

FIRST DIVISION

[G.R. No. 243940, August 20, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO DOCTOLERO, JR., ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE,* J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Alfredo Doctolero, Jr. (accused-appellant) assailing the Decision^[2] dated July 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09379, which affirmed the Decision^[3] dated January 18, 2017 and the Order^[4] dated March 8, 2017 of the Regional Trial Court of Marikina City, Branch 273 (RTC) in Criminal Case No. 2015-4864-D-MK finding him guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165^[5] and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The Facts

Accused-appellant was charged with violation of Section 5, Article II of RA 9165 in an Information^[6] that reads:

That on or about the 3rd day of October [2015], in the City of Marikina, 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 knowingly sell to SPO1 LUIS Q. FORTUNO, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.16 gram (marked as ADB 10-3-15) of white crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

When arraigned, accused-appellant entered a plea of *not guilty*.^[7]

The prosecution alleged that on October 2, 2015, after receipt of confidential information from an asset regarding the alleged drug-peddling activities of a certain alias "Borong," known to be a "scorer of *shabu*" and seller of illegal drugs along Lavender Street, Concepcion Dos, Marikina City, Chief Police Senior Inspector Edwin Caracas (Chief Caracas) formed a buy-bust team composed of Senior Police Officer 1 (SPO1) Luis Q. Fortuno (SPO1 Fortuno), Police Officer 3 Valre Serfino (PO3 Serfino), SPO1 Peter Joseph Villanueva (SPO1 Villanueva), and several others to conduct a surveillance in the area. After coordination^[8] with the Philippine Drug Enforcement Agency (PDEA) and the Marikina City Police, the buy-bust team agreed to conduct

its entrapment operation the following day or on October 3, 2015. In preparation, SPO1 Fortuno, as poseur buyer, placed his initials "LQF" on one (1) P100.00 and two (2) P50.00 bills, which were to serve as buy-bust money.^[9]

On October 3, 2015, at around two (2) o'clock in the morning, the buy-bust team proceeded to the target area. SPO1 Fortuno and the confidential informant approached a house with an old gate, whereupon the latter knocked and was answered by a tall man wearing eyeglasses. The informant remarked to him, "*Borong, mukhang may tama ka na. Iiskor kami para kami rin* (Borong, looks like you are already high. We want to score so we can get high, too)" to which alias "Borong," who was later identified as accused-appellant, replied, "*Sige merong isa na lang dito. Kunin niyo na* (Ok, I only have one left. You can have it)." Thus, SPO1 Fortuno handed over the marked money to accused-appellant, which the latter inserted in his right pocket. Accused-appellant went inside the house and upon his return, gave SPO1 Fortuno one (1) transparent heat-sealed plastic sachet containing white crystalline substance.^[10]

The sale having been consummated, SPO1 Fortuno performed the prearranged signal, prompting the rest of the buy-bust team to rush in and apprehend accused-appellant. SPO1 Fortuno retrieved the marked money from accused-appellant's pocket. However, accused-appellant ran towards another house, where he remained hiding until Barangay Chairman Mary Jane Dela Rosa (Brgy. Chairman Dela Rosa) and Barangay Ex-O Rolando Abadam (Brgy. Ex-O Abadam) were summoned to convince him to surrender to the police.^[11]

Thereafter, accused-appellant was taken to the barangay office of Barangay Concepcion Dos, Marikina City where SPO1 Fortuno prepared an inventory^[12] and marked the confiscated plastic sachet containing white crystalline substance with "ABD 10-3-15" and the buy-bust money in the presence of accused-appellant, Brgy. Chairman Dela Rosa, and Brgy. Ex-O Abadam. Meanwhile, SPO1 Villanueva took photographs.^[13]

At the police station later on, SPO1 Villanueva prepared the Request for Laboratory Examination.^[14] Subsequently, SPO1 Fortuno brought the confiscated substance, as well as the Request for Laboratory Examination, to the Eastern Police District Crime Laboratory Office, which were duly received^[15] by Police Chief Inspector Margarita Libres (PCI Libres), the forensic chemist. After qualitative examination,^[16] the seized plastic sachet, which contained white crystalline substance weighing 0.16 gram, tested *positive* for Methamphetamine Hydrochloride, a dangerous drug.^[17]

In defense, accused-appellant denied the charge and claimed that on the date and time in question, he was helping his sister-in-law prepare food for his niece's baptism when he heard a noise from the gate. Thinking that it was the delivery of coconuts that his sister-in-law was expecting, he opened the gate and saw a vehicle with three (3) men, one of whom was signaling to him to approach the vehicle. As he drew closer, he suddenly felt a gun poked at his back. When the men attempted to board him inside the vehicle, he suddenly knelt down on the ground to keep them from boarding him in the vehicle. Seeing that the gate was still open, he ran back towards the house where he stayed until his father convinced him to go to the barangay hall with the men allegedly for verification purposes only. It was at the

barangay hall that he learned that the persons who were apprehending him were the policemen. Accused-appellant was likewise surprised when the police officers produced a plastic sachet and claimed that they confiscated it from him, which he denied.^[18]

