



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 March 2020** which reads as follows:*

“G.R. No. 232486 (*People of the Philippines vs. Agustin Caole y Vilorio alias “Gusting”*). — On appeal is the December 22, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07459, through which the November 26, 2014 Decision² of Branch 63 of the Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 12-1605 and 12-1606 was affirmed. Through the RTC’s decision, accused-appellant Agustin V. Caole (Caole) was convicted of violating Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

For the Illegal Sale and Possession of Methamphetamine Hydrochloride, otherwise known as *shabu*, the City Prosecutor of Makati City charged Caole with violating Sections 5 and 11 of R.A. No. 9165 through two Informations, the accusatory portions of which read:

INFORMATION

(Criminal Case No. 12-1605)

(For Violation of Section 5, Article II, R.A. No. 9165)

On the 17th day of August 2012 in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drugs and without corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver one heat sealed transparent sachet containing zero point zero three (0.03) gram of Methylamphetamine Hydrochloride, which is a dangerous drug, in violation of the above-cited law.

¹ Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Maria Elisa Sempio Diy concurring; *rollo*, pp. 2-13.

² CA *rollo*, pp. 19-24.

CONTRARY TO LAW.³INFORMATION
(Criminal Case No. 12-1606)
(For Violation of Section 11, Article II, R.A. No. 9165)

On the 17th day of May 2012 in the city of Makati, the Philippines, accused, not being lawfully authorized by law to possess and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point twelve (0.12) gram of white crystalline substance containing Methamphetamine Hydrochloride, which is a dangerous drug, as well as a plastic tube and aluminum foil with traces of said substance in violation of the above-cited law.

CONTRARY TO LAW.⁴

At his arraignment, Caole pleaded not guilty to the crimes charged. Trial on the merits thereafter ensued.⁵

The prosecution established that, on August 17, 2012, a confidential informant tipped the officers of the Station Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF) of the Makati City Police Station that Caole was allegedly engaged in illegal drug activities taking place along Adalla Street, Barangay Guadalupe Viejo, Makati City.⁶

Acting on the information, the police officers formed a team composed of members of the SAIDSOTF and the Makati Anti-Drug Abuse Council (MADAC) to conduct a buy-bust operation to entrap Caole. During the team's briefing, MADAC operative Lord Louie M. Pasamic (Pasamic) was designated to act as the poseur-buyer. He was given buy-bust money consisting of six ₱50.00 bills, which he then marked "LLP."⁷

Subsequently, the team proceeded to Adalla Street for the conduct of the operation. Thereat, Pasamic and the confidential informant approached Caole, who was standing near a blue gate. The confidential informant introduced Pasamic to Caole, and said "*Pare, may kukuha itong kasama ko.*" Caole then asked Pasamic how much *shabu* he wanted to buy. Pasamic replied that he wanted ₱300.00 worth of the drug.⁸

The operation to entrap Caole then ensued. As Pasamic was handing him the payment, Caole took a brown pouch from his pocket, which had in it several small plastic sachets, all containing a white crystalline substance. Caole then gave Pasamic one of the sachets, causing the latter to signal to his

³ Id. at 3.

⁴ Id. at 4.

⁵ Id.

⁶ Id.

⁷ Id. at 4-5.

⁸ Id. at 5.

fellow operatives that the deal had been consummated. Immediately, the other law enforcers rushed to the scene, and Pasamic arrested Caole. Pasamic thereafter introduced himself as a MADAC operative, while another member of the arresting team read Caole his constitutional rights.⁹

Subsequently, Pasamic frisked Caole and obtained from his person five more plastic sachets, two of which were empty, while the other three contained a similar white crystalline substance. The frisk also revealed a glass tube and several strips of aluminum foil, as well as the marked money. Pasamic then placed all the evidence recovered from Caole in a yellow envelope.¹⁰

