



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. 232072 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee, vs. JEROME E. CABRERA AND PATRICK E. CABRERA, accused-appellants). – This is an appeal seeking to annul and set aside the Decision¹ dated March 10, 2017 issued by the Court of Appeals (CA) in CA-G.R. CR- HC No. 01397-MIN. The CA Decision affirmed the Decision dated March 4, 2015² of the Regional Trial Court (RTC), Branch 40 of Tandag City, Surigao del Sur, in Criminal Case No. 6180, which held both Jerome E. Cabrera and Patrick E. Cabrera (accused-appellants) guilty beyond reasonable doubt of violation of Section 5, Article II, of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On January 7, 2013, an Information³ was filed charging accused-appellants with illegal sale of dangerous drugs penalized under Section 5, Article II, of R.A. No. 9165. The accusatory portion of the Information states:

That on the 4th of September 2012 at around 8:30 o'clock in the morning, at Cabrera Street, Purok Maharlika, Barangay Bagong Lungsod, City of Tandag, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who are private persons, conspiring, confederating and mutually helping each other, without authority of law, with deliberate intent, did, then and there, willfully,

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¹ Rollo, pp. 3-10; penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Ronaldo B. Martin.

² CA rollo, pp. 38-57; penned by Presiding Judge Rufo U. Naragas.

³ Rollo, p. 4.

unlawfully and feloniously sell to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance, otherwise known as "SHABU", with a net weight of 1.841 grams.

Contrary to law. (In violation of Section 5 of R.A. [No.] 9165)⁴

Accused-appellants pleaded not guilty during their arraignment on January 20, 2013.

The CA in its assailed Decision summarized the antecedent facts as follows:

VERSION OF THE PROSECUTION

PDEA Intelligence Officer Ephraim S. Sumaylo (Ephraim, for brevity) testified that on 31 August 2012, their office received a call from an informer that a certain Jerome Cabrera was engaged in selling illegal drugs in Tandag City. The information was relayed to their Regional Director who instructed them to go to Tandag City to verify the information.

On 3 September 2012, at about 1:30 in the afternoon, Ephraim received a call from the PDEA Regional Director who instructed him to go immediately to Tandag City to conduct a possible buy-bust operation. He, together with his co-agents proceeded to and reached the PDEA Tandag City safehouse at about 11:00 o'clock that evening.

At 6:00 o'clock the following morning (4 September 2012), the PDEA agents conducted a meeting with the confidential informant for a possible buy-bust operation to be done that day. Ephraim was designated as a poseur-buyer while Agent James Nasser (James, for brevity) as the arresting officer. The confidential informant then contacted Jerome. Agent Mark Anthony Paler handed Ephraim two (2) pieces of five hundred peso (Php500.00) bills which Ephraim marked with "ESS1" and "ESS2"[.] then photocopied and recorded the same in their Regional Office blotter. Each of the Php500.00 peso bill was carefully placed on top of a boodle money or newspaper cut-outs simulating that of a Php500.00 peso bill.

After everything was ready, the arresting officer, the back-ups and perimeter security team surreptitiously proceeded to Cabrera Street, Purok Maharlika, Bag-ong Lungsod, Tandag City, Surigao del Sur where the Cabrera's house was located in order to secure the area. Thereafter, Ephraim and the confidential informant went to the house of the Cabreras.

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⁴ Id.

The confidential informant informed Jerome that Ephraim was his close friend who would like to buy shabu. Jerome then invited Ephraim to enter their house where Patrick was sitting on a chair drinking coffee. Jerome asked the informant where the money was to which the informant replied that it was with Ephraim who carefully drew out the money from his belt bag.

Seeing the money, Jerome then instructed Patrick to get a sachet of shabu which the latter drew from under his chair and handed to Jerome who handed the same to Ephraim. Ephraim examined the sachet and gave Agent James a missed call to signify that the transaction was consummated. He then handed to Jerome rolls of Php500.00 peso bills, supposedly amounting to nineteen thousand pesos (Php19,000.00) which the latter eagerly received.

Few seconds later, the rest of the PDEA team rushed inside the house of the Cabreras and introduced themselves. Agent James then informed the Cabreras why they were arrested and appraised them of their rights. They were also frisked for deadly weapons. The arresting officer took the boodle money from the hands of Jerome and confiscated two (2) pieces of cellphones which were used in the transaction of illegal drugs. A photograph was then taken when Ephraim marked the sachet of shabu with his initials "ESS" at the crime scene. Thereafter, they proceeded to Tandag City Police Station for proper inventory. Present during the inventory at the police station were Ephraim and his team, a media and DOJ representatives as well as a barangay captain. Thereafter, Ephraim and Agent James, who were escorted by Tandag City policemen, brought Jerome and Patrick to the Provincial Crime Laboratory for examination.

