



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **July 27, 2022** which reads as follows:*

“G.R. No. 250899 (People of the Philippines v. Emil Edwin Deyro y Bernal) – This appeal assails the Decision¹ dated May 31, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 08368, affirming the convictions of appellant **Emil Edwin Deyro y Bernal** (appellant) for illegal sale and illegal possession of dangerous drugs, under Sections 5 and 11, respectively, of Article II of Republic Act No. (RA) 9165.²

Antecedents

The Charges

By separate Informations dated February 14, 2012, appellant was charged with violations of Sections 5 and 11 of RA 9165 for illegal sale and illegal possession of dangerous drugs, respectively, *viz.* :

Criminal Case No. 2012-3990-D-MK – Section 5, RA 9165

“That on or about the 22nd day of October 2011, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly deliver/sell to PO2 ANDREI CAWA, of the Philippine National Police (PNP), acting as poseur buyer, for Five Hundred Pesos ([Php500].00) one (1) heat-sealed transparent plastic sachet, marked as “A (EMIL-1-10-22-2011 with signature)” containing 0.06 gram of white crystalline substance, which gave positive result to the test for the presence of Methylamphetamine (sic) Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”³

¹ *Rollo*, pp. 3-20; Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Samuel H. Gaerlan (now a member of the Supreme Court) and Renato C. Francisco, concurring.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

³ CA Decision, p. 2.

per 27

Criminal Case No. 2012-3989-D-MK – Section 11, RA 9165

“That on or about the 22nd day of October 2011, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drugs, did then and there, willfully, unlawfully and feloniously have in his possession, direct custody and control, two (2) heat-sealed transparent plastic sachets, marked as “B (EMIL-2 10-22-2011 with signature)” and “C (EMIL-3 10-22-2011 with signature)”, each containing 0.06 gram of white crystalline substance, which gave positive result to the test for Methylamphetamine (sic) Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.”⁴

The cases were raffled to and consolidated before the Regional Trial Court (RTC)-Branch 165, Marikina City.⁵ On arraignment, appellant pleaded *not guilty* to both charges.⁶

During trial, PO2 Andrei M. Cawa (PO2 Cawa), PO2 Jerrywin Rebosora (PO2 Rebosora), and PCI Isidro L. Cariño (PCI Cariño) testified for the prosecution,⁷ while appellant for the defense.⁸

The parties stipulated on the proposed testimonies of Police Chief Inspector Dante Javiñas, Jr. (P/CInsp. Javiñas), PO3 Norman Barcellano (PO3 Barcellano), PO2 Yob Enguio (PO2 Enguio), and PO1 Marlon Quibete (PO1 Quibete).

The prosecution offered the following in evidence: Affidavit of Arrest executed by PO2 Cawa; Pre-Operation Report dated October 21, 2011; Coordination Form dated October 21, 2011; Request for Laboratory Examination dated October 22, 2011; Request for Drug Test dated October 22, 2011; photographs of appellant, the boodle money, and the seized items; Certificate of Inventory dated October 22, 2011; Physical Sciences Report No. D-364-11E; Affidavit of PCI Cariño; Certificate of Coordination; ₱500 boodle money; and Physical Sciences Report No. DT-403-11E.⁹

The defense, on the other hand, offered in evidence Pre-Operation Report dated October 21, 2011; Coordination Form dated October 20, 2011; and a counter-affidavit.¹⁰

⁴ Id.

⁵ RTC Decision; *CA rollo*, pp. 43-59.

⁶ Id. at 2.

⁷ Id. at 2-7.

⁸ Id. at 7-8.

⁹ Id. at 6-7.

¹⁰ Id. at 8.

