

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 243936

Present:

- versus -

BERSAMIN, C.J.,\*  
PERLAS-BERNABE,\*\*  
Acting Chairperson,  
JARDELEZA,  
GISMUNDO,\*\*\* and  
CARANDANG, JJ.

VERNIE ANTONIO y MABUTI,  
Accused-Appellant.

Promulgated:  
SEP 16 2019

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DECISION

CARANDANG, J.:

On appeal is the Decision<sup>1</sup> dated June 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08832, affirming the Decision<sup>2</sup> dated October 26 2016 of the Regional Trial Court of Makati City, Branch 65 (RTC), convicting accused-appellant Vernie Antonio y Mabuti (Vernie) of violating Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The two Information filed against Vernie read:

Criminal Case No. R-MKT-16-01662-CR

On 20<sup>th</sup> day of August 2016, in the City of Makati, the Philippines, accused, not being lawfully authorized by law and without the corresponding license or prescription,

\* On official business.

\*\* Acting Chairperson of the First Division per Special Order No. 2704.

\*\*\* On official business.

<sup>1</sup> Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court), with Associate Justices Henri Paul B. Ining (now a Member of this Court) and Maria Filomena D. Singh, concurring; *rollo*, pp. 2-14.

<sup>2</sup> Penned by Presiding Judge Edgardo M. Caldona; *CA rollo*, pp. 67-73.

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did then and there willfully, unlawfully and feloniously sell and distribute one (1) heat-sealed plastic sachet containing methamphetamine hydrochloride with a weight of zero point zero six (0.06) gram, a dangerous drug, in consideration of the amount of five hundred (P500.00) pesos, in violation of the afore-cited law.

CONTRARY TO LAW.<sup>3</sup>

Criminal Case No. R-MKT-16-01663-CR

On 20<sup>th</sup> day of August 2016, in the City of Makati, the Philippines, accused, not being authorized by law to possess or otherwise use dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control and direct custody the total of zero point zero nine (0.09) gram of methamphetamine hydrochloride (*shabu*) a dangerous drug, in violation of the afore-cited law.

CONTRARY TO LAW.<sup>4</sup>

When arraigned, Vernie entered the plea of not guilty to both charges. Thereafter, joint trial was conducted.<sup>5</sup>

The prosecution presented the following witnesses: (1) Police Officer (PO) 1 Byron Atilon (PO1 Atilon), the poseur buyer; and (2) PO2 Michelle Gimena (PO2 Gimena), the immediate back-up. The defense of Vernie was based solely on his testimony.<sup>6</sup>

The evidence of the prosecution established that on August 20, 2016, a buy-bust team was formed after a confidential informant reported to the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) that illegal drug activities were being conducted by a certain Vernie in Brgy. Tejeros, Makati City. PO1 Atilon was assigned as poseur-buyer, while PO2 Gimena was the immediate back-up. A P500.00 bill was pre-marked as buy-bust money. The buy-bust team met with the informant in McDonalds PRC, Brgy. Olympia, Makati City.<sup>7</sup>

After planning the operation, the team and the informant proceeded where Vernie may be found. The informant pointed to Vernie standing in front of a house along D. Gomez St., Brgy. Tejeros, Makati City. The informant introduced PO1 Atilon to Vernie and said that PO1 Atilon wanted to buy *shabu*. Vernie asked how much and PO1 Atilon answered P500.00. PO1 Atilon handed the P500.00 marked money to Vernie. Immediately,

<sup>3</sup> Id. at 67.

<sup>4</sup> Id. at 68.

<sup>5</sup> *Rollo*, p. 3.

<sup>6</sup> *CA rollo*, p. 68.

<sup>7</sup> Id. at 68-69.

