



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **07 September 2020** which reads as follows:*

“G.R. No. 238837 (*People of the Philippines v. Virgilio Primo y Donaire @ “Zoilo”*). — This ordinary Appeal¹ assails the Decision² dated 29 November 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08006, which affirmed the Decision³ dated 16 November 2015 of the Regional Trial Court (RTC) of Makati City, Branch 135 in Crim. Case Nos. 15-539 and 15-540, finding Virgilio Primo y Donaire @ “Zoilo” (appellant) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, respectively, of Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Appellant’s conviction arose from two (2) separate Informations⁴ dated 04 March 2015 for Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively.

Upon arraignment, appellant pleaded not guilty to the charges. Thereafter, pre-trial conference and trial on the merits ensued.⁵

The prosecution presented that on 02 March 2015, the Philippine Drug Enforcement Agency (PDEA) and the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) organized a buy-bust team in response to a tip from a confidential informant (CI) about appellant’s drug activities at *Barangay Comembo*, Makati City. Police Officer 2 Jonathan

¹ See Notice of Appeal dated 27 December 2017; *rollo*, pp. 22-23.

² Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Stephen C. Cruz and Samuel H. Gaerlan (now a Member of the Court), concurring; *id* at 2-21.

³ Penned by Presiding Judge Josephine M. Advento-Vito Cruz; *CA rollo*, pp. 57-63.

⁴ Records, pp. 2, 4.

⁵ *Rollo*, p. 4.

Flores (PO2 Flores) was designated as the *poseur*-buyer, while Police Officer 1 Mario Maramag (PO1 Maramag) was designated as back-up cooperative, and Police Officer 1 Mauro Pagulayan (PO1 Pagulayan) was designated as the apprehending officer. The team, together with the CI, then proceeded to Yakal Street, *Barangay* Comembo (target site).⁶

At the target site, the CI introduced PO2 Flores as a buyer of *shabu*. When PO2 Flores gave appellant a marked ₱500.00 bill, appellant took out a plastic sachet containing the suspected *shabu* from his right pocket and handed it over to PO2 Flores. After placing the plastic sachet in his pocket, PO2 Flores executed the pre-arranged signal by scratching his cheek. PO2 Flores then grabbed appellant, while PO1 Pagulayan rushed to the target site and assisted in restraining appellant. Upon frisking appellant, PO2 Flores recovered the marked ₱500.00 bill and two (2) other heat-sealed sachets containing white crystalline substance from appellant. Thereafter, the arresting team brought appellant to the *barangay* hall.⁷

At the *barangay* hall, the arresting team conducted an inventory of the three (3) plastic sachets in the presence of appellant, *Barangay* Captain Arnel Meneses Sarmiento (Brgy. Captain Sarmiento), *Bantay Bayan* members, and other policemen. PO2 Flores placed the marking "JGF" on the one (1) sachet handed to him by appellant, and the markings "JGF-1" and "JGF-2," respectively, on the two (2) other plastic sachets recovered from appellant's possession. Thereafter, PO2 Flores delivered the three (3) sachets to the crime laboratory, where they were turned over to Police Chief Inspector Abraham Verde Tecson (PCI Tecson) for laboratory examination. In Chemistry Report No. D-224-15,⁸ PCI Tecson confirmed that the three (3) plastic sachets were positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.⁹

For his part, appellant interposed denial. He claimed that on 01 March 2015, he was at the market to buy ice, when police officers arrived and shouted at the gamblers outside an ice store. Suddenly, the police officers arrested and brought him to the *barangay* hall, where he voluntarily emptied his pocket, taking out a ₱20.00 bill, which he intended for the purchase of ice. Thereafter, the police officers detained him at the police station. The following day, the police officers brought appellant to the *barangay* hall, where he learned for the first time of the accusation against him for illegal sale and possession of *shabu*. Thereat, the police officers presented him, as well as the three plastic sachets containing a white powdery substance and a ₱500.00 bill, to Brgy. Captain Sarmiento.¹⁰

⁶ CA *rollo*, pp. 109-110.

⁷ Id. at 110.

⁸ Records, p. 18.

⁹ CA *rollo*, pp. 110-111.

¹⁰ Id. at 112-113.

The RTC Decision

In a Decision dated 16 November 2015, the RTC found appellant guilty beyond reasonable doubt of the offenses charged, and sentenced him as follows: (a) in Crim. Case No. 15-539, the penalty of life imprisonment and a fine in the amount of ₱500,000.00; and, (b) in Crim. Case 15-540, the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to fourteen (14) years.

