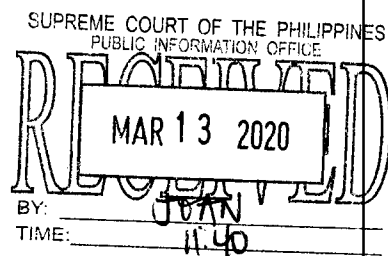




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 6, 2020 which reads as follows:

“G.R. No. 242822 – People of the Philippines v. Ronald Borja y Bareng

This is an appeal filed by the accused-appellant Ronald Borja y Bareng (Borja) from the Decision¹ dated November 29, 2017 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08837, which affirmed the Decision² dated October 28, 2016 of the Regional Trial Court (RTC) Branch 13, Laoag City convicting the Borja for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In two separate Information similarly dated September 23, 2013, Borja was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of the Information read:

Criminal Case No. 15673-13
[For violation of Section 5 of R.A. No. 9165]

That on or about the 21st day of September 2013 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously sell and deliver one (1) heat[-]sealed plastic sachet containing 0.1133 gram of Methamphetamine Hydrochloride locally known as [*shabu*] a dangerous drug, to a [*poseur-buyer*], without any license or authority, in violation of the aforesaid law.

- over – twelve (12) pages ...

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¹ Penned by Associate Justice Ramon A. Cruz, with Associate Justices Franchito N. Diamante and Pablito A. Perez, concurring; *rollo*, pp. 2-21.

² Penned by Judge Philip G. Salvador; *CA rollo*, pp. 57-74.

³ 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, approved on June 7, 2002.

CONTRARY TO LAW.

X X X X

Criminal Case No. 15674-13
[For violation of Section 11 of R.A. No. 9165]

That on or about the 21st day of September 2013 in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat[-]sealed plastic [sachet] containing 0.1994 gram of Methamphetamine Hydrochloride locally known as [*shabu*], a dangerous drug, without any license or authority, in violation of the aforesaid law.

CONTRARY TO LAW.⁴

Trial ensued following Borja's entry of a not guilty plea.

To establish its case, the prosecution presented the testimonies of Senior Police Inspector 4 Rovimmanuel Balolong (SPO4 Balolong), Police Officer 3 Lawrence Ganir (PO3 Ganir) and PO2 Engelbert Ventura (PO2 Ventura). Police Inspector Amiely Ann Navarro's testimony was dispensed with after the defense admitted her written proffered testimony. The defense, on the other hand, presented Borja and his girlfriend, Rosenda Limpio (Rosenda).

The facts as summarized in the pertinent CA Decision are as follows:

Version of the Prosecution

On September 21, 2013, sometime in the early afternoon, at the height of devastation of typhoon Odette, SPO4 Balolong received a call from one of the assets of the Laoag City Police Station informing him that he had contacted and had ordered ₱1,000.00 worth of *shabu* from a certain "Naldo," later identified to be herein accused-appellant, Borja, who agreed to deliver the *shabu* at their house in Barangay 9, Laoag City. SPO4 Balolong, thus, called to inform Police Superintendent Jeffrey Gorospe, the Chief of Police, who directed that a team be organized to conduct a buy-bust operation against Borja. The intended operation was thereupon immediately coordinated with the Philippine Drug Enforcement Agency and the buy-bust money

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⁴ Rollo, p. 3.

consisting of a ₱1,000.00 bill bearing serial number CX 939539 was prepared and reflected in the police blotter.⁵

Later, upon constitution of the team composed of SPO4 Balolong, PO3 Ganir (who was then a PO2), PO3 Arnel Saclayan (PO3 Saclayan) and PO2 Ventura (a PO1 at that time), a short briefing took place to plan the said buy-bust operation. PO3 Ganir, who was earlier given the buy-bust money, was designated to act as *poseur-buyer* while the rest were assigned as arresting officers and back up. The team thereafter went to the house of the asset riding in an unmarked vehicle and waited at the second floor of the house. In the meantime, the backup went to the adjacent room situated at the second floor of the house.⁶