In a Decision^[19] dated January 18, 2017, the RTC found accused-appellant guilty beyond reasonable doubt as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.^[20] In convicting accused-appellant, the RTC found that all the elements of Illegal Sale of Dangerous Drugs had been established in this case, to wit: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. The RTC gave credence to the testimony of SPO1 Fortuno and held that the integrity of the *corpus delicti* was preserved in this case, considering the marking, inventory, and taking of photographs of the petitioner, the marked money, and the seized drugs. The RTC held that while it is true that the inventory was signed only by elected officials, *i.e.*, Brgy. Chairman Dela Rosa and Brgy. Ex-O Abadam, the presence of a representative from the media or the National Prosecution Service (NPS), as required under RA 10640,^[21] can be dispensed with considering that at two (2) o'clock in the early morning, the time when petitioner was arrested, the presence of the member of the NPS or the media cannot be secured.^[22]

Further, the chain of custody of the seized item was observed, as SPO1 Fortuno personally brought the seized item and the Request for Laboratory Examination to the PNP Crime Laboratory and was received by PCI Libres, the forensic chemist.^[23]

Accused-appellant's Motion for New Trial^[24] was denied in an Order^[25] dated March 8, 2017; hence, he appealed^[26] to the CA.

In a Decision^[27] dated July 19, 2018, the CA upheld accused-appellant's conviction,^[28] echoing the RTC's finding that the elements of the offense of Illegal Sale of Dangerous Drugs have been established and that failure to comply with the requirements of Section 21, Article II of RA 9165 was not fatal. It found that the chain of custody of the confiscated substance has been complied with, thereby preserving the integrity and evidentiary value of the *corpus delicti*. Like the RTC, the CA rejected accused-appellant's defense of denial. It held that accused-appellant failed to show any ill motive on the part of the police officers to arrest and frame him up for the said offense.^[29]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the conviction of accused-appellant for violation of Section 5, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,^[30] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.^[31] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt which therefore warrants an acquittal.^[32]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[33] Thus, as part of the chain of custody procedure, the apprehending team is mandated, immediately after seizure and confiscation, to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media AND the Department of Justice (DOJ), and any elected public official;^[34] or (b) if *after* the amendment of RA 9165 by RA 10640,^[35] an elected public official and a representative of the NPS^[36] OR the media.^[37] The presence of these witnesses safeguards "the establishment of the chain of custody and remove[s] any suspicion of switching, planting, or contamination of evidence."^[38]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.^[39] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"^[40]

Be that as it may, however, the Court acknowledges that strict compliance with the chain of custody procedure may not always be possible.^[41] During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.^[42] The foregoing is based on the saving clause found in Section 21 (a),^[43] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[44] However, in *People v. Almorfe*,^[45] the Court stressed that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses.^[46] Further, in *People v. De Guzman*,^[47] the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.^[48]

With regard to the witness requirement, non-compliance therewith may be permitted only if the prosecution proves that the ***apprehending officers exerted genuine and sufficient efforts to secure their presence***, although they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the primary objective is for the Court to be convinced that the

failure to comply was reasonable under the given circumstances.^[49] Thus, ***mere statements of unavailability***, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.^[50] These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.^[51]

The arrest of accused-appellant in this case transpired after the effectivity of RA 10640, the amendatory law of Section 21, Article II of RA 9165. Thus, the witnesses required in this case are an elected public official and a representative of the NPS *OR* the media.

In this case, although the inventory and photography of the seized items were conducted in the presence of Brgy. Chairman Dela Rosa and Brgy. Ex-O Abadam, both elected public officials, records are bereft of evidence to show that a representative of the NPS or the media was also present thereat. Regrettably, no explanation has been offered for their absence and no testimony has been given to prove that there were genuine and earnest efforts exerted to secure their presence, as jurisprudentially required. In fact, there was not even an *attempt* to contact these witnesses, especially given the fact that the police officers received the confidential information from their asset on October 2, 2015 and the buy-bust operation was put into action in the early morning of October 3, 2015, thereby giving the police officers sufficient time to contact any member of the NPS *or* the media. Indeed, while the RTC took judicial notice of the fact that the Office of the City Prosecutor of Marikina City does not have a night-shift public prosecutor^[52] who could be invited to witness the inventory and photography in this case, the police officers had ample time to contact them during the daytime of October 2, 2015. Moreover, RA 10640 requires the presence of an elected public official and a representative of the NPS **OR** the media; thus, the police officers even had the option who among these witnesses would be more convenient for them to find. The police officers cannot mask their non-compliance by stating that they were not able to contact any of the required witnesses when the same was made only at such an ungodly hour rather than well beforehand knowing that the buy-bust operation was planned to be conducted at that time. This failure on the part of the prosecution was not justified, thereby rendering the integrity and evidentiary value of the seized items to be highly compromised, consequently warranting accused-appellant's acquittal.

As a final word, the Court reiterates its pronouncement in *People v. Miranda*^[53] reminding prosecutors that, when dealing with drugs cases, "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."^[54]