



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **February 5, 2020**, which reads as follows:

“G.R. No. 240445 (*People of the Philippines, Plaintiff-Appellee, v. Jerry Collado y Catalan @ “Gerry” [or] “Miggy” and Marinel Macacando y Cordial @ “Marinil Macacando y Cordial,” Accused-Appellants*). - This appeal¹ seeks to reverse and set aside the Decision² dated 05 January 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08912, which affirmed with modification the “Consolidated Decisions”³ (sic) dated 30 September 2016 of Branch 27, Regional Trial Court (RTC) of Manila in: a) Criminal Case No. 16-328003, finding Marinel Macacando y Cordial @ “Marinil Macacando y Cordial” (accused-appellant Marinel) and Jerry Collado y Catalan @ “Gerry” [or] “Miggy” (accused-appellant Jerry)⁴ guilty beyond reasonable doubt of violation of Section 5, in relation to Section 26, of Article II, of Republic Act No. (RA) 9165;⁵ b) Criminal Case No. 16-328004, finding accused-appellant Marinel guilty beyond reasonable doubt of violation of Section 11(3), Article II of RA 9165; and c) Criminal Case No. 16-328005, finding accused-appellant Jerry guilty beyond reasonable doubt of violation of Section 11(3), Article II of RA 9165.

Antecedents

Accused-appellants were jointly indicted for violation of Section 5, in relation to Section 26, Article II of RA 9165, in an Information, the accusatory portion of which reads:

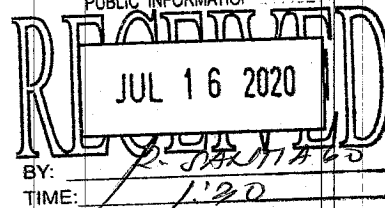
¹ *Rollo*, pp. 34-36.

² *Id.* at 2-33; penned by Associate Justice Celia C. Libre-Leagogo and concurred in by Associate Justices Manuel M. Barrios and Josep Y. Lopez of the Eighth Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 46-53; penned by RTC Judge Teresa Patrimonio-Soriano.

⁴ Collectively referred to as accused-appellants.

⁵ Comprehensive Dangerous Act of 2002.



Criminal Case No. 16-328003

That on or about **August 12, 2016**, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug[,] did[,] then and there willfully, unlawfully, knowingly and jointly[,] sell or offer for sale to a police officer/poseur-buyer **one (1) heat-sealed transparent plastic sachet** marked as “VJAL” containing white crystalline substance weighing **ZERO POINT ONE NINE NINE (0.199) gram of Methamphetamine hydrochloride**.

Contrary to law.⁶

Likewise, accused-appellants Marinel and Jerry were separately indicted for violation of Section 11(3), Article II of RA 9165, through their respective Informations, the accusatory portions of which read:

Criminal Case No. 16-328004

That on or about **August 12, 2016**, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did[,] then and there willfully, unlawfully, and knowingly[,] have in her possession and under her custody and control **three (3) heat-sealed transparent plastic sachets** marked as “VJAL1”, “VJAL2” and “VJAL3” containing white crystalline substance weighing

ZERO POINT ONE FOUR ZERO (0.140) gram;
ZERO POINT ONE FIVE ZERO (0.150) gram;
and
ZERO POINT ONE SIX FOUR (0.164) gram;

respectively, or with a total net weight of **ZERO POINT FOUR FIVE FOUR (0.454) gram of Methamphetamine hydrochloride**, a dangerous drug.

Contrary to law.⁷

Criminal Case No. 16-328005

That on or about **August 12, 2016**, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did[,] then and there willfully, unlawfully, and knowingly[,] have in his possession and under his custody and control **five (5) heat-sealed transparent plastic sachets** marked as “VJAL4”, “VJAL5”, “VJAL6”, “VJAL7” and “VJAL8” containing

ONE POINT SIX FOUR SEVEN (1.647) grams;
ONE POINT SIX FIVE FOUR (1.654) grams;

⁶ Records, Criminal Case No. 16-328003, p. 2.