The arresting team thereafter took Caole to the barangay hall of Barangay Guadalupe Viejo, where the marking and inventory of the seized items were conducted.¹¹ Caole, Pasamic, and photographer Police Officer 1 Joemar Cahanding (PO1 Cahanding) were present during the marking and inventory, which Barangay Kagawad Washington Dela Cruz (Brgy. Kagawad Dela Cruz) witnessed.¹²

Thereafter, Pasamic turned the seized items over to Senior Police Officer 1 Rafael J. Castillo (SPO1 Castillo), who prepared a request for laboratory examination. The request and the suspected contraband were then delivered to the PNP crime laboratory, where Pasamic handed them to Non Uniform Personnel Arturo Relos. The qualitative examination revealed that the white crystalline substance contained in the small white plastic sachets was indeed methamphetamine hydrochloride, otherwise known as *shabu*. Also, the paraphernalia seized from Caole tested positive for traces of the drug.¹³

In his defense, Caole interposed denial. He testified that, on August 17, 2012, at around 2:00 p.m., he was sleeping in his house, where he was staying with his sick mother, when five armed men in civilian clothes suddenly arrived. Naturally, he was surprised to wake up with several guns pointed at him. He was then handcuffed, dragged into a van, and brought to the MADAC office. Caole maintained that the instant case was filed against him because allegedly one of the arresting officers, Police Officer 2 Perceival Mendoza (PO2 Mendoza), was not able to use him as an asset or pusher of *shabu*.¹⁴

On November 26, 2014, the RTC rendered a Decision convicting Caole of the crimes charged. The trial court opined that the prosecution had successfully established the preservation of the evidentiary value of the confiscated articles. According to the RTC, the fact that the marking and

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 5-6.

¹³ Id.

¹⁴ Id. at 6-7.

inventory were conducted in the barangay hall, and not at the place of arrest, was of no moment. This did not affect the admissibility of the drugs and drug paraphernalia, nor did it render Caole's arrest unlawful.¹⁵ The dispositive portion of the RTC's decision reads:

WHEREFORE, premises considered, the Court finds [Caole] GUILTY beyond reasonable doubt, with no mitigating or aggravating circumstances, and is hereby sentenced to suffer, as follows:

- 1.) In Criminal Case No. 12-1605 (Illegal Sale of Dangerous Drugs) for Violation of Section 5, R.A. 9165 – the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00); and
- 2.) In Criminal Case No. 12-1606 (Illegal Possession of Dangerous Drugs) for Violation of Section 11, R.A. 9165 -- the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00).

The subject drugs and paraphernalias are forfeited in favor of the government and ordered turned over to the PDEA for disposition pursuant to law.

SO ORDERED.¹⁶

On December 22, 2016, the CA rendered the decision now under review affirming the RTC's ruling. Like the trial court, the CA was satisfied as to the admissibility of the drugs and drug paraphernalia confiscated from Caole. The appellate court held that the integrity and evidentiary value of the seized items had been preserved despite the conduct of the inventory and marking at the barangay hall and the absence of representatives from the Department of Justice (DOJ) and the media.¹⁷ The CA therefore dismissed Caole's appeal, *viz.*:

WHEREFORE, the appeal is **DISMISSED**. The November 26, 2014 Decision of the Regional Trial Court of Makati City, Branch 63 in *Criminal Case Nos. 12-1605 and 12-1606* convicting accused-appellant Agustin Caole y Vioria @ "Gusting" for [I]llegal [Sa]le and [P]ossession of [D]angerous [D]rugs, is **AFFIRMED** *in toto*.

SO ORDERED.¹⁸ (Emphasis and italics in the original)

Hence, this appeal.

¹⁵ CA rollo, pp. 21-23.

¹⁶ Id. at 24.

¹⁷ Rollo, pp. 8-12.

¹⁸ Id. at 12.

The Issue

WHETHER OR NOT THE CA ERRED IN AFFIRMING THE CONVICTION OF CAOLE FOR VIOLATIONS OF SECTIONS 5 AND 11 OF R.A. No. 9165

The Court's Ruling

The assailed decision is reversed. Caole's acquittal is in order.

