

FIRST DIVISION

[G.R. No. 246165, November 28, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOEFFREY MACASPAC Y LLANETE AND BRYAN MARCELO Y
PANDINO, ACCUSED-APPELLANTS.**

DECISION

LAZARO-JAVIER, J.:

The Case

Appellants Joeffrey Macaspac y Llanete and Bryan Marcelo y Pandino assail the Court of Appeals' Decision dated May 30, 2018, affirming their conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Proceedings before the Trial Court

Appellants were charged^[1] with violation of Section 5, Article II of RA 9165^[2] for transporting five hundred fifty-two (552) grams of methamphetamine hydrochloride (*shabu*), a dangerous drug.

On arraignment, appellants pleaded not guilty.^[3] Trial ensued.

Prosecution's Version

National Bureau of Investigation (NBI) Special Investigator Joel Otic testified that on December 13, 2015, around 4 o'clock in the afternoon, he received a report from a confidential informant that a drug trafficking group from San Pablo, Laguna was set to transport drugs to another drug trafficking group on the same day at the SM Mall of Asia (MOA). The confidential informant relayed further that for this transaction, the first group would use a silver Hyundai Accent with plate number AAV 8780, a white Mitsubishi Mirage with plate number ACA 3243, and a gray Mitsubishi van with plate number XLV 925.^[4] Agent Otic, in turn, relayed the information to Chief Joel M. Tuvera, head of the Anti-Illegal Drugs Division (AIDD). Chief Tuvera approved the deployment of the team to the area. For this purpose, Agent Otic formed a team composed of Agent Fatima Liwalug, Agent Jerome Bomediano, Agent Bertrand Gamaliel Mendoza, Agent John Mark Santiago, Agent Melvin Escurel and Agent Salvador Artech Jr. The team coordinated with the Philippine Drug Enforcement Agency (PDEA), the Pasay City Southern Police District, and the Security Manager of SM MOA, after which, it proceeded to the target area at the SM MOA.^[5]

Around 5 o'clock in the afternoon, a MOA Security personnel informed Agent Otic that he saw a Hyundai Accent with plate number AAV 8780 parked in front of the SM Hypermarket. The team drove there and spotted the vehicle with three (3) persons on board. They were later identified as Dario "Bong Cuenca" (who acted as driver)^[6] and appellants Macaspac and Marcelo. Appellants alighted from the vehicle and

walked toward the package counter of the SM Hypermarket where they claimed a plastic bag containing a box labeled "Zest O."

As soon as appellants had returned to their vehicle, Agents Mendoza and Escurel closed in, blocked the vehicle, and ordered the driver and appellants to step out. But Bong reacted by revving up the engine and swiftly heading to the direction of Agents Mendoza and Escurel with the clear intent of hitting them.^[7] When he missed his targets, Bong revved up the engine anew, albeit this time, the car was blocked by Agent Otic's Toyota Fortuner. Agents Arteche and Santiago alighted from the Toyota Fortuner and ordered Bong and appellants to get off. But Bong once more accelerated the engine and tried anew to run over the agents. The police officers were then forced to shoot.^[8] As a result, Bong and appellants got injured and were immediately brought to the San Juan de Dios Hospital in Pasay City. Bong died later that evening.^[9]

Meantime, the police team inspected the Hyundai vehicle used by appellants. Agent Otic recovered from the backseat a "Zest O" box containing a plastic pack with white crystalline substance inside. Agent Otic did an inventory and marked the seized item with his initials "JLO" in the presence of media representative Ryan Ann, and Barangay Kagawad Andres Ileja of Barangay 76, Zone 10, Pasay City. Agent Liwalug took photographs of the seized item.^[10]

Agent Otic also prepared a Request for Laboratory Examination and brought it to the NBI Manila's Forensic Chemist Division. Forensic Chemist Loreto Bravo received from Agent Otic the specimen and the request for its examination.

