

SPECIAL EIGHTEENTH DIVISION

[CA-G.R. CEB-CR NO. 01344, March 27, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE. VS.
CARLITO DE LOS SANTOS ERBITO, ACCUSED-APPELLANT.**

D E C I S I O N

DIY, J.:

Before this Court is an Appeal assailing the Decision^[1] dated January 5, 2009 of Branch 58, Regional Trial Court of Cebu City (hereafter, the "court a quo") in Criminal Case No. CBU-78530 entitled "People v. Carlito Delos Santos Erbito", which found Carlito Delos Santos Erbito (hereafter, "accused-appellant") guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the Decision reads:

Accordingly, the court finds the accused GUILTY as charged and hereby sentences him to suffer the penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum and to pay a fine of P300,000.00

The full period of preventive detention shall be credited in the service of this sentence.

Finally, the 2 sticks of (Exh. B) are confiscated in favor of the state for proper disposition.

SO ORDERED.

In an Information^[2] docketed as Crim. Case No. CBU-78530, herein accused-appellant was charged with violation of Section 11, Article II of Republic Act No. 9165, viz:

That on or about the 23rd day of November 2006, at about 2:30 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and under his control two (2) sticks of marijuana cigarette weighing .25 gram, a dangerous drug, without being authorized by law.

CONTRARY TO LAW.

Accused-appellant was arraigned on January 16, 2007.^[3] He pleaded not guilty. Pre-trial was conducted. Thereafter, trial on the merits ensued.

The Prosecution's evidence,^[4] as culled from the testimony of PO3 Michael Ernie (hereafter, "PO3 Ernie"), SPO1 Eduardo Deligero (hereafter, "SPO1 Deligero"), and PO1 Jerry Macabudbud (hereafter, "PO1 Macabudbud"), is as follows:

On November 23, 2006, at around 2:30 o'clock in the afternoon, while manning their office at the Parian police station, SPO1 Deligero, PO1 Dioscoro Ello, Jr., PO1 Macabudbud, and PO3 Ernie received information regarding a trouble alarm at the corner of Mabini and Colon Streets, which is 40 to 50 meters away from the station.

With the foregoing information, the team immediately proceeded to the area. On their way, they met the woman victim Andresa Alburo (hereafter, "Alburo") whose face was bleeding. Alburo pinpointed to them accused-appellant as the person who robbed her. The police officers, followed by Alburo, then gave chase to accused-appellant who was more or less five (5) meters away. They were able to get hold of accused-appellant at Binagayan Street. Alburo then identified the suspect who robbed and mauled her. The police officers arrested accused-appellant and recovered from his hand the items taken from Alburo (a brown shoulder bag containing her Nokia 6600 cellphone, P18,000.00 cash, two ^[2] gold bracelets, and one ^[1] earring). Alburo informed them that her gold necklace was also taken from her but it was not included in the recovered items. Hence, SPO1 Deligero conducted a body search. Instead of recovering the necklace, SPO1 Deligero recovered two (2) marijuana sticks from the secret pocket of accused-appellant.

Accused-appellant was brought to the police station, with the two sticks of marijuana which were allegedly recovered from him. In going to their office, SPO1 Deligero was in possession of the two sticks of marijuana.

At the station, SPO1 Deligero marked the two (2) marijuana sticks as "CDE 11/23/06-A" to "CDE 11/23/06-B". A letter-request for laboratory examination was then prepared. The two (2) marijuana sticks were then brought by PO1 Ello and PO1 Macabudbud to the PNP Regional Crime Laboratory-7 at Camp Sotero Cabahug, Cebu City for examination. Forensic Chemical Officer Jude Daniel Mendoza (hereafter, "Mendoza") examined the seized items. Mendoza found that the seized sticks are positive for marijuana, a dangerous drug. Mendoza later prepared the corresponding Chemistry Report No. D-1841-2006.^[5]

The Version of the Defense

The Defense, on the other hand, presented as sole witness accused-appellant himself, who testified as follows:^[6]

On November 23, 2006, at about 1:00 o'clock in the afternoon, accused-appellant was on his way home from his workplace at Carmel Display Center located behind Barangay Lorega. He first boarded a jeepney going to Colon Street and disembarked near the police station at Parian to board another jeepney going to Alaska, Mambaling. Upon crossing the street at Parian, he saw a woman being held by a man. Accused-appellant approached the duo and asked the man to release the woman because the woman was already bleeding. The man told him not to interfere. However, when the man picked something from the ground, accused-appellant bumped the man and held him. While they were grappling, the woman fell

to the ground unconscious. The man tried to pull out a knife from his back but accused-appellant got hold of the man's hand. Accused-appellant then twisted the arm of the man and hit the latter with his elbow, prompting the man to release the knife. The man then ran away. Accused-appellant gathered the items of the woman which were scattered on the ground and waited for the police to arrive. Three persons then arrived, kicking accused-appellant at the right portion of his waist. He became unconscious and the trio continued to maul him. Accused-appellant gained consciousness inside the police station. Thereat, the police asked him why he robbed the woman and he answered that he was only helping the lady. Accused-appellant was also mauled by the police inside the detention cell. He was asked the name of his companion, and if he did not disclose it, the investigating policeman would plant evidence (shabu) against him. Accused-appellant was also informed that he would be released if he had money. He told the policeman that he had no money.

