. 569, 580 (2012).

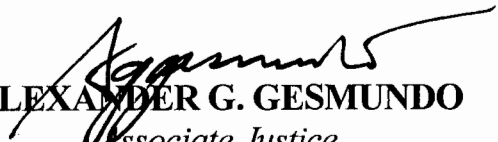
SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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