



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **28 April 2021** which reads as follows:*

“**G.R. No. 243587** (*People of the Philippines v. Arnel Verbo y Mamala*). — On appeal is the Decision¹ dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08882, which affirmed the Decision² dated November 17, 2016 of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 7, in Criminal Case No. II-12350 convicting accused-appellant Arnel Verbo y Mamala (Verbo) for violation of Section 5, Article II of Republic Act (RA) No. 9165.³

ANTECEDENTS

In two (2) separate Informations, Verbo was charged with violation of Sections 5 and 11 of RA No. 9165, *viz.*:

[Criminal Case No. II-12350]

That on or about SEPTEMBER 28, 2014 in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously sell, deliver, dispense, give away one (1) piece heat[-]sealed transparent plastic sachet containing crystalline substance which gave POSITIVE result to the tests for methamphetamine hydrochloride, a dangerous drug, locally known as SHABU, weighing 0.4176 gram to a poseur buyer of the elements of the Philippine National Police, stationed in said municipality, said accused knowing fully-well and

¹ *Rollo*, pp. 2-14; penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Jose C. Reyes, Jr. (a Retired Supreme Court Associate Justice) and Maria Elisa Sempio Diy.

² *CA rollo*, pp. 43-53; penned by Judge Oscar T. Zaldivar.

³ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972 PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSE. Approved: June 7, 2002.

aware that it is prohibited for any person to sell, deliver, dispense, give away to another or transport any dangerous drugs regardless of the quantity or purity thereof, unless authorized by law.

CONTRARY TO LAW.⁴

[Criminal Case No. II-12351]

That on or about SEPTEMBER 28, 2014, in the Municipality of Gattaran, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody (1) piece of heat[-]sealed transparent plastic sachet containing crystalline substance which gave POSITIVE results to the tests for methamphetamine hydrochloride, a dangerous drug, locally known as SHABU, weighing 0.1348 gram to a poseur buyer of the elements of the Philippine National Police, stationed in said municipality, said accused knowing fully-well and aware that it is prohibited for any person to sell, deliver, dispense, give away to another or transport any dangerous drugs regardless of the quantity or purity thereof, unless authorized by law.

CONTRARY TO LAW.⁵

Verbo pleaded not guilty upon arraignment. Trial on the merits followed.⁶

The prosecution presented five (5) witnesses: PO3 Elmar Ventura (PO3 Ventura), PO3 Desmond A. Garcia (PO3 Garcia), PO1 Eric P. Sumagay (PO1 Sumagay), Barangay Captain Alejandro Camange (Brgy. Capt. Camange), and PSI Glenn Ly Tuazon (PSI Tuazon).⁷

PO3 Ventura testified that on September 28, 2014, at around 3:00 p.m., PSI Jayson Cabauatan briefed PO3 Garcia, PO3 Ventura, PO2 Jayson Gaffud, PO2 Sumagay, together with a confidential informant, regarding a drug buy-bust operation against Verbo also known as Jestoni/Long Hair. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA) and the *barangay* officials of Barangay Takiki. PO3 Garcia was designated as the *poseur-buyer* and was directed to remove his cap upon completion of the sale to signal the team.⁸

Around 3:45 p.m., the team arrived at the target area – a waiting shed beside the national highway in Barangay Takiki. PO3 Ventura and the rest of the team positioned themselves about 100 meters away from the waiting shed, while PO3 Garcia and the informant approached Verbo, who was already waiting for them at the shed. The informant then introduced PO3 Garcia to

⁴ CA rollo, p. 43.

⁵ *Id.* at 43-44.

⁶ Rollo, p. 3.

⁷ CA rollo, p. 44.

⁸ Rollo, p. 4.

