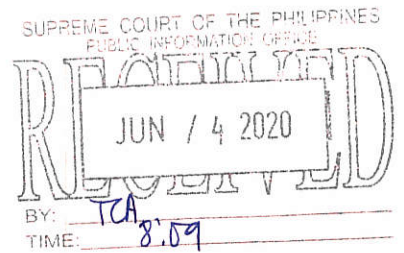




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **29 January 2020** which reads as follows:*

“**G.R. No. 238869** (*People of the Philippines v. Robert Francis Latorre y Jumao-As*). – The Court **NOTES** the letter¹ dated December 17, 2019 of CSupt. Benhur V. Pantaleon, Officer-in-Charge, Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte by way of compliance with the Resolution dated August 19, 2019, informing the Court that Robert Francis Latorre y Jumao-As (accused-appellant) was received for confinement at the Davao Prison and Penal Farm on June 28, 2014.

This is an appeal² seeking to reverse and set aside the Decision³ dated August 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01260-MIN affirming the Omnibus Decision⁴ dated November 14, 2013 of Branch 4, Regional Trial Court (RTC), Butuan City in Criminal Case Nos. 13520 and 13521. The RTC found accused-appellant guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Facts

The instant case stemmed from two Informations⁵ filed before the RTC charging accused-appellant with violation of Sections 5 and 11, Article II of RA 9165.

¹ *Rollo*, p. 36

² *Id.* at 17-18.

³ *Id.* at 4-16; penned by Associate Justice Ronaldo B. Martin with Associate Justices Romulo V. Borja and Louis P. Acosta, concurring.

⁴ *CA rollo*, pp. 133-150; penned by Judge Godofredo B. Abul, Jr.

⁵ *Rollo*, p. 5; Records (Crim. Case No. 13520), pp. 1-2; Records, (Crim. Case No. 13521), pp. 1-2.

The prosecution alleged that on June 9, 2009, the Philippine Drug Enforcement Agency (PDEA), Regional Office XIII, Butuan City, implemented a buy-bust operation against accused-appellant. Intelligence Officer 1 Donesa Janito (IO1 Janito) and the confidential informant acted as *poseur*-buyers in the case. The confidential informant introduced IO1 Janito to accused-appellant as the one interested to buy *shabu*. Accused-appellant thereafter took one plastic cellophane from his pocket and handed it to IO1 Janito. In exchange, IO1 Janito gave the marked ₱500.00 to accused-appellant, then placed her hand inside her pocket, and dialed the number of IO1 Rommel Ramos to indicate that the transaction had been consummated. Immediately thereafter, the rest of the buy-bust team swooped in to the scene and arrested accused-appellant.⁶

Upon arrival at the police station, the team conducted a thorough body search on accused-appellant. A yellow disposable lighter with a removable cover was found in accused-appellant's possession; that instead of containing fluid, three sachets of suspected *shabu* were inside the lighter's body. Also recovered from accused-appellant is a black wallet containing dried *marijuana* leaves. After which, the team inventoried the seized items. The search and inventory were done in the presence of media representative Christopher Timogan of *Bombo Radio, Barangay Kagawad* Erlinda Felias of *Barangay 4 Nasipit*, and Ms. Bernadith Lindo of the Municipal Trial Court of Nasipit.⁷ IO1 Janito prepared the certificate of inventory.⁸

After the taking of the photographs of the accused-appellant and the seized items, the buy-bust team went back to the PDEA office with the accused-appellant. The team prepared the request⁹ for accused-appellant's medical and physical examination and the request¹⁰ for chemical test of the recovered specimen.¹¹ After a qualitative examination, the four sachets of white crystalline substance, with a total weight of 0.1045 gram yielded positive for the presence of methamphetamine hydrochloride. The specimen in the folded paper weighing 0.9820 gram, on the other hand, tested positive for

⁶ *Id.* at 6-7.

⁷ *Id.* at 7.

