



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **March 9, 2022**, which reads as follows:*

“G.R. No. 254861 (*People of the Philippines, plaintiff-appellee v. Josie Rollen Bucio, accused-appellant*). – The Court resolves to **NOTE:**

- (1) the Office of the Solicitor General’s Manifestation (in Lieu of Supplemental Brief) dated August 4, 2021, stating that it dispenses with the filing of a supplemental brief to expedite the resolution of this case and to avoid repetition of arguments, considering that the appellee’s brief sufficiently discussed all the relevant issues and arguments of the case; and
- (2) accused-appellant Manifestation in Lieu of Supplemental Brief dated July 13, 2021, stating that after review of the appellant’s brief, he adopts the same in lieu of a supplemental brief to avoid repetition of the issues and arguments already discussed.

Appellant Josie Rollen Bucio faults the Court of Appeals¹ for affirming the verdict of conviction² against her for violations of Sections 5 (illegal sale of dangerous drugs) and 11 (illegal possession of dangerous drugs), both of Article II of Republic Act No. 9165 (RA 9165), known as the *Comprehensive Dangerous Drugs Act of 2002*.

She argues³ that the alleged seized items were not immediately marked upon confiscation contrary to the command of RA 9165 and its implementing rules. As it was, both Senior Police Officer 1 Ellen Nito P. Nacua (SPO1 Nacua) and Police Officer 3 Sofia D. Pensinabes (PO3 Pensinabes) turned-over the seized items to Police Inspector Lemuel Sabanal

¹ By its assailed Decision dated June 10, 2020, penned by Presiding Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Richard D. Mordeno, *rollo*, pp. 5-36 and *CA rollo*, pp. 145-176.

² Through Judgment dated July 27, 2018, penned by Presiding Judge Giovanni Alfred H. Navarro of the Regional Trial Court, Branch 27, Gingoog City, Misamis Oriental, *CA rollo*, pp. 67-74.

³ See Appellant’s Brief dated December 4, 2018, *id.* at 49-65.

(PSI Sabanal) without marking them first. The plastic sachets were marked only much later at the police station. Also, Forensic Chemist Police Chief Inspector Joseph Esber (PCI Esber) failed to prove that the sachets which he examined were the same ones presented in court. His testimony was limited to the results of his examination.

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Ma. Cielo Se-Rondain and Senior State Solicitor Hector G. Calilung, counters⁴ that the elements of the crimes charged were all proven beyond reasonable doubt. The integrity and evidentiary value of the seized items were preserved. The testimonies of PSI Sabanal, SPO1 Nacua, PO3 Pensinabes, and PCI Esber clearly demonstrated how the items were seized. The same remained in PSI Sabanal's possession from the time they were turned over to him until he personally delivered them to the crime laboratory. PCI Esber further testified that after he did the chemical examination of the items, he marked and turned them over to the evidence custodian. The sachets presented in court were the same ones he examined. He identified the markings he made thereon and noted that his markings were not tampered with.

We acquit.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The Court, in *People v. Barte*⁵ emphasized that the prosecution is tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants a verdict of acquittal.⁶

Appellant was charged with violations of Sections 5 and 11, Article II of RA 9165 which she allegedly committed on September 23, 2014. The applicable law, therefore, is RA 9165 as amended by Republic Act No. 10640 (RA 10640) which took effect on August 7, 2014.

Section 21 of RA 9165, as amended by RA 10640 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, 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

⁴ See Appellee's Brief dated April 11, 2019, *id.* at 81-99.

⁵ See 806 Phil. 533, 542 (2017).

⁶ *People v. Dela Cruz*, G.R. No. 238212, January 27, 2020.

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 person/s 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.

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. *People v. Gayoso*⁷ enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*, **first**, the seizure and marking immediately at the place of arrest 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 illegal drug seized from the forensic chemist to the court.

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁸

We focus on the first link.

⁷ See 808 Phil. 19, 31 (2017).

