



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **August 17, 2022**, which reads as follows:*

“G.R. No. 210652 (*People of the Philippines v. Augusto Dorimon y Dequillo*). – This is an appeal from the Decision¹ dated July 4, 2012 and the Resolution² dated March 11, 2013 of the Court of Appeals (CA), Cebu City in CA-G.R. CR-HC No. 00201, which affirmed the Decision³ dated March 24, 2004 of the Regional Trial Court (RTC) of Bacolod City, Branch 47, finding accused-appellant Augusto Dorimon y Dequillo (Dorimon) guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165.

Dorimon was formally charged with violation of Sections 5 and 11, Article II of R.A. No. 9165 as shown in two separate Informations:

Criminal Case No. 03-25342

That on or about the 12th day of September, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there wilfully [*sic*], unlawfully and feloniously sell, deliver, give away to a police confidential asset in a buy-bust operation five (5) Marijuana cigarettes placed inside a self-sealing transparent plastic bag weighing 0.72 gram and another seven (7) marijuana cigarettes placed inside a self-sealing transparent bag weighing 0.90 gram in exchange of marked money of one (1) fifty pesos bill with Serial Number DL042408, and ₱307.00 respectively in different denominations, in violation of the aforementioned law.

¹ *Rollo*, pp. 5-19. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Pampio A. Abarintos and Gabriel T. Ingles, concurring.

² *CA rollo*, pp. 136-137. Penned by Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy, concurring.

³ *Id.* at 22-37. Penned by Presiding Judge Edgar G. Garvilles.

Act contrary to law.⁴

Criminal Case No. 03-25343

That on or about the 12th day of September, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drugs, did, then and there wilfully [*sic*], unlawfully and feloniously have in his possession and under his custody and control five (5) Marijuana cigarettes, total weight of 0.72 gram and seven (7) marijuana cigarettes with a total weight of 0.90 gram with markings, in violation of the aforementioned law.

Act contrary to law.⁵

In the arraignment, Dorimon pleaded not guilty.⁶

The prosecution presented Police Officer (PO) 2 Meller Abdon Dionio (PO2 Dionio), PO1 Ludovico De la Raya, Jr.⁷ (PO1 De la Raya), and Police Senior Inspector Augustina Laranang Ompoy.⁸ Aside from Dorimon, Nerita Beboso and Randy delos Santos testified for the defense.⁹

Version of the Prosecution

On September 12, 2003, at around 9:00 a.m., the station commander of Police Precinct 9 of Barangay Sum-ag, Bacolod City, held a conference on the proliferation of dangerous drugs around school areas.¹⁰ Thereafter, a buy-bust operation was organized, with the subject being Dorimon, who ranked second in the Order of Battle, a list of persons suspected to be conducting the sale of illegal drugs near the Visayan Maritime Academy (VMA).¹¹

The buy-bust team was composed of Senior Police Officer 4 Reynaldo Auditor (SPO4 Auditor), PO2 Dionio, and PO1 De la Raya.¹² PO1 de la Raya, a newly assigned officer from Manila,¹³ was designated as the *poseur-buyer*.¹⁴ Their pre-agreed signal was a scratch on his head. A ₱50.00-bill with serial

⁴ Id. at 9.

⁵ Id. at 11.

⁶ *Rollo*, p. 7.

⁷ Ludovico in some parts of the *rollo*.

⁸ *Rollo*, p. 7.

⁹ Id. at 10.

¹⁰ Id. at 7-8.

¹¹ Id. at 8.

¹² Id.

¹³ Id. at 14.

¹⁴ Id. at 8.

number DL042408, and with PO2 Dionio's initials, "MD," on the front and the back, was used as marked money.¹⁵

Around 4:30 p.m., the buy-bust team proceeded to Purok San Sebastian, Barangay Sum-ag Bacolod near VMA, where they noticed Dorimon outside his house, while other people from VMA were going in and out his place.¹⁶ PO1 De la Raya, donning a VMA uniform, approached Dorimon who asked the former how much he was buying. PO1 De la Raya then handed Dorimon the marked ₱50.00-bill, and in exchange, the latter handed him five (5) *marijuana* sticks.¹⁷ PO1 De la Raya then executed their pre-arranged signal, while the back-up operatives hurtled to the scene.¹⁸ They introduced themselves as police officers and accordingly arrested Dorimon and informed him of his constitutional rights. When Dorimon was frisked, seven (7) more *marijuana* sticks, ₱307.00, and the marked ₱50.00-bill were found from his possession. They then proceeded to the police station.¹⁹