Borja arrived at about 1:20 p.m. They then went to the room of the asset where the latter introduced PO3 Ganir as the one paying for the *shabu* that he ordered. After PO3 Ganir asked the subject if he brought the *shabu*, the exchange of the buy-bust money and a plastic sachet of suspected *shabu*, PO3 Ganir grabbed the hands of Borja, announcing his authority and telling Borja that he is under arrest. Borja resisted and grappled with PO3 Ganir on the wooden floor. At that instance, the backup who heard PO3 Ganir from the adjacent room rushed and helped in the arrest of Borja who was still putting up a strong resistance. The policemen, however, were eventually able to subdue and handcuff Borja. After which, he was frisked and the buy-bust money was recovered from his possession together with another plastic sachet of suspected *shabu*. The policemen asked him if he had any authority to sell and possess *shabu* and when he was not able to present any, he was informed of his constitutional rights.⁷

After the arrest of Borja, while the team was still in the house of the asset, they tried to get barangay officials for the inventory, but none were available because of the storm. Without witnesses, the team decided to mark, inventory and take photographs of the seized items.⁸

Later on, the charges against Borja were prepared at the police station. The crime laboratory, through its forensic chemist, examined the two plastic sachets recovered and found the contents positive of methamphetamine hydrochloride.⁹

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⁵ Id. at 5.

⁶ Id.

⁷ Id. at 5-6.

⁸ Id. at 6.

⁹ Id.

Evidence for the Defense

In his defense, Borja, 33 years of age, single, and who claimed to be a driver, essentially asserted in his defense that no buy-bust operation was conducted against him and that he was framed-up with planted evidence. Thus, as pieced together from his testimony and that of his witness, Rosenda, the version of the accused is as follows:

At 5:30 a.m. of September 21, 2013, Borja rode on a tricycle driven by Marton, a frequent customer in the chicken stall in Laoag City Public Market where Borja works. Before proceeding to the market, they passed by a house in Balintawak Street in Barangay 9 where Marton talked to a male person named Boyet Buted (Boyet). Afterwards, Marton finally brought Borja to the Laoag City Public Market. Upon alighting from the tricycle and paying his fare, Marton asked him if he can return to the house of Boyet later that day to get the money they talked about. In return, Marton will be the one to compensate him.¹⁰

Eventually, after finishing his work at around 12:30 p.m., Borja, together with Rosenda, went to the house of Boyet. To his surprise, when they reached the second floor of the house, four men whom he came to know later to be SPO4 Balolong, PO2 Ventura, PO3 Ganir and PO3 Saclayan, pointed their guns at him and arrested him. The policemen then grabbed him, pushed him down to the floor and stepped on his back. He struggled against them and shouted for help. After the policemen were able to handcuff him, they raised him up and officer Ganir frisked him. He took his cigarette and lighter and his money of less than ₱500.00. At that time, he did not see his girlfriend anymore.¹¹

Later, as he was made to sit, his things were placed on a table before him. At that instance, he observed Boyet talking and giving a plastic with white contents to SPO4 Balolong who then told PO3 Ganir, "*Daytoy tay bagi na*" (This is his). As PO3 Ganir asked him why he sold it, he protested and continued to struggle against the policemen, telling them that he saw Boyet giving the plastic to SPO4 Balolong. The policemen then took him to the police station where his mug shots and fingerprints were taken. Thereafter, he was placed in his cell.¹²

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¹⁰ Id. at 6-7.

¹¹ CA *rollo*, pp. 60-61.

¹² Id. at 61.

Ruling of the Trial Court

On October 28, 2016, the RTC rendered a Decision¹³ convicting Borja for violation of Sections 5 and 11 of R.A. No. 9165 for possession and sale of prohibited drugs. The *fallo* reads as follows:

WHEREFORE, judgment is rendered finding accused Ronald Borja y Bareng GUILTY beyond reasonable doubt for the two offenses leveled against him and is accordingly sentenced as follows:

1. For illegal sale of [*shabu*] as charged in Crim. Case No. 15473, to suffer the penalty of Life Imprisonment and to pay a fine of P500,000.00; and
2. For illegal possession of [*shabu*] weighing 0.1994 gram as charged in Crim. Case No. 15674, to suffer the indeterminate penalty of imprisonment of Twelve (12) years and One (1) day as minimum to Fourteen (14) years as maximum and to pay the fine of P300,000.00.

The plastic sachets of [*shabu*] subject of the charges are hereby forfeited for proper disposal as the law prescribes.

