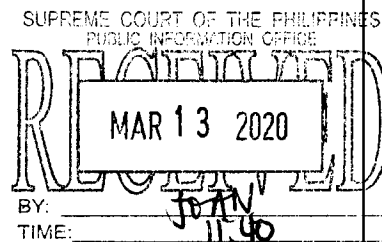




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

“G.R. No. 243389 - People of the Philippines v. Arnold Francisco y Javier a.k.a. “Anot”

On appeal is the February 15, 2018 Decision¹ of the Court of Appeals in CA-G.R. CR HC No. 09039 which affirmed the January 12, 2017 Decision² of the Regional Trial Court (RTC), 4th Judicial Region, Branch 73, Antipolo City, in Criminal Case No. 04-28921 finding accused-appellant Arnold J. Francisco (Francisco) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drug, as defined and penalized under Section 5, Article II of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information³ dated November 17, 2004, appellant Francisco was charged with illegal sale of dangerous drugs, reading as follows:

That on or about the 13th day of November 2004, in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there wilfully, unlawfully and knowingly sell, deliver and give away to another 0.03 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which was found positive to the test of methylamphetamine hydrochloride, a dangerous drug,

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¹ Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justice Nina G. Antonio-Valenzuela and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 2-15.

² CA *rollo*, pp 48-54.

³ RTC records, pp. 1-2.

in consideration of the amount of Php100.00, in violation of the above-cited law.

Contrary to law.

The evidence of the prosecution shows that at around 10 a.m. of November 11, 2004, Special Police Officer (SPO) 2 Froilan Loyola (Loyola) and Police Officer (PO) 1 Hector Lico (Lico) of the Philippine National Police (PNP), Taytay, Rizal received an Information from a confidential informant (CI) alias Edgar on the drug peddling activities of Francisco at his residence on M.C. Ison Street, Barangay Sta. Ana, Taytay, Rizal. On the following day, at around 3 p.m., SPO2 Loyola, PO1 Lico and PO1 Dexter Pangilinan (Pangilinan), accompanied by the CI conducted surveillance on the said area wherein they observed suspicious transactions and exchanges involving Francisco and unknown men which the CI confirmed to be a sale of dangerous drugs. They immediately reported what they observed to their chief, Police Superintendent (P/S) Jaime Piloneo (Piloneo), who ordered them to conduct an entrapment operation against Francisco. The buy-bust team was composed of SPO2 Loyola, as the team leader, PO1 Lico, as the poseur buyer, PO1 Rogelio Marundan and PO1 Pangilinan served as back-up. During the briefing, SPO2 Loyola gave to PO1 Lico a ₱100.00 bill with serial number SR420356 and marked "FRL" which stands for "Froilan R. Loyola" to be used in purchasing a sachet of *shabu*.⁴

At around 8:10 p.m. of November 13, 2004, the team, accompanied by the CI proceeded to the target area; Thereat PO1 Lico and the CI approached Francisco who was then standing near his house, talking to three other men namely: Herbert Jay Gonzales (Herbert), Sonny V. Santos (Sonny) and Richard D. Alonzo (Richard).⁵

Upon seeing PO1 Lico and the CI, Francisco asked them, "*o pare kuha rin ba kayo?*" to which PO1 Lico answered, "*Oo piso lang pare*" simultaneously handing the ₱100.00 bill marked money. Upon receiving the money, Francisco entered the house and returned after a couple of minutes and handed to PO1 Lico a plastic sachet containing white crystalline substance suspected to be *shabu*. He also gave one sachet each to Sonny and Herbert and passed one sachet of dried marijuana leaves to Richard.⁶ At this juncture, PO1 Lico gave the

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⁴ TSN, May 29, 2013, pp. 4-7.

⁵ Id. at 8-9.

⁶ Id. 10-11.

pre-arranged signal by taking off his cap. SPO2 Loyola and the rest of the buy-bust team immediately proceeded to their position, but Francisco and the three men scampered when they saw the approaching policemen. PO1 Lico was able to get a hold of Francisco while SPO2 Loyola and the rest of the team were able to subdue Sonny, Herbert and Richard.⁷

The buy-bust team introduced themselves as police officers. PO1 Lico gave to SPO2 Loyola the transparent sachet which she bought from Francisco. SPO2 Loyola marked the said transparent sachet with "RVM-1." The sachets of *shabu* recovered from Herbert and Sonny were marked "RVM-2" and "RVM-3," respectively, while the plastic sachet of dried marijuana leaves recovered from Richard was marked "RVM-4." The team directed Francisco to remove the contents of his pocket which resulted in the confiscation of the ₱100.00 bill marked money.⁸

