



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 10, 2020 which reads as follows:

“G.R. No. 234289 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, v. EDGARDO DELA VEGA, accused-appellant.

After a careful review of the records of the instant case, the Court **REVERSES AND SETS ASIDE** the Decision¹ dated July 27, 2017 of the Court of Appeals, Special Sixteenth Division (CA) in CA-G.R. CR-H.C. No. 08331, which affirmed the Decision² dated April 28, 2016 rendered by the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Criminal Case No. 12-0619, finding accused-appellant Edgardo Dela Vega (Dela Vega) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Court resolves to acquit Dela Vega for failure of the prosecution to prove that the apprehending team complied with the mandatory requirements of Section 21 of RA 9165 which, in turn, results in its failure to prove his guilt beyond reasonable doubt.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must prove the following elements: (i) the identity of the buyer and the seller, the object and the consideration; and (ii) the delivery of the thing sold and the payment therefor.³ In drug cases, the State bears not only the burden of proving these elements, but also of

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¹ *Rollo*, pp. 2-16. Penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Carmelita Salandanan Manahan.

² *CA rollo*, pp. 48-49. Penned by Presiding Judge Dennis Patrick Z. Perez.

³ *People v. Musor*, G.R. No. 231843, November 7, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64866>>.

proving the *corpus delicti* or the body of the crime, that is, the illegal drug subject of the charge. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.⁴

Thus, in the conduct of buy-bust operations, Section 2⁵ of RA 9165 requires that: (i) the seized items be inventoried and photographed immediately after seizure or confiscation; and (ii) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. **It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.** This also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation. This requirement can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.⁶

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⁴ Id.

⁵ The provision reads:

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 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)

⁶ *People v. Musor*, supra note 3.

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures is permissible. Section 21 of the IRR of RA 9165 provides 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 and custody over said items.” However, for this provision to be effective, the prosecution must (i) recognize any lapses on the part of the police officers and (ii) be able to justify the same.⁷

In a long line of cases namely, *People v. Mendoza*,⁸ *People v. Musor*,⁹ *People v. Rivera*,¹⁰ *People v. Abdula*,¹¹ *People v. Ilagan*,¹² *People v. Vistro*,¹³ *Reyes v. People*,¹⁴ *People v. Cadungog*,¹⁵ *People v. Comoso*,¹⁶ and *People v. Ternida*¹⁷ the Court has consistently held that failure to photograph the seized drugs at the place and in the manner set forth in Section 21 of RA 9165 without justifiable reason impairs the integrity of the seized drugs.

Moreover, it is established that the unjustified failure to comply with the three-witness rule set forth in Section 21 of RA 9165 creates reasonable doubt on the identity of the seized drugs. The Court has ruled that such failure serves as a ground for acquittal in a series of cases, including *People v. Rendon*,¹⁸ *People v. Angeles*,¹⁹ *People v. Cabezudo*,²⁰ *People v. Malazo*,²¹ *People v. Tampus*,²² *People v.*

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⁷ See *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 329.

⁸ G.R. No. 225061, October 10, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64646>>.

⁹ Supra note 3.

¹⁰ G.R. No. 225786, November 14, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64854>>.

¹¹ G.R. No. 212192, November 21, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64747>>.

¹² G.R. No. 227021, December 5, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64800>>.

¹³ G.R. No. 225744, March 6, 2019.

¹⁴ G.R. No. 226053, March 13, 2019.

¹⁵ G.R. No. 229926, April 3, 2019.

¹⁶ G.R. No. 227497, April 10, 2019.

¹⁷ G.R. No. 212626, June 3, 2019.

¹⁸ G.R. No. 227873, November 14, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64860>>.

¹⁹ G.R. No. 237355, November 21, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64869>>.

²⁰ G.R. No. 232357, November 28, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64767>>.

²¹ G.R. No. 223713, January 7, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64883>>.

²² G.R. No. 221434, February 6, 2019.

Guerrero,²³ *People v. Caranto*,²⁴ *People v. Rodriguez*,²⁵ *People v. Pantallano*,²⁶ *People v. Espejo*,²⁷ *People v. Briones*,²⁸ *People v. Cadiente*,²⁹ and *People v. Arellaga*.³⁰

The records of this case show that the buy-bust team unjustifiably failed to comply with the requirements of Section 21 of RA 9165 and its IRR. Following the aforesaid cases, Dela Vega should thus be acquitted due to the following reasons:

First, the prosecution does not deny that only media practitioner Tata Rey Abella (Tata Rey) from DWDO Radio was present to witness the marking and inventory of the seized items. It was established, through the testimony of police poseur-buyer Police Officer 2 (PO2) Jeffray B. Mejala (PO2 Mejala), that neither an elected public official nor a representative from the DOJ was present.

DIRECT EXAMINATION BY PROSECUTOR ARAGONES

x x x x

Q - And what did you do with the two plastic sachets?

