



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 26, 2021 which reads as follows:

“G.R. No. 246190 — PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ANTHONY ABUEL ABUD ALIAS “JIMMY BOY,” accused-appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision¹ dated November 29, 2018 issued by the Court of Appeals – Cagayan De Oro City in CA-G.R. CR- HC No. 01738-MIN which affirmed the Decision² dated August 2, 2016 issued by Branch 13, Regional Trial Court of Davao City (RTC) finding accused-appellant Anthony Abuel Abud alias “Jimmy Boy” (accused-appellant Abud) guilty of illegal sale of 0.1012 gram of methamphetamine hydrochloride; illegal possession of 4.2735 grams and 4.3713 grams of methamphetamine hydrochloride; and possession of one piece small improvised plastic tooter, one piece improvised glass tooter, two improvised lighters with attached needles, two strips aluminum foil, 13 pieces empty plastic transparent sachets, and two strips aluminum foil with suspected residue of methamphetamine hydrochloride.

For failure to establish the *corpus delicti* of the offense due to the failure of the apprehending officers to faithfully abide by the chain of custody rule under Section 21, Article II of Republic Act (R.A.) No. 9165, the Court acquits accused-appellant Abud.

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¹ Rollo, pp. 4-14 Penned by Associate Justice Edgardo A. Camello, with Associate Justices Ruben Reynaldo G. Roxas and Evalyn M. Arellano-Morales concurring.

² CA rollo, pp. 45-57. Penned by Presiding Judge Rowena Apao-Adlawan.

In cases involving dangerous drugs, the Court must determine whether the dangerous drug, the *corpus delicti* of the crime, reached the court with its identity and integrity preserved.³ This must be established with moral certainty.⁴ In arriving at this certainty, the very nature of prohibited drugs — being susceptible to tampering and error — circumscribes the burden of the State in prosecuting the crime.⁵

Thus, in order to obviate any unnecessary doubt as to their identities, it is imperative for the prosecution to show that the dangerous drugs seized from accused-appellant are the very same substance offered in court and that the identities of the seized items are established with the same unwavering exactitude as that required to make a finding of guilt.⁶ Otherwise stated, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence.⁷ Accordingly, the burden lies on the prosecution to prove each link in the chain of custody.

The prosecution's burden in proving the *corpus delicti* is discharged by a faithful compliance of Section 21, Article II of R.A. No. 9165, the law applicable at the time of the commission of the offenses.⁸ Said provision requires that: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) 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 of the same; and (3) the seized drugs must be turned over to the Philippine National Police Crime Laboratory within 24 hours from confiscation for examination.

First, the marking of the confiscated items was not made in the presence of accused-appellant Abud. In its *Appellee's Brief*, the prosecution all but admitted that accused-appellant Abud did not witness the marking of the confiscated items:

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³ *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018).

⁴ *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

⁵ *People v. Lopez*, G.R. No. 247974, July 13, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66294>>.

⁶ *People v. Labsan*, G.R. No. 227184, February 6, 2019, 892 SCRA 112, 128-129.

⁷ *People v. Año*, 828 Phil. 439, 448 (2018).

⁸ The commission of the crimes charged occurred prior to the effectivity of Republic Act No. 10640 which amended Section 21, Article II of R.A. No. 9165.

41. As correctly pointed out by the trial court, after frisking the accused-appellant, he was transferred to a well-lighted portion of his house where marking subsequently took place. That marking was conducted was done [*sic*] in a well-lit area shows the intention of the police officers to show the accused the marking of the seized evidence.

42. Indeed, the testimony of Agent Villacis shows that when he and Agent Escudero were marking the seized items, the accused-appellant “was secured by the other members of the team”. That he was “secured” my [*sic*] PDEA officers is explained by the fact that upon his arrest, the accused-appellant attempted to flee, ran [*sic*] away from the place of arrest and put up resistance.

43. The contention of the defense that it is necessary for the accused-appellant to have an actual view of the act of marking is absurd. It is sufficient that the accused be within a close proximity of the place of marking thereby giving him an opportunity to view the act of marking. In this case, it was clear that when the marking was made by Agents Escudero and Villacis, the accused-appellant was in the same place and had an opportunity to view the same.⁹

The literal definition proposed by the prosecution for the term “in the presence of” — that is, accused-appellant Abud should be in close proximity thereby giving him an opportunity to view the marking—is not only a clear violation of Section 21, but also defeats the purpose of requiring him to witness the marking. The Court, in *People v. Sanchez*,¹⁰ emphasized the paramount importance of having the seized items marked immediately upon confiscation and in the presence of the apprehended violator as this initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.¹¹

It is important to note that Section 21 uses the same standard “in the presence of” not only for the accused, but also for the required three insulating witnesses. The ridiculousness of the definition proposed by the prosecution is more glaring when applied to the three insulating witnesses. Following the contention of the prosecution, the three insulating witnesses need not actually witness the inventory and photograph of the confiscated items. It is sufficient that they had the opportunity to witness and could have witnessed it, reducing them to mere warm bodies whose signatures are needed for the inventory. This is clearly not the rationale behind Section 21.

