



Republic of the Philippines
Supreme Court
Bacolod City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 29, 2022 which reads as follows:

“G.R. No. 254213 (*People of the Philippines v. Alfred Caballero Sombilon*). – This is an appeal¹ seeking to set aside and reverse the Decision² dated 27 February 2020 of the Court of Appeals (CA) in CA G.R. CR-HC No. 02769. The CA affirmed the Joint Decision³ dated 21 December 2017 rendered by Branch 44, Regional Trial Court (RTC) of Dumaguete City, in Criminal Case Nos. 2017-24176 and 2017-24177, finding Alfred Caballero Sombilon (appellant) guilty beyond reasonable doubt of Violation of Sections 5 and 11, respectively, of Article II of Republic Act No. (RA) 9165,⁴ or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellant was charged in two separate Informations with Illegal Sale and Illegal Possession of Dangerous Drugs, in violation of Sections 5 and 11, respectively, of Article II, RA 9165. The Amended Information in Criminal Case No. 2017-24176 states:

That on or about 24 January 2017 in the City of Dumaguete, Philippines and within the jurisdiction of the Honorable Court, the said Accused ALFRED CABALLERO SOMBILON did then and there willfully and unlawfully, criminally sell and deliver to a police poseur-buyer a heat-sealed transparent plastic sachet containing 0.04 gram of methamphetamine

¹ See Notice of Appeal dated 24 June 2020; *rollo*, pp. 19-21.

² *Rollo*, pp. 7-18. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Alfredo D. Ampuan and Carlito B. Calpatura, concurring.

³ *CA rollo*, pp. 33-40. Penned by Presiding Judge Neciforo C. Enot.

⁴ 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 Therefore and for Other Purposes.” Approved: 07 June 2002



hydrochloride, commonly known as “shabu,” a dangerous drug under R.A. No. 9165.

That accused has been found positive for the use of Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-030-17.

CONTRARY TO LAW.⁵

An Information was also filed in Criminal Case No. 2017-24177 for violation of Section 11, Article II of RA 9165, which reads:

That on or about 24 January 2016 (sic) in the City of Dumaguete, Philippines and within the jurisdiction of the Honorable Court, the said accused ALFRED CABALLERO SOMBILON did then and there willfully and unlawfully and criminally keep and possess nine (9) heat-sealed transparent plastic sachets respectively containing 0.011 gram, 0.07 gram, 0.06 gram, 0.08 grams (sic), 0.10 gram, 0.08 gram, 0.06 gram, 0.08 gram and 0.53 gram, or a total of 1.17 grams of methamphetamine hydrochloride, commonly known as “shabu,” a dangerous drug under R.A. No. 9165.

That accused has been found positive for the use of Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-030-17.

CONTRARY TO LAW.⁶

Appellant pleaded “not guilty” to both charges. After pre-trial, trial on the merits ensued.⁷

Version of the Prosecution

On 24 January 2017, at around 4:00 p.m., the City Anti-Illegal Drugs Special Operation Task Group (CAIDSOTG) team of the Dumaguete City Philippine National Police (PNP) Station received information from a confidential informant (CI) that a certain “Alfred” was selling *shabu* at *Purok Dapdap, Barangay Bagacay, Dumaguete City*. Police Superintendent Jovito Atanacio then planned a buy-bust operation, designating Senior Police Officer 2 Ma. Jasmien S. Mores (SPO2 Mores)⁸ as poseur buyer, while the

⁵ *Rollo*, pp. 7-8.

⁶ *Id.* at 8.

⁷ *Id.*

⁸ Then SPO1 Mores.



rest of the team members, namely Police Officer 2 Relly Viernes (PO2 Viernes), PO2 Marinduque,⁹ SPO1 Reymund Maghinay, and SPO4 Rogelio Ocubillo, were to act as back-up.

