



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Appellee,

**G.R. No. 198113**

Present:

- versus -

VELASCO, JR., J., *Chairperson,*  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

**FERDINAND BAUTISTA y SINAON,**  
Appellant.

Promulgated:

December 11, 2013

X -----

*J. Velasco* X

***DECISION***

**ABAD, J.:**

This case is about the gross and deliberate failure of the buy-bust team to comply with the mandatory procedural safeguards of Section 21, Republic Act (R.A.) 9165 and Section 21(a) of its Implementing Rules and Regulations (IRR) with no justification for such non-compliance.

**The Facts and the Case**

On September 15, 2003 the Provincial Prosecutor of Bulacan filed separate charges of selling and possessing dangerous drugs in violation of Sections 5 and 11, Article II of R.A. 9165 against the accused appellant Ferdinand Bautista y Sinaon (Bautista) before the Regional Trial Court of Bulacan in Criminal Cases 3529-M-2003 and 3530-M-2003.

The evidence for the prosecution shows that on August 31, 2003 the Chief of Police of the Philippine National Police (PNP) in Meycauayan, Bulacan, received a phone-in information that accused Bautista had been selling illegal drugs in *Barangay Saluysoy*, Meycauayan, Bulacan.<sup>1</sup> At

<sup>1</sup> TSN, April 3, 2007, p. 4.

*W*

about 11:40 p.m. on September 3, 2003, after confirming through surveillance that Bautista had indeed been peddling illegal drugs,<sup>2</sup> the police chief dispatched police officers Willie Tadeo, Frederick Viesca, Michael Sarangaya, Philip Santos, and Manuel Mendoza to the place mentioned to conduct a buy-bust operation against the accused.<sup>3</sup>

On reaching the place, PO1 Tadeo approached accused Bautista's house while the rest of the officers positioned themselves nearby. Bautista met Tadeo outside the house. The officer told Bautista that he was interested in buying ₱300.00 worth of *shabu*. Bautista agreed and handed over a plastic sachet believed to contain *shabu* to his supposed buyer who in turn gave him three marked ₱100.00 bills. At a signal, the police back-up team rushed in and arrested Bautista.<sup>4</sup>

During the arrest, Bautista had a lady-companion later identified as Ma. Rocel Velasco (Ma. Rocel). The police officers asked Bautista to take out the contents of his pockets. He did so and this revealed the money paid to him as well as another sachet of 0.019 gram *shabu*. PO1 Viesca recovered from Ma. Rocel one big plastic sachet and eight small ones, the latter containing suspected *shabu*. PO1 Viesca marked these items with his initials "FTV."<sup>5</sup> The police then herded accused Bautista and Ma. Rocel to the police station.<sup>6</sup>

At the police station, PO1 Tadeo marked the *shabu* subject of the buy-bust with the initials "BBWCT." He marked the second plastic sachet seized from Bautista as "WCT" on one side and the letter "P" on the other side. After marking the seized items, the police submitted them for forensic examination which proved positive for methamphetamine hydrochloride or *shabu*.<sup>7</sup>

Bautista and Ma. Rocel denied the charges against them. In his brief, Bautista claimed as follows:

On 3 September 2003 while accused Rocel was washing clothes and accused [Bautista] was sleeping inside their house, a male person arrived and inquired from Rocel as to the whereabouts of a certain Jerry. When she replied that she does not know of a person by that name and that her only companion was her husband, several armed men went inside their house and demanded for her husband.

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<sup>2</sup> Id. at 3.

<sup>3</sup> TSN, June 4, 2007, p. 9.

<sup>4</sup> Id. at 10.

<sup>5</sup> Id. at 10-12.

<sup>6</sup> TSN, May 26, 2008, p. 38.

<sup>7</sup> Supra note 5, at 12-13.

As she was about to call [Bautista,] however, they went to him, asked him whether he was Jerry and immediately handcuffed him. Both accused were invited to the police precinct after that, and were falsely charged of the instant case.

The reason behind the false accusation was that Bautista was accused of stealing the coins from the video *karera* owned by PO1 Tadeo.<sup>8</sup>

On August 7, 2009 the RTC rendered a Decision finding accused Bautista guilty beyond reasonable doubt of selling dangerous drugs and, further, of having possession and control of a separate quantity of the same. The court, however, acquitted Ma. Rocel of the crime of possession for lack of the required proof to sustain conviction.

On appeal in CA-G.R. CR-HC 04099, the Court of Appeals (CA) affirmed on February 22, 2011 the Decision of the RTC with modification on the fine imposed.

### Issue Presented

The key issue presented in this case is whether or not the arresting officers preserved the integrity and the evidentiary value of the seized items despite their failure to observe the mandatory procedural requirements of Sec. 21 of R.A. 9165 and its IRR.

### The Court's Ruling

**One.** When prosecuting the sale or possession of dangerous drugs like *shabu*, the State must prove not only the elements of each of the offenses. It must prove as well the *corpus delicti*, failing in which the State will be unable to discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.<sup>9</sup>

To prove the *corpus delicti*, the prosecution must show that the dangerous drugs seized from the accused and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence to prove his guilt.<sup>10</sup> To ensure that this is done right and that the integrity of the evidence of the dangerous drugs is safeguarded, Congress outlined in Sec. 21 of R.A. 9165 the mandatory procedure that law enforcers must observe following the seizure of such substance:

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<sup>8</sup> Records, p. 90.

<sup>9</sup> *People v. Relato*, G.R. No. 173794, January 18, 2012, 663 SCRA 260, 270.

<sup>10</sup> *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 133.

