



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 253335 (Edilberto Tuazon y Diaz v. People of the Philippines). – The Court resolves to:

- (1) **GRANT** the Office of the Solicitor General’s (OSG) Motion to Admit Attached Comment (on the petition for review on *certiorari*) dated December 10, 2021, stating that the folder of this case was inadvertently included in other case files and was not calendared and referred to the handling Solicitor for the preparation of the required comment; hence, begging the indulgence of the Court and praying that the attached comment be admitted and considered in the disposition of this case.

- (2) **NOTE:**
 - (a) said Comment dated December 10, 2021; and

 - (b) Manifestation in Lieu of Reply to Comment dated December 28, 2021, filed by the Public Attorney’s Office, stating that since all relevant issues were already raised and discussed at length in the petition, and the OSG did not raise new issues or matters relevant thereto in its comment, petitioner would no longer file a reply to avoid repetition of the arguments already raised.

Before the Court is a petition for review on *certiorari*¹ under Rule 45 of Rules of Court assailing the February 11, 2020 Decision² as well as the August 24, 2020 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 41424,

¹ *Rollo*, pp. 12-23.

² *Id.* at 35-47. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Myra Garcia-Fernandez and Pedro B. Corales, concurring.

³ *Id.* at 49-50.

which affirmed the Decision⁴ dated July 20, 2017 rendered by the Regional Trial Court (RTC), Branch 53, Manila, finding Edilberto Tuazon y Diaz (petitioner) guilty of violation of Section 11, Article II of Republic Act (R.A.) No. 9165 in Criminal Case No. 11-281043.

Facts

Petitioner was charged in an Information, as follows:

That on or about January 20, 2011, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) heat[-]sealed transparent plastic sachet with marking 'EDT' containing Zero point zero two nine (0.029) gram of white crystalline substance commonly known as 'SHABU' containing Methamphetamine hydrochloride, which is a dangerous drug.

Contrary to law.⁵

Upon arraignment, petitioner entered a plea of not guilty. Trial on the merits ensued thereafter.

Version of the prosecution

The prosecution witnesses established that sometime on January 20, 2011, the police officers at the Manila Police District (MPD) Station 3 received an information that a certain "*Botchok*" was selling illegal drugs along Elias Street, Sta. Cruz, Manila. Acting on the report, Police Chief Inspector Glenn Gonzales sent his men to conduct surveillance at the target area. At around 11:00 p.m., the police officers saw petitioner who was shouting, "*Botchok lumabas ka diyan!*" and "*Hayup ka, Botchok, lagi na lang talo kung magbigay ka gusto mo lumabas ka para malaman na kung sino matapang sa atin.*" A bystander told them that the person who was causing the commotion was involved in drug dealing. They approached petitioner and introduced themselves as police officers, and arrested him for violating City Ordinance No. 844 or Breach of Peace.⁶

Petitioner attempted to flee but the police officers got hold of him. When they searched petitioner, Senior Police Officer 1 Marvin L. Flores (SPO1 Flores) noticed that he was holding a plastic sachet containing white crystalline substance. Suspecting it to be *shabu*, SPO1 Flores took the plastic sachet and brought petitioner to the police station. Thereafter, SPO1 Flores marked the plastic sachet with the initials "EDT," and turned it over to investigator SPO3 Marcelino Morales (SPO3 Morales). Barangay Kagawad Nena Cabrera witnessed the inventory taking, while SPO3 Morales took photographs of

⁴ Id. at 82-85. Penned by Judge Reynaldo A. Alhambra.

⁵ Id. at 36.

⁶ Id. at 83.

petitioner and the seized item. SPO3 Morales then handed the seized item to Police Office 1 Richard Sibayan, who brought it to the crime laboratory.⁷ After qualitative examination on the contents of the recovered sachet by Forensic Chemist Erickson Calabocal, he found that the specimen yielded positive for the presence of methamphetamine hydrochloride or *shabu*.⁸

Version of the defense

In his defense, petitioner testified that on January 20, 2011, he was standing in front of Joe Kuan food store along Ronquillo Street, Rizal Avenue, Manila. He was watching a video on his cellphone when a group of men, numbering more or less five (5) who were eating inside the store, summoned him to come over. Petitioner just glanced at them and continued watching the video on his cellphone. One of the men, Meynard Mallari (Mallari), called petitioner again and asked him, "Do you know me?" Mallari introduced himself as a police officer and frisked petitioner for allegedly committing a crime. Thereafter, SPO1 Flores approached petitioner and confiscated his cellphone. SPO1 Flores then accused petitioner of committing a robbery along Jones Bridge, Manila. Petitioner denied the accusation and explained that the cellphone was just pawned to him. Nonetheless, he was handcuffed and detained at the police station. Petitioner later learned that he was charged with illegal possession of dangerous drugs instead of robbery.⁹

The RTC Ruling

The RTC found the prosecution's version credible and worthy of belief, and thus, rendered a Decision finding petitioner guilty of the crime charged. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **EDILBERTO TUAZON y DIAZ GUILTY** beyond reasonable doubt of the crime of Violation of Section 11 (3), Article II, Republic Act 9165, and is hereby sentenced to suffer imprisonment of Twelve (12) years and one (1) day, as minimum, to Fifteen (15) years, as maximum, and to pay fine in the amount of P300,000.00.

