



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 14, 2023**, which reads as follows:*

“G.R. No. 208037 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ERNESTO FERRER y CAMBALLA, accused-appellant). – This is an ordinary appeal filed by the accused-appellant Ernesto Ferrer y Camballa (**Ferrer**), assailing the Decision,¹ dated February 21, 2013, of the Court of Appeals (CA), in CA-G.R. CR-HC No. 05189. The CA denied Ferrer’s appeal from the Decision² of the Regional Trial Court of Pasig City, Branch 154 (RTC), dated January 10, 2011, in Criminal Case Nos. 16181-D and 16182-D, which convicted Ferrer of violation of Sections 5 and 11, Article II, of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Ferrer was charged with illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165 in an Information that reads:

That on or about March 7, 2008, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully, and knowingly sell, deliver and give away to PO1 Christopher Milanes, a police poseur buyer, one (1) heat-sealed transparent sachet containing four (4) centigrams (0.04 gram) of white crystalline substance which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.³ (Emphasis in the original)

Simultaneously, Ferrer was charged with illegal possession of dangerous drugs in violation of Section 11, Article II of R.A. No. 9165 in an Information that reads:

¹ *Rollo*, pp. 2-14. Penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Jose C. Reyes, Jr. (retired Member of this Court) and Mario V. Lopez (now Member of this Court).

² *CA rollo*, pp. 21-28. Penned by Judge Abraham B. Borreta.

³ *Id.* at 8.

That on or about March 7, 2008, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully, and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing four (4) centigrams (0.04 gram) of white crystalline substance which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

CONTRARY TO LAW.⁴ (Emphasis in the original)

On arraignment, Ferrer pleaded not guilty. During trial, the prosecution presented Police Officer 1 Christopher Milanes (**PO1 Milanes**), Police Officer 1 Jeffrey Timado (**PO1 Timado**) and Senior Police Officer 1 Carlo Luna (**SPO1 Luna**) as its witnesses, while the defense presented Yuri Hibay (**Hibay**) and Ferrer.

Version of the Prosecution

The police officers testified that around 10:00 p.m. on March 6, 2008, a confidential informant (**CI**) reported that Ferrer was illegally selling drugs along Banaag Street, Brgy. Pineda, Pasig City. SPO1 Luna briefed a team to conduct a buy-bust operation against Ferrer, and coordinated with the Philippine Drug Enforcement Agency. With SPO1 Luna as team leader, the team included PO1 Milanes as the *poseur* buyer, and PO1 Timado as the back-up officer.⁵

At around 1:00 a.m. of March 7, 2008, the team proceeded to the target area. Upon sighting Ferrer, PO1 Milanes, together with the CI, approached Ferrer to buy *shabu*. PO1 Milanes told Ferrer, "*Pa-score naman*," to which Ferrer replied, "*Magkanong i-score mo?*" PO1 Milanes then brought out the ₱200.00 and ₱100.00 marked bills and handed them to the CI to hand to Ferrer. In exchange, Ferrer gave PO1 Milanes a plastic sachet that appeared to contain *shabu*. Upon receipt, PO1 Milanes grabbed the hands of Ferrer and introduced himself as a police officer.⁶ PO1 Milanes then made a missed call to SPO1 Luna, the pre-arranged signal to signify the consummation of the sale transaction.⁷ As the back-up officer, PO1 Timado was positioned about 10 meters away from PO1 Milanes, the CI, and Ferrer. Once he saw PO1 Milanes arresting the accused, PO1 Timado rushed to assist PO1 Milanes.⁸ Having already been in the area, SPO1 Luna arrived with the rest of the team and assisted PO1 Milanes in arresting Ferrer.⁹

⁴ Id. at 10.

⁵ Id. at 87, Brief for the Appellee.

⁶ Id. at 87-88.

⁷ Id. at 21, RTC Decision.

⁸ Id. at 23.

⁹ Id. at 22.

