



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 16, 2022**, which reads as follows:*

“G.R. No. 253818 – (*People of the Philippines v. Rosemarie Melon y Bagonbon*). – The Court resolves to **NOTE:**

- (1) the Letter dated January 6, 2021 of CSSupt. Virginia S. Mangawit, Acting Superintendent of the Correctional Institution for Women, Mandaluyong City, confirming the confinement therein of accused-appellant since February 22, 2018;
- (2) the Office of the Solicitor General’s Manifestation (Re: Supplemental Brief) dated February 5, 2021, stating that it adopts its Appellee’s Brief dated February 7, 2019 and dispenses with the filing of a supplemental brief to expedite the disposition of this case and to avoid repetition of arguments;
- (3) accused-appellant’s Manifestation (in Lieu of Supplemental Brief) dated February 11, 2021, stating that she no longer intends to file her supplemental brief as it would only result to a reiteration of all arguments already exhaustively discussed in her Appellant’s Brief; and
- (4) undated Letter (in vernacular) of one Myrlin Melon, sister of accused-appellant, with address at Barangay Bagumpanda, Dumaguete City, Negros Oriental praying for the early resolution of this case.

The Case

This resolves the appeal,¹ assailing the Decision² dated November 29, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02665 entitled “*People of the Philippines v. Rosemarie Melon y Bagonbon*” which affirmed the trial court’s verdict of conviction for violation of Section 11, Article II of Republic Act (RA) No. 9165.³

The Court of Appeals held that appellant was arrested *in flagrante delicto*. The arresting officers, Agent Ivy Claire Oledan (Agent Oledan) and Senior Police Officer 3 Tommy Tan (SPO3 Tan) had personal knowledge of the existence of dangerous drugs inside the bag and appellant’s possession of the same. This personal knowledge satisfied the requirement of knowledge of probable cause of the arresting officer in an *in flagrante* arrest. More, the elements of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 were all proven by the prosecution. Lastly, the prosecution was able to comply with the chain of custody rule and prove that the integrity and evidentiary value of the seized illegal drugs were properly preserved.⁴

Appellant now prays anew for her acquittal.⁵ For the purpose of this appeal, the Office of the Solicitor General⁶ and appellant⁷ respectively manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

We affirm.

To begin with, objection involving arrest or the procedure for acquiring jurisdiction over the person of the accused must be made before arraignment, otherwise, the objection is deemed waived.⁸ In any event, “the legality of an arrest affects only the jurisdiction of the court over the person of the accused, [and] any defect in the arrest may be deemed cured when [they] voluntarily [submit] to the jurisdiction of the trial court.”⁹ The accused’s voluntary submission to the jurisdiction of the court and their active participation during the trial cure any defect or irregularity that may have attended their arrest.¹⁰

¹ *Rollo*, pp. 17–18.

² Penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Alfredo D. Ampuan and Edgardo L. Delos Santos (Former member of the Court); *id.* at 5–16.

³ The Comprehensive Dangerous Drugs Act of 2002.

⁴ *Id.* at 11–15.

⁵ *Id.* at 17–18.

⁶ *Id.* at 29–30.

⁷ *Id.* at 30–31.

⁸ *Lapi v. People*, G.R. No. 210731, February 13, 2019.

⁹ *People v. Alunday*, 586 Phil. 120, 133 (2008).

¹⁰ See *People v. Lapitaje*, 445 Phil. 729, 748 (2003).

Here, appellant did not raise any objection to her warrantless arrest before she got arraigned. She, in fact, voluntarily submitted to the court's jurisdiction by entering a plea of not guilty, and thereafter, actively participated in the trial. Her present challenge against her warrantless arrest came too late in the day as she raised it only for the first time on appeal before the Court of Appeals. This belated stance certainly cannot undo her waiver and the consequent proceedings that took place below, as well as the proceedings before the Court of Appeals.

We now resolve whether the People was able to establish beyond reasonable doubt appellant's guilt for violation of Section 11, Article II of Republic Act (RA) No. 9165, as amended.

