



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 4, 2020**, which reads as follows:*

“G.R. No. 233795 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. MICHAEL T. BORJA, *accused-appellant*). — This Court resolves an appeal¹ from the Decision² of the Court of Appeals, which affirmed the conviction of Michael T. Borja (Borja) for violating Sections 5, 11, and 12 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

For these crimes, three (3) Informations were filed against Borja. The Information docketed as Criminal Case No. 66,010-09 read:

That on or about June 26(sic), 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession and control two (2) pieces improved glass tooter with suspected shabu residue; seven (7) pieces improvised plastic scoop with shabu residue; seven (7) pieces improvised plastic scoop with shabu residue; one (1) pieces (*sic*) disposable lighter with attached needle; two (2) pieces disposable lighter and two (2) pieces bamboo sticks fit or intended for inhaling, consuming or introducing any dangerous drug into the body.

In the commission of the above-offense, herein accused was found positive for use of dangerous drugs which is alleged as a qualifying aggravating circumstance.

CONTRARY TO LAW.³

¹ *Rollo*, pp. 14–16. This appeal was filed under Rule 124, Section 13(c) of the Rules of Court.

² *CA rollo*, pp. 105–115. The June 9, 2017 Decision in CA-G.R. CR-HC No. 01421-MIN was penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Rafael Antonio M. Santos of the Special Twenty-First Division of the Court of Appeals, Cagayan de Oro City.

³ *Id.* at 62.

The Information docketed as Criminal Case No. 66,011-09 read:

That on or about June 23, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly sold, transferred and delivered a sachet of Methamphetamine Hydrochloride, otherwise known as “shabu” weighing 0.0192 gram, which is a dangerous drug and that during the commission of the above-offense (*sic*) said accused was found positive for use of dangerous drugs which is as (*sic*) a qualifying aggravating circumstance.

CONTRARY TO LAW.⁴

The Information docketed as Criminal Case No. 66,012-09 read:

That on or about June 23, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly possessed Methamphetamine Hydrochloride otherwise known as “shabu” with a total weight of 0.0310 gram, which is a dangerous drug and that during the possession thereof, herein accused was found positive for use of dangerous drugs which is herein alleged as a qualifying aggravating circumstance.

CONTRARY TO LAW.⁵

Upon arraignment, Borja pleaded not guilty to the crimes charged.⁶

Agent Hazel B. Ortoyo (Agent Ortoyo), Agent Charlemagne Karol Tang (Agent Tang), and Police Officer 2 Alfred Noya (PO2 Noya) testified for the prosecution. Their testimonies depicted the following events:

At around noon on June 23, 2009, a confidential informant arrived at the Philippine Drug Enforcement Agency office and told Agent Ortoyo that a certain “Michael”—later identified as Borja—was selling illegal drugs on Artiaga Street in Davao City. The tip was reported to IO3 Agent Emerson Rosales, who then organized a team and a briefing for a buy-bust operation. Agent Ortoyo was assigned to act as the poseur-buyer and Agent Tang was to be her immediate back-up.⁷

That afternoon, Agent Tang proceeded to Liz Apartment on Artiaga Street, where she pretended to rent a room beside Borja’s. An hour later, the rest of the buy-bust team arrived together with their confidential informant.

⁴ Id.

⁵ Id.

⁶ Id. at 63.

⁷ Id.

Tailed by the other officers, Agent Ortoyo and the informant proceeded to the apartment first; however, on their way to Borja's room, just before reaching the door, they met their target.⁸

The informant introduced Agent Ortoyo to Borja as a friend interested in buying shabu. Borja invited them to his room, and upon reaching the doorway asked Agent Ortoyo how much she wished to purchase, to which she answered ₱1,000.00. From where she stood, Agent Ortoyo could see drug paraphernalia atop a table while Borja was taking a small transparent plastic sachet of white crystalline substance from his right pocket. He handed it to Agent Ortoyo, who handed in exchange the marked buy-bust money, which Borja placed in his left pocket. Then, Agent Ortoyo signaled to the team that the transaction was complete.⁹

Agent Tang and the rest approached while Agent Ortoyo introduced herself to Borja as an operative of the Philippine Drug Enforcement Agency. Then, Agent Tang held Borja, informed him of his rights, and searched his body for weapons. She found three (3) small transparent plastic sachets of shabu in his pocket along with the buy-bust money.¹⁰

