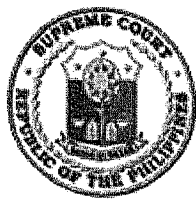


SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 223562
Plaintiff-Appellee,

Present:

CARPIO, *Chairperson,*
CAGUIOA,
REYES, J. JR.,
LAZARO-JAVIER, and
ZALAMEDA, *JJ.*

- versus -

LEAN NOEL DIZON @
"Jingle",
Accused-Appellant.

Promulgated:

04 SEP 2019

X-----X

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision¹ dated June 10, 2015 of the Court of Appeals in CA-G.R. CR H.C. No. 01728 affirming the trial court's verdict of conviction against appellant Lean Noel Dizon @ Jingle for violation of Sections 5 and 11 of Art. II of Republic Act No. 9165 (RA 9165)² and imposing appropriate penalties.

¹ *Rollo*, pp. 4-31, penned by Justice Jhosep Y. Lopez, and concurred in by Associate Justices, Gabriel T. Ingles and Marilyn B. Lagura-Yap.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

Appellant Lean Noel Dizon “Jingle” was charged under two (2) separate Informations, *viz*:

Criminal Case No. 20259³

(Violation of Section 5, Article II of R.A. 9165)

That at around 9:00 o'clock in the morning of December 5, 2010, at Barangay Poblacion, Siaton, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the herein accused, did, then and there willfully, unlawfully and feloniously sell crystalline substance containing methamphetamine Hydrochloride, locally known as “*shabu*”, weighing zero point fifteen (0.15) grams (sic) to a police poseur buyer, without authority of law.

CONTRARY TO LAW.

Criminal Case No. 20260⁴

(Violation of Section 11, Article II of R.A. 9165)

That at around 9:00 o'clock in the morning of December 5, 2010, at Barangay Poblacion, Siaton, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the herein accused, did, then and there willfully, unlawfully and feloniously possess and have in his control crystalline substance containing methamphetamine Hydrochloride, locally known as “*shabu*”, weighing zero point thirteen (0.13) grams without authority of law.

CONTRARY TO LAW.

On arraignment, appellant pleaded not guilty to both charges.⁵

During the pre-trial, both the prosecution and the defense stipulated on the trial court's jurisdiction over the case, the identity of the accused, the lack of authority of the accused to possess subject dangerous drugs, and the expert qualifications of Forensic Chemist Josephine S. Llana.⁶


During the trial, the Philippine Drug Enforcement Agency (PDEA)

³ Record, p. 38.

⁴ *Id.* at 50.

⁵ Crim Case Nos. 2010-20260 & 2010-20259, Folder, Record, pp. 69-70.

⁶ Record, p. 87.



Special Investigator 1 Claire Oledan, Police Officer 3 Jerry Magsayo and Police Officer 3 Ramon Bernard Pedeglorio testified for the prosecution. On the other hand, Lean Noel Dizon @ *Jingle* and Shiela Mae Dizon testified for the defense.

The Prosecution's Version

Sometime in late November 2010, Task Force *Kasaligan* (TFK) of Negros Oriental received information about the nefarious activities of a certain *Jingle*.⁷ According to TFK's informant, *Jingle* had a reputation of peddling illegal drugs in Barangay Dos, Siaton, Negros Oriental and was expected to sell illegal drugs during the forthcoming town fiesta.⁸

In the late afternoon of December 4, 2010, a buy bust team was formed consisting of PDEA Special Investigator 1 Claire Oledan, PDEA Information Officer 1 Julieta Amatong, NBI Special Agent Miguel Dungog, Police Officer 3 Jerry Magsayo, Police Officer 3 Ramon Bernard Pedeglorio, and Police Officer 2 Glenn Corsame. The team immediately held a briefing at the house of Agent Dungog in Siaton, Negros Oriental. There, Agent Dungog was designated as team leader, Agent Oledan as poseur-buyer, PO3 Magsayo and PO3 Pedeglorio as immediate back up, and the rest of the team as perimeter security. They marked the buy bust money of ₱500.00 bill with serial number CG519652 "TFK" or Task Force *Kasaligan*.⁹