After coordinating with the Philippine Drug Enforcement Agency (PDEA) through Agent Jerum M. Chiquillo (PDEA Agent Chiquillo), the buy-bust team and the CI proceeded to *Purok* Dapdap at around 4:45 p.m. of the same day. SPO2 Mores and the CI went to the house of appellant and the rest of the team positioned themselves nearby. The CI pointed appellant to SPO2 Mores. The latter approached appellant and asked if she could buy ₱500 worth of *shabu*. Appellant then gave SPO2 Mores one heat-sealed transparent plastic sachet containing white crystalline substance. SPO2 Mores examined the contents of the sachet and concluded that it was *shabu* based on her experience and knowledge. She then handed appellant the buy-bust money with some cutout papers. When appellant accepted the money, SPO2 Mores told him she was a police officer. She and the rest of the team arrested appellant for violation of Section 5, Article II of RA 9165. SPO2 Mores apprised appellant of his constitutional rights in his Cebuano dialect.

During the ensuing body search, SPO2 Mores found eight more heat-sealed plastic sachets and one big heat-sealed transparent plastic pack containing suspected *shabu*. The buy-bust money, together with the cutout papers, were also recovered from appellant's right pocket. SPO2 Mores also effected the arrest of appellant for violation of Section 11, Article II of RA 9165, and once again apprised him of his constitutional rights in his Cebuano dialect.

Aware of the imminent risk the team is exposed if they remained in the area, SPO2 Mores decided to have the marking and inventory of the seized items at the police station. Upon arriving at the police station, SPO2 Mores marked the plastic sachet containing the white crystalline substance she bought from appellant with ACS-BB-1/24/17, while the other nine plastic sachets seized were marked ACS-P1-1/24/17 to ACS-P9-1/24/17. The marking and the inventory were done in the presence of appellant, and witnessed by media representative Juancho Gallarde and *barangay* official Vincent Perigua, who all signed the Receipt/Inventory of the Property Seized. Meanwhile, PO2 Viernes photographed the appellant and witnesses while they were affixing their signature on the Inventory. PO2 Viernes also took pictures of the pre-operation briefing, the sketch of the place of operation, the buy-bust money, and the seized items. Meanwhile, PO2 Tikling¹⁰ recorded the arrest of appellant in the police blotter.

⁹ The first name of Marinduque was not stated in the *rollo* and records of the case.

¹⁰ Spelled as Tickling in the TSN. The first name of PO2 Tikling/Tickling was not stated in the *rollo* and records of the case.

SPO2 Mores then delivered the Request for Laboratory Examination and Drug Test with the plastic sachets of *shabu* to the PNP Crime Laboratory. After receiving the specimens from SPO2 Mores, PO3 Michelle Cañete (PO3 Cañete) of the Crime Laboratory checked the request and the plastic sachets of *shabu*. After confirmation, PO3 Cañete gave the specimens to Forensic Chemist Police Chief Inspector Josephine Suico Llena (PCI Llena), who made her own markings on the specimens. In Chemistry Report No. D-035-17, PCI Llena concluded that all the specimens submitted contain Methamphetamine Hydrochloride or *shabu*. Moreover, appellant's urine sample was also found positive for Methamphetamine Hydrochloride, as stated in Chemistry Report No. DT-030-17.

The specimens and the Chemistry Reports were presented in court and were duly identified by SPO2 Mores and PO3 Cañete. The testimonies of PO2 Viernes, PCI Llena, Juancho Gallarde, Vincent Perigua, PO2 Tikling, and PDEA Agent Chiquillo were dispensed with after the parties stipulated that: (1) PO2 Viernes was the designated photographer who had taken the pictures at the police station; (2) PCI Llena had conducted the qualitative and quantitative examinations of the subject specimens and urine sample of appellant and the results as reflected in the Chemistry Reports; (3) Juancho Gallarde and Vincent Perigua signed the Inventory Receipt as witnesses; (4) PO2 Tikling recorded the police blotter entry; and (4) PDEA Agent Chiquillo issued the Certificate of Coordination.