PO1 Milanese frisked Ferrer and recovered one more plastic sachet containing suspected *shabu*, and the marked money from the buy-bust operation just conducted. The items were confiscated and marked on the spot by PO1 Milanese, while SPO1 Luna took photographs of the confiscated items. The team then brought Ferrer and the seized items to the police station for further examination after Ferrer was informed of his violation and his constitutional rights.¹⁰ The confiscated items were received by a certain PO1 Villamayor.¹¹

A request for laboratory examination was made at the police station. Police Chief Inspector Lourdeliza G. Cejes, (**PCI Cejes**), the Forensic Chemist, conducted the qualitative examination of the specimens and found that the seized items were positive for methylamphetamine hydrochloride.¹²

Version of the Defense

Ferrer denied the charges against him. In his testimony, Ferrer alleged that at around 7:30 p.m. on March 7, 2008, he was at the “*bingohan*” when four men in civilian clothes invited him to the barangay hall to ask him something. However, instead of bringing him to the barangay hall, Ferrer was brought to the police precinct and was told that he was selling illegal drugs.¹³

While at the police precinct, Ferrer testified that SPO1 Luna asked him for ₱100,000.00 in exchange for his liberty. However, Ferrer could not produce the amount as he was just working as a taxi driver.¹⁴

Ferrer also denied that he was involved in trafficking illegal drugs and that it was only in court that he first saw the illegal drugs allegedly recovered from him.¹⁵

Hibay testified that he was with Ferrer at the “*bingohan*” when Ferrer was approached and placed in handcuffs before Ferrer was brought elsewhere.¹⁶

The Ruling of the RTC

On January 10, 2011, the RTC found Ferrer guilty beyond reasonable doubt of both charges. The dispositive portion of the RTC Decision reads:

¹⁰ *Rollo*, p. 5, CA Decision.

¹¹ *CA rollo*, p. 88, Brief for the Appellee.

¹² *Id.* at 88-89.

¹³ *Id.* at 61, Brief for the Accused-Appellant.

¹⁴ *Id.* at 62.

¹⁵ *Id.*

¹⁶ *Id.* at 63.

WHEREFORE, premises considered, judgment is hereby rendered in Crim. Case No. 16181-D finding the accused **Ernesto Ferrer y Camballa** **GUILTY** of the crime of violation of Section 5 of R.A. No. 9165 (selling of dangerous drugs), and the accused is hereby sentenced to suffer the penalty of **life imprisonment**.

The accused is also ordered to pay a **fine** in the amount of **P500,000.00**.

In Crim. Case No. 16182-D, the same accused **Ernesto Ferrer y Camballa** is also found **GUILTY** beyond reasonable doubt of the crime of violation of Section 11 of R.A. 9165 (possession of dangerous drugs) and he is hereby sentenced to suffer the indeterminate penalty of **twelve (12) years and one (1) day to seventeen (17) years and one (1) day of imprisonment**.

He is also ordered to pay a **fine** of **P300,000.00**.

Considering the penalty imposed on the accused, his immediate commitment to the National Bilibid Prisons is ordered.

The period of his preventive detention will be considered in the service of his sentence pursuant to Article 29 of the Revised Penal Code.

SO ORDERED.¹⁷ (Emphasis in the original)

The RTC found that “there was no showing of any irregularity in the conduct of the sale transaction except the claim on the part of the accused that he was arrested by the police because they wanted to extract money from him.”¹⁸ The RTC further stated that it “observed the demeanor, deportment, and facial expression of the accused during trial. The accused strikes the court as someone who is insincere and dishonest. His guilt is written all over his face.”¹⁹

The RTC also explained that a charge of possession of dangerous drugs may be maintained with the charge for sale of dangerous drugs, except where the other quantity of the prohibited drugs are not covered by, or included in the sale, nor probably intended for some future dealings or use by the seller.²⁰

Ferrer appealed the decision, alleging that the RTC “did not take into account the deliberate failure of the apprehending officers to follow the procedures as mandated by law.”²¹ Ferrer argued that the prosecution failed to establish the proper chain of custody, disposition, and integrity of the seized illegal drugs; that the prosecution did not prove that the two plastic sachets

¹⁷ Id. at 27-28.

¹⁸ Id. at 27.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 65, Brief for the Appellant.

recovered from Ferrer were the same ones submitted for the laboratory examination and later presented before the RTC.²²

Ferrer alleged that there was no physical inventory and photographing of the seized *shabu*, nor was there a representative from the media, the Department of Justice (DOJ), nor any elected public official who should have signed the copies of the inventory and been given copies thereof. PO1 Villamayor and PCI Cejes were also not presented as witnesses to testify on their receipt of the prohibited drugs.²³ As such, it cannot be said that the chain of custody is intact.²⁴

Ferrer further argued that the presumption of regularity in the performance of their duties cannot be invoked by the police because as a mere presumption, it cannot be regarded as binding truth. The presumption also cannot prevail over the presumption of innocence of the accused where the latter is not overthrown by proof beyond reasonable doubt.²⁵ Ferrer acknowledged that although he invoked denial, the weakest of all defenses, the same is irrelevant considering that the prosecution must rely on the strength of its own evidence, yet it failed to prove his guilt with moral certainty.²⁶