Around 9 o'clock the following morning, December 5, 2010, Agent Oledan and the informant went to the place where *Jingle* lived. Agent Oledan positioned herself outside the gate of the residence of *Jingle* while the informant went inside. After a while, Agent Oledan saw the informant and *Jingle* coming out from the house. *Jingle* walked up to her and asked for the payment. She immediately handed the marked ₱500.00 bill to *Jingle* which the latter slid in his pocket. *Jingle* showed her two (2) sachets of suspected *shabu*, lying on his palm. He asked Agent Oledan to choose one sachet. *Jingle* readily handed her the sachet she chose, Agent Oledan slid it in her pocket and discreetly dialled the number of PO3 Magsayo to signal the consummated sale.

As soon as they heard the ringtone, PO3 Magsayo and PO3 Pedeglorio immediately closed in and pursued *Jingle* who ran toward his house. *Jingle* eventually got arrested. Agent Oledan recovered another sachet of *shabu* from *Jingle* when the latter tried to wiggle away from PO3 Pedeglorio and PO3 Magsayo.¹⁰ PO3 Pedeglorio arrested *Jingle* and informed him of his constitutional rights. PO3 Magsayo also frisked him and retrieved from his pocket the marked ₱500 bill and two (2) other ₱500 bills.¹¹

PO3 Pedeglorio marked the seized items in the makeshift nipa hut right

⁷ Court of Appeals Decision dated June 10, 2015, Records, p. 182 and p. 25.

⁸ *Id.*

⁹ TSN dated April 16, 2013, pp. 3-7; TSN dated June 11, 2013, pp.4-5.

¹⁰ TSN dated April 16, 2013, pp. 3-11.

¹¹ TSN dated May 21, 2013, p. 12.

outside *Jingle*'s house. He also initiated a partial inventory of the items. The marking and partial inventory were done in the presence of *Jingle*, two (2) Barangay Dos officials namely: Kagawad Reynaldo Sumagaysay and Santiago Saberon, Jr., and DOJ representative Nicanor Ernesto Tagle.¹² Agent Amatong took photographs of the seized items during the inventory.¹³

The buy bust team then took "*Jingle*" to the Dumaguete NBI Office where his arrest was entered in the blotter. *Jingle* identified himself as Lean Noel Dizon (appellant).

Meantime, PO3 Pedeglorio resumed the inventory at the NBI Office and asked media representative Neil Rio to sign it. PO3 Pedeglorio further prepared the request for the laboratory examination of the seized items. Agent Oledan signed for the requesting party. Agent Oledan had been in possession of the seized items the whole time. She, too, delivered them to Forensic Chemist Josephine Llana for laboratory examination.¹⁴

Per Chemistry Report No. D-155-10, Forensic Chemist Llana found the (a) heat sealed transparent plastic sachet with markings LND-BB-12-05-2010 containing 0.15 gram of white crystalline substance; and b) heat sealed transparent plastic sachet with markings LND-P-12-05-2010 containing 0.13 gram of white crystalline substance both positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.¹⁵

The prosecution offered the following documentary evidence:

1. Exhibit A – Request for Laboratory Examination dated December 5, 2010;
2. Exhibit B – Chemistry Report No. D-155-10;
3. Exhibit C – (CC 20259) One heat sealed transparent plastic sachet with markings LND-BB-12-05-2010 containing 0.15 gram of white crystalline substance;
4. Exhibit D – (CC 20260) One heat sealed transparent plastic sachet with markings LND-P-12-05-2010 containing 0.13 gram of white crystalline substance;
5. Exhibit E – Receipt of Property Seized dated December 5, 2010;
6. Exhibit F – Marked money, Php500.00 bill, with serial number CG519652;
7. Exhibit G – One piece ₱500 bill with serial number AJ726044;
- 7.1. Exhibit G-1 – One piece ₱500 bill with serial number TV251560

¹² TSN dated June 11, 2013, p. 11-13.

¹³ Record, p. 141.

¹⁴ TSN dated April 16, 2013, pp. 22-25; TSN dated June 11, 2013, pp. 12-15.

