



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 190175

Present:

- versus -

CARPIO, *Acting Chief Justice*,^{*}
BRION,
DEL CASTILLO,
MENDOZA, *and*
LEONEN, *JJ.*

EDWIN CABRERA,
Accused-Appellant.

Promulgated:

NOV 12 2014 *HM Cabalag Perfecto*

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RESOLUTION

DEL CASTILLO, *J.*:

Assailed in this appeal is the June 18, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CEB-CR-H.C. No. 00784 which affirmed in all respects the March 5, 2007 Decision² of the Regional Trial Court (RTC), Branch 15, Cebu City in Criminal Case No. CBU-64615, finding appellant Edwin Cabrera (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165³ (RA 9165) and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

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^{*} Per Special Order No. 1860 dated November 4, 2014.

¹ CA *rollo*, pp. 60-73; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda.

² Records, pp. 66-68; penned by Presiding Judge Fortunato M. De Gracia, Jr.

³ Otherwise known as The Comprehensive Dangerous Drugs Act of 2002. Section 5, Article II thereof reads in part, *viz*:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* The penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (₱500,000.00) to ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Factual Antecedents

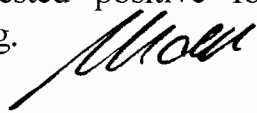
After receiving information from residents of Sitio Galaxy, Tangke, Talisay, Cebu and a report from a confidential asset of the illegal drug activities of appellant, police officers from the Talisay Police Station composed of PO1 Leopoldo Palconit (PO1 Palconit), PO3 Isaias Cabuenas, and PO2 Joel Cunan conducted a buy-bust operation against appellant on September 30, 2002. At about 4:30 p.m., poseur-buyer PO1 Palconit, together with the confidential asset, approached appellant who was standing outside his house. The confidential asset introduced PO1 Palconit to appellant as a person who wanted to buy *shabu*. PO1 Palconit gave appellant two marked ₱50.00 bills, while the latter handed to him two plastic sachets containing white crystalline substance. Thereupon, PO1 Palconit made the pre-arranged signal by touching his head with his right hand. His back-ups then rushed to the scene and simultaneously therewith PO1 Palconit arrested the appellant. He then put the markings “EC” on the two plastic sachets and brought the same to the Philippine National Police (PNP) Crime Laboratory for forensic examination.⁴

The following day or on October 1, 2002, a Complaint/Information was filed against appellant charging him with violation of Sec. 5, Article II, of RA 9165 as amended, the pertinent portion of which reads:

That on or about 4:30 P.M. of September 30, 2002, at Tangke, Talisay City, Cebu, Police Operatives of Talisay City Police Station proceeded to Tangke, Talisay City, Cebu to conduct buy[-]bust operation [resulting in] the arrest of one (1) Edwin Cabrera and within the jurisdiction of this Honorable Court, the above[-]named accused without the authority of the law, did then and there, willfully, unlawfully and feloniously, [recover] from [his] possession, custody and control, [t]wo (2) x x x plastic pack[s] of white crystalline substance believed to be shabu, other paraphernalia in [his] illegal activity and [t]wo [f]ifty[-]p[eso] [b]ill[s] used as mark[ed] money with [the markings] SN.WD565189 and VH234189 (Recovered White [Crystalline] Substance submitted to Crime Lab. [f]or examination.

CONTRARY TO LAW.⁵

The chemistry report⁶ from the PNP Crime Laboratory later revealed that the white crystalline substance with a total weight of 0.11 gram inside the two plastic sachets marked with “EC” tested positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.



⁴ TSN, March 19, 2004, pp. 3-10.

⁵ Records, p. 4.

⁶ Chemistry Report No. D-2043-2002, id. at 6.

Appellant pleaded “not guilty” to the crime charged.⁷ He denied the accusations against him and offered his own version of the story. According to appellant, at around 4:30 p.m. of September 30, 2002, he was at the alley outside his house washing clothes. Three men then approached him. They requested him to buy shabu and gave ₱200.00. He acceded and thus went to the house of a certain Rey Campo (Campo) which is about 50 meters or six houses away from his house. After buying *shabu* from Campo, he went back to his house to give it to the three men. Thereupon, four policemen arrived and searched his house, but recovered nothing therefrom. Appellant claimed that he was familiar with one of the policemen, PO1 Palconit, because he would see him conducting raids in Sitio Galaxy. Appellant thus averred that he would never sell *shabu* to PO1 Palconit because he knew that he is a police officer.⁸

Ruling of the Regional Trial Court

In a Decision⁹ dated March 5, 2007, the RTC convicted appellant of the crime charged, *viz*:

WHEREFORE, in view of the foregoing, this Court hereby finds accused Edwin Cabrera GUILTY beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 and in the absence of any mitigating and aggravating circumstances, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS, together with all the accessory penalties provided for by law. The physical evidence is hereby forfeited in favor of the government to be disposed of in accordance with law.

SO ORDERED.¹⁰

Ruling of the Court of Appeals

On appeal to the CA, appellant questioned the legality of the alleged buy-bust operation. He pointed to the absence of a prior surveillance and pre-operation report. He likewise assailed the non-presentation in court of the confidential informant and of the marked money. Moreover, he alleged a break in the chain of custody by emphasizing that the confiscation of the specimen happened at 4:30 p.m. of September 30, 2002 while the submission of the same to the PNP Crime Laboratory for examination was made only at 10:50 p.m. of the same day. Because of these, appellant averred that his guilt was not proven beyond reasonable doubt.¹¹



⁷ Id. at 12.