In its Brief for the Appellee,²⁷ the prosecution argued that all the elements of illegal sale and possession of *shabu* were met. “What is material is proof that the transaction actually took place, along with the presentation in court of the illegal substance which constitutes the *corpus delicti* of the crime.”²⁸

The prosecution alleged that there was no showing of any evidence that the police officers had any ill-motive to indict Ferrer, and that credence should be given to the narration of the police officers, who are presumed to have performed their duties in a regular manner. Citing the case of *People v. Dela Rosa*,²⁹ the prosecution argued that “the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over petitioner’s self-serving and uncorroborated denial.”³⁰

As for the non-compliance with Section 21 of R.A. No. 9165, the prosecution argued that the failure to comply strictly with this section is not

²² Id.

²³ Id. at 66.

²⁴ Id. at 67.

²⁵ Id. at 70.

²⁶ Id.

²⁷ Id. at 82-97.

²⁸ Id. at 89.

²⁹ 655 Phil. 630, 654 (2011).

³⁰ CA *rollo*, p. 93, Brief for the Appellee.

fatal, nor does it render the arrest illegal nor the evidence inadmissible. The prosecution alleged that the integrity of the *shabu* was not compromised as it clearly established the chain of custody from the time of Ferrer's apprehension, up to the time the marked items were offered in evidence.

The Ruling of the CA

On February 21, 2013, the CA denied Ferrer's appeal:

WHEREFORE, the appeal is **DENIED**. The assailed Decision finding the accused-appellant guilty of the crimes charged is **AFFIRMED**.

SO ORDERED.³¹ (Emphasis in the original)

The CA found that all the elements to establish illegal sale of dangerous drugs through a buy-bust transaction were met. PO1 Milanes caught Ferrer *in flagrante delicto* selling and delivering the *shabu*. As for the charge of illegal possession of dangerous drugs, having been caught *in flagrante delicto*, the same constituted *prima facie* evidence of *animus possidendi* on the part of Ferrer.³²

Further, the CA held that "the law itself lays down exceptions to its requirements... Sec. 21 of the IRR need not be followed with pedantic rigor. It is settled that non-compliance with Sec. 21 does not render an accused's arrest illegal or make the items seized inadmissible. What is imperative is 'the preservation of the integrity and the evidential value of the seized items.'"³³ The CA found no proof that the integrity of the seized drugs was compromised as it found that PO1 Milanes marked the seized sachets upon the arrest of Ferrer, before Ferrer was brought to the police station. Thereafter, the sachets were forwarded to the PNP Crime Laboratory for testing, which later revealed that the specimens submitted were positive for *shabu*.³⁴ Consequently, there is no reason to overturn the RTC Decision.

Aggrieved, Ferrer appealed to this Court.

The Issue

Was the CA correct in affirming the RTC Decision declaring Ferrer guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs in violation of Sections 5 and 11, Article II of R.A. No. 9165?

³¹ Id. at 14.

³² Id. at 10-11.

³³ Id. at 12-13.

³⁴ Id. at 13.

The Ruling of the Court

The Court finds the appeal meritorious.

The elements of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.³⁵

On the charge of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165, the elements are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.³⁶

In both charges, the prosecution is burdened to establish the *corpus delicti* of the offenses as time and again, the Court has held that it is essential that the identity of the dangerous drug be established with moral certainty.³⁷

In cases involving R.A. No. 9165, it is the dangerous drug itself that constitutes the very *corpus delicti* of the offense. The fact of its existence is vital to sustain a judgment of conviction. It must therefore be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.

Section 21 of the Implementing Rules and Regulations (**IRR**) of R.A. No. 9165 provides:

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:

(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

³⁵ *People v. Piñero*, 850 Phil. 1130, 1136 (2019).

³⁶ *Supra* note 35.

³⁷ *People v. Piñero*, *supra* note 35 at 1137.

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[.]** (Emphasis supplied)

In *People v. Garcia*,³⁸ the Court held that:

Every criminal case starts with the constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt. The prosecution starts the trial process by presenting evidence showing the presence of all the elements of the offense charged. If the prosecution proves all the required elements, the burden of evidence shifts to the accused to disprove the prosecution's case. Based on these presentations, the court must then determine if the guilt of the accused has been proven beyond reasonable doubt. It may happen though that the prosecution, even before the presentation by the defense, already has failed to prove all the elements of the crime charged, in which case, the presumption of innocence prevails; the burden of evidence does not shift to the accused, who no longer needs to present evidence in his defense.³⁹

Ferrer was charged with violations of Sections 5 and 11, Article II of R.A. No. 9165 on March 10, 2008. Hence, the applicable law is R.A. No. 9165 before its amendment in 2014. Nevertheless, the requirement remains the same: there must have been witnesses to the marking and inventory of the seized drugs.

