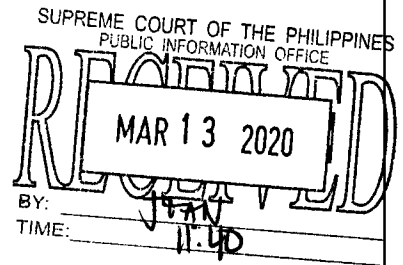




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

“G.R. No. 242881 – *People of the Philippines v. Ranzel T. Lara*

This is an appeal from the Decision¹ dated August 10, 2018 of the Court of Appeals (CA)-Cagayan De Oro in CA-G.R. CR-HC No. 01725-MIN, which partially granted Ranzel T. Lara’s (accused-appellant) appeal from the Decision² dated May 5, 2017 of the Regional Trial Court (RTC) of Zamboanga Del Norte, Dipolog City, Branch 8, in Criminal Case Nos. 17172 and 17173 for Violation of Sections 5 (illegal sale) and 11 (illegal possession), Article II of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Facts

Two separate Informations were filed against accused-appellant before the RTC, charging him as follows:

Criminal Case No. 17172

That at past midnight, on or about the 9th day of August, 2011, in the Municipality of Rizal, Zamboanga del Norte, x x x the said accused, without authority from law, did then and there wilfully, unlawfully and feloniously sell and deliver one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride (shabu) to BEAU FAITH ORTEZUELA, a PDEA agent who acted as a poseur buyer, after receiving from the latter a

- over – eleven (11) pages ...

267-B

¹ Penned by CA Justice Edgardo A. Camello, with Justices Perpetua T. Atal-Paño and Walter S. Ong concurring; *rollo*, pp. 3-12.

² Penned by Judge Ric S. Bastasa; CA *rollo*, pp. 62-69.

marked money in the amount of Php500.00, with his full knowledge that the same is a dangerous drug in Violation of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.³

Criminal Case No. 17173

That at past midnight, on or about the 9th day of August 2011, in the Municipality of Rizal, Zamboanga del Norte, x x x the said accused, not being authorized by law, did then and there wilfully, unlawfully and feloniously possess and have in his control and custody one (1) heat-sealed transparent plastic sachet containing white crystalline granules known as methamphetamine hydrochloride (*shabu*) weighing 0.0697 gram, with his full knowledge that the same is a dangerous drug in violation of Sec. 11, Art. II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drug Act of 2002.⁴

The prosecution alleged that on August 8, 2011, Philippine Drug Enforcement Agency (PDEA) Intelligence Officer 1, Beau Faith Ortezuela (IO1 Ortezuela) received confidential information that a certain Ranzel, later on identified as accused-appellant, is engaged in mobile selling of *shabu* at ₱500.00 per sachet. Acting upon said information, around 7:00 p.m. that day, Provincial Drug Enforcement Officer IO2 Jury Rocamora coordinated with the Provincial Public Safety Company and organized a buy-bust operation, wherein IO1 Ortezuela was designated as poseur buyer to be accompanied by the confidential informant and Police Officer 1 Louie Dennis Maravillas (PO1 Maravillas) as a back-up arresting officer. A ₱500.00 bill was also prepared as the buy bust money. Around 11:00 p.m., the team proceeded to the target area. They waited for accused-appellant for 30 minutes. When accused-appellant arrived thereat, the confidential informant introduced him to IO1 Ortezuela. IO1 Ortezuela then gave accused-appellant the marked money, which was placed by the latter in his short pants' right pocket. In turn, accused-appellant pulled out a plastic sachet containing white crystalline granules, which he gave to IO1 Ortezuela. Thereafter, IO1 Ortezuela took off his cap, which was the team's pre-arranged signal to alert PO1 Maravillas that the transaction was already consummated.⁵

Upon arrest, IO1 Ortezuela marked the confiscated packet with "BEO-BB-1088-11". The buy-bust team also conducted a physical search on accused-appellant for weapons but none was recovered. Thereafter, they proceeded to the police station for the conduct of the

- over -

267-B

³ Id. at 62.

⁴ Id. at 63.

