

TWELFTH DIVISION

[CA-G.R. CR. No. 32908, March 14, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ORLANDO PURIFICACION Y BANDELARIA, ACCUSED-APPELLANT.**

D E C I S I O N

ELBINIAS, J.:

At bench is an Appeal^[1] from the Decision^[2] dated August 7, 2009 of the Regional Trial Court, Branch 55 of Lucena City ("trial court" for brevity) in Criminal Case Nos. 2006-87 and 2006-171 for violation of Section 11 (Illegal Possession of a Dangerous Drug), and Section 12 (Illegal Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) of Republic Act No. 9165 ("R.A. No. 9165" for brevity), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

In Criminal Case No. 2006-87, the conviction of accused-appellant Orlando Purificacion y Bandelaria ("accused-appellant Purificacion" or "accused-appellant" for brevity) stemmed from an Information^[3] for "Possession of Dangerous Drugs"^[4] dated August 25, 2005 that read as follows:

"That on or about the 15th day of December 2004, at Barangay San Roque Zone 2, Municipality of Tayabas, Province of Quezon, Philippines, and with the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets each containing Methamphetamine Hydrochloride (shabu), a dangerous drug, weighing 0.10 and 0.04 gram and six (6) heat-sealed transparent plastic sachets each containing 'Marijuana', also a dangerous drug, weighing 1.80, 1.82, 2.70, 1.53, 1.32 and 2.14 grams or with a total weight of 11.31 grams.

Contrary to law."^[5]

In Criminal Case No. 2006-171, the conviction of accused-appellant Purificacion arose from an Information^[6] for "Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs"^[7] dated August 25, 2005 which stated as follows:

"That on or about the 5th day of December 2004, at Barangay San Roque Zone 2, Municipality of Tayabas, Province of Quezon, 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 have in his possession, custody and control one (1)

improvised tooter which is fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body.

Contrary to law.”^[8]

The prosecution presented the testimonies of Police Senior Inspector Donna Villa Huelgas (“PSI Huelgas” for brevity), PO2 Andres B.N. Esmiller (“PO2 Esmiller” for brevity) and SPO1 Roberto Aguilar (“SPO1 Aguilar” for brevity), in order to prove the following:

On December 15, 2004, the Intelligence Section of Tayabas Municipal Police Station received a report about the suspected selling of shabu near Tayabas Bakery (“target area” for brevity) located at Barangay San Roque, Zone 2, Tayabas, Quezon.^[9] PO2 Esmiller, together with PO1 Mago, PO1 Rallos, PO1 Ebina and SPO1 Aguilar, acting on that report, conducted a surveillance operation on the target area at around 9:45 in the evening^[10] of the same day.

According to PO2 Esmiller, when their team arrived at the target area, he saw accused-appellant Purificacion talking to a man.^[11] When the team approached them, the other man ran away but accused-appellant stayed. PO1 Rallos^[12] ran after the other man but was unable to catch him.^[13]

Meanwhile, PO2 Esmiller and PO2 Mago^[14] introduced themselves as police officers to accused-appellant. Accused-appellant was surprised.^[15] According to PO2 Esmiller, PO1 Mago recovered two (2) plastic sachets from accused-appellant, which sachets were suspected as containing shabu.^[16]

PO2 Esmiller also recovered from accused-appellant, six (6) tea bags of suspected marijuana, a plastic drinking glass containing marijuana, and one (1) improvised tooter^[17]. Accused-appellant admitted to SPO1 Aguilar that he owned the items.^[18]

Afterwards, PO1 Ebina and SPO1 Aguilar^[19] brought accused-appellant to the Tayabas Police Station for further investigation,^[20] and brought along with them the seized items.^[21] There, SPO1 Aguilar saw PO1 Ebina put the marking “IZE” on the items.^[22] On December 16, 2004, the marked items were brought by PO1 Ebina and SPO2 Aguilar to the crime laboratory.^[23]

Among the pertinent results of the chemical examination conducted by PSI Huelgas on the confiscated items were the following:

“CHEMISTRY REPORT NO. D-1736-04

xxx

FINDINGS:

Qualitative examination conducted on the above-mentioned specimens gave the following results:

1. Specimens A and B – **POSITIVE** to the tests for the presence of **Methamphetamine hydrochloride**, a dangerous drug.

2. Specimens C through J – **POSITIVE** to the tests for the presence of **Marijuana**, a dangerous drug.”^[24]

On the other hand, the defense presented the testimonies of accused-appellant Purificacion, and Arnel Sumilang (“Sumilang” for brevity), in order to establish the following:

On December 15, 2004, at about seven or seven thirty-five in the evening, accused-appellant was buying “tasty bread” in a bakery^[25] located at Quezon Avenue, Tayabas, Quezon^[26]. Accused-appellant was about to pay the bread he bought when he noticed that police officers were running after a man with a bag. The man dropped the bag at the corner of the bakery.^[27] However, the police officers failed to catch the man, who later turned out to be Dondon Flores.^[28]

Afterwards, accused-appellant saw the police officers take the bag. Then, the police officers approached accused-appellant because the police officers suspected that accused-appellant was the companion of the man they were chasing.^[29] Despite accused-appellant's insistence that the bag was not his, the police officers arrested him and forcibly brought him to the police station.^[30]

Consequently, two (2) sets of Information were filed by the Office of the Provincial Prosecutor of Quezon against accused-appellant: one for “Possession of Dangerous Drugs”^[31]; the other for “Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs”^[32].

