

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

“**G.R. No. 247657 (People of the Philippines v. Jonathan Cabrillos y Nacario)**. – This is an appeal from the Decision¹ dated August 31, 2018 of the Court of Appeals (CA) affirming the Decision² dated May 2, 2016 of the Regional Trial Court (RTC) of Cebu City, Branch 21, convicting Jonathan Cabrillos y Nacario (accused-appellant) of violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Facts of the Case

Accused-appellant was charged with violation of Section 5, Article II of R.A. 9165 under the following Information:

That on or about the 23rd of September, 2009, at about 4:30 in the afternoon, more or less, at Sitio Mananga, Brgy. Tabunoc, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer, Ten (10) white hand-rolled paper sticks containing crushed dried leaves locally known as “MARIJUANA”, having a total net weight of 3.25 grams, a dangerous drug.

CONTRARY TO LAW.³

Duly assisted by counsel, appellant entered a plea of not guilty during the arraignment. Trial on the merits ensued.

¹ Penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court), with Associate Justices Marilyn B. Lagura-Yap and Emily R. Aliño-Geluz, concurring; *rollo*, pp. 4-15.

² Penned by Acting Presiding Judge Soliver C. Peras; CA *rollo*, pp. 34-47.

³ *Id.* at 34.

The prosecution presented the testimonies of Forensic Chemist P/I Rendielyn Sahagun (PI Sahagun), PO3 Rey Bucao (PO3 Bucao), PO2 Narciso Alforque (PO2 Alforque), PO3 Benedicto Lasque and PO2 Roy Lofranco (PO2 Lofranco).

It was established that on September 23, 2009, a buy-bust operation was planned against a certain drug pusher named "Tatay,"⁴ who was known to be operating in Sitio Tabunok, Talisay City, Cebu. A surveillance was conducted in the target area a month prior to the buy-bust operation. Coordination was likewise made with the Philippine Drug Enforcement Agency. During the briefing, the confidential informant was assigned as the *poseur*-buyer. PO2 Lofranco prepared the ₱50.00 bill marked money. A transparent card case was also provided to contain the drugs that would be sold by "Tatay." A head scratch was the pre-arranged signal.⁵

The *poseur*-buyer was sent ahead to Sitio Mananga. He had with him the buy-bust money and the transparent card case. While PO2 Lasque, PO3 Bucao, PO2 Alforque, and PO2 Lofranco used a private multi-cab van in going to Sitio Mananga. They parked the van at a vacant lot near the house of accused-appellant. PO3 Bucao positioned himself behind a banana tree while the remaining officers stayed in the multi-cab van to observe.⁶ The multi-cab van had one-way tinted windows – those outside the van could not see the persons inside while those inside could clearly see the outside.

When the *poseur*-buyer arrived, he went to the house of accused-appellant. He then gave the marked money, and in exchange, accused-appellant gave the marijuana sticks, which the *poseur*-buyer placed inside the transparent card case. The transaction was consummated at the door of accused-appellant's residence. The police officers were more or less seven meters away from where the *poseur*-buyer and accused-appellant transacted and they personally witnessed the transaction.⁷ When the *poseur*-buyer scratched his head, the members of the buy-bust team rushed to arrest accused-appellant. The *poseur*-buyer gave the marijuana placed in the transparent card case to PO3 Bucao. PO2 Lasque conducted a body search on accused-appellant and recovered from the latter's pocket the marked money. The seized drugs consisted of ten sticks of marijuana. As people began gathering around the area, the police officers immediately left and brought accused-appellant and the seized drugs to the police station.

At the police station, PO3 Bucao turned over the seized drugs to PO2 Alforque, who then marked the sticks of marijuana with "TATAY-1" to "TATAY-10". The marking, inventory, and photograph taking⁸ were all done at the police station for security reasons. It was witnessed by accused-

⁴ Also known as "Tata."

⁵ *Rollo*, p. 36

⁶ TSN dated June 19, 2014, pp. 8-10.

⁷ TSN dated March 8, 2012, pp. 5-6; TSN dated November 8, 2012, p. 13; TSN dated May 6, 2015, p. 6; TSN dated June 3, 2015 p. 6.

