



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 5, 2022 which reads as follows:

“G.R. No. 252453 (*People of the Philippines v. Yap Kean Hock*). – This treats of the Notice of Appeal¹ under Section 13(c), Rule 124 of the Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC, filed by Yap Kean Hock (accused-appellant) seeking the reversal of the Decision² dated July 12, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09543. The CA affirmed the Decision³ dated June 29, 2017 of the Regional Trial Court (RTC) of Pasay City, Branch 231, finding accused-appellant guilty beyond reasonable doubt of the crime of Importation of Dangerous Drugs, in violation of Section 4, Article II of Republic Act (R.A.) No. 9165, otherwise known as, “*The Dangerous Drugs Act of 2002.*”

The Case

This case stemmed from an Information⁴ filed before the RTC charging accused-appellant with the crime of Importation of Dangerous Drugs, in violation of Section 4, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 31st day of December 2010, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, an incoming passenger of Flight PR 731 from Bangkok, Thailand, without

- over – fourteen (14) pages ...

69-B

¹ *Rollo*, pp. 17-18.

² *Id.* at 3-16; penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Maria Luisa Quijano-Padilla, concurring.

³ *CA rollo*, pp. 44-51; penned by Presiding Judge Divina Gracia Lopez Peliño.

⁴ Records, p. 1.

authority of law, did then and there willfully, unlawfully and feloniously import or bring into the Philippines Five Thousand Nine Hundred Eighteen (5,918.0) grams of Methamphetamine Hydrochloride, a dangerous drug.

Contrary to Law.⁵

Upon arraignment on June 13, 2011, accused-appellant pleaded not guilty to the offense charged.⁶ Thereafter, pre-trial and trial on the merits ensued.

The Antecedents

Prosecution's Version of Facts

Accused-appellant arrived in the Philippines from Bangkok, Thailand on December 31, 2010 at around 5:40 p.m. on board Philippine Airlines Flight PR371. At around 6:30 p.m., accused-appellant passed by the Customs Area Examination Lane No. 3, Carousel 5, being manned by Customs Examiner Alican Ali (Ali). Accused-appellant then gave his customs declaration. Thereafter, Ali examined accused-appellant's baggage.⁷

While examining accused-appellant's baggage, Ali found a few T-shirts, socks and a pair of pants. When he touched the bottom of the bag, however, it seemed very thick and hard. Ali, when he lifted the bag, further noticed that although it had only a few contents, it was unusually heavy. He, thus, unzipped a zipper, which revealed a hard black plastic cover. When the cover was removed, Ali saw six (6) cellophane plastic bags containing crystalline substance. He then closed the baggage and called the attention of Flight Supervisor Flor Dimayuga (Dimayuga) and Customs Police Major Mariano Biteng (Biteng), who were at the customs gate area. Biteng then instructed SA1 Edmond Mozo (Mozo) and IO1 Joseph Samson (Samson), Philippine Drug Enforcement Agency (PDEA), to escort accused-appellant to the In-Bond room to secure accused-appellant and the baggage for further investigation.⁸

When accused-appellant was already inside the In-Bond room, SAII Sherwin Andrada (Andrada) and SAII Ernesto Pracale, Jr. (Pracale) of the Customs Task Force/Group on Dangerous Drugs and

- over -

69-B

⁵ Id.

⁶ Id. at 25.

⁷ CA *rollo*, p 61.

⁸ Id. at 62.

Controlled Chemicals (Customs Task Force) arrived. Based on an initial field test conducted by the Customs Task Force, the contents of the cellophane plastic bags yielded the presence of Methamphetamine Hydrochloride. Immediately thereafter, accused-appellant was apprised of his constitutional rights.⁹

The seized *shabu* was then marked per plastic and photographed. Department of Justice (DOJ) and media representatives, and a barangay official were present during the marking and the inventory of the seized items. Ali, thereafter, prepared an Inventory Report for the luggage and the six (6) packs of *shabu*. A turn-over receipt of the *shabu* and other belongings taken from accused-appellant was then prepared by IOI Samson. Likewise, he prepared a request for laboratory examination and submitted the same to the PDEA Laboratory Office, which was received by Chemist Sheila M. Esguerra (Esguerra). After conducting a laboratory examination of the seized items, Esguerra issued a Chemistry Report No. DD011-002, which states that the seized items, weighing a total of 5,918 grams, were positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.¹⁰

Defense's Version of Facts

Accused-appellant, a Malaysian national, vehemently denied the allegations against him and insisted that he was a victim of a frame-up.

