



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 23, 2023, which reads as follows:

“G.R. No. 253303 (*People of the Philippines v. Romeo Reconday y Neserio*). – On appeal¹ is the Decision² dated February 21, 2020 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10388, which affirmed with modification the Judgment³ dated October 27, 2017 of the Regional Trial Court, 5th Judicial Region, Branch 21, Naga City (RTC), in Criminal Case No. 2015-0274 finding accused-appellant Romeo Reconday y Neserio (Reconday) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Reconday was charged with illegal sale of *shabu* in an information, the accusatory portion of which reads:

That on or about **May 14, 2015** in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did, then, and there, willfully, unlawfully and criminally sell, dispense, and deliver **twenty (20) heat-sealed transparent plastic sachets containing white crystalline substance, with the total weight of 100.4613 grams, more or less**, to poseurbuyer (*sic*) *PDEA Samuel A. Detera*, which when tested were found positive for the presence of Methamphetamine Hydrochloride popularly known as “shabu”, a dangerous drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.⁴

Upon arraignment, Reconday pleaded “not guilty” to the charge against him.⁵

¹ *Rollo*, pp. 19-20.

² *Id.* at 3-18. Penned by Associate Justice Pedro B. Corales, with Associate Justices Apolinario D. Bruselas, Jr. and Perpetua Susana A. Atal-Paño, concurring.

³ *CA rollo*, pp. 77-86. Penned by Judge Pablo Cabillan Formaran III.

⁴ *Rollo*, p. 4.

⁵ *Id.*

During trial, the prosecution presented as witnesses: the poseur-buyer, Philippine Drug Enforcement Agency (PDEA) Agent Samuel A. Detera (Agent Detera); buy-bust team leader, PDEA Agent Ken F. Villafuerte (Agent Villafuerte); Forensic Chemist Meden Listanco (Forensic Chemist Listanco); and arresting officer, PDEA Agent Arnel Lasay (Agent Lasay). On the other hand, the defense presented Reconday as its sole witness.⁶

The prosecution and the defense stipulated on the respective testimonies of Forensic Chemist Listanco, *Barangay Kagawad* Santiago San Pablo (*Barangay Kagawad* San Pablo), and media representative Emmanuel Gamora (media representative Gamora).

It was stipulated that Forensic Chemist Listanco, a chemist of PDEA, Regional Office No. 5, received on 2:30 a.m. of May 15, 2015, the Request for Laboratory Examination as well as the seized *shabu*, as shown by her signature appearing thereon. It was further stipulated that she examined the confiscated *shabu* and found 20 specimens, with a total weight of 100.4613 grams, positive for the presence of methamphetamine hydrochloride as stated in Chemistry Report No. PDEAROV-DD015-011. It was likewise stipulated that immediately after conducting the laboratory examination, Forensic Chemist Listanco turned over the specimens to Norelyn Lopez (Lopez) of the Office of the Evidence Custodian. It was also stipulated that the specimens she brought to court are the same specimens she examined, and that the textual entries on the strips of masking tape on the large plastic sachets, as well as in the small plastic sachets inside it, particularly PDEAROV-DD015-011, were entries made by her after she finished conducting the laboratory examination.⁷

As regards *Barangay Kagawad* San Pablo and media representative Gamora's respective testimonies, it was stipulated that they witnessed the inventory of the seized *shabu*, and that they affixed their respective signatures on the Certificate of Inventory. It was also stipulated that they were the persons appearing on the photograph marked as Exhibit "H" submitted to the trial court.⁸

During trial, the prosecution witnesses alleged that at around 7:00 p.m.⁹ of May 14, 2015, team leader Agent Villafuerte, together with members of his team and two confidential informants (CI1 and CI2), planned the conduct of a buy-bust operation against Reconday after Agent Villafuerte was informed by one of the confidential informants that the latter was able to arrange a drug deal worth ₱200,000.00 with Reconday at Villa Caceres Hotel, located along Magsaysay Avenue, Naga City.¹⁰

During the briefing, it was discussed that Reconday was a drug peddler who had been previously charged for violation of R.A. No. 9165 in 2004, but

⁶ Id. at 4-5.

⁷ Transcript of Stenographic Notes (TSN), April 19, 2016, pp.13-14 – PI. Meden Listanco.

⁸ *Rollo*, p. 5.