Barangay *Kagawads* Alberto Palma and Rodney Carmona were present at the police station and witnessed the recording of the incident.²⁰ The *marijuana* sticks bore the initials MD, which stood for PO2 Dionio, who sent the letter requesting the laboratory examination and physically took it to the PNP Crime Provincial Office 6 for analysis.²¹

The five (5) suspected *marijuana* cigarettes with a total weight of 0.72 gram were placed in a transparent plastic bag, which was labeled as "Specimen A," while the other seven (7) suspected *marijuana* cigarettes with a total weight of 0.90 gram recovered from Dorimon's possession were placed in another transparent plastic bag labeled as "Specimen B." Physical, color, and chromatography tests concluded on the said specimens yielded positive results for *marijuana* per Chemistry Report No. D-523-2003.²²

Version of the Defense

On November 1, 2002, at around 8:00 p.m., Dorimon and his friend Randy delos Santos were at a store having coffee and beer, respectively, when PO2 Dionio arrived and bodily searched Dorimon and his *trisikad* (tricycle).²³

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 9.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id. at 10.

²³ Id.

Finding nothing, PO2 Dionio threatened Dorimon that he would be smacked the next time they meet.²⁴

On September 12, 2003, at around 4:30 p.m., Dorimon was tending his fighting cocks at home when SPO2 Jamili arrived and informed him that he had been summoned by the barangay captain.²⁵ Dorimon was immediately led away. Rather than going to the barangay captain's house, Dorimon was brought to a waiting police car and driven to Police Precinct No. 9. PO2 Dionio searched him physically, but nothing was found in his possession except his wallet. He was not shown an arrest or search warrant, nor were his constitutional rights explained to him.²⁶ He was thereafter detained for unknown reasons.²⁷

Dorimon interposed the defenses of denial and frame-up.²⁸ He denied having sold *marijuana* to PO1 De la Raya as he knew him to be a police officer having seen him before on patrol.²⁹ He asserted that the reason for his arrest was the latter's grudge against him.³⁰

Nerita Beboso, the sister of Dorimon, corroborated the latter's testimony. She narrated that his brother failed to come home that afternoon when he was escorted by SPO2 Jamili.³¹ Upon inquiry to the barangay captain, it was revealed he did not summon Dorimon to his residence, and they later learned that Dorimon was detained at Police Precinct No. 9.³²

Ruling of the RTC

After the trial, the RTC handed a guilty verdict on Dorimon for violation of Sections 5 and 11, Article II of R.A. No. 9165. The decretal portion of the Decision³³ dated March 24, 2004 states:

Wherefore, finding accused Augusto Dorimon y Dequillo guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. No. 9165 (Sale of Dangerous Drugs) in Criminal Case No. 25342, judgment is

²⁴ Id.
²⁵ Id.
²⁶ Id.
²⁷ Id. at 11.
²⁸ Id. at 10.
²⁹ Id. at 11.
³⁰ Id.
³¹ Id.
³² Id.
³³ CA rollo, pp. 22-37.

hereby rendered sentencing him to suffer Life Imprisonment and to pay a fine of P500,000.00, as well as the accessory penalty prescribed by law.

Also finding accused Augusto Dorimon guilty beyond reasonable doubt of Violation of Section 11(3), Article II of R.A. No. 9165 (Illegal Possession of Dangerous Drugs), in Criminal Case No. 25343, judgment is likewise rendered meting on him imprisonment ranging from 12 years and 1 day to 14 years and to pay a fine of P300,000.00.

Costs against accused.

SO ORDERED.³⁴

Aggrieved, Dorimon appealed to the CA.

Ruling of the CA

The CA, through its Decision³⁵ dated July 4, 2012 affirmed the conviction of Dorimon for violation of Sections 5 and 11, Article II of R.A. No. 9165. The dispositive portion reads:

WHEREFORE, the Decision dated March 24, 2004 of the Regional Trial Court, Branch 47, Cebu City in Criminal Cases No. 03-25342 and 03-25343, which adjudged the guilt of accused-appellant **AUGUSTO DORIMON y DEQUILLO** for Violation of Sections 5 and 11, Article II of R.A. No. 9165, is hereby **AFFIRMED** in toto.

