



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. 255683 (People of the Philippines v. Bobby Ortalla y Pacamo @ “John Brian”). – The Court resolves to **NOTE**:

- (1) the Office of the Solicitor General’s Manifestation (in Lieu of Supplemental Brief) dated August 4, 2021, stating that it adopts the Brief for the Appellee dated March 11, 2019 and waiving its right to file a supplemental brief considering that appellant’s guilt and culpability has already been exhaustively discussed therein; and
- (2) accused-appellant’s Manifestation (in Lieu of Supplemental Brief) dated July 27, 2021, stating that he adopts the appellant’s brief as his supplemental brief, for the same has adequately discussed all the matters pertinent to the appellant’s defense.

We acquit.

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.¹ The seized drug itself constitutes the *corpus delicti* of the offense. The prosecution is, thus, tasked to establish that the substance illegally possessed or sold by the accused is the very substance presented in court² with the same unshakeable accuracy as that required to sustain a finding of guilt.

It is essential that the identity of the seized drug be established with moral certainty. In order to obviate any unnecessary doubts on such identity, the prosecution must show an unbroken chain of custody. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus*

¹ *People v. Calates*, 829 Phil. 262, 269 (2018).

² *People v. Dizon @ “Jingle”* G.R. No. 223562, September 4, 2019.

delicti.³ The showing of the continuous chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.⁴

Generally, there are four (4) links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and (iv) its turnover by the forensic chemist to the court.⁵

We focus on the first and second links.

The First Link

Appellant Bobby Ortalla was arrested on December 27, 2017 and subsequently charged with violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).⁶ Thus, the applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640),⁷ which took effect on August 7, 2014.⁸ Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

x x x x

SEC. 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

³ See *People v. Manuel Lim Ching*, 819, Phil. 565, 575 (2017).

⁴ *People v. Reyes*, 797 Phil. 671, 686 (2016).

⁵ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

⁶ The Comprehensive Dangerous Drugs Act of 2002.

⁷ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of RA 9165.

⁸ As held in *People v. Maganon*, G.R. No. 234040, June 26, 2019:

x x x x

x x x As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018, footnote 26), RA 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.” RA 10640 was published on July 23, 2014 in “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and “Manila Bulletin”³ (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014. x x x

x x x x

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. (Emphases supplied)

x x x x

The IRR of RA 9165 further mandates:

x x x x

Section 21. (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**: x x x *Provided*, further, that non-compliance with 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 of and custody over said items; (Emphases supplied)

x x x x

Here, the prosecution sufficiently established that the requisite marking, inventory and photographing at the place of arrest were duly

complied with. The irregularity in the first link of the chain of custody, however, lies in the execution of the Certificate of Inventory.

The law requires that the copies of the inventory should be signed by the accused or his/her representative or counsel and the insulating witnesses, *i.e.*, an elected public official and a representative from the media or the National Prosecution Service. Record bears the Certificate of Inventory which was signed by Barangay Kagawad Noel Mira⁹ and media representatives Rhea Reyes and Macky Libradilla. Conspicuously missing, however, was the signature of appellant or that of his counsel or representative. The prosecution did not acknowledge this defect, let alone, provide a justification why appellant was unable to sign the Certificate of Inventory.

Concededly, Section 21 of the IRR of RA 9165 provides that “noncompliance with 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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.¹⁰ As stated, however, the prosecution failed to even recognize the procedural lapse committed by the police officers in not making appellant sign the inventory and failed even more so in not offering a justifiable ground for appellant’s failure to sign the same. This procedural infirmity, *sans* any valid explanation from the prosecution militates against a finding of guilt against appellant as the integrity and evidentiary value of the *corpus delicti* would have been compromised.¹¹

The Second Link

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and there was no opportunity for someone not in the chain to have possession of the same.¹²

Police Officer 1 Leo Andres (PO1 Andres) testified that the illegal drug

⁹ Mita in other parts of the records.

¹⁰ Supra note 8.

¹¹ *People v. Santiago*, G.R. No. 252892, July 28, 2021.

¹² *Peo v. Celso Plaza, et al.* G.R. No. 235467, August 20, 2018.

confiscated from appellant was *presented* to investigator Senior Police Officer 3 Jerry Tamargo (SPO3 Tamargo), who in turn, prepared a request for its laboratory examination thereof. The following stipulation of the defense and prosecution shows the participation of SPO3 Tamargo pertaining to the confiscated drug, thus:

x x x x

The stipulation and the defense stipulated on the following:

x x x x

16. SPO3 Jerry D. Tamargo prepared the following documents:

- a) Referral Letter
- b) Joint Affidavit of Arrest
- c) Coordination Form
- d) Pre-operation Report
- e) Request for Laboratory Examination
- f) Inventory of Seized/Confiscated Item/Property
- g) Chain of Custody Form
- h) Ten Prints