On December 31, 2010, at about 6:00 p.m., accused-appellant arrived in Manila to spend the new year in the Philippines. After disembarking from the airplane, he went straight to and was cleared at the immigration. He then lined himself up at the customs lane. While waiting in line, an unknown person suddenly approached him, talked to him in a language unknown to him and asked him to open his bag. Without any warning, the person suddenly opened accused-appellant's bag. Accused-appellant failed to stop him. While checking his bag, the person suddenly shouted, "*shabu, shabu*" and then took the bag away from him.¹¹

Accused-appellant was then brought to an office and was locked therein. During that time, several unknown persons came in and out of the room, who thereafter, came in with his bag, placed it on

- over -

69-B

⁹ Id.

¹⁰ Id. at 62-63.

¹¹ Id. at 32.

the floor, opened it and took out a thing wrapped with packing tape subsequently revealing several items. The persons who were in the room then insisted that the *shabu* was his. Accused-appellant, however, denied the accusation. One of them approached accused-appellant and asked if he had money to give them in exchange for his liberty. When the accused-appellant answered in the negative, he was forced to sign a document and brought to another office where he was detained.¹²

The RTC Ruling

The RTC rendered a Decision¹³ finding accused-appellant guilty beyond reasonable doubt of Importation of Dangerous Drugs in violation of Section 4, Article II of R.A. No. 9165. The RTC concluded that the integrity and the evidentiary value of the seized drugs were duly preserved from the time it was seized from accused-appellant until it was presented in court during trial.¹⁴ The RTC also refused to give any probative value to the defense of denial raised by accused-appellant.¹⁵ Accordingly, the RTC disposed of the case in this wise:

WHEREFORE, judgment is hereby rendered finding the accused, **YAP KEAN HOCK**, *guilty beyond reasonable doubt* of the charge of Violation of Section 4, Article II of Republic Act 9165 in Criminal Case No. R-PSY-11-03033-CR and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of one million pesos (Php1,000,000.00).

The Officer-in-Charge is hereby directed to transmit the samples taken from the 5,918 grams of methamphetamine hydrochloride seized from the accused.

SO ORDERED.¹⁶

Aggrieved, accused-appellant filed an appeal with the CA.

The CA Ruling

In a Decision¹⁷ promulgated on July 12, 2018, the CA affirmed the RTC Decision. Similar to the RTC's findings, the CA ruled that the prosecution was able to establish all the elements of the crime

- over -

69-B

¹² Id.
¹³ Id. at 44-51.
¹⁴ Id. at 50.
¹⁵ Id. at 51.
¹⁶ Id. at 51.
¹⁷ *Rollo*, pp. 3-16.

charged; and that the integrity and evidentiary value of the seized drugs were preserved. The CA reiterated that accused-appellant's defense of denial is weak and without any probative weight.¹⁸ The *fallo* of the assailed Decision reads:

WHEREFORE, premises considered, the appealed 29 June 2017 *Decision* of the Regional Trial Court in Criminal Case Nos. R-PSY-11-03033-CR is hereby **AFFIRMED** *in toto*.

SO ORDERED.¹⁹

Undaunted, accused-appellant filed a Notice of Appeal²⁰ under Rule 124, Section 13(c) of the Rules of Criminal Procedure.

Issue

Whether the CA erred in affirming the RTC's decision convicting accused-appellant of the crime of Importation of Dangerous Drugs despite inconsistencies in the testimonies of the prosecution witnesses and lapses in the handling of the seized items.

The Court's Ruling

The appeal is bereft of merit.

In the instant appeal, accused-appellant insists that there were several inconsistencies in the testimonies of the prosecution's witnesses, which is fatal to its case. Accused-appellant further avers that the apprehending officers/agents failed to strictly comply with the requirements outlined in Section 21 of R.A. No. 9165 in that the seized items were not marked immediately after they were seized; accordingly, there is reasonable doubt as to his guilt for the crime charged.²¹

We disagree.

At the very outset, in every prosecution for Importation of Dangerous Drugs, the prosecution must establish the following elements: (1) the importation or bringing into the Philippines of any regulated or prohibited drug; and (2) the importation or bringing into the Philippines of said drugs was without authority of law.²²

- over -

69-B

¹⁸ Id. at 12-14.

¹⁹ Id. at 15.

²⁰ Id. at 17-18.

²¹ CA *rollo*, pp. 36-41.

²² *People v. Chi Chan Liu*, 751 Phil. 146, 157-158 (2015).

In the instant case, the prosecution was able to establish all the elements of the crime of Importation of Dangerous Drugs when accused-appellant was caught red-handed bringing into the Philippines almost six (6) kilograms of *shabu* without lawful authority. The testimony of the prosecution witnesses, specifically of Ali was on point, thus:

x x x x

Q: Mr. Witness, tell us, what is your tour of duty as Customs Collection District Officer or Examiner?

A: There are three (3) terminals and in Terminal 2, we were assigned at 3:00 in the afternoon up to the last flight. We are examining the baggage of the passengers, sir.

Q: Were you able to report for duty on December 31, 2010?

A: Yes, sir.

Q: Tell us, Mr. Witness, what exact place were you at the terminal on that date, December 31, 2010?

A: I was at Terminal 2 Examination Lane No. 3, Carousel No. 5, and sir.

x x x x

Q: On or about 18 30 100 hours or 6:30 on December 31, 2010, do you remember of an incident that happened?

A: Yes, sir.

Q: And tell us, what was that incident all about?

A: There is a Malaysian national who passed me and I examined his baggage and since I felt that it is heavy and when I was going over his things, there was an item blocking something and when I took it, I saw the zipper and when I opened the zipper, I saw a cellophane, sir.

Q: Why is there a need for you to examine the baggage of the passengers?

A: To determine if they are in possession of taxable items or *contraband*, sir.

Q: After you examined the baggage of the accused in this case and you found out something inside the said bag, what happened next?

A: What I did was that I closed the bag of the passenger and then I called the attention of the Customs Police Duty Supervisor Dimayuga, sir.

- over -

69-B



Q: Mr. Witness, tell us what was that unusual object or items [sic] that you saw inside the bag of this arriving passenger?

A: I saw there what was inside were six (6) cellophanes, sir. [sic]

Q: When you saw these six (6) cellophane plastic bags, what if any did you do?

A: I closed the baggage and then I called the attention of Supervisor Dimayuga and Major Biteng, sir.

x x x x

Q: I ask you again, Mr. Witness. How did you conclude that that is "shabu", the first time that you saw the plastic bag? [sic]

A: I suspected that it was "shabu." sir

Q: Because you suspected it as "shabu", what did you do, if any?

A: I called the attention of my Supervisor and the Customs Police in the gate, sir.

Q: What did you tell them, if any?

A: I told my Supervisor that this passenger is carrying something, which I cannot determine, so I asked him to assist me to identify what are those items, sir.

Q: When you informed them concerning what you found inside the luggage of the accused, what did they do, if any?

A: What they did was that they brought them to the Enclosure Room at Terminal 2 together with the passenger, sir

Q: Who brought the passenger to where?

A: Major Biteng who called Agent Mozo and then they brought the accused to Enclosure Room, sir.

Q: What else, if any?

A: No more, sir.

Q: What about the identity of the accused? How did you know that the accused is the one, who the owner of that bag that you inspected?

A: Upon arriving in front of me, he gave to me his passport and his bag, sir.

Q: And what else were given to you, aside from passport and his baggage?

A: None, sir.

Q: What about the Customs Declaration?

A: Yes, sir, also the Customs Declaration, sir.

- over -

69-B



Q: What about the Boarding Pass?
A: We don't get the Boarding Pass, sir.

x x x x

Q: And what happened next?
A: They asked me to count the contents of the baggage, sir.

Q: And what was the result of your count?
A: There were six (6) cellophanes containing allegedly
"shabu", sir.

x x x x²³

Ali's testimony was corroborated by SA1 Mozo who testified that after Ali discovered six (6) cellophane plastic bags containing white crystalline substance, his assistance was sought; thereafter, they brought accused-appellant to the In-Bond room;²⁴ and on initial field test conducted by the Customs Task Force, the contents of the cellophane plastic bags yielded the presence of Methamphetamine Hydrochloride.²⁵

Verily, Ali, as corroborated by SA1 Mozo, confirmed without a doubt, that accused-appellant was caught in *flagrante delicto* importing dangerous drugs to the Philippines without authority of law. We, thus, conclude that Ali's and SA1 Mozo's positive identification of accused-appellant, coupled with their straightforward and categorical narration of the incident, warrants accused-appellant's conviction for the crime charged.

Notwithstanding, accused-appellant assails that there was a procedural lapse when the items were marked and inventoried not at the place where the items were seized – customs counter, but in the In-Bond room. Simply, accused-appellant avers that there was a broken chain of custody.²⁶

We are not persuaded.

At the outset, apart from showing that the elements of the crime are present, the fact that the dangerous drug seized is the same drug offered in court as exhibit must likewise be established with the same

- over -

69-B

²³ TSN dated June 2, 2011, pp. 4-9.

²⁴ TSN dated October 1, 2013, pp. 6-7.

²⁵ Id. at 14-16.

²⁶ CA *rollo*, p. 36.

degree of certitude as that needed to sustain a guilty verdict.²⁷ In other words, like in cases of Sale and Illegal Possession of Dangerous Drugs, it is essential in a case of Importation of Dangerous Drugs that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime of Importation of Dangerous Drugs.²⁸ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.²⁹

The requisites to establish the identity and integrity of the *corpus delicti* or an unbroken chain of custody of the dangerous drugs are exhaustively enumerated and explained in the case of *People v. Cariño*,³⁰ thus:

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, “a representative from the media **and** the Department of Justice (DOJ), and any elected public official”; or (b) if **after** the amendment of RA 9165 by RA 10640, “[a]n elected public official and a representative of the National Prosecution Service **or** the media.” The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”

- over -

69-B

²⁷ *People v. Del Mundo*, 818 Phil. 575, 584-585 (2017).

²⁸ *People v. Cariño*, G.R. No. 233336, January 14, 2019.

²⁹ *Plan, Jr. v. People*, G.R. No. 247589, August 24, 2020.

³⁰ G.R. No. 233336, January 14, 2019.

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.” This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that 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.

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

Notably, the Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises

- over -

69-B

the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."³¹ (Citations omitted)

After a careful perusal of the records of the case, We hold and so rule that the prosecution was able to prove an unbroken chain of custody of the seized drugs.

After confiscation, the items were marked (EJV 12-31-2010 EXH-A, EJV 12-31-2010 EXH-B, EJV 12-31-2010 EXH-C, EJV 12-31-2010 EXH-D, EJV 12-31-2010 EXH-E, EJV 12-31-2010 EXH-F),³² photographed,³³ and inventoried by Ali. While, admittedly, the marking, inventory and taking of pictures were done not at the place where the items were discovered, that is, at the customs counter, but at the In-Bond room, this is to be expected considering that the customs counter is a public place where people arriving from other countries line up to be cleared before going to their respective destinations in the Philippines. To conduct the marking, inventory and taking of pictures at that place will cause a commotion and may compromise the security in the airport. More so, the rules allow that the marking be made at the nearest police station or office of the apprehending team.³⁴ These justify the decision of the officers/agents to conduct the marking, inventory and taking of pictures in the In-Bond room.

Furthermore, the inventory of the seized items was conducted in the presence of accused-appellant, DOJ and media representatives, and a barangay official.³⁵ The crime was committed prior to the amendment of R.A. No. 9165 by R.A. No. 10640,³⁶ hence, the presence of the three (3) witnesses was in strict compliance with the existing rules.

After the marking and inventory of the seized items, accused-appellant and his personal belongings, together with the confiscated drugs were then turned over to the PDEA. This is evidenced by the

- over -

69-B

³¹ Id.

³² Records, p. 224

³³ Id.

³⁴ Section 21, Implementing Rules and Regulations of R.A. No. 9165.

³⁵ Records, p. 225.

³⁶ Prior to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *and* the Department of Justice (DOJ), and any elected public official"; or if *after* the amendment of R.A. No. 9165 by R.A. No. 10640, "[a]n elected public official and a representative of the National Prosecution Service *or* the media."; *People v. Esguerra*, G.R. No. 243986, January 22, 2020).

Turn-over Receipt signed by IO1 Samson.³⁷ IO1 Samson, thereafter, turned over the seized cellophane plastic sachets of *shabu* to the PDEA Laboratory.³⁸ It was Chemist Esguerra who received the items,³⁹ and who, after examining the contents of the cellophane plastic sachets, concluded that it was *shabu*.⁴⁰ During trial, the testimony of Chemist Esguerra was dispensed with after the prosecution and the defense stipulated that she was the one who received the evidence from PDEA Agent Samson and that when she received the evidence, there were markings; that she has no knowledge as to who placed the marking; and that after examination, she made her own markings on the evidence.⁴¹ While it was not stipulated that Esguerra turned over the seized drugs to the court, records show that Esguerra personally appeared before the RTC and turned over the seized evidence on February 9, 2011.⁴²

With the foregoing disquisition, it is clear that there was an unbroken chain of custody of the seized drug. The integrity of the seized drugs was duly preserved from the moment they were confiscated until the time that they were presented in court for trial. Corollarily, the RTC did not err in giving the prosecution's evidence full credence. This is in contrast to the denial by accused-appellant who failed to substantiate his allegation of frame-up and extortion. It bears stressing that given the quantity and obvious size of the items seized, 5,918 grams of *shabu* to be exact, it is incredible that they would have been planted or exchanged with another.

In a plethora of cases, We have enunciated that frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.⁴³ To substantiate such defense, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.⁴⁴ Unfortunately, no such evidence was presented by accused-appellant in this case.

- over -

69-B

³⁷ Records, p. 226.

³⁸ Id. at 227.

³⁹ Id.

⁴⁰ Id. at 228.

⁴¹ TSN dated June 2, 2011, p. 17.

⁴² Records, p. 36.

⁴³ *People v. Mamaril*, 646 Phil. 660, 668 (2010).

⁴⁴ *People v. Alejandro*, 731 Phil. 662, 684 (2014).

Finally, accused-appellant contends that, since there were inconsistencies in the testimonies of the prosecution's witnesses, the prosecution failed to prove his guilt beyond reasonable doubt.⁴⁵

We disagree.

To recall, accused-appellant avers that there was inconsistency in the testimony of the prosecution witness. Accused-appellant claims that in the affidavit of Ali, he narrated that "Major Biteng instructed SA1 Edmund Mozo, ESS CPD and IO1 Joseph L. Samson, PDEA to escort the passenger Mr. Yap Kean Hock at the In-Bond Room to safely secure both the passenger and the luggage for further investigation."⁴⁶ Meanwhile, when he was testifying, Ali stated that it was Major Biteng, and Agent Mozo who brought accused-appellant to the In-Bond Room.⁴⁷

While admittedly, there was an inconsistency, such is clearly insignificant and only refer to a minor detail and not upon the basic aspect of the crime. It relates only to a trivial matter, that is, who brought accused-appellant to the In-Bond Room. Accordingly, such inconsistency cannot be considered a ground to reverse accused-appellant's conviction.

The foregoing, coupled with the failure of accused-appellant to overthrow the presumption of regularity accorded to the official acts of the prosecution's witnesses, as well as, his failure to prove ill-motive on the part of the officers/agents, give Us no reason to overturn accused-appellant's conviction for the crime of Importation of Dangerous Drugs.

All told, We hold and so rule that accused-appellant committed the offense charged and that the degree of proof required to convict him has been met.

WHEREFORE, the instant appeal is hereby **DENIED**. The appealed Decision dated July 12, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09543, is hereby **AFFIRMED *in toto***.

- over -

69-B


⁴⁵ *Rollo*, p. 32.

⁴⁶ *CA rollo*, p. 33.

⁴⁷ TSN dated June 2, 2011, pp. 7-8.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *7/6/22*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

69-B

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