BY: YSC
TIME: 3:41

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 218403 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus GUILLERMO DIAZ y TACORDA, accused-appellant.

Before the Court is an ordinary appeal¹ filed by accused-appellant Guillermo Diaz y Tacorda (Diaz) assailing the Decision² dated June 30, 2014 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 05941, which affirmed with modification the Decision³ dated October 4, 2012 of the Regional Trial Court of Quezon City, Branch 82 (RTC), in Criminal Case No. Q-03-121995, finding Diaz guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Facts

On October 31, 2003, Diaz was charged with violation of Section 5, Article II of RA 9165 in an Information⁴ which reads:

That on or about the **31st day of October, 2003**, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drugs, did, then and there, wilfully and unlawfully sell, dispose, deliver, transport, distribute or act as broker in the said transaction, **zero point one nine (0.19) gram of white crystalline substance containing methylamphetamine hydrochloride** a dangerous drug.

- over – eleven (11) pages ...

166

¹ See Notice of Appeal dated July 14, 2014, CA *rollo*, pp. 87-89.

² CA *rollo*, pp. 77-86. Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court) with Associate Justices Ramon M. Bato, Jr. and Agnes Reyes-Carpio, concurring.

³ Id. at 32-38. Penned by Presiding Judge Severino B. De Castro, Jr.

⁴ Records, p. 1.

CONTRARY TO LAW.⁵

When arraigned, Diaz pleaded not guilty to the offense charged against him. Thereafter, trial on the merits ensued.⁶

The prosecution presented the following witnesses: Forensic Chemist, Engr. Leonard Jabonillo, SPO2 Reynaldo Montefalcon (SPO2 Montefalcon), PO2 Arnolfo Aguillon (PO2 Aguillon) and PO1 Ernesto Saranggaya (PO1 Saranggaya).⁷

The facts established by the evidence for the prosecution were summarized by the CA as follows:

On 31 October 2003, the Station Anti-Illegal Drugs Special Operation Team (SAID-SOT) of Station 2, Baler, Quezon City where PO1 Saranggaya, PO1 Carlos Nicolas, PO2 Aguillon and PO2 Vecida were assigned, planned an entrapment operation against a certain alias "Roger" later known to be [Diaz]. PO1 Saranggaya was designated as the poseur-buyer while the rest to act as immediate back-up officers. Thereafter, at around 7:30 in the evening, the team accompanied by their asset headed to their area of operation.

On arrival thereat, the asset introduced PO1 Saranggaya to [Diaz] as the prospective buyer of methylamphetamine hydrochloride. [Diaz] readily asked how much he was willing to buy and PO1 Saranggaya replied that he intended to buy five hundred (P500.00) pesos worth of *shabu*. Moments later, [Diaz] handed to PO1 Saranggaya one (1) plastic sachet while the latter in turn gave [Diaz] the five hundred (P500.00)-peso bill in payment. Consequently, PO1 Saranggaya placed the plastic sachet in his pocket to signal to the rest of the team that the sale had been consummated. [Diaz] tried to escape when PO1 Saranggaya introduced himself as police officer but PO2 Vecida was able to apprehend him. PO2 Vecida then bodily frisked [Diaz] and in the course thereof found in his possession the buy-bust money.

The arresting officers thereafter brought [Diaz] to their office for investigation. PO1 Saranggaya affixed his initials on the plastic sachet and on the buy-bust money, then surrendered the same to SPO2 Montefalcon. On receipt thereof, SPO2 Montefalcon prepared the request for laboratory examination and on the same day delivered the item to the PNP Crime Laboratory. The specimen submitted was later confirmed to be positive for *shabu*, a dangerous drug, as evidenced by Chemistry Report No. D-1207-2003.⁸

- over -

⁵ Id.

⁶ CA rollo, p. 79.

⁷ Id.

⁸ Id. at 79-80.

For the defense, Diaz and Carmen Ramelo (Carmen) were presented in court. Their testimonies were summarized by the RTC as follows:

[Diaz denied the charges against him]. [He] testified that on October 31, 2003, between 4:00 and 5:00 p.m., he was at Gen. Lim St., San Francisco del Monte, Quezon City cooking x x x their dinner. He was with his father, girlfriend and sister when two (2) men knocked. He allowed them to enter and they introduced themselves as policemen and asked him if he was Guillermo Diaz. After replying in the affirmative, he was invited to go with them to the precinct, [which he followed]. [PO1 Saranggaya] took out shabu from his pocket and told [Diaz] that it was [for the latter's case]. [PO1 Saranggaya] also showed [Diaz] a Php500.00 bill from his wallet. [Diaz] told [PO1 Saranggaya]: "Bakit po wala naman po akong atraso sa inyo" and he replied "Pasensya ka na[.]" [Diaz] was thereafter detained. [Diaz] testified that the reason x x x [for his arrest was that his neighbor wanted to eject him from his house and paid the policemen to detain him]. [Diaz] was brought to the Fiscal for inquest x x x [and] was brought back to the station. x x x

x x x x

[Carmen] x x x corroborated the testimony of [Diaz] that she was with him and her mother-in-law on October 31, 2003 between 4:00 and 5:00 p.m[.] She testified that [Diaz] was cooking then when four (4) policemen arrived and invited him to Baler Police Station. The policemen showed [Diaz] the marked money and shabu when she went to the station where [Diaz] was detained. x x x⁹

