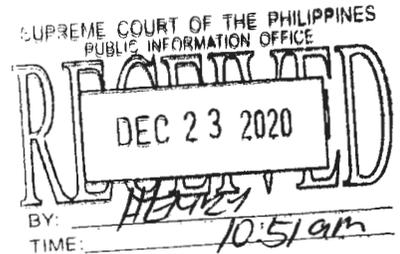




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **December 2, 2020**, which reads as follows:*

“G.R. No. 239475 (People of the Philippines v. Richard Ral y Udarbe).
- On appeal is the February 28, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01603-MIN, affirming the January 11, 2017 Decision² of the Regional Trial Court (RTC) of Medina, Misamis Oriental, Branch 42, in Criminal Case No. 2044-M(2014) which found accused-appellant Richard Udarbe Ral (Ral) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (RA 9165), or the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents:

The facts, as alleged by the prosecution, are as follows:

On November 6, 2014, at about 7:00 p.m., a confidential informant informed Deputy Officer-In-Charge Police Inspector Arnold Mabunga Sala (PI Sala) that Ral would be transporting illegal drugs to their area of responsibility. The informant described Ral as a 35 to 40-year-old man, of medium build, and wearing a green hoodie. Ral was said to have boarded a public utility bus from Cagayan de Oro, carrying a gray, black and blue backpack containing dried marijuana fruit tops.

PI Sala immediately relayed the information to Chief of Police Adolfo Abella Tolentino (Chief Tolentino), who immediately conducted a briefing for the apprehension of Ral. He divided his members into two (2) teams. A searching team, composed of PI Sala, Police Officer 3 Arvie Balatero Cainoy (PO3 Cainoy), Senior Police Officer 1 Rogaciano Ignalig, PO2 Rowel Macas, and PO2 Eliezer Jun Virtudazo (PO2 Virtudazo), was tasked to conduct a plain view checkpoint along National Highway of Purok 1, Portulin, Medina. Meanwhile, the back up or surveillance team, composed of Chief Tolentino, SPO3 Rene Rombo, SPO1 Ajitor Jaculan, and PO2 Jesson Gabotero, was

¹ *Rollo*, pp. 3-10; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Tita Marilyn Payoyo-Villordon.

² *Records*, pp. 225-238 ; penned by Judge Judy A. Sia-Galvez.

tasked to secure and monitor the vicinity of the checkpoint, should the target attempt to escape. After the briefing, the teams proceeded to their target area.

At about 9:55 p.m., the police operatives flagged down a "Bachelor" aircon bus with plate number LYE-811 and apprised the driver that they would be conducting a plain view search inside the bus. Upon boarding the vehicle, PO3 Cainoy noticed a man seated behind the bus driver, with a backpack placed on his lap that matched the informant's description. The man, later identified as Ral, looked anxious and alarmed. PO3 Cainoy asked Ral to open his backpack to which he obliged. A nylon sack was found containing four (4) bundles of marijuana. PO2 Virtudazo immediately frisked, arrested, and handcuffed Ral and informed him of his offense and constitutional rights.

One of the police officers contacted Barangay Captain Bertoldo Yamit (Brgy. Capt Yamit) and Barangay Kagawad Patrick Henry Villanueva (Brgy. Kagawad Villanueva). When Brgy. Captain Yamit arrived at the scene, he saw the bundles of marijuana inside a sack and some cash placed on top of the hood of the patrol car. He was also asked to sign the inventory³ prepared by PO3 Cainoy. After reading its contents, he affixed his signature on it. Brgy. Kagawad Villanueva and Ral likewise signed the inventory. Thereafter, Ral was brought to the police station, where PO3 Cainoy prepared the police blotter and booking. He also placed the seized marijuana inside the evidence locker, to which only he had access to.

