



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated 16 November 2020 which reads as follows:*

**“G.R. No. 250132 (*The People of the Philippines v. Guillermo Bartolome, Jr. y Fernandez*).** — Assailed in this appeal<sup>1</sup> is the Decision dated July 4, 2018 of the Court of Appeals,<sup>2</sup> (CA) in CA-G.R. CR-HC No. 09501, which affirmed accused-appellant Guillermo F. Bartolome, Jr.’s (Guillermo) conviction for Illegal Possession and Illegal Sale of Dangerous Drugs.

**ANTECEDENTS**

Guillermo was charged with violation of Sections 5<sup>3</sup> and 11,<sup>4</sup> Article II of Republic Act (RA) No. 9165<sup>5</sup> in two separate Informations that read:

*Criminal Case No. 16266 – for sale of dangerous drugs*

That on or about August 8, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as shabu, a dangerous drug, weighing ZERO POINT ZERO SIX ONE SEVEN (0.0617) GRAM.

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<sup>1</sup> *Rollo*, pp. 15-17.

<sup>2</sup> *Id.* at 3-14; penned by Associate Justice Jhosep Y. Lopez, with the concurrence of Associate Justices Japar B. Dimaampao and Manuel M. Barrios.

<sup>3</sup> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty x x x shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x

<sup>4</sup> SEC. 11. *Possession of Dangerous Drugs.* — The penalty x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x.

x x x x

<sup>5</sup> COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; approved on June 7, 2002.

CONTRARY TO LAW.<sup>6</sup>

*Criminal Case No. 16267 – for possession of dangerous drugs*

That on or about August 08, 2016, in Balanga City, Bataan, Philippines and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully have in his possession, custody and control two (2) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride commonly known as shabu, a dangerous drug, with a total weight of ZERO POINT ONE FOUR SEVEN FIVE (0.1475) GRAM.

CONTRARY TO LAW.<sup>7</sup>

On arraignment, Guillermo pleaded not guilty.<sup>8</sup> Thus, trial ensued.

The prosecution, through the testimonies of PO2 Merlin Juano Brian (PO1 Brian) and PO1 Jason Tolentino (PO1 Tolentino), established that, in the afternoon of August 8, 2016, a confidential asset approached PO2 Brian at the Balanga City Police Station to report that Guillermo, known to the informant as “Guila” and a tricycle driver from Barangay (Brgy.) Bagong Silang, was involved in peddling of drugs. Through a cellphone call on loud speaker, the asset introduced PO2 Brian to Guillermo as a potential buyer of *shabu* (Methamphetamine Hydrochloride). They agreed to meet for the sale in front of the billiard hall at Phase III, Brgy. Bagong Silang, Balanga City at around 7:30 p.m.<sup>9</sup>

PO2 Brian reported the planned transaction to their Chief of Police, Police Superintendent Joel K. Tampus, who instructed for the conduct of a buy-bust operation. PO2 Abelardo DC Tacto coordinated with the Philippine Drug Enforcement Agency (PDEA),<sup>10</sup> and submitted a Coordination Form,<sup>11</sup> and Pre-Operation Report.<sup>12</sup> A briefing was then conducted where SPO1 Aribenson T. Alberto was designated as team leader, PO1 Tolentino was assigned as arresting officer, and PO2 Brian was appointed as *poseur-buyer*. A 500-peso bill, with serial number EK330249, was then marked by PO2 Brian with “BCPS.”<sup>13</sup>

At around 6:40 p.m. of the same day, PO2 Brian, PO1 Tolentino and the informant went to the area of the billiard hall. Upon their arrival, the informant called Guillermo, who answered that he still had a passenger to drop off. By 7:30 p.m., PO2 Brian saw a man approaching them; the informant told him that the man was Guillermo. On contact, the asset introduced PO2 Brian to Guillermo, who immediately uttered, “*Pare iabot*

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<sup>6</sup> *Rollo*, pp. 3-4.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Rollo*, p. 5.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

*nyo na agad ang pera.*” PO2 Brian then gave the marked money to Guillermo; in exchange, Guillermo handed over a heat-sealed transparent plastic sachet containing white crystalline substance. PO2 Brian then lighted a cigarette to signify that the sale was completed. PO1 Tolentino rushed to the crime scene and arrested Guillermo. PO1 Tolentino frisked Guillermo and recovered two plastic sachets with white crystalline substance from the right pocket of his pants, while PO2 Brian retrieved the marked money from Guillermo’s right hand. At the place of arrest, PO2 Brian marked the sachet he bought from Guillermo with “MTB;” while the other two (2) confiscated sachets were marked with “MTB-1” and “MTB-2.”<sup>14</sup>

