



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** which reads as follows:*

“G.R. No. 241083 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus JENELYN BUENAFLOR y ROMANO, accused-appellant.

After a careful review of the records of the case and the issues submitted by the parties, the Court **REVERSES** the Decision¹ dated January 29, 2018 of the Court of Appeals (CA) Nineteenth Division in CA-G.R. CR-HC No. 02371 which affirmed the Decision² dated September 5, 2016 of the Regional Trial Court (RTC) of Negros Occidental, Branch 47 in Criminal Cases Nos. 11-35181 and 11-35182 convicting accused-appellant Jenelyn Buenaflor y Romano (Buenaflor) for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.³

In cases involving dangerous drugs, the prosecution has the burden to prove compliance with the chain of custody requirements under Section 21, Article II of R.A. No. 9165, to wit:

(1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a

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¹ CA *rollo*, pp. 71-80. Penned by Associate Justice Edward B. Contreras, and concurred in by Associate Justices Edgardo L. Delos Santos (a retired Member of the Court) and Louis P. Acosta.

² Id. at 34-43. Rendered by Judge Therese Blanche A. Bolunia.

³ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on June 7, 2002.

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 and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.⁴ (Citation, emphasis and underscoring omitted)

Strict compliance with the foregoing requirements is mandatory, and any deviation therefrom must be acknowledged and explained or justified by the prosecution; otherwise, the integrity and credibility of the *corpus delicti* are tarnished and the claim that a violation of R.A. No. 9165 was committed by the accused becomes questionable.⁵ Further, it is only by such strict compliance that the grave mischiefs of planting, switching and contamination of evidence may be eradicated and the legitimacy of the buy-bust operation may be proved. In other words, noncompliance with Section 21 is tantamount to a failure to establish an essential element of the crime, and will therefore engender the acquittal of an accused.

In this case, the Receipt/Inventory of Property Seized revealed that only two (2) elective officials, Barangay Kagawad Elsie Khey and Barangay Kagawad Danilo Aplasca, witnessed the marking and inventory of the seized drugs. The RTC,⁶ the CA,⁷ and even the prosecution⁸ all acknowledged this fact. Clearly, there is an absence of two other mandatory witnesses — a media representative and a DOJ representative.

In a plethora of cases,⁹ the Court has repeatedly stressed that the presence of **all** the third-party witnesses at the time of the inventory and photography is mandatory and the law imposes said requirement because their presence will guarantee “against planting of evidence and frame-up.”¹⁰ The presence of these disinterested witnesses will insulate “the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”¹¹

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⁴ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, 888 SCRA 604, 618-619.

⁵ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503-504.

⁶ CA rollo, p. 37.

⁷ Id. at 73 and 79.

⁸ Id. at 55.

⁹ See *People v. Arellaga*, G.R. No. 231796, August 24, 2020; *People v. Casilang*, G.R. No. 242159, February 5, 2020; *Hedreyda v. People*, G.R. No. 243313, November 27, 2019, 926 SCRA 308; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019, 926 SCRA 19; *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131; *People v. Calibod*, G.R. No. 230230, November 20, 2017, 845 SCRA 370; *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225; *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513; *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113.

¹⁰ *People v. Sagana*, id. at 246-247, citing *People v. Reyes*, id. at 535.

¹¹ Id. at 247, citing *People v. Mendoza*, supra note 9, at 126.

While jurisprudence provides that strict compliance with the requirements of Section 21 is not always possible given the wide range of varying field conditions, the Implementing Rules and Regulations of R.A. No. 9165 nonetheless state 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.”¹² Thus, for this saving clause to apply, the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.¹³

As the Court *en banc* unanimously held in the case of *People v. Lim*:¹⁴

It must be alleged and proved that the presence of the three 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 Article 125 of the Revised Penal 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.¹⁵
(Emphasis omitted)

In *People v. Umipang*,¹⁶ the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witnesses before the buy-bust operation was executed. In the said case, the Court held:

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¹² IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 9165, Sec. 21(a).

¹³ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

¹⁴ G.R. No. 231989, September 4, 2018.

¹⁵ *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, 866 SCRA 73, 99-100.

¹⁶ G.R. No. 190321, April 25, 2012, 671 SCRA 324.

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so—especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. [No.] 9165. **A sheer statement that representatives were unavailable—without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances—is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. [No.] 9165, or that there was a justifiable ground for failing to do so.**¹⁷ (Citations omitted and emphasis and underscoring supplied)

Here, the records are bereft of any explanation as to why the apprehending officers were not able to secure the presence of a DOJ and a media representatives. Worse, the prosecution did not even acknowledge this defect.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.¹⁸ Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the inventory of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. Thus, this failure adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.¹⁹

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¹⁷ Id. at 354.

¹⁸ *People v. Ramos*, G.R. No. 206906, July 25, 2016, 798 SCRA 164, 176.

¹⁹ *People v. Mendoza*, supra note 9, at 128-129.

Because of noncompliance with the three-witness rule under Section 21 of R.A. No. 9165, the prosecution failed to discharge its burden of proving the *corpus delicti* of the offense. Buenaflor must performe be acquitted.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated January 29, 2018 of the Court of Appeals Nineteenth Division in CA-G.R. CR-HC No. 02371 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jenelyn Buenaflor y Romano is **ACQUITTED** of violations of Sections 5 and 11 of Republic Act No. 9165 on the ground of reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong 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 taken.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m. 422*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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(CA-G.R. CR-HC No. 02371)

The Hon. Presiding Judge
Regional Trial Court, Branch 47
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(Crim. Case Nos. 11-35181 & 11-35182)

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