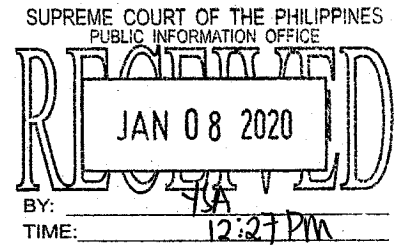




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

“G.R. No. 243020 – People of the Philippines v. Joseph Matias y Aquino

This is an appeal from the June 29, 2018 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09500, which affirmed the July 12, 2017 Joint Decision² of the Regional Trial Court, Branch 92, Balanga City, Bataan (RTC) in Criminal Case Nos. 16264 and 16265, finding accused-appellant Joseph Matias y Aquino (Matias) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act (CDDA) of 2002.

The Facts

In two separate Informations both dated March 23, 2010, Matias was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of the Informations read:

That on or about August 8, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully sell, distribute and give away to another one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride commonly known as shabu, a dangerous drug, weighing ZERO POINT ZERO NINE SIX ONE (0.0961) GRAM, and that accused was found positive for the use of Methamphetamine and THC Metabolites, a dangerous drug, after

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¹ Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rodil V. Zalameda and Renato C. Francisco, concurring; *rollo*, pp. 2-15.

² Penned by Presiding Judge Gener M. Gito; *CA rollo*, pp. 44-59.

the screening and confirmatory tests on the urine sample taken from him.³

and

That on or about August 8, 2016, in Balanga City, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully have in his possession, custody and control three (3) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride commonly known as shabu, a dangerous drug, with a total weight of ZERO POINT TWO TWO EIGHT FOUR (0.2284) GRAM, and that accused was found positive for the use of Methamphetamine and THC Metabolites, a dangerous drug, after the screening and confirmatory tests on the urine sample taken from him.⁴

During his arraignment on August 18, 2016, for both offenses, Matias pleaded "Not Guilty."⁵

Evidence for the Prosecution

On August 8, 2016, at around 3:00 p.m., Police Officer 1 Elton Berdonar (PO1 Berdonar) received a tip from a confidential informant (CI) that Matias was selling *shabu* at Barangay Bagong Silang, Balanga City. He then told the CI to report to the police station. When the CI arrived at the police station, PO1 Berdonar instructed him to call Matias. Using his cellular phone, the CI called Matias and put it on speaker mode so PO1 Berdonar could listen to their conversation. Eventually, the CI introduced PO1 Berdonar to Matias as his friend. Then, PO1 Berdonar told Matias that he wanted to buy ₱500.00 worth of *shabu* and the latter instructed him to meet in front of Bagong Silang's *barangay* hall at around 8:00 p.m.⁶

After the conversation with Matias, PO1 Berdonar relayed the information to the Chief of Police, who instructed him to conduct a buy-bust operation. During the briefing for the operation, it was agreed that PO1 Berdonar would be the poseur-buyer. Then, the buy-bust team proceeded to the agreed meeting place for the sale of *shabu*. PO1 Berdonar and the CI rode together in a motorcycle while the rest of the team followed them in a car.⁷

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³ Records (Criminal Case No. 16264), p. 1.

⁴ Records (Criminal Case No. 16265), p. 1.

⁵ Id. at 27.

⁶ Transcript of Stenographic Notes (TSN) dated October 6, 2016, pp. 3-4.

⁷ Id. at 3-6.

Upon arriving at the area, PO1 Berdonar and the CI waited for Matias at a nearby store. Once there, Matias talked to the CI and later instructed them to hand over the money. PO1 Berdonar gave the marked money to Matias, who in turn gave a plastic sachet of *shabu* to the police officer. After pocketing the *shabu*, PO1⁸ Berdonar performed the pre-arranged signal to alert the rest of the buy-bust team. He then held Matias' right hand and the arresting officer approached them to execute the arrest.⁸

After the arrest, PO1 Berdonar frisked Matias and retrieved a green pouch containing three plastic sachets — he then marked the plastic sachets recovered from Matias. Thereafter, the buy-bust team brought Matias and the seized items to the Balanga City Police Station.⁹

