



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 27, 2020**, which reads as follows:

“G.R. No. 242879 (People of the Philippines v. Rolly Concon y Pedillo). – This is an appeal from the Decision¹ of the Court of Appeals (CA) rendered on August 17, 2018 in CA-G.R. CR-HC No. 01592-MIN, whereby the CA affirmed the conviction of accused-appellant for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165² handed down by the Regional Trial Court, Cagayan de Oro City, Branch 23 (RTC).

The Antecedents

On December 11, 2015, two (2) separate Informations³ were filed against appellant for violation of Secs. 5 and 11, Article II of R.A. No. 9165, the accusatory portions of which respectively read:

Criminal Case No. CR-DRG-2015-771

That on December [9], 2015 at around 4:00 o'clock in the afternoon, at 33rd Street, Nazareth, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, deliver, and give away to another any dangerous drugs, did then and there willfully, unlawfully, and criminally deliver and give away to a police officer who acted as a poseur buyer, one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance in consideration of Php200.00 which[,] after a confirmatory test conducted by the PNP Crime Laboratory-X, was found positive for the presence of methamphetamine hydrochloride, locally known as shabu, a

¹ *Rollo*, pp. 3-31; penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring.

² The Comprehensive Dangerous Drugs Act of 2002.

³ RTC Records (Criminal Case No. CR-DRG-2015-771), pp. 2-3; RTC Records (Criminal Case No. CR-DRG-2015-772), pp. 2-3.

dangerous drug, weighing 0.0201 gram, said accused knowing the same to be a dangerous drug.

Contrary to and in violation of Section 5 of R.A. 9165.

Criminal Case No. CR-DRG-2015-772

That on December [9], 2015 at around 4:00 o'clock in the afternoon at 33rd Street Nazareth, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did and there willfully, unlawfully, and criminally have in his control and possession, one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance which after confirmatory test conducted by the PNP Crime Laboratory, was found positive for the presence of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing 0.0408 gram, said accused knowing the same to be a dangerous drug.

Contrary to and in violation of Section 11 of R.A. 9165.

Appellant pleaded "not guilty" to both charges during arraignment.⁴ Pre-trial and trial ensued thereafter.

The CA summarized the factual antecedents as follows:

Evidence of the Prosecution

The prosecution presented three witnesses, namely, PO2 Ruel L. Rodriguez (PO2 Rodriguez), PO2 Manolito Budo (PO2 Budo), and P.S.I. Charity Peralta Caceres, the forensic chemist.

The substance of their testimonies are as follows[:]

PO2 Ruel L. Rodriguez

He testified that he is a member of the Philippine National Police (PNP), assigned at Police Station 9.

According to him, on [9] December 2015, he was designated by their Station Commander, a certain Police Senior Inspector Sabanal, to act as a poseur-buyer in a team assigned to conduct a buy-bust operation

⁴ RTC Records (Criminal Case No. CR-DRG-2015-772), p. 18.

along 33rd Street, Nazareth, where, based on reports, the accused-appellant was peddling dangerous drugs. The police also confirmed these reports by previously surveilling and monitoring the activities of the accused-appellant.

The team was composed of four (4) operatives from Police Station 9, namely: PO2 Rodriguez, PO2 Budo, PO3 Reusora, and SPO2 Daclag.

For purposes of the buy-bust operation, he was handed two (2) Php100.00 bills, for a total amount of Php200.00, to be used as transaction money. To identify the bills, he wrote the letter "w" on both bills, specifically on the upper left portion of each one.

At around 4:00 o'clock in the afternoon of the same day, the team proceeded to 33rd Street, Nazareth. PO2 Rodriguez communicated with their confidential informant who was around the area and who, in turn, communicated with the accused-appellant to facilitate the transaction. The informant described to PO2 Rodriguez the appearance of the accused-appellant at the time so the latter could approach him for the buy-bust operation, although PO2 Rodriguez was also familiar with the appearance and identity of the accused as they had previously surveilled him.

Meanwhile, the rest of the team strategically positioned themselves around PO2 Rodriguez as he made his way to a passageway to meet the accused-appellant.

Upon meeting the accused-appellant, PO2 Rodriguez asked him, "Naay imo diha? Mupalit ko (Do you have? I will buy)", to which the former replied, "Naay ako bay (I have)" PO2 Rodriguez gave the marked money, while the accused-appellant gave him a sachet allegedly containing the prohibited drug.

