



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court's First Division, issued a Resolution dated December 7, 2022 which reads as follows:

“G.R. No. 250303 (*People of the Philippines, plaintiff-appellee vs. Virgilio Encarnacion y Marasigan @ “Vio”, accused-appellant*). – This is an appeal¹ from the March 26, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09323. The Court of Appeals affirmed with modification the July 26, 2016 Decision³ of the Regional Trial Court of Oriental Mindoro, Branch 39 (RTC) in Criminal Case Nos. CR-12-10,367 and CR-12-10,368, finding Virgilio Encarnacion y Marasigan @ “Vio” (*appellant*) guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,⁴ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

Antecedents

Appellant was charged with violation of Secs. 5 and 11, Art. II of R.A. No. 9165 in two separate Informations which read:

Criminal Case No. CR-12-10,368

That on or about the 18th day of February 2012, at around 9:30 in the evening, more or less, in Barangay Camilmil, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named

¹ *Rollo*, pp. 15-18.

² *Id.* at 3-14; penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) and concurred in by Associate Justices Romeo F. Barza and Franchito N. Diamante.

³ *CA rollo*, pp. 56-67; penned by Judge Manuel C. Luna, Jr.

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.

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accused, without any legal authority nor corresponding license or prescription, with the use of a tricycle with plate number WU8800, did then and there willfully, unlawfully, and feloniously transport and sell, deliver or distribute to a poseur-buyer, two (2) heat-sealed transparent plastic [sachets] containing methamphetamine hydrochloride (shabu), a dangerous drug, with a total weight of 0.052 (zero point zero fifty two) gram, more or less.

CONTRARY TO LAW.⁵ (Bold and italicized in the original)

Criminal Case No. CR-12-10,367

That on or about 18th day of February 2012, at around 10:00 o'clock in the evening, more or less, at Barangay Lalud, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor corresponding license or prescription, with the use of a tricycle with [plate] number WU8800, did then and there willfully, unlawfully, and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic [sachets] containing methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, with a total weight of 0.050 (zero point zero fifty) gram, more or less.

CONTRARY TO LAW.⁶ (Bold and italicized in the original)

During arraignment, appellant pleaded not guilty to the crimes charged.⁷ Thereafter, trial on the merits followed.

Version of the Prosecution

On February 18, 2012, a confidential informant (*CI*) came to Calapan City Police Station and informed Police Superintendent William Destura (*P/Supt. Destura*), officer-in-charge, of the illegal drug activities of appellant. P/Supt. Destura then ordered Senior Police Officer 3 Nebuchadnezzar B. Matrio (*SPO3 Matrio*) and the other police officers to coordinate with P/Supt. Bonard Briton (*P/Supt. Briton*) of the Provincial Intelligence Branch for the conduct of buy-bust operation. SPO3 Matrio and his team coordinated with the Philippine Drug Enforcement Agency (*PDEA*) and they found out that appellant was already included in the PDEA watch list. After verification and submission of the pre-operation report with the PDEA, the operatives were given a go signal as shown by Control No. PDEA RO 04-B 0212-00020.⁸

⁵ *CA rollo*, p. 57.

⁶ *Id.* at 56-57.

⁷ *Id.* at 57.

⁸ *Rollo*, p. 4.

Thereafter, P/Supt. Briton formed a buy-bust team and designated SPO3 Matrio as poseur-buyer, PDEA Agent Terrence C. Naulgan (*Agent Naulgan*) as the arresting officer, and the CI as the one who shall set-up the sale. SPO3 Matrio was handed one ₱500-bill and four pieces of ₱100-bill, all dusted with ultra-violet powder. As the pre-arranged signal of the perfection of the sale, SPO3 Matrio was to make a “missed call” to P/Supt. Briton.⁹