SO ORDERED.³⁶ (Emphases in the original)

Dorimon filed a Motion for Reconsideration,³⁷ but the same was denied by the CA in a Resolution³⁸ dated March 11, 2013.

Hence, this appeal before the Court.

³⁴ Id. at 37.

³⁵ *Rollo*, pp. 5-19.

³⁶ Id. at 18.

³⁷ *CA rollo*, pp. 128-133.

³⁸ Id. at 136-137.

Issue

Whether accused-appellant Dorimon was correctly convicted for violation of Sections 5 and 11, Article II of R.A. No. 9165

Dorimon would like to impress upon this Court that the arrest was motivated by ill-motive by the police officers and that it was illogical for him to sell *marijuana* to *poseur*-buyer PO1 De la Raya whom he knew to be a police officer.³⁹ He also alleges that there was neither proof to show that physical inventory was conducted on the items seized nor any photograph made pursuant to Section 21, Article II of R.A. No. 9165.⁴⁰

The Court's Ruling

We find for the accused-appellant Dorimon.

In the instant case, Dorimon was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. No. 9165, the applicable law at the time of the commission of the offense. When an accused is charged with Illegal Sale of Dangerous Drugs, the prosecution must prove the following to warrant his conviction: (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.⁴¹ On the other hand, in order to secure the conviction of an accused charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or object identified as a prohibited drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the said drug.⁴²

However, in order to secure a conviction in both cases, the identity of the illegal substance must be proven with moral certainty, given that the dangerous drug is an intrinsic element of *corpus delicti* of the crime. To remove any question about the identification of the dangerous drugs, the prosecution must demonstrate an unbroken chain of custody and account for each link in the chain of custody from the time the drugs are seized until they are presented in court as evidence.⁴³

³⁹ *Rollo*, p. 12.

⁴⁰ *CA rollo*, pp. 132.

⁴¹ *People v. Rivera*, G.R. No. 252886, March 15, 2021.

⁴² *Id.*

⁴³ *People v. Viterbo*, 739 Phil. 593, 601 (2014).

To demonstrate a chain of custody sufficient to admit the evidence, the proponent merely has to provide a rational basis for concluding that the evidence is what the party claims it to be.⁴⁴ In other words, in a criminal case, the prosecution must present sufficient evidence for the trier of facts to conclude that an object is still what the government alleges it to be. As a result, the following links in the chain of custody must be established: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.⁴⁵

Section 21(1), Article II of R.A. No. 9165 further states:

Section 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 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[.]

To supplement this, Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 mandates:

(a) The apprehending officer/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: 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

⁴⁴ *People v. Rivera*, supra note 41.

⁴⁵ *Id.*

or at the nearest office of the apprehending officer/team, whatever is practicable, in case of warrantless seizures; Provided, further, that non-compliance 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.

Strict compliance must be so observed because with the very nature of anti-narcotics operations, the necessity for entrapment procedures, the use of shady characters as informants, the ease with which sticks of *marijuana* or grams of heroin can be planted in pockets of or hands of unsuspecting individuals, and the secrecy that inevitably cloaks all drug deals, the possibility of abuse is great.⁴⁶

Thus, Section 21 of R.A. No. 9165 requires the arresting team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be completed in the presence of the aforementioned witnesses, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. As clarified by the Court in *Tañamor v. People*, the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of arrest.⁴⁷ In this regard, it also implies that the three required witnesses should be physically present at the time of arrest – a criterion that the buy-bust team can easily meet given that the buy-bust operation is, in essence, a planned activity.⁴⁸ Indeed, a buy-bust team has sufficient time to gather and bring with it the required witnesses.⁴⁹

Nonetheless, strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible under certain conditions. The failure of the apprehending team to strictly comply with the procedure laid out in the cited provisions does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves both of the following requisites: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.⁵⁰ The Court elucidated that for the above-saving clause to apply, the prosecution must fully explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence was, nevertheless, preserved.⁵¹ There has to be a justifiable ground for

⁴⁶ *Tañamor v. People*, G.R. No. 228132, March 11, 2020.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *People v. Dela Torre*, G.R. No. 238519, July 19, 2019.

⁵¹ *Id.*

non-compliance to be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.⁵²

However, in the instant case, the Court finds that the arresting officers violated the chain of custody without justification, calling into doubt the integrity and evidentiary value of the illegal drugs purportedly confiscated from Dorimon.

