



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Cagayan de Oro City
SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **March 8, 2023** which reads as follows:*

“G.R. No. 257431 – (PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, v. JAY DELGADO y ESPARTERO, Accused-appellant). – The present Appeal¹ before the Court seeks to reverse and set aside the Decision² dated October 29, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 03048 entitled *People of the Philippines v. Jay Delgado y Espartero*, finding appellant Jay Delgado y Espartero guilty of violation of Article II, Sections 5 and 11 of Republic Act No. 9165.³

Antecedents

Under separate Informations, appellant was charged with violations of Sections 5 and 11, Article II of Republic Act No. 9165, to wit:

Criminal Case No. 15-2128

That on or about the 11th day of June 2015, in the Municipality of Buenavista, Province of Guimaras, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully[,] and knowingly sell, deliver[,] and give away to another, 0.0385 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as “*shabu*”, in violation of afore-cited (sic) law.

CONTRARY TO LAW.⁴

¹ *Rollo*, pp. 4–5.

² *Id.* at 10–21. Penned by Associate Justice Marilyn B. Lagura-Yap, and concurred in by Associate Justices Raymond Reynold B. Lauigan and Lorena R. Bordios.

³ Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” Approved on June 07, 2002.

⁴ *Rollo*, p. 10–11.

Criminal Case No. 15-2129

That on or about the 11th day of June 2015, in the Municipality of Buenavista, Province of Guimaras, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody six (6) heat-sealed transparent plastic sachets of white crystalline substance with the following description and recorded net weights:

- 1) HGD-B1 (JD-1) = 0.0244 gram;
- 2) HGD-B2 (JD-2) = 0.769 gram;
- 3) HGD-B3 (JD-3) = 0.0178 gram;
- 4) HGD-B4 (JD-4) = 0.0795 gram;
- 5) HGD-B5 (JD-5) = 0.0328 gram; and
- 6) HGD-B6 (JD-6) = 0.0245 [gram.]

having a total weight of 0.2559 gram, which were found positive to the tests for Methamphetamine Hydrochloride, also known as “shabu”, a dangerous drug, in violation of the afore-cited (sic) law.

CONTRARY TO LAW.⁵

The cases were raffled to the Regional Trial Court, Branch 65, Jordan, Guimaras, and docketed as Criminal Case Nos. 15-2128 and 15-2129.⁶ On arraignment, appellant pleaded not guilty to all the charges. Trial ensued.⁷

Version of the Prosecution

Sometime in May 2015, the Chief of Police of the Municipal Police Station of Buenavista, Guimaras received information that appellant was selling illegal drugs in Barangay Rizal, Barangay Santo Rosario, and other neighboring barangays in Buenavista, Guimaras. The Chief instructed the members of the Municipal Anti-Illegal Drugs Special Operations Task Group (MAIDSOTG) to conduct surveillance on appellant to validate the information. After a month-long surveillance, the MAIDSOTG confirmed the illegal activities of appellant.⁸

The members of the MAIDSOTG then planned the buy-bust operation. Police Officer (PO) 2 Christian John Tan (PO2 Tan) was designated as poseur-buyer while PO3 Ronald Estares (PO3 Estares) was assigned as his back-up. The other members took part as security. The team agreed that once the sale shall have been completed, PO2 Tan would scratch his head to signal the other members.⁹

⁵ *Id.* at 11.

⁶ *Id.* at 23–28.

⁷ *Id.* at 11.

⁸ *Id.* at 11–12.

⁹ *Id.* at 12.

On June 11, 2015, around 10 a.m., the members of the buy-bust team proceeded to Barangay Santo Rosario, Buenavista, Guimaras. PO2 Tan was accompanied by the confidential asset, while the other members positioned themselves within the peripheries.¹⁰

The confidential asset introduced PO2 Tan to appellant as his friend who wanted to buy *shabu*. Appellant asked how much *shabu* he would buy, to which PO2 Tan replied that he wanted to buy PHP 500.00 worth. Afterwards, appellant took one sachet from his right pocket and gave it to PO2 Tan, while the latter handed him the buy-bust money. Then, PO2 Tan scratched his head to signal that the sale had been consummated.¹¹

PO2 Tan immediately arrested appellant. On the other hand, PO3 Estares rushed to the scene and helped subdue appellant who was then resisting arrest and attempting to escape. PO2 Tan frisked appellant for possible weapons or other contraband and, in the course of the search, he recovered six more plastic sachets of suspected *shabu* in appellant's possession.¹²