At 9:30 in the evening, the buy-bust team went to the Shell Gasoline Station located in *Barangay Camilmil*, Calapan City, Oriental Mindoro. SPO3 Matrio and the CI rode a motorcycle and parked near the air pump of the gas station. On the other hand, Agent Naulgan, P/Supt. Briton, and the rest of the arresting team rode a van and parked on the opposite lane to ensure that they could witness the negotiation. After a while, appellant arrived at the gas station on board his tricycle. The CI introduced SPO3 Matrio as the buyer. Appellant, who was then in a hurry, immediately told SPO3 Matrio, “*Pare akin na yung pera. Nagmamadali ako at me pupuntahan pa ako*” to which SPO3 Matrio replied, “*Ok, akin na yung item.*” Appellant then handed over two plastic sachets of *shabu* to SPO3 Matrio. Upon receipt of the item, SPO3 Matrio made a “missed call” to P/Supt. Briton in order to signal the consummation of the transaction.¹⁰

After receiving the pre-arranged signal, the operatives tried to arrest appellant but the latter managed to run away. A chase then ensued with SPO3 Matrio following closely behind. The arresting team finally caught appellant at *Barangay Lalud* where he was arrested by Agent Naulgan and was immediately apprised of his constitutional rights. Thereafter, appellant was frisked by Agent Naulgan who recovered two more plastic sachets of suspected *shabu*. He then turned them over to SPO3 Matrio who immediately marked the drugs subject of the sale and the sachets recovered from appellant as “NBM 2-18-12,” “NBM1 2-18-12,” “NBM2 2-18-12,” and “NBM3 2-18-12.”¹¹

Subsequently, the team, together with appellant, proceeded to the PDEA Office for investigation and processing. Appellant was also subjected to an ultra-violet (fluorescence powder) test and tested positive for fluorescent powder residue. The operatives then conducted an inventory of the seized items where photographs were also taken in the presence of *Kagawad Lita Lascano*, *barangay* official of *Barangay Lalud*, and *Maricris De Jaro*, a member of the local media.¹²

⁹ Id. at 5.

¹⁰ Id.

¹¹ Id.

¹² Id. at 5-6.

The next day, SPO3 Matrio delivered the seized items to the crime laboratory and were duly received by PO2 Gian Franco Perpiña (*PO2 Perpiña*). Upon receipt, PO2 Perpiña turned over the seized sachets to Police Senior Inspector Eugenio Garcia (*PSI Garcia*) for examination. In Laboratory Report No. D-026-12, PSI Garcia confirmed that the contents of the seized sachets were positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.¹³

Version of the Defense

Appellant testified that on February 18, 2012 at around 9:00 o'clock in the evening, he was driving his tricycle along San Vicente. While dropping off his passenger, an armed man rushed towards him and poked his gun at him. Appellant sped up his vehicle and managed to escape. However, around six armed men in civilian clothes chased him while shouting, "*Tigil! Tigil!*" Appellant attempted to flee but was grabbed by his shirt, shoved to the ground, and was trampled upon. He was immediately handcuffed while a police officer was forcing to place several bills in his hands. He was then boarded onto a gray van and brought to the PDEA office. Thereat, he was brought inside an office where a police officer tried to make him confess to possession of dangerous drugs. When the authorities were done with the investigation, appellant was forced to sign a document. He was also placed in the holding cell for three days before he was brought to the crime laboratory for examination. Thereafter, he was made to stay at the holding cell for another three days until inquest proceedings were conducted at the Office of the City Prosecutor. He was later transferred to the provincial jail.¹⁴

The RTC Ruling

In its July 26, 2016 Decision, the RTC found appellant guilty of Illegal Sale and Illegal Possession of Dangerous Drugs. The *fallo* reads:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In CR-12-10,367, this Court finds the accused VIRGILIO ENCARNACION y MARASIGAN @ "*Vio*" **GUILTY** beyond reasonable doubt as principal of the crime charged in the aforequoted information and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from **TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FIFTEEN (15) YEARS and ONE (1) DAY as MAXIMUM and to pay a**

¹³ Id. at 6.

¹⁴ Id.

fine in the amount of P300,000.00, with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any.

The 0.050 gram of “*methamphetamine hydrochloride*” (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

2. In CR-12-10,368, this Court finds accused VIRGILIO ENCARNACION y MARASIGAN @ “Vio” **GUILTY** beyond reasonable doubt as principal of the crime charged in the aforementioned Information and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS**, with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any.

