

SECOND DIVISION

[G.R. No. 234686, June 10, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MICHAEL FRIAS Y SARABIA ALIAS "NICKER," ACCUSED-
APPELLANT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision^[1] dated March 14, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01973 affirming the conviction of appellant Michael Frias for violations of Section 5 and Section 11, Art. II of Republic Act 9165 (RA 9165)^[2] and imposing on him the corresponding penalties.

The Proceedings Before the Trial Court

Appellant Michael Frias was charged in the following Informations:

Crim. Case No. 09-32569
(Violation of Section 11, Art. II of RA 9165; Illegal Possession of Dangerous Drugs)

That on or about the 15th day of July 2009, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess, prepare, administer or otherwise use any dangerous drug, did, then and there willfully, unlawfully and feloniously have in her possession and under his custody and control one (1) heat sealed transparent plastic (sachet) marked "MFS-2" containing methamphetamine hydrochloride (shabu), a dangerous drug, weighing 0.03 gram, a dangerous drug, without the corresponding license or prescription therefor, in violation of the aforementioned law.

Act contrary to law.^[3]

Crim. Case No. 09-32570
(Violation of Section 5, Art. II of RA 9165; Illegal Sale of Dangerous Drugs)

That on or about the 15th day of July 2009, in (the) City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give a way to a PDEA poseur buyer IO1 Novemar H. Pinanonang in a buy-bust operation one (1) small heat sealed transparent plastic sachet with markings MFS-1 containing 0.02 gram of white crystalline substance known as methamphetamine hydrochloride (shabu), in exchange for a price of Five Hundred Pesos (P500.00) for which the police used one (1) P500.00 bill as marked money with Serial No. SN HE274907, in violation of the aforementioned law.

Act contrary to law.^[4]

On arraignment, appellant pleaded not guilty to both charges.^[5] Trial ensued.

Agents of the Philippine Drug Enforcement Agency (PDEA), namely: Novemar Pinanonang, Theonette Solar, and Von Rian Tecson testified for the prosecution. On the other hand, appellant Michael Frias himself, Marichu Suson, and Charlie Chavez testified for the defense.

The Prosecution's Version

On July 9, 2009, PDEA agent Von Rian Tecson received a report from a confidential informant that appellant and his live-in partner Marichu Suson were selling shabu at Purok Mahigugmaon, Brgy. 22, Bacolod City. They did a surveillance and confirmed that persons were coming in and out of appellant's house in the area. A buy-bust team was immediately formed with Agent Tecson as team leader, Agent Pinanonang as poseur-buyer, Agent Solar as arresting officer, and the rest of the team as back up. They prepared the buy-bust money of P500.00 bill.^[6]

The team proceeded to appellant's house in Purok Mahigugmaon, Brgy. 22, Bacolod City. The informant introduced Agent Pinanonang to appellant as potential buyer of shabu. Appellant asked if they got the money and simultaneously handed Agent Pinanonang a plastic sachet containing white crystalline substance. The latter, in turn, gave the buy-bust money to appellant. Thereafter, Agent Pinanonang removed his baseball cap to signal the back-up team to close in. Agent Pinanonang arrested and frisked appellant. He also recovered from appellant another plastic sachet containing shabu and the buy-bust money. As for Suson, Agent Solar frisked her too and recovered from her a plastic sachet also containing white crystalline substance. The items were marked and inventoried at the place of arrest and in the presence of media representatives Larry Trinidad and Raquel Gariando and barangay officials Delilah Tasasan, Rafael Valencia, and Charlie Chavez. Agent Elmer Ebona took photographs of the items.^[7]

Appellant and Suson were brought to the police station where their arrest was entered in the blotter. Agent Pinanonang took the plastic sachets to the PDEA safe house, prepared a request for their laboratory examination, and delivered them to Forensic Chemist Paul Jerome Puentespina for laboratory examination.^[8]

Per Chemistry Report No. D-030-2009, Forensic Chemist Puentespina found the specimens positive for methamphetamine hydrochloride (shabu), a dangerous drug.^[9]

The prosecution offered the following exhibits: Exhibit A - Police Blotter Report dated July 14, 2009; Exhibit B - P500.00 bill with Serial Number HE274907; Exhibit C - Pre-Operation Report dated July 15, 2009; Exhibit D - Certificate of Inventory dated July 15, 2009; Exhibit E - White long bond paper with attached pictures (taken during inventory); Exhibit F - Police Blotter Report dated July 15, 2009; Exhibit G - Request for Laboratory Examination dated July 15, 2009; and, Exhibit H - Chemistry Report No. D-030-2009 dated July 15, 2009.^[10]

The Defense's Version

Appellant and Suson testified they were inside their bedroom when the PDEA agents suddenly barged in. The agents pointed long firearms to them and announced a raid. They were made to leave the room but the agents remained inside. The agents frisked them and found nothing. Appellant denied that he sold shabu to Agent Pinanonang. He also claimed he got coerced to sign the inventory of the confiscated items.^[11]

Brgy. Captain Charlie Chavez confirmed that he witnessed the inventory and signed the

certificate of inventory during the buy-bust operation.^[12]

