



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated September 7, 2022, which reads as follows:

“G.R. No. 252541 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. GILBERT CRUZ y GOMEZ, Accused-Appellant. –

The Court resolves to **GRANT** the present appeal for failure of the prosecution to prove the guilt of the accused-appellant Gilbert Cruz y Gomez (**Cruz**) beyond reasonable doubt for violation of Section 5, Article II of Republic Act (**R.A.**) No. 9165, the Comprehensive Dangerous Drugs Act of 2002, as amended.

In the prosecution of crimes involving illegal drugs, aside from proof beyond reasonable doubt that the elements of the offense committed were present, the prosecution bears the burden to present proof of the identity and integrity of the *corpus delicti* — the dangerous drug itself.¹ To facilitate the prosecution’s discharge of this obligation, the rule on the chain of custody was devised and is now embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640.² The said law requires that the marking, physical inventory,

¹ *Belga y Brizuela v. People*, G.R. No. 241836, 11 November 2021 [per J. Caguioa, First Division], accessed at <<https://sc.judiciary.gov.ph/26845/>>.

² “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 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 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

and photography of the seized items be conducted immediately after seizure and confiscation of the same,³ which means at the place of apprehension.⁴ The law also requires that the inventory and photography be done in the presence of: (1) the accused or the persons from whom such items were confiscated and seized or his/her counsel; (2) an elected public official; and, (3) a representative of the National Prosecution Service or the media.⁵ All those required to witness the inventory and photographing should sign copies of the certificate of inventory and be given a copy thereof.⁶

The Court has also clarified that the insulating witnesses must be present at or near the place of arrest during confiscation. In *People v. Tomawis*,⁷ the Court ruled that the three witnesses should already be physically present at the time of apprehension because it is their presence that prevents the evils of switching, planting or contamination of the evidence that had tainted buy-bust operations.

Nonetheless, despite the mandatory nature of the rule on chain of custody, deviations from it may be permitted if the following requisites are present: (1) the existence of “justifiable grounds” allowing departure from the rule on chain of custody; and, (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.⁸

Still, it is the prosecution that has the burden of proof to show that non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 was warranted by the peculiar circumstances the apprehending officer were faced during the buy-bust operation.⁹ The justification must also be genuinely exceptional. The Court will not accept flimsy excuses and general statements not backed by the apprehending officer’s sworn affidavit and coupled with a statement on the steps the police took to preserve the integrity of the seized item.¹⁰ This stringency and exactness required by the law is necessary considering that the quantity of the dangerous drug usually seized during buy-

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.

³ *People v. Cabriole*, G.R. No. 248418, 5 May 2021, accessed at <<https://sc.judiciary.gov.ph/22278/>>.

⁴ *Luna v. People*, G.R. No. 231902, 30 June 2021, accessed at <<https://sc.judiciary.gov.ph/21690/>>.

⁵ *People v. Cabriole*, *supra*.

⁶ *Id.*

⁷ *People v. Tomawis*, 830 Phil. 388, 409 (2018).

⁸ *People v. Tagluocop*, G.R. No. 243577, 15 March 2022, accessed at <<https://sc.judiciary.gov.ph/27556/>>.

⁹ *People v. Rosales*, G.R. No. 233656, 2 October 2019, 921 SCRA 420, 436.

¹⁰ See *People v. Salenga*, G.R. No. 239903, 11 September 2019, 919 SCRA 342, 358-359.

bust operations is miniscule, and thus, highly susceptible to planting, tampering, or alteration.¹¹

The buy-bust operation is marred with several violations of the chain of custody rule under Section 21 of R.A. No. 9165

The evidence on record and the testimony of the prosecution's witness exposed several violations of the rules on chain of custody committed by the apprehending officers. As a by-product, the identity of the *corpus delicti* of the crime has become highly doubtful, which, in turn, could justify Cruz's acquittal.

At the outset, the physical inventory and photographing of the seized drug were not done immediately after seizure and arrest at the place of apprehension. The direct and cross-examination of PO3 Ricky Gacelo (**PO3 Gacelo**) highlighted these lapses:

FISCAL ROBREDO:

Q After arresting Gilbert Cruz, what happened next?

A I recovered the buy bust money and boodle money and there was a little scuffle because he resisted arrest. I also recovered from the accused a pistol caliber (sic) a replica of Glock 9mm.

Q What happened next?

A We proceeded to the Barangay for physical examination.

x x x x x x x x x x

Q Where were you when you placed those markings?

A At the Barangay, sir.

Q Why not at the crime scene?

A It was just ten meters distance of (sic) of the barangay so we decided to go to the barangay, sir.