Verbo as the buyer and took two ₱500.00 bills from his pocket,⁹ which he handed to Verbo. In turn, Verbo gave PO3 Garcia one heat-sealed plastic sachet containing white crystalline substance. Thereafter, PO3 Garcia took off his cap. In response, PO3 Ventura, PO2 Gaffud, and PO1 Sumagay immediately proceeded to the waiting shed, introduced themselves as police officers, and arrested Verbo. PO3 Ventura apprised Verbo of his constitutional rights and frisked him. The team then conducted an inventory of the seized items at the place of arrest in the presence of Verbo, Brgy. Capt. Camangeg, and two Barangay Kagawads. PO3 Garcia handed the heat-sealed plastic sachet that he received from Verbo to PO3 Ventura and asked Verbo if he has more items in his custody, to which he replied in the affirmative. Verbo brought out one heat-sealed transparent plastic sachet containing white crystalline substance and gave it to PO3 Ventura. The plastic sachets were marked "EV-1" and "EV-2." The two ₱500.00 bills with serial numbers TX064941 and BJ379199 were also recovered from Verbo.¹⁰

After the inventory, the buy-bust team, together with Verbo, proceeded to the Gattaran police station. A request for laboratory examination was prepared by PSI Cabauatan. On the same day, PO3 Ventura personally delivered the letter request and specimens to the PNP Crime Laboratory, Camp Adduru, Tuguegarao City. At around 6:45 p.m., PO1 Jershon Bryan Gapay (PO1 Gapay), an officer of the PNP Crime Laboratory, received the specimens. Thereafter, PO1 Gapay turned over the marked sachets to PSI Tuazon, who conducted the examination, which yielded a positive result for the presence of methamphetamine hydrochloride, a dangerous drug, as stated in his Chemistry Report No. D-108-2014.¹¹

Verbo, on the other hand, denied the charges and presented the following narration of facts. On September 28, 2014, he, together with his wife and child, accompanied his brother-in-law and his children to the latter's residence in Barangay Calaogan, Gattaran. They stopped by the side of the road since Verbo and the children wanted to relieve themselves. Suddenly, four police officers in civilian clothes on board a vehicle arrived and held him at gunpoint. Verbo identified them as PO2 Sumagay, PO2 Gaffud, PO3 Ventura, and PO3 Garcia, whom he knew as police officers, as they would pass by his workplace as a barker. Verbo was handcuffed and brought to a marketplace where PO3 Ventura alighted, made a call, and came back after around five minutes. They proceeded to the same waiting shed in Barangay Takiki. The policemen took pictures after scouting for some *barangay* officials. Thereafter, Verbo was brought to the police station, and then to Tuguegarao.¹²

⁹ TSN, March 11, 2015, p. 12.

¹⁰ *Rollo*, pp. 4-5.

¹¹ *Id.* at 5.

¹² *Id.* at 5-6.

RTC RULING

In a Decision¹³ dated November 17, 2016, the RTC convicted Verbo of Illegal Sale of Dangerous Drugs in Criminal Case No. II-12350, while Criminal Case No. II-12351 was dismissed for being violative of the accused's constitutional right against double jeopardy.

The RTC found that the identity of the buyer and the seller was sufficiently established by the prosecution;¹⁴ the integrity and evidentiary value of the item subject of the sale was safeguarded by an unbroken chain of custody;¹⁵ and the prosecution was able to establish the consummated transaction between the *poseur-buyer* and the accused.¹⁶ Notably, the RTC observed that the inventory was only witnessed by *barangay* officials without a representative from the National Prosecution Service (NPS) or the media. The police, however, explained that they failed to contact the NPS due to the urgency of the situation, and because the inventory was conducted around 5:00 p.m. in a distant *barangay*. Taking judicial notice of Barangay Takiki as a far-flung area in Gattaran, Cagayan, and of the reported sightings of some members of the New People's Army (NPA)¹⁷ in the area, the RTC excused the absence of the NPS or the media representative.¹⁸ Lastly, the RTC brushed aside Verbo's claim of frame-up as he failed to substantiate such allegation and there was no showing of improper motive on the part of the prosecution witnesses to fabricate testimonies and implicate him in such a serious crime.¹⁹ The RTC disposed:

WHEREFORE, premises considered, the court finds the accused **Arnel Verbo y Mamala** in [C]riminal [C]ase [N]o. II-12350 for [V]iolation of [S]ection 5, Article II of [RA No.] 9165 **guilty** beyond reasonable doubt and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of Five Hundred Thousand ([P]500,000.00) pesos.

The case against the accused in **Criminal Case No. II-12351** is hereby **dismissed** for being violative of the Constitutional right of the accused against double jeopardy.

The Branch Clerk of Court is hereby ordered to turn over to the **Philippine Drug Enforcement Agency (PDEA)** the prohibited drugs/paraphernalia subject of the instant case for proper disposition.