Vernie took out a small heat-sealed plastic sachet containing suspected *shabu* and handed it to PO1 Atilon.<sup>8</sup>

PO1 Atilon tapped the shoulder of Vernie, the pre-arranged signal to signify the consummation of the transaction, and arrested him. PO2 Gimena rushed to the scene and aided PO1 Atilon in conducting a body search on Vernie. The body search yielded two more sachets of *shabu* and the buy-bust money. Antonio was informed of his constitutional rights and brought to Makati Police Station, Police Community Precinct 1.<sup>9</sup> The marking of the three plastic sachets and inventory was conducted by PO1 Atilon at the Makati Police Station in the presence of Barangay Chairwoman Teresita Brillante (Chairwoman Brillante). The Inventory Receipt<sup>10</sup> states that the following were seized from Vernie: (1) one piece small heat-sealed plastic sachet containing *shabu* marked as “BSA” (subject of sale); (2) two pieces small heat-sealed plastic sachet containing *shabu* marked as “BSA-1” and “BSA-2” (subject of possession); and (3) one piece five hundred peso bill with serial number ET 632616 pre-marked as “BSA” (upper right corner). Photographs were taken during the inventory.<sup>11</sup> The Inventory Receipt, likewise, states that PO1 Atilon turned over the seized items to police investigator PO3 Roque Carlo Paredes II (PO3 Paredes).

The Chain of Custody Form<sup>12</sup> shows that from PO3 Paredes, the seized plastic sachets were received again by PO1 Atilon for delivery to the Philippine National Police Crime Laboratory. PO1 Atilon delivered the seized plastic sachets to the Southern Police District Crime Laboratory. Forensic Chemist Police Chief Inspector May Andrea Bonifacio (PCI Bonifacio) received the seized plastic sachets from PO1 Atilon. Per Chemistry Report No. D-1219-16<sup>13</sup> signed by PCI Bonifacio, the qualitative examination gave positive result that the three heat-sealed plastic sachets marked as “BSA,” “BSA-1,” and “BSA-2” contain methamphetamine hydrochloride, a dangerous drug.

Vernie alleged that he was taking a rest beside his tricycle in Barangay Tejeros, Makati City, when a group wearing civilian clothes invited him to their office. He denied the accusation against him.<sup>14</sup>

After evaluating the evidence for the prosecution and the defense, the RTC, in its Decision<sup>15</sup> dated October 26, 2016, found Vernie guilty of violating Sections 5 and 11, Article II of R.A. 9165:

**WHEREFORE**, in view of the foregoing, judgment is hereby rendered as follows:

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<sup>8</sup> Id. at 69.  
<sup>9</sup> *Rollo*, pp. 3-4.  
<sup>10</sup> Records, p. 13.  
<sup>11</sup> Id. at 20-21.  
<sup>12</sup> Id. at 19.  
<sup>13</sup> Id. at 18.  
<sup>14</sup> Id. at 194-195, 201.  
<sup>15</sup> CA *rollo*, pp. 67-73.

1. In Criminal Case No. R-MKT-16-01662-CR, the court finds the accused, Vernie Antonio y Mabuti GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

2. In Criminal Case No. R-MKT-16-01663-CR, the court finds the same accused, Vernie Antonio y Mabuti, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, R.A. No. 9165 and sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

The period of detention of the accused should be given full credit.

Let the dangerous drugs subject matter of these cases be disposed of in the manner provided for by law.

The Branch Clerk of Court is directed to transmit the plastic sachets containing *shabu* subject matter of these cases to the PDEA for said agency's appropriate disposition.

**SO ORDERED.**<sup>16</sup>

In convicting Vernie, the RTC gave credence to the testimonies of the police officers, who were presumed to have performed their duties in a regular manner.<sup>17</sup> The trial court held that all the elements of illegal sale and illegal possession of *shabu* were proven by the prosecution. It also ruled that the prosecution was able to establish an unbroken chain of custody showing that the integrity and evidentiary value of the seized items were not compromised at any stage. The absence of a media or a Department Of Justice (DOJ) Representative during the inventory is not fatal to the case.<sup>18</sup>

Vernie appealed his conviction. In his Appellant's Brief,<sup>19</sup> he argued that the *corpus delicti* (the *shabu*) and all the documents presented by the prosecution to prove his guilt beyond reasonable doubt were never properly identified in open court by the prosecution witnesses.<sup>20</sup>

In the instant case the prosecution, to expedite the proceedings, took the hasty and dangerous short-cut by adopting the Joint Affidavit of Apprehension of PO1 Atilon and PO2 Gimena as part of their direct testimonies and offering in stipulation that they *could* identify the drug evidence and their accompanying documents if presented to them. And in adopting such dangerous short-cut, the

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<sup>16</sup> Id. at 73.

