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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 5, 2019** which reads as follows:

“G.R. No. 244376 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus MARK LESTER BASCO y MITRA @* “TIKYO”, accused-appellant.

This is an Appeal¹ under Section 13(c), Rule 124 of the Rules of Court from the Decision² dated October 24, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08287, which affirmed the Decision³ dated March 9, 2016 rendered by the Regional Trial Court, Branch 12, Lipa City (RTC) in Criminal Case No. 0576-2010, finding accused-appellant Mark Lester Basco y Mitra @ “Tikyo” (Mark) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended,

The Facts

Mark was charged with violating Section 5, Article II of RA 9165. The Information⁵ filed against Mark pertinently reads:

The undersigned Associate City Prosecutor accuses Mark Lester Basco y Mitra alyas “Tikyo” for Violation of Section 5, Article II of Republic Act No. 9165 known as “The

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* Spelled “alias” or “alyas” in some parts of the CA *rollo* and records.

¹ *Rollo*, pp. 19-20. See Notice of Appeal dated November 15, 2018.

² *Id.* at 3-18. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Marlene B. Gonzales-Sison and Ma. Luisa C. Quijano-Padilla, concurring.

³ *CA rollo*, pp. 49-54. Penned by Judge Danilo S. Sandoval.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES” (2002).

⁵ Records, p. 1.

Comprehensive Dangerous Drugs Act of 2002”, committed as follows:

That on or about 6th day of December, 2010 at about 3:15 o'clock in the afternoon at Brgy. Bugtong na Pulo, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver, dispose or give away to a police informer/poseur buyer 0.04 grams (*sic*) of Methamphetamine Hydrochloride, locally known as “shabu”, a dangerous drug contained in one (1) plastic sachet.

Contrary to law.

Lipa City, December 7, 2010.⁶

Upon arraignment, Mark pleaded not guilty to the crime charged.⁷

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

The following persons testified for the Prosecution: PO3 Robert I. Espiritu (“PO3 Espiritu”); PO1 Dan R. Gonzales (“PO1 Gonzales”); PO2 Joseph O. Valencia (“PO2 Valencia”); PO1 Herbert Bereña (“PO1 Bereña”); and Police Senior Inspector Herminia Carandang Llacuna (“PSI Llacuna”).

The evidence for the Prosecution is summarized thus: In the last week of November, a police asset reported to PO3 Espiritu and PO2 Valencia that alias “Tikyo” (later identified as the appellant Mark) was engaged in selling drugs at Barangay Bugtong na Pulo, Lipa City (“Target Site”). Acting on the report, PO3 Espiritu, PO1 Gonzales, and PO2 Valencia, conducted surveillance operations on the appellant Mark in the first week of December. However, the surveillance operations were unsuccessful, because the police were not able to verify the identity of the appellant Mark, and did not see the appellant Mark selling drugs.

On 6 December 2010, at 9:00 a.m., the police asset Bong Lunal (“Police Asset Lunal”) reported to the City Anti-Illegal Drugs Special Operation Task Force (“CAID-SOTF”) at the Lipa City Police Station (“Police Station”) and informed PO3 Espiritu and PO2 Valencia that he (Police Asset Lunal) could buy drugs from the appellant Mark on that day. Thus, PO3 Espiritu (as Team Leader) formed the buy bust team (“Buy Bust Team”) with PO2

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⁶ Id.

⁷ Rollo, p. 4.

Valencia (as Arresting Officer), and PO1 Gonzales (as Poseur Buyer). PO3 Espiritu prepared the Coordination Form and Pre-Operation Report. PO3 Espiritu faxed the Coordination Form, and Pre-Operation Report, to PDEA, and one Agent Barte received the documents at the PDEA. The PDEA authorized the conduct of the buy-bust operation by issuing Control No. 1210-0024. PO1 Gonzales prepared the marked money consisting of one P500.00 bill, and placed his initials "DRG" on the front and back portion of the marked money. PO3 Espiritu informed PO1 Gonzales that the person who was to sell the contraband was the man with long hair, and with a tattoo. The police agreed that the pre-arranged signal that the drug sale has been consummated, was when PO1 Gonzales place[d] his hands over the shoulder of Police Asset Lunal.