To sustain conviction under Section 5, Article II, of R.A. No. 9165, which punishes illegal sale of prohibited drugs, the following must be established beyond reasonable doubt:

First, the identity of the buyer and the seller, the object of the sale, and its consideration; and

Second, the delivery of the thing sold and the payment therefor.¹⁹

On the other hand, conviction under Section 11, Article II of R.A. No. 9165, which punishes illegal possession of dangerous drugs, may be had only if the following elements concur:

First, the accused was in possession of dangerous drugs;

Second, such possession was not authorized by law; and

Third, the accused was freely and consciously aware of being in possession of dangerous drugs.²⁰

In addition to proof of the elements of the crime, the successful prosecution of drugs cases depends on the *admissibility into evidence* of the subject drugs or drug paraphernalia. This is so since, in cases involving the sale and possession of dangerous drugs, the prohibited articles confiscated from the accused comprise the *corpus delicti* of the charges. Accordingly, it is of paramount importance that the identity of the seized drug be established beyond reasonable doubt. In this regard, the prosecution bears the burden of proving that the substance recovered during the buy-bust operation is exactly the same substance offered in evidence before the court.²¹

To ensure that the items presented in court—whether they be drugs or drug paraphernalia—are very same as those taken from the accused, Section

¹⁹ *People v. Oliva*, G.R. No. 234156, January 7, 2019.

²⁰ *Id.*

²¹ *Id.*

21 of R.A. No. 9165 provides several links that the prosecution must establish in order to secure conviction, *viz.*:

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.²²

Taken together, these links make-up the *chain of custody*, which Dangerous Drug Board Regulation No. 1, series of 2002, defines as:

[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.²³

Section 21 of R.A. No. 9165, which in itself serves as the legal basis for the chain of custody rule, reads:

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[.]²⁴ (Emphasis and underscoring supplied)

The Implementing Rules and Regulations (IRR) of R.A. No. 9165 supplement Section 21, to wit:

²² *People v. Gayoso*, 808 Phil. 19, 31 (2017).

²³ Dangerous Drug Board Regulation No. 1, s. 2002, Sec 1(b).

²⁴ Republic Act No. 9165, Article II, Sec. 21.

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. *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *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[.]²⁵ (Emphasis and underscoring supplied)

Perforce, immediately after seizure and confiscation of the *shabu*, the apprehending team should have *immediately photographed and physically inventoried* the same in the presence of Caole, or his representative or counsel, a representative from the media, a representative from the DOJ, and any elected public official.²⁶ It has been held that the immediate inventory and photographing of the seized contraband may be excused only when the safety and security of the arresting officers and of the required witnesses, or of the evidence are threatened by immediate or extreme danger, such as retaliatory action from those who have the resources and capability to mount a counter assault.²⁷

Here, the record discloses that the inventory of drugs and drug paraphernalia was conducted at the barangay hall of Barangay Guadalupe Viejo, Makati City, and not immediately at the place of arrest. The prosecution admits this in its brief, *viz.*:

8. MADAC Pasamic frisked accused-appellant's body, and recovered three (3) more plastic sachets containing "shabu," and two (2) plastic sachets, a glass tube and an aluminum foil strip with traces of "shabu." He placed the evidence recovered from accused-appellant inside a yellow envelope. The buy-bust team then took accused-appellant to the barangay hall of Barangay Guadalupe Viejo in Makati City, where the marking and inventory of the seized evidence was conducted.²⁸

Perplexingly, the prosecution never bothered to explain why the arresting officers did not immediately inventory the seized items. Instead of citing a valid reason for the conduct of the inventory at the barangay hall, such as some imminent danger to the arresting officers, the prosecution, in

²⁵ Implementing Rules and Regulations of Republic Act No. 9165, Sec. 21.
²⁶ *People v. Cornel*, G.R. No. 229047, April 16, 2018, 861 SCRA 267, 280.
²⁷ *People v. Romy Lim y Miranda*, G.R. No. 231989, September 4, 2018.
²⁸ CA rollo, p. 93.

its brief,²⁹ argues that strict adherence to the chain of custody rule is not necessary. It is contended that, under field conditions, the apprehending officers might not always be able to strictly comply with the requirements of Section 21. Therefore, deviations from the chain of custody rule may be permitted as long as the integrity and the evidentiary value of the seized item are preserved.

