



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **15 March 2021** which reads as follows:*

“G.R. No. 233532 (*People of the Philippines v. Elmer Miraflor y De Luna*). – This is an Appeal¹ from the March 29, 2017 Decision² of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 08107. The *CA* affirmed the January 27, 2016 Judgment³ of the Regional Trial Court of San Pedro City, Laguna, Branch 31 (*RTC*), which found Elmer Miraflor y De Luna (*accused-appellant*) guilty beyond reasonable doubt of violation of Section 5,⁴ Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Antecedents

Accused-appellant was charged with violation of Sec. 5, Art. II of R.A. No. 9165 in an Information⁵ dated March 1, 2013, the accusatory portion of which reads:

¹ *Rollo*, pp. 13.

² *Id.* at 2-12; penned by Associate Justice Socorro B. Inting with Associate Justices Romeo F. Barza and Maria Filomena D. Singh, concurring.

³ *CA rollo*, pp. 13-19; penned by Judge Sonia T. Yu-Casano.

⁴ **SECTION 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) 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

⁵ *CA rollo*, p. 12.

That on or about February 8, 2013, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to PO2 MARIE FRANZ INES SUMAYOD, a police poseur[-] buyer, one (1) small heat-sealed plastic sachet containing [METHAMPHETAMINE] HYDROCHLORIDE or *Shabu*, a dangerous [drug] weighing zero point zero eight (0.08) gram.

CONTRARY TO LAW.⁶

During arraignment, accused-appellant pleaded “not guilty” to the charge. Trial ensued thereafter.

Version of the prosecution

On February 7, 2013, Police Officer II Pio Pievro Avila (*PO2 Avila*), Police Senior Inspector Limuel June Sigua (*PSI Sigua*), Senior Police Officer IV Melchor Dela Peña, Senior Police Officer II Manuel Abutal, Police Officer II Marie Franz Ines Sumayod (*PO2 Sumayod*), and Police Officer II Almadilla were on a 24-hour duty at the San Pedro Municipal Police Station, San Pedro, Laguna. At around 8:00 in the evening, an informant came to their station and reported that accused-appellant was selling illegal drugs at Purok Ilat, Brgy. Nueva, San Pedro, Laguna. PSI Sigua relayed the information to their Chief of Police who decided to form a team to conduct a buy-bust operation and designated PO2 Sumayod as the poseur-buyer.⁷

The buy-bust team led by PSI Sigua proceeded to Purok Ilat, Brgy. Nueva, San Pedro, Laguna to verify the exact location of accused-appellant. At around 10:30 in the evening, the team and the informant arrived in the vicinity. The informant pointed the exact location of accused-appellant’s house. Thereafter, the buy-bust team returned to their station to prepare the Pre-Operation Report,⁸ authority to operate, and Coordination Form⁹ and transmitted the same to the Philippine Drug Enforcement Agency (*PDEA*). The team also prepared the buy-bust money.¹⁰

At around 11:30 in the evening, the team, together with the informant, left the station. They arrived at the target place around 12:00 midnight. Upon arrival, the team positioned themselves at their designated places while PO2 Sumayod and the informant proceeded to accused-appellant’s house. PO2

⁶ Id.

⁷ *Rollo*, p. 3.

⁸ Records, p. 11.

⁹ Id. at 12.

¹⁰ *Rollo*, p. 3.

Sumayod and the informant immediately saw accused-appellant standing outside his house and approached him. The informant uttered, "*Tol escorer dos lang.*" PO2 Sumayod handed the marked money to accused-appellant, who then took out from his pocket a plastic containing a white crystalline substance, suspected to be *shabu*. Thereafter, PO2 Sumayod rang the phone of PO2 Avila to signal the consummation of the drug transaction.¹¹

PO2 Avila ran towards accused-appellant and assisted PO2 Sumayod in effecting the arrest, while the others served as perimeter security. PO2 Sumayod immediately marked the sachet subject of the transaction with "EM-B" which stands for "Elmer Miraflor-Buy-bust." Thereafter, the police officers brought accused-appellant and the confiscated item to their station and prepared the request for drug dependency, request for drug test, and chain of custody form. They also conducted the inventory of the item seized and took its photograph. After preparing all the necessary documents, they brought accused-appellant and the seized item to the crime laboratory at Camp Vicente Lim.¹²

Chemistry Report No. D-091-13,¹³ dated February 8, 2013, indicated that the specimen yielded a positive result for Methamphetamine Hydrochloride or *shabu*.¹⁴

