



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **08 June 2020** which reads as follows:*

“G.R. No. 233541 (*People of the Philippines v. Reynand Cutamora y Bastis*). – This is an appeal¹ from the Court of Appeals’ (CA) Decision² dated February 28, 2017 in CA-G.R. CR-HC No. 08066, which affirmed the Judgment³ dated January 29, 2016 of Branch 79, Regional Trial Court (RTC), Quezon City, finding Reynand Cutamora y Bastis (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged in an Information⁴ for the Illegal Sale of Dangerous Drugs, as follows:

That on or about the 13th day of February 2014, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell, dispense, deliver, transport, distribute or act as broker in the said transaction one (1) heat sealed transparent plastic sachet containing zero point thirty nine (0.39) grams of Methamphetamine Hydrochloride, a dangerous drug.

Contrary to law.⁵

On February 28, 2014, the accused-appellant entered a plea of not guilty to the offense charged.⁶ After the termination of the pre-trial, trial on the merits ensued.

¹ *Rollo*, pp. 15-16.

² *Id.* at 2-14; penned by Associate Justice Rodil V. Zalameda (now a member of the Court) with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring.

³ *Id.* at 43-52; penned by Presiding Judge Nadine Jessica Corazon J. Fama.

⁴ Records, p. 1

⁵ *Id.*

⁶ *Id.* at 64-65.

Version of the Prosecution

The Office of the Solicitor General (OSG) presents the prosecution's version of facts, as follows:

On 12 February 2014, at around 10:00 o'clock in the evening, District Anti-Illegal Drugs (DAID) Division of the Camp *Karingal*, Quezon City Police District received a report from a confidential informant (CI) regarding the illegal drug activities of a certain "Enan," later identified as the accused-appellant Raymond Cutamora. The report was received by DAID Chief Police Senior Inspector Robert Razon (C/PSI Razon) and his team.

Acting on the information received, C/PSI Razon instructed the team to conduct a buy-bust operation. SPO1 Eugene Lim (SPO1 Lim) was designated as the *poseur-buyer*. SPO1 Lim received a 1000 peso bill from C/PSI Razon, which was pre-marked as the buy-bust money. SPO1 Lim placed his initials "EL" on the face of the bill.

During the briefing, it was also agreed upon that the pre-arranged signal was lighting a cigarette upon consummation of the transaction. In connection with the intended buy-bust operation, a Coordination form addressed to the Philippine Drug enforcement Agency (PDEA) and Pre-Operational report were prepared by police investigator PO1 Erwin Bautista.

It was agreed upon by the CI and the accused-appellant that the drug deal transaction will take place on the following day, 13 February 2014, in Sto. Niño, Talanay, Batasan Hills, Quezon City.

At around 3:00 or 4:00 in the afternoon of 13 February 2014, SPO1 Lim and his team, consisting of PO3 Jacinto Caranguian, PO3 Neil John Dumlao, PO2 Eladio Pamittan, and PO1 Peggy Lynne Vargas, were dispatched to conduct the buy-bust operations. Upon arriving in the area, the CI contacted the accused-appellant through a text message. The accused-appellant replied and instructed them to proceed at his house at 168 Sto. Niño, Talanay, Batasan Hills, Quezon City. Meanwhile, the other members of the buy-bust team were stationed within viewing distance from the agreed transaction place.

The CI and SPO1 Lim proceeded to the house of alias Enan. When they arrived, the accused-appellant, who was in front of his house, was introduced by the CI to SPO1 Lim. The CI introduced SPO1 Lim as his friend who will buy the drugs worth Php 1,000. Accused-appellant asked for the payment. Upon handing him the Php 1,000 buy-bust money, accused-appellant gave SPO1 Lim the item,

which is a white crystalline substance placed inside a plastic sachet.

After checking the item SPO1 Lim lit a cigarette to signal the consummation of the transaction.

After the pre-arranged signal was executed, the rest of the team rushed to the place of the operation. Accused-appellant tried to escape but SPO1 Lim grabbed him and recovered from him the 1,000 peso bill buy-bust money. Thereafter, SPO1 Lim handcuffed the accused-appellant and appraised him of his constitutional rights and the nature of his offense. SPO1 Lim marked the confiscated plastic sachet with "EL-RC 01-13-14" at the place of operation. PO1 Bautista listed all the evidence recovered while they are still at the area of arrest.

As the police were doing their job, the relatives of the accused-appellant were shouting unsavory words directed against the operatives. Because there was no barangay official who will witness the inventory at the place of operation and as to avoid commotion, the operatives decided to bring accused-appellant and the confiscated articles to the police station.

