

SECOND DIVISION

[G.R. No. 235898, March 13, 2019]

**MARLON DOMINGUEZ Y ARGANA, PETITIONER, V. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on Certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Marlon Dominguez y Argana (Dominguez) assailing the Decision^[2] dated May 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38665, which affirmed the Decision^[3] dated March 22, 2016 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Criminal Case No. 10-533, finding Dominguez guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"^[4] as amended.

The Facts

Dominguez was charged with violation of Section 11, Article II of RA 9165. The accusatory portion of the Information reads as follows:

That on or about the 17th day of August 2010, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession, custody and control Metamphetamine Hydrochloride, a dangerous drug weighing 0.03 [gram] contained in a transparent plastic sachet, in violation of the above-cited law.

CONTRARY TO LAW.^[5]

Upon arraignment, Dominguez pleaded not guilty to the crime charged. Thereafter, trial ensued.

Version of the Prosecution

At around 2:00 in the morning of August 17, 2010, SPO1 Gerardo Parchaso (SPO1 Parchaso) was conducting monitoring and possible arrest of violators of RA 9165 at Purok 3, Brgy. Poblacion, Muntinlupa City.^[6] From a meter away, he saw a man wearing a red shirt and white shorts, holding with his left hand a small transparent plastic sachet containing white crystalline substance suspected to be *shabu*. This man was later identified as Dominguez.^[7]

SPO1 Parchaso grabbed the hands of Dominguez and seized therefrom one heat-sealed transparent plastic sachet containing the substance suspected to be *shabu*.^[8]

Assisted by PO2 Salvador Genova (PO2 Genova), SPO1 Parchaso introduced himself as a police officer, arrested Dominguez, and informed him of his violation and his rights under the law.^[9] However, seeing that there was already a crowd gathering in the area, SPO1 Parchaso and PO2 Genova decided to leave the scene, and brought Dominguez and the seized item to their office.^[10]

At the police station, SPO1 Parchaso marked the seized item with "MD," the initials of Dominguez.^[11] With the help of Police Inspector Domingo J. Diaz (P/Insp. Diaz), and another police officer, PO2 Mark Sherwin Forastero (PO2 Forastero), they prepared Dominguez's Booking and Information Sheet, and took photographs of Dominguez and the marked seized item.^[12] They also conducted the inventory which was witnessed by Orlando Rodriguez, a local government employee of Muntinlupa City.^[13] SPO1 Parchaso explained that despite P/Insp. Diaz's calls to the representatives of the Department of Justice (DOJ) and the media to witness the inventory, no one came.^[14] Nevertheless, they still proceeded with the inventory to comply with the period within which to bring the evidence to the Philippine National Police - Southern Police District (PNP-SPD) Crime Laboratory for examination.^[15]

The marked seized item was brought to the PNP-SPD Crime Laboratory for examination. SPO1 Parchaso was the one who prepared the request for laboratory examination, but it was PO2 Genova who delivered the marked seized item. Upon inquiry, SPO1 Parchaso explained that it was only PO2 Genova who had an identification card at the time of delivery.^[16] Nonetheless, the request was received by PNP Non-Uniformed Personnel Bernardo Bucayan, Jr. (NUP Bucayan, Jr.), which he turned over to Police Chief Inspector Abraham Verde Tecson (PCI Tecson).^[17] Based on Physical Science Report No. D-294-10S, prepared by PCI Tecson, the specimen weighing 0.03 gram, yielded a positive result for *shabu*.^[18]

Version of the Defense

Dominguez vehemently denied the accusations against him. He testified that at 11:00 in the evening of August 16, 2010, while he was at home watching television and eating inside his house at Argana St., Brgy. Poblacion, Muntinlupa City, two men in civilian clothes entered therein and arrested him.^[19] They immediately grabbed him by his shorts and nape and told him not to resist.^[20]

The two men introduced themselves as police officers.^[21] When Dominguez asked the men, "*Ano pong kasalanan ko sa inyo?*"^[22] The men replied, "*Sumama ka na sa amin para hindi ka masaktan.*"^[23] Immediately thereafter, the men brought Dominguez and boarded him on a white Toyota Revo, where he was told, "*Aregluhin mo na lang ito,*" to which he replied, "*Sir, ano hong aaregluhing sinasabi niyo?*"^[24]

The man, later identified as Police Officer Bob Yangson (PO Yangson), showed Dominguez a plastic sachet containing a white crystalline substance, and insisted that the same was recovered from him.^[25] The other man was later identified as PO2 Forastero. At the police station, PO Yangson and PO2 Forastero took a photograph of Dominguez while they reiterated that Dominguez should settle the matter to avoid criminal charges.^[26] However, Dominguez did not enter into any settlement with them because he denied having possessed said sachet and also, due to lack of money.^[27]

