



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

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

“G.R. No. 247833 – Mario Serzo, Jr. y Cabral v. People of the Philippines

For our resolution is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated January 18, 2019 and Resolution³ dated June 11, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09459, which affirmed the Decision⁴ dated June 8, 2017 of the Regional Trial Court (RTC) of Valenzuela City, Branch 269, in Criminal Case No. 134-V-17 and Criminal Case No. 135-V-17, convicting Mario Serzo, Jr. y Cabral (petitioner) of sale and possession of illegal drugs under Sections 5 and 11, respectively, of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The accusatory portions of the separate Information filed against petitioner are as follows:

Criminal Case No. 134-V-17

That on or about January 10, 2017 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named [petitioner], for and in consideration of **two (2) pieces of ONE HUNDRED-PESO BILLS (₱100.00) with serial numbers GH131373 (marked as JZF-1 01-10-17 with signature) and GH131374 (marked as JZF-2 01-10-17 with signature)** without any authority of law, did then and there willfully, unlawfully and knowingly sell and deliver to poseur buyer **PO1 ARVIN LIRAG,**

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¹ *Rollo*, pp. 10-43.

² Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Sesinando E. Villon and Edwin D. Sorongon; concurring, *id.* at 48-56.

³ *Id.* at 45-46.

⁴ Penned by Presiding Judge Emma C. Matammu; *id.* at 57-65.

one heat-sealed transparent plastic sachet (marked as AVL with date and signature) containing 0.05 gram of Methamphetamine Hydrochloride (Shabu), knowing it to be a dangerous drug.

CONTRARY TO LAW.⁵

Criminal Case No. 135-V-17

That on or about January 10, 2017 in Valenzuela City and within the jurisdiction of this Honorable Court, the [petitioner], without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and control **one heat-sealed transparent plastic sachet containing 0.06 gram (marked as JZF with date and signature) of Methamphetamine Hydrochloride (Shabu),** knowing [it] to be a dangerous drug.

CONTRARY TO LAW.⁶

When arraigned, petitioner pleaded not guilty to both charges.⁷

The prosecution evidence tends to establish that on January 9, 2017, the Station Intelligence Branch (SIB) of the Valenzuela Police Station received information with regard to petitioner's illegal drugs activities. At around 1:00 a.m. of January 10, 2017, SIB Chief, PCI Jowelou Bilaro (PCI Bilaro) formed a team composed of PO1 Arvin Lirag (PO1 Lirag) as poseur buyer, together with their confidential informant; PO1 Jason Fabros (PO1 Fabros) as perimeter back-up, along with other police officers.⁸

Immediately after briefing and coordination with the Philippine Drug Enforcement Agency (PDEA), the team was dispatched to the target area in *Barangay Parada*. Upon arrival thereat, PO1 Lirag and the confidential informant saw petitioner near a lamppost. When petitioner saw them, he greeted the confidential informant. In turn, the latter asked petitioner, "*pre, meron ka pa ba diyan?*" Petitioner responded, "*meron pa.*" PO1 Lirag then said, "*dos lang na halaga,*" and gave him the two ₱100.00 marked bills. Upon receipt of the money, petitioner took a plastic sachet containing white crystalline substance from his right pocket and handed the same to PO1 Lirag. After examining the item, PO1 Lirag removed his hat, signalling his team that the sale has already been consummated. He then introduced himself as a police officer to petitioner but the latter tried to run away.

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⁵ Id. at 57.

⁶ Id.

⁷ Id.

⁸ Id. at 49-50.

PO1 Fabros ran after and caught up with him. Upon arrest, PO1 Fabros frisked petitioner and recovered a small heat-sealed sachet from his hat and the two ₱100.00 buy-bust bills from his pocket. He then marked the recovered items with his initials "JZF," the date, and his signature and placed the same in an evidence bag. PO1 Lirag, on the other hand, marked the plastic sachet that he bought from petitioner with his initials "AVL," the date, and his signature, then placed the same in a brown envelope marked "SIB-VCPS," the date, and his signature. Thereafter, petitioner and the seized items were brought to the Police Community Precinct of *Barangay Parada*.⁹

At the precinct, *barangay kagawad* Corazon Francisco (*Kagawad* Francisco) was summoned to witness the inventory. Upon her arrival, the inventory and taking of photographs of the seized items proceeded. Requests for laboratory examination and drug test were prepared by PO2 Carlito Nerit, Jr., and thereafter forwarded to the Northern Police District Crime Laboratory and received by PO2 Mauricio Badoso.¹⁰

