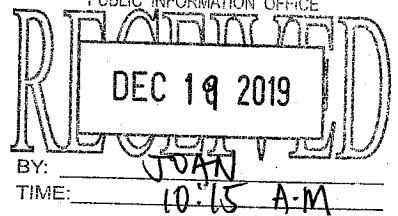




Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

**“G.R. No. 218579 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ARMANDO SANTOS y ORTIS, accused-appellant.**

This is an Appeal<sup>1</sup> under Section 13, Rule 124 of the Rules of Court from the Decision<sup>2</sup> dated November 11, 2013 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05328, which affirmed the Decision<sup>3</sup> dated November 11, 2011 rendered by the Regional Trial Court of Caloocan City, Branch 120 (RTC), in Criminal Case No. C-80915, which found herein accused-appellant Armando Santos y Ortis (Santos) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

**The Facts**

An Information<sup>4</sup> was filed against Santos for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 26<sup>th</sup> day of February, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, [Santos] without authority of law, did then and there willfully, unlawfully[,] and feloniously sell and deliver to PO3 FIDEL B. CABINTA who posed, as [poscur] buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.04 gram, a dangerous drug, without the corresponding license or prescription therefor, knowing the same to be such.

- over – eleven (11) pages ...

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<sup>1</sup> See Notice of Appeal dated December 9, 2013, *rollo*, pp. 15-16.

<sup>2</sup> *Rollo*, pp. 2-14. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan, concurring.

<sup>3</sup> *CA rollo*, pp. 19-28. Penned by Judge Aurelio R. Ralas, Jr.

<sup>4</sup> Records, p. 2.

Contrary to Law.<sup>5</sup>

*Version of the Prosecution*

The version of the prosecution, as summarized by the Office of the Solicitor General and adopted by the CA, is as follows:

“On February 25, 2009, a confidential informant, reported to the Anti-Illegal Drugs Special Operations Task Group, Caloocan City about the illegal drug selling activities of a certain alias Eyong along Heroes del ‘96, Barangay 73, Caloocan City. Said information was communicated to [SPO1 Cabinta] and [SPO1 Gomboc] who in turn conveyed the same to their Chief, Insp. Jerome Balbontin.

Acting on the report, P/Chief Balbontin instructed P/Insp. Crisanto Lleva to form a team to conduct a buy-bust operation. Said team was composed of [SPO1 Cabinta] who will act as the poseur-buyer, [SPO1 Gomboc], as security back-up. P/Senior Insp. Crisanto Lleva, P[O]3 Cahilig, PO3 Managhaya and PO3 Llandera as perimeter security back-ups.

Buy-bust money in the amount of P200.00 composed of two (2) P100.00 bills were also-prepared. SPO1 Cabinta placed his initials on the buy-bust money.

On February 26, 2009, the buy-bust team went to Heroes del ‘96, Barangay 73, Caloocan City. Their target person is *alias* Eyong. Upon arrival at the area, SPO1 Cabinta and the confidential informant entered the alley and they met a male person who turned out to be appellant and the confidential agent answered that they are looking for *Alias* Eyong. The male person answered, “*Magkano ba? Wala si Eyong, eh.*”

SPO1 Cabinta answered, “Two Hundred (P200.00) just for our personal consumption.” Appellant told them that he had the *shabu* at that time so SPO1 Cabinta handed to him the P200.00 buy-bust money and appellant in turn handed a plastic sachet suspected to contain shabu.

Upon receipt of the plastic sachet, SPO1 Cabinta held appellant and introduced himself as a policeman and he took off his cap as a sign that the sale is already consummated. SPO1 Gomboc was the first one who rushed to SPO1 Cabinta and assisted him in arresting the appellant. At the police office, they learned of appellant’s name is Armando Santos.

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<sup>5</sup> Id.



Markings were placed on the plastic sachet and an inventory was conducted in the presen[ce] of a media representative. A request for the examination of the specimen was made and said specimen was sent to the PNP Crime Laboratory. The test yielded positive for the presence of methamphetamine hydrochloride as indicated in the laboratory result.”<sup>6</sup>

### *Version of the Defense*

On the other hand, the defense’s version, as summarized by the Public Attorney’s Office and adopted by the CA, is as follows:

“**ARMANDO SANTOS** (“Santos”) was at the corner of Samson Road and Masagana Street in Caloocan in the morning of 26 February 2009 when three (3) men suddenly approached him. One of the men held him and asked where he lives. When he answered that he was from Heroes Del, he was frisked. His bag and wallet, which contained one hundred twenty pesos (P120.00) and his working clothes were taken from him. He was then asked to board a van where he was repeatedly asked if [he] knew a certain Masong. He, however, does not know anyone by the said name. He was brought to the police station, where he was again asked about Masong. He was already detained for two (2) days when a policeman asked him how much he could give for his release. Santos answered that nothing was recovered from him and he has no money.”<sup>7</sup>

### **Ruling of the RTC**

In the assailed Decision dated November 11, 2011, the RTC found Santos guilty of the crime charged. The dispositive portion of the Decision reads:

Premises considered, this court finds the accused **Armando Santos y Ortis GUILTY** beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).

The drugs subject matter of this case is (*sic*) hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.  
11 November 2011.<sup>8</sup>

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<sup>6</sup> Rollo, pp. 4-5.

<sup>7</sup> Id. at 5-6.

<sup>8</sup> CA rollo, p. 28.