After completing the transaction, PO2 Rodriguez gave the prearranged signal to his team, which was by scratching his head. When his team members saw the signal, PO2 Budo approached them and arrested the accused-appellant, while the other two acted as additional security for the group. PO2 Budo proceeded to frisk the accused-appellant, then recovered from his left pocket another sachet allegedly also containing the prohibited substance.

PO2 Rodriguez apprised the accused of his constitutional rights and handcuffed him. The latter was then brought to their police station. On the way to the station, PO2 Rodriguez held on to the sachet given to him as a result of the buy-bust operation, while PO2 Budo kept the other sachet recovered from the accused's left pocket as he was being frisked.

At the police station, SPO2 Daclag took pictures of the accused and the seized items. PO2 Budo also turned over the other sachet allegedly containing a dangerous drug over to PO2 Rodriguez. PO2 Rodriguez

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marked the two plastic sachets. The sachet given in exchange for the marked money was labelled "BB-RPC, 12/9/2015" to indicate that it was recovered as a result of the buy-bust operation on [9] December 2015 and that it was recovered from the accused, hence, his initials, Rolly P. Concon. The other sachet recovered after the accused was frisked was marked with the initials of the accused and the date the same was recovered, "RPC-1, 12/9/2015." Meanwhile, PO2 Rodriguez and PO2 Budo prepared the inventory receipt, stating that two heat-sealed transparent cellophanes were recovered from the accused. The two sachets were then placed in a single container sealed with masking tape and marked by PO2 Rodriguez with the initials of the accused and the date, "RPC, 12/9/2015."

The inventory and picture-taking at the police station was witnessed by a certain Kagawad Oming Pimentel of Barangay Nazareth, who can be seen in one of the pictures as wearing a yellow t-shirt.

PO2 Rodriguez then prepared a request for a laboratory examination of the seized substances, which he brought personally to the crime laboratory. He also personally retrieved the results of the examination, which showed that the substances tested positive for dangerous drugs.

PO2 [Manolito] Budo

He testified that he was also assigned at the same police station as PO2 Rodriguez. He was one of the selected officers to form part of the buy-bust team, organized by their Chief Intelligence Officer, SPO2 Mark Anthony Daclag, to arrest the accused-appellant.

Before conducting the buy-bust operation, they coordinated with the Philippine Drug Enforcement Agency (PDEA), which gave the team authority, as evidenced by a "pre-ops" number given to them, to conduct the buy-bust operation.

He then saw PO2 Rodriguez marked the two Php100.00 bills used for the buy-bust operation on the upper right corner of the bills.

The team then proceeded to 33rd St., Brgy. Nazareth, the area indicated by their confidential informant. Upon arriving, PO2 Budo and the others positioned themselves in strategic locations as PO2 Rodriguez met with the accused-appellant. According to him, the informant was also in the area when the buy-bust operation was being conducted.

PO2 Budo saw PO2 Rodriguez enter an alley and met with a person, who later turned out to be the accused-appellant. He saw PO2 Rodriguez hand something to the accused-appellant and the latter hand something in exchange to the former. After the transaction PO2 Budo saw PO2 Rodriguez do their prearranged signal, which is to touch his head. Upon seeing the signal, PO2 Budo ran to where PO2 Rodriguez and the accused were. PO2 Rodriguez was already holding on the accused-appellant. Meanwhile, PO2 Budo saw their informant run away, without

knowing the reason why. He then proceeded to frisk the accused and recovered from his left pocket one small transparent plastic cellophane.

Upon apprehending the accused, PO2 Budo informed him of his constitutional rights. He held on to the sachet recovered from the accused after he was arrested, while PO2 Rodriguez kept the sachet given by the accused during the buy-bust operation.

The team decided not to take photographs within the area of operation, as any people had begun to gather around them. Thus, the marking, inventory, and photographing were all conducted at the police station. On the way to the station, PO2 Budo was in possession of the sachet recovered after the accused was frisked while PO2 Rodriguez kept the other sachet received during the buy-bust operation. PO2 Budo then handed over possession of the sachet he seized from the accused over to PO2 Rodriguez, who marked both sachets. PO2 Rodriguez also conducted the inventory of the items recovered from the accused-appellant. Both he and PO2 Rodriguez signed the inventory receipt. The inventory was witnessed by a barangay official, Kagawad Pimentel, as seen in the photographs taken inside the police station.