Per Certification dated December 14, 2015, Forensic Chemist Bravo confirmed that the specimen weighed five hundred fifty-two (552) grams and was found positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.^[11]

The prosecution submitted the following evidence: 1) Joint Affidavit of Arrest;^[12] 2) Coordination Form;^[13] 3) Pre-Operation Report;^[14] 4) Coordination Letter;^[15] 5) Inventory of Seized Item;^[16] 6) Request for Laboratory Examination and Analysis;^[17] 6) Certification (of the qualitative and quantitative results of the seized item);^[18] and 7) Photographs of the seized item.^[19]

Defense's Version

Appellants interposed denial. They testified that on December 13, 2015, around 4 o'clock in the afternoon, they went to the SM MOA to meet with Bong Cuenca, an interested car buyer. While they were strolling inside the mall, Bong called appellant Marcelo to meet him near the ferris wheel at the SM MOA.^[20] There, they boarded Bong's Hyundai vehicle.^[21] Suddenly, armed men ran towards them and a car blocked Bong's vehicle. Another group of armed men also started hitting the vehicle. Bong accelerated the car causing the armed men to shoot as a result of which, they got wounded. They were brought to the San Juan de Dios Hospital for treatment.^[22] After their discharge from the hospital, they were taken to the NBI where they got informed of the charge against them for illegal transporting of drugs.^[23]

The Trial Court's Ruling

By Decision^[24] dated March 14, 2017, the trial court found appellants guilty as charged, viz.:

WHEREFORE, premises considered, the accused, **JOEFFREY MACASPAC and BRYAN MARCELO**, are hereby found **GUILTY** of transporting **552 grams** of *methamphetamine hydrochloride*, otherwise known as "shabu" as penalized under Section 5, Article II of Republic Act 9165, and are hereby sentenced to suffer a penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

The Branch Clerk of Court is hereby directed to coordinate with, and transmit to the PDEA, the one (1) sachet of representative sample earlier extracted from the specimen for its proper disposition.

Furnish the Legal and Prosecution Service of the PDEA, the NBI, the prosecutor, the accused and his counsel, copies of this decision.

SO ORDERED.

The trial court found that the elements of transporting drugs were all present here. Appellants had complete possession and control of the prohibited drugs from the time they picked up the same at the SM Hypermarket up until they boarded the drugs into Bong's car.^[25] The trial court also noted that since appellants were actually in the act of committing an offense, the police officers had lawful reason to arrest them, search the vehicle, and seize the prohibited item found therein.^[26] Had it not been for the timely interception by the police officers and NBI agents, both appellants and the five hundred fifty-two (552) grams of *shabu* would have freely moved out from the SM MOA undetected.^[27]

Finally, there was substantial compliance with Section 21 of RA 9165. There was justifiable ground why the inventory and photograph of the seized item were not made in the presence of appellants as both of them were brought to the hospital for immediate treatment after sustaining gunshot wounds during the encounter. In any case, the integrity and evidentiary value of the seized item were preserved from the time it was seized until it was presented in court.^[28]

The Proceedings before the Court of Appeals

On appeal, appellants faulted the trial court for giving credence to Agent Otic's testimony, albeit the same was allegedly only based on the reports of his team. During the operation, Agent Otic stayed inside the vehicle, hence, he had no personal knowledge that appellants indeed retrieved a box containing *shabu* from the SM Hypermarket and brought it to their vehicle. His testimony, therefore, deserved no probative weight.^[29] Appellants further argued that the integrity and evidentiary value of the *corpus delicti* were not preserved because the "Zest O" box which supposedly contained the *shabu* was not marked nor included in the inventory.^[30]

For its part, the Office of the Solicitor General (OSG) countered in the main: 1) the elements of transporting dangerous drugs under Section 5, Article II of RA 9165 were all sufficiently established; 2) appellants were caught *in flagrante delicto* while transporting five hundred fifty-two (552) grams of *shabu*;^[31] 3) the chain of

custody was followed, thus, preserving the integrity and evidentiary value of the seized item;^[32] and 4) Agent Otic's testimony was not hearsay as he was simply narrating independent relevant statements which led to appellants' lawful arrest.^[33]

