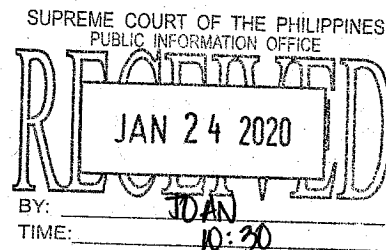




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 8, 2020** which reads as follows:

“G.R. No. 229719 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus WILMA AURO y RIZARE, accused-appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision¹ dated January 19, 2016 (assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06042, which affirmed the Decision² dated February 18, 2012 rendered by the Regional Trial Court of Batangas City, Branch 2 (RTC) in Criminal Case No. 16842, entitled *People of the Philippines v. Wilma Auro y Rizare*, finding accused-appellant Wilma Auro y Rizare (Auro) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002.”

The Court acquits Auro for failure of the prosecution to prove her guilt beyond reasonable doubt.

In the conduct of buy-bust operations, Section 21 of RA 9165 provides that: (1) the seized items must be marked, inventoried and photographed immediately after seizure or confiscation; and (2) **the marking, physical inventory, and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

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¹ Rollo, pp. 2-12. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez, concurring.

² CA rollo, pp. 36-47. Penned by Presiding Judge Maria Cecilia I. Austria-Chua.

In the instant case, it is not denied that the marking of the seized items were conducted *without* the presence of a representative of the media, a representative of the DOJ, and an elected public official. As explained by the CA in the assailed Decision, the evidence on record shows that the authorities, through PO2 Jonas Guarda, marked the alleged seized drug specimen in the presence of Auro without any witnesses.³

In *People v. Sarabia*,⁴ the Court explained that the authorities have the duty of securing the presence of the required witnesses during the marking of the allegedly seized drug specimen, considering that the marking of the evidence is an integral part of the physical inventory:

The marking of the evidence is an indispensable aspect of the physical inventory process. Marking the seized drug specimen is crucial as it establishes the link between the specimen seized during the buy-bust operation and the specimen that is examined and later presented as evidence during the trial. In short, the marking of the seized specimen is the definitive process undertaken by the authorities to establish the identity of the drug specimen retrieved from the accused. Therefore, with the marking of the evidence being an integral part of the physical inventory, in accordance with Section 21 of RA 9165, the authorities had the duty of securing the presence of the required witnesses during the marking of the allegedly seized plastic sachets.⁵

To emphasize, “the non-presence of the witnesses during the marking of the subject evidence puts into doubt the identity of the allegedly retrieved drug specimen.”⁶

Moreover, when the rest of the inventory and photographing were eventually conducted at the Barangay Hall, as found by the CA in the assailed Decision, the only witnesses who were present were “Brgy. Kagawad Juanita Berania and Fiscal Evelyn Jovellanos.”⁷ It is not disputed that there was no media representative who witnessed the rest of the inventory and photographing of the alleged seized drug specimen.

The Court has held that the presence of the witnesses from the DOJ, media, and from public elective office is *necessary* to protect

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³ *Rollo*, p. 10.

⁴ G.R. No. 243190, August 28, 2019.

⁵ *Id.*

⁶ *Id.*

⁷ *Rollo*, p. 10.

against the possibility of planting, contamination, or loss of the seized drug.⁸ Using the language of the Court in *People v. Mendoza*,⁹ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted previous buy-bust operations would not be averted, negating the integrity and credibility of the seizure and confiscation of the subject drug specimen that were evidence of the *corpus delicti*, and thus adversely affecting the trustworthiness of the incrimination of the accused.¹⁰

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures is permissible. Section 21 of the Implementing Rules and Regulations of RA 9165 provides 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.”

For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.¹¹

Applying the foregoing in the instant case, it must be stressed that the prosecution failed to recognize the authorities’ failure to secure the presence of the mandatory witnesses during the marking of the alleged seized specimen. Moreover, the prosecution failed to make any justification for such failure.

In addition, the prosecution’s explanation that no media representative was present during the rest of the inventory process because none could be contacted at that time is specious. From the time the authorities received the tipped information to the time of the conduct of the buy-bust operation, the authorities had sufficient time to secure a representative from the media. The assertion that no media representative was available is a self-serving excuse that fails to convince.

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⁸ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 149; italics and underscoring supplied.

⁹ 736 Phil. 749 (2014).

¹⁰ Id. at 761; italics supplied.

¹¹ *People v. Alagarme*, 754 Phil. 449, 461 (2015).

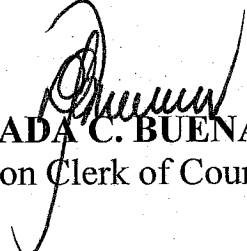
Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would have been compromised.¹²

In light of the foregoing, the Court restores the liberty of Auro.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 19, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06042 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Wilma Auro y Rizare is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately. Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action she has taken.

SO ORDERED.” Lopez, J., on official leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ¹¹²⁷

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¹² *People v. Sumili*, 753 Phil. 342, 352 (2015).



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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 06042)

The Hon. Presiding Judge
Regional Trial Court, Branch 2
4200 Batangas City
(Crim. Case No. 16842)

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