



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated December 07, 2022 which reads as follows:

“G.R. No. 257486 (*Allan P. Mascariñas v. People of the Philippines*).
— This Petition for review on *certiorari* under Rule 45 (petition)¹ of the Rules of Court seeks to reverse and set aside the Decision dated 30 January 2020² and Resolution dated 23 June 2021³ of the Court of Appeals (CA) Cebu City in CA-G.R. CR No. 03071.

Antecedents

Petitioner Allan P. Mascariñas a.k.a. “Onggoy” (petitioner) was charged with violating Section 11 of Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002 for illegal possession of dangerous drugs, which was docketed as Criminal Case No. 17102, in an Information dated 14 October 2014:

That on or about the 14th day of October 2014, in the Municipality of Loon, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there, willfully and unlawfully, possess and have in his custody and control, 5 small heat-sealed transparent plastic sachets, each containing Methamphetamine Hydrochloride, a dangerous drug, with an total net weight of 0.12 gram, without any authority or permit to possess the same from competent

¹ *Rollo*, pp. 15-43.

² *Id.* at 95-104. Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Dorothy P. Montejo-Gonzaga and Carlito B. Calpatura of Nineteenth Division, Court of Appeals, Cebu City.

³ *Id.* at 121-123. Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Dorothy P. Montejo-Gonzaga and Bautista G. Corpin, Jr. of Special Former Nineteenth Division, Court of Appeals, Cebu City.

government authorities, to the damage and prejudice of the Government of the Republic of the Philippines.

Acts contrary to Section 11, Article II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On 10 October 2014, a search warrant was issued by Vice-Executive Judge Leo Moises Lison against petitioner to search his residence for dangerous drugs located in *Barangay Moto Norte*, Loon, Bohol. On 14 October 2014, at around 12:30 a.m., P/Insp. Dennis B. Lumor briefed a team composed of members of the Loon Police Station and the 4th Regional Public Safety Maneuver Company on the implementation of the said search warrant.

PO3 Donald D. Nuera (PO3 Nuera) was assigned as searcher and evidence custodian. PO1 Jonas A. Rosales (PO1 Rosales), PO2 Charlie Jay Ancheta (PO2 Ancheta), and PO3 Leonara Molina were designated as arresting officer, recorder, and photographer, respectively. PO2 Lamberto Lauros was responsible for coordinating with the Philippine Drug Enforcement Agency (PDEA) on the operation under the Control No. 1014-0113. In addition, the following were assigned as back up: SPO 3 William A. Tecson, SPO1 Mariano B. Luzon (SPO1 Luzon), PO3 Darwin Andales, PO3 Emerito Paulinio, PO2 Helmar Diapo, PO2 Nelson Lodripas, PO1 Bombie Bustillon, PO1 Ramon Butil, PO1 Ferdiand Ceballos, and PO1 Ronald Calabria.

At around 3:45 a.m., the team proceeded to the residence of petitioner accompanied by witnesses *Barangay* Captain Hospicio G. Camilotes (*Barangay* Captain Camilotes), *Barangay* Kagawad Blesilo C. Camello (*Barangay* Kagawad Camello), Alexander M. Luzon (Luzon) as representative from the media, and Gaspar M. Dangoy (Dangoy) as representative for the Department of Justice (DOJ).

Upon arriving at the residence of petitioner, the team positioned themselves at the front and back doors. They knocked, and identified themselves as police officers with a search warrant. However, no one answered the door and the officers had to forcibly enter through the back door.

Inside, police officers found petitioner sitting in the living room awake. Shortly thereafter, his mother, Adela Mascariñas (Adela), awakened by the commotion, joined the group in the living room. SPO1 Luzon then read the search warrant to petitioner. PO3 Nuera then conducted a body search on petitioner in the presence of the witnesses, but yielded no evidence. PO3 Nuera searched the living room with no results. He then proceeded to petitioner's room, along with the witnesses and petitioner himself. After

about 15 minutes of searching, PO3 Nuera observed a rolled tin foil on top of the *Orocan* cabinet next to the bed. They opened the tin foil and found five heat-sealed transparent sachets containing a white crystalline substance, suspected to be *shabu*. Further search of the room yielded two lighters and 10 pieces of tin foil.