The Prosecution's Version

PO2 Cawa testified that in the afternoon of October 22, 2011, he and the other members of the drug operatives unit of Marikina City received a report from a confidential informant that a certain "Emil" was selling drugs at Sapphire Street, Concepcion Uno, Marikina City. Acting on this tip, Police Chief P/Supt. Cereno of the District Anti-Illegal Drugs Special Operation Task Group (DAID-SOTG) formed a buy-bust team where he (PO3 Cawa) was designated as poseur-buyer, PO3 Barcellano as Team Leader, PO2 Rebosora as back-up, and PO1 Quibete, PO1 Arlan Arriola, and PO1 Enguio as perimeter guards.¹¹

After validating the report, the team prepared the boodle money, the Pre-Operational Report, and Coordination Form which they forwarded to the Philippine Drug Enforcement Agency (PDEA). After a final briefing, they proceeded to the target area for the operation.¹²

At 5:30 in the afternoon, he and the informant arrived at the agreed location while the rest of the team strategically positioned themselves nearby. "Emil," later identified as appellant who was on board his motorcycle, approached them. After he got introduced to appellant, he intimated to appellant he wanted to buy ₱500 worth of *shabu*. Appellant opened the compartment of his motorcycle, retrieved three (3) plastic sachets, and gave one (1) to him. He, in turn, handed over the ₱500 bill to appellant.¹³

Thereupon, he gave the pre-arranged signal prompting the back-up officers to rush in and assist him in arresting appellant. After the arrest, he frisked appellant and recovered the boodle money and two (2) plastic sachets.¹⁴

He marked the item he bought from appellant "EMIL 1 10-22-2011" and those seized from appellant, "EMIL 2 10-22-2011" and "EMIL 3 10-22-2011." He also did the inventory and photographing at the place of arrest.¹⁵

Thereafter, the team brought appellant and the seized items to their office where he prepared the requests for laboratory examination and drug test. He brought appellant, the seized items and the requests for laboratory examination and drug test to the Eastern Police District (EPD) Crime Laboratory.¹⁶

¹¹ Id. at 3.

¹² Id.

¹³ Id.

¹⁴ Id. at 2-3.

¹⁵ Id.

¹⁶ Id. at 3-4.

On cross and redirect, he admitted that both the Pre-Operational Report and Coordination Form bore different dates. These documents and even the boodle money were apparently prepared and intended for a different operation and a different target.¹⁷

PO2 Rebosora corroborated PO2 Cawa's testimony on its material points.¹⁸

PCI Cariño testified that he was the forensic chemist who conducted the qualitative test on the seized items. He reduced his findings in Physical Sciences Report No. D-364-11E which confirmed that these items are positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹⁹

The parties stipulated on the following proposed testimonies:

PO3 Barcellano signed the pre-operation report and he can identify the same; he acted as team leader of the buy-bust operation; he prepared the boodle money; and he was present during the operation, but only stood guard at the perimeter.²⁰

P/CINsp. Javiñas, Jr. can identify the request for drug test on appellant; he did the drug test on appellant; and he prepared Physical Sciences Report No. DT-403-11E, confirming that the sample taken from appellant did **not** contain methamphetamine and THC metabolites.²¹

PO2 Enguio can identify the Pre-Operation Report and Coordination Form; he coordinated with the PDEA as shown by the Certificate of Coordination; and his participation in the operation was limited to such coordination as a matter of procedure.²²

PO1 Quibete acted as perimeter back-up with PO1 Arriola, PO1 Rey Cabarles, and PO2 Jayson Rael.²³

The Defense's Evidence

Appellant testified that on October 22, 2011, he was in his house having dinner by himself. Suddenly, eight (8) persons in civilian clothing

¹⁷ Id. at 4.

¹⁸ Id. at 5.

¹⁹ Id. at 2-3.

²⁰ Id. at 4-5.

²¹ Id. at 5-6.

²² Id. at 6.

²³ Id.

barged in and accused him of selling illegal drugs. They searched his house and found nothing. They turned out to be police officers. They handcuffed and brought him to the police station where they offered a settlement. When he refused, he was charged with selling illegal drugs.²⁴

The Ruling of the Trial Court

By Consolidated Decision dated May 10, 2016,²⁵ the trial court found him guilty of both charges, *viz.*:

WHEREFORE, in Criminal Case No. 2012-3990-D-MK, finding accused EMIL EDWIN DEYRO y BERNAL GUILTY beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00. The period of detention of the accused shall be fully credited in his favor.

