



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 234207

Present:

- versus -

CARPIO, J., *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
LAZARO-JAVIER, JJ.

MARLON CRISTOBAL y
AMBROSIO,
Accused-Appellant.

Promulgated:

70 JUN 2019

X-----*[Signature]*-----X

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Marlon Cristobal y Ambrosio (Cristobal) assailing the Decision² dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08134, which affirmed the Decision³ dated December 14, 2015 of the Regional Trial Court of Pasig City, Branch 154 (RTC) in Criminal Case No. 18885-D-PSG, finding Cristobal guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information was filed against Cristobal for violating Section 11 of RA 9165, the accusatory portion of which reads:

* On leave.
¹ See Notice of Appeal dated July 17, 2017, *rollo*, pp. 12-14.
² *Rollo*, pp. 2-11. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Maria Filomena D. Singh, concurring.
³ *CA rollo*, pp. 11-23. Penned by Presiding Judge Achilles A.A.C. Bulautan.
⁴ Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

On or about November 21, 2013, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control seven (7) heat-sealed transparent plastic sachet[s] each containing the following, to wit:

- | | |
|------------------------|---------------------|
| <i>a. 0.83 gram</i> | <i>e. 0.97 gram</i> |
| <i>b. 0.70 gram</i> | <i>f. 0.84 gram</i> |
| <i>c. 1.05 gram[s]</i> | <i>g. 0.75 gram</i> |
| <i>d. 0.82 gram</i> | |

having a total weights (sic) of 5.96 grams, of white crystalline substance, which after qualitative examination, was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.

*Contrary to law[.]*⁵

When arraigned, Cristobal pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized by the CA, is as follows:

On November 21, 2013, PO2 Remy Ramos (PO2 Ramos) of the PS2, *Pulis sa Barangay 28*, Brgy. Rosario, Pasig City, together with other police officers were conducting "*Oplan Sita*" in a checkpoint along Ortigas Extension corner GSIS Road.

At around 6 o'clock in the evening, PO2 Ramos flagged down accused-appellant who was driving a motorcycle without a helmet. He ordered accused-appellant to alight from his motorcycle then asked for the original receipt (OR) and certificate of registration (CR) of the said motorcycle. Since accused-appellant failed to show either of the said documents, PO2 Ramos asked for his driver's license. While PO2 Ramos was preparing the traffic citation ticket for traffic violation of accused-appellant, the latter ran away but the other police officers in the vicinity were quick to apprehend him. He was brought back to the checkpoint where he was searched by PO2 Ramos for deadly weapon but the latter found nothing. However, PO2 Ramos noticed that accused-appellant's pocket was bulging. PO2 Ramos ordered him to remove that object from his pocket which accused-appellant obliged by pulling-out a small plastic bag therefrom. When PO2 Ramos opened the same, he found seven (7) plastic sachets containing white crystalline substance which he suspected as *shabu*. PO2 Ramos immediately arrested accused-appellant and informed him of his constitutional rights. In the presence of accused-appellant, PO2 Ramos signed and marked the seven (7) plastic sachets as: 1RDR/Marlon 11/21/13, 2RDR/Marlon 11/21/13, 3RDR/Marlon 11/21/13, 4RDR/Marlon 11/21/13, 5RDR/Marlon 11/21/13, 6RDR/Marlon 11/21/13, and 7RDR/Marlon 11/21/13.

⁵ *Rollo*, p. 3.



Still in possession of the seized items, PO2 Ramos and his companions brought accused-appellant to their office. Thereat, PO2 Ramos summoned a *barangay kagawad* to witness the inventory. Kagawad Noel Bernabe (Kagawad Bernabe) arrived and an inventory of the seized items was done in his presence and in the presence of accused-appellant. Then, PO2 Dennis N. Singuillo (PO2 Singuillo) prepared the indorsement for the transfer of accused-appellant to their headquarters at Brgy. Caniogan. Thereat, PO2 Ramos prepared the *Chain of Custody Form*. At around 8:40 o'clock in the evening, he turned over the seized items to PO3 Miguel Torallo (PO3 Torallo), Investigator of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Pasig Police Station.

