



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 February 2022** which reads as follows:*

“G.R. No. 252448 (*People of the Philippines v. Rowwel Castro y Bolante*). – This resolves the appeal¹ filed by accused-appellant Rowwel Castro y Bolante (Castro), praying for the reversal of the September 20, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10411, which affirmed the September 7, 2017 Decision³ of the Regional Trial Court (RTC) Branch 57, Angeles City, convicting him of violation of Section 5, Article II of Republic Act (R.A.) No. 9165.⁴

Antecedents

In an Information dated May 16, 2011, Castro was charged with violation of Section 5, Article II of R.A. No. 9165, committed as follows:

That on or about the 13th of May 2011, at Angeles City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer one (1) brick weighing **TWO HUNDRED TWENTY FIVE (225) GRAMS OF MARIJUANA FRUITING TOPS (TETHRA HYDRO CANNABINOL)** and **TWENTY (20) pieces heat sealed transparent plastic sachets with a total weight of ONE HUNDRED FIVE and SIX HUNDRED FORTY EIGHT THOUSANDTHS (105.648) OF A GRAM OF MARIJUANA FRUITING TOPS (TETHRA HYDRO CANNABINOL)**, which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 16-17.

² *Id.* at 3-15. Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court), with Associate Justices Stephen C. Cruz and Geraldine C. Fiel-Macaraig, concurring.

³ *CA rollo*, pp. 79-85. Penned by Judge Omar T. Viola.

⁴ 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.

⁵ *Rollo*, pp. 3-4.

Upon arraignment, Castro pleaded not guilty to the crime charged. After the pre-trial, trial on the merits ensued.⁶

The prosecution witnesses related that at 10 o'clock in the morning of May 13, 2011, a confidential informant arrived at the Philippine Drug Enforcement Agency (PDEA) Regional Office III in Camp Olivas, San Fernando, Pampanga, to report the drug selling activities of a certain Douglas in Bagong Silang, Pulung Cacutud, Angeles City. The informant told SO2 Reynald Poquiz (SO2 Poquiz) that Douglas had instructed him to find a buyer for marijuana dried leaves in exchange for a commission.⁷

Acting on the information, SO2 Poquiz instructed IO1 Charito Mindanao (IO1 Mindanao) to assist the informant in contacting Douglas, to inform the latter that he had found an interested buyer.⁸ Then, a buy-bust team was formed with IO1 Mindanao as the poseur-buyer and IO1 Dale Magpayo (IO1 Magpayo) as the arresting officer. IO1 Mindanao was handed two pieces of two hundred peso bills on top of a bundle of cut paper. She placed her initials "COM" on the bills.⁹

Thereafter, the buy-bust team proceeded to Pulung Cacutud, Angeles City. Upon arriving at Douglas's house, the informant introduced IO1 Mindanao. Douglas simply nodded in conformity. After a brief conversation, Douglas took out the marijuana, and IO1 Mindanao handed him the marked money. IO1 Mindanao inspected the marijuana, and then executed the pre-arranged signal.¹⁰

Swiftly, IO1 Magpayo moved towards IO1 Mindanao and arrested Douglas. Then, IO1 Magpayo confiscated the marked money and 23 pieces of boodle money from him. The team also seized one brick of marijuana dried leaves and 20 pieces of transparent plastic sachets containing marijuana cubes. It was discovered that Douglas's real name is Rowwel Bolante Castro, herein accused-appellant.¹¹

The buy-bust team brought Castro to the Barangay Hall of Pulung Cacutud, where they marked the seized items and prepared an inventory thereof. The marking and inventory were witnessed by Barangay Kagawad Elvira K. Artesano and Kagawad Ricardo A. Tullao, officials of Barangay Pulung Cacutud, Assistant City Prosecutor Junnie T. Esplana of the Department of Justice (DOJ), and Redentor Tolentino from ABS-CBN Pampanga. After which, the operatives brought Castro to the PDEA office for investigation and processing.¹²

⁶ Id. at 5.

⁷ Id. at 4.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 4-5.

¹² Id. at 5.

At the PDEA office, SO2 Poquiz prepared the letter-request for laboratory examination, while IO1 Magpayo prepared the Certificate of Coordination. Later, SO2 Poquiz delivered the seized items and the letter-request to the Angeles City Crime Laboratory Office (ACCLO), which were duly received by SPO1 Apolonio Sales. Then, Police Superintendent Engr. Ma. Luisa Gundran-David issued Laboratory Report No. D-956-2011, confirming that the seized items tested positive for marijuana, a dangerous drug.¹³