On 06 December 2010, at 2:45 p.m., the Buy Bust Team left the Police Station, and proceeded to the Target Site. When the Buy Bust Team reached the Target Site, the Buy Bust Team first went to the Barangay Hall and met Kagawad Rolando Bautista ("Kagawad Bautista"). Kagawad Bautista guided the Buy Bust team to the alley where the appellant Mark's house was located. At the alley, PO1 Gonzales and the Police Asset Lunal walked towards the house of the appellant Mark, while PO3 Espiritu and PO2 Valencia hid behind the store that was about ten meters from the house of the appellant Mark. In the alley, the Police Asset Lunal saw the appellant Mark, and Police Asset Lunal pointed out the appellant Mark to PO1 Gonzales. PO1 Gonzales and the appellant Mark nodded at each other. The appellant Mark asked PO1 Gonzales the quantity of *shabu* PO1 Gonzales wanted to buy, and PO1 Gonzales said that he wanted P500.00 worth of *shabu*. PO1 Gonzales handed over the marked money to the appellant Mark, and in turn the appellant Mark handed to PO1 Gonzales one plastic sachet containing a white crystalline substance. At that point, PO1 Gonzales placed his hand over the shoulder of the Police Asset Lunal (the pre-arranged signal that the sale had been consummated). PO3 Espiritu and PO2 Valencia immediately approached the appellant Mark, and PO3 Espiritu handcuffed the appellant Mark, introduced himself as a policeman, and informed the appellant Mark of his Miranda rights. PO3 Espiritu took the marked money from the right hand of the appellant Mark and frisked the appellant Mark, but founding nothing in the appellant Mark's pockets. PO1 Gonzales turned over the plastic sachet containing a white crystalline substance to PO2 Valencia at the exit of the alley. PO2 Valencia placed his initials "JOV-MMB" on the plastic sachet containing a white crystalline substance. The Buy-Bust Team proceeded to the Police Station. At the Police Station, PO3 Espiritu prepared the Request for Drug Test, and Request for Laboratory Examination. PO2 Valencia placed the plastic sachet containing a white crystalline substance in a bigger plastic sachet and marked the bigger plastic sachet with his initials "JOV-MMB-1." PO1 Gonzales prepared the Inventory of Confiscated and Seized Items, and took pictures of the conduct of the inventory. PO3 Espiritu, Kagawad Bautista, radio station disk jockey Lyn

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Sunga (DJ Sunga), and the appellant Mark, signed the Inventory of Confiscated and Seized Items. PO2 Valencia brought the seized item to the Batangas Provincial Crime Laboratory Office ("Crime Laboratory"). PO1 Bereña received the seized item at the Crime Laboratory, and then turned over the seized item to PSI Llacuna for laboratory examination. Per Chemistry Report Sciences No. BD-188-2010, qualitative examination of the seized contraband (Specimen A, weighing 0.04 gram) yielded a positive result to the test for the presence of methamphetamine hydrochloride, a dangerous drug. From the Crime Laboratory, PO2 Valencia and PO1 Gonzales brought the appellant Mark to the Granja Hospital for medical examination, and then PO2 Valencia and PO1 Gonzales went back to the Police Station to execute their Sinumpaang Salaysay.⁸

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

The following persons testified for the Defense: the appellant Mark; Jaime Pocholo Hernandez.

The evidence for the Defense is summarized thus: On 06 December 2010, the appellant Mark was inside his house at Barangay Bugtong Na Pulo, Lipa City, and at past 12:00 noon, Niño Tolentino arrived at the house of the appellant Mark, and Niño requested the appellant Mark to give Police Asset Lunal one pack of sealed Marlboro Cigarettes. As instructed, the appellant Mark gave the sealed pack of Marlboro Cigarettes to Police Asset Lunal, and then the appellant Mark proceeded to the neighborhood store to buy softdrinks. When the appellant Mark returned to his house, the appellant Mark saw three men in civilian clothes (later identified as PO3 Espiritu, PO2 Gonzales, and PO1 Valencia). The three men asked the appellant Mark where Niño Tolentino was, and the appellant Mark replied, "I do not know." The appellant Mark recognized PO3 Espiritu, because PO3 Espiritu was the investigator in another case where the appellant Mark was involved in. PO2 Valencia handcuffed the appellant Mark, and brought the appellant Mark to the Police Station for questioning. At the Police Station, PO1 Gonzales frisked the appellant Mark, and took the appellant Mark's cash of P120.00, and cellphone. Then, the police brought the appellant Mark to a room at the Police Station, where PO3 Espiritu, PO2 Valencia, PO1 Gonzales, and Kagawad Rolando Bautista were, and the appellant Mark saw money on the table. PO1 Gonzales took a plastic sachet from the drawer of the table, and placed the plastic sachet on the table, and the police made the appellant Mark sign a blank piece of paper.⁹

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⁸ Id. at 4-7.

