

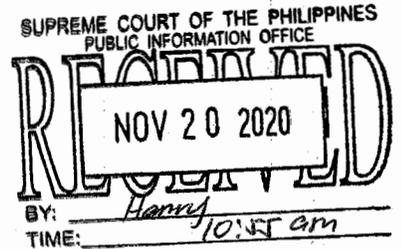


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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 15, 2020, which reads as follows:

“G.R. No. 227994 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. JOSEFINO ABUNDO y GUERRERO, accused-appellant). – On appeal is the November 6, 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06085, which affirmed the Decision² of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93, finding Josefino Abundo y Guerrero (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5, 11 and 12, Article II of Republic Act (R.A.) No.9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Accused-appellant was charged in three separate Informations for illegal sale and illegal possession of dangerous drugs, and illegal possession of drug paraphernalia, respectively, in Criminal Case Nos. 5539, 5540 and 5541.³ Accused-appellant pleaded not guilty to the charges against him.⁴

Prosecution witness Senior Police Office 4 Melchor dela Peña (SPO4 dela Peña) testified that on July 14, 2005, at around 10:00 a.m., a confidential informant arrived at their office informing them about the illegal drug activities of a certain Pinong.⁵ After conducting surveillance, a team composed of Police Officer 1 Jifford Signap (PO1 Signap), PO2 Rommel Bautista (PO2 Bautista) and himself, proceeded to the target area at Pulong, Kendi, Barangay Cuyab, San Pedro, Laguna. PO1 Signap and the confidential informant went to Macalinao Street, while he and PO2 Bautista stayed at Vergara Street.⁶ After receiving the pre-arranged signal from PO1

¹ Rollo, pp. 2-16; penned by Associate Justice Noel G. Tijam, with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring.

² CA rollo, pp. 7-12; penned by Judge Francisco Dizon Pano.

³ Rollo, p. 34; CA rollo, pp. 7-8.

⁴ Id. at 4; id. at 7.

⁵ Id.

⁶ Id.

Signap, they rushed to the target area and saw Pinong, who was later identified as the accused-appellant.⁷ The police arrested accused-appellant and recovered from him the marked money, three heat-sealed plastic sachets containing suspected *shabu* and six unsealed sachets suspected to have *shabu* residue, as well as several *shabu* paraphernalia. SPO4 dela Peña marked the seized items, which were sent to the Philippine National Police (PNP) Crime Laboratory in Canlubang, Laguna for examination.⁸

PO1 Signap corroborated the testimony of SPO4 dela Peña. He testified that when they arrived at accused-appellant's house at around 1:00 p.m. of July 14, 2005, he was introduced by the civilian asset as the buyer of *shabu*.⁹ Upon entering the house, he gave Pinong ₱300.00, telling him, "*pa[b]jili at pa-iskor.*"¹⁰ Pinong placed the money in his pocket and went to the kitchen where he got a small plastic sachet containing suspected *shabu*, which was handed to him. PO1 Signap pulled out his cell phone and made the pre-arranged signal to indicate that he was able to buy the *shabu*. He then introduced himself as a police officer and arrested Pinong. They recovered a black leather box with three plastic sachets containing *shabu*, one tong, a pair of scissors, one cigarette lighter and some unsealed plastic sachets containing *shabu* residue. The items were sent to the PNP Crime Laboratory in Canlubang, Laguna for examination. The results of the examination yielded positive for *shabu*.¹¹

On the other hand, accused-appellant denied the allegations against him. He testified that at around 1:00 a.m. of July 14, 2005, he was playing computer games inside their house at Macalinao Street, Barangay Cuyab, San Pedro, Laguna, when five police officers arrived and asked if he was Pinong. They were also looking for Roger Reyes (Roger) but he answered that he does not know where he was. Two police officers went to the rented house of Roger, while two others went inside their bedroom to conduct a search. The two police officers who went to the rented house returned bringing with them a plastic bag, while the two other officers who search the room returned with a Kris.¹² PO1 Signap then threatened him if he did not tell where Roger was. He was then brought to the police station where he was informed that there is a warrant of arrest issued against him.¹³

⁷ Id. a 4-5.

⁸ Id. at 5.

⁹ Id.

¹⁰ Id. at 5-6.

¹¹ Id. at 6.

¹² A Malay or Indonesian dagger with a ridged serpentine blade; *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/kris>. Accessed 15 Jun. 2020.

¹³ *Rollo*, pp. 7-8.