After the arrest and search, the apprehending officers conducted an inventory of the seized items. It was witnessed by Barangay Captain Jasper Catalbas, Barangay Kagawad Elmer Mabaguiao, and Department of Justice (DOJ) Representative Agnes Gamuyao. PO2 Tan marked the sachets of suspected *shabu* as JD-BB, the buy-bust money as JD-BB-1, and the six sachets of suspected *shabu* recovered from appellant as JD-1, JD-2, JD-3, JD-4, JD-5, and JD-6, respectively, while PO2 Ediben Jacildo prepared the certificate of inventory and the other members of the team took photographs.¹³

After the inventory, the apprehending officers, together with appellant, proceeded to the police station to record the incident in the police blotter and prepare the request for laboratory examination. PO2 Tan delivered the seized sachets of suspected *shabu* to the Regional Crime Laboratory. Forensic Chemist Police Senior Inspector Hernand Donado (PS/Insp. Donado) of the Regional Crime Laboratory Office 6 conducted the laboratory examination.¹⁴ Per Chemistry Report No. D-324-2015¹⁵ dated June 11, 2015, the seized substance yielded positive results for methamphetamine hydrochloride or *shabu*.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 13.

¹⁴ *Id.*

¹⁵ RTC Records, p. 14.

Version of the Defense

Appellant interposed denial and frame-up. He testified that on June 11, 2015, around 10:20 a.m., he was driving his pedicab in Barangay Santo Rosario, Buenavista, Guimaras. PO2 Tan boarded his pedicab and asked him to bring him to a store called “Nori.” But before they could reach their destination, a van labeled “Salida Buenavista” blocked their way. Several men, all wearing civilian clothes, alighted from the van and handcuffed him. They then searched him but recovered nothing.¹⁶

PO3 Estares placed sachets of *shabu* on the table in front of appellant, but he (appellant) insisted that those were not his. The men ordered him to board the van and frisked him for the second time. Thereafter, they brought him to the police station. PO3 Estares forced appellant to admit ownership of the sachets of *shabu* placed on the table and punched him. He, however, still denied the allegations of PO2 Tan and PO3 Estares that they were able to buy a sachet of *shabu* from him and that they recovered more sachets of *shabu* from his possession.¹⁷

Ruling of the Trial Court

By Decision¹⁸ dated March 12, 2018, the trial court rendered a verdict of conviction, *viz.*:

IN VIEW WHEREOF, the court finds accused Jay Delgado y Espartero **GUILTY** beyond reasonable doubt of [v]iolation of Section 5 of R.A. 9165 in Criminal case No. 15-2128. He is sentenced to **LIFE IMPRISONMENT** and to pay a **FINE** of **₱500,000.00**.

The court likewise finds accused Jay Delgado y Espartero **GUILTY** beyond reasonable doubt of [v]iolation of Section 11 of R.A. 9165 in Criminal Case No. 15-2129. He is sentenced to an indeterminate penalty of **TWELVE (12) YEARS AND ONE (1) DAY** imprisonment as minimum to **FIFTEEN (15) YEARS** imprisonment as maximum and to pay a **FINE** of **₱300,000.00**.

The items recovered in connection with these cases are **FORFEITED** in favor of the government to be dealt with in accordance with the law. The accused who is presently detained shall be credited in the service of his sentence.

SO ORDERED.¹⁹ (Emphasis in the original)

¹⁶ *Rollo*, p. 26.

¹⁷ *Id.*

¹⁸ *Id.* at 23–28. Penned by Presiding Judge Rosario Abigail M. Dris-Villanueva.

¹⁹ *Id.* at 28.

