

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO HERRERA Y OSORMAN, A.K.A. “WILLY”, ACCUSED-APPELLANT.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Transmitted to the Court for review is a Joint Decision[1] that found the accused-appellant Wilfredo Herrera y Osorman a.k.a. “Willy” (“Wilfredo”) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs. The decretal portion of which reads as follows:

“WHEREFORE, foregoing considered, the Court hereby renders judgment as follows:

In Criminal Case No. 16263-D-PSG, the Court finds accused Wilfredo Herrera y Osorman a.k.a. “Willy” guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P 500,000.00).

In Criminal Case No. 16264-D-PSG, the Court finds accused Wilfredo Herrera y Osorman a.k.a. “Willy” guilty beyond reasonable doubt of the crime of Violation of Section 11, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to thirteen (13) years and one (1) day, as maximum, and to pay a fine of Three Hundred Thousand Pesos (P 300,000.00).

The shabu subject of these cases are forfeited in favor of the government.

SO ORDERED.”[2]

On April 23, 2008, two (2) separate pieces of information for Violation of Sections 5[3] and 11,[4] Article II of Republic Act No. 9165,[5] were filed against Wilfredo. The accusatory portions of the two pieces of information read:

Criminal Case No. 16263-D-PSG

“On or about April 21, 2008, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together with Danilo Herrera y Osorman, a.k.a. “Danny” who is still at large, and both of them mutually helping and aiding one another, and not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to police officer Carlo Luna, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing one (1) centigram (0.01 gram), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the aforesaid law.

Contrary to law.”[6]

Criminal Case No. 16264-D-PSG

“On or about April 21, 2008, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and

feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing four (4) centigrams (0.04 gram), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the aforesaid law.

Contrary to Law.”[7]

The two cases were consolidated and heard jointly.[8] When arraigned, accused Wilfredo pleaded “Not Guilty” to both charges. Accused Danilo Herrera remained at large and a fugitive from justice.

A Joint Order to consolidate Criminal Cases Nos. 16263-D and 16264-D was issued.[9] The hearing on the merits of the case thereafter ensued.

During the pre-trial conference, the parties agreed on the following stipulations of fact:

“(1) That the police officer prepared and submitted to the Crime Laboratory the Request for Laboratory Examination of the the specimen allegedly confiscated from the accused – (Existence ADMITTED with the qualification that the stuff allegedly subject of the forensic examination was not taken from the person of the accused and if ever it was taken from the accused, it was obtained illegally.);

(2) That the Forensic Chemistry Report showed positive result for shabu – (Existence ADMITTED with the qualification that the defense does not admit that the forensic chemist knows the origin of the specimen or knows that it was seized from the accused);

(3) Affidavit of Arrest of SPO1 Carlo E. Luna – (Existence ADMITTED).”[10]

The prosecution presented the following witnesses: (1) SPO1 Carlo Luna (“SPO1 Luna”), who acted as the poseur-buyer; (2) PO3 Mario Benito (“PO3 Benito”), a member of the buy-bust team; and (3) PCI Lourdeliza G. Cejes (“PCI Cejes”), the forensic chemist who examined the drug items. The defense, on the other hand, presented the lone testimony of accused-appellant Wilfredo.

The factual circumstances presented by the prosecution revealed that at around 9:00 o'clock in the evening of April 21, 2008, a police confidential informant (CI) arrived at the office of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF), Pasig City and reported the rampant selling of shabu by brothers alias “Willy” and alias “Danny” at Kapasigan, Pasig City.[11]