⁷ Records, Criminal Case No. 16-328004, p. 1.

**ONE POINT SIX THREE TWO (1.632) grams;
ONE POINT SIX NINE THREE (1.693) grams;
and
ONE POINT THREE ONE EIGHT (1.318) grams**

respectively, or with a total net weight of **SEVEN POINT NINE FOUR FOUR (7.944) grams of Marijuana leaves and fruiting tops**, a dangerous drug.

Contrary to law.⁸

Upon arraignment, accused-appellants pleaded not guilty to the respective charges against them.⁹ After pre-trial,¹⁰ trial on the merits ensued.

Version of the Prosecution

On 12 August 2016, a team was formed to conduct a buy-bust operation against one alias "Miggy," later identified as accused-appellant Jerry.¹¹ During the buy-bust, PO1 Val Jose Libo-on (PO1 Libo-on) handed the money to accused-appellant Marinel, who in turn, gave it to accused-appellant Jerry. In exchange, the latter pulled out from his right pocket four (4) pieces of plastic sachets with suspected *shabu* and handed it to accused-appellant Marinel, who then asked PO1 Libo-on to get a piece.¹² After consummation of the sale, PO1 Libo-on executed the pre-arranged signal which led to accused-appellants' arrest.¹³ PO1 Libo-on recovered from accused-appellant Marinel three (3) pieces of plastic sachets with suspected *shabu*, and recovered the buy-bust money and five (5) pieces of plastic sachet with suspected marijuana from accused-appellant Jerry.¹⁴

The team proceeded to the police station where PO1 Libo-on marked the seized items and prepared the inventory in the presence of accused-appellants and *Barangay Kagawad* Arnold Merina (*Kgd.* Merina)¹⁵ while the investigator took photographs.¹⁶ PO1 Libo-on then brought the request for laboratory examination, together with the seized items, to the crime laboratory.¹⁷ Per the Chemistry Report,¹⁸ specimens "A" to "D" tested positive for methamphetamine hydrochloride while specimens "E" to "I" were

⁸ Records, Criminal Case No. 16-328005, p. 1.

⁹ Records, Criminal Case No. 16-328003, p. 29; Records, Criminal Case No. 16-328004, p. 19; Records, Criminal Case No. 16-328005, p. 19.

¹⁰ Records, Criminal Case No. 16-328003, pp. 33-35.

¹¹ TSN dated 21 September 2016, Witness PO1 Libo-on, pp. 3-4.

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ *Id.* at 12-13.

¹⁵ *Id.* at 33.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 14-16.

¹⁸ Records, Criminal Case No. 16-328003, p. 38.

found positive for marijuana.

Version of the Defense

Accused-appellants denied the charges against them. They claimed that on 12 August 2016, while they were eating dinner, ten (10) policemen in civilian clothing suddenly barged into their room and pointed guns at them.¹⁹ The police officers asked them about a certain "Loyot." Not knowing the latter's whereabouts, accused-appellants were brought to the police station²⁰ where PO1 Libo-on showed them plastic sachets with assorted drugs to be used against them. Accused-appellants were detained after.²¹

Ruling of the RTC

On 30 September 2016, the RTC rendered its "Consolidated Decisions,"²² (sic) the dispositive portion of which reads:

WHEREFORE, judgment is rendered as follows:

1. In **Criminal Case No. 16-328003**, finding accused **[MARNINEL] MACACANDO y CORDIAL** and **JERRY COLLADO y CATALAN @ "Miggy"** guilty beyond reasonable doubt of the crime of violation of Sec. 5 in relation to Sec. 26 Art. II of RA 9165 and sentencing them to suffer the penalty of **Life Imprisonment**; to pay a fine of P400,000.00 each; and to pay the costs.
2. In **Criminal Case No. 16-328004**, finding accused **MARNINEL MACACANDO y CORDIAL a.k.a. MARINIL MACACANDO y CORDIAL** guilty beyond reasonable doubt of the crime of Sec. 11(3) Art. II of RA 9165, and since the dangerous drug involved is 0.454 grams, sentencing her to suffer the indeterminate penalty of **twelve (12) years, as minimum to fourteen (14) years as the maximum penalty, to pay a fine of P300,000.00; and to pay the costs.**
3. In **Criminal Case No. 16-328005**, finding accused **JERRY COLLADO y CATALAN a.k.a. GERRY COLLADO y CATALAN @ "Miggy"** guilty beyond reasonable doubt of the crime of violation of Sec. 11(3) Art. II of RA 9165 and, since the dangerous drug involved is 7.944 grams, sentencing him to suffer the penalty of imprisonment of **twenty (20) years and**

¹⁹ TSN dated 28 September 2016, Witness accused-appellant Marinel, pp. 4-6.

²⁰ *Id.* at 21.

²¹ TSN dated 28 September 2016, Witness accused-appellant Jerry, pp. 32-33.

²² CA rollo, pp. 46-53.

one (1) day to life imprisonment, to pay the fine of P400,000.00; and to pay the costs.

The drugs subject matter of these cases are confiscated in favor of the Government, the same to be turned-over to the proper government authority.

SO ORDERED.²³

The RTC held that the prosecution's testimonial, documentary and object evidence established the authenticity of the buy-bust operation, as well as the recovery of *shabu* and marijuana from accused-appellants Marinel and Jerry, respectively. It likewise held that conspiracy existed between accused-appellants Jerry and Marinel in Criminal Case No. 16-328003.²⁴

Aggrieved, accused-appellants appealed to the CA.

Ruling of the CA

The CA affirmed the RTC's "Consolidated Decisions" (sic) that the chain of custody of the seized dangerous drugs was not broken. The reason behind the procedural lapses was apparently sufficiently explained by the prosecution, while the integrity and evidentiary value of the seized evidence were duly preserved. It likewise gave weight to the RTC's evaluation of the credibility of the witnesses.²⁵

The CA, however, modified the penalties imposed, as follows: a) in Criminal Case No. 16-328003, it imposed upon the accused-appellants the penalty of life imprisonment and a fine of P500,000.00 each; b) in Criminal Case No. 16-328004, it imposed on accused-appellant Marinel the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years as maximum, with a fine of P300,000.00; and c) in Criminal Case No. 16-328005, it imposed on accused-appellant Jerry the indeterminate penalty of twelve (12) years and one (1) day as minimum, to twenty (20) years, as maximum, and a fine of P300,000.00.²⁶

Hence, this appeal.

²³ CA rollo, pp. 52-53.

²⁴ *Id.* at 51-52.

²⁵ *Id.* at 119-120.

²⁶ *Id.* at 120-121.

Issue

The sole issue in this case is whether or not the CA correctly affirmed the conviction of accused-appellants for illegal sale and illegal possession of dangerous drugs under RA 9165.

Ruling of the Court

The appeal is meritorious.

Accused-appellants were charged with the offenses of illegal sale and illegal possession of dangerous drugs, defined and penalized under Section 5 in relation to Section 26 and Section 11, Article II of RA 9165. To secure conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. To convict an accused for illegal possession of dangerous drugs, the prosecution must prove: (a) that the accused was in possession of an item or an object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁷ In either case, it is essential that the identity of the seized drug be established with moral certainty. Furthermore, the prosecution has to show an unbroken chain of custody over the same to obviate any unnecessary doubt on such identity.²⁸

“Chain of custody” is defined as the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²⁹

The Court has repeatedly stressed the links that must be established in the chain of custody of the confiscated item in a buy-bust operation: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug by the forensic chemist to the court as evidence and subsequent disposal. The chain of custody rule requires the testimony as to every link in the chain,

²⁷ *People v. Ching*, 819 Phil. 565-581 (2017); G.R. No. 223556, 09 October 2017, 842 SCRA 280.

