



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 8, 2020** which reads as follows:*

“G.R. No. 225628 (*People of the Philippines v. Jerry Naldo y Samsona a.k.a. “Basil”*). - On appeal is the February 29, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01950 which affirmed the February 28, 2014 Judgment² of the Regional Trial Court (RTC), Branch 11, San Jose, Antique in Criminal Case No. 12-05-8249, finding accused-appellant Jerry Naldo y Samsona a.k.a. “Basil” (*Naldo*) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information filed on May 24, 2012, Naldo was charged with violation of Section 5, Article II of R.A. No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002* committed as follows:

That on or about the 23rd day of January, 2011, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there, willfully, unlawfully and feloniously sell to PO1 Celcon Aguilar one (1) sachet of Methamphetamine Hydrochloride or “shabu,” weighing 0.035 gram worth Php 500.00 and when PO1 Celcon Aguilar asked the said accused gave him another sachet of Methamphetamine Hydrochloride or “shabu” weighing 0.038 gram, which both specimen were examined and evaluated by PSI Cirox T. Omero, Provincial Chief/Forensic Chemist, Antique Provincial Crime Laboratory, San Jose, Antique wherein he found the same as containing Methamphetamine Hydrochloride or “shabu,” a dangerous drug.

- over – twelve (12) pages ...

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¹ Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 5-17.

² CA *rollo*, pp. 47-60.

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Contrary to the provisions of Section 5 of Article II of R.A.
9165³

In his arraignment on August 17, 2012, Naldo pleaded not guilty⁴ to the charges. Thereafter, trial on the merits ensued.

The prosecution presented four (4) witnesses, namely, Police Senior Inspector (PSI) Cirox T. Omero (*Omero*), Police Officer 1 Genus David (David), PO2 Celcon Aguilar (*Aguilar*) and Police Superintendent (*PSupt*) Mercedes Delfin Diastro (*Diastro*) as witnesses. The defense for its part presented the accused, Naldo and a certain Helen Sison.

Version of the Prosecution

On January 23, 2011, at around 3:40 p.m., PO2 Aguilar, together with a confidential agent and several police officers were at Barangay 1, San Jose, Antique, beside the Antique Sport Development Center. They were conducting a surveillance for a buy-bust operation against a certain Jerry Samsona Naldo, alias Basil who is known in the said place for selling illegal drugs. The buy-bust was composed of PO2 Aguilar, PSI Herbert Ballego, SPO2 Salvador Emmanuel II, PO3 Victor Cepe, PO2 Gem Jamandron, PO1 Marlon Galeda and PO2 Rocky Luzarita. During their surveillance, PO2 Aguilar and the confidential agent were sitting at the former's parked motorcycle right beside the Antique Sport Development Center. Meanwhile, the other members of the buy-bust team were waiting inside a tinted Isuzu Pick Up.

The confidential agent texted Naldo, informing him that he will buy "shabu" worth five hundred pesos (₱500.00). When Naldo arrived 20 minutes later, the confidential agent approached him and introduced PO2 Aguilar as the buyer. Naldo then asked PO2 Aguilar as to how many sachets he wanted to buy to which the latter replied that he would only buy one sachet. Afterwards, Naldo took one sachet from his pocket and immediately gave it to PO2 Aguilar. In return, PO2 Aguilar handed five (5) pieces One Hundred Peso (₱100.00) bills amounting to Five Hundred Pesos (₱500.00) which Naldo immediately put on his pocket. Thereafter, PO2 Aguilar signified his intent to buy one more sachet to which Naldo assented. He took another sachet from his pocket and handed it to PO2 Aguilar. During that moment, PO2 Aguilar introduced himself as a police officer and told Naldo that he was being arrested for illegal sale of drugs. Naldo

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³ Records, p. 1.

⁴ *Id.* at 28 and 31.

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then attempted to escape, but the back-up team was able to subdue him. Thereafter, PO2 Jamandron was able to recover from Naldo a knife which was tucked in his waist. PO2 Aguilar then conducted a body search and he was able to recover the buy-bust money, cash money of different denominations worth Seventy-Five Pesos (₱75.00) and a Nokia cellphone.

After Naldo was appraised of his constitutional rights, he was brought to the San Jose Police Station where the incident was recorded in the police blotter. An inventory was, thereafter, made over the seized items in the presence of representatives from the Provincial Prosecutor's Office, the media and barangay. PO2 Aguilar, together with PO2 Luzarita, submitted the seized drug items to the Antique Provincial Crime Laboratory. These were received by PO1 David. PSI Omero, Provincial Chief/Forensic Chemist of the Antique Provincial Crime Laboratory then conducted chemical examination over the seized items. The two (2) confiscated items yielded positive for the presence of Methamphetamine Hydrochloride, a dangerous drugs.

