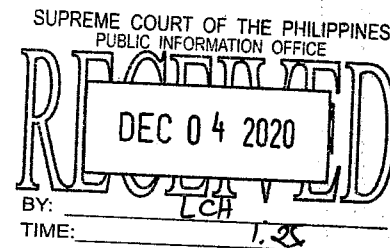




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **September 2, 2020**, which reads as follows:

“G.R. No. 247320 (*People of the Philippines v. Vicente Ferrolino y Torres @ Noel*). – On appeal is the Decision¹ dated February 13, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 02691, affirming the Decision² dated August 23, 2017 of the Regional Trial Court (RTC) of Dumaguete City, Branch 30 convicting accused-appellant Vicente Ferrolino y Torres (Noel) of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

On January 14, 2016, Police Officer 2 Tristan Joseph Chua (PO2 Chua) was on duty at the Sibulan Police Station, Sibulan, Negros Oriental. At around 5:00 p.m., PO2 Chua received a phone call from a confidential informant requesting that they meet personally because he has information to give. Thirty minutes after, PO2 Chua and the confidential informant met at the Sibulan Park. The confidential informant relayed that he just had a transaction worth ₱500.00 of *shabu* with a certain “Noel.”³ “Noel” was later identified as accused-appellant. PO2 Chua instructed the confidential informant to arrange another transaction with Noel for ₱300.00 worth of *shabu*.⁴

It was 7:30 p.m. of the same day when the confidential informant called PO2 Chua again. PO2 Chua was informed that the transaction with Noel for ₱300.00 worth of *shabu* is scheduled at 8:45 p.m. at the Maayo Shipping Terminal located at the Sibulan Port. PO2 Chua relayed this information to SPO4 Rhuell Tan Piñero (SPO4 Piñero) who immediately conducted a briefing for the buy-bust operation. Present during the briefing were PO2 Chua, Police Officer 2 Michael Piñero (PO2 Piñero) and PO2 Fuentes. PO2 Chua was designated as the *poseur*-buyer. He prepared the buy-bust money consisting of three pieces of ₱100.00 bill and marked each

¹ Penned by Associate Justice Edward B. Contreras, with the concurrence of Associate Justices Gabriel T. Ingles and Dorothy P Montejo-Gonzaga; *rollo*, pp. 5-7.

² *CA rollo*, pp. 37-48.

³ *Rollo*, pp. 6-7.

⁴ *Id.* at 7.

bill with his initials "CTJ." A text message was also sent by PO2 Chua to the Philippine Drug Enforcement Agency Officer Agent Julieta Amatong (Agent Amatong) for purposes of coordination.⁵ In turn, Agent Amatong forwarded the coordination control number to PO2 Chua. Agent Amatong likewise prepared the Certificate of Coordination.⁶ PO2 Piñero, on the other hand, was the designated back-up arresting officer and photographer while PO2 Fuentes served as back-up area security.⁷

At 8:45 p.m., the confidential informant and PO2 Chua proceeded to the Sibulan Port via motorcycle. The rest of the team followed as back-up.⁸ As Noel was approaching the meeting place at the Maayo Shipping Terminal, the confidential informant raised his hand to signal Noel that they were already there.⁹ Noel first asked them if the barge was leaving, to which the confidential informant replied that it was already about to leave. Then, the confidential informant asked Noel if he brought the substance with him. Noel answered that he did and that there is only one left. PO2 Chua replied "it's okay bai"¹⁰ while simultaneously handing Noel the buy-bust money. Noel received the money and tucked it into his right waistline. Noel gave PO2 Chua one heat-sealed transparent sachet containing white crystalline substance.¹¹ PO2 Chua looked at the contents of the plastic sachet and concluded that it was *shabu*.¹²