<sup>17</sup> Id. at 72.

<sup>18</sup> Id.

<sup>19</sup> Id. at 40-65.

<sup>20</sup> Id. at 47.

prosecution dispensed with presenting to them and letting them identify the said drug evidence and accompanying documents in open court.<sup>21</sup>

In affirming the conviction of Vernie, the CA did not give merit to his argument and found nothing irregular in resorting to such procedure done to expedite trial.<sup>22</sup> On the chain of custody rule, the CA explained that links were established by the following: (1) stipulation during the pre-trial conference on the testimony of PO3 Paredes about the Final Investigation Report, Request for Drug Test and Request for Laboratory Examination, and the delivery of the seized items to the PNP Crime Laboratory; (2) that the markings “BSA” on the specimen stand for the poseur-buyer’s name “Byron SM Atilon,” who bought the illegal drugs from Vernie and confiscated two more sachets from him;<sup>23</sup> (3) PO1 Atilon’s testimony during cross-examination that from the time of arrest until inventory, he had possession of the seized drugs, and that the inventory was conducted at the police station due to security reasons;<sup>24</sup> (4) photographs taken during the inventory;<sup>25</sup> and (5) the Chain of Custody Form showing how the seized items passed from PO1 Atilon to PO3 Paredes, and then to PCI Bonifacio.<sup>26</sup>

In its Manifestation (In Lieu of Supplemental Brief)<sup>27</sup> dated June 18, 2019, the Office of the Solicitor General manifested that it will no longer file a Supplemental Brief. Likewise, in his Manifestation In Lieu of Supplemental Brief<sup>28</sup> dated July 3, 2019, Vernie, through the Public Attorney’s Office, manifested that he would no longer file a supplemental brief, considering that he had exhaustively discussed the assigned errors in the appellant’s brief before the CA, hence, he will be adopting the same.

We find the appeal meritorious.

The *corpus delicti* in this case are: (1) one sachet of *shabu* sold to the poseur buyer; and (2) the two additional sachets confiscated from Vernie. It is, therefore, necessary that the identity and integrity of the dangerous drugs are established beyond reasonable doubt. In other words, the *shabu* presented in court must be the same *shabu* seized from him during the buy-bust operation and the body search after his arrest.<sup>29</sup>

R.A. 9165 provides reasonable safeguards to preserve the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders.<sup>30</sup> Section 21, Article II of the Implementing Rules and

<sup>21</sup> Id. at 48.

<sup>22</sup> *Rollo*, p. 7.

<sup>23</sup> Id. at 10.

<sup>24</sup> Id.

<sup>25</sup> Id. at 12.

<sup>26</sup> Id.

<sup>27</sup> Id. at 22-25.

<sup>28</sup> Id. at 28-31.

<sup>29</sup> *People v. Obmiranis*, 594 Phil. 561, 569-570 (2008).

<sup>30</sup> *Carino v. People*, 600 Phil. 433, 448 (2009).

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Regulations (IRR) of R.A. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. Proper procedures to account for each specimen by tracking its handling and storage from point of seizure to presentation of the evidence in court and its final disposal must be observed. Immediately after seizure and confiscation, the apprehending team is required to conduct a physical inventory and to photograph the seized items 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, namely: (a) if *prior* to the amendment of R.A. 9165 by R.A. 10640, a representative from the media *and* the DOJ, and any elected public official; or (b) if *after* the amendment of R.A. 9165 by R.A. 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.<sup>31</sup>

Strict compliance with the chain of custody rule is essential in cases involving illegal drugs because these items are highly susceptible to planting, alteration, tampering, contamination and even substitution and exchange. Thus, if chain of custody rule will be strictly followed, there is moral certainty that prosecution would be able to establish the guilt of the accused beyond reasonable doubt.<sup>32</sup>

Mere lapses in procedures do not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved.<sup>33</sup> The saving clause found in Section 21(a), Article II of the IRR of R.A. 9165 adopted in Section 1 of R.A. 10640 states:

*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.<sup>34</sup>

Although the Court acknowledges that strict compliance with the chain of custody procedure may not always be possible, it must be stressed that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses.<sup>35</sup> Further, the justifiable ground for non-compliance must be proven as a fact because the Court cannot presume what these grounds are or that they even exist.<sup>36</sup>

This rule especially applies to the witness requirement during inventory of the seized items, as it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug.<sup>37</sup> Non-compliance with the three or two-witness rule may be

<sup>31</sup> See *Dimaala v. People*, G.R. No. 242315, July 3, 2019.