The RTC ruled that the prosecution's evidence established that there was indeed a sale of dangerous drugs between Santos and the poseur-buyer.<sup>9</sup> It held that since Santos was caught in *flagrante*, his identity as the seller of *shabu* could no longer be disputed.<sup>10</sup> Also, against the positive testimonies of the prosecution witnesses, Santos's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail.<sup>11</sup> It further held that Santos miserably failed to show that the members of the buy-bust team were impelled by any improper motive or that they did not properly perform their duty.<sup>12</sup> Lastly, it ruled that the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority is worthy of full faith and credit.<sup>13</sup>

Aggrieved, Santos appealed to the CA.

### Ruling of the CA

In the assailed Decision dated November 11, 2013, the CA affirmed Santos's conviction. The dispositive portion of the Decision reads:

**WHEREFORE**, the appeal is **DENIED**, and the Decision appealed from is **AFFIRMED**.

**SO ORDERED.**<sup>14</sup>

The CA ruled that all the elements of the crime of illegal sale of dangerous drugs were clearly proven by the prosecution through the credible testimony of SPO1 Fidel Cabinta (SPO1 Cabinta), the designated poseur-buyer.<sup>15</sup> It further ruled that unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duties, it has been ruled that their testimonies on the buy-bust operation deserve full faith and credence.<sup>16</sup> It held that the prosecution was able to prove the unbroken chain of custody of the confiscated *shabu*.<sup>17</sup> Lastly, it ruled that strict compliance with Section 21 is not

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<sup>9</sup> Id. at 24.  
<sup>10</sup> Id. at 25.  
<sup>11</sup> Id.  
<sup>12</sup> Id. at 26.  
<sup>13</sup> Id. at 27.  
<sup>14</sup> *Rollo*, p. 13.  
<sup>15</sup> Id. at 7.  
<sup>16</sup> Id. at 8-9.  
<sup>17</sup> Id. at 10.

necessary.<sup>18</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized drug.<sup>19</sup> In this case, as borne by the evidence on record, the integrity and evidentiary value of the seized sachet were properly preserved with the crucial links in the chain of custody thereof having been duly established by the prosecution.<sup>20</sup>

Hence, the instant appeal.

### Issue

Whether Santos's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

### The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Santos as the prosecution failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 which thus results in its failure to prove his guilt beyond reasonable doubt.

Santos was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must prove the following elements: (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 therefor.<sup>21</sup>

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.<sup>22</sup> While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,<sup>23</sup> the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

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<sup>18</sup> Id. at 12.

<sup>19</sup> Id.

<sup>20</sup> Id. at 13.

<sup>21</sup> *People v. Opiana*, 750 Phil. 140, 147 (2015).

<sup>22</sup> *People v. Guzon*, 719 Phil. 441, 451 (2013).

<sup>23</sup> *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows the buy-bust operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.<sup>24</sup> The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.<sup>25</sup>

In this connection, Section 21, Article II of RA 9165,<sup>26</sup> the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”<sup>27</sup>

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<sup>24</sup> *People v. Guzon*, *supra* note 22, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

<sup>25</sup> *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

<sup>26</sup> The said section reads as follows:

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[.]

<sup>27</sup> *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

*The police officers utterly failed to comply with the requirements of Section 21.*

In present case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drug and consequently, reasonable doubt as to the guilt of the accused.

Based on the testimony of SPO1 Cabinta, it is obvious that **none of the three required witnesses was present at the time of seizure of the shabu and apprehension of the accused.**<sup>28</sup> At the police station, where the alleged marking and inventory of the seized item took place, only a media representative was present. **Moreover, said media representative did not even witness the actual marking and inventory of the seized shabu as she was only called in to sign the already accomplished inventory report.**<sup>29</sup> In addition, the signature of Santos and his counsel do not appear in the inventory report.<sup>30</sup> The prosecution did not even submit any photograph of the seized *shabu*. It merely submitted a mugshot of the accused.<sup>31</sup>

Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. Further, the inventory must be done **in the presence of the accused, his counsel or representative, a representative of the DOJ, the media and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory, is mandatory and that the

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<sup>28</sup> TSN, September 13, 2011, pp. 8-12.

<sup>29</sup> Id. at 9.

<sup>30</sup> Exhibit "E," records, p. 9.

<sup>31</sup> Exhibit "F," id. at 44.

law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,<sup>32</sup> the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,<sup>33</sup> without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. 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.”<sup>34</sup>

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<sup>32</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131.

<sup>33</sup> 736 Phil. 749 (2014).

<sup>34</sup> *People v. Tomawis*, supra note 32, at 149-150.



It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,<sup>35</sup>

It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) **their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**<sup>36</sup> (Emphasis in the original)

In this case, none of the abovementioned reasons is present. In fact, the prosecution did not offer any explanation as to the absence of the three required witnesses at the place of arrest.

*The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.*

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.<sup>37</sup> The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing

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<sup>35</sup> G.R. No. 231989, September 4, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

<sup>36</sup> Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

<sup>37</sup> CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.<sup>38</sup>

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.<sup>39</sup> The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.<sup>40</sup> Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>41</sup>

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*<sup>42</sup> that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Santos.

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 11, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05328 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ARMANDO SANTOS y ORTIS** is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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<sup>38</sup> *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

<sup>39</sup> *People v. Mendoza*, supra note 33, at 770.

<sup>40</sup> Id. at 769.

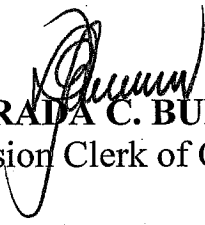
<sup>41</sup> *People v. Catalan*, 699 Phil. 603, 621 (2012).

<sup>42</sup> 393 Phil. 68, 133 (2000).

Let a copy of this Resolution be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

**SO ORDERED.** *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>12/17</sup>  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR HC No. 05328)

The Hon. Presiding Judge  
Regional Trial Court, Branch 120  
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(Crim. Case No. C-80915)

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