⁹ TSN, August 9, 2016, p. 14 – Samuel A. Detera; Records, p. 6, Affidavit of Poseur-Buyer Agent Samuel A. Detera; Records, p. 7, Affidavit of Arresting Officer Agent Arnel D. Lasay.

¹⁰ *Rollo*, p. 6.

was acquitted in 2007. Agent Detera was designated as the poseur-buyer and Agent Lasay as arresting officer, while the rest of the operatives, including Agent Villafuerte, would act as the back-up and security team. Agent Villafuerte handed over one ₱500.00-bill with serial no. MF301022 to Agent Detera which the latter marked with “SAD,” photocopied, and placed inside a Fuji Film envelope together with several pieces of paper-cut boodle money. The plan was for one of the confidential informants (CI1) to remain in the hotel room with Agent Detera, and for Agent Lasay to stay hidden in the comfort room while they waited for Reconday to arrive together with the other confidential informant (CI2). The pre-arranged signal was upon Agent Detera’s utterance of the words: “*Tama daw ini sa timbang?*” After the briefing, Agent Villafuerte prepared the requisite *Pre-Operational Report and Authority to Operate*.¹¹

At 9:00 p.m. of the same day, Agents Detera and Lasay, together with CI1, proceeded to the target area and checked themselves in at Room 203 of Villa Caceres Hotel. The rest of the operatives were inside a grey sports utility vehicle parked at a secluded area along Magsaysay Avenue near the hotel. At 10:00 p.m., CI1, Agent Detera, and Agent Lasay positioned themselves inside the room while CI2 waited outside for Reconday to arrive.¹²

At 10:30 p.m., CI2 entered the room together with Reconday. After a brief introduction, Agent Detera asked Reconday: “*Dara mo na ba ang item?*” (Did you bring the item?), to which Reconday replied: “*Iyo na po.*” (Yes please). Then, Reconday retrieved from his sling bag an orange box of Kojic soap which he gave to Agent Detera. When Agent Detera took possession of the orange box, he opened it and unloaded its contents on the table, revealing 20 heat-sealed transparent plastic sachets containing white crystalline substance. Thereafter, Agent Detera handed over the Fuji Film envelope to Reconday. Immediately, before Reconday could even look into the contents of the envelope, Agent Detera executed the pre-arranged signal which prompted Agent Lasay to come out of the comfort room, introduce themselves as PDEA agents, and arrest Reconday. After receiving a call from agent Detera, the rest of the operatives followed.¹³

At the place of arrest, Agent Detera, in the presence of Reconday, marked the 20 plastic sachets as follows: SAD1 5/14/15, SAD2 5/14/15, SAD3 5/14/15, SAD4 5/14/15, SAD5 5/14/15, SAD6 5/14/15, SAD7 5/14/15, SAD8 5/14/15, SAD9 5/14/15, SAD10 5/14/15, SAD11 5/14/15, SAD12 5/14/15, SAD13 5/14/15, SAD14 5/14/15, SAD15 5/14/15, SAD16 5/14/15, SAD17 5/14/15, SAD18 5/14/15, SAD19 5/14/15, SAD20 5/14/15, all with his signature. Also recovered by Agent Detera from Reconday was the Fuji Film envelope containing the marked ₱500.00-bill and several pieces of paper-cut boodle money.¹⁴

¹¹ Id.

¹² Id.

¹³ Id. at 6-7.

¹⁴ Id. at 7.

After the marking, they proceeded back to the Camarines Sur Provincial Office where Agent Detera conducted the physical inventory in the presence of Reconday, *Barangay Kagawad* San Pablo, and media representative Gamora.¹⁵ Listed in the Certificate of Inventory¹⁶ were the following items: (1) Twenty heat-sealed transparent plastic sachets (with respective markings indicated) containing white crystalline substance suspected as *shabu*; (2) One Kojic soap box marked as SAD 5/14/15; (3) One piece genuine ₱500.00-peso bill with serial number MF301022 pre-marked with SAD and several pieces of cut paper as boodle money; and (4) One Fuji Film envelope marked as SAD21 5/14/15. Photographs were then taken depicting the following: (1) Agent Lasay apprising appellant of his constitutional rights; (2) Agent Detera marking the evidence at the crime scene in the presence of appellant; (3) The seized pieces of evidence at the crime scene; (4) Close-up photo of the marking of evidence; (5) Photo taken outside of Room 203 while Agent Detera was conducting the marking; and (6) Emmanuel Gamora of ABS-CBN and *Barangay Kagawad* San Pablo signing the Certificate of Inventory in the presence of Reconday.¹⁷