Version of the defense

On February 7, 2013, at around 10:00 in the evening, accused-appellant was having dinner on the second floor of his house when PO2 Sumayod and PO2 Avila suddenly barged inside, went to the second floor, and handcuffed him. Said police officers were forcing him to take out the *shabu* he was allegedly hiding. Accused-appellant's mother then asked the police officers if they had a search warrant but PO2 Avila drew a gun, pointed it at her, and uttered, "*Eto ang search warrant, manahimik ka na lang.*" The police officers then searched the house for about 30 minutes. Although the search turned futile, accused-appellant was still taken to the police station where a person took out a plastic sachet and a ₱200.00-bill, placed them on the table, and took pictures of the latter. After an hour, accused-appellant was brought to Camp Vicente Lim.¹⁵

¹¹ Id. at 3-4.

¹² Id. at 4.

¹³ Records, p. 14.

¹⁴ *Rollo*, p. 4.

¹⁵ Id. at 5.

The RTC Ruling

In its January 27, 2016 Judgment,¹⁶ the RTC found accused-appellant guilty beyond reasonable doubt of violation of Sec. 5, Art. II of R.A. No. 9165, and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The dispositive portion of the judgment reads:

WHEREFORE, judgment is hereby rendered finding accused Elmer Miraflor y De Luna GUILTY beyond reasonable doubt of violation of Section 5, Article II of [R.A. No.] 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency. Accused is likewise not eligible for parole under the Indeterminate Sentence Law.

x x x x

SO ORDERED.¹⁷

Aggrieved, accused-appellant appealed to the CA.

The CA Ruling

In its March 29, 2017 Decision,¹⁸ the CA affirmed the ruling of the RTC and found that the prosecution was able to establish all the elements of the offense. The prosecution's evidence positively showed that accused-appellant agreed to sell ₱200.00 worth of *shabu* to PO2 Sumayod, who was then acting as the poseur-buyer.¹⁹ After receiving the marked money from PO2 Sumayod, accused-appellant took one (1) sachet of *shabu* from his pocket and handed it to PO2 Sumayod. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.²⁰

Moreover, the CA held that, while the procedure under Sec. 21(1), Art. II of R.A. No. 9165 was not strictly complied with, the integrity and evidentiary value of the seized item were duly preserved.²¹ Without a doubt, the evidence seized from accused-appellant at the time of the buy-bust operation was the same one tested, introduced, and testified to in court. This

¹⁶ CA rollo, pp. 13-19.

¹⁷ Id. at 18.

¹⁸ Rollo, pp. 2-12.

¹⁹ Id. at 7.

²⁰ Id. at 7-8.

²¹ Id. at 9.

fact was further bolstered by the stipulations entered into by the parties as to the testimony of Forensic Chemist Donna Villa Huelgas (*FC Huelgas*). Considering that the integrity of the seized drug had been maintained, the absence of an elected public official and representatives from the media and the DOJ during the inventory and photograph-taking of the seized item should not be deemed fatal to the prosecution's case.²² The dispositive portion of the decision reads:

WHEREFORE, the appeal is **DENIED**. The Judgment dated January 27, 2016 of the Regional Trial Court (RTC) of San Pedro City, Laguna, Branch 31, in Criminal Case No. 13-8838-SPL is hereby **AFFIRMED**.

SO ORDERED.²³

Undaunted, accused-appellant filed the instant appeal.

ISSUE

Did the CA err in affirming accused-appellant's conviction?

Accused-appellant maintains that his guilt had not been proven beyond reasonable doubt because the prosecution failed to comply with the strict requirements of Sec. 21, Art. II of R.A. No. 9165, particularly, the lack of the required witnesses during the inventory. Furthermore, the prosecution failed to present the police officer who handled the seized drug after PO2 Sumayod turned over the same to the PNP Crime Laboratory. Likewise, the custodian as well as the officer who delivered the drug to the court were not presented as witnesses. Furthermore, accused-appellant maintains that his warrantless arrest was illegal.

The Court's Ruling

This Court finds the appeal meritorious.

To secure a conviction for illegal sale of *shabu*, the prosecution must not only establish all the elements of the crime charged but also each and every link in the chain of custody, and the identity of the prohibited drug must be

²² *Id.* at 10

²³ *Id.* at 11.

established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.²⁴

Chain of Custody

To ensure the establishment of the chain of custody, Sec. 21(1), Art. II of R.A. No. 9165 specifies that:

- (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.