⁸ See *People v. Hementiza*, 807 Phil. 1017, 1026 (2017):

The *first link* speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated items.

Marking is the placing by the arresting officer or the poseur-buyer of his initials and signature on the items after seizure. While the matter of marking of the seized illegal drugs in warrantless seizures is not expressly specified in Section 21, consistency with the chain of custody rule requires that such marking be done (1) in the presence of the apprehended violator and (2) *immediately upon confiscation*. This step initiates the process of protecting innocent persons from dubious and concocted searches on one hand, and of protecting the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft, on the other.⁹

In *People v. Areola, Jr.*,¹⁰ the Court emphasized that the immediate marking of the seized illegal drugs is vital because succeeding handlers of the specimens will use the markings as reference. The marking obviates switching, “planting,” or contamination of evidence as it separates the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings. Failure to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.

Here, as correctly pointed out by appellant, neither of the three (3) police officers who handled the seized items marked the same immediately after confiscation. They did the marking only at the police station in direct violation of RA 9165 and its Implementing Rules and Regulations.

The prosecution tried to justify the delayed marking, claiming that a number of people were starting to gather at the *situs criminis* after they seized the drugs from appellant. But this allegation was never established. Nor was it shown that the so-called number of people who had gathered at the *situs criminis* posed a threat to the operation. More so considering the fact that PSI Sabanal, SPO1 Nacua, and PO3 Pensinabes had a full back-up not only from the Misamis Oriental Police Provincial Office – Provincial Intelligence Branch, Anti-Illegal Drugs Specialist Operations Task Force, Philippine Drug Enforcement Agency (PDEA), but also from the Gingoog City police station itself.¹¹ They could have easily controlled the crowd or at the very least held them until PO3 Pensinabes or PSI Sabanal shall have successfully marked the sachets.

⁹ See *People v. Areola, Jr.*, G.R. No. 251919 (Notice), May 12, 2021.

¹⁰ *Id.*

¹¹ CA rollo, pp. 52 and 69.

The prosecution further claimed that the police station was only a minute's drive away from the *situs criminis*. If this were so, then the police officers could have easily summoned an additional back-up to restrain the crowd while they do the marking, assuming their full original back-up team was still not enough.

In any event, even after they had arrived at the police station, the police officers admitted to having waited another fifteen (15) minutes before they did the marking. Between the time the items were seized and the time they were actually marked, there was no guarantee at all that they did not commingle with each other or with the other items that police officers may have seized from their other operations on that day. In fine, the identity, integrity, and evidentiary value of the seized items were deemed to have already been compromised early on.

As the Court reiterated in *People v. Omamos*,¹² marking after seizure is the starting point in the custodial link. If the item seized remained unmarked from the time of seizure up until it was brought to the office of the arresting officers, alteration, substitution, or contamination of the seized item could happen.

In *People v. Valdez*,¹³ the seizing officer marked the seized items only at the police station due to the officer's lack of marking tools with him at the place of arrest. There, the Court said that the justification was flimsy on its face and could not have set the saving clause in motion. The Court further decreed that since the alleged *corpus delicti* remained unmarked from the place of arrest until it reached the police station, *it was exposed to the possibility of switching or tampering while in transit, hence, its integrity and evidentiary value were deemed to have been compromised.*

The prosecution witnesses testified that PO3 Pensinabes respectively marked the plastic sachets "LSS-1" for the subject of the illegal sale and "LSS-2" for the subject of the charge for illegal possession. The markings "LSS-1" and "LSS-2" contravened the Philippine National Police (PNP) Manual on Anti-Illegal Drugs Operation and Investigation, which requires the seizing officer to mark the evidence with his or her initials indicating therein the *date, time, and place* where the evidence was found, recovered, or seized.¹⁴ In *Sarip v. People*,¹⁵ one of the factors that led the Court to acquit Sarip was the irregularity in the marking of the seized items, thus:

¹² See G.R. No. 223036, July 10, 2019, 908 SCRA 367, 380.

