

## FIRST DIVISION

[ G.R. No. 200748, July 23, 2014 ]

**JAIME D. DELA CRUZ, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**SERENO, C.J.:**

This is a Petition for Review on *Certiorari*, filed by petitioner Jaime D. dela Cruz, from the Decision<sup>[1]</sup> dated 22 June 2011 issued by the Twentieth Division of the Court of Appeals (CA) and Resolution<sup>[2]</sup> dated 2 February 2012 issued by the Former Twentieth Division of the CA in CA- G.R. C.R. No. 00670.

### THE ANTECEDENT FACTS

Petitioner Jaime D. dela Cruz was charged with violation of Section 15, Article II of Republic Act No. (R.A.) 9165, or The Comprehensive Dangerous Drugs Act of 2002, by the Graft Investigation and Prosecution Officer of the Office of the Ombudsman – Visayas, in an Information<sup>[3]</sup> dated 14 February 2006, which reads:

That on or about the 31st day of January 2006, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **JAIME D. DE LA CRUZ, a public officer**, having been duly appointed and qualified to such public position as **Police Officer 2** of the **Philippine National Police** (PNP) assigned in the Security Service Group of the Cebu City Police Office, after having been arrested by agents of the National Bureau of Investigation (NBI) in an entrapment operation, was found positive for use of **METHAMPHETAMINE HYDROCHLORIDE** commonly known as “**Shabu**”, the dangerous drug after a confirmatory test conducted on said accused.

CONTRARY TO LAW.

When arraigned, petitioner, assisted by counsel *de parte*, pleaded not guilty to the charge. The records do not reveal whether De la Cruz was likewise charged for extortion.

### VERSION OF THE PROSECUTION

The evidence of the prosecution reveals that at 8:00 a.m. of 31 January 2006, the agents and special investigators of the National Bureau of Investigation, Central Visayas Regional Office (NBI-CEVRO) or simply NBI, received a Complaint from Corazon Absin (Corazon) and Charito Escobido (Charito). The complainants claimed

that at 1:00 a.m. of that same day, Ariel Escobido (Ariel), the live-in partner of Corazon and son of Charito, was picked up by several unknown male persons believed to be police officers for allegedly selling drugs. An errand boy gave a number to the complainants, and when the latter gave the number a ring, they were instructed to proceed to the Gorordo Police Office located along Gorordo Avenue, Cebu City. In the said police office, they met "James" who demanded from them ₱100,000, later lowered to ₱40,000, in exchange for the release of Ariel. After the meeting, the complainants proceeded to the NBI-CEVRO to file a complaint and narrate the circumstances of the meeting to the authorities. While at the NBI-CEVRO, Charito even received calls supposedly from "James" instructing her to bring the money as soon as possible.

The special investigators at the NBI-CEVRO verified the text messages received by the complainants. A team was immediately formed to implement an entrapment operation, which took place inside a Jollibee branch at the corner of Gen. Maxilom and Gorordo Avenues, Cebu City. The officers were able to nab Jaime dela Cruz by using a pre-marked ₱500 bill dusted with fluorescent powder, which was made part of the amount demanded by "James" and handed by Corazon. Petitioner was later brought to the forensic laboratory of the NBI-CEVRO where forensic examination was done by forensic chemist Rommel Paglinawan. Petitioner was required to submit his urine for drug testing. It later yielded a positive result for presence of dangerous drugs as indicated in the confirmatory test result labeled as Toxicology (Dangerous Drugs) Report No. 2006-TDD-2402 dated 16 February 2006.

### **VERSION OF THE DEFENSE**

The defense presented petitioner as the lone witness. He denied the charges and testified that while eating at the said Jollibee branch, he was arrested allegedly for extortion by NBI agents. When he was at the NBI Office, he was required to extract urine for drug examination, but he refused saying he wanted it to be done by the Philippine National Police (PNP) Crime Laboratory and not by the NBI. His request was, however, denied. He also requested to be allowed to call his lawyer prior to the taking of his urine sample, to no avail.

