



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 23, 2022** which reads as follows:*

“G.R. No. 251656 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus KIM JUMAO-AS BERDON, accused-appellant.

After a careful review of the records of the case and the issues submitted by the parties, the Court **AFFIRMS** the Decision¹ dated November 8, 2019 of the Court of Appeals (CA), Cebu City, Special Nineteenth Division in CA-G.R. CR-HC No. 02821.

In the prosecution of crimes involving illegal drugs, aside from proof beyond reasonable doubt that the offenses were committed, there must be proof of the identity and integrity of the *corpus delicti* — the dangerous drug itself.² There must be an accounting of the following links in its chain of custody: *first*, the seizure and marking 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 by the forensic chemist to the court.³

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¹ *Rollo*, pp. 5-18. Penned by Associate Justice Emily R. Alifio-Geluz and concurred in by Associate Justices Gabriel T. Ingles and Dorothy P. Montejo-Gonzaga.

² *People v. Barte*, G.R. No. 179749, March 1, 2017, 819 SCRA 10, 20.

³ *Jacson v. People*, G.R. No. 199644, June 19, 2019, 904 SCRA 537, 548.

In this relation, as part of the chain of custody, Section 21,⁴ Article II of Republic Act (R.A.) No. 9165, as amended by R.A. No. 10640, imposes upon the members of the buy-bust team to strictly comply with the following requirements: (1) inventory and photographing of the seized items immediately after seizure and confiscation; and (2) the physical inventory and photographing in the presence of the accused or his/her representative or counsel, and two witnesses, namely: an elected public official and a choice between a representative from the media *or* a representative from the National Prosecution Service, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.⁵ Strict compliance with the requirements spelled out in Section 21 is mandatory and any irregularity in procedure must be satisfactorily explained or justified by the buy-bust team.⁶

In the instant case, the prosecution was able to establish an unbroken chain of custody over the sachets of *shabu*, that is, from the seizure, confiscation, and marking of the sachets of *shabu* up to the delivery of the same to the crime laboratory, and presentation before the trial court.⁷

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⁴ The relevant portion of the 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 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 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

⁵ *Limbo v. People*, G.R. No. 238299, July 1, 2019, 907 SCRA 129, 137.

⁶ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 523.

⁷ *Rollo*, pp. 15-17.

First, the records show that after the buy-bust transaction, Police Officer (PO) 2 Aaron Gevera (PO2 Gevera), the poseur-buyer and seizing officer for the said operation, immediately marked, inventoried, and photographed the seized items at the place of arrest, and in the presence of accused-appellant Kim Jumao-as Berdon (Berdon), *barangay* councilor Epifania Augusto and media representatives Aiza Layagne and Arnel Berdon.⁸

Second, following Berdon's arrest, PO2 Gevera maintained custody and possession of the seized items.⁹ When they got back to the police station, he prepared the letter-request addressed to the Philippine National Police (PNP) Crime Laboratory 7 in Cebu City.¹⁰ In less than four hours, he delivered the letter-request together with the seized items: two (2) pieces of small heat-sealed transparent plastic sachets containing white crystalline substance marked as "KJB-BB-1" and "KJB-BB-2" and sixty-five (65) pieces of small heat-sealed transparent plastic sachets containing white crystalline substance marked as "KJB-1" to "KJB-65", to the PNP Crime Laboratory for examination.¹¹

Third, the PNP Crime Laboratory Desk Officer PO1 Rolando Casinillo (PO1 Casinillo) received the letter-request and the pieces of evidence from PO2 Gevera.¹² The former immediately handed the same to forensic chemist Police Chief Inspector Ryan Ace M. Sala (PCI Sala) who examined the seized items.¹³ The test results showed that the seized items were positive for methamphetamine hydrochloride. The results were contained in Chemistry Report No. D-636-16.¹⁴

Fourth, after examining the items, PCI Sala sealed the specimens, marked them, and turned them over to PO2 Gevera for safekeeping until the same were turned over to the Regional Trial Court for presentation of evidence.¹⁵

As shown above, the prosecution was clearly able to account for each link in the chain of custody over the dangerous drugs.

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⁸ Id. at 8; *CA rollo*, p. 14.

⁹ *CA rollo*, p. 14.

¹⁰ Id.

¹¹ Records, pp. 17-19.

¹² *CA rollo*, p. 14.

¹³ Id.; Records, pp. 18-19.

¹⁴ *Rollo*, p. 9.

¹⁵ *CA rollo*, p. 14.

However, the defense insists that the requirements of Section 21 of R.A. No. 9165 were not complied with, arguing that the prosecution failed to establish the third link in the chain of custody as PO1 Casinillo and PCI Sala were not presented in court.¹⁶

This argument is clearly without merit.

