



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 15, 2020 which reads as follows:

“G.R. No. 247715 – PEOPLE OF THE PHILIPPINES vs. JIMBO HERNANDEZ y ACOSTA

The Case

This appeal assails the Decision¹ dated October 3, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07668 entitled “*People of the Philippines v. Hernandez*” affirming appellant’s conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).²

Proceedings before the Trial Court

The Charge

By Information³ dated March 13, 2014, appellant Jimbo Hernandez was indicted for violation of Section 5, Article II of RA 9165, viz.:

That on or about 7:55 o’clock in the evening of March 11, 2014 at Brgy. Alac, Municipality of San Quintin, Province of Pangasinan, Philippines, and within this jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously sell one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride weighing 0.112 gram marked as “RTA”, a dangerous drug, in exchange of one (1) piece of five hundred peso bill (Php500.00) with serial numbers “ES183841” which also marked as “RTA”.

- over – twelve (12) pages ...

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¹ Penned by Associate Justice Jhosep V. Lopez with the concurrence of Associate Justices Ramon M. Bato, Jr., and Samuel M. Gaerlan (now a member of this Court), all members of the Tenth Division, *rollo*, pp. 3-15.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

³ CA *rollo*, p. 50.

CONTRARY to Sec. 5, Art. II of Republic Act 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.⁴

The case was raffled to the Regional Trial Court (RTC) – Branch 52, Tayug, Pangasinan. On arraignment, appellant pleaded not guilty.⁵

The Prosecution's Version

On March 11, 2014, around 6 o'clock in the evening, PCI Aurelio Manantan received a message from a confidential informant that there was an ongoing transaction involving illegal drugs in Brgy. Alac, San Quintin, Pangasinan being allegedly sold by Jimbo Hernandez. A buy-bust team was immediately formed comprising of the confidential informant, PO3 Rodel Asunio, PO3 Roderick Nicolas and PO1 John Fariñas. The team proceeded to the area for validation and surveillance.⁶

Thereafter, the team returned to the police station and coordinated with the Philippine Drug Enforcement Agency – Regional Office No.1 (PDEA – RO1). Earlier, PO1 Manantan also arranged with their confidential informant that the latter buy ₱500 worth of shabu. PO1 Manantan gave a ₱500 bill to the buy-bust team to serve as marked money. PO3 Asunio wrote his initials, "RTA," on the bill. The details of their buy-bust plan were entered in the police blotter.⁷

At 7:55 o'clock in the evening, the buy-bust team went back to Purok 3, Brgy. Alac, San Quintin, Pangasinan. They rode two (2) motorcycles. PO3 Asunio and the confidential informant were together on the same motorcycle, while PO3 Nicolas and PO1 Fariñas, were on the other. From a distance, PO3 Asunio already saw appellant alone standing near a waiting shed.⁸

The confidential informant alighted from the motorcycle and transacted with appellant. At that point, PO3 Asunio was one and a half meters away from appellant. The confidential informant transacted with appellant about the ₱500 worth of shabu. They talked for three (3) to five (5) minutes. PO3 Asunio made the pre-arranged signal (raising his ball cap) and immediately arrested appellant. PO3 Asunio retrieved the marked money from appellant's pocket. PO3

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⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 51.

⁷ *Id.*

⁸ *Id.*

Asunio was not able to mark the plastic sachet recovered from appellant because the latter's relatives were starting to mill around them. The team decided to leave the premises and return to the police station. PO3 Asunio had in his possession the marked money and the plastic sachet while they were in transit.⁹

At the police station, the investigator prepared the Inventory Sheet and Confiscation Receipt. In appellant's presence, PO3 Asunio marked the plastic sachet of shabu with his initials, "RTA". Several photos were taken of PO3 Asunio marking the plastic sachet of shabu. PO1 Mary Joy Evangelista prepared the request for laboratory examination of the specimen. Hours later, in the early morning of March 12, 2014 (00:10 AM), PCI Myrna Malojo-Todeño received the plastic sachet of shabu. The specimen weighing 0.112 gram tested positive for methamphetamine hydrochloride per Chemistry Report No. D-120-2014L.¹⁰

The Defense's Version

Appellant Jimbo Hernandez testified that on March 11, 2014, about 7:50 in the evening, while he was on his way home onboard a motorcycle from the house of his brother-in-law, his *kumpare* Jeffrey Quitariano flagged him down. Jeffrey asked if he could hitch a ride to Brgy. Lagasit. He stopped at a gasoline station to fill up his tank. While his tank was being filled up, PO1 Farinas, in civilian clothes, approached and suddenly frisked him. He warded off PO1 Fariñas' hands. PO3 Nicolas, who was behind him, held his pants. PO3 Nicolas also poked a gun at him. They took his cellphone and ₱300 in cash. They boarded him on a passenger tricycle and brought him to the police station. Jeffrey and his motorcycle were left behind at the gas station.¹¹

At the police station, he was told to sit down while they waited for someone. He kept insisting that he wanted to go home which eventually earned him the ire of the policemen. PO3 Nicolas punched him in the stomach. Then, they switched off the light and closed the door. When the lights were switched on again three (3) minutes later, the marked money and the plastic sachet of shabu were already laid on the table. The police officers told him these items came from him. They took photographs of him and the items.¹²

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⁹ *Id.* at 51-52.

