



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 6, 2019**, which reads as follows:

“G.R. No. 235008 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. DELFIN CEREZO Y PEDRO, *defendant-appellant*). — The chain of custody rule enshrined in Section 21 of Republic Act No. 9165, requires four (4) persons to be present during the photograph and inventory of the seized illegal drug, namely: (1) the accused or his or her representative or counsel; (2) a representative from the media; (3) a Department of Justice representative; and (4) an elected public official.¹ Noncompliance without justifiable reason puts into question the integrity and evidentiary value of the seized drugs.²

For this Court’s resolution is a Notice of Appeal³ challenging the Court of Appeals Decision in CA-G.R. CR-HC No. 08584⁴ which affirmed the Regional Trial Court’s Decision,⁵ finding Delfin Cerezo y Pedro (Cerezo) guilty beyond reasonable doubt of illegal sale of dangerous drugs.

An Information was filed against Cerezo charging him with violation of Section 5, Article II of Republic Act No. 9165, thus:

That on or about the 30th day of November 2009 in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, accuses (sic) DELFIN CEREZO y PEDRO, did [then and] there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride (Shabu) contained in two (2) heat-sealed plastic sachet, weighing more or less 0.13 gram, without authority to do so.

¹ Republic Act. No. 9165 (2002).

² *People v. Padua*, 639 Phil. 235, 248 (2010) [Per J. Leonardo-De Castro, First Division].

³ *Rollo*, pp. 12–14.

⁴ *Id.* at 2–11. The Decision dated July 19, 2017 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan of the Twelfth Division, Court of Appeals, Manila.

⁵ *CA rollo*, pp. 38–47. The Decision was penned by Judge Mervin Jovito S. Samadan of Branch 40, Regional Trial Court, Dagupan City.

WHEREFORE, premises considered, the accused **DELFIN CERZO y PEDRO**, is hereby found **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 charged in Criminal Case No. 2009-0683-D. Accordingly, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of five hundred thousand pesos (P500,000.00).

The seized shabu is hereby confiscated in favor of the State for its destruction in accordance with the law.

SO ORDERED.²³

In ruling this, the Regional Trial Court decreed that the prosecution established all the elements of the crime charged. It further ruled that while the buy-bust team failed to strictly comply with the chain of custody rule, the integrity and evidentiary value of the seized items had not been compromised.²⁴ In addition, it decreed that absent any proof of ill motive on the part of the arresting officers, they shall be presumed to have regularly performed their official duty.²⁵

Aggrieved, Cerezo then appealed to the Court of Appeals.²⁶

In his Brief,²⁷ Cerezo argued that there were irregularities in the buy-bust operation. He maintained that no prior investigations were conducted by the police officers to determine the veracity of the confidential informant's report.²⁸ Similarly, he contended that the chain of custody was not strictly followed, noting that: (1) the marking of the seized items was not stated in the Joint Affidavit of Arrest and Seizure;²⁹ (2) the inventory was not conducted at the place of arrest, and absence of an explanation as to who handled the seized items during transportation; (3) no representative from the Department of Justice was present;³⁰ (4) the police officers failed to take photographs during the inventory; and (5) there were apparent erasures in the booking sheet.³¹

On the other hand, the Office of the Solicitor General maintained that there was an unbroken chain of custody of the seized drugs.³² It claimed that the arresting officers' failure to strictly comply with the chain of custody rule will not render inadmissible the seized items, and insisted that the primordial

²³ Id. at 47.

²⁴ Id. at 44-45.

²⁵ Id. at 46.

²⁶ Id. at 12-13.

²⁷ Id. at 21-37.

²⁸ Id. at 28.

²⁹ Id. at 29.

³⁰ Id. at 30.

³¹ Id. at 31.

³² Id. at 67.

consideration is the preservation of the integrity and evidentiary value of the items.³³

Finally, the Office of the Solicitor General insisted that absent any evidence that the police officers were inspired by improper motive, it shall be presumed that they have performed their duties in a regular manner.³⁴

In its July 19, 2017 Decision, the Court of Appeals affirmed Cerezo's conviction.³⁵ It ruled that the arresting officers' non-compliance with Section 21 had no effect on the seized items' evidentiary weight since it was established that the arresting officers had preserved their identity and integrity.³⁶

Aggrieved, Cerezo filed a Notice of Appeal before the Court of Appeals.³⁷

In its December 11, 2017 Resolution,³⁸ this Court noted the records of this case forwarded by the Court of Appeals and required the parties to file their supplemental briefs.