SO ORDERED.²⁰ (Emphases in the original.)

Aggrieved, Verbo appealed to the CA.

¹³ CA *rollo*, pp. 43-53.

¹⁴ *Id.* at 48.

¹⁵ *Id.* at 49.

¹⁶ *Id.* at 52.

¹⁷ Stated as National People's Army in the RTC Decision; CA *rollo*, p. 50.

¹⁸ *Id.*

¹⁹ *Id.* at 52.

²⁰ *Id.* at 53.

CA RULING

The CA found no reason to disturb the findings and conclusion of the RTC, thus:

WHEREFORE, the instant appeal is **DENIED**. The assailed November 17, 2016 Decision of the Aparri, Cagayan Regional Trial Court, Branch 7, in Criminal Case No. II-12350 finding the herein accused-appellant guilty for [*sic*] violation of Section 5[,] Article II of [RA] No. 9165 is hereby **AFFIRMED**. No costs.

SO ORDERED.²¹ (Emphases in the original.)

Hence, this appeal. Both parties filed Manifestations²² that they will no longer file supplemental briefs, but are adopting the briefs filed with the CA.

RULING

The Court grants the appeal.

In prosecutions involving dangerous drugs, the drug itself constitutes the *corpus delicti* and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Like the other elements of the offense charged, the identity of the dangerous drug must be established with moral certainty.²³ 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.²⁴ In this regard, Section 21²⁵ of RA No. 9165, known as the “Comprehensive Dangerous Drugs Act of 2002,” outlines the post-seizure procedure for the custody and disposition of the seized drugs to

²¹ *Rollo*, p. 13.

²² *Id.* at 23-24; and 27-29.

²³ *People v. De Guzman*, 825 Phil. 43, 53 (2018).

²⁴ *People v. De Dios*, G.R. No. 243664, January 22, 2020.

²⁵ 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

x x x x

preserve their integrity and evidentiary value. As amended by RA No. 10640,²⁶ the provision requires that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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 NPS **or** the media who shall be required to sign the copies of the inventory and be given a copy thereof. The law requires the presence of these witnesses to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.²⁷

As a general rule, strict compliance with the chain of custody procedure is enjoined as it is not merely a procedural technicality, but is regarded as a matter of substantive law. This is because such procedure was crafted by the Legislature as a safety precaution to address potential police abuses, especially considering the gravity of the penalty that may be imposed in drug cases. Nonetheless, due to some varying field conditions that may cause strict compliance with the procedure to be impractical or impossible, Section 21(a)²⁸ of the Implementing Rules and Regulations of RA No. 9165, as amended by RA No. 10640, provides that deviation from the procedure would not *ipso facto* render the seizure and custody over the items void and invalid provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items were properly preserved. For this saving clause to apply, however, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact.²⁹

In this case, the apprehending officers admittedly failed to strictly comply with the chain of custody procedure, *i.e.*, they conducted the inventory without the presence of a representative from the NPS or the media. The officers cited the following to justify their non-compliance, to wit: the urgency of the situation; the distance of the area where the buy-bust operation and inventory took place; and the danger brought about by the alleged reported presence of the NPA in the area. The RTC took judicial notice of these circumstances and, thus, found the offered justifications acceptable. We do not agree.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. The principle is based on convenience and expediency in securing

²⁶ 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." Approved on July 15, 2014.

²⁷ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018, emphases supplied.

²⁸ *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[.]

²⁹ See *People v. Suarez*, G.R. No. 249990, July 8, 2020.

and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed. The power to take judicial notice should, however, be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.³⁰

The distance of the *barangay*, in relation to the availability and capability of the representatives of the NPS or the media to be present in the conduct of the inventory, as well as the alleged reported sightings of members of the NPA, cannot be taken judicial notice of as the truth and veracity of these allegations obviously necessitate evidentiary proof. They are not matters of common knowledge of which courts may take judicial notice. Judicially noticed facts must be those which are not subject to a reasonable dispute in that they are either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.³¹ Truth be told, the absence of the required NPS was not due to the distance of the *barangay* nor the alleged danger due to the presence of NPAs in the area. PO3 Ventura's testimony revealed that nobody in the team actually coordinated with the fiscal's office before they conducted the operation because "[t]hese are urgent sir, kasi nawala na sa isip namin."³² PO3 Ventura further explained that the team intentionally did not call a representative from the NPS because it was already late in the afternoon (4:00 p.m.), and they prioritized calling the *barangay* officials as they would be nearer in the area in their opinion.³³ As for the media representative, PO3 Ventura testified that they coordinated with Bombo Radio past 5:00 p.m., but he had no personal knowledge as to who in particular was called.³⁴

