



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 8, 2022** which reads as follows:*

“G.R. No. 248067 (Marlon De Guzman y Alipio, petitioner v. People of the Philippines, respondent). – Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated October 23, 2018 and the Resolution³ dated June 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40656, which affirmed the Decision⁴ dated August 25, 2017 of the Regional Trial Court of Quezon City, Branch 82 (RTC), finding petitioner Marlon De Guzman y Alipio (De Guzman) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

This case stemmed from an Information⁶ filed before the RTC charging De Guzman with Illegal Possession of Dangerous Drugs, the accusatory portion of which reads:

That on or about the 17th day of January, 2015, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there, willfully, unlawfully and knowingly have in his possession and control the (sic) One (1) heat-sealed transparent plastic sachet containing white crystalline substance, to wit: zero point zero six (0.06) gram of Methamphetamine Hydrochloride, a dangerous drugs (sic).

CONTRARY TO LAW.

¹ *Rollo*, pp. 11–25.

² *Id.* at 29-45. Penned by Associate Justice Ramon A. Cruz with Associate Justice Ramon M. Bato, Jr. and Germano Francisco D. Legaspi, concurring.

³ *Id.* at 47.

⁴ *Id.* at 67-74. Penned by Presiding Judge Lyn Eborac-Cacha.

⁵ 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.

⁶ *Rollo*, p. 30.

The prosecution alleged that on January 17, 2015, Senior Police Officer 2 Alex Palmenco (SPO2 Palmenco) was at Neopolitan along Regalado Highway, Barangay Greater Lagro, Quezon City, for his regular jog when he noticed a man, later identified as De Guzman, trying to open his car with an ice pick. He then took out his gun and shouted at the man ‘what are you doing in (sic) my car?’ Afterwards, SPO2 Palmenco grabbed the ice pick, frisked De Guzman for any deadly weapons, and recovered from him one (1) plastic sachet containing suspected *shabu*. SPO2 Palmenco then arrested De Guzman and brought him to North Fairview, Quezon City Police Station where SPO2 Palmenco marked the seized item. He likewise turned over De Guzman and the seized item to the duty desk officer for blotter purposes. Subsequently, the investigator, SPO2 Gerardo Quimson (SPO2 Quimson) conducted the inventory and photography of the seized item in the presence of Barangay Councilors Bernardo Neri and Belly Caballero.⁷ SPO2 Palmenco and SPO2 Quimson then brought the seized item to the crime laboratory, where it was received by Police Senior Inspector Bernardo Rivera Roque (PSI Roque). Thereafter, PSI Roque conducted a qualitative examination of the seized item, which tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. PSI Roque then turned over the seized item to the evidence custodian and, eventually, recovered the same from the latter and delivered it to the trial court for identification.⁸

For his part, De Guzman denied the charges against him, claiming, instead, that during that time, he was on his way home after a jog at Neopolitan Oval near SM Fairview when a tricycle with three (3) persons on board (including the driver) stopped near him. They told him that a gun was missing from the place he came from. Afterwards, he was brought to the police station where the individuals insisted that he took the missing gun. He claimed that it was not SPO2 Palmenco who arrested him and that he was arrested one (1) kilometer away from the vehicle where the missing gun was allegedly taken. He likewise denied that an ice pick was taken from him.⁹

The RTC Ruling

In a Decision¹⁰ dated August 25, 2017, the RTC found De Guzman guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and ordered him to pay a fine in the amount of ₱300,000.00. It held that the prosecution was able to establish all the

⁷ Referred to as “Cabello” in the CA Decision.

⁸ *Rollo*, pp. 30-33. See also *id.* at 69-71.

⁹ *Id.* at 34.

¹⁰ *Id.* at 67-74.

elements of Illegal Possession of Dangerous Drugs, as well as the chain of custody over the seized item.¹¹

Aggrieved, De Guzman appealed to the CA.

The CA Ruling

In a Decision¹² dated October 23, 2018, the CA affirmed the RTC ruling. It held that the prosecution was able to prove all the elements of the crime charged as it was established that De Guzman was found in possession of a sachet containing *shabu*, and such possession was not authorized by law. It gave credence to the testimonies of the arresting officers as they were presumed to have performed their duties in a regular manner, there being no evidence to the contrary. It likewise found that the prosecution was able to establish with certainty that the item seized from De Guzman was the same item presented to the court as evidence.¹³

Dissatisfied, De Guzman moved for reconsideration, which was denied in a Resolution¹⁴ dated June 25, 2019; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly affirmed De Guzman's conviction for the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of RA 9165.

The Court's Ruling

The petition is meritorious.

'At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.'¹⁵

¹¹ Id. at 72-74.

¹² Id. at 29-45.

¹³ Id. at 38-43.

¹⁴ Id. at 47.

¹⁵ *People v. Acosta*, G.R. No. 238865, January 28, 2019; citing *Sindac v. People*, 794 Phil. 421, 427 (2016).

Guided by the foregoing consideration, the Court is constrained to acquit De Guzman of the crime charged, as will be explained below.

In cases of violation of RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁶ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.¹⁷

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime,¹⁸ viz.:

[F]irst, 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*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.¹⁹

In this case, the prosecution failed to establish its compliance with the first link in the chain of custody of the seized item.