On January 5, 2009, the court *a quo* rendered the assailed Decision,^[7] which found accused-appellant guilty beyond reasonable doubt of violation of Section 11, Article II, of Republic Act No. 9165.

On January 21, 2009, accused-appellant filed his Motion for Reconsideration.^[8] Comment/Opposition^[9] was filed by the prosecution on February 20, 2009, while the Rejoinder to the Comment/Opposition^[10] was filed by accused-appellant on the same day.

On April 17, 2009, the court *a quo* issued an Order denying the Motion for Reconsideration.^[11]

On April 29, 2009, accused-appellant filed his Notice of Appeal.^[12] In the Order^[13] dated May 4, 2009, the Notice of Appeal was given due course by the court *a quo*, and the records of the case were ordered elevated to this Court.

The Appeal of accused-appellant presented the following assignment of errors:

I

THE TRIAL COURT ERRED IN RULING THAT THE WARRANTLESS ARREST WAS VALID[.]

II

THE TRIAL COURT COMMITTED AN ERROR IN RULING THAT THE SEARCH WAS PERMITTED BEING INCIDENTAL TO A LAWFUL ARREST[.]

III

THE TRIAL COURT FAULTED IN AFFIRMING THE IDENTITY OF THE SEIZED DRUGS DESPITE NON-COMPLIANCE WITH SECTION 21 OF RA 9165[.]

The issues are: a) whether or not there is proof beyond reasonable doubt of the guilt of the accused-appellant for the crime of illegal possession of drugs; and b) whether or not the warrantless arrest and search were valid.

In his Appellant's Brief,^[14] accused-appellant strongly asserts that he should have been acquitted because there was no valid arrest under "hot pursuit" and no valid search conducted subsequent to a valid arrest. Accused-appellant contends that there was failure to comply with Section 21, paragraph 1, Article II of Republic Act No. 9165 because the marking was not made at the place where the drug was confiscated, no physical inventory was conducted, and no photographs were taken.

The Republic in its Brief^[15] alleges that the prosecution was able to prove beyond reasonable doubt the guilt of accused-appellant as all the elements necessary for his prosecution were present in this case. Further, the Republic claims that accused-appellant was validly arrested and the evidence obtained from him is admissible in evidence. Finally, it is claimed that failure to comply strictly with Section 21 of R.A. No. 9165 is not fatal because there was preservation of the integrity and the evidentiary value of the seized items, and the elements of the crime had been sufficiently proven.

The Ruling of the Court

We deny the appeal.

At the outset, We observe that nowhere in the records do We find any objections by accused-appellant with regard to the irregularity of his arrest before his arraignment.^[16] Considering this, and accused-appellant's active participation in the trial of the case, jurisprudence dictates that accused-appellant is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.

Moreover, the legality of an arrest affects only the jurisdiction of the court over his person.^[17] Accused-appellant's warrantless arrest, therefore, cannot, in itself, be the basis of his acquittal.

However, to determine the admissibility of the seized drugs in evidence, it is indispensable to ascertain whether or not the search which yielded the alleged contraband was lawful. Accused-appellant maintains that the two (2) marijuana sticks found in his possession were not a product of a valid search and seizure as an incident of a valid warrantless arrest.

We are not convinced.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the occasions during which a person may be arrested without a warrant. It reads:

Section 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that

the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x.

From the aforequoted Rule, there are three (3) instances when a warrantless arrest may be lawfully effected: (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (arrest in *flagrante delicto*); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners).^[18]

Under Section 5(b) of the aforequoted rule, two conditions must concur for a warrantless arrest to be valid: first, the person to be arrested must have just committed an offense, and second, the arresting peace officer or private person must have personal knowledge of facts indicating that the person to be arrested is the one who committed the offense.^[19]

Personal knowledge of facts in arrests without a warrant under Section 5(b) of Rule 113 must be based upon "probable cause" which means "an actual belief or reasonable grounds of suspicion." The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion must, therefore, be founded on probable cause, coupled with good faith on the part of the peace officer making the arrest.^[20]

Here, the arresting officers had probable cause to effect the warrantless arrest. The testimony of PO3 Ernie disclosed the succeeding incident after the police station received the report of the alleged holdup. Reproduced herein are salient portions of his testimony, viz:^[21]

xxx

Q: What did your team do then after receiving the said alarm?

A: We responded by immediately proceeding to the area.

Q: What happened while you went to the said place if any?

A: On our way to the area we met a woman whom we later identified as Andresa Alburo