The complementary Sec. 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 gives the following instructions to the apprehending officer on the custody of the illegal drugs:

- (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 are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.²⁵ (emphasis supplied)

²⁴ *People v. Mercader*, 833 Phil. 1031, 1042 (2018).

²⁵ *People v. Balubal*, G.R. No. 234033, July 30, 2018, citing *People v. Dahil*, 750 Phil. 212, 227 (2015).

R.A. No. 10640,²⁶ which took effect on July 23, 2014, amended Sec. 21, Art. II of R.A. No. 9165 and incorporated the saving clause contained in the IRR, requires that the conduct of the physical inventory and taking of photographs of the seized item be done 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) an elected public official; **and** (3) a representative of the National Prosecution Service **or** the media.²⁷

The purported crime was committed in 2013, hence, the old provisions of Sec. 21, Art. II of R.A. No. 9165 and its IRR are applicable. They provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the seized items 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) from the DOJ; **and** (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.²⁸

A review of the records reveals that when the physical inventory and photography of the seized items were conducted, only accused-appellant and a media representative were present, and there was neither a representative from the DOJ nor an elected public official. As evidenced by the Certification of Inventory,²⁹ only a media representative, Ding Bermudez, was present.

²⁶ Entitled "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" provides:

x x x x

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

x x x x

²⁷ *Edangalino v. People*, G.R. No. 235110, January 8, 2020.

²⁸ *Id.*

²⁹ Records, p. 17.

Even accused-appellant failed to sign said certification.³⁰ At any rate, PO2 Avila admitted the absence of the required witnesses during his cross-examination:

- Q55 : When you arrived at the police station, what if any did you or your office do?
A : We called a media representative to conduct inventory of the item confiscated, sir.
- Q56 : What else did your office do?
A : We took picture while we [conducted] inventory together with the confiscated item, sir.
- Q57 : I am showing to you Exhibit "J", Certificate of Inventory, Exhibits "L and L-1", pictures, please look at these and tell us what is the relation of these exhibits to the one you mentioned?
A : This is the Certification of Inventory, sir. (Witness is referring to Exhibit "J"). The pictures together with the suspect, media representative and the confiscated item, sir. (Witness is referring to Exhibit "L").
- Q58 : What else did you do after taking of pictures?
A : We immediately prepared the request for laboratory examination for the *shabu* and request for drug test for the suspect, sir.³¹

Although, as a rule, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art. II of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items void and invalid, the same is under the condition that the prosecution satisfactorily proves that there is justifiable ground for [noncompliance]; and the integrity and evidentiary value of the seized items are properly preserved.³²

In *People v. Lim*,³³ this Court held that "[i]t must be alleged and proved that the presence of the three (3) witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 125 of the Revised Penal

³⁰ Id.

³¹ TSN, February 26, 2014, p. 9.

³² *People v. Año*, 828 Phil. 439, 450 (2018), citing *People v. Goco*, 797 Phil. 433, 443 (2016).

³³ *People v. Lim*, G.R. No. 231989, September 4, 2018.

Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.”³⁴

Here, the testimonies of prosecution witnesses PO2 Avila and PO2 Sumayod failed to establish any plausible explanation or justification why the presence of the representative from the DOJ and the elective official was not secured.

Also, considering the fact that the buy-bust operation was arranged and/or scheduled in advance, the police officers had sufficient time to secure the presence of the required witnesses. Yet, they failed to ensure that a DOJ representative and a local elected official would witness the inventory of the seized item. Securing the presence of these required witnesses was not impossible. It is not enough for the apprehending officers to merely mark the seized sachet of *shabu*; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by law.³⁵ Police officers are given time to prepare for a buy-bust operation and make necessary arrangements beforehand, fully aware of the strict procedure they need to follow under Sec. 21, Art. II of R.A. No. 9165.³⁶

*Integrity and evidentiary value
of the seized drug*

Aside from the lack of the required witnesses in the inventory of the seized drug, the Court notes that the prosecution did not present the officer who received the specimen from PO2 Sumayod when the latter turned it over to the crime laboratory for chemical analysis.

The prosecution must establish, through records or testimony, the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers until it was tested in the laboratory to determine its composition, and all the way to the time it is offered in evidence.³⁷

³⁴ *Id.*

³⁵ *People v. Saragena*, 817 Phil. 117, 139 (2017).

