



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2021** which reads as follows:*

“G.R. No. 231990 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. AL PACINO PANTIN y ZAFRA, accused-appellant). – This resolves the appeal filed by accused-appellant Al Pacino Pantin y Zafra (Pantin) against the affirmance¹ by the Court of Appeals (CA) of his conviction² for violation of Section 5 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Pantin was charged with violation of Section 5 of R.A. No. 9165 in an information which reads:

That on or about February 6, 2011, at more or less 4:00 o'clock in the morning at FRONT STREET GRILL, Tiano/Gaerlan Sts., Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch, in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a poseur-buyer, One (1) small heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, locally known as Shabu, a dangerous drug, weighing .11 gram, accused knowing the same to be a dangerous drug, in consideration of Five Hundred

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¹ Decision of the Court of Appeals in CA-G.R. CR-HC No. 01157-MIN, dated March 20, 2017. Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo A. Camello and Rafael Antonio M. Santos concurring. *Rollo*, pp. 3-16.

² Decision dated April 23, 2013 in Criminal Case No. 2011-107. Penned by Presiding Judge Arthur L. Abundiente of the Regional Trial Court of Cagayan de Oro City, Branch 25. *CA rollo*, pp. 59-64.

Pesos [P500.00] with Serial No. EM810147 marked with initial RPP, which was previously marked for the purpose of the buy-bust operation.

Contrary to law.³

Upon arraignment, Pantin pleaded not guilty.⁴ During the pre-trial, the parties stipulated on the identity of Pantin as the accused and the fact of his arrest, which the defense admitted with the qualification that such was made without a warrant.⁵ During the trial, the prosecution and defense counsels agreed to dispense with the testimony of the forensic chemical officer, Police Superintendent Joseph Esber, after both sides agreed to stipulate on the matters to be testified upon by said witness.⁶ The prosecution offered the testimonies of Philippine Drug Enforcement Agency (PDEA) agents Intelligence Officer 2 Vincent Cecil Orcales (IO2 Orcales), IO2 Remedios P. Patino (IO2 Patino)⁷ and IO1 Joel Genita (IO1 Genita), along with documentary evidence on the circumstances of the arrest and the alleged *corpus delicti* which was tested positive for *shabu*.⁸ The defense relied solely on the testimonies of Pantin and a certain Zosima Flores Velez.⁹

Version of the Prosecution

Respondent summarizes the facts in its brief before the CA, which it adopted *in toto*,¹⁰ as follows:

On 5 February 2011, at around 11:00 a.m., at the Philippine Drug Enforcement Agency (“PDEA”) Region 10 Office, the operatives received the instruction from their Regional Director, Col. Edwin Layese, to conduct a buy-bust operation against accused-appellant. During the briefing for their operation, they formed a team to be led by Police [Investigation Agent 5] Joseph Atila (“Atila”), with [IO2 Patino] as poseur-buyer and [IO2 Orcales] as the arresting officer and back-up. They recorded the serial number of the marked buy-bust money in the PDEA blotter (Exhibit “J”). [pp. 3-5, Transcript of Stenographic Notes (TSN) of IO2 Orcales dated 23 June 2011]

On 6 February 2011, at around 4:00 a.m., the PDEA operatives together with their confidential informant proceeded to

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³ Records, p. 3.

⁴ Order dated March 1, 2011. Id. at 24.

⁵ Pre-trial Order. Id. at 32.

⁶ Order dated June 2, 2011. Id. at 39.

⁷ Also referred to in the records as “IO2 Remedios Pateno” and “IO2 Remedios Patenio”.

⁸ RTC Decision, CA *rollo*, p. 60.

⁹ Id. at 61.