The argument cannot be sustained.

In *People v. Cornel*,³⁰ the failure of the arresting officers to conduct the inventory immediately at the place of arrest led to the accused's acquittal. As in this case, the inventory in *Cornel* took place at the barangay hall. However, there, commotion ensued after the accused's arrest, preventing the apprehending team from immediately conducting the inventory. Nevertheless, the Court found such explanation insufficient and unjustifiable considering that the team was composed of eight police officers. With all but one armed, they could have easily contained any commotion at the place of arrest and proceeded with the inventory of the contraband. Ultimately, the Court held that the apprehending team's failure to conduct the inventory in the manner provided by law was fatal to the prosecution's case.

Here, the police team's deviation from the requirements of the chain of custody rule, coupled with the prosecution's failure to provide ample justification therefor, must result in Caole's acquittal based on reasonable doubt. To be sure, the record is bereft of any allegation that may have justified the conduct of the inventory at the barangay hall. The prosecution never mentioned any circumstance, *e.g.*, commotion, as in *Coronel*, that prodded the law enforcement units to leave the scene of the buy-bust operation immediately after arresting and frisking Caole.

Notable too is the absence of *representatives from the Department of Justice (DOJ) and the media* during the conduct of the inventory. The role of these witnesses is "to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity"³¹ by ensuring that the arresting team does not plant incriminating evidence against the accused. With such a key role, they are indispensable to any legitimate buy-bust operation. If the presence of any or all of them was not obtained, the prosecution must then allege and prove a justifiable cause for the omission, such as:

First, that their attendance was impossible because the place of arrest was a remote area;

²⁹ Id. at 88-110.

³⁰ Supra note 26.

³¹ Id.

Second, that their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;

Third, that the elected official themselves were involved in the punishable acts sought to be apprehended;

Fourth, that earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or

Fifth, that time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.³²

Regrettably, the prosecution also failed to clarify why the arresting team did not secure the attendance of representatives from the media and the DOJ. Like the unjustified inventory at the barangay hall, the unexplained absence of the required witnesses has left much to be desired. Out of the three witnesses enumerated in Section 21, only Brgy. Kagawad Dela Cruz was present during the conduct of the inventory. Because of these lapses, the identity of the seized items was not established beyond reasonable doubt. Following Section 21 of R.A. No. 9165 and relevant jurisprudence including *Coronel*, Caole must be acquitted.

WHEREFORE, premises considered, the December 22, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07459, which affirmed the November 26, 2014 Decision of Branch 63 of the Regional Trial Court of Makati City in Criminal Case Nos. 12-1605 and 12-1606, is **REVERSED and SET ASIDE**. Accused-appellant Agustin V. Caole is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

Agustin V. Caole is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let an entry of final judgment be issued immediately.” **Hernando J.**, no part due to prior action in the Court of Appeals; **Leonen, J.** designated as additional Member per Raffle dated November 27, 2019.

Very truly yours,

TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *whh 8/3*

03 AUG 2020

³²

Id.

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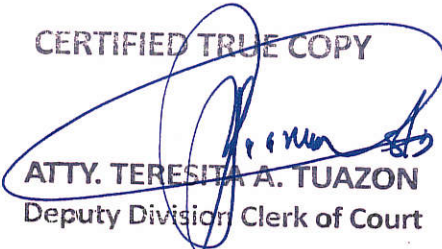
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