At around past 12:00 o'clock in the morning of November 22, 2013, PO3 Torallo brought the confiscated items as well as the *Request for Laboratory Examination* to the Crime Laboratory Office in Mandaluyong for qualitative examination where [they were] received by PSI Anghelisa Santiago (PSI Santiago), a forensic chemist. The items tested positive for *Methamphetamine Hydrochloride*, a dangerous drug. After conducting the laboratory examination, PSI Santiago turned over the contraband to SPO3 Ramon Rabino, Jr. (SPO3 Rabino, Jr.), the evidence custodian at the Eastern Police District (EPD). SPO3 Rabino, Jr. released the seized items on April 10, 2014 for [their] presentation in Court.⁶

On the other hand, the evidence of the defense is based on the lone testimony of Cristobal, who testified as follows:

At around 6:00 o'clock in the evening of November 21, 2013, accused-appellant was riding his wife's motorcycle on his way to SM Hypermart in Brgy. Ugong, Pasig City. But before reaching his destination, he was flagged down by PO2 Ramos at a police checkpoint. After giving his driver's license, he was asked to produce the OR/CR of the motorcycle. When he was not able to produce the same, PO2 Ramos ordered him to empty his pockets which he did. He brought out the contents of his pockets consisting of Eighteen Thousand Pesos (P18,000.00) which was sent to him by his mother for his wedding. PO2 Ramos left him momentarily and went to the police mobile car and then returned to him and said "positive". PO2 Ramos frisked him on his waist but found nothing else in his body. Accused-appellant told PO2 Ramos that he can prove that he is the owner of the motorcycle if he will come with him to his house but PO2 Ramos only ignored him and ordered him to board the mobile car.

Accused-appellant was brought to the police precinct at C. Raymundo St., corner Dr. Sixto Ave., Pasig City, where he was shown the *shabu* which according to the police thereat belong[ed] to him. He was nonetheless charged with Violation of Section 11 R.A. 9165 despite his denial thereof.⁷

⁶ Id. at 3-4.

⁷ Id. at 5.

Ruling of the RTC

After trial on the merits, in its Decision dated December 14, 2015, the RTC convicted Cristobal of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, in accordance with the foregoing, the Court finds the accused Marlon Cristobal y Ambrosio **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165 for illegal possession of seven (7) plastic sachets of methamphetamine hydrochloride or *shabu* with a total weight of 5.96 grams and he is hereby sentenced to imprisonment of twenty (20) years and one (1) day to life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

x x x x

SO ORDERED.⁸

In finding Cristobal guilty, the RTC held that the search conducted against Cristobal may be justified under the “stop and frisk” doctrine, or otherwise called the *Terry search*. It held:

The totality of the circumstances justified a stop and frisk search on the accused. The accused was stopped during a routine checkpoint for not wearing a helmet while riding a motorcycle. When required, he could not also produce the OR/CR of the motorcycle that he was using. While PO2 Ramos was writing on the OVR the violations committed by the accused the latter ran away but he was eventually apprehended by the police officers. Why the accused ran away while he was merely being issued a ticket for his violations naturally raised a reasonable suspicion to a police officer like PO2 Ramos. This behavior or conduct elicited suspicion that the accused was hiding something illegal. Thus, there was genuine reason for PO2 Ramos to search the accused for any weapon that might be used against him. As he searched the accused, PO2 Ramos noticed a bulge in the pocket of the accused. When PO2 Ramos ordered the accused to bring out the contents of his pockets the latter appeared hesitant (*atubili*). Thus, PO2 Ramos repeated the order and when the accused complied the plastic sachets of *shabu* were recovered from his possession. Given these circumstances, the Court holds that the warrantless search on the person of the accused was justified as a stop and frisk and the drugs recovered from his possession are admissible in evidence against him.⁹

The RTC also ruled that while the police officers were unable to strictly comply with the procedure outlined in Section 21, RA 9165, the evidentiary value of the seized items were nevertheless preserved.¹⁰ Thus, it held Cristobal guilty of the crime charged.

Aggrieved, Cristobal appealed to the CA.

⁸ CA *rollo*, p. 23.

⁹ Id. at 18.

¹⁰ Id. at 21.



Ruling of the CA

In the questioned Decision dated June 29, 2017, the CA affirmed the RTC's conviction of Cristobal. It held that Cristobal's defense of denial and frame-up could not be given more credence over the positive testimonies of the police officers. It likewise held that non-compliance with the procedural requirements under Section 21, RA 9165 was not fatal to the prosecution of violation of Section 11, RA 9165, or Illegal Possession of Dangerous Drugs.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting Cristobal.