The 0.052 gram of “*methamphetamine hydrochloride*” (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

SO ORDERED.¹⁵

The RTC held that the prosecution was able to establish the elements of both Illegal Sale and Illegal Possession of dangerous drugs under Secs. 5 and 11, Art. II of R.A. No. 9165. It explained that the prosecution was able to show that the apprehending officers and the PDEA agent substantially complied with the provisions of Sec. 21, Art. II of R.A. No. 9165.¹⁶

The CA Ruling

In its March 26, 2019 Decision, the CA affirmed appellant’s conviction. The dispositive portion of the Decision reads:

WHEREFORE, foregoing considered, the present appeal is **DISMISSED** for lack of merit. The assailed Decision dated July 26, 2016, of the Regional Trial Court of Oriental Mindoro, Branch 39, in Criminal Case No. CR-12-10[,]¹⁷ is **AFFIRMED** with **MODIFICATION**. Accused-Appellant Virgilio Encarnacion y Marasigan @ “Vio” is hereby found guilty beyond reasonable doubt of the crime of violation[s] of Sections 5 and 11, Article II of Republic Act No. 9165, as amended by Republic Act No. 9346, and sentencing him to suffer the penalty of life imprisonment without eligibility for parole and ordering him to pay the fine

¹⁵ CA rollo, pp. 66-67.

¹⁶ Id. at 63-66.

¹⁷ While the CA upheld the conviction of appellant for violation of Secs. 5 and 11, Art. II of Republic Act No. 9165, said appellate court inadvertently failed to state in the *fallo* of its March 26, 2019 Decision that it likewise affirmed the July 26, 2016 Decision of the Regional Trial Court of Oriental Mindoro, Branch 39, in Criminal Case No. CR-12-10,368.

of ₱500,000.00, for violation of Section 5, Article II, Republic Act No. 9165, and imprisonment of twelve (12) years and one (1) day to fifteen (15) years and one (1) day and a fine of ₱300,000.00, for violation of Section 11, Article II, Republic Act No. 9165.

SO ORDERED.¹⁸

The CA sustained the conclusions reached by the RTC that the prosecution was able to establish all the elements of the crimes charged. It held that the records indicate that the integrity and the evidentiary value of the seized items had been preserved despite the procedural infirmities that accompanied the process. According to the CA, the presumption of regularity in the performance of official duty should be accorded the apprehending officers absent any proof of improper motive to falsely accuse appellant of such grave crimes.

Hence, this appeal. Appellant raises the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THE ELEMENTS OF ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁹

In its February 3, 2020 Resolution,²⁰ the Court required the parties to submit their respective supplemental briefs, if they so desired. In its September 15, 2020 Manifestation (In Lieu of Supplemental Brief),²¹ the Office of the Solicitor General (*OSG*) manifested that it will no longer file a supplemental brief because its Appellee's Brief had already discussed the propriety of appellant's conviction. In his August 25, 2020 Manifestation (In Lieu of a Supplemental Brief),²² appellant averred that he would no longer

¹⁸ *Rollo*, p. 13.

¹⁹ *CA rollo*, p. 42.

²⁰ *Rollo*, pp. 21-22.

²¹ *Id.* at 30-34.

²² *Id.* at 25-29.

file a supplemental brief considering that he had thoroughly discussed his defense in his Appellant's Brief.

In his Appellant's Brief²³ filed before the CA, appellant questions the validity of the buy-bust operation by asserting that the prosecution should have presented the CI who had sole knowledge of how the alleged sale started and how it was perfected. Moreover, appellant argues that the prosecution failed to comply with the requirements enumerated in Sec. 21, Art. II of R.A. No. 9165, specifically, the presence of a Department of Justice (*DOJ*) representative during the conduct of inventory and taking of photograph of the allegedly seized shabu. He thus claims that the prosecution failed to prove the identity of the *corpus delicti*.²⁴

In its Appellee's Brief²⁵ filed before the CA, the OSG counters that the Decision of the RTC must be affirmed because the prosecution duly proved all the elements of illegal sale and illegal possession of dangerous drugs. The OSG argues that the prosecution was able to prove that there was a valid buy-bust operation. It insists that it is presumed that the police officers performed their duties in a regular manner, unless there is clear evidence that the latter were inspired by improper motive. However, appellant failed to prove the contrary.²⁶ Moreover, the OSG argues that the chain of custody rule was substantially complied with and that the police officers were also able to preserve the integrity and evidentiary value of the seized items.²⁷ Lastly, the OSG maintains that the presentation of the CI as witness is not regarded as indispensable to the success in prosecuting appellant.²⁸

The Court's Ruling

The Court finds the appeal meritorious.