On the other hand, Castro vehemently denied the charge leveled against him. He claimed that at noon of May 13, 2011, he and his live-in partner were resting inside his uncle's house, when a person in civilian clothes barged in, aimed a gun at him, and asked if he was Joel Carlos. He answered no, but the person told him not to lie and frisked him. Then, he was brought to the barangay hall and to Camp Olivas where he was detained. He later found out that he was charged with violation of Section 5 of R.A. No. 9165.¹⁴

Ruling of the RTC

On September 7, 2017, the RTC rendered a Decision¹⁵ convicting Castro of violation of Section 5 of R.A. No. 9165. The RTC held that the prosecution proved all the elements for the crime charged. It noted that Castro was caught in the act of selling drugs,¹⁶ and stated that the specimen presented in court was the same one sold by Castro to the poseur-buyer.¹⁷ It further observed that the arresting officers had complied with the procedural safeguards under R.A. No. 9165.¹⁸ Hence, it decreed as follows:

WHEREFORE, the prosecution having established its case against the accused and having proven the guilt of the accused beyond reasonable doubt, the Court hereby finds **ROWWEL CASTRO y BOLANTE a.k.a. DOUGLAS GUILTY** beyond reasonable doubt of the crime, as alleged in the Information, and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** for violation of Section 5, R.A. [No.] 9165 and a fine of Php500,000.00.

Furthermore, accused Rowwel Castro y Bolante is ineligible for parole as expressly provided under Section 3, R.A. [No.] 9346.

SO ORDERED.¹⁹

Dissatisfied with the ruling, Castro filed an appeal.²⁰

¹³ Id.

¹⁴ Id.

¹⁵ CA *rollo*, pp. 79-85. Rendered by Judge Omar T. Viola

¹⁶ Id. at 83.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 85.

²⁰ Id. at 11-12.

Ruling of the CA

In a Decision²¹ dated September 20, 2019, the CA affirmed Castro's conviction. The CA held that the prosecution established all the elements for the sale of illegal drugs, namely, that the sale took place; that the poseur-buyer identified Castro as the seller of the illegal drugs; and that the illegal drugs and marked money were identified and presented in court. The CA further ratiocinated that the object and testimonial evidence demonstrate that the apprehending officers marked the dangerous drugs seized, and prepared a physical inventory which were witnessed by the three personalities required by law. The CA also noted that the chain of custody was observed and the integrity and evidentiary value of the seized drugs were preserved beyond reasonable doubt. Thus, the CA disposed of the case as follows:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated September 7, 2017 of the Regional Trial Court of Angeles City, Branch 57, in Criminal Case DC No. 11-1987, is **AFFIRMED**.

SO ORDERED.²²

Undeterred, Castro filed a Notice of Appeal²³ before the CA.

Issues

In support of his appeal for acquittal, Castro attacks the testimonies of the prosecution witnesses as incredible and inconsistent.²⁴ He further alleges that the prosecution failed to prove the identity and integrity of the *corpus delicti*.²⁵ He laments that the arresting officers blatantly failed to comply with Section 21 of R.A. No. 9165, as amended by R.A. No. 10640.²⁶ He points out that they marked the seized items, prepared the inventory, and took photographs at the barangay hall in Pulung Cacutud sans any valid justification.²⁷ Likewise, he contends that there were several breaks in the chain of custody, particularly in the manner in which IO1 Mindanao handled and transmitted the seized items.²⁸

On the other hand, the People of the Philippines, through the Office of the Solicitor General (OSG) counters that all the elements of the crime of illegal sale of drugs was established with moral certainty, and that the integrity

²¹ *Rollo*, pp. 3-15.

²² *Id.* at 15.

²³ *Id.* at 16-17.

²⁴ *Id.* at 65.

²⁵ *Id.* at 64.

²⁶ 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," approved on July 15, 2014.

²⁷ *Rollo*, p. 68.

²⁸ *Id.* at 68-69; 73.

of the seized items was preserved, and the chain of custody duly established.²⁹ The OSG maintains that the police officers complied with all the requirements under Section 21 of R.A. No. 9165.³⁰

As for the argument that the seized items should have been marked and inventoried at the place of arrest, the OSG responds that term “immediate confiscation” has no exact definition, and may include marking at the nearest police station.³¹ It stresses that the arresting officers marked and inventoried the seized items at the nearest barangay hall in the presence of the accused and the insulating witnesses.³² The OSG retorts that the integrity of the evidence is presumed preserved absent any proof of bad faith or tampering.³³ Lastly, it contends that the arresting officers are presumed to have performed their duties regularly.³⁴

Ruling of the Court

The appeal is granted.

The arresting officers failed to immediately mark the seized items, prepare the inventory, and take photographs at the place of arrest.