⁸ Exhibit "I," index of exhibits, p. 12.

⁹ Exhibit "J," *id.* at 13.

¹⁰ Exhibit "D," *id.* at 5-6.

¹¹ *Rollo*, p. 8.

*marijuana.*¹²

In his defense, accused-appellant alleged that on June 9, 2009, at about 8:30 p.m., he was in his house watching TV when a certain Harold Macapas (Macapas) texted him that he wanted to buy *shabu*. He replied that he does not sell dangerous drugs. He further alleged that Macapas invited him to go to Ong Yiu, Butuan City to buy *shabu*, but he declined. Accused-appellant admitted that he was a user and used to have drug sessions with Macapas before.¹³

Accused-appellant furthermore alleged that Macapas told him to just go to *Barangay 4* to meet up with him. He texted his other friend, John Ray Gultiano (Gultiano), to go with him to meet Macapas at the boundary of *Barangay 1* and *Barangay 4*. He and Gultiano arrived at the meeting place ahead of Macapas. When Macapas arrived, the latter showed them the *shabu* he brought; he asked Gultiano to look for some foil they can use. Gultiano left while he stayed with Macapas. Macapas then handed to him the *shabu*, which he received. Suddenly, two persons pointed a gun at him and instructed him to lie down on his chest. The men thereafter handcuffed him and introduced themselves as PDEA agents.¹⁴

Ruling of the RTC

On November 14, 2013, the RTC convicted accused-appellant on the ground that the prosecution was able to prove beyond reasonable doubt the existence of all the elements of Illegal Sale and Illegal Possession of Dangerous Drugs. Moreover, the RTC found that the prosecution substantially complied with the chain of custody requirement under Section 21, Article II of RA 9165.¹⁵

Aggrieved, accused-appellant brought the case to the CA arguing that the RTC erred in relying on the prosecution's incredible and inconsistent version of facts. He also imputed error on the part of the RTC in finding an unbroken chain of custody of the alleged prohibited drugs seized from him.¹⁶

¹² Records (Crim. Case No. 13520), p. 17; Records, (Crim. Case No. 13521), p. 17.

¹³ *Rollo*, p. 11.

¹⁴ *Id.*

¹⁵ *CA rollo*, pp. 142-150.

¹⁶ *Id.* at 30.

Ruling of the CA

In the Decision¹⁷ dated August 4, 2017, the CA affirmed accused-appellant's conviction. The CA upheld the validity of his arrest and the seizure of the *shabu* and *marijuana* despite the PDEA agents' failure to strictly comply with the requirements of Section 21, Article II of RA 9165.¹⁸

Hence, the instant appeal.

Ruling of the Court

The appeal is with merit.

The elements necessary in the prosecution of illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.¹⁹ On the other hand, the elements of illegal possession of dangerous drugs are: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug.²⁰ To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²¹

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility that, at any of the links in the chain of custody, there could have been tampering, alteration or substitution of substances from other cases in which similar evidence was submitted for laboratory testing. Hence, in authenticating the specimen, a standard more stringent than that applied to cases

¹⁷ *Rollo*, pp. 4-16.

¹⁸ *Id.* at pp. 13-15.

¹⁹ *People v. Visperas*, G.R. No. 231010, June 26, 2019.

²⁰ *People v. Piñero*, G.R. No. 242407, April 1, 2019.

²¹ *People v. Camiñas*, G.R. No. 241017, January 7, 2019.

involving objects which are readily identifiable must be applied to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.²²

In order to avoid planting, tampering, substitution and contamination of the *corpus delicti*, Section 21, Article II of RA 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases. Considering that the present case took place on June 9, 2009 prior to the amendment of RA 9165 by RA 10640,²³ the old provision of Section 21, Article II of RA 9165 applies, to wit:

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; (Italics ours.)