The RTC Ruling

The RTC found accused-appellant guilty beyond reasonable doubt of the crime charged as follows:

WHEREFORE, the Court hereby renders judgment:

1. Finding accused JOSEFINO ABUNDO y GUERRERO guilty beyond reasonable doubt of the crime of violation of Section 5 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5539-SPL, hereby sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00;

2. Finding accused JOSEFINO ABUNDO y GUERRERO guilty beyond reasonable doubt of the crime of violation of Section 11 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5540-SPI, hereby sentencing him to suffer an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and to pay a fine in the amount of P300,000.00; and,

3. Finding accused JOSEFINO ABUNDO y GUERRERO guilty beyond reasonable doubt of the crime of violation of Section 12 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5541-SPL, hereby sentencing him to suffer the penalty of imprisonment from two (2) years as minimum to four (4) years as maximum, to pay a fine in the amount of Twenty Thousand (P20,000.00) Pesos, and to pay the costs.

The 0.07 and 0.18 grams of methamphetamine hydrochloride, and the drug paraphernalia which constitutes the instruments in the commission of these crimes are confiscated and forfeited in favor of the government.

Atty. Jaarmy Bolus-Romero, Branch Clerk of Court of this Court is hereby directed to immediately transmit the 0.07 and 0.18 grams of methamphetamine hydrochloride as well as the drug paraphernalia, specifically three (3) plastic straws with traces of methamphetamine hydrochloride and the zero point two hundred eighty three (0.283) gram of Metamphetamine Hydrochloride "shabu" to the Dangerous Drugs Board for proper disposition.

SO ORDERED.¹⁴

The trial court gave credence and evidentiary weight to the testimonies of the police officers who apprehended accused-appellant. It held that accused-appellant's denial cannot stand against the positive

¹⁴ CA rollo, pp. 11-12.

identification of the prosecution witnesses, who are police officers and are presumed to have regularly performed their duties as such.¹⁵

The CA Ruling

The CA affirmed the RTC ruling *in toto*. It held that the fact that the evidenced seized were not photographed and inventoried in the presence of a member of the media, a representative from the Department of Justice, and an elective government official, does not render the seizure of the items void and invalid, as long as the integrity and evidentiary value of the seized items were properly preserved by the apprehending team.¹⁶ Moreover, the CA found that the alleged flaws cited by the accused-appellant do not materially affect the credibility of the prosecution witnesses.¹⁷

Hence, this appeal.

Essentially, accused-appellant maintains that the records of the case are bereft of evidence to show that the apprehending police officers followed the procedure mandated in Section 21, Article II of R.A. No. 9165.

Our Ruling

The appeal is meritorious. Accused-appellant should be acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt.

The prosecution must prove with moral certainty the identity of the prohibited drug, as the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. It has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁸

The procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165, which provides:

¹⁵ Id. at 11.

¹⁶ *Rollo*, p. 12.

¹⁷ Id. at 13.

¹⁸ *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

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;

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed:

(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 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.***¹⁹
(Emphasis ours)

It is not amiss to state that R.A. No. 10640, which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

¹⁹ *People v. Ramirez*, G.R. No. 225690, January 17, 2018, 852 SCRA 85, 95-96.

The prosecution bears the burden of proving a valid cause for non compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.²⁰ Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.²¹ Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.²²

After a judicious study of the case, this Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from accused-appellant.

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.²³ However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of R.A. No. 9165 must be adduced.²⁴ In *People v. Umipang*, this Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.”²⁵

Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non compliance.²⁶ These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure

²⁰ *People v. Paz*, G.R. No. 229512, January 31, 2018, 854 SCRA 23, 40; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 319.

²¹ *People v. Saragena*, 817 Phil. 117, 144 (2017).

²² *Id.* at 142-143.

²³ *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

²⁴ *Id.* at 1052-1053.

²⁵ *Id.* at 1053.

²⁶ *Id.*

prescribed in Section 21 of R.A. No. 9165. As such, police officers are compelled not only to state reasons for their noncompliance, but must in fact, also convince this Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.²⁷

In this case, the procedural lapses committed by the Philippine Drug Enforcement Agency operatives, which were unfortunately left unjustified by the State, militate against a finding of guilt beyond reasonable doubt against accused-appellant, as the integrity and evidentiary value of the *corpus delicti* had been compromised.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 6, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06085 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Josefino Abundo y Guerrero is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason. Let entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, New Bilibid Prison, 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.

SO ORDERED.”

By authority of the Court:

Mis + DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
6/12
11/15/20

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²⁷ See *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 375.

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Mr. Josefino Abundo y Guerrero
c/o The Superintendent
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BUREAU OF CORRECTIONS
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The Presiding Judge
REGIONAL TRIAL COURT
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4023 Laguna
(Crim. Case No. 5539-41-SPL)

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