



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated March 9, 2022, which reads as follows:*

**“G.R. No. 254840 (Arnel Magadan Hilario, Sr., petitioner v. People of the Philippines, respondent).** – Petitioner Arnel Magadan Hilario, Sr. seeks to reverse the verdict of conviction rendered by the trial court and the Court of Appeals against him for violation of Section 11, Article II of Republic Act No. 9165 (RA 9165)<sup>1</sup> (illegal possession of 0.2295 gram of *methamphetamine hydrochloride*). He argues that the search warrant issued on his residence was invalidly procured and implemented, and the prosecution failed to establish an unbroken chain of custody.<sup>2</sup>

In its *Comment*<sup>3</sup> dated June 25, 2021, the Office of the Solicitor General (OSG)<sup>4</sup> counters that only questions of law may be raised in a Rule 45 petition, and the Court of Appeals correctly convicted petitioner of illegal possession of dangerous drugs because (a) the seized drugs were retrieved pursuant to a validly issued and implemented search warrant and (b) the chain of custody rule was complied with.

RULING

***The validity of Search Warrant  
056-16 may no longer be assailed***

Petitioner admits that he assailed the validity of Search Warrant 056-16 for the first time before the Court of Appeals.<sup>5</sup> He too failed to file a motion to quash the search warrant and/or to suppress the evidence gathered from the search, before the trial court. In *Pastrano v. Court of*

<sup>1</sup> The “Comprehensive Dangerous Drugs Act of 2002.”

<sup>2</sup> Petition for Review on Certiorari, *rollo*, pp. 12-38.

<sup>3</sup> *Id.* at 125-136.

<sup>4</sup> Through Solicitor General Jose C. Calida, Assistant Solicitor General Alexander S. Salvador, and State Solicitor Ron Winston A. Reyes.

<sup>5</sup> *Rollo*, p. 24.

*Appeals*,<sup>6</sup> we held that objections to a search warrant not raised during trial are deemed waived, *viz.*:

[A]lthough [there] is a ground for quashing a search warrant in this case, petitioner did nothing to this end. x x x In the case of *Demaisip v. Court of Appeals*, [W]e held:

At any rate, objections to the legality of the search warrant and to the admissibility of the evidence obtained thereby were deemed waived when no objection to the legality of the search warrant was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant.

Pursuant to *Pastrano*, petitioner is therefore deemed to have waived his objections to the search warrant.<sup>7</sup>

***Petitioner is nonetheless acquitted of illegal possession of dangerous drugs due to violations of the chain of custody rule***

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti*, *i.e.*, the seized drugs, itself.<sup>8</sup> Thus, the prosecution must establish that the identity and integrity of the dangerous drug were duly preserved in order to sustain a verdict of conviction.<sup>9</sup> It must prove that the dangerous drug seized from petitioner is indeed the substance offered in court with the same unshakeable accuracy as that required to sustain a finding of guilt.

Here, petitioner was charged with illegal possession of dangerous drugs allegedly committed on August 18, 2016. The governing law is RA 9165, as amended by Republic Act No. 10640 (RA 10640),<sup>10</sup> which took effect on August 7, 2014.

Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,*

<sup>6</sup> See 346 Phil. 277, 287 (1997) citing *Demaisip v. Court of Appeals*, 271 Phil. 392, 403 (1991).

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

<sup>8</sup> See *People v. Calates*, 829 Phil. 262, 269 (2018).

<sup>9</sup> See *Calahi v. People*, 820 Phil. 886, 894 (2017) citing *People v. Casacop*, 778 Phil. 369, 376 (2016) and see *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

<sup>10</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."

*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 persons from whom such items were confiscated and/or seized, or his/her 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.

The drug itself constitutes the *corpus delicti* of the offense. The prosecution is tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.<sup>11</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, 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>12</sup>

Here, the chain of custody was breached during the first and fourth links.

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<sup>11</sup> *People v. Barte*, 806 Phil. 533, 542 (2017).

<sup>12</sup> See *People v. Dahil*, 750 Phil. 212, 231 (2015).

**For one.** Although Police Officer 3 Ralph Richard Ozaeta (PO3 Ozaeta) affixed his signature on the seized drugs,<sup>13</sup> he improperly marked the seven (7) sachets containing white crystalline substance only as “A” to “A-6”<sup>14</sup> without his requisite initials.

