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Supreme Court  
Manila

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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. 234772 (*People of the Philippines v. Andy Quioco y Milo*). – On appeal is the Decision<sup>1</sup> dated May 22, 2017 of the Court of Appeals (CA) in CA-G.R. No. CR-HC No. 07405, affirming the Decision<sup>2</sup> dated November 19, 2014 of the Regional Trial Court (RTC) of Urdaneta City, Branch 48, convicting accused-appellant Andy Quioco y Milo (Andy) of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Facts of the Case

At around 12:00 p.m. of October 4, 2011, a confidential informant arrived at the Regional Office I of the Philippine Drug Enforcement Agency (PDEA) located at Barangay Bayaoas, Urdaneta City, Pangasinan. The confidential informant reported to PDEA Agent Mark S. Mariñas (Agent Mariñas) that a certain “Bruno Pangon” was engaged in an illegal sale of drugs at the *peryahan* along Consejo Street, Barangay Poblacion, Urdaneta City. “Bruno Pungon” was later identified as accused-appellant Andy. A buy-bust team was organized with the following members: Agent Mariñas, Agent Balbin, Agent Orenca, *poseur*-buyer IO1 Peralta, immediate back-up and arresting officer IO1 Paul Pestelos (IO1 Pestelos), and Agent Minga. The members of the buy-bust team were also introduced to the confidential informant. Afterwards, IO1 Peralta and IO1 Pestelos went to Consejo Street to assess and survey the buy-bust area. A pre-arranged signal indicating the consummation of the sale of drugs was agreed upon by the buy-bust team. A ₱500.00 bill as the buy-bust money, which IO1 Peralta marked with her initials “BLP” and the corresponding serial number was recorded in the logbook.<sup>3</sup>

At around 6:30 p.m. of the same day, the buy-bust team went to Consejo Street. IO1 Peralta, IO1 Pestelos, and the confidential informant proceeded to

<sup>1</sup> Penned by Associate Justice Maria Filomena D. Singh, with the concurrence of Associate Justices Ricardo R. Rosario and Edwin D. Sorongon; *rollo*, pp. 2-20.

<sup>2</sup> CA *rollo*, pp. 67-71.

<sup>3</sup> Id. at 62-63.

the *peryahan* and pretended as bettors at the drop ball area. Fifteen minutes thereafter, Andy arrived. The confidential informant introduced IO1 Peralta to Andy as an interested buyer of *shabu* worth ₱500.00. Subsequently, Andy took out a plastic sachet from his right pocket with a zipper. Andy handed the plastic sachet to IO1 Peralta while reminding her to keep it. Then, Andy asked IO1 Peralta for the payment. IO1 Peralta paid Andy with a ₱500.00 bill, the buy-bust money. Subsequently, IO1 Peralta executed the pre-arranged signal when she brought out her wallet from her handbag. IO1 Pestelos and IO1 Peralta introduced themselves as PDEA agents and immediately arrested Andy.

IO1 Pestelos, IO1 Peralta, and Andy boarded an unmarked PDEA vehicle. On their way to the PDEA Office, IO1 Pestelos apprised Andy of his constitutional rights while IO1 Peralta marked the plastic sachet bought from Andy. Upon arrival at the PDEA Office in Barangay Bayaoas, Urdaneta City, IO1 Peralta conducted a body search on Andy and recovered the following items: (a) five plastic sachets of *shabu*; (b) two ₱100.00 bills; and (c) one ₱20.00 bill. Inventory was conducted at the PDEA Office, in the presence of the following witnesses: (a) GMA Media Representative Jette Arcellana; and (b) Barangay Kagawad Edwin Mondala. The following documents were also prepared: (a) Request for Laboratory Examination (Exhibit W); (b) Booking Sheet and Arrest Report (Exhibit T); and (c) Joint Affidavit of Arrest executed by IO1 Peralta and IO1 Pestelos (Exhibit A). On the same day, Agent Mariñas requested a laboratory examination of the seized items. Per Chemistry Report issued by Police Chief Inspector Emelda Roderos (PCI Roderos), the six plastic sachets retrieved from Andy tested positive for the presence of methamphetamine hydrochloride or *shabu*.<sup>4</sup>