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Decision^[13] dated October 1, 2014, the trial court found appellant guilty as charged, viz:

WHEREFORE, finding accused Michael Frias y Sarabia alias "Nicker" GUILTY beyond reasonable doubt of: (a) Violation of Section 5, Article II of Republic Act 9165 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs) in Criminal Case 09-32570; and (b) Violation of Section 11, Article II of the same law (Possession of Dangerous Drugs) in Criminal Case 09-32569, judgment is hereby rendered sentencing him to suffer: (1) Life imprisonment, and to pay a fine of Php500,000.00 in Criminal Case No. 09-32570; and (2) an indeterminate prison term of Twelve (12) Years and One (1) day, as minimum, to Fifteen (15) years, as maximum, and to pay a fine of Php300,000.00 in Criminal Case No. 09-32569. He is also to bear the accessory penalty provided by law. Costs against accused.^[14]

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The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked three fatal omissions of the PDEA agents during the supposed buy-bust operation, viz: lack of ultra violet powder on the buy-bust money, lack of search warrant, and improper surveillance. Appellant also faulted the trial court when it gave credence to the purported inconsistent testimonies of PDEA Agent Solar pertaining to what she wore during the buy-bust operation.^[15]

For its part, the People, through Assistant Solicitor General Ma. Cielo Se-Rondain and Senior State Solicitor Ma. Lourdes Alarcon-Leones, countered in the main: 1) the presumption of regularity in the performance of official in favor of the PDEA agents cannot prevail over appellant's unsubstantiated theory of frame up; 2) mere absence of ultraviolet powder on the buy-bust money does not invalidate the buy-bust operation; and, 3) the warrantless search on appellant's person was a valid incident to appellant's arrest in flagrante delicto.^[16]

The Court of Appeals' Ruling

By Decision^[17] dated March 14, 2017, the Court of Appeals affirmed the verdict of conviction and the corresponding penalties.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the People adopted, in lieu of supplemental briefs, their respective briefs filed before the Court of Appeals.^[18]

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violations of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), both of Art. II of RA 9165?

Ruling

At the outset, appellant assails the warrantless arrest and incidental search effected by PDEA agents on his person.

On this score, Section 5 of Rule 113 of the Rules on Criminal Procedure provides instances when warrantless arrest may be affected, thus:

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;

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Here, appellant was arrested during an entrapment operation where he was caught in flagrante delicto selling and in possession of shabu. In *People v. Rivera*, the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.^[19]

Consequently, appellant's warrantless arrest as well as the incidental search effected by the PDEA agents on his person validly conformed with Section 5 of Rule 113 of the Rules on Criminal Procedure.^[20]

Appellant further seeks to invalidate the verdict of conviction on ground that the prior surveillance done on him was improper.

We are not convinced. It is settled that prior surveillance is not a requisite to a valid entrapment or buy-bust operation. Flexibility is a trait of good police work. For so long as the rights of the accused have not been violated in the process, the arresting officers may carry out its entrapment operations and the courts will not pass on the wisdom thereof.^[21] Hence, whether or not PDEA's prior surveillance on appellant was proper, the same will not affect the validity of the subsequent entrapment operation in the absence of any showing that appellant's rights as accused was violated.

Appellant also harps on the PDEA officers' failure to use ultraviolet powder on the buy-bust money. *People v. Unisa* clarified that there is nothing in RA 9165 or its Implementing Rules which requires the buy-bust money to be dusted with ultraviolet powder before it can be legally used in a buy-bust operation.^[22] So must it be.

Appellant likewise points to the alleged failure of PDEA Agent Solar to specify what she wore during the buy-bust operation. This is too trivial a matter which does not in any way affect the veracity of the testimonies of the prosecution witnesses especially Agent Solar's positive identification of appellant as the person who sold shabu to Agent Pinanonang.

We now address the core issue: did the PDEA Agents comply with the chain of custody rule in the handling of the dangerous drugs in question?

Notably, appellant himself has not raised this issue in his present appeal. We, nonetheless, apply here the rule that appeal in a criminal easel throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appeal brief.^[23]

Here, although appellant has not presented the issue pertaining to the chain of custody rule, the Court, *motu proprio* takes cognizance thereof and consequently, ascertains based on the record, whether the PDEA agents concerned duly complied with the mandatory chain of custody rule.

The case is governed by RA 9165 prior to its amendment in 2014. Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.

Section 21, paragraph 1 of RA 9165 reads:

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. (Emphasis supplied)

This provision is related to Sec. 21 (a), Article II of the Implementing Rules of RA 9165, viz.:

(a) The apprehending officer/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: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Underscoring supplied)

x x x x x x x x x

Why is the chain of custody rule mandatory in every dangerous drugs case? *People v. Enad* pointedly addressed this question:

[S]ince the corpus delicti in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under RA 9165. Because the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of the prohibited drug be established with the same unwavering exactitude as that requisite to make a finding of guilt to ensure that unnecessary doubts concerning the identity of the evidence are removed. To this end, the prosecution must establish the unbroken chain of custody of the seized item.^[24]

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As required, the physical inventory and photograph of the sized or confiscated drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.