The officers tagged and marked the evidence with their initials and placed them inside different pouches. They then returned to their office, where they presented Borja and the seized evidence to the duty desk officer. The team's return was recorded in the agency's blotter. However, because it was nighttime, the team had to postpone conducting the inventory to the following day as they could not secure the required witnesses.¹¹

At around 11:15 a.m. the next day, the team inventoried the seized items in the presence of representatives from the Department of Justice and the media, an elected barangay official, the members of the buy-bust team, and Borja. Afterward, they brought Borja and the seized drugs to the crime laboratory and had them received by PO2 Noya.¹² PO2 Noya, in turn, handed the specimens to Police Chief Inspector Lina Ligad Avelino, the forensic chemist, who found upon examination that the drug specimens and Borja's urine tested positive for shabu.¹³

The defense presented Borja. He testified that at the time of the incident, he was in his apartment with Rusette Villanueva (Villanueva), his live-in partner who also faced drug charges. That day, he was about to do laundry when he heard a knock on his door. This turned out to be a man and

⁸ Id.

⁹ Id. at 63-64.

¹⁰ Id. at 64.

¹¹ Id.

¹² Id.

¹³ Id. at 64-66.

a woman who then, at gunpoint, ordered him to drop to the floor. As he lay on the floor, someone stepped on his head while more strangers entered his room and searched it. He did not know whether these people took items from his room.¹⁴

After some time, Borja was ordered to stand and change his clothes. The strangers boarded him in a vehicle and took him to the Philippine Drug Enforcement Agency office, where he saw Villanueva. He was told to sit in front of a table, where shabu was placed. He admitted in court that he was a shabu user.¹⁵

In a September 23, 2014 Decision,¹⁶ the Regional Trial Court found Borja guilty beyond reasonable doubt of violating Sections 5, 11, and 12 of Republic Act No. 9165. On the illegal sale, it found that the prosecution not only proved that the transaction had taken place, but also presented the *corpus delicti* as evidence. On the illegal possession of dangerous drugs, it found that the prosecution proved that Borja was in free and conscious possession of such items. As to the possession of drug paraphernalia, it found the seizing lawful.¹⁷

The trial court reasoned that aside from establishing the crimes' elements, the prosecution had sufficiently established the *corpus delicti* through an unbroken chain of custody:

This Court also notes that the prosecution was able to establish the *corpus delicti* of the crime not only by proving the elements of the crime but was able to establish without doubt compliance [with] Section 21 of RA 9165. This is shown by the fact that after the arrest of the accused and while still at the crime scene, both Agents Ortoyo and Tang were able to tag and mark the sachets of shabu subject matter of Section 5 and Section 11 and 12, respectively. Thereafter, they proceeded to the PDEA office and presented the drugs to Agent Rommel dela Peña who recorded the same as evidenced by Exhibit "G-3". On the following day, the inventory was conducted in the presence of those persons required by law to attend. Picture taking was made to document the said proceeding. After its inventory, the drug specimen (*sic*) were brought to the PNP Crime Laboratory duly received by PO2 Noya who was the one who placed the corresponding weights of the drug specimen. The drugs and paraphernalia were then examined by PCI Avelino, the forensic chemist. Indeed, the chain of custody as required under Section 21 of RA 9165 was established without doubt.¹⁸ (Citations omitted)

¹⁴ Id. at 66.

¹⁵ Id.

¹⁶ Id. at 61–70. The Decision was penned by Acting Presiding Judge Rowena Apao-Adlawan of Branch 13, Regional Trial Court of Davao City.

¹⁷ Id. at 67–68.

¹⁸ Id. at 68–69.

The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, as the prosecution was able to prove the guilty of accused beyond reasonable doubt judgment is hereby rendered as follows:

- 1) In Criminal Case No. 66, 010-09 accused MICHAEL TAYLARAN BORJA is **convicted** for violation of Section 12, Article II of RA 9165, and is hereby sentenced to suffer the indeterminate penalty of (6) months and one (1) day to two (2) years and to pay a fine of Ten Thousand pesos.
- 2) In Criminal Case No. 66, 011-09 accused MICHAEL TAYLARAN BORJA is **convicted** for 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 Five Hundred Thousand pesos (P500,000.00).
- 3) In Criminal Case No. 66, 012-09 accused MICHAEL TAYLARAN BORJA is **convicted** for violation of Section 11, Article II of RA 9165, and is hereby sentenced to suffer the penalty of Twelve (12) Years and One (1) day to Twenty (20) years and to pay a fine of Four Hundred Thousand pesos (P400,000.00).