Q Who was in possession of the buy bust money from the crime scene up to the barangay?

A I, sir.

¹¹ *People v. Rosales*, supra, at 437.

Q What happened at the barangay?

A We conducted inventory and took photograph of the suspect, sir.¹² (underscoring supplied)

ATTY. MAGALLANES

Q Where did you mark the specimen?

A At the Barangay Hall.

Q Why not at the place of the arrest of the accused?

A Because there were many persons and relatives there. So we decided to proceed at the Barangay, sir.

Q How far were (sic) the place of arrest from the Barangay?

A Five to fifteen meters only, sir.

Q You are saying that the transaction happened just (sic) few meters from the Barangay?

A Yes, sir.

Q You conducted the Inventory at the Barangay Hall?

A Yes, sir.¹³ (underscoring supplied)

In *People v. Musor*,¹⁴ it was explained that with the phrase “immediately after seizure and confiscation,” the law’s intention is to require police officers to conduct the physical inventory and photographing of the drugs immediately after, or at the place of apprehension. It is only when the same is not practicable that a transfer of venue could be permitted. Meanwhile, when the drugs are seized pursuant to a buy-bust operation or a warrantless seizure, then inventory and taking of photographs can be conducted at the nearest police station or at the nearest office of the apprehending team.¹⁵ Moreover, even Section 21 of R.A. No. 9165, as amended, explicitly enumerated the venues where transfer could be had: the nearest police station or at the nearest office of the apprehending officer/team. Clearly, the barangay hall is not one of the alternative places specified.

Another departure from the chain of custody rule is the failure of the police authorities to obtain the presence of the required witnesses at the time of seizure and apprehension. As mentioned, it is during this time “that the presence of the three witnesses is most needed, as it is their presence at the

¹² Records, Transcript of Stenographic Notes of PO3 Ricky Gacelo, pp. 7-9.

¹³ Id. at 15-16.

¹⁴ 842 Phil. 1162, 1176 (2018).

¹⁵ *Tumabini v. People*, G.R. No. 224495, 19 February 2020, 933 SCRA 60, 81.

time of seizure and confiscation that would insulate against the police practice of planting evidence.”¹⁶

Here, there is nothing in the testimonial evidence presented by the prosecution that would show that earnest efforts were made to secure the presence of the required witnesses during seizure and apprehension. On the contrary, it appears that the witnesses were merely called in at the Barangay Hall where the marking, inventory and photographing were conducted. This is indefensible considering that a buy-bust operation is, by its nature, a planned activity; and the buy-bust team almost always has enough time to bring with them the insulating witnesses.¹⁷

The apprehending officers failed to provide justification for their non-compliance

As explained earlier, the prosecution’s case may still succeed despite the police officer’s failure to follow the rules on chain of custody if the “saving clause” found in Section 21 of R.A. No. 9165, as amended, were properly invoked and applied. For this saving mechanism to apply, the apprehending officers must first acknowledge their omissions and then explain why the prescribed procedures were not followed.¹⁸ In *People v. Luna*,¹⁹ the Court strictly laid down the requirements to apply the saving clause:

As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of “justifiable grounds” allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. **If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; ergo, the integrity of the *corpus delicti* remains untarnished.** x x x

x x x

x x x

x x x

Following a plain reading of the law, it is now settled that non-compliance with the mandatory procedure in Section 21 triggers the operation of the saving clause enshrined in the IRR of RA 9165. *Verba legis non est recedendum* — from the words of a statute there should be no departure. Stated otherwise, in order not to render void and invalid the seizure and custody over the evidence obtained, the prosecution must, as a matter of law, establish that

¹⁶ Supra note 14.

¹⁷ Supra note 7, at 405.

¹⁸ *People v. Alagarme*, 754 Phil. 461 (2015).

¹⁹ 828 Phil. 686-687 (2018).

such non-compliance was based on justifiable grounds and that the integrity and the evidentiary value of the seized items were preserved. **Hence, before the prosecution can rely on this saving mechanism, they (the apprehending team) must first recognize lapses, and, if any are found to exist, they must justify the same accordingly.** (emphasis supplied)

Here, the police officers offered no justification other than what was stated in PO3 Gacelo's testimony, as quoted above. This justification would hardly suffice. In *People v. Salenga*,²⁰ the Court held that a general excuse that the crowd is building-up at the place of arrest, and nothing more, is not enough to prove that it was not practicable to conduct inventory and photographing at the place of arrest. As regards the police's failure to bring with them witnesses during apprehension and seizure, the police did not even acknowledge this as an error on their part.