Ruling of the RTC

In its Decision dated October 4, 2012, the RTC found Diaz guilty beyond reasonable doubt for illegal sale of dangerous drug, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **GUILLERMO DIAZ y TACORDA a.k.a. ROGER "guilty"** beyond reasonable doubt of x x x violation of Section 5, Article II of R.A. No. 9165.

Accordingly, he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine in the amount of **Five Hundred Thousand (Php 500,000.00) Pesos**.

x x x x

SO ORDERED.¹⁰

- over -

166

⁹ See RTC Decision, id. at 35-36.

¹⁰ Id. at 38.

The RTC held that while Section 21 of RA 9165 was not strictly followed by the police officers — no inventory was prepared, nor photographs were taken of the seized item — the prosecution was able to show an unbroken chain of custody of the shabu purchased by the poseur-buyer from Diaz. According to the RTC, the evidentiary value of the seized drug and the integrity thereof were preserved.¹¹

Moreover, the RTC found no merit in Diaz's unsubstantiated defense of denial, which cannot overturn the affirmative assertions of the prosecution.¹²

Ruling of the CA

On appeal, the CA, in the assailed Decision, sustained Diaz's conviction. The CA agreed with the RTC that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 will not render the item seized inadmissible in evidence because the prosecution was able to show an unbroken chain of custody through the testimonies of the police officers.¹³ The CA held that the prosecution was able to sufficiently account for each link in the chain of custody from the moment the drug was seized during the buy-bust operation to the time it was presented in court as proof of the *corpus delicti*.¹⁴

The CA further ruled that between Diaz's denial and the police officers' positive narration of the incident, the latter should be given credence because the police officers are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary, which is wanting in this case.¹⁵

Hence, the instant appeal.

Issue

Whether the RTC and CA erred in convicting Diaz for violation of Section 5, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious.

- over -

166

¹¹ Id. at 37.

¹² See id. at 38.

¹³ Id. at 82.

¹⁴ Id. at 84.

¹⁵ Id. at 83-84.

In cases involving dangerous drugs, it is essential that the identity and integrity of the seized drug, which constitutes the very *corpus delicti* of the offense, be established with moral certainty.¹⁶ The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime.¹⁷ Each link to the chain of custody must be accounted for.¹⁸

*People v. Lacdan*¹⁹ enumerates the links in the chain of custody, which must be established for a successful prosecution of illegal sale of dangerous drugs, viz.: **first**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²⁰

In this regard, as part of the chain of custody procedure — particularly the first link — Section 21, Article II of RA 9165,²¹ the applicable law at the time of the commission of the alleged crime, requires the members of the buy-bust team to **conduct a physical inventory of the seized item and the photographing of the same immediately after seizure and confiscation, in the presence of (a) the accused or his/her representative or counsel, (b) an elected**

- over -

166

¹⁶ *People v. Retada*, G.R. No. 239331, July 10, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65466>>.

¹⁷ *People v. Supat*, G.R. No. 217027, June 6, 2018, 865 SCRA 45, 62.

¹⁸ *Id.*, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁹ G.R. No. 232161, August 14, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65607>>.

²⁰ *Id.*, citing *People v. Gayoso*, 808 Phil. 19, 31 (2017).

²¹ The said section reads as follows:

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 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[.]

public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same.²²

In *People v. Supat*,²³ the Court explained that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.²⁴ This also means that the three required witnesses should already be physically present at the time of and near the place of apprehension and seizure. This requirement can easily be ensured or complied with in a buy-bust operation as this is, by nature, a planned activity.²⁵ The buy-bust team normally has enough time to gather and bring with them the said witnesses.²⁶

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. Thus, the IRR of RA 9165 provides 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.” For this saving clause to apply, the prosecution must first **(1) recognize any lapse on the part of the police officers and (2) be able to justify the same.**²⁷ Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.²⁸

- over -

166

²² *People v. Rivera*, G.R. No. 225786, November 14, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64854>>.

²³ *Supra* note 17, at 66-67.

²⁴ IRR of RA 9165, Art. II, Sec. 21(a).

²⁵ *People v. De Vera*, G.R. No. 218914, July 30, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64535>>.

²⁶ *People v. Casco*, G.R. No. 212819, November 28, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64852>>.

²⁷ *People v. Bricero*, G.R. No. 218428, November 7, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64846>>.

²⁸ *People v. Labsan*, G.R. No. 227184, February 6, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65258>>.

