

## **SECOND DIVISION**

**[ G.R. No. 223036, July 10, 2019 ]**

**PEOPLE OF THE PHILIPPINES, VS. MIKE OMAMOS Y PAJO,  
ACCUSED-APPELLANT.**

### **D E C I S I O N**

**LAZARO-JAVIER, J.:**

#### **THE CASE**

This petition assails the Decision<sup>[1]</sup> 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:

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.<sup>[2]</sup>

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 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,<sup>[3]</sup> Chemistry Report No. D-133-2008,<sup>[4]</sup> Chemistry Report No. C-031-2008,<sup>[5]</sup> Pre-operation Report dated July 16, 2008,<sup>[6]</sup> and Coordination Form dated July 16, 2008.<sup>[7]</sup>

### ***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.

### **The Trial Court's Decision**

By Decision dated January 31, 2013,<sup>[8]</sup> the trial court found appellant guilty as charged, sentenced him to life imprisonment and fine of P1,000,000.00, 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 nonpayment 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*.<sup>[9]</sup>

On the other hand, the Office of the Solicitor General (OSG) through then Assistant Solicitor General Sarah Jane T. Fernandez,<sup>[10]</sup> 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.<sup>[11]</sup>

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.<sup>[12]</sup>

### **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.<sup>[13]</sup> 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.<sup>[14]</sup> 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 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;

XXXX 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.<sup>[15]</sup>

**People v. Hementiza**<sup>[16]</sup> 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;

**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,