



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 23, 2022** which reads as follows:*

“G.R. No. 239024 – ZENON A. PLAZA, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

After a careful review of the records of the case and the issues submitted by the parties, the Court **REVERSES** the Decision¹ dated March 23, 2018 of the Court of Appeals, Cagayan De Oro City (CA) in CA-G.R. CR No. 01475-MIN, which affirmed the Decision² dated July 25, 2016 of the Regional Trial Court, Branch 41, Cantilan, Surigao del Sur (RTC), convicting petitioner Zenon A. Plaza (Plaza) for violation of Section 11, Article II of Republic Act No. (RA) 9165,³ in Criminal Case No. C-790. The Court grants the Petition and acquits Plaza for failure of the prosecution to prove his guilt beyond reasonable doubt.

Plaza waived his right to question the application and issuance of Search Warrant No. 2011-1

Foremost, Plaza assails Search Warrant No. 2011-1⁴ issued by Honorable Ambrosio N. Moleta, Acting Presiding Judge of the 4th Municipal Circuit Trial Court, Cagwait-Bayabas, Surigao del Sur (MCTC) arguing that the same was not issued based on probable cause.⁵

- over – eight (8) pages ...

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¹ *Rollo*, pp. 48-64. Penned by Associate Justice Romulo V. Borja, with Associate Justices Oscar V. Badelles and Tita Marilyn Payoyo-Villordon, concurring.

² *Id.* at 89-99. Penned by Assisting Judge Rufo U. Naragas.

³ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, June 7, 2002.

⁴ *Records*, p. 35.

⁵ *Id.*

Plaza has already waived his right to question the application and issuance of Search Warrant No. 2011-1 considering that he raises the same only in the present Petition. Notably, Plaza filed a Motion to Suppress Evidence⁶ before the RTC on the basis of the alleged illegality in the implementation of Search Warrant No. 2011-1. Section 8, Rule 15, in relation to Section 1, Rule 9 of the Rules of Court provides for the omnibus motion rule which requires that all available objections must be included in a party's motion, otherwise, said objections shall be deemed waived.⁷ In his motion, Plaza failed to raise any defect in the application and issuance of Search Warrant No. 2011-1. He likewise did not raise any issue on the matter when he appealed before the CA. Thus, Plaza cannot be allowed to belatedly assail the application and issuance of Search Warrant No. 2011-1 in the present Petition.

On the issue of the legality of the search conducted, Plaza argues that the police officers went beyond the area covered by Search Warrant No. 2011-1 which provided that the dangerous drugs and paraphernalia were located in Plaza's "sala, on top of the table in his house."⁸ Plaza claims that the house searched belonged to his brother and the search should have been limited to the sala, not the entire premises.⁹

The argument deserves scant consideration. For one, the records clearly show that it was Plaza's residence that was searched. This was corroborated by the testimony of Barangay Captain Alberto Mendez Urquia (Barangay Captain Urquia) who personally knew Plaza and witnessed the search.¹⁰ Moreover, as correctly ruled by the CA, Search Warrant No. 2011-1 authorized the police officers to conduct a search of the entire house of Plaza,¹¹ viz.:

IT APPEARING to the satisfaction of the undersigned after examining under oath the applicant PI ELMAR ROZ CLARET and his witness GENEVIEVE M. DEONTOY, that there is probable cause to believe that possession of illegal drugs locally known as shabu and paraphernalia, as penalized under [RA] 9165, has been committed or is about to be committed and that there are good and sufficient reasons to believe that **ZENON PLAZA**, has

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⁶ Id. at 93-96.

⁷ *Surban v. People*, G.R. No. 231045, March 18, 2021 (Unsigned Resolution).

⁸ Records, p. 35.

⁹ *Rollo*, p. 53.

¹⁰ TSN, February 3, 2016, pp. 4-8.