After the arrest, Guillermo and the seized items were taken to the Balanga City Police Station.<sup>15</sup> There, the seized items were inventoried<sup>16</sup> and photographed<sup>17</sup> in the presence of Guillermo, Brgy. Kagawad Armando Zabala, an elective public official, and Villamor Sanchez, a representative of the Department of Justice (DOJ). Thereafter, PO2 Brian and PO1 Tolentino brought the contraband to the Crime Laboratory, where they were personally received by PO2 Carbonel and PCI Vernon Rey Santiago (PCI Santiago).<sup>18</sup> Examination made by PCI Santiago yielded positive for Methamphetamine Hydrochloride for all three plastic sachets.<sup>19</sup>

Guillermo denied the charges, and claimed that no buy-bust operation was conducted. He testified that in the afternoon of August 8, 2016, while driving his tricycle, two men boarded and asked to be dropped at Brgy. Munting Batangas, Balanga City. Upon reaching the destination, the two men ordered him to park the tricycle inside a compound and to alight. After alighting the tricycle, two men introduced themselves as police officers from Balanga City and asked if he knew someone named Banong from Brgy. Bagong Silang. Guillermo answered in the affirmative. Thereafter, the police officers instructed him to drive to Brgy. Bliss and look for Banong. En route, they came across another team of police officers who apprehended one Joseph Matias (Matias). Meanwhile, a black car arrived at the scene to carry Matias. Guillermo was also ordered to go to the police station, and there, he was surprised that he was charged with illegal sale and possession of *shabu*.<sup>20</sup>

The trial court, in its Joint Decision dated July 12, 2017, found Guillermo guilty as charged.<sup>21</sup> It was held that the elements of both crimes

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<sup>14</sup> CA rollo, p. 51.

<sup>15</sup> *Id.* at 51-52.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> CA rollo, pp. 51-52.

<sup>21</sup> *Id.* at 86-102. The Decision was penned by Presiding Judge Gener M. Gito; the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, accused, **GUILLERMO BARTOLOME, JR. [v] FERNANDEZ**, is found **GUILTY BEYOND REASONABLE DOUBT**:

were duly proven by the prosecution since it was established that they apprehended Guillermo in a buy-bust operation after having sold one plastic sachet of *shabu* for ₱500.00 to PO2 Brian, the *poseur-buyer*. Thereafter, two more plastic sachets of *shabu* were confiscated from him. Guillermo's defense of denial cannot prevail over the positive assertions of the apprehending police officers.<sup>22</sup>

On appeal, the CA affirmed the trial court Decision, with modification as to the penalty imposed.<sup>23</sup> The CA confirmed that the prosecution evidence proved Guillermo's unauthorized possession of sachets of *shabu*, a dangerous drug, and that there was an unbroken chain of custody. The requirements of Section 21 of RA No. 9165 were substantially complied with, and the integrity of the drugs seized was preserved. Hence, this appeal.

On June 16, 2020, Guillermo manifested that he will no longer file a supplemental brief considering that he has exhaustively discussed the assigned errors in the appellant's brief filed before the CA. Likewise, on June 24, 2020, the Office of the Solicitor General filed a Manifestation and Motion (In Lieu of a Supplemental Brief) praying that it be excused from filing a supplemental brief and that the appellee's brief filed before the CA be considered as sufficient compliance with the Court's Resolution requiring the submission of supplemental briefs by the parties.

### Issue

The sole issue for this Court to resolve is whether Guillermo is guilty beyond reasonable doubt of the crimes charged.

### The Court's Ruling

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- a. For violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 16266 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** without eligibility for parole and to **PAY** the fine of **FIVE HUNDRED THOUSAND PESOS** ([₱]500,000.00).
  - b. For violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 16267 and is hereby sentenced to suffer the penalty of imprisonment of **FIFTEEN (15) YEARS AND ONE (1) DAY as minimum to TWENTY (20) YEARS as maximum** without eligibility for parole and to pay the fine of **THREE HUNDRED THOUSAND PESOS** ([₱]300,000.00).  
**SO ORDERED.** (Emphases in the original.) *Id.* at 101.

<sup>22</sup> *Id.*

<sup>23</sup> *Supra* note 2. The dispositive portion of the CA Decision provides:

**WHEREFORE**, the assailed Joint Decision dated July 12, 2017 of the Regional Trial Court of Balanga City, Bataan, Branch 92, in Criminal Cases Nos. 16266 and 16267 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Guillermo Bartolome, Jr. [r] Fernandez is hereby found guilty beyond reasonable doubt:

- a. For violation of Section 5, Article II of Republic Act No. 9165, accused-appellant and is hereby sentenced to suffer the penalty of life imprisonment without eligibility for parole and to pay a fine of Five Hundred Thousand Pesos ([₱]500,000.00); and
- b. For violation of Section 11, Article II of Republic Act No. 9165, accused-appellant and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and a fine of ₱300,000.00.

