



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECORDED
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BY: JOAN
TIME: 2:10

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 19, 2020**, which reads as follows:*

“G.R. No. 244258 (People of the Philippines v. Christopher Durado y Broso). – On appeal¹ is the Decision² dated September 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09252. The CA affirmed the Joint Judgment³ dated March 27, 2017 of the Regional Trial Court (RTC) of Legazpi City, Branch 6, convicting accused-appellant Christopher Durado y Broso (Durado) for violating Sections 5, 11, and 12 of Republic Act No. (R.A.) 9165.⁴

The four Informations filed against Durado read:

Criminal Case No. 13001

That on or about the 12th day of December, 2014, at the vicinity of Brgy. Sagmin, Legazpi City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, knowingly, unlawfully and feloniously sell and deliver to a poseur buyer, 17 years of age, a minor, Two (2) pcs. Heat sealed transparent plastic sachets and One (1) unsealed transparent plastic sachet each containing Marijuana fruiting tops, a dangerous drug, per laboratory examination with a total net weight of 3.695 grams and One (1) heat sealed transparent plastic sachet containing 0.112 grams of white crystalline substance which upon laboratory examination tested positive for Methamphetamine Hydrochloride commonly known as Shabu, a dangerous drug, in consideration of Two Thousand Pesos (P2,000.00) consisting of two (2) genuine Five Hundred (500.00) Peso bills and replica of the said 500 peso bills, without any legal authority to sell the same, to the damage and prejudice of public interest.

¹ CA rollo, pp. 133-134.

² Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz, concurring; id. at 117-127.

³ Penned by Judge Elmer M. Lanuzo; Records, Criminal Case No. 13001, pp. 236-257.

⁴ Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

CONTRARY TO LAW.⁵

Criminal Case No. 13002

That on or about the 12th day of December 2014, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully (*sic*), unlawfully and feloniously have in his possession, control and custody having the following with their marking:

A – One (1) heat-sealed transparent plastic sachet with markings JAA-1B 12/12/14 containing 0.020 gram of white crystalline substance

and upon forensic chemistry examination, gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE a dangerous drug, without the corresponding license and prescription, in violation of the above-cited law[.]

CONTRARY TO LAW.⁶

Criminal Case No. 13003

That on or about the 12th day of December 2014, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully (*sic*), unlawfully and feloniously have in his possession, control and custody having the following, with their markings and recorded weights:

C – One (1) unsealed transparent plastic sachet with markings JAA-3 12/12/14 containing 0.258 gram of dried suspected Marijuana fruiting tops

D – One (1) heat sealed transparent plastic sachet with markings JAA-4 12/12/14 containing 0.850 gram of dried suspected Marijuana fruiting tops.

with a total net weight of 1.108 grams and upon forensic chemistry examination, gave positive result to the test for the presence of MARIJUANA a dangerous drug, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.⁷

⁵ Records, Criminal Case No. 13001, p. 1.

⁶ Records, Criminal Case No. 13002, p. 1.

⁷ Records, Criminal Case No. 13003, p. 2.

Criminal Case No. 13004

That on or about the 12th day of December 2014, in the City of Legazpi, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there knowingly, willfully (*sic*), unlawfully and feloniously have in his possession, control and custody the following with their markings:

One (1) transparent glass tube pipe marked as JAA-2A 12/12/14 containing 0.058 gram of partially burned suspected Marijuana fruiting tops

One (1) piece yellow/green disposable lighter marked as JAA-1A 12/12/14.

which are instruments or paraphernalia fit or intended for smoking, consuming, administering, ingesting or introducing any dangerous drug into the body, and the accused's possession is without authority of law nor necessary prescription.

CONTRARY TO LAW.⁸

When arraigned, Durado entered the plea of not guilty to all four charges.⁹ A joint trial was conducted.