The Court of Appeals' Ruling

By a Decision^[34] dated May 30, 2018, the Court of Appeals affirmed the trial court's ruling. It ruled that the prosecution sufficiently established the elements of illegal transporting of dangerous drugs. Appellants' possession of the five hundred fifty-two (552) grams of *shabu*, by itself, indicated appellants' purpose to transport the same.^[35]

Another. Agent Otic's testimony was not hearsay. Being the team leader of the operation which coordinated with the PDEA, as well as the mall's security personnel, he had personal knowledge of the illegal transporting of the drugs in question. He was also personally present at the target area during the operation.^[36]

Finally, the prosecution sufficiently proved that the chain of custody rule was duly complied with, preserving the integrity and evidentiary value of the *corpus delicti*.^[37]

The Present Appeal

Appellants now seek affirmative relief from the Court and plead anew for a verdict of acquittal.

In compliance with the Resolution^[38] dated June 10, 2019, the OSG manifested that in lieu of supplemental brief, it was adopting its brief before the Court of Appeals.^[39]

On August 28, 2019, appellant Macaspac filed a supplemental brief^[40] reiterating there was no transporting of illegal drugs to speak of since the prosecution failed to show they transferred the alleged illegal drugs from one place to another.^[41] Also, there was a gap in the chain of custody because the forensic chemist was not presented in court to testify whether the seized item he examined was the same item presented in court.

Issue

Did the Court of Appeals err when it affirmed appellants' conviction for illegal transporting of dangerous drugs under Section 5, Article II of RA 9165?

Ruling

The core element of illegal transporting of dangerous drugs is the movement of the dangerous drug from one place to another.^[42] As defined in ***People v. Mariacos***,^[43] "transport" means "to carry or convey from one place to another."^[44]

In ***People v. Matio***,^[45] the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act.^[46] The fact that there is

actual conveyance suffices to support a finding that the act of transporting was committed.^[47]

Here, appellants claim there was no transporting of illegal drugs to speak of since they were not able to actually leave the premises of the SM MOA.^[48]

The argument fails.

Records bear the following facts: 1) appellants picked up from the baggage counter of the SM Hypermarket a plastic bag containing a "Zest-O" box filled with *shabu*; 2) appellants walked towards the SM MOA where Bong Cuenca's car was waiting; 3) appellants loaded the *shabu* into the car and boarded; 4) as they and Bong were driving away, Agent Mendoza and Agent Escurel blocked them; 5) but instead of halting, Bong accelerated the engine and maneuvered to run over the agents; 6) when he missed his targets, Bong revved up the engine anew and maneuvered another time to run over the agents but this time, it was Agent Otic's Toyota Fortuner which blocked the vehicle; and 7) when the driver and appellants were asked to step out, the driver simply repeated what he did earlier, thus, forcing the agents to shoot. Bong and appellants were consequently injured and later brought to the hospital for treatment. Appellants survived, but the driver did not.

True, appellants were not able to completely leave the SM MOA premises because their car was blocked by Agent Otic and his team but the fact remains – they had already moved the drugs from the SM Hypermarket into the car and had actually started driving away with it. In fine, the essential element of moving the drugs from one place to another was already accomplished, no matter how far or near the same had gone from their place of origin.

People v. Asislo^[49] aptly noted that the law does not dictate the threshold *how far* the drugs should have been transported in order to fall within the limits of illegal transporting of dangerous drugs. ***People v. Gumilao***^[50] further elucidated that in cases of illegal transporting of prohibited drugs, it is immaterial whether or not the place of destination is reached.

We also reckon with the rule that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved.^[51]

In ***People v. Asislo***,^[52] the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same.

Also, in ***People v. Alacdis***,^[53] appellant was found in possession of almost one hundred ten (110) kilos of marijuana. The Court ruled that such sheer volume by itself clearly indicated one's purpose to transport these drugs.

Here, five hundred fifty-two (552) grams or half kilo of *shabu* is by no means a minuscule amount indicating as well appellants' intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

So must it be.