**SO ORDERED.** (Emphases in the original.) *Rollo*, p. 13.

The appeal is devoid of merit.

A buy-bust operation is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense.<sup>24</sup> Entrapment has received judicial sanction when undertaken with due regard to constitutional and legal safeguards.<sup>25</sup> This is what happened in this case. The Balanga City Police Station, after receiving a report from a confidential informant that Guillermo was engaged in selling illegal drugs, arranged for a transaction to buy drugs. Consequently, a buy-bust team was formed to entrap Guillermo. The team proceeded to the area of the billiard hall in Phase III, Brgy. Bagong Silang. There, PO2 Brian succeeded in buying *shabu* from Guillermo for ₱500.00. After consummating the sale, Guillermo was arrested, and the buy-bust money was recovered from him. Undoubtedly, the prosecution established that there was a legitimate buy-bust operation where Guillermo sold and delivered *shabu* for value to PO2 Brian acting as *poseur-buyer*.

Indubitably, the elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA No. 9165 are present here, namely: (1) the identities of the buyer and seller; (2) the transaction or sale of the illegal drug; and (3) the existence of the *corpus delicti*.<sup>26</sup> PO2 Brian, the *poseur-buyer*, positively identified Guillermo as the person from whom he bought a sachet of *shabu* for ₱500.00. He narrated in detail how the transaction happened from the time he and the confidential informant arrived outside the billiard hall, was introduced to Guillermo, until he handed the marked money in exchange of one heat-sealed plastic sachet containing *shabu*.

On the other hand, in Illegal Possession of Dangerous Drugs, it must be shown that: (1) the accused was in possession of an item or object identified to be a prohibited or regulated drug; (2) the possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>27</sup> After the sale, Guillermo was frisked and found in possession of two heat-sealed plastic sachets of *shabu*. Guillermo did not offer any satisfactory explanation why he was in possession of the dangerous drugs; hence, there is *prima facie* evidence of his intent to possess.<sup>28</sup> After the buy-bust operation, PO2 Brian and PO1 Tolentino delivered the contraband to the crime laboratory for examination, which resulted positive for *shabu*. Thus, the prosecution proved both the sale of dangerous drugs between the *poseur-buyer* and Guillermo, and the possession of illegal drugs.

<sup>24</sup> *People v. Doria*, 361 Phil. 595, 608 (1999), citing *People v. Basilgo*, 305 Phil. 204 (1994), *People v. Yap*, 299 Phil. 839 (1994), and *People v. Macasa*, 299 Phil. 440 (1994).

<sup>25</sup> *Id.*, citing *People v. Herrera*, 317 Phil. 518 (1995), *People v. Tapeda*, 314 Phil. 231 (1995), and *People v. Basilgo*, *supra*.

<sup>26</sup> *People v. De Guzman*, 835 Phil. 43, 54 (2018).

<sup>27</sup> *People v. Quijano*, G.R. No. 247558, February 19, 2020, citing *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Que*, 824 Phil. 882, 895 (2018), citing *People v. Morales*, 630 Phil. 215, 229 (2010).

<sup>28</sup> See *People v. Eda*, 793 Phil. 885, 898 (2016), citing *Sy v. People*, 671 Phil. 164 (2011); and *Miclat, Jr. v. People*, 672 Phil. 191 (2011).

In both cases, it must be established beyond reasonable doubt that the *corpus delicti*, which is the dangerous drug itself, is the same object tested to be positive for dangerous drug and presented in court.<sup>29</sup> It is thus crucial for the prosecution to establish the unbroken chain of custody of the seized items.<sup>30</sup> Section 21, Article II of RA No. 9165<sup>31</sup> outlines the post-seizure procedure for the custody and disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory and take a photograph of the drugs 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, an elected public official and a representative from the media or the National Prosecution Service of the DOJ, who shall be required to sign the copies of the inventory and be given a copy thereof. The crime, in this case, was committed after the enactment of the amendatory law, RA No. 10640, that relaxed the requirement on insulating witnesses, and now, allows that

<sup>29</sup> *People v. Quijano*, *supra* note 27; *People v. Que*, *supra* note 27, citing *People v. Morales*, 630 Phil. 215 (2010); *People v. Ismael*, 806 Phil. 21 (2017).

<sup>30</sup> *People v. Enad*, 780 Phil. 346 (2016), citing *People v. Quebral*, 621 Phil. 226 (2009).

<sup>31</sup> Section 21 of RA No. 9165, as amended by RA No. 10640, which took effect on August 7, 2014, reads:

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, x x x 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, x x x shall, immediately after seizure and confiscation, physical 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, 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 sieved items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

[x x x x]

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA No. 9165 which states:

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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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[.]

physical inventory to be made at the nearest police station instead of the place of arrest. Here, the inventory of the confiscated items from Guillermo were witnessed by Guillermo, Brgy. Kagawad Armando Zabala – an elective public official, and Mr. Villamor Sanchez – a representative of the DOJ.