Accused-appellant Purificacion pleaded “NOT GUILTY”^[33] to both offenses.

Eventually, accused-appellant was found guilty of both offenses by the trial court in its Decision^[34] of August 7, 2009. The dispositive portion of the Decision read:

“WHEREFORE, judgment is hereby rendered finding the accused guilty of violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 2006-87 and is sentenced to the Indeterminate penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years, eight (8) months, and one (1) day as maximum and to pay a fine (sic) of P300,000.00. He is likewise found guilty of violation of Section 12, Article II, R.A. 9165 in Criminal Case No. 2006-171, and is sentenced to the indeterminate penalty of six (6) months and one (1) day as minimum to two (2) years and four (4) months as maximum.

The shabu, marijuana, and the improvised tooter subject matter of the two (2) cases are confiscated in favor of the government and the Branch Clerk of this Court is hereby directed to forward them to the PDEA for its proper disposition.

SO ORDERED.”^[35]

Accused-appellant, in filing the Appeal at bench, prayed that “the Decision of the court a quo dated August 7, 2009 and promulgated on September 22, 2009, be reversed and set aside and that another judgment be rendered acquitting accused-appellant Orlando Purificacion y Bandelaria.”^[36]

Appealing from his conviction, accused-appellant raised the following assignment of errors:

"ASSIGNMENT OF ERRORS

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL CREDENCE TO THE VERSION OF THE PROSECUTION AND FINDING THE ACCUSED GUILTY OF VIOLATION OF SECTIONS 11 AND 12, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSES CHARGED BEYOND A [sic] REASONABLE DOUBT

II

THE COURT A QUO GRAVELY ERRED IN UPHOLDING THE PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY OVER THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PATENT ILLEGALITY OF HIS ARREST

IV.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 11 AND 12, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG AND PARAPHERNALIA ALLEGEDLY FOUND IN HIS POSSESSION."^[37] (*Emphasis were made in the original*)

In the prosecution of illegal possession of drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law, and; (3) the accused freely and consciously possesses the drug.^[38]

In the prosecution of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs the following elements must concur: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.^[39]

Here, the prosecution witnesses PO2 Esmiller and SPO1 Aguilar had positively identified accused-appellant Purificacion as the person who was arrested by them having in his possession, without authority, illegal drugs and drug paraphernalia.

This positive identification by the prosecution witnesses of accused-appellant prevails over accused-appellant's defense of denial in that the charges against him were false, and that the dangerous drugs and drug paraphernalia were not

recovered from him but were left in a bag by a certain Dondon Flores. Such a defense of denial is a common defense ploy that can be easily feigned and fabricated.^[40]

In the absence of evidence of any ill-motive on the part of the police officers who apprehended accused-appellant, as was so here, the presumption of regularity in the performance of duty prevails.^[41]

All of these were as similarly found by the trial court, to wit:

“The Court is not persuaded by the defense of denial interposed by accused Purificacion which was sought to be corroborated by his barangay mate Arnel Sumilang who identified the other man as Dondon Flores who ran away while talking to the accused when he saw policemen coming on the date and time in question. They would like to impress the Court that the charges are false and that the dangerous drugs and drug paraphernalia submitted as evidence in court were not actually recovered from Purificacion but were left in a bag by the man who scampered away. **Their assertion is self serving and cannot prevail over the positive assertions of the police officers who were not shown to have any ill motive or intention to frame-up the accused and falsely testify against him in court.**”^[42] (*Emphasis supplied*)

Contrary to accused-appellant's *assignment of error III*, he was validly arrested.

In arguing that he was illegally arrested, accused-appellant alleged:

“The warrantless arrest of accused-appellant was effected under Sec. 5(a), arrest of a suspect in flagrante delicto. For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

In the cases at bar, the accused was not doing anything when he was arrested. That is SPO1 Aguilar's reply to the query of the court a quo.”^[43]

Defeating accused-appellant's arguments however, is that accused-appellant failed to object to the legality of his arrest prior to entering his plea during arraignment. Accused-appellant's failure to do so was deemed as a waiver on his part to object to such legality, pursuant to the following pronouncement of the Supreme Court in ***People of the Philippines vs. Arturo Lara y Orbista, G.R. No. 199877, August 13, 2012***:

“Jurisdiction over the person of the accused may be acquired through compulsory process such as a warrant of arrest or through his voluntary appearance, such as when he surrenders to the police or to the court. **Any objection to the arrest or acquisition of jurisdiction over the person of the accused must be made before he enters his plea, otherwise the objection is deemed waived. An accused submits to the jurisdiction of the trial court upon entering a plea and**