



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

**“G.R. No. 219589 – (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. GEMMA DACUMOS y CANLAS, accused-appellant).** – On appeal is the January 30, 2015 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00440 which affirmed the June 29, 2006 Decision<sup>2</sup> rendered by the Regional Trial Court (RTC), Branch 47, Bacolod City in Criminal Case Nos. 25170 and 25171. In Criminal Case No. 25170, accused-appellant Gemma Dacumos y Canlas (Dacumos) was found guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, while in Criminal Case No. 25171, she was found guilty beyond reasonable doubt for violation of Section 11, also under Article II of the Act.

In an Information<sup>3</sup> dated August 3, 2003, Dacumos was charged under Criminal Case No. 25170, as follows:

That on or about the 2<sup>nd</sup> of August, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another; distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer in a buy-bust operation, two heat-sealed transparent plastic packets containing methylamphetamine hydrochloride (shabu), having a total weight 0.02 gram, in exchange for a price of one (1) P100.00 in mark money bill with Serial No. DU993447, in violation of the aforementioned law.

- over – eight (8) pages ...

196

<sup>1</sup> *Rollo*, pp. 4-19; penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Edgardo L. Delos Santos and Jhosep Y. Lopez (now both Members of this Court), concurring.

<sup>2</sup> *CA rollo*, pp. 20-35; penned by Judge Edgar G. Garvilles.

<sup>3</sup> *Id.* at 9-10.

Act contrary to law.<sup>4</sup>

In an Information<sup>5</sup> also filed on August 3, 2003, Dacumos was charged under Criminal Case No. 25171, as follows:

That on or about the 2nd day of August, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in her possession and under her custody and control two (2) elongated heat sealed plastic bags containing methylamphetamine hydrochloride or shabu having a total weight of 0.17 gram, in violation of the aforementioned law.

Act contrary to law.<sup>6</sup>

During her arraignment, Dacumos pleaded not guilty to both charges.

### ***Version of the Prosecution***

In the afternoon of August 2, 2003, at around 1:00 p.m., Police Senior Inspector Jonathan Lorilla (PSI Lorilla) of the Bacolod City Police Office received a confidential information that a certain Gemma Dacumos of Purok Sigay, Brgy. 2, Bacolod City is engaged in drug activities. Lorilla formed a team composed of himself, Senior Police Officer 1 Eduardo Bantoto, Police Officer (PO) 2 Wilfredo C. Perez, PO2 Rolando Malte, PO2 Ronald Villeran, PO2 Claro Gordoncillo Jr., and PO1 Alain Sonido, to conduct a buy-bust operation. They marked a ₱100.00 bill to be used as the buy-bust money. At 4:45 p.m., the team proceeded to the target area. Lorilla, the poseur-buyer, together with the asset, was to meet Dacumos in front of the latter's house. The rest of the team strategically positioned themselves in the interior part of Purok Sigay. Upon arriving in front of the house, the asset introduced Lorilla to Dacumos. She asked Lorilla if they were going to buy *shabu*, to which they (Lorilla and asset) acceded. Dacumos asked how much and Lorilla answered that they would buy worth ₱100.00. When Lorilla handed over the marked money, Dacumos gave him two small sachets of suspected *shabu* which she got from a tin can that she was holding. After receiving the two sachets of suspected *shabu*, Lorilla introduced himself as police officer and executed the pre-arranged signal. Dacumos was arrested and she was informed of the reason for her arrest and of her constitutional rights to remain silent and to counsel.<sup>7</sup>

- over -

196

---

<sup>4</sup> Id. at 9.

<sup>5</sup> Id. at 11-12.

<sup>6</sup> Id. at 11.

<sup>7</sup> Id. at 107.

