



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 27, 2022** which reads as follows:*

“**G.R. No. 249590** (*Nickulo Arellano y Umacam v. People of the Philippines*). – This Court resolves a Petition for Review on *Certiorari*<sup>1</sup> that seeks to set aside the Decision<sup>2</sup> dated May 31, 2019 and the Resolution<sup>3</sup> dated September 24, 2019 of the Court of Appeals (*CA*) in CA-G.R. CR No. 40869, which affirmed the Decision<sup>4</sup> dated December 5, 2017 of the Regional Trial Court of Navotas City, Branch 286 (*RTC*), which found petitioner Nickulo Arellano y Umacam (*Arellano*) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

In the evening of August 17, 2017, the police officers of Navotas City received information that there were men in possession of illegal drugs along Goldrock Street.<sup>5</sup>

Police Officer (*PO*) 1 Renato Panganiban (*PO1 Panganiban*) and his police team were dispatched to conduct a surveillance. Once there, the police officers noticed two men standing by the street, with one of them passing something to his companion. As soon as they sensed the presence of the police operatives, one of the men, later identified as Arellano, threw something to the ground, which turned out to be a plastic sachet containing granular substances. *PO1* Panganiban introduced himself as a police officer and apprehended Arellano. Thereafter, *PO1* Panganiban picked up the plastic sachet and marked it with “RMP” which stood for his initials. Subsequently, *PO1* Bryan Greg Calixtro apprised Arellano of his constitutional rights. The police officers brought Arellano and the seized sachet to the *barangay* hall where they conducted the inventory and photographing of the seized item in the presence of *Barangay Kagawad* Onio Duque. Afterwards, Arellano was brought to the Navotas Hospital for

<sup>1</sup> *Rollo*, pp. 12-34.

<sup>2</sup> Penned by Associate Justice Stephen C. Cruz, with Associate Justices Pedro B. Corales and Maria Filomena D. Singh (now a member of this Court), concurring; *id.* at 39-52.

<sup>3</sup> *Id.* at 36-37.

<sup>4</sup> Penned by Presiding Judge Pedro T. Dabu, Jr.; *id.* at 78-85.

<sup>5</sup> *Id.* at 41.

medical verification while the seized sachet was turned over to PO1 Suaib Karim (*PO1 Karim*) for the preparation of the request for laboratory examination. PO1 Karim also prepared the referral slip, joint affidavit of arrest, and chain of custody form. Next, PO1 Karim handed back the seized sachet to PO1 Panganiban for submission to the Scene of the Crime Operatives (*SOCO*). Not long after, the seized sachet was sent to Police Chief Inspector Richard Allan Mangalip (*PC/Insp. Mangalip*), the forensic chemist. After examination, the substance yielded a positive result for *shabu*.<sup>6</sup>

Accordingly, Arellano was indicted for violation of Section 11(3), Article II, R.A. 9165 in an Information, the accusatory portion of which reads:

That on or about the 17<sup>th</sup> day of August 2017, in the City of Navotas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat-sealed transparent plastic sachet with markings "RMP-08-17-17 with signature" containing 0.06 grams (sic) of white crystalline substance, which substance, when subjected to qualitative examination gave positive result to the test for Methamphetamine Hydrochloride otherwise known as "Shabu", a dangerous drug.

CONTRARY TO LAW.<sup>7</sup>

For Arellano, he denied the accusations against him. He claimed that he was just walking along Tangos in A. Cruz Street when somebody called him. A man, whom he later identified as PO1 Panganiban, immediately frisked him but was not able to recover anything from him. Despite that, PO1 Panganiban and his companion, who turned out to be PO1 Karim, still proceeded to arrest him. Arellano was brought to Andamyo Street, Tangos, where he was enticed to give away the names of people whom he knew were drug sellers in the area in exchange for his liberty. However, despite his lack of knowledge of drug dealings in the area, the police officers proceeded to charge him with illegal possession of prohibited drugs.<sup>8</sup>

During arraignment, Arellano pleaded not guilty to the crime charged. Thereafter, pre-trial and trial ensued.<sup>9</sup>

After due proceedings, the RTC issued its Decision which found Arellano guilty as charged, the dispositive portion of which reads:

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 40.