From the facts of the case, it is clear that there were no witnesses other than the police officers present during the buy-bust operation. As such, there were no insulating witnesses during the marking and the inventory as required by law. Although the IRR provides for an exception to its strict application, this is not availing in the present case.

No justifiable ground was presented to excuse the non-compliance of Section 21 of R.A. No. 9165

It is undisputed in this case that there were no insulating witnesses to the seizure and confiscation of the prohibited drugs. During the buy-bust operations and the arrest thereafter, no DOJ representative, representative from the media and elected public official were present to witness the marking, inventory and photographing of the contraband, and to sign the

³⁸ 599 Phil. 416 (2009).

³⁹ Id. at 426.

copies of the inventory of the seized items. Yet, the RTC and the CA found that there was no cause to question the integrity of the drugs presented at trial.

The Court finds that the RTC and CA erred in appreciating the evidence and arguments of the prosecution and the defense.

The IRR provides that the non-compliance with the requirements under the law shall not render void and invalid the seizures and custody over confiscated items where there are justifiable grounds and where the integrity and evidentiary value of the evidence are preserved. However, the Court notes that no justifiable ground was alleged by the prosecution in this case.

In fact, the prosecution failed to acknowledge this deviation, and accordingly did not offer any explanation for the absence of the required witnesses. The prosecution merely argued that its witnesses duly established the elements for the prosecution of illegal sale of drugs, and that the presumption of regularity of the police officers in their performance of official duty, and the findings of the trial court on the credibility of witnesses should prevail over Ferrer's denial.

Thus, there being no justification given for the irremediable lapse, the saving clause cannot be applied. A strict adherence to the requirements laid down by Section 21, Article II of R.A. No. 9165 is necessary where the quantity of the dangerous drugs seized is miniscule, considering it is highly susceptible to planting, tampering, or alteration.⁴⁰ As held in the case of *Nisperos v. People*,⁴¹ “[i]n warrantless arrests on account of buy-bust operations, the required witnesses must be present “at or near” the place of apprehension, *i.e.*, within the vicinity, in order to comply with the statutory rule that the inventory should be conducted immediately after the seizure and confiscation.”

Moreover, the Court points out that the prosecution must rely on the strength of its own evidence and cannot rest on the weakness of that of the defense.⁴² Thus, the prosecution must first ensure that its evidence is sufficient to convict the accused based on proof beyond reasonable doubt before it compares the weight of its arguments against that of the accused.

Section 21 was put in place as a procedural safeguard against police abuses. The failure to follow the requirements set therein, and the absence of any justifiable ground for its non-compliance, is fatal to the case of the prosecution as there is no showing that the integrity of the evidence offered in court was preserved. As such, reasonable doubt exists as to the guilt of the accused.

⁴⁰ *People v. Roales*, G.R. No. 233656, October 2, 2019, 921 SCRA 421, 436-437.

⁴¹ G.R. No. 250927, November 29, 2022.

⁴² *People v. Domingo*, 248 Phil. 60, 66 (1988).

In *People v. Dela Cruz*,⁴³ the accused was acquitted where there was no mention that the marking and inventory had been done in the presence of the appellant or his representatives, nor was there any mention of a representative from the media, the DOJ, or any elected official. The Court further found therein that:

Failing to prove entitlement to the application of the proviso, the arresting officers' non-compliance with the procedure laid down by R.A. No. 9156 is not excused. This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the corpus delicti in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.⁴⁴

Considering that similarly in this case, the prosecution was unable to prove Ferrer's guilt beyond reasonable doubt, an acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals, in CA-G.R. CR-HC No. 05189, dated February 21, 2013, is **REVERSED**. The accused-appellant Ernesto Ferrer y Camballa is **ACQUITTED**.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action taken in compliance with this order.

Let an entry of final judgment be issued immediately.

SO ORDERED." (Inting, J., no part; Lopez, J. J., designated additional Member per Raffle dated April 26, 2023)

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *ju 071923*

⁴³ 591 Phil. 259 (2008).

⁴⁴ Id. at 261.

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