17. SPO3 Jerry D. Tamargo took photographs of the accused and the specimens;

18. SPO3 Jerry D. Tamargo can identify the documents he prepared, the accused and the specimens subject of his investigation;

19. SPO3 Jerry D. Tamargo has no personal knowledge as to the facts and circumstances surrounding the arrest of the accused; and

20. SPO3 Jerry D. Tamargo has no personal knowledge as to the source of the specimen presented to him for investigation;¹³ (Emphases supplied)

x x x x

Indubitably, SPO3 Tamargo came in contact with the confiscated drug when he took photographs of it. It thus becomes imperative for him to testify on the

condition of the drug when he received it, how he handled it, and the measures he observed in order to prevent any contamination, switching, or tampering while the drug was in his possession. As it was, however, the only testimony

¹³ Record, p. 43.

pertaining to his possession of the seized drug appearing on the record was the stipulation of the prosecution and defense which, however, sorely lacked the mentioned crucial details. The stipulations referred merely to the documents prepared by SPO3 Tamargo, the fact that he took photographs of the items and of appellant, and that he had no personal knowledge of the source of the seized item or of any information regarding appellant's arrest, *nothing more*. There was no stipulation specifically pertaining to the condition of the confiscated drug and the precautions supposedly taken by SPO3 Tamargo to preserve its identity and integrity while he was taking photographs of the same. This raises doubts on the susceptibility of tampering, switching, or contamination of the seized drug while it was in his custody.

The absence of vital information proving that the identity and integrity of the seized drug was adequately preserved renders the *corpus delicti* questionable. In *People v. Dumagay*,¹⁴ the Court acquitted appellant therein, ruling that in dispensing with the testimony of the investigator, the prosecution failed to show, by the stipulations agreed on, the condition of the seized drug upon its turnover from the arresting officer to the investigator. The prosecution, thus, failed to establish an unbroken chain of custody of the confiscated drug.

It has been repeatedly held that strict adherence to the chain of custody rule must be observed; the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.¹⁵ This imperative becomes even more rigid where the amount of drugs involved is miniscule, thus, could be easily planted or tampered, as in this case where the drug allegedly seized from appellant weighed only 0.0596 gram. Indeed, as explained in *Malillin v. People*, the likelihood of tampering, loss, or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.¹⁶

In *People vs. Marcelo*,¹⁷ a case involving only 0.02 and 0.03 gram of *shabu* allegedly sold by appellant, it was held that "the Court cannot simply overlook the procedural lapses committed by the police officers. Current jurisprudence has highlighted the need to ensure the integrity of seized drugs in the chain of custody when only a minuscule amount had been allegedly seized from the accused."

Admittedly, though, a perfect chain of custody may not at all times be achieved because of varying field conditions. The saving clause of the

¹⁴ See 825 Phil. 726 (2018).

¹⁵ *People v. Miranda*, G.R. No. 218126, July 10, 2019, citing *People v. Lim*, G.R. No. 231989, September 4, 2018.

¹⁶ 576 Phil. 576, 588 (2008).

¹⁷ G.R. No. 228893, November 26, 2018.

Implementing Rules and Regulations, however, allows for some leniency so long as justifiable grounds exist which warrant deviation from the established procedure and provided that the integrity and evidentiary value of the seized items are properly preserved.

As discussed, the prosecution failed to acknowledge much less offer a justifiable reason for its procedural lapses involving the chain of custody. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the *proviso* “so long as the integrity and evidentiary value of the seized items are properly preserved,” will not come into play either.¹⁸

The presumption of regularity of performance of official duty cannot apply here as it stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.¹⁹ The presumption cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.²⁰ And here, the presumption was sufficiently overturned by compelling evidence on record of serious doubts relating to the integrity of the *corpus delicti*. Appellant’s acquittal is, thus, in order.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated July 10, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 10680, is **REVERSED AND SET ASIDE**. Appellant **BOBBY ORTALLA y PACAMO @ “John Brian”** is **ACQUITTED** of violation of Section 5, Article II of Republic Act 9165, as amended, in Criminal Case No. R-QZN-18-00160-CR.

The Court further **DIRECTS** the Director of the Bureau of Corrections a) to cause the immediate release of **BOBBY ORTALLA y PACAMO @ “John Brian”** from custody unless he is being held for some other lawful cause; and b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment be issued immediately.

SO ORDERED.” (Leonen, J., *on leave*)

By authority of the Court:

MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
Misael D.C.B. - H
elcbz

¹⁸ See *People v. Bolado*, G.R. No. 227356, October 16, 2019.

¹⁹ *People v. Richael Luna*, 828 Phil. 671, 699 (2018).

²⁰ *People s. De Vera, et al.* G.R. No. 229364, October 16, 2019.

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