

THIRD DIVISION

[G.R. No. 233251, March 13, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBEN D. DURAN, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

Before us is an appeal from the Decision^[1] dated June 8, 2017 of the Court of Appeals (CA), Cagayan de Oro City, in CA-G.R. CR-HC No. 01523 finding appellant guilty of illegal sale of marijuana, a dangerous drug, in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information^[2] dated December 9, 2013, appellant was charged with violation of Section 5, Art. II of R.A. No. 9165, as follows:

That on or about December 6, 2013, in the Municipality of Carmen, Province of Davao del Norte, 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 knowingly deal, sell and distribute dried marijuana fruiting tops weighing 9.9875 grams to PO2 Bencent T. Manglalan, who acted as poseur[-]buyer.^[3]

Appellant, duly assisted by counsel, was arraigned and pleaded not guilty^[4] to the charge. Pre-trial and trial thereafter ensued.

The prosecution presented the testimonies of PO2 Bencent T. Manglalan* (*PO2 Manglalan*) and SPO1 Jonathan O. Tabigue** (*SPO1 Tabigue*) which established the following:

At 9:30 p.m. of December 6, 2013, PO2 Manglalan and SPO1 Tabigue were on duty at Carmen Police Station, Davao del Norte, when their Chief of Police, Police Senior Inspector (*PSI*) Reny Valdesco received a report from their confidential informant (*CI*) that appellant was selling marijuana at Purok 3-A,*** *Barangay* Sto. Nino, Carmen.^[5] Immediately, *PSI* Valdesco conducted a briefing for a possible entrapment operation on the appellant. The briefing was attended by Police Inspector (*PI*) Ruel V. Sinahon, PO2 Manglalan who was designated to act as the poseur buyer, SPO1 Tabigue as the arresting officer, and the *CI*.^[6] PO2 Manglalan was given a P200 bill as the buy-bust money which he marked by placing number "10" thereon.^[7] The *Barangay* Captain of Purok 3-A was informed of the buy-bust operation.^[8] At 9:55 p.m., the team left the police station on board the motorcycles. PO2 Manglalan was the driver of the motorcycle with SPO1 Tabigue as

his back rider.^[9] They were following the motorcycle driven by the CI who led them to the target area.^[10] Upon reaching the area, the team positioned themselves at the corner portion of the *barangay* road and highway. PO2 Manglalan and the CI waited for appellant, while SPO1 Tabigue positioned himself at the dark portion of the road which was about 20 meters away from them.^[11] The rest of the buy-bust team were standing at the other side of the road waiting for their call.^[12] After 5-10 minutes, appellant arrived on board a motorcycle driven by another person and was parked near an electric post which was 20-25 meters away from where PO2 Manglalan and the CI were waiting.^[13] When appellant alighted from the motorcycle, PO2 Manglalan and the CI approached the former and the CI introduced PO2 Manglalan as "*Ku-an*," who would like to score as he had already told him earlier.^[14] Appellant then pulled out from his right pocket the marijuana wrapped in a printed paper and gave it to PO2 Manglalan and told them that he was in a hurry.^[15] After verifying the content that it was indeed marijuana fruiting tops, PO2 Manglalan gave the P200 marked money to appellant who took and placed it inside his pocket.^[16] PO2 Manglalan then held appellant's hand and introduced himself as a policeman and informed him of his offense.^[17] SPO1 Tabigue ran towards them and started frisking the appellant and was able to recover from the latter's pocket the buy-bust money.^[18] The other team members then arrived.^[19] Appellant's companion who was still on the motorcycle hurriedly fled.^[20]

PO2 Manglalan and SPO1 Tabigue marked this seized item with "BTM" and "JOB," respectively, at the crime scene and in the presence of the appellant and *Barangay* Captain Mario Catungal, while PO3 Bernard Gabisan took pictures.^[21] The team, together with the appellant, proceeded to the police station with SPO1 Tabigue having custody of the seized item.^[22] The inventory of the seized item was made at the police station.^[23] SPO1 Tabigue handed the seized item to PO3 Gabisan, the investigator of the case, for documentation and preparation of the request for laboratory examination.^[24] PO2 Manglalan then delivered the seized item to the crime laboratory at 1:35 a.m. the following day,^[25] which was received by a certain PO1 Rhuffy D. Federe.^[26] Chemistry Report No. D-259-2013^[27] was issued by Police Chief Inspector Virginia S. Gucor, Forensic Chemist, which showed that the examination of the seized item weighing 9.9875 grams yielded positive results for marijuana, a dangerous drug.