¹⁰ Manifestation In Lieu of Supplemental Brief, *Rollo*, p. 27.

the target area at Front Street Grill. IO2 Patino and the informant were on board the Crosswind vehicle while IO2 Orcales was on the Revo vehicle driven by [IO1 Genita]. [p. 6, TSN of IO2 Genita dated 12 September 2011; pp. 5-6, TSN of IO2 Orcales dated 23 June 2011] IO2 Patino and the informant were dropped off near the Front Street Grill, while the Crosswind parked at Gaston Park and the Revo parked along Gaerlan Street, [pp. 6-7, TSN of IO2 Orcales dated 23 June 2011]

IO2 Patino and their informant walked towards Front Street Grill. The informant went inside the establishment and had a brief conversation with the appellant and told the latter his companion wanted to buy shabu. Appellant then led both the informant and IO2 Patino to an adjacent corner at the back of Dynasty Hotel. Appellant asked them how much they wanted to buy. IO2 Patino replied she would like to buy P500.00 worth of shabu and immediately gave appellant the money. Appellant then got one heat-sealed transparent sachet containing white crystalline substance from his left pocket and gave it to IO2 Patino. IO2 Patino then gave the pre-arranged signal to IO2 Orcales on the consummation of the transaction, by waving her right hand to him. [pp. 13-19, TSN of IO2 Patino dated 15 August 2011]

When IO2 Orcales saw the signal from IO2 Patino, together with the rest of the PDEA operatives, they immediately went to the appellant, introduced themselves as agents of the PDEA and effected his arrest. Appellant initially resisted arrest and when the operatives were able to apprehend him, they informed him of his constitutional rights as well as his violation. They frisked his body for any deadly weapon and IO2 Orcales found the marked buy-bust money in appellant's right pocket. IO2 Patino then gave IO2 Orcales the sachet containing the shabu she bought from appellant. [pp. 9-11, TSN of IO2 Orcales dated 23 June 2011]

To avoid further scandal that might alarm the people at the Front Street Grill, they left the area immediately [p. 9, TSN of IO1 Genita dated 12 September 2011], and upon the instruction of their team leader IA5 Atila, the team conducted the inventory at the PDEA office. But before proceeding to their office, the operatives stopped by the Divisoria police station to record the incident. [pp. 11-12, TSN of IO2 Orcales dated 23 June 2011]

Upon arrival at the PDEA office, IO2 Orcales conducted the inventory and pictures were taken. Then, together with the Letter- Request for the Philippine National Police (PNP) Crime Laboratory Region 10 (Exhibit "A") to examine the seized item, IO2 Orcales delivered the confiscated illegal drugs (Exhibit "B"), as well as the appellant, to the crime laboratory, for examination. [pp. 13-18, TSN of IO2 Orcales dated 23 June 2011]

Forensic chemist, Police Superintendent (PSI) Joseph T. Esber ("Esber"), prepared Chemistry Report No. D-41-2011 (Exhibit "C") which stated that the specimen contained

[methamphetamine] hydrochloride, a dangerous drug, and Chemistry Report No. DTCRIM- 028-2011 (Exhibit “D”) which stated that the urine sample from appellant gave positive for shabu and marijuana. [Order dated 2 June 2011; p. 38, Record].¹¹

Version of the Defense

Pantin interposed a defense of denial and frame-up, which was summarized by the trial court as follows:

According to the accused, prior to his arrest, he was a medical representative up to 2007. He was also a dance instructor at Vacation Hotel. On February 26, 2011, he was celebrating his birthday by drinking with his friends at Front Street Grill near Dynasty Court Hotel. He was with Marlon and Macky. After drinking up to 4:00 o'clock in the morning, they intended to go home. He crossed the street leading to the side of the Dynasty Court because there were “habal-habal” parked in the area. He boarded a motorcycle then somebody held his arm and introduced himself as PDEA agent. The latter attempted to handcuff him but he failed. Later, the man succeeded in cuffing him. He shouted so that the people surrounding them will not leave, but an agent whom he knew later to be Joel Genita, slapped him. After he was slapped, a tall man approached them and aimed his firearm at him, and told him that they just wanted to talk, so he invited them that they will proceed to OKK [a police station in Divisoria]. His intention was to let the policemen witness the contents of his pockets and that there was no drugs inside his pocket. So his handcuff was removed and he was loaded on board their Toyota Innova. But he was not brought to OKK. Instead, he was brought to the PDEA office. At the PDEA office, his head was covered with a sack and [they] mauled him. He was then placed inside a cell. At 9:00 o'clock in the morning, he was supposed to be brought to the crime laboratory but he overheard one of the agents saying that they had no shabu to be used yet so he was returned to his cell. At around 11:30 o'clock in the morning, he was brought to the crime laboratory where he was made to urinate. He was given a plastic container which he observed to have been used before him because it was wet. From the crime laboratory, he was brought back to the PDEA cell. He was also brought to the Office of the City Prosecutor. He believed that the motive of the PDEA agents in filing this case was because they were embarrassed with what happened. The accused also testified that Orcales and Patino were not there at the time of the arrest. He saw the shabu which was presented in Court for the first time, at the PDEA office.¹²

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¹¹ Appellee's Brief, *CA rollo*, pp. 77-78.