⁸ Records, p. 14.

appellant, a representative from the media, and an elected public official.⁹ PO2 Alforque and PO2 Lofranco then turned over the seized drugs to the Philippine National Police Crime Laboratory for examination, received by PO1 Jerry Antopina who handed the seized drugs to PI Sahagun for testing. The seized drugs yielded a positive result for the presence of marijuana.¹⁰ After the examination, PI Sahagun handed the specimen to the evidence custodian for safekeeping. When PI Sahagun was called to testify, she retrieved the seized drugs from the evidence custodian and the seized drugs were submitted to the trial court.

Accused-appellant denied the charge claiming that he was not arrested in the buy-bust operation. On September 23, 2009, he was inside his rented house when, suddenly, a man forcefully opened the door and handcuffed him. He was dragged outside his house and brought to the vehicle by the same person who was assisted by four other persons. While inside the vehicle, he was asked whether he knew certain Larry, Melvin, and Seking to which he denied knowing them. Upon arrival at the police station, accused-appellant was presented with six sticks, followed by four sticks of marijuana. Accused-appellant contends that he does not recognize those items and he only learned that he was charged of selling ten sticks of marijuana when he was brought to the prosecutor's office. He opted not to file a case against the officers for fear of his safety.¹¹

Ruling of the Regional Trial Court

On May 2, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. 9165 and was sentenced to suffer the penalty of life imprisonment and to pay ₱500,000.00 as fine.¹² The RTC accorded weight and credence to the collective testimonies of PO3 Bucao, PO2 Alforque, PO3 Lasque, and PO2 Lofranco that accused-appellant was arrested selling marijuana during a buy-bust operation. It likewise held that there is absence of any evidence showing bad faith, revenge, or hatred on the part of the arresting officers and that appellant's denial of alibi was weak, unsubstantiated, and insufficient to overcome the affirmative testimony of the prosecution's witnesses. Also, the police officers complied with Section 21 of R.A. 9165 and its Implementing Rules and Regulations (IRR).¹³

Accused-appellant filed an appeal before the CA.

⁹ See Certificate of Inventory; *id.* at 11.

¹⁰ See Chemistry Report No. D-899-200; *id.* at 8.

¹¹ *Rollo*, p. 8.

¹² Penned by Acting Presiding Judge Soliver C. Peras; *CA rollo*, pp. 34-47.

¹³ *Id.* at 41-46.

Ruling of the Court of Appeals

In the Decision¹⁴ dated August 31, 2018, the CA denied the appeal and affirmed the conviction of accused-appellant. The CA held that all the elements of Illegal Sale of Dangerous Drugs were clearly proven. Accused-appellant was positively identified by the police officers who conducted the buy-bust operation as the seller of the marijuana. The CA gave full faith and credence to the testimonies of the police officers and upheld the presumption of regularity in the apprehending officers' performance of official duty. The CA explained that there are no inconsistencies in the testimonies of PO3 Bucao and PO2 Alforque and that the other inconsistencies cited by accused-appellant refer to matters inconsequential for the prosecution of illegal sale of drugs. Further, the failure to present the *poseur*-buyer is not fatal to the prosecution considering that the police officers had personal knowledge of what was going on because they saw everything while accused-appellant was transacting with and selling marijuana to the poseur-buyer. Hence, the testimony of the civilian informant was not indispensable or necessary; it would have been merely cumulative, or corroborative at best. Lastly, the CA held that there was no gap in the chain of custody. Accused-appellant was present during the marking of the seized marijuana. The integrity of the seized items had been duly preserved.¹⁵

Hence, this appeal filed by accused-appellant. Both parties filed their respective Manifestations In Lieu of Supplemental Brief¹⁶ adopting their respective briefs filed before the CA.

Issue

Whether the CA correctly affirmed the conviction of appellant for illegal sale of marijuana under Section 5, Article II of RA 9165.

Ruling of the Court

The appeal is meritorious.

The Court acquits accused-appellant for failure of the prosecution to prove: (a) the illegal sale of the dangerous drug beyond reasonable doubt; and (b) the unbroken chain of custody of the dangerous drug.

For an accused to be convicted for illegal sale of dangerous drugs, the following elements must concur: (1) that the transaction or sale took place between the accused and the poseur-buyer; and (2) that the dangerous drug subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.¹⁷

¹⁴ *Rollo*, pp. 4-15.

¹⁵ *Id.* at 9-13.