The uncorroborated and general allegation of urgency is likewise unacceptable. Given the nature of a buy-bust operation as a planned activity,³⁵ the team could have secured or exerted efforts to secure the presence of the insulating witnesses before the conduct of the operation. In this case, however, the team admittedly coordinated with the required insulating witnesses only after the operation. Worse, the records are bereft of any indication that they took other measures and exerted sufficient efforts to ensure the presence of the witnesses during the inventory.

In sum, the reason for the absence of the required representative from the NPS or the media was merely the officers' failure to properly coordinate their operation with the required witnesses. Mere claims of unavailability, absent a showing that actual and serious attempts were employed to contact the required witnesses, are unacceptable as they fail to show that genuine and

³⁰ *Juan v. Juan*, 817 Phil. 192, 206 (2017), citing *State Prosecutors v. Judge Muro RTC, Br. 5-4, Manila*, 306 Phil 519, 537 (1994).

³¹ *Id.*

³² TSN, March 11, 2015, p. 11.

³³ TSN, March 11, 2015, pp. 13-14.

³⁴ TSN, March 11, 2015, pp. 11-12.

³⁵ *People v. Sood*, 832 Phil. 850, 868 (2018).

sufficient efforts were exerted by the police officers.³⁶

We stress, the presence of the persons who should witness the post-operation measures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody considering that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed.³⁷ Given that no representative from the NPS or the media was present during the inventory, the evils of switching, planting, or contamination of the evidence create serious lingering doubts as to the integrity of the alleged *corpus delicti*,³⁸ warranting Verbo's acquittal.

It is well-settled that the accused in criminal cases has the constitutional right to be presumed innocent until proven guilty. As such, the prosecution has the burden of proving the accused' guilt beyond reasonable doubt and may not rely on the presumption of regularity in the performance of duties. In *People v. Malana*,³⁹ we ruled that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. While the law enforcement officers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth. When the performance of duty is tainted with irregularities, such presumption is effectively overturned.⁴⁰

FOR THESE REASONS, the appeal is **GRANTED**. The Decision dated February 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08882 is **REVERSED AND SET ASIDE**. Accordingly, accused-appellant Arnel Verbo y Mamala is **ACQUITTED** of the crime charged in Criminal Case No. II-12350 on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

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

³⁶ See *Sayson v. People*, G.R. No. 249289, September 28, 2020.

³⁷ *People v. Macud*, 822 Phil. 1016, 1041 (2017).

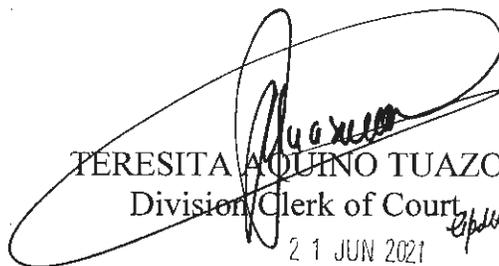
³⁸ See *People v. Visperas*, G.R. No. 231010, June 26, 2019.

³⁹ G.R. No. 233747, December 5, 2018.

⁴⁰ See *Mallillin v. People*, 576 Phil. 576 (2008).

SO ORDERED." (Lopez, J. Y., J., designated additional Member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 21 JUN 2021

OFFICE OF THE SOLICITOR GENERAL (reg)
 134 Amorsolo Street
 1229 Legaspi Village
 Makati City

PUBLIC ATTORNEY'S OFFICE (reg)
 Special & Appealed Cases Service
 Department of Justice
 PAO-DOJ Agencies Building
 NIA Road corner East Avenue
 1104 Diliman, Quezon City

MR. ARNEL VERBO y MAMALA (x)
 Accused-Appellant
 c/o The Director
 Bureau of Corrections
 1770 Muntinlupa City

THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 7
 Aparri, 3515 Cagayan
 (Crim. Case Nos. II-12350 & 12351)

JUDGMENT DIVISION (x)
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