¹² Decision, *id.* at 61-62. Citations omitted.

Ruling of the RTC

The trial court found Pantin guilty as charged, finding that the elements of the crime of illegal sale of dangerous drugs were established by the testimonies of IO2 Patino and IO2 Orcales. Furthermore, Pantin was positively identified by both prosecution witnesses as the person who sold the marked article to the poseur-buyer, PO2 Patino. The trial court found no evidence to support Pantin's defense of denial and alleged embarrassment on the part of the PDEA agents, holding that there was no reason for the agents to operate at such an ungodly hour if their information was inaccurate. Furthermore, of all the people who were with Pantin at the time of his arrest, he was the only one who was apprehended.¹³ Finally, the trial court held that the arresting officers are entitled to the presumption of regularity in the performance of official duties, as the defense was unable to show any improper motive on the part of the arresting officers. The trial court disposed of the case thus:

WHEREFORE, premises considered, this Court finds the accused AL PACINO PANTIN y ZAFRA GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the Fine of Five Hundred Thousand Pesos [P500,000.00], without subsidiary penalty in case of non-payment of fine.

Let the penalty imposed on the accused be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden act that crime does not pay, and that the pecuniary gain and benefit, as well as the perverse psychological well-being which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from using, or possessing, or just committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.¹⁴

Ruling of the CA

The CA found no cogent or compelling reasons to disturb the RTC's factual findings, especially as regards the chain of custody. The prosecution was able to establish, through witness testimonies,

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¹³ Id. at 63.

¹⁴ Id. at 64.

that IO2 Patino received the seized *shabu* from Pantin after she gave him the marked money. IO2 Orcales then testified that IO2 Patino handed him the *shabu* at the buy-bust area. The seized drug remained in IO2 Orcales' possession from the police station to the PDEA office. IO2 Orcales and the other agents then brought Pantin and the seized drug to the PNP Crime Laboratory for Examination.¹⁵ Coupled with the presentation of the contents of the plastic bag in court, which was tested positive for *shabu*, the evidence proves beyond reasonable doubt that Pantin was arrested in a legitimate buy-bust operation. The appellate court admitted that while the apprehending team failed to strictly follow the procedure in Section 21(1) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, such lapses were excusable on the ground of previous jurisprudence holding that failure of the apprehending team to mark the confiscated drugs at the place of arrest does not impair the chain of custody or render such items inadmissible in evidence.¹⁶ The CA disposed of the case thus:

ACCORDINGLY, the appeal is DENIED. The Decision dated 23 April 2013 of the Regional Trial Court, 10th Judicial Region, Branch 25, Cagayan de Oro City, in Criminal Case No. 2011-107 is hereby AFFIRMED.

SO ORDERED.¹⁷

Hence, the present appeal.¹⁸

The Court's Ruling

An appeal against a judgment of conviction opens the whole case for review; and all errors, whether or not assigned, are open to appreciation and correction¹⁹ regardless of whether or not they were raised for the first time on appeal.²⁰ In the case at bar, records reveal that the seizure and custody of the alleged narcotic substance sold by Pantin to IO2 Patino was attended by irregularities and defects which are fatal to the prosecution's case. This Court must acquit the appellant.

The crime of illegal sale of dangerous drugs, as defined and penalized in Article II, Section 5 of R.A. No. 9165, has two elements:

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¹⁵ CA Decision, pp. 9-12. *Rollo*, pp. 10-14.

¹⁶ CA Decision, pp. 12-13, *id.* at 14-15, citing *Imson v. People*, 669 Phil. 262, 270-271 (2011).

¹⁷ *Id.* at 16.

¹⁸ Notice of Appeal, *id.* at 17-18.

¹⁹ *People v. Fornillos*, G.R. No. 231991, January 27, 2020, citing *People v. De Guzman*, G.R. No. 234190, October 1, 2018.