To sustain a conviction for illegal possession of dangerous drugs, the prosecution must establish the following elements: (a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.¹¹

In *People v. Quijano*,¹² the Court decreed:

The crime is *malum prohibita*, as such, criminal intent is not an essential element. The prosecution, however, must prove that the accused had the intent to possess (*animus possidendi*). Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when they have the right to exercise dominion and control over the place where it is found.

Ownership of the dangerous drugs is inconsequential. The burden of proof is upon the accused to prove that they have permits or clearance to possess the dangerous drugs."¹³

Here, the prosecution was able to establish beyond reasonable doubt the presence of these elements:

First. Agent Oledan saw appellant in possession of the bag containing the three (3) transparent heat-sealed plastic packs while trying to sneak out of

¹¹ *People v. Villojan*, G.R. No. 239635, July 22, 2019.

¹² G.R. No. 247558, February 19, 2020.

¹³ *Arcilla v. CA*, 463 Phil. 914, 926 (2003).

her house. Appellant laid the bag under a banana tree before returning back to the house.¹⁴ The substance contained in these plastic packs tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.¹⁵

Second. Appellant's possession was clearly illegal because she could not present any proof or justification that she had lawful authority to possess the dangerous drugs in question.

Third. Appellant was freely and consciously aware of being in possession of the dangerous drugs since she laid the bag containing the packs of *shabu* under the banana tree herself. In *People v. Lagman*,¹⁶ the Court stressed that dangerous drugs and paraphernalia found in a house or building owned or occupied by a particular person raises the "presumption of knowledge and possession..., which, standing alone, is sufficient to convict [them]."

Consequently, the prosecution had adequately established the elements of violation of Section 11, Article II of RA 9165.

The chain of custody was unbroken

Appellant was indicted for illegal possession of dangerous drugs allegedly committed on August 31, 2015. Thus, the applicable law is RA 9165, as amended by RA 10640, which took effect on August 7, 2014.¹⁷ Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drugs cases, to wit:

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 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

¹⁴ *Rollo*, p. 7.

¹⁵ *Id.* at 8–9.

¹⁶ 593 Phil. 617, 626 (2008).

¹⁷ RA No. 10640 took effect on August 7, 2014. See: *Quiap v. People*, G.R. No. 229183, February 17, 2021.

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. (Emphasis supplied)

x x x x

The Implementing Rules and Regulations of RA 9165 further mandates:

Section 1. Implementing Guidelines. 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:

A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph “a” of the IRR.

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1. The marking, physical inventory and photograph of the seized/ confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.5. The physical inventory and photograph of the seized/ confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated “refused to sign” above their names in the certificate of inventory of the apprehending or seizing officer.

x x x x

A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21(1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team.

“In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, is tasked to establish that the substance illegally possessed by appellant is the same substance presented before the court.”¹⁸ It is the prosecution’s onus to prove every link in the chain of custody – from the time the drug is seized from the accused, until the time it is presented in court as evidence.¹⁹ “The saving clause under Section 21 (a), Article II of RA 9165 IRR commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.”²⁰

The Court, in *People v. De Leon*,²¹ ruled:

Generally, there are four 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.

The **first link** refers to the seizure and marking, which must be done immediately at the place of the arrest. It, too, includes the physical inventory and taking of photograph of the seized items, which should be done in the presence of the accused or their representative or counsel, together with an

¹⁸ *People v. Miranda*, G.R. No. 218126, July 10, 2019.

¹⁹ *People v. Dumagay*, 825 Phil. 726, 741 (2018).

²⁰ *People v. Frias*, G.R. No. 234686, June 10, 2019.

²¹ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

elected public official **and** a representative of the Department of Justice (DOJ) **or** the media.²²

Here, Senior Police Officer 1 Rowino Bayuna (SPO1 Bayuna), at the place of arrest, marked the three (3) heat-sealed transparent plastic packs containing white crystalline substance with “RMBM-SW#30-2015-01-8/31/15,” “RMBM-SW#30-2015-03-8/31/15,” and “RMBM-SW#30-2015-06-8/31/15,” respectively. He also marked the other seized items: one (1) big needle, one (1) black box that contained the needle, one (1) pink purse, one (1) sack bag, and one (1) digital weighing scale. SPO1 Bayuna conducted the inventory in the presence of appellant, Barangay Kagawad Rolando Egera, media representative Juancho Gallarde, and DOJ Representative Anthony Chilius Benlot. Simultaneously, Senior Police Officer 3 Tommy Tan took photographs during the inventory.²³

Anent the **second link**, *People v. Del Rosario*²⁴ dictates:

. . . in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer’s possession of the seized drugs must be documented and established.

