

## FIRST DIVISION

[ G.R. No. 224587, July 28, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMMY YUSOP Y MUHAMMAD, ACCUSED-APPELLANT.**

### DECISION

**REYES, J. JR., J.:**

On ordinary Appeal<sup>[1]</sup> are the March 27, 2015 Decision<sup>[2]</sup> and the February 11, 2016 Resolution<sup>[3]</sup> of the Court of Appeals (CA), Cagayan De Oro City (CDO) in CA-G.R. CR-HC No. 01002-MTN affirming *in toto* the February 9, 2012 Judgment<sup>[4]</sup> of the Regional Trial Court (RTC) of CDO, Branch 25 in Criminal Case No. 2011-1109 convicting accused-appellant Sammy Yusop y Muhammad (Yusop) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

The accusatory portion of the Information<sup>[5]</sup> dated November 23, 2011, charging Yusop with the offense of illegal transport of dangerous drugs, reads:

That on or about the **21<sup>st</sup> day of November 2011**, at around **8:30 o'clock in the evening**, more or less, at **Upper Carmen, [CDO]**, Province of Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, ***in conspiracy with a certain alyas [sic] LEA LEDESMA***, without any legal authority nor corresponding license or prescription to pass, transport, deliver or distribute any dangerous drug, then and there willfully, unlawfully and feloniously pass, deliver, transport or distribute **thru the LBC courier service** **two (2) pieces** of sealed ziplocked big transparent plastic cellophane containing crystalline substance with markings "**RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature**" with a net weight of **736.98 grams**, and "**RECOVERED 01 RDC 11/21/2011 with signature VCMO 11/21/2011 with initial signature**" with a net weight of **744.48 or a total weight of 1,481.46 grams**, more or less, wherein after a ***physical, qualitative, and confirmatory tests*** conducted by an authorized and expert forensic chemist, the same yielded positive for the presence of ***methamphetamine hydrochloride (shabu)***, a dangerous drug, accused well-knowing that the substance recovered from him was a dangerous drug.

Contrary to law.

Upon arraignment, Yusop pleaded not guilty,<sup>[6]</sup> thence, trial ensued.

#### ***Version of the Prosecution***

On November 20, 2011, at around 2:30 a.m., the Philippine Drug Enforcement Agency (PDEA) received reliable information from a trusted source that a large quantity of *shabu* was about to be transported, through the LBC Express, Inc. (LBC), from Las Pinas City to CDO.<sup>[7]</sup> According to the informant, a certain Lea Ledesma will be shipping a Pensonic Television

(subject package) to a consignee later identified as Yusop.<sup>[8]</sup> Upon verification with the area manager of LBC, PDEA agents planned the drug bust and proceeded to the LBC branch in SM City CDO where the subject package will be picked up.<sup>[9]</sup> However, no one came to get the subject package.<sup>[10]</sup> The PDEA team contemplated on securing a search warrant but decided to dispense with obtaining one considering that they did not know when the subject package will be claimed and their lack of personnel.<sup>[11]</sup> The next day, at around 8:30 p.m., Yusop finally arrived at the LBC branch and retrieved the subject package.<sup>[12]</sup> Once apprehended, the PDEA agents asked Yusop regarding the contents of the subject package and made him open the same.<sup>[13]</sup> The *shabu* was found at the back portion of the television.<sup>[14]</sup> Yusop was then arrested and the seized items were marked<sup>[15]</sup> and photographed in the presence of City Councilor Roger Abaday (Abaday) and ABS-CBN reporter Rod Bolivar (Bolivar).<sup>[16]</sup> After securing the necessary request for laboratory examination, the confiscated drugs were brought to the PDEA Crime Laboratory where it was received by PDEA Forensic Chemist III Dina Mae S. Unito (PDEA/FC Unito). The laboratory tests confirmed that the seized plastic bags contained methamphetamine hydrochloride or *shabu*<sup>[17]</sup>

### ***Version of the Defense***

Yusop, on the other hand, averred that he claimed the subject package for a certain Nasser Datu Mama who promised to pay him P15,000.00 and vehemently denied any knowledge that the subject package contained *shabu*.

### **The Ruling of the RTC**

In its Judgment dated February 9, 2012, the RTC found Yusop guilty as charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 for violating Section 5, Article II of R.A. No. 9165. The RTC opined that on account of the urgency of the operation, the PDEA agents were justified in not procuring a search warrant beforehand and that there was probable cause to confront Yusop. Moreover, for the RTC, the prosecution was able to establish that, indeed, Yusop was caught transporting *shabu* deliberately placed in the picture tube of a television set consigned to the latter through the LBC, and that the identity, integrity, and probative value of the sequestered drugs were preserved and kept intact from the time of confiscation up to its presentation in court pursuant to the chain of custody rule laid down in Section 21 of R.A. No. 9165.