²⁰ *People v. Jagdon*, G.R. No. 234648, March 27, 2019, citing *People v. Miranda*, 824 Phil. 1042, 1058 (2018).

(a) the identities of the buyer and the seller, the object of the sale and its consideration; and (b) the delivery of the thing sold and the payment.²¹ Relative thereto, it has been consistently held that the crime of illegal sale of dangerous drugs cannot be proven without the presentation and identification of the dangerous drug.²² As to the *corpus delicti* of the crime, the existence and custody of the dangerous drug subject of the transaction must be established beyond reasonable doubt.²³

To this end, Section 21 of R.A. No. 9165 prescribes the guidelines to be observed by law enforcement officers in the processing and custody of dangerous drugs. Section 21(1) provides:

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 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;

Unjustified noncompliance with the foregoing procedures renders the existence of the *corpus delicti* in doubt, as the possibility of switching or substituting the seized items with another sample can never be ruled out. Thus, this Court has consistently ruled that the prosecution must provide adequate justification for lapses in the

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²¹ *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019.

²² *People v. Abdulah*, G.R. No. 243941, March 11, 2020, citing *People v. Nacua*, 702 Phil. 739 (2013); *People v. Battung*, G.R. No. 230717, June 20, 2018; *People v. Catentay*, 638 Phil. 201 (2010). *People v. Nazareno*, 559 Phil. 387 (2007)

²³ *People v. Crispo, et al.*, 828 Phil. 416, 430 (2018); *People v. Ramirez*, 823 Phil. 1215, 1223 (2018).

procedure for handling seized dangerous drugs, otherwise such seizures shall be considered invalid.²⁴

In *People v. Pantallano*,²⁵ the Court acquitted the accused who was arrested in a buy-bust operation in 2012, because the inventory of the seized narcotics was signed only by a *barangay kagawad*. The Court elucidated the importance of the three-witness requirement as laid down in the foregoing provision, *viz.*:

Since the offenses subject of this appeal were committed before the amendment introduced by R.A. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, *viz.*:

(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 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.

The use of the word “shall” means that compliance with the foregoing requirements is mandatory. Section 21 (a) clearly states that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following indispensable witnesses: (1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media. The Court, in *People v. Mendoza*, explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or “planting” of evidence, *viz.*:

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²⁴ *People v. Sioson*, G.R. No. 242686, July 7, 2020; *People v. Lim*, G.R. No. 231989, September 4, 2018. Such has been the rule even before the amendment of RA 9165, Section 21 in 2014. *Dela Riva v. People*, 769 Phil. 872 (2015); *Valencia v. People*, 725 Phil. 268 (2014); *People v. Guzon*, 719 Phil. 441 (2013); *People v. Roble*, 663 Phil. 147 (2011) *People v. Lorenzo*, 633 Phil. 393 (2010) and cases cited therein.

²⁵ G.R. No. 233800, March 6, 2019.

[W]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There were no representatives from the DOJ and the media. Neither was it shown nor alleged by the arresting officers that earnest efforts were made to secure the attendance of these witnesses. To the Court's mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these procedural lapses.

In the case at bar, the records show that the buy-bust operation against Pantin occurred in 2011,²⁶ before the amendments to R.A. No. 9165, Section 21 were introduced. The Inventory of Seized Items was signed only by IO2 Orcales and a media representative.²⁷ On the face of the Inventory form, only two blanks are provided for signatures of the witnesses, of which only one was filled up. The other signature spaces were for the suspect and the arresting officers.²⁸ Furthermore, during trial, the arresting officers admitted that they conducted the inventory of the seized items at the local PDEA office, after they had already gone to the Divisoria Police Station *for the sole purpose of recording the incident in the police blotter.*²⁹

Clearly, the arresting team committed two major lapses which they must properly and satisfactorily justify, as these affect the integrity of the *corpus delicti*:³⁰ 1) the inventory was not conducted immediately after the arrest; and 2) the inventory was witnessed and signed only by a media representative.

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²⁶ Affidavits of Arresting Officers, Records, pp. 6, 8.