¹⁰ *Id.* at 52.

¹¹ *Id.*

¹² *Id.*

The Trial Court's Ruling

As borne in its Decision¹³ dated July 3, 2015, the trial court rendered a verdict of conviction. It held that the police officers' non-compliance with the procedure set out in Section 21 of RA 9165 was not fatal as to render appellant's arrest illegal. The integrity and evidentiary value of the *corpus delicti* remained intact, hence, sufficient to convict appellant. The elements of illegal sale of dangerous drugs were duly proven by the prosecution. It disregarded appellant's defense of denial. Thus:

WHEREFORE, finding accused Jimbo Hernandez y Acosta, GUILTY beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of P500,000.

The P500 buy-bust money is ordered transmitted to the National Treasury for its proper disposition. The destruction of the sachet of shabu subject of the case is hereby ordered.

SO ORDERED.¹⁴

The Proceedings Before the Court of Appeals

On appeal,¹⁵ appellant faulted the trial court for rendering the verdict of conviction. He argued: a) his warrantless arrest was not valid; b) the chain-of-custody rule was not observed because the police did not immediately conduct an inventory and photographing of seized items at the place of arrest, the police did not comply with the three-witness rule, and they did not cite any compelling reason why they deviated from the strict requirements of the law; and c) the trial court erred in declaring that the police officers were presumed to have regularly performed their official duties.

The Office of the Solicitor General (OSG), through Assistant Solicitor General Raymund Rigodon and Associate Solicitor Ronn Michael Villanueva, riposted: appellant was lawfully arrested *in flagrante delicto*, during a valid buy-bust operation. The positive and categorical testimonies of the prosecution prevailed over appellant's denial. The marking of the plastic sachet at the police station, not at the place of arrest, was sanctioned by law. In cases of warrantless arrests resulting from buy-bust operations, the inventory and photographing can be conducted at the nearest police station, as what

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¹³ Penned by Presiding Judge Emma S. Ines-Parajas, *id.* at 50-56.

¹⁴ *Id.* at 55-56.

¹⁵ *Id.* at 28-47.

was done in this case. Non-compliance with the three-witness rule can be excused here because the police officers exerted efforts to contact these witnesses but the latter could not be reached and were unavailable. Lastly, the trial court correctly applied the principle of presumption of regular performance of duties in favor of the arresting police officers.¹⁶

The Court of Appeals' Ruling

By its assailed Decision dated October 3, 2017, the Court of Appeals affirmed.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG¹⁷ and appellant¹⁸ both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the chain of custody rule?

Ruling

We acquit.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.¹⁹ The chain of evidence is constructed by proper exhibit handling, storage, labelling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.²⁰

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking of the illegal drug recovered from the accused by the

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¹⁶ *Id.* at 72-82.

¹⁷ *Rollo*, p. 29.

¹⁸ *Id.* at 23-25.

¹⁹ *People v. Barte*, 806 Phil. 533, 542 (2017).

²⁰ *People v. Balibay*, 742 Phil. 746, 756 (2014).

apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.²¹

Appellant was charged with violation of Section 5, RA 9165 on March 11, 2014. The governing law is the version of RA 9165 and its implementing rules, prior to their amendment. Section 21 of RA 9165 reads:

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; x x x

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines “chain of custody,” as follows:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

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²¹ *People v. Dahil*, 750 Phil. 212, 231 (2015).

Under Section 21 of RA 9165, the inventory and photography should be done 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 representative from the media and the Department of Justice (DOJ), and any elected public official.*"²²

PO3 Rodel Asunio testified on how the inventory was conducted in this case:

Q: What did you do with the money?

A: I kept it sir.

Q: How about the plastic sachet that Jimbo gave you?

A: I placed also in my pocket, sir.

Q: After that, what did you do next?

A: I was not able to mark the sachets because there were many people coming including his relative that is why I was not able to mark it.

Q: So, where did you do the marking?

A: At the police station, sir.

Q: So what did you do with Jimbo?

A: He was boarded in the tricycle and we brought him to the police station.

Q: How about the items and the buy-bust money, (in whose possession were they?

A: In my possession, sir.

Q: While at the police station, what did you do?

