



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **4 October 2023** which reads as follows:

“G.R. No. 252308 (*People of the Philippines v. Davis Jordan Baloga y Tamayo*).— Before the Court is an appeal from the Decision of the conviction of Davis Jordan Baloga y Tamayo (accused-appellant) for illegal sale of 0.4785 gram of *methamphetamine hydrochloride* or *shabu* for which he was sentenced to life imprisonment and fined in the amount of One million pesos (PhP 1,000,000.00). Accused-appellant was also convicted of illegal use of *methamphetamine hydrochloride* or *shabu* for which drug rehabilitation was imposed upon him.¹

From the records, on 12 May 2016, at around 10:00 a.m., a confidential informant (CI) reported to the Office of the Philippine Drug Enforcement Agency-Cordillera Administrative Region (PDEA-CAR) the illegal drug trade activities of a certain “Jordan” or “Dandan,” later identified as accused-appellant, in La Trinidad, Benguet. The CI relayed to the PDEA agents that accused-appellant was scouting around for a buyer of *shabu* worth at least Four thousand pesos (PhP 4,000.00). Subsequently, a buy-bust team was formed where PDEA Special Agent Liza C. Atolba (Agent Atolba) and Agent Ranel Canero (Agent Canero) were chosen as *poseur* buyer and arresting officer, respectively, while the rest of the team served as backup.² With the CI's assistance, Agent Atolba and accused-appellant agreed to meet near Tabanda Park, Kilometer 5 Pico, La Trinidad, Benguet, for the purpose of trading drugs.³

¹ CA rollo, p. 51.

² Id. at 33.

³ Id. at 30, 33.

At about 9:30 p.m. on 12 May 2016, during the briefing, it was decided that the pre-arranged signal that the sale of drug was already consummated was for the *poseur*-buyer to scratch her head using her left hand. Agent Atolba marked the buy-bust money consisting of four (4) pieces of PhP 1,000.00 peso boodle money using her initials.⁴ At about 9:55 p.m. on 12 May 2016, Agent Atolba and the CI arrived at the designated meeting site while the other team members followed. After some time, accused-appellant arrived and approached Agent Atolba and the CI. The CI in *Ilokano* dialect introduced Agent Atolba as the buyer, "*Daytoy day aggang,*" (This is the buyer).⁵ Accused-appellant in *Ilokano* dialect asked, "*Kasano, gumatangka, 4,000?*" (How is it, you are going to buy, 4,000?) to which Agent Atolba answered in the affirmative. Accused-appellant asked her if she has the money to which Agent Atolba answered, "*Wen adda, ngem kitaek pay,*" (Yes, I have but I have to see it first). Accused-appellant then handed a heat-sealed plastic sachet containing white crystalline substance to Agent Atolba who, upon being convinced that the same contained *shabu*, gave the marked boodle money as payment and executed the pre-arranged signal. Agent Canero rushed to the scene, arrested accused-appellant, and informed him of his constitutional rights and the reason why he was being arrested.⁶

Agent Atolba immediately marked the seized sachet containing white crystalline substance in the presence of accused-appellant and took custody of the seized sachet. Then, Agent Canero frisked accused-appellant and recovered the marked boodle money and a cell phone.⁷ Thereafter, Agent Canero handcuffed accused-appellant and brought him to the La Trinidad Police Station.⁸

The seized items were inventoried in the presence of accused-appellant, *Barangay* Captain Juan Mendoza, and Glory Botegan from Bombo Radio Station at the La Trinidad Police Station.⁹ Agent Canero admitted that the inventory was conducted hours after the arrest of accused-appellant because they had to wait for the arrival of the witnesses, particularly the media and DOJ representatives, and the *barangay* official.¹⁰ Thereafter, accused-appellant was brought to the hospital for physical examination, and later to the PDEA-CAR Forensic Office for a urine test. Later, the screening and confirmatory tests conducted on the urine sample taken from accused-appellant both gave positive results for the presence of *methamphetamine hydrochloride* or *shabu*.¹¹ Agent Atolba delivered the seized items to Forensic Chemist Ma. Cecilia B. Bucasas for the qualitative examination. Upon

⁴ Id. at. 33.

⁵ Id. at 35.

⁶ Id.

⁷ Id. at 36.

⁸ Id.

⁹ Id. at 37.

¹⁰ Id. at 39-40.

