



Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 12, 2023 which reads as follows:*

**“G.R. No. 250348 (*Nardo Policarpio y Alcantara v. People of the Philippines*).** — This is a Petition for Review on *Certiorari* (Petition)<sup>1</sup> under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision<sup>2</sup> dated 31 May 2019 and Resolution<sup>3</sup> dated 04 November 2019, issued by the Court of Appeals (CA) in CA-G.R. CR-HC No. 10031. The CA acquitted petitioner Nardo Policarpio y Alcantara (petitioner) of violation of Section 5, Article II of Republic Act No. (RA) 9165<sup>4</sup> or the “Comprehensive Dangerous Drugs Act of 2002,” but affirmed his conviction for violation of Section 11 of the same law.

**Antecedents**

Petitioner was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, penalized under Section 5 and 11, Article II of RA 9165, respectively. The accusatory portions of the Informations against him read:

**Criminal Case No. 25532-2015-C**

That on or about 14:50 p.m. of 26 September 2015 at Brgy. Kwarto, Calamba City and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell to a poseur buyer a quantity of Methamphetamine Hydrochloride otherwise known as ‘shabu’, a dangerous drugs [sic], having a total weight of 0.14 grams, in violation of the aforementioned law.

<sup>1</sup> *Rollo*, pp. 10-37.

<sup>2</sup> *Id.* at 39-52; penned by Associate Justice Gabriel T. Robeniol, and concurred in by Associate Justices Ramon R. Garcia and Eduardo B. Peralta, Jr.

<sup>3</sup> *Id.* at 54-55; information not attached to the *rollo*.

<sup>4</sup> 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: 23 January 2002.

CONTRARY TO LAW.<sup>5</sup>

**Criminal Case No. 25533-2015-C**

That on or about 14:50 p.m. of 25 September 2015 at Brgy. Kwarto, Calamba City and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously possess two (2) heat-sealed transparent plastic sachet[s] containing Methamphetamine Hydrochloride, otherwise known as 'shabu', a dangerous drugs, having a total weight of 0.16 grams, in violation of the aforementioned law.

CONTRARY TO LAW.<sup>6</sup>

Petitioner was likewise indicted for Illegal Possession of Drug Paraphernalia.<sup>7</sup>

On his arraignment, he pleaded not guilty to all charges. Pre-trial and trial on the merits thus ensued.<sup>8</sup>

**Version of the Prosecution**

Prompted by reliable information from a confidential informant (CI) that petitioner was involved in peddling illegal drugs, the Chief of Police of Calamba Police Station formed a buy-bust team with PO1 Alfredo D. Requito, Jr. (PO1 Requito) as the designated poseur buyer. In the afternoon of 26 September 2015, the buy-bust team proceeded to petitioner's house at Brgy. Kwatro, Calamba City to conduct their entrapment operation.<sup>9</sup>

At the target area, the CI introduced PO1 Requito to petitioner as a buyer looking to buy ₱200.00 worth of *shabu*. Petitioner briefly went to a corner and returned. He then handed a transparent plastic sachet to PO1 Requito, who in turn paid using the marked money.<sup>10</sup> The CI left to inform the back-up team that the transaction was done. Meanwhile, PO1 Requito examined the content of the sachet. Upon confirmation it was *shabu*, he immediately introduced himself to petitioner as a police officer, and placed the latter under arrest. Thereafter, PO1 Requito kept the sachet subject of the sale in his right pocket and frisked petitioner. He recovered from petitioner two (2) more plastic sachets and drug paraphernalia.<sup>11</sup> As per

<sup>5</sup> See Records of Criminal Case No. 25532-2015-C(City), p. 1.

<sup>6</sup> Id.

<sup>7</sup> *Rollo*, p. 40.

<sup>8</sup> Id. at 81.

<sup>9</sup> Id. at 40-41.

<sup>10</sup> Id. at 41.

<sup>11</sup> Id.

Blotter Entry No. 06139, the three (3) sachets seized from petitioner had a total weight of 1.05 grams.<sup>12</sup>

At the crime scene, PO1 Requito marked the item subject of the sale with “PNP-BB” and the sachets recovered from the possession of petitioner with “PNP-NAP” and “PNP-NAP-1.”<sup>13</sup> On the other hand, he marked the drug paraphernalia with “NAP-1” and “NAP-2” at the *barangay* hall.<sup>14</sup> The subsequent inventory, and taking of photographs were conducted in the presence of petitioner, *Brgy.* Chairman Dalmacio Rivera, and Renato Galang, Jr. of Net 25.<sup>15</sup>