The sachet received by Ephraim during the buy-bust was positive for shabu. Jerome and Patrick were also subjected to urine examination where Jerome was the only one found to be positive for methamphetamine hydrochloride or shabu.

VERSION OF THE DEFENSE

Jerome, on the other hand, testified that at around 6:00 o'clock in the morning of 4 September 2012 in the house of their younger brother Michael, Patrick knocked on his door and they had coffee together. Suddenly, he heard a thud from outside the house and Patrick peeped through a window and told him he saw a person. Thereafter, their door was kicked and it opened prompting three (3) men to rush inside the house followed by another two (2) men. One of the intruders held Jerome at his nape and forced him to kneel down. Jerome saw Patrick being poked by a gun by one of the intruders while the three (3) men went inside the rooms of Jerome and Michael searching for something.

Jerome's wife, Maria Theresa and his son Christian, who were in the dining room preparing breakfast were asked to face the wall by the intruders. One of the PDEA agents then asked for a key

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of Jerome's motorcycle and he replied by pointing at the place near the door where he kept his keys. The agents then opened the U-box of Jerome's motorcycle and Ephraim took his wallet containing ten thousand pesos (Php10,000.00) and a driver's license, his two (2) gold rings, and a gold bracelet.

Jerome also testified that after he and Patrick were frisked, the agents took their cellphones, handcuffed them, brought them to Tandag Police Station where he first saw the sachet of shabu which the agents claimed to have been taken from him.

Patrick corroborated Jerome's testimony by testifying that they were just framed-up by the PDEA agents. He vehemently denied the allegation that they were selling shabu and that they only saw a sachet of shabu at the Tandag Police Station.⁵

RTC Ruling

The RTC issued its Decision⁶ dated March 4, 2015, which convicted accused-appellants for illegal sale of dangerous drugs:

WHEREFORE, judgment is hereby rendered finding accused JEROME E. CABRERA and PATRICK E. CABRERA both guilty beyond reasonable doubt of the crime of violation of Sec. 5, Article II, RA 9165, and sentence them both to suffer LIFE imprisonment and to each pay a fine of FIVE Hundred Thousand Pesos (P500,000.00) pesos [sic] and subsidiary imprisonment in case of insolvency.

Both accused being detained, are credited in the service of their sentence with the full term of their preventive imprisonment, if they agreed in writing to abide by the same disciplinary rules imposed on convicted prisoner [sic], otherwise four-fifths (4/5) thereof. They shall serve their sentence at Davao Prison and Penal Farm, Panabo City, Davao del Norte.

Further, let the physical evidence subject matter of this case be confiscated and forfeited in favor of the Government and the same be turned over to PDEA for proper disposition.

SO ORDERED.⁷

The RTC held that it was sufficiently proved that accused-appellants were the sellers of illegal drugs in the buy-bust operation legally conducted with the Philippine Drug Enforcement Agency (PDEA) Intelligence Officer Ephraim S. Sumaylo (Sumaylo) as the

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⁵ CA rollo, pp. 98-100.

⁶ CA rollo, pp. 38-57.

⁷ Id. at 56.

poseur-buyer. Accused-appellants' unsubstantiated defense of denial could not prevail over positive testimony by the prosecution witnesses.

Aggrieved, accused-appellants appealed the RTC Decision to the CA. Accused-appellants filed their Appellants' Brief⁸ and respondent, through the Office of the Solicitor General, filed an Appellee's Brief.⁹

CA Ruling

The CA issued its Decision¹⁰ dated March 10, 2017 which affirmed the RTC Decision convicting accused-appellants of illegal sale of dangerous drugs, thus:

WHEREFORE, premises considered, the appeal is hereby DENIED. The 4 March 2015 Decision of the trial court is hereby AFFIRMED.

SO ORDERED.¹¹

The CA rejected accused-appellants' argument that the inventory of the drugs should have been conducted at the house where the sale allegedly occurred. It noted that this requirement for inventory is applicable only for cases of searches with a warrant, and not valid for warrantless searches such as in the instant case.

The CA held that the chain of custody of the drugs was sufficiently established by the prosecution. It thus explained:

Here, the chain of custody of the prohibited drug was clearly established when Ephraim testified that he received a sachet containing a crystalline substance later found to be methamphetamine hydrochloride or shabu from Jerome in exchange for nineteen thousand pesos (Php19,000.00) money. Ephraim then marked the said sachet at the crime scene. A photograph was likewise taken at the time the sachet was being marked.