The prosecution presented the following witnesses: (1) Agnes Q. Manga (Agnes); (2) Police Senior Inspector Domingo B. Tapel, Jr. (PSI Tapel); (3) Agnelli Katereen Hua (Agnelli); (4) Alec Brent M. Hua (Alec); Police Office 1 Jovy Albaytar (PO1 Albaytar); (5) Police Office 3 Noriel L. Palencia (PO3 Palencia); (6) DOJ Representative Jesus Arsenio Aragon (DOJ Rep. Aragon); (7) Barangay Kagawad Jude Rico (Kgd. Jude); (8) Barangay Kagawad Orlando Lombes (Kgd. Orlando); (9) Police Officer 1 Ma. Joan Batislaong (PO1 Batislaong); (10) Police Officer 2 Angelo S. Villanueva (PO2 Villanueva); and (11) Police Senior Inspector Wilfredo I. Pabustan, Jr. (PSI Pabustan). The defense of Durado was based solely on his testimony.

The evidence of the prosecution established that around 10:00 a.m. on December 12, 2014, Alec, a 17-year old minor, received a text message from a certain Weng¹⁰ saying "YAYOO! MINDFOAMSTALKS STIL (*sic*) AVAILABLE. AYAW MO BA[?]"¹¹ At that time, Alec's mother Agnes had possession of the cellphone.¹² Suspecting that the sender was offering Alec

⁸ Records, Criminal Case No. 13004, p. 2.

⁹ Records, Criminal Case No. 13001, p. 56; Records, Criminal Case No. 13002, p. 56; and Records, Criminal Case No. 13003, p. 57.

¹⁰ TSN, March 4, 2015, p. 7. When the trial court asked if there was a name in the mobile phone, Agnes said there was none. *See id.* at 14.

¹¹ TSN, April 15, 2015, p. 8. *See also* TSN, February 23, 2015, pp. 6, 10 and TSN March 4, 2015, pp. 8 and 13.

¹² TSN, March 4, 2015, p. 8.

drugs, Agnes sought the help of her daughter (Agnelli) in asking how much the illegal drugs were.¹³ When the sender quoted the drugs at ₱500.00, Agnes pretended to be Alec and expressed interest in buying drugs. Agnes, Agnelli, and Alec proceeded to the Philippine Drug Enforcement Agency (PDEA). A PDEA agent referred them to the Legazpi City Police Station due to a lack of PDEA agents at that time. At the police station, PSI Tapel met with Agnes, Agnelli, and Alec.¹⁴ He formed a buy-bust team with five other officers and assigned Alec as the *poseur-buyer*.¹⁵ Because Agnes informed PSI Tapel that the agreed purchase price was ₱2,000.00,¹⁶ PSI Tapel prepared two genuine ₱500.00 bills and two scanned copies of the same ₱500.00 bills.¹⁷

A few minutes before 5:00 p.m., Alec boarded a black Toyota Altis (Altis) with his brother-in-law¹⁸ (Aaron) and proceeded to the meeting place, while the rest of the buy-bust team followed *via* their motorcycles.¹⁹ Between 5:25 p.m. and 5:30 p.m., the buy-bust team positioned themselves near the meeting place along Sampaguita street, while PO1 Albaytar and PSI Tapel left their motorcycles and followed the Altis by foot.²⁰ PSI Tapel and PO1 Albaytar bought barbecue at the barbecue stand near Alec and Durado. PSI Tapel saw Alec and Durado talking to each other and exchanged something. While Alec was walking back to the Altis, Alec executed the pre-arranged signal by holding his head. It was at this time that Durado was walking towards the barbecue stand. Thus, PO1 Albaytar arrested Durado. PSI Tapel went to Alec, who was seated inside the Altis, and told Alec to maintain custody over the three plastic sachets of *marijuana* and one plastic sachet of *shabu* purchased from Durado.²¹

During the 1 hour and 30 minutes that the buy-bust team remained at the crime scene with Durado, they were able to secure the presence of three barangay officials (one of whom was the barbecue vendor), a media representative,²² and a Department of Justice (DOJ) representative.²³ When all the insulating witnesses were present, PO1 Albaytar searched the person of Durado, while PO1 Batislao brought materials to be used for marking and photograph-taking of evidence. PO1 Albaytar recovered the buy-bust money and two sachets²⁴ of *marijuana* on Durado's left front pocket, while *shabu*

¹³ TSN, March 4, 2015, pp. 13, and 22-23. Agnes admitted that it was she who asked about the price.