¹⁵ Crim. Case No. 20259 & 20260 Folder, Records, p. 9.

8. Exhibit H – Joint Affidavit of SI2 Ivy Claire Oledan, PO2 Ramon Pedeglorio and PO2 Jerry Magsayo;
9. Exhibit “I, I-1, I-2, I-3, I-4, I-5, I-5-a and I-6-a – Six Photographs;
10. Exhibit J – Chemistry Report No. CDT-099-10; and
11. Exhibit K – PDEA Certification dated December 6, 2010.¹⁶

The Defense’s Version

Appellant and his sister Sheila Mae Dizon testified that on December 5, 2010, around 9 o’clock in the morning, while he was standing by the gate; and Sheila, lounging at the makeshift nipa hut just outside their house, a vehicle suddenly stopped in front of them. The driver asked appellant where they could find Mark Badon. Appellant replied he did not know the person. As he turned to walk back into the house, the driver and another man rushed toward him, held his hands, and elbowed him. As a result, he fell on the ground. When he and his sister asked what was wrong, the men introduced themselves as police officers. They instructed him and his sister not to ask questions. They handcuffed and brought him to the makeshift nipa hut.¹⁷

There, PO3 Pedeglorio pulled out from his pocket two (2) sachets of *shabu* and a piece of paper. The officers warned appellant and his sister that the evidence will be used against appellant if he refused to help them. The officers then called for barangay officials and others to join them. Meantime, appellant was made to sign the piece of paper. The police officers placed money over the piece of paper beside the two (2) sachets of *shabu*. When the barangay officials, the Mayor of Siaton, Agent Dungog and his two (2) female companions arrived, they affixed their signatures to the piece of paper. While signing it, their photographs were taken.¹⁸

Thereafter, the police officers boarded appellant into the vehicle and took him to the Dumaguete NBI office. Inside the vehicle, PO3 Pedeglorio asked appellant if he would like to become their asset and buy *shabu* from a certain Brian. They assured him that if he agreed, they will no longer bring him to Dumaguete. But appellant did not agree. They then took him to the house of Agent Dungog, where he was made to eat breakfast. Agent Dungog repeated his offer which appellant again refused. Consequently, Agent Dungog instructed the team to bring him to Dumaguete.¹⁹

The team took him first to the Dumaguete NBI office, then, to the police station where his urine samples were collected. By that time, he already knew the identities of the arresting agents. Around two (2) weeks earlier, Agent Dungog already offered to utilize him as police asset. He did not file a case

¹⁶ Crim. Case No. 20259 & 20260 Folder, Record, p. 156-158.

¹⁷ *Rollo*, pp. 10-11; TSN dated July 24, 2013, pp. 3-6.

¹⁸ TSN dated July 24, 2013, pp. 6-8.

¹⁹ *Rollo*, pp. 11-12; TSN dated July 24, 2013, pp. 8-15.

against the police because he did not have money.²⁰

The defense did not offer any documentary evidence.

The Trial Court's Ruling

By Joint Judgment²¹ dated August 23, 2013, the trial court found appellant guilty of both cases, viz:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 20259, the accused Lean Noel Dizon @ "Jingle" is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.15 gram of *shabu* in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "LND-BB 12-05-2010" containing 0.15 gram of *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 20260, the accused Lean Noel Dizon @ "Jingle" is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.13 gram of *shabu* in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as a minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

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The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for allegedly disregarding the infirmities which attended the supposed buy bust operation, viz: a) his warrantless arrest was invalid because he was not doing anything unlawful when he got arrested; b) there were discrepancies in the markings appearing on the seized items; c) the Receipt of Property Seized did not bear any certification; d) he was made to sign the Receipt of Property Seized, without assistance of counsel; e) NBI Special Agent Tagle who signed as DOJ representative was a biased witness because he was part of the buy bust team; f) the identity of the buyer was not established because Agent Oledan who purportedly acted as poseur-buyer was not a police officer; and g) the informant did not testify in court.²²

Appellant also faulted the trial court for finding him guilty of alleged

²⁰ *Id.*

²¹ Crim. Case No. 20259 & 20260, Folder, Record, pp. 181-195.

