



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 15, 2022** which reads as follows:*

“G.R. No. 239536 – KEVIN TAN y DIGAL, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

Preliminarily, the Court notes that petitioner Kevin Tan y Digal (petitioner) availed of the wrong mode of appeal with the filing of the present Petition for Review under Rule 45. The Rules of Court provides that when the Court of Appeals (CA) imposes a penalty of life imprisonment, as in this case, the proper mode of appeal is by filing a notice of appeal with the CA and not a petition for review on *certiorari* under Rule 45.¹

Nevertheless, in the interest of justice, and in consideration of the gravity of life imprisonment as the penalty meted out to petitioner, the Court will treat this Petition as an ordinary appeal and resolve the case on the merits.

After a careful review of the records of the case and the issues submitted by the parties, the Court **REVERSES** the Decision² dated January 15, 2018 and the Resolution³ dated May 23, 2018 of the CA⁴ in CA-G.R. CR-HC No. 08711, which affirmed *in toto* the Judgment dated August 22, 2016 of the Regional Trial Court of Quezon City, Branch 79, convicting petitioner for violation of Section 5, Article II

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¹ See REVISED RULES OF CRIMINAL PROCEDURE, Rule 122, Sec. 3(e) in relation to Rule 124, Sec. 13.

² *Rollo*, pp. 29-41. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh.

³ *Id.* at 43-44.

⁴ Eleventh and Former Eleventh Division, respectively.

of Republic Act No. (R.A.) 9165,⁵ in Criminal Case No. R-QZN-13-05648-CR.⁶ The Court acquits petitioner for failure of the prosecution to prove his guilt beyond reasonable doubt.

In the prosecution of cases involving illicit drugs, aside from proving that the crime charged was committed, the prosecution must also establish with moral certainty the identity and integrity of the *corpus delicti* — the illicit drug itself.⁷ To discharge this burden, the prosecution must establish an unbroken chain of custody of the seized items and prove compliance with the requirements of Section 21, Article II of R.A. 9165.⁸ Strict compliance with these requirements is mandatory, and any deviation therefrom must be acknowledged and explained or justified by the prosecution; otherwise, the integrity and evidentiary value of the *corpus delicti* are tarnished and the claim that the accused violated R.A. 9165 becomes questionable.⁹

The starting point in the chain of custody is the marking which is the placing by the arresting officer of his or her initials and signature on the items after they have been seized from the accused.¹⁰ While R.A. 9165 does explicitly provide for the manner of marking, the Court, in a *catena* of cases,¹¹ has held that the marking must be made immediately upon confiscation or at the earliest possible time, and in the presence of the apprehended violator.¹² This ensures that the seized items from the apprehended violator are the very ones that enter the chain of custody and are presented in court as evidence of the crime.

As for the procedure in handling the seized items, Section 21 requires of the members of the buy-bust team to comply with the following prescriptions: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a

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⁵ Entitled, "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," approved on June 7, 2002.

⁶ *Rollo*, p. 29.

⁷ *People v. Barte*, G.R. No. 179749, March 1, 2017, 819 SCRA 10, 20.

⁸ *People v. Supat*, G.R. No. 217027, June 6, 2018, 865 SCRA 45, 82.

⁹ *See People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 509.

¹⁰ *People v. Gayoso*, G.R. No. 206590, March 27, 2017, 821 SCRA 516, 529.

¹¹ *See People v. Abdula*, 733 Phil. 85, 95 (2014); *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 131; *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 112, 134.

¹² *People v. Abdula*, *id.*

representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In the present case, the Court finds that the members of the buy-bust team demonstrated a complete and absolute disregard not only of the requirements of Section 21 but also the jurisprudential mandate of immediate marking of the seized items.

First, the illicit drugs were not marked immediately upon seizure at the place of confiscation. Instead, the marking was deferred to a later time. Information Officer 1 Alejandro Dela Cruz (IO1 Dela Cruz), the designated poseur-buyer, marked the tin can containing the suspected illicit drugs only upon arrival at the Philippine Drug Enforcement Agency-National Capital Region (PDEA NCR) office.¹³

In *People v. Gonzalez*,¹⁴ the Court, emphasizing the importance of immediate marking, held:

x x x The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.¹⁵

Thus, in a series of cases¹⁶ where the buy-bust team failed to mark the seized items immediately after confiscation at the place of arrest but only at the barangay hall or police station, the Court harbored serious doubts as to the identity and integrity of the seized illicit drugs warranting the acquittal of the accused.

Second, as admitted by the prosecution, only a barangay kagawad witnessed the conduct of the inventory and photographing of

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¹³ *Rollo*, pp. 13 and 31.