The Court's Ruling

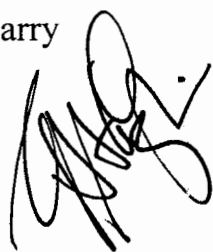
The petition is meritorious.

The CA manifestly overlooked the undisputed fact that the seized items were confiscated from Cristobal as he was being issued a traffic violation ticket. His violations consisted of (1) not wearing a helmet while driving a motorcycle, and (2) being unable to show the original receipt (OR) and certificate of registration (CR) of the motorcycle he was riding. Cristobal's first violation – failure to wear a helmet while riding a motorcycle – is punishable by RA 10054, or the Motorcycle Helmet Act of 2009. Under the said law, any person who violates the said law should be punished as follows:

SEC. 7. *Penalties.* — (a) Any person caught not wearing the standard protective motorcycle helmet in violation of this Act shall be punished with a fine of One thousand five hundred pesos (Php1,500.00) for the first offense; Three thousand pesos (Php3,000.00) for the second offense; Five thousand pesos (Php5,000.00) for the third offense; and Ten thousand pesos (Php10,000.00) plus confiscation of the driver's license for the fourth and succeeding offenses.

It is clear from the above provision that a violation of the law requiring the use of helmets while driving a motorcycle is only punishable by **fine**.

Meanwhile, Cristobal's second violation – failure to furnish the OR and CR of the motorcycle – is likewise punishable only by fine. Land Transportation Office (LTO) Department Order (DO) No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides that the offense of "failure to carry



certificate of registration or official receipt of registration” is punishable only with a fine of One Hundred Fifty Pesos (₱150.00).

Stated simply, the police officers involved in this case conducted an illegal search when they frisked Cristobal on the basis of the foregoing violations. It was not, as it could not have been, even believing the story of the police officers, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of.

In the case of *Luz vs. People*,¹¹ a case strikingly similar to the present case, a man who was driving a motorcycle was flagged down for violating a municipal ordinance requiring drivers of motorcycles to wear a helmet. While the police officer was issuing him a ticket, the officer noticed that the man was uneasy and kept touching something in his jacket. When the officer ordered the man to take the thing out of his jacket, it was discovered that it was a small tin can which contained sachets of *shabu*. When the man was prosecuted for illegal possession of dangerous drugs, the Court acquitted the accused as the confiscated drugs were discovered through an unlawful search. Hence:

We find the Petition to be impressed with merit, but not for the particular reasons alleged. In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.

First, there was no valid arrest of petitioner. When he was flagged down for committing a traffic violation, he was not, ipso facto and solely for this reason, arrested.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter[.]

X X X X

It also appears that, according to City Ordinance No. 98-012, which was violated by petitioner, the failure to wear a crash helmet while riding a motorcycle is penalized by a fine only. Under the Rules of

¹¹ 683 Phil. 399 (2012).



Court, a warrant of arrest need not be issued if the information or charge was filed for an offense penalized by a fine only. It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.¹² (Emphasis and underscoring supplied; italics in the original)

The case of *Luz* **squarely applies** in the present case. There was similarly no lawful arrest in this case as Cristobal's violations were only punishable by fine. There was thus no valid search incidental to a lawful arrest.

Neither could the search on Cristobal be justified as a valid "stop and frisk" search.

The RTC, in its Decision, ruled that the search was valid because it was a "stop and frisk" situation, justified by the police officers' suspicion over Cristobal as the latter supposedly tried to flee as he was being issued a traffic violation ticket.¹³ Even if this version of events were true, *i.e.*, that Cristobal tried to run away while he was being issued a ticket for his traffic violation, the same did not justify the *intensive* search conducted on him. By the prosecution's own narration of the facts – in other words, by their own admission – after Cristobal was successfully apprehended after he ran away, "PO2 Ramos searched the accused for any deadly weapon but **he found none.**"¹⁴ This is corroborated by Cristobal's narration in which he said that: "he was unable to produce the OR/CR as the key to open the motorcycle compartment was lost. PO2 Ramos suddenly told him to stand up and empty his pockets. He brought out the contents of his pockets, Eighteen Thousand Pesos (P18,000.00), which was sent by his mother and was intended for his wedding. **PO2 Ramos then went to his police mobile, returned, said "positive", and frisked him on his waist. Nothing else was found in his possession.**"¹⁵

Even if the Court accepts wholesale the police officers' version of the facts, the search that led to the supposed discovery of the seized items had nevertheless become unlawful the moment they continued with the search despite finding no weapon on Cristobal's body. It must be pointed out that "stop and frisk" searches developed in jurisprudence to serve a certain purpose. In *Terry vs. Ohio*,¹⁶ the Decision of the United States Supreme Court from which our local "stop and frisk" doctrine was based, it was clearly stated:

x x x At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the

¹² Id. at 406-409.

