

## THIRD DIVISION

[ G.R. No. 205472, January 25, 2016 ]

**AMADO I. SARAUM,<sup>[1]</sup> PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse the Decision<sup>[2]</sup> dated September 8, 2011 and Resolution<sup>[3]</sup> dated December 19, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR No. 01199, which affirmed the judgment of conviction against petitioner Amado I. Saraum (*Saraum*) rendered by the Regional Trial Court (ATC), Branch 57, Cebu City, in Criminal Case No. CBU-77737.

Saraum was charged with violation of Section 12, Article II (*Possession of Paraphernalia for Dangerous Drugs*) of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*. The accusatory portion of the Information reads:

That on or about the 17<sup>th</sup> day of August, 2006, at about 12:45 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession the following:

- 1 = One (1) lighter
- 2 = One (1) rolled tissue paper
- 3 = One (1) aluminum tin foil

which are instruments and/or equipments (*sic*) fit or intended for smoking, consuming, administering, ingesting, or introducing, any dangerous drug into the body.

CONTRARY TO LAW.<sup>[4]</sup>

In his arraignment, Saraum, with the assistance of a counsel, pleaded not guilty to the offense charged.<sup>[5]</sup> Trial ensued. Meantime, Saraum was released on bail.<sup>[6]</sup>

PO3 Jeffrey Larrobis and PO1 Romeo Jumalon testified for the prosecution while the defense presented no witness other than Saraum.

According to the prosecution, on August 17, 2006, a telephone call was received by PO3 Larrobis regarding the illegal drug activities in Sitio Camansi, Barangay Lorega, Cebu City. A buy-bust team was then formed composed of PO3 Larrobis, PO1

Jumalon, PO2 Nathaniel Sta. Ana, PO1 Roy Cabahug, and PO1 Julius Aniñon against a certain "Pata." PO2 Sta. Ana was designated as the *poseur*-buyer accompanied by the informant, PO1 Jumalon as the back-up of PO2 Sta. Ana, and the rest of the team as the perimeter security. PO1 Aniñon coordinated with the Philippine Drug Enforcement Agency (PDEA) regarding the operation. After preparing all the necessary documents, such as the pre-operation report and submitting the same to the PDEA, the team proceeded to the subject area.

During the operation, "Pata" eluded arrest as he tried to run towards his shanty. Inside the house, which was divided with a curtain as partition, the buy-bust team also saw Saraum and Peter Espcranza, who were holding drug paraphernalia apparently in preparation to have a "shabu" pot session. They recovered from Saraum's possession a lighter, rolled tissue paper, and aluminum tin foil (*tooter*). PO3 Larrobis confiscated the items, placed them in the plastic pack of misua wrapper, and made initial markings ("A" for Saraum and "P" for Esperanza). At the police station, PO3 Larrobis marked as "AIS-08-17-2006" the paraphernalia recovered from Saraum. After the case was filed, the subject items were turned over to the property custodian of the Office of City Prosecutor.

By way of defense, Saraum denied the commission of the alleged offense. He testified that on the date and time in question, he was passing by Lorega Cemetery on his way to the house of his parents-in-law when he was held by men with firearms. They were already with "Antik" and "Pata," both of whom were his neighbors. Believing that he had not committed anything illegal, he resisted the arrest. He learned of the criminal charge only when he was brought to the court.

On May 5, 2009, the RTC rendered its Decision,<sup>[7]</sup> the dispositive portion of which states:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and he is hereby sentenced to suffer the penalty of six (6) months and one (1) day to two (2) years and to pay a fine of Php20,000.00 with subsidiary imprisonment in case of insolvency.

The drug paraphernalias (*sic*) are ordered forfeited in favor of the government.

SO ORDERED.<sup>[8]</sup>

On appeal, the CA sustained the judgment of conviction; hence, this petition.

We deny.

Considering that Saraum failed to show any arbitrariness, palpable error, or capriciousness on the findings of fact of the trial and appellate courts, such findings deserve great weight and are deemed conclusive and binding.<sup>[9]</sup> Besides, a review of the records reveals that the CA did not err in affirming his conviction.

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other

paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.<sup>[10]</sup> In this case, the prosecution has convincingly established that Saraum was in possession of drug paraphernalia, particularly aluminum tin foil, rolled tissue paper, and lighter, all of which were offered and admitted in evidence.

Saraum was arrested during the commission of a crime, which instance does not require a warrant in accordance with Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure.<sup>[11]</sup> In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) 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 (2) such overt act is done in the presence or within the view of the arresting officer.<sup>[12]</sup>

Here, the Court is unconvinced with Saraum's statement that he was not committing a crime at the time of his arrest. PO3 Larrobis described in detail how they were able to apprehend him, who was then holding a disposable lighter in his right hand and a tin foil and a rolled tissue paper in his left hand,<sup>[13]</sup> while they were in the course of arresting somebody. The case is clearly one of hot pursuit of "Pate," who, in eluding arrest, entered the shanty where Saraum and Esperanza were incidentally caught in possession of the illegal items. Saraum did not proffer any satisfactory explanation with regard to his presence at the vicinity of the buy-bust operation and his possession of the seized items that he claims to have "countless, lawful uses." On the contrary, the prosecution witnesses have adequately explained the respective uses of the items to prove that they were indeed drug paraphernalia.<sup>[14]</sup> There is, thus, no necessity to make a laboratory examination and finding as to the presence or absence of methamphetamine hydrochloride or any illegal substances on said items since possession itself is the punishable act.

The valid warrantless arrest gave the officers the right to search the shanty for objects relating to the crime and seize the drug paraphernalia they found. In the course of their lawful intrusion, they inadvertently saw the various drug paraphernalia. As these items were plainly visible, the police officers were justified in seizing them. Considering that Saraum's arrest was legal, the search and seizure that resulted from it were likewise lawful. The various drug paraphernalia that the police officers found and seized in the shanty are, therefore, admissible in evidence for having proceeded from a valid search and seizure. Since the confiscated drug paraphernalia are the very *corpus delicti* of the crime charged, the Court has no choice but to sustain the judgment of conviction.

Even if We consider the arrest as invalid, Saraum is deemed to have waived any objection thereto when he did not raise the issue before entering his plea. "The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise the objection is deemed waived."<sup>[15]</sup> In this case, counsel for Saraum manifested its objection to the admission of the seized drug

paraphernalia, invoking illegal arrest and search, only during the formal offer of evidence by the prosecution.<sup>[16]</sup>

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165;<sup>[17]</sup> **and** (b) there was an unbroken link (*not perfect link*) in the chain of custody with respect to the confiscated items.<sup>[18]</sup>

Although Section 21(1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance therewith is not fatal as long as there is a justifiable ground and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team.<sup>[19]</sup> While nowhere in the prosecution evidence show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation from making the physical inventory and taking a photograph of the drug paraphernalia confiscated and/or seized, such omission shall not render Saraum's arrest illegal or the items seized/confiscated from him as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of Saraum to specifically challenge the custody and safekeeping or the issue of disposition and preservation of the subject drug paraphernalia before the trial court. He cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.<sup>[20]</sup>

The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.<sup>[21]</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing R.A. No. 9165, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Mallillin v. People*,<sup>[22]</sup> the Court discussed how the chain of custody of seized items should be established, thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in