Ephraim was in possession of the subject sachet from the time he received it from Jerome until the same was received by Chief Inspector Norman Gales Jovita (Norman, for brevity), a Forensic Chemical Officer of the Provincial Crime Laboratory

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⁸ Id. at 23-37.

⁹ Id. at 70-90.

¹⁰ *Rollo*, pp. 3-10.

¹¹ Id. at 10.

Office of Camp Vicente Pimentel, Tandag City at about 3:30 p.m. on that same day for laboratory examination.

Ephraim's testimony was corroborated by Norman who testified that he received the specimen of the shabu together with the request for its examination from Ephraim on 4 September 2012 at 3:30 in the afternoon as shown in the laboratory stamp. Furthermore, he also checked whether the markings in the specimen coincided with the markings reflected in the laboratory request document before he conducted the examination. The specimen yielded a positive result of the presence of methamphetamine hydrochloride or shabu. He completed the examination at 10:15 in the evening of the same day and submitted a Laboratory Report on the result.

The last link was established by Norman when the sachet of shabu was presented before the court and was identified by him as the very same specimen that he received from Ephraim and the one that he examined in the laboratory.

From the foregoing, We find that the prosecution was able to establish the chain of custody of the sachet of shabu received from Jerome and had duly preserved the integrity and evidentiary value of the same.¹²

The CA Decision was appealed to this Court which issued a Notice¹³ ordering the parties to file Supplemental Briefs.

Accused-appellants filed a Manifestation (In Lieu of Supplemental Brief)¹⁴ that they would no longer file a Supplemental Brief as their Appellants' Brief already contained the full amplification of their arguments. Plaintiff-appellee similarly filed a Manifestation (In Lieu of Supplemental Brief)¹⁵ that it already exhaustively argued all the issues relevant to the case in its Appellee's Brief.

Issue

The issue for resolution is whether or not the CA committed reversible error in affirming the conviction of accused-appellants for illegal sale of dangerous drugs.

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¹² Id. at 8-9.

¹³ Id. at 17-18.

¹⁴ Id. at 22-23.

¹⁵ Id. at 26-27.

The Court's Ruling

Accused-appellants argued on appeal that the prosecution failed to establish the chain of custody of the drugs confiscated due to the irregular inventory conducted. The PDEA agents did not offer any explanation for their failure to conduct an inventory at the house where the alleged sale occurred as required under the law. The *corpus delicti* was thus not proven for being the fruit of a poisonous tree and should lead to accused-appellants' acquittal.

The appeal is granted. Accused-appellants are acquitted.

It bears emphasis that an appeal in a criminal case throws the entire case open for review. The Court in the exercise of its appellate jurisdiction, may correct errors unassigned on appeal or reverse the trial court's decision based on grounds other than those raised by the parties. The appeal confers this Court with full jurisdiction over the case and renders it competent to examine the case records, review and revise the appealed judgment, and increase the penalty as may be necessary in accordance with the law and principles of justice.¹⁶

After a thorough review of the case, this Court finds that the prosecution failed to sufficiently establish evidence of the *corpus delicti* and the unbroken chain of its custody to preserve its integrity.

In cases involving the illegal sale of drugs, the following elements must be established: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.¹⁷

The element of presenting and proving the *corpus delicti* in court is governed by Section 21 of R.A. No. 9165, the law at the time of the commission of the crime. Section 21(1) to (3) provide the following requirements on the custody of seized dangerous drugs prior to the filing of a case:

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

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¹⁶ *Ramos, et al. v. People*, 803 Phil. 775, 783 (2017), citing *People v. Bagamano*, 793 Phil. 602, 607 (2016) and *People v. Comboy*, 782 Phil. 187, 196 (2016).

¹⁷ *People v. Que*, 824 Phil. 882, 893 (2018), citing *People v. Morales*, 630 Phil. 215, 228 (2010).

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

These requirements are mandatory and non-compliance will jeopardize the identity of the *corpus delicti*.¹⁸ The Court has repeatedly emphasized the paramount importance of proving the identity of the *corpus delicti* with moral certainty and any lack of conclusive identification of the illegal drugs seized strongly militates against a conviction.¹⁹

In this regard, this Court in *People v. Claudel*²⁰ established that the procedure to conduct an inventory of the seized drugs “immediately after seizure or confiscation” requires that the physical inventory and photographing of the drugs should be made immediately after, or at the place of apprehension. Further, the

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¹⁸ Id. at 893-894.

¹⁹ *People v. Sorin*, 757 Phil. 360, 368 (2015).