After the discovery of the said heat-sealed sachets and other seized items, PO1 Rosales arrested petitioner, informing him of his rights. PO3 Nuera marked the heat-sealed sachets as “APM-1” to “APM-5” with the date and his signature in the living room in front of petitioner, Adela, and the witnesses. PO2 Ancheta inventoried the seized items in the same manner while PO3 Molina photographed the proceedings.

The inventory was signed by PO2 Ancheta, PO3 Nuera, PO1 Rosales, *Barangay* Captain Camilotes, *Barangay* Kagawad Camello, Luzon, Dangoy, and Adela. Accused was then taken to the Loon Police Station for proper disposition.

PO3 Nuera then made a return of service of the search warrant to the issuing court. After a motion to withdraw the five marked heat-sealed sachets was filed and granted, PO3 Nuera then took the same to the Bohol Provincial Crime Laboratory for examination. At the crime laboratory, PO3 Nuera delivered the marked heat-sealed sachets together with a Laboratory Examination Request, which were received by PO3 Andres N. Garcia (PO3 Garcia), the desk officer. PO3 Garcia then handed the marked heat-sealed sachets to P/Insp. Jovani D. Abregana (P/Insp. Abregana), forensic chemist, for examination.

As per Chemistry Report No. D-594-2014, P/Insp. Abregana determined that the specimens were positive for methamphetamine hydrochloride or *shabu*. After the examination, P/Insp. Abregana placed the specimens inside another plastic bag, sealed the bag and deposited it with the laboratory’s evidence custodian.

At his arraignment, petitioner pleaded not guilty.

Ruling of the RTC

On 15 September 2017, the RTC rendered the assailed Decision, which found petitioner guilty beyond reasonable doubt of illegal possession of dangerous drugs in violation of Section 11 of R.A. No. 9165. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the court finds accused **ALLAN MASCARIÑAS y PIZARRAS Alias “Onggoy” GUILTY** beyond reasonable doubt for the offense of violation of Section 11 (3) of Article II of R.A. 9165 or The Comprehensive Drugs Act of 2002 for Possession of Dangerous Drugs and hereby imposes an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum and a **FINE** of Three Hundred Thousand Pesos (P300,000.00) and to pay the cost.

Pursuant to Section 21, Article II of R.A. 9165, the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take custody of the dangerous drugs for proper disposition.

SO ORDERED.⁴

Contrary to the contention of accused, the trial court did not find any irregularity in the implementation of the search warrant. Further, it was convinced that the rules under Section 21 of RA 9165, in relation to Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165, were substantially complied with. It gave weight to the testimony of the police officers as it did not find any basis to disregard the legal presumption of regularity in the performance of official duties.⁵

Ruling of the CA

On 30 January 2020, the CA issued the assailed decision. The *fallo* of the decision reads:

IN LIGHT OF ALL THE FOREGOING, the present appeal is **DISMISSED**. The Decision dated September 15, 2017 of the Regional Trial Court, Branch 4, Tagbilaran City, Bohol in Criminal Case No. 17102 is **AFFIRMED**.

SO ORDERED.⁶

In affirming the ruling of the trial court, the CA was convinced that the prosecution was able to establish an unbroken chain of custody of the seized drugs. According to the CA, there is no doubt that the *shabu* recovered during the search was the same offered into evidence before the trial court. The non-presentation of PO3 Garcia does not adversely affect the prosecution's case. The claim of the petitioner that the drug specimen was somehow interchanged or mingled while it was with the crime laboratory's evidence custodian prior to its presentation before the trial court is purely speculative and unsupported by concrete evidence. The CA stressed that law enforcement officers enjoy the presumption of regularity in the performance

⁴ Id. at 73.

⁵ Id. at 68-71.

⁶ Id. at 104.

of their duties.⁷ The motion for reconsideration of petitioner was likewise denied.⁸

Undeterred, accused files the instant petition. He asserts that the seized evidence is inadmissible as it was obtained through an unlawful search and seizure. He argues that the police officers did not properly implement the search warrant as they allegedly failed to give proper notice prior to their entry to his residence. He also casts doubt as to the identity of the *corpus delicti* of the crime charged and alleges gaps in the chain of custody of the seized drugs.⁹

Issue

Whether the CA erred in affirming the conviction of accused.

