

## THIRD DIVISION

[ G.R. No. 198113, December 11, 2013 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERDINAND  
BAUTISTA Y SINAON, APPELLANT.**

### ***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 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 P300.00 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 P100.00 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.

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:

(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.

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