Later, PO1 Requito brought the seized items to the crime laboratory and turned over the same to forensic chemist Donna Villa P. Huelgas for examination. As per Chemistry Report No. D-2034-15,<sup>16</sup> the seized drugs tested positive for methamphetamine hydrochloride.<sup>17</sup>

During the trial, the prosecution and the defense entered into stipulations and admissions, among which were: 1) the qualification of the forensic chemist as expert witness; 2) the existence and due execution of the letter dated 26 September 2015 with the seized evidence, as delivered to the crime laboratory; 3) the said letter- request was received by the crime laboratory; 4) pursuant to said letter-request, the forensic chemist conducted a qualitative examination of the seized evidence, and she reduced her findings into Chemistry Report No. D-2034-15; 5) the forensic chemist has no personal knowledge from whom the specimens were taken; and 6) the specimens examined were the same items transmitted to the prosecution and marked as Exhibits “D,” “D-1,” “D-2,” “D-3,” and “D-4.”<sup>18</sup>

### Version of the Defense

Petitioner was sleeping at home when ten armed men barged in and searched his house. When they did not find any contraband, they asked him to leave. On his way out, he saw items on top of his table. One looked like a candle, and another one looked like an implement used for grilling fish. After that, one of the police officers brought out a wallet while another one brought out a thing used for grilling fish. The police officers then brought him to the *barangay* hall for no justifiable reason.<sup>19</sup>

<sup>12</sup> See Records of Criminal Case No. 25533-2015-C(City), p. 11.

<sup>13</sup> *Rollo*, p. 49.

<sup>14</sup> TSN dated 08 September 2017, p. 5.

<sup>15</sup> *Id.* at 41 and 48.

<sup>16</sup> See Records of Criminal Case No. 25533-2015-C(City), p.17.

<sup>17</sup> *Rollo*, pp. 41-42.

<sup>18</sup> See Records of Criminal Case No. 25533-2015-C(City), pp. 65-66.

<sup>19</sup> *Rollo*, p. 42.



### Ruling of the RTC

The RTC rendered its Judgment<sup>20</sup> dated 25 October 2017, acquitting petitioner for illegal possession of drug paraphernalia, but convicting him of illegal sale and illegal possession of dangerous drugs.<sup>21</sup> The dispositive portion of the RTC's Decision reads:

**IN VIEW OF THE FOREGOING**, In Criminal Case No. 25532-2015-C, the Court finds accused, **NARDO POLICARPIO y ALCANTARA, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165. He is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and to PAY A FINE OF FIVE HUNDRED THOUSAND (Php500,000.00) PESOS**.

In Criminal Case No. 25533-2015-C, the Court finds accused **NARDO POLICARPIO y ALCANTARA, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to PAY A FINE of THREE HUNDRED THOUSAND (Php300,000.00) PESOS**.

In Criminal Case No. 25534-2015-C, for failure of the Prosecution to prove the guilt of the accused beyond reasonable doubt, accused **NARDO POLICARPIO y ALCANTARA** is **ACQUITTED** of the offenses [*sic*] charged.

The Branch Clerk of Court is hereby ordered to turnover to PDEA the methamphetamine hydrochloride (shabu) and drug paraphernalia submitted in evidence for this case for proper disposition.

**SO ORDERED.**<sup>22</sup>

In convicting petitioner for Illegal Selling and Illegal Possession, the RTC held that there was a legitimate warrantless arrest with petitioner being caught *in flagrante delicto* selling illegal drug. Furthermore, the prosecution had sufficiently established an unbroken chain of custody over the subject drugs from the time of the buy-bust until the prosecution witness produced the same in court as evidence.<sup>23</sup>

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<sup>20</sup> Id. at 80-96.; penned by Presiding Judge Caesar C. Buenagua.

<sup>21</sup> Id.

<sup>22</sup> Id. at 95-96.

<sup>23</sup> Id. at 42-43.

On the other hand, the RTC rejected petitioner's defense of frame-up, finding the same flimsy and unsubstantiated.<sup>24</sup>

### **Ruling of the CA**

On appeal, the CA acquitted petitioner of Illegal Sale, but affirmed his conviction for Illegal Possession of Dangerous Drugs. The dispositive portion of the CA's Decision reads:

**WHEREFORE**, the appeal is **PARTLY GRANTED**. The Judgment dated October 25, 2017 of the RTC of Calamba City, Laguna, Branch 37, in Criminal Case Nos. 25532-2015-C and 25533-2015-C is **AFFIRMED with the MODIFICATION** that, in Criminal Case No. 22532-2015-C, accused-appellant Nardo A. Policarpio is **ACQUITTED** of the charge of violation of Section 5, Article II of R.A. No. 9165.

