



Republic of the Philippines  
Supreme Court  
Baguio City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 199219

Present:

CARPIO, J.,  
Chairperson,  
VELASCO, JR.,\*  
BRION,  
DEL CASTILLO, and  
PEREZ, JJ.

-versus-

GERRY OCTAVIO Y  
FLORENDO and REYNALDO  
CARIÑO Y MARTIR,  
Accused-Appellants.

Promulgated:

APR 03 2013 *HR Cabalag/Refectio*

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DECISION

PEREZ, J.:

For review of this Court is the appeal filed by Gerry Octavio (Octavio) and Reynaldo Cariño (Cariño) assailing the 29 March 2011 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03900. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 65, Makati City finding both accused guilty of violating Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002.

\* Per Special Order No. 1437 dated 25 March 2013.

<sup>1</sup> Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rosmari D. Carandang and Samuel H. Gaerlan, concurring. *Rollo*, pp. 2-23.

### **The Antecedents**

On 21 August 2007, three (3) separate Informations were filed before the Regional Trial Court (RTC), Makati City for violations of R.A No. 9165. The first information charges Gerry Octavio y Florendo with violation of Section 5 thereof in the following manner:

#### **CRIMINAL CASE NO. 07-1580**

That on or about the 16<sup>th</sup> day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away Php200.00 worth of [Methamphetamine] Hydrochloride (Shabu) weighing zero point zero two (0.02) gram, a dangerous drug.<sup>2</sup>

The second information charges the same accused with violation of Section 11 of the same law allegedly committed as follows:

#### **CRIMINAL CASE NO. 07-1581**

That on or about the 16<sup>th</sup> day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use dangerous drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of Methamphetamine Hydrochloride (Shabu) each weighing zero point zero two (0.02) gram or a total of zero point zero four (0.04) gram, which is a dangerous drug, in violation of the aforesaid law.<sup>3</sup>

The third information charges Reynaldo Cariño y Martir (Cariño) of violating Section 11 of R.A. No. 9165, to wit:

#### **CRIMINAL CASE NO. 07-1582**

That on or about the 16<sup>th</sup> day of August, 2007, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this

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<sup>2</sup> Records, p. 2.  
<sup>3</sup> Id. at 4.

Honorable Court, the above-named accused, not being lawfully authorized to possess and/or use dangerous drugs and without any license or proper prescription, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of [Methamphetamine] Hydrochloride (Shabu) each weighing zero point zero two (0.02) gram or a total of zero point zero four (0.04) gram, which is a dangerous drug, in violation of the aforesaid law.<sup>4</sup>

### **Version of the Prosecution:**

At around 7:00 o'clock in evening of 16 August 2007, an informant went to the Office of the Makati Anti-Drug Abuse Council (MADAC) to report the alleged rampant illegal drug trafficking activities of Gerry Octavio alias "Buboy" at Pateros Street, *Barangay Olympia*, Makati City.<sup>5</sup>

On the basis of this report, an anti-narcotics team was formed to conduct a buy-bust operation with MADAC operatives Danilo Baysa (Baysa) and Danilo Sumudlayon (Sumudlayon) as the designated poseur-buyer and immediate back-up, respectively. Two (2) pieces of One Hundred Peso bills were pre-marked to be utilized as buy-bust money. Proper coordination was made with the Philippine Drug Enforcement Agency (PDEA) before the team, together with the asset, proceeded to the target area.<sup>6</sup>

Upon arrival at the designated area, the team spotted Octavio conversing with another male person along an alley. MADAC operative Baysa and the asset approached the duo while the rest of the team strategically positioned themselves. The asset, who was familiar with the subject, introduced MADAC operative Baysa as a "scorer" or user of *shabu*. The other male person, however, tried to convince MADAC operative Baysa to buy *shabu* from him instead, at the same time showing two (2) pieces of small heat-sealed transparent plastic sachets containing suspected *shabu*. The subject then introduced his companion to MADAC operative Baysa as alias "Nano" before asking him how much he wanted to purchase. MADAC operative Baysa intimated that he needed ₱200.00 worth of *shabu*, while simultaneously handing over the marked money to the subject who, in turn, gave him one (1) small heat-sealed transparent plastic sachet containing suspected *shabu*.