Version of the Defense

Appellant, who was the lone witness for the defense, denied the charges against him. He testified that on 24 January 2017, he was inside his house in *Purok Dapdap, Barangay Bagacay, Dumaguete City*, when three men in civilian clothes knocked on the door. The men were looking for his cousin, Patrick Alap-ap, alias "Patpat," who was then having lunch at *Boloc-boloc* in Sibulan. Appellant led the men inside his house and told them to wait for Patpat. However, when Patpat did not arrive after thirty minutes, the men asked appellant whether he knew of Patpat's activities. When appellant denied any knowledge of the same, the three men introduced themselves as police officers and brought him to the police station. At the police station, appellant was asked the identity of his companions in selling *shabu* but he denied any knowledge thereof. After appellant was searched but nothing was found in his possession, he was arrested.

Ruling of the RTC

On 21 December 2017, the RTC rendered its Joint Decision, finding appellant guilty beyond reasonable doubt of the crime of Illegal Sale and

Illegal Possession of Dangerous Drugs, in violation of Sections 5 and 11, respectively, of Article II of RA 9165. The dispositive portion of the Joint Decision reads:

WHEREFORE, foregoing premises considered, accused Alfred Caballero Sombilon is found GUILTY beyond reasonable doubt for Violation of Section 5, Article II of RA 9165 in Crim. Case No. 2017-24176 and is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00.

In Crim. Case No. 2017-24177, he is likewise found GUILTY beyond reasonable doubt for Violation of Section 11, Article II, R.A. 9165 and is hereby sentenced to suffer the indeterminate penalty of imprisonment of [twelve] (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and to pay a fine of ₱300,000.00.

In the service of his sentence, the accused shall be credited in full of the period he has undergone preventive imprisonment, provided that he has faithfully and religiously complied with the rules and regulations of the facility where he is detained.

The illegal drugs subject matter of these cases are confiscated and forfeited in favor of the State. The Officer-in-Charge is hereby directed to forward the same to the PDEA for the proper disposition in accordance with law.

SO ORDERED.¹¹

The RTC held that the defense of denial and frame-up interposed by appellant could not overcome the positive and straightforward declaration of the poseur-buyer, SPO2 Mores. Moreover, the RTC stated that apart from his self-serving testimony that he was merely fetched from his house by policemen dressed in civilian clothes and then brought to the police station, appellant offered no evidence to support his claim. The RTC noted that appellant did not even present his sister, who was at the store across his house to testify for him, nor any of his neighbors who saw him being brought out of his house by the policemen.

Ruling of the Court of Appeals

The CA affirmed appellant's conviction for violation of Sections 5 and 11 of RA 9165. It stated that appellant was validly arrested in a buy-bust operation and was subsequently charged for Illegal Sale and Illegal Possession of Dangerous Drugs. Moreover, the CA held that the prosecution clearly established the elements of the crime of illegal sale of dangerous drugs, thus: (1) SPO2 Mores' identity as the poseur-buyer and appellant as the seller was proven; and (2) there was a clear exchange of the object of the sale, the *shabu*, and the consideration in the amount of ₱500.00 between the police poseur-buyer and appellant.

¹¹ CA *rollo*, p. 40.

Further, the CA ruled that appellant was caught in *flagrante delicto* selling dangerous drug and positively identified by SPO2 Mores as the person who sold and delivered to her the plastic sachet of *shabu*. The subsequent seizure of the nine plastic sachets of *shabu* from appellant was justified since it was the result of a valid body search after the warrantless arrest was effected. The plastic sachets of *shabu* seized from appellant were therefore admissible in evidence because these were recovered from the search incidental to the lawful arrest.

The CA also found that the chain of custody rule was followed in this case and that the identity and integrity of the seized drugs, including the *shabu* sold to the poseur-buyer, were established by the prosecution. According to the CA, appellant's defense of denial and frame-up was mere conjecture and would not suffice to overturn the affirmative evidence of the buy-bust operation. In order to prosper, the defenses of denial and frame-up must be proven with strong and convincing evidence, which the CA found appellant failed to present in this case.