²⁰ G.R. No. 219852, April 3, 2019.

intention of the law is clear that the three required witnesses (*i.e.*, an elected public official, a media representative, and a DOJ representative) should already be physically present at the time of the conduct of the inventory of the seized items which must be immediately done at the place of seizure and confiscation. It was thus held:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with it the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not ipso facto render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the corpus delicti is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.²¹

Similarly, it was held in *People v. Tomawis*²² that the required witnesses need to be present not only during the inventory, but also **at the time of the warrantless arrest and during the seizure of the drugs.** This requirement was intended to curb the evils of switching, planting, or contaminating evidence which had previously tainted the buy-bust operations. Hence, the practice of police operatives calling in the witnesses only after the conduct of the buy-bust operation and during the inventory defeats the purpose of the law:

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²¹ Id.

²² 830 Phil. 385 (2018).

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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 subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”²³ (Emphasis and underscoring supplied)

The Court in *People v. Que*²⁴ thus acquitted the accused due to the police’s failure to ensure the presence of the required insulating witnesses at the time of the actual seizure of the dangerous drugs. It stressed that this is such a basic requirement in buy-bust operations that police officers’ failure to comply casts doubt not only on the integrity of the seized items, but also on their own:

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²³ Id. at 408-409.

²⁴ Supra note 17.

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs “immediately after seizure and confiscation” **necessarily means that the required witnesses must also be present during the seizure or confiscation.**

x x x x

In complete disregard of Section 21’s unequivocal requirements, no one but police officers witnessed the supposed marking of the sachets obtained from accused-appellant.

It also does not escape our attention that accused-appellant’s apprehension was supposedly an occasioned buy-bust or entrapment operation. This operation was allegedly prompted by a tip from an informant. Acting on the tip, P/C Insp. Muksan allegedly organized a buy-bust team. All the niceties of an entrapment operation were furnished: the simulated sale was laid out, a pre-arranged signal was devised, and the marked money was prepared.

Police officers set about what appears to have been a meticulously prepared, self-conscious operation. They had the diligence to secure preliminaries, yet they could not be bothered to secure the presence of the same insulating witnesses who would have ultimately bolstered their case. They paint a picture of themselves as a deliberate, calculated team, yet they utterly failed at observing plain, formulaic statutory requirements.

There is nothing overly complicated, demanding, or difficult in Section 21’s requirements. If at all, these requirements have so repeatedly been harped on in jurisprudence, and almost just as certainly on professional and casual exchanges among police officers, that the buy-bust team must have been so familiar with them. The buy-bust team was asked to adhere to a bare minimum. **Its utter disregard for Section 21 by not even bothering to conduct an actual inventory, take pictures, or secure the presence of third-party persons to ensure the integrity of their self-proclaimed marking raises grave doubts not only on the integrity of the allegedly seized items, but even on their own.**²⁵ (Emphasis and underscoring supplied)

In this case, it cannot be denied based on the prosecution’s own evidence that the PDEA agents failed to ensure the presence of the insulating witnesses at the place and time of the seizure of the dangerous drugs. The insulating witnesses were present only at the Tandag City Police Station during the inventory stage after the buy-

²⁵ Id. at 911-912.

bust operation and seizure of the drugs had already been completed. The RTC summarized the testimony of the prosecution's sole witness to the conduct of the buy-bust operation as follows:

Sumaylo testified that he gave the agreed amount of P19,000.00 consisting of two (2) P500.00-peso bills and boodle money to Jerome. This was placed in a cellophane that was sealed with a staple wire to delay the opening of the said money.

After Sumaylo placed the missed call and in less than a minute, the rest of the team arrived in the area and they introduced themselves as PDEA agents. Present in the room were Sumaylo, the CI, Jerome Cabrera and Patrick Cabrera.

Accused Jerome Cabrera looked very nervous and sweaty. Agent Nasser apprised and informed them that they were arrested for Violation of R.A. 9165 and they then were apprised of their rights. Jerome and Patrick Cabrera were both arrested. The money was in Jerome's hand when the arresting officer took it from him.

The one (1) sachet of shabu was marked in the crime scene by Sumaylo, with marking "ESS", "ESS" stands for Ephraim S. Sumaylo. Other items seized were the marked money together with the cut-outs or boodle money and the two (2) pieces of cellphones. The 2 cellphones (1 unit Nokia cellphone and 1 unit Samsung cellphone) were identified by the witness in open court already marked in evidence.