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<sup>4</sup> Id. at 6.

<sup>5</sup> TSN, 6 October 2008. Id. at 155 and 163.

<sup>6</sup> CA Decision. *Rollo*, pp. 5-6.

The transaction having been consummated, MADAC operative Baysa executed the pre-arranged signal to the rest of the team for assistance. Taking their cue, [PO1 Michelle V. Gimena] (PO1 Gimena) and MADAC operative Sumudlayon rushed to the scene. Meanwhile, MADAC operative Baysa introduced himself before effecting the arrest of the subject, who was later identified as the herein accused Gerry Octavio y Florendo. A routine body search upon his person yielded the marked money, two (2) pieces of small plastic sachets containing suspected *shabu* and another two (2) ₱100 bills. MADAC operative Sumudlayon, on the other hand, was able to arrest alias “Nano,” who was later identified as the herein accused Reynaldo Cariño y Martir. Two (2) pieces of heat-sealed transparent plastic sachets containing the same illegal substance were recovered from his possession.

Thereafter, both of the accused, as well as the confiscated items were brought to the SAID-SOTF office for further investigation and later to the PNP Crime Laboratory for drug test and examination, respectively.<sup>7</sup>

### **Version of the Defense**

Both accused vehemently denied the charges against them. Accused Cariño maintained that at around 6:00 c’clock in the evening of 17 August 2007, he was resting inside his house when four (4) men suddenly entered. They asked him if he was Cesar Martir, referring to his cousin who resided next door. When he did not respond, they handcuffed and boarded him inside their vehicle. One of those on board was MADAC operative Ed Monteza who previously invited him to the barangay hall in connection with an investigation regarding persons suspected to be drug peddlers within the neighborhood. Upon seeing him, MADAC Ed Monteza allegedly told his companions that they arrested the wrong person (“*Hindi iyan ang target natin.*”) Thus, the men returned to the house of Cesar Martir but the latter was already nowhere in sight. They later proceeded to the SAID-SOTF and MADAC office, passing through Pateros Street, Brgy. Olympia, Makati City, where his co-accused Gerry Octavio was also arrested.

For his part, accused Octavio narrated that at around 6:30 o’clock in the evening of 16 August 2007, he was walking along Pateros Street on his way to the house of Sylvia Lopez. Since he worked as a car painter, he was supposed to estimate the cost of materials needed to repaint her vehicle. Along the way, he caught sight of an incoming Mitsubishi L-300 van. When it stopped in front of him, two (2) armed men alighted therefrom and wanted

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<sup>7</sup>

RTC Decision. Records, pp. 139-140.

to know where he was going. They likewise accused him of using illegal drugs (“*Siguro i-iscore ka, ano?*”). Although he denied the accusation, they handcuffed and boarded him just the same inside their vehicle. Once inside, he saw MADAC operative Eduardo Monteza who arrested him sometime in 2003. He likewise saw his co-accused Reynaldo Cariño already on board the van. Upon arrival at the SAID-SOTF office, the men asked if they knew the whereabouts of Cesar Martir. They allegedly threatened to file charges against the accused if they refused to provide any information about him. Since the accused were unable to give any information, an investigator accordingly produced plastic sachets of *shabu* which were allegedly recovered from them.<sup>8</sup>

Upon arraignment, both accused pleaded not guilty to the offenses charged. After pre-trial, trial on the merits ensued.

### **Ruling of the RTC**

On 23 March 2009, the trial court rendered a decision finding both accused guilty beyond reasonable doubt of the offenses charged. In Criminal Case No. 07-1580, accused Octavio was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. In Criminal Case No. 07-1581, he was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen years (14) and eight (8) months as maximum and to pay a fine of ₱300,000.00. Cariño, for his part, was sentenced in Criminal Case No. 07-1582 to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen years (14) and eight (8) months as maximum and to pay a fine of ₱300,000.00.<sup>9</sup>

The RTC found that the prosecution succeeded in proving beyond reasonable doubt the guilt of the two accused for violation of Sections 5 and 11, Article II, R.A. No. 9165. It ruled that the evidence presented during the trial adequately established that a valid buy-bust operation was conducted by the operatives of the MADAC, as well as the SAID-SOTF, Makati City on 16 August 2007 upon proper coordination with the PDEA.<sup>10</sup> On the other hand, accused Octavio and Cariño failed to present substantial evidence to establish their defense of frame-up. The RTC ruled that frame-up, as advanced by the herein accused, is generally looked upon with caution by

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<sup>8</sup> Id. at 140-141.

