



Republic of the Philippines  
**Supreme Court**  
 Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
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**PEOPLE OF THE PHILIPPINES,** **G.R. No. 233336**  
 Plaintiff-Appellee, Present:

- versus -

**DON EMILIO CARIÑO y**  
**AGUSTIN a.k.a. "DON EMILIO**  
**CARINO AGUSTIN,"\***  
 Accused-Appellant.

CARPIO, J., Chairperson,  
 PERLAS-BERNABE,  
 CAGUIOA,  
 J. REYES, JR., and  
 HERNANDO,\*\* JJ.

Promulgated:

14 JAN 2019

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01818 which affirmed the Decision<sup>3</sup> dated February 25, 2014 and Order<sup>4</sup> dated March 20, 2014 of the Regional Trial Court of Dumaguete City, Branch 36 (RTC) in Criminal Case Nos. 21107 and 21108, finding accused-appellant Don Emilio Cariño y Agustin a.k.a. "Don Emilio Carino Agustin" (Cariño) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act

\* Also referred as "Don Emilio Cariño Agustin" in some parts of the records.

\*\* Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

<sup>1</sup> See Notice of Appeal dated April 16, 2017; *rollo*, pp. 30-31.

<sup>2</sup> *Id.* at 4-29. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Pablito A. Perez, concurring.

<sup>3</sup> CA *rollo*, pp. 66-97. Penned by Judge Joseph A. Elmaco.

<sup>4</sup> *Id.* at 98.

J

No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

### The Facts

This case stemmed from two (2) Informations<sup>6</sup> filed before the RTC accusing Cariño of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that on April 24, 2012, policemen of the Special Operations Group of the Negros Oriental Police Provincial Office successfully conducted a buy-bust operation against a certain “Dondon,” later identified as Cariño, during which one (1) plastic sachet containing white crystalline substance was recovered from him. When Cariño was searched incidental to his arrest, the policemen recovered another plastic sachet containing the same aforesaid substance from him. While waiting for the arrival of the witnesses – namely, Barangay Kagawad Chona Merced (Kagawad Merced), Department of Justice (DOJ) Representative Ramonito Astillero (DOJ Representative Astillero), and Media Representative Juancho Gallarde (Media Representative Gallarde) policemen then conducted the marking and inventory at the place of arrest in Cariño’s presence.<sup>7</sup> Upon the witnesses’ arrival thereat, the policemen presented the Inventory/Receipt of Property Seized<sup>8</sup> to them and they signed the same. Thereafter, Cariño and the seized items were taken to the police headquarters where the necessary paperworks for examination were prepared. The seized items were then brought to the crime laboratory where, after examination,<sup>9</sup> the contents thereof yielded positive for 0.09 and 0.04 gram, respectively, of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>10</sup>

In defense, Cariño denied the charges against him, claiming instead, that he was a former asset of the policemen who arrested him, and that they framed him up after he begged to be excused from a surveillance task assigned to him.<sup>11</sup>

In a Decision<sup>12</sup> dated February 25, 2014, the RTC found Cariño guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Criminal Case No. 21107, he was sentenced to suffer

<sup>5</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 on June 7, 2002.

<sup>6</sup> The Information dated July 25, 2012 in Criminal Case No. 21107 was for violation of Section 5, Article II of RA 9165; records (Criminal Case No. 21107), p. 3; while the Information dated April 25, 2012 in Criminal Case No. 21108 was for violation of Section 11, Article II of RA 9165; records (Criminal Case No. 21108), p. 3.

<sup>7</sup> *Rollo*, p. 8.

<sup>8</sup> Dated April 24, 2012, records (Criminal Case No. 21108), p. 12.

<sup>9</sup> See Chemistry Report No. D-067-12 dated April 24, 2012; *id.* at 15.

<sup>10</sup> *Rollo*, pp. 5-9.

<sup>11</sup> *Id.* at 9-10.