¹¹ Id. at 45.

examination, the submitted seized specimen yielded positive for *methamphetamine hydrochloride* or *shabu*.¹²

For his part, accused-appellant did not present any evidence either documentary or testimonial. However, in his Memorandum, he averred that the arresting officers failed to comply with Section 21, Republic Act No. (RA) 9165.¹³

On 04 December 2017, the trial court found accused-appellant guilty as charged. It found that the prosecution was able to sufficiently establish the elements of illegal sale and use of dangerous drugs.¹⁴ It added that the identity of the seized drug was carefully preserved by the marking made thereon, thus, the arresting officer's failure to strictly comply with the requirements of Section 21, RA 9165, did not render void or invalid the seizure and custody of the seized drug.¹⁵ As for the illegal use of dangerous drugs, considering that this was accused-appellant's first offense of illegal use, drug rehabilitation was imposed on accused-appellant. The dispositive portion of the RTC Decision¹⁶ reads:

WHEREFORE, the court hereby finds the accused Davis Jordan Baloga guilty beyond reasonable doubt in both charges. He is hereby penalized as follows:

1. In Criminal Case No. 16, CR-11376, it appearing that this is his first offense of such nature, the accused is hereby imposed to undergo rehabilitation for a period of not less than six (6) months pursuant to the provisions of Article VIII of R.A. 9165; and
2. In Criminal Case No. 16-CR-11377, the accused is hereby imposed the penalty of life imprisonment, and a fine of one (1) Million pesos, pursuant to Section 5, par. 2 of the said law.

SO ORDERED.¹⁷

Aggrieved, accused-appellant filed an appeal before the Court of Appeals (CA).

In the assailed Decision¹⁸ dated 07 November 2019, the CA affirmed the RTC Decision.

Hence, the instant appeal.

¹² Id. at 40-42.

¹³ Id. at 47.

¹⁴ Id.

¹⁵ Id. at 50.

¹⁶ Id. at 29-51. Penned by Judge Danilo P. Camacho.

¹⁷ Id.

¹⁸ Id. at 98-110. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Louis P. Acosta and Walter S. Ong.

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (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.¹⁹ On the other hand, to secure a conviction for illegal use of dangerous drugs, there must be a prior initial screening test and a subsequent confirmatory test, both yielding positive results for illegal drug use.²⁰

However, the successful prosecution of crimes involving violations of RA 9165 requires more than the presentation of evidence establishing each element of the crime. As the drugs seized from the accused constitute the *corpus delicti* of the offense, it is also of utmost importance that the integrity and identity of the seized drugs must be clearly shown to have been duly preserved with moral certainty.²¹ Thus, to establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photograph of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photograph be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses.²²

Accused-appellant was charged with and convicted of violation of Sections 5 and 15, Article II, RA 9165, committed on 12 May 2016. Thus, the governing law is Section 21, Article II, RA 9165, as amended by RA 10640,²³ which requires that the marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of two witnesses – a representative from the media or the Department of Justice (DOJ), and any elected official. The purpose of this rule is to preserve the integrity and evidentiary value of the seized dangerous drugs to fully remove doubts as to the drug's identity.²⁴

In the instant case, the chain of custody was not followed in accordance with the law. From the records, Agent Atolba marked the seized heat-sealed transparent plastic sachet while Agent Canero marked the boodle money, after confiscation from accused-appellant at the place of the buy-bust operation.²⁵ However, while the marking was immediately done at the place of seizure and

¹⁹ *People v. Mangilit*, G.R. No. 254034, 15 February 2022.

²⁰ See *People v. Lopez*, G.R. No. 247974, 13 July 2020.

²¹ *People v. Enriquez*, 718 Phil. 352, 363 (2013).

²² *People v. De Dios*, G.R. No. 243664, 22 January 2020.

²³ 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,'" approved on July 15, 2014. RA 10640 took effect on August 7, 2014, or 13 days after its complete publication in two newspapers of general circulation, *The Philippine Star* and the *Manila Bulletin*, on July 23, 2014.

²⁴ *People v. Baluyot*, G.R. No. 243390, 5 October 2020.

²⁵ *CA rollo* at 35-36; Underscoring supplied.

arrest, the inventory was done at the La Trinidad Police Station which is a few meters from the place where the buy-bust was conducted.²⁶ Agent Atolba further testified that the inventory was made hours after the arrest of accused-appellant since they had to wait for the arrival of the witnesses.²⁷ Thus, the inventory and taking of photographs were not accomplished immediately after seizure and confiscation as mandated by Section 21, as amended.