Acting on the report, Police Inspector Dennis David, Team Leader of SAID-SOTF, coordinated with the Philippine Drug Enforcement Agency (PDEA) for the conduct of a buy-bust operation against the suspects. Thereafter, PINSP David called for a meeting of the members of the SAID-SOTF and briefed them on the buy-bust operation against the suspects. SPO1 Luna was designated as the poseur-buyer and PO3 Mario Benito, as his immediate back up. PINSP David provided SPO1 Luna with one (1) P 200.00 bill bearing Serial No. ED 666525 to be used as the buy-bust money. SPO1 Luna marked the same with his initials “CEL”. The team agreed that once SPO1 Luna gets hold of the suspect, the same shall be the signal for the back-up team members to come in and help SPO1 Luna arrest the suspects.[12]

The CI was summoned to ascertain the exact place where the suspects sold shabu. At around 10:45 of the said evening, the CI returned to the office of SAID-SOTG and confirmed that the suspects were selling shabu at their house at Callejon Roces St., Kapasigan, Pasig City. The buy-bust team was immediately dispatched to the target area. Upon arriving thereat, SPO1 Luna and the CI went straight to the house of the suspects. The other members of the buy-bust team positioned themselves in strategic locations.[13]

The CI knocked on the door of the house of the suspects and called out the names of alias “Willy” and alias

“Danny”. Shortly thereafter, alias “Willy” and alias “Danny” came out of the house. The CI said, “iskor kami” and then introduced SPO1 Luna to the Herrera brothers as his friend. When alias “Willy” asked for how much, SPO1 Luna answered, “P 200.00” and immediately, the latter handed the buy-bust money to the former.[14]

Upon receipt of the money, alias “Willy” pocketed the same and ordered alias “Danny”: “Bigyan mo ng tig P 200.00.” Alias “Danny” then handed to alias “Willy” a plastic sachet of suspected shabu and the latter, in turn, handed the same to SPO1 Luna. Upon examining the contents of the plastic sachet, SPO1 Luna grabbed the hand of alias “Willy” and introduced himself as a police officer.[15]

PO3 Benito promptly came to the scene and helped SPO1 Luna arrest alias “Willy”. SPO1 Luna also ran after alias “Danny” who then sprinted to their house and locked their door. The other members of the team helped force open the door of the Herreras to pursue alias “Danny” but to no avail as alias “Danny” was able to jump off their house and escape.[16]

SPO1 Luna informed alias “Willy” of his constitutional rights and marked the plastic sachet of suspected shabu subject of the buy-bust with the markings: “WILLY/CEL BUY BUST 04-21-08 (with signature)”. He also marked another plastic sachet of suspected shabu seized from the person of alias “Willy”, with the markings: “WILLY/CEL 04-21-08 (with signature)”.[17]

After the inventory of the seized evidence, the police officers brought alias “Willy” and the seized evidence to the office of SAID-SOTF. Upon investigation made by SPO1 Peter Joseph Villanueva (“SPO1 Villanueva”), alias “Willy” was identified as accused-appellant Wilfredo Herrera and alias “Danny” as accused Danilo Herrera.[18] After the investigation and documentation, SPO1 Luna and SPO1 Villanueva brought the confiscated evidence and the request for laboratory examination to the Eastern Police District Crime Laboratory, Marikina City.[19]

The testimony of prosecution witness SPO1 Villanueva was dispensed with after the defense admitted the following offer of his testimony that: “(1) He was the investigator on the subject case; (2) He prepared the request for laboratory examination on the specimens confiscated and bought from the accused; (3) He prepared the request for drug test on both accused; (4) He brought the accused and the subject drugs to the PNP Crime Laboratory for examination; and (5) He turned over the subject drugs to Forensic Chemist, PCI Lourdeliza Cejes, in Marikina Crime Laboratory.”[20]

According to PCI Cejes, the seized, suspected sachets of shabu yielded positive results for methamphetamine hydrochloride or shabu, a dangerous drug, per Physical Sciences Report No. D-206-2008E which she issued on April 22, 2008.[21] The latter contained the following findings:

“SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

A - “A. Willy/CEL 04/21/08 Buy Bust with signatures”= 0.01 gram

B - “B. Willy/CEL 04/21/08 with signatures”= 0.04 gram

XXX XXX XXX

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug.”[22]