<sup>8</sup> *Id.* at 42.

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

WHEREFORE, the Court finds accused N[i]ckulo Arellano y Umacam GUILTY beyond reasonable doubt of the offense of possession of dangerous drugs punished under Section 11, Article II, [R.A.] 9165. Accordingly, the Court sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine in the amount of Three Hundred Thousand Pesos ([P]300,000.00).

The period of preventive detention of the accused shall be deducted from his sentence in accordance with Article 29 of the Revised Penal Code.

The Branch Clerk of Court is ordered to transfer the possession and custody of the dangerous drug subject of this case to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.<sup>10</sup>

On appeal, the CA affirmed *in toto* the RTC's ruling, thus:

WHEREFORE, the instant appeal is DENIED. The Decision promulgated on December 5, 2017 by the Regional Trial Court of Navotas City, Branch 286, in Criminal Case No. 17-735-MN, finding Nickulo Arellano y Umacam guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165, is AFFIRMED *in toto*.

SO ORDERED.<sup>11</sup>

In upholding Arellano's conviction, the CA ruled that Arellano's warrantless arrest was justified because he was caught in possession of illegal drugs in the presence of a police officer.<sup>12</sup>

The CA likewise explained that the preservation of the integrity and the evidentiary value of the seized drugs was sufficiently maintained as there was a properly documented account of the seized illegal drugs from marking to submission of the seized sachet for chemistry examination.<sup>13</sup>

Arellano filed a Motion for Reconsideration,<sup>14</sup> but the same was denied by the CA in a Resolution<sup>15</sup> dated September 24, 2019. Hence, Arellano filed a petition for review on *certiorari* arguing that his arrest was illegal because he was not committing, or attempting to commit, a crime. He likewise argued that the integrity and evidentiary value of the item seized was compromised because the police operatives failed to strictly comply with the procedure required by law.

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<sup>10</sup> *Id.* at 84-85.

<sup>11</sup> *Id.* at 51.

<sup>12</sup> *Id.* at 45.

<sup>13</sup> *Id.* at 49-50.

<sup>14</sup> *Id.* at 124-135.

<sup>15</sup> *Id.* at 36-37.

For this Court's resolution is whether or not petitioner Arellano is guilty beyond reasonable doubt of illegal possession of dangerous drugs.

For a warrantless arrest to be valid, the accused must have been in the act of committing a crime, or was about to commit a crime. If the prosecution fails to prove these circumstances, any evidence seized from the accused cannot be used against them for any purpose in the proceeding.<sup>16</sup>

This flows from the right of every citizen against unreasonable searches and seizures enshrined under Article III, Section 2 of the 1987 Constitution, *viz.*:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable; and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Generally, a validly issued warrant must precede every search and seizure in order to be considered reasonable. This Court, however, had recognized instances when searches and seizures are considered reasonable even without a warrant. The case of *Niro v. People*,<sup>17</sup> citing *People v. Aruta*,<sup>18</sup> outlined the instances when a warrantless search and seizure are considered valid:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126<sup>19</sup> of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
  - a. a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
  - b. the evidence was inadvertently discovered by the police who had the right to be where they are;
  - c. the evidence must be immediately apparent; and
  - d. "plain view" justified mere seizure of evidence without further search.

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<sup>16</sup> *Niro v. People*, G.R. No. 226014, January 22, 2020 (Notice).

<sup>17</sup> *Id.*

<sup>18</sup> 351 Phil. 868 (1998).

<sup>19</sup> Now Rules of Court, Rule 126, Sec. 13.