Cost against the accused.

SO ORDERED.¹⁰

On appeal, the CA affirmed the findings of the RTC. It held that the prosecution was able to establish the presence of all the elements for illegal possession of dangerous drugs, to wit: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed

⁷ Id.

⁸ Id.

⁹ Id. at 83-84.

¹⁰ Id. at 85.

the said drug. According to the CA, petitioner was arrested because he was violating a city ordinance. He attempted to flee but the police officers were able to grab him and recover in his possession a plastic sachet containing white crystalline substance which, when tested, yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, the appeal is **DENIED**. The Decision dated 20 July 2017 rendered by the Regional Trial Court, National Capital Judicial Region, Branch 53, Manila, in Criminal Case No. 11-281043, is **AFFIRMED**.

SO ORDERED.¹¹

Petitioner filed a Motion for Reconsideration.¹² However, the CA, in its Resolution dated August 24, 2020, denied the motion for lack of merit.¹³

Hence, this petition.

Issue

The sole issue is whether petitioner's guilt was proven beyond reasonable doubt for violating Section 11, Article II of R.A. No. 9165.

The Court's Ruling

The Court acquits petitioner.

Petitioner argues that the CA gravely erred in affirming his conviction despite the fact that the evidence proffered did not sufficiently prove his guilt beyond reasonable doubt. He insisted that the prosecution failed to comply with the requirements of Section 21 of R.A. No. 9165, which compromised the integrity of the alleged seized drugs.

The procedure for the custody and disposition of confiscated, seized, and surrendered dangerous drugs is provided under Section 21, paragraph 1, Article II of R.A. No. 9165, which reads:

(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

The plain import of Section 21 of R.A. No. 9165 is that the buy-bust team is to **conduct the physical inventory and photographing** of the seized items **immediately after seizure** and confiscation **in the presence of the**

¹¹ Id. at 46.

¹² Id. at 51-57.

¹³ Id. at 49-50.

accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof. And only if this is not practicable, can the inventory and photographing be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.

In *People v. Sipin*,¹⁴ this Court ruled that the prosecution bears the burden of proving compliance with the procedure laid down in Section 21 of R.A. No. 9165, and its failure to follow the mandated procedure must be adequately explained and must be proven as a fact under the rules.¹⁵ In *Sipin*, the Court ruled what constitutes justifiable reasons for the absence of any of the three witnesses, thus:

(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 officials] 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 the 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.¹⁶

In this case, the prosecution failed to explain why the marking, inventory and taking of photograph of the alleged illegal drug were done at the police station and not immediately after seizure at the place of the arrest. Moreover, no representatives from the media and DOJ were present when SPO3 Morales conducted the marking and inventory of the confiscated item as required under Section 21 of R.A. No. 9165. We note that only a barangay *kagawad* was present during the inventory, who was summoned only when petitioner was already at the police station. The prosecution failed to offer any justification why the required witnesses were not present during the inventory and photographing of the seized item. It must be stressed that the non-observance of the three-witness rule, coupled with the prosecution's failure to offer any explanation or justification for its non-compliance, is a clear violation of Section 21 of R.A. No. 9165, as amended, and its implementing rules, and therefore, warrants the acquittal of petitioner from the offense charged for failure to prove his guilt beyond reasonable doubt.¹⁷

The Court again takes this opportunity to emphasize that the presence of the three witnesses required by Section 21 is precisely to protect and guard against the pernicious practice of police officers in planting evidence. Without

¹⁴ 833 Phil. 67 (2018).

¹⁵ *People v. Cadungog*, G.R. No. 229926, April 3, 2019.

¹⁶ *Supra* note 14 at 93.

¹⁷ See *People v. Orcullo*, G.R. No. 229675, July 8, 2019.

the insulating presence of the three (3) witnesses during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the seized drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.¹⁸

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The February 11, 2020 Decision and the August 24, 2020 Resolution of the Court of Appeals in CA-G.R. CR No. 41424 are **SET ASIDE**. Accordingly, petitioner is hereby **ACQUITTED**.

Let a copy of this Resolution be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
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Division Clerk of Court
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The Presiding Judge
 REGIONAL TRIAL COURT
 Branch 53, Manila
 (Crim. Case No. 11-281043)

The Director General
 BUREAU OF CORRECTIONS
 1770 Muntinlupa City

¹⁸ See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

The Superintendent
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