Contrary to Berdon's assertion, the movement of the confiscated contraband from PO2 Gevera to the forensic chemist was duly established by both testimonial and documentary evidence. The CA had already laid this issue to rest, as follows:

x x x *We* do not agree with the appellant that there was a gap in the third link in the chain of custody. The transfer of the seized items from PO2 Gevera to PO1 Casinillo, was testified to by PO2 Gevera, and duly documented in the Chain of Custody Form. Further, the testimony of the forensic chemist was stipulated on by both parties. x x x¹⁷

As admitted by the defense itself, the trial court dispensed with the testimony of PCI Sala in view of the stipulation entered into by the prosecution and the defense.¹⁸ Consistent with this Court's ruling in *Malillin v. People*,¹⁹ the intended testimony of forensic chemist PCI Sala clearly included stipulations as to how and from whom the confiscated drugs were received, where they were and what happened to them while in his possession, the condition in which they were received, and the condition in which they were delivered to the next link in the chain.²⁰

With respect to the failure of the prosecution to present the PNP Crime Laboratory Desk Officer PO1 Casinillo, the same is not fatal to the admissibility of the seized drugs and paraphernalia. In *People v. Padua*,²¹ the Court held that not all people who came into contact with the seized drugs are required to testify in court. There is nothing in R.A. No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drugs was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.²²

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¹⁶ Id. at 43-44.

¹⁷ *Rollo*, p. 16. Citations omitted

¹⁸ *CA rollo*, p. 44.

¹⁹ G.R. No. 172953, April 30, 2008, 553 SCRA 619.

²⁰ Records, pp. 45-46.

²¹ 639 Phil. 235 (2010).

²² Id. at 251.

In *People v. Zeng Hua Dian*,²³ the Court ruled:

After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. **The non-presentation as witnesses of other persons** such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, **is not a crucial point against the prosecution.** The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.²⁴ (Emphasis supplied)

As regards the charge for illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of R.A. No. 9165, the following elements must be established: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.²⁵

The Court notes that in prosecutions involving Section 12 of R.A. No. 9165, forensic testing should still be done in accordance with Section 21(2) of R.A. No. 9165, especially in cases where the allegation is that one of the equipment was *used for administering dangerous drugs*.²⁶ A laboratory examination of the paraphernalia is required because absent the same, there exists reasonable doubt as to the second element of the crime, *i.e.*, the seized items may have been possessed for lawful purposes.²⁷

However, in this case, Berdon's conviction for illegal possession of paraphernalia for dangerous drugs must still be upheld despite non-submission of the seized equipment for forensic testing²⁸ because:

(1) considering that the seized paraphernalia are *unused tin foils and a disposable lighter*,²⁹ these, even if tested, will improbably show traces of dangerous drugs; and more importantly,

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²³ G.R. No. 145348, June 14, 2004, 432 SCRA 25.

²⁴ Id. at 32.

²⁵ *Derilo v. People*, G.R. No. 190466, April 18, 2016, 789 SCRA 517, 532.

²⁶ *Cuico v. People*, G.R. No. 232293, December 9, 2020.

²⁷ Id.

²⁸ Records, pp. 17-18.

²⁹ *Rollo*, p. 6.

(2) the circumstances in this case, particularly, the established: possession of sixty-five (65) sachets of *shabu*, attempted sale of two (2) sachets of *shabu*, and seizure of the items, all at Berdon's dwelling, reasonably show that the seized paraphernalia are fit and intended for consuming dangerous drugs, i.e., for an unlawful purpose.

The prosecution has likewise established that the seized seven (7) pieces of aluminum tin foil strips and disposable lighter were marked, inventoried, and photographed at the place of arrest and in the presence of the required insulating witnesses;³⁰ and remained in the possession of PO2 Gevera from the time of seizure until the presentation of evidence.³¹

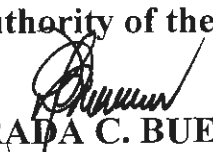
Since the prosecution was able to prove that the integrity and evidentiary value of the seized drugs and paraphernalia remained uncompromised, the Court finds no reason to disturb the assailed Decision of the CA.

Berdon's conviction must thus be upheld.

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated November 8, 2019 of the Court of Appeals Cebu City, Special Nineteenth Division in CA-GR. CR-HC No. 02821. The Decision finding accused-appellant KIM JUMAO-AS BERDON **GUILTY** beyond reasonable doubt of violating Sections 11, 12, and 26(b), in relation to Section 5, Article II of Republic Act No. 9165, otherwise known as the "Dangerous Drugs Act of 2002," as amended by Republic Act No. 10640 is **AFFIRMED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court _{m4/15}

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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³⁰ CA *rollo*, p. 14; Records, pp. 14 and 23.

³¹ Id.



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Court of Appeals
6000 Cebu City
(CA-G.R. CR-HC No. 02821)

The Hon. Presiding Judge
Regional Trial Court, Br. 21 (for Br. 53)
Lapu-Lapu City, 6015 Cebu
(Crim. Case Nos. R-LLP-16-00327-CR
to 00329-CR)

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