Upon reaching the police station, SPO1 Lim turned over the seized items to PO1 Bautista. The seized items were inventoried and photographed. The inventory was signed by SPO1 Lim and the representative of the media who witnessed the conduct of the inventory.

Thereafter, PO1 Bautista prepared the Request for Crime Laboratory Examination, Chain of Custody Form, and Request for Drug Test. The confiscated sachet containing the white crystalline substance was submitted by PO1 Bautista and SPO1 Lim to the QCPD Crime Laboratory for laboratory examination.

The plastic sachet was turned over to forensic chemist PCI Maridel R. Martinez (PCI Martinez) and the specimen was found positive for methamphetamine hydrochloride, commonly known as *shabu*. This finding was reflected in the Chemistry Report No. D-88-14 issued by PCI Martinez. A Drug Test for the examination of the urine of the accused-appellant was also requested and, as indicated in the initial report, yielded positive results.

After the accused-appellant and the specimen were brought to the crime laboratory, SPO1 Lim went back to the police station and executed his Affidavit of Arrest. Thereafter, accused-appellant was brought to the Hall of Justice for inquest proceeding.⁷

⁷ CA rollo, pp. 76-78.

Version of the Defense

The accused-appellant interposed the defense of denial. He testified that on February 13, 2014, at around 9:30 p.m., he was walking along Luzon Avenue towards his house. When he was passing by Jollibee Puregold, six police officers arrested him and made him board a vehicle and brought him to Camp *Karingal*. Later on, he was surprised to find out that he was being charged with selling dangerous drugs. During cross-examination, accused-appellant testified that one of the arresting officers, SPO1 Eugene Lim (SPO1 Lim), demanded money from him in the amount of ₱1,500,000.00.⁸

The Ruling of the RTC

The RTC found the accused-appellant guilty beyond reasonable doubt of Illegal Sale of 0.39 grams of *shabu*, sentenced him to suffer life imprisonment, and ordered him to pay a fine of ₱500,000.00. The dispositive portion of the Judgment⁹ reads:

WHEREFORE, judgment is hereby rendered finding accused REYNAND CUTAMORA y BASTIS GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165. Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos.

The Acting Branch Clerk of Court is ordered to prepare the Mittimus for the immediate transfer of the accused to the Bureau of Corrections, New Bilibid Prison, Muntinlupa City.

The Acting Branch Clerk of this Court is also directed to immediately turn over to the Chief of PDEA Crime Laboratory, the drug evidence in this case, consisting of one (1) heat-sealed transparent plastic sachet containing white crystalline substance with markings "EL-RC 02-13-14", covered by Chemistry Report No. D-88-14, to be disposed of in strict conformity with the provisions of R.A. 9165 and its implementing rules and regulations on the matter.

SO ORDERED.¹⁰

The RTC ruled that the prosecution had proven all the elements of sale of dangerous drugs through the positive testimony of SPO1 Lim. It

⁸ *Id.* at 29-30.

⁹ *Id.* at 43-52.

¹⁰ *Id.* at 52.

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further held that there was no hiatus in the custody of the subject prohibited drugs.¹¹

Aggrieved, accused-appellant brought the case to the CA.

In his Brief,¹² the accused-appellant argued that the chain of custody was broken from the beginning when the inventory was conducted only at the police station and no representative from the DOJ or an elected official were present to witness the inventory. The accused-appellant likewise faulted the police officers for failing to comply with the requirements under Section 21, Article II of RA 9165 and to provide an explanation for the non-compliance thereto.¹³

On the other hand, the OSG asserted that non-compliance with the procedure laid out in law and its IRR will not result in the non-admissibility of the confiscated drugs.¹⁴ The OSG maintained that accused-appellant's bare denial and alibi cannot overcome the positive identification of the credible witness presented during trial by the prosecution.¹⁵

The Ruling of the CA

On February 28, 2017, the CA denied the appeal. The CA held that the prosecution had sufficiently shown the law enforcers' unbroken chain of custody over the subject specimen.¹⁶ It found no hiatus or confusion in the confiscation, handling, custody and examination of the confiscated drugs.¹⁷ The CA disposed of the case as follows:

WHEREFORE, premises considered, the instant Appeal is DENIED and the Decision dated 29 January 2016 rendered by Branch 79, Regional Trial Court of the Quezon City, is hereby AFFIRMED with MODIFICATION, to read as follows:

x x x x.

WHEREFORE, judgment is hereby rendered finding accused REYNAND CUTAMORA Y BASTIS GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165.

¹¹ *Id.* at 51.

¹² *Id.* at 23-41.

¹³ *Id.* at 37.

¹⁴ *Id.* at 88.

¹⁵ *Id.* at 89.

¹⁶ *Rollo*, p. 9.