It held that the prosecution was able to establish the presence of all the elements of both illegal possession and illegal sale of dangerous drugs. Further, appellant's defenses of denial and frame-up were self-serving. He failed to establish any improper motive on the part of PO2 Tan and PO3 Estares.²⁰

Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction.²¹ He posited that: **first**, the buy-bust operation did not actually happen and was merely fabricated to justify his illegal arrest; **second**, since the dangerous drugs were discovered by virtue of an unlawful search, the pieces of evidence recovered are inadmissible, being fruits of a poisonous tree; and **third**, he faulted the trial court for finding him guilty despite the broken chain of custody of the seized illegal substance.²²

The People, through Associate Solicitor Kyle Bryan M. Guerrero, Associate Solicitor Lorene A. Pe, and Assistant Solicitor General Rex Bernardo L. Pascual of the Office of the Solicitor General (OSG), countered that the prosecution had proven appellant's guilt beyond reasonable doubt.²³ All the elements of illegal sale and illegal possession of dangerous drugs were undeniably present in the case. Too, the integrity and identity of the specimens had been preserved.²⁴

Ruling of the Court of Appeals

By its assailed Decision²⁵ dated October 29, 2020, the Court of Appeals affirmed. It held that appellant was arrested *in flagrante delicto*. A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto*. Consequently, since the *in flagrante* arrest of appellant was lawful, the subsequent search and seizure of the plastic sachets containing dangerous drugs were justified, and the seized plastic sachets are admissible in evidence. More, the elements of illegal sale and illegal possession of dangerous drugs 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.²⁶

²⁰ *Id.* at 27–28.

²¹ *CA rollo*, pp. 11–45.

²² *Id.* at 21–43.

²³ *Id.* at 56–72.

²⁴ *Id.* at 64–72.

²⁵ *Rollo*, pp. 10–21. Penned by Associate Justice Marilyn B. Lagura-Yap, and concurred in by Associate Justices Raymond Reynold B. Latigan and Lorenzo R. Bordios.

²⁶ *Id.* at 15–20.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.²⁷ In accordance with the Court's Resolution²⁸ dated August 1, 2022, both the OSG²⁹ and appellant³⁰ manifested that in lieu of supplemental briefs, they are adopting their respective briefs filed before the Court of Appeals.

Our Ruling

The appeal is meritorious.

On appellant's warrantless arrest, suffice it to state that any 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.³¹ 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.³² The accused's voluntary submission to the jurisdiction of the court and their active participation during the trial cures any defect or irregularity that may have attended their arrest.³³

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

The failure of appellant though to timely object to the illegality of his arrest does not preclude him from questioning the admissibility of the evidence seized as an incident of the warrantless arrest.³⁴ Its inadmissibility is not affected when the accused fails to timely question the court's jurisdiction

²⁷ *Id.* at 4–5.

²⁸ *Id.* at 31–32.

²⁹ *Id.* at 33–37. Plaintiff-Appellee's Manifestation in lieu of Supplemental Brief dated October 3, 2022.

³⁰ Temporary *rollo*, pp. 1–2. Accused-appellant's Manifestation in lieu of Supplemental Brief dated October 20, 2022.

³¹ *Lapi v. People*, G.R. No. 210731, February 13, 2019, [Per J. Leonen, Third Division].

³² See *People v. Alunday*, 586 Phil. 120, 133 (2008), [Per J. Chico-Nazario, Third Division].

³³ See *People v. Bacla-An Lapitaje, et al.*, 445 Phil. 729 (2003) [Per J. Austria-Martinez, *En Banc*].

³⁴ See *Homar v. People*, 768 Phil. 195, 203 (2015), [Per J. Brion, Second Division].

over their person. Jurisdiction over the person of the accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.³⁵

The Court thus moves on to the core issue: did the apprehending officers comply with the chain of custody rule in handling the illegal drugs in question?

The Court rules in the negative.

Appellant was indicted for illegal sale and possession of dangerous drugs allegedly committed on June 11, 2015. Thus, the applicable law is Republic Act No. 9165, as amended by Republic Act No. 10640 which took effect on August 7, 2014.³⁶

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.³⁷ 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.³⁸ The saving clause under Section 21(a),³⁹ of Republic Act No. 9165, Implementing Rules and Regulations 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.⁴⁰

³⁵ *Veridiano v. People*, 810 Phil. 642, 654 (2017), [Per J. Leonen, Second Division].

³⁶ Republic Act No. 10640. An Act To Further Strengthen The Anti-Drng 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," Approved on July 15, 2014.

³⁷ See *People v. Miranda*, G.R. No. 218126, July 10, 2019, [Per J. Lazaro-Javier, Second Division].

³⁸ See *People v. Dumagay*, 825 Phil. 726, 739 (2018), [Per J. Del Castillo, First Division].

³⁹ Republic Act No. 9165, art. II, sec. 21(1) The apprehending officer/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, 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; . . .