Immediately, PO2 Chua grabbed the hands of Noel, informed him that he is a police officer and arrested Noel for selling illegal drugs. Noel attempted to escape. The back-up team and the confidential informant assisted PO2 Chua and successfully pinned down Noel. Thereafter, PO2 Chua informed Noel of the nature of his arrest and of his Constitutional rights. PO2 Chua conducted a body search on Noel from whom he recovered the buy-bust money. Still at the crime scene, PO2 Chua wrote the marking "VTF-BB-01-14-2016" on a white masking tape and placed it on the plastic sachet handed to him by Noel.¹³ Since the crowd started to gather around them, the buy-bust team, together with Noel, proceeded to the Sibulan Police Station. From the crime scene to the police station, PO2 Chua took custody of the plastic sachet.¹⁴

Inventory of the seized items was conducted at around 9:30 p.m. at the Sibulan Police Station. Photographs were taken by PO2 Piñero. The Inventory of the Property Seized¹⁵ was signed by the following witnesses:

⁵ TSN dated July 4, 2017, p. 5.
⁶ TSN dated July 5, 2017, p. 3.
⁷ TSN dated July 4, 2017, p. 4.
⁸ *Rollo*, p. 7.
⁹ *Id.*
¹⁰ TSN dated July 4, 2017, p. 6.
¹¹ *Id.*
¹² *Id.* at 7.
¹³ *Rollo*, p. 8.
¹⁴ TSN dated July 4, 2017, p. 10.
¹⁵ *Rollo*, p. 23.

(1) media representative Jufill Mira; (2) Department of Justice (DOJ) representative Andres Mangubat; and (3) Barangay Poblacion Kagawad Rufino Arañas.¹⁶ PO2 Chua placed the plastic sachet inside a brown window envelope and then prepared a Memorandum Request for Crime Laboratory Examination (memorandum request).¹⁷ The memorandum request was signed by SPO4 Rhuell Tan Piñero for Nelson Bendaño Lamoco, Police Senior Inspector, OIC. PO2 Chua kept the brown window envelope containing the plastic sachet inside his locker at the Sibulan Police Station.¹⁸

At 10:40 a.m. of the following day, January 15, 2016, PO2 Chua brought the Memorandum Request for Crime Laboratory Examination and the seized item to the Negros Oriental Provincial Crime Laboratory. Noel was also brought there for drug testing. Police Chief Inspector Josephine Llana (PCI Llana) received the specimen from PO2 Chua. PCI Llana placed the marking "A D-028-16 JSL" on the upper portion of the brown envelope she received from PO2 Chua. Per Chemistry Report No. D-028-16¹⁹ issued by PCI Llana, the specimen yielded positive for *shabu*. Noel's urine sample also tested positive for the presence of methamphetamine hydrochloride or *shabu*. PCI Llana kept the seized items inside the evidence vault that can be accessed only by her. PCI Llana submitted the specimen to the Court on June 14, 2016.²⁰

The defense presented the sole testimony of Noel. According to Noel, he was arrested while he was on his way to the Tanjan Police Station to voluntarily surrender for a murder case filed against him.

Noel narrated that on January 10, 2016, he went to Cebu to escape a murder case that was filed against him in Tanjay City. On January 14, 2016, Noel returned to Tanjay City to surrender to the police. He coordinated his surrender at the Tanjay Police Station where his cousin, who is a police officer, is stationed. At around 3:30 p.m. of that date, he rode a pump boat from the Lilo-on Port to the Sibulan Port. When he arrived at the Sibulan Port, Noel was mauled by Sibulan Police Officers Lanciola and Fuentes. Around 5:30 p.m., Noel was brought to the Sibulan Police Station. Noel informed the police officers in Sibulan Police Station that a murder case was filed against him in Tanjan City Police Station. Noel was never turned over to the Tanjan Police Station.²¹

Noel was later indicted for violating Section 5, Article II of R.A. 9165:

That in the evening of January 14, 2016, at Poblacion, Sibulan, Negros Oriental, Philippines, and within the

¹⁶ Id. at 8.

¹⁷ Records, p. 24.