Let a Partial Entry of Judgment be issued for said Criminal Case No. 22532-2015-C.

Let also copies of this Decision be served on accused-appellant at his place of incarceration and last address on record.

**SO ORDERED.**<sup>25</sup>

The Court affirmed the finding of facts of the RTC, including the credibility of the testimony of PO1 Requito.<sup>26</sup> However, the CA acquitted petitioner of the charge for Illegal Sale because PO1 Requito used the generic marking "PNP-BB" on the item subject of the sale. According to the CA, said marking failed to provide any safeguard against switching, planting, or contamination of evidence, compromising the evidence subject of the case for violation of Section 5, Article II of RA 9165.<sup>27</sup>

Meanwhile, the CA affirmed his conviction for violation of Section 11. It ruled that insofar as the two (2) other sachets of *shabu*, are concerned, the prosecution sufficiently established the identity of said evidence as the markings thereon were distinguishable from all other drugs in the custody of the police officers. Furthermore, the CA affirmed the validity of the search of petitioner being incidental to a lawful warrantless arrest.<sup>28</sup>

### **Issue**

For the Court's resolution is whether or not the CA committed reversible error in affirming the conviction of petitioner for violation of

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<sup>24</sup> Id. at 43.

<sup>25</sup> Id. at 52.

<sup>26</sup> Id. at 45.

<sup>27</sup> Id. at 49.

<sup>28</sup> Id. at 49-50.

Section 11, Article II of RA 9165.

### **Ruling of the Court**

The Court grants the Petition.

Time and again, the Court emphasizes that in drug cases, the State bears not only the burden of establishing the elements of the offense but also of proving the *corpus delicti* or the body of the crime.<sup>29</sup>

A conviction for Illegal Possession of Dangerous Drugs requires the prosecution to prove beyond reasonable doubt the existence of the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>30</sup>

Additionally, the narcotic substance taken from the petitioner's possession constitutes the *corpus delicti* of the offense. Hence, the fact of its existence is vital to sustain a judgment of conviction.<sup>31</sup> It is thus of prime importance that the identity of the dangerous drug be established beyond reasonable doubt, and that it must be proven that the item seized during the buy-bust operation is the same item offered in evidence.<sup>32</sup>

The Court had previously acknowledged the reality that a buy-bust operation has a significant downside, in that, it is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. The rules set forth under Section 21, Article II RA 9165, as amended, act as safety precautions to address potential police abuses by narrowing the window of opportunity for tampering with evidence.<sup>33</sup>

To ensure the identity and integrity of the seized drugs, the prosecution must establish the chain of custody of the dangerous drugs, *i.e.*, *first*, the seizure and marking 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 by the forensic chemist to the court.<sup>34</sup> In addition, the law requires that the 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,

<sup>29</sup> See *People v. Manabat*, G.R. No. 242947, 17 July 2019.

<sup>30</sup> See *Calahi v. People*, 820 Phil. 886, 894 (2017).

<sup>31</sup> See *People v. Nacua*, 702 Phil. 739, 751 (2013).

<sup>32</sup> *People v. Ramirez*, 823 Phil. 1215, 1223 (2018), citing *People v. Gatlabayan*, 669 Phil. 240, 252 (2011).

<sup>33</sup> *Id.* at 1224, citing *People v. Ancheta*, 687 Phil. 569, 577-579 (2012); *People v. Umipang*, 686 Phil. 1025, 1033-1038 (2012).

<sup>34</sup> *People v. Dahil*, 750 Phil. 212, 231 (2015), citing *People v. Kamad*, 624 Phil. 289, 304-306 (2010).

as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, a representative from the media and the Department of Justice, and any elected public official; or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media. 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.<sup>35</sup>

*There is palpable violation of the required procedural safeguards which put in doubt the identity and integrity of the evidence submitted in court*

PO1 Requito marked the evidence from the alleged buy-bust with “PNB-BB,” while the two (2) sachets, subject of the illegal possession, were marked with “PNP-NAP” and “PNP-NAP-1.” However, PO1 Requito failed to indicate the exact weight of each of the seized drugs in the Receipt of Physical Inventory, in violation of the 2014 Philippine National Police (PNP) Manual on Anti-Illegal Drugs Operations and Investigation. The supposed weight of the three (3) sachets seized from petitioner, can only be found from Blotter Entry No. 06139. However, while said entry shows that the three (3) items had a total weight of 1.05 grams, Chemistry Report No. D-2034-15 reveals that three (3) items received by the forensic chemist only had the miniscule total weight of .30 gram, *thus*: 1) .14 gram for “PNP-BB”; 2) 0.08 gram for “PNP-NAP”; and 3) 0.08 gram for “PNP-NAP-1.”<sup>36</sup> With such discrepancy, the Court agrees with petitioner that serious doubt exists as to the identity of the evidence submitted in court.