### **THE RULING OF THE RTC**

The Regional Trial Court (RTC) Branch 58 of Cebu City, in its Decision<sup>[4]</sup> dated 6 June 2007, found the accused guilty beyond reasonable doubt of violating Section 15, Article II of R.A. 9165 and sentenced him to suffer the penalty of compulsory rehabilitation for a period of not less than six (6) months at the Cebu Center for the Ultimate Rehabilitation of Drug Dependents located at Salinas, Lahug, Cebu City.<sup>[5]</sup>

Petitioner filed an appeal assigning as error the RTC's validation of the result of the urine test despite its dubiousness having been admitted in spite of the lack of legal basis for its admission. First, he alleges that the forensic laboratory examination was conducted despite the fact that he was not assisted by counsel, in clear violation of his constitutional right. Secondly, he was allegedly held guilty beyond reasonable doubt notwithstanding the lack of sufficient basis to convict him.

### **THE RULING OF THE CA**

The CA found the appeal devoid of merit and affirmed the ruling of the RTC.

Petitioner filed a timely Motion for Reconsideration. He argued that the CA overlooked prevailing jurisprudence, which states that drug testing conducted under circumstances similar to his would violate a person's right to privacy. The appellate court nevertheless denied the motion.

Petitioner thus filed the present Petition for Review on *certiorari*. He assigns as errors the use of hearsay evidence as basis for his conviction and the questionable circumstances surrounding his arrest and drug test.

Respondent, through the Office of the Solicitor General, filed its Comment,<sup>[6]</sup> saying that "petitioner's arguments cannot be the subject of a petition for review on *certiorari* under Rule 45, as they involve questions of facts which may not be the subject thereof; after his arraignment, he can no longer contest the validity of his arrest, less so at this stage of the proceedings; his guilt has been adequately established by direct evidence; and the manner in which the laboratory examination was conducted was grounded on a valid and existing law.

### **THE ISSUE**

We deem it proper to give due course to this Petition by confronting head-on the issue of whether or not the drug test conducted upon the petitioner is legal.

### **OUR RULING**

We declare that the drug test conducted upon petitioner is not grounded upon any existing law or jurisprudence.

We gloss over petitioner's non-compliance with the Resolution<sup>[7]</sup> ordering him to submit clearly legible duplicate originals or certified true copies of the assailed Decision and Resolution.

Petitioner was charged with use of dangerous drugs in violation of the law, the pertinent provision of which reads:

**Section 15. Use of Dangerous Drugs.** – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.<sup>[8]</sup>

The RTC subsequently convicted petitioner, ruling that the following elements of Section 15 were established: (1) the accused was arrested; (2) the accused was subjected to drug test; and (3) the confirmatory test shows that he used a dangerous drug.

Disregarding petitioner's objection regarding the admissibility of the evidence, the lower court also reasoned that "a suspect cannot invoke his right to counsel when he is required to extract urine because, while he is already in custody, he is not compelled to make a statement or testimony against himself. Extracting urine from one's body is merely a mechanical act, hence, falling outside the concept of a custodial investigation."

We find the ruling and reasoning of the trial court, as well as the subsequent affirmation by the CA, erroneous on three counts.

***The drug test in Section 15 does not cover persons apprehended or arrested for any unlawful act, but only for unlawful acts listed under Article II of R.A. 9165.***

**First, "[a] person apprehended or arrested" cannot literally mean any person apprehended or arrested for any crime.** The phrase must be read in context and understood in consonance with R.A. 9165. Section 15 comprehends persons **arrested or apprehended for unlawful acts listed under Article II** of the law.

