



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 19, 2022 which reads as follows:*

**“G.R. No. 242412 (People of the Philippines, Plaintiff-Appellee vs. Lopercio Anqui y Lorico, Accused-Appellant).**

This Appeal<sup>1</sup> seeks to reverse and set aside the July 12, 2018 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 02214. The CA affirmed the December 7, 2015 Joint Judgment<sup>3</sup> of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 30 (RTC) in Criminal Case Nos. 2014-22485 and 2014-22486, finding Lopercio Anqui y Lorico (*accused-appellant*) guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

**Antecedents**

In two separate Amended Informations,<sup>4</sup> both dated September 25, 2014, accused-appellant was charged with illegal possession of dangerous drugs and illegal possession of drug paraphernalia under Secs. 11 and 12, Art. II of R.A. No. 9165, the respective accusatory portions of which read:

Criminal Case No. 2014-22485

That on or about August 26, 2014 at Barangay Apolong, Municipality of Valencia, Province [of] Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court,

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<sup>1</sup> CA rollo, pp. 150-151.

<sup>2</sup> Rollo, pp. 4-35; penned by Associate Justice Louis P. Acosta, with Associate Justices Gabriel T. Ingles and Edward B. Contreras, concurring.

<sup>3</sup> CA rollo, pp. 11-23; penned by Judge Rafael Crescencio C. Tan, Jr.

<sup>4</sup> Records, pp. 50-53.

the above-named accused, not being lawfully authorized by law, with intent to possess, did then and there willfully, unlawfully and knowingly have in his possession and control six (6) pieces of heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride or “shabu,” a dangerous drug, having a total weight of 23.32grams.

That accused was found positive for methamphetamine under Chemistry Report No. DT-271-14.

Contrary to law.<sup>5</sup> (underscoring in the original)

Criminal Case No. 2014-22486

That on or about August 26, 2014 at Barangay Apolong, Municipality of Valencia, Province [of] Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, with intent to possess, did then and there willfully, unlawfully and knowingly have in his possession and control the following drug paraphernalia:

- *Several roll of tin foils later marked as “P7-LLA-08-26-2014” with signature;*
- *One (1) disposable lighter marked “P8-LLA-08-26-2014” with signature;*
- *One improvised tooter marked “P9-LLA-08-26-2014” with signature;*
- *Several empty heat-sealed plastic sachets marked “P10-LLA-08-26-2014” with signature;*

That accused was found positive for methamphetamine under Chemistry Report No. DT-271-14.

Contrary to law.<sup>6</sup> (italics and underscoring in the original)

During his arraignment on September 26, 2014, accused-appellant pleaded not guilty to the charges.<sup>7</sup> After pre-trial was terminated,<sup>8</sup> trial on the merits ensued.

*Version of the Prosecution*

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<sup>5</sup> Id. at 52.

<sup>6</sup> Id. at 50.

<sup>7</sup> Id. at 109.

<sup>8</sup> Id. at 123.

The prosecution presented as witnesses Police Chief Inspector Josephine Llana (*PCI Llana*), Police Officer II John Paul Melon (*PO2 Melon*), Police Officer II Herley Sangasin, Jr. (*PO2 Sangasin*), *Barangay* Captain Cleto Lorico (*Barangay Captain Lorico*), Senior Police Officer II Elinor de la Zerna<sup>9</sup> (*SPO2 de la Zerna*), media representative Juancho Gallarde (*Gallarde*), Department of Justice (*DOJ*) representative Lemuel Lagahit (*Lagahit*), and Philippine Drug Enforcement Agency (*PDEA*) Investigative Agent I Ivy Claire Oledan (*IA1 Oledan*). Their combined testimonies tend to establish the following:

On August 26, 2014, at around 10:00 in the evening, a team of 12 police officers from the Valencia Police Station conducted a pre-operational briefing for the implementation of Search Warrant No. 14-2014 for the seizure of *shabu* and drug paraphernalia allegedly kept and concealed in accused-appellant's house located in *Barangay* Apolong, Valencia, Negros Oriental. PO2 Melon was designated as the seizing and arresting officer while PO2 Sangasin was assigned as the photographer for the operation. The team also coordinated with the PDEA through IA1 Oledan. After receiving the coordination control number from the PDEA, the police team proceeded to accused-appellant's house.<sup>10</sup>