²² CA rollo, pp. 59-60.

sale and possession of illegal drugs, albeit, the prosecution failed to establish the identity of the buyer and the identity of the prohibited drugs or the *corpus delicti*.²³

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor Sarah Jane Fernandez²⁴ and Associate Solicitor Giancarlo Yuson, countered, in the main: a) appellant was validly arrested in flagrante delicto during a buy-bust operation; and b) the integrity and evidentiary value of the seized drugs from appellant had been preserved.²⁵

The Court of Appeals' Ruling

By Decision²⁶ dated June 10, 2015, the Court of Appeals affirmed. It found that the prosecution had adequately and satisfactorily proved the elements of illegal sale of shabu and illegal possession of shabu. It also found that the chain of custody of the seized items was not broken. There was proof of the continuous whereabouts of the exhibits from the time it came into possession of the arresting officers, until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.²⁷

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal. In compliance with Resolution dated December 7, 2016, the OSG manifested that, in lieu of supplemental brief, it was adopting its appellee's brief before the Court of Appeals.²⁸ As for appellant, he failed to file his supplemental brief within the thirty (30) day period granted for the purpose, hence, the Court deemed that in lieu of supplemental and appeal brief, he too, was adopting its appeal brief before the Court of Appeals.

Issues

First. Was appellant's warrantless arrest, including the incidental search of his person valid?

Second. Is the informant's testimony indispensable to a successful prosecution for illegal sale of drugs?

Third. Was Agent Tagle who witnessed the inventory, a member of the buy bust team, hence, considered a biased witness?

²³ *Id.*

²⁴ Now Associate Justice of the Sandiganbayan.

²⁵ *CA rollo*, pp. 108-125.

²⁶ *Rollo*, pp. 4-31, See also *CA rollo*, pp. 169-196.

²⁷ *Rollo*, pp. 17-30.

²⁸ *Id.* at 47.

Fourth. Was the chain of custody rule complied with?

Ruling

Appellant's warrantless arrest including the incidental search was valid.

Appellant first assails his warrantless arrest including the incidental search made on his person. On this score, Section 5 of Rule 113 of the Rules on Criminal Procedure states:

Sec. 5 *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

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Appellant was caught in *flagrante delicto* selling *shabu* during a buy bust operation. **People v. Rivera**²⁹ reiterated the rule that warrantless arrest made during an entrapment operation including the search done incidental thereto was valid pursuant to Section 5(a) of Rule 113 of the Rules on Criminal Procedure.

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anyone inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.³⁰ So must it be.

The testimony of the informant is not necessary to a successful prosecution for illegal sale of dangerous drugs.

Appellant further asserts that for not presenting the informant's testimony, the prosecution may not be deemed to have proved his guilt of the offense charged.

The argument must fail. In **People v. Tripoli**,³¹ the Court found that the informant in that case was not presented in court for security reasons, as there

²⁹ 790 Phil. 770, 779-780 (2016).

³⁰ *Id.*

³¹ 810 Phil. 788, 796 (2017).

was a compelling need to protect the informant from possible retaliation of the accused who got arrested through the informant's efforts. The informant's identity should be kept in confidence in deference to his invaluable service to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the accused should the need to protect his security be disregarded.³²

The prosecution here did not find the need to expose the informant's identity for the purpose of proving the case of the People.

There was no proof that DOJ representative Agent Tagle was a member of the buy bust team.

As for the alleged bias of DOJ representative Agent Tagle who witnessed the inventory of the seized items, appellant's bare allegation that the former was a member of the buy bust team, hence, should be deemed a biased witness is devoid of probative weight. A bare allegation is not evidence.

The Court may review the arresting team's compliance with the chain of custody rule although appellant has not raised it here as an issue.

The Court now reckons with the core issue in every indictment for illegal sale or possession of dangerous drugs: Was the chain of custody rule duly complied with? Indeed, compliance with the chain of custody rule determines the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of appellant's liberty. Although appellant himself has not raised this issue here or even below, the Court is not deterred from taking cognizance thereof. The Court can even examine the case records if only to ascertain whether the procedure had been completely complied with, and if not, whether good reasons exist to excuse any deviation therefrom. This conforms with the rule that appeal in a criminal case throws the entire case open for review.