PO2 Rodriguez delivered the sachets over to the crime laboratory for examination, which later turned out positive for shabu. Afterwards, they filed the present case against the accused-appellant.

P.S.I. Charity Peralta Caceres

She was presented by the prosecution to prove that she conducted the drug examination of two substances presented to her pursuant to a request for laboratory examination from PO2 Rodriguez.

PSI Caceres was no longer presented in court since the prosecution and defense stipulated on the substance of her testimony, and agreed on the following:

- 1) The expertise of Forensic Chemist PSI Charity Peralta Caceres;
- 2) The existence of the Request for Laboratory Examination dated December 9, 2015;
- 3) The existence of the two (2) plastic rectangular transparent sachet (*sic*) containing white crystalline substance marked as RPC-12/9/2015 and the initial of the forensic chemist CPC; and BB-RPC-12/9/2015 with the initial of the forensic chemist CPC;

4) Thereafter, the prosecution had the following exhibits marked:

- Exh. "A" - Request for Laboratory Examination on Seized Evidence;
- Exh. "A-1" - Stamp pad impression located at the bottom portion of the Request for Laboratory Examination;
- Exh. "B" - Transparent plastic cellophane;
- Exh. "B-1" - First rectangular plastic sachet Marked as "A-1";
- Exh. "B-2" - Second rectangular plastic sachet marked as "A-2";
- Exh. "C" - Chemistry Report No. D-893-2015;
- Exh. "C-1" - Name of the suspect as Rolly Concon y Pedillo;
- Exh. "C-2" - Specimen submitted;
- Exh "C-3" - Findings and conclusions[.]

Evidence of the Defense

The defense presented only one witness, the accused-appellant himself Rolly Concon y Pedillo. He testified that on [9] December 2015, he was just at his house in Ramonal Village, Camaman-an, Cagayan de Oro City, eating lunch. After taking his meal, he went out of his house and found four persons parked in front of his fence. He saw one of the men wearing a black shirt containing the logo of the police. This man asked him if he had seen anyone run into his house. The accused-appellant replied that he did not. Without explanation he was then immediately arrested and handcuffed. He was brought to the police station, where his picture was taken. He also saw the officers take a picture of items placed on top of a table. The only item placed on top of the table was one sachet allegedly containing shabu. No pictures were taken of money. The police also did not ask him to sign

any document. Afterwards, he was brought to his detention cell.⁵ (citations and boldface omitted)

RTC Decision

On December 15, 2016, the RTC promulgated a Decision⁶ finding that all the elements of the crimes of illegal sale and possession of dangerous drugs are present and that the arresting officers were able to preserve the integrity and evidentiary value of the seized items from appellant. The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-DRG-2015-771, the court finds the accused, **ROLLY CONCON Y PEDILLO, GUILTY beyond reasonable doubt** of the charge of violation of Section 5, Article II, R.A. No. 9165 and sentences [him] to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

2. In Criminal Case No. CR-DRG-2015-772, the court finds the accused **ROLLY CONCON Y PEDILLO, GUILTY beyond reasonable doubt** for violation of Section 11, Article II, R.A. No. 9165 and sentences him to imprisonment of 12 years 1 day to 20 years and to pay a fine of Three [H]undred [T]housand [P]esos (₱300,000.00);

The two (2) heat-sealed transparent plastic sachets containing white crystalline substance locally known as Shabu with a total weight of 0.0609 grams marked as Exhibits "B" to "B-2" for the prosecution are hereby ordered confiscated and destroyed pursuant to R.A. No. 9165.

SO ORDERED.⁷

CA Decision

On August 17, 2018, the CA rendered the assailed Decision and upheld the findings of the RTC. The appellate court held that inconsistencies in the testimonies of the prosecution witnesses only pertained to collateral matters,⁸ considering that the witnesses adequately established the elements of the crimes

⁵ *Rollo*, pp. 5-12.

⁶ *CA rollo*, pp. 49-68; penned by Presiding Judge Vincent F. B. Rosales.

⁷ *Id.* at 67-68.

⁸ *Rollo*, pp. 15-20.