After the prosecution presented and completed the testimony of PCI Cejes, the parties likewise stipulated on the

following facts: “(1) that the drug subject matter of these cases were turned over by PCI Cejes to SPO2 Ramon Rabino, Evidence Custodian of the EPD Crime Laboratory after the former conducted laboratory examination on the subject drugs; (2) that on June 10, 2008, SPO2 Rabino turned over the subject drugs to the Pasig City Prosecutor's Office and the same was received by Salve Cernero; (3) that Salve Cernero also turned over the subject drug to the Evidence Custodian of the Pasig City Prosecutor's Office as evidenced by the turn-over letter marked as Exhibit “L”; and (4) that the same drugs were brought by the Public Prosecutor to this Court and identified by the poseur-buyer and the arresting officer, SPO2 [sic] Joseph Villanueva.”[23]

The defense, on the other hand, presented a different version of the facts. Denying the charges against him, appellant Wilfredo took the witness stand and testified that at around 5:00 to 5:30 in the afternoon of April 21, 2008, while he was inside the house of his aunt Lilia Osorman at Callejon Rosas, Kapasigan, Pasig, men in civilian clothes suddenly entered the house looking for his brother Danilo Herrera. When he responded that Danilo was not staying in the said house, the men searched for him inside the house. Not finding his brother, the men handcuffed him; brought him to Pariancillo Police Headquarters where he was locked behind bars. Cases for violation of Article II, Sections 5 and 11 of R.A. 9165 were then filed against him.[24]

The court a quo rendered the assailed decision finding Wilfredo guilty beyond reasonable doubt of the crime of illegal sale and illegal possession of dangerous drugs under R.A. 9165.

Invoking his innocence, appellant Wilfredo appeals his conviction before the Court, and seeks his acquittal by raising the following assignment of errors:

I. THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S TESTIMONY;

II. THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL;

III. THE COURT A QUO GRAVELY ERRED IN NOT APPLYING THE 'FRUIT OF THE POISONOUS TREE' DOCTRINE WITH RESPECT TO THE ALLEGEDLY CONFISCATED SHABU;

IV.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS; and

IV. THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.”

We find merit in the appeal.

To secure a conviction for illegal sale of shabu under Section 5, Rule II of Republic Act No. 9165, the prosecution must prove the presence of the following essential elements: “(a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing.”[25] For one to be convicted of illegal possession of dangerous drugs, on the other hand, the following elements must concur: (1) the accused is in possession of an item or object, which is identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[26]

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.[27] In the prosecution of these offenses, the primary consideration is to ensure that the identity and integrity of the seized drugs and other

related articles have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.[28]

Appellant Wilfredo argues that the court a quo erroneously disregarded his testimony regarding the surrounding circumstances of his illegal warrantless arrest; that contrary to the version of the prosecution that he was transacting with SPO1 Luna and the informant, he was in fact in his house when he was arrested; that had the court a quo considered his version, it would have recognized the fact that his arrest was patently illegal as he was not committing an unlawful act at the time of his arrest but was merely inside his house; and that if it were true that he was involved in illegal transactions involving dangerous drugs, the police officers should have applied for a warrant, considering that his identity, together with that of his brother's, were already known to the police even before the entrapment operations.

We observe, however, we observe that nowhere in the records can we find any objection by Wilfredo about the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.[29]

Nonetheless, we discuss briefly arrests without a warrant. Section 5, Rule 113 of the Rules of Court provides when an arrest without warrant is lawful:

SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person.

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.[30]

The records show that SPO1 Luna, who acted as the poseur-buyer, testified that he was present during the negotiation and the actual buy-bust or entrapment operation. He was the one who recovered from Wilfredo the two (2) sachets of suspected shabu involved in the illegal sale and illegal possession of dangerous drugs which were duly marked, identified, and presented in court. Together with the other prosecution witnesses, they testified as to the corpus delicti of the crime.