<sup>9</sup> Id. at 144.

<sup>10</sup> Id. at 141

the court because it is easy to contrive and difficult to disprove. Like *alibi*, frame-up as a defense had invariably been viewed with disfavor as it is common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.<sup>11</sup>

### **The Ruling of the Court of Appeals**

The CA affirmed the decision of the RTC, upon a finding that all of the elements of illegal sale and illegal possession of dangerous drug have been sufficiently established by the prosecution. It found credible the statements of prosecution witnesses Baysa, Sumudlayon and *Barangay* Captain Victor Del Prado (*Barangay* Captain Del Prado) about what transpired during and after the buy-bust operation. Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence. The CA likewise upheld the findings of the trial court that the buy-bust operation conducted enjoyed the presumption of regularity, absent any showing of ill-motive on the part of the police operatives who conducted the same.

The CA found accused-appellants' defenses of denial and frame-up unconvincing and lacked strong corroboration.<sup>12</sup>

### **ISSUE**

Accused-appellants raised in their brief a lone error on the part of the appellate court, to wit:

The court-a-quo gravely erred in finding the accused-appellants guilty beyond reasonable doubt of the crime charged.<sup>13</sup>

### **Our Ruling**

The appeal is bereft of merit.

Accused-appellants submit that the trial court failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A.

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<sup>11</sup> Id. at 143 citing *People of the Philippines v. Evangelista*, G.R. No. 175281, 27 September 2007, 534 SCRA 241.

<sup>12</sup> CA Decision. *Rollo*, p. 20.

<sup>13</sup> CA *rollo*, p. 41.

No. 9165.<sup>14</sup> Accused-appellants allege that no photograph was taken of the items seized from them. Further, *Barangay* Captain Del Prado, an elected public official, was not present during the alleged buy-bust operation. He was only asked to sign the inventory of the seized items shortly after his arrival at the scene of the buy-bust operation. Thus, he has no personal knowledge as to whether the drugs allegedly seized from the accused-appellants were indeed recovered from them. Accused-appellants maintain that such failure created a cloud of doubt as to whether the alleged *shabu* seized from them were the same ones forwarded by the apprehending officers to the investigating officer, to the crime laboratory for examination and later presented in court.<sup>15</sup>

Relevant to accused-appellants' case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165, which reads:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

This provision is elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further, that non-compliance with 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,

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<sup>14</sup> Brief for the accused-appellants. Id. at 43.

<sup>15</sup> Id. at 47-48.

shall not render void and invalid such seizures of and custody over said items[.]

Clearly, there is nothing in the aforesaid law or its implementing rules which require the presence of the elected public official during the buy-bust operation. It is enough that he is present during the physical inventory immediately conducted after the seizure and confiscation of the drugs and he signs the copies of the inventory and is given a copy thereof.

During the cross-examination by the defense counsel, *Barangay Captain Del Prado* testified as follows:

- Q: Mr. Witness, you mentioned it was evening time when Eduardo Monteza called you?  
A: Yes, sir.  
Q: What was the date again?  
A: August 16 think.  
Q: Am I correct to say that Eduardo Monteza called you up regarding the arrest of the suspect in this case?  
A: Yes, sir.  
Q: When you proceeded to the place, it was designated by Ed Monteza, the place you would be?  
A: They told me the site of apprehension because I know the place of operation, sir.

THE COURT:

- Q: Where was the area of operation?  
A: Pateros Street Barangay Olympia near Osmeña Street.  
Q: You said that some items were shown to you, will you please enlighten us what are these items?  
A: I remember four (4) items in the inventory receipt that I signed, the first item consists of five (5) transparent plastic sachets containing suspected shabu, one with marking 'BUBOY', the subject which was bought from Buboy, then 2 plastic sachets with marking 'BUBOY' 1 and 2, those recovered from the possession of the said @Buboy, then 2 items with marking 'NANO-1' and 'NANO-2' recovered from accused Reynaldo.  
Q: When you proceeded to the place, did you happen to see the accused?  
A: Yes, sir.  
Q: What were they wearing at that time, if you can still remember?  
A: I remember that Gerry was wearing sando and short.  
Q: What's the color of the sando?  
A: I remember it's white, sir.  
Q: The short, what's the color?  
A: It's maong shorts, sir.  
Q: What about the other accused?