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charged.⁹ The CA also held that the inventory and photograph of the seized items at the police station was justified¹⁰ and that the chain of custody remained unbroken.¹¹

Hence, this appeal.

Issue

Appellant maintains the following errors for Our consideration:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE SHABU ALLEGEDLY CONFISCATED.

III

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹²

Appellant argues that the testimonies of PO2 Rodriguez and PO2 Budo are riddled with material inconsistencies;¹³ that the prosecution failed to establish how the integrity of the *corpus delicti* was preserved; that the inventory conducted at the police station is bereft of indication of any identifying marks, to separate or segregate the supposed *shabu* that was the subject of the buy-bust operation with the one confiscated from the accused; and that the prosecution failed to comply with Section 21, Article II of R.A. No.

⁹ Id. at 18-19.

¹⁰ Id. at 22.

¹¹ Id. at 22-28.

¹² CA *rollo*, p. 30.

¹³ Id. at 38.

9165 in conducting the inventory and marking after the buy-bust operation and arrest of the accused.¹⁴

Did the prosecution establish the guilt of appellant beyond reasonable doubt for violation of Sections 5 and 11 of R.A. No. 9165?

Our Ruling

The appeal has merit.

In *People v. Yagao*,¹⁵ the Court had the occasion to explain the two (2) principles that guide us in reviewing an appeal in a criminal case:

For purposes of this appeal, two principles should be our guides. The first is that we should still carefully review the evidence adduced at the trial despite both the trial and the appellate courts having already pronounced the accused-appellant guilty. Indeed, nothing prevents or forbids us from such factual review, for we as a reviewing tribunal remain committed to ensuring that his conviction rest on the strength of the Prosecution's evidence, not on the weakness of his defense. We are wholly free to ascertain whether or not the lower courts judiciously and correctly examined the evidence against him before they concluded that the evidence supported their ultimate finding of his guilt. The second is that we may consider in this appeal any fact or circumstance in his favor although he has not assigned or raised it. For, indeed, every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether or not the findings adverse to the accused should be upheld against him or struck down in his favor. The burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.

Hence, in reviewing the instant case, the evidence submitted by the prosecution including the testimonies of its witness shall be the subject of our rigorous scrutiny.

The prosecution presented the testimonies of PO2 Rodriguez and PO2 Budo to establish that the accused violated Section 5, Article II of R.A. No. 9165 when he illegally sold 0.0201 gram of shabu to PO2 Rodriguez for the amount of ₱200.00. Based on the recollection of PO2 Rodriguez, the illegal sale occurred as follows:

¹⁴ Id. at 44-47.

¹⁵ G.R. 216725, February 18, 2019.

ACP Lalia:

x x x x

Q During your initial meeting with the accused, please tell us what transpired?

A I told him I will buy and then, he immediately gave me.

Q Who speak first to the other, was it you, or was it the accused?

A Me, sir.

Q In your own vernacular, please tell the court in your own, what did you tell to the accused?

A "Naay imo diha? Mupalit ko[.]"

Q You did not ask him if he was Rolly Concon?

A I asked him whether he is alias Bulldog.

Q What was his reply if any?

A He said he is the one.

Q You did not ask him if he is Rolly Concon? You just asked him "Naay imo diha? Mupalit ko"?

A I asked him if he is alias Bulldog.

Q What was his reply, if any?

A He said he is the one.

Q And that was the second time that you asked him that "naay imo diha? Mupalit ko". That was the second time that you asked him?

A Yes, sir.

Q What was his reply if any?

A "Naay ako bay". I have.

x x x x

Q Okay. So, when he answered naa ko bai, What was your reply if any?

A I gave him the marked money.

Q To make it clearer Mr. Witness, because there was yet no mentioned [sic] of how much, are we made to understand that you gave the ₱200.00 without asking how much you are supposed to buy? Please tell the court[.]

A I told him I will buy worth ₱200.00.

Q And what was his reply?

A He replied that he had, sir.

Q **After informing that person that you are supposed to buy worth ₱200.00, what else transpired immediately after that conversation?**

A **I made a pre-arranged signal, sir, so that my companions will be alerted, sir.**

Q **We will make it step by step, Mr. Witness, so that the court will be apprised of the actual transaction. Are we made to understand that before you have received that Shabu, and even before the accused received the ₱200.00 from you, you already made the pre-arranged signal to your other companions?**

A **After the transaction have done, sir, that was the time I made the pre-arranged signal.**

Q **What was your pre-arranged signal?**

A **I took my hand and touched my head.**

Q So, after touching and scratching your head, what happened?