¹⁴ 708 Phil. 121 (2013).

¹⁵ *Id.* at 130-131.

¹⁶ *See People v. Paz*, G.R. No. 233466, August 7, 2019, 912 SCRA 471; *People v. Hementiza*, G.R. No. 227398, March 22, 2017, 821 SCRA 470; *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172; *People v. Beran*, 724 Phil. 788 (2014); *People v. Ismael*, *supra* note 11; *People v. Dahil*, 750 Phil. 212, 226 (2015); *People v. Gonzales*, *supra* note 14; and *People v. Angngao*, G.R. No. 189296, March 11, 2015, 752 SCRA 531.

the seized items at the PDEA NCR office.¹⁷ No representatives from the DOJ and media were present to witness said activities.

In a plethora of cases,¹⁸ the Court has repeatedly stressed that the presence of **all** the third-party witnesses at the time of the inventory and photographing is mandatory because their presence insulates “the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”¹⁹ Their presence serves to protect against the possibility of planting, switching, contamination, or loss of the seized illicit drugs.²⁰ It will also belie any doubt as to the source, identity, and integrity of the *corpus delicti*.²¹

To make matters worse, the prosecution did not offer any explanation or justification on why the apprehending officers failed to secure the presence of all the required witnesses during the inventory and photographing of the confiscated illicit drugs. There was even no showing from the records of the case that the apprehending officers exerted genuine efforts to comply with the three-witness rule.

It must be remembered that the prosecution has the burden of proving the apprehending officers’ compliance with Section 21 and providing a sufficient explanation in case of non-compliance.²² The prosecution also has the positive duty to establish that earnest efforts were employed in contacting the required representatives; and “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.”²³ In other words to simply claim that the witnesses are unavailable without proving that serious attempts were made to secure their presence, as in this case, is unacceptable to justify non-

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¹⁷ *Rollo*, p. 64.

¹⁸ *See People v. Arellaga*, G.R. No. 231796, August 24, 2020, accessed at <<https://sc.judiciary.gov.ph/13590/>>; *People v. Casilang*, G.R. No. 242159, February 5, 2020, accessed at <<https://sc.judiciary.gov.ph/12219/>>; *Hedreyda v. People*, G.R. No. 243313, November 27, 2019, accessed at <<https://sc.judiciary.gov.ph/10451/>>; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 accessed at <<https://sc.judiciary.gov.ph/10003/>>; *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131; *People v. Calibod*, G.R. No. 230230, November 20, 2017, 845 SCRA 370; *People v. Sagana*, 815 Phil. 356 (2017); *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513; and *People v. Mendoza*, G.R. No. 192432, June 23, 2014, 727 SCRA 113.

¹⁹ *People v. Mendoza*, *id.* at 126.

²⁰ *People v. Siapno*, G.R. No. 218395, November 3, 2020 (Unsigned Resolution), accessed at <<https://sc.judiciary.gov.ph/18466/>>.

²¹ *People v. Tomawis*, *supra* note 18, at 149.

²² *People v. De Castro*, G.R. No. 243386, September 2, 2019, accessed at <<https://sc.judiciary.gov.ph/9833/>>.

²³ *People v. Lim*, G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

compliance. This unjustified deviation from the requirements of Section 21 casts reasonable doubt on the veracity of the contents of the inventory receipt as well as the legitimacy of the supposed buy-bust operation conducted against petitioner.

Accordingly, the Court holds that the totality of the evidence presented in this case does not support the finding of guilt beyond reasonable doubt. The unexplained lapses in the requirements mandated by law puts into question the identity and integrity of the illicit drugs allegedly seized from petitioner. In other words, the prosecution in this case failed to prove the identity and integrity of the *corpus delicti*. Consequently, petitioner should be acquitted on the basis of reasonable doubt.

WHEREFORE, the instant petition is hereby **GRANTED**. The Decision dated January 15, 2018 and the Resolution dated May 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08711 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Kevin Tan y Dugal is hereby **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The said Director General is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action taken.

The entry of appearance of Atty. Jason John S. Salalima of Parada Rivera Evardone and Salalima Attorneys-at-Law as counsel for petitioner, is **NOTED**, and his request that all pleadings, orders and notices be furnished at Unit 2001-A, 20/F, Philippine Stock Exchange Centre, Tektite East Tower, Exchange Road, Ortigas Center, Pasig City, is **GRANTED**; and the petitioner's supplemental reply to the comment on the petition for review on certiorari, is **NOTED**.

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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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(CA-G.R. CR HC No. 08711)

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(Crim. Case No. R-QZN-13-05648-CR)

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