In this case, **none** of the foregoing requirements under Section 21 was complied with by the members of the buy-bust team. No inventory and photographing of the evidence were conducted either at the scene of the purported buy-bust operation or even when Diaz was brought to the police station for investigation. PO1 Saranggaya, the poseur-buyer, testified:

- Q. Did you prepare an inventory report as to the item you recovered from the accused?
- A. None, sir.
- Q. Did you take photographs of the confiscated item?
- A. None, sir.
- Q. Are you familiar with Section 21 of Republic Act 9165?
- A. I do not know, sir.²⁹

PO1 Saranggaya further testified that the drug seized from Diaz was not marked immediately upon seizure but only after it was brought to the police station for investigation.³⁰ In *People v. De Leon*,³¹ the Court explained that the marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked by the apprehending officer to prevent the evils of switching, planting or contamination of evidence. While marking is not found in RA 9165, this Court has consistently held, long before the passage of RA 9165, that “**failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.**”³²

Moreover, **none** of the required witnesses was present at the place of apprehension or at the police station where the marking of the evidence was allegedly made. The Court has repeatedly emphasized that the presence of the required witnesses at the time of the apprehension and inventory is mandatory and that the law imposes the said requirement because their presence serves an essential purpose. Thus, in *People v. Tomawis*,³³ the Court explained:

- over -

166

²⁹ TSN, August 13, 2007, p. 11.

³⁰ Id. at 6.

³¹ G.R. No. 214472. November 28, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64849>>.

³² Id., citing *People v. Dahil*, 750 Phil. 212, 232 (2015).

³³ G.R. No. 228890, April 18, 2018, 862 SCRA 131.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,³⁴ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³⁵ (Emphasis supplied)

Moreover, the records do not show that the prosecution was able to establish a justifiable ground for the police officers’ non-compliance with the requirements of Section 21. In fact, the prosecution neither recognized, much less tried to justify or explain, the police officers’ deviation from the procedure contained in Section 21. There is also no showing that the police officers exerted even the

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³⁴ 736 Phil. 749, 764 (2014).

³⁵ *People v. Tomawis*, supra note 33, at 149-150.

slightest efforts to secure the attendance of the required witnesses. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would have been compromised.³⁶

Thus, the Court is absolutely appalled by the RTC and CA's assessment that the chain of custody of the drug allegedly seized from Diaz was sufficiently established, when at the point of seizure and confiscation, *i.e.*, the very first link in the chain of custody, irregularities were already attendant. The evils of "planting" which Section 21 seeks to prevent was already made possible at the point of seizure because of the absence of all the three (3) insulating witnesses. Thus, any proof of the chain of custody after such point merely proves the chain of custody of, possibly, already planted drugs.³⁷

Moreover, both the RTC and CA turned a blind eye to the police officers' complete and utter derogation of Section 21 and instead erroneously relied on the presumption of regularity in the performance of official duty. In *People v. Tomawis*, the Court held that "[j]udicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity."³⁸

The presumption of regularity in the performance of official duty cannot overcome the stronger presumption of innocence in favor of the accused.³⁹ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.⁴⁰ **In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.**

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drug due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody and handling of the seized drug. Thus, the prosecution was not able to overcome the presumption of innocence of Diaz. He must perforce be acquitted.

- over -

166

³⁶ *People v. Fatallo*, G.R. No. 218805, November 7, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64858>>.

³⁷ *People v. Adobar*, G.R. No. 222559, June 6, 2018, 865 SCRA 220, 256.

³⁸ *Supra* note 33, at 160.

³⁹ *People v. Escaran*, G.R. No. 212170, June 19, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65324>>.

⁴⁰ *Id.*

As a final note, the Court sternly reminds the trial and appellate courts to exercise extra vigilance in trying and deciding drug cases and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.⁴¹

The prosecutors are also reminded to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution, irrespective of whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned and the innocence of the accused affirmed.⁴²

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated dated June 30, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05941 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Guillermo Diaz y Tacorda is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be sent to the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

Further, let a copy of this Resolution be furnished the Chief of the Philippine National Police and the Regional Director of the National Capital Region Police Office, Philippine National Police.

- over -

166

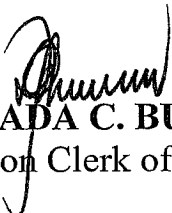
⁴¹ See *People v. Dagdag*, G.R. No. 225503, June 26, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65353>>.

⁴² *People v. Otico*, G.R. No. 231133, June 6, 2018, 865 SCRA 534, 573-574, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

The Philippine National Police is **ORDERED** to **CONDUCT AN INVESTIGATION** on the blatant violation of Section 21 of Republic Act No. 9165 and other violations of the law committed by the buy-bust team, as well as other similar incidents and **REPORT** to this Court within thirty (30) days from receipt of this Resolution the action taken.

SO ORDERED.” Lopez, J., on official leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
166

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Manila
(CA-G.R. CR-HC No. 05941)

The Chief
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The Hon. Presiding Judge
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