### **The Ruling of the CA**

In the herein assailed Decision, the CA denied the appeal and affirmed the judgment of the RTC, thus:

WHEREFORE, [w]e **DISMISS** the appeal. We **AFFIRM** *in toto* the [Judgment] of the [RTC] of [CDO], Branch 25, promulgated on Febaiary 09,

2012.

SO ORDERED.<sup>[18]</sup>

The CA held that on the basis of the definite information regarding the subject package and the identity of its consignee, Yusop was lawfully arrested. The CA likewise found Yusop's defense of denial as incredible given the fact that upon confrontation with the PDEA agents, instead of standing his ground like an innocent person, Yusop threw away the subject package and attempted to escape.

Yusop filed a Motion for Reconsideration but the same was denied in a Resolution dated February 11, 2016.

On July 7, 2016, this Court required<sup>[19]</sup> the parties to submit their respective supplemental briefs; however, they manifested that they would merely adopt their briefs before the CA.

In his Brief, Yusop essentially argues that the dangerous drugs allegedly seized were inadmissible in evidence for being the fruit of a poisonous tree, and that the crime charged was not proven beyond reasonable doubt.

### The Ruling of the Court

The appeal is partly meritorious.

The Court finds that while the warrantless arrest was valid, Yusop must nevertheless be acquitted for non-compliance with the three-witness rule laid down in Section 21 of R.A. No. 9165.

*The warrantless arrest was valid as the PDEA agents had probable cause to believe based on personal knowledge that the person to be arrested has committed an offense i.e. illegal transport of dangerous drugs*

Generally, and as guaranteed by our Constitution,<sup>[20]</sup> an arrest, search or seizure without a warrant issued by a competent judicial authority is invalid. However, there are certain recognized exceptions listed under Section 5, Rule 113 of the Revised Rules of Criminal Procedure,<sup>[21]</sup> viz.:

SEC. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In the case at bench, both the RTC and the CA concluded that, based on the established facts, the present case falls within paragraph (b) of the above-quoted provision. We agree.

Jurisprudence<sup>[22]</sup> tells us that the following must be present for a valid warrantless arrest under paragraph (b): i) an offense has just been committed; and ii) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. In *Pestilos v. Generoso*,<sup>[23]</sup> we said that in connection with Section 5, paragraph (b), Rule 113 of the Rules of Court, the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within Ms personal knowledge and that the requirement of the existence of probable cause objectifies the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests. Moreover, we enunciated in *Vaporoso v. People*<sup>[24]</sup> that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through

the search incidental thereto will be rendered inadmissible.

The evidence on record clearly shows that the police officers had personal knowledge of facts or circumstances upon which they had properly determined probable cause in effecting a warrantless arrest against Yusop. Here, the PDEA agents immediately acted on a tip received from a confidential informant that a substantial amount of *shabu* will be shipped from Las Pinas to CDO. The details regarding the shipment such as the names of the shipper and consignee, contents of the subject package, and the courier service were all accurate upon verification. The PDEA agents then conducted surveillance operations at the LBC branch where the package will be claimed. The subject package was without a doubt retrieved a day later by Yusop - who acted like a guilty person and attempted to run when confronted by the authorities. The foregoing pieces of information qualify as the PDEA agents' personal observation, perception and evaluation, which are necessarily within their personal knowledge, prompting them to make the warrantless arrest. The Court is, thus, convinced that the PDEA agents had personal knowledge of facts or circumstances justifying Yusop's warrantless arrest.

Besides, on the procurement of a search warrant, Intelligence Officer 2 Vincent Cecil M. Orcales (IO2 Orcales) testified that:

Q : Now, before conducting the operation, did it not occur to your mind to secure a search warrant?

x x x x

A : We had a plan to apply for a Search Warrant, [b]ut, because of the exigency and emergency circumstances, we cannot also afford the safety of our agents. We don't have the luxury of time; [w]e have very few and limited personnel x x x. We cannot actually sacrifice our agents and the subject consignee may pick up the package anytime x x x.

Q : Do you mean to tell us that you did not know the exact time as to when the accused will pick up the package? A: Yes, Sir.

x x x x

Q : Could you not have divided the number of your personnel into two (2) groups? One group will be applying for a Search Warrant and the other group will conduct the operation?

A: We cannot sacrifice our agents and as we know, it involves large quantity of *shabu* and huge amount. And, we believed that he was not alone. We believed he was armed and with armed men. We considered that one. [25]

Intelligence Agent 1 Rodolfo S. Dela Cerna, Jr. (IA1 Dela Cerna) likewise testified in this wise:

Q : xxx Who talked about securing a Search Warrant?