*Version of the Defense*

In her testimony, Dacumos narrated that in the afternoon of August 2, 2003, at around 4:30 p.m., she just woke from a nap because she was not feeling well. She heard unfamiliar voices outside her house and noticed that the front door was open. A man went up the stairs to her bedroom. She was asked what her name was and whether she was “packing.” However, she was not able to answer the questions as she was feeling nervous. One of the policemen told her that she will be arrested if she will not reveal who was selling drugs in their area. Dacumos did not respond because she did not know anyone selling in the area. The man and his companions searched the room without a warrant for about ten minutes and found nothing. Dacumos was handcuffed and brought to the living room where the police continued the search. She was again asked who were the persons selling drugs but she did not answer. Thereafter, they brought her to the Bacolod City Police Office. Dacumos denied the accusations against her.<sup>8</sup>

**RTC Ruling**

After the trial, the RTC promulgated its judgment of conviction. The dispositive portion of the June 29, 2006 Decision<sup>9</sup> states:

WHEREFORE, finding accused Gemma Dacumos y Canlas guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 (Sale, Delivery, etc. of Dangerous Drug) in Criminal Case No. 25170 and of Violation of Section 11 (3), Article II of the same law (Possession of Dangerous Drug) in Criminal Case No. 25171, judgment is hereby rendered imposing upon her; (a) life imprisonment and to pay a fine of P500,000.00 in Criminal Case No. 25170; and (b) an indeterminate prison term of Twelve (12) years and one (1) day, as minimum, to fourteen years, as maximum and to pay a fine of P300, 000.00 in Criminal Case No. 25171. She is also to suffer the accessory penalty prescribed by law. Costs against the accused. The two (2) sachets of shabu with combined weight of 0.02 gram (Sale) (Exhibit “B3-A”) and two (2) more sachets of shabu with a combined weight of 0.17 gram (Possession) (Exhibit “B-3-B”) confiscated/seized from the accused being dangerous drugs and/or contraband are ordered confiscated and or forfeited in favor of the government and are to be forthwith turned over to the Philippine Drug Enforcement Agency (PDEA) for immediate destruction or disposal in accordance with law.

SO ORDERED.<sup>10</sup>

- over -

196

---

<sup>8</sup> Id. at 108.

<sup>9</sup> CA *rollo*, pp. 20-35.

<sup>10</sup> Id. at 34-35.

Dacumos filed a Notice of Appeal. On July 25, 2006, she was transferred to the Correctional Institution for Women, Mandaluyong City.

### CA Ruling

On appeal, the CA affirmed the RTC Decision, to wit:

WHEREFORE, the Decision dated June 29, 2006 rendered by the Regional Trial Court (RTC) Branch 47, Bacolod City in Criminal Case No. 25170 and Criminal Case No. 25171, convicting accused-appellant Gemma Dacumos y Canlas of Violation of Section 5 and Section 11 respectively, of Article II of R.A 9165 as amended or the Dangerous Drugs Act is hereby AFFIRMED. With costs against the accused-appellant.

SO ORDERED.<sup>11</sup>

The CA agreed with the findings of the trial court that the prosecution has established that an illegal sale of the dangerous drugs actually took place and that Dacumos was the seller thereof. It found that after her arrest, Dacumos was immediately brought to the AIDSOTF Office, Bacolod City, where PSI Lorilla marked the sachet of *shabu*, weighing 0.02 grams, with letter "JML" which stands for Jonathan M. Lorilla. PSI Lorilla then prepared the Letter Request for Laboratory Examination and brought this to the PNP Crime Laboratory. Per Chemistry Report No. D-422-2003 conducted by PSI Augustina Laranang Ompoy, the specimen submitted for examination gave a positive result to methamphetamine hydrochloride, a dangerous drug. PSI Lorilla identified the plastic sachet of *shabu* presented in court as the one that was bought from Dacumos during the buy-bust operation.<sup>12</sup>

The CA held that a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. It explained that the arresting officers' failure to conduct a physical inventory and to photograph the items seized will not render the arrest illegal or the items confiscated inadmissible in evidence as they were able to nonetheless preserve the integrity and the evidentiary value of the said items. The CA is convinced that the two sachets of *shabu* presented in court were those sold by Dacumos to the poseur buyer.<sup>13</sup>

Before Us, Dacumos argues that the testimonies of the police officers displayed a disregard of the statutory requirements of handling

- over -

196

---

<sup>11</sup> Id. at 18.

<sup>12</sup> *Rollo*, p. 14.

<sup>13</sup> Id. at 15-16.

the evidence. The testimony of PSI Lorilla would show that there was no marking, inventory and taking of photographs of the alleged confiscated *shabu*. There was no mention as to the identity of the person with whom the items were given while in transit from the area of incident to the police station. Dacumos claims that the prosecution failed to adequately show the preservation of the evidentiary value. She further asserted that the non-compliance with Section 21 of R.A. No. 9165 made by the police officers was never justifiably explained by the prosecution.<sup>14</sup>

### Our Ruling

We find the appeal meritorious.