A They came near.

Q Who was that who came near?

A PO2 Budo approached me and the other two they served as a security.¹⁶ (emphasis supplied)

On the other hand, PO2 Budo witnessed the incident in this manner:

Q How far were you when you saw them entered the house?

A Approximately 5 to 10 meters, sir.

Q This passage way, is it big or is it narrow, or wide?

A Wide, sir.

x x x x

¹⁶ TSN, May 12, 2016, pp. 10-11; RTC Records, pp. 61-62.

Q About 2 to 3 meters?

A That is possible, sir, 2 meters.

Q So, when you saw them entered [sic] the passage way, what happened next?

A **One person came, then they talked for a while. I saw that PO2 Rodriguez handed something, and returned to the suspect who handed and was given to PO2 Rodriguez.**

X X X X

Q **When you saw the transaction, when you saw Rodriguez and the accused exchanging something, what happened next?**

A **PO2 Rodriguez gave to us the pre-arranged signal.**

Q What was the pre-arranged signal?

A He will touch his head using his right hand, sir.¹⁷

PO2 Rodriguez testified that he paid for the shabu after the transaction while PO2 Budo saw appellant and PO2 Rodriguez exchanged something before the latter scratched his head to signify that the sale had been consummated. These narrations failed to meet the quantum of proof required to establish that appellant committed the crime of illegal sale of dangerous drugs under Sec. 5 of R.A. No. 9165.

In order to successfully prosecute a case involving an illegal sale of dangerous drugs, the following essential elements should concur: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.¹⁸ Without showing that the delivery of the dangerous drug took place, the State's evidence would not amount to proof of guilt beyond reasonable doubt, for it was the delivery of the drug by the accused-appellant, coupled with the presentation in court of the confiscated drug itself, or the *corpus delicti*, that would establish to a moral certainty the commission of the violation.¹⁹

PO2 Rodriguez' testimony lacked clarity as to how the sale occurred, especially the delivery by appellant of the 0.0201 gram of shabu. PO2 Rodriguez did not mention how appellant passed the said contraband, or described its packaging, or how he became convinced that appellant was selling shabu based on its appearance, or even how he came into possession of the

¹⁷ TSN, June 2, 2016, pp. 7-8; RTC Records, pp. 88-89.

¹⁸ See *People v. Fernandez*, 802 Phil. 686, 695 (2016); *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

¹⁹ *People v. Yagao*, G.R. No. 216725, February 18, 2019.

subject item. His statement that he executed the pre-arranged signal after the “transaction” does not meet the quantum of proof required to establish appellant’s guilt beyond reasonable doubt for the crime of illegal sale of dangerous drugs under Sec. 5 of R.A. No. 9165. On the contrary, it engendered doubts as to how appellant had actually delivered the contraband to him. As the poseur-buyer, PO2 Rodriguez should have been more distinct with his recollection of the supposed sale, but he failed in this aspect.

The testimony of PO2 Budo also suffered the same fate. PO2 Budo did not attest to the fact that PO2 Rodriguez gave the buy-bust money to the appellant in consideration of a delivered item which resembled that of shabu. Hence, his testimony cannot be accorded weight and credence.

Delivery is an essential element of the crime of illegal sale of dangerous drugs. Since the prosecution failed to prove the fact of delivery of shabu by appellant, he cannot be held criminally liable under Sec. 5 of R.A. No. 9165.

On the other hand, the crime of illegal possession of dangerous drugs is established when: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.²⁰

In both illegal sale and illegal possession, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. 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 drugs are seized up to its presentation in court as evidence of the crime.²¹ The chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”²²

Sec. 21, Article II of R.A. No. 9165 provides for the rule on chain of custody. Since the present case occurred in 2015, the applicable rule shall be the amendment under R.A. No. 10640 to which Sec. 21 now reads as follows:

SECTION 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:

²⁰ *People v. Jaime*, G.R. No. 232083, November 27, 2019; *People v. Pinero*, G.R. No. 242407, April 1, 2019; *People v. Lagata*, 452 Phil. 846 (2003).

²¹ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018.