The wife of Dominguez, Rowelyn, also testified that on August 17, 2010, at around 11:00 in the evening, two men who introduced themselves as police officers barged inside their house.^[28] She saw PO2 Forastero slap and punch Dominguez while the other police officer held him.^[29] When they brought Dominguez at the police station, Rowelyn followed them. She claimed that PO2 Forastero told her: "*Misis halika, may P50,000 ka ba?*" to which she replied: "*Sir, wala po akong P50,000.00, ako'y isang mananahi lang po ngayon, hindi po ako makakabigay sa inyo ng P50,000.00.*"^[30] Thereafter, PO2 Forastero said that they will detain and charge Dominguez with violation of Section 5 or Section 11 of RA 9165.^[31]

Ruling of the RTC

After trial on the merits, in its Decision^[32] dated March 22, 2016, the RTC convicted Dominguez of the crime charged. The RTC held that the prosecution sufficiently established all the elements for illegal possession of dangerous drugs, and that the integrity of the *shabu* seized from Dominguez had been duly preserved. It further held that chain of custody has not been broken. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Marlon Dominguez y Argana @ "OXO" guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165. Accordingly, the accused is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum to pay a fine in the amount of Three Hundred Thousand Pesos (P300,000.00).

x x x x

SO ORDERED.^[33]

Aggrieved, Dominguez appealed to the CA.

Ruling of the CA

In the questioned Decision^[34] dated May 9, 2017, the CA affirmed the RTC's conviction of Dominguez, holding that the prosecution was able to prove the elements of the crime charged. The CA explained:

A close look at the sequence of events narrated by the prosecution witnesses particularly by SPO1 Parchaso shows that during the police officers' monitoring, accused-appellant was caught with a sachet of *shabu* in plain view and *in flagrante delicto*[.] It bears stressing that accused-appellant was particularly identified by SPO1 Parchaso as the person in possession of the seized sachet marked as "MD." Subsequently, through chemical analysis, the contents of the same sachet were found to be *shabu*. Accused-appellant was positively found to be in possession of prohibited drugs without proof that he was duly authorized by law to possess them. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on the part of accused-appellant - a burden of evidence, which accused-appellant miserably failed to discharge in this case.^[35]

The CA also held that there was no showing that the integrity and evidentiary value of the seized item was compromised. It stated that the chain of custody can be easily established. It further stressed that defenses of denial and frame-up cannot prevail over the positive and categorical assertions of the police officers, particularly SPO1 Parchaso, who was a stranger to Dominguez and against whom no ill motive was established.

For these reasons, the CA disposed as follows:

WHEREFORE, the appeal is **DISMISSED**. The March 22, 2016 Decision of the Regional Trial Court of Muntinlupa City, Branch 203 in *Criminal Case No. 10-533*, convicting accused-appellant Marlon Dominguez y Argana @ "OXO" for illegal possession of dangerous drugs, is **AFFIRMED in toto**.

SO ORDERED.^[36]

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Dominguez of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Dominguez for failure of the prosecution to prove his guilt beyond reasonable doubt.

Dominguez focuses his appeal on the validity of his arrest and the search and seizure of the sachet of *shabu* and, consequently, the admissibility of the sachet. Notably, the CA already highlighted the fact that Dominguez raised no objection to the irregularity of his arrest before arraignment.^[37] Thus, considering such and his active participation in the trial of the case, the CA ruled that he is deemed to have submitted to the jurisdiction of the RTC, thereby curing any defect in his arrest.^[38]

Well settled is the rule that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment.^[39] Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived.^[40] Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.^[41]

Applying the foregoing, the Court agrees that Dominguez had already waived his objection to the validity of his arrest. However, it must be stressed that such waiver only affects the jurisdiction of the court over the person of the accused but does not carry a waiver of the admissibility of evidence, as the Court ruled in *Homar v. People*:^[42]

We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required by the Rules. In addition, he actively participated in the trial of the case. As a

result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.

However, this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.^[43] (Emphasis ours)

Thus, it is now necessary for the Court to ascertain whether the warrantless search which yielded the alleged contraband was lawful.

Enshrined in the Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, as defined under Section 2, Article III thereof, which reads:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. **In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.**^[44]

Nevertheless, the constitutional proscription against warrantless searches and seizures is not absolute but admits of certain exceptions, namely: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence,^[45] (2) seizure of evidence in plain view;^[46] (3) search of moving vehicles;^[47] (4) consented warrantless search;^[48] (5) customs search; (6) stop and frisk situations (Terry search);^[49] and (7) exigent and emergency circumstances.^[50]

The CA and the RTC concluded that Dominguez was caught *in flagrante delicto*, declaring that he was caught in the act of actually committing a crime or attempting to commit a crime in the presence of the apprehending officers, when he was caught holding a sachet of *shabu*. Consequently, the warrantless search was considered valid as it was deemed an incident to the lawful arrest.

For an arrest of a suspect *in flagrante delicto*, two elements must concur, namely: (a) 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 (b) such overt act is done in the presence or within the view of the arresting officer.^[51] The officer's personal knowledge of the fact of the commission of an offense is absolutely required.^[52] The officer himself must witness the crime.^[53]