

FIRST DIVISION

[G.R. No. 246999, July 28, 2020]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARVIN BALBAREZ Y HERNANDEZ, ACCUSED-APPELLANT.**

DECISION

LOPEZ, J.:

The conviction of Marvin Balbarez for illegal possession of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals' Decision^[1] dated July 11, 2018 in CA-G.R.-HC No. 09558, which affirmed the findings of the Regional Trial Court (RTC).

ANTECEDENTS

Marvin ranked second on the list of the top ten drug personalities in Los Banos, Laguna.^[2] On April 23, 2011, the municipal police planned a buy-bust operation against Marvin based on reports that he is selling shabu in Barangay Malinta. In the briefing, the police asset was designated as *poseur-buyer* while Police Officer (PO) 2 Michael Angelo Palanca, PO1 Ruperto Lapitan, Jr., and PO1 Jeremias Ramos acted as apprehending officers. After coordination with the Philippine Drug Enforcement Agency, the operatives proceeded to the target area. Thereat, the *poseur-buyer* gave the boodle money to Marvin. Upon receipt of the payment, Marvin handed to the *poseur-buyer* a plastic sachet containing white crystalline substance.^[3] At that moment, the *poseur-buyer* executed the pre-arranged signal by flicking the sachet.

The buy-bust team rushed in, introduced themselves as police officers, and arrested Marvin. The *poseur-buyer* turned over the sachet to PO1 Ramos, who marked it with "MHB1." On the other hand, PO2 Palanca searched Marvin and recovered from him two plastic sachets. PO2 Palanca gave the sachets to PO1 Ramos, who marked them with "MHB2" and "MHB3." Also, the entrapment team took photographs of the seized items at the police station.^[4] Thereafter, PO1 Ramos forwarded the contrabands to Police Chief Inspector Dona Villa Huelgas for laboratory examination. The substances tested positive for methamphetamine hydrochloride.^[5] Thus, Marvin was charged with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165 before the RTC docketed as Criminal Case Nos. 18225-2011-C and 18228-2011-C, respectively, to wit:

[Criminal Case No. 18225-2011-C]

That on or about 23 April 2011, in the Municipality of Los Baños, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously sell and deliver one (1) small heat-sealed transparent plastic sachet containing 0.02 gram of methamphetamine hydrochloride, a dangerous

drug, without the corresponding authority of law.

CONTRARY TO LAW.^[6]

[Criminal Case No. 18228-2011-C]

That on or about 23 April 2011, in the Municipality of Los Baños, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously possess two (2) heat-sealed transparent plastic sachet containing 0.04 gram of methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.^[7]

Marvin denied the accusations and claimed he was driving his tricycle, with two passengers on board, when PO1 Ramos flagged him down. Afterward, PO1 Ramos brought them to the police station and were ordered to strip their clothes. Later, the passengers were allowed to go home while he was left incarcerated.^[8]

On May 30 2016, the RTC convicted Marvin of the charges.^[9] On July 11, 2018, the Court of Appeals acquitted Marvin of illegal sale (Case No. 18225-2011-C) but affirmed his guilt as to illegal possession (Criminal Case No. 18228-2011-C) of dangerous drugs,^[10] thus:

WHEREFORE, in view of the foregoing, the appeal is **PARTIALLY GRANTED**. The Decision dated May 30, 2016 rendered by the Regional Trial Court in Calamba City Laguna, Branch 36 in Criminal Case No. 18228-2011-C for Violation of Section 11, Article II of R.A. No. 9165 is **AFFIRMED**. For failure to prove the guilt of the accused-appellant beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165, the disposition in the aforesaid Decision pertaining to Criminal Case No. 18225-2011-C is **REVERSED and SET ASIDE**, and accused-appellant is **ACQUITTED** of the said charge.

SO ORDERED.^[11] (Emphasis in the original.)

RULING

We acquit.

In illegal possession 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.^[12] Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.^[13] Indeed, the prosecution must satisfactorily established 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.^[14] Here, the records

reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640^[15] amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations shall apply, to wit:

[Section 21, paragraph 1, 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 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: x x x 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; (Emphases and italics 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.^[16] Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.^[17] In *People v. Lim*,^[18] 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**