Appellant denied the charge. He claimed that in the early evening of December 6, 2013, he was riding a motorcycle for hire on his way to the house of Roselyn Catobog in Purok 3 Cebulano, Carmen, to invite her to watch the opening of Christmas lighting in *Barangay* Ising.^[28] While on his way, the motorcycle he was riding was flagged down by a woman whom he later learned was a childhood friend of Roselyn and was on the way to Roselyn's house to invite her also to watch the Christmas lighting.^[29] He later learned the name of the woman as Antonette Yama.^[30] He, together with Roselyn and Antonette, rode a motorcycle driven by Antonette's cousin on the way to *Barangay* Ising when Antonette asked the driver to stop at a corner of *Barangay* Sto. Nino and the national highway.^[31] When the motorcycle stopped, two men wearing civilian clothes "came to the them, pointed a gun at him and pulled him out of the motorcycle, frisked him and directed him to drop on the ground, took his cellphone and P100.00 cash, and arrested him for

allegedly selling marijuana fruiting tops.^[32]

Roselyn Catabog corroborated appellant's testimony.^[33] She also testified that she had a brief relationship with appellant before he was arrested; that she learned from appellant's cousin that a crime was imputed against appellant; and, that she acceded to the request of appellant's cousin to testify as she pitied appellant who was not selling marijuana at the time of his arrest.^[34]

On February 11, 2016, the Regional Trial Court (RTC), Branch 34, Panabo City rendered its Decision,^[35] the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding Roben D. Duran guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of life imprisonment and fine in the amount of Php500,000.00.

The one (1) pack of dried marijuana fruiting tops weighing 9.9875 grams is hereby ordered confiscated and forfeited in favor of the government through the PDEA to be disposed of by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drug for its proper disposition and destruction within ten (10) days from notice.

SO ORDERED.^[36]

The RTC found that the prosecution failed to establish the adverted sale of the subject marijuana between the poseur-buyer and the appellant, since there was no discussion between them relative to the object and consideration that took place; and, that appellant simply handed the marijuana to PO2 Manglalan after declaring that he was in a hurry. However, appellant can be held liable for the act of dealing and distributing marijuana which was included in the charge since the exchange of marijuana and the money was deemed established. It also found that while there was no cogent reason why the inventory was not done at the crime scene, however, it was shown that the integrity and evidentiary value of the illegal substance was preserved.

Appellant filed his Notice of Appeal. After the filing of the parties' respective briefs before the CA, the case was submitted for decision.

On June 8, 2017, the CA rendered its assailed Decision denying the appeal, the dispositive portion of which reads:

ACCORDINGLY, the appeal is denied. The Decision dated February 11, 2016, of the Regional Trial Court (RTC), Eleventh (11th) Judicial Region, Branch 34, Panabo City, finding the accused-appellant Roben D. Duran in Criminal Case No. CrC 611-2013, guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165 is AFFIRMED.

SO ORDERED.^[37]

The CA held that the prosecution was able to establish all the elements of the illegal sale of marijuana. Appellant was positively identified by PO2 Manglalan as the same person from whom he purchased the dried marijuana fruiting tops for a consideration of P200.00 during a legitimate buy-bust operation; that the marijuana fruiting tops wrapped in printed paper and marked with "BTM" and "JOB," which was presented in court, was the same specimen brought by PO2 Manglalan during the buy-bust operation. The CA found that the prosecution was able to prove the chain of custody of the confiscated marijuana. PO2 Manglalan and SPO1 Tabigue marked the seized item with "BTM" and "JOB," respectively; SPO1 Tabigue took custody of the seized item and brought it to the police station where he turned it over to PO3 Gabisan, who prepared the request for laboratory examination; that PO2 Manglalan delivered the seized item to the crime laboratory for examination; and, that PCI Gucor examined the confiscated item and prepared Chemistry Report No. D-259-2013 confirming that the specimen tested positive for marijuana. The seized item was presented during trial and was identified by PO2 Manglalan and SPO1 Tabigue.

Appellant filed a Notice of Appeal with this Court. We required the parties to simultaneously file their respective supplemental briefs if they so desired. Both parties filed their respective Manifestations stating that they are no longer filing their supplemental briefs and were adopting all the issues and arguments filed before the CA to avoid repetition of the same.

Appellant argues that the integrity of the drug presented in court is doubtful because of the apparent non-compliance with Section 21 of R.A. No. 9165; the non-presentation of the investigator to testify on how he preserved the evidence transferred to him; and, the non-presentation of the forensic chemist or the receiving police officer at the crime laboratory.

We find merit in the appeal.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.^[38] The existence of *corpus delicti* is essential to a judgment of conviction.^[39] Hence, the identity of the dangerous drug must be clearly established.

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

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 or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:

- (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 persons/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; x x x

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed:[40]

- (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 said items.***[41]

R.A. No. 10640,[42] which amended Section 21 of R.A. No. 9165, incorporated the saving clause contained in the IRR, and requires only two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts." [43] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult." For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended.[44]