²⁸ *Id.*

²⁹ Section 1(b), Dangerous Drugs Board Regulation No. 1, Series of 2002.

describing how and from whom the seized evidence was received, the condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.³⁰

Further, since accused-appellants allegedly committed the offense charged in 2016, RA 10640³¹ must be applied.³² Consequently, the prosecution must establish that the suspected drug was physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel (b) an elected public official and (c) a representative from the National Prosecution Service (NPS) or the media.

Based on the established facts and evidence, however, the prosecution clearly failed to comply with the foregoing requirements.

There was neither any representative from the NPS or the media during the marking, inventory, and taking of photographs of the seized shabu nor any showing that the required witnesses were present during the buy-bust operation

The marking, inventory and taking of photographs of the seized items were conducted in the presence of only one witness, *Kgd. Merina*. The prosecution did not adequately explain why the police operatives failed to secure the presence of a representative from the NPS or the media. They also did not show any proof that earnest efforts were made to secure their presence. What is more, the required witnesses were absent during the buy-bust operation.

On the witness stand, PO1 Libo-on testified thus:

[ACP Bea-Punsalan]

Q: And on the third photograph, who are these persons?

³⁰ *People v. Havana*, 776 Phil. 462-476 (2016); G.R. No. 198450, 11 January 2016, 778 SCRA 524.

³¹ 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."

³² In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018), this Court noted that RA No. 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 7 August 2014, pursuant to Section 5 of the law.

[PO1 Libo-on]

A: The man on the left side I am the one. Then the man on red is Kagawad Merina signing the Inventory and Collado in black and Marinel whose head is partly seen.

Q: Why is it Mr. Witness that only the Kagawad was present, why is it that there is no media representative?

A: There is no available media representative at that time, Ma'am.³³

xxx

Q: And upon arriving at the police station, you marked the recovered items?

A: Yes, Sir.

Q: Who were present when you marked the recovered items?

A: The Kagawad, Sir.

Q: What was the name of the Kagawad?

A: Arnold Merina.

Q: There was no representative coming from the media?

A: None, Sir.

Q: There was no representative coming from the Department of Justice?

A: None, Sir.³⁴

The presence of the witnesses required by law is essential. In the words of *People v. Macud*,³⁵ this rule is vital “to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would preserve an unbroken chain of custody.”

It bears stressing as well that the presence of the required witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the said 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.³⁶

In *People v. Umipang*,³⁷ the Court held that the prosecution must show that the required presence of witnesses was earnestly sought. A sheer statement of their unavailability without a satisfactory explanation that serious attempts were made in looking for the other representatives is regarded as a

³³ TSN dated 21 September 2016, Witness PO1 Libo-on, pp. 21-22.

³⁴ *Id.* at 33.

³⁵ G.R. No. 219175, 14 December 2017, 849 SCRA 294, 323.

³⁶ *See People v. Tomawis*, G.R. No. 228890, 18 April 2018.

³⁷ 686 Phil. 1024-1055 (2012); G.R. No. 190321, 25 April 2012, 671 SCRA 324.

flimsy excuse.

There was no turn over of the seized illegal drugs from the apprehending officer to the investigating officer

PO1 Libo-on testified that after seizure of the three (3) plastic sachets of suspected *shabu* from accused-appellant Marinel, he kept the same in his left front pocket, while the five (5) plastic sachets of suspected marijuana seized from accused-appellant Jerry was placed in his right back pocket.³⁸ He kept the seized items until he brought them to the crime laboratory.³⁹

In *People v. Mamuyac, Jr.*,⁴⁰ the Court held that the act of the police officer in keeping one of the seized items in his right pocket and the rest in his left pocket from the time of the seizure until the alleged marking and inventory at the police station is doubtful and suspicious, if not a reckless and blatantly irregular way of ensuring the integrity of the item.