A: We talked about it.

Q : And, did you agree to secure and apply for a Search Warrant ?

A : We did not.

Q: Why?

A : Because of the urgency of the matter and also because of our limited personnel.

Q: When you speak of because of the urgency of the matter, can you elaborate that to us?

A : We do not exactly know as to when the consignee will pick up the package.

Q: You mean to tell us that on that following day, you do not know the specific time as to when the accused will pick up the package?

A : Yes, Sir.

xxxx

Q :

Now, when you said because of the limited number of your operatives; What does it mean and can you elaborate it?

A : We consider the consignee to arrive not alone and probably armed. So, we could not sacrifice the safety of our men by pulling out from our already depleted personnel<sup>[26]</sup>

It is thus clear that the PDEA agents intended to obtain a search warrant but, in the end, decided not to because time was evidently of the essence. In the past, the Court said that we should not expect too much of an ordinary policeman considering that oftentimes, he has no opportunity to make proper investigation but must act in haste on his own belief to prevent the escape of the criminal.<sup>[27]</sup> Hence, the Court concurs with the common findings of the courts *a quo* that the PDEA agents were justified in dispensing with the procurement of a warrant due to the exigency, the risks, and the quantity of the dangerous drugs involved in the operation.

### ***The search and seizure which followed the warrantless arrest was likewise valid***

No less than Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.<sup>[28]</sup>

Nevertheless, warrantless search or seizure is allowed if it is incidental to a lawful arrest and such instance is governed by Section 13, Rule 126 of the Revised Rules on Criminal Procedure, which provides:

**SEC. 13. Search incident to a lawful arrest.** — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

Here, as previously discussed, the warrantless arrest of Yusop was valid. It follows, therefore, that the search and seizure that followed Yusop's arrest which yielded more than one kilogram of *shabu* was likewise valid and admissible as evidence.

### ***Nevertheless, non-compliance with the requirements of Section 21 of R.A. No. 9165 casts doubt on the integrity of the seized items and suffices as a ground for acquittal based on reasonable doubt.***

Yusop was caught illegally transporting dangerous drugs in 2011. The law applicable then was Section 21, Article II of R.A. No. 9165 before its amendment by RA 10164, and it states:

**SEC. 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.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

In simpler terms, the prevailing law then requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of **(a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same.<sup>[30]</sup> In the case of *Lescano v. People*,<sup>[31]</sup> the Court held that non-compliance with the chain of custody rule is tantamount to failure in establishing identity of the *corpus delicti* which is an essential element of the offense and engenders the acquittal of an accused.

Seemingly, in the present case, the PDEA agents failed to secure the attendance of a DOJ representative during the inventory and photography of the seized drugs as testified by IO2 Orcales:

x x x x

Q : Alright. What happened after you have subdued [Yusop]?

A : IA1 Dela Cema asked him what was inside the package. At first, he was reluctant. But, later on, he cooperated.

x x x x

Q : Can you tell us what [Yusop] said?

A : That there is *shabu* inside.

Q : Do you mean to tell us that [Yusop] told IA1 Dela Cema that what was contained inside the package [was] *shabu*?

A:  
Yes, Sir.

Q : After that, what happened next?

A : After that, we called Councilor [Abaday] to witness the opening of the package and the Media was already there.

Q : What Media are you referring to?

A: ABS-CBN.

Q : Why was the ABS-CBN already there?

A: On the first day of operation, the Camera Man was with us and the Anchorman was within the vicinity of SM.

x x x x

Q : You said you made an inventoiy; Where did you actually make the inventoiy?

A : At the crime scene.

x x x x

Q : Okay. So, after you made the inventoiy, what happened next?

A: After the inventoiy, we let Councilor [Abaday] and [Bolivar] of the ABS-CBN signed [sic] the inventoiy. x x x<sup>[32]</sup>

The presence of only two out of the three required insulating witnesses was corroborated by 102 Liezel Baldovino (102 Baldovino):

x x x x

Q: For emphasis purposes, Madam Witness, do you mean to tell us that these pictures were taken by you during the confiscation of evidence and inventory of the evidence?

A: Yes, Sir.

Q : You said that you were taking photographs of the evidence confiscated during the inventory. Can you tell us who were present during the inventory?

A: The representative of the media from ABS-CBN and Councilor [Abaday] of the City Council.<sup>[33]</sup>

x x x x

Q: You said you made an inventory; Where did you actually make the inventory?

A : At the crime scene

It was also apparent in the testimony of IA1 Dela Cerna:

Q : And, upon hearing that there was [*shabu*] inside, what did you do if any?

A : I called up ABS-CBN and Councilor [Abaday].