¹⁷ *Id.* at 10.

Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos without eligibility for parole.

The Acting Branch Clerk of this Court is ordered to prepare the Mitimus for the immediate transfer of the accused to the Bureau of Corrections, New Bilibid Prison, Muntinlupa City.

The Acting Branch Clerk of this Court is also directed to immediately turn over to the Chief of PDEA Crime Laboratory, the drug evidence in this case, consisting of one (1) heat-sealed transparent plastic sachet containing white crystalline substance with markings "EL-RC 02-13-14", covered by Chemistry Report No. D-88-14, to be disposed of in strict conformity with the provisions of R.A. 9165 and its implementing rules and regulations on the matter.

x x x x .

SO ORDERED.¹⁸

Hence, this appeal.

Our Ruling

The Court grants the appeal.

The main issue in this case hinges on the determination of whether the elements of illegal sale of dangerous drugs were all satisfied, and whether the integrity and evidentiary value of the sachet containing *shabu* were duly preserved by complying with the requirements provided under Section 21, Article II of RA 9165.

The following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.¹⁹ The delivery of the illicit drugs to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction.²⁰ What is material, therefore, is the proof that the transaction transpired coupled with the presentation in court of the *corpus delicti*, as evidence.²¹ There must be an unbroken chain to establish the *corpus delicti*.

¹⁸ *Id.* at 13.

¹⁹ *People v. Yagao*, G.R. No. 216725, February 18, 2019.

²⁰ *People v. Sipin*, G.R. No. 224290, June 11, 2018, 866 SCRA 73, 84.

²¹ *Id.*

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the 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 from the forensic chemist to the court.²² The purpose of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.²³ To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.²⁴

In *Mallillin v. People*,²⁵ the Court explained the importance of the chain of custody, *viz.*:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

²² *People v. Belmonte*, G.R. No. 224588, July 4, 2018, 871 SCRA 17.

²³ *People v. Alboka*, G.R. No. 212195, February 21, 2018, 856 SCRA 252, 270 citing *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122. See also *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484.

²⁴ *People v. Belmonte*, *supra* note 22.

²⁵ 576 Phil. 576, 587 (2008).

In order to avoid planting, tampering, substitution and contamination of the confiscated substance, Section 21 (a), Article II of RA 9165 provides for the manner by which law enforcement officers should handle the seized items in dangerous drugs cases. This law was amended by RA 10640 and took effect on August 7, 2014.²⁶

The law requires that the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure. Moreover, the law directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the Department of Justice (DOJ), *and* any elected public official;²⁷ or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.²⁸ Evidently, before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.²⁹

In *People v. Tomawis*,³⁰ the Court explained the rationale of the law in requiring the presence of these witnesses, thus:

The presence of the witnesses from the DOJ, media and from public elective office is necessary against the possibility of planting, contamination, or loss of the seized drugs. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any

²⁶ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending For the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002," approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2015 in the respective issues of the "Philippine Star" (Vol. XXVII, No. 359, Philippine Star Metro section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23; World News section, p.6); hence, RA 10640 became effective on August 7, 2014.

²⁷ Section 21 (1) and (2), Article II of RA 9165.

²⁸ Section 21, Article II of RA 9165, as amended by RA 10640.

²⁹ *People v. Alconde*, G.R. 238117, February, 04, 2019.

³⁰ G.R. No. 228890, April 18, 2018, 862 SCRA 131.

elected public official during seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-bust conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during inventory but more importantly *at the time of the warrantless arrest*. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so – and “calling in them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³¹ (Emphasis supplied; citations omitted.)

After a review of the records of the case, the Court finds that the prosecution utterly failed to prove the *corpus delicti* of the crime charged as it failed to demonstrate that the police officers observed the chain of custody rule.

The crime charged was purportedly committed on February 13, 2014 when RA 9165 was not yet amended. Thus, the three witnesses rule applies in the instant case.

³¹ *Id.* at 149-150.

The law enforcers ignored the requirements provided under Section 21, Article II of RA 9165. They violated the chain of custody by failing to comply with the witness requirements under Section 21, Article II of RA 9165. Records show that the certificate of inventory³² was merely signed by SPO1 Lim and a media representative. This is a blatant violation of the chain of custody rule.

It bears to stress that the rule required that the inventory sheet must be signed by the accused-appellant or his representative along with the required three witnesses (one from the media, the DOJ, and an elected public official) to the inventory.

Worse, the signature of the media representative is highly questionable for being incomprehensible. In fact, SPO1 Lim (the lone prosecution witness) failed to identify the name of the media representative.