A - I place[d] markings on them, ma'am.

Q - What markings did you place on the two plastic sachets?

A - EDG-1 and EDG-2, ma'am.

Q - And after you put markings on the plastic sachets, did you make an inventory of the same?

A - Yes, ma'am.

Q - Who prepared the inventory?

A - I, ma'am.

Q - **Who was present during the preparation of the inventory, Mr. Witness?**

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²³ G.R. No. 228881, February 6, 2019.

²⁴ G.R. No. 217668, February 20, 2019.

²⁵ G.R. No. 238516, February 27, 2019.

²⁶ G.R. No. 233800, March 6, 2019.

²⁷ G.R. No. 240914, March 13, 2019.

²⁸ G.R. No. 239077, March 20, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65124>>.

²⁹ G.R. No. 228255, June 10, 2019.

³⁰ G.R. No. 231796, August 24, 2020.

A - **Tata Rey [from] the media, ma'am.**³¹ (Emphasis supplied)

Second, the testimony of PO2 Mejala further confirmed that the seized items were not photographed immediately after seizure and confiscation. Rather, the seized items were photographed at the police station purportedly because PO2 Mejala and back-up officer Police Officer 1 (PO1) Raul Paran (PO1 Paran) did not bring a camera. Worse, it appears that Tata Rey, the sole witness allegedly present during the marking and inventory of the seized items, was no longer present at the police station when said photographs were taken.

CROSS-EXAMINATION BY ATTY. IREMEDIO

x x x x

Q - **May I ask, Mr. Witness, was there coordination made before the barangay officials?**

A - **We coordinated but there were no barangay officials because it was then All Saints' Day.**

Q - **And that statement of yours was never written in this receipt or inventory, that comment was not written here?**

A - **Yes, ma'am.**

Q - **You said, Mr. Witness, that the specimen [was] brought to the police station?**

A - **It was handed to me and I was the one who brought to the station.**

Q - **And who took pictures of the specimen?**

A - **I, ma'am.**

Q - **And that was done already at the police station?**

A - **Yes, ma'am.**

Q - **And this Tata Rey was already at the police station?**

A - **He was there while I was marking but considering that we do not have camera we brought it to the police station.**

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³¹ TSN, April 3, 2013, pp. 3, 10-11.

Q - And this Tata Rey you said is a media [representative]?

A - Yes, ma'am.

Q - And he does not have to come down considering that he is from the media?

A - He is from radio.³² (Emphasis supplied)

The prosecution has the burden of proving its compliance with Section 21 of RA 9165, and providing a sufficient explanation in case of non-compliance. Thus, in *People v. Lim*,³³ the Court *en banc* unanimously ruled:

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.³⁴ (Underscoring supplied; emphasis in the original)

None of the foregoing reasons is present.

The assertion that the buy-bust team attempted, but failed, to secure the presence of an elected public official during their operation because it was a holiday is flimsy, at best. Even if this justification were to be given credence, it still fails to explain why the buy-bust team did not even attempt to secure the presence of a DOJ

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³² Id. at 18, 25-27.

³³ G.R. No. 231989, September 4, 2018.

³⁴ Id. at 13.

representative to witness the inventory and photographing of the seized items. Clearly, the prosecution failed to show that the apprehending officers exerted earnest efforts to comply with the three-witness rule.

Similarly, the allegation that the seized items had to be taken to the police station for photographing because the buy-bust team did not have a camera is too incredible to be believed.

In his *Sinumpaang Salaysay*,³⁵ PO2 Mejala claimed that he was at the Binangonan police station when the CI reported Dela Vega's alleged illegal activities.³⁶ PO2 Mejala further asserted that he *returned* to the same police station after conducting surveillance with PO1 Paran to plan the buy-bust operation.³⁷ The fact that neither of these two police officers considered bringing the camera purportedly stored at the station to the buy-bust operation is highly unusual, if not unbelievable. This lapse is further amplified by PO2 Mejala's unequivocal admission that the sole witness, Tata Rey, was no longer present at the police station when the seized items were photographed only because "he is from radio".

All told, the breaches of the procedure outlined in Section 21 of RA 9165 and its corresponding IRR, when left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.³⁸ In such cases, the acquittal of the accused is in order.

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated July 27, 2017 of the Court of Appeals, Special Sixteenth Division, in CA-G.R. CR-H.C. No. 08331 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Edgardo Dela Vega is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

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³⁵ Records, pp. 7-8.

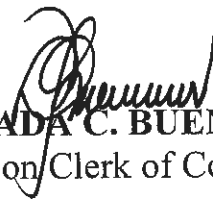
³⁶ Id. at 7.

³⁷ Id.

³⁸ See *People v. Sumili*, G.R. No. 212160, February 4, 2015, 750 SCRA 143, 152 and 154.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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