⁹ Id. at 7-8.

Ruling of the RTC

In the Decision dated March 9, 2016, the RTC convicted Mark of the crime charged. The dispositive portion of the Decision reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of having committed the crime of drug pushing as defined and penalized under Section 5, Article II of Republic Act 9165 known as the Comprehensive Dangerous Drugs Act of 2002, as principal by direct participation and there being no modifying circumstances to be appreciated hereby sentences him to suffer the penalty of life imprisonment and a fine of P500,000.00.

The sachet of shabu is ordered confiscated in favor of the government for destruction purposes pursuant to the provisions of RA 9165.

SO ORDERED.

March 9, 2016, Lipa City, Batangas.¹⁰

The RTC ruled that all the elements of the crime charged were proven beyond reasonable doubt by the prosecution.¹¹ It further ruled that the identity and integrity of the *corpus delicti* were well preserved as the chain of custody of the specimen was proven.¹² Lastly, it held that the defense of denial by Mark cannot be given credence in the face of the positive assertion of the prosecution witnesses.¹³

Aggrieved, Mark appealed to the CA.

Ruling of the CA

In the assailed Decision dated October 24, 2018, the CA affirmed Mark's conviction. The dispositive portion of the Decision reads:

We **DISMISS** the appeal, and **AFFIRM** the assailed Decision dated 09 March 2016 of the Regional Trial Court, Branch 12, Lipa City in Criminal Case No. 0576-2010.

IT IS SO ORDERED.¹⁴

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¹⁰ CA *rollo*, p. 54.

¹¹ Id. at 53.

¹² Id. at 54.

¹³ Id.

¹⁴ *Rollo*, p. 17.

The CA ruled that the RTC did not err in convicting Mark of the crime of illegal sale of *shabu*.¹⁵ It further held that non-compliance with the requirements of Section 21, Article II of RA 9165, is not fatal and will not necessarily render the confiscated items inadmissible.¹⁶ What is important is that the integrity and evidentiary value of the seized item are preserved.¹⁷ The absence of a media representative or the Department of Justice (DOJ) is not fatal and will not render Mark's arrest illegal or the item seized from him inadmissible.¹⁸

Hence, the instant appeal.

Issue

Whether the CA erred in finding Mark guilty of the crime of Illegal Sale of Dangerous Drugs.

The Court's Ruling

The appeal is meritorious. Mark is accordingly acquitted for failure of the prosecution to prove his guilt beyond reasonable doubt for the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165.

In every drugs case, the confiscated drug constitutes the very *corpus delicti* of the offense¹⁹ and the fact of its existence is vital to sustain a judgment of conviction.²⁰ It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.²¹ Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.²²

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¹⁵ Id. at 10.

¹⁶ Id. at 14.

¹⁷ Id.

¹⁸ Id.

¹⁹ *People v. Sagana*, 815 Phil. 356, 367 (2017).

²⁰ *Derilo v. People*, 784 Phil. 679, 686 (2016).

²¹ *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

²² *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 370.

In this connection, the Court has repeatedly held that Section 21, Article II of RA 9165,²³ the applicable law at the time of the commission of the alleged crime, **strictly requires** that (1) the seized item 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 DOJ.²⁴

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized item — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.**²⁵

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible;²⁶ and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the item void, this has **always** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized item are properly preserved.²⁷

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²³ 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[.]

²⁴ See RA 9165, Art. II, Sec. 21 (1) and (2); *Ramos v. People*, G.R. No. 233572, July 30, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64716>>; *People v. Ilagan*, G.R. No. 227021, December 5, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64800>>; *People v. Mendoza*, G.R. No. 225061, October 10, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64646>>.

²⁵ *People v. Angeles*, G.R. No. 237355, November 21, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64869>>.