PCI Sandra D. Go was the one who examined the seized items and issued Chemistry Report No. D-065-17 dated January 10, 2017, stating that the seized plastic sachets contained methamphetamine hydrochloride, a dangerous drug.¹¹

Petitioner interposed the defense of denial and frame-up. It was alleged that on the date of arrest, petitioner was on his way home when he was taken by then-unknown men, who forced him to board a vehicle. Thereafter, they drove around while he was asked about the whereabouts of a certain "Berto." When he was not able to give any information about said person, they pulled over along C-5 Road. Thereafter, they proceeded to the *barangay* hall of Parada where they waited for a certain *kagawad*. Upon the latter's arrival, one of the men pulled out money from his pocket and placed the same on top of a table together with two plastic sachets. Charges for illegal sale and possession of drugs were thereafter filed against him. Petitioner's wife was also presented to testify on the disappearance of her husband.¹²

In its Decision¹³ dated June 8, 2017, the RTC found petitioner guilty as charged. The RTC found sufficient compliance with the

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⁹ Id. at 50.

¹⁰ Id. at 50-51.

¹¹ Id. at 51.

¹² Id.

¹³ Supra note 4.

chain of custody rule as the markings were done at the place of arrest; the inventory was done at the nearest police station; the inventory was witnessed by a *barangay kagawad*; the seized items were turned over to the crime laboratory by PO1 Lirag and PO2 Bodoso themselves; and this process was accomplished in just a couple of hours. The RTC also placed high premium on the presumption of regularity in the police officers' performance of duty as the trial court found no ill motive or bad faith imputed against them. The RTC disposed of the case as follows:

WHEREFORE, [petitioner] MARIO SERZO[,] JR.[.] y CABRAL, also known as JOJO, is hereby found **GUILTY** of violation of Sections 5 and 11 of Republic Act No. 9165, as charged. In Criminal Case No. 134-V-17, he is hereby **SENTENCED** to life imprisonment, plus a fine of ₱500,000.00; while in Criminal Case No. 135-V-17, he is hereby imposed an indeterminate penalty of 12 years and one day, as minimum, to 15 years, as maximum, and a fine of ₱300,000.00.

The [petitioner] may be credited with the period that he has served under preventive imprisonment, in accordance with Article 29 of the same Code, as amended, and applicable rules.

The Acting Branch Clerk of Court is directed to turn over with dispatch the drug substances subject of these cases to the PDEA for proper disposition.

SO ORDERED.¹⁴

Relying heavily upon the presumption of regularity accorded to the police officers, the CA affirmed in its entirety the RTC's findings and conclusion, thus:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated June 8, 2017 of the Regional Trial Court of Valenzuela City, Branch 269 in Criminal Case[s] Nos. 134-V-17 and 135-V-17 is **AFFIRMED**.

SO ORDERED.¹⁵

Petitioner's motion for reconsideration was likewise denied by the CA in its June 11, 2019 Resolution.

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¹⁴ Id. at 65.

¹⁵ Id. at 55-56.

WHEREFORE, premises considered, [petitioner's] motion for reconsideration is **DENIED**.

SO ORDERED.¹⁶

Hence, this petition.

The only issue for our resolution is whether or not petitioner's guilt for violation of Sections 5 and 11 of R.A. No. 9165 was proved beyond reasonable doubt.

We answer in the negative.

Time and again, case law instructs us that in every prosecution of a drugs case, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. It is, therefore, incumbent upon the prosecution to establish an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court, in order to obviate any unnecessary doubt on the identity and integrity of the drugs.¹⁷

Mandatory legal procedure, as well as jurisprudential guidelines, have been laid down for police officers to comply with in handling seized drugs in order to preserve their integrity and evidentiary value. Specifically, Section 21, Article II of R.A. No. 9165 and its Implementing Rules and Regulations (IRR), as amended by R.A. No. 10640,¹⁸ require the apprehending team to, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items at the place of arrest and seizure or at the nearest police station, whichever is practicable. Further, it is required that said steps be conducted in the presence of an elected public official **and** a representative of the National Prosecution Service of the Department of Justice (DOJ) or the media.

While strict mandatory compliance with these procedural requirements is enjoined due to the crucial purpose for which they are set forth, both this Court and the legislature are not unaware of the

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¹⁶ Id. at 46.