A: I marked the (evidence) sir.

Q: Did you know what your chief of police do?

A: Yes, sir.

Q: What did he do?

A: He called for Kgd. Capillan but they were not able to arrive.

Q: What happened when he tried to call Brgy. Kgd. Capillan?

A: When he was not able to contact Kgd. Capillan the accused was brought to the police station where he witnessed the marking.

Q: What (sic) else did your chief of police invited?

A: He called for a media to witness sir and the court personnel, sir.

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²² *People v. Sanchez*, G.R. No. 239000, November 05, 2018.

COURT:

Q: Who is that court personnel who was (phoned) by your chief of police?

A: I could not tell because he was the one who called, ma'am.

PROS. BINCE:

Q: What was the result when he called up a representative from the court?

A: Nobody came because they were busy sir.

Q: So, you brought the accused as well as the plastic sachet and the buy-bust money to the police station?

A: Yes, sir.

Q: Where the marking was done?

A: Yes, sir.

COURT:

Q: Where was the accused when you were working?

A: At the police station, Ma'am.

Q: How far was he from you?

A: About 2 meters, sir.

PROS. BINCE:

Q: I have several photographs here, four (4) photographs, you are aware of the taking of that pictures?

A: Yes, sir.

Q: Do you know who was then the photographer?

A: PO3 Nicolas, sir.²³ (Emphasis supplied)

PSI Aurelio Manantan explained why he was unable to secure the presence of the three (3) required witnesses, thus:

Q: What did you (do) then?

A: I went to Brgy. Alac and went to the barangay officials but I have not contacted them and others were afraid to testify, sir.

Q: After that, what did you do next?

A: I also call the representative from media Madam Angel but her cellphone (kept) on ringing, sir.²⁴

X X X

Also, PCI Myrna Malojo Todeño, Forensic Chemical Officer of the Pangasinan Provincial Crime Laboratory Office, confirmed that she received the specimen from PO3 Asunio. She did a chemical test

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²³ TSN, May 26, 2014, pp. 12-14.

²⁴ TSN, January 14, 2015, p. 6.

on the specimen and found the same positive for methamphetamine hydrochloride. Her Chemistry Report No. D-120-2014 bore her findings. After the test, she sealed the specimen inside an improvised white envelope, wrapped the envelope with masking tape, and wrote thereon the control number, her initials, and the date. The envelope was turned over to the evidence custodian and later presented in court.²⁵

Here, PO3 Asunio recognized the fact that the inventory was not immediately done at the place of arrest. He explained though that the crowd and appellant's relatives had started to gather around them so the team had to go back to the police station, where they marked the plastic sachet, and did the inventory and photographing.

As for absence of the three (3) required witnesses, PO3 Asunio claimed they did try to get hold of Kagawad Capillan (elective official), a certain Madame Angel (media representative), and a court personnel after the buy-bust operation and appellant's arrest.

Yet, to the mind of the Court, the so-called attempt to secure the presence of the insulating witnesses was a mere afterthought. For the police officers concerned did not even bother to secure a DOJ representative but instead pursued an elusive court personnel, who is not even one of the witnesses required by law. Besides, as held in *People v. Tomawis*,²⁶ the three (3) required witnesses should already be physically present at the time of the apprehension. This requirement should easily be complied with, considering that a buy-bust operation, by its nature, is a planned activity.

In *People v. Romy Lim*²⁷ the accused was acquitted in view of the absence of the three (3) required witnesses and the prosecution's failure to demonstrate that earnest efforts were made to secure their attendance, viz.:

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items. In fact, their signatures do not appear in the Inventory Receipt.

The Court stressed in *People v. Vicente Sipin y De Castro*:

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

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²⁵ TSN, August 13, 2014, pp. 6-7.

²⁶ G.R. No. 228890, April 18, 2018, 862 SCRA 131, 146.

²⁷ G.R. No. 231989, September 04, 2018.

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.

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

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

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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.

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house. IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them. He admitted that there are times when they do not inform the barangay officials prior to their operation as they might leak the confidential information. We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.

The law requires the presence of these witnesses primarily to ensure not only the compliance with the chain-of-custody rule but also remove any suspicion of switching, planting, or contamination of evidence.²⁸ Here, we cannot be sure that, in between the period of time from when appellant was arrested up to the moment the specimen was submitted to forensics laboratory, the integrity of the *corpus delicti* remained intact and uncontaminated.

Verily, a verdict of acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 3, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07668 is **REVERSED** and **SET ASIDE**.

Appellant **JIMBO HERNANDEZ y ACOSTA** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.



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²⁸ *People v. Santos*, G.R. No. 236304, November 05, 2018.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court 
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(CA-G.R. CR HC No. 07668)

The Hon. Presiding Judge
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