



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 240430

Present:

- versus -

PERLAS-BERNABE, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
GAERLAN,** JJ.

JAYMAR V. ANICOY,
Accused-Appellant,

Promulgated:

XXX,*
Defendant (minor-pleaded guilty).

06 JUL 2020

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DECISION

DELOS SANTOS, J.:

The Case

Before the Court is an ordinary Appeal¹ assailing the Decision² dated 27 March 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01531-MIN. The CA affirmed the Decision³ dated 17 March 2016 of the Regional Trial Court (RTC) of ██████████, Davao del Norte, Branch 34 in Criminal Case No. 399-2013, convicting accused-appellant Jaymar V.

* In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records, and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

** Designated as additional member of the Second Division per Special Order No. 2780 dated 11 May 2020.

¹ *Rollo*, pp. 18-19.

² Penned by Associate Justice Tita Marilyn Payoyo-Villordon, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *id.* at 3-17.

³ Penned by Presiding Judge Dax Gonzaga Xenos; *CA rollo*, pp. 23-32.



Anicoy (Anicoy) of the crime of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Anicoy was sentenced to suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

The Facts

Anicoy, together with accused 15-year old XXX, was charged in an Information⁴ dated 12 August 2013 for violating Section 5, Article II of RA 9165, known as the Comprehensive Dangerous Drugs Act of 2002. The Information states:

That on August 9, 2013, in the [REDACTED], Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Jaymar V. Anicoy and [XXX], who is a fifteen (15) year old minor, who is a Child in Conflict With The Law (CICL), acting with discernment, conspiring, confederating and mutually helping with each other, without being authorized by law, did then and there willfully, unlawfully and feloniously deal, sell and distribute to PO1 Tony B. Rubion, who acted as poseur buyer, six (6) packs of dried marijuana fruiting tops, a dangerous drug with a weight of 17.1112 grams, in exchange for a marked money of Php 200.00 bill, with serial number GJ23202.

CONTRARY TO LAW.⁵

Upon arraignment, Anicoy pleaded not guilty while his minor companion pleaded guilty. In a Decision⁶ dated 3 October 2013 and promulgated on 18 November 2013, the RTC convicted XXX of the crime charged and suspended his sentence. Also, in an Order⁷ dated 18 November 2013, the RTC released XXX, placed him in the custody of his mother and made him undergo the disposition measures adopted for a period of two (2) years due to his minority. Meanwhile, trial on the merits ensued against Anicoy.

The prosecution presented Police Officer 1 Tony B. Rubion (PO1 Rubion) as the lone witness. The prosecution dispensed with the testimonies of Senior Police Officer 4 Wilfredo Galo (SPO4 Galo) and Forensic Chemist Jade Ryan P. Bajade (Forensic Chemist Bajade) of the Philippine National Police (PNP) Davao del Norte Provincial Crime Laboratory in view of the stipulations made by the prosecution and the defense in the Pre-Trial Order⁸ dated 8 September 2014.

⁴ Records, p. 1.

⁵ Id.

⁶ Id. at 26-27.

⁷ Id. at 33-34.

⁸ Id. at 64-68. See also RTC Order dated 10 September 2015, id. at 100-101.

PO1 Rubion testified that a confidential informant reported at the [REDACTED], Davao del Norte Police Station that a certain alias Jaymar is selling marijuana, a dangerous drug. On 9 August 2013, at around 8:30 A.M., a briefing was immediately conducted by Officer-in-Charge (OIC) Police Senior Inspector Werenfredo S. Regidor⁹ (PSI Regidor) for a buy-bust operation at [REDACTED], Davao del Norte. PO1 Rubion was designated as the *poseur*-buyer with SPO4 Galo as backup.

PSI Regidor handed PO1 Rubion a ₱200.00 bill as marked money, with serial number GJ23202, which PO1 Rubion signed with the initial "TBR." As pre-arranged signal, they agreed that PO1 Rubion would raise his right hand upon consummation of the sale. SPO4 Galo coordinated with the Philippine Drug Enforcement Agency (PDEA) regarding the operation.