¹⁶ *Id.* at 24-28, 30-32.

¹⁷ *People v. Conchu*, G.R. No. 225213, October 3, 2018.

The first element of the crime involving the Sale of Illegal Drugs – that the transaction or sale took place – was not sufficiently proven by the prosecution. The non-presentation of the *poseur*-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between accused-appellant and the *poseur*-buyer.

Be it stressed that in this case, the *poseur*-buyer and the confidential informant is one and the same. The *poseur*-buyer/confidential agent did not testify. The prosecution argues that the non-presentation of the *poseur*-buyer may be dispensed with in cases where there are other witnesses who can testify on the sale transaction, as in this case.

In *People v. Andaya*,¹⁸ the Court reversed the CA's conviction of the accused since the prosecution failed to prove beyond reasonable doubt the illegal sale. In said case, the prosecution did not present the *poseur*-buyer, who was also the confidential informant, to describe how exactly the transaction between him and the accused had taken place. The Court held:

The non-presentation of the confidential informant as a witness does not ordinarily weaken the State's case against the accused. However, if the arresting lawmen arrested the accused based on the pre-arranged signal from the confidential informant who acted as the *poseur* buyer, his nonpresentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof beyond reasonable doubt because the arresting lawmen did not themselves participate in the buy-bust transaction with the accused.

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Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.

Here, the confidential informant was not a police officer. He was designated to be the *poseur* buyer himself. It is notable that the members of the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the *poseur* buyer. The pre-arranged signal signified to the members of the buy-bust team that the transaction had been consummated between the *poseur* buyer and Andaya. However, **the State did not present the confidential informant/*poseur* buyer during the trial to describe how exactly the transaction between him and Andaya had**

¹⁸ 745 Phil. 237 (2014).

taken place. There would have been no issue against that, except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction. (Emphasis in the original)¹⁹

In this case, the seven-meter distance between the police officers waiting for the pre-arranged signal from the *poseur*-buyer and the accused-appellant made it difficult for the police officers, the supposed eyewitnesses, to see and to hear what exactly was happening between accused-appellant and the *poseur*-buyer.²⁰ None of the police officers were privy to their conversation. The police officers had no personal knowledge of what transpired between accused-appellant and the *poseur*-buyer. The police officers merely made a sweeping statement that they saw the exchange of the buy-bust money and the seized drugs between accused-appellant and the *poseur*-buyer considering that there was nothing that obstructed their view. What was clearly agreed upon was the pre-arranged signal, such that after the *poseur*-buyer scratched his head, the police officers rushed to arrest accused-appellant. The police officers merely relied on the pre-arranged signal to signify that the transaction was consummated. The non-presentation of the *poseur*-buyer was fatal to the prosecution's cause to prove the fact of the illegal transaction. His testimony would have clearly established that the illegal transaction indeed took place. More so, in this case, the *poseur*-buyer was not familiar with accused-appellant, according to PO3 Lasque.²¹

In addition, the prosecution failed to establish how the police officers were able to personally witness the transaction between accused-appellant and the *poseur*-buyer. The police officers' testimonies as to their position during the exchange contradict each other, which raises doubt as to whether they personally witnessed the illegal transaction. In his testimony, PO3 Bucao stated that he, together with the other police officers, used a multi-cab van in going to the area and they were inside said van while the transaction was going on between accused-appellant and the *poseur*-buyer.²² On the other hand, PO2 Alforque testified that PO3 Bucao accompanied the *poseur*-buyer in going to the area; PO3 Bucao left the *poseur*-buyer and hid at the back of the banana tree while the transaction was happening; while PO2 Alforque and the rest of the police officers were inside the multi-cab van.²³ This seeming inconsistency as to the position of the police officers at the time the exchange was taking place between accused-appellant and the *poseur*-buyer taints the truthfulness of their assertion that they personally witnessed the transaction. If PO3 Bucao had to hide behind the banana tree, he would have, in all probability, exposed himself from the sight of the *poseur*-buyer. Indeed, reasonable doubt exists whether the police officers personally witnessed the

¹⁹ Id. at 240, 247.

²⁰ Supra note 15.

²¹ TSN dated May 20, 2015, p. 3.

²² TSN dated March 8, 2012, pp. 4-5.

