

SPECIAL TWENTY-SECOND DIVISION

[CA-G.R. CR-HC NO. 01040-MIN, July 14, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TALIB
ADEL ONTONG, ACCUSED-APPELLANT.**

D E C I S I O N

INTING, J.:

This is an appeal from the April 13, 2012 Judgment^[1] of the Regional Trial Court Branch 40, Cagayan de Oro City in Criminal Case No. 2003-399 for violation of Section 5, Article II of RA 9165, decreed as follows:

"WHEREFORE, the foregoing considered, the prosecution having established all the elements of the crime of illegal delivery of a dangerous drug, the Court hereby finds the accused, Talib Adel Ontong GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5, Par. 1, Article II of R.A. 9165. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P500,000.00. The sachet of *shabu* described in the Information is ordered confiscated in favor of the government to be disposed of in accordance with law and regulations. No pronouncement as to costs.

SO ORDERED."

The conviction of accused Talib Ontong' stemmed from an Information dated May 13, 2003^[2] which reads:

"That on May 10, 2003 at about 4:30 in the afternoon, at V. Castro St., Carmen, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously offer to sell for Php 200.00, deliver, distribute and give away one (1) heat sealed transparent cellophane (of methamphetamine hydrochloride) containing 0.03 grams of white crystalline substance locally known as '*shabu*' to the plainclothesmen PO1 Oscar B. Sierra, Jr. and PO2 Joseph E. Jabiniao, who, when accused showed them the substance drawn from his pocket, arrested him for transacting a dangerous drug."

Accused, assisted by counsel, was arraigned on October 30, 2003; he pleaded not guilty to the offense charged.^[3] He is presently detained at the Davao Prison and Penal Farm, Panabo, Davao del Norte.^[4]

The facts of the case are as follows:

On May 10, 2003 at about 4:30 p.m., PO2 Oscar Sienna and PO2 Joseph Jabiniao conducted a surveillance at V. Castro St., Carmen, Cagayan de Oro City following a

report they received the previous day from their civilian informant on the rampant selling of prohibited drugs in the area. The informant had been texting PO2 Sierra about a certain Talib, who was supposedly doing the illegal selling.

The informant was already stationed at the surveillance area and gave the authorities a description of Talib including the shirt he was wearing.^[5] On the other hand, PO2 Sierra and Jabiniao, both in civilian clothes and on board a motorela,^[6] alighted at V. Castro and strolled for a while observing the area. Later on, a man whom they identified as Talib Ontong (herein accused) approached them and offered PO2 Jabiniao a sachet of *shabu* for P200.00. PO2 Sierra was then about a meter and a half away from the accused and PO2 Jabiniao. PO2 Jabiniao signified interest in Talib's offer and asked the latter where he could get the *shabu*. Talib took a sachet from his pocket and handed it to PO2 Jabiniao. Thereafter PO2 Jabiniao, assisted by PO2 Sierra, apprehended Talib, informed him of his rights, and brought him to the police station. The seized item remained in PO2 Jabiniao's possession. Upon reaching the station, he placed the sachet in a cellophane which he marked "A" for identification purposes.

On May 12, 2003, PO2 Jabiniao personally brought the confiscated item to the crime laboratory for examination and was received by PO3 Tabligan. The test was conducted by Forensic Chemical Officer Aileen Bernido (his testimony was stipulated upon by the parties thus dispensing her oral testimony in open court). The forensic chemist confirmed the specimen to be methamphetamine hydrochloride, a prohibited substance. Hence, the authorities filed the above-quoted Information against Talib.

During the trial, PO2 Sierra maintained that he witnessed PO2 Jabiniao pay the accused P200.00 just before they made the arrest and recalled that the money was turned over to them only at the police station when they asked the accused where the money was. The buy-bust money was personally handed to them by Talib before it was turned over to the precinct commander. PO2 Sierra added that PO2 Jabiniao marked the cellophane only at the police station. On his cross-examination, PO2 Sierra confirmed that even before the scheduled surveillance on May 10, 2003, they have already received reports regarding the selling of prohibited drugs by one Talib.^[7]

Contrary to PO2 Sierra's claims, PO2 Jabiniao insisted that he was not able to pay the buy-bust money as he opted to identify himself as a police officer and arrest Talib instead of handing the money.^[8] He confirmed that the marking on the cellophane was only made at the station but he positively identified the item presented in court as the same item he seized from Talib. Moreover, he admitted that when they went to the surveillance area, they already knew who they were looking for based on the informant's tips but he denied that it was they who approached Talib. He further averred that it was mere coincidence that Talib chose to offer to sell the illegal drugs to him.^[9]