Ruling of the Court

The Petition is impressed with merit.

At the outset, it bears stressing that in drugs cases, the prosecution cannot benefit from a presumption of regularity. Section 21 of RA 9165 articulates a specific statutory mandate that cannot be trumped by the prosecution's self-assurance.¹⁰ While not losing sight of the urgency of addressing the drug menace, it is this Court's bounden duty to ensure compliance with laws and uphold basic freedoms.¹¹

*There was proper implementation of
the search warrant*

Contrary to the claim of petitioner, We do not find any irregularity in the implementation of the search warrant. Section 7, Rule 126 of the Rules of Court states:

Section 7. Right to break door or window to effect search. — The Officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

⁷ Id. at 101-103.

⁸ Id. at 123.

⁹ Id. at 23-36.

¹⁰ *People v. Royol*, G.R. No. 224297, 13 February 2019 citing *People v. Que*, G.R. No. 212994, 31 January 2018.

¹¹ *People v. Royol*, *supra*.

The rules on knock and announce principle were observed in this case. When the police arrived at the house of accused, PO2 Rosales knocked the door and informed that they were police officers armed with a search warrant but the occupants refused to open the door so the police forcibly opened the door and entered. Inside the house, SPO1 Luzon read the search warrant to the accused in the presence of the witnesses. This is evident in the testimonies of PO3 Nuera and PO2 Rosales, viz:

a. PO3 Nuera:

Q: Upon arrival at the house of Allan Mascariñas, what happened then?

A: Upon arrival at the house of Allan Mascariñas, we called Allan Mascariñas, we informed him that we are Police Officers who serve the search warrant, sir.

Q: Was he present at the time?

A: Yes sir, but he did not open the door.

Q: What did you do when he did not open the door?

A: We forcibly opened the front door and the back door, sir.

Q: So, after you gained entrance into his house, what happened next?

A: Upon entering the house in his living room, Allan Mascariñas was there so we told him that we have a search warrant.

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Q: Aside from him were there other occupants that were present?

A: His mother.

Q: And then after telling him that you are armed with a search warrant what did he say?

A: He did not say anything.

Q: What about his mother?

A: She was surprised, sir.

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Q: At that moment that you gained entrance at the house of the accused, where were these witnesses you said they joined you in the search?

A: They followed us.

Q: Including the civilian witnesses?

A: Yes, sir.

Q: So, after informing the accused that you were armed with a search warrant what happened next?

A: To make it proper our Chief Investigator PO1 Luzon read the search warrant to Allan Mascariñas.¹²

b. PO2 Rosales:

Q: In your affidavit, you stated that you were the one knocking the door of the house of Allan Mascariñas and you said that after informing that you were police officers, the occupants did not open?

A: After introducing ourselves as police officers we informed them that we have a search warrant. Because they did not open the door, we forcibly entered the house.¹³

Verily, petitioner failed to prove any irregularity in the implementation of the search warrant. Nonetheless, as will be discussed at length below, his acquittal is proper for failure of the prosecution to prove strict compliance with Section 21 of RA 9165.

There were unexplained gaps in the third and fourth links of the chain of custody

The elements of illegal possession of dangerous drugs under Section 11 of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. In cases of this nature, it is essential that the identity of the seized drug be established with moral certainty. Thus, in order to obviate any unnecessary doubts on such identity, the prosecution must show an unbroken chain of custody over it. The prosecution 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 delicti*.¹⁴

As a general rule, four links in the chain of custody of the confiscated item must be established: *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 examination; and *fourth*,

¹² TSN, 23 September 2015, pp. 5-6.

¹³ TSN, 25 May 2016, p. 6.

¹⁴ *Fernandez v. People*, G.R. No. 254320, 05 July 2021.

the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.¹⁵

In this case, the first and second links were duly established by the prosecution. Immediately after the search, the recovered items were marked by PO3 Nuera as “APM-1” to “APM-5” with the date and his signature. The physical inventory and photograph of the seized items were made inside the house and in the presence of the accused, Adela, the two elected officials, and the DOJ and media representatives. The inventory was signed by the same witnesses.