Compliance with the chain of custody procedure is strictly enjoined as the same is not merely a procedural technicality but a matter of substantive law. This is because [t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.²⁴

²² *People v. Merando*, G.R. No. 232620, August 5, 2019, citing *Mallillin v. People*, 576 Phil. 576, 588-589 (2008).

²³ Entitled "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.

²⁴ *People v. Arciaga*, G.R. No. 239471, January 14, 2019.

As could be gleaned from Section 21, Article II of RA 9165, the seized drugs must be immediately inventoried and photographed in the presence of the accused or his representative, a representative from the media, the Department of Justice (DOJ), and any elected public official. All are required to sign the copies of the inventory and each should be given a copy thereof.

However, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁵ As such, justified deviations from the procedure may be allowed. The absence of the insulating witnesses required by Section 21, Article II of RA 9165 does not itself render the confiscated items inadmissible, so long as valid reason for the failure, or a showing of a genuine and sufficient effort to secure them is adduced.²⁶

Mere statements of their unavailability, absent actual serious attempts to secure the required witnesses are unacceptable and does not justify non-compliance.²⁷ 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 to make necessary arrangements to strictly comply with the procedure prescribed by Section 21, Article II of RA 9165. As such, police officers are compelled not only to state reasons for their noncompliance, 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.²⁸

In this case, record shows that the search and inventory of the items allegedly seized from accused-appellant were only done in the presence of media representative Christopher Timogan of *Bombo Radio* and *Barangay Kagawad* Erlinda Felias of *Barangay 4 Nasipit*. No representative from the DOJ came to witness the procedure. While the signatures of the media representative and the *kagawad* appear in the Certificate of Inventory,²⁹ no less than the witnesses themselves testified that they did not see the actual inventory of the seized items. According

²⁵ *Fuentes v. People*, G.R. No. 228718, January 7, 2019.

²⁶ See *People v. Visperas*, G.R. No. 231010, June 26, 2019, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018, 857 SCRA 175, 190.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Exhibit "1," index of exhibits, p. 12.

to them, the purported illegal items were already placed on top of the table when they arrived in the police station,³⁰ and that they were merely asked to sign the Certificate of Inventory.³¹ Although it was incumbent upon the prosecution to account for their deviation from Section 21, Article II of RA 9165, the prosecution did not present any justifiable reason for their lapses. As stated by IO1 Ruben Tibayan, case surveillance was conducted over accused-appellant, prior to the buy-bust operation. During the preparation period, they had every opportunity to arrange and secure the presence of all the required insulating witnesses, but they failed to do so. This signifies the police officers' lack of effort to comply with the safeguards of Section 21, Article II of RA 9165, adversely affecting the authenticity of the allegedly seized items. In view of the foregoing, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant were compromised, thereby necessitating his acquittal from the crimes charged.

WHEREFORE, the appeal is **GRANTED**. The assailed Decision dated August 4, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01260-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Robert Francis Latorre y Jumao-As is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case Nos. 13520 and 13521.

The Director of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to: (a) cause the immediate release of Robert Francis Latorre y Jumao-As unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

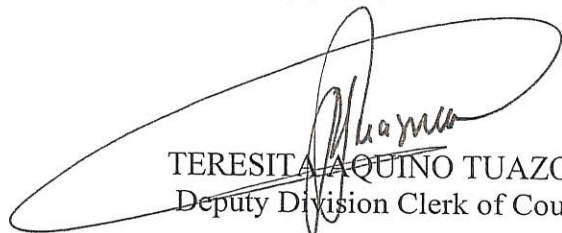
Let entry of judgment be issued.

³⁰ TSN of Erlinda Felias, September 6, 2011, pp. 5-6; TSN of Christopher Timogan, September 6, 2011, p. 15.

³¹ Exhibit "1," index of exhibits, p. 12.

**SO ORDERED.” (REYES, A., Jr., J., on official leave and
HERNANDO, J., on official leave.)**

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

06 MAR 2020

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