(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;

Also, Sec. 21(a) of the IRR of R.A. 9165 provides the following:

(a) The apprehending officer/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: 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, further, that non-compliance 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 of and custody over said items;

Clearly, the Congress and the Executive Department demand strict compliance with the above. It is only by such strict compliance that the grave mischiefs of planting evidence or substituting it may be eradicated. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the government and liberally in favor of the accused.<sup>11</sup>

The first stage after seizure is the taking of inventory of the dangerous drugs seized from the suspect. It begins with the marking of the seized objects to fix its identity. Such marking should be made as far as practicable in the presence of the suspect immediately upon his arrest.<sup>12</sup> Of course, the failure to mark the seized items at the place of arrest does not of itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.<sup>13</sup> Marking upon “immediate” confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team,<sup>14</sup> especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.

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<sup>11</sup> Id. at 132.

<sup>12</sup> Id. at 134.

<sup>13</sup> *People v. Umipang*, G.R. No. 190321, April 25, 2012, 671 SCRA 324, 351.

<sup>14</sup> Id., citing *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836.

Here, however, PO1 Viesca marked the sachets of suspected substance seized from Ma. Rocel right where he arrested her. This shows that such marking was feasible. In contrast, PO1 Tadeo marked the substance he seized from Bautista after the police returned to their station. This unexplained digression from what ought to have been done creates a doubt regarding the integrity of the evidence against Bautista.

**Two.** The law requires the apprehending officer or team to conduct a physical inventory of the seized items and take photograph of the same in the presence of the accused, 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 copies of the same.

PO1 Tadeo categorically admitted that no elected official was present when the police made the arrest and when they conducted their investigation. PO1 Viesca admitted that no representative from the media or the DOJ were present during the inventory of the seized items.

The cross-examination and re-direct of PO1 Viesca is enlightening:

Atty. Sabinorio:

Q: Was there any picture taken in relation to the items you have recovered?

A: As far as I remember there were pictures taken, sir.

Q: And who took the pictures?

A: **I cannot remember anymore who took the pictures, sir.**

x x x x

Court:

Q: How about pictures of specimen?

A: **I cannot remember anymore if there were pictures taken, sir.**

Q: How about your coordination with the barangay officials in that place, did you do so?

A: **I don't remember, your honor.**

x x x x

Q: How about a media representative was he around?

A: **None, sir.**

Q: How about a DOJ representative?

A: **Also none, your honor.**

x x x x

Fiscal Roque:

Q: Why were you not able to coordinate this operation with the barangay officials?

A: **Because during that time I was just assigned there for only a month and I don't know the procedure, sir.**<sup>15</sup> (Emphasis supplied)

Further, although the prosecution witnesses averred that the physical inventory of the seized items was recorded in the police blotter, it did not bother to present a copy of the same with the required signatures or submit some valid justification for the omission.

What is more, both PO1 Tadeo and PO1 Viesca were uncertain regarding whether they photographed the seized items. In fact, they failed to produce any such photograph. This is either sloppy police work or utter refusal to comply with what is required of them. The prosecution should not have filed the case absent proof of compliance with what the law requires.

The Court has of course held that non-compliance with the procedural safeguards provided in Sec. 21 of R.A. 9165 and its IRR would not necessarily void the seizure and custody of the dangerous drugs for as long as there is a justifiable ground for it and the integrity and the evidentiary value of the seized items are properly preserved. Here, however, the buy-bust team did not bother to show that they “intended to comply with the procedure but were thwarted by some justifiable reason or consideration.”<sup>16</sup> Accordingly, despite the presumption of regularity in the performance of official duty, this Court stresses that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality.<sup>17</sup>

Due to the gross disregard of the buy-bust team of the procedural safeguards mandated by Sec. 21 of R.A. 9165 and its IRR and its failure to give justifiable reasons for it, this Court is led to conclude that the integrity and identity of the *corpus delicti* have been compromised.

**WHEREFORE**, the Court **REVERSES and SETS ASIDE** the Court of Appeals Decision of February 22, 2011 in CA-G.R. CR-HC 04099 as well as the Regional Trial Court Decision of August 7, 2009 in Criminal Cases 3529-M-2003 and 3530-M-2003 and **ACQUITS** the accused-appellant Ferdinand Bautista y Sinaon of the charges against him of violation of Sections 5 and 11, Article II of Republic Act 9165 due to the failure of the prosecution to establish his guilt beyond reasonable doubt.

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<sup>15</sup> TSN, July 1, 2008, pp. 10-12.

<sup>16</sup> *People v. Martin*, G.R. No. 193234, October 19, 2011, 659 SCRA 783, 792.


<sup>17</sup> *Supra* note 13, at 338.

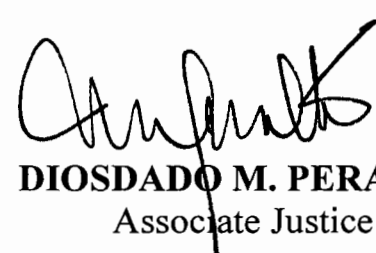
Further, the Court **DIRECTS** the immediate release from detention of Ferdinand Bautista y Sinaon, a.k.a. Ferdie, unless he is detained for some lawful cause. The Director of the Bureau of Corrections is **ORDERED** to implement this Decision immediately and report his action to this Court within 10 days from receipt of this Decision.


**SO ORDERED.**


  
**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

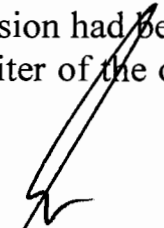
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice


***ATTESTATION***

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice