



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. 252888 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ERNESTO ANTONIO y ROSIPES, accused-appellant.

After a careful review of the records of the case, the Court reverses and sets aside the Decision¹ dated March 28, 2018 of the Court of Appeals, Third Division in CA G.R. CR HC No. 08745 which affirmed the Decision² dated October 26, 2016 of the Regional Trial Court, Branch 65, Makati City in Criminal Case Nos. R-MKT-16-01252-CR and R-MKT-16-01253-CR convicting accused-appellant Ernesto Antonio y Rosipes (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165.³

For a successful prosecution of illegal sale of dangerous drugs, the following elements must be established: (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.⁴ As for illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.⁵

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¹ *Rollo*, pp. 3-17. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Rosmari D. Carandang (retired member of this Court) and Pedro B. Corales, concurring.

² *CA rollo*, pp. 47-54. Penned by Presiding Judge Edgardo M. Caldoná.

³ Entitled “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.”

⁴ *People v. Eda*, G.R. No. 220715, August 24, 2016, 801 SCRA 510, 521.

⁵ *People v. Manabat*, G.R. No. 242947, July 17, 2019, 909 SCRA 543, 561.

In both cases of illegal sale and illegal possession of dangerous drugs, the dangerous drugs seized from accused constitute the *corpus delicti* of the offense, thus, the integrity and evidentiary value of the seized drugs must be shown to have been duly preserved.⁶ In order to establish the identity of the dangerous drugs with moral certainty, each of the following links in the chain of custody must be accounted for by the prosecution: (1) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁷

Moreover, Section 21⁸ Article II of R.A. 9165 as amended by R.A. 10640, provides the following procedure that must be strictly followed by police officers during a buy-bust operation: (1) inventory and photographing of the seized items must be conducted immediately after seizure and confiscation; and (2) the physical inventory and photographing must be done in the presence of the accused or his/her

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⁶ *People v. Hilario*, G.R. No. 210610, January 11, 2018, 851 SCRA 1, 18.

⁷ *Jacson v. People*, G.R. No. 199644, June 19, 2019, 904 SCRA 537, 548.

⁸ The said section reads as follows:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read 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 person/s 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.["]
(Italics in the original)

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 (NPS), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.⁹ 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.¹⁰

In the instant case, the buy-bust team committed several violations of the procedure laid out in Section 21, Article II of R.A. 9165, as amended by R.A. 10640.

First, SPO2 Rommel Ladiana did not immediately mark the seized drugs, a breach in the first link of the chain of custody. The Joint Affidavit of Arrest states that the deviation was due to “security reasons.”¹¹ Apart from this claim, no other details, much less any proof, were provided as to what imminent threat was present at the time accused-appellant was arrested which prevented the immediate marking of the seized drugs, or otherwise necessitated the transfer of the marking, inventory and photographing at the Barangay Hall of Barangay Tejeros, Makati City. A vague and unsubstantiated claim of “security reasons” is unacceptable as a justifiable ground for non-compliance with the law.

Second, the marking, inventory and photographing of the seized items were conducted in the Barangay Hall of Barangay Tejeros, Makati City, a place not authorized by law. R.A. 10640 provides for two alternative places for the conduct of the inventory and photographing of the seized drugs when they cannot be practicably done at the place of apprehension, namely: (a) nearest police station; or (b) nearest office of the apprehending officer/team.¹² Clearly, a barangay hall is not one of the alternative places where inventory and photographing may be conducted.

Third, only one insulating witness, particularly Barangay Captain Teresita Brillantes¹³ (Brillantes), was present during marking, inventory and photographing of the seized items at the Barangay Hall of Barangay Tejeros, Makati City. Brillantes did not have prior knowledge of the buy-bust operation and was only called upon to act

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⁹ *Limbo v. People*, G.R. No. 238299, July 1, 2019, 907 SCRA 129, 136-137.

¹⁰ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018, 884 SCRA 276, 287.

¹¹ *Rollo*, p. 54.

¹² *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

¹³ “Brillante” in some parts of the *rollo* and *CA rollo*.

as witness at the Barangay Hall. Moreover, the buy-bust team failed to obtain the presence of a representative from either the NPS or the media, and did not provide any explanation for such breach in procedure. In several cases, the Court has stressed the importance of securing the presence of **all** the witnesses required by law during inventory and photographing as this ensures that the buy-bust operation was valid and legitimate and removes any suspicion of switching, planting, or contamination of evidence.¹⁴

While absence of one of the required witnesses will not automatically render the confiscated items inadmissible in evidence, it is incumbent upon the buy-bust team to acknowledge and explain the lapse in procedure.¹⁵ In *People v. Lim*,¹⁶ the Court *en banc* stressed that it must be alleged and proved that the presence of the witnesses to the physical inventory and photograph of the seized drugs was not secured due to justifiable reasons 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.¹⁷ (Emphasis in the original)

It bears emphasis that R.A. 10640 only requires two witnesses and is already less stringent compared to R.A. 9165 which required the presence of three witnesses.¹⁸ Moreover, a buy-bust operation is a planned activity, thus, police operatives usually have sufficient time to secure the presence of the witnesses.¹⁹

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¹⁴ See *Saban v. People*, G.R. No. 253812, June 28, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67464>>; *Mascariola v. People*, G.R. No. 251312, October 7, 2020 (Unsigned Resolution); *People v. Detros*, G.R. No. 247273, July 15, 2020 (Unsigned Resolution); *Matabilas v. People*, G.R. No. 243615, November 11, 2019, 925 SCRA 336; *People v. Maganon*, G.R. No. 234040, June 26, 2019, 906 SCRA 406.

¹⁵ See *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 355.

¹⁶ G.R. No. 231989, September 4, 2018, 879 SCRA 31.

¹⁷ *Id.* at 61-62.

¹⁸ *People v. Sood*, G.R. No. 227394, June 6, 2018, 865 SCRA 368, 381.

¹⁹ *People v. Guerrero*, G.R. No. 228881, February 6, 2019, 892 SCRA 143, 159.

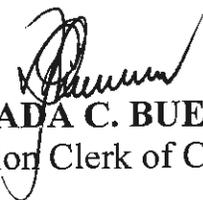
The foregoing irregularities in the conduct of the buy-bust operation render questionable the integrity and evidentiary value of the seized drugs and establish a break in the chain of custody. As the *corpus delicti* of the crimes were not established, the Court must thus acquit accused-appellant.

WHEREFORE, the instant appeal²⁰ is hereby **GRANTED**. The Decision dated March 28, 2018 of the Court of Appeals, Third Division in CA-G.R. CR HC No. 08745 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ERNESTO ANTONIO y ROSIPES** is hereby **ACQUITTED** for failure of the prosecution to establish his guilt beyond 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 furnished the Director General of New Bilibid Prison, Muntinlupa City for immediate implementation. The said Director General 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

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 08745)

The Hon. Presiding Judge
Regional Trial Court, Branch 65
1200 Makati City
(Crim. Case Nos. R-MKT-16-02152
to 53-CR)

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²⁰ *Rollo*, pp. 18-19.



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