Hence, a drug test can be made upon persons who are apprehended or arrested for, among others, the "importation,"<sup>[9]</sup> "sale, trading, administration, dispensation, delivery, distribution and transportation",<sup>[10]</sup> "manufacture"<sup>[11]</sup> and "possession"<sup>[12]</sup> of dangerous drugs and/or controlled precursors and essential chemicals; possession thereof "during parties, social gatherings or meetings"<sup>[13]</sup>; being "employees and visitors of a den, dive or resort";<sup>[14]</sup> "maintenance of a den, dive or resort";<sup>[15]</sup> "illegal chemical diversion of controlled precursors and essential chemicals"<sup>[16]</sup>; "manufacture or delivery"<sup>[17]</sup> or "possession"<sup>[18]</sup> of equipment, instrument, apparatus, and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals; possession of dangerous drugs "during parties, social gatherings or meetings"<sup>[19]</sup>; "unnecessary"<sup>[20]</sup> or "unlawful"<sup>[21]</sup> prescription thereof; "cultivation or culture of plants classified as dangerous drugs or are sources thereof";<sup>[22]</sup> and "maintenance and keeping of original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals."<sup>[23]</sup> To make the provision applicable to all persons arrested or apprehended for any crime not listed under Article II is tantamount to unduly expanding its meaning. Note that accused appellant here was arrested in the alleged act of extortion.

A charge for violation of Section 15 of R.A. 9165 is seen as expressive of the intent of the law to rehabilitate persons apprehended or arrested for the unlawful acts enumerated above instead of charging and convicting them of other crimes with heavier penalties. The essence of the provision is more clearly illustrated in *People*

v. Martinez<sup>[24]</sup> as follows:

On a final note, this Court takes the opportunity to be instructive on Sec. 11 (Possession of Dangerous Drugs) and Sec. 15 (Use of Dangerous Drugs) of R.A. No. 9165, with regard to the charges that are filed by law enforcers. This Court notes the practice of law enforcers of filing charges under Sec. 11 in cases where the presence of dangerous drugs as basis for possession is only and solely in the form of residue, being subsumed under the last paragraph of Sec. 11. Although not incorrect, **it would be more in keeping with the intent of the law to file charges under Sec. 15 instead in order to rehabilitate first time offenders of drug use, provided that there is a positive confirmatory test result as required under Sec. 15.** The minimum penalty under the last paragraph of Sec. 11 for the possession of residue is imprisonment of twelve years and one day, while the penalty under Sec. 15 for first time offenders of drug use is a minimum of six months rehabilitation in a government center. To file charges under Sec. 11 on the basis of residue alone would frustrate the objective of the law to rehabilitate drug users and provide them with an opportunity to recover for a second chance at life.

In the case at bench, the presence of dangerous drugs was only in the form of residue on the drug paraphernalia, and the accused were found positive for use of dangerous drugs. Granting that the arrest was legal, the evidence obtained admissible, and the chain of custody intact, the law enforcers should have filed charges under Sec. 15, R.A. No. 9165 or for use of dangerous drugs and, if there was no residue at all, they should have been charged under Sec. 14 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings). Sec. 14 provides that the maximum penalty under Sec. 12 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) shall be imposed on any person who shall possess any equipment, instrument, apparatus and other paraphernalia for dangerous drugs. Under Sec. 12, the maximum penalty is imprisonment of four years and a fine of P50,000.00. In fact, under the same section, the possession of such equipment, apparatus or other paraphernalia is *prima facie* evidence that the possessor has used a dangerous drug and shall be presumed to have violated Sec. 15.

**In order to effectively fulfill the intent of the law to rehabilitate drug users, this Court thus calls on law enforcers and prosecutors in dangerous drugs cases to exercise proper discretion in filing charges when the presence of dangerous drugs is only and solely in the form of residue and the confirmatory test required under Sec. 15 is positive for use of dangerous drugs.** In such cases, to afford the accused a chance to be rehabilitated, the filing of charges for or involving possession of dangerous drugs should only be done when another separate quantity of dangerous drugs, other than mere residue, is found in the possession of the accused as provided for in Sec. 15. (Emphasis supplied)