Upon their arrival at accused-appellant's house, the police team knocked on the door and called out to accused-appellant, who responded and came out of the house. The team decided to stay outside of the house while waiting for the *barangay* officials whom they invited to witness the enforcement of the search warrant.<sup>11</sup>

A few minutes later, *Barangay* Captain Lorico and *Barangay Kagawad* Necito Vincoy (*Kagawad Vincoy*) arrived. SPO2 de la Zerna read the search warrant to accused-appellant and explained its contents. Thereafter, PO2 Melon, PO2 Sangasin, accused-appellant, *Barangay* Captain Lorico, and *Kagawad* Vincoy entered the house and began the search.<sup>12</sup>

Accused-appellant's house was a one-story concrete structure with two bedrooms, a living room, and a kitchen. The search party began the search in the living room where they found a blue bag and a

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<sup>9</sup> Also referred to as "SPO2 Elinor Dela Zerna" and "SPO2 Elinor dela Zerna" in some parts of the *rollo* (see *rollo*, pp. 8 and 18).

<sup>10</sup> *Rollo*, pp. 7-9.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.*

black bag. Inside the blue bag, PO2 Melon recovered five (5) pieces of transparent plastic sachets containing white crystalline substance and a bundle of money. On the other hand, the black bag contained one disposable lighter, an improvised tooter, and an empty transparent plastic sachet.<sup>13</sup>

After searching the living room, the search party proceeded to the bedroom occupied by accused-appellant. PO2 Melon found one big transparent plastic sachet containing *shabu* granules placed inside an empty ice cream cup on top of a cabinet. Thereafter, the search party went to the other bedroom but found no illegal items. They proceeded to the kitchen, where PO2 Melon seized rolls of tin foil inside a trash can. During the entire search, PO2 Melon had with him a transparent plastic envelope where he placed all the items that had been confiscated. As PO2 Melon was about to conclude the search of accused-appellant's house, Gallarde and Lagahit arrived at the scene.<sup>14</sup>

After the search, the search party went back to the living room where PO2 Melon arrested accused-appellant and informed the latter of his rights in Visayan dialect. Afterwards, PO2 Melon marked all the items he recovered as follows: (i) "P1-LLA-08-26-2014" to "P6-LLA-08-26-2014" for the six heat-sealed transparent plastic sachets; (ii) "P7-LLA-08-26-2014" for the rolls of tin foil; (iii) "P8-LLA-08-26-2014" for the blue disposable lighter; (iv) "P9-LLA-08-26-2014" for the improvised tooter; and (v) "P10-LLA-08-26-2014" for the empty heat-sealed plastic sachets. PO2 Melon also marked the money he found with "P11-LLA-08-26-2014" to "P14-LLA-08-26-2014." PO2 Melon then conducted an inventory of all the items in the presence of accused-appellant, *Barangay* Captain Lorico, Gallarde, and Lagahit. All these witnesses, together with Police Senior Inspector Wilfredo Villoria (*PSI Villoria*) as team leader and PO2 Sangasin as photographer, signed the receipt/inventory of property seized prepared by PO2 Melon. The witnesses also obtained their own copies of the receipt/inventory of property seized. The entire time, PO2 Melon maintained custody of the confiscated items, which he returned inside the plastic envelope after conducting the marking and inventory.<sup>15</sup>

Thereafter, the police team brought accused-appellant and the confiscated items to the Valencia Police Station. PSI Villoria prepared the Request for Laboratory Examination<sup>16</sup> and other necessary

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<sup>13</sup> Id.

<sup>14</sup> Id. at 10.

<sup>15</sup> Id. at 10-11.

