

FIRST DIVISION

[G.R. No. 246471, June 16, 2020]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIEGO FLORES Y CASERO, ACCUSED-APPELLANT.**

RESOLUTION

LOPEZ, J.:

The conviction of Diego Flores for illegal sale of dangerous drugs is the subject of review in this appeal assailing the Court of Appeal's Decision^[1] dated May 31, 2018 in CA-G.R. CR-HC No. 08634, which affirmed the findings of the Regional Trial Court.

ANTECEDENTS

On October 12, 2009, the Muntinlupa City Police Station Anti-Illegal Drugs Special Operations Task Group planned a buy-bust operation against Diego based on the information and surveillance report that he is selling shabu to jeepney drivers. After the briefing, PO1 Michael Leal was designated as the *poseur-buyer*, PO3 Agosto Enrile as back-up, and the other team members as perimeter guards. The following day, the confidential informant arranged a meeting in Diego's house at #355 National Road, Barangay Alabang, Muntinlupa City. The entrapment team went to the target area. Thereat, the informant introduced PO1 Leal to Diego who greeted them "*Kanina ko pa kayo inaatay pare, siya ba yung sinabi mo sa akin na kumpare mo na iiskor?*" The confidential informant replied, "*Oo pare siya nga.*" Diego then showed a gun and said "*Huwag kayo mag-alala safe kayo dito, takot sila sa akin dito.*"^[2]

Thereafter, PO1 Leal gave Diego the boodle money.^[3] Upon receipt of the payment, Diego handed to PO1 Leal a plastic sachet containing white crystalline substance. At that moment, PO1 Leal drew his gun and introduced himself as a police officer. The rest of the entrapment team rushed in. They arrested Diego and recovered from him a gun, three ammunitions and the buy-bust money. Immediately, the team proceeded to the police station because a crowd was forming which included Diego's relatives and their presence might cause a commotion. At the station, PO1 Leal marked the sachet with Diego's initials.^[4] The police officers conducted an inventory and photograph of the seized items witnessed by a representative from the City Drug Abuse Prevention and Control Office.^[5]

Afterwards, PO1 Leal and PO3 Enrile personally delivered the marked item to Ma. Victoria Meman, a non-uniformed personnel of the SPD Crime Laboratory Office, who then gave it to the forensic chemist PCI Abraham Verde Tecson.^[6] After examination, the substance tested positive for methamphetamine hydrochloride.^[7] PCI Tecson then marked the sachet with his initials⁸ and handed it to the evidence custodian PO3 Aires Abian for safekeeping. Accordingly, Diego was charged with

violation of Section 5, Article II of R.A. No. 9165 before the Regional Trial Court docketed as Criminal Case No. 09-681, to wit:

That on or about 13th day of October, 2009 around 12:00 [p.m.], in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, [Flores], not being authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, deliver and give away to another a white crystalline substance which when tested is (sic) positive for Methamphetamine Hydrochloride, [a] dangerous drug, weighing 0.03 grams, contained in a heat transparent plastic sachet in violation of the above-cited law.^[9]

Diego denied the accusation and claimed that he was on his way to work when a police mobile parked beside him. Suddenly, three armed men in civilian clothes alighted and pointed their guns at him. One of them searched him but found nothing. Yet, he was forcibly brought to the police station and was interrogated. The person who earlier searched him demanded P5,000.00 in exchange for his liberty. Unable to produce the money, they detained him and was placed under inquest proceedings.^[10]

On August 23, 2016, the RTC convicted Diego of illegal sale of dangerous drugs. It gave credence to the prosecution's version as to the transaction that transpired between Diego and the *poseur-buyer*.^[11] On May 31, 2018, the Court of Appeals affirmed the RTC's findings and ruled that the prosecution presented an unbroken chain of custody of dangerous drugs.^[12]

RULING

We acquit.

In illegal sale of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.^[13] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.^[14] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.^[15] Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before R.A. No. 10640^[16] amended R.A. No. 9165. Thus, the original provisions of Section 21 and its IRR shall apply, to wit:

Section 21, paragraph I, Article II of RA 9165]

(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.

[Section 21(a), Article II of the IRR of RA 9165]

(a) 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; ***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.*** (Emphasis Supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.^[17] Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.^[18] In *People v. Lim*,^[19] it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to