The following morning, PO3 Cainoy prepared the bundles of marijuana for laboratory testing and delivered it to the PNP Misamis Oriental/Ginoog City Crime Laboratory Office, together with the Request for Laboratory Examination.⁴ After the forensic chemist in-charge, PCI Joseph Tagadiad Esber (PCI Esber), received the request and seized items, he conducted an examination and found that the specimen tested positive for the presence of marijuana, a dangerous drug.⁵

On November 10, 2014, an Information⁶ was filed charging Ral with violation of Section 5, Article II of RA 9165, as follows:

That on or about November 6, 2014, at more or less 9:55 o'clock in the evening in Medina, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was then on board a public utility bus, *i.e.* Bachelor Aircon Bus bearing plate no. LYE-811 bound for Medina, Misamis Oriental from Cagayan de Oro City, and not being lawfully authorized to possess and/or transport any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously transport via the said bus four (4) bundles of dried Marijuana fruiting tops with a total aggregate weight of around 2.16845 kilograms which were all found in his possession, custody, and/or control,

³ Id. at 14.

⁴ Id. at 13.

⁵ Id. at 10.

⁶ Id. at 1-2.

particularly inside his backpack, which after laboratory examination yielded positive result to the presence of Marijuana, a dangerous drug.

CONTRARY TO LAW.⁷

During his arraignment, Ral entered a plea of “not guilty.”⁸

Ral denied the allegations against him. He claimed that at around 7:00 p.m. on November 6, 2014, he boarded a bus at the Balingasag Bus Station headed for Mingitra, Ginoog City to visit his older sibling. When the bus stopped in Brgy. Portulin, Medina, two (2) uniformed police officers and a man in civilian attire boarded the same. Ral claimed that the police officers pulled a backpack from under his seat, and asked him if he knew who owned it. When he replied in the negative, PO3 Cainoy pointed an armalite rifle at him and handcuffed him. When he asked why he was being arrested, the police said it was because he was the owner of the backpack.

Subsequently, PO3 Cainoy uncuffed him and instructed him to wear the backpack while another police officer took photographs of him. Upon alighting from the bus, Ral heard PO3 Cainoy tell the bus driver that he might be requested to drop by the police station to shed light on the incident. Afterwards, he was brought inside the patrol car where he was made to wait for the barangay captain. An hour later, the barangay captain arrived and signed a document. Then Ral was brought to the police station where he was forced to admit ownership over the backpack, which he denied.

Ruling of the Regional Trial Court:

In its January 11, 2017 Decision,⁹ the trial court found Ral guilty of violating Section 5, Article II of RA 9165. Its *fallo* reads:

WHEREFORE, since there is proof beyond reasonable doubt, the Court hereby **convicts** accused **RICHARD UDARBE RAL** for **violating Section 5, Article II of R.A. 9165** for transporting 2.16845 kilograms of marijuana on November 6, 2014 at around 9:55 o'clock in the evening from Cagayan de Oro City or Balingasag, Misamis Oriental to Portulin, Medina, Misamis Oriental, without lawful authority, and hereby sentences him to serve a term of imprisonment of **Life Imprisonment**, and to pay a **fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00)**.

Further, as provided under Section 35 Accessory Penalties of R.A. 9165, **RICHARD UDARBE RAL** is disqualified to exercise his **civil rights** such as, but not limited to, the rights of parental authority or guardianship over his children as to their person or property, the right to dispose of the property of his children by any act or any conveyance *inter vivos*, and **political rights**, such as the right to vote and be voted for.

⁷ Id. at 1.

⁸ Id. at 27.

⁹ Id. at 225-238.

Consequently, the Acting Branch Clerk of Court of this Station, RAMONITO OCTAVIUS L. SALISE, shall turnover to the Philippine Drug Enforcement Agency – Regional Office No. 10 (PDEA – RO No. 10) the specimens marked as Exhibits I I-1 I-b, I-2 I-2-a I-2-b, I-3 I-3-a I-3-b, I-4 I-4-a & I-4-b, which are the specimens A-1 A-2 A-3 A-4 in Chemistry Report No. D-41-2014 MIS OR, for their proper disposition and destruction, as provided for by law, and to submit a report to this Court, within fifteen (15) days from compliance.

So ordered.¹⁰

Ruling of the Court of Appeals:

On appeal¹¹ before the CA, Ral contended that the warrantless search and seizure was unlawful thereby rendering the seized items inadmissible in evidence.¹² While the search of a moving vehicle is one of the doctrinally admitted exceptions to warrantless searches and seizures, Ral argued that the seizing officer must have been prompted by probable cause to conduct the search.¹³ He alleged that the tip from the informant was insufficient to constitute probable cause to effect a warrantless search and seizure.¹⁴ He emphasized that there should have been an overt act to indicate that he has committed, is actually committing, or is attempting to commit an offense. In his case, he was only sitting in the bus at the time that he was subjected to the search by the law enforcers.

