

CONTRARY TO LAW.⁷

Criminal Case No. 6096-SPL

That on or about March 20, 2007, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a police poseur-buyer one (1) heat-sealed transparent plastic sachet of METHAMPHETAMINE HYDROCHLORIDE ("shabu"), a dangerous drug, weighing zero point zero three (0.03) gram in exchange for Two Hundred Pesos (P200.00) marked money.

CONTRARY TO LAW.⁸

The evidence for the prosecution tend to establish that on March 20, 2007, Police Inspector Antonio Gutierrez (P/Insp. Gutierrez) of the San Pedro Laguna Municipal Police Station received reports from confidential informants on the drug activities of a certain "Marlon" at No. 19 Flicker St., Pacita 2, San Pedro, Laguna.⁹ "Marlon" was later identified as herein defendant-appellant.¹⁰

Based on the information, a buy-bust operation team was formed by Chief of Police Superintendent Sergio Dimaandal with PO1 Omar Balmas (PO1 Balmas) as the poseur-buyer. After the necessary preparations, the team consisting of four (4) confidential informants and headed by P/Insp. Gutierrez went to the target area. Upon arrival, PO1 Balmas was introduced by the confidential informant to the defendant-appellant as a buyer of shabu. The defendant-appellant then asked how much shabu he wanted to buy, to which PO1 Balmas replied Two Hundred Pesos (Php200.00). After PO1 Balmas handed the marked money, the defendant-appellant took out from his pocket a canister containing a plastic sachet. After receiving the sachet, PO1 Balmas performed the pre-arranged signal by making a call to P/Insp. Gutierrez. This prompted the buy-bust operation team to rush to the scene. Surprised, the defendant-appellant ran towards his house where he was pursued and arrested by the members of the buy-bust operation team.¹¹

Immediately after arrest, PO1 Balmas frisked the defendant-appellant, in the course of which, PO1 Balmas retrieved another plastic sachet which he placed inside his left pocket; in his right pocket he placed the other sachet from the buy-bust operation.¹²

⁷ Id. at 14.

⁸ Id. at 15.

⁹ Id. at 37, *rollo*, p. 4.

¹⁰ CA *rollo*, pp. 36-37.

¹¹ Id. at 37, *rollo*, pp. 4-6.

¹² *Rollo*, p. 6.

The defendant-appellant was then brought to the police station where the defendant-appellant was identified and the seized items were marked. The seized items were likewise photographed and listed in an inventory in the presence of the defendant-appellant and media representative Nick Luares. Thereafter, PO1 Balmas turned over the plastic sachets to the crime laboratory.¹³ The examination revealed that the sachets contain methamphetamine hydrochloride, or *shabu*.¹⁴

The defendant-appellant, for his part, denied the allegations against him. He narrated that on March 20, 2007, he was celebrating his birthday at the garage of the house whom he shared with one Marlon Israel, when suddenly, several armed men, looking for a certain "Marlon" barged in.¹⁵ They were then ordered to lie down on the floor as the armed men entered the house. Defendant-appellant denied that drugs were confiscated in his possession and that he was caught selling drugs to a police officer. Instead, defendant-appellant claimed that without cause, he along with two (2) other guests was suddenly brought to the police station where they were shown several drug paraphernalia allegedly confiscated from them.¹⁶

On January 27, 2010, the RTC of San Pedro, Laguna, Branch 31, rendered its Judgment,¹⁷ finding the defendant-appellant guilty beyond reasonable doubt of the Illegal Possession and Illegal Sale of Dangerous Drugs. The dispositive portion of the Judgment reads:

WHEREFORE, foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 6095-SPL, accused Menard Mercado y Barrinuevo is hereby found GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php 500,000.00;
2. In Criminal Case No. 6096, accused Menard Mercado y Barrinuevo is hereby found GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer the penalty of imprisonment of 12 years and one day as minimum to 14 years and eight months as maximum and to pay a fine of Php300,000.00.

Let the illegal drugs subject of these cases be transmitted to the Philippine Drug Enforcement Agency for their proper disposition.

¹³ Id. at 6-7.

¹⁴ Id.

¹⁵ Id. at 7-8.

¹⁶ Id. at 8.

¹⁷ CA *rollo*, pp. 35-40.

SO ORDERED.¹⁸

The defendant-appellant appealed to the CA, which rendered the herein assailed Decision,¹⁹ viz.:

WHEREFORE, the instant appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court, Branch 31 of San Pedro, Laguna, dated 27 January 2010 is hereby **AFFIRMED IN TOTO**.

SO ORDERED.²⁰

In affirming the conviction, the CA held that non-compliance with Section 21(1) of R.A. No. 9165 and its corresponding provision under the Implementing Rules and Regulations does not render the items seized inadmissible considering that the integrity and evidentiary value of the same were preserved. Further, the CA explained that the procedural lapses are not fatal to the action as there was substantial compliance with the law in that the chain of custody has been established by the testimonies of the witnesses.²¹

Thus, this Appeal.

Adopting the Brief that he filed before the CA, the defendant-appellant contends in the main that he should be acquitted on account of the failure by the members of the buy-bust operation and arresting officers to comply with the requirements of Section 21(1) of R.A. No. 9165.

The appeal is **meritorious**.

In order to sustain conviction for possession and sale of illegal drugs, it is vital that the element of *corpus delicti* must be proven beyond reasonable doubt. This means that the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia as set forth under Section 21 of R.A. No. 9165, must be complied with, viz.:

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

¹⁸ Id. at 40.

¹⁹ Id. at 112-128.

²⁰ *Rollo*, p. 18.

²¹ Id. at 10-11.