*The marking of the seized item
was not done at the place of
apprehension*

‘Marking is the placing by the arresting officer or the poseur-buyer of [their] initials and signature on the items after they have been seized. It is the starting point in the custodial link. It is vital that the seized items be marked immediately since the succeeding handlers thereof will use the markings as reference. The chain of custody rule also requires that the marking of the seized contraband be done ‘(1) in the presence of the apprehended violator, and (2) immediately upon confiscation.’²⁰ Failure to mark the seized items in the presence of the accused will result in their acquittal.²¹

¹⁶ See *People v. Crispo*, 828 Phil. 416, 418 (2018); *People v. Sanchez*, 827 Phil. 457, 458 (2018); *People v. Magsano*, 826 Phil. 947, 948 (2018); *People v. Manansala*, 826 Phil. 578, 579 (2018); *People v. Miranda*, 824 Phil. 1042, 1043 (2018); and *People v. Mamangon*, 824 Phil. 728, 729 (2018). See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁷ *People v. Gumboa*, 833 Phil. 1055 (2018), citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁸ *Saban v. People*, G.R. No. 253812, June 28, 2021; citations omitted

¹⁹ *People v. Que*, 824 Phil. 882, 895 (2018), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010)

²⁰ *People v. Gayosa*, 808 Phil. 19, 31-32 (2017).

²¹ See *People v. Bansil*, G.R. No. 240693 (Notice), September 23, 2020.

The importance of marking – the initial step in the chain of custody rule – was enunciated in the case of *People v. Gonzales*,²² thus:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of [their] initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.²³

Records reveal that the marking of the seized item was not done at the place of apprehension. Moreover, the apprehending officers failed to explain why they did the marking at the police station. Thus, from the place of apprehension up to the police station, the seized item remained unmarked, which exposed it to possible switching or tampering while in transit.

In *People v. Carreon*,²⁴ the Court held that there was a significant breach in the chain of custody rule when the apprehending officers failed to immediately mark the seized items after apprehension without proving any justifiable reason on their failure to do so.²⁵

The Inventory and Photography of the seized item were not witnessed by a representative from the DOJ or media.

As part of the first link in the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted. 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 their representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,²⁶ ‘a representative from the media **and** the Department of

²² 708 Phil. 121 (2013).

²³ Id. at 130-131.

²⁴ G.R. No. 253299, July 28, 2021.

²⁵ See *People v. Balaso-Lopez*, G.R. No. 251050 (Notice), June 28, 2021.

²⁶ 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

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Justice (DOJ), and any elected public official;²⁷ or (b) if **after** the amendment of RA 9165 by RA 10640, '[a]n elected public official and a representative of the National Prosecution Service [(NPS)] **or** the media.'²⁸ 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.'²⁹

As a general rule, 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.'³⁰ Thus, in the case of *People v. Lim*³¹ (*Lim*), the Court *En Banc* definitively held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 of RA 9165, as amended, in such a way that it must acknowledge and justify any perceived deviations therefrom.³²

In cases of non-compliance with the witnesses requirement, *Lim* further instructs that it must be alleged and proved that the presence of the required witnesses to the physical inventory and photography of the seized drugs was not obtained due to reason/s, such as: (a) their attendance was impossible because the place of arrest was a remote area; (b) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in their behalf; (c) the elected official himself was involved in the punishable acts sought to be apprehended; (d) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (e) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.³³ Finally, *Lim* further mandates that the **prosecution must prove that the arresting officers had exerted earnest efforts to secure the attendance of the witnesses**, as sheer statements that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, are to be regarded as a flimsy excuse.³⁴

'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (842 Phil. 681 [2018]), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 became effective on August 7, 2014.

²⁷ Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

²⁸ Section 21, Article II of RA 9165, as amended by RA 10640.

²⁹ See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³⁰ *Saban v. People*, supra note 18; citing *People v. Miranda*, 824 Phil. 1024, 1059 (2018).

³¹ 839 Phil. 598 (2018).

³² See *id.*, citing *People v. Sipin*, 833 Phil. 67 (2018).

³³ See *id.*, citing *People v. Sipin*, *id.*

³⁴ See *id.*, citing *People v. Ramos*, 826 Phil. 981 (2018).

In the present case, De Guzman was caught in possession of the illegal drugs on January 17, 2015, or after the effectivity of RA 10640. RA 10640 provides that the inventory and photography should be conducted in the presence of: (a) an elected official; and (b) a representative from the media or the NPS. However, records reveal that the arresting officers failed to secure the attendance of a representative from the media or the NPS. It bears stressing that **the prosecution has the positive duty to prove compliance with the chain of custody procedure set forth in Section 21 of RA 9165. As such, it must have the initiative to not only acknowledge, but also justify, any perceived deviations from the said procedure during the proceedings before the trial court.**³⁵ Here, the prosecution did not even bother to acknowledge, much more justify, such glaring non-compliance from the witnesses requirement of the chain of custody rule.

Similarly, in *People v. Fulgado*,³⁶ the Court acquitted therein accused-appellant as only the barangay official was present during the inventory of the seized items at the police station and the prosecution failed to justify the absence of the other insulating witnesses.

In view of the unjustified non-compliance with the chain of custody rule as delineated above, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from De Guzman were compromised, which warrants his acquittal.

FOR THIS REASON, the petition is **GRANTED**. The Decision dated October 23, 2018 and the Resolution dated June 25, 2019 of the Court of Appeals in CA-G.R. CR No. 40656 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Marlon De Guzman y Alipio is **ACQUITTED** of the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of Republic Act No. 9165.

The Director General of the Bureau of Corrections is **ORDERED** to: (a) cause the immediate release of Marlon De Guzman y Alipio, unless he is being lawfully held in custody for any other reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let copies of this Resolution be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of judgment be issued immediately.

³⁵ See *People v. Año*, 828 Phil. 439, 448 (2018).

³⁶ G.R. No. 246193, February 19, 2020.

SO ORDERED.” (Lopez, M., J., on official leave)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

04 APR 2023

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THE DIRECTOR (x)
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THE SUPERINTENDENT(x)
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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. R-QZN-15-00561-CR)

(158)URES(a)

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