

SECOND DIVISION

[G.R. No. 232154, August 20, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN FERIOL Y PEREZ, ACCUSED-APPELLANT.**

DECISION

PERLAS-BERNABE, J.:

Before this Court is an ordinary appeal^[1] filed by accused-appellant Benjamin Feriol y Perez (Feriol) assailing the Decision^[2] dated June 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07201, which affirmed the Decision^[3] dated November 27, 2014 of the Regional Trial Court of Makati City, Branch 65 (RTC) in Criminal Case No. 14-104 finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[5] filed before the RTC, charging Feriol with the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

On the 28th day of January 2014, in the City of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and distribute a total of zero point twenty three (0.23) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug, in consideration of P500.

CONTRARY TO LAW.^[6]

The prosecution alleged that at around four (4) o'clock in the afternoon of January 28, 2014, the Makati City Police received an information from a confidential informant (CI) that a certain "Allan," who was later on identified as Feriol, was engaged in illegal drug activities along Sampaloc Street, Barangay Cembo, Makati City. Acting on the information, a buy-bust team was organized with Makati Anti-Drug Abuse Council Operative Delno A. Encarnacion (MADAC Encarnacion) as the designated poseur-buyer and Police Officer 1 Mark Anthony L. Angulo (PO1 Angulo) as the immediate back-up. Subsequently, the team, together with the CI, proceeded to the target area where the latter introduced MADAC Encarnacion to Feriol as buyer of *shabu*. MADAC Encarnacion handed over the marked money in the amount of P500.00 to Feriol who, in turn, gave him a small plastic sachet containing white

crystalline substance. MADAC Encarnacion then executed the pre-arranged, signal, causing PO1 Angulo to rush and assist him in arresting Feriol. The buy-bust team conducted a body search upon Feriol and recovered from the latter's left pocket the marked money. Due to security reasons, the buy-bust team brought Feriol and the seized items to the barangay hall, where the required inventory and photography were conducted in the presence of Feriol and Barangay Kagawad Roderick P. Bien (Kagawad Bien). Afterwards, Feriol and the seized items were turned over to the investigator on duty, Senior Police Officer 1 Ramon D. Esperanzate, who then prepared the letter request for laboratory examination. Shortly after, the said letter request and the plastic sachet were given to MADAC Encarnacion, who delivered the same to the crime laboratory for examination, during which the substance recovered from Feriol tested positive for the presence methamphetamine hydrochloride, a dangerous drug.^[7]

In his defense, Feriol denied the accusations against him, claiming that at around four (4) o'clock in the afternoon of January 28, 2014, he was taking a bath inside his house when he heard a number of individuals shouting his name. He averred that upon opening the door of the bathroom, someone suddenly poked a gun at him and asked for his ID. Thereafter, he was handcuffed and brought to the barangay hall where all the pieces of evidence were shown to him.^[8]

The RTC Ruling

In a Decision^[9] dated November 27, 2014, the RTC found Feriol guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00.^[10] It ruled that the prosecution adequately proved all the elements of the crime of Illegal Sale of Dangerous Drugs. Moreover, it established an unbroken chain of custody over the seized dangerous drug, as it was shown that: (a) MADAC Encarnacion purchased from Feriol a sachet containing a white crystalline substance which he marked with "Allan"; (b) after conducting the inventory and photography, MADAC Encarnacion delivered the seized drug to the crime laboratory; (c) upon delivery, the said drug was received and examined by the forensic chemist, who confirmed that it was *shabu*; and (d) the said drug was officially brought to the court and presented as evidence.^[11]

In addition, the RTC observed that the apprehending officers' failure to secure the representatives from the Department of Justice (DOJ) and the media during the conduct of inventory was not fatal – and thus did not render Feriol's arrest void and the evidence obtained from him inadmissible – as it was proved that the integrity and the evidentiary value of the seized items were duly preserved.^[12]

Aggrieved, Feriol appealed^[13] to the CA.

The CA Ruling

In a Decision^[14] dated June 14, 2016, the CA affirmed *in toto* the ruling of the RTC.^[15] It found no showing that the chain of custody had been broken from the

moment the dangerous drug was seized by the apprehending officers until such time that it was introduced in evidence. Furthermore, it declared that Feriol had the burden of proving that the confiscated item had been tampered with, the integrity of the evidence is presumed to have been preserved absent any showing of bad faith or ill will on the part of the apprehending officers. Feriol, however, failed to discharge such burden in this case.^[16]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Feriol's conviction for the crime charged.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[17] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[18]

In this case, Feriol was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.^[19] Case law instructs that it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.^[20]

Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.^[21] Under the said section, prior to its amendment by RA 10640,^[22] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized

drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.^[23] In the case of *People v. Mendoza*,^[24] the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."^[25]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.^[26] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640^[27] – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**^[28] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.^[29] In *People v. Almorfe*,^[30] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**^[31] Also, in *People v. De Guzman*,^[32] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**^[33]

After a judicious study of the case, the Court finds that the apprehending officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drug allegedly seized from Feriol.

In this case, while the, inventory^[34] and the photography of the seized items were made in the presence of Feriol and an elected public official, the records do not show that the said inventory and photography were done before any representative from the DOJ and the media. The apprehending officers did not bother to acknowledge or explain such lapse, as the records even fail to disclose that there was an attempt to contact or secure these witnesses' presence.

In the recent case of *People v. Miranda*,^[35] the Court held that "the procedure in