⁴⁰ See *People v. Frias*, 853 Phil. 377 (2019), [Per J. Lazaro-Javier, Second Division].

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.⁴¹

The Court shall focus on the *fourth link*.

In *People v. Omamos*,⁴² the Court stressed that in drug related cases, it is of paramount necessity that the forensic chemist testifies on the details 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 in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen. Further, in *People v. Pajarin*,⁴³ the Court decreed:

...as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial.⁴⁴

In the present case, the Court finds there was a breach of the chain of custody at the fourth link – from the time the laboratory examination was concluded until the illegal drugs were brought to the trial court. Records are bereft of any details of how the illegal drugs were kept and who had custody thereof after the conclusion of its testing. Notably, PS/Insp. Donado did not discuss how he safeguarded the illegal drugs after examination and before they were presented in court.⁴⁵

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. Ideally, the evidence presented by the prosecution should include testimony about every link in the chain, from the moment the item was picked up to the time it was offered

⁴¹ *People v. De Leon*, G.R. No. 227867, June 26, 2019, [Per J. Del Castillo, First Division].

⁴² G.R. No. 223036, July 10, 2019, [Per J. Lazaro-Javier, Second Division].

⁴³ 654 Phil. 461 (2011), [Per J. Abad, Second Division]

⁴⁴ *Id.* at 466.

⁴⁵ TSN of Prosecution Witness PSI/Insp. Hernand Donado dated June 21, 2016.

into evidence. The prosecution should present evidence establishing the chain of custody in such a way that “*every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.*” In addition, these witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.⁴⁶

The sheer lack of proof on how the seized illegal drugs were handled after PS/Insp. Donado examined the same until it reached the court for presentation undeniably opened the seized items to possible tampering and switching. The integrity and identity of these items, therefore, cannot be deemed to have been preserved.⁴⁷ This casts serious doubts on the identity and the integrity of the *corpus delicti*.⁴⁸

Since compliance with the procedure set forth in Section 21 of Republic Act No. 9165, as amended, is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the trial courts would not preclude the appellate court, including the Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court’s bounden duty to acquit the accused, and perforce, overturn a conviction.⁴⁹

FOR THESE REASONS, the Appeal is **GRANTED**. The Decision dated October 29, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 03048 is **REVERSED** and **SET ASIDE**. Appellant Jay Delgado y Espartero is **ACQUITTED** of violations of Article II, Section 5 of Republic Act No. 9165 in Criminal Case No. 15-2128 and Article II, Section 11 of Republic Act No. 9165 in Criminal Case No. 15-2129.

⁴⁶ *Mallillin v. People*, 576 Phil. 576, 587 (2008), [Per J. Tinga, Second Division].

⁴⁷ See: *People v. Lacdan*, 859 Phil. 792 (2019), [Per J. Lazaro-Javier, Second Division].

⁴⁸ *People v. Catipan*, G.R. No. 252691, June 14, 2021, [Notice, Second Division].

⁴⁹ *People v. Año*, 828 Phil. 439, 453 (2018), [Per J. Perlas-Bernabe, Second Division].

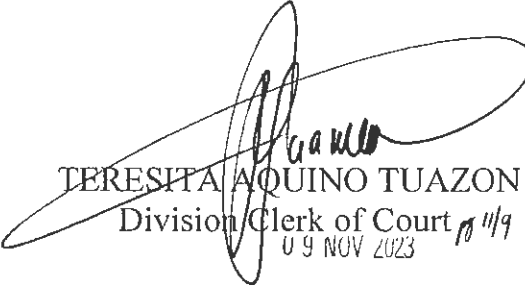
The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to a) immediately release Jay Delgado y Espartero from custody unless he is being held for some other lawful cause, and (b) inform the Court of the action taken within five days from notice.

Copies shall also be furnished to the Chief of Police of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court #119
 09 NOV 2023

OFFICE OF THE SOLICITOR GENERAL (reg)

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Accused-Appellant
 c/o The Director
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THE DIRECTOR (x)
 Bureau of Corrections
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THE SUPERINTENDENT (x)
 New Bilibid Prison
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HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 65
 San Miguel, Jordan, Guimaras
 (Crim. Case Nos. 15-2128 & 15-2129)

THE CHIEF (reg)

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 Supreme Court, Manila

COURT OF APPEALS (reg)

Cebu City
 CA-G.R. CR-HC No. 03048

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