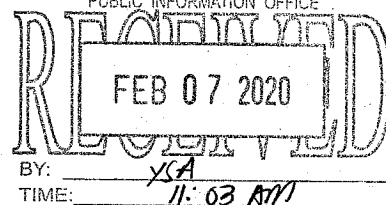




Republic of the Philippines
Supreme Court
Manila

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 **January 8, 2020** which reads as follows:

“G.R. No. 237689 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus EBRAHIM BAURA y SULTAN and ABULKAIR LAUT y GAMBURWAY, accused; EBRAHIM BAURA y SULTAN, accused-appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision¹ dated September 26, 2017 (assailed Decision) of the Court of Appeals, Cagayan de Oro City, Special Twenty-Third Division (CA) in CA-G.R. CR-HC No. 01451-MIN, which affirmed the Judgment² dated November 26, 2014 rendered by the Regional Trial Court of Butuan City, Branch 1 (RTC) in Criminal Case No. 14411, entitled *People of the Philippines v. Ebrahim Baura y Sultan and Abulkair Laut y Gamburway*, finding accused-appellant Ebrahim Baura y Sultan (accused-appellant Baura) and accused Abulkair Laut y Gamburway guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended. The Court acquits accused-appellant Baura for failure of the prosecution to prove his guilt beyond reasonable doubt.

In the conduct of buy-bust operations, Section 21 of R.A. 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**

- over – four (4) pages ...

169

¹ Rollo, pp. 3-25. Penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

² CA rollo, pp. 60-72. Penned by Presiding Judge Eduardo S. Casals.

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.

In the instant case, it is not denied that the marking of the seized specimen was conducted *without* the presence of a representative of the media, a representative of the DOJ, and an elected public official. As admitted by the prosecution's own witness, Intelligence Officer 3 Nefrelyn Sibugon, who acted as poseur-buyer during the buy-bust operation, **the marking of the alleged seized specimen was done at the PDEA Office without the presence of any of the required witnesses and the three witnesses were summoned only after the marking of the alleged seized specimen was completed:**

Q: In that one hour of waiting for [a representative of the media, a representative of the DOJ, and an elected public official], the said drugs were only placed in your pocket?

A: I already put it in the evidence bag and had already marked them together with the certificate of inventory.³

The Court has held that the presence of the witnesses from the DOJ, media, and from public elective office is *necessary* to protect against the possibility of planting, contamination, or loss of the seized drug.⁴ Using the language of the Court in *People v. Mendoza*,⁵ 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 drug, the evils of switching, "planting" or contamination of the evidence that had tainted previous buy-bust operations would not be averted, thereby negating the integrity and credibility of the seizure and confiscation of the subject illegal drug that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.⁶

In *People v. Sarabia*,⁷ the Court explained that the authorities have the duty of securing the presence of the required witnesses during the marking of the allegedly seized illegal drugs, 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

- over -

169

³ *Rollo*, p. 15.

⁴ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 149.

⁵ 736 Phil. 749 (2014).

⁶ *Id.* at 764.

⁷ G.R. No. 243190, August 28, 2019.

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.⁸

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.”⁹

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

For this provision to be effective, however, the prosecution must: (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.¹⁰

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

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.¹¹

In light of the foregoing, the Court restores the liberty of accused-appellant Baura.

- over -

⁸ Id.

⁹ Id.

¹⁰ See *People v. Alagarme*, 754 Phil. 449, 461, (2015).

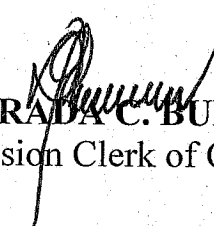
¹¹ See *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 26, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01451-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Ebrahim Baura y Sultan is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

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

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{in/s}
169

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01451-MIN)

The Hon. Presiding Judge
Regional Trial Court, Branch 1
8600 Butuan City
(Crim. Case No. 14411)

PUBLIC ATTORNEY'S OFFICE
Regional Special and Appealed Cases Unit
Counsel for Accused-Appellant
BJS Building, Tiano Bros cor. San Agustin
Streets, 9000 Cagayan de Oro City

Mr. Ebrahim S. Baura
Accused-Appellant
c/o The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

UR