SO ORDERED.¹⁴

The RTC found that all the elements for the illegal possession and sale of dangerous drugs were fully established by the prosecution. It gave credence to the testimonies of PO3 Ganir who was utilized as the *poseur*-buyer and PO2 Ventura who found the plastic sachet of *shabu*, including a lighter and a cellular phone when they frisked Borja. It noted that no other defense was offered by Borja other than denial and frame-up. As for the chain of custody, the RTC found it sufficient that the marking, inventory and taking of photographs were done at the house of the asset where Borja was arrested. It also held that the two plastic sachets taken from him were the same ones presented in evidence during the trial.

Aggrieved, Borja filed a Notice of Appeal on November 8, 2016 which was given due course by the RTC in an Order¹⁵ dated November 14, 2016.

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¹³ Supra note 2.

¹⁴ CA *rollo*, pp.73-74.

¹⁵ Id. at 15

According to Borja, the accounts of the prosecution witnesses are marred with inconsistencies. Aside from that, Borja alleges that the police officers failed to observe the chain of custody requirement.

Ruling of the CA

In its Decision¹⁶ dated November 29, 2017, the CA affirmed the findings of the RTC. It agreed with the RTC that all the elements for illegal possession and sale of dangerous drugs were fully established by the prosecution. It also noted that there was substantial compliance in the chain of custody of the seized drugs from Borja since the integrity and evidentiary value of the seized items were properly preserved by the apprehending police.

Aside from that, the inconsistencies pointed out by Borja were ruled to be mere minor inconsistencies that do not affect the elements of the crime committed. Besides, such minor inconsistencies even show the truthfulness of the testimony as it proves that it is not a rehearsed testimony. Furthermore, CA ruled that Borja failed to provide any ill motive on the part of the police officers to support his claim of frame-up. Consequently, the presumption of regularity in the performance of duty must be upheld. Additionally, CA held that the defense of denial, such as the one offered by Borja, cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters when it is unsupported and unsubstantiated by clear and convincing evidence.

Hence, the present appeal.

In a Resolution¹⁷ dated December 10, 2018, the Court noted the records forwarded by the CA and notified the parties that they may file their supplemental briefs.

On March 27, 2019, a Manifestation¹⁸ of the Office of the Solicitor General (OSG), on behalf of the People of the Philippines, stated that the office was not filing a supplemental brief as the Brief for the Appellee¹⁹ dated September 5, 2017, filed with the CA, had sufficiently addressed the issues and arguments in the appellant's brief.

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¹⁶ Supra note 1.

¹⁷ *Rollo*, pp. 29-30.

¹⁸ *Id.* at 38-39.

¹⁹ *CA rollo* pp. 106-125.

The OSG maintained that the alleged failure to strictly comply with the requirements of the chain of custody under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) does not necessarily render the seized items inadmissible nor does it impair its evidentiary weight. It asserted that the prosecution was able to establish every link in the chain of custody through categorical and consistent account given by its witnesses in the handling of the confiscated illegal substance.

In turn, Borja filed his Manifestation (in lieu of Supplemental Brief) on March 20, 2019 indicating that he is adopting his Appellant's Brief²⁰ dated April 28, 2017, as his supplemental brief.

Borja claims that his arrest was illegal and that the alleged seized items were inadmissible for being fruits of a poisonous tree. He also highlighted the violations of R.A. No. 9165 and its IRR of the police officers specifically the conflict in the testimony among the members of the buy-bust team as to where the marking of the seized items took place. Additionally, Borja pointed out the absence of a representative from the Department of Justice (DOJ), an elected government official, and Borja or his representative, and that such fact was left unexplained by the prosecution. There was also no photograph of the alleged recovered sachets of *shabu* that was presented in court.

The Issue

The paramount issue for the Court's resolution is whether or not Borja's convictions for violation of Sections 5 and 11, Article II of R.A. No. 9165 should be upheld.

The Court's Ruling

The instant appeal is meritorious.

In this case, Borja was charged with illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, which has the following elements: (a) the identities of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.²¹ In addition, Borja was also charged with illegal possession of dangerous drugs, the elements of which are: (a)

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²⁰ Id. at 28-56.

²¹ *People v. Sumili*, 753 Phil. 342, 348 (2015), citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²² According to the RTC and the CA, all these elements were duly proven to justify the conviction of the accused.