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.²⁹ It is essential to prove that a transaction or sale actually took place coupled with the presentation in court of evidence of the

²³ CA *rollo*, pp. 40-55.

²⁴ Id. at 48-52.

²⁵ Id. at 78-97.

²⁶ Id. at 84-90.

²⁷ Id. at 90-94.

²⁸ Id. at 94-95.

²⁹ *People v. Roble*, 663 Phil. 147, 157 (2011).



corpus delicti.³⁰ The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence.

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.³¹

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug.³² The identity of the prohibited drug must be established with moral certainty.³³ Apart from proving the presence of the elements of possession or sale, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be proved with the same degree of certitude as that needed to sustain a guilty verdict.³⁴

In all prosecution of drugs cases, therefore, compliance with the chain of custody rule is crucial.³⁵ Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.³⁶

As part of the chain of custody procedure, the law requires that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.³⁷ The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640,³⁸ a

³⁰ Id.

³¹ *People v. Climaco*, 687 Phil. 593, 603 (2012), citing *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

³² *People v. Guarin*, G.R. No. 252857, March 18, 2021.

³³ Id.

³⁴ Id. citing *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

³⁵ Id. citing *People v. Malana*, G.R. No. 233747, December 5, 2018.

³⁶ *People v. Guzon*, 719 Phil. 441, 451 (2013).

³⁷ *Matabilas v. People*, G.R. No. 243615, November 11, 2019, 925 SCRA 336, 345.

³⁸ 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.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018, 884 SCRA 276 and *Matabilas v. People* (supra), R.A. No. 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." R.A. No. 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, *Philippine Star Metro* section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; *World News* section, p. 6). Thus, R.A. No. 10640 appears to have become effective on August 7, 2014.

representative from the media **AND** the Department of Justice (*DOJ*), and any elected public official;³⁹ or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service⁴⁰ **OR** the media.⁴¹ 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.”⁴²

Here, since the offenses charged were committed on **February 18, 2012**, the provisions of Sec. 21, Art II of R.A. No. 9165 shall apply. Thus, the accused or his representative and the three witnesses mandated by law to be present during the inventory and taking of photographs must be complied with.

The prosecution failed to establish an unbroken chain of custody.

Sec. 21, Art. II of R.A. No. 9165 requires the presence of these three witnesses during the inventory and photograph taking: (1) media representative; (2) representative from the DOJ, and (3) any elected public official. Sec. 21 pertinently states:

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 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[.]** (Emphasis supplied)

³⁹ See Sec. 21(1) and (2), Art. II of R.A. No. 9165 and its IRR.

⁴⁰ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of R.A. No. 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010]).

⁴¹ See Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640.

⁴² See *Matabilas v. People*, supra note 35 at 346-347.

The Implementing Rules and Regulations (*IRR*) further elaborate on the proper procedure to be followed in Sec. 21(a), Art. II of R.A. No. 9165. It provides:

(a) The apprehending office/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; 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[.]

In this case, it is clear from the testimony of SPO3 Matrio that only the *Barangay Kagawad* and a representative from the local media were present at the time of the conduct of the physical inventory of the evidence allegedly seized from the appellant; there was no representative from the DOJ, to wit:

DIRECT EXAMINATION

PROSECUTOR JOYA:

x x x x

Q: There is a signature on top of the handwritten note Kagawad Lita Lascano. Do you know whose signature is this?

A: That is the signature of Kagawad Lascano, ma'am.

Q: Why do you know that this is her signature?

A: It was signed in my presence, ma'am.

Q: There is likewise a signature atop the name Maricris De Jaro. Whose signature is this?

A: That is the signature of Maricris De Jaro.

Q: Why do you know that this is her signature?

A: I was also present when she signed this? (sic)

Q: How about the signature on top of the name of SPO3 Nebuchadnezzar Matrio. Whose signature is this?

A: That is mine, ma'am.