<sup>12</sup> *CA rollo*, pp. 66-97.

the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (b) in Criminal Case No. 21108, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years, and one (1) day, as minimum, to twelve (12) years, ten (10) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.<sup>13</sup> The RTC found that the prosecution had established beyond reasonable doubt that Cariño was arrested after he was caught *in flagrante delicto* to be selling *shabu*, and that after his arrest, another sachet containing *shabu* was recovered from him.<sup>14</sup> Cariño moved for reconsideration but the same was denied in an Order<sup>15</sup> dated March 20, 2014. Aggrieved, he appealed<sup>16</sup> to the CA.

In a Decision<sup>17</sup> dated March 17, 2017, the CA affirmed the RTC ruling. It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Cariño, and that the conduct of inventory *prior* to the arrival of the witnesses, among others, did not tarnish the integrity and evidentiary value of the seized items.<sup>18</sup>

Hence, this appeal seeking that Cariño's conviction be overturned.

### The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>19</sup> 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.<sup>20</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State

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<sup>13</sup> Id. at 96-97.

<sup>14</sup> Id. at 90-96.

<sup>15</sup> Id. at 98.

<sup>16</sup> See Notice of Appeal dated March 24, 2014; records, p. 297.

<sup>17</sup> *Rollo*, pp. 4-29.

<sup>18</sup> Id. at 12-27.

<sup>19</sup> The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II 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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

<sup>20</sup> See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.<sup>21</sup>

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.<sup>22</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>23</sup> In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”<sup>24</sup> Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.<sup>25</sup>

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 his representative or counsel, 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 (DOJ), and any elected public official”;<sup>26</sup> 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 **or** the media.”<sup>27</sup> 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>28</sup>

<sup>21</sup> See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

<sup>22</sup> See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 19; *People v. Sanchez*, supra note 19; *People v. Magsano*, supra note 19; *People v. Manansala*, id.; *People v. Miranda*, supra note 19; and *People v. Mamangon*, supra note 19. See also *People v. Viterbo*, supra note 20.

<sup>23</sup> In this regard, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.” (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009]) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumalak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015])

<sup>24</sup> *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

<sup>25</sup> See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

<sup>26</sup> Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

<sup>27</sup> Section 21, Article II of RA 9165, as amended by RA 10640.

<sup>28</sup> See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

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.”<sup>29</sup> This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”<sup>30</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>31</sup> As such, 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.<sup>32</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>33</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>34</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>35</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>36</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>37</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>38</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the

<sup>29</sup> See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 21, at 1038.

<sup>30</sup> See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id.*

<sup>31</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>32</sup> See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>33</sup> Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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**”

<sup>34</sup> Section 1 of RA 10640 pertinently states: “**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.**”

<sup>35</sup> *People v. Almorfe*, *supra* note 32.

<sup>36</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>37</sup> See *People v. Manansala*, *supra* note 19.

<sup>38</sup> See *People v. Gamboa*, *supra* note 21, citing *People v. Umipang*, *supra* note 21, at 1053.

accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>39</sup>

Notably, the Court, in *People v. Miranda*,<sup>40</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”<sup>41</sup>

In this case, it would initially appear that the apprehending policemen complied with the witness requirement, considering that the Inventory/Receipt of Property Seized<sup>42</sup> contains the signatures of the required witnesses, *i.e.*, Kagawad Merced, DOJ Representative Astillero, and Media Representative Gallarde. However, a more circumspect examination of the records would show that these witnesses arrived *after* the apprehending policemen had already completed the inventory, and that they were merely asked to sign the aforesaid inventory form. The respective testimonies of the aforesaid witnesses are revelatory, to wit:

#### **Testimony of Kagawad Merced**

[Pros. Zerna]: And when you arrived at that place where the arrest was made, what was it that you were able to observe?

[Kagawad Merced]: When I arrived there, the suspected items were already there.

Q: Where did you particularly see these items that you said were suspected to have been confiscated?

A: When I arrived there, it was already placed on the table[.]

Q: And what did you do when you arrive (*sic*) there?

A: Somebody told me that these are the items that were recovered and I inspected the items and compared it with what was listed and I signed it.<sup>43</sup>

#### **Testimony of DOJ Representative Astillero**

[Atty. Cariño]: You mean to say that when you arrived at that time the inventory sheet was already prepared?