Thereafter, PO1 Rubion and the informant went to the target area while SPO4 Galo posted himself nearby. PO1 Rubion then saw Anicoy standing along the road and away from a shanty while his minor companion XXX was sitting at the shanty. The informant introduced PO1 Rubion to Anicoy as the one interested in buying marijuana. PO1 Rubion asked Anicoy to sell him ₱200.00 worth of marijuana and Anicoy handed PO1 Rubion two (2) packs of marijuana fruiting tops from his pocket. PO1 Rubion opened the two (2) packs then asked Anicoy for other stocks of marijuana to choose from. Anicoy called XXX and asked him to bring the other packs. XXX handed PO1 Rubion four (4) other packs of marijuana. After examining the packs, PO1 Rubion chose the two (2) packs originally handed to him since they have more contents than the other four (4) packs. PO1 Rubion then handed Anicoy the ₱200.00 marked money. Afterwards, PO1 Rubion raised his right hand prompting SPO4 Galo to come near them. The two police officers arrested Anicoy and XXX. PO1 Rubion recovered the marked money and the other four (4) packs of marijuana.

At the place of arrest, PO1 Rubion marked the confiscated evidence in the presence of (1) Anicoy; (2) XXX; the three required witnesses¹⁰ from the: (3) media – Reneliza R. Torollo; (4) Department of Justice (DOJ) – Carl P. Montifalcon; and (5) elected public official – Barangay Captain Ronald P. Dimaya.

Also, PO1 Rubion marked the six (6) packs of suspected marijuana with the date (08-09-2013), time (9:30 A.M.), placed his initials "TBR", and signature. PO1 Rubion placed the numbers 1 and 2 (TBR1 and TBR2) on the two (2) packs which were the subject of the buy-bust operation, while the other four (4) packs were numbered 3 to 6 (TBR3 to TBR6). Three pictures were taken during the marking and PO1 Rubion took custody of the confiscated drugs. After the marking and picture taking, the police officers

⁹ Also referred to as PSI Wilfredo S. Regidor in some parts of the records.

¹⁰ Records, p. 72.

brought the two accused at the police station. At the station, PO2 Rochelle G. Hervas (PO2 Hervas) documented the inventory and took three more pictures in the presence of representatives from the media, DOJ and the barangay captain.¹¹ The Certificate of Inventory¹² was signed by PSI Regidor and all six witnesses.

Afterwards, PO1 Rubion delivered the six (6) packs of suspected marijuana, together with a request for laboratory examination dated 9 August 2013 signed by PSI Regidor, to the Davao del Norte Provincial Crime Laboratory Office. The six (6) packs were received by PO1 Rhuffy Federe (PO1 Federe). The suspected marijuana fruiting tops weighing a total of 17.1112 grams tested positive for marijuana, a dangerous drug, as per Chemistry Report No. D-149-2013¹³ issued by Forensic Chemist Bajade.

The defense presented the testimony of Anicoy as the lone witness. Anicoy testified that the incident happened on 8 August 2013, a Thursday, and not on 9 August 2013, which he remembered since his mother called him up that day asking him to come to his parent's house. Anicoy stated that at around 8:00 A.M., while waiting for a tricycle going to the house of his mother, he saw XXX pass by heading towards the down slope. Afterwards, a motorcycle arrived with two men onboard. They asked Anicoy the whereabouts of RJ, which he understood to refer to XXX. Anicoy told them that he saw XXX heading towards the down slope. The passenger of the motorcycle alighted and the other drove on. Five minutes later, before Anicoy was about to board a tricycle along the road at [REDACTED], he was arrested by a man he later found out as SPO4 Galo. Anicoy asserted that he did not sell marijuana to PO1 Rubion since PO1 Rubion only arrived after SPO4 Galo arrested him. SPO4 Galo was the one who handcuffed him while PO1 Rubion held him. Thereafter, XXX and a certain "Benjamin," whom Anicoy knew as the neighbor of his live-in partner, were likewise brought to the area wearing handcuffs. The two were arrested separately from Anicoy. Subsequently, SPO4 Galo asked XXX where the rest of the marijuana was. XXX said that the rest was at their house across the street. They proceeded to the house and SPO4 Galo went inside and brought with him a multi-colored sling bag and took out the contents consisting of three packs of marijuana. Anicoy also saw a ₱200.00 bill handed by XXX to the barangay captain. Afterwards, they were all brought to the police station.