However, it must be emphasized that to convict Borja for the foregoing crimes, it is of paramount importance that the identity of the confiscated drugs be established beyond reasonable doubt. The reason is to prevent any unnecessary doubt as to the identity of the dangerous drugs. In order to accomplish such, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.²³

Section 21, Article II of R.A. No. 9165, as amended by R.A No. 10640²⁴ outlines the procedure to be followed by the buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia.

Section 1 of R.A. No. 10640 states:

SEC. 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read 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 dangerous drugs,

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²² *People v. Bio*, 753 Phil. 730, 736 (2015).

²³ *People v. Viterbo*, supra note 21.

²⁴ 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.

controlled precursors and essential chemicals, 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.

In the case of *People v. Gutierrez*,²⁵ we clarified the application of R.A. No. 10640, thus:

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media AND the Department of Justice (DOJ), and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official AND a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

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²⁵ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

The abovementioned procedure is necessary given that narcotic substances are not readily identifiable and that they are subject to meticulous scientific analysis to determine their composition and nature, and are prone to tampering, alteration, or substitution either by accident or otherwise.²⁶ This necessitates the Court's imposition of a more exacting standard before they could be accepted as evidence. This is where the observance of the chain of custody becomes of paramount importance so as to ensure that the identity and the integrity of the *shabu* allegedly seized from the accused is duly preserved.²⁷

Non-compliance with these requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said items provided that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.²⁸ However, for this saving clause to apply, there must be justifiable reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.²⁹ The justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³⁰

At bench, since the seizure, marking and inventory were all done on September 21, 2013 which is prior to the enactment of R.A. No. 10640, the required witnesses in the instant case are a representative from the media and the DOJ, and any elected public official. However, as culled from the case records, there was no representative from the DOJ nor was there any elected public official present during the marking of the seized items. Worse, the marking was done without the presence of the accused nor his representative. Furthermore, there were disagreements on the accounts of the arresting officers as to whether the seized items were marked at the place where the alleged transaction was consummated.

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the

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²⁶ *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

²⁷ *People v. Andrada*, G.R. No. 232299, June 20, 2018.

²⁸ *People v. Sanchez*, 590 Phil. 214, 231-232 (2008), citing Section 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165 – which is now crystallized into statutory law with the passage of R.A. No. 10640, approved on July 15, 2014.

²⁹ *See People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁰ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

prosecution's case against the accused. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds; and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.³¹

Here, PO2 Ventura reasoned that the barangay officials were not in the barangay hall at that time due to an ongoing storm. However, this reason is dubious considering that the police officers merely asked the Police Assistance Center (PAC) to contact the barangay officials for them even if they are nearer to the barangay hall than the PAC personnel. Moreover, they failed to offer any explanation regarding the absence of the representatives from the media and the DOJ.

In addition, a mere scratch paper was used by PO3 Ganir and PO2 Ventura as inventory instead of a standard form under the Police Operations Manual. This is highly irregular and casts serious doubt on the credibility of the conducted buy-bust operation. Also, the said inventory on the scratch paper contained numerous irregularities such as the absence of the date of its preparation, the place where it was accomplished, the signature of Borja, as well as those required by law to observe the inventory, and the supposed markings of PO3 Ganir and PO2 Ventura.

Finally, despite the assertion of PO3 Ganir that PO3 Saclayan took pictures of the seized items, not a single photograph of the alleged sachets of *shabu* was presented in court. This leads us to doubt the truthfulness of the alleged operation.

All things considered, the failure to comply with the procedure outlined in Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640 negate the finding of guilt beyond reasonable doubt against Borja as the integrity and evidentiary value of the *corpus delicti* had been compromised. Therefore, the acquittal of Borja results.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08837 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Ronald Borja y Bareng is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason.

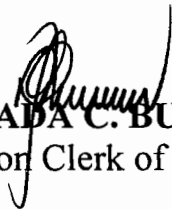
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³¹ *People v. Cayas*, 789 Phil. 70, 80 (2016).

SO ORDERED.” Lopez, J., on official leave.

Very truly yours,



LIBRADA C. BUENA
Division Clerk of Court

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Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 08837)

The Hon. Presiding Judge
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(Crim. Case Nos. 15673 & 15674)

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