- over -

- Q: Who is this Kagawad Lita Lascano?
A: She is the Kagawad of Barangay Lalud, ma'am.
- Q: How about Maricris De Jaro?
A: She is a member of the local media, ma'am.⁴³

In addition, the inventory and taking of photographs were conducted not at the place of the arrest, but at the PDEA office. In *Tumabini v. People*,⁴⁴ it was explained that the difference between a search warrant and a warrantless search with regard a buy-bust operation is the venue of the conduct of the physical inventory and taking of photographs. When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served.⁴⁵

In *People v. Tagluop*,⁴⁶ the Court ruled that it is the police officers who have the expertise to decide whether it would be practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station or nearest office of the apprehending officers. In said case, a warrantless search was conducted pursuant to a buy-bust operation. The inventory and taking of photographs of the seized items at the nearest police station, and not at the place of arrest, was practicable and was justified because: (1) there was a crowd gathering; (2) it was already raining; and, (3) the place is unsafe. These justifications were consistently included in the judicial affidavits immediately executed by the police after the buy-bust operation.

In the most recent case of *People v. Casa*⁴⁷ (*Casa*), the Court finally settled that, in case of warrantless seizures, the inventory and taking of photographs generally must be conducted at the place of seizure.⁴⁸ The exception to this rule – where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team – is when the police officers provide justification that:

1. It is not practicable to conduct the same at the place of seizure; or

⁴³ TSN, September 5, 2012, p. 14.

⁴⁴ G.R. No. 224495, February 19, 2020.

⁴⁵ Id.

⁴⁶ G.R. No. 243577, March 15, 2022.

⁴⁷ G.R. No. 254208, promulgated: August 16, 2022.

⁴⁸ Id.

2. The items seized are threatened by immediate or extreme danger at the place of seizure.⁴⁹

It was emphasized therein that the law itself recognizes that the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is not absolute, unbridled, and unrestrained because of the phrase “**whichever is practicable.**” Verily, a plain reading of the provision shows that this phrase is a qualifier when the police officers may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It demonstrates the plain meaning of the statute that only when the police officers offer a “practicable” reason for the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team shall the law allow a deviation on the location of the inventory. Absent such “practicable” reason, then the police officers are required to conduct the inventory and taking of photographs of the seized items at the place of seizure.⁵⁰

Nevertheless, it was also underscored in *Casa* that when the police officers are able to provide a sensible reason, which is practicable, consistent, and not merely generic or an afterthought excuse, then the courts will recognize that the police officers indeed may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. Such reason must be indicated in the affidavits of the police officers who participated in the buy-bust operation, pursuant to the guidelines provided in the case of *People v. Lim (Lim)*.⁵¹

In this case, the reason for the conduct of the inventory at the PDEA office rather than the place of seizure is not shown from the affidavits of the police officers. It was also not clear whether the said PDEA office was the nearest police station or office of the apprehending officers. The police officers could have explained in their affidavits the rationale for not conducting the inventory at the place of seizure, as pronounced in *Lim*.⁵² However, the police officers failed to do so. The Court cannot resort to guesswork on what was the ultimate reason why they could not conduct the inventory and taking of photographs of the purported contraband at the place of seizure.

In any case, even if the conduct of the inventory at the PDEA office could be justified, it does not erase the fact that not all of the required insulating witnesses at the conduct of the inventory and taking of photographs of the seized items were present.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Id.; 839 Phil. 598, 624-625 (2018).

⁵² Id.

Saving clause is not applicable

While the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow.⁵³

As a rule, strict compliance with the requirements under Sec. 21, Art. II of R.A. No. 9165 is mandatory. However, following the IRR of R.A. No. 9165, the courts may allow a deviation from these requirements if the following requisites under the “saving clause” 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.⁵⁴

The Court finds that the prosecution cannot invoke the saving clause.

Under the first requirement, the prosecution offered no justification as to the absence of the DOJ representative. The prosecution did not even recognize their procedural lapses or give any plausible explanation on why the apprehending team did not conduct the marking, inventory, and taking of photographs of the seized evidence in the presence of all the insulating witnesses. Neither was it proven by the prosecution that the arresting officers exerted genuine and sufficient efforts to secure the presence of the required witnesses during that time.