¹⁴ TSN, March 11, 2015, p. 4. Per PSI Tapel's testimony, this was before 4:00 p.m.

¹⁵ TSN, March 11, 2015, pp. 6, 10-11; *i.e.*, PO1 Astor, PO1 Albaytar (as the arresting officer), PO2 Borlasa (as perimeter security), PO2 Azais (as perimeter security), and PO1 Batislaon (as back-up and photographer). 1.

¹⁶ TSN, March 11, 2015, p. 5. However, Agnelli testified that the final price agreed upon *via* text messaging was ₱1,500.00; TSN April 15, 2015, pp. 9, 13-14. Brent testified that the deal was for him to buy ₱1,800.00 worth of dangerous drugs, May 11, 2015, p. 14.

¹⁷ TSN, March 11, 2015, pp. 5-6. *See also* Records, Criminal Case No. 13004, p. 45.

¹⁸ *i.e.*, Aron Azotilla. TSN, May 11, 2015, p. 17. Also referred to as Agnelli's boyfriend, Aaron Asutilla; CA *rollo*, pp. 62 and 120.

¹⁹ TSN, March 11, 2015, p. 10.

²⁰ TSN, July 29, 2015, p. 5 and TSN, March 11, 2015, p. 13.

²¹ TSN, March 11, 2015, p. 23.

²² In the person of Kim Reolo. TSN, March 11, 2015, p. 25.

²³ In the person of Jesus Arsenio Aragon. TSN, March 11, 2015, p. 25.

²⁴ One opened sachet marked as JAA-3, while the sealed sachet marked as JAA-4.

and drug paraphernalia were recovered from Durado's right front pocket.²⁵ PO1 Albaytar then marked the items recovered from Durado, while Alec marked the plastic sachets sold to him.²⁶ PO1 Albaytar placed the drugs and drug paraphernalia he recovered in separate transparent plastic containers.²⁷

After an initial inventory of the items was made, Durado and the buy-bust team proceeded to the Legazpi City Police Station.²⁸ According to Alec, he turned over the drugs to PO3 Palencia upon arriving at the police station.²⁹

At the police station's investigation room, another inventory was conducted by PO3 Palencia and PO1 Albaytar.³⁰ The Certificate of Inventory³¹ states that the following were seized from Durado:

1. one small black pouch³² containing:
 - a. 1 piece yellow/green disposable lighter,³³
 - b. 1 small heat sealed transparent sachet³⁴ containing white crystalline substance,
 - c. 1 genuine ₱50.00 bill,
 - d. 1 genuine ₱20.00 bill,
 - e. 3 pieces ₱1.00 coins,
 - f. 2 pieces ten-centavo coins, and
 - g. 2 piece of five-centavo coin;
2. 1 rolled brown paper³⁵ containing 1 piece of glass tube pipe³⁶ containing suspected *marijuana* traces;
3. 1 piece open transparent plastic sachet³⁷ containing suspected *marijuana* leaves;
4. 1 piece heat sealed transparent plastic³⁸ sachet containing suspected *marijuana* leaves;
5. 2 pieces genuine ₱500.00 bills;³⁹
6. 2 pieces replica ₱500.00 bills;⁴⁰
7. 1 black Nokia cellphone;⁴¹
8. 2 pieces heat sealed transparent plastic sachet⁴² containing suspected *marijuana* leaves;
9. 1 open transparent plastic sachet⁴³ containing suspected *marijuana* leaves; and

²⁵ TSN, May 20, 2015, pp. 12, 14, 16.

²⁶ TSN, March 11, 2015, p. 25 and TSN, May 20, 2015, p. 17.

²⁷ TSN, May 20, 2015, pp. 23-25.

²⁸ TSN, March 11, 2015, p. 26.