¹³ See G.R. No. 255343 (Notice), July 28, 2021.

¹⁴ See *Sarip v. People*, G.R. No. 250986 (Notice), February 17, 2021.

¹⁵ *Id.* citing *People v. Narvas*, G.R. No. 241254, July 8, 2019, 908 SCRA 125.

For another, PO3 Petilo violated the Philippine National Police's (PNP) own Manual on Anti-Illegal Drugs Operation and Investigation. For the seized items do not bear the date, time, and place of seizure, as required. The Manual commands:

2.35 The Seizing Officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.

Here, PO3 Petilo testified that he only marked the seized items with his initials, viz.:

Q: How would you be able to identify the plastic sachet of suspected shabu which you said @Leah handed over to this Norie Mohammad?

A: I put my markings on the item seized, ma'am.

Q: What markings did you place on the plastic sachet which you saw accused [Asliah] Sarip handed over [to] Norie Mohammad?

A: JSP, ma'am.

x x x x

Q: What about the plastic sachet which you recovered from the possession of Leah when you asked them to empty their pocket, what was the markings that you placed therein?

A: JSP-1, ma'am.

In acquitting the appellant in *People v. Narvas*, the Court noted that the seized items only bore the initials of the apprehending officer without indicating the date, time, and place they were supposedly confiscated and considered this **highly irregular**. Indeed, **such plain markings now fall short of the requirements of the PNP itself**. As in *Narvas*, so too should petitioner here be acquitted. (Emphasis supplied)

Lastly, the Court notes that the seized items were not immediately brought to the crime laboratory for examination after the inventory. PCI Esber admitted¹⁶ that she received two (2) requests for examination, one on September 23, 2014, for ultraviolet testing of the three (3) ₱1,000.00 bills and appellant's hands, and the other on September 24, 2014 for the contents of the plastic sachets allegedly seized from appellant. SPO1 Nacua, on the other hand, testified that after the inventory PSI Sabanal took the sachets and stored them inside a security cabinet.

Neither PSI Sabanal nor SPO1 Nacua testified as to who actually had access to that security cabinet or if it were really a secure place to keep the items in question. Without showing how the items were supposedly kept intact and secure inside that cabinet, the possibility that the items were switched with other items or were tampered with, can never be ruled out. Also, the Court finds it suspect for PSI Sabanal to have stored the seized items inside the cabinet when he could have right off delivered them to

¹⁶ CA rollo, pp. 149-150.

Forensic Chemist PCI Esber on the same day he delivered appellant and the three (3) ₱1,000.00 bills to the aforementioned chemist.

In view of the foregoing procedural infirmities, the integrity and evidentiary value of the seized items cannot be said to have been preserved. If the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, as in this case, then it is the Court's duty to overturn the verdict of conviction.¹⁷

As the Court pronounced in *People v. Macud*,¹⁸ we recognize the pernicious effects of dangerous drugs in our society, but the efforts to defeat or eradicate these cannot trample on the constitutional rights of individuals, particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State. Time and again, we have exhorted courts "to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses."

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated June 10, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 02079 is **REVERSED and SET ASIDE**. Appellant Josie Rollen Bucio is **ACQUITTED** of illegal sale of dangerous drugs in **Criminal Case No. 2014-5796** and of illegal possession of dangerous drugs in **Criminal Case No. 2014-5797**.

The Court **DIRECTS** the Director General of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Josie Rollen Bucio from custody unless she is being held for some other lawful cause or causes; and (b) inform the Court of the action taken within five (5) days from notice.

Let an entry of final judgment be issued immediately.

SO ORDERED." (LEONEN and KHO, JR., JJ., on official leave.)

By authority of the Court:

MistDCB-H
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
ca
4/19/22

¹⁷ See *People v. Año*, 828 Phil. 439, 453 (2018).

¹⁸ 822 Phil. 1016, 1042 (2017).

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