After Agent Villafuerte prepared the Request for Laboratory Examination, Agent Detera submitted the same, together with the 20 seized plastic sachets, to Forensic Chemist Litanco at 2:30 a.m. of May 15, 2015. Agent Detera testified that from the time of seizure until submission to the forensic laboratory for examination, he safely kept the 20 plastic sachets in a large plastic bag. Thereafter, Reconday was subjected to medical examination at the Naga City Health Office and then, kept in detention at the Camarines Sur Provincial Office.¹⁸

As per Chemistry Report No. PDEAROV-DD015-011¹⁹ completed by Forensic Chemist Litanco at 10:00 a.m. of May 15, 2015, all 20 specimens examined gave positive results for the presence of methamphetamine hydrochloride.”²⁰

For his part, Reconday denied the charge against him. He claimed that on May 14, 2015, at about 10 o'clock in the evening, a certain “Eden Beringuela” invited him for a “gimmick” at Bistro Roberto in Villa Caceres. Reconday narrated that upon his arrival at the hotel lobby, two men ushered him to the second floor. Thereafter, one of the men handed him a bag and ordered him to knock on the door of one of the hotel rooms, which he acceded to. The man entered the hotel room, while Reconday was left with the other person outside the room.²¹

Subsequently, Reconday was persuaded by one of the men to enter the room, to which Reconday reluctantly agreed. Reconday allegedly noticed that

¹⁵ Id.

¹⁶ Records, p. 9, Certificate of Inventory.

¹⁷ Id. at 180, Exhibit “H”, entitled “Photos taken during the arrest (of) Romeo Reconday y Naserio in a buy-bust operation conducted on May 14, 2015 at about 10:30 p.m. at Room 203, Villa Caceres Hotel.”

¹⁸ *Rollo*, p. 8.

¹⁹ Records, p. 178, Chemistry Report No. PDEAROV-DD015-011.

²⁰ *Rollo*, p. 8.

²¹ Id.

there were already three men inside. Thereafter, the man who opened the door took the bag from Reconday and told him to lie face down. At that point, Reconday allegedly cried out of fear as a gun was poked at him for a period of around 15 to 20 minutes. When he was finally allowed to stand, he allegedly noticed money and plastic sachets of *shabu* on top of the table. Then, the men introduced themselves as PDEA agents and brought Reconday to the Civic Center Office of PDEA where he stayed until the afternoon of the following day. Reconday averred that he only learned of the charge against him when he was already in court.²²

The RTC Decision

The RTC rendered its Judgment²³ on October 27, 2017, finding Reconday guilty of violating Section 5, Article II, of the Comprehensive Dangerous Drugs Act of 2002, for illegally selling *shabu*. The RTC ruled that the integrity and evidentiary value of the seized items were established by the prosecution. Moreover, the trial court gave greater weight and credence to Agent Detera's testimony over Reconday's defense of denial and frame-up. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered, finding accused **Romeo Reconday y Nesperio GUILTY beyond reasonable doubt** of the offense of violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", and sentencing him to **SUFFER** the penalty of **life imprisonment and a fine of Five hundred thousand pesos (P500,000.00)** with accessory penalties as provided in Section 35 of the same Act.

The accused, being a detention prisoner, shall be credited in the service of his sentence with the preventive imprisonment which he underwent by reason of this case in accordance with the conditions set forth in Article 29 of the Revised Penal Code, as amended by Republic Act No. 10592.

The immediate transfer of the accused to the National Bilibid Prison is hereby ordered.

Finally, the subject dangerous drugs are hereby **CONFISCATED** for turn-over to the Philippine Drug Enforcement Agency (PDEA) for their proper disposal and destruction in accordance with law.

SO ORDERED.²⁴

Seeking recourse, Reconday appealed to the CA.

The CA Decision

The CA rendered its assailed Decision²⁵ on February 21, 2020, denying Reconday's appeal, and affirming with modification the Judgment of the RTC.

²² Id. at 8-9.

²³ CA *rollo*, pp. 77-86.

²⁴ Id. at 85-86.

²⁵ *Rollo*, pp. 3-18.