The RTC found that the prosecution was able to establish appellant's guilt beyond reasonable doubt, underscoring that: (a) he was caught *in flagrante delicto* selling *shabu* to the *poseur*-buyer; and, (b) in the search incidental to his arrest, he was discovered to be in possession of two (2) plastic sachets of *shabu*. Finding the testimonies of the police witnesses credible, the RTC upheld the presumption of regularity of the buy-bust operation and debunked appellant's denial. It was also convinced of the integrity and the preservation of the three (3) plastic sachets containing *shabu*.¹¹

Aggrieved, appellant filed with the CA an appeal, maintaining that the prosecution failed to adequately establish the chain of custody of the seized plastic sachets of *shabu*.¹²

The CA Decision

In the challenged Decision dated 29 November 2017, the CA affirmed appellant's conviction *in toto*.

As did the RTC, the CA found the testimonies of the police witnesses credible over that of appellant's denial. It held that the police officers substantially complied with the requirements under Section 21, Article II of RA 9165 on the custody of the seized drugs.¹³

Hence, this appeal.

For purposes of this appeal, the Public Attorney's Office¹⁴ and the Office of the Solicitor General (OSG)¹⁵ manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

The appeal hinges on the procedural flaws purportedly committed by the police officers in the proper handling of the seized drugs as embodied in Section 21, Article II of RA 9165, and the legality of appellant's arrest, as

¹¹ Id. at 62.

¹² Id. at 40.

¹³ *Rollo*, pp. 11-21.

¹⁴ Id. at 34.

¹⁵ Id. at 28-29.

well as the admissibility of the evidence against him.

Issue

The issue for the Court's resolution is whether or not appellant is guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

Our Ruling

The appeal is impressed with merit.

In prosecutions for *illegal sale* of dangerous drugs under Section 5, Article II of RA 9165, conviction is proper if the following essential elements are established: "(1) the identity of the buyer and the seller, the object, and the consideration; and, (2) the delivery of the thing sold and the payment thereto."¹⁶

On the other hand, *illegal possession* of dangerous drugs under Section 11, Article II of RA 9165 carries the following elements: "(1) possession by the accused of an item or object identified to be a prohibited drug; (2) the possession is not authorized by law; and, (3) the free and conscious possession of the drug by the accused."¹⁷

Jurisprudence instructs that it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁸ To obviate any unnecessary doubt on the identity of the seized dangerous drugs, the prosecution has to show an unbroken chain of custody over the same, and account for each link in the chain of custody from the moment the drugs are seized until their presentation in court as evidence of the crime.¹⁹

Considering that appellant was indicted for the two offenses on 04 March 2015, the procedure on custody and handling of seized dangerous drugs mandated in Section 1 of RA 10640,²⁰ which amended Section 21 of RA 9165, applies, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

¹⁶ See *People v. Sembrano*, 642 Phil. 476, 487 (2010).

¹⁷ See *People v. Naquita*, 582 Phil. 422, 445 (2008).

¹⁸ *People v. Crispo*, G.R. No. 230065, 14 March 2018, 828 SCRA 416, 429.

¹⁹ *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²⁰ "AN ACT TO FURTHER STRENGTHEN 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,'" which was approved on 15 July 2014.

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That **noncompliance of 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 and custody over said items. (Emphases and underscoring supplied)

The procedure on custody and handling of the seized dangerous drugs authorizes “substantial compliance,” provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and, (b) the integrity and evidentiary value of the seized items are properly preserved.²¹

In *People v. Almorfe*,²² the Supreme Court emphasized that the saving clause under the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized in RA 10640 – presupposes the mandatory twin-requirements, viz.: (a) the prosecution must explain the reasons behind the procedural lapses, and (b) that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.²³ Further, the justifiable grounds for non-compliance must be proven as a fact, as the trial court cannot presume what these grounds are or that they even exist.²⁴

In this case, the police officers committed fatal procedural lapses when they deviated from the outlined procedure for the marking and physical inventory of the seized drugs.

To start, the marking and inventory in this case were not conducted immediately at the place of the arrest but at the *barangay* hall of *Barangay Comembo*, Makati City, which is not one of the allowed alternative places

²¹ See *People v. Goco*, 797 Phil. 433, 443 (2016).

²² 631 Phil. 51 (2010).

²³ *People v. Goco*, supra, at 444-445.

²⁴ See *People v. De Guzman*, 630 Phil. 637, 648-649 (2010).

contemplated under the outlined procedure.

More importantly, there was no compliance with the “two-witness rule” mandated by Section 1, RA 10640, *i.e.*, the physical inventory of the seized items must be conducted in the presence of the accused, with (1) an elected public official, and (2) representative of the National Prosecution Office or the media, who shall be required to sign the copies of the inventory and be given a copy thereof.

A painstaking review of the records reveals that the supposed physical inventory of the seized sachets of *shabu* was made in the presence of only one witness, Brgy. Captain Sarmiento. This is evident from the Inventory Receipt,²⁵ which appears to have been signed by Brgy. Captain Sarmiento, together with PO2 Flores, PO1 Pagulayan and PO3 Esguerra, and no other. Telling as well is PO2 Flores’s testimony, which reveals that the police officers never intended to procure the required two witnesses, *viz.*:

Q x x x what did you do after [appellant] was arrested?