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⁹ CA *rollo*, pp. 98-99.

¹⁰ 590 Phil. 214 (2008).

¹¹ *Id.* at 240-241.

In a long line of cases that includes *People v. Mendoza*,¹² *People v. Reyes*,¹³ *People v. Sagana*,¹⁴ *People v. Calibod*,¹⁵ *People v. Tomawis*,¹⁶ *Hedreyda v. People*,¹⁷ *People v. Sta. Cruz*,¹⁸ *Tañamor v. People*,¹⁹ *People v. Arellaga*,²⁰ and *People v. Casilang*,²¹ the Court has consistently emphasized that the presence of all the required witnesses at the time of the inventory and photography is mandatory and the law imposes the said requirement because their presence serves to protect against the possibility of planting, switching, contamination or loss of the seized drugs. The presence of these disinterested witnesses would belie any doubt as to the source, identity, and integrity of the seized drugs. How can their presence ensure the integrity of the *corpus delicti* when they need not even witness the inventory and photograph thereof?

Second, the physical inventory and photographing of the dangerous drugs were made a day after the apprehension and seizure. In *People v. Supat*,²² the Court explained that the phrase “immediately after seizure and confiscation” in Section 21 of R.A. No. 9165 means that the physical inventory and photographing of dangerous 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 R.A. No. 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.²³

In *People v. Lim*,²⁴ the Court explained that the inventory and photographing in a place other than where the arrest and confiscation took place may only be allowed, among others, when there is threat to the safety and security of the apprehending officers and witnesses. As

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¹² 736 Phil. 749 (2014).

¹³ 797 Phil. 671 (2016).

¹⁴ 815 Phil. 356 (2017).

¹⁵ 820 Phil. 1225 (2017).

¹⁶ 830 Phil. 385 (2018).

¹⁷ G.R. No. 243313, November 27, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66031>>.

¹⁸ G.R. No. 244256, November 25, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65946>>.

¹⁹ G.R. No. 228132, March 11, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66109>>.

²⁰ G.R. No. 231796, August 24, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66340>>.

²¹ G.R. No. 242159, February 5, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66075>>.

²² G.R. No. 217027, June 6, 2018, 865 SCRA 45.

²³ Id. at 66.

²⁴ G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

such, in *People v. Amores*,²⁵ the Court found in favor of the accused the fact that the prosecution did not prove that the safety and security of the police officers were at risk which would have justified the deviation from the requirements of Section 21.

In the case at bar, the prosecution alleged that the members of the buy-bust team did not conduct the inventory and taking of photographs immediately after the buy-bust operation at the place of arrest and seizure because it was “beginning to get dark” and the “area is known to the [sic] have questionable persons.”²⁶ The Court is not convinced. Mere allegations without proof are not sufficient to justify non-compliance with Section 21. Otherwise, apprehending officers can easily get around Section 21 by alleging apparently valid justifications even though such are mere afterthoughts. In any case, the Court finds the reasons proffered by the prosecution insufficient.

First, the members of the buy-bust team left their office at 6:30 p.m. in the evening so they should have anticipated that the operation might drag on late into the night. Since they were able to mark the confiscated items at a well-lit area, there is simply no reason why they could not have continued the inventory and the taking of photographs in the same place. The Court likewise finds that there is no basis for the allegation that there were questionable persons in the area. To be sure, there was no allegation of any commotion caused by such questionable persons. If there were, the buy-bust team was composed of several police officers who could have subdued the situation. The members of the buy-bust team would have been able to secure the perimeter around accused-appellant Abud’s house where the inventory and taking of photographs could have taken place. However, they did not do so. Instead, they went back to the police station where none of the required witnesses was present. In the interim, the seized items were placed in the personal lockers of the apprehending officers, without any assurance that the personal lockers were under lock and key, and that the apprehending officers were the only ones who had access to their personal lockers.

The prosecution put forth the excuse that it was already late at night when the members of the buy-bust team arrived at the police station so they could not secure the presence of the three required witnesses. This would have been a sufficient justification for non-compliance with Section 21 if not for the fact that there was a seven-hour window from the time when the apprehending officers were

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²⁵ G.R. No. 243658, December 10, 2019.

²⁶ Appellant’s Brief, *CA rollo*, p. 37, citing page 12 of TSN dated July 18, 2015.



tipped by the confidential informant at 11:00 a.m. to the time they left their office at 6:30 p.m. The members of the buy-bust team did not testify as to their attempts to secure the presence of the required witnesses, much less explain why they were not able to do so, within the seven-hour window before the buy-bust operation and immediately after.

In *People v. Sanico*,²⁷ the Court overturned the conviction of the accused since it was shown, among other lapses, that the inventory of the seized items was done a day after the arrest of the accused therein. Similarly, in *People v. Borja*²⁸ (*Borja*), the inventory and photographing were done a day after the arrest of the accused. The Court, in *Borja*, noted that the postponement of the inventory and photographing defeated its very purpose — to ensure that the drugs seized are the very same drugs that are presented in court. In *People v. Redondo*,²⁹ where the seized items were marked one whole day after their confiscation, the Court acquitted the accused since a significant and unexplained break in the chain of custody had been made.

Third, the three insulating witnesses were not present at the time of the seizure of the dangerous drugs. Indeed, while the IRR of R.A. No. 9165 allow alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three insulating witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' seizure and confiscation — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.³⁰ It is at this point when their presence is most needed to ensure the source, identity, and integrity of the seized drug.³¹

The Court has repeatedly pointed out that this requirement can easily be complied by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.³² In *People v. Gamboa*,³³

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²⁷ G.R. No. 240431, July 7, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66318>>.

²⁸ G.R. No. 233795, March 4, 2020.

²⁹ G.R. No. 245488, September 16, 2020.

³⁰ *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 364; *People v. Labsan*, supra note 6, at 116.

³¹ *People v. Callejo*, G.R. No. 227427, June 6, 2018, 865 SCRA 405, 431.

³² *People v. Labsan*, supra note 6, at 130; *People v. Supat*, supra note 22, at 67; *People v. Casco*, G.R. No. 212819, November 28, 2018, 887 SCRA 322, 335-336.

³³ Supra note 4.

the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Considering that buy-bust operations are planned operations, police officers are given sufficient time to prepare and consequently make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed by Section 21, Article II of R.A. No. 9165.³⁴ They are therefore compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.³⁵ This is all the more pertinent in this case where, as admitted by the prosecution, the buy-bust team had seven hours to secure the presence of the required witnesses during the buy-bust operation.

The fact that the three insulating witnesses were present during the physical inventory and photograph taking a day after the apprehension and confiscation did not and cannot cure non-compliance with Section 21, Article II of R.A. No. 9165.

As such, the Court, in *People v. Bolivar*,³⁶ where the witnesses were only called the following day, emphasized that the required witnesses must be present even as early as the time of arrest. In this regard, the Court, in *People v. Tomawis*,³⁷ noted that 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.³⁸

Strict adherence with Section 21, Article II of R.A. No. 9165 remains to be the rule. This is a singular and rigid standard.³⁹ Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin requirements of: (1) existence of justifiable reasons, and (2) preservation of the integrity and evidentiary value of the seized items.⁴⁰ In the case at bar, the prosecution failed on both counts.

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³⁴ Id. at 569-570.

³⁵ Id. at 570.

³⁶ G.R. No. 225626, Decemeber 5, 2019.

³⁷ *People v. Tomawis*, 830 Phil. 385 (2018).

³⁸ Id. at 409.

³⁹ *People v. Lopez*, supra note 5.

⁴⁰ IRR of R.A. No. 9165, Sec. 21 (a).

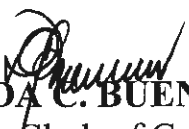
Indeed, much has been said about the conduct of buy-bust operations as a tool in flushing out illegal transactions that are otherwise conducted covertly and in secrecy.⁴¹ While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations⁴² and has generally left to the discretion of police authorities the selection of effective means to apprehend drug dealers,⁴³ the buy-bust operation's peculiar characteristic of having the benefit of planning and coordination⁴⁴ impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards.⁴⁵

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 29, 2018 of the Court of Appeals – Cagayan de Oro City Twenty-First Division in C.A.-G.R. CR-HC No. 01738-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant ANTHONY ABUEL ABUD ALIAS “JIMMY BOY” is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be sent to the Superintendent of the Davao Prison and Penal Colony, 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. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court, m.c. 17

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁴¹ *People v. Garcia*, 599 Phil. 416, 426-427 (2009).

⁴² *Castro v. People*, 596 Phil. 722, 730-731 (2009).

⁴³ *Quinicot v. People*, 608 Phil. 259, 274-275 (2009).

⁴⁴ *People v. Luna*, 828 Phil. 671, 688 (2018).

⁴⁵ See *People v. Umipang*, supra note 4, at 1054.



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