The defense presented the testimonies of the following: (1) Doris Castro (Doris), an eyewitness to the arrest of Andy; (2) Arlene Alvarez (Arlene), Andy's common law partner; and (3) Andy. Doris and Andy narrated that at around 6:00 p.m. of October 4, 2011, while they were playing drop ball at the *peryahan*, two men approached them. They placed their hand on Andy's shoulder and pulled him towards their vehicle. Andy asked the two men what was his fault, but the two did not answer. Thereafter, Andy called Doris and told her to call his mother. When Doris returned to the *peryahan* with Andy's mother, Andy was no longer there. They were informed that Andy was brought to the PDEA Office in Barangay Bayaoas. On that same night, Arlene and Andy's mother went to the PDEA Office. However, they were asked to return the following day. Meanwhile in the PDEA Office, the PDEA agents showed Andy a number of plastic sachets and placed them on top of a table. Andy was surprised and told the PDEA agents that he did not know anything about the plastic sachets. Subsequently, Andy was brought to the Sacred Heart Hospital for a medical check-up. Upon return to the PDEA

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<sup>4</sup> Id. at 62-66.

Office, a media representative was called. Andy sought help from the media representative and narrated to him what happened. The PDEA agents called the media representative and then had a conversation. Andy was left at the kitchen. Later on, Andy saw the media representative already leaving the place.<sup>5</sup>

At around 8:00 a.m. of October 5, 2011, Arlene and Andy's mother went back to the PDEA Office. According to Arlene, they were ushered to the "PDEA safehouse" where they finally saw Andy. Andy told her that he was suddenly arrested. Arlene pleaded to the people in the PDEA safehouse to release Andy. Arlene's plea was denied and was told to go home, get some clothes for Andy, and proceed to the Hall of Justice. At around 3:00 p.m., they went to the Hall of Justice where they were ordered to sign some documents. Andy, likewise, testified that on October 5, 2011, he was brought to the Hall of Justice and then to the Urdaneta City District Jail, where he was detained. Andy was later indicted for violating Sections 5 and 11, Article II of R.A. 9165:

Criminal Case No. U-17714

That on or about 6:20 o'clock in the evening of October 4, 2011 at Brgy. Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat sealed plastic sachet containing 0.036 of Methamphetamine Hydrochloride or Shabu, a dangerous drug.

CONTRARY to Section 5, Article II, R.A. 9165.

Criminal Case No. U-17715

That on or about 6:20 o'clock in the evening of October 4, 2011 at Brgy. Poblacion, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody five (5) heat sealed transparent plastic sachets each containing 0.060 gram; 0.045 gram; 0.069 gram; 0.052 gram and 0.028 gram, with a total weight of 0.254 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug.

CONTRARY to Art. II, Sec. 11 of Republic Act 9165, otherwise known as "Comprehensive dangerous Drugs Act of 2002."<sup>6</sup>

<sup>5</sup> Id. at 67-68.

<sup>6</sup> Id. at 61.

Upon arraignment, Andy pleaded not guilty. Joint trial ensued.

In a Decision<sup>7</sup> dated November 19, 2014, the RTC found Andy guilty of illegal sale of *shabu* while the case for illegal possession of dangerous drugs was dismissed. The RTC found that “the manner by which the initial contact was made, the offer to purchase, the delivery of the prohibited drug, the payment of the buy-bust money, were all shown with clarity during the testimony of [IO1 Peralta], the poseur-buyer, who presented a complete and detailed picture of the buy-bust operation which resulted to the apprehension of [Andy].”<sup>8</sup> Further, the RTC held that “[t]he fact that IO1 Peralta recovered [other] sachets of *shabu* from the possession of [Andy] during the actual sale transaction is already immaterial and will not justify the filing of a separate case of illegal possession of dangerous drugs.”<sup>9</sup> According to the RTC, Andy was found in possession of plastic sachets of *shabu* for the sole purpose of selling the same to his prospective buyer in that particular sale transaction at that particular time and not for some future dealings or personal use. The case for illegal possession of *shabu* was dismissed.