Wilfredo's assertion about the illegality of his arrest therefore is devoid of merit for it is a well-established rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest", in line with the above-cited provisions of Rule 113, Section 5 (a) of the Revised Rules of Court.[31]

A buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction

between the entrapping officers and the accused. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony about the operation deserves faith and credit.[32] Because the legitimacy of the buy-bust operation is beyond question, the subsequent warrantless arrest and warrantless search and seizure, were permissible. The search, clearly being incident to a lawful arrest, needed no warrant for its validity. Thus, contrary to Wilfredo's contention, the contraband seized from him, having been obtained as a result of the buy-bust operation to which the defense failed to impute any irregularity, was correctly admitted in evidence.

Appellant Wilfredo likewise insists that the prosecution failed to establish the unbroken chain of custody of the evidence, thus putting into doubt the integrity and the evidentiary value of the subject shabu. He asserts that there is nothing in the records that will show that SPO1 Luna gave the custody of the confiscated items to someone else; that PO3 Benito, in fact, testified that SPO1 Luna was one of the police officers who brought the seized items to the crime laboratory. In the Request for Laboratory Examination submitted to the trial court, however, the name of SPO1 Luna does not appear therein. The prosecution likewise failed to show how the specimens were transferred from SPO1 Luna to SPO1 Villanueva whose name appears as the one who supposedly delivered the specimens to the crime laboratory. Wilfredo also maintains that no inventory and photographs were taken of the seized items. According to Wilfredo, the prosecution failed to give any reasonable explanation for the said lapses.

A careful review of the case compels a different conclusion.

To be able to identify the dangerous drug and effectively prove the corpus delicti, Section 21 of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 (IRR) define the procedures to be followed by the apprehending officers in the seizure and custody of the dangerous drugs.

Section 21 of Republic Act No. 9165 relevantly provides:

“Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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;”

Similarly, Section 21(a), IRR of Republic Act No. 9165 pertinently states:

“(a) The apprehending office/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;”

From the foregoing, it may be gleaned that to establish the chain of custody in a buy-bust operation the steps are as follows: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked, seized illegal drug from the forensic chemist to the court.[33]

The rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[34]

The first link in the chain of custody refers to the seizure from Wilfredo of the illegal drugs and the subsequent marking thereof. It should be observed from the testimony of SPO1 Luna that the specifics on how, where and when he marked with his initials "A. WILLY/CEL BUY BUST 04-21-08 (with signature)" (pertaining to the illegal sale) and "B. WILLY/CEL 04-21-08 (with signature)" (pertaining to the illegal possession) the confiscated plastic sachets which were recovered from the sale transaction as well as the subsequent search from Wilfredo were proven by the prosecution. SPO1 Luna testified that he placed his markings immediately after Wilfredo's arrest, at the scene where the buy-bust operation took place and in the presence of appellant Wilfredo.[35]

The second link in the chain of custody, which pertains to the turnover of the sachets containing the suspected illegal drugs seized by the apprehending officer to the investigating officer, however, appears to have some irregularities. While the parties stipulated on the fact that SPO1 Villanueva was the assigned investigator; and that he was the one who brought the accused and the subject drugs to the PNP Crime Laboratory for examination, the testimonies of SPO1 Luna and PO3 Benito are inconsistent with such facts. SPO1 Luna testified that after Wilfredo was brought to the police headquarters, he took part in the preparation of the Letter Request for Laboratory Examination.[36] PO3 Benito, on the other hand, claimed that the possession of the confiscated items remained with SPO1 Luna, together with SPO1 Villanueva even after they arrived at the police office.[37] He even testified that SPO1 Luna merely showed the evidence to PO3 Villanueva.[38] Hence, it is not clear who had actual custody of the drug specimens before and during delivery to the PNP Crime Laboratory. There is also the lack of certainty about the person of one officer Villanueva who had been referred to as SPO1 Peter Joseph Villanueva, PO3 Villanueva, PO2 Villanueva. Do these 3 names refer to one and the same officer as the investigator? The one who delivered the shabu to the laboratory?