Here, SPO1 Bayuna had sole custody of the plastic packs from the place of arrest until he brought them to the Negros Oriental Office of the Criminal Investigation and Detection Group (CIDG) for booking and proper documentation. SPO1 Bayuna, together with Police Chief Inspector Aladdin Esplago Dingal, prepared the memorandum request for laboratory examination. On that same day, at 5:27 in the afternoon, he continued to have custody and personally delivered the seized items to Police Officer 3 Edilmar Manaban (PO3 Manaban) of the Negros Oriental Provincial Crime Laboratory. Thus, even in the absence of an investigating officer here, the chain of custody was not necessarily broken. *People v. Dayag*²⁵ teaches:

Here, though the *corpus delicti* was not turned over to an investigating officer, PO2 Osio was able to account for the condition of the specimen since he held on to it from the time he recovered it from accused-appellant at 12:55 in the afternoon on

²² See *Limbo v. People*, G.R. No. 238299, July 1, 2019.

²³ CA *rollo*, pp. 11–12.

²⁴ G.R. No. 235658, June 22, 2020.

²⁵ G.R. No. 251648, February 17, 2021.

May 19, 2014 until he turned it over, together with the letter-request for laboratory examination, to the Regional Crime Laboratory Office at 5:30 in the afternoon the same day. Indeed, the absence of the investigating officer, *per se*, does not affect the integrity and identity of the *corpus delicti* so long as the transfer of custody is accounted for.

So must it be.

The **third link** is the delivery of the illegal drugs to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the forensic chemist who will test and verify the nature of the substance. Additionally, the **fourth link** involves the “submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.”²⁶

Both the third and fourth links were duly established by the prosecution here. At six o'clock in the evening of August 31, 2015, the day of arrest, PO3 Manaban submitted the three (3) transparent heat-sealed plastic packs to Forensic Chemist PCI Josephine Llena. The latter then marked the items respectively as Specimen “A-1,” Specimen “B-1,” and “Specimen “C-1.” She conducted forensic examinations thereon, the result of which tested positive for *methamphetamine hydrochloride*, a dangerous drug. The results were reflected in her Chemistry Report No. D-333-15. She thereafter secured the specimens in the evidence vault of the crime laboratory. On November 9, 2015, she submitted the specimens together with the chemistry report to the trial court.²⁷

In sum, the prosecution succeeded in proving all the links in the chain of custody, including the proper handling and preservation at every stage of the seized drugs. Consequently, the Court of Appeals did not err when it affirmed the verdict of conviction for violation of Section 11, Article II of RA 9165, as amended.

Penalty

Under Section 11, Article II of RA 9165,²⁸ the penalty for illegal possession of dangerous drugs, such as *methamphetamine hydrochloride* or

²⁶ *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

²⁷ CA rollo, pp. 13–14.

²⁸ Section 11. *Possession of Dangerous Drugs*. — The penalty of **life imprisonment to death** and a **fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00)** shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof: x x x (5) **50 grams or more of methamphetamine hydrochloride or “shabu;”** x x x (Emphasis supplied)

shabu, weighing fifty (50) grams or more, is **life imprisonment** and a fine ranging from **₱500,000.00** to **₱10,000,000.00**. Thus, the courts below correctly sentenced appellant to life imprisonment and ordered her to pay a fine of **₱1,000,000.00**.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated November 29, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02665 is **AFFIRMED**. Appellant Rosemarie Melon y Bagonbon is found **GUILTY** of **illegal possession of dangerous drugs** under Section 11, Article II of Republic Act No. 9165, as amended, and sentenced to **life imprisonment**. She is further ordered to **pay a FINE** of **₱1,000,000.00**.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
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Division Clerk of Court
GER
11/7/22

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