¹⁸ TSN dated July 4, 2017, p. 15.

¹⁹ Records, p. 26.

²⁰ CA *rollo*, p. 40.

²¹ Id. at 41.

jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and feloniously sell and deliver to a police poseur-buyer one (1) heat-sealed transparent plastic sachet containing “shabu” (Methamphetamine Hydrochloride) with a net weight of 0.03 gram, a dangerous drug.

That accused Vicente Ferrolino y Torres @Noel was found positive for methamphetamine, a dangerous drug under Chemistry Report No. DT-027-16.

CONTRARY TO LAW.²² (Emphasis in the original)

Upon arraignment, Noel pleaded *not guilty*. Trial on the merits ensued.²³

In a Decision²⁴ dated August 23, 2017, the RTC found Noel guilty of illegal sale of 0.03 gram of *shabu*, in violation of Section 5, Article II of R.A. 9165. The trial court upheld the validity of the buy-bust operation based on the testimony of PO2 Chua.²⁵ In his testimony, PO2 Chua clearly recounted how the buy-bust operation was executed. According to the RTC, only a trustworthy witness could have narrated with such clarity and realism what really happened.²⁶ The buy-bust money was also presented before the court. As regards the disposition and preservation of the seized items, the RTC found that the police officers complied with the law and successfully preserved the integrity of the seized item.²⁷ The forensic chemist, PCI Llena, likewise enumerated in her testimony the precautionary measures done to preserve the identity and integrity of the seized item. Further, the RTC emphasized the fact that the screening and confirmatory tests conducted on Noel’s urine sample gave positive result for the presence of *shabu*.²⁸ There is also nothing in the records that would show that a motive or reason on the part of the police officers to falsely implicate Noel.²⁹ The RTC sentenced Noel to suffer penalty of life imprisonment and to pay a fine of ₱500,000.00.³⁰

On appeal, the defense mainly questioned the apprehending team’s noncompliance with Section 21 of R.A. 9165 when they failed to immediately conduct a physical inventory of the seized items and photograph the same. The defense argues that a simple assembly of bystanders should not prevent compliance with the requirements of Section 21 of R.A. 9165.³¹

²² Records, p.41.

²³ Id. at 53.

²⁴ CA *rollo*, pp 37-48.

²⁵ Id. at 44.

²⁶ Id. at 46.

²⁷ Id. at 45.

²⁸ Id.

²⁹ Id. at 46-47.

³⁰ Id. at 47.

³¹ CA *rollo*, p. 31.

The CA in its Decision³² dated February 13, 2019, affirmed the Decision of the RTC finding Noel guilty of violation of Section 5, Article II of R.A. 9165.³³ The appellate court found that Noel was caught *in flagrante delicto* of selling *shabu* to *poseur*-buyer PO2 Chua. The clear, categorical and positive testimony of PO2 Chua sufficiently established the exchange of money and illicit drugs during the buy-bust operation. The prosecution had satisfactorily shown how the illegal sale took place and positively identified the *shabu* subject of this case.³⁴ The allegation of frame-up cannot prosper since the defense failed to substantiate it. There is no evidence that there was ill motive on the part of the arresting officers and Noel did not know them prior to his arrest. There is also no proof that the police officers improperly performed their duty in arresting Noel.³⁵ Furthermore, the CA found that the chain of custody remained unbroken. As such, the identity and integrity of the seized items is well-preserved. As established by the collective testimonies of the prosecution witnesses, the following links in the chain of custody are all present: (a) PO2 Chua marked the sachet of *shabu* immediately after seizure at the crime scene; (b) PO2 Chua inventoried the same at the police station and signed by the required witnesses; (c) photographs were taken during the course of inventory; (d) the specimen was brought to the crime laboratory for analysis; (e) PCI Llena conducted the laboratory examination on the item seized which yielded a positive result for the presence of *shabu*; (f) PO2 Chua positively identified the marked specimen as the very same item confiscated from Noel; and (g) PCI Llena likewise identified the marked specimen as the very same item she examined.³⁶ In addition, the conduct of the inventory at the police station was explained by the fact that several people began to gather around the crime scene and there was a possibility that the integrity of the evidence could be compromised if the buy-bust team had remained thereat.³⁷

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 Manifestation³⁸ that it will adopt the Appellee's Brief³⁹ dated August 13, 2018 as its Supplemental Brief. Likewise, the defense, through the Public Attorney's Office, filed its Manifestation in Lieu of Supplemental Brief⁴⁰ dated December 6, 2019.