<sup>16</sup> Records, p. 96.

documents, while SPO2 de la Zerna prepared the pleading denominated as return of search warrant with prayer to retain in custody of seized/confiscated *shabu* and drug paraphernalia for laboratory examination (return of search warrant).<sup>17</sup> PO2 Melon, who still had custody of the confiscated items,<sup>18</sup> went to the Office of the Clerk of Court (OCC) together with SPO2 de la Zerna, who submitted the return of search warrant. PO2 Melon handed the plastic envelope containing the illicit drugs to SPO2 de la Zerna, who immediately handed the same to Atty. Diputado<sup>19</sup> of the OCC. Since the issuing court granted SPO2 de la Zerna's prayer to retain custody of some of the items in the return for purposes of laboratory examination, SPO2 de la Zerna signed a receipt, which indicated that he reclaimed custody of the six pieces heat-sealed transparent plastic sachets marked with "P1-LLA-08-26-2014" to "P6-LLA-08-26-2014." SPO2 de la Zerna placed the items in a white evidence envelope and immediately turned it over to PO2 Melon.<sup>20</sup>

Thereafter, PO2 Melon and SPO2 de la Zerna proceeded to the Negros Oriental Provincial Crime Laboratory together with accused-appellant. Upon their arrival at the crime laboratory, PO2 Melon personally transmitted the seized items to PCI Llena, who placed her own markings on the items upon receipt. She also weighed the six heat-sealed transparent plastic sachets and found that the sachets had a total weight of 23.32 grams. After conducting a qualitative examination, the contents of the sachets were found positive for methamphetamine hydrochloride or *shabu*, which PCI Llena reported in Chemistry Report No. D-333-14. PCI Llena stored the confiscated items in the evidence vault of the crime laboratory, which only she has access to. She personally submitted the seized evidence in court on September 24, 2014.<sup>21</sup>

### *Version of the Defense*

The defense presented accused-appellant as its sole witness. He testified that on August 26, 2014, at around 9:00 in the evening, he was in *Purok Santan*, Dumaguete City to collect the proceeds of his peanut butter business. While he was still in Dumaguete City, he received a text message from Charina Dumip-ig (*Charina*), who was his tenant. Charina asked him to immediately return to their house. Thus, he immediately left and went home.<sup>22</sup>

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<sup>17</sup> Exhibit "U," Folder of Exhibits, pp. 13-14.

<sup>18</sup> TSN, September 24, 2015, p. 14.

<sup>19</sup> First name is not mentioned in the *rollo* and records.

<sup>20</sup> *Rollo*, pp. 11-12.

<sup>21</sup> *Id.* at 12-13.

<sup>22</sup> *Id.* at 14.

As he approached the house, he saw a parked patrol car and around 10 police officers. He greeted the police officers and saw that Charina, her boyfriend named Louie, PO2 Sangasin, PO2 Melon, and SPO2 de la Zerna, were inside the house. SPO2 de la Zerna waved at him and motioned for him to come over. SPO2 de la Zerna showed and read to him the search warrant, and thereafter, he gave his consent for the police officers to search his house. The police officers, however, waited for the two *barangay* officials to arrive. While waiting, he stayed at the porch of his house together with SPO2 de la Zerna.<sup>23</sup>

Upon the arrival of the *barangay* officials, SPO2 de la Zerna showed them the search warrant, and the search proceeded. The police officers, together with accused-appellant and the *barangay* officials, all went inside the house. He, however, claimed that he was made to sit in the living room while the police team proceeded to search the house.<sup>24</sup>

Accused-appellant denied the charges against him and claimed that the bags containing sachets of drugs, the money, and the drug paraphernalia do not belong to him but to Charina. In fact, he only saw the bags when he entered the house before the search began. He claimed that he knew some of the police officers who conducted the search.<sup>25</sup>

### The RTC Ruling

In its December 7, 2015 Joint Judgment, the RTC found accused-appellant guilty beyond reasonable doubt of illegal possession of dangerous drugs and illegal possession of drug paraphernalia. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 2014-22485, the accused Lopercio Anqui y Lorico is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 23.32 grams of *shabu* in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

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<sup>23</sup> Id.