To secure a conviction for the illegal sale of dangerous drugs, the prosecution must establish (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefor.³⁵ The dangerous drugs seized from the accused constitutes the *corpus delicti* of the offense.³⁶ Thus, it is imperative to present the object of the transaction and show that it is the same substance seized from the accused.³⁷

To ensure the identity and integrity of the seized dangerous drugs, their proper and prompt marking serves as the first and most crucial step in the chain of custody. Marking initiates the process of protecting innocent persons from dubious and concocted searches, and of saving the apprehending officers from accusations of planting evidence.³⁸ Consequently, marking must be done in the presence of the accused or his/her representative, and immediately upon

²⁹ Id. at 100.

³⁰ Id. at 107.

³¹ Id. at 108-109.

³² Id. at 109.

³³ Id.

³⁴ Id.

³⁵ *People v. Ismael*, 806 Phil. 21, 29 (2017), citing *People v. Alberto*, 625 Phil. 545, 554 (2010) citing *People v. Dumlao*, 584 Phil. 732, 739 (2009).

³⁶ *People v. Ismael*, id.

³⁷ Id.

³⁸ See *People v. Ramirez, et al.*, 823 Phil. 1215, 1225 (2018).

confiscation, to ensure the integrity of the seized item/s as it enters into the chain of custody.³⁹

Notably, in *People v. Dela Rosa*,⁴⁰ the Court stressed that the immediate marking of the seized items ensures their integrity:

*In the first link of the chain of custody, the apprehending officer acquires possession of the suspected drug from the offender at the time of the arrest. The apprehending officer is required to mark the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence, and it should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation. x x x*⁴¹

Similarly, in *People v. Ismael*,⁴² the Court underscored the need to mark the seized items immediately, since marking after seizure is the starting point in the custodial link.

Moreover, in *People v. Hementiza*,⁴³ the Court explained that the immediate marking of the confiscated items eliminates the possibility of tampering:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because the succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate 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 the criminal proceedings, thus, preventing switching, planting or contamination of evidence.⁴⁴

In this case, the arresting officers failed to immediately mark the seized items after their confiscation. Rather, they belatedly marked the seized items at the Barangay Hall of Pulung Cacutud, without offering any justifiable excuse for such delayed marking. This mishap engenders doubt on the identity and integrity of the seized items.

It cannot be gainsaid that in *People v. Cornel*,⁴⁵ *People v. Martin*

³⁹ Id.

⁴⁰ 822 Phil. 885 (2017).

⁴¹ Id. at 904-905, citing *People v. Martinez*, 652 Phil. 347, 377 (2010).

⁴² Supra note 35.

⁴³ 807 Phil. 1017 (2017).

⁴⁴ Id., citing *People v. Dahil, et al.*, 750 Phil. 212, 232 (2015).

⁴⁵ 829 Phil. 645 (2018).

Asaytuno, Jr. and Renato Asaytuno,⁴⁶ *People v. Samiah Abdulah*,⁴⁷ *Ramil Cha v. People*,⁴⁸ *People v. Macmac Bangcola*,⁴⁹ *People v. Christopher Ilagan*,⁵⁰ *People v. Larry Sultan*, and *People v. Jose Quilatan*,⁵¹ the Court stressed that the delayed marking of the seized items at the barangay hall, sans any justification, casts doubt on the identity and integrity of the confiscated items.

It is further noted that, in this case, the inventory and photography of the seized items were likewise belatedly done at the barangay hall. It must be emphasized that Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,⁵² requires the arresting officers to conduct a physical inventory and to take photographs of the seized items immediately after their seizure and confiscation. Preparing the inventory and taking photographs of the items immediately after seizure, in the place they were confiscated, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence.⁵³

As correctly argued by the OSG, Section 21 of the Implementing Rules and Regulations of R.A. No. 9165 likewise allows the conduct of the physical inventory and photography at the “nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures.”⁵⁴ However, the barangay hall is not included as an alternative place for the inventory and photography of the confiscated items.

Lamentably, despite the arresting officers’ lapses, they did not bother to prove, let alone plead, any situation or circumstance to excuse their deviation from the law’s simple requirements. Thus, absent the prompt marking, inventory and photography of the allegedly seized items, the Court cannot ascertain whether the confiscated items are the same ones that entered the chain of custody.

⁴⁶ G.R. No. 245972, December 02, 2019.

⁴⁷ G.R. No. 243941, March 11, 2020.

⁴⁸ G.R. No. 246550, September 16, 2020.

⁴⁹ G.R. No. 237802, March 18, 2019.

⁵⁰ G.R. No. 227021, December 5, 2018.

⁵¹ G.R. No. 218107, September 9, 2019.

⁵² REPUBLIC ACT NO. 9165 applies considering that the accused was arrested in 2011.

⁵³ *People v. Larry Sultan*, G.R. No. 225210, August 7, 2019, citing *People v. Que*, 824 Phil. 882, 909 (2018).

⁵⁴ **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. – 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; x x x**

IO1 Mindanao failed to provide specific details on how she handled and safely kept the unmarked seized items.