⁸ TSN, May 26, 2006, pp. 3-7.

⁹ Records, pp. 66-68.

¹⁰ Id. at 68.

¹¹ See Brief for Accused-Appellant, CA *rollo*, pp. 39-51.

In its Decision¹² dated June 18, 2009, the CA held that the testimony of PO1 Palconit and the existence of the dangerous drug seized from appellant more than sufficiently proved the crime charged. PO1 Palconit positively identified appellant as the person who sold to him the plastic sachets containing the white crystalline substance which was confirmed in the laboratory examination as *shabu* and later brought to and identified in court.

The appellate court likewise upheld the legality of the buy-bust operation. It ratiocinated that prior surveillance is not required in a buy-bust operation especially where the police operatives are accompanied by their informant during the entrapment, as in this case. Neither is the submission of a pre-operation report necessary for a conviction under Section 5, Article II of RA 9165 as long as the elements of the offense are sufficiently established by the prosecution. Further, there is no need to present in court the confidential informant and the marked money. Presentation of the confidential informant is only required when there are material inconsistencies in the testimony of the prosecution witness which is not the case here, since PO1 Palconit's testimony was found by the trial court to be credible and convincing. In the same way, presentation of the marked money is not required either by law or jurisprudence.

The CA did not likewise give credence to appellant's claim of gap in the chain of custody as it found the identity and integrity of the drugs to have been established and preserved by the prosecution. Besides, the defense admitted the existence, due execution and genuineness of the chemistry report and the specimen submitted.

The dispositive portion of the CA Decision reads:

WHEREFORE, the Decision dated March 5, 2007 of the Regional Trial Court ("RTC"), 7th Judicial Region, Branch 15, Cebu City, in Criminal Case No. CBU-64615, finding appellant Edwin Cabrera guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 is AFFIRMED in all respects.

SO ORDERED.¹³

Appellant thus interposes this appeal where he raised as additional assignment of errors the lack of physical inventory of the seized specimen and the



¹² Id. at 60-73.

¹³ Id. at 72.

non-taking of its photograph pursuant to Section 21¹⁴ of the Implementing Rules of RA 9165.¹⁵

Our Ruling

The appeal has no merit.

The Court has gone over the assailed Decision of the CA and found the appellate court's resolution on the issues raised, as well as its conclusions, to be in order. Hence, the Court finds no need to dwell on them again.

With regard to the non-compliance by the police officers with Section 21 of the Implementing Rules of RA 9165 as alleged by appellant in his Supplemental Brief, particularly the lack of physical inventory of the seized specimen and the non-taking of photograph thereof, the Court notes that appellant raised the same only in this appeal. The records of the case is bereft of any showing that appellant objected before the RTC regarding the seizure and safekeeping of the *shabu* seized from him on account of the failure of the police officers to maintain an unbroken chain of custody of the said drugs. The only time that appellant questioned the chain of custody was before the CA but not on the ground of lack of physical inventory or non-taking of photograph, but on the alleged gap between the time of confiscation of the specimen and the time of its submission to the PNP Crime Laboratory. But even then, it was already too late in the day for appellant to do so. Appellant should have raised the said issue before the trial court.¹⁶ In similar cases, the Court brushed aside the accused's belated contention that the illegal drugs confiscated from his person were inadmissible because the arresting officers failed to comply with Section 21 of RA 9165.¹⁷ "Whatever justifiable grounds may excuse the police officers from literally complying with Section 21

¹⁴ Section 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 and/or surrendered, for proper disposition in the following manner.

(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, shall not render void and invalid such seizures of and custody over the said items.

¹⁵ See appellant's Supplemental Brief, *rollo*, pp. 32-43.

¹⁶ *People v. Mariacos*, G.R. No. 188611, June 21, 2010, 621 SCRA 327, 349.

¹⁷ *People v. Octavio*, G.R. No. 199219, April 3, 2013, 695 SCRA 192, 205-206; *People v. Mateo*, 582 Phil. 390, 403-404 (2008); *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

will remain unknown, because [appellant] 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.”¹⁸ Besides and as already mentioned, the CA had already aptly concluded that the identity of the seized drugs was established by the prosecution and its integrity preserved, viz:

Record show[s] that after the arrest, PO1 Palconit immediately marked the sachets of shabu with [appellant’s] initials, requested a laboratory examination of the confiscated substance and himself brought the sachets of shabu on the same day to the PNP Regional Crime Laboratory. Thus, the identity of the drugs had been duly preserved and established by the prosecution. Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with. [Appellant] bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharged their duties. This is also bolstered by the defense’s admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted.¹⁹

Thus, the Court upholds appellant’s conviction for violation of Section 5, Article II of RA 9165 as well as the penalty imposed upon him. It must, however, be added that appellant is not eligible for parole.²⁰

WHEREFORE, the appeal is **DISMISSED**. The assailed June 18, 2009 Decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00784 is **AFFIRMED with the MODIFICATION** that appellant Edwin Cabrera is not eligible for parole.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

¹⁸ *People v. Octavio*, supra note 17 at 206.

¹⁹ *CA rollo*, pp. 71-72.

²⁰ *People v. SPO3 Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 328.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



ARTURO D. BRION

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



MARVIC M.V.F. LEONEN

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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
Acting Chief Justice