²² *People v. Oliva*, G.R. No. 234156, January 7, 2019; citing *People v. Ismael*, 806 Phil. 21, 29 (2017).

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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, 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.** [emphases supplied]

In here, the inventory, marking and photograph of the confiscated drug were all conducted at the police station. PO2 Budo testified that they conducted the inventory and photograph-taking at the police station because of “lack of time” and the area was becoming crowded of appellant’s relatives.²³ Both PO2 Rodriguez and PO2 Budo also testified that before the operation, they contacted the representatives from the Department of Justice (DOJ), the media and the barangay officials, but only Kagawad Oming Pimentel arrived. The photographs submitted by the prosecution appeared to show PO2 Rodriguez, appellant and Kagawad Oming to be present at the police station. However, the inventory receipt did not bear the signatures of appellant and Kagawad Pimentel, to which the prosecution did not offer any explanation.²⁴

Under Sec. 21 as amended by R.A. No. 10640, the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service (*NPS*) or the media who

²³ TSN, June 2, 2016, p. 9; RTC Records, p. 90.

²⁴ Id. at 92.

shall sign the copies of the inventory and be given a copy thereof.²⁵ Furthermore, the *Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640*²⁶ provides for the following safeguards:

A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

x x x x

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

x x x x

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. **In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.**

²⁵ *People v. Oliva*, supra note 22; *Ramos v. People*, G.R. No. 233572, July 30, 2018, 874 SCRA 595, 609.

²⁶ Dated May 28, 2015.

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A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

(1) Any justification or explanation in cases of noncompliance with the requirements of Section 21 of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.

A.1.10. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. (emphasis supplied)

The above guidelines embodies an exacting set of standards for apprehending officers to ensure the integrity and evidentiary value of the seized illegal drugs. Hence, the prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Sec. 21 of R.A. No. 9165, as amended.²⁷

Based on the guidelines, a deviation from the procedure requires the apprehending officers to not simply mention a justifiable ground, but also to clearly state this ground in their sworn affidavit, coupled with a statement on

²⁷ *People v. Padua*, G.R. No. 239781, February 5, 2020; citing *People v. Reyes*, G.R. No. 219953, April 23, 2018.

the steps they took to preserve the integrity of the seized item.²⁸ The prosecution failed to present any sworn affidavit to this effect.

Moreover, the Court in *People v. Sipin*²⁹ laid down the following justifiable grounds that may exempt the apprehending officers from failure to secure the required witnesses: (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.

None of the abovementioned justifications obtained in this case. The statement of PO2 Budo that "lack of time" and that the place was getting crowded with the presence of appellant's relatives did not explain why the simple act of marking, as provided by the guidelines, cannot be done at the place of arrest and seizure.

The guidelines also require that in the event of noncompliance, a certification or record of coordination with the PDEA as provided under Section 86(a) and (b), Article IX of the IRR of RA No. 9165 shall be presented. PO2 Budo mentioned during his testimony that their chief intelligence coordinated with the PDEA, but he failed to bring and present a copy of the coordination sheet³⁰ as proof thereof.

While prior coordination with the PDEA is not necessary to make a buy-bust operation valid,³¹ We hold that the failure of the prosecution to prove prior coordination with the PDEA affects the validity of the buy-bust operation when there appeared inconsistencies in the testimonies of the witnesses on how it was conducted.

In his direct examination, PO2 Rodriguez testified that he did not meet with the confidential informant during the operation and that they only communicated by exchanging text messages.³² However, PO2 Budo narrated

²⁸ *People v. Saragena*, 817 Phil 117, 144 (2017).

²⁹ *People v. Sipin*, G.R. No. 224290, June 11, 2018.

³⁰ TSN, June 2, 2016, p. 6; RTC Records, p. 87.

³¹ *People v. Amin*, 803 Phil. 557, 564 (2017).

³² TSN, May 12, 2016, p. 8; RTC Records, p. 59.

that the confidential informant accompanied PO2 Rodriguez while waiting for appellant and that the informant ran away when the buy-bust team approached PO2 Rodriguez and the appellant.³³ The validity of the buy-bust operation was likewise rendered doubtful by the fact that PO2 Rodriguez, the poseur-buyer, was then wearing a shirt bearing a print of "Police Regional Office 10" and the logo of the Special Action Force (SAF)³⁴ which appellant allegedly noticed upon seeing the group.³⁵ If indeed PO2 Rodriguez posed himself as a buyer of shabu, he should have dressed discreetly to avoid being marked and identified as a police.

