

## **NINETEENTH DIVISION**

**[ CA-G.R. CEB CR NO. 01315, February 27, 2015 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BENJAMIN ENTERA JAMITO, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated December 2, 2008, of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 58, Cebu City, finding accused-appellant Benjamin Jamito y Entera guilty beyond reasonable doubt for Violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in Crim. Case No. CBU-78248.

#### ***The Facts***

On October 20, 2006, accused-appellant Benjamin Jamito y Entera [Jamito] was charged for violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information<sup>[2]</sup> reads as follows:

“ That on or about the 19th day of October, 2006, at about 6:30 p.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 and under his control the following:

One (1) transparent plastic sachet weighing 0.04 gram of white crystalline substance;

locally known as “shabu”, containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.”

On December 5, 2006, Jamito was arraigned and pleaded not guilty to the offense charged.<sup>[3]</sup>

The RTC in its Pre-Trial Order on December 5, 2006 stated that the issue to be resolved is whether or not the accused is guilty as charged.<sup>[4]</sup>

Trial on the merits followed.

#### ***VERSION OF THE PROSECUTION***

Prosecution presented the arresting officers: SPO1 Metodio Aparis [SPO1 Aparis],

PO3 Fortunato Macaranas [PO3 Macaranas] and PO1 Francis Lyle Flores [PO1 Flores]. The testimony of forensic chemist Police Senior Inspector Pinky Sayson was dispensed with considering the admission by accused-appellant that PSI Acog is an expert who executed Chemistry Report No. D-1670-2006 on October 20, 2006 and that she has no personal knowledge as to how, where and from whom the specimen consisting of one (1) heat-sealed transparent plastic pack marked as "BJE" was recovered.<sup>[5]</sup> Prosecution witnesses narrated that:

On October 19, 2006, SPO1 Aparis, PO3 Macaranas and PO1 Flores were at Sitio Mahayahay, A. Lopez Street, Calamba, Cebu City conducting a foot patrol in said area because the same was known to be rampant with *shabu* cases.<sup>[6]</sup> While roving the area, SPO1 Aparis saw accused-appellant Jamito examining something and when the latter noticed the presence of the police officers, he immediately placed in his pocket the thing he was holding and attempted to flee. PO1 Flores gave chase to Jamito who eventually caught him.

After he was caught, SPO1 Aparis told him to empty his pockets and a heat-sealed plastic sachet containing a white crystalline substance suspected to be a dangerous drug known as *shabu* fell from Jamito's pocket which was picked up by SPO1 Aparis.<sup>[7]</sup> He was asked why he ran away and he just responded that he was afraid.

Jamito was then read his constitutional rights<sup>[8]</sup> and was brought to the police station. At the station, the contraband that was confiscated from him was marked as "BJE" by SPO1 Aparis.<sup>[9]</sup> Thereafter, SPO1 Aparis prepared a Letter Request for Laboratory Examination<sup>[10]</sup> which was delivered by the three arresting officers at the PNP Crime Laboratory on the same day of the arrest. The letter request was received by one PO3 Ramos.

The Chemistry Report which was prepared by PSI Pinky Sayson Acog bearing Chemistry Report No. C-1670-2006,<sup>[11]</sup> revealed that the specimen submitted in her office bearing the mark "BJE" weighing 0.04 gram tested positive for Methamphetamine hydrochloride, a dangerous drug.

The testimony of SPO1 Aparis was corroborated by PO3 Macaranas and PO1 Flores.

On December 17, 2007, prosecution formally offered Exhibits "A" to "C"<sup>[12]</sup> with their sub-markings which were all admitted by the RTC over the objections of Jamito.<sup>[13]</sup>

### **VERSION OF THE DEFENSE**

Defense presented accused-appellant as its lone witness, who narrated that on October 19, 2006 at around 2:00 o'clock in the afternoon he was at his home. After he took a bath, a fight ensued between him and his live-in partner Lilian Saballa which was not resolved. So he decided to pack up his things to go to Barili.

Carrying his bag, he went out of the house and walked the streets to get a ride. While walking, he saw five persons in their plain clothes, running towards his direction, chasing someone. When he saw that one of them was carrying a firearm he got terrified at that sight and he ran as well.

Later on it was him that was being chased by the persons and was eventually prevailed upon. He later on found the said persons to be police officers after he was mauled and dragged to the police station. It was only on the following morning that he knew that he was charged for possession of illegal drugs.<sup>[14]</sup>

Accused-appellant did not offer any documentary evidence.

Hence, the RTC on December 2, 2008, rendered a decision convicting accused-appellant of the crime charged. The decretal portion of the decision, reads:

“Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to suffer the penalty of imprisonment from twelve (12) years to one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of P300,000.00. The full period of preventive detention shall be credited in the service of his sentence.

Exhibit “B” is confiscated in favor of the state for proper disposition.

SO ORDERED.”<sup>[15]</sup>

From the adverse decision, Jamito comes to Us on appeal, with the following assignment of errors, to wit:

“I. THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT; AND

II. THE TRIAL COURT ERRED IN AFFIRMING THE IDENTITY OF THE SEIZED DRUGS DESPITE NON-COMPLIANCE WITH SECTION 21 OF R.A. 9165”<sup>[16]</sup>

### ***Our Ruling***

We shall discuss the issues raised by accused-appellant Jamito *in seriatim*.

Accused-appellant questions for the first time on appeal his warrantless arrest. He insists that the circumstances leading to his arrest, which was purely based on suspicion, was outlawed by no less than the Philippine Constitution. At the time he was arrested, he was not committing, attempted to commit or had just committed a crime justifying an *in flagrante delicto* arrest.

An appeal is generally limited to the errors assigned by petitioner. Issues not raised below cannot be pleaded for the first time on appeal.<sup>[17]</sup> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.<sup>[18]</sup>

In the instant case, the records show that accused-appellant never objected to the irregularity of his arrest before his arraignment. In fact, this is the first time that he raises the issue. Considering this lapse, coupled with his active participation in the trial of the case, we must abide with jurisprudence which dictates that accused-appellant, having voluntarily submitted to the jurisdiction of the trial court, is deemed to have waived his right to question the validity of his arrest, thus curing whatever defect may have attended his arrest. The legality of the arrest affects only the jurisdiction of the court over his person. Accused-appellant's warrantless arrest therefore cannot, in itself, be the basis of his acquittal.<sup>[19]</sup>

Accused-appellant Jamito alleged further that the prosecution failed to establish *corpus delicti* for failure to observe the guidelines set forth under Section 21 of R.A. 9165.

The Supreme Court has long settled that an accused may still be found guilty, despite the failure to faithfully observe the requirements provided under Sec. 21 of RA 9165, for as long as the chain of custody remains unbroken.<sup>[20]</sup> In the recent case of *People v. Oniza, et al.*<sup>[21]</sup> the Supreme Court set forth the links of the chain of custody to establish, thus:

"It should establish the following links in that chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. Still, jurisprudence has established a rare exception with respect to the first required link—immediate seizure and marking of the seized items in the presence of the accused and others—namely, that (a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved."

It is not clear from the evidence that the marking, which was done in the police station, was made in the presence of the accused or his representative.

Thus, the following are the declarations of the arresting officers, thus:

PO1 Flores

"Q: You said that you immediately went to your office at that time?

A: Yes after apprising him of his constitutional rights.

Q: And in your office you (immediately) prepare(d) the documentation and markings, why did you make the markings at that time in your office not in the place of arrest?

A: That was our S.O.P.