The saving clause under Section 21 (a) commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.

On this score, *People v. Jugo* specified the twin conditions for the saving clause to apply:

[F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.^[25]

Here, Agent Pinanonang testified:

Q: Who were present when you marked this specimen?

A: The barangay officials and members of the media.

Q: Can you please name these barangay officials and members of the media?

A: Kagawad Charlie Chavez, Kagawad Delilah (Ta-asan), and Kagawad Rafael Valencia.

Q: By the way, where was Michael Frias during the marking?

A: At the crime scene.

x x x x

Q: Who placed the marking MFS-2 on this (plastic sachet) item?

A: I myself.

x x x x

Q: Who were present during the marking of this exhibit?

A: The barangay officials, the subject Michael Frias and the (members) of the media.

x x x x

Q: There are signature over the names Larry Trinidad, DYHB, Racquel Gariando of RPN-DYKB, Delilah D. Ta-asan, Rafael Valencia and Charlie Chavez, do you know who these persons are and whose signatures appears over their names?

A: Yes, sir.

Q: Who are these persons?

A: They were the witnesses during the inventory.^[26]

Based on the testimony of Agent Pinanonang, the marking, inventory, and photograph in this case were done in the presence of appellant, media representatives Larry Trinidad and Raquel Gariando and local elective officials Delilah Ta-asan, Rafael Valencia, and Charlie Chavez. He did not mention, however, that a representative from the DOJ was also present. Notably, the prosecution failed to acknowledge this deficiency, let alone, offer any explanation therefor. In fact, the prosecution was conspicuously silent on this point.

In *People v. Seguiante*, the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.^[27]

In *People v. Rojas*, the Court likewise acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against the accused being supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain such deficiency.^[28]

Another. In the recent case of *People v. Vistro*, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule during the physical inventory and photograph of dangerous drugs. The Court similarly made the observation that the first condition under the saving clause was not fulfilled, *i.e.* the prosecution failed to offer any justification for the absence of the representatives from the DOJ and the media.^[29]

In all these cases, the Court invariably held that since the first condition was already inexplicably absent, there was no way the second condition could ever be present.

In any event, since compliance with the chain of custody rule is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the courts below, would not preclude this Court from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation therefrom. If no such reasons exist, then it is the Court's duty to acquit appellant and overturn the verdict of conviction.^[30] So must it be.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated March 14, 2017 of the Court of Appeals is **REVERSED AND SET ASIDE**. Appellant Michael Frias is **ACQUITTED** of violations of Section 5 and Section 11, Article II of Republic Act 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release of Michael Frias from custody unless he is being held for some other lawful cause; and (b) to inform the Court of the action taken within five days from notice.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, and Caguioa, JJ., concur.
J. Reyes, Jr., J., on leave.

^[1] *Rollo*, pp. 4-15, Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos, and Geraldine C. Fiel-Macaraig, concurring.

^[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

^[3] Crim. Case No. 09-32569, Record, p. 1.

^[4] Crim. Case No. 09-32570, Record, p. 1.

^[5] Crim. Case No. 09-32569, Record, p. 22; Crim. Case No. 09-32570, Record, p. 18.

^[6] TSN dated March 4, 2010, pp. 6-15; TSN dated February 3, 2011, pp. 5-15.

- [7] TSN dated March 4, 2010, pp. 21-41; TSN dated February 3, 2011, pp. 17-27.
- [8] TSN dated March 4, 2010, pp. 41-45; TSN dated February 3, 2011, pp. 27-28.
- [9] Crim. Case No. 09-32569, Record, p. 116.
- [10] Crim. Case No. 09-32569, Record, pp. 106-116.
- [11] TSN dated March 1, 2012, pp. 4-16; TSN dated July 26, 2012, pp. 3-15.
- [12] TSN dated February 11, 2014, pp. 3-8.
- [13] CA *rollo*, pp. 38-49.
- [14] *Id.* at 48.
- [15] *Id.* at 28-37.
- [16] *Id.* at 69-85.
- [17] *Rollo*, pp. 4-16, See also CA *rollo*, pp. 93-105.
- [18] The People's Manifestation, *rollo*, pp. 27-28, Appellant's Manifestation, *rollo*, pp. 30-32.
- [19] 790 Phil. 770, 780 (2016).
- [20] See *People v. Sembrano*, 642 Phil. 476, 488-489 (2010).
- [21] *People v. Padua*, 639 Phil. 235, 254, (2010).
- [22] 674 Phil. 89, 112(2011).
- [23] *People v. Saludes*, 451 Phil. 719, 728 (2003).
- [24] 780 Phil. 346,357-358 (2016).
- [25] G.R. No. 231792, January 29, 2018.
- [26] TSN dated March 4, 2010, pp. 30-34.
- [27] G.R. No. 218253, June 20, 2018.
- [28] G.R. No. 222563, July 23, 2018.
- [29] G.R. No. 225744, March 6, 2019.
- [30] *People v. Año*, G.R. No. 230070, March 14, 2018.
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