In Criminal Case no. 2012-3989-D-MK, finding accused EMIL EDWIN DEYRO y BERNAL GUILTY beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165, he is hereby sentenced to suffer the penalty of imprisonment for a period of TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS and to pay a fine of Three Hundred Pesos (Php300,000.00).

The dangerous drugs submitted as evidence in these cases are hereby ordered to be transmitted to the Philippine Drug Enforcement Agency for appropriate disposition.

SO ORDERED.

It ruled that appellant's guilt for violations of Sections 5 and 11 of RA 9165 was established to a moral certainty, the seized items and their evidentiary value were properly preserved, the chain of custody duly observed, and the *corpus delicti*, positively identified.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction,²⁶ arguing that: *first*, the Pre-Operation Report and Coordination Form were dated October 21, 2011 and his name was not among the targets listed; *second*, none of the insulating witnesses were present during the inventory and photographing of the alleged seized items; and *third*, the arresting team failed to observe the chain of custody rule. Specifically, no

²⁴ Id. at 7-8.

²⁵ Penned by Judge Acerey C. Pacheco; CA *rollo*, pp. 43-59.

²⁶ Brief for the Accused-Appellant; id. at 27-41.

Chain of Custody of Evidence Form was presented; the persons who held the seized items did not testify on how said items were handled, preserved, and safeguarded; and the evidence custodian was not presented in violation of the requirement that every person who handled the seized item shall testify to establish every link.

The Office of the Solicitor General (OSG), through Solicitor General Jose C. Calida, Assistant Solicitor General Ellaine Rose A. Sanchez-Corro, and Associate Solicitor Peter Filip S. Abelita defended the verdict of conviction.²⁷ It maintained that the prosecution established appellant's guilt beyond reasonable doubt.

The Ruling of the Court of Appeals

By Decision dated May 31, 2018,²⁸ the Court of Appeals affirmed. It noted that the prosecution was able to prove that the integrity and evidentiary value of the seized item had been preserved by the unbroken compliance with the procedural requirements of Section 21 of RA 9165; all the elements of illegal sale and illegal possession of dangerous drugs were established; and weighed against appellant's bare denial, the presumption of regularity of performance of duty by the arresting officers must prevail.

The Present Petition

Appellant now asks the Court for a verdict of acquittal.²⁹

In compliance with the Resolution dated May 5, 2021, both appellant and the OSG filed their respective Manifestations (in lieu of supplemental briefs) adopting their arguments below.³⁰

Our Ruling

We acquit.

Appellant was charged with illegal sale and illegal possession of dangerous drugs allegedly committed on October 22, 2011. The applicable law is RA 9165, prior to its amendment by RA 10640 on August 7, 2014.³¹

²⁷ Brief for the Plaintiff-Appellee; id. at 72-93.

²⁸ *Rollo*, pp. 3-20; Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Samuel H. Gaerlan (now a member of the Supreme Court) and Renato C. Francisco, concurring.

²⁹ Notice of Appeal; id. at 21-22.

³⁰ Attached to *Temporary Rollo*.

³¹ *Jacson v. People*, G.R. No. 199644, June 19, 2019.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to prove that the dangerous drug seized from the accused is the same substance eventually offered in court.³²

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz.:

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; (Emphasis supplied)

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The Implementing Rules and Regulations of RA 9165 further commands:

Section 21. (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 or at the nearest office of the apprehending officer/team, whichever 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. (Emphases supplied)

³² *People v. Barte*, 806 Phil. 533, 542 (2017).

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To ensure the integrity of the seized drug, the prosecution must also account for each link 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.³³

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.³⁴

We focus on the first link.

The **first link** in the chain of custody includes the marking, physical inventory, and photographing of the seized items.

Appellant asserts that the arresting team utterly failed to comply with the requirements of the first link, rendering the identity and integrity of the alleged seized items highly questionable, *viz.*: none of the insulating witnesses were present during the inventory and photograph; no chain of custody form was presented; and not all persons who held the seized items testified on how they handled, preserved, and safeguarded the same.

Indeed, none of the three (3) required personalities witnessed the physical inventory and photographing of the seized items. The police officers offered no reason for this omission. Too, the OSG did not even discuss this fatal omission in the People's Brief.