On appeal, the defense raised the following issues: (1) failure of the prosecution to present the testimony of the confidential informant; (2) non-compliance with the requirements of Section 21 of the Implementing Rules and Regulations (IRR) of R.A. 9165; and (3) the broken links in the chain of custody.

On May 22, 2017, the CA affirmed the Decision of the RTC finding Andy guilty of Illegal Sale of Dangerous Drugs. The appellate court ruled that the prosecution successfully established all the elements of Illegal Sale of Dangerous Drugs. The direct, positive, and categorical testimonies of IO1 Peralta and IO1 Pestelos established the following elements: (1) the identity of the *poseur*-buyer IO1 Peralta and of Andy as the seller; (2) the *shabu*, which is the object of the operation; and (3) the ₱500.00 buy-bust money as consideration. The delivery of the illicit drug (0.036 gram of white crystalline substance) to IO1 Peralta and the receipt by Andy of the marked money in exchange for the drug consummated the sales transaction. Also, the CA held that the chain of custody rule has been substantially complied with. The testimonies of the prosecution witnesses categorically confirmed that all the items seized from Andy were the same ones marked, tested, introduced, identified, and testified to in open court. IO1 Peralta, who was present from the moment the buy-bust operation commenced, until the confiscated item was presented before the RTC, was able to identify the *shabu* with certitude when these were presented in court through the markings she herself made.<sup>10</sup> Lastly, the CA did not give merit to Andy’s defense of frame-up for being

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<sup>7</sup> Supra note 2.

<sup>8</sup> CA rollo, p. 70.

<sup>9</sup> Id.

<sup>10</sup> Rollo, p. 16.

inherently weak. Despite the non-presentation of the confidential informant and the minor inconsistencies, the testimonies of the prosecution witnesses were given credence.

Pursuant to Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court, the Office of the Solicitor General filed a Manifestation<sup>11</sup> that it will adopt the Appellee's Brief<sup>12</sup> dated August 8, 2016 as its supplemental brief. Likewise, the defense through the Public Attorney's Office, filed its Manifestation in Lieu of Supplemental Brief<sup>13</sup> dated May 30, 2018.

This Court finds the appeal impressed with merit.

R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.<sup>14</sup> Section 21, Article II of the IRR of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Strict compliance with the chain of custody rule is essential in order for the prosecution to establish the guilt of the accused beyond reasonable doubt. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as the number of witnesses required, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640 approved on July 23, 2014, a representative from the media *and* the Department of Justice (DOJ), and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.<sup>15</sup>

Andy was arrested *prior* to the effectivity of R.A. 10640. The witnesses required in this case are: (a) a representative from the media; (b) a DOJ representative and (c) any elected public official. It is gathered from IO1 Peralta's testimony and from the Certificate of Inventory<sup>16</sup> (Exhibit L) that only two witnesses were present during the inventory: (1) GMA Media Representative Jette Arcellana; and (2) Barangay Kagawad Edwin Mondala. Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 admits exceptions to non-compliance with the rules of chain of custody under justifiable grounds. Non-compliance with the three or two-witness rule may be permitted only if the prosecution proves that the apprehending officers

<sup>11</sup> Id. at 28-32.

<sup>12</sup> CA *rollo*, pp. 77-104.

<sup>13</sup> *Rollo*, pp. 34-37.

<sup>14</sup> *Cariño v. People*, 600 Phil. 433, 448 (2009).

<sup>15</sup> See *Dimaala v. People*, G.R. No. 242315, July 3, 2019.

<sup>16</sup> Records, p. 13.

exerted genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses. Mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable.<sup>17</sup> Here, nowhere in the records did the arresting officer/team provide an explanation on the absence of a DOJ representative. Neither was there any evidence to prove that genuine and earnest efforts were exerted to secure their presence. This non-compliance is rendered *even more* unreasonable given the fact that the buy-bust operation was planned. The police officers received the confidential information about Andy's illegal activities at around 12:30 p.m., while the arrest of Andy was effected at about 6:00 p.m. The buy-bust team had more or less six (6) hours of preparation – from the time they received the information until the arrest of Andy – to secure the presence of the three required witnesses.