As for the third link in the chain of custody, PO3 Benito mentioned in his testimony that the Request for Laboratory Examination was prepared by SPO1 Villanueva, which fact was stipulated on by the prosecution and the defense. In the letter-request signed by Police Inspector Harold E. Aglipay, the stamped portion shows that the confiscated specimens were delivered by "PO2 Villanueva"[39] and received by "PCI Cejes" at the PNP Crime Laboratory. The testimony of PCI Cejes, on the other hand, merely established that the shabu items were tested and proved positive to the test for methylamphetamine hydrochloride, a dangerous drug as reflected in Physical

Sciences Report No. D-206-2008E.[40]

As for the fourth and last link in the chain of custody which is the fact of turn-over and submission of the marked shabu sachets from the forensic chemist to the court, such fact was stipulated on by the parties. It is worthy to reiterate that the parties stipulated on the following facts: that the drug specimens were turned over by PCI Cejes to SPO2 Ramon Rabino, the Evidence Custodian of the EPD Crime Laboratory after the former conducted the laboratory examination on the subject drugs; that SPO2 Rabino turned over the subject drugs to the Pasig City Prosecutor's Office and the same was received by Salve Cernero; that the latter also turned over the subject drugs to the Evidence Custodian of the Pasig City Prosecutor's Office as evidenced by the turn-over letter marked as Exhibit "L"; and that the same drugs were brought by the Public Prosecutor to the trial court and identified by the poseur-buyer SPO1 Luna and the investigating officer, SPO1 Joseph Villanueva.

Apart from the gap in the chain of custody, the procedure for the custody and disposition of confiscated, seized or surrendered dangerous drugs, among others, as provided under Section 21 (a), paragraph 1, Article II of Republic Act No. 9165, was likewise shown to have not been observed. The prosecution failed to show that the proper procedure concerning the inventory and photography of the seized items in the presence of the accused or his counsel, or a representative from the media and the Department of Justice, and of an elective official had been observed. While both SPO1 Luna and PO3 Benito testified that an Inventory of Seized Property Form was issued by SPO1 Luna but without the signature of the appellant or any other witness,[41] and that the same was marked, the said document however was not formally offered in evidence. The same is true with the photos taken of the drug specimens as they were not formally offered in evidence by the prosecution for unknown reasons. Hence, taken together with the broken chain of custody, such non-compliance with law and rules consequently raises doubt as the integrity and evidentiary value of the drug specimens. The inescapable conclusion can only be that the failure of the prosecution to comply with the foregoing procedures compromised the identity, as well as the integrity of the corpus delicti.

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[42] In the case at hand, although photos were allegedly taken and a Certificate of Inventory was issued, the prosecution failed to give any reason for their non-submission in the formal offer of evidence. As to the absence of a representative from the media, the Department of Justice, and of an elective official pursuant to Section 21, the prosecution merely offered the excuse that the urgency of the entrapment operations prevented them from getting the participation of these representatives.

The prosecution's failure to establish the element of corpus delicti with the prescribed degree of proof required for the successful prosecution of both illegal sale and possession of dangerous drugs compels a reversal of the judgment of conviction and acquittal of the accused-appellant Wilfredo.

In the war against illegal drugs, short-cuts in the apprehension, investigation and prosecution of suspected offenders cannot be tolerated as they erode the people's respect for the criminal justice system. The amended law and rules on dangerous drugs have precisely taken note of these observed field phenomena.

WHEREFORE, the appeal is GRANTED. The assailed decision is REVERSED and SET ASIDE. Appellant WILFREDO HERRERA y OSORMAN is ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. His release from detention is ordered, unless he be confined for any other lawful cause.