²⁷ Id. at 17. IO2 Patino and IO2 Orcales likewise admitted that the Inventory was signed only by a media representative, whom IO2 Patino identified as Richard dela Cruz. Testimony of IO2 Orcales, TSN, June 23, 2011, p. 13; Testimony of IO2 Patino, TSN, August 15, 2011, pp. 23-24; TSN, August 26, 2011, p. 8.

²⁸ Records, p. 17.

²⁹ Testimony of IO2 Orcales, TSN, June 23, 2011, pp. 11-13. Testimony of IO2 Patino, TSN, August 26, 2011, pp. 21-22; TSN, August 26, 2011, pp. 6-12. Testimony of IO1 Genita, TSN, September 12, 2011, p. 9.

³⁰ *People v. Acub*, G.R. No. 220456, June 10, 2019; *People v. Cordova*, G.R. No. 231130, July 9, 2018, citing *People v. Abetong*, 735 Phil. 476 (2014).

When asked why the arresting team decided not to conduct the inventory on the spot and why they proceeded to the police station before conducting the inventory at the PDEA office, the arresting officers explained:

[Pros. Lalia]: At the time that Al Pacino Pantin noticed the coming or approaching of IO2 Orcales and other members of the team, what was the reaction of that person Al Pacino?

[IO2 Patino]: He was resisting the arrest and tried to run, Sir.

[Pros. Lalia]: In other words, at that time the accused was resisting arrest, or was trying to run this IO2 Orcales together with the other members of the team was already in that place so that they were able to apprehend him, was there anything recovered from the accused that person, alias Al Pacino?

[IO2 Patino]: Yes, Sir.

x x x x

[Pros. Lalia]: Tell us, what was the thing recovered from him?

[IO2 Patino]: P500.00 bill, Sir.

[Pros. Lalia]: After the apprehension and eventual arrest of the accused, what did you do with him?

[IO2 Patino]: After the arrest, the Team Leader decided to drop to the Police Station 1 so that we have record that we arrested the accused.

[Pros. Lalia]: You are referring to the further investigation of the accused that was the reason why he was brought at the Police Station, did I get you right?

[IO2 Patino]: Yes, Sir.

[Pros. Lalia]: Please tell us, during the further investigation of the accused did you finally learn his correct name at the police station?

[IO2 Patino]: Yes, Sir.

[Pros. Lalia]: What is the correct name of the accused?

[IO2 Patino]: Al Pacino Pantin y Zafra, Sir.

[Pros. Lalia]: During the further investigation of him at the police station, will you please tell us what series or type of investigation that was done inside the police station?

[IO2 Patino]: We just drop by the police station and then we proceeded to our office, Sir.³¹

x x x x

[Atty. Gamotin]: Now, you likewise made mention in the direct examination that the marking VCMO in Exhibit "2" was made at the crime scene?

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³¹ TSN, August 15, 2011, pp. 20-22.

[IO2 Patino]: No Sir, it was made in the office.

[Atty. Gamotin]: So, the whole thing was made in your office?

[IO2 Patino]: Yes, Sir.

[Atty. Gamotin]: In fact the inventory was not made in the crime scene, am I right??

[IO2 Patino]: Yes, Sir.

[Atty. Gamotin]: And the picture which you identified in the direct examination was not taken in the crime scene?

[IO2 Patino]: It was taken in the office, Sir.

[Atty. Gamotin]: So, the pictures, the inventory were taken in your office. The receipt of the seized items was also not taken in the crime scene, am I right?

[IO2 Patino]: It was made in the office, Sir.

[Atty. Gamotin]: No, it appears that in the inventory there is a media. The media was only invited to witness the taking of the inventory of your office?

[IO2 Patino]: Yes, Sir.

[Atty. Gamotin]: Not the incident that took place in the crime scene, am I right?

[IO2 Patino]: Yes, Sir.

x x x x

[Atty. Gamotin]: I will recall your memory that because of the advised of that Police Officer at the time of Pacino was arrested to drop first at the Police Station 1, it was because of that advise that you dropped by the Police Station 1, am I right?

[IO2 Patino]: No, Sir, it was the decision of our Team Leader.

[Atty. Gamotin]: But there was a Police Officer who advised your Team Leader?

[IO2 Patino]: The Team Leader decided to drop because the suspect resisted the arrest.

[Atty. Gamotin]: Of course, Al Pacino resisted the arrest because he was not committing a crime at that time of his arrest, am I right?