Additionally, nothing in the records will show that the prosecution or the police officers provided justification for non-compliance with the three witnesses rule. Clearly, the RTC and the CA merely glossed over this issue by relying on the rule on presumption of regularity.

The above-mentioned lapses cannot be considered minor, as they are in fact, fatal in establishing the chain of custody. Without a doubt, the circumstances mentioned show that the chain of custody had been broken which, thus, casts doubt on the integrity of the dangerous drugs supposedly seized from petitioner.

The Court cannot merely gloss over the glaring lapses committed by the police officers, especially when what had been allegedly seized from accused-appellant was only 0.39 grams of *shabu*. Recent cases have highlighted the need to ensure the integrity of the seized drugs in the chain of custody when only a miniscule amount of drugs had been allegedly seized from the accused.³³

Indubitably, the accused-appellant should not be deprived of his freedom. With the prosecution's pieces of evidence pointing to the accused-appellant's acquittal, the Court is given sufficient reasons to put into serious question the identity of the illegal drugs allegedly seized

³² Records, p. 44.

³³ *People v. Del Mundo*, 818 SCRA 757, September 20, 2017.

from the accused-appellant. The theory presented by the prosecution created doubts on the accused-appellant's guilt. Thus, all of the prosecution's statements claiming that the chain of custody was followed cannot be given credence.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused-appellant to be presumed innocent and cannot itself constitute proof beyond reasonable doubt.³⁴ This presumption of regularity remains just like a presumption disputable by contrary proof, which if challenged by evidence, cannot be regarded as the binding truth.³⁵

By failing to follow even the simplest witness requirement under Section 21, Article II of RA 9165, the police officers cannot be presumed to have regularly exercised their duties during the buy-bust operation. The blatant violations committed by these law enforcers cannot be countenanced. Otherwise, the Court will be giving the law enforcers a license to abuse their power and authority, defeating the purpose of the law, violating human rights, and eroding the justice system in this country.

Although it is well-settled that non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses,³⁶ records disclose that no plausible explanation was forwarded by the prosecution as to why no representative from the DOJ or an elected public official was not present during the inventory and photography of the confiscated *shabu*. Neither was it proven by the prosecution that the police officers exerted genuine and sufficient efforts to secure the presence of the required witnesses. The failure to follow the witness requirement under Section 21, Article II of RA 9165 was completely ignored and was left unjustified by the prosecution.

Considering that the marking and inventory of the allegedly seized drugs were highly questionable, there was no assurance that the sachet of *shabu* tested in the laboratory was the same sachet of dangerous drug allegedly confiscated from the accused-appellant. Evidently, the integrity

³⁴ *People v. Cantalejo*, 604 Phil. 658, 668 (2009).

³⁵ *Id.*

³⁶ *People v. Alconde*, *supra* note 30 citing *People v. Manansala*, February 21, 2018, 856 SCRA 359.

and evidentiary value of the seized sachet of *shabu* were never preserved.

The evidence of the accused-appellant may be weak and uncorroborated, nevertheless, this cannot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.³⁷ Well-entrenched is the rule that where the circumstances shown to exist yield two or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must acquit the accused for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction.³⁸

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs will not secure a conviction. In drugs cases, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.³⁹

The Court holds that the evidence on record and the circumstances obtaining here do not support a finding of guilt beyond reasonable doubt. The lapses committed by the police officers created a serious doubt on whether the supposedly seized drugs from accused-appellant were the same drugs presented in court as evidence. Hence, the *corpus delicti* had not been adequately proven.

In fine, reasonable doubt does exist in the present case. Since the quantum of proof required for the conviction of accused-appellant for illegal possession of dangerous drugs was not met, his acquittal is therefore in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 28, 2017 in CA-G.R. CR-HC No. 08066 is **REVERSED** and

³⁷ *People v. Santos, Jr.*, 562 Phil. 458, 473 (2007).

³⁸ *Id.*

³⁹ *People v. Santos, Jr.*, *supra* note 37.

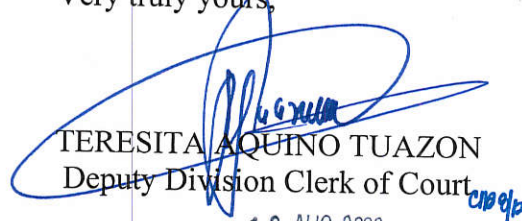
SET ASIDE. Accused-appellant Reynand Cutamora y Bastis is hereby **ACQUITTED.**

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Reynand Cutamora y Bastis, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED.” (Gaerlan, *J.*, designated as additional member, per Special Order No. 2780 dated May 11, 2020).

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
12 AUG 2020

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 79
Quezon City
(Crim. Case No. R-QZN-14-01577-CR)

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