[DOJ representative Astillero]: Yes, sir.

<sup>39</sup> See *People v. Crispo*, supra note 19.

<sup>40</sup> Supra note 19.

<sup>41</sup> See *id.*

<sup>42</sup> Dated April 24, 2012, records, p. 12.

<sup>43</sup> TSN, October 29, 2012, p. 4.

Q: Was it already signed by somebody else?

A: When I signed it there were other signatures.

x x x x

Q: You already testified that you have not witnessed the time on the fact of the confiscation of these items?

A: No more, when I arrived there, there was already an inventory on the confiscated items.<sup>44</sup>

### Testimony of Media Representative Gallarde

[Atty. Cariño]: How would you considered (*sic*) then that there was indeed or it was true the (*sic*) conduct of an inventory?

[Media Representative Gallarde]: My purpose is to observe and witness the inventory I don't have personal knowledge how (*sic*) the alleged buy bust and alleged confiscation of the items.

Q: And you also do not have any personal knowledge of the conduct of the inventory?

A: Yes, sir.

Q: You only have actual knowledge as to the fact that when you arrived at the place [of the arrest] you signed the inventory sheet?

A: Yes, sir.

Q: And when you arrived you also noticed that the inventory sheet was already signed by the two (2) Kagawads which you already mentioned[?]

A: Yes, sir.

Q: And it was already signed by a certain Astillero?

A: Yes, sir.<sup>45</sup>

As may be gleaned from the testimonies of the required witnesses themselves, the inventory was ***not*** conducted in their presence as the apprehending policemen already prepared the Inventory/Receipt of Property Seized when they arrived at the scene of arrest and only made them sign the same. As discussed, the witness requirement mandates the presence of the witnesses ***during*** the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented. Hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk.<sup>46</sup> Unfortunately, no such explanation was proffered by the prosecution to justify this glaring procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Cariño were compromised, which consequently warrants his acquittal.

<sup>44</sup> TSN, September 6, 2012, pp. 20 and 23.

<sup>45</sup> TSN, November 5, 2012, pp. 8-9.

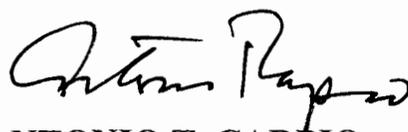
<sup>46</sup> See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

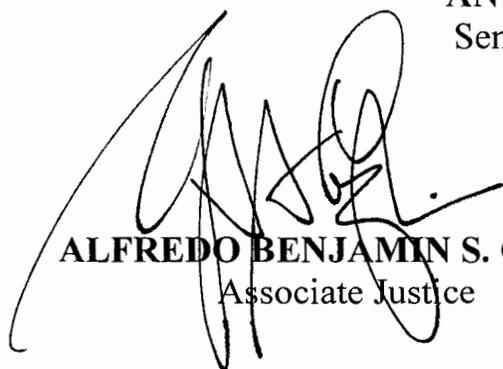
**WHEREFORE**, the appeal is **GRANTED**. The Decision dated March 17, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 01818 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Don Emilio Cariño y Agustin a.k.a. "Don Emilio Carino Agustin" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

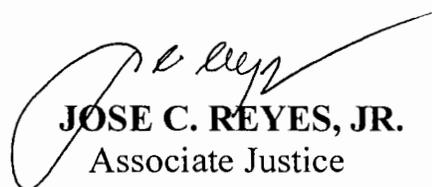
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

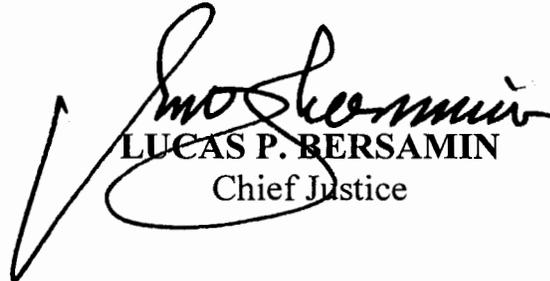
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN  
Chief Justice