In *People v. Dahil*,<sup>15</sup> the Court explained that there is marking when “the apprehending officer [places] his/her initials and signature on the seized items upon seizure.”<sup>16</sup> The marking of 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.<sup>17</sup>

Certainly, the markings “A” to “A-6” on the seized drugs do not suffice without PO3 Ozaeta’s initials affixed thereto. As such, these markings are merely generic and do not shield the *corpus delicti* from possible tampering, switching or planting.<sup>18</sup> Similar evidence bearing the same marks can be easily passed off as the drugs allegedly seized from petitioner.

The improper marking, coupled with the fact that the seized drugs inexplicably remained with PO3 Ozaeta from the time of seizure until their delivery to the Philippine National Police (PNP) Crime Laboratory in Tagum City without any statement on how PO3 Ozaeta safeguarded the seized drugs while these were in his custody, engenders doubt as to their integrity and evidentiary value.<sup>19</sup>

**For another.** The seized drugs were turned over by Forensic Chemist Police Chief Inspector April Dela Rosa Fabian (PCI Fabian) to two (2) evidence custodians who failed to testify on the safeguards they implemented to preserve the integrity and evidentiary value of the seized drugs.

Notably, the parties stipulated that from PCI Fabian, the seized drugs were turned over to Police Officer 1 Rhuffy Federri (PO1 Federri) and later to Police Officer 3 Ermer Cubillan (PO3 Cubillan), *viz.*:

2. PO3 Yparraguirre turned-over the drugs to PCI April Dela Rosa Fabian, Forensic Chemist, for quantitative and qualitative

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<sup>13</sup> *Rollo*, p. 96.

<sup>14</sup> *Id.* at 47, 94, 96, 104, 108, 109, 127 and 134.

<sup>15</sup> See *supra* note 11.

<sup>16</sup> See also *People v. Balaso-Lopez*, G.R. No. 251050, June 28, 2021; Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 as amended by Republic Act No. 10640, Section 1(A)(A.1.2), May 28, 2015.

<sup>17</sup> See *People v. Dahil*, *supra*, at 232.

<sup>18</sup> *Id.*

<sup>19</sup> See *People v. Bermil*, G.R. No. 238207, June 21, 2021; See *People v. Perater*, G.R. No. 234325, November 28, 2019.

examination. After examination, the drugs were turned-over to PO1 Rhuffy Federri, Evidence Custodian, for safekeeping.

3. On November 20, 2016, PO1 Federri turned-over the drugs to PO3 Ermer Cubillan, Evidence Custodian, Davao Oriental Provincial Crime Lab, Mati City, and the same were submitted by the latter to the Court on December 1, 2016.<sup>20</sup>

But, the stipulation did not include the measures undertaken by PO1 Federri and PO3 Cubillan to safeguard the seized drugs while the same were in their custody and while these were in transit to the trial court. In *Reas v. People*,<sup>21</sup> we discussed the importance of the testimony of an evidence custodian:

[An] evidence custodian could testif[y] on the circumstances under which he/she received the item, what he/she did with them during the time that the items were in his/her custody, or what happened during the time that the items were transferred to the trial court. **The absence of the testimony of the evidence custodian presents a break in the links in the chain of custody of the evidence.** (Emphasis and underscoring supplied)

To conclude, the first link was already breached early on and the same was no longer remediable. More so, the breach was even repeated on the fourth link when the prosecution failed to show how the integrity and evidentiary value of the seized drugs were preserved from the time the forensic chemist turned them over to the evidence custodians up until they were brought to the trial court. Accordingly, petitioner must be acquitted as a matter of right.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated September 2, 2020 of the Court of Appeals in CA-G.R. CR No. 01673-MIN, is **REVERSED and SET ASIDE**.

**ARNEL MAGADAN HILARIO, SR.** is **ACQUITTED** in **Criminal Case No. 2169-16**. The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) immediately release him from custody unless he is being held for some other lawful cause; and (b) submit his report on the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

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<sup>20</sup> *Rollo*, p. 87.

<sup>21</sup> *Reas v. People*, G.R. No. 248228, May 3, 2021.

**SO ORDERED.”** (LEONEN, *J.*, on leave; KHO, JR., *J.*, on wellness leave.)

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

SEP 4/11/22

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Branch 32, Lupon, Davao Oriental  
(Crim. Case No. 2169-16)

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G.R. No. 254840

(171)  
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**SO ORDERED.”** (LEONEN, *J.*, on leave; KHO, JR., *J.*, on wellness leave.)

By authority of the Court:

*Micel DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*  
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