The Ruling of the RTC

In a Decision¹⁴ dated 17 March 2016, the RTC rendered judgment finding Anicoy guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The dispositive portion of the Decision states:

¹¹ Id. at 73-74.

¹² Id.

¹³ Records, Book 2, p. 1.

¹⁴ CA rollo, pp. 23-32.

WHEREFORE, judgment is hereby rendered finding *Jaymar V. Anicoy* guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of life imprisonment and fine in the amount of Php 500,000.00.

The 17.1112 grams of marijuana fruiting tops is hereby ordered confiscated and forfeited in favor of the government through the PDEA to be disposed of by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drug for its proper disposition and destruction within ten (10) days from notice.

SO ORDERED.¹⁵

The RTC found that there was substantial compliance with the chain of custody rule since the subject marijuana was sufficiently accounted for from the time of its seizure, marking at the crime scene, inventory at the police station, and its delivery to the crime laboratory.¹⁶ The RTC found that the account of PO1 Rubion was natural, reasonable, and easy to believe from the natural sequence of events in the buy-bust operation starting with the preliminary introduction, manifestation and declaration of intent to buy and sell, up to the actual exchange of money and drugs. In contrast, the RTC declared that there were a number of inconsistent loose ends from the testimony of the accused. *First*, Anicoy stated that he was only waiting for a ride, so what would be the motive of the police officers for arresting and charging him with such a serious offense? *Second*, if Anicoy's defense was only a frame-up, then why was XXX and a certain Benjamin likewise involved and arrested? *Last*, if PO1 Rubion only came later and it was SPO4 Galo who was involved and arrested Anicoy, why did PO1 Rubion testify as a *poseur*-buyer and not SPO4 Galo? Also, the RTC remarked that Anicoy did not even present any corroborative witnesses which could have helped build a stronger defense and shed light on important aspects of his testimony. Anicoy could have called on XXX and Benjamin, his mother or live-in partner to bolster the veracity of the frame-up and denial defense he portrayed.¹⁷ However, Anicoy failed to do so. Thus, with doubts and nagging suspicions surrounding Anicoy's accounts, the RTC found in favor of the prosecution and declared that Anicoy clearly committed the act of selling marijuana.

Anicoy filed an appeal with the CA.

The Ruling of the CA

In a Decision¹⁸ dated 27 March 2018, the CA denied the appeal and upheld the conviction against Anicoy for violating Section 5, Article II of RA 9165. The dispositive portion of the Decision states:

¹⁵ Id. at 32. (Emphasis, italics, and underscore in the original)

¹⁶ Id. at 29.

¹⁷ Id. at 30-31.

¹⁸ *Rollo*, pp. 3-17.

ACCORDINGLY, the appeal is DENIED. The Decision dated 17 March 2016 of the Regional Trial Court (RTC), 11th Judicial Region, Branch 34, [REDACTED], in Criminal Case No. 399-2013, is hereby AFFIRMED with MODIFICATION that accused-appellant Jaymar V. Anicoy is guilty beyond reasonable doubt of selling two (2) packs of marijuana weighing 6.3685 grams, defined and penalized under Section 5, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