The Division Clerk of Court is directed to cause the implementation forthwith of the herein decision and to see to the appropriate disposition of the real evidence subject of the case.

IT IS SO ORDERED.

Reyes, Jr., P.J., (Chairperson) and Gaerlan, J., concur.

[1] Written by Judge Genie G. Gapas-Agbada, Acting Presiding Judge of Branch 154, Regional Trial Court of Pasig City in Criminal Case No. 16263-D-PSG, dated May 22, 2013; Records, pp. 156-167.

[2] Records, pp. 166-167.

[3] SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

xxx xxx xxx

[4] SECTION 11. Possession of Dangerous Drugs. — xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.”

[5] Entitled as “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, providing funds therefor, and for other purposes.”

[6] Records, p. 1.

[7] Ibid, p. 17

[8] Ibid, p. 100.

[9] Records, p. 100.

[10] Ibid, p. 34.

- [11] TSN dated March 25, 2009, p. 3.
- [12] Ibid, March 25, 2009, p.3; dated May 6, 2009, p. 5; and dated September 12, 2011, pp. 8-10.
- [13] Ibid, dated March 25, 2009, p. 4; and May 6, 2009, pp. 5-6.
- [14] TSN, dated March 25, 2009, p. 4; and May 6, 2009, pp. 7-10.
- [15] Ibid, dated March 25, 2009, p. 5; and May 6, pp. 10-12.
- [16] Ibid, dated March 25, 2009, p. 6; May 6, 2009, pp. 15-16; and September 12, 2011, p. 15.
- [17] Ibid, dated March 25, 2009, p. 7; and May 6, 2009, pp. 16-17.
- [18] TSN, dated September 12, 2011, pp. 17-18.
- [19] Ibid, dated September 12, 2011, pp. 15-17.
- [20] Records, p. 110.
- [21] TSN, dated November 23, 2012, pp. 5-8.
- [22] Records, p. 132.
- [23] Ibid, pp. 118-119.
- [24] TSN dated February 15, 2013, pp. 4-9.
- [25] People v. Constantino, G.R. No. 199689, March 12, 2014; People v. Secreto, G.R. No. 198115, February 27, 2013, 692 SCRA 298; People v. Salonga, G.R. No. 194948, September 2, 2013; People v. Enriquez, G.R. No. 197550, September 25, 2013; People v. Adrid, G.R. 201845, March 6, 2013, 692 SCRA 683; People v. Clara, GR. No. 195528, July 4, 2013, 702 SCRA 273.
- [26] Valencia v. People, G.R. No. 198804, 22 January 2014; People v. Secreto, supra at footnote 25 People v. Enriquez, supra at footnote 25.
- [27] People v. Bautista, G.R. No. 198113, December 11, 2013; People v. Beran, G.R. No. 203028, January 15, 2014.
- [28] People v. Secreto, supra at footnote 25.
- [29] Miclat v. People, G.R. No. 176077, August 31, 2011, 656 SCRA 539; Valdez v. People, G.R. No. 170180, November 23, 2007, 538 SCRA 611.
- [30] People v. Tancinco, G.R. No. 200598, June 18, 2014.
- [31] People v. Agulay, G.R. No. 181747, September 26, 2008, 566 SCRA 571.
- [32] People v. Dumangay, G.R. No. 173483, September 23, 2008, 566 SCRA 290.
- [33] People v.Holgado, G.R. No. 207992, August 11, 2014.
- [34] Valencia v. People, supra at footnote 26; People v. Salonga, supra at footnote 25.
- [35] TSN dated May 6, 2009, p. 16.
- [36] TSN, dated March 25, 2009, p. 7.
- [37] TSN, dated September 12, 2011, p. 17.

[38] Ibid.

[39] Same person as SPO1 Villanueva.

[40] Records, p. 132.

[41] TSN dated May 6, 2009, pp. 16-17; and dated September 12, 2011, p. 17.

[42] Valencia v. People, supra at footnote 26.

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