⁵ Id. at 80-82.

inventory. IO1 Ortezuela held on to the seized item on their way to the police station. Upon arrival thereat, IO1 Ortezuela frisked accused-appellant again and found from the latter's left short pants pocket, another sachet with white crystalline substance wrapped in a paper. From his right pocket, IO1 Ortezuela recovered the marked money.⁶

IO1 Ortezuela then conducted the physical inventory of the seized items and took photographs thereof in the presence of a representative from the Department of Justice (DOJ), Chenita Elcamel, and Barangay Mapang Official, Pelenio Busarang. Thereafter, accused-appellant was brought to the Provincial Police Office in Sicayab, Dipolog City for detention, while the seized items were brought inside the Evidence Locker at the PDEA office to which only IO1 Ortezuela holds the key.⁷

The next day, around 11:30 a.m., IO1 Ortezuela personally delivered the seized items to the Provincial Crime Laboratory together with a Letter Request for examination that he prepared himself. The items were received by Forensic Chemical Officer Police Chief Inspector Anne Aimee T. Pilayre (PCI Pilayre), who examined the same and found them positive of the presence of methamphetamine hydrochloride.⁸

In his defense, accused-appellant testified that he came to the disco place, where he was arrested, to pick up his children when he was abruptly grabbed by six to seven persons, handcuffed, and dragged to a black pick-up truck. His red backpack and his body were not searched. Inside the vehicle, he was asked about a certain Marlon Mejias. Failing to find the latter, accused-appellant was then brought to the police station. Thereat, he was made to own the *shabu* that the police placed on the table while saying, "[i]f you do not have any, we have ours."⁹

The defense also presented Joseph Acoymo Yap (Yap), accused-appellant's neighbor, who testified that he was at the disco place on the date of accused-appellant's arrest. He saw accused-appellant by the entrance when he came out to buy cigarettes. Accused-appellant asked him if he saw the former's sons. Yap responded that he will look for them inside the disco. When he came back to the entrance, he saw accused-appellant being pulled out of the

- over -

267-B

⁶ Id. at 81-82.

⁷ Id. at 82.

⁸ Id.

⁹ CA rollo, pp. 65-66.

area and escorted by policemen who were not in uniform. Accused-appellant's son, Philippe Ceasar Manigsaca was also presented to corroborate accused-appellant's testimony.¹⁰

The RTC Ruling

In a Decision¹¹ dated May 5, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of the charges. The RTC found that the prosecution was able to establish all the elements of the offenses charged, relying heavily on the presumption of regularity in the performance of duty enjoyed by the arresting officers, thus:

WHEREFORE, judgment is hereby rendered finding RANZEL T. LARA beyond reasonable doubt **GUILTY** in **Criminal Case No. 17172** of the crime of Violation of Section 5, Article II, [Republic Act No. 9165] and sentences him to **LIFE IMPRISONMENT**, plus **fine in the amount of Five Hundred Thousand (P500,000.00) Pesos**; and in **Criminal Case No. 17173**, this court also finds him guilty of Violating Section 11, Article II, [Republic Act No. 9165], hereby sentences him to a penalty of **imprisonment of twelve (12) years and one (1) day to 14 years and eight (8) months** and a **fine of P300,000.00**.

Furthermore, the accused is not eligible for parole pursuant to Section 2 of the Indeterminate Sentence Law.

Finally, all the sachets of shabu, the cash money and other paraphernalia used in the commission of the offense are hereby forfeited in favor of the state to be disposed in accordance with the rules.

SO ORDERED.¹²

Aggrieved, accused-appellant appealed to the CA.

The CA Ruling

In a Decision¹³ dated August 10, 2018, the CA partly granted accused-appellant's appeal. The CA affirmed accused-appellant's conviction for illegal sale in Criminal Case No. 17172. Accused-appellant was, however, acquitted in Criminal Case No. 17173 for illegal possession, finding that the item allegedly seized from accused-appellant marked as "BEO-3" "08-09-11" was vaguely identified by PCI Pilayre in her testimony. The CA disposed, thus:

- over -

267-B

¹⁰ Id. at 65.

¹¹ Supra note 2.

¹² CA *rollo*, pp. 68-69.

¹³ Supra note 1.

267-B

FOR THESE REASONS, the appeal is PARTIALLY GRANTED. Ranzel Lara is ACQUITTED in Criminal Case No. 17173, and the Decision of the Regional Trial Court dated May 5, 2017 is AFFIRMED as so modified.