Version of the Defense

Accused-appellant Naldo testified that, in the morning of January 23, 2011, he was in Hamtic, Antique and thereafter returned to his house located at the back of the cockpit in Sitio Tipolo, Rosario, San Jose, Antique. At about 2:00 p.m. that same day, he left the house and went to the market place of San Jose, Antique where he sells watermelon. During the time he was walking along the street, a red pick-up truck came near him and blocked his way. Thereafter, police officer Salvador Emmanuel disembarked from the vehicle and held his right wrist. He knew SPO2 Emmanuel before because he was the one who planted evidence against him which resulted to a filing of a case in court although he was acquitted in that case. While he was walking along the sports complex, he never received any text message from somebody. He also claimed that there were many people around who saw the incident where he was being forced by SPO2 Emmanuel to board the vehicle, one of whom was Jenny Sison, the owner of the store fronting the cockpit. Further, he saw Sison at that time because the incident happened in front of her store.

While being forced to board the vehicle, Naldo asked the police officers what offense has he committed. At that point, Sison intervened and asked the same question. However, the police officers just told Sison not to intervene. Aside from SPO2 Emmanuel, PO2

Jamadron and PO2 Luzarita likewise helped in forcing Naldo to board the vehicle by locking his hands. Naldo has known PO2 Jamadron before the incident because he frequently went to the place where he sells fruits. Also, he knows PO2 Luzarita prior to the incident and PO2 Aguilar who just remained in the car when the incident happened. Furthermore, Naldo vehemently denied any transaction with PO2 Aguilar on January 23, 2011. At the San Jose Police Station where he was brought, they frisked his body and took his lighter, cellphone and Sixty-Five Pesos (₱65.00) money. He added that the police officers did not get from his possession a small sachet. Before he was brought to the police station, he was not frisked nor was an inventory made.

Meanwhile, Sison testified that on January 23, 2011 at around 3:40 p.m., she was in Rosario Street near the cockpit arena or the Antique Sports Development Center riding a tricycle driven by her husband. They were on their way home at that time which is located at the back of the cockpit arena. Just a few meters from the entrance of the cockpit arena, she noticed that there were many people. She told her husband to stop and thereupon, she noticed Jerry Naldo whose hands were being tied at his back by four (4) people. While the four (4) persons forced Naldo to ride the red pick-up vehicle, he heard Naldo shouting “*Sir, what is my offense?*” The said persons said nothing and just pushed Jerry inside the vehicle. When the pick-up truck left and the people dispersed, they also left and proceeded in going home.

RTC Ruling

After trial, the RTC handed a guilty verdict on Naldo for violation of Section 5 (Illegal Sale of Dangerous Drugs), Article II of R.A No. 9165. The dispositive portion of the February 28, 2014 Decision states:

WHEREFORE, in the light of the facts and the law as hereinbefore rationated, judgment is hereby rendered finding the accused JERRY SAMSONA NALDO ALIAS “BASIL” guilty beyond reasonable doubt for unlawful and unauthorized sale of one (1) plastic sachet of methamphetamine hydrochloride or shabu, a dangerous drug, weighing 0.035 gram, in violation [*sic*] of Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, hereby:

1. IMPOSING upon the said accused JERRY SAMSONA NALDO ALIAS “BASIL” the conjunctive penalties of

life imprisonment and a fine of seven hundred fifty thousand pesos (PhP750,000.00), as well as the accessory penalties inherent thereto.

2. ORDERING the confiscation and forfeiture in favor of the government, of all the proceeds and properties derived from the unlawful act of the accused JERRY SAMSONA NALDO ALIAS "BASIL" and the instruments or tools with which the unlawful act was committed by said accused, including the one (1) sachet of methamphetamine hydrochloride or shabu, to be destroyed without delay pursuant to the provisions of Section 21 of Republic Act No. 9165; and
3. PRONOUNCING no cost.

SO ORDERED.⁵

CA Ruling

On appeal, the CA affirmed the RTC Decision. The CA agreed with the findings of the trial court that a valid buy-bust operation against Naldo exists. The appellate court was in the position that the statement of PO2 Aguilar, coupled with the documentary evidence, gave a detailed picture of the series of events that transpired on January 23, 2011, which led to the consummation of the transaction. In addition, the CA ruled that the prosecution has proven the chain of custody of the seized items and without a doubt, the integrity and evidentiary value of the two (2) plastic sachets of *shabu* bought from Naldo were duly preserved. Further, the CA added that credence is given to the prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner. Lastly, the appellate court, ruled that accused-appellant Naldo has the burden to show that the evidence was tampered with to overcome the presumption of regularity in the performance of police duties. He failed to discharge such burden.

Before us, the People and the accused-appellant Naldo, manifested that that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Essentially, Naldo maintains his innocence, being in the position that the conduct of a buy-bust operation is highly dubious. In addition, he claimed that the chain of custody in the handling of the evidence was not established.

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⁵ CA rollo, pp. 59-60.

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Our Ruling

We find the appeal meritorious. The judgment of conviction is reversed and set aside, and Naldo should be acquitted based on reasonable doubt.

Under Section 5, Article II of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

x x x (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.⁶

In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.⁷ In *People v. Gatlabayan*,⁸ the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."⁹ Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."¹⁰

The prosecution failed to establish the chain of custody of the seized *shabu* from the time they were recovered from accused-appellant up to the time they were presented in court. Section I(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002¹¹, which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include

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⁶ *People v. Ismael*, G.R. No. 208093, February 20, 2017.