[IO2 Patino]: No, Sir.³²

x x x x

[ACP Vicente]: When you arrived there at Front Street Grill, what happened next?

[IO2 Orcales]: We introduced ourselves as PDEA agents and Al Pacino resisted the arrest but in few seconds we were able to subdue him.

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³² TSN, August 26, 2011, pp. 8-10.

[ACP Vicente]: How did he resist the arrest?
[IO2 Orcales]: He was shouting and fighting against us.

[ACP Vicente]: You said you were able to subdue him, what happened next?
[IO2 Orcales]: After subduing him, we apprised him of his rights and we informed him of his violation.

[ACP Vicente]: What did you do with his body?
[IO2 Orcales]: We immediately bodily searched him for any deadly weapon.

[ACP Vicente]: What did you discover?
[IO2 Orcales]: We recovered from him the buy bust money, the 500 peso bill.

[ACP Vicente]: Who recovered the buy bust money?
[IO2 Orcales]: I myself, Sir.

[ACP Vicente]: Where?
[IO2 Orcales]: In his pocket, Sir.

[ACP Vicente]: Which pocket?
[IO2 Orcales]: Right side, Sir.

[ACP Vicente]: And what happened next?
[IO2 Orcales]: After that, Agent Patino turned over to me the buy bust item which is the shabu.

[ACP Vicente]: Where did she turn over the shabu?
[IO2 Orcales]: At the vicinity, Sir, after the arrest of the accused.

[ACP Vicente]: What did you do with that shabu which was turned over to you by Patino?
[IO2 Orcales]: I kept it, Sir.

[ACP Vicente]: Where?
[IO2 Orcales]: We have our small transparent plastic bag, Sir.

[ACP Vicente]: What did you do with it?
[IO2 Orcales]: Since the people are beginning to converge, our team leader decided to conduct the inventory at the office.

[ACP Vicente]: Why did you conduct the inventory at the office?
[IO2 Orcales]: That was our team leader order because the people are beginning to converge.

x x x x

[ACP Vicente]: Considering that the people started already to converge and that you went to your office, who was in possession of the shabu?

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[IO2 Orcales]: Can I correct, Sir? After the team leader decided to proceed to the office, we dropped by first at the police station to blotter the incident.

[ACP Vicente]: What police station?

[IO2 Orcales]: At Divisoria, Sir.

[ACP Vicente]: Do you have proof that you dropped by there?

[IO2 Orcales]: Yes, Sir. We have the blotter.

x x x x

[ACP Vicente]: When you arrive at the office, what happened next, Mr. Witness?

[IO2 Orcales]: We immediately conducted the inventory together with the arresting officers, the media and also the accused.³³

x x x x

[Atty. Gamotin]: But, the time you arrested the accused was 4:00 o' clock dawn and there were a lot of people beginning to converge?

[IO2 Orcales]: Yes, Sir

[Atty. Gamotin]: How many people?

[IO2 Orcales]: I cannot give the figure, but the team leader, he presumed that it might be unfavorable for us because the accused was shouting and resisting arrest.

[Atty. Gamotin]: He resisted the arrest because he did not commit any crime at the time he was arrested?

[IO2 Orcales]: No, Sir.

x x x x

[Atty. Gamotin]: Now, you likewise mentioned in the direct-examination that you dropped by the police station. I would like to refresh your memory. You dropped by the police station after the arrest because you were advised by the companions of the accused to register the arrest of the accused because they are afraid that they might be liquidated by you, am I right?

[IO2 Orcales]: No, Sir.

[Atty. Gamotin]: It is usual for you to drop by the police station after the arrest of the accused?

[IO2 Orcales]: No, Sir. Because we are the leading agency, it is the discretion of the team leader if we are going to drop by the police station or not.

[Atty. Gamotin]: So before this incident and based on your experience, how many times have you dropped by the police station to record your arrest?

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³³ TSN, June 23, 2011, pp. 10-13.

[IO2 Orcales]: Mostly, we dropped by the police station when we coordinate or for courtesy call, but it is not necessary for us to drop by the police station.

[Atty. Gamotin]: There is no need for you to drop by at the police station to record the arrest?

[IO2 Orcales]: As PDEA agent, we are the leading agency.³⁴

x x x x

[Pros. Vicente]: After you saw the waving, what happened next if you can remember?