An examination of the records reveals that the inventory and photography of the seized items were only made in the presence of Barangay *Kagawads* Alberto Palma and Rodney Carmona.⁵³ There was no presence of representatives from either the media or the DOJ as required by law. Even so, the two barangay officers were not present **at the time of arrest**. As found by the trial court, it was only **after** PO2 Dionio and PO1 De la Raya apprehended Dorimon, when Barangay *Kagawads* Alberto Palma and Rodney Carmona were summoned to the place where they signed a Certification of the “property/item seized” from Dorimon.

It should be emphasized that the mere marking of the confiscated illegal drugs and conduct of an inventory in violation of the stringent procedure requiring the attendance 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 DOJ, and any elected public official fall short of conforming with Section 21, Article II of R.A. No. 9165.⁵⁴ The presence of these individuals, as well as the prompt marking and conduct of physical inventory upon seizure and confiscation in full view of the accused and requisite witnesses, cannot be disregarded as a mere procedural formality.⁵⁵ In this regard, the prosecution again failed to explain why it did not obtain the appearance of a representative from the DOJ and the media. Verily, there was no evidence of any attempt to contact DOJ or media representatives. Minor deviations may be permitted if a justifiable explanation for non-compliance is shown.⁵⁶ However, the same is unavailing in this case.

Indeed, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure provided under the law. It cannot simply rely on the presumption of regularity in the performance of duties of the police

⁵² Id.

⁵³ *Rollo*, p. 9.

⁵⁴ *People v. Dela Torre*, supra note 50.

⁵⁵ Id.

⁵⁶ Id.

officers, especially when the rules on the conduct of buy-bust operations have already been concisely laid down by law and jurisprudence.

Additionally, the police officers should have been more prudent in their operation considering that prosecution under R.A. No. 9165 and eventual conviction, if warranted by the case, could deprive an individual of his personal liberty for life. If they were able to conduct a conference on the proliferation of dangerous drugs around school areas,⁵⁷ and conclude a so-called Order of Battle,⁵⁸ showing their supposed preparedness for the buy-bust operation, they should have been able to summon the required number of witnesses at the very start of the operation. Yet, they were unable to do so nor give any justification for the said want of effort to comply with the procedure under the law.

Anent the issue of ill-motive, Dorimon was not able to establish the same against the police officers. The Court agrees with the trial court that the confrontation that occurred sometime in November of 2002 to desist Dorimon from his illegal drug activities in no way constitutes a motive for said police officers to falsely testify against him.⁵⁹ At the very least, the said confrontation was a mere expression of concern for a fellow resident not to further run afoul with the law. As regards the argument that it would be illogical for Dorimon to sell illegal drugs to a person whom he knew to be a police officer, the same is without merit. It must be emphasized that it is not the familiarity but the agreement and acts constituting the sale and delivery that is crucial in the prosecution of drug cases.⁶⁰

In any case, if doubt arises about the adequacy of the evidence to convict an accused, our courts of justice should find in favor of the accused, lest they violate their obligation to preserve individual rights within the confines of the law. Thus, given that the arresting officers' procedural lapses, which were unfortunately left unjustified, militate against a finding of guilt beyond reasonable doubt against Dorimon, as the integrity and evidentiary value of the *corpus delicti* had been compromised, the Court is constrained to rule that accused-appellant Dorimon's acquittal is in order.

WHEREFORE, the Decision dated July 4, 2012 and the Resolution dated March 11, 2013 of the Court of Appeals, Cebu City in CA-G.R. CR-HC No. 00201 are **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Augusto Dorimon y Dequillo is **ACQUITTED** and is **ORDERED**

⁵⁷ *Rollo*, p. 8.

⁵⁸ *Id.*

⁵⁹ *CA rollo*, p. 30.

⁶⁰ *Quinicot v. People*, 608 Phil. 259, 276 (2009).

IMMEDIATELY RELEASED from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. Said Director General is **ORDERED** to report to this Court, within five (5) working days from receipt of this Resolution, the action he has taken.

Let an entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:

Misa DCB-H
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *10/17/22*

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

COURT OF APPEALS
CA G.R. CR HC No. 00201
6000 Cebu City

Atty. Teodulo Cario, Jr.
Counsel for Accused-Appellant
Door 12 JS Bldg. Lacson-Galo Streets
6100 Bacolod City

and

Atty. Cassioppea Jerose V. Soriano
Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 47, 6100 Bacolod City
(Criminal Case Nos. 03-25342 and 03-25343)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Augusto Dorimon y Dequillo
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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