On June 20, 2018, this Court resolved³⁹ to note the separate manifestations filed by the Office of the Solicitor General⁴⁰ and accused-appellant,⁴¹ noting that they will no longer file supplemental briefs.

The issue to be resolved by this Court is whether or not the guilt of accused-appellant Delfin Cerezo y Pedro for the crime of illegal sale of dangerous drugs has been established by the prosecution beyond reasonable doubt.

I

Settled is the rule that the lack of a prior investigation does not render a buy-bust operation irregular.

A buy-bust operation has been characterized as a form of entrapment procedure generally utilized in anti-narcotic operations.⁴² "It is commonly

³³ Id. at 71.

³⁴ Id. at 72-73.

³⁵ *Rollo*, p. 11.

³⁶ Id. at 8.

³⁷ Id. at 12-14.

³⁸ Id. at 17-18.

³⁹ Id. at 34-35.

⁴⁰ Id. at 28-30.

⁴¹ Id. at 23-25.

⁴² *People v. Doria*, 361 Phil. 595, 608 (1999), [Per J. Puno, En Banc].

employed by police officers as an effective way of apprehending law offenders in the act of committing a crime.”⁴³

In conducting a buy-bust operation, police officers are not bound by any rigid method, and are authorized to capture their suspects provided that none of the accused’s rights have been violated in the process.⁴⁴ Indeed, the arresting officers may deem that time is of the essence, rendering the conduct of a prior investigation or surveillance unnecessary.⁴⁵ As held in *Quinicot v. People*:⁴⁶

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.⁴⁷ (Citations omitted)

In this case, the entrapment procedure was conducted with the assistance of the police officers’ confidential informant. It was the latter who introduced the arresting officers to accused-appellant. Therefore, a prior surveillance was not necessary.

II

In actions involving the illegal sale of dangerous drugs, the prosecution must establish the following elements: “(1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.”⁴⁸

The illegal drugs taken from the accused constitutes the *corpus delicti* of the offense. To sustain a conviction, it is essential for the prosecution to prove beyond reasonable doubt that its identity and evidentiary value have been preserved.⁴⁹ As held in *People v. Denoman*.⁵⁰

⁴³ *People v. Boco*, 368 Phil. 341, 366 (1999) [Per J. Panganiban, En Banc].

⁴⁴ *People v. Padua*, 639 Phil. 235, 254 (2010) [Per J. Leonardo-De Castro, First Division].

⁴⁵ *Id.*

⁴⁶ 608 Phil. 259 (2009) [Per J. Chico-Nazario, Third Division].

⁴⁷ *Id.* at 274–275.

⁴⁸ *People v. Nandi*, 639 Phil. 134, 142 (2010) [Per J. Mendoza, Second Division].

⁴⁹ *People v. Siaton*, 789 Phil. 87, 97 (2016) [Per J. Perez, Third Division].

⁵⁰ 612 Phil. 1165 (2009) [Per J. Brion, Second Division].

A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.⁵¹ (Citations omitted)

The chain of custody rule provided under Section 21 of Republic Act No. 9165 performs this function.⁵² It serves as “a mode of authenticating evidence”⁵³ which “ensures that unnecessary doubts concerning the identity of the evidence are removed.”⁵⁴ It provides:

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 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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

⁵¹ Id. at 1175.

⁵² *Fajardo v. People*, 691 Phil. 752, 758 (2012) [Per J. Perez, Second Division].

⁵³ *People v. Cervantes*, 600 Phil. 819, 836 (2009) [Per J. Velasco Jr., Second Division].

⁵⁴ *Fajardo v. People*, 691 Phil. 752, 759 (2012) [Per J. Perez, Second Division].

- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

In connection, the Implementing Rules and Regulation of Republic Act No. 9165 provides:

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:

- (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;
- (b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the

PDEA Forensic Laboratory for a qualitative and quantitative examination[.] (Emphasis supplied)

The chain of custody rule is couched in strict and mandatory terms.⁵⁵ It requires the apprehending officer to make an inventory and take photographs of the seized items immediately after confiscation in the presence of the accused, representatives from the media and Department of Justice, and an elected public official. Failure to comply with this rule results to the prosecution's failure to establish the *corpus delicti* of the case.⁵⁶

Nevertheless, this Court has acknowledged that perfect compliance is not always the case. Due to the unpredictable conditions under which police officers operate, they "cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence."⁵⁷ This Court has allowed non-compliance with the rule, provided that the prosecution has established the following requirements: (1) existence of justifiable grounds; and (2) that the seized items' integrity and evidentiary value have been properly preserved by the apprehending team.⁵⁸

Here, the police officers conducted the inventory of the seized items at the police station without describing the details as to who handled it during the transportation. They merely alleged that PO3 Calimlim had personal custody of the seized items.⁵⁹ However, he failed to describe the precautions he took to ensure that the identity and evidentiary value of the seized drugs have been preserved.

In *People v. Dela Cruz*,⁶⁰ this Court pointed out that a police officer's plain assertion of having personal custody over the seized drug is insufficient to guarantee that its integrity has been preserved:

The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.

⁵⁵ *People v. Cañete*, G.R. No. 242018, July 3, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65358>> [Per J. Caguioa, Second Division].

⁵⁶ *People v. Dela Cruz*, 744 Phil. 816, 827 (2014) [Per J. Leonen, Second Division].

⁵⁷ *People v. Pagaduan*, 641 Phil. 432, 446 (2010) [Per J. Brion, Third Division].

⁵⁸ *Id.*

⁵⁹ CA rollo, p. 69.

⁶⁰ *People v. Dela Cruz*, 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.⁶¹

Worse, no photographs of the seized items were taken by the arresting officers. Likewise, the inventory was witnessed only by the accused, a representative from the media, and Barangay Captain Alfredo Quinto, Jr. The apprehending officers failed to secure the presence of a Department of Justice representative without offering any justifiable reason. They allegedly relied on the order of a certain Major Lopez saying that they need not secure the presence of a Department of Justice representative.⁶²

In *People v. Que*,⁶³ this Court stressed that the presence of the required witnesses during the inventory serves as an “insulating” guarantee that shields against the “evils of switching” or “planting” of evidence.⁶⁴ For this reason, the failure of the police officers to secure the presence of a Department of Justice representative without offering any justifiable reason raises doubt as to whether the items seized from Cerezo are the same items subjected to examination and eventually presented in court.

On a final note, it must be remembered that the presumption of regularity in the performance of duty is insufficient to overcome the constitutional presumption of innocence enjoyed by an accused. The burden is on the prosecution to establish by proof beyond reasonable doubt the truth as to the criminal imputations made against an accused,⁶⁵ thus:

The oft-cited presumption of regularity in the performance of official functions cannot by itself affect the constitutional presumption of innocence enjoyed by an accused, particularly when the prosecution's evidence is weak.

⁶¹ Id. at 834–835.

⁶² CA rollo, p. 20.

⁶³ *People v. Que*, G.R. No. 212994, January 31, 2018 853 SCRA 487 [Per J. Leonen, Third Division].

⁶⁴ Id. at 520–523.

⁶⁵ *People v. Mirantes*, 284-A Phil. 630, 642 (1992) [Per J. Regalado, Second Division].

The evidence of the prosecution must be strong enough to pierce the shield of this presumptive innocence and to establish the guilt of the accused beyond reasonable doubt. And where the evidence of the prosecution is insufficient to overcome this presumption, necessarily, the judgment of conviction of the court *a quo* must be set aside. The *onus probandi* on the prosecution is not discharged by casting doubts upon the innocence of an accused, but by eliminating all reasonable doubts as to his guilt.⁶⁶ (Citations omitted)

WHEREFORE, the July 19, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08584 is **REVERSED** and **SET ASIDE**. Accused-appellant Delfin Cerezo y Pedro is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED." (Gesmundo, J., on leave.)

Very truly yours,

Misael Domingo C. Battung III
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

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⁶⁶ Id.

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