Both parties separately manifested that they would no longer file their respective supplemental briefs, and that in lieu thereof, they are adopting their briefs filed before the CA.¹²

Issue

For the Court's resolution is whether the CA erred in affirming appellant's conviction of illegal sale and illegal possession of dangerous drugs.

Ruling of the Court

We grant the appeal and acquit appellant.

For the proper conviction of the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹³ Moreover, the identity of the dangerous drugs, which constitute the *corpus delicti* of the offense, must be established beyond reasonable doubt to ensure that the dangerous drug presented in court against the accused is the exact same drug retrieved from him during the buy-bust operation.¹⁴

¹² *Rollo*, pp. 27-30, 35-36.

¹³ *People v. Vinluan*, G.R. No. 232336, 28 February 2022; *People v. Jaime*, G.R. No. 232083, 27 November 2019; *People v. Sagana*, 815 Phil. 356 (2017).

¹⁴ *People v. Sali*, G.R. No. 236596, 29 January 2020; *Edangalino v. People*, G.R. No. 235110, 08 January 2020.

As regards the offense of illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the following elements must be proven before the accused can be convicted: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.¹⁵

Since the crimes were committed on 24 January 2017, the governing law is RA 9165, as amended in 2014 by RA 10640,¹⁶ which reduced the number of witnesses required during the conduct of inventory.¹⁷ Under the amendments introduced under RA 10640, only two witnesses are now required during the conduct of physical inventory and photographing of the seized items: (1) the accused or the person/s from whom such items were confiscated or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. In this case, the marking, inventory, and photographing of the seized drugs, including the *shabu* sold to the poseur-buyer, were conducted in the presence of the accused (appellant), and two of the required witnesses, media representative Juancho Gallarde and *barangay* official Vincent Perigua, who all signed the Receipt/Inventory of Property Seized.

However, the Court notes that the marking, inventory and photographing of the seized items were not done at the crime scene but at the police station. Both the RTC and the CA held that such is warranted in this case since the apprehending officers were surrounded by appellant's friends and relatives, thereby endangering their safety.

We disagree. Although the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused when the safety and security of the apprehending officers and witnesses are under threat of immediate or extreme danger,¹⁸ such was not established in this case. The excuse proffered by the police officers that their safety was compromised due to the presence of the family and friends of the appellant is not a serious security threat that would justify not conducting the marking, inventory and photographing immediately after the seizure and confiscation of the drugs. The prosecution failed to establish that appellant's friends and family had the resources and capability to mount a counter-assault on the apprehending officers, thereby endangering their safety and security.¹⁹ Appellant testified that he was alone in his house when was arrested by the

¹⁵ *People v. Rivera*, G.R. No. 252886, 15 March 2021; *People v. Buesa*, G.R. No. 237850, 16 September 2020.

¹⁶ Entitled: "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Effective 30 July 2014.

¹⁷ *Saban v. People*, G.R. No. 253812, 28 June 2021; *People v. Silayan*, G.R. No. 229362, 19 June 2019.

¹⁸ *People v. Allingag*, G.R. No. 233477, 30 July 2018; *People v. Sali*, G.R. No. 236596 (Resolution), 29 January 2020.

¹⁹ Cf. *People v. Lim*, G.R. No. 231989, 04 September 2018.

police officers,²⁰ so there couldn't have been any threat from his family. Moreover, when prosecution witness SPO2 Mores was asked during cross-examination why the marking and inventory were not done at the place of arrest, she replied that they feared for their safety and that appellant's neighbors were looking at them. Upon further interrogation, SPO2 Mores testified that she had no knowledge whether the neighbors or bystanders were armed. She also testified that she and the rest of the buy-bust team were all armed.²¹

Considering that appellant was alone in his house during the arrest, there was no apparent threat on the safety and security of the apprehending officers who were all armed. They should have conducted the marking and inventory at the crime scene. The presence of the curious neighbors or bystanders outside the house watching them after they arrested appellant could hardly be considered a threat of immediate or extreme danger.