As to the second requisite of the saving clause, the Court finds that the prosecution failed to establish that the integrity and evidentiary value of the seized item were preserved; particularly, due to the break in the first and fourth links.

In *People v. Hementiza*,⁵⁵ the Court enumerated the links in the chain of custody of drugs seized in a buy-bust situation that the prosecution must establish, as follows: *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

⁵³ See *People v. Denoman*, 612 Phil. 1165, 1178 (2009).

⁵⁴ *People v. Luna*, 828 Phil. 671, 686 (2018).

⁵⁵ 807 Phil. 1017, 1030 (2017) as cited in *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 378-379.

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.

In this case, there is doubt regarding the fourth or last link in the chain of custody. The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.⁵⁶ In *Casa*, the Court reiterated the minimum stipulations before the testimony of the forensic chemist may be dispensed with, *i.e.*, that it “should be stipulated that the forensic chemist would have testified that he[*/she*] took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.”⁵⁷ In addition, the stipulations as to the testimony of the forensic chemist should include “the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination.”⁵⁸

Here, while PSI Garcia did not testify in open court, the parties entered into general stipulations on his testimony. However, the stipulations are replete of information regarding the condition of the seized items while in his custody and the precautions he undertook to preserve their integrity. Absent any testimony on the management, storage, and preservation after the qualitative examination of the illegal drugs allegedly seized, this again adds doubt whether the fourth link was duly complied with.⁵⁹ This unquestionably contributes to doubts on the identity and the integrity of the *corpus delicti*.

In *People v. Dahil*,⁶⁰ the Court acquitted the appellant in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, to wit:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoena were

⁵⁶ *People v. Dahil*, 750 Phil. 212, 237 (2015).

⁵⁷ *Supra* note 45.

⁵⁸ *Id.*

⁵⁹ *People v. Ubungen*, 836 Phil. 888, 902 (2018).

⁶⁰ *People v. Dahil*, *supra* at 237-238.

sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

In view of the foregoing, the Court concludes that the integrity and evidentiary value of the items purportedly seized from appellant had been compromised because of the significant gaps in the chain of custody, thereby warranting appellant's acquittal based on reasonable doubt.

It must be emphasized that it is not sufficient that the elements of the offenses of illegal sale and illegal possession of dangerous drugs be established, but that the identity and integrity of the confiscated illegal drugs be similarly proven beyond reasonable doubt. Especially where miniscule amount of illegal drug is involved, the prosecution must be circumspect in complying with the requirements of the law. The miniscule quantity of confiscated illicit drugs heightens the importance of a more stringent conformity with Sec. 21, which the police officers in this case miserably failed to do so.⁶¹ The significant lapses committed, as well as their failure to explain their noncompliance with the directives of the law, cast doubt on the integrity of the *corpus delicti*. Thus, the acquittal of appellant is in order.

WHEREFORE, the appeal is **GRANTED**. The March 26, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09323, affirming the July 26, 2016 Decision of the Regional Trial Court of Oriental Mindoro, Branch 39 in Criminal Case Nos. CR-12-10,367 and CR-12-10,368, finding appellant Virgilio Encarnacion y Marasigan guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. The Court **ACQUITS** appellant and **ORDERS** his **IMMEDIATE RELEASE** from detention unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City. The said Director General is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken thereon.

Let entry of judgment be issued immediately.

⁶¹ See *Aparente v. People*, 818 Phil. 935, 937 (2017), where the Court stated that "Where the amount of narcotics seized is miniscule, a stricter adherence to the requirements of Section 21 of Republic Act No. 9165 is required to preserve the evidentiary value of the seized drugs."

SO ORDERED.” *Hernando, J., on wellness leave; Zalameda, J., designated as Acting Working Chairperson per S.O. No. 2939 dated November 24, 2022.*

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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JAN 26 2023

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 09323)

The Hon. Presiding Judge
Regional Trial Court, Branch 39
Calapan City, 5200 Oriental Mindoro
(Crim. Case Nos. CR-12-10,367 & CR-12-10,368)

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PUBLIC ATTORNEY’S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Philippine Judicial Academy (x)
Supreme Court

Mr. Virgilio M. Encarnacion @ “Vio” (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

Judgment Division (x)
Supreme Court

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City



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