SPO2 Loyola informed Francisco and the three men of their constitutional rights. When asked whether they understood their rights as explained, they responded in the affirmative and stated that "*kukuha na lang po kami ng sariling abogado.*"

Francisco and the three men were immediately brought to the Taytay Police Station. SPO2 Loyola kept the seized item under his custody from the time PO1 Lico gave the said item to him, that is, immediately after Francisco's arrest up to the time he reached Taytay Police Station. At the police station SPO2 Loyola turned over the confiscated item to the investigating officer, PO1 Rogelio Marundan who prepared the request for laboratory examination and thereafter turned over the specimen to PO Valdez, who brought the same to the PNP Crime Laboratory. The incident including the confiscated item was recorded in the blotter book.⁹

Police Inspector and Forensic Chemist Glenn Tuazon of the PNP Chemistry Division conducted qualitative examination on the specimen. Per Chemistry Report No. R-10-06 (D-1071-04),¹⁰ the specimen with markings "A-1-1 D-1071-04 A-1-11-14-04 ACP RVM-1 yielded positive for methamphetamine hydrochloride, a dangerous drug known as *shabu*.

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⁷ TSN, September 5, 2013, p. 10; TSN, July 10, 2014, pp. 10-11.

⁸ Id. at 13.

⁹ TSN, September 5, 2013, p. 4-5.

¹⁰ Exhibit "A," RTC records, p. 263.

The evidence for the defense, on the other hand, shows that on November 13, 2004, at around 8:30 p.m., while Francisco was seated with his billiard playmates in front of the former aunt's house, some police officers arrived and suddenly frisked them without any explanation at all. Afterwards, they were boarded in their vehicles and brought to Taytay Police Station. According to Francisco, he was falsely charged with illegal sale of dangerous drugs by concocting a story that he was caught in the act of selling the same in a buy-bust operation conducted against him.

On January 12, 2017 the RTC promulgated its Decision, the dispositive portion of which, reads:

WHEREFORE, in light of all the foregoing, accused Arnold J. Francisco is hereby found **GUILTY** beyond reasonable [. . .] doubt of illegal sale of dangerous drugs, as defined and penalized under Section 5, 1st Paragraph, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos.

The contrabands subject hereof are hereby confiscated, the same to be disposed of as the law prescribes.

SO ORDERED.¹¹

Aggrieved, Francisco appealed his conviction to the Court of Appeals.

The Court of Appeals, in its Decision dated February 15, 2018, affirmed *in toto* the RTC ruling. It upheld the trial court's factual findings and was convinced that the prosecution has satisfactorily established all the elements constituting the illegal sale of *shabu*. It also ruled that the marking of the seized item in the presence of the appellant is already a sufficient observance of the rules on the chain of custody. In the end, it ruled that the integrity and the evidentiary value of the seized items were duly preserved.

Accordingly, the Court of Appeals disposed as follows:

IN VIEW OF THE FOREGOING, We hereby **DISMISS** the present appeal. Accordingly, the impugned Decision of the court *a quo* is **AFFIRMED**.

SO ORDERED.

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¹¹ CA rollo, p. 54.

Hence, this appeal seeking Francisco's conviction be overturned.

In deciding a criminal case, the policy of the courts is always to look at the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, averting general conclusions from isolated pieces of evidence. This means that an appeal of a criminal case opens its entire records for review.¹²

Appellant was charged of Illegal Sale of Dangerous Drugs. In a prosecution for the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) proof that the transaction or sale took place; (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; and (3) identification of the buyer and seller. It is essential that the identity of the prohibited drug be proved with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, planting or contamination of the evidence. The necessity of maintaining an unbroken chain of custody and the mechanics of the custodial chain requirement were explained in *Mallillin v. People*,¹³ thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible

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¹² *People v. Larrañaga*, 502 Phil 231, 240 (2005).

¹³ 576 Phil 576, 587 (2008).

to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

In *People v. Kamad*,¹⁴ the Court recognized the following links that must be established in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

The unauthorized sale of dangerous drug committed by appellant happened on November 13, 2004, thus the governing law is R.A. No. 9165 before its amendment in 2014.

Section 21(1) of R.A. No. 9165 outlines the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia, to wit:

(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;

Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which mandates that:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physical 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:

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¹⁴ 624 Phil. 289, 304 (2010) cited in *People v. Jagdon*, G.R. No. 234648, March 27, 2019.