In *People v. Lim*,³⁵ the Court held that it is necessary for the prosecution to establish that earnest efforts were made to secure the presence of the required witnesses – mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, RA 9165.

Here, the police officers failed to show even the slightest, let alone, genuine and sufficient effort to secure the presence of the insulating witnesses during the inventory and photograph requirements.

³³ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

³⁴ *Jacson v. People*, G.R. No. 199644, June 19, 2019.

³⁵ G.R. No. 231989, September 4, 2018, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018.

On this score, *Mallillin v. People*³⁶ explained that every person who touched the exhibit should describe how and from whom it was received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.³⁷ In addition, these witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.³⁸

Mallillin also emphasized that stricter compliance with the rules should be observed when the items in question are of minute quantity that come in small containers, viz.:

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential **when the item of real evidence is not distinctive and is not readily identifiable**, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is **susceptible to alteration, tampering, contamination and even substitution and exchange**. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is ***greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.***³⁹ (Emphases and underscoring supplied; citations omitted)

Verily, given the minute quantities of the drugs involved, *i.e.* three (3) plastic sachets containing 0.06 gram each, it becomes imperative for the arresting team to strictly comply with the safeguards to guarantee the identity and integrity of the seized items.

As it was, however, the operation had already been botched right from its very inception. For the arresting team not only failed to secure the presence of any of the insulating witnesses, they did not even bother preparing the Pre-Operation Report and Coordination Form as they stubbornly stuck to using the old or outmoded forms, thus, seriously compromising the integrity of their operation.

³⁶ 576 Phil. 576, 587 (2008).

³⁷ Id.

³⁸ Id.

³⁹ Id.

In *Veriño v. People*,⁴⁰ the Court decreed that the absence of therein petitioner's name in the Pre-Operation report coupled with noncompliance with Section 21 caused *reasonable doubt as to whether [the police officer] received a tip regarding petitioner, whether a surveillance was conducted on him, and ultimately, whether he was caught possessing dangerous drugs.*

Following *Mallilin* and *Veriño*, it becomes evident that the first link in the chain of custody had been breached early on. Consequently, the identity and integrity of the seized drug items is deemed to have been compromised. Perforce, appellant must be acquitted and released from restraint.

Pending appeal, in their respective Letters dated June 16, 2022⁴¹ and June 10, 2022,⁴² Corrections Senior Officer IV (CSO4) Cesar T. Grecia⁴³ and Corrections Superintendent (CSupt) Jayferson G. Bon-as⁴⁴ of the Bureau of Corrections (New Bilibid Prison) informed the Court that appellant **Emil Edwin Deyro y Bernal** died on March 24, 2020 at the New Bilibid Prison Hospital per the attached death certificate.⁴⁵

Pursuant to Article 89(1) of the Revised Penal Code,⁴⁶ criminal liability is totally extinguished by the death of the accused. The civil action which was deemed instituted therein for recovery of civil liability ex delicto is ipso facto extinguished, as well. This is without prejudice to a separate civil action which private complainant may institute based on sources other than delicts.

FOR THESE REASONS, therefore, the Court **RESOLVES** to **SET ASIDE** the Court of Appeals Decision **dated May 31, 2018 in CA-G.R. CR-HC No. 08368 and DISMISS** Criminal Case Nos. 2012-3989-D-MK and 2012-3990-D-MK, by reason of the death of the accused-appellant.

Let this case be considered **CLOSED** and **TERMINATED** and an entry of judgment be issued accordingly.

SO ORDERED.”

⁴⁰ G.R. No. 225710, June 19, 2019.

⁴¹ *Rollo*, p. 43.

⁴² *Id.* at 46.

⁴³ Chief Admin, Inmate Documents and Processing Division (IDPD).

⁴⁴ Supt, NBP-MaxSeCom.

⁴⁵ *Rollo*, p. 44.

⁴⁶ Article 89. How criminal liability is totally extinguished. - Criminal liability is totally extinguished:
1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
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By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *12/27*

27 DEC 2022

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