¹¹ *Rollo*, p. 58.

in his possession or control inside the sala, on top of the table of his house situated at Frias corner Arreza Sts., of Linibunan, Madrid, Surigao del Sur, the following illegal drugs and items, to wit: at least ten (10) sachets of illegal drug locally known as “shabu”, placed inside a red wallet; and several shabu paraphernalia such as tinfoils, lighter and tooters, placed on top of the table of the sala of the above-described house of the respondent located at the mentioned address as indicated in the attached Map of Madrid Pob marked as Exhibit “A”, which should be seized and brought to the undersigned.

You are hereby commanded to make an immediate search at any time in the day (or night) of the premises above described and forthwith seize and take possession of the following personal property x x x.¹²

The phrase “inside the sala, on top of the table” was not only used by the issuing court to establish that Plaza had control and possession of dangerous drugs and paraphernalia, but also to satisfy the requirements of definiteness and particularity in describing the premises to be searched so that the warrant officer may be guided in its implementation. Further, Plaza’s one-storey residence is a singular unit which included a sala, a kitchen, and one bedroom, therefore, it was reasonable for the police officers to include the bedroom in the search as it is part of the premises occupied by Plaza.

There are unexplained gaps in the chain of custody which compromised the identity and integrity of the seized sachets of shabu

Notwithstanding the validity of Search Warrant No. 2011-1 and its consequent implementation, the Court finds that the prosecution failed to establish the *corpus delicti* of the offense.

In order that an accused may be convicted for illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the following elements must be established: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹³

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¹² Records, p. 35; emphasis in the original.

¹³ *People v. Manabat*, G.R. No. 242947, July 17, 2019, 909 SCRA 543, 561.

In dangerous drugs cases, it is also essential that the prosecution establishes the identity of the seized drugs, the *corpus delicti* of the offense.¹⁴ There must be no doubt that the drugs presented in court are the same drugs taken from the accused.¹⁵ In this case, the Information charges Plaza for illegal possession of *shabu* committed on August 11, 2011.¹⁶ Thus, the applicable law is RA 9165, prior to its amendment by RA 10640.¹⁷ Section 21, Article II of the law prescribes the standards in preserving the *corpus delicti* of the offense, *viz.*:

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[.]

In conjunction with Section 21, the prosecution must be able to establish an unbroken chain of custody of the seized drugs, particularly: (1) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.¹⁸

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¹⁴ See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487.

¹⁵ See *Tolentino v. People*, G.R. No. 227217, February 12, 2020, 932 SCRA 118.

¹⁶ *Rollo*, pp. 48-49.

¹⁷ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," July 15, 2014.

¹⁸ *People v. Ferrer*, G.R. No. 213914, June 6, 2018, 864 SCRA 598, 618.

Unfortunately, in the instant case, the first and third links in the chain of custody were not established putting into question the identity and evidentiary value of the 20 sachets of *shabu*.

The first link pertains to seizure, marking, inventory and photographing of the seized drugs by the apprehending officers. Section 21 of the law expressly provides that “accused or the person/s from whom such items were confiscated and/or seized” must sign the inventory. In this case, since the search and seizure were done in the presence of Marites Plaza (Marites), Plaza’s wife, she should have been made to sign the Inventory Receipt¹⁹ and the Receipt of Property Seized.²⁰ However, Police Officer 2 Jimmy A. Milan (PO2 Milan), the officer tasked to prepare the inventory,²¹ failed to do so and no justification was provided by the prosecution for this non-compliance. Under the Implementing Rules and Regulations of RA 9165, it is incumbent upon the police officers to recognize non-compliance with the requirements of Section 21 and to justify the said lapses in the required procedure.²² In the present case, the only reason proffered by PO2 Milan for his failure to make Marites sign was “because her name was not there” in the Inventory Receipt.²³ This is clearly an unacceptable justification for failing to obtain her signature.

As gleaned from the records, the Receipt of Property Seized is a document with blank spaces for information to be filled in by police officers during a particular operation.²⁴ The form requires each

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¹⁹ RTC records, p. 33.

²⁰ Id. at 31.

²¹ *Rollo*, p. 49.

²² IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE “COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,” August 30, 2002.