[IO1 Genita]: We rushed up to the scene because we can see our co-agent Patimo the poseur-buyer, we can see that they were talking [to] each other.

[Pros. Vicente]: What happened next?

[IO1 Genita]: We rushed to the scene and we try to arrest Al Pacino Pantin, Sir.

[Pros. Vicente]: What happened next?

[IO1 Genita]: He resisted the arrest, Sir.

[Pros. Vicente]: So, what happened next?

[IO1 Genita]: And, for quite a few minutes he submitted himself.

[Pros. Vicente]: You said he resisted the arrest, how did he resist arrest, Mr. Witness?

[IO1 Genita]: He did not want to be handcuffed, Sir.

[Pros. Vicente]: Did he run away?

[IO1 Genita]: No, Sir.

[Pros. Vicente]: Then, what happened next after he was handcuffed?

[IO1 Genita]: After he was handcuffed we brought him to our vehicle, Sir.

[Pros. Vicente]: Who was designated as the evidence custodian at that time?

[IO1 Genita]: It was the arresting officer, IO2 Orcales, Sir.

[Pros. Vicente]: You said he was the designated custodian, what did the poseur buyer do when your team arrived at the scene?

[IO1 Genita]: She alighted our vehicle, Sir.

[Pros. Vicente]: You said after he waved his hand, the team rushed to the scene, what did you do after your team arrives at the scene?

[IO1 Genita]: To avoid further scandal at the time because there were so many people at the Frontstreet Grill, we don't want to alarm them, we immediately leave the area, Sir.³⁵

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³⁴ Id. at 19, 22-23.

³⁵ TSN, September 12, 2011, pp. 8-9.

It is clear from the foregoing testimonies that the arresting team leader, who was not called to the witness stand, made the on-the-spot call not to conduct the inventory at the scene of the arrest in view of the prevailing circumstances, *i.e.*, that Pantin was resisting arrest and they wanted to keep the operation discreet. On this point, this Court held that the possible existence of a commotion is insufficient justification for the failure to conduct the inventory at the place of seizure.³⁶ Here, the officers failed to sufficiently show that the convergence of people and Pantin's resistance was of such nature that the conduct of the inventory would be prejudicial to the case or to the safety of the apprehending team. Pantin himself testified that all he did was shout so that the people surrounding them will not leave as he was afraid that the arresting team might plant something on him.³⁷ Likewise, IO2 Orcales clearly testified that the team was able to subdue Pantin almost instantly. In the absence of testimony from the team leader who made the judgment call, these circumstances show that there was no clear justification for the apprehending team's failure to conduct the inventory at the scene of the arrest.

Assuming *arguendo* that such justification was made, Section 21 of the IRR of R.A. No. 9165 clearly states 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.*" Here, the apprehending team was already at the police station but did not conduct the inventory there, under the impression that since the arrest was a PDEA operation, they only need to go the police station for coordination or courtesy calls. Given these circumstances, this Court finds that the delay in the conduct of the inventory was unjustified. Furthermore, the silence of the aforementioned testimonies of the arresting team on the lack of a barangay official and a DOJ representative likewise establish that there was no justification whatsoever for such lapse. At the risk of being repetitive, both IO2 Patino and IO2 Orcales admitted that the lone witness to the inventory was the media representative; but no justification was made for the absence of the two additional witnesses required by R.A. No. 9165 or that reasonable efforts were made to secure the presence of such witnesses.

In view of the apprehending officers' unjustified noncompliance with the requirements of Section 21 of R.A. No. 9165,

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³⁶ *People v. Sood*, G.R. No. 227394, June 6, 2018; *People v. Cornel*, 829 Phil. 645, 654 (2018).

³⁷ TSN, July 30, 2012, p. 8.

the prosecution's case crumbles. Absent proof beyond reasonable doubt of the existence and identity of the narcotic substance allegedly confiscated from Pantin, his conviction cannot be sustained.

WHEREFORE, the present appeal is **GRANTED**. The March 20, 2017 decision of the Court of Appeals in CA-G.R. CR-HC No. 01157-MIN is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Al Pacino Pantin y Zafra is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being detained for any lawful cause.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *alr*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
227-B

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