



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“G.R. No. 245394 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, versus LIWAY FRAGA y MONTARAYE, Accused-Appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision¹ dated August 31, 2018 issued by the Court of Appeals (CA) in CA-G.R. CR HC No. 08897, affirming the November 14, 2016 Judgment² of the Regional Trial Court (RTC) of Daet, Camarines Norte, Branch 41 finding accused-appellant Liway Fraga y Montaraye (accused-appellant Fraga) guilty of illegal sale of 0.04 gram of methamphetamine hydrochloride, more commonly known as *shabu*. The Court finds that the apprehending officers failed to strictly observe the requirements of Section 21, Article II of Republic Act (R.A.) No. 9165, which warrants the acquittal of the accused-appellant Fraga.

In cases involving dangerous drugs, the State bears the burden of proving not only the elements of the crime, but also the identity and integrity of the *corpus delicti*.³ It is integral that the prosecution establish the *corpus delicti* – or the seized dangerous drug itself – with moral certainty. In arriving at this certainty, the very nature of prohibited drugs, being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime.⁴

- over – ten (10) pages ...

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¹ *Rollo*, pp. 3-43. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), with the concurrence of Associate Justices Eduardo B. Peralta, Jr. and Jhosep Y. Lopez.

² Records, pp. 223-228; Penned by Presiding Judge Arniel A. Dating.

³ *Tañamor v. People*, G.R. No. 228132, March 11, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66109>>.

⁴ *People v. Lopez y Canlas*, G.R. No. 247974, July 13, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66294>>.

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For this purpose, Section 21, Article II of R.A. No. 9165 provides the procedure that law enforcement must follow when handling seized drugs. At the time of the alleged commission of the offense,⁵ Section 21 requires that: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to the forensic laboratory within twenty-four (24) hours from confiscation for examination. Failure to strictly comply with these requirements renders the saving clause under Section 21(a) inoperative, unless the prosecution provides a justification for the arresting officers' lapses. The presumption of regularity cannot also be appreciated in favor of the arresting officers should they fail to adhere to the procedure laid down in Section 21.⁶

The mandatory nature of Section 21, Article II of R.A. No. 9165 is particularly emphasized in the seizure of dangerous drugs during a planned operation such as a buy-bust. There being forethought and advance preparation, there should be little margin for error on the arresting officers' compliance with Section 21.⁷

In this case, the Court finds that the apprehending team failed to strictly observe the requirements of Section 21. The prosecution likewise neglected to justify these lapses.

First, the Certificate of Inventory was irregularly executed.

Again, Section 21 of R.A. No. 9165 requires that the inventory be signed by all of the following persons: (a) the accused or her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a DOJ representative. An examination of the Certificate of Inventory⁸ in this case reveals that the document was not signed by accused-appellant Fraga, or by her counsel or her representative. The records also fail to bear out any explanation, much less an acknowledgment of such defect, on the part of the arresting officers.

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⁵ R.A. No. 9165 was amended by R.A. No. 10640, which was approved on July 15, 2014.

⁶ *People v. Tubera*, G.R. No. 216941, June 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65306>>.

⁷ See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

⁸ Records, p. 10.

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Second, the witnesses were not present at the time of the seizure of the dangerous drugs. As a matter of fact, the arresting officers themselves stated that the witnesses were called in only **after** the confiscation of the dangerous drug and the arrest of accused-appellant Fraga. It is further evident from the following testimony of Investigating Officer 1 Daniel Tan (IO1 Tan), the poseur buyer, that none of the mandatory witnesses were invited prior to the actual conduct of the buy-bust:

[(Direct Examination of IO1 Tan)]

Q: Can you please tell me what was discussed during the briefing, if you remember?

A: On or about 12:00 o'clock in the afternoon of June 28, 2013 when a confidential informant informed our team leader Agent Magpantay that he can ready transact and accompany us to a certain Liway Fraga in buying shabu. Right then and there, Agent Magpantay conducted a briefing wherein I was tasked as the poseur buyer and Agent [Judith] Rigo as back up officer.

x x x x

Q: Now, what happened after the briefing, if any?

A: At around 3:00 o'clock in the afternoon, ma'am, we proceeded to Paracale and we arrived there at around 3:50 o'clock in the afternoon.

Q: When you say "we proceeded", you mean more than one?

A: Yes, ma'am.

Q: Who are these people that you are referring to, Mister Witness?

A: Agent [Erwin B. Magpantay], Agent Rigo, me, other operatives such as Agent David and Cyril Llaguno.

Q: In what barangay in Paracale did you arrive, if you know?

A: At Barangay Batobalani to wait for the confidential informant.

Q: What happened next after your arrival, Mister Witness, if any?