²⁹ TSN, May 11, 2015, p. 28. *See also* TSN, June 10, 2015, p. 13.

³⁰ Id; TSN, May 20, 2015, pp. 19-20.

³¹ Records, Criminal Case No. 13001, pp. 20-21.

³² Marked as JAA-1 12/12/14.

³³ Marked as JAA-1A 12/12/14.

³⁴ Marked as JAA-1B 12/12/14.

³⁵ Marked as JAA-2 12/12/14.

³⁶ Marked as JAA-2A 12/12/14.

³⁷ Marked as JAA-3 12/12/14.

³⁸ Marked as JAA-4 12/12/14.

³⁹ Pre-marked as AMH-1 and AMH-2.

⁴⁰ Marked as JAA-5 12/12/14.

⁴¹ Marked as JAA-7 12/12/14.

⁴² Marked as AMH 3 and AMH-5.

⁴³ Marked as AMH-4.

10. 1 heat sealed transparent sachet⁴⁴ containing white crystalline substance.

After inventory and around 10:00 p.m., PO1 Albaytar, PO3 Palencia, and Durado brought the drugs and drug paraphernalia to the crime laboratory.⁴⁵ At the crime laboratory, PO1 Albaytar and PO3 Palencia turned over the items to PO2 Villanueva, who then handed the seized items over to PSI Pabustan.⁴⁶ PSI Pabustan conducted two separate examinations⁴⁷ of the items turned over to him. Both examinations yielded positive for either *shabu* or *marijuana*.⁴⁸

For his defense, Durado claimed that Alec was his drug supplier. On December 12, 2014, Durado alleged that he was at the back of JY store waiting for Alec to sell him ₱500.00 worth of *marijuana*. After purchasing *marijuana*, Alec walked back to the Altis. Police officers approached Durado and arrested him.⁴⁹ The police officers then took from his pockets his black pouch and his Samsung cellphone.⁵⁰ PO1 Albaytar approached him, returned the pouch, and placed a Nokia cellphone into Durado's pockets.⁵¹ Upon PSI Tapel's instruction, Alec inserted plastic sachets into his pockets.⁵² Thereafter, Alec was told to return to the Altis, while Durado was ordered to sit down and remain silent while they wait for witnesses. When all the witnesses arrived, white bond papers were placed on the pavement and Durado was frisked. All items taken from Durado and those coming from Alec were marked prior to heading for the police station.⁵³ Durado tried talking to one of the barangay kagawads to deny being a drug peddler but the barangay kagawad only told him to remain silent and just explain in the precinct.⁵⁴

Ruling of the Regional Trial Court

After evaluating the evidence for the prosecution and the defense, the RTC found Durado guilty of violating Sections 5 and 11, Article II of R.A. 9165:

WHEREFORE, in light of the foregoing ratiocinations, the Court hereby renders judgment in the following manner, to wit:

⁴⁴ Marked as AMH-6.

⁴⁵ TSN, May 20, 2015, pp. 22 and 39.

⁴⁶ TSN, May 20, 2015, pp. 17 and 23. *See also* TSN, November 18, 2015, p. 3. The items handed over by PO1 Albaytar were those frisked from Durado while the items handed over by PO3 Palencia were those turned over to him by Alec.

⁴⁷ Covered by Chemistry Report Nos. D-309-2014 and D-310-2014. Records, Criminal Case No. 130001, pp. 25-26.

⁴⁸ TSN, November 18, 2015, p. 6.

⁴⁹ TSN, May 4, 2016, p. 4-5.

⁵⁰ *Id.* at 5, 16.

⁵¹ *Id.* at 6, 16.

⁵² *Id.* at 6-7.

⁵³ *Id.* at 7-9.

⁵⁴ *Id.* at 18.