A We called for a barangay official for the inventory.

Q Where were you at the time that you called up for a barangay official for the inventory?

A We were still at the place.

Q And what happened?

A **There was no barangay official available so we proceeded to the barangay hall of Comembo.**

Q By the way, Mr. Witness, in the records, of this case it appears that he was arrested at around 4:30?

A Yes, ma’am.

Q **How long did it take you to wait for the barangay official to arrive in the area?**

A **15 to 20 minutes, ma'am.**

Q And what happened to (sic) the area when the accused was arrested?

A Many onlookers started to flock the area, so we decided to proceed to the barangay hall for security of our suspect.

Q **So you mean to say that after waiting for some time for that barangay official, you went to the barangay?**

A **Yes ma'am.**

Q And what happened at the barangay hall, Mr. Witness?

A We conducted the inventory before Brgy. Capt. Sarmiento.²⁶
(Emphasis supplied)

²⁵ Records, p. 21.

²⁶ TSN, 15 July 2015, p. 15.

Clearly, the buy-bust team did not prepare or bring with it the required witnesses at or near the place of the buy-bust operation, *i.e.*, the team had to call for a *barangay* official, and waited for 15 to 20 minutes until it decided to proceed to the *barangay* hall. This common practice of police operatives of not bringing the required witnesses to the intended place of arrest, when they could easily do so, and “calling them in” to witness the inventory and photographing of the drugs only after the buy-bust has already been executed, does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.²⁷ The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.²⁸

The procedural deviations committed by the police officers cannot find justification from the saving clause under RA 10640 for failure of the prosecution to give a plausible explanation therefor. “Justifiable grounds” for deviations from the requirement presupposes genuine, sufficient and **earnest efforts** to secure the required witnesses under the law.²⁹ These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with procedure on the procurement of witnesses to attend the physical inventory of the seized dangerous drugs.³⁰ In this case, it becomes evident that the buy-bust team's calling of a *barangay* official to witness the inventory and photographing of the drugs was not only a belated resort, but a mere afterthought.

The mandatory requirement as to the presence of (1) **an elected public official, and** (2) **a representative of the National Prosecution Office or the media** was deliberately placed by law “to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case.”³¹ The absence of this “insulating presence” of the required witnesses during the seizure and marking of the drugs underscored the uncertainty about the identity and integrity of the seized sachets of *shabu* admitted as evidence against appellant.³² These lapses not only cast doubt on the identity of the *corpus delicti* but also tend to negate, if not totally discredit, the claim of regularity in the performance of official duties by the police officers.³³ Contrary, thus, to the opinion of the RTC and CA, the presumption of regularity in the performance of official duties cannot

²⁷ See *People v. Tomawis*, G.R. No. 228890, 18 April 2018, 830 SCRA 385, 409.

²⁸ *Id.*

²⁹ *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

³⁰ See *People v. Manansala*, G.R. No. 229092, 21 February 2018, 826 SCRA 578, 586-587.

³¹ See *People v. Mendoza*, 736 Phil. 749, 761 (2014).

³² See *People v. Sanchez*, 590 Phil. 214, 229-245 (2008).

³³ *Dela Cruz v. People*, 617 Phil. 109, 120 (2009).

supplant the palpably insufficient and uncertain testimonies of the police witnesses, as regards compliance with the mandatory requirements. "As every fact necessary to constitute the crime must be established by proof beyond reasonable doubt,"³⁴ the doubts established in this case must be resolved in favor of appellant. His acquittal is warranted.

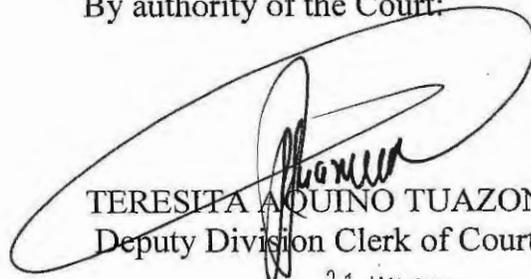
WHEREFORE, the appeal is **GRANTED**. The Decision dated 29 November 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08006, is hereby **REVERSED and SET ASIDE**. Accordingly, appellant Virgilio Primo y Donaire @ "Zoilo" is **ACQUITTED** of the offenses charged in Crim. Case Nos. 15-539 and 15-540.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Virgilio Primo y Donaire @ "Zoilo", unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED." (*Inting, J., on official leave; Baltazar-Padilla, J., on leave.*)

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utth*
21 JAN 2021 1/21

³⁴ *People v. De la Cruz*, 591 Phil. 259, 268-272 (2008).

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 135
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(Crim. Case Nos. 15-539 and 15-540)

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