

SECOND DIVISION

[G.R. No. 205871, June 27, 2016]

RUEL TUANO Y HERNANDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

RESOLUTION

LEONEN, J.:

Before us is a Motion for Reconsideration of this Court's June 23, 2014 unsigned Resolution^[1] affirming the Court of Appeals' June 8, 2012 Decision^[2] and February 12, 2013 Resolution.^[3] The Court of Appeals affirmed in toto the Regional Trial Court Decision that found petitioner Ruel Tuano y Hernandez guilty beyond reasonable doubt of violating Article II, Section 11(3) of Republic Act No. 9165, and sentenced him to suffer imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a P300,000 fine.^[4]

Petitioner argues non-compliance with Dangerous Drugs Board Regulation No. 3, series of 1979, as amended by Dangerous Drugs Board Regulation No. 2, series of 1990, on the proper procedure for handling seized dangerous drugs.^[5] Specifically, the apprehending officers did not conduct inventory nor take photographs of the evidence. They did not give any explanation for such failure.^[6] These duties are likewise found in the 2010 Philippine National Police Manual on Anti-Illegal Drugs Operation and Investigation.^[7] Marking on the plastic sachet was not immediately made after arrest, but was made in the office.^[8]

Petitioner also raises the illegality of his warrantless arrest, in that the circumstances do not show he "has committed, was about to commit, or was actually committing a crime."^[9] The circumstances also do not engender a probable cause against him, pursuant to Rule 113, Section 5 of the Revised Penal Code.^[10] Police Office 2 Jerry Santos (PO2 Santos) even admitted that he was uncertain what petitioner was holding when he saw petitioner from his vehicle.^[11] Petitioner submits that PO2 Santos was on a mere "fishing expedition."^[12] Petitioner submits that the exclusionary rule under Article III, Section 3(2) of the Constitution,^[13] on the inadmissibility as evidence of products of unreasonable searches, applies in this case.^[14]

Respondent filed a Comment^[15] on the Motion for Reconsideration, to which petitioner filed a Reply.^[16] Respondent reiterates that non-compliance with Section 21 of Republic Act No. 9165 does not render the confiscated items inadmissible if it is clearly shown that its integrity and evidentiary value was preserved.^[17] Respondent emphasizes that there was no significant lapse of time from petitioner's apprehension, the apprehending police's marking of the confiscated sachet, up to its

submission for laboratory testing.^[18] Respondent also reiterates the admissibility of the confiscated sachet as evidence, since it proceeded from a warrantless search incident to a lawful arrest.^[19]

I

Recalling the facts, an Information^[20] charged petitioner with illegal possession of "one (1) heat-sealed transparent plastic sachet with 0.064 (zero point zero six four) gram of white crystalline substance, known as 'shabu'"^[21]

The prosecution alleged that on March 11, 2003 at around 2:30 p.m., PO2 Santos and PO2 Eduardo Bernardo were conducting surveillance patrol.^[22] While driving along Kahilum I, Pandacan, Manila, they saw petitioner waving a small plastic sachet containing a white crystalline substance they suspected to be "shabu."^[23] PO2 Santos approached petitioner, introduced himself as a police officer, and inquired about the sachet. Petitioner simply replied, "[S]orry."^[24] PO2 Santos confiscated the sachet and brought petitioner to the police station for investigation.^[25] He marked the plastic sachet with the initials "RHT" then turned it over to police investigator PO2 Llorete.^[26] They prepared the documents required for filing a case. The confiscated substance brought to the crime laboratory yielded positive for methylamphetamine hydrochloride.^[27]

Petitioner countered that he was standing along the alley of Kahilum I, Pandacan, Manila with his companion "Tek-tek" when police officers arrived to arrest a "Len-len."^[28] "Len-len" escaped and the police officers arrested them instead. When petitioner asked for the reason of his arrest, he was told it was for buying "shabu."^[29] Petitioner claimed he was just standing there, but the police officers handcuffed him and brought him to the police station.^[30]

After a second hard look at the facts, this Court resolves to reverse its earlier ruling and acquit petitioner.

II

Recent jurisprudence emphasize that "[l]aw enforcers should not trifle with the legal requirement to ensure the integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."^[31]

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides:

SEC. 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment *shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the 'National Prosecution Service or the media 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, finally, That noncompliance of 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 and custody over said items.*

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]*

[32] (Emphasis supplied)

Mallillin v. People^[33] discussed the importance of complying with the required procedures in Section 21 in relation to the unique nature of narcotic substances:

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. Graham vs. State positively acknowledged this danger. In that case where a substance later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession was excluded from the prosecution evidence, the court pointing out that the white powder seized

could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard* that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.^[34] (Emphasis supplied, citations omitted)

The recitation of facts, both in the Regional Trial Court Decision^[35] and in the Court of Appeals Decision,^[36] does not state that a physical inventory of the confiscated sachet was conducted, or that photographs of it were taken in the presence of petitioner or his representative or counsel. There is also no factual finding that this was done "with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof."^[37] The statutory safeguards enacted in Section 21 of Republic Act No. 9165 were not observed. There is also no showing of "justifiable grounds"^[38] for the non-compliance with the requirements as to trigger such exception.

While this Court has ruled that "the failure of the policemen to make a physical inventory and to photograph the confiscated items are not fatal to the prosecution's cause,"^[39] more recent cases^[40] highlight the need for strict compliance with the legal requirements to protect the integrity of the chain of custody, more so when the miniscule quantity of the confiscated substance—0.064 gram, in this case—underscores the need for exacting compliance with Section 21. In *People v. Holgado*:^[41]

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered.

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