SO ORDERED.¹⁴

Hence, this appeal.

The Issue

Whether or not accused-appellant is guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165.

The Court's Ruling

We find merit in the appeal.

Preliminarily, it should be pointed out that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or not.¹⁵

For our review is the charge and conviction of accused-appellant for illegal sale of *shabu* defined and penalized under Section 5, Article II of R.A. No. 9165. To successfully prosecute said offense, the prosecution must prove beyond reasonable doubt the following elements, to wit: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.¹⁶ Case law instructs us that the most crucial element that must be proven in the prosecution of cases involving illegal drugs is the existence and identity of the *corpus delicti*, that is, the drugs itself because without it, there would be no illegal drug violation to speak of.¹⁷ Thus, in order to establish the identity of the prohibited drug, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁸ The pronouncement of the Court in the case of *People v. Bintaib*¹⁹ is instructive:

- over -

267-B

¹⁴ *Rollo*, p. 12.

¹⁵ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

¹⁶ *Id.*

¹⁷ *People v. Bintaib*, G. R. No. 217805, April 2, 2018.

¹⁸ *People v. Cabrellos*, supra note 15.

¹⁹ *People v. Bintaib*, supra note 17.

For this reason, both law and jurisprudence have set procedural guidelines on how confiscated drugs should be handled. The fact that the seized drugs exists heavily relies on the preservation of its identity and integrity. The identity of the confiscated drugs is preserved when we can say that the drug presented and offered as evidence in court is the exact same item seized or confiscated from the accused at the time of his arrest. The preservation of the drug's integrity, on the other hand, means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.²⁰

Section 21, Article II of R.A. No. 9165 and Section 21(a), Article II of its Implementing Rules and Regulations (IRR) outlines the procedure which the police should follow when handling the seized drugs in order to preserve their integrity and evidentiary value. In *People v. Luna*,²¹ the Court synthesized the requirements under said provisions, to wit:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:
 - a. The **accused** or his representative or counsel;
 - b. The **required witnesses**:
 - i. a representative from the **media and the Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640, **as in this case**;
 - ii. an **elected public official** and a representative of the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640.²²

The Court also emphasized in *Luna* that as a rule, strict compliance with the foregoing requirements is mandatory. Deviation therefrom may be allowed **only if** there are “justifiable grounds” for such non-compliance, and the integrity and evidentiary value of the

- over -

267-B

²⁰ Id.

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

²² Id. at 20.

seized items are properly preserved by the apprehending team. Put differently, this Court, as well as the Congress, recognize the fact that under varied field conditions, strict compliance with said mandatory requirements may not always be possible.²³ Hence, case law and the above-cited provisions of R.A. No. 9165 and its IRR provide that non-compliance with said requirements under justifiable grounds will not render void and invalid the seizure and custody over the seized items as long as the integrity and evidentiary value of said items are properly preserved by the apprehending officers. For purposes of applying said saving clause under the law, the prosecution must recognize the apprehending officers' lapse/s and justify or explain them.²⁴

A careful review of this case reveals that the apprehending officers failed to comply with the mandatory requirements of Section 21 of R.A. No. 9165 without justification.

It is undisputed, as was found by the RTC and the CA, that the conduct of the physical inventory and taking of photograph were not immediately done at the place of the seizure and arrest. Further, only two or the three required witnesses were present during the inventory. What is more, none of the required witnesses were present at the time of seizure and apprehension. These lapses from the mandatory requirements of the law were not acknowledged, much less given justification or explained, by the apprehending officers.

In no ambiguous terms did Section 21 of R.A. No. 9165 require that the apprehending team should "immediately after seizure and confiscation", physically inventory and photograph the seized items. The Court has consistently ruled in recent cases that the phrase "immediately after seizure and confiscation" means that the marking, physical inventory, and photographing must be at the place of seizure and apprehension. Only if this is not practicable may it be done as soon as the apprehending team reaches the nearest police station or nearest office.²⁵

Further, whether the conduct of the inventory and the taking of photograph were done at the place of seizure and apprehension, or at the nearest police station or office, they are required to be done in the presence of any elected public official **and** a representative from the

- over -

267-B

²³ *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 370-371.

²⁴ *People v. Reyes*, 797 Phil. 671,690 (2016).