SO ORDERED.¹⁹

The CA declared that the prosecution established the chain of custody from the time the police officers confiscated the six (6) packs of suspected marijuana, up to the time they were inventoried and brought to the forensic chemist for laboratory examination, and thereafter were offered in evidence in court. The CA stated that the chain of custody was duly established by the prosecution through the following links: (1) PO1 Rubion marked the seized six (6) packs of marijuana subject of the buy-bust operation as “TBR1 to TBR6”; (2) a request for laboratory examination of the seized items marked was signed by PSI Regidor, the OIC of the Sto. Tomas Police Station; (3) the request and the marked items seized, which were personally delivered by PO1 Rubion, were received by the PNP Crime Laboratory; (4) Chemistry Report No. D-149-2013 confirmed that the marked items seized from Anicoy and XXX were marijuana; and (5) the marked items were offered in evidence.²⁰

Also, the CA gave full faith and credence to the testimony of PO1 Rubion as *poseur*-buyer, with SPO4 Galo as back-up, when they conducted the buy-bust operation and led to the seizure of the six (6) packs of marijuana, following the legal presumption of regularity in the performance of official functions.²¹

However, the CA found that Anicoy was guilty for selling only two (2) packs of marijuana and not six (6) packs. The CA stated that PO1 Rubion testified during the direct examination that he only bought two (2) packs of marijuana from Anicoy and that the other four (4) packs were seized from Anicoy and XXX after the arrest. Thus, Anicoy was found guilty beyond reasonable doubt of selling only two (2) packs of marijuana marked as TRB1 and TRB2 with a total weight of 6.3685 grams. Nevertheless, the penalty for violation of Section 5, Article II of RA 9165, regardless of the quantity and purity involved, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱1,000,000.00. Therefore, the CA affirmed the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the RTC.

¹⁹ Id. at 16. (*Italics in the original*)

²⁰ Id. at 12.

²¹ Id. at 13.

Anicoy comes before the Court assailing the decisions of the trial and appellate courts for failure to establish the chain of custody of the alleged dangerous drugs and to comply with the requirements established by Section 21, Article II of RA 9165.

Issue

Whether accused-appellant Anicoy is guilty beyond reasonable doubt for the crime of violation of Section 5, Article II of RA 9165.

The Court's Ruling

The appeal lacks merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are:

- (1) the identity of the buyer and the seller, the object of the sale and the consideration; and
- (2) the delivery of the thing sold and its payment.

The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money consummate the illegal transaction.²²

In the present case, all the elements of illegal sale of dangerous drugs were present. Anicoy was caught in *flagrante delicto* of selling marijuana to PO1 Rubion, as *poseur*-buyer, for ₱200.00 during a legitimate buy-bust operation conducted by the police in coordination with the PDEA.

In illegal drugs cases, there should be proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²³ As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.²⁴ The law also requires that the inventory and photography be done in the presence of the accused or his counsel, as well as

²² *People v. Basilio*, 754 Phil. 481, 485 (2015).

²³ *People v. Año*, G.R. No. 230070, 14 March 2018, 859 SCRA 380, 388-389.

²⁴ In *People v. Tumulak*, 791 Phil. 148 (2016), the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

the required witnesses: representatives from the media and the DOJ, and any elected public official.²⁵

In *People v. Luna*,²⁶ the Court re-examined the law and held that the legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of RA 9165. Under the law, the following procedure must be observed in the seizure, custody, and disposition of dangerous drugs and related paraphernalia:

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; italics in the original)

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 supplied details as to the place where the physical inventory and photographing of the seized items should be done, *i.e.*, at the place of seizure, at the nearest police station, or at the nearest office of the apprehending officer or team. Further, a “saving clause” was added in case of non-compliance with the requirements under justifiable grounds. Section 21 (a), Article II of the IRR states:

SECTION 21. x x x

(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: 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

²⁵ Section 21(1), Article II of RA 9165.

²⁶ G.R. No. 219164, 21 March 2018, 860 SCRA 1.

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.