The appeal has merit.

R.A. 9165 provides reasonable safeguards to preserve the identity

³² Supra note 1.
³³ *Rollo*, pp. 27.
³⁴ Id. at 11.
³⁵ Id. at 11-12.
³⁶ *Rollo*, pp. 13-14.
³⁷ Id. at 16.
³⁸ Id. at 28-30.
³⁹ *CA rollo*, pp. 52-77.
⁴⁰ *Rollo*, pp. 35-36.

and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.⁴¹ Section 21, Article II of the Implementing Rules and Regulations 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.

The links in the chain of custody start with the seizure of the plastic sachet containing the suspected *shabu* bought in the buy-bust sale. Immediately after seizure and confiscation, the apprehending team is required to mark the seized item, 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 certain required witnesses, 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 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 *or* the media.⁴²

Noel was arrested after the effectivity of R.A. 10640. The witnesses required in this case are: (a) an elected public official; and (b) a representative of the National Prosecution Service *or* the media. The signatures of the following persons are reflected in the Inventory of Property Seized: (1) media representative Jufill Mira; (2) DOJ representative Andres Mangubat; and (3) Barangay Poblacion Kagawad Rufino Arañas. While these persons indeed signed as witnesses, the manner by which they have actually witnessed the conduct of inventory is *unacceptable*. In his testimony, DOJ representative Andres Mangubat (Mangubat) narrated that when he arrived at the Sibulan Police Station for the inventory, “there were already items that were prepared by the police officers.”⁴³ “[Mangubat] saw the drugs on top of the table together with the alleged marked money”⁴⁴ and “the entries in the inventory were already filled up.”⁴⁵ All that Mangubat did was to make a comparison between the entry written on the inventory sheet and the items placed on top of the table.⁴⁶ Eventually, “when [Mangubat] found out that they are the same drugs in the entry, [he] signed the inventory receipt.”⁴⁷ On the other hand, the testimonies of the two other witnesses were dispensed with based on the following stipulations:

As to Witness Barangay Kagawad Rufino Aranas

⁴¹ *Cariño v. People*, 600 Phil. 433, 448 (2009).

⁴² See *Dimaala v. People*, G.R. No. 242315, July 3, 2019.

⁴³ TSN dated June 29, 2017, p. 5.

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 3.

⁴⁷ *Id.*

1. That Rufino Aranas at the time of the incident on January 14, 2016 was a barangay kagawad of Barangay Poblacion, Sibulan, Negros Oriental;
2. That Barangay Kagawad Rufino Aranas was present during the conduct of the inventory held in connection with this case at the Sibulan Police Station, Sibulan, Negros Oriental in the evening of the said date;
3. That Barangay Kagawad Rufino Aranas signed the Inventory of Property Seized identified and marked as Exhibit "G" with sub markings for the prosecution in this case and his signature is identified and marked therein as Exhibit "G-4";
4. That the image of Barangay Kagwad Rufino Aranas appears in the photographs collectively identified and marked as Exhibit "H" with sub markings for the prosecution in this case specifically Exhibit "H-2"; and
5. That Barangay Kagawad Rufino Aranas was given a copy of the inventory of property seized.