²⁵ *People v. Adobar*, G.R. No. 222559, June 6, 2018 865 SCRA 220, 251.

media **and** the DOJ who are required to sign an inventory and given copies thereof. It should be pointed out that the offense subject of this case was allegedly committed in 2011 or before amendment of Section 21 of R.A. No. 9165 through the enactment of R.A. No. 10640.²⁶ The original provision of Section 21, thus, applies, which clearly requires the insulating presence of the **three** witnesses above-enumerated. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”²⁷

The presence of these witnesses must be secured not only during the inventory but more importantly, at the time of the warrantless arrest. In *People v. Tomawis*,²⁸ the Court expounded on this requisite:

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.”²⁹

- over -

267-B

²⁶ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE “COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,” Approved on July 15, 2014.

²⁷ *People v. Cabrellos*, supra note 15.

²⁸ G.R. No. 228890, April 18, 2018.

²⁹ Id. at 150.

The fact that only the police officers were present during the apprehension of accused-appellant is enough to raise concern as police impunity in such situation becomes inherent.³⁰ To be sure, this lingering doubt is not without basis. Truth be told, assuming that the evidence was indeed planted, it would be difficult, if not impossible, for any accused to overcome the oft-favored testimony of police officers by mere denial. Add to this the fact that buy-bust operations are necessarily shrouded with secrecy to ensure the success of the operation³¹ and the unique characteristic of drugs being small, indistinct, not readily identifiable, and thus easily open to tampering, alteration, substitution, and planting.³²

At this point, it must be emphasized that non-compliance with required witnesses rule does not *per se* render the confiscated items inadmissible³³ or invalidate the buy-bust operation. Again, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses must be adduced.³⁴ There is none in this case. Also, the circumstances obtaining in this case show that the buy-bust team had enough time and opportunity to secure the required witnesses to accompany them to the place of apprehension for the latter to witness the operation, but they opted to do so only after the operation.³⁵

With these unexplained crucial lapses from the very first link in the chain of custody, *i.e.*, at the point of seizure and apprehension, doubts, not only on the identity and integrity of the alleged seized items but also on the regularity, if at all, of the alleged buy-bust operation cannot be ignored. Thus, judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.³⁶ Time and again, we ruled that the presumption that the regular duty was performed by the arresting officer could not prevail over the presumption of innocence of the accused.³⁷

- over -

267-B

³⁰ *People v. Luna*, *supra* note 21, at 26-27.

³¹ *Id.* at 27.

³² *People v. Carlit*, 816 Phil. 940, 951 (2017), citing *People v. Cayas*, 789 Phil. 70, 79 (2016).

³³ *People v. Cabrellos*, *supra* note 15.

³⁴ *Id.*

³⁵ Records show that the team spent around four hours coordinating, planning the operation, and gathering personnel, which to this Court is enough time to at least call in the required witnesses; *CA rollo*, pp. 80-81.

³⁶ *People v. Cabrellos*, *supra* note 15.

³⁷ *People v. Pagaura*, 334 Phil. 683, 690 (1997).

Basic is this principle in criminal prosecutions: “[a]ny doubt shall be resolved in favor of the accused.”³⁸ In this case, acquittal, perforce, is warranted.

A final note.

This Court is strongly reminding police officers, as well as prosecutors, of their positive duty to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR, and R.A. No. 10640 in applicable cases so we could all effectively perform our part in the State’s campaign against illegal drugs; otherwise, every entrapment operation or prosecution of drug cases will just be futile, if not arbitrary, actions against any individual. We quote herein the Court’s reminder in *Luna*:

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.³⁹

WHEREFORE, premises considered, the Decision dated August 10, 2018 of the Court of Appeals-Cagayan de Oro in CA-G.R. CR-HC No. 01725-MIN is hereby **REVERSED** in that, accused-appellant Ranzel T. Lara is hereby **ACQUITTED** in Criminal Case No. 17172 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine Drug Enforcement Agency for his information.

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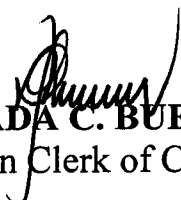
267-B

³⁸ *People v. Cruz*, 736 Phil. 564, 580 (2014).

³⁹ *People v. Luna*, supra note 21, at 36.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
267-B

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(Crim. Case No. 17172)

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