



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 February 2022 which reads as follows:

“G.R. No. 224887 (*People of the Philippines v. Sherwin S. Entera*¹).
- Before Us is an ordinary appeal² from the Decision³ dated February 29, 2016 of the Court of Appeals (CA) in CA-G.R. C.R. H.C. No. 01669, which affirmed the March 4, 2013 Judgment⁴ of the Regional Trial Court (RTC) of Cebu City, Branch 57 in Criminal Case Nos. 84910 and 84911, finding Sherwin S. Entera (accused-appellant) and his co-accused, Ma. Lilia S. Entera (Lilia),⁵ (collectively, the Enteras) guilty beyond reasonable doubt for violation of Sections 5⁶ and 11⁷ of Republic Act (R.A.) No. 9165.⁸

THE FACTS

In a case docketed as Criminal Case No. CBU-84910 and CBU-84911, accused-appellant and his mother, Lilia, were accused of violation of Section 5 of R.A. No. 9165 allegedly committed as follows:

That on or about the 5th day of December 2008 at about 9:15 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, did then and there sell, deliver or give away to a poseur buyer one (1) heat sealed transparent plastic sachet containing 0.03 gram of white

¹ *Rollo*, pp. 90-92; in a Resolution dated August 24, 2020, the Court considered the case closed and terminated as to the other accused-appellant, Ma. Lilia S. Entera in view of her demise on July 18, 2018.

² *Id.* at 18-19.

³ *Id.* at 5-17; penned by Associate Justice Edgardo L. Delos Santos (now a retired Member of this Court) and concurred in by Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig. CA *rollo*, pp. 32-39; penned by Presiding Judge Enriqueta Loquillano-Belarmino.

⁴ *Rollo*, pp. 90-92.

⁵ Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* x x x

⁶ Section 11. *Possession of Dangerous Drugs.* x x x

⁷ Section 11. *Possession of Dangerous Drugs.* x x x

⁸ Comprehensive Dangerous Drugs Act of 2002, which took effect on July 4, 2002.

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crystalline substance locally known as "SHABU", containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁹

Accused-appellant was also charged with Violation of Section 11 of R.A. No. 9165 in Criminal Case No. CBU-84911. The accusatory portion of the Information reads:

That on or about the 5th day of December 2008 at about 9:15 o'clock in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in possession and control, twelve (12) heat-sealed transparent plastic sachets of white crystalline substance with a total weight of 0.56 gram locally known as "Shabu" containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.¹⁰

On arraignment, both Enteras pleaded not guilty and joint trial ensued.¹¹

Version of the prosecution

As summarized by the Office of the Solicitor General (OSG), the prosecution established the following:

In the early morning of December 5, 2008, a civilian informant went to the headquarters of the Philippine Drug Enforcement Agency (PDEA) Region 7 to relay the information regarding the illegal drug activity of [accused-appellant] in the area of Bato, Carbon, Cebu City. Consequently, a team headed by IO4 Julius Navales was formed to conduct the buy-bust operation against [accused-appellant]. SI2 Ferdinand Kintanar [Kintanar] was des[i]gnated as the poseur buyer who would be assisted by two (2) confidential informants. After that, the team marked three (3) pieces [of] P100.00 bill buy-bust money with the initials "FK" corresponding to the initials of SI2 [Kintanar].

At around 8:00 o'clock in the morning, the team proceeded to the target area at Bato, Carbon, Cebu City on board unmarked vehicles. Upon arrival at the area, [Kintanar] and the two confidential informants disembarked near the University of San Jose Recoletos. The three proceeded to the makeshift shelter of [the Enteras] and there they were met by [Lilia]. [Lilia] introduced herself as the mother of [accused-appellant]. After Kintanar told Lilia of his purpose, the latter called her son to come outside and told him that Kintanar wanted to buy P300.00 worth of shabu. Kintanar handed the money to Lilia, who, in turn gave the same to [accused-appellant]. Thereafter, [accused-appellant] gave

⁹ Records, p. 1.

¹⁰ CA rollo, pp. 32-33.

¹¹ Rollo, p. 7.

Kintanar a pack of shabu. Kintanar checked the item and then made the pre-arranged signal to their team leader. Right then and there, he grabbed [accused-appellant] while the rest of the team cornered Lilia. After arresting [accused-appellant], Kintanar conducted a body search and recovered from him the buy-bust money and a blue plastic container with twelve (12) sachets of shabu in it. When [the Enteras] were brought to the service vehicle, the buy-bust team heard a gunshot. Later, it was learned that Bernabe Espanola, one of the civilian informants was hit at the back. Espanola was brought to Cebu City Medical Center for treatment. He survived the gunshot.