Sec. 21. x x x

- (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[.]

²³ TSN, January 7, 2014, p. 9.

²⁴ Records, p. 31.

witness and seizing officer to place their names and signatures at the lower portion of the document.²⁵ Under the portion “WITNESS TO SEIZURE AND INVENTORY,” Barangay Captain Urquia, Barangay Kagawad Domingo Role, Department of Justice Representative Crisanto T. Arlique and Media Representative Jaymar R. Urquia placed their names and signatures on the document.²⁶ Thus, it is unclear why Marites was not made to sign the document. In fact, the document expressly provides for a space for “Owner Signature” where Marites should have signed as she was also initially apprehended by the police officers for her alleged involvement in her husband’s drug activities.²⁷

The first link in the chain of custody includes the handling and safekeeping of the drugs before their turnover to the next custodian. In this case, after the seizure of the drugs, the police officers were required to make a return on the warrant and turn over the seized items to the MCTC. Apart from the testimony of PO2 Milan that the drugs remained in his custody while the team was in transit from Plaza’s residence to the police station, there are no details in the records of what happened to the 20 sachets while they were in the police station and prior to their turnover to the MCTC at 9:30 a.m. the next day.²⁸ Thus, there is a gap in the chain of custody spanning a considerable number of hours. The prosecution could not account for the handling, storage, and safekeeping of the seized drugs before their turnover to the MCTC.

There is likewise a break in the third link which covers the turnover of the seized drugs to the forensic chemist. PO2 Milan testified that after he was given custody of the seized items by the MCTC, he brought the drugs to the Philippine Drug Enforcement Agency (PDEA) Crime Laboratory in Butuan City where it was received by one of the PDEA staff:

Q: Did you deliver the seized item in the crime lab?

A: Yes.

Q: Do you have proof that you went to the crime lab?

A: It was stamped and there are signatures of the (*sic*) PO2 Milan.

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²⁵ Id.

²⁶ Id.

²⁷ Id. at 27-31.

²⁸ Id. at 43; TSN, January 7, 2014, p. 10.

Q: Exh. "N-2" who received the seized items at the crime lab?

A: One of the staff there but I don't know the name.

Q: It would appear that there was stamped name Jovita were you present when he stamp[ed] it?

A: No because he was inside the crime lab.²⁹

Meanwhile Police Chief Inspector Norman G. Jovita (PCI Jovita) testified that he personally received the seized items from PO2 Milan:

Q. Can you still recall who delivered the specimens in this case to your office?

A. It was delivered by PO2 [Milan].

x x x x

Q. You stated a while ago, that you personally receive[d] the request from PO2 [Milan], who personally receive[d] these items at the crime laboratory?

A. I personally received.³⁰

The seized drugs in this case appeared to have been given to an unidentified staff member of the PDEA Crime Laboratory and there is no testimony on the circumstances surrounding the handling of the drugs while in his/her custody. Thus, the contradicting testimonies of PCI Jovita and PO2 Milan cast doubt on the source, identity, and integrity of the 20 sachets of *shabu* which were subjected to qualitative examination. In view of the foregoing lapses in the chain of custody, Plaza should be acquitted of the crime charged.

WHEREFORE, the Petition is **GRANTED**. The Decision dated March 23, 2018 of the Court of Appeals, Cagayan De Oro City in CA-G.R. CR No. 01475-MIN is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of petitioner Zenon A. Plaza. He is hereby **ACQUITTED** of the crime charged against him and **ORDERED IMMEDIATELY RELEASED** from custody, unless he is being held for some other lawful cause. Let an entry of judgment be issued immediately.

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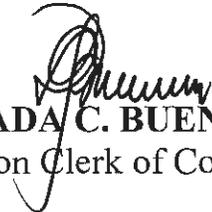
²⁹ *Rollo*, p. 122.

³⁰ TSN, May 9, 2013, pp. 4 & 7.

Let a copy of this Resolution be furnished to the Penal Superintendent of the Bureau of Jail Management & Penology of Surigao del Sur for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action taken.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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