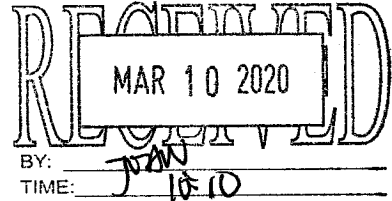




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 10, 2019 which reads as follows:

“G.R. No. 243658 – *People of the Philippines, Plaintiff-Appellee v. Randy Amores y Baylon, John Vincent Arizo y Sahi, and Maricel Nicolas y Castroverde, Accused; John Vincent Arizo y Sahi and Maricel Nicolas y Castroverde, Accused-Appellants*

For failure to conduct the marking, inventory and photograph taking immediately at the place of arrest/confiscation, and for the lack of the required number of witnesses under Republic Act No. 9165, an acquittal of the accused-appellants is in order.

The Case

This is an ordinary appeal from the June 29, 2018 Court of Appeals (CA) Decision in CA-G.R. CR-HC No. 09618,¹ which affirmed the June 13, 2016 Regional Trial Court (RTC) Decision of Olongapo City, Branch 74 in Criminal Case Nos. 982-12 to 985-12.²

The Facts

In four separate Informations, accused-appellants Randy Amores y Baylon (Amores), John Vincent Arizo y Sahi (Arizo), and Maricel Nicolas y Castroverde (Nicolas) were charged of violating Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act.³

Amores was charged of illegal possession of *shabu* under Section 11, Article II of RA 9165 as follows:

- over – thirteen (13) pages ...

269-B

¹ Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Manuel M. Barrios and Jhosep Y. Lopez, concurring; *rollo*, pp. 2-10.

² Penned by Presiding Judge Roline M. Ginez-Jabalde; *CA rollo*, pp. 64-77.

³ *Rollo*, p. 3.

Criminal Case No. 982-2012

That on or about the third (3rd) day of December 2012, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously, have in his effective possession and control Thirty-Seven Thousandths (0.037) of a gram of Methamphetamine Hydrochloride or Shabu, a dangerous drug, placed in one (1) heat-sealed transparent plastic sachet, said accused not having the corresponding license or prescription to possess said dangerous drug.⁴

Arizo and Nicolas were charged of illegal sale of *shabu* under Section 5, Article II of RA 9165 as follows:

Criminal Case No. 983-2012

That on or about the third (3rd) day of December 2012, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without being lawfully authorized, did then and there willfully, unlawfully and knowingly, sell and deliver to PO2 Ryan Garcia ₱300.00 (SN-QY876061, QJ197945 & BH787984) worth of Methamphetamine Hydrochloride, otherwise known as "shabu," a dangerous drug, weighing One Hundred Four Thousandths (0.104) of a gram placed in one (1) heat-sealed transparent plastic sachet.⁵

Arizo was separately charged of illegal possession of *shabu* under Section 11, Article II of RA 9165 as follows:

Criminal Case No. 984-2012

That on or about the third (3rd) day of December 2012, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously, have in his effective possession and control [Two Hundred Twelve Thousandth] (0.212) of a gram of Methamphetamine Hydrochloride or Shabu, a dangerous drug, placed in one (1) heat-sealed transparent plastic sachet and Eighty Five Thousandths (0.085) of a gram of Methamphetamine Hydrochloride or Shabu, a dangerous drug, place[d] in one (1) heat-sealed transparent plastic sachet, said accused not having the corresponding license or prescription to possess said dangerous drug.⁶

Nicolas was separately charged of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 as follows:

- over -

269-B

⁴ CA rollo, pp. 64-65.

⁵ Id. at 65.

⁶ Id.

Criminal Case No. 985-2012

That on or about the third (3rd) day of December 2012, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named [accused], without being lawfully authorized, and without prescription from a physician, did then and there willfully, unlawfully and knowingly have in her person, possession and control one (1) folded aluminium foil containing methamphetamine hydrochloride or shabu, which is a paraphernalia intended for smoking, sniffing or consuming, administering x x x of dangerous drug.⁷

During arraignment, the accused-appellants pleaded not guilty. On pre-trial, the parties stipulated on the trial court's jurisdiction over the offense charged. Thereafter, trial proceeded.⁸