Aside from the non-compliance with the witness requirement, the inventory was conducted at the PDEA Office in Barangay Bayaoas, Urdaneta City and not at the place of arrest. Marking was done separately inside the vehicle when Andy was brought to the PDEA Office. According to IO1 Pestelos, the inventory and marking were done at their office because the *peryahan* was too crowded to conduct orderly marking and inventory. The PDEA operatives are very few in number to control the crowd who gathered around the place of arrest. The risk from the crowd of onlookers had to be avoided. While this may be a justifiable explanation, the arresting officer/team failed to detail how the seized item was handled from the place of arrest until they reached the PDEA Office.

It is worth underscoring in this case that the *shabu* seized from Andy weigh only 0.036 gram. While the minuscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21.<sup>18</sup> The likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.<sup>19</sup>

Here, the prosecution left unanswered questions as to how and where the seized item was kept from the place of arrest and who brought the same until they reached the PDEA Office where the inventory was taken. Neither IO1 Peralta nor IO1 Pestelos mentioned the fact that they kept the seized item in their sole custody. This Court has emphasized many times that the ultimate success of the buy-bust operation rests on the evidence establishing with moral certainty that the illegal drugs seized from the accused during buy-bust operation are the very same items presented to the court. The need to prove each link in the chain of custody serves a vital purpose: to protect the accused

<sup>17</sup> *People v. Agustin*, G.R. No. 233336, January 14, 2019.

<sup>18</sup> *People v. Holgado*, 741 Phil. 78, 99 (2014).

<sup>19</sup> *Mallillin v. People*, 576 Phil. 576 (2008).

July 15, 2020

against *any* possibility of planting, contamination, or loss of the seized drug. These details are important in order to show that the arresting officer/team's handling of the illegal drug seized leaves *no room* for planting, contamination, switching, or loss of the seized drug.

Aside from this clear gap in the chain of custody, the handling of the seized item by evidence custodian Mercedita Velasco was not accounted for. While logbook entries of the evidence custodian (Exhibit V) were offered in evidence by the prosecution, the authenticity thereof was never proved. The logbook entries neither prove any of the following details important in the preservation of the identity and integrity of the seized illegal drug: (a) the status of the specimen upon receipt by the evidence custodian; (b) the place where the evidence custodian kept the specimen; and (c) the possibility of other persons having access to the specimen. Absent these details, the claim that the illegal drugs seized from Andy during buy-bust operation are the very same items presented in court is rendered *doubtful*.

All in all, there is a substantial gap in the chain of custody. The prosecution, therefore, failed in proving the identity and integrity of the seized item. There is no moral certainty to pronounce the guilt of Andy for the crime charged.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated May 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07405 is **REVERSED** and **SET ASIDE**. Accused-appellant Andy Quiocho y Milo is **ACQUITTED** of the charge of violating Section 5, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless further detention is lawful for other reasons. The Director of Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

**SO ORDERED."**

By authority of the Court:

*Misa DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
GER  
 7/15/20

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 Legaspi Village, 1229 Makati City



COURT OF APPEALS  
CA G.R. CR-HC No. 07405  
1000 Manila

The Director  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Mr. Andy Quiocho y Milo  
Accused-Appellant  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 48, Urdaneta City  
2428 Pangasinan  
(Crim. Case No. U-17714)

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT  
AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

**G.R. No. 234772**

-versus-

ANDY QUIOCHO y MILO ,  
Accused-Appellant.

x-----/

**ORDER OF RELEASE**

**TO: The Director**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Thru: **The Superintendent**  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**GREETINGS:**

WHEREAS, the Supreme Court on July 15, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“WHEREFORE, the appeal is **GRANTED**. The Decision dated May 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07405 is **REVERSED** and **SET ASIDE**. Accused-appellant Andy Quiocho y Milo is **ACQUITTED** of <sup>61</sup>

the charge of violating Section 5, Article II of Republic Act No. 9165. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless further detention is lawful for other reasons. The Director of Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

**SO ORDERED.”**

**NOW, THEREFORE,** You are hereby ordered to immediately release **ANDY QUIOCHO y MILO**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **15<sup>th</sup>** day of **July 2020**.

Very truly yours,

*Misa DC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

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1770 Muntinlupa City

The Presiding Judge  
REGIONAL TRIAL COURT  
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