In the police station, an inventory of the seized items was conducted in the presence of Matias, a representative from the Department of Justice (DOJ) and an elected *barangay* official. After the inventory, Matias and the seized drugs were brought to the Bataan Crime Laboratory for testing.¹⁰ The tests conducted revealed that the plastic sachets obtained from Matias contained *shabu* and that the urine sample he gave was positive for *shabu* and THC metabolites.¹¹

Evidence for the Defense

On August 8, 2016, from 3:30 p.m. up to 8:00 p.m., Matias was at the *barangay* hall attending a youth meeting to discuss plans to conduct a sports fest in the *barangay*. After the meeting, he decided to go home to rest. While walking home, a tricycle driven by Guillermo Bartolome stopped in front of Matias. From the tricycle, a certain Police Officer Disono (Disono) alighted, approached Matias and pointed a gun at him. Then, another police officer on board a black car arrived. While Disono held Matias at gunpoint, the other police officer tied Matias' hands behind his back. The two police officers then frisked and forced him inside the car. Matias was brought to the Balanga City Police Station where he was made to sit in front of a table where the drugs and the marked money allegedly recovered from him were placed.¹²

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⁸ Id. at 6-7.

⁹ Id. at 7-9.

¹⁰ Id. at 9-11.

¹¹ Records (Criminal Case No. 16265), pp. 15-17.

¹² Records (Criminal Case No. 16265), pp. 34-36.

The RTC Ruling

In its July 12, 2017 Joint Decision, the RTC convicted Matias for violating Sections 5 and 11, Article II of R.A. No. 9165. The trial court ruled that the prosecution was able to prove all the elements for the crime of sale of illegal drugs. It opined that PO1 Berdonar's testimony as the poseur-buyer categorically narrated from how they prepared to conduct the buy-bust operation up to the consummation of the sale of illegal drugs. The RTC also found that all the elements for illegal possession of illegal drugs were duly proven. The trial court pointed out that PO1 Berdonar unequivocally testified that plastic sachets of *shabu* were recovered from Matias after he was searched as an incident to a lawful arrest.

Further, the RTC posited that the identity and integrity of the drugs recovered from Matias were undoubtedly preserved. The trial court highlighted that the drugs seized from Matias were immediately marked at the place of operation. In addition, it pointed out that the narcotics were inventoried at the police station in the presence of the accused, a DOJ representative and an elected public official. The RTC also noted that the prosecution was able to account the handling of the illegal drugs from the time it was recovered from the accused until it was presented in court as evidence. The dispositive portion read:

WHEREFORE, in view of the foregoing, accused **JOSEPH MATIAS y AQUINO** is found **GUILTY BEYOND REASONABLE DOUBT**:

- (a) For Violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 16264 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** without eligibility for parole and to **PAY** the fine of **FIVE HUNDRED THOUSAND PESOS [(PhP 500,000.00)]**.
- (b) For Violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. 16265 and is hereby sentenced to suffer the penalty of imprisonment of **FIFTEEN (15) YEARS AND ONE (1) DAY as minimum to TWENTY YEARS (20) as maximum** without eligibility for parole and to pay the fine of **THREE HUNDRED THOUSAND PESOS (PhP 300,000.00)**.

SO ORDERED.¹³

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¹³ CA rollo, pp. 58-59.

Aggrieved, Matias appealed before the CA.

The CA Ruling

In its assailed June 29, 2018 Decision, the CA upheld Matias' conviction for violating Sections 5 and 11, Article II of R.A. No. 9165. The appellate court agreed that the testimonial and documentary evidence presented by the prosecution established the elements of the crimes of sale of illegal drugs and illegal possession of drugs. It disregarded Matias' defense of denial and alibi in view of the affirmative testimony of the witnesses for the prosecution.

The CA likewise found that the prosecution was able to account for every link in the chain of custody of the drugs seized from Matias. As such, the appellate court concluded that the integrity and evidentiary value of the narcotics recovered from Matias were preserved. It ruled:

WHEREFORE, the appeal is DENIED. The RTC *Joint Decision* dated July 12, 2017 is **AFFIRMED** *in toto*.