Like the RTC, the appellate court found Reconday guilty of violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002. However, the CA ruled that Reconday should be punished for illegal *delivery*, instead of illegal *sale* of dangerous drugs, punishable under the same section of the law.

The CA agreed with the Office of the Solicitor General's (OSG) concession that Reconday could not be convicted for illegally *selling shabu* due to the failure of the prosecution to present a witness that could testify on the agreement as to the price and circumstances surrounding the perfection of the sale.²⁶ Nevertheless, the CA also agreed with the OSG that the prosecution had proven all the elements of illegal *delivery* of dangerous drugs, similarly punishable under Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed CA Decision reads:

WHEREFORE, the instant appeal is **DENIED**. The October 27, 2017 Judgment of the Regional Trial Court, Branch 21, Naga City in Crim. Case No. RTC 2015-0274 is **AFFIRMED** with **MODIFICATION** that accused-appellant Romeo Reconday y Noserio is found guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165.

SO ORDERED.²⁷

Yet again seeking recourse, Reconday filed a Notice of Appeal²⁸ dated March 6, 2020, which was given due course by the CA in its Resolution²⁹ dated July 16, 2020.

On December 2, 2020, the Court issued a Resolution³⁰ requiring the parties to file their respective supplemental briefs, if they so desired. Reconday, through the Public Attorney's Office, filed a Manifestation in Lieu of a Supplemental Brief³¹ adopting his Brief for the Accused-Appellant³² filed before the CA. The People of the Philippines, through the OSG, filed its own Manifestation (In Lieu of Supplemental Brief)³³ adopting its Brief for the Appellee³⁴ filed before the CA.

The issue before the Court is whether or not the CA erred in affirming with modification the RTC's conviction of Reconday for violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, particularly, for illegal delivery of dangerous drugs.

²⁶ CA *rollo*, pp. 101-102.

²⁷ *Rollo*, pp. 17-18.

²⁸ *Id.* at 19-20.

²⁹ *Id.* at 22.

³⁰ *Id.* at 25.

³¹ *Id.* at 38-40.

³² CA *rollo*, pp. 58-75.

³³ *Rollo*, pp. 41-42.

³⁴ CA *rollo*, pp. 91-117.

Our Ruling

The appeal is meritorious.

The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. The delivery may be committed even without consideration.³⁵

In cases involving dangerous drugs, the substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.³⁶ Thus, it is of utmost importance that the prosecution be able to establish that the identity and integrity of the seized drug were preserved to support a verdict of conviction.³⁷

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.³⁸ The four links that must be established are: *first*, the seizure and marking, if practicable, 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.³⁹

Relative thereto, the Court, in *Lopez v. People*,⁴⁰ discussed:

The chain of custody rule comes into play as a mode of authenticating the seized illegal drug as evidence. It includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would 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. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the

³⁵ *People v. Arago, Jr.*, 847 Phil. 915, 923 (2019).

³⁶ *People v. Bartolini*, 791 Phil. 626, 634 (2016).

³⁷ *Largo v. People*, 854 Phil. 144, 154 (2019).

³⁸ *People v. Piñero*, 850 Phil. 1130, 1137 (2019).

³⁹ *People v. Kamad*, 624 Phil. 289, 304 (2010).

⁴⁰ 725 Phil. 499 (2014).

apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.”⁴¹ (Citation omitted)

Inventory by the apprehending officer

As part of the chain of custody procedure, the Implementing Rules and Regulations (IRR) of R.A. No. 9165, as amended by R.A. No. 10640, requires that the physical inventory and photographing of the seized items be conducted immediately after seizure and confiscation of the same, thus:⁴²

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

A review of the testimonies of the prosecution witnesses reveal that the buy-bust team failed to observe the statutory procedure for preserving the chain of custody. While the marking was done at the place of arrest in Room 203 of Villa Caceres Hotel, Magsaysay Avenue, Naga City, the inventory was done at the PDEA Camarines Sur Provincial Office.

- Q- After his arrest, physical inventory and taking of photographs were made, is that correct?
A- Yes, sir.

⁴¹ Id. at 507-508.

⁴² Section 21, Article II of Republic Act No. 9165, as amended.

Q- In fact, you mentioned in No. 4 of your affidavit that conduct of physical inventory and photograph of the seized drug and non-drug evidence ensued at the PDEA Camarines Sur Provincial Office?