To make matters worse, IO1 Mindanao personally held on to the seized items from the time of their confiscation until they were marked at the barangay hall. Moreover, she failed to provide details on how she handled the seized items. During her testimony, she tersely and vaguely stated that she was holding the marijuana, or was in possession thereof, without providing further details and assurances that they were safely kept and segregated. Her testimony hardly inspires confidence in the preservation of identity and integrity of the confiscated items:

Q: What were you doing then?

A: I was holding the marijuana, sir.

Q: Do you know if there was anything recovered by Agent Magpayo from @Douglas?

A: Yes sir, the buy-bust money.

Q: After that, what did you do with the item?

A: It was still in my possession, sir.

Q: You are referring to the marijuana?

A: Yes, sir.⁵⁵

Equally important, the quantity of the seized items imposes a greater obligation on the arresting officers to ensure their integrity. The items allegedly confiscated consisted of 225 grams of marijuana fruiting tops, and 20 pieces of heat-sealed plastic sachets, weighing a total of 105.648 grams. En route to the barangay hall, the unmarked seized items were exposed to switching, planting, and contamination.

Relatedly, in *People v. Martin Asaytuno, Jr. and Renato Asaytuno*,⁵⁶ the Court questioned why the seized drug sachet was left in the sole possession of a single police officer from the buy-bust operation until its turnover for examination.

Also, in *People v. Dela Cruz*,⁵⁷ the Court held that the police officer's reckless act of keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items.

⁵⁵ CA rollo, p. 71

⁵⁶ Supra note 46.

⁵⁷ 744 Phil. 816 (2014).

In the same vein, in *People v. Samiah Abdulah*,⁵⁸ the Court criticized the fact that the seized drugs remained in the sole possession of a single police officer, whose manner of handling was unaccounted for:

Worse, the manner by which the allegedly seized drugs were handled after their confiscation, and while in transit to the barangay hall, remains unaccounted for. All that was alleged was that PO3 Temporal kept them himself.

This Court has previously decried police officers' plain claims of having close, personal custody of allegedly seized items in transit. This lone assertion, as pointed out in *People v. Dela Cruz*, is "fraught with dangers," "reckless, if not dubious," and "a doubtful and suspicious way of ensuring the integrity of the items":

X X X X

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.⁵⁹

Verily, IO1 Mindanao's sole possession of the unmarked seized items, along with her failure to provide assurances that she safely kept and handled them while in transit to the barangay hall, casts doubt on the identity and integrity of the items that entered the chain of custody.

The arresting officers may not harp on the presumption of regularity in the performance of duties.

The practice of eagerly ascribing the veil of regular performance of duty in favor of the apprehending officers, even in the face of their evident lapses in following the prescribed procedure laid down by law, should not be tolerated. The presumption of regularity in the performance of duties is not a tool designed to coddle State agents unjustifiably violating the law or an excuse for the courts to shy away from their duty to subject the prosecution's evidence to the crucible of severe testing.⁶⁰ The presumption of regularity enjoyed by the police officers shall not prevail over the constitutional right of the accused to be presumed innocent.⁶¹ Neither may a conviction be secured simply on the prosecution's sweeping guarantees as to the identity and

⁵⁸ Supra note 47.

⁵⁹ Id., citing *People v. Dela Cruz*, supra note 57.

⁶⁰ *People v. Jose Quilatan*, supra note 51.

⁶¹ *People v. Hementiza*, supra note 43.

integrity of the seized drugs.⁶²

Accordingly, the prosecution cannot shirk on its responsibility to prove Castro's guilt beyond reasonable doubt for the illegal sale of dangerous drugs. This obligation includes proving the identity and integrity of the allegedly seized marijuana with mortal certainty. Unfortunately, the prosecution failed to perform its mandate. Instead, it conveniently relied on the presumption of regularity in the performance of the arresting officers' duties, and Castro's failure to ascribe ill motive against the arresting officers. These reasons are certainly not enough to overturn Castro's constitutionally enshrined presumption of innocence.

All told, the arresting officers' failure to immediately mark, inventory, and photograph the seized items at the place of arrest, and to account for the manner in which the said items were handled from the time of their confiscation up to their marking, inventory, and photography at the barangay hall, engenders doubt on the items' identity and integrity. In turn, these doubts militate against a finding of guilt, thereby warranting an acquittal.

WHEREFORE, the appeal is **GRANTED**. The assailed September 20, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 10411 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rowwel Castro y Bolante is hereby **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections, Muntinlupa City, is **ORDERED** to: (a) cause the immediate release of Rowwel Castro y Bolante, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
19 MAY 2022

⁶² Id., citing *People v. Holgado*, 741 Phil. 78, 93-94 (2014).

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