A: Upon the arrival of the confidential informant, a short briefing was conducted [on] how the confidential informant will accompany us to the store of Liway Fraga.

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Q: After the short briefing, what happened next if any, Mister Witness?

A: We proceeded to Barangay Capacuan, ma'am.

x x x x

Q: What happened next when you arrived at Barangay Capacuan?

A: When we arrived at Capacuan, the confidential informant parked his motorcycle [a] few meters away from the store of Liway Fraga and we walked casually to the store.

Q: When you say "we walked casually to the store", who are you referring to, Mister Witness?

A: The confidential informant and Agent Rigo, ma'am.

Q: When you say "we" that includes you, Mister Witness?

A: Yes, ma'am.

x x x x

Q: So when Liway Fraga said "*Magkano kukunin mo?*", was she talking to you?

A: No, to the confidential informant.

Q: So, at that time, after that question, the confidential informant did not have any reaction, if you remember?

A: As I remember, he answered Five Hundred.

x x x x

Q: And then what happened next, Mister Witness, if any?

A: When I handed the [P500.00] to the confidential informant, Liway Fraga went inside the bedroom and when she went out, she handed over to me one (1) sachet of small transparent plastic sachet and after having the plastic sachet, I immediately grabbed her hand.

x x x x

Q: What happened next if any, Mister Witness, after you grabbed her hand?

A: We introduced ourselves as PDEA operatives, ma'am, and Agent Rigo rushed inside the store.

x x x x

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Q: What happened next, if any?

A: After that, Agent Magpantay fetched the witnesses.

Q: So while Agent Magpantay is fetching the witnesses, where were you at that time?

A: At the area, ma'am.

Q: Is Agent Rigo still inside the store?

A: Yes.

Q: And what about Liway Fraga?

A: Also inside the store, ma'am.

Q: And what about you?

A: I was outside the store and I followed Agent Rigo inside the store.

X X X X

Q: And then, at that point in time you said that Agent Magpantay fetch[ed] the witnesses, what about the confidential informant? Where was he?

A: He ran away.

Q: So who were left were only? (sic)

A: Two (2) of us and Liway Fraga.

Q: What about the other team?

A: The other team proceeded to our location, ma'am.

Q: After Agent Magpantay fetched the witnesses, what happened next, if any?

A: When the witnesses arrived, we conducted documentation including photographs, inventory of the buy bust items.⁹ (Emphasis supplied)

The affidavit of IO1 Tan further clarified that after the arrest of accused-appellant Fraga, the other members of the apprehending team had to go to Daet, Camarines Norte, in order to get the witnesses for the inventory. The affidavit of the arresting officer, IO2 Judith Rigo

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⁹ TSN, May 21, 2015, pp. 5-13.

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(IO2 Rigo), contained the same statement.¹⁰ Taking into account that Daet is several towns away from Barangay Capacuan – the place of accused-appellant Fraga’s arrest – it is indubitable that none of the witnesses were at or near the area where the dangerous drug was seized.

The Court has consistently held that the presence of the insulating witnesses at the time of the apprehension is indispensable. **It is at the time of the arrest — or at the time of the drugs’ seizure and confiscation — that the presence of the three (3) witnesses is most needed.**¹¹ At that point, the initial link in the chain of custody is established, and as such, the insulating witnesses must be present to obviate the evils of switching, “planting” or contamination of the drug evidence, which in turn, can adversely affect the trustworthiness of the incrimination of the accused.¹²

The arresting officers can easily comply with this requirement, especially since the buy-bust operation is, as previously mentioned, a planned activity.¹³ In *People v. Gamboa*,¹⁴ the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. In planning the buy-bust operation, law enforcement operatives have sufficient time to prepare and make the necessary arrangements beforehand knowing fully well that they would have to strictly observe the procedure prescribed in Section 21, Article II of R.A. No. 9165. They are therefore compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.¹⁵

Here, it was alleged that as early as 12:00 in the afternoon of June 28, 2013, a confidential informant approached the Philippine Drug Enforcement Agency (PDEA) team leader, Agent Erwin B. Magpantay, with information about accused-appellant Fraga purportedly selling shabu in Barangay Capacuan, Paracale, Camarines

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¹⁰ Records, pp. 6 and 8.

¹¹ *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 364; *People v. Labsan y Nala*, G.R. No. 227184, February 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65258>>.

¹² *People v. Callejo*, G.R. No. 227427, June 6, 2018, 865 SCRA 405, 430; *Tañamor v. People*, supra note 3.

¹³ *People v. Labsan y Nala*, supra note 11; *People v. Supat*, G.R. No. 217027, June 6, 2018, 865 SCRA 45, 66-67; *People v. Casco*, G.R. No. 212819, November 28, 2018, 887 SCRA 322, 335-336.