²⁶ *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁷ *People v. Ceralde*, 815 Phil. 711, 721 (2017).

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 is required to 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.²⁸

However, in the case at bar, the prosecution failed to prove all the elements of illegal sale of dangerous drugs due to the buy-bust team's multiple unexplained breaches of procedure in the seizure, custody and handling of the seized drug.

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

First, none of the required witnesses was present at the marking, inventory, and photographing of the seized *shabu*. PO3 Robert Espiritu (PO3 Espiritu) testified that the chief of the barangay tanod allegedly accompanied them to the place of arrest and thereafter, was also present at the police station to sign the inventory of the *seized shabu* together with a Radio Disk Jockey (DJ).²⁹ However, it must be stressed that they are not the required witnesses contemplated by Section 21, Article II of RA 9165. It is thus clear that the police officers were grossly ignorant of the requirements of Section 21.

The law clearly requires that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized item.³⁰ However, in the case at bar, none of them was present at the required place and time. The gross ignorance and deliberate disregard of the law by the police officers is emphasized even more by the fact that they did not invite the proper witnesses required by Section 21, Article II of RA 9165. Instead, they invited an appointed public official rather than an elected public official and a Radio DJ from an FM Radio Station.

Their obvious and inexcusable negligence is likewise stressed by the fact that they had more than sufficient time to properly comply with the requirements of Section 21, Article II of RA 9165. PO3 Espiritu testified that one week prior to the alleged buy-bust operation, they received reports that Mark was involved in selling *shabu*. Thus, for one whole week, they conducted surveillance against

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²⁸ *People v. Opiana*, 750 Phil. 140, 147 (2015).

²⁹ TSN, April 26, 2012, pp. 22-23.

³⁰ *People v. Angeles*, G.R. No. 237355, supra note 25.

Mark.³¹ It is thus evident that they had plenty of time prior to the alleged buy-bust operation to make the necessary preparations and coordinate with the mandatory witnesses under Section 21. However, they miserably failed to do so.

Second, whether there really was a buy-bust operation is even doubtful, as gleaned from the subsequent testimony of PO1 Dan Gonzales (PO1 Gonzales) that he was not even sure if there was really a media representative at the police headquarters to witness the inventory.³² The police officers did not even take pictures of the witnesses who were allegedly present.³³

Time and again, the Court has held that 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.³⁴ **Even more so in this case wherein no pictures were taken of the witnesses who were allegedly present at the police headquarters for the inventory and photography of the seized item.**

It bears stressing that the prosecution has the burden of (1) proving the police officers’ compliance with Section 21, Article II of 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*,³⁵

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**

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³¹ TSN, September 20, 2011, p. 9.

³² TSN, March 7, 2013, p. 29.

³³ Id. at 29-30.

³⁴ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 150.

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

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.³⁶ (Emphasis in the original and underscoring supplied)

Indubitably, none of the abovementioned circumstances was attendant in the case. PO3 Espiritu did not mention that the safety of the police officers during the inventory and photographing of the seized drugs was threatened by an immediate retaliatory action of Mark or any person/s acting for and in his behalf. He merely testified that the angry relatives of Mark were also present at the scene of the crime and that they *might* cause a commotion.³⁷ More importantly, he did not state any reason for the team's failure to invite the required witnesses for the buy-bust operation.

This case perfectly exemplifies the importance of compliance with Section 21, Article II of RA 9165. The police officers involved in this case should have been more prudent and careful in complying with the mandatory requirements of the law. They had enough time and opportunity to be compliant with the law, however, due to their gross negligence and palpable ignorance of the law, the integrity and evidentiary value of the seized item were compromised.

All told, the prosecution failed to prove the *corpus delicti* of the crime charged 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 Mark.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated October 24, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08287, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **MARK LESTER BASCO y MITRA @ "TIKYO"** is **ACQUITTED** of the crime of Section 5, Article II of Republic Act No. 9165 on the ground of

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³⁶ Id., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>>.

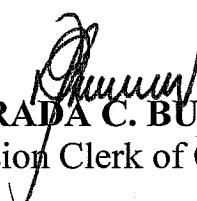
³⁷ TSN, April 26, 2012, p. 17.

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.

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

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The Hon. Presiding Judge
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(Crim. Case No. 0576-2010)

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