<sup>24</sup> Id. at 14-15.

<sup>25</sup> Id. at 15.

The six (6) heat-sealed transparent plastic sachets with markings “P1-LLA-08-26-2014” to “P6-LLA-08-26-2014,” with signatures, respectively, containing a total weight of 23.32 grams of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 2014-22486, the accused Lopercio Anqui y Lorico is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of dangerous drug paraphernalia (several rolls of tin foils, one disposable lighter, one improvised tooter and several empty heat-sealed plastic sachets) in violation of Section 12, Article II of RA 9165 and is hereby sentenced to suffer a penalty of six (6) months and one (1) day as minimum term to two (2) years as maximum term and to pay a fine of Ten Thousand Pesos (P10,000.00).

The several rolls of tin foils collectively marked as “P7-LLA-08-26-2014” with signature, one disposable lighter marked as “P8-LLA-08-26-2014” with signature, one improvised tooter marked as “P9-LLA-08-26-2014” with signature and several empty heat-sealed plastic sachets collectively marked as “P10-LLA-08-26-2014” with signature, are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

SO ORDERED.<sup>26</sup>

The RTC held that the prosecution sufficiently established the elements of the crimes charged. It lent credence to the testimonies of the prosecution witnesses. It opined that accused-appellant knowingly possessed the illegal drugs and drug paraphernalia and had control over said items, considering his failure to rebut the presumption of knowledge as to the presence of the drug and drug paraphernalia in his possession. The RTC found that there was compliance with the chain of custody requirements. The seized items were immediately marked and inventoried after the search in the presence of accused-appellant, *Barangay* Captain Lorico, Gallarde, and Lagahit. PO2 Melon had custody of the seized items until their turn over to the clerk of court and, subsequently, to the forensic chemist. In addition, the RTC ruled that accused-appellant could no longer question the legality of his arrest after arraignment where he pleaded not guilty, and after actively participating in the trial of the joint cases.

Dissatisfied, accused-appellant appealed the joint judgment of the RTC before the CA.

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<sup>26</sup> CA rollo, p. 22.

### The CA Ruling

In its July 12, 2018 Decision, the CA affirmed the conviction of accused-appellant for the crimes charged, *viz.*:

**ACCORDINGLY**, the appeal is hereby **DENIED**. The Decision dated 7 December 2015 of the Regional Trial Court, Branch 30, Dumaguete City in Criminal Case Nos. 2014-22485 and 2014-22486 are **AFFIRMED**.

**SO ORDERED.**<sup>27</sup>

The CA sustained accused-appellant's conviction. It subscribed to the conclusion reached by the RTC that the prosecution sufficiently established the elements of illegal possession of dangerous drugs and illegal possession of drug paraphernalia. There were also no irregularities in the implementation of the search warrant. The CA observed that the prosecution witnesses consistently testified that accused-appellant was inside the house during the search, marking, and inventory of the seized items. According to the CA, the integrity and evidentiary value of the seized items were properly preserved by the police officers. Contrary to accused-appellant's claim, the CA found that the marking and inventory were conducted in his house right after the search. The CA held that there was an unbroken chain of custody of the seized items.

Unfazed, accused-appellant appealed the CA decision before the Court.

Accused-appellant insists that the police officers began the search while he was not yet at his house. He also argues that there was a gap in the chain of custody since the marking was not done immediately after his arrest and in his presence. He avers that there was a discrepancy as to who had custody of the seized items after the search. He likewise points out that while PO2 Melon claims that he had custody of the seized items until the team reached the police station, the documentary evidence reveals that SPO2 de la Zerna delivered the items to the clerk of court, which meant that SPO2 de la Zerna had control over the seized items. Lastly, he contends that the pieces of evidence on record do not warrant the penalty imposed given that the weight of the sachets allegedly confiscated from him, as testified to by PO2 Melon, was not corroborated by any other evidence or testimony.

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<sup>27</sup> *Rollo*, p. 34.