1. In **Criminal Case No. 13001**, accused-Christopher Durado y Broso a.k.a. Weng is found guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a **FINE** of **Php500,000.00**;

2. In **Criminal Case No. 13002**, accused-Christopher Durado y Broso a.k.a. Weng is found guilty of Violation of Section 11, Article II of R.A. 9165 and hereby sentences him to an imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** as the minimum to **FOURTEEN (14) YEARS** as the **MAXIMUM** and to pay a **FINE** of **Php300,000.00**;

3. In **Criminal Case No. 13003**, accused-Christopher Durado y Broso a.k.a. Weng is found guilty beyond reasonable doubt of Violation of Section 11, Article II of R.A. 9165 and hereby sentences him to an imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY** as the minimum to **FOURTEEN (14) YEARS** as the **MAXIMUM** and to pay a **FINE** of **Php300,000.00**; and

4. In **Criminal Case No. 13004**, accused-Christopher Durado y Broso a.k.a. Weng is found guilty beyond reasonable doubt of Violation of Section 12, Article II of R.A. 9165 and hereby sentences him to undergo an imprisonment of **SIX (6) MONTHS** and **ONE (1) DAY** as **MINIMUM** to **ONE (1) YEAR** as the **MAXIMUM** and to pay a **FINE** of **Php50,000.00**.

5. The eight (8) drug specimens are confiscated in favor of the government to be destroyed upon motion of the public prosecutor pursuant to Section 21, par. 7 of R.A. 9165.

6. The Branch Clerk of Court is directed to issue the **MITIMUS** for the commitment of the accused-Christopher Durado y Broso a.k.a. Weng to serve his sentence at the National Penitentiary, Bilibid, Muntinlupa City.

7. Costs against the accused.

SO ORDERED.⁵⁵ (Emphasis in the original)

In convicting Durado, the RTC concluded that the testimonies and supporting documents sufficiently proved the identities of the buyer and seller, the prohibited drug, and the marked money.⁵⁶

The trial court held that the prosecution was able to establish an unbroken chain of custody, successfully showing that the integrity and evidentiary value of the seized items were not compromised at any stage. The RTC did not believe Durado's allegation that he was framed. The RTC held that the text exchanges between Alec and Durado prove that Durado was the person selling drugs to Alec, and not the other way around.⁵⁷

⁵⁵ Supra note 3 at 256-257.

⁵⁶ Records, Criminal Case No. 13001, p. 248

⁵⁷ Id. at 255.

Durado appealed his conviction with the CA.⁵⁸ In his Appellant's Brief,⁵⁹ he argued that there was no valid buy-bust operation because he was instigated into selling drugs. Durado explained that Agnelli's testimony and the text exchange showed Durado desisting from selling drugs. However, because of Agnelli's offer to purchase ₱1,800.00 worth of drugs, Durado was enticed to sell.⁶⁰ He also questioned the integrity of the drugs seized from him because of the absence of the fourth link in the chain of custody. Durado pointed out that "PSI Pabustan admitted not having personal knowledge as to who delivered the evidence to the office of the prosecutor[.]"⁶¹

Ruling of the Court of Appeals

In affirming Durado's conviction, the CA did not give merit to his arguments. The dispositive portion of the CA's decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The 27 March 2017 Joint Judgment of Branch 6 of the Regional Trial Court of Legazpi City in Criminal Case Nos. 13001, 13002, 13003 and 13004 is **AFFIRMED**.

SO ORDERED.⁶² (Emphasis in the original)

The appellate court ruled that the buy-bust operation was a valid entrapment operation because Durado was not cajoled into peddling drugs. Unlike in cases of instigation, where the criminal intent did not originate from the accused, it was Durado who sent the first message to Alec and offered drugs to the latter.⁶³

The CA ruled that the prosecution's failure to identify the person who delivered the drugs to the trial court did not render the drugs presented as inadmissible in evidence. The CA held that an unbroken (not perfect) link in the chain of custody was proven by the prosecution. PO1 Albaytar, Alec, and PO3 Palencia identified the seized items with certainty. Lastly, the appellate court gave more credence to the prosecution's evidence especially since Durado failed to prove that the drugs presented in court were tampered with.⁶⁴

Durado now appeals the CA's decision based on the same arguments he raised before the appellate court.

⁵⁸ Id. at 261-262.