Moreover, the dangerous drugs which constitute the *corpus delicti* of the offense were properly secured. The prosecution satisfactorily established the movement and custody of the seized drugs through the following links:

- (1) At the crime scene, PO2 Brian bought a sachet of *shabu* from Guillermo which he marked with “MTB;”<sup>32</sup> thereafter, another two plastic sachets were confiscated from Guillermo and were marked by PO2 Brian with “MTB-2” and “MTB-3;”<sup>33</sup>
- (2) The contrabands were inventoried and photographed in the presence of Guillermo, Barangay Kagawad Armando Zabala and DOJ Representative Villamor Sanchez;<sup>34</sup>
- (3) A request for laboratory examination of the seized items was prepared, and was brought with the items to the Crime Laboratory by PO2 Brian and were received by PO2 Carbonel and PCI Santiago;<sup>35</sup>
- (4) PCI Santiago performed a qualitative examination on the specimens, and issued Chemistry Report No. D-501-16, stating that the sachets tested positive for the presence of methamphetamine hydrochloride or *shabu*;<sup>36</sup>
- (5) During trial, PO2 Brian identified the three sachets of *shabu* seized from Guillermo.<sup>37</sup>

The evidence shows that the items seized were the same items tested and subsequently identified and testified to in court. The integrity and evidentiary value of the drugs seized from Guillermo were not compromised.

It must be stressed that the purpose of Section 21 of RA No. 9165 is to protect the accused from malicious imputations of guilt by abusive police officers. However, Section 21 cannot be used to thwart the legitimate efforts of law enforcement agents. Slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not

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<sup>32</sup> CA rollo, p. 55

<sup>33</sup> *Id.* at 60.

<sup>34</sup> *Id.* at 56 and 60.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

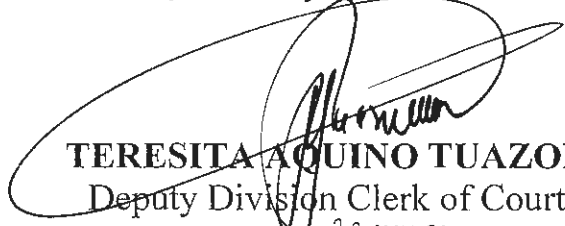
exculpate an otherwise guilty defendant. Substantial adherence to Section 21 will suffice as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officers.<sup>38</sup>

All told, after a careful review of the records of the case and the issues submitted by the parties, the Court finds no error committed in the assailed Decision of the CA. The facts, as borne out by the records, sufficiently support the conclusion that Guillermo is indeed guilty of violation of Sections 5 and 11, Article II of RA No. 9165. The issues and matters raised before the Court are the same ones raised in the CA, and were sufficiently addressed and correctly ruled upon by the CA. However, we find it necessary to modify the penalty imposed for Illegal Sale of Dangerous Drugs, in that the phrase “*without eligibility for parole*” must be omitted. In A.M. No. 15-08-02-SC,<sup>39</sup> this Court set the guideline for the use of the phrase “*without eligibility for parole*” only in cases where the death penalty is warranted, but is not imposed because of RA No. 9346; otherwise, there is no need to use the phrase “*without eligibility for parole*” when the penalty is life imprisonment.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated July 4, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09501– convicting accused-appellant Guillermo Bartolome, Jr. y Fernandez of violation of Section 5, Article II of Republic Act No. 9165 and sentencing him with life imprisonment and imposing a fine of Five Hundred Thousand Pesos (₱500,000.00), and violation of Section 11, Article II of Republic Act No. 9165, and sentencing him with twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and a fine of Three Hundred Thousand Pesos (₱300,000.00) – is **AFFIRMED**. The phrase “*without eligibility for parole*” is **DELETED**.

**SO ORDERED.** (Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)”

By authority of the Court:

  
**TERESITA AQUINO TUAZON**  
Deputy Division Clerk of Court *by s/rs*  
28 MAY 2021

<sup>38</sup> *People v. Sahibil*, G.R. No. 228953, January 28, 2019; *People v. O'cochlain*, G.R. No. 229071, December 10, 2018.

<sup>39</sup> GUIDELINES FOR THE PROPER USE OF THE PHRASE “WITHOUT ELIGIBILITY FOR PAROLE” IN INDIVISIBLE PENALTIES; dated July 19, 2016.



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THE DIRECTOR (reg)  
Bureau of Corrections  
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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 92  
Balanga City, 2100 Bataan  
(Crim. Case Nos. 16266 & 16267)

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