### The Court's Ruling

The Court partially grants the appeal.

*Accused-appellant's conviction for illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. No. 9165 is proper.*

In prosecuting the crime of illegal possession of dangerous drugs under Sec. 11, Art. II of R.A. No. 9165, it is primordial to establish the following elements: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>28</sup>

In this case, all the elements of illegal possession of dangerous drugs were adequately proven by the prosecution. The records clearly showed that the police team went to accused-appellant's house and implemented Search Warrant No. 14-2014 in the presence of accused-appellant, *Barangay* Captain Lorico, and *Kagawad* Vincoy, after showing and reading to accused-appellant himself the contents of the search warrant. PO2 Melon, who was the designated seizing officer, found five (5) heat-sealed plastic sachets containing white crystalline substance and a bundle of money in one of the bags in the living room. Another bag in the living room also contained a disposable lighter, an improvised tooter, and an empty transparent plastic sachet. In accused-appellant's bedroom, PO2 Melon found one big transparent plastic sachet containing *shabu* granules placed inside an empty ice cream cup. Lastly, PO2 Melon recovered in the kitchen some rolls of tin foil inside a trash can.

Accused-appellant merely denied that the plastic sachets of *shabu* belonged to him. He claimed that said items belonged to Charina. However, as found by the RTC, accused-appellant failed to rebut the presumption of knowledge as to the presence of *shabu* in his own home. This Court has held that the finding of illicit drugs in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof, which, standing alone, is sufficient to convict.<sup>29</sup> Accused-appellant's failure to rebut,

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<sup>28</sup> *People v. Rivera*, G.R. No. 252886, March 15, 2021.

<sup>29</sup> *People v. Obias, Jr.*, G.R. No. 222187, March 25, 2019.

by sufficient evidence, that he did not exercise power and control over the place searched and the items seized was fatal to his case. Besides, he also failed to prove that he was authorized by law to possess the dangerous drugs.

Accused-appellant claims that the police team began the search without his presence, and that he did not witness the actual search as he was made to sit in the living room. He contends that this violated his constitutional right against unreasonable searches and seizures rendering the seized evidence inadmissible against him.

The Court finds otherwise. Accused-appellant himself witnessed the search from beginning to end. The prosecution witnesses testified that accused-appellant was home when they initially got there and that it was him who even opened the door for them.<sup>30</sup> On the other hand, his claim that he came from Dumaguete City and saw police officers inside his house when he arrived was uncorroborated. The CA underscored that his claim that he did not witness the search was unsubstantiated. As found by the CA, accused-appellant was present while PO2 Melon conducted the search with PO2 Sangasin, *Barangay* Captain Lorico, and *Kagawad* Vincoy.

The prosecution also proved that there was an unbroken chain of custody of the seized illegal drugs. PO2 Melon marked the sachets of *shabu* at the house of accused-appellant immediately after the search ended. After marking, PO2 Melon inventoried the seized evidence while PO2 Sangasin took photographs. Notably, both the marking and inventory were witnessed by accused-appellant, *Barangay* Captain Lorico, Lagahit, and Gallarde, who all signed the inventory and obtained copies thereof. Afterwards, the police team proceeded to the police station, with PO2 Melon maintaining custody of the seized items contained in the transparent plastic envelope that he had with him during the search. PSI Villoria prepared the requests for laboratory examination, while SPO2 de la Zerna prepared the return of the search warrant. Then, PO2 Melon and SPO2 de la Zerna filed the return of the search warrant and gave the seized items to Atty. Diputado. In the return, the police team prayed for the return of the seized drugs for purposes of laboratory examination. The issuing court granted their prayer and returned the items to SPO2 de la Zerna, who immediately handed the same to PO2 Melon. Thereafter, SPO2 de la Zerna, PO2 Melon, and accused-appellant went to the crime laboratory, where the seized drugs were personally received by

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<sup>30</sup> TSN, October 21, 2015, p. 10; TSN, September 30, 2015, p. 5; TSN, September 24, 2015, p. 5.