According to the prosecution, the police officers received several tips that Arizo and Nicolas were selling drugs along the National Highway, Barangay Barretto, Olongapo City. Police Officer 2 Ryan Garcia (PO2 Garcia), Senior Police Officer 1 Allan Delos Reyes (SPO1 Delos Reyes), and their informant conducted a surveillance on the two accused on December 2, 2012. They saw Arizo and Nicolas waiting for someone in front of Garden View Resort along the National Highway. The informant introduced PO2 Garcia to Arizo and Nicolas as *tropa* and a drug user. Nicolas offered PO2 Garcia *shabu* which she mentioned was of good quality. PO2 Garcia accepted the offer and was told to come back the following day at 4 p.m. at Room 102 of Garden View Resort. He reported the incident to the investigator, Senior Inspector Julius Jimenez.⁹

The following day or on December 3, 2012, the police officers planned a buy-bust operation on the location given by the accused-appellants. PO2 Garcia was the *poseur* buyer, while SPO1 Delos Reyes was a back-up officer, frisker, and investigator. The rest of the buy-bust team served as security. Three pieces of ₱100 bills were marked as buy-bust money, and were given to PO2 Garcia.¹⁰

At 3:45 p.m., PO2 Garcia proceeded to Garden View Resort, while the rest of the buy-bust team positioned themselves inside and outside the resort. When PO2 Garcia was at the resort's gate, Nicolas waved at him. PO2 Garcia approached Arizo and Nicolas. Nicolas asked how much he would be buying, to which he replied ₱300. Nicolas told him to go to Arizo, to whom he gave ₱300. In turn, Arizo

- over -

269-B

⁷ Id. at 65-66.

⁸ Id. at 66.

⁹ Id. at 66.

¹⁰ Id. at 67.

handed PO2 Garcia a transparent plastic sachet containing *shabu*. Arizo took the sachet from a brown coin purse inside his right pocket. PO2 Garcia also saw Nicolas gave a sachet of *shabu* to an unidentified male person. PO2 Garcia removed his cap, which was the pre-arranged signal for a consummated transaction. The rest of the buy bust team rushed to PO2 Garcia's location.¹¹

PO2 Garcia recovered from Arizo a brown coin purse containing two sachets of *shabu* and the ₱300 buy bust money. SPO1 Delos Reyes ordered Nicolas to empty her pockets, which revealed one piece aluminium foil with *shabu* residue. SPO1 Delos Reyes confiscated the foil. He also frisked Amores, who was the unidentified male buyer of *shabu*. SPO1 Delos Reyes seized one sachet of *shabu*, one piece rolled aluminium foil, and five disposal lighters from him. The police officers arrested Arizo, Nicolas, and Amores, and took them to Police Station 1.¹²

PO2 Garcia marked the sachet he bought from Arizo with his initials "RG" and "control buy," while he marked the two sachets from the coin purse as "RG." He turned over the items to SPO1 Delos Reyes, who marked them with his initials "ADR." On the other hand, SPO1 Delos Reyes marked the sachet he recovered from Amores with "ADR." The marking and inventory were conducted in the presence of a Department of Justice Representative Jaime Navarro and *Kagawad* Willy Avila. Thereafter, SPO1 Delos Reyes delivered the seized items to the Olongapo City Crime Laboratory for drug test, which revealed that they were positive for methamphetamine hydrochloride.¹³

On the other hand, the defense presented the three accused-appellants as witnesses. Arizo and Amores have the same versions of the incident. They testified that they were living in Garden View Resort at the time of the arrest. At 10 a.m. of December 3, 2012, five men barged into their room, pointed a gun at them, and handcuffed them. The men introduced themselves as policemen. They searched the room and found nothing. They boarded Arizo and Amores in a van along with two other persons. They were brought to Police Station 1, where their names were taken. Then, they were held in an office, where they waited for three hours and then detained overnight. They denied the charges against them, as well as knowing each other and their co-accused.¹⁴

- over -

269-B

¹¹ Id.

¹² Id.

¹³ Id. at 68.

¹⁴ Id. at 68-70.