However, there were unexplained gaps in the succeeding links in the chain of custody. According to the prosecution, PO3 Nuera turned over the seized items to PO3 Garcia, the desk officer of the crime laboratory. It was PO3 Garcia who handed the seized items to P/Insp. Abregana, forensic chemist, for examination. However, PO3 Garcia was not presented as witness to testify on the condition of the seized items when these were delivered and the precautions taken to ensure its integrity. In *People v. Ismael*, We ruled that non-presentation of the desk officer to whom the contraband was turned over constitutes a break in the chain of custody. Indeed, every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement.¹⁶

The need for PO3 Garcia’s testimony is amplified by the fact that several hours have lapsed from the time that PO3 Nuera delivered the seized items to the crime laboratory to the time when these were examined. PO3 Nuera testified that he delivered the seized items to the crime laboratory at around 7:00 a.m. to 8:00 a.m.¹⁷ However, the Chemistry Report reflects that it was received for examination at 11:21H.¹⁸ There was no explanation provided as to the gap of more than 3 hours. During this period, the integrity of the seized items could have been compromised.

Further, while P/Insp. Abregana testified that he gave the seized items to the evidence custodian of the crime laboratory after his examination, said evidence custodian was not presented in court to testify on the condition of the seized items and the precautions taken to ensure its integrity. His or her identity was not revealed, nor did such person sign the chain of custody document. In *People v. Alon-Alon*, We held that failure to present the evidence custodian is a clear disregard of the mandate that every link in the chain must testify, describing the condition of the seized item when it was

¹⁵ *People v. Gayoso*, 808 Phil. 19, 31 (2017).

¹⁶ *People v. Ismael*, 2017, 806 Phil. 21, 33, 35 (2017).

¹⁷ TSN, 23 September 2015, p. 25.

¹⁸ Records, p. 12.

delivered, and the precautions taken to ensure its integrity.¹⁹ Similarly, in *People v. Labadan*, We found that the fourth link in the chain of custody was broken when the identity of the evidence custodian was not revealed and his or her name is not reflected in the chain of custody. Thus:

On the fourth link, after PCI Julian examined the sample taken from accused-appellants to ensure it was indeed a prohibited drug, nary a statement was made detailing what happened after the examination. The stipulation stated that the specimen was turned over to the evidence custodian; however, the identity of the custodian was not revealed, nor did such person sign the chain of custody document. Any other detail after the turnover to PCI Julian was sorely missing in the document. Once more, the prosecution evidence gives rise to more questions than answers: **To whom did PCI Julian hand over the specimen after examination? How was it handled by her? How was it handled by the evidence custodian? No answers were found to properly apprise the Court of the compliance with the chain of custody rule.**²⁰

Nevertheless, We acknowledge that strict compliance with the chain of custody procedure may not always be possible. During such eventualities, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²¹ In this case, however, the prosecution failed to recognize the gaps in the chain of custody and offer any explanation for the same.

Observance of chain of custody is more crucial when the seized drugs are miniscule in quantity

It bears stressing that the observance of the chain of custody is even more crucial if the *shabu* involved is only miniscule,²² such as in this case. In *People v. Sagana*, We declared that the 0.12 gram of *shabu* seized was miniscule; hence, the need for exacting compliance with Section 21 of RA 9165. We explained that courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs for these can be readily planted and tampered.²³

¹⁹ *People v. Alon-Alon*, G.R. No. 237803, 27 November 2019.

²⁰ *People v. Labadan*, G.R. No. 237769, 11 March 2019.

²¹ *Fernandez v. People*, *supra*.

²² *People v. Alon-Alon*, *supra*.

²³ *People v. Sagana*, 815 Phil. 356, 377 (2017) citing *People v. Casacop*, 755 Phil. 265, 284 (2015).



It must be emphasized that compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.²⁴


Therefore, the significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the *corpus delicti*. With these circumstances, this Court acquits accused as his guilt was not proven beyond reasonable doubt.

WHEREFORE, premises considered, the instant Petition is **GRANTED** and the Decision dated 30 January 2020 and Resolution dated 23 June 2021 of the Court of Appeals Cebu City in CA-G.R. CR No. 03071 are **REVERSED and SET ASIDE**. Petitioner **ALLAN P. MASCARIÑAS** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.” *Hernando, J., on wellness leave.*

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 25 2023

²⁴ *Fernandez v. People, supra.*

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