The prosecution failed to establish the chain of custody of the seized *shabu* from the time they were recovered from Dacumos up to the time they were presented in court. Section 21, Article II of R.A. No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>15</sup> Under the said section, prior to its amendment by R.A. No. 10640,<sup>16</sup> the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>17</sup>

However, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible.<sup>18</sup> On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the Implementing Rules and Regulations (IRR) of R.A. No. 9165, thus:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals,

- over -

196

---

<sup>14</sup> Id. at 18.

<sup>15</sup> *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

<sup>16</sup> 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.

<sup>17</sup> See REPUBLIC ACT NO. 9165, Article II, Section 21(1) and (2).

<sup>18</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally That noncompliance of 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 and custody over said items.

The IRR of R.A. No. 9165, which is now crystallized into statutory law with the passage of R.A. No. 10640, provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that noncompliance with the requirements of Section 21, Article II of R.A. No. 9165 under justifiable grounds will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.<sup>19</sup> The Court, however, stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.<sup>20</sup>

After a judicious study of the case, the Court finds that the apprehending officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items allegedly seized from Dacumos. Noteworthy is the testimony of P/INSP Lorilla, to wit:

PROS. YNGSON: (To witness – Direct Examination)

Q: After you have arrested her, where did you proceed?

A: We immediately proceeded to Police Precinct 2 for recording.<sup>21</sup>

In this case, we note that there was no explanation given by the apprehending officers why the physical inventory and photography of

- over -

<sup>19</sup> *People v. Ceralde*, 815 Phil. 711, 720-721 (2017).

<sup>20</sup> *People v. Almorfe, et al.*, 631 Phil. 51, 60 (2010).

<sup>21</sup> TSN, 28 July 2004.

the confiscated items were not immediately done after seizure at the place of arrest. Moreover, the prosecution failed to establish that the inventory and photography of the confiscated items were conducted in the presence of an elected public official, a representative from the DOJ or a representative from the media as required by Section 21, Article II of R.A. No. 9165. Neither was there any justification offered why the marking was not done in the presence of the required witnesses, and why no attempt was made to secure their presence. Thus, the evidentiary value of the seized items was already compromised making it susceptible to alteration, substitution or contamination.<sup>22</sup>

The Court stressed that without the insulating presence of the representative from the media or the DOJ, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, 'planting,' or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the presence of such witnesses would have preserved an unbroken chain of custody.<sup>23</sup>

In view of the foregoing, the Court concludes that there has been an unjustified breach of procedure, and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised. Thus, Dacumo's acquittal is in order.

**WHEREFORE**, premises considered, the January 30, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00440, which affirmed the June 29, 2006 Decision of the Regional Trial Court, Branch 47, Bacolod City, in Criminal Case Nos. 25170 and 25171, finding accused-appellant Gemma Dacumos y Canlas guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Gemma Dacumos y Canlas is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause. Let an entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City for

- over -

196

<sup>22</sup> *People v. Manabat*, G.R. No. 242947, July 17, 2019.

<sup>23</sup> See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

immediate implementation. The Superintendent of the Correctional Institution for Women is **directed to report** the action he/she has taken to this Court within five (5) days from receipt of this Resolution.

**SO ORDERED.”**

**By authority of the Court:**

**LIBRADA C. BUENA**  
Division Clerk of Court  
SAU/17

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**196**

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals  
6000 Cebu City  
(CA-G.R. CR HC No. 00440)

The Hon. Presiding Judge  
Regional Trial Court, Branch 47  
Bacolod City, 6100 Negros Occidental  
(Crim. Case Nos. 25170 & 25171)

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

PUBLIC ATTORNEY'S OFFICE  
Regional Special and Appealed Cases Unit  
Counsel for Accused-Appellant  
3<sup>rd</sup> Floor, Taft Commercial Center  
Metro Colon Carpark  
Osmeña Boulevard, 6000 Cebu City

Philippine Judicial Academy (x)  
Supreme Court

Ms. Gemma C. Dacumos (x)  
Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

Judgment Division (x)  
Supreme Court

The Superintendent (x)  
Correctional Institution for Women  
1550 Mandaluyong City

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

UR

*AW*

*NET*