On the other hand, Talib raises the defense of denial. He recalled that he was not arrested on May 10, 2003 but rather on May 5; that he did not have, much more sell any *shabu* to the police officers; and that all he had was 75 centavos and not P200.00. He attested that on May 5, 2003, he had been driving his father's tri-sikad since 5:30 a.m. but had to stop at about 10:00 a.m. because the tri-sikad's bearing

broke. At about 11:00 a.m., while fixing the tri-sikad, he noticed a taxi stop behind him from which two (2) men, whom he usually sees in the Carmen area and whom he later learned to be PO2 Sierra and PO2 Jabiniao, alighted and pointed their guns at him telling him not to run. He was then pushed inside the taxi where he was handcuffed and brought to Maharlika detention center. This was witnessed by his sister Norica Ontong. Outside Maharlika, he was searched by PO2 Sierra who dropped a sachet in front of him. That was the first time he saw the *shabu* and he denied that that was his. He also denied having P200.00 in his pocket as he only had 75 cents during that time. Thereafter he was detained in Maharlika for 11 days before he was brought to the prosecutor's office and then to Lumbia jail. On his cross-examination, he admitted not knowing any grudge between him and the police officers.^[10]

The RTC rendered the assailed Judgment holding that the accused was caught in *flagrante delicto* when he handed the sachet of *shabu* to PO2 Jabiniao; that it was not material whether the P200.00 was actually paid to the accused since violation of Section 5, Article II of RA 9165 includes the delivery or the passing of the prohibited drugs to another with or without consideration; that no ill-motive could be attributed to the police officer thus, the presumption of regularity in the performance of their duty should prevail against the accused's self-serving denial; that the chain of custody was adequately established as the person who received the item and placed the marking thereon was presented and the *corpus delicti* was properly identified by the prosecution witnesses; that the integrity and evidentiary value of seized drug was preserved; and that lastly, there was no evidence of tampering or meddling with the evidence.

Unyielding, accused appeals to Us imputing that the RTC erred in convicting him notwithstanding the failure of the prosecution to prove his guilt beyond reasonable doubt.

The accused-appellant asseverates that there was no selling of illegal drugs but rather only an illegal, warrantless search and arrest; and that the authorities failed to follow the requirements set forth in Section 21 of RA 9165 without justifiable grounds. He contends that there was no coordination with the PDEA on the alleged buy-bust; that the seized item was not immediately marked upon confiscation; that there was no inventory or photo taking of the items; and that there was no representative from the DOJ or any public official.

Our Ruling.

The appeal is imbued with merit.

Basically, the accused-appellant assails the authorities' failure to follow the mandate provided for under Section 21, Article II of RA 9165 pertinent portion of which provides:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA

shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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Indeed, the integrity and evidentiary value of the *corpus delicti* was never assailed by the accused-appellant before the RTC. He did not question the propriety of the police authorities' taking and safekeeping of the seized item nor did he try to destroy the chain of custody to show that the illegal drug presented before the court was not what the proponents claim it to be. Apparently, the accused-appellant did not concern himself on the alleged non-compliance with the procedures set forth in the afore-quoted provision despite the opportunity accorded to him to question the purported lapses until on appeal before this Court where such issue was raised for the first time.

Analogously, in *People v. Robelo*,^[11] the Supreme Court noted therein that the alleged non-compliance with Section 21, Article II of RA 9165 was not raised before the trial court but only for the first time on appeal. The High Court held that that cannot be done. Citing a plethora of cases, the Supreme Court quoted:

x x x Indeed the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal."

Such ruling was reiterated in *People v. Bis*,^[12] where the Supreme Court found apt the CA observation that the appellant therein failed to seasonably question the procedural gaps before the trial court and so any objection to the evidence was not allowed to be raised for the first time on appeal.

However, in the case of *People v. Castillo*,^[13] the Supreme Court chose to pass upon the question of the alleged violations of Section 21 of RA 9165 despite the fact

that it was not raised while the case was being heard before the trial court. We quote the Supreme Court:

"Indeed[,] the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

Nevertheless, we will still pass upon this question considering the gravity of its consequences on the liberty of appellant. We take this opportunity to reiterate jurisprudence which states that non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible because what is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused."

In the instant case, it cannot be denied that the procedural requirements were not totally complied with by the police authorities and such issue was not tackled before the RTC. Nonetheless, in the same vein as the *Castillo* case, We opt to address the issue to determine whether the integrity and evidentiary value of the seized item was really preserved despite the lapses since the determination thereof would significantly influence the resolution for or against the accused-appellant whose liberty is at stake.

It is settled that the failure to strictly follow the directives of this section is not fatal and will not necessarily render the items confiscated from an accused inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.^[14] Thus, the failure of the apprehending team to inventory and photograph the confiscated items immediately after the operation, is not fatal to the prosecution's cause^[15] contrary to what the accused-appellant would want to impress on this Court provided the integrity and evidentiary value of the confiscated drugs have been preserved. Further, in *People v. Salvador*,^[16] the Supreme Court held that coordination with PDEA, while perhaps ideal, is not an indispensable element of a proper buy-bust operation; it is not invalidated by mere non-coordination with the PDEA. Likewise, the appropriation of the prohibited drugs cannot also be voided on the mere ground that no DOJ representative or any elective official was present during the taking. In *People v. Consulta*,^[17] the Supreme Court declared:

"We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. The participation of a representative from the DOJ, the media or an elected official alone can be problematic. For this reason, the last sentence of the implementing rules provides that