⁷ *Id.*

⁸ 669 Phil. 240, 252 (2011).

⁹ *People v. Miranda*, 771 Phil. 345, 356-357 (2015).

¹⁰ See *People v. Ismael*, *supra* note 6.

¹¹ Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

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the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165, as amended, specifies:

(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 non-compliance 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.

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(a) The apprehending officer/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

- (2) 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 non-compliance 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 present case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thus, putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from accused-appellant.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "*Marking*" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.¹²

Here, the marking was done directly at the PNP Crime Laboratory, and not where the buy-bust operation was conducted. For

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¹² *People v. Diputado*, 813 Phil. 160, 171 (2017).

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this reason, in the initial step of the chain of custody, a gap already occurred. The seized item was not marked immediately at the place where accused-appellant was arrested. Hence, the integrity and evidentiary value of the seized item was already compromised making it susceptible to alteration, substitution or contamination during the time that the police officers were in transit going to the crime laboratory and the police station.

Although this processes may be excused in some cases for justifiable reasons, the present case is not one of those. In a brief redirect and re-cross examinations of PO2 Aguilar, he said that the inventory of the seized items was made at the police station and not at the site of the buy-bust operation as it was near the residence of Naldo, and they wanted to avoid trouble which the family of Naldo might create. The allegation that the marking, physical inventory, and photograph were not done in the crime scene to prevent trouble that Naldo's family will not suffice. The prosecution failed to expound why it was not possible to make the marking, physical inventory, and photograph at the crime scene, considering that the police station was near the residence of Naldo, which can provide immediate back up if any trouble was caused by Naldo's family.

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.¹³ The present case is not one of those.

The phrase "*immediately after seizure and confiscation*" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable would the IRR allow that the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team, considering that the buy-bust

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¹³ *People v. Mola*, G.R. No. 226481, April 18, 2018.

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operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.¹⁴

In the instant case, the required witnesses were not present at the time of the apprehension. The witnesses were merely called at the police station only after the conduct of the buy-bust operation which is a patent violation of Section 21 of the IRR. While the law allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.¹⁵

The non-observance of the procedure mandated by Section 21 of R.A. No. 9165, as amended, cast a serious doubt if the illegal drugs presented are the same from the one seized from accused-appellant Naldo. It is worthy to note that the quantity of the drugs seized has an aggregate amount of 0.073 gram. It is an extremely small amount which is highly susceptible to planting and tampering. This is the very reason why strict adherence to Section 21 is a must.

The Court stressed in *People v. Vicente Sipin y De Castro*:¹⁶

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.¹⁷

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¹⁴ *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

¹⁵ *Id.*

¹⁶ G.R. No. 224290, June 11, 2018.

¹⁷ *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, *supra* note 13.

In addition, it should be noted that the conduct of the alleged buy-bust operation was highly doubtful. *First*, there was no proper coordination with the Philippine Drug Enforcement Agency (*PDEA*) made by the buy-bust team prior to the operation. Second, the buy-bust team did not conduct a briefing before they proceeded to the target area, relying mostly by a streak of good luck that Naldo will show up with a single text message from the confidential agent without contacting Naldo ahead of time for a possible transaction on a particular date, time and place. Also, the buy-bust money was not previously recorded in the police blotter before the operation was undertaken. Furthermore, PO2 Aguilar claimed that there were seven of them who were part of the buy-bust team, six of them served as back-up who positioned themselves at a seeing distance from the actual location of transaction. However, not one of them was presented in court to corroborate the testimony of PO2 Aguilar. *Lastly*, it was highly unlikely that Naldo would sell *shabu* to PO2 Aguilar, considering that he knew PO2 Aguilar to be a police officer.

The prosecution's unjustified non-compliance with the required procedures under Section 21 of R.A. No. 9165, as amended, resulted in a substantial gap in the chain of custody of the seized item from Naldo; thus, the integrity and evidentiary value of the drugs seized are put in question. Moreover, the conduct of the alleged buy-bust operation was highly doubtful taking into consideration the factors mentioned above. Hence, this Court finds it necessary to acquit Naldo for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the February 29, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01950, which affirmed the February 28, 2014 Judgment of the RTC, Branch 11, San Jose, Antique in Criminal Case No. 12-05-8249, finding accused-appellant Jerry Naldo y Samsona a.k.a. "Basil" guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jerry Naldo y Samsona a.k.a. "Basil" is **ACQUITTED** on 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 Chief Superintendent of the Bureau of Corrections, New Bilibid Prison,

Muntinlupa City, for immediate implementation. Said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Resolution the action he has taken.

The letter dated August 2, 2019 of CSupt. Marites D. Luceño, Chief, Inmates' Documents and Processing Division, Bureau of Corrections, Muntinlupa City, in compliance with the Resolution dated August 17, 2016 and reiterated in the Resolution dated June 3, 2019, stating that per available records, there is no such name as Jerry Samsona Naldo @ "Basil" confined in the said institution, is **NOTED**.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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