

FORMER ELEVENTH DIVISION

[CA-G.R. CR-H.C. NO. 04192, March 13, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NIÑO
ERWIN REDONA Y SAMOY AND DIANA BUCO Y MANDAP,
ACCUSED-APPELLANTS.**

AMENDED DECISION

In a decision^[1] dated January 31, 2013, this Court denied the appeal of accused-appellants from the decision of the trial court finding accused-appellant Niño Erwin Redona y Samoy guilty beyond reasonable doubt of possession of dangerous drug in violation of Section 11, Article II of RA 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002 and accused-appellant Diana Bucu y Mandap guilty beyond reasonable doubt of attempt to sell and give away dangerous drug in violation of Section 26, Article II of RA 9165 in relation to Section 5 of the same law.

Accused-appellant Niño Erwin Redona now seeks reconsideration of the decision of this Court on the ground that the evidence does not establish his guilt beyond reasonable doubt because:

1) The arrest of accused-appellant Redona was unlawful and the evidence obtained from him is inadmissible in evidence against him and;

2) The chain of custody rule was broken.

After examining the allegations in the instant Motion for Reconsideration^[2], this Court finds that while the conviction of accused-appellant Diana Bucu should be upheld on the basis of the evidence of the prosecution showing her guilt beyond reasonable doubt of the offense of attempt to sell and give away dangerous drug pursuant to Section 26, Art. II of RA 9165, the conviction of accused-appellant Niño Erwin Redona for possession of dangerous drug in violation of Section 11, Article II of RA 9165 should be reversed and set aside after a second look at the records of the case and evidence presented by the prosecution.

A perusal of the records shows that the prosecution was not able to adequately prove that accused-appellant Redona was committing any offense before or during the time that he was arrested by prosecution witness SPO1 Amurao. Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to accused-appellant Redona as to rouse suspicion in the mind of SPO1 Amurao that accused-appellant had just committed, was committing, or was about to commit a crime, for the acts per se of staying in a vehicle or previously talking to a suspected criminal, i.e., co-accused Bucu before the latter met with the poseur buyer for the attempted sale of dangerous drug, cannot in any way be

considered criminal acts. In fact, even if accused-appellant Redona had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for SPO1 Amurao to effect a lawful warrantless arrest under paragraph (a) of Section 5, Rule 113. Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, i.e., that an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.^[3] Consider the following testimony of SPO1 Amurao:

"Q: While you were there at four in the morning of 25 August 2007 what if any information was received by your office in relation to your duties as drug operative?

A: An informant arrived in our office who was entertained by our Chief, Col. Napoleon Villegas, sir.

Q: This informant is this a male or female?

A: Male, sir.

Q: And what if any information did he give to your office on that particular morning?

A: As far as I remember he could order a "shabu" on that day, sir.

Q: How did you know that?

A: It was relayed to us during the briefing by our Chief, sir.

Q: And what if any other information did he give you in so far as the identity of the person from whom he was able to strike a deal?

A: He will give the description of the person whom the shabu will be ordered, sir.

Q: What description was given to you?

A: As far as I remember it fits the description of accused Diana Buco, sir.

Q: You said that there was an information given to your office by your informant?

A: Yes, sir.

Q: That he was able to strike a drug deal?

A: Yes, sir.

Q: And then to whom was your informant able to strike a deal if you know?

A: As far as I remember we contacted a certain Ronald, sir.

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Q: Now, how much money was given to Melendrez as buy-bust money?

A: As far as I remember, four (4) pieces of five hundred peso bill was given to Melendrez together with the boodle money, sir.

Q: So the money was given to Melendrez, why was Melendrez given the money?

A: Because he was assigned as the poseur buyer, sir.

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Q: Earlier ago you testified that the description fitted to the description of accused Diana Buco why was it that there was a description about Diana Buco?

A: Because according to the conversation between Ronald and the informant they will just ask somebody to bring the item, sir.

Q: How did you know that there was a conversation to that effect?

A: It was relayed to us during the briefing, sir.

Q: Who was the person who was supposed to bring the item as per conversation?

A: Based on the description a female will bring the item, sir.

Q: And where would the place be where the item would be delivered?

A: At Jollibee Food Chain, Alabang Zapote Road in Muntinlupa, sir.

Q: What time would be the item delivered in Jollibee?

A: To my knowledge around 4:00 P.M., sir.

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Q: Where did you position yourself?

A: We parked in front of Jollibee at the parking space, sir.

Q: What about the Revo where Melendrez was boarded where was this Revo parked?

A: The same area in front of Jollibee, sir.

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Q: So after that what happened next?

A: At around 3:45 P.M. a Honda Civic colored cream arrived, sir.

Q: What happened next after a Honda Civic colored cream arrived?

A: A female alighted from the vehicle and she fitted the description of the person who will bring the item, sir.

Q: She fitted the description of the person who will bring the item, why what was the description given?

A: A short female person around 40 years old, sir.

Q: What else did you observe after a woman alighted from Honda Civic?

A: She approached Melendrez and the informant as if they conversed and they went inside the Jollibee, sir.

Q Where were Melendrez and the informant when the woman approached them?

A They were near the door of Jollibee, sir.

Q: How far were you from them when you observed them?

A: Around ten (10) meters away from them, sir.