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*, further, that non-compliance with 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 of and custody over said items.

The cited provision strictly requires that; (1) the seized items be inventoried and photographed immediately after seizure and 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.¹⁵ However, non-compliance of the apprehending team to strictly comply with the procedure laid down under Section 21 of R.A. No. 9165 and its implementing rules does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserve.¹⁶ Prevailing jurisprudence, instructs that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume that these grounds are or that they even exist.¹⁷

After a thorough review of the records, the Court finds that the police officers completely disregarded Section 21 of R.A. No. 9165.

While the prosecution was able to show that SPO2 Loyola placed markings on the seized illegal drugs in the presence of appellant, however, none of the required witnesses, such as the representative from the media and the DOJ and any elected public officials were present at the place of arrest to witness the marking of the seized *shabu*. PO1 Lico testified during his cross-examination, thus:

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¹⁵ *People v. Galuken*, G.R. No. 216754, July 17, 2018.

¹⁶ *People v. Goco*, 797 Phil 433, 443 (2016)

¹⁷ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

Atty. Reonal:

Q Before going to the place of operation, did you communicate with the Department of Justice (DOJ)?

A No, sir.

Q How about *barangay* official?

A No, sir.

It is clear that the buy-bust team did not obtain or make any attempt to prove that there were genuine and earnest efforts exerted to secure the presence of the required witnesses. It is baffling that not a single member of the arresting team could secure the presence of the required witnesses when a day before their operation, a surveillance was conducted and they reported to their chief, P/S Piloneo that indeed Francisco peddled illegal drugs. The absence of the required witnesses without any justifiable reason and the lack of honest-to-goodness efforts to secure their presence are serious lapses that taint the integrity and evidentiary value of the seized illicit drugs.

SPO2 Loyola also admitted that they neither prepared an inventory nor photographed the seized item. He declared:

Atty. Carlo Magno Reonal

Q Did you take picture of sachet involving this case?

A None, sir

Q How about written inventory?

A None, sir.

However, despite the non-observance of this requirement, the prosecution did not bother to give a plausible explanation thereof. In *Zarraga v. People*,¹⁸ the Court held that the material inconsistencies with regard to when and where the markings on the *shabu* were made and **the lack of inventory on the seized drugs** created reasonable doubt as to the identity of the *corpus delicti*. The Court thus acquitted the accused due to the prosecution's failure to indubitably show the identity of the *shabu*. In *People v. Guieb*,¹⁹ the court reiterated the consequence of the failure of the prosecution to provide justifiable grounds for non-compliance with Sec. 21 of R.A. No. 9165 and its IRR:

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¹⁸ 519 Phil. 614, 624 (2006).

¹⁹ G.R. No. 233100, February 14, 2018.

To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply. To reiterate, the law requires the presence of the enumerated witnesses — namely, an elected official, as well as a representative from the DOJ and the media — to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified [non-compliance] with the prescribed procedure under Section 21, Article II of RA 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.

Verily, the procedural lapse committed by the police officers, which was unfortunately unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It is well-settled that the procedure in Section 21, Article II of RA 9165, is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution failed to provide justifiable grounds for [non-compliance] with Section 21, Article II of RA 9165, as well as its IRR, Guieb's acquittal is perforce in order.

The Court also observes that the Court of Appeals gave credence to the testimonies of the police officers and accorded them the presumption of regularity in the performance of their duty. This presumption does not hold water in this case.

A presumption of regularity in the performance of duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.²⁰ Hence, non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.

In view of the foregoing, as the chain of custody has been breached, consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. It is thus proper that appellant should be acquitted and released from restraint.

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²⁰ Supra note 13, at 311.

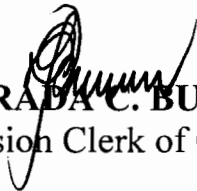
WHEREFORE, the appeal is **GRANTED**. The Decision dated February 15, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09039 which affirmed the January 12, 2017 Decision of the Regional Trial Court of Antipolo City is **REVERSED** and **SET ASIDE**.

Appellant Arnold J. Francisco is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to implement this Resolution and inform the Court of the date of the actual release from confinement of the appellant within five (5) working days from receipt hereof.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{at 210}
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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09039)

The Hon. Presiding Judge
Regional Trial Court, Branch 73
1870 Antipolo City
(Crim. Case No. 04-28291)

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

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