The accused is entitled to be credited in his favor the preventive imprisonment that he has undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592.

Pursuant to Section 21(7) of RA No. 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the shabu and drug paraphernalia subject matter of these cases. Otherwise, the Branch Clerk of Court is hereby directed to forward the same to the PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.¹⁹ (Emphasis in the original)

Borja filed a Notice of Appeal.²⁰ In its June 9, 2017 Decision,²¹ however, the Court of Appeals affirmed the Regional Trial Court's findings. It agreed that the prosecution had sufficiently established all the elements of the crimes.²² It also maintained that the chain of custody was unbroken, accepting as justifiable grounds the buy-bust team's reasons for not immediately conducting the inventory of the seized drugs.²³

¹⁹ Id. at 69-70.

²⁰ Id. at 15-16.

²¹ Id. at 105-115.

²² Id. at 113-114.

²³ Id. at 112.

The dispositive portion of the Court of Appeals Decision read:

ALL TOLD, the Appeal is DENIED. The Decision of the Regional Trial Court, Branch 13, Davao City dated September 24, (*sic*) 2014 in Criminal Case [No.] 66,010-09 which found the accused-appellant Michael T. Borja guilty beyond reasonable doubt for violation of Sections 5, 11 and 12 of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.²⁴

Borja filed a Notice of Appeal,²⁵ and the Court of Appeals elevated the case records to this Court.²⁶ Both the Office of the Solicitor General,²⁷ on behalf of plaintiff-appellee People of the Philippines, and accused-appellant²⁸ manifested that they would no longer be filing supplemental briefs, adopting their Briefs before the Court of Appeals instead.

The principal issue to be resolved here is whether or not the prosecution established beyond reasonable doubt that accused-appellant Michael T. Borja is guilty of violating Sections 5, 11, and 12 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On the charge of violating Sections 5 and 11 of Republic Act No. 9165, accused-appellant is acquitted based on reasonable doubt. However, his conviction for violating Section 12 of Republic Act No. 9165 is affirmed.

All accused are presumed innocent until their guilt is proven beyond reasonable doubt. The burden of proof falls on the prosecution. Its failure to meet this burden warrants the accused's acquittal.²⁹

To recall, Section 5 of Republic Act No. 9165 penalizes, among others, the sale of dangerous drugs; Section 11, the possession of dangerous drugs; and Section 12, the possession of drug paraphernalia. Before a court may convict an accused for these crimes, it must be certain that dangerous drugs were seized, and that the drugs submitted as evidence were the very ones seized from the accused.³⁰

To convince a court that the drugs were actually seized, the prosecution must show that the apprehending team followed the stringent

²⁴ Id. at 114–115.

²⁵ Id. at 118–120.

²⁶ *Rollo*, p. 1.

²⁷ Id. at 23–28.

²⁸ Id. at 29–32.

²⁹ *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

³⁰ *People v. Nandi*, 639 Phil. 134 (2010) [Per J. Mendoza, Second Division] citing *People v. Almorfe*, 631 Phil. 51, 60 (2010) [Per J. Carpio Morales, First Division].

legal requirements on the custody of the seized items. Notably relevant in this case is the procedure under Section 21(1) of Republic Act No. 9165, which, at the time of the buy-bust operation, provides:

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. — . . .*

- (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[.]

Observance of this procedure establishes the identity of the dangerous drug seized and presented in court with moral certainty.

The first step is the immediate marking, physical inventory, and photographing of the seized drugs.³¹ Not only must this step be done immediately, but also in the presence of certain witnesses—(1) the accused, or his or her representative; (2) a representative from the media; (3) a representative from the Department of Justice; and (4) any elected public official—all of whom must sign the inventory, and be given a copy of this inventory. Conducting the first step in the presence of these witnesses minimizes the possibility that the evidence was planted. Failure to comply raises doubt that what was submitted in court was, in fact, seized from the accused.³²

The buy-bust team in this case admitted that they did not immediately inventory and photograph the seized items. In affirming accused-appellant's conviction, the Court of Appeals accepted the buy-bust team's explanation:

At the time that the operation ended, it was already 5:30 o'clock in the afternoon. The law requires that the inventory be made in the presence of the representatives of the media, the DOJ and a public official. Since these persons were not present during the operation itself, the police officers tried to contact them to be present during the inventory. Due to time constraints, they were no longer available that day. Hence, it was only justifiable for the police officers to decide to conduct the inventory the following day. It is also noteworthy, that the law does not invalidate an inventory done in the police station or in this case in the PDEA office,

³¹ *People v. Alconde*, G.R. No. 238117, February 4, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64973>> [Per J. Perlas-Bernabe, Second Division].