¹⁴ G.R. No. 233702, June 20, 2018, 867 SCRA 548.

¹⁵ Id. at 569-570.

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Norte. Upon receiving this information, the concerned PDEA operatives immediately conducted a briefing and later, at 3:00 in the afternoon, a team proceeded to target area to carry out the planned buy-bust operation.¹⁶ However, from the time of the initial briefing until the buy-bust was allegedly carried out at around 4:00 p.m.,¹⁷ the PDEA operatives did not attempt to contact or secure the attendance of the mandatory witnesses, or at the very least, exert efforts to ensure the presence of the witnesses to be at or near the intended place of arrest.

IO1 Tan and IO2 Rigo also admitted that the witnesses were called-in and arrived only after accused-appellant Fraga was apprehended. They further disclosed that members of the buy-bust team had to go to Daet, Camarines Norte to get the witnesses, leaving IO1 Tan and IO2 Rigo with accused-appellant Fraga.¹⁸

The Court may take judicial notice of the fact that Daet is at least 34 kilometers away from Paracale, Camarines Norte.¹⁹ As such, while the inventory and photographing were accomplished at the place of arrest, a substantial amount of time had already passed from the moment that the alleged dangerous drug was confiscated from accused-appellant Fraga until the witnesses arrived. The presence of the witnesses, meant to safeguard the initial link in the chain of custody from the evils of tampering, switching, and planting of evidence, no longer served any useful purpose. Significantly, even with the planning and prior arrangements made to ensure the success of the buy-bust operation, the arresting officers glaringly omitted to secure the presence of the required witnesses at the time of the seizure and apprehension, to ensure that they are ready to witness the inventory and photographing of the drug evidence *immediately* after seizure. The prosecution did not even acknowledge this lapse or provide an explanation for this deviation.

The Court in *People v. Tomawis*²⁰ noted that the practice of police operatives of not bringing to the intended place of arrest the three (3) witnesses, when they could easily do so – and “calling them in” to the place of inventory to witness the inventory and

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¹⁶ TSN, May 21, 2015, pp. 5-6.

¹⁷ Id. at 4.

¹⁸ Records, pp. 6 and 8.

¹⁹ RULES OF COURT, Rule 129, Sec. 2:

Section 2. *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

²⁰ Supra note 7, at 150.

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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. Likewise, in *People v. Castillo*,²¹ the Court ruled that allowing third-party witnesses to be present only during the subsequent physical inventory and photographing **renders the whole requirement of their presence futile.**

Notably, the RTC and the CA also failed to notice the arresting officers' deviation from this requirement. The CA further affirmed the conviction of accused-appellant Fraga on the basis of the presumption of regularity in favor of the arresting officers' performance of their duties.²²

It bears emphasizing that police officers are presumed to have performed their duty regularly only when there is nothing to suggest that they deviated from the standard conduct prescribed by law.²³ It is not a cure that retroactively remedies the deficiencies on the part of the arresting officers. Strict adherence with Section 21, Article II of R.A. No. 9165 remains to be the rule. This is a singular and rigid standard.²⁴ Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin-requirements of: (1) existence of justifiable reasons, and (2) preservation of the integrity and evidentiary value of the seized items.²⁵ In this case, the prosecution failed to prove either requirement.

While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations²⁶ and has generally left to the discretion of police authorities the selection of effective means to apprehend drug offenders,²⁷ the peculiar characteristics of a buy-bust operation, having the benefit of planning and coordination,²⁸ impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards.²⁹ In light of the arresting officers' non-compliance with

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²¹ G.R. No. 238339, August 7, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>>.

²² *Rollo*, p. 40.

²³ *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 502.

²⁴ *People v. Lopez y Canlas*, supra note 4.

²⁵ Implementing Rules and Regulations of R.A. No. 9165, Sec. 21 (a).

²⁶ *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 155.

²⁷ *Quinicot v. People*, G.R. No. 179700, June 22, 2009, 590 SCRA 458, 470-471.

²⁸ *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 23.

²⁹ *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 356.

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the requirements of Section 21, and the corresponding absence of a justification on the part of the prosecution, the acquittal of accused-appellant Fraga based on reasonable doubt is in order.

WHEREFORE, in view of the foregoing, the appeal³⁰ is hereby **GRANTED**. The Decision dated August 31, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08897 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant LIWAY FRAGA y MONTARAYE is **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165 on the ground of reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be sent to the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from notice hereof of the action she has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 08897)

The Hon. Presiding Judge
Regional Trial Court, Branch 41
Daet, 4600 Camarines Norte
(Crim. Case No. 15696)

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³⁰ Rollo, p. 45-47.

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