In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed or sold by the accused is the same substance presented in court.³³

To ensure the integrity of the seized drugs, the prosecution must account for each link in its chain of custody:³⁴ ***first***, the seizure and marking

³² *Id.*

³³ *People vs. Barte*, 806 Phil. 533, 542 (2017).

³⁴ As defined in Section 1(b) of Dangerous Drug Board Regulation No. 1, Series of 2002.



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.³⁵

This is the chain of custody rule. It emerged as a potent safeguard against any possible tampering, alteration, or substitution either by accident or otherwise the usually indistinct and not readily identifiable form of illegal drugs.³⁶

The Information here alleged that appellant committed the offenses on December 5, 2010. The applicable law, therefore, is RA 9165 before its amendment under RA 10640.

Section 21 of RA 9165 bears the prescribed procedure in preserving the *corpus delicti* in illegal drugs cases, *viz*:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending 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. (Emphasis supplied)

The Implementing Rules and Regulations of RA 9165 supplements the aforequoted provision:

- (a) The apprehending 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

³⁵ *People v. Dahil*, 750 Phil. 212, 231 (2015).

³⁶ *People vs. Hementiza*, 807 Phil. 1017, 1026 (2017).

preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Underscoring supplied)

We now focus on the physical inventory and photograph of the seized drugs. The law and the rules require the same to be immediately done after seizure, in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official. Agent Oledan testified:

Q : After the marking of these two exhibits, Ms. Witness, what happened next?

A : After that, we waited for the witnesses to arrive to witness the inventory, ma'am.

Q : Where did you wait?

A : In the house of Jingle, ma'am.

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Q : And did these witnesses arrive?

A : Yes, ma'am.

Q : What happened when they arrived?

A : The elected officials arrived and witnessed the inventory, ma'am.

Q : Okay, this inventory that you mentioned, was this in writing?

A : Yes, ma'am.

Q : Who wrote this inventory?

A : It was Police Officer Pedeglorio, ma'am.

Q : Did you also sign this inventory that you mentioned, Ms. Witness?

A : Yes, ma'am.

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Q : Who else signed this inventory, as you said, the open hut in front of the house (sic) of this certain Jingle, Ms. Witness?

A : The team leader, former Agent Miguel Dungog, the two (2) barangay kagawads who arrived, ma'am, and Agent Tagle.

Q : Where were you when these witnesses arrived?

A : I was there, ma'am, right in the hut.³⁷

PO3 Pedeglorio likewise testified:

Q : Who were present during the conduct of the inventory, Mr. Witness?

A : During the inventory, ma'am, two (2) barangay officials arrived then the accused was also present during the inventory, ma'am.

Q : Aside from the barangay officials, who else arrived, Mr. Witness?

A : Later, ma'am, Ernesto Tagle from the NBI also arrived.

Q : Where was the inventory conducted?

A : Outside the residence of the accused, ah, the suspect, ma'am.³⁸

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Q : You also mentioned that one person, the media man, did not sign at that instance, Mr. witness, where did he sign?

A : He signed at the NBI office, ma'am.

Q : Who was this media personnel?

A : Mr. Neil Rio, ma'am.

³⁷ TSN dated April 16, 2013, pp. 18-20.

³⁸ TSN dated June 11, 2013, p. 11.

- Q : Who assisted him in the continuation of the inventory at the NBI Office?
- A : Me, ma'am, I was the one.³⁹

Both witnesses confirmed that the required inventory and photograph were done at the place of arrest and in the presence of elected officials Reynaldo Sumagaysay and Santiago Saberon, Jr. and DOJ representative Agent Ernesto Tagle. One (1) required witness though was missing: a representative from media. Absence of one of the required witnesses is already a breach of the chain of custody rule.

In **People v. Seguinte**,⁴⁰ the Court acquitted the accused because the prosecution's evidence was bereft of any showing that a representative from the DOJ was present during the inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegations of frame up.