SO ORDERED.¹⁴

Hence, this appeal, raising:

The Issue

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTIONS 5 AND 11, ARTICLE II OF R.A. NO. 9165

The Court's Ruling

The appeal is meritorious.

For a successful prosecution of violation of Section 5, Article II of R.A. No. 9165, or the illegal sale of dangerous drugs, the following elements must concur: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.¹⁵ On the other hand, the elements for illegal possession of dangerous drugs punished under Section 11, Article II of R.A. No. 9165 are the following: (a) the accused was in possession of an item or object identified as a prohibited

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¹⁴ *Rollo*, p. 15.

¹⁵ *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 125.

drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.¹⁶

In both offenses, the preservation of the integrity and identity of the seized drugs is of utmost importance considering that the narcotics itself constitute the *corpus delicti*.¹⁷ In other words, it is imperative that there is no reasonable doubt that the drugs presented in evidence in court must be the very same drugs recovered or seized from the accused. Observance of the chain of custody ensures that unnecessary doubt concerning the identity of the evidence is removed.¹⁸ Chain of Custody is the “duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction.”¹⁹

To ensure observance of the chain of custody, Section 21 of R.A. No. 9165 prescribes the procedure to be followed in drug related police operations, to wit:

SEC. 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[.]

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¹⁶ Id.

¹⁷ *People v. Ismael*, 806 Phil. 21, 29 (2017).

¹⁸ *People v. Dahil*, 750 Phil. 212, 231 (2015).

¹⁹ *People v. Gayoso*, 808 Phil. 19, 30 (2017).

It is supplemented by the provisions of its Implementing Rules and Regulations (IRR), *viz.*:

SEC. 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:

(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[.]

x x x x

Subsequently, R.A. No. 10640 amended Section 21 of R.A. No. 9165, to wit:

SEC. 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

SEC. 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*

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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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

X X X X

R.A. No. 10640 applies in the present case considering that the offense took place after its effectivity. Nevertheless, the provisions of Section 21 of R.A. No. 9165 and R.A. No. 10640 are

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nearly identical. Under R.A. No. 9165, it is required that a representative from the DOJ, the media, and an elected public official be present during the inventory. On the other hand, R.A. No. 10640 simply requires the presence of an elected public official, and a representative from the National Prosecution Service (NPS) or from the media. In addition, R.A. No. 10640 also incorporated provisions of the IRR of R.A. No. 9165, particularly the saving clause in case of non-observance of the procedures and that the inventory and photograph of the items seized may be done in a place other than where the arrest was made.

In essence, Section 21 of R.A. No. 9165, as amended by R.A. No. 16040 requires: (1) the inventory and photograph of the seized items immediately after seizure; (2) that it must take 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; and (3) it must be done in the presence of the accused, an elected public official and a representative from the NPS or the media.

In *People v. dela Cruz*,²⁰ the Court explained that the requirement that the inventory and photograph be done immediately after seizure and confiscation necessitates that the insulating witnesses should be at or near the place of arrest, *viz.*:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses. (Emphasis in the original and citation omitted)

In *People v. Tomawis*,²¹ the Court likewise explained the rationale in requiring the presence of the insulating witnesses during the buy-bust operation, to wit:

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²⁰ G.R. No. 234151, December 5, 2018.

²¹ G.R. No. 228890, April 18, 2018, 862 SCRA 131, 147.

While the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. **The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.** (Emphasis supplied)

In *People v. Labsan*,²² the Court expounded that the presence of insulating witnesses at or near the place of arrest helps to strengthen the case of the prosecution as it would easily negate usual defenses raised by the accused in drug related offenses, to wit:

Thus, if the buy-bust operation was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up, extortion and civilian harassment. Conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, as in this case, then, doubt exists whether there was actually a buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*. (Citation omitted)

A closer scrutiny of PO1 Berdonar's testimony reveals that the police failed to observe the procedure laid out under R.A. No. 10640, to wit:

PROSECUTOR PUNAY:

x x x x

Q: And after the marking of the [P]500.00 what did you do next?

A: We proceeded to the area agreed upon at Phase 3, Barangay Bagong Silang, Balanga City, Bataan, [ma'am].

Q: Who was or were with you when you proceeded to the area?