<sup>32</sup> *People v. Gum-Oyen*, 630 Phil. 637-653-654 (2010).

<sup>33</sup> *People v. Domado*, 635 Phil. 74, 87 (2010).

<sup>34</sup> Amendment to R.A. 9165, R.A. 10640, approved on July 15, 2014.

<sup>35</sup> *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>36</sup> *People v. Gum-Oyen*, supra note 36 at 649.

<sup>37</sup> See *People v. Orpila*, G.R. No. 241631, March 11, 2019.

permitted only if the prosecution proves that the apprehending officers exerted genuine, sufficient, and earnest efforts but failed to secure the presence of said witnesses. Mere statements of unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable grounds for non-compliance,<sup>38</sup> since the buy-bust conducted in this case is a planned operation.

Vernie was arrested *after* the effectivity of R.A. 10640. The witnesses required in this case are: (a) elected public official and (b) a representative of the NPS *or* the media.

It is gathered from the Joint Affidavit of Arrest<sup>39</sup> executed by PO1 Atilon and PO2 Gimena and from the testimony of PO1 Gimena in court, that the inventory was conducted not at the place of seizure and arrest, but in the police community precinct in the presence of Chairwoman Brillante. The police precinct was near the place of the buy-bust operation.

During cross-examination, PO1 Atilon testified that the inventory was conducted at the police station for security reasons. PO2 Gimena explained that there were many onlookers who might prevent the arrest of Vernie. This statement is incredulous as it is admitted that the buy-bust took place near the community police precinct.

While the police officers testified that the inventory was conducted at the police station and not at the place of arrest, the records do not show why Chairwoman Brillante was the only witness present during the inventory. No explanation was given as to the absence of a representative from the NPS or the media. Neither was there any statement to prove that genuine and earnest efforts were exerted to secure their presence.

The police officers received the confidential information about Vernie's illegal activities at around 3:00 a.m., while the arrest of Vernie transpired at 3:00 p.m.<sup>40</sup> The police officers had more or less 12 hours of preparation – from the time they received the information until the arrest of the accused – to comply with the requirements under R.A. 10640.

The prosecution evidence also left unanswered questions about the forensic chemist's handling of the seized plastic sachets. The Chemistry Report No. D-1219-16<sup>41</sup> was admitted in court as Exhibit D as stipulated in the testimony of PO3 Paredes. The report is not authenticated and is therefore hearsay evidence because he had no personal knowledge of the circumstances surrounding the preparation of the Chemistry Report. He did not personally deliver the seized articles to the forensic chemist nor was he present during the physical examination. It was not even clear who obtained the Chemistry Report from PCI Bonifacio. Thus, Exhibit D is inadmissible to prove that the seized articles are dangerous drugs.

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<sup>38</sup> See *People v. Agustin*, G.R. No. 233336, January 14, 2019.

<sup>39</sup> Records, pp. 25-26.

<sup>40</sup> Id. at 25.

<sup>41</sup> Id. at 18.

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All in all, the prosecution did not prove with moral certainty the guilt of the accused-appellant on both charges.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated June 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08832 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Vernie Antonio y Mabuti is **ACQUITTED** of both charges. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless further detention is lawful for other reasons.

Let entry of judgment be issued immediately.

**SO ORDERED.**

  
**ROSMARI D. CARANDANG**  
*Associate Justice*

**WE CONCUR:**

(on official business)  
**LUCAS P. BERSAMIN**  
*Chief Justice*  
*Chairperson*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*  
*Acting Chairperson*

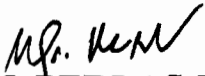
  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

(on official business)  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*



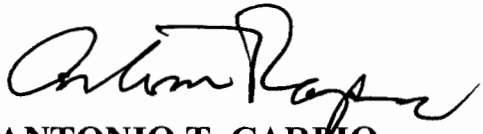
## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*  
*Acting Chairperson, First Division*

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Acting Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Acting Chief Justice*