Meanwhile, because of the shooting incident, the operatives decided to conduct the post inventory of the confiscated shabu at the station. At the PDEA station, Public Information Officer Jessie Tabanao called Barangay Councilor Eliezer Ruiz and Dave Tumalak of ABS-CBN to witness the markings and inventory of the confiscated items. The items were marked with initials "SSE-BB" 12-05-08 for the purchased pack of shabu and the items retrieved from [accused-appellant] were marked with initials "SSE-01 12-05-08" to ["SSE-12 12-05-08" respectively. After the inventory, the marked items were photographed together with [the Enteras]. Thereafter, a letter request for laboratory examination was prepared and sent to PNP Crime Laboratory. The result of the examination yielded positive for methamphetamine hydrochloride or shabu.¹²

Version of the defense

On the other hand, accused-appellant and Lilia testified that they were not engaged in the illegal drug trade. This was corroborated by defense witnesses Ermita Barangay Councilor Wenifredo Miro, former Ermita Barangay Captain Felicisimo Rupinta, and Ana Marie Taculoy (Ana Marie).¹³ The defense's version of the events that transpired on December 5, 2008 is as follows:

Lilia claimed that she was visiting her son[,] [accused-appellant][,] who lives with his girlfriend[,] [Ana Marie] in preparation for their intended wedding on the coming month in 2009. While in the house on that specified date of December 2008, she heard noise emanating from the walls of G.I. Sheets from persons running inside passing through their house. She went out to verify as who were these persons. Two persons one of whom is Kintanar whom she came to know later came in and asked her if she had seen "Maki" and where did this guy go. She pretended that she did not see anyone getting in because she did not want to get involved. She knew "Maki" as Mark Anthony Gomez, a person involved in illegal drug in their community as the person who went in. As a result, Kintanar got angry at her and she was held by Kintanar. [Accused-appellant] came out of the house and saw her (sic) mother being held in the arms by Kintanar. Not knowing that Kintanar was a PDEA agent, [accused-appellant] pushed Kintanar and this made Kintanar mad at him too. Because of what transpired, both Lilia and [accused-appellant] were arrested by Kintanar for obstruction of justice. However, when they were

¹² CA rollo, pp. 62-63.

¹³ Id. at 16.

already inside the parked vehicles of the PDEA, somebody outside fired a gun hitting one of the confidential agents of PDEA. This caused Kintanar to get further mad at them. When they reached [the] PDEA office, both accused were tortured to reveal who was the one responsible. Both of the accused said they did not know who it might be because when the shot was fired, they were already inside the vehicles. Nevertheless, [accused-appellant] later came to know from his neighbors that the person who fired the shot was a certain Edwin alias "Trojan" who was from Pasil and he told the PDEA about his findings. Finally, [accused-appellant] told the court that he is not "maki" the subject of the PDEA at that time. He revealed that this "Maki" is actually Mark Anthony Gomez[,] a drug personality in their barangay.¹⁴

The RTC Ruling

On March 4, 2013, the RTC rendered Judgment,¹⁵ the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court finds SHERWIN S. ENTERA and MA. LILIA S. ENTERA, guilty beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 and each accused is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

For Violation of Section 11, Article II of RA 9165, the Court finds accused Sherwin Entera guilty beyond reasonable doubt and is hereby sentenced to suffer twelve (12) years and one (1) day to fifteen (15) years of imprisonment and fine of P300,000.00

The total thirteen (13) packs of shabu are forfeited in favor of the government.

SO ORDERED.¹⁶

The RTC found that all the elements for the Illegal Sale and Possession of Dangerous Drugs were established by the prosecution. The transaction of sale of *shabu* was consummated with the exchange of the poseur-buyer's (Kintanar) buy-bust money for a pack of *shabu* from the Enteras. Also, the search and subsequent seizure of the twelve (12) packs of *shabu* from accused-appellant were lawful being incidental to his valid warrantless arrest. In convicting accused-appellant and Lilia, the RTC gave more credence to the positive testimonies of the prosecution witnesses than the denial of the Enteras, more so in view of the absence of any ill-motive on the part of the prosecution witnesses. The RTC also held that although the inventory and marking of the seized items were not done at the crime scene, such deviation was justified in view of the shooting incident immediately after accused-appellant's arrest. In any event, the integrity and evidentiary value of the

¹⁴ Id. at 16-17.

¹⁵ Id. at 32-39.