At the very least, the marking of the seized items should have been done immediately after the buy-bust operation to prevent switching, substitution, planting, or tampering of evidence. The importance of marking the seized drugs at the place of arrest is highlighted in this case where there were allegedly two sets of drugs seized: one sachet of *shabu* which appellant allegedly sold to the poseur buyer and nine more sachets of *shabu* found in his possession after he was frisked. The defense noted during trial that the sachet of *shabu* allegedly sold by appellant was of the same size as the eight sachets of *shabu* seized from him after he was frisked.²² Since the marking of the sachets was not done at the place of arrest, there is a possibility that the unmarked sachets were interchanged. It bears stressing that SPO2 Mores did not testify on the manner in which she transported the unmarked seized items from the place of arrest to the police station. There was no testimony on the precautionary measures undertaken in order to preserve the identity of the seized items. From the very start, the non-marking of the seized items at the place of arrest and the lack of testimony on how these were transported from the crime scene to the police station, where the belated marking, inventory and photographing were done, already cast doubt on the identity, integrity and evidentiary value of the illegal drugs seized from appellant during the buy-bust operation.

In *People v. Hementiza*,²³ the Court explained the importance of immediately marking the seized items, thus:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or

²⁰ TSN, 26 September 2017, p. 14.

²¹ TSN, 03 August 2017, pp. 33-34.

²² *Id.* at 30-31. Only one of the sachets recovered from appellant was bigger in size than the other seized items.

²³ 807 Phil. 1017.

the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

The Court also notes that since the testimony of PCI Llena, the forensic chemist was dispensed with, there was no testimony or information on the condition of the seized items while in her custody, or the safety precautions undertaken on the safekeeping of the drugs. There was no testimonial or documentary evidence on how the forensic chemist kept the seized items while it was in her custody until they were presented in court.

In *People v. Leaño y Leaño*,²⁴ the Court ruled that when the testimony of the forensic chemist is dispensed with, the stipulation by the parties should state that “the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial.”

In this case, the parties merely stipulated that PCI Llena had conducted the qualitative and quantitative examinations of the subject specimens and urine sample of appellant and the results as reflected in the Chemistry Reports. There was no stipulation on the precautionary steps undertaken by PCI Llena to preserve the integrity and evidentiary value of the seized items. The absence of evidence on the precautions undertaken to ensure that there was no change in the condition of the seized items and that no opportunity for someone not in the chain of command to have possession thereof further casts doubt on the identity and evidentiary value of the seized items presented in court.²⁵

In view of the breaches in the chain of custody that clearly compromised the identity, integrity, and evidentiary value of the items allegedly seized from appellant, his acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 27 February 2020 of the Court of Appeals in CA G.R. CR-HC No. 02769, finding appellant Alfred Caballero Sombilon guilty beyond reasonable doubt of Violation of Sections 5 and 11, Article II of Republic Act No. 9165 is **REVERSED and SET ASIDE**.

²⁴ G.R. No. 246461, 28 July 2020.


²⁵ *People v. Bangcola*, G.R. No. 237802, 18 March 2019.

Accordingly, Alfred Caballero Sombilon is **ACQUITTED** 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 the Bureau of Corrections, Muntinlupa City for immediate implementation. The 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.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

331-A

JAN 25 2023

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals
6000 Cebu City
(CA-G.R. CR-HC No. 02769)

The Hon. Presiding Judge
Regional Trial Court, Branch 44
Dumaguete City, 6200 Negros Oriental
(Crim. Case Nos. 2017-24176 to 77)

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

PUBLIC ATTORNEY'S OFFICE
Regional Special and Appealed Cases Unit
Counsel for Accused-Appellant
3rd Floor, Taft Commercial Center
Metro Colon Carpark, Osmeña Boulevard
6000 Cebu City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Mr. Alfred Caballero Sombilon
Accused-Appellant
c/o The Superintendent
Leyte Regional Prison
Abuyog, 6510 Southern Leyte

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

The Superintendent
Leyte Regional Prison
Abuyog, 6510 Southern Leyte

UR