Finally, the prosecution also failed to provide any reasonable explanation on why they failed to secure the signatures of the appellant and Kagawad Pimentel to the inventory receipt. It will not suffice that appellant and Kagawad Pimentel were present as shown in the photographs submitted by the prosecution as evidence. The said pictures only provide evidence as to the presence of these persons but do not signify their agreement to the actual inventory conducted and the corresponding report that the apprehending officers prepared. Such distinction plays a significant factor in this case whereby the appellant objects to the inventory not only because of his defense that he did not sell shabu to PO2 Rodriguez, but that he only saw one (1) sachet of shabu when photographs of him were being taken.³⁶

In criminal cases, the burden of proving the guilt of the accused beyond reasonable doubt rests on the strength of the evidence of the prosecution and not the weakness of the defense.³⁷ For failure of the prosecution to establish beyond moral certainty the illegal sale of shabu by the accused, the validity of the buy- bust operation, and the compliance with Sec. 21, Article II of R.A. No. 9165, appellant should be acquitted of all charges.

WHEREFORE, the Court **ACQUITS** accused-appellant Rolly Concon y Pedillo; **REVERSES** and **SETS ASIDE** the August 17, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01592; and **ORDERS** his **IMMEDIATE RELEASE** from detention unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Penal Superintendent, Davao Prison and Penal Farm, Dapecol, Davao del Norte for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this

³³ TSN, June 2, 2016, pp. 7-8; RTC Records, pp. 88-89.

³⁴ TSN, May 12, 2016, p. 21; RTC Records, p. 71.

³⁵ TSN, October 20, 2016, p. 4; RTC Records, p. 121.

³⁶ Id. at 5 and 122.

³⁷ *People v. Battung*, G.R. No. 230717, June 20, 2018; *Reyes v. Court of Appeals*, 686 Phil. 137, 153 (2012).

Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.” (Leonen, J., on leave.)

By authority of the Court:

Mis-DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
GER
11/1/20

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
1229 Legaspi Village, Makati City

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 01592-MIN
9000 Cagayan de Oro City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
PDEA Bldg., NIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

Regional Special & Appealed Cases Unit
PUBLIC ATTORNEY'S OFFICE
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Tiano Brothers cor. San Agustin Sts.
9000 Cagayan de Oro City

DANGEROUS DRUGS BOARD
3rd Floor DDB-PDEA Bldg.,
BIA Northside Road
National Government Center
Brgy. Pinyahan, Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 23, 9000 Cagayan de Oro City
(Crim. Case No. 71-794-12)

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Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

Mr. Rolly P. Concon
Accused-Appellant
c/o The Penal Superintendent
DAVAO PRISON & PENAL FARM
B.E. Dujali, 8105 Davao del Norte

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The Director General
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

The Penal Superintendent
DAVAO PRISON & PENAL FARM
8105 B.E. Dujali, Davao del Norte



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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 242879

-versus-

Rolly Concon y Pedillo,
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **The Penal Superintendent**
DAVAO PRISON & PENAL FARM
8105 B.E. Dujali, Davao del Norte

GREETINGS:

WHEREAS, the Supreme Court on July 27, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, the Court **ACQUITS** accused-appellant Rolly Concon y Pedillo; **REVERSES** and **SETS ASIDE** the August 17, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01592; and **ORDERS** his **IMMEDIATE** *ly*

RELEASE from detention unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Penal Superintendent, Davao Prison and Penal Farm, Dapecol, Davao del Norte 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.” (Leonen, *J., on leave.*)

NOW, THEREFORE, you are hereby ordered to immediately release **Rolly Concon y Pedillo**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **ALEXANDER G. GESMUNDO**, Acting Chairperson of the Third Division of the Supreme Court of the Philippines, this 27th day of July 2020.

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
11/1/20

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
1229 Legaspi Village, Makati City

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 23, 9000 Cagayan de Oro City
(Crim. Case No. 71-794-12)

Mr. Rolly P. Concon
Accused-Appellant
c/o The Penal Superintendent
DAVAO PRISON & PENAL FARM
B.E. Dujali, 8105 Davao del Norte

The Director General
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Penal Superintendent
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