¹⁶ Id. at 38-39.

seized packs of *shabu* have been preserved as established by the testimony of Kintanar, the poseur buyer.¹⁷

The CA Ruling

On appeal, the CA, through the assailed Decision,¹⁸ affirmed in full the RTC Judgment, *viz.*:

WHEREFORE, premises considered, the appeal is **DENIED**. The Joint Judgment dated March 4, 2013 of the Regional Trial Court of Cebu City, Branch 57 in Criminal Case No. 84910 and Criminal Case No. 84911 for Violation of Section 5 and Section 11, Article II, Republic Act No. 9165 is **AFFIRMED** *in toto*.

SO ORDERED.¹⁹

The CA sustained the conclusion of the RTC that all the elements of Illegal Sale and Possession of *shabu* were established by the prosecution. In addition, the alleged inconsistencies in the testimonies of the prosecution witnesses were inconsequential and had nothing to do with the elements of the crime. Anent the alleged gaps in the chain of custody, the CA held that the failure of the apprehending officers to mark the confiscated items at the place of arrest was justified because a shooting incident ensued wounding one of the civilian informants. Also, while the prosecution did not present as witnesses all the persons who handled the seized drugs, such omission was not fatal to the case because the prosecution has the prerogative to choose the evidence or witness it wishes to present. In this case, the evidence presented by the prosecution sufficiently showed that the integrity and evidentiary value of the seized drugs were properly preserved and safeguarded. The CA stressed that absent any proof or showing of bad faith, ill-will, or tampering of evidence, it is presumed that the integrity of the evidence have been preserved. Finding no error on the RTC Judgment, the CA upheld the conviction of the Enteras for the offenses charged.²⁰

Hence, the present appeal before this Court.

Records disclose that accused, Lilia, died on July 18, 2018 due to acute myocardial infection.²¹ Consequently, the Court considered the case closed and terminated as to her.²²

¹⁷ Id. at 35-38.

¹⁸ *Rollo*, pp. 5-17.

¹⁹ Id. at 16.

²⁰ Id. at 11-16.

²¹ Id. at 86-88.

²² Id. at 90-92.

In his Supplemental Brief,²³ accused-appellant insisted on his innocence and stressed the procedural lapses of the apprehending officers in the handling of the illegal drugs purportedly seized from accused-appellant. Apart from the fact that the seized items were not immediately marked and photographed at the place of apprehension, the marking and photography thereof were also done without any representative from the Department of Justice (DOJ). The prosecution likewise failed to establish all the stages in the chain of custody of the seized drugs. Hence, the CA erred in affirming his conviction for the offenses charged.²⁴

The OSG manifested that it would dispense with the filing of a supplemental brief.²⁵

Issue

The crux of the appeal is whether the CA correctly affirmed the RTC Judgment finding accused-appellant guilty beyond reasonable doubt for illegal sale and possession of *shabu*.

The Court's Ruling

We acquit.

The elements for conviction under Section 5, Article II of R.A. No. 9165 are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.²⁶ On the other hand, to convict an accused for Illegal Possession of Dangerous Drugs under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁷ The burden is on the State to prove not only these elements but also the *corpus delicti* or the body of the crime.²⁸

In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. Necessarily, compliance with the rule on chain of custody over the seized illegal drugs is crucial in any prosecution that follows a buy-bust operation.²⁹ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict**

²³ Id. at 76-84.

²⁴ Id.

²⁵ Id. at 30-32.

²⁶ *People v. Tanes*, G.R. No. 240596, April 3, 2019.

²⁷ *Plan, Jr. v. People*, G.R. No. 247589, August 24, 2020.

²⁸ *People v. Tanes*, supra.

²⁹ Id.

compliance with procedures laid down by it to ensure that rights are safeguarded.³⁰

Corollarily, the original provision of Section 21 (1), Article II of R.A. No. 9165, provides:

Section 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 x x x (Emphasis and underscorings supplied.)**

In *People v. Claudel*,³¹ We held that “[t]he 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.”³² When the same is not practical, the Implementing Rules and Regulations (IRR) of R.A. No. 9165 allows the inventory and photography to be done at the nearest police station or the nearest office of the apprehending officer/team. It must be stressed nonetheless that the **three (3) required witnesses** should already be physically present at the time of the conduct of the inventory of the seized items — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.³³

Further, in *People v. Hementiza*,³⁴ We stressed:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items **immediately after they have been seized from the accused**. “Marking” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked

³⁰ *People v. Manabat*, G.R. No. 242947, July 17, 2019.

³¹ G.R. No. 219852, April 3, 2019.

³² Id.

³³ Id.