A- Yes, sir.

Q- So, you are referring to the Office of the PDEA?

A- Camarines Sur Provincial Office, sir.

Q- It was there that the inventory and taking of photograph were made?

A- Yes, sir.

Q- The marking was included in the taking of inventory?

A- No, sir, the marking was done at the place where the buy-bust operation was conducted, inside the room 203 of Villa Caceres Hotel, sir.

Q- What you did at the scene of the crime is only the marking?

A- Yes, marking and photographs, sir.⁴³

Q- After announcing that you are arresting him, what else did you do?

A- I informed him of his rights, sir.

Q- After you did so, what else happened?

A- Thereafter, Agent Detera recovered the recovered items, sir.

Q- At this time when Agent Detera was marking the recovered items, where was the accused Romeo Reconday?

A- He was present, sir.

Q- Did he say anything?

A- I cannot remember, sir.

Q- Do you remember him complaining?

A- What I can remember is that he was crying, sir.

Q- After the marking was made, what else happened?

A- During the marking, Agent Ampongan took pictures and thereafter, we proceeded to the Provincial Office, sir.⁴⁴

As expressly required by R.A. No. 9165, the physical inventory and photographing of the seized item 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.⁴⁵

In *People v. Musor*,⁴⁶ the Court held that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by law to be made immediately after, or at the place of apprehension. Only when this is not practicable does the law allow the

⁴³ TSN, August 9, 2016, p. 21 – Agent Samuel A. Detera.

⁴⁴ TSN, April 25, 2017, p. 6-7 – Agent Arnel Lasay.

⁴⁵ Section 21, Article II of R.A. No. 9165, as amended.

⁴⁶ 842 Phil. 1159 (2018).

inventory and photographing to be done at the nearest police station or the nearest office of the apprehending officer/team.⁴⁷

In *People v. Taglucop (Taglucop)*,⁴⁸ the Court settled the place of the conduct of the inventory and taking of photographs under Section 21(1) of R.A. No. 9165, as amended. The Court ruled that in case of warrantless seizures, the requirement of immediacy in conducting the inventory and photographing of the seized drugs is met when the same is done at the place of seizure. However, the same may be done at the nearest police station or at the nearest office of the apprehending officer/team when to do so at the place of seizure is rendered impracticable or would pose an immediate and extreme danger to the seized items or the police officers:

Accordingly, as current jurisprudence stand, in case of warrantless seizures, the inventory and taking of photographs generally must be conducted at the place of seizure. The exception to the rule is when the police officers provide 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.⁴⁹

Thus, for the above exceptions to find application to the case at bar, the prosecution should have been able to show that it was not practicable to conduct the inventory at the place of arrest, or that the safety and security of the apprehending officer or the items seized were threatened by immediate and extreme danger.

The Court, in *Taglucop*, had occasion to discuss examples of acceptable justifications to give ground for the conduct of the inventory at a place other than the place of arrest:

The foregoing testimony of SPO2 Gilbuena was likewise corroborated by P/Insp. Lacana in his testimony as to the marking of the seized drugs at the place of arrest and the inventory conducted at the police station. P/Insp. Lacana testified that they had to transfer to the police station since the place was unsafe. Evidently, the prosecution presented three justifications to conduct the inventory and taking of photographs at the nearest police station:

1. There was a crowd gathering in the place;
2. It was already raining; and
3. The place of seizure was unsafe at that time.

Unlike in the previous cases of *Musor* and *Salenga*, where the prosecution simply gave flimsy excuses for not conducting the procedures at the place of seizure, the present case provides a different scenario. To the judgment of the police officers conducting the operation, the gathering crowd

⁴⁷ Id. at 1172-1173.

⁴⁸ G.R. No. 243577, March 15, 2022.

⁴⁹ Id.

and the ongoing rain could jeopardize the seized items. Considering that the seized items were crystallized substances, such are susceptible to contamination from water or rain. Accordingly, it was understandable for the police officers to conduct the inventory and taking of photographs at the nearest police station, where the complete insulating witnesses were present.⁵⁰

Noticeably, in the instant case, the records are utterly bereft of any explanation whatsoever as to why the arresting officers decided to conduct the inventory at the PDEA Camarines Sur Provincial Office instead of the place of arrest at Villa Caceres Hotel.