Moreover, Ral averred that the search conducted upon his person was made without his consent.¹⁵ He claimed the police officers made inconsistent testimonies regarding the manner by which they got hold of the bag.¹⁶ Lastly, the policemen failed to adhere to the provisions of Section 21 of RA 9165 since the conduct of the inventory was not made in his and the barangay captain's presence.¹⁷

Contrariwise, the Republic, through the Office of the Solicitor General (OSG), argued that the warrantless search and seizure was valid.¹⁸ The police officers had probable cause to conduct a search on Ral's person based on the description given by the informant and his anxious demeanor while being interrogated. Moreover, the integrity and the evidentiary value of the seized items were properly preserved.¹⁹ Non-compliance with Section 21 did not render the arrest illegal or the items seized inadmissible as there were justifiable grounds for its non-compliance. PO3 Cainoy had provided a

¹⁰ Id. at 237-238.

¹¹ *CA rollo*, pp. 20-38.

¹² Id. at 27.

¹³ Id. at 28-29.

¹⁴ Id. at 30.

¹⁵ Id. at 33.

¹⁶ Id. at 34.

¹⁷ Id. at 35-36.

¹⁸ Id. at 82.

¹⁹ Id. at 94.

detailed account on how the seized items were handled from the time they came into his possession until their turnover to the crime laboratory.²⁰

The appellate court, in its assailed February 28, 2018 Decision,²¹ affirmed the ruling of the trial court finding Ral guilty of illegally transporting dangerous drugs. It ruled he can no longer raise on appeal the supposed invalidity of his arrest and illegal search and seizure of the bundles of marijuana due to his failure to raise the same before the trial court prior to his plea. Moreover, any irregularity was cured by his voluntary submission to the trial court's jurisdiction.²²

The appellate court found the warrantless search and seizure to be valid.²³ It emphasized that the rule against warrantless searches and seizures admit of exceptions, like the search of moving vehicles, such as the case at bar.²⁴ It also noted that Ral voluntarily opened his backpack which contained bundles of marijuana, thereby negating any claim of illegal search and seizure.²⁵ He was plainly caught *in flagrante delicto* committing the crime of illegal transport of dangerous drugs. All told, the CA found no reason to modify the decision of the RTC.

Hence, this appeal.

Our Ruling

We find merit in the appeal. While the warrantless search and seizure involving accused-appellant Ral was validly undertaken by the police, the subsequent grievous lapse in their handling of the illicit drugs in violation of the rule on chain of custody warrants the acquittal of accused-appellant of the crime charged.

Warrantless Search and Seizure:

The right against unreasonable searches and seizures is enshrined in Section 2, Article III of the 1987 Constitution:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.²⁶

²⁰ Id. at 96-99.

²¹ *Rollo*, pp. 3-10.

²² Id.

²³ Id. at 8.

²⁴ Id.

²⁵ Id. at 8-9.

²⁶ CONSTITUTION. Art. III, Sec. 2.

Thus, as a general rule, no arrest, search, and seizure can be made without a warrant issued by a competent judicial authority. Furthermore, any evidence obtained in violation of this right becomes inadmissible.²⁷

However, jurisprudence also recognizes several exceptions to this rule, such as a search of a moving vehicle.

According to jurisprudence, “warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, are *limited to routine checks where the examination of the vehicle is limited to visual inspection.*”

On the other hand, an extensive search of a vehicle is permissible, but only when “the officers made it upon probable cause, *i.e.*, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains [an] item, article or object which by law is subject to seizure and destruction.”²⁸

While routine checks are permitted, these must be limited to a visual inspection. A more extensive search requires the existence of probable cause that would cause the police officers to believe, *before the search*, that they will find evidence pertaining to a crime.²⁹ Accordingly, two requisites must be satisfied for a valid warrantless search on a moving vehicle: 1) the search must be limited to a visual inspection; and 2) the existence of probable cause prior to the conduct of the search, if a more extensive and intrusive search is made.