⁵⁹ CA *rollo*, pp. 36-53.

⁶⁰ Id. at 46-47.

⁶¹ Id. at 50.

⁶² Id. at 127.

⁶³ Id. at 124.

⁶⁴ Id. at 124-127.

The Court's Ruling

We find the appeal meritorious.

In the prosecution of illegal sale of dangerous drugs, the following must be sufficiently proven: “(1) that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. x x x [F]or illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.”⁶⁵

The fact of sale is undisputed. According to Durado, “the transaction would not consummate were it not for [Agnelli’s] insistence.”⁶⁶ Durado thus admits that a sale took place. Agnelli’s act of increasing the price did not convert the transaction to one of instigation. What transpired was a legitimate entrapment operation where the criminal intent originated from Durado – Durado being the first to text Alec and offer drugs.

In presenting the *corpus delicti* or the dangerous drugs as evidence, the prosecution must prove compliance with the rule on the chain of custody. This is embodied in Section 1 of R.A. 10640,⁶⁷ which is essentially a carry-over of the provisions of Section 21 of R.A. 9165. Section 1 of R.A. 10640 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, 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

⁶⁵ *People v. Que*, G.R. No. 212994, January 31, 2018, citing *People v. Morales*, 630 Phil. 215, 228 (2010).

⁶⁶ *CA rollo*, p. 47.

⁶⁷ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002.”

presence of the accused or the persons 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.

x x x x

- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification. (underscoring supplied)

Thus, the four links of the chain of custody are: (1) seizure and marking of the illegal drugs recovered from the accused by the apprehending officer; (2) turnover of the illegal drugs seized by the apprehending officer to the investigating officer; (3) turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination; and (4) turnover and submission of the illegal drugs seized from the forensic chemist to the court.⁶⁸

The buy-bust team improperly allowed a civilian (*i.e.*, Alec) to mark and to maintain custody over the drugs sold by Durado. Alec testified that:

⁶⁸ See *People v. Gayoso*, 808 Phil. 19, 31 (2017), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

(1) he marked the plastic sachets sold to him;⁶⁹ and (2) he had possession of the drugs sold to him from 5:30 p.m. until he turned them over to PO3 Palencia at the police station past 7:00 p.m. The first link requires that marking be done by the apprehending officer – in this case, PO1 Albaytar. PO1 Albaytar should have taken custody of the items upon consummation of the sale. The fact that Alec did not immediately surrender the drugs sold to him is a red flag on the first link of the chain of custody.

The second link in the chain of custody was not clearly established. According to Alec, he turned over the items sold to him to PO3 Palencia. This was corroborated by PO3 Palencia. However, Kgd. Orlando testified that all the items seized (meaning those that were sold by Durado and those recovered from Durado's possession) were placed in one brown paper container after marking.⁷⁰ The incongruity arises when the testimonies of the buy-bust team and the insulating witness are compared. The buy-bust team alleged that two separate people handled (a) the drugs sold and (b) the drugs confiscated from Durado.⁷¹ It can be implied from Kgd. Orlando's testimony that only one person had possession of all the drugs (meaning, those sold to Alec and those recovered from Durado) after marking was done as these items were placed in one brown paper.⁷² There is, thus, no certainty on how the second link was complied with.

If this Court were to consider the buy-bust team's testimonies, the buy-bust team still failed to comply with the second link. There was no clear account of PO1 Albaytar's turnover of the items recovered from Durado's possession to PO3 Palencia (the investigating officer).

The prosecution also failed to establish the fourth link in the chain of custody. According to PSI Pabustan, he turned over the items after conducting a laboratory examination "to the evidence custodian for proper safekeeping."⁷³ There was no statement as to *who* this evidence custodian is and *how* the items were handled by the said custodian. When asked who else handled the plastic sachets containing the drugs and drug paraphernalia, PSI Pabustan merely said, "I believed (*sic*) it was turned over by the evidence custodian to the good prosecutor for marking of evidence."⁷⁴ Such answer is only speculative.