Likewise, there is absolutely nothing on record to indicate that circumstances were present during the buy-bust operation that would make the inventory at the place of arrest not practicable, or that there was any threat of immediate or extreme danger thereat. To the contrary, the closed nature of the place where the buy-bust operation was conducted (*i.e.*, inside Room 203 of the Villa Cacaes Hotel) would, in theory, mitigate any disturbance or interference from any external force. Thus, based on the evidence at hand, the Court fails to see how the deviation by the apprehending officers becomes acceptable.

Absent any justifiable reason for the apprehending officers to belatedly conduct the inventory of the seized items at a place other than the place of seizure, as required by R.A. No. 9165, as amended, the Court finds that the *first* link in the chain of custody was broken at the outset.

*No justification for failure to comply with
Section 21(1), Article II of R.A. No. 9165*

Nonetheless, the Court has held that non-compliance with the prescribed procedure does not necessarily result in the conclusion that the identity of the seized drug has been compromised so that an acquittal should follow.⁵¹

When the prosecution fails to prove compliance with the mandatory requirements under the first and second parts of Section 21(1), Article II of R.A. No. 9165, as amended by R.A. No. 10640, its only recourse is to invoke the saving clause, which is provided for in the final portion of the same provision:

Provided, finally, that noncompliance of these requirements under justifiable grounds, as long as the integrity and 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.

In *People v. Vinluan*,⁵² the Court laid down the requirement before the prosecution can validly raise the provisions of the saving clause. For the saving clause to apply, the prosecution must first have recognized the procedural lapses,

⁵⁰ Id.

⁵¹ *People v. Castillon*, G.R. No. 256262 (Notice), August 31, 2022 citing *People v. Denoman*, 612 Phil. 1165, 1178 (2009).

⁵² G.R. No. 232336, February 28, 2022.

and thereafter, explain the justifiable ground for non-compliance as well as show that the integrity and evidentiary value of the seized items were preserved. The prosecution bears the duty to acknowledge and justify any deviations from the procedure during the trial.⁵³

Accordingly, there must first be an admission of mistake on the part of the prosecution and a corresponding explanation for the omission before the saving clause can apply.⁵⁴

Once again in *Taglucop*,⁵⁵ the Court highlighted the importance of strictly enforcing the provisions of the saving clause:

Evidently, when the prosecution fails to prove its compliance with the mandatory requirements under the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640, its only recourse is to invoke the saving clause. However, the saving clause, as an exception to the rule of strict compliance, is not a *talisman* that the prosecution may invoke at will. Indeed, it is the burden of the prosecution in the application of the saving clause to prove that the integrity and evidentiary value of the seized items were preserved in all the four links in the chain of custody. This is the heavy duty placed on the prosecution, not only due to the presumption of innocence of the accused, but also as a consequence for not complying with the mandatory requirements provided by the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended.⁵⁶

After a judicious review of the records of the instant case, the Court found nothing that would show that the apprehending team had recognized the procedural lapses it committed. Needless to say, there is also nothing on record that would show that the prosecution had provided any valid justification for the apprehending team's non-compliance with the provisions of Section 21(1), Article II of R.A. No. 9165.

For failing to comply with the requirements in applying the saving clause, doubt attached to the integrity and evidentiary value of the confiscated drug. Even if the Court rejects the frame-up defense of the accused, the unexplained lapses committed by the buy-bust team cannot be ignored. Acquittal is in order as the integrity and evidentiary value of the *corpus delicti* were compromised.⁵⁷

WHEREFORE, the instant appeal is **GRANTED**. The assailed Decision dated February 21, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 10388 is hereby **SET ASIDE**.

Accordingly, accused-appellant **ROMEO RECONDAY y NESERIO** is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for some other lawful cause.

⁵³ Id.

⁵⁴ *People v. Castillon*, supra.

⁵⁵ Supra note 48.

⁵⁶ *People v. Taglucop*, supra note 48.

⁵⁷ *People v. Castillon*, supra note 51.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director General is likewise directed to submit a report on the action taken within five (5) days from notice.

Let entry of judgment be issued immediately.

SO ORDERED.” (Inting, J., on leave.)

By authority of the Court:

^{MisPDCBatt}
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court ^{mbcbj}

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 21, 4400 Naga City
(Crim. Case No. RTC 2015-0274)

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Director General
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1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
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Mr. Romeo N. Recondy
c/o The Superintendent
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