A tip alone is insufficient to constitute probable cause.³⁰ In *People v. Sapla*,³¹ We held that “an exclusive reliance on an unverified, anonymous tip cannot engender probable cause that permits a warrantless search of a moving vehicle that goes beyond a visual search. Hence, absent any probable cause that can justify an extensive and intrusive search, the warrantless search becomes invalid and unlawful.”³² What is critical in finding sufficient probable cause is the police officers’ personal observation of facts leading to their suspicion, and not their mere reliance on the information relayed to them.³³ In *People v. Yanson*,³⁴ the following were considered sufficient probable cause:

x x x probable cause was established by the confluence of the accused speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another,

²⁷ CONSTITUTION. Art. III, Sec. 3 (2).

²⁸ *People v. Sapla*, G.R. No. 244045, June 16, 2020.

²⁹ *People v. Manago*, 793 Phil. 505, 520 (2016), citing *People v. Mariacos*, 635 Phil. 315 (2010).

³⁰ *People v. Sapla*, supra.

³¹ Id.

³² Id.

³³ Id. citing *People v. Cogaed*, 740 Phil. 212 (2014).

³⁴ G.R. No. 238453, July 31, 2019.

and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection[.]

x x x this Court upheld the accused's conviction. It reasoned that the information received by the police officers regarding the Gemini car — together with how the officer saw a gun tucked in the accused's waist, the accused's inability to produce any document pertaining to the gun, and ultimately, the plastic sachets the officer saw after the accused stepped out — supported probable cause.

In these illustrative cases, law enforcers acted on tipped information that a crime was being committed, or was about to be committed. However, the **seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being tipped was progressively heightened by other factors, such as the accused's failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached.** (Citations omitted; Emphasis supplied)

Applying the following parameters in the case at bar, this Court finds that there was sufficient probable cause based on the tip from the informant, coupled with Ral's suspicious behavior upon being approached and questioned by the police officers. Ral's dubious demeanor was described by PO3 Cainoy during trial, thusly:

Q: Then at 9:55 in the evening, do you know what happened then?

A: Yes, at around 9:55 in the evening, we [flagged] down a Bachelor aircon bus bearing plate No. LYE-811 and we informed the driver Efren T. Babanto that we will be conducting a plain view search x x x.

Q: Then, what did you do?

A: We entered the bus and x x x conducted the plain view [search].

Q: [W]hat did you notice?

A: [Upon] entering the bus, I immediately [saw] a male person sitting behind the driver [with a backpack] on his lap x x x which bag fits the description given by our confidential informant[. W]hen I started asking the said person which we later identified as Richard Ral y Udarbe, 38 years old, live-in and a resident of Binitinan, Balingasag, Misamis Oriental, **he x x x acted [panicky and anxious] which x x x made him more suspicious and giving us hint being our target.**³⁵

x x x x

Q: Now, when you noticed the backpack, what did you do thereafter?

A: **I noticed that the subject acted indifferently.** He also fits the description from our confidential informant. So, I asked [him] to open his backpack.

³⁵ TSN, May 20, 2015, pp. 7-8.

Q: You mean, because of the suspicious action of the accused, and the description conveyed by the informant, and because the information fits to that person, that is the time you asked to open his backpack?

A: Yes, and also the clothes he wear.³⁶

x x x x

Q: Why [did] you find his action suspicious?

A: **Because [he was panicky for no reason at all] and I observed that he [wanted] to escape at that time because he was in front of the door near x x x the driver[‘s] seat.**

Q: Let us take this one by one. You said that his eyes were.. how do you describe the eyes, your assessment at that time?

A: I think he [was thinking of] a way to escape.

Q: What were his eyes doing then?

A: **Because his eyes were wandering.**

Q: You saw his eyes were wandering, what else?

A: **His action revealed that he [was] trying to escape because x x x he is near the door of the bus.**

x x x x

Q: What about his facial expression, did you find anything suspicious [about] his facial expression at that time when you boarded the bus?