Nicolas testified that she and Arizo were childhood neighbors. At 11 a.m. of December 3, 2012, she and Arizo went to the grocery and thereafter, rode a tricycle. Suddenly, three men blocked their way and ordered them to alight from the tricycle along the National Highway near Garden View Resort. The men inspected their groceries and told them to clear their pockets as they faced the wall of the resort. Then, they were directed to board a van, where they saw Amores already handcuffed.¹⁵

Once inside the van, the police officers were talking about bringing out *shabu*, which they did not have. The police officers told Nicolas and Amores “*magbigay na lang kayo ng taong may kinalaman sa shabu.*” Then, they were detained. The following day, they were brought to the prosecutor’s office for inquest. She denied the accusations against her.¹⁶

The RTC Decision

On June 13, 2016, the RTC rendered a decision convicting all the accused-appellants of their respective charges.

In Criminal Case No. 982-2012, the RTC found Amores guilty beyond reasonable doubt of illegal possession of *shabu* for violating Section 11, Article II of RA 9165, and sentenced him to imprisonment of 12 years and 1 day as minimum to 14 years as maximum and to pay ₱300,000.00 as fine.¹⁷

In Criminal Case No. 983-2012, the RTC found Arizo and Nicolas guilty beyond reasonable doubt of illegal sale of *shabu* for violating Section 5, Article II of R.A. 9165, and sentenced them to life imprisonment and to pay ₱500,000.00 as fine.¹⁸

In Criminal Case No. 984-2012, the RTC found Arizo guilty beyond reasonable doubt of illegal possession of *shabu* for violating Section 11, Article II of RA 9165, and sentenced him to imprisonment of 12 years and 1 day as minimum to 14 years as maximum and to pay ₱300,000.00 as fine.¹⁹

- over -

269-B

¹⁵ Id. at 69.

¹⁶ Id. at 69-70.

¹⁷ Id. at 77.

¹⁸ Id. at 76.

¹⁹ Id. at 76-77.

In Criminal Case No. 985-2012, the RTC found Nicolas guilty beyond reasonable doubt of illegal possession of drug paraphernalia for violating Section 12, Article II of RA 9165, and sentenced her to imprisonment of 6 months and 1 day as minimum to 4 years as maximum and to pay ₱10,000.00 as fine.²⁰

The RTC held that the prosecution proved all the elements of illegal sale of *shabu*, and illegal possession of *shabu* and its paraphernalia. The links in the chain of custody were likewise established. The prosecution evidence defeated the unsubstantiated denial of the accused-appellants, and the conflicting testimonies of Arizo and Nicolas.²¹ Only accused-appellants Arizo and Nicolas appealed to the CA.

The CA Decision

On June 29, 2018, the CA affirmed the conviction, and disputed accused-appellants' arguments. First, the CA held that failure to mark the confiscated items at the place of arrest does not render the confiscated items inadmissible in evidence, because substantial compliance is sufficient. What is essential is the preservation of the integrity and the evidentiary value of the seized items.²²

Second, the CA ruled that the decision whether to apply for a search warrant or to conduct a buy-bust operation is left to the police officers' discretion. They have the right to choose which legal means or processes are best suited in the given circumstances.²³

Third, the CA resolved that the details of the confidential information and the identity of the informant are insignificant to the buy-bust operation. The informant's identity is kept confidential due to health and safety reasons, and to encourage others to report wrongdoings to the authorities.²⁴

Fourth, the CA explained that the defense of denial and frame up must be proved with clear and convincing evidence; otherwise, it is presumed that the government officials performed their duties in a regular and proper manner.²⁵

- over -

269-B

²⁰ Id. at 77.

²¹ Id. at 71-77.

²² *Rollo*, p. 8.

²³ Id. at 9.

²⁴ Id.

²⁵ Id.

Unsuccessful, the accused-appellants Arizo and Nicolas appealed to the Court.

The Issue Presented

The parties manifested that they would no longer file a supplemental brief as they have discussed their respective theories of the case in the Brief filed before the CA.²⁶

The accused-appellants raise the following arguments: (1) the prosecution failed to establish the validity of the entrapment operation; (2) the prosecution failed to establish an unbroken chain of custody of the seized items; (3) there is lack of evidence to establish conspiracy to sell drugs; and (4) the prosecution witnesses' testimonies are inconsistent and incredible.²⁷

On the other hand, the People of the Philippines, as represented by the Office of the Solicitor General, contends that the prosecution established the accused-appellants' guilt beyond reasonable doubt, the existence of a legitimate buy-bust operation, the identity and integrity of confiscated items, and the presence of conspiracy to sell *shabu*.²⁸

The main issue to be resolved is whether or not the conviction of the accused-appellants should be upheld.