Q : Why did you call up ABS-CBN and Councilor Abaday?

A : I wanted them to witness the opening of the package and to witness the inventory.

x x x x

Q : Now, Mr. Witness, you said that you inventoried the items confiscated; Kindly tell us if thai inventory was reduced into writing?

A : Yes, Sir. It was.

Q :

If that Inventory of that confiscated items is shown to you; Will you be able to recognize it?

A : Yes, Sir.

x x x x

Q : By the way, Mr. Witness, I forgot to ask you if the representative of the ABS-CBN [Bolivar] and Councilor [Abaday] have affixed their signatures on your written inventory, [Did] they [sign] your written inventory?

A: Yes, Sir.<sup>[34]</sup>

Equally telling is the Inventoiy<sup>[35]</sup> sheet which contains the signatures of Councilor Abaday and media representative Bolivar only.

Realistically speaking, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 is not always possible. But, while the law excuses non-compliance under justifiable grounds the same must be proven as a fact for the Court cannot presume what they are or that they even exist<sup>[36]</sup>; and the integrity and evidentiary value of the seized items were properly preserved.<sup>[37]</sup>

Disappointingly, here, there was no effort at all on the part of the prosecution to explain or justify why a representative from the DOJ was not present during the inventoiy and photography of the confiscated drugs nor was it shown that earnest efforts were in fact exerted to secure or obtain their presence or attendance thereat.

The oft-repeated rule is that the presence of the required insulating witnesses at the time of the inventoiy is mandatory since it serves both a crucial and a critical purpose. Indeed, under the law, the presence of the so-called insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself—the very prohibited substance itself — and for that reason imperils and jeopardizes the prosecution's case.

**WHEREFORE**, the appeal is **GRANTED**. The March 27, 2015 Decision and February 11, 2016 Resolution of the Court of Appeals, Cagayan De Oro City in CA-G.R. CR-HC No. 01002-MIN are **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **SAMMY YUSOP y MUHAMMAD** is hereby ACQUITTED and ordered immediately RELEASED from detention, unless he is confined for any other lawful cause. The Director of the Bureau of Corrections is **DIRECTED** to INFORM the Court of the action taken hereon within five (5) days from receipt hereof.

**SO ORDERED.**

*Peralta, C.J., (Chairperson), Caguioa, Lazaro-Javier, and Lopez, JJ., concur.*

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[1] See Notice of Appeal dated March 8, 2016; CA rollo, pp. 186- i 87.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Rafael Antonio ML Santos, concurring; id. at 149-162.

[3] Id. at 181-182.

[4] Penned by Judge Arthur L. Abundiente; records, pp. 160-183.

[5] Id. at 3.

[6] See Certificate of Arraignment dated December 13, 2011; id. at 55.

[7] Id. at 105.

[8] Id. at 106.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 107.

[13] Id.

[14] Id.

[15] The two pieces of sealed transparent plastic cellophane each containing crystalline substance were marked "RECOVERED 01 RDC ! 1/21/2011 with signature VCMO 11/21/2011 with initial signature" with a net weight of 736.98 grams, and "RECOVERED 01 RDC I 1/21/2011 with signature VCMO 11/21/2011 with initial signature" with a net weight of 744.48 grams; See also Inventory and Pictures, id. at 15-24.

[16] Id.

[17] See Chemistry Report No. PDEA-DD-2011-019; id. at 13.

[18] CA *rollo*, p. 161.

[19] See Resolution dated July 7, 2016, *rollo*, pp. 21 -22.

[20] Article III, Section 2.

[21] A.M. No. 00-5-03-SC. October 3, 2000.

[22] *People v Comprado*, G.R. No. 213225, April 4, 2018; *People v. Gardon-Mentay*, G.R. No. 223 140, September 4, 2019.

[23] 746 Phil. 301 (2014).

[24] G.R. No. 238659, June 3, 2019.

[25] TSN, January 16, 2012, pp. 22-23.

[26] TSN, January 17, 2012, pp. 5-6.

[27] *Pestiloa v. Generoso*, supra note 23.

[28] *Cruz v. People*, G.R. No. 238141, July 1, 2019.

[29] *People v. Binasing*, G.R. No. 221439, July 4, 2018.

[30] *People v Manansala*, G.R. No. 229509, July 3, 2019.

[31] 778 Phil. 460(2016).

[32] TSN. January 16, 2012. pp. 11 and 15.

[33] TSN (IO1 Liezel Baldovino), January 17, 2012, p. 15.

[34] TSN (1A1 Rodolfo S. Dela Cerna, Jr.). January 17. 2012. pp. 10, 15. and 16.

[35] Records, p. 15.

[36] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[37] *People v. Dumagay*. G.R. No. 216753, February 7, 2018.