Forensic Chemist PCI Llena. In her Chemistry Report No. D-333-14, PCI Llena confirmed that the contents of the confiscated sachets were positive for *shabu*. After conducting the forensic examination, PCI Llena stored the confiscated items in the evidence vault of the crime laboratory which only she has access to. She personally submitted the seized illegal drugs before the RTC on September 24, 2014.

As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>31</sup> The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640,<sup>32</sup> a representative from the media **AND** the DOJ, and any elected public official,<sup>33</sup> or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service<sup>34</sup> **OR** the media.<sup>35</sup> The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”<sup>36</sup>

In these cases, the crimes charged were committed on August 26, 2014, hence, the amendment under R.A. No. 10640 will apply. It bears stressing that accused-appellant, *Barangay* Captain Lorico, Lagahit, and Gallarde, witnessed the marking and inventory of the seized items. Gallarde testified that they arrived as the search was about to end and before the marking and inventory of the seized items

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<sup>31</sup> *Matabilas v. People*, G.R. No. 243615, November 11, 2019.

<sup>32</sup> Entitled “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.” As the Court noted in *People v. Gutierrez* (842 Phil. 681 [2018]) and *Matabilas v. People* (id.), R.A. No. 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” R.A. No. 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, R.A. No. 10640 appears to have become effective on August 7, 2014.

<sup>33</sup> See Section 21(1) and (2), Article II of R.A. No. 9165 and its IRR.

<sup>34</sup> Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of R.A. No. 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE”, otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010]).

<sup>35</sup> See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

<sup>36</sup> See *Matabilas v. People*, supra.

began.<sup>37</sup> The photographs they identified in court also showed them in the act of signing the inventory in the presence of accused-appellant himself.<sup>38</sup>

Accused-appellant's argument that the marking of the illegal drugs and drug paraphernalia seized in his house were not immediately done after his arrest and in his presence is belied by the testimonies of the prosecution witnesses. PO2 Melon confirmed during his cross-examination that the items were marked immediately after the search of accused-appellant's house ended.<sup>39</sup> PO1 Sangasin corroborated the same and testified that the items were immediately marked after the search.<sup>40</sup> Also, in their Joint Affidavit with Affidavit of Arrest<sup>41</sup> dated August 27, 2014, PO2 Melon and PO2 Sangasin stated that "all the confiscated items were marked, photographed and inventoried in the presence of the respondent [accused-appellant], duly elected *Barangay* Officials, Brgy. Captain Cleto Lorico and Brgy. *Kagawad* Necito Vincoy, DOJ representative Lemuel A. Lagahit, media representative Juancho Gallarde, in accordance with Sec. 21 of RA 9165."<sup>42</sup> These representatives were witnesses to accused-appellant's arrest and the seizure of illegal drugs, thus insulating the apprehension and incrimination proceedings from any taint of irregularity.

Accused-appellant also cites a discrepancy in the custody of the seized illegal drugs after the search. According to him, documentary evidence shows that it was SPO2 de la Zerna who turned over the seized items to the clerk of court, contrary to PO2 Melon's claim that he had custody of the seized items. However, as correctly found by the CA, there is no such discrepancy contrary to accused-appellant's claim. PO2 Melon had custody of the seized items while the police team was at accused-appellant's house, when they reached the police station, and right before the turnover of the seized items to Atty. Diputado. This was confirmed by SPO2 de la Zerna in his testimony<sup>43</sup> as well as by PO2 Melon during the latter's direct examination.<sup>44</sup> As explained by the prosecution witnesses, the momentary turnover of the seized items to SPO2 de la Zerna by PO2 Melon was necessary since he was the one who prepared and signed the return of the search

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<sup>37</sup> TSN, October 22, 2015, p. 3.

<sup>38</sup> Id. at 7.

<sup>39</sup> TSN, September 24, 2015, pp. 20-21.

<sup>40</sup> TSN, September 30, 2015, p. 15.

<sup>41</sup> Records, pp. 21-22.

<sup>42</sup> Id. at 22.