The team then went to Tandag City Police Station for proper inventory together with accused Patrick and Jerome Cabrera. Present during the conduct of the inventory were Sumaylo, the rest of the PDEA team, the two (2) accused, a media representative-Pinky S. Bee of DXJJ, Hon. Vicente Pimentel, Jr., Jehiel L. Orias of 101.1Planet FM, Teresa A. Agatin of DOJ and George L. Ajos, the barangay captain of Brgy. Bagong Lungsod.²⁶

This was corroborated by accused-appellants' testimonies that the PDEA agents allegedly barged into their house and conducted the search by themselves for around thirty minutes while accused-appellants were made to kneel and face the wall at gunpoint.²⁷

It is evident from the foregoing that the insulating witnesses from the media, the DOJ, and the local government, were all absent during the apprehension of accused-appellants and the alleged seizure of the dangerous drugs at the house of Michael Cabrera (Michael).

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²⁶ *Rollo*, p. 44.

²⁷ *Id.* at 46-47.

This is a violation of the mandatory requirement under Section 21 of R.A. No. 9165 that such witnesses must be present also during the seizure of the dangerous drugs²⁸ to safeguard against the possibility of planting, contamination, or loss of the evidence.²⁹

The prosecution also did not give any sufficient justifiable grounds to explain the PDEA agents' failure to comply with this requirement. The Court has established that to justify non-compliance with this requirement, the following must be proved: (1) the prosecution must specifically allege, identify, and prove "justifiable grounds"; and (2) the prosecution must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Broad and self-serving justifications and sweeping guarantees that the integrity and evidentiary value of the seized items was preserved will not suffice.³⁰

It appears from the records that this requirement was merely disregarded and brushed aside without any justification. The prosecution had the burden to prove a sufficient justification but failed to do so. It also cannot rely on the presumption of regularity in the performance of official duties since this only applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law.³¹ In this case, the PDEA agents' failure to comply with the law is an apparent irregularity that prevents the application of the presumption.

On the contrary, the facts surrounding the buy-bust operation support the conclusion that there was no sufficient justification. Firstly, the PDEA agents had sufficient time to coordinate with the required witnesses if they had wanted to. The PDEA agents were informed of the plan to conduct a buy-bust operation on September 3, 2012 at 1:30 p.m., a day before they conducted the buy-bust operation on September 4, 2012 at 6:00 a.m.³² There was also no compelling reason for them to conduct the buy-bust operation at that specific date or time. A buy-bust operation is a planned event, and they could have scheduled it on a date and time when they have ensured that all the requirements of the law would be complied with.

Secondly, there were no safety concerns proved to justify the absence of the witnesses. The buy-bust operation was executed at the

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²⁸ *People v. Que*, supra note 17 at 896.

²⁹ *People v. Tomawis*, supra note 22 at 408-409.

³⁰ *People v. Que*, supra at 933-934.

³¹ *People v. Kamad*, 624 Phil. 289, 311 (2010).

³² *Rollo*, p. 42.

house of Michael which was not shown to be located at an unreachable or dangerous area. It was also conducted in the morning in broad daylight. Further, there was no indication that accused-appellants would be armed and highly dangerous during the buy-bust operation. In fact, the two were merely having coffee and casually talking when the PDEA agents made their move. The prosecution even admitted that no weapons were recovered from the accused-appellants.³³

All told, Section 21 of R.A. No. 9165 was unjustifiably violated when the PDEA agents failed to ensure the presence of the insulating witnesses at the time of the warrantless arrest and seizure of the dangerous drugs. This is a matter of substantive law which cannot be brushed aside or ignored.³⁴ All buy-bust operations must always be executed within the boundaries of law. This violation has jeopardized the integrity of the *corpus delicti* and militates against the conviction of accused-appellants.

WHEREFORE, premises considered, We **REVERSE and SET ASIDE** the Decision dated March 10, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01397-MIN, affirming the Decision dated March 4, 2015 of the Regional Trial Court, Branch 40 of Tandag City, Surigao del Sur, in Criminal Case No. 6180, convicting accused-appellants Jerome E. Cabrera and Patrick E. Cabrera for violation of Section 5, Article II, of Republic Act No. 9165. Accused-appellants are **ACQUITTED and ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED to IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

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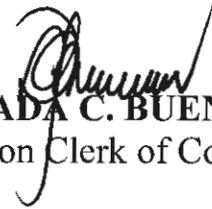
³³ Id. at 34.

³⁴ *People v. Baptista*, G.R. No. 225783, August 20, 2018.



SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court **478**

by:

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

The Solicitor General
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Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01397-MIN)

The Hon. Presiding Judge
Regional Trial Court, Branch 40
Tandag City, 8300 Surigao del Sur
(Crim. Case No. 6180)

The Superintendent
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