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;** (Emphasis supplied)

The Implementing Rules and Regulations of R.A. No. 9165 provides for the proper procedure be followed under the foregoing provision, viz.:

a. The apprehending office/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 noncompliance 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.**

Jurisprudence instructs that compliance with the foregoing chain of custody requirements goes into the identity and integrity of the *corpus delicti*.²² The chain of custody requirements serve as a method of authentication; they ensure that unnecessary doubts involving the identity of the seized drugs are removed.²³

In the case at bar, the defendant-appellant was arrested *in flagrante delicto* during a buy-bust operation.²⁴ Drugs in the quantities of 0.03 gram and 0.06 gram were seized at the point of the simulated sale and subsequent frisking, respectively. The defendant-appellant and the seized items were brought to the nearest police station. There, the items were marked, inventoried, and photographed in the presence of the defendant-appellant and media

²² *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 citing *People v. Morales*, 630 Phil. 215 (2010) and *People v. Belocura*, 693 Phil. 476 (2012).

²³ *People v. Jaafar*, 803 Phil. 582, 591 (2017).

²⁴ CA rollo, p. 38.

representative, Nick Luares.²⁵

Clearly, the apprehending officers committed procedural lapses that justify the defendant-appellant's acquittal. In particular, there was no third person present at the time of confiscation and seizure of drugs.²⁶ Likewise, during the inventory of the seized items, only a media representative was present. No justification was offered by the apprehending officers for such deviation.²⁷

In the case of *People v. Que*,²⁸ the Court emphasized and reiterated that "[t]he presence of third persons is imperative, not only during the physical inventory and taking of photographs, but also during the actual seizure and confiscation of items"²⁹ to ensure the possibility of "switching, planting, or contamination."³⁰ In the case at bar, not only was the seizure unwitnessed, as well, the marking, taking of photographs, and inventory were made in the presence only of a media representative. There was no mention that any representative from the Department of Justice or an elected public official had been present, or if they have been informed and invited to witness the inventory, they were unable to do so.³¹

The importance of observing the chain of custody requirements is amplified by the minuscule amounts of *shabu* obtained from the defendant-appellant. This renders the circumstances more susceptible of substitution, planting, or contamination, the very evils R.A. No. 9165 seeks to prevent. Thus, while the minuscule amount in this case is not *per se* a badge of innocence on the part of the defendant-appellant, the same nonetheless impresses upon the Court to exert extreme caution in determining his guilt. Such that, it must be rigorous in ensuring that Section 21 of R.A. No. 9165 is the strictly complied with.³²

Verily, it would not be amiss to underscore that this case does not merely involve lapses on the part of the apprehending officers and failure by the prosecution to provide justifiable grounds therefor. Noteworthy, the prosecution also failed to present in evidence the buy-bust money nor explained its absence. Admittedly, the failure to present the marked money in evidence is not required as its absence does not necessarily disprove that a sale occurred.³³ However, when taken in conjunction with other procedural lapses, this casts reasonable doubt that the defendant-appellant committed the offense charged.

In closing, while the Court recognizes that the defendant-appellant has

²⁵ *Rollo*, pp. 5-6.

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ *Supra* note 22.

²⁹ *Id.* at 520-521.

³⁰ *Id.* citing *People v. Mendoza*, 736 Phil. 749, 761 (2014).

³¹ *Id.* at 672.

³² *Id.* citing *Lescano v. People*, 778 Phil. 460, 472 (2016).

³³ *People v. Macud*, G.R. No. 219175, December 14, 2017, 849 SCRA 294, 307-308.

only offered the defense of “denial and frame-up,” still, it is fundamental principle in every criminal prosecution that the burden rests upon the prosecution to establish the guilt of the accused beyond reasonable doubt. In doing so, “[t]he prosecution’s case must rise on its own merits, not merely on relative strength as against of the defense.”³⁴ Should the prosecution fail to discharge this burden, as in the case at bar, acquittal must follow.

WHEREFORE, in view of the foregoing, the appeal is **GRANTED**. The Decision dated December 5, 2011 and Resolution dated February 24, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04469, which in turn affirmed the January 27, 2010 Judgment of Branch 31, Regional Trial Court of San Pedro, Laguna in Criminal Case Nos. 6095-SPL and 6096-SPL, are hereby **REVERSED** and **SET ASIDE**.

Defendant-appellant Menard Mercado y Barrinuevo is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of defendant-appellant Mercado, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Resolution must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.


SO ORDERED.”

(Perlas-Bernabe, J., designated additional Member per Raffle dated June 8, 2020 vice Zalameda, J., who recused due to prior participation in the assailed CA Decision and Resolution)

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

9-9-2020

³⁴ *Daayata v. People*, 807 Phil. 102, 104 (2017).

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The Director
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1770 Muntinlupa City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 31, San Pedro
4023 Laguna
(Crim. Case Nos. 6095-SPL & 6096-SPL)

Mr. Menard Mercado y Barrinuevo
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,
Plaintiff-appellee,

G.R. No. 203033

-versus-

MENARD MERCADO y
BARRINUEVO,

Defendant-appellant.

x-----/

ORDER OF RELEASE

TO: The Director
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **The Superintendent**
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on **June 17, 2020** promulgated a **Resolution** in the above-entitled case, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the appeal is **GRANTED**. The Decision dated December 5, 2011 and Resolution dated February 24, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04469, which in turn affirmed the January

-over-

27, 2010 Judgment of Branch 31, Regional Trial Court of San Pedro, Laguna in Criminal Case Nos. 6095-SPL and 6096-SPL, are hereby **REVERSED** and **SET ASIDE**.

Defendant-appellant Menard Mercado y Barrinuevo is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of defendant-appellant Mercado, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Resolution must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.”

NOW, THEREFORE, You are hereby ordered to immediately release **MENARD MERCADO y BARRINUEVO**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **17th** day of **June 2020**.

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court July 9, 2020

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