¹³ CA *rollo*, p. 18.

¹⁴ Brief for the Appellee, id. at 80; emphasis and underscoring supplied.

¹⁵ Brief for the Accused-Appellant, id. at 45; emphasis and underscoring supplied.

¹⁶ 392 U.S. 1 (1968)



threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that[,] **where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where[,] in the course of investigating this behavior[,] he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a *carefully limited search of the outer clothing* of such persons in an attempt to discover weapons which might be used to assault him.** x x x¹⁷ (Emphasis, underscoring, and italics supplied)

In *Manalili vs. Court of Appeals*,¹⁸ the Court explained that in *Terry*,

x x x what justified the **limited search** was the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him.

It did not, however, abandon the rule that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, excused only by *exigent circumstances*.¹⁹ (Emphasis, underscoring and italics supplied)

Verily, the “stop and frisk” doctrine was developed in jurisprudence, and searches of such nature were allowed despite the Constitutionally-enshrined right against unreasonable searches and seizures, because of the recognition that law enforcers should be given the legal arsenal to prevent the commission of offenses.²⁰ It must be emphasized, however, that these “stop and frisk” searches are **exceptions** to the general rule that warrants are necessary for the State to conduct a search and, consequently, intrude on a person’s privacy. In the words of the Court in *People vs. Cogaed*,²¹ this doctrine of “stop and frisk” “should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.”²²

“Stop and frisk” searches should thus be allowed only in the specific and limited instances contemplated in *Terry*: (1) it should be allowed only on the basis of the police officer’s reasonable suspicion, in light of his or her experience, that criminal activity may be afoot and that the persons with whom he/she is dealing may be armed and presently dangerous; (2) the

¹⁷ Id. at 30-31.

¹⁸ 345 Phil. 632 (1997).

¹⁹ Id. at 644-645.

²⁰ *People vs. Cogaed*, 740 Phil. 212, 229 (2014).

²¹ Id.

²² Id. at 229-230.



search must only be a *carefully limited search of the outer clothing*; and (3) conducted for the purpose of discovering weapons which might be used to assault him/her or other persons in the area.

Applying the foregoing in the present case, the police officers' act of proceeding to search Cristobal's body, **despite their own admission that they were unable to find any weapon on him**, constitutes an invalid and unconstitutional search.

In this connection, the Court, in *Sindac vs. People*,²³ reminds:

Section 2, Article III of the 1987 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.** To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.

One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed.**²⁴

Thus, any item seized through an illegal search, as in this case, cannot be used in **any** prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.

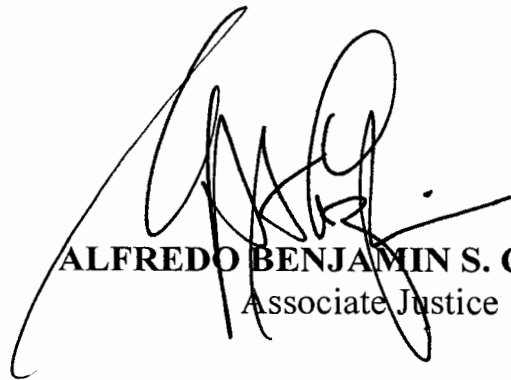
WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08134 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marlon Cristobal y Ambrosio is **ACQUITTED** of the crime charged, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

²³ 794 Phil. 421 (2016).

²⁴ Id. at 428.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave)
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

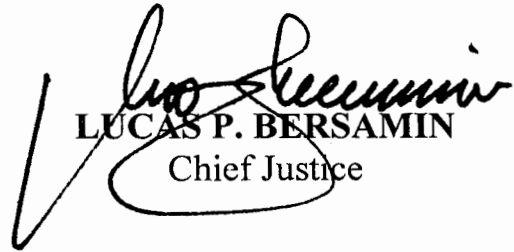
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