A: I was riding on a motorcycle together with our confidential asset and PO1 Linsangan was following us on a Toyota Innova, [ma'am].

Q: Who was with Officer Linsangan?

A: Our team leader, [ma'am].

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²² G.R. No. 227184, February 6, 2019.

Q: Upon arriving to the area, where did you park your motorcycle?

A: In front of a store and PO1 Linsangan also parked at the other side of the store at a distance of seven (7) meters, [ma'am].

x x x x

Q: And after pocketing the sachet, what did you do next?

A: I took off the helmet I was wearing and placed it on the "manibela" of the motorcycle as the pre-arranged signal, [ma'am].

Q: After you placed the helmet, what did you do next?

A: I held the right hand of @Jopet and the arresting officer approached us to execute the arrest, [ma'am].

Q: How did you effect the arrest?

A: When I held his hand I was able to recover the marked money; I frisked him and recovered from him a green pouch containing three (3) plastic sachets, [ma'am].

x x x x

Q: After you marked the specimens and the coin purse, what happened next?

A: We proceeded to the Balanga City Police Station, [ma'am].

Q: And from the buy-bust area up to the police station who was in possession of the specimen?

A: I was in the possession of the specimen, [ma'am].

Q: How were you possessing the specimens?

A: I was holding the coin purse from the area of operation to the police station while the one I was able to buy from the accused I placed in my right pocket, [ma'am].

Q: How about the three (3) sachets that you were able to confiscate from the possession of the accused, where were those sachets on your way to the police station?

A: After I marked the sachets I placed it in the green pouch which I was holding on my way to the police station[,] [ma'am].

Q: And at the police station, what happened?

A: We conducted an inventory, [ma'am].

Q: What is your proof that an inventory was conducted at the police station?

A: We had picture taking together with the DOJ representative and the barangay official and we have inventory receipt, [ma'am].²³ (Emphasis supplied)

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²³ TSN, October 6, 2016, pp. 5-9.

It is readily apparent that the insulating witnesses were not present at or near the place of arrest. As testified to by PO1 Berdonar, it was only the buy-bust team and the CI who went to the meet-up place with Matias. The presence of a DOJ representative and a *barangay* official was only mentioned at the time of the inventory at the police station. The presence of the insulating witness at or near the place of arrest is amplified considering that PO1 Berdonar pocketed the evidence allegedly recovered from Matias. Without them, the identity and integrity of the drugs seized become questionable as questions may arise whether the drugs PO1 Berdonar took out of his pocket were the very same drugs he retrieved from Matias.

It is true that failure to observe strict compliance with the procedure laid out under the CDDA is not necessarily fatal to the prosecution. R.A. No. 10640 adopted the saving clause provided under the IRR of R.A. No. 9165 stating that non-compliance of 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 and custody over said items.

Nonetheless, in order for the saving clause to apply, the following requisites must concur: (1) existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.²⁴ It is imperative that the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same to excuse strict compliance of the procedures under the law.²⁵ Unacknowledged and unexplained breaches of the procedures prescribed in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, militate against a finding of guilt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.²⁶

In the present case, the prosecution failed to identify the deviation from the prescribed procedure under R.A. No. 10640. As a result, no justifiable grounds were likewise offered to excuse strict compliance with the requirements of the law. Necessarily, the integrity and evidentiary value of the *corpus delicti* had been tainted warranting the acquittal of the accused.

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²⁴ *People v. Claudel*, G.R. No. 219852, April 3, 2019.

²⁵ *People v. Caranto*, G.R. No. 217668, February 20, 2019.

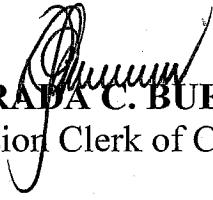
²⁶ *Id.*

WHEREFORE, the June 29, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09500 is **REVERSED** and **SET ASIDE**. Accused-appellant Joseph Matias y Aquino is **ACQUITTED**. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

Let a copy of this Resolution be furnished the Chief Superintendent of the New Bilibid Prison, for immediate implementation. He is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

SO ORDERED.” *Inting, J., additional member per Special Order 2726.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{pk 117}
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Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09500)

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