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search;
6. Stop and frisk; and
7. Exigent and Emergency Circumstances.<sup>20</sup> (Citations omitted)

Warrantless arrests can either be *in flagrante delicto* [Rule 113, Section 5(a)] where two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer,<sup>21</sup> or hot pursuit arrest<sup>22</sup> [Rule 113 (b)] which requires that (1) a crime has just been committed; and (2) while law enforcers need not personally witness the commission of a crime . . . they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.<sup>23</sup>

For Arellano's *in flagrante delicto* arrest to be valid, he must have executed an overt act which signified that he just committed, is actually committing, or is about to commit a crime. Here, PO1 Panganiban testified that while the police operatives were dispatched to the location to conduct surveillance on a possible drug trade, Arellano was sighted openly passing a plastic sachet with white granules, suspected to be *shabu*, to his companion. As the police officers closed in, Arellano threw away the plastic sachet to get rid of it in his person, but PO1 Panganiban was quick to pick up what was thrown.

Indeed, Arellano's mere act of holding the *shabu* in the presence and in full view of the police operatives was enough to justify that a crime has been committed and his subsequent attempt to get rid of the incriminating evidence gave the police officers probable cause to conduct a warrantless arrest on Arellano.

However, despite the validity of his warrantless arrest, Arellano still deserves an acquittal.

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<sup>20</sup> *Supra* note 18, at 879-880, citing Rules of Court, Rule 126, Sec. 12.

<sup>21</sup> *People v. Cogaed*, 740 Phil. 238 (2014).

<sup>22</sup> *Veridiano v. People*, 810 Phil. 642, 659 (2017).

<sup>23</sup> *Id.* at 660.

In the prosecution for illegal possession of dangerous drugs, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. The illicit drug in evidence must be established beyond reasonable doubt.<sup>24</sup>

The Information alleged that the crime with which Arellano was charged was committed on August 17, 2017. As such, the governing law is R.A. No. 10640,<sup>25</sup> which effectively amended R.A. No. 9165. In *People v. Nocum*,<sup>26</sup> this Court outlined the procedural safeguards to be followed by police operatives as contained in Section 1 of R.A. No. 10640, amending Section 21, Article II of R.A. No. 9165, viz.:

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

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 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 [their] 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.**

<sup>24</sup> See *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

<sup>25</sup> 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." *Amendment to R.A. No. 9165 (Anti-Drug Campaign of the Government, Republic Act No. 10640, July 15, 2014.)*

<sup>26</sup> G.R. No. 239905, January 20, 2021.

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(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame-, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, that a final certification shall be issued immediately upon completion of the said examination and certification.<sup>27</sup>

In *People v. Galisim*,<sup>28</sup> this Court reiterated that the prosecution must account for each link in the chain of custody to ensure the integrity of the drugs seized, as follows:

[*F*]irst, the seizure and marking 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 by the forensic chemist to the court.<sup>29</sup>

Crucial to this case are the first and the fourth links, which We should discuss in seriatim.

The first link pertains to the marking, inventory, and photograph of the drugs seized.

In *Izon v. People*,<sup>30</sup> this Court highlighted the chain of custody procedure, which required that the physical inventory and photographing of the seized items be done in the presence of the accused, or the person from whom the items were seized, or their representative or counsel, as well as the required insulating witnesses, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.<sup>31</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>32</sup>

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<sup>27</sup> Emphases supplied.

<sup>28</sup> G.R. No. 231305, September 11, 2019.

<sup>29</sup> *Id.*

<sup>30</sup> G.R. No. 222509, March 3, 2021.

<sup>31</sup> See Section 21(a) of RA 9165.

<sup>32</sup> *People v. Cariño*, G.R. No. 233336, January 14, 2019.

Records bear out that the police operatives failed to ensure that the marking and inventory were observed by the witnesses required by law. In fact, as testified to by PO1 Panganiban, the marking and inventory of the item seized was witnessed only by an elected public official.

The prevailing rule is that in cases where the presence of the mandatory witnesses was not obtained, the prosecution must establish not only the reasons for their absence but also earnest efforts have been exerted to secure their presence.<sup>33</sup> Here, the prosecution's failure to secure the attendance of a representative from the National Prosecution Service or the media to witness the conduct of the marking of the evidence and the inventory thereof remained unexplained. Likewise, there was no showing that an actual serious attempt to contact these insulating witnesses was undertaken by the prosecution.