As to Witness Jufill Mira

1. That Jufill Mira at the time of the incident on January 14, 2016 was a media practitioner connected as an anchor of the DYWC, Sibulan, Negros Oriental;
2. That Jufill Mira was present during the conduct of the inventory held in connection with this case at the Sibulan Police Station, Sibulan, Negros Oriental in the evening of said date;
3. That Jufill Mira signed the Inventory of Property Seized identified and marked as Exhibit "G" with sub markings for the prosecution in this case and his signature is identified and marked therein as Exhibit "G-5";
4. That the image of Jufill Mira appears in the photographs collectively identified and marked as Exhibit "H" with sub markings for the prosecution in this case specifically Exhibit "H-3"; and
5. That Jufill Mira was given a copy of the inventory of property seized that he signed.⁴⁸

The three/two witness-requirement rule in cases involving drugs cannot be diminished into an empty formality, as what sadly happened in this case. Far from a passive gesture, the attendance of the required witnesses ensures the identity, origin, and integrity of the items seized.⁴⁹ In no uncertain words, Section 21 requires that the taking of photographs and conduct of inventory must be done *in the presence* of the three/two required witnesses. The required witnesses must be *physically present* at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation."⁵⁰ Precisely at that point – immediately after

⁴⁸ TSN dated July 5, 2017, pp. 15-16.

⁴⁹ *People v. Castillo*, G.R. No. 238339, August 7, 2019.

⁵⁰ *People v. Adobar*, G.R. No. 222559, June 6, 2018.

seizure and confiscation – when the presence of the required witnesses is most needed to protect the accused against the slightest possibility of planting, contamination, or loss of the seized drug. In this case of Noel, neither the testimony of Mangubat nor the stipulations on the testimonies of the other required witnesses indicate that they were physically present *immediately after seizure and confiscation*. As a matter of fact, the witnesses arrived at the Sibulan Police Station at around 9:30 p.m. while the seizure and confiscation happened at around 8:45 p.m..⁵¹

The second link in the chain of custody involves the transfer of the seized drugs by the apprehending officer to the investigating officer. The police officer who seizes the suspected drugs turns it over to a supervising officer, who will then send the same to the police crime laboratory for testing. The investigating officer usually conducts the proper investigation and prepares the necessary documents for the developing case. Surely, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.⁵² Here, PO2 Chua is the apprehending officer while the memorandum request states that Nelson Bendaño Lamoco is the Police Senior Inspector. However, it was PO2 Chua who prepared the memorandum request and was the one who delivered the specimen to the forensic chemist. The memorandum request was also not originally signed by Nelson Bendaño Lamoco. Instead, it was signed on his behalf by SPO4 Rhuel Tan Piñero.⁵³ The prosecution did not provide any explanation on any of these circumstances nor did the prosecution give a justifiable ground for not strictly complying with the second link in the chain of custody.⁵⁴

The third link is the turnover by the investigating officer of the illegal drugs to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance. The last link consists of the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. While these last two links might have been proven in this case before the Court, it will not cure the fact that the first and second links were not properly established in accordance with the strict requirements of the law. The chain of custody of the *shabu* seized from Noel remains *broken*.

With a broken chain of custody, there is no reasonable certainty that the *shabu* that was offered in court as evidence is the same *shabu* that was allegedly seized from the accused. The *corpus delicti* was not proven. Hence, the prosecution failed to overcome the right of the accused to be presumed innocent of the crime charged. The Court has no moral certainty to pronounce the guilt of Noel for the crime charged.

⁵¹ TSN dated July 4, 2017, pp. 5, 10.

⁵² *People v. Dahil*, 750 Phil. 212, 235 (2015).

⁵³ TSN dated July 4, 2017, p. 14.

⁵⁴ *People v. Catinguel*, G.R. No. 229205, March 6, 2019.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 13, 2019 of the Court of Appeals in CA-G.R. CR-HC. No. 02691 is **REVERSED** and **SET ASIDE**. Accused-appellant Vicente Ferrolino y Torres @ Noel 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 the Bureau of Corrections is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Resolution.

SO ORDERED.”

By authority of the Court:

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
GER
1126/126

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