³² *People v. Orteza*, 555 Phil. 701 [Per J. Tinga, Second Division].

since that was the most practicable of all options at that time.

Moreover, to the mind of this Court, the above-mentioned circumstances surrounding the case can be considered reasonable justification for the police officers' alleged failure to comply with the law.³³

This is incorrect.

To secure the presence of the required witnesses, the buy-bust team postponed the inventory of the seized items to the next day. Although this was ostensibly done to observe the procedure mandated by law, the postponement defeated its very purpose—to ensure that the drugs seized are the very same drugs that are presented in court.

That the witnesses were absent at the time of seizure is not a justifiable ground for not immediately inventorying the items. The witnesses should have been present or near the place of seizure in the first place.³⁴

Indeed, this Court has deemed similar explanations for postponement as unacceptable. In the seminal case of *People v. Lim*,³⁵ this Court held that the buy-bust team's explanation revealed that it did not earnestly attempt to comply with the law:

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.³⁶ (Citations omitted)

Thus, for the prosecution's failure to prove his guilt beyond reasonable doubt, accused-appellant must be acquitted of the charges of illegal sale and possession of dangerous drugs.

³³ CA rollo, p. 112.

³⁴ *People v. Ramos*, G.R. No. 225325, August 28, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65497>> [Per J. Leonen, Third Division].

³⁵ G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc].

³⁶ Id.

However, the same reasoning cannot be applied to the charge of possession of drug paraphernalia. Section 21(1)'s requirement of immediate inventory of seized items before certain witnesses, at the time the offense was committed,³⁷ refers specifically to the inventory of the seized drugs. It does not mention drug paraphernalia:

- (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[.]³⁸ (Emphasis supplied)

In contrast, the second and fourth paragraphs of Section 21 include drug paraphernalia in their enumerations of items to be submitted to the laboratory for examination and to be inspected by the trial court, respectively:

- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/*paraphernalia* and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

....

- (3) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, *including the instruments/paraphernalia* and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official.³⁹ (Emphasis supplied)

The law at the time of the seizure did not mandate that the same stringent procedure for seized drugs be observed for drug paraphernalia in order to preserve the evidentiary value of seized drug paraphernalia.

³⁷ Section 21(1) of Republic Act No. 9165 was amended by Republic Act No. 10640 on July 15, 2014 to include drug paraphernalia among the items that must be immediately inventoried and photographed in front of the required witnesses. This was long after the incidents in this case happened in 2009.

³⁸ Republic Act No. 9165 (2002), sec. 21(1).

³⁹ Republic Act No. 9165 (2002), sec. 21(2) and (4).

WHEREFORE, the Regional Trial Court's September 23, 2014 Decision, which was affirmed by the Court of Appeals in its June 9, 2017 Decision in CA-G.R. CR-HC No. 01421-MIN, is **MODIFIED**. Judgment is rendered as follows:

- 1) In Criminal Case No. 66,010-09, for violation of Section 12 of Republic Act No. 9165, accused-appellant Michael T. Borja is **CONVICTED** and is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day to two (2) years and to pay a fine of ₱10,000.00;
- 2) In Criminal Case No. 66,011-09, for violation of Section 5 of Republic Act No. 9165, accused-appellant is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt; and
- 3) In Criminal Case No. 66,012-09, for violation of Section 11 of Republic Act No. 9165, accused-appellant is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt.

Accused-appellant is entitled to be credited in his favor the preventive imprisonment that he has undergone pursuant to Article 29 of the Revised Penal Code, as amended by Republic Act No. 10592.

SO ORDERED."

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

*9th
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The Presiding Judge
REGIONAL TRIAL COURT
Branch 13, 7000 Davao City
(Crim. Case Nos. 66, 010-09; 66-011-09
& 66, 012-09)

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