The unjustified deviations in the conduct of the buy-bust cast doubts on the integrity and identity of the seized items necessitating the acquittal of accused-appellants

Admittedly, non-compliance with the procedures laid down by the law will not render void and invalid the seizure and custody, if such non-compliance is with justifiable reasons, and as long as the integrity and evidentiary value of the items were properly preserved. However, it is imperative that the prosecution recognize the procedural lapses committed and cite justifiable grounds⁴¹ accompanied by evidence that the integrity and evidentiary value of the items are preserved.⁴² Further, justifiable grounds for non-compliance must be proved as a fact, because the courts cannot presume what these grounds are or that they even exist.⁴³ None was shown in this case, however.

³⁸ TSN dated 21 September 2016, Witness PO1 Libo-on, pp. 31-32.

³⁹ *Id.* at 14 and 34.

⁴⁰ G.R. No. 234035, 19 August 2019.

⁴¹ *People v. Hementiza*, 807 Phil. 1017-1039 (2017); G.R. No. 227398, 22 March 2017, 821 SCRA 470.

⁴² *People v. Ga-a*, G.R. No. 222559, 06 June 2018, 865 SCRA 220.

⁴³ *People v. De Guzman*, 630 Phil. 637-655 (2010); G.R. No. 186498, 26 March 2010, 616 SCRA 652.

Considering the procedural lapses committed by the police officers in this case and their failure to properly account for their non-compliance with the required procedures laid down by the law, the only recourse for this Court is to acquit accused-appellants.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 05 January 2018 by the Court of Appeals in CA-G.R. CR-HC No. 08912 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **JERRY COLLADO y CATALAN @ "GERRY" or "MIGGY"** and **MARINEL MACACANDO y CORDIAL @ "MARINIL MACACANDO y CORDIAL"** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. Accused-appellants are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED."

Very truly yours,

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

9th 7/10/20

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
5th Floor, DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

COURT OF APPEALS
CA-G.R. CR-HC No. 08912
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 27, Manila City
(Criminal Case Nos. 16-328003, 16-328004 and 16-328005)

The Director
Bureau of Corrections
1770 Muntinlupa City


The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Messrs. Jerry C. Collado and Marinel C. Macacando
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

PUBLIC INFORMATION OFFICE
Supreme Court, Manila

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

240445
gym/ 

CA
(279)
URES



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 240445

-versus-

JERRY COLLADO y
CATALAN @ "GERRY" [or]
"MIGGY" and MARINEL
MACACANDO y CORDIAL @
"MARINIL MACACANDO y
CORDIAL,"

Accused-Appellants.

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 February 05, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads: ⁶¹

“WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 05 January 2018 by the Court of Appeals in CA-G.R. CR-HC No. 08912 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **JERRY COLLADO y CATALAN @ “GERRY”** or **“MIGGY”** and **MARINEL MACACANDO y CORDIAL @ “MARINIL MACACANDO y CORDIAL”** are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. Accused-appellants are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.”

NOW, THEREFORE, You are hereby ordered to immediately release **JERRY COLLADO y CATALAN @ “GERRY”** or **“MIGGY”** and **MARINEL MACACANDO y CORDIAL @ “MARINIL MACACANDO y CORDIAL”**, 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 **05th** day of **February 2020**.

Very truly yours,

Misa DC Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court *gmd/1/10/20*

PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
5th Floor, DOJ Agencies Building
NIA Road corner East Avenue.
1104 Diliman, Quezon City

Order of Release

- 3 -

G. R. No. 240445

COURT OF APPEALS
CA G.R. CR HC No. 08912
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 27, Manila City
(Criminal Case Nos. 16-328003, 16-328004 and 16-328005)

Messrs Jerry C. Collado and Marinel C. Macacando
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

PUBLIC INFORMATION OFFICE
LIBRARY SERVICES
Supreme Court, Manila

G.R. No. 240445 ²¹ _{ofw}

STATIONER & PRINTER