In sum, the law puts in place requirements of time, witnesses, and proof of inventory with respect to the custody of seized dangerous drugs:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:
 - a. The **accused** or his representative or counsel;
 - b. The **required witnesses**:
 - i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and **prior to its amendment by RA 10640**;
 - ii. an elected public official and a representative of the National Prosecution Service of the DOJ or the media for offenses committed during the effectivity of RA 10640.²⁷

As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of “justifiable grounds” allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; *ergo*, the integrity of the *corpus delicti* remains untarnished.²⁸

After a careful review of the records of this case, the Court finds that the police officers faithfully executed their duty in complying with the requirements on the seizure, initial custody, and handling of the seized items pursuant to Section 21, Article II of RA 9165.

As shown by the prosecution, immediately after seizure of the suspected packs of marijuana, PO1 Rubion did a physical inventory and marked the packs with the date (08-09-2013), time (9:30 A.M.), initials

²⁷ Id. at 20.

²⁸ Id. at 20-21.

“TBR1 to TBR6,” and placed his signature. Also, PO1 Rubion took three pictures, at the place of arrest, in the presence of the two accused and the three required witnesses from the media, DOJ, and the barangay captain. At the police station, PO2 Hervas documented the inventory and again took three more pictures in the presence of the two accused and the three required witnesses. Afterwards, the seized items and the Request for Laboratory Examination dated 9 August 2013 signed by PSI Regidor, the OIC of the Sto. Tomas Police Station, were personally delivered by PO1 Rubion to the PNP Provincial Crime Laboratory and received by PO1 Federe. Then Forensic Chemist Bajade confirmed that the marked items yielded a positive result of the dangerous drug marijuana as embodied in Chemistry Report No. D-149-2013. Clearly, from the sequence of events, the police officers sufficiently complied with the chain of custody rule and they were able to preserve the identity, integrity, and evidentiary value of the seized items.

However, given that the charge is for the Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 and did not include Section 11, Article II of RA 9165 on the illegal possession of dangerous drugs, then we agree with the findings of the appellate court that Anicoy is guilty in selling only two (2) packs of marijuana marked as “TBR1” and “TBR2” in the total weight of 6.3685 grams. PO1 Rubion's testimony during the direct examination²⁹ disclosed that he only bought from Anicoy two (2) packs of marijuana, which was the subject of the sale transaction, and not the entire six (6) packs, which were seized after the consummation of the sale. The other four (4) packs should have been separately charged under Section 11, Article II of RA 9165.

Regardless, Anicoy is still guilty for the crime of Illegal Sale of Dangerous Drugs. The prosecution fully substantiated the guilt of Anicoy by clear and convincing evidence which clearly outweighs Anicoy's uncorroborated denial and alleged frame-up of the offense charged. Thus, both the RTC and CA correctly ruled in convicting him under Section 5, Article II of RA 9165 and in imposing on him the penalty of life imprisonment and a fine of ₱500,000.00.

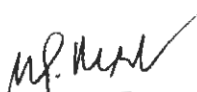
WHEREFORE, the appeal is **DISMISSED**. The Decision dated 27 March 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01531-MIN is **AFFIRMED**. Accused-appellant Jaymar V. Anicoy is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs defined and penalized under Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

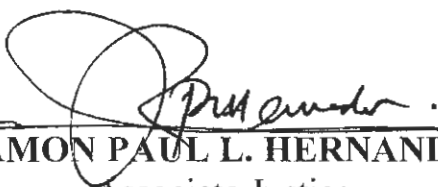
²⁹ Records, Book 3, TSN, Direct Examination of PO1 Rubion, 10 September 2015, pp. 10-11.

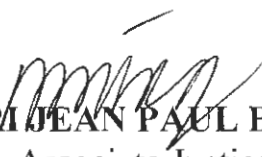
SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

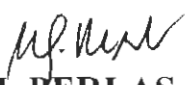

RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

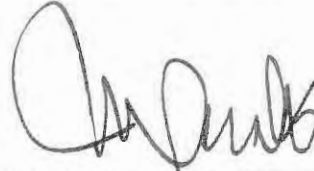
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior 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.



DIOSDADO M. PERALTA
Chief Justice