Considering that the first of the two conditions under the saving clause was not complied with, there is no more reason to discuss whether the evidence of the prosecution showed the preservation of the integrity and evidentiary value of the seized items. Again, in *Luna*,²¹ the Court explained:

In this regard, considering that the first prong of the saving clause was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial. **Given the fact that patent irregularities were already present at the point of seizure — the supposed "first link" in the chain — there is no more practical value to establishing an unbroken chain of custody to show that the integrity and the evidentiary value of the seized items were properly preserved.** (emphasis supplied)

Gap in the first and fourth links of the chain of custody

Regardless, even if the Court were to determine whether the evidentiary value of the seized drugs was preserved in this case, the outcome would still be the same. Jurisprudence has recognized that the second requirement under the saving clause is satisfied when the police authorities are able to establish the four links in the chain of custody: *first*, the seizure and marking, if practicable, 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

²⁰ Supra note 10.

²¹ Supra note 19, at 695.

examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.²²

The prosecution failed to establish these four links. There is a gap in the first link, *i.e.*, the seizure and marking of the illegal drugs recovered from the accused by the apprehending officer; and, the fourth link, *i.e.*, the turnover and submission of the seized and marked illegal drugs from the forensic chemist to the court.

With respect to the first link, the marking of the plastic bag of *shabu* allegedly recovered from Cruz was not in compliance with the prescribed rules. It is vital that the seized items be marked immediately after confiscation since the succeeding handlers thereof will use the markings as reference.²³ As can be gleaned from the testimony of PO3 Gacelo, the prosecution failed to provide an acceptable justification why the marking was conducted at the Barangay Hall, and not at the place of apprehension. Additionally, the marking made by PO3 Gacelo was not in accordance with paragraph 2.35, Section 2-6 of the Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation.²⁴

2.35. The Seizing Officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found recovered or seized.

The testimony of PO3 Gacelo, again, underscored this non-compliance:

FISCAL ROBREDO:

Q The money and the boodle money that [was] handed over for the said buy-bust money, you identified as Exhibit O and series. You said you were able to confiscate a plastic sachet. If shown to you, will you be able to identify?

A Yes, sir.

Q How?

A I have my markings.

Q What is the marking?

A RG-12-16-17.

²² *People v. Castillo*, G.R. No. 238339, 07 August 2019, accessed at <<https://sc.judiciary.gov.ph/8269/>>

²³ *People v. Alejandro*, 671 Phil. 33, 46 (2021).

²⁴ Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation, September 2014.

- Q Is this the plastic sachet that you recovered from the accused?
A This is the one, sir.²⁵ (underscoring suppling)

There was no explanation from PO3 Gacelo on what these letters and numbers stand for. At any rate, it is readily apparent from the said marking that it is lacking the required indications of time and place where the evidence was seized.

As to the fourth link, it is settled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial.²⁶ The stipulation shall likewise cover the management, storage, and preservation of the seized drugs.²⁷

In the present case, the parties merely agreed to the following stipulations: (1) that PCI Bacani received the transparent plastic bag that contained white crystalline substance with markings "R.G. 12/16/14," which gave positive result for shabu after the laboratory examination; and, (2) that PCI Bacani can identify the plastic bag of shabu that she brought for the proceedings before the Regional Trial Court.²⁸

Clear from the foregoing is the lack of the stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. PCI Bacani failed to specify that she took precautionary steps to preserve the integrity and evidentiary value of the illegal drugs seized from Cruz.

All told, the prosecution failed to discharge its burden to prove Cruz's guilt beyond reasonable doubt. There is serious uncertainty as to the identity of the *corpus delicti* due to the apprehending officers' failure to follow the mandatory rules on chain of custody to the letter. The flimsy explanations given to defend the violations committed by the police authorities also failed to ease the Court's doubts. If the chain of custody procedure had not been

²⁵ Supra note 12, at 7-8.

²⁶ *People v. Leaño y Leaño*, G.R. No. 246461, 28 July 2020, accessed at <<https://sc.judiciary.gov.ph/14742/>>

²⁷ *People v. Ubungen*, G.R. No. 225497, 23 July 2018, 873 SCRA 172, 187.

²⁸ *Rollo*, p. 13.

complied with, and no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.²⁹

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 10331, dated 16 December 2019, is **REVERSED**. The accused-appellant Gilbert Cruz y Gomez is **ACQUITTED** of the crime charged on the ground of reasonable doubt.

The Director General of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other cause.

Let an entry of final judgment be issued immediately.

The Director General of the Bureau of Corrections is **DIRECTED** to report compliance, within five (5) days from receipt.

SO ORDERED.”

By authority of the Court:

MisDc Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
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10/5/22

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²⁹ *People v. Año*, 828 Phil. 448-452 (2018).

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