³⁶ See *People v. Ramos*, G.R. No. 225325, August 28, 2019.

³⁷ *People v. Beran*, 724 Phil. 788, 814 (2014), citing *People v. Dela Rosa*, 655 Phil. 630, 659 (2011).

In *People v. Balubal*,³⁸ the Court discussed the importance of the testimony about every link in the chain of custody, viz.:

The prosecution's evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witness would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have its possession. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.³⁹

Here, the testimonies of the prosecution witnesses provided details only up to the time the seized drug was delivered by PO2 Sumayod to the PNP Crime Laboratory for examination. There is a gap from that time on to the time of receipt by the forensic chemist. The prosecution did not present PO1 Alex Reyron Redruco (*PO1 Redruco*), the officer who, as indicated in the chain of custody form, received the seized drug.⁴⁰

To note, while there was a stipulation⁴¹ as to the testimony of FC Huelgas which indicated that she was the one who "personally received from the receiving clerk of the crime laboratory,"⁴² it was not established whether said "receiving clerk" is the same person to whom PO2 Sumayod delivered the specimen. Furthermore, the failure of PO1 Redruco and/or the receiving clerk to testify on the precautions taken on the specimen raises doubt as to whether there had been a change in the condition of the item or whether there was no opportunity for someone not in the chain to have its possession.

While the non-presentation of some of the witnesses who can attest to an unbroken chain of evidence may in some instances be excused, there should be a justifying factor for the prosecution to dispense with their testimonies.⁴³ Here, however, no explanation was proffered as to why key individuals who had custody over the drug at certain periods were not identified and/or not presented as witnesses. Uncertainty, therefore, arises if the seized drug during the buy-bust operation purportedly conducted on

³⁸ *Supra* note 25.

³⁹ *Id.*, citing *People v. De Guzman*, 825 Phil. 43, 57 (2018).

⁴⁰ Records, p. 16.

⁴¹ *Id.* at 41-42.

⁴² *Id.* at 41.

⁴³ *People v. Barba*, 611 Phil. 330, 339 (2009).

February 7, 2013 was the same specimen presented in court. Given these procedural lapses, serious uncertainty hangs over the identity of the *corpus delicti* which the prosecution introduced into evidence.

Conduct of buy-bust operations

In view of the aforementioned discussions, this Court is more inclined to rule in accused-appellant's favor anent his argument that the warrantless arrest was illegal.

In *People v. Claudel*,⁴⁴ this Court held that “[a] buy-bust operation is a form of entrapment in which the violator is caught in *flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on. What puts in doubt the very conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against accused was a mere pretense, a sham.”⁴⁵

To recall, only one of the three required witnesses was present during the buy-bust operation when the alleged drug was seized from accused-appellant. Indeed, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether said buy-bust operation actually took place. The surrounding circumstances raise doubt and/or suspicion as to the conduct of the buy-bust operation. The apprehending officers miserably failed to comply with the requirements under Sec. 21, Art. II of R.A. No. 9165. Indeed, the total absence of any witness belies the claim that there was even a buy-bust operation.⁴⁶

Since there is doubt on the true circumstances of the buy-bust operation, the culpability of accused-appellant cannot be ascertained. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.⁴⁷

⁴⁴ G.R. No. 219852, April 3, 2019.

⁴⁵ *Id.*

⁴⁶ *People v. Buniag*, G.R. No. 217661, June 26, 2019.

⁴⁷ *People v. Guinto*, 744 Phil.156, 169-170 (2014).

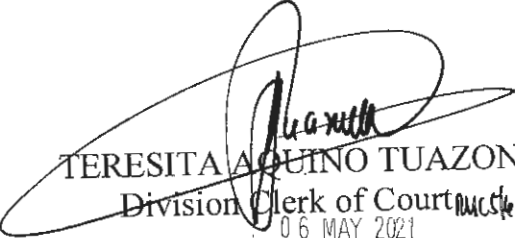
WHEREFORE, the appeal is **GRANTED**. The March 29, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08107, which affirmed the January 27, 2016 Judgment of the Regional Trial Court of San Pedro City, Laguna, Branch 31 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Elmer Miraflor y De Luna is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to **IMMEDIATELY RELEASE** accused-appellant from detention, unless he is being lawfully held in custody for some other reason, and to **INFORM** this Court of his action hereon within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
06 MAY 2021

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 31
San Pablo City, 4023 Laguna
(Crim. Case No. 13-8838-SPL)

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