¹⁷ *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

¹⁸ 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.

varied field conditions that may make strict compliance therewith possible at all times.¹⁹ Hence, the IRR and now R.A. No. 10640²⁰ provide that non-compliance, under justifiable grounds, with the said requirements will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.²¹ It should be emphasized, however, that it is incumbent upon the prosecution to satisfactorily prove that there is justifiable ground for such non-compliance, and that the integrity and evidentiary value of the items were properly preserved.

After a careful review of this case, we find that the police officers committed unjustified deviations from the mandatory requirements above-cited.

The inventory and photograph-taking of the seized items were not immediately done at the place of seizure, and no justifiable explanation was given for such deviation. The Court has consistently explained that the phrase "immediately after seizure and confiscation" plainly means that the physical inventory and photograph-taking of the seized drugs were intended by the law to be made immediately

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¹⁹ See *People v. Crispo and Herrera*, G.R. No. 230065, March 14, 2018 citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁰ Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

SEC. 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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²¹ *People v. Cabrellos*, supra note 17.

after, or at the place of apprehension. It is only when it is not practicable to accomplish the same at the place of arrest that the rules allow the conduct of the said process at the nearest police station or the nearest office of the apprehending team.²²

The buy-bust team also failed to comply with the two-witness rule. Whether the inventory and photograph-taking were done at the place of arrest or at the nearest police station or office, the presence of an elected public official **and** a representative from the Department of Justice (DOJ) or the media is crucially necessary. It is glaringly apparent from the established factual circumstances of this case that only one of the required two insulating witnesses was summoned by the police officers to witness the inventory and photograph-taking of the seized items. Only a *barangay kagawad* was present during the inventory and photograph-taking. No witness from the DOJ or the media was called to witness this crucial stage in the chain of custody. It is also noteworthy that said *barangay kagawad* was called in only after the alleged seizure and marking were already done.

Thus, what is more, the police officers utterly failed to comply not only with the required number of witnesses, they also failed to prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation to witness the very first link in the chain of custody, *i.e.*, the seizure of the drugs. As the rules require that the initial custody process of marking, inventory, and photograph-taking be done immediately at the place of seizure and arrest or at the nearest police station or office in the presence of the enumerated insulating witnesses, it necessarily follows that said witnesses are required to be physically present at the time of seizure and arrest, otherwise their purpose will be rendered nugatory. The Court expounded on this requirement in the case of *People v. Tomawis*,²³ *viz.*:

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 frameup 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.

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²² See *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

²³ *Id.*

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 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 the 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 the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."²⁴

Notably, no explanation was also given why only one of the required witnesses was summoned and why the latter was called in only after the arrest, seizure, and marking were already done.

It bears stressing that it is incumbent upon the prosecution to allege and prove a justifiable reason for non-compliance with the mandatory requirements under the law, and that genuine and sufficient efforts were exerted to comply therewith, for a mere substantial compliance be acceptable.

With all these unexplained lapses in the conduct of the buy-bust operation and in handling the alleged seized items, judicial reliance on the presumption of regularity in the performance of official duty is, thus, fundamentally unsound because the lapses themselves are affirmative proof of irregularity.²⁵ To be sure, this presumption of regularity often invoked by police officers in the prosecution of drugs cases could not prevail over the constitutionally-guaranteed right of the accused to be presumed innocent until the contrary is proved beyond reasonable doubt.²⁶

All told, the prosecution failed to prove the *corpus delicti* of the offenses charged against petitioner due to the above-discussed breaches of procedure unjustifiably committed by the police officers in the seizure and custody of the alleged seized drugs. This Court is, therefore, constrained to uphold the presumption of innocence in favor of petitioner.

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²⁴ Id.

²⁵ *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

²⁶ See *People v. Pagaura*, 334 Phil. 683-691 (1997).

Lastly, until every stakeholder in the government's campaign against illegal drugs performs their respective parts in accomplishing the ultimate goal in this campaign in accordance with the law, this Court will relentlessly remind police officers, as well as prosecutors, of their positive duties to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR, as amended by R.A. No. 10640; otherwise, every entrapment operation and prosecution of drugs cases will just be futile, if not arbitrary, actions against any individual. We quote herein the Court's reminder in *People v. Luna*:

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.²⁷

WHEREFORE, premises considered, the Decision dated January 18, 2019 and the Resolution dated June 11, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09459 are hereby **REVERSED and SET ASIDE**. Accordingly, Mario Serzo, Jr. y Cabral is **ACQUITTED** of the offenses charged. He is **ORDERED** to be immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished the Director General of the Philippine Drug Enforcement Agency for his information.

SO ORDERED." *Peralta, C.J., on official business.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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²⁷ G.R. No. 219164, March 21, 2018.



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