Aside from the foregoing, a perusal of the Receipt of Physical Inventory<sup>37</sup> shows that the same was signed by the required media personnel and elected local official, but not by petitioner himself. This raises doubt on whether the police officers conducted the inventory and taking of photographs in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, as strictly required by Section 21, Article II of RA 9165, as amended by RA 10640.

What is more, PO1 Requito admitted during his testimony that the photographs to prove the conduct of the marking and inventory were not submitted into evidence, thus:

Q: There was no photograph attached to the records of the case of the specimen you allegedly recovered, correct?

<sup>35</sup> See *People v. Ramos*, G.R. No. 243944, 15 March 2021.

<sup>36</sup> See Records of Criminal Case No. 25533-2015-C(City), p.17.

<sup>37</sup> See Records of Criminal Case No. 25533-2015-C(City), p.9.

A: Not submitted, ma'am.

Q: There was likewise no photograph of you actually marking the specimen, correct?

A: Not also submitted, ma'am.<sup>38</sup>

With the lack of photographs, and given the missing signature of petitioner, the Court cannot help but entertain doubt as to whether there was indeed an inventory conducted by the apprehending officers. Corollarily, the Court also entertains doubt as to whether the required officers indeed signed the inventory receipt, especially considering that their identification cards were not submitted into evidence, and neither of them testified in court.

*The prosecution cannot successfully avail of the saving mechanism of the law*

It cannot be overemphasized that the procedural safeguards in the seizure, custody, and handling of confiscated illegal drugs *are* considered substantive law and not merely a procedural technicality. Admittedly, the failure of police officers to strictly comply with the law 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.<sup>39</sup>

In this case, however, the prosecution failed to justify the police officers' non-compliance with the required procedural safeguards. Notably, the prosecution did not bother to explain and justify their egregious omissions and violations of the strict requirements of the law. Notably, too, the lower courts brushed aside the same as negligible deviations, while nonchalantly relying on the presumption of regularity of duty of the police officers and the perceived credibility of the testimony of PO1 Requito.

Moreover, the prosecution failed to prove that the integrity and evidentiary value of the seized items are properly preserved with the marked discrepancy in the reported weight of the seized evidence in the police blotter and the recorded weight of the same in the chemistry report. Too, the Court finds that the forensic chemist's stipulated testimony violates the fourth link of the chain of custody.

The fourth link refers to the turn-over and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount necessity that the forensic chemist testifies on the details

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<sup>38</sup> TSN dated 08 September 2017, p. 12.

<sup>39</sup> See *People v. Corral*, G.R. No. 233883, 07 January 2019.



pertaining to the handling and analysis of the dangerous drug submitted for examination, *i.e.*, when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was kept. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.<sup>40</sup>

Here, the forensic chemist's testimony was dispensed as the parties agreed to stipulate on her testimony. However, noticeably missing from her stipulated testimony is the essential discussion on how she handled the specimens from the time of her receipt until their presentation. In *People v. Hernandez*,<sup>41</sup> the Court had the occasion to emphasize anew that when the failure of the forensic chemist's stipulated testimony to explain in detail who exercised custody and possession of the specimens after the chemical examination, and how they were handled, stored, and safeguarded pending their presentation as evidence in court raises nagging questions and doubts as to whether the specimens submitted to the court are the same items seized from the accused.<sup>42</sup>

Clearly, contrary to the common postures of the RTC and the CA, the prosecution is not entitled to the saving mechanism of Section 21 of the IRR of RA9165, as amended. With the blatant and dreadful procedural lapses committed in this case, serious uncertainty hangs over the identity and integrity of the seized illegal drugs presented in court, creating a reasonable doubt on petitioner's criminal liability.

**WHEREFORE**, premises considered, the instant Petition for Review on *Certiorari* is **GRANTED**. The Decision dated 31 May 2019 and Resolution dated 04 November 2019 issued by the Court of Appeals (CA) in CA-G.R. CR-HC No. 10031 are **REVERSED** and **SET ASIDE**. Petitioner **NARDO POLICARPIO y ALCANTARA** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** released from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to cause the immediate implementation of this Resolution, and to submit his report on the action taken within five (5) days from notice hereof.

Let an entry of final judgment be issued immediately.

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<sup>40</sup> *People v. Hernandez*, G.R. No. 258077, 15 June 2022.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

**530**

**MAY 16 2023**

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