²³ TSN dated June 19, 2014, pp. 8-11.

consummation of the illegal transaction. As this Court stated, the police officers merely relied on the pre-arranged signal to know that the transaction was consummated. That was the time they rushed to arrest accused-appellant.

Furthermore, there is serious doubt that the chain of custody of the dangerous drug, from the time it was allegedly recovered from accused-appellant up to the time it was presented in court, was unbroken.

In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.²⁴ Consequently, compliance with the rule on chain of custody over the seized illegal drugs is crucial in any prosecution that follows a buy-bust operation. The rule is imperative, as it is essential that the prohibited drug recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.²⁵

To ensure an unbroken chain of custody, Section 21(1) of R.A. 9165 specifies:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Supplementing the above-quoted provision, Section 21(a) of the IRR of R.A. 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 noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items

²⁴ *People v. Santos* (Resolution), G.R. No. 218579, December 5, 2019.

²⁵ *People v. Tanes*, G.R. No. 240596, April 3, 2019.

are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Thus, under Section 21 of R.A. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the same 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) a representative from the media **and** (3) the Department of Justice (DOJ); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three (3) persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”²⁶

In this case, a perusal of the Certificate of Inventory²⁷ shows that it was only signed by two witnesses: (1) a representative from the media, Jose Marlon Bellita; and (2) an elected public official, Florencio D. Lastimoso, Jr. The absence of a representative from the DOJ during the inventory and photographing of the seized items was not justifiably explained by the prosecution. A review of the transcript of stenographic notes does not yield any testimony from the police officers as to the reason why there was no representative from the DOJ. Neither was there any testimony to show that any attempt was made to secure the presence of the required witness.

Compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items. Non-compliance with them tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.²⁸

The last paragraph of Section 21 (a) contains a saving *proviso* to the effect 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.” However, in order for the saving *proviso* to apply, the prosecution must first recognize and explain the lapse or lapses in procedure committed by the arresting law officers.²⁹ In this case, the prosecution neither recognized nor explained the lapses.

When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, critical elements of the offense of illegal sale of dangerous

²⁶ *People v. Oliva*, G.R. No. 234156, January 7, 2019.

²⁷ Records, p. 11.

²⁸ *People v. Que*, G.R. No. 212994, January 31, 2018.

²⁹ *People v. Zakaria*, 699 Phil. 367, 382 (2012).

drugs remain wanting. It follows, then, that this non-compliance justifies an accused's acquittal.³⁰

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The assailed Decision dated August 31, 2018 of the Court of Appeals in CA-G.R. CEB HC No. 02553 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jonathan Cabrillos y Nacario is **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of Jonathan Cabrillos y Nacario, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.”

Very truly yours,

Mis-DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
9/25/20

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Brgy. Kalubihan, 6000 Cebu City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 21, 6000 Cebu City
(Crim. Case No. CBU-87145)

Mr. Jonathan N. Cabrillos
c/o The Superintendent
LEYTE REGIONAL PRISON
Brgy. Mahagna, Abuyog
6510 Leyte

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

³⁰ Supra note 26.

The Director General
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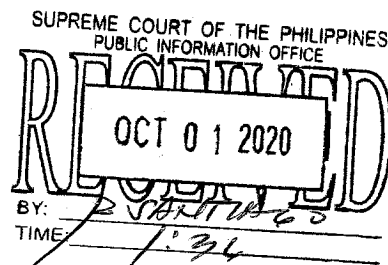
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Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 247657

-versus-

JONATHAN CABRILLOS y
NACARIO,
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: The Superintendent
Leyte Regional Prisons
Abuyog 6541 Leyte

GREETINGS:

WHEREAS, the Supreme Court on June 8, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The assailed Decision dated August 31, 2018 of the Court of Appeals in CA-G.R. CEB HC No. 02553 is hereby **REVERSED** and SET **ASIDE**.

ASIDE. Accordingly, accused-appellant Jonathan Cabrillos y Nacario is **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of Jonathan Cabrillos y Nacario, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.”

NOW, THEREFORE, you are hereby ordered to immediately release **JONATHAN CABRILLOS y NACARIO**, 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 **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **8th** day of **June 2020**.

Very truly yours,

MisPDCBatt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
GER
9/28/20

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 21, 6000 Cebu City
(Crim. Case No. CBU-87145)

Mr. Jonathan N. Cabrillos
c/o The Superintendent
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