A: **For me [it was] unusual for x x x a passenger [of] an aircon bus to get sweaty.³⁷**

Clearly, the informant’s tip and accused-appellant’s suspicious demeanor sufficed to establish probable cause and for the police officers to believe that accused-appellant was committing a crime thereby justifying a warrantless search and seizure.

Integrity and Evidentiary Value of the Seized Items:

In prosecuting dangerous drugs cases, it is essential that the identity of the seized drugs be established beyond reasonable doubt, such that the prohibited drugs offered in court are the same as those recovered from the accused.³⁸ Section 21, Article II of RA 9165, provides for the procedural requirements in the seizure, custody, and handling of confiscated illegal drugs and/or paraphernalia:

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

³⁶ Id. at 24.

³⁷ Id. at 33-34.

³⁸ *People v. Ambrosio*, G.R. No. 234051, November 27, 2019 citing *People v. Macaumbang*, G.R. No. 208836, April 1, 2019.

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 persons 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)

Furthermore, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

(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 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[.]**³⁹ (Emphasis Ours)

RA 10640⁴⁰ amended Section 21 of RA 9165 on July 15, 2014 and included the saving clause in the IRR which required that the conduct of the physical inventory and taking of photograph of the seized items must be done immediately after the seizure and confiscation in the presence of the witnesses, namely: (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media. This was not adhered in this case.

To repeat, both the conduct of inventory and taking of photographs were not done in the presence of the required number of witnesses, nor in the presence of the accused and/or his representative. While Brgy. Capt. Yamit signed the inventory, records show that he was not actually present when it was made:

³⁹ Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act Of 2002, August 30, 2002.

⁴⁰ An Act to Further the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002."

- Q: When you arrived there, you saw Richard Ral y Udarbe [sitting in] the patrol car, is that correct?
A: Yes, at the back.
- Q: You saw also, as you testified a marijuana place[d] inside the sack, am I right?
A: Yes, sir.
- Q: Was that sack open when you arrived?
A: It was open x x x.
- Q: Only one, or how many sack[s]?
A: Only one.
- Q: When you arrived x x x you were just made to sign a certain document; and this document x x x ?
A: Yes, x x x.
- Q: So, you were just made to sign and then the police officer[s] together with the accused left the area?
A: Yes, Sir.
- Q: **So you were never present when the inventory was made?**
A: **I was not there when they counted those things but I saw that there was a marijuana and then the cash.**⁴¹

In *People vs. Acabo*,⁴² the Court acquitted the accused because there was a deviation from the witness requirement when the media representative merely signed the certificate of inventory but did not actually witness the conduct thereof or the taking of photograph of the seized items. The Court reiterated that the law requires the insulating presence of these witnesses to ensure that the chain of custody has been duly established and negate any suspicion of switching, planting, or contamination of evidence.⁴³

Concededly, non-compliance with the procedure laid down in Section 21 does not *ipso facto* render the seizure and custody over the items as invalid, as long as the prosecution proves: 1) a justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly preserved.⁴⁴ Moreover, there must be evidence proving that earnest efforts were employed by the prosecution in order to secure their attendance.⁴⁵ Notably, in this case, the prosecution did not even acknowledge, much less justify why the inventory was not conducted in the presence of the required witnesses. Accordingly, this substantial gap casts serious doubts upon the integrity and evidentiary value of the seized item as to render it inadmissible in evidence.

⁴¹ TSN, October 7, 2015, pp. 9-10.

⁴² G.R. No. 241081, February 11, 2019.

⁴³ *Id.*

⁴⁴ *People v. Ramos*, G.R. No. 236455, February 19, 2020.

⁴⁵ *Id.*, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018.

To conclude, We find that the chain of custody has been broken. Hence, the identity of the seized items has not been established beyond reasonable doubt. The acquittal of accused-appellant is therefore warranted.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed February 28, 2018 Decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01603-MIN, is **REVERSED** and **SET ASIDE**. Accused-appellant Richard Ral y Udarbe is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED." (J. Leonen, on official leave.)

By authority of the Court:

Misael Domingo C. Battung III
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
GER
12/1/20

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Mr. Richard Ral y Udarbe
c/o The Regional Superintendent
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The Presiding Judge
REGIONAL TRIAL COURT
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(Crim. Case No. 2044-M[2014])

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