Certainly, the presence of these insulating witnesses during the inventory and photographing of the confiscated illegal drugs is vital. In the absence of these witnesses, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items. Noncompliance with this requirement constituted a huge significant gap in the chain of custody which is fatal to the prosecution's case.<sup>34</sup>

For the fourth link, it concerns the submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount necessity that the forensic chemist testifies as to the details pertinent to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; the description of the specimen; and the container bearing it. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.<sup>35</sup>

Records bear out that the prosecution and defense stipulated and dispensed with the testimony of forensic chemist PC/Insp. Mangalip during the pre-trial. The stipulations, nonetheless, only focused on the expertise and qualifications of PC/Insp. Mangalip as forensic chemist, the crime laboratory's receipt of the letter-request for laboratory examination, the specimen to be tested, and the existence of Chemistry Report No. D-1465-17. Observably, none of these stipulations even mentioned the condition of the specimens when PC/Insp. Mangalip received them and how he handled

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<sup>33</sup> *Tolentino v. People*, G.R. No. 227217, February 12, 2020.

<sup>34</sup> See *People v. Caray*, G.R. No. 245391, September 11, 2019.

<sup>35</sup> Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

the same at the crime laboratory before it was delivered to the court for identification.<sup>36</sup>

In *People v. Rivera*,<sup>37</sup> this Court emphasized that the testimony of the forensic chemist may be dispensed with provided that the parties stipulated that the forensic chemist would have testified the precautionary steps he/she took in order to preserve the integrity and evidentiary value of the seized item, to wit:

[A]s a rule, the police chemist who examines a seized substance should ordinarily testify that [they] received the seized article as marked, properly sealed and intact; that [they] resealed it after examination of the content; and that [they] placed [their] own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that [they] took the precautionary steps mentioned.<sup>38</sup>

Absent these required stipulations, the fourth link of the chain of custody could not be reasonably established.<sup>39</sup>

Indeed, establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized items. Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the items confiscated from the accused are the same items offered in evidence, as in this case.<sup>40</sup>

In light of the prosecution's failure to account for every link in the chain of custody of the drugs allegedly seized from Arellano, a pronouncement for his acquittal is in order.

**FOR THESE REASONS**, the petition is **GRANTED**. The Decision dated May 31, 2019 of the Court of Appeals in CA-G.R. CR No. 40869 is hereby **REVERSED** and **SET ASIDE**. Petitioner **NICKULO ARELLANO y UMACAM** is hereby **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165. He is **ORDERED** to be **IMMEDIATELY RELEASED** from detention unless he is being held for some other valid or lawful cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is **DIRECTED** to **REPORT** the

<sup>36</sup> See *People v. Manolito Rivera*, G.R. No. 252886, March 15, 2021.

<sup>37</sup> *Id.*

<sup>38</sup> *People v. Pajarin*, 654 Phil 461, 466 (2011).

<sup>39</sup> *Supra* note 33.

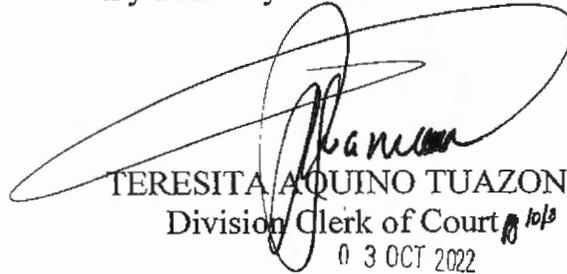
<sup>40</sup> *Id.*

action he/she has taken to this Court within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

**SO ORDERED.”**

By authority of the Court:

  
 TERESITA AQUINO TUAZON  
 Division Clerk of Court *10/13*  
 03 OCT 2022

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 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
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THE DIRECTOR (x)  
 Bureau of Corrections  
 1770 Muntinlupa City

THE SUPERINTENDENT (x)  
 New Bilibid Prison  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 286  
 Navotas City  
 (Crim. Case No. 17-735-MN)

PHILIPPINE NATIONAL POLICE (reg)  
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THE DIRECTOR GENERAL (reg)  
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