In *People v. Musor*,²⁸ the Court explained that the phrase “immediately after seizure and confiscation” means that the physical inventory and taking of photographs of the drugs are intended by the law to be made immediately after, or at the place of apprehension. It added that only when the same is not practicable does the law allow the seized drugs to be inventoried and photographed as soon as the buy-bust team reaches the nearest police station or at the office of the apprehending officer/team.²⁹

In the recent case of *People v. Casa*,³⁰ the Court reiterated anew that in case of warrantless seizures, as in this case, the inventory and taking of photographs must be conducted generally at the place of seizure. The exception to this rule where the physical inventory and taking of photographs of the seized item may be made at the nearest police station or at the nearest office of the apprehending officer or team is when the police officers provide a sufficient justification that:

1. It is not practicable to conduct the same at the place of seizure; or
2. The items seized are threatened by immediate or extreme danger at the place of seizure.³¹

However, in the instant case, there is nothing in the records that would justify the deviation from the rules. The arresting officers provided no justification as to why they decided to conduct the inventory at the police station where the required witnesses were all called in. Without any explanation, a mere change of venue is insufficient to justify that it was actually not practicable to conduct the inventory at the place of seizure.³²

To reiterate, the presence of the required witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest such that they are required to be at or near the intended place of arrest so that they can be ready to witness the inventory and photograph-taking of the seized and confiscated drugs “immediately after seizure and confiscation.”³³ This serves as a safeguard to protect the seizure and arrest from possibilities of switching, planting, or contamination

²⁶ Id. at 36.

²⁷ Id. at 39-40, 50.

²⁸ 842 Phil. 1159, 1172-1173 (2018).

²⁹ Id.

³⁰ G.R. No. 254208, 16 August 2022.

³¹ Id.

³² Id.

³³ *Nisperos v. People*, G.R. No. 250927, 29 November 2022.

of the evidence, which compromise the integrity of the confiscated items. Failure to comply with this jeopardizes the trustworthiness of the *corpus delicti*, breaks the chain of custody, and, as a result, puts the guilt of the accused in doubt.³⁴

Certainly, the Court has held that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised. To clarify, in order not to invalidate the seizure and custody over the evidence obtained, the prosecution may invoke the saving clause and satisfy the two requisites:

1. The existence of “justifiable grounds” allowing departure from the rule on strict compliance; and
2. The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.³⁵

In the instant case, the first requisite of the saving clause was not satisfied by the prosecution. Thus, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso “so long as the integrity and evidentiary value of the seized items are properly preserved” too, will not come into play, as without any acceptable explanation for the departure from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed as preserved.³⁶ It must be emphasized that the arresting officers are under obligation, should they be unable to observe the procedure laid down under Section 21, Article II, RA 9165, as amended, to explain why the procedure was not followed and to demonstrate that the deviation was justified or warranted. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.³⁷

Considering that the integrity and evidentiary value of the *corpus delicti* appeared to have been compromised because of the non-compliance with the mandated procedure under Section 21, Article II, RA 9165, as amended, accused-appellant must be acquitted on reasonable doubt. The prosecution likewise cannot benefit from the saving clause under the same law because it failed to provide a justifiable reason for the non-compliance with Section 21(1), and to prove that the integrity and evidentiary value of the seized items were preserved due to doubts over the chain of custody.³⁸ Thus, accused-appellant's acquittal is in order.

³⁴ *Tañamor v. People*, G.R. No. 228132, 11 March 2020.

³⁵ *People v. Tagluop*, G.R. No. 243577, 15 March 2022.

³⁶ *People v. Caray*, G.R. No. 245391, 11 September 2019.

³⁷ *People v. Tagluop*, supra note 35.

³⁸ *People v. Musor*, supra note 28.

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WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated 7 November 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11220 is **REVERSED** and **SET ASIDE**. Accused-appellant **DAVIS JORDAN BALOGA y TAMAYO** is **ACQUITTED** of the crimes of Illegal Sale of Dangerous Drugs and Illegal Use of Dangerous Drugs, respectively, defined and penalized under Sections 5 and 15, Article II, R.A. No. 9165, as amended, on the ground of reasonable doubt. He 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, New Bilibid Prison, Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED to REPORT** to this Court the action taken thereon within five (5) working days from receipt of this Resolution.

The accused-appellant is considered to have **WAIVED** the filing of a supplemental brief which was required in the Resolution dated 16 September 2020.

SO ORDERED.” *Hernando, J., on leave.*

By authority of the Court:


MARIA TERESA B. SIBULO
Division Clerk of Court 

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OCT 25 2023

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

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

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Judgment Division (x)
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UR

Court of Appeals (x)
1000 Manila
(CA-G.R. CR-HC No. 11220)

The Hon. Presiding Judge
Regional Trial Court, Branch 62
La Trinidad, 2601 Benguet
(Crim. Case Nos. 16-CR-11376 to 11377)

A B S LAW OFFICES
Counsel for Accused-Appellant
Suite 305, 3rd Floor, Laperal Building
Session Road, Baguio City, 2600 Benguet

Mr. Davis Jordan T. Baloga (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