The Court's Ruling

The Court acquits the accused-appellants Arizo and Nicolas for failure of the police officers to strictly comply with Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR), particularly the following paragraphs.

R.A. 9165

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:

- over -

269-B

²⁶ Id. at 21, 26.

²⁷ CA *rollo* at 37-38.

²⁸ Id. at 91-92.

(1) The apprehending 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;

IRR

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:

x x x x

(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 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;

x x x x

The IRR states that the inventory and photograph taking shall be conducted at the place of arrest/confiscation, or at the nearest police station or nearest office of the apprehending officer/team. Here, the marking and inventory of the confiscated items were done in the police station and not in the resort, and there was no mention that photographs were taken during such time.

- over -

269-B

Further, the inventory was witnessed by only 2 individuals, DOJ Representative Jaime Navarro and *Kagawad* Willy Avila, and not by 3 individuals as required under RA 9165 and its IRR.

In *People v. Mamuyac, Jr.*,²⁹ the Court elucidated that non-compliance with the procedure under Section 21 of RA 9165 casts doubt on the links in the chain of custody and the integrity of the confiscated items.

The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody — from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense. (Citation omitted)

In *People v. Lim*,³⁰ the Court explained that the inventory and photograph taking in a place other than where the arrest/confiscation took place may only be allowed when there is threat to the safety and security of the apprehending officers and witnesses.

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. (Citation omitted)

Here, the prosecution did not allege or prove that the safety and security of the police officers are at risk. Considering the small amounts of *shabu* confiscated from the accused-appellants, it is imperative that these pieces of evidence must be immediately labelled, secured, and separated from the other evidence. The Court cannot excuse the marking and inventory at the police station in the absence of justification to deviate from the provision of RA 9165.

- over -

269-B

²⁹ G.R. No. 234035, August 19, 2019.

³⁰ G.R. No. 231989, September 4, 2018.

In addition, there was no explanation why the marking and inventory was not attended by 3 witnesses. In short, the police officers failed to explain why they did not strictly comply with RA 9165 and its IRR.

In *People v. Sipin*,³¹ the Court discussed the prosecution's duty to explain why the apprehending officers/team failed to strictly comply with Section 21 of RA 9165, and enumerated grounds to excuse the non-attendance of the required number of witnesses.

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence. (Citations omitted)

X X X X

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**. (Emphasis in the original and citation omitted)

- over -

269-B

³¹ G.R. No. 224290, June 11, 2018.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officers/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law. (Underlining supplied and citations omitted)

In *People v. Ramos*,³² the Court explained the concept of *earnest efforts* of the apprehending authorities in securing the attendance of the required number of witnesses.

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphases and underlining in the original and citations omitted)

Here, neither the CA nor the RTC decisions stated that the prosecution, through the apprehending officers, sufficiently justified the non-attendance of the required number of witnesses. The

- over -

269-B

³² G.R. No. 233744, February 28, 2018.

appellee's brief also did not mention about the lack of required witnesses. This gives the Court an impression that there was really no earnest effort on the part of the apprehending officers/team to require the presence of the required number of witnesses. Thus, following the *Lim* case, *Sipin* case, and *Ramos* case, an acquittal of the accused-appellants is in order.

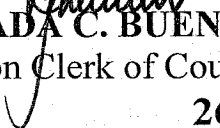
WHEREFORE, the appeal is **GRANTED**. The June 29, 2018 Court of Appeals Decision in CA-G.R. CR-HC No. 09618, which affirmed the June 13, 2016 Regional Trial Court Decision of Olongapo City, Branch 74 in Criminal Case Nos. 982-12 to 985-12, is **REVERSED**.

Accordingly, accused-appellants John Vincent Arizo y Sahi and Maricel Nicolas y Castroverde are **ACQUITTED** and **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for other cause.

Let a copy of this Resolution be furnished the Bureau of Corrections for immediate implementation. The Director/Superintendent is ordered to report to this Court within five (5) days from receipt of this Resolution of the action he/she has taken.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{of 2018}
269-B

The Solicitor General
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09618)

The Hon. Presiding Judge
Regional Trial Court, Branch 74
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(Crim. Case Nos. 982-12 to 985-12)

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269-B

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