- A: I remember he's wearing white t-shirt, sir.  
Q: And his lower garment?  
A: I did not notice, sir, because they were then sitting.<sup>16</sup>

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In the aforesaid testimony, *Barangay* Captain Del Prado, not only positively identified both accused but also identified the items contained in the inventory receipt. Such testimony clearly established compliance with the requirement of Section 21 with regard to the presence and participation of the elected public official.

Furthermore, this Court has consistently ruled that even if the arresting officers failed to take a photograph of the seized drugs as required under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.<sup>17</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.<sup>18</sup> In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.<sup>19</sup>

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Appellants bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and

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<sup>16</sup> TSN, 12 January 2009. Records, pp. 291-293.

<sup>17</sup> *People v. Jose Almodiel*, G.R. No. 200951, 5 September 2012; *People v. Campos*, G.R. No. 186526, 25 August 2010, 629 SCRA 462 citing *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 436-437.

<sup>18</sup> *People v. Mangundayao*, G.R. No. 188132, 29 February 2012, 667 SCRA 310, 338; *People v. Le*, G.R. No. 188976, 29 June 2010, 622 SCRA 571, 583 citing *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 133 further citing *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 448; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 437.

<sup>19</sup> *People v. Manlangit*, G.R. No. 189806, 12 January 2011, 639 SCRA 455, 467 citing *People v. Rosialda*, G.R. No. 188330, 25 August 2010, 629 SCRA 507, 520-521 further citing *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 897-899.

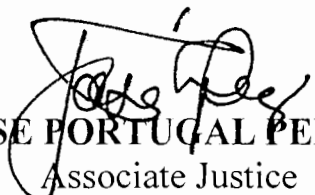
the presumption that public officers properly discharged their duties.<sup>20</sup> Appellants in this case failed to present any plausible reason to impute ill motive on the part of the arresting officers. Thus, the testimonies of the apprehending officers deserve full faith and credit.<sup>21</sup> In fact, accused-appellants did not even questioned the credibility of the prosecution witnesses. They anchored their appeal solely on the alleged broken chain of the custody of the seized drugs.

Finally, we note and agree with the observation of the CA that the issue regarding the break in the chain of custody of evidence was raised belatedly and only for the first time on appeal.<sup>22</sup> In *People v. Mateo*,<sup>23</sup> this Court brushed aside the accused's belated contention that the illegal drugs confiscated from his person was inadmissible because the arresting officers failed to comply with Section 21 of R.A. No. 9165. Whatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because accused did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal.

On the basis of the aforesaid disquisition, we find no reason to modify or set aside the decision of the CA.

**WHEREFORE**, the appeal is **DENIED** and the 29 March 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 03900 in is hereby **AFFIRMED**.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

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<sup>20</sup> *People v. Miranda*, G.R. No. 174773, 2 October 2007, 534 SCRA 552, 568-569.

<sup>21</sup> See *People v. Macabalang*, G.R. No. 168694, 27 November 2006, 508 SCRA 282, 300.

<sup>22</sup> CA Decision. *Rollo*, p. 20


<sup>23</sup> G.R. No. 179478, 28 July 2008, 560 SCRA 397, 410-411 citing *People v. Sta. Maria*, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

WE CONCUR:



**ANTONIO T. CARPIO**

Associate Justice  
Chairperson



**PRESBITERO J. VELASCO, JR.**

Associate Justice



**ARTURO D. BRION**

Associate Justice



**MARIANO C. DEL CASTILLO**

Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

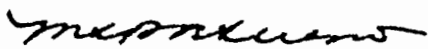


**ANTONIO T. CARPIO**

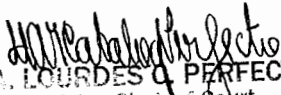
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY:**

  
**M.A. LOURDES P. A. PERFECTO**  
Division Clerk of Court  
Second Division