<sup>43</sup> TSN, October 21, 2015, p. 13.

<sup>44</sup> TSN, September 24, 2015, pp. 14-15.

warrant. This also explained why SPO2 de la Zerna was the one who received the items back from Atty. Diputado after being granted their prayer to withdraw the items for purposes of laboratory examination, although his custody thereof lasted only for a few seconds since he immediately handed the seized items to PO2 Melon.

*Accused-appellant is acquitted  
of the charge of illegal of  
possession of drug  
paraphernalia.*

Nevertheless, the Court finds that accused-appellant must be acquitted of the charge of illegal possession of drug paraphernalia. The forensic examination of seized evidence in illegal drugs cases applies not only to the actual dangerous drugs but also to seized drug paraphernalia. Sec. 21, Art. II of R.A. No. 9165 states:

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:

x x x x

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as **instruments/paraphernalia** and/or laboratory equipment, **the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;**

x x x x

In the meantime that the PDEA has no forensic laboratories and/or evidence rooms, as well as the necessary personnel of its own in any area of its jurisdiction, **the existing National Bureau of Investigation (NBI) and Philippine National Police (PNP) forensic laboratories shall continue to examine or conduct screening and confirmatory tests on the seized/surrendered evidence whether these be dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential**

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**chemicals, instruments, paraphernalia and/or laboratory equipment**; and the NBI and the PNP shall continue to have custody of such evidence for use in court and until disposed of, burned or destroyed in accordance with the foregoing rules: *Provided*, that pending appointment/designation of the full complement of the representatives from the media, DOJ, or elected public official, the inventory of the said evidence shall continue to be conducted by the arresting NBI and PNP operatives under their existing procedures unless otherwise directed in writing by the DOH or PDEA, as the case may be. (emphases supplied)

From the foregoing, it is clear that even drug paraphernalia must be submitted for forensic examination. This forms part of the chain of custody procedure and any deviation therefrom constitutes a break in the chain.<sup>45</sup>

In this case, the seized drug paraphernalia from accused-appellant's house were not submitted to the crime laboratory. PO2 Melon and SPO2 de la Zerna only retrieved the illegal drugs for forensic examination and left the drug paraphernalia with Atty. Diputado. This goes against the procedure outlined under Sec. 21, Art. II of R.A. No. 9165 for the custody and disposition of drug paraphernalia. It was not confirmed whether the drug paraphernalia seized from accused-appellant's house were used for illegal drug activities or for lawful purposes.<sup>46</sup> Thus, there is reasonable doubt as to accused-appellant's guilt for the crime of illegal possession of drug paraphernalia, which warrants his acquittal of the said charge.

**WHEREFORE**, the appeal is **PARTLY GRANTED**. The July 12, 2018 Decision of the Court of Appeals in CA-G.R. CEB-CR HC No. 02214 is hereby **AFFIRMED** with **MODIFICATION** as follows:

- a. In Criminal Case No. 2014-22485, the conviction of accused-appellant Lopercio Anqui y Lorico for Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. 9165, which meted the penalty of life imprisonment and payment of fine amounting to ₱400,000.00, is **AFFIRMED**.
- b. In Criminal Case No. 2014-22486, accused-appellant Lopercio Anqui y Lorico is **ACQUITTED** of the charge of Illegal Possession of Drug Paraphernalia under Section 12, Article II of Republic Act No. 9165 as his guilt thereof had not been established beyond reasonable doubt.

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<sup>45</sup> *People v. Taboy*, 834 Phil. 72, 87 (2018).

<sup>46</sup> *Cuico v. People*, G.R. No. 232293, December 9, 2020.

**SO ORDERED.” Gaerlan, J., on official leave.**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *msll*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**104-B**

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

Court of Appeals  
6000 Cebu City  
(CA-G.R. CEB CR-HC No. 02214)

The Hon. Presiding Judge  
Regional Trial Court, Branch 30  
Dumaguete City, 6200 Negros Oriental  
(Crim. Case Nos. 2014-22485 & 2014-22486)

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The Director General  
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