The records do not show how the drugs and drug paraphernalia were turned over to the court. The Minutes of the Preliminary Conference⁷⁵ and

⁶⁹ TSN, March 11, 2015, p. 25; TSN, May 20, 2015, p. 17.

⁷⁰ See TSN July 29, 2015, pp. 41-43. Upon further clarification by the prosecutor during re-direct, Kgd. Orlando suddenly could not give a categorical answer. The sudden change in his answer was manifested by the prosecution and observed by the trial court.

⁷¹ *i.e.*, Alec maintaining possession of the drugs sold by Durado and PO1 Albaytar maintaining possession of the drugs and drug paraphernalia recovered from Durado's possession.

⁷² See TSN July 29, 2015, pp. 41-43.

⁷³ TSN November 18, 2015, p. 11.

⁷⁴ *Id.*

⁷⁵ Records, Criminal Case No. 13001, pp. 58-60.

the Joint Pre-trial Order⁷⁶ show that the drugs and drug paraphernalia (under Exhibits BB to HH) were marked as reserved.⁷⁷ During trial, the drugs sold by Durado were mentioned for the first time when the public prosecutor requested the court to open the “bigger plastic sachet” where four heat sealed transparent sachets were placed.⁷⁸ There was no statement as to how the public prosecutor acquired the said bigger plastic sachet. There was also no mention as to how the public prosecutor obtained the plastic sachet containing the drugs and drug paraphernalia confiscated from Durado.⁷⁹ During the testimony of PO1 Albaytar, the public prosecutor simply requested the court to open the plastic sachet containing three sealed sachets and one sachet with a glass tube.⁸⁰

Without any proof of how the items were handled from the forensic chemist to the trial court, the prosecution failed to prove the fourth link in the chain of custody.

Given the glaring gaps in the chain of custody, the prosecution was not able to prove that the identity, integrity, and evidentiary value of the drugs and drug paraphernalia subject of the instant appeal were preserved. Therefore, this Court cannot conclude with moral certainty that: (1) the *marijuana* and *shabu* sold to Alec; and (2) the *shabu*, *marijuana*, and drug paraphernalia recovered from Durado were the same as those presented in court.

Thus, Durado’s acquittal is in order because his guilt was not proven beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09252 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Christopher Durado y Broso is hereby **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason. The Director of Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

Let entry of judgment be issued immediately.

⁷⁶ Id. at 66-71.

⁷⁷ See id. at 59 and 69.

⁷⁸ See TSN May 11, 2015, p. 20.

⁷⁹ See TSN May 20, 2015, p. 14.

⁸⁰ Id.

SO ORDERED.”

By authority of the Court:

MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court
G.R. 244258

Atty. Edric Christian E. Chua
Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

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

COURT OF APPEALS
CA G.R. CR HC No. 09252
1000 Manila

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

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

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

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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

Mr. Christopher Durado y Brosco
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

LIBRARY SERVICES
Supreme Court, Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 6, Legaspi City
4500 Albay
(Crim. Case Nos. 13001, 13002, 13003
& 13004)

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila





SUPREME COURT OF THE PHILIPPINES
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 SEP 09 2020
 BY: JOAN
 TIME: 2:10

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 244258

-versus-

CHRISTOPHER DURADO y
 BROSO
 Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director
 BUREAU OF CORRECTIONS
 1770 Muntinlupa City

Thru: **The Superintendent**
 New Bilibid Prison North
 BUREAU OF CORRECTIONS
 1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on February 19, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 19, 2018 of the Court of Appeals in

CA-G.R. CR-HC No. 09252 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Christopher Durado y Brosos is hereby **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason. The Director of Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

Let entry of judgment be issued immediately.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release **CHRISTOPHER DURADO y BROSO** 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 **19th** day of **February 2020**.

By authority of the Court:

MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

GER
9/4/20

Atty. Edric Christian E. Chua
Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
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COURT OF APPEALS
CA G.R. CR HC No. 09252
1000 Manila

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

Mr. Christopher Durado y Broso
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Presiding Judge
REGIONAL TRIAL COURT
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