³⁴ 807 Phil. 1017 (2017).

because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

Still, there are cases when the chain of custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused in illegal drugs cases. (Emphasis supplied, citations omitted.)³⁵

Here, the failure of the apprehending team to immediately mark, photograph, and physically inventory the seized sachets of *shabu* at the place of accused-appellant's arrest were justified on account of the shooting incident that transpired immediately after such arrest. Records show however, that the arresting officers failed to comply with the three-witness rule, under Section 21, Article II of R.A. No. 9165, during the marking, photography, and inventory of the seized items at the PDEA office.

Notably, only two (2) of the required three (3) witnesses signed the Certificate of Inventory: (1) barangay councilor Eliezer Ruiz and (2) Dave Tumulak from ABS-CBN.³⁶ No representative from the DOJ was present during the inventory and photography of the seized items. This was highlighted by Kintanar in his testimony when he stated that upon arriving at the PDEA office, he directed their Public Information Officer, Jesus Tabanao, "to contact representatives from the media **and** barangay official [only] . . ."³⁷ Also, the Certificate of Inventory was not signed by either accused-appellant or his co-accused, Lilia.³⁸ This casts serious doubts as to whether the marking, inventory, and photography of the seized sachets of *shabu* were indeed done by Kintanar in the presence of the two (2) accused.

The Court has recognized that strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible because of varied field conditions.³⁹ This is now crystallized into statutory law with the passage of R.A. No. 10640.⁴⁰ Thus, non-compliance with the requirements of Section 21, Article II of R.A. No. 9165 – **under justifiable grounds** – will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value

³⁵ Id. at 1030-1031.

³⁶ Records, p. 107.

³⁷ TSN dated January 11, 2010, p. 22.

³⁸ Records, p. 107.

³⁹ *People v. Colabres*, G.R. No. 240752, January 19, 2021, citing *People v. Año*, 828 Phil. 439, 449-450 (2018).

⁴⁰ 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," approved on July 15, 2014.

of the seized items are properly preserved by the apprehending officer or team.⁴¹

It must be emphasized however that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.⁴² To warrant the application of this saving mechanism, the prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.⁴³

In the present case, the prosecution did not offer sufficient explanation or justification for the apprehending officers' failure to comply with the three-witness rule under Section 21 (1), Article II of R.A. No. 9165. It cannot be overstated that the presence of these witnesses would not only preserve an unbroken chain of custody but also prevent the possibility of tampering with, or "planting" of, evidence.⁴⁴ The failure of the prosecution to recognize the fatal omission of the apprehending team only means that no justifiable reasons exist that will warrant the application of the saving mechanism under the law. To the mind of the Court, stricter compliance with the procedure required by law should have been established by the prosecution in this case considering that the arresting officers did not conduct the marking, inventory, and photography of the seized illegal drugs at the place of accused-appellant's apprehension. Neither did the apprehending team immediately proceed to the PDEA office after the buy-bust operation.⁴⁵ Absent justifiable and unavoidable grounds, these deviations by the apprehending team are not excused.⁴⁶ Thus, the RTC and the CA erred in applying the saving clause and ruling that the integrity and evidentiary value of the seized evidence have been properly preserved.

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.⁴⁷ Simply put, the failure of the police officers to strictly comply with the requirements of the law, and to give justifiable grounds for their deviations had compromised the integrity and evidentiary value of the

⁴¹ *People v. Colabres*, supra note 39.

⁴² *Id.* citing *People v. Dela Torre*, G.R. No. 238519, June 26, 2019.

⁴³ *People v. Manabat*, supra note 30, citing *People v. Reyes*, 797 Phil. 671, 690 (2016).

⁴⁴ See *Tolentino v. People*, G.R. No. 227217, February 12, 2020, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

⁴⁵ See TSN dated January 11, 2010, p. 20.

⁴⁶ See *Tolentino v. People*, supra.

⁴⁷ *People v. Manabat*, supra note 30.

corpus delicti, warranting accused-appellant's acquittal for reasonable doubt.⁴⁸

On a final note, We reiterate Our pronouncement in *People v. Año*,⁴⁹ viz.:

x x x [P]rosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. **Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.**⁵⁰ (Emphasis and underscoring supplied.)

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 29, 2016 of the Court of Appeals in CA-G.R. C.R. H.C. No. 01669 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Sherwin S. Entera is **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.

Let copies of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **DIRECTED** to immediately implement this Resolution and to inform this Court of the action he/she has taken within five days from receipt thereof.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

13 JUL 2022

⁴⁸ *People v. Colabres*, supra note 39.

⁴⁹ Supra note 39.

⁵⁰ Id. at 452-453.

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