Although PO3 Pedeglorio testified that media representative Neil Rio came later to the NBI Dumaguete Office and affixed his signature to the inventory, the same, however, did not cure the incipient breach. He was not mentioned as one of those present at the place of arrest who actually witnessed the inventory. In **People vs. Acabo**⁴¹ the Court acquitted the accused because there was a deviation from the witness requirement as the conduct of the inventory and photograph was not witnessed by the DOJ while the media representative merely signed the certificate of inventory but did not actually witness the inventory and photograph of the seized items. The Court reiterated that the law requires the presence of these witnesses primarily to ensure that the chain of custody has been duly established, and thus remove any suspicion of switching, planting, or contamination of evidence.

We have clarified, that a perfect chain may be impossible to obtain at all times because of varying field conditions.⁴² In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.⁴³ The prosecution, however, offered no explanation why media representative Rio did not witness the first part or the second part of the inventory. He was only asked to affix his signature to the inventory itself. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the provision "so long as the integrity and evidentiary value of the seized items are properly preserved", will not come into play. **People vs. Año**⁴⁴ is instructive:

³⁹ TSN dated June 11, 2013, p. 14.

⁴⁰ G.R. No. 218253, June 20, 2018.

⁴¹ G.R. No. 241081, February 11, 2019 citing *People v. Bangalan*, G.R. No. 232249, September 3, 2018.

⁴² See *People v. Abetong*, 735 Phil. 476 (2014).

⁴³ See Section 21 (a), Article II, of the IRR of RA 9165.

⁴⁴ G.R. No. 230070, March 14, 2018.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.⁴⁵ In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 1064030- provide that non-compliance with the requirements of Section 21, Article II of RA 9165 - under justifiable grounds - will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.⁴⁶ In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does 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 justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁴⁷ In *People v. Almorfe*,⁴⁸ the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*,⁴⁹ it was emphasized 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.

As heretofore shown, the chain of custody here had been seriously violated. We cannot therefore consider the identity and integrity of the seized drug items to have been preserved. Hence, appellant must be acquitted as a matter of right.

Finally, prosecution witness Agent Oledan confirmed that appellant signed the Certificate of Inventory of the seized items. There was no showing, however, that appellant was even notified of his right to counsel or the right not at all to sign the Certificate of Inventory, thus:

- Q : Madam Witness, in the Certification of Inventory, I am just curious of a signature on a blank, (sic) the space provided for counsel/representative of accused, since you said that you were there, whose signature is this, Madam Witness?
- A : I cannot recall the person who signed for the blank portion, sir.
- Q : You also said, Madam Witness, that in the Certificate of Inventory, you also said that the accused signed the Certificate of Inventory, am I correct?
- A : Yes, sir.
- Q : And this is the signature of the accused, am I correct?

⁴⁵ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

⁴⁶ Section 21 (a), Article II, of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 07, 2017, 834 SCRA 613, 624-625.

⁴⁷ See *People v. Goco*, 797 Phil. 433, 443 (2016).

⁴⁸ 631 Phil. 51, 59 (2010).

⁴⁹ 630 Phil. 637, 649 (2010).

- A : Yes, the received (sic) copy marked as Exhibit "E-8".
Q : The one who wrote the received copy is not the accused but a member of your arresting team, am I correct?
A : I cannot recall, sir.⁵⁰

People v. Del Castillo⁵¹ is apropos, viz:

The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent; it is also an *indicium* of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

Assuming *arguendo* that appellant did waive her right to counsel, such waiver must be voluntary, knowing and intelligent. To insure that a waiver is voluntary and intelligent, the Constitution requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused. There is no such written waiver in this case, much less was any waiver made in the presence of the counsel since there was no counsel at the time appellant signed the receipt. Clearly, appellant affixed her signature in the inventory receipt without the assistance of counsel which is a violation of her right under the Constitution.⁵²

Here, appellant was not apprised of his right to counsel nor his right not to sign at all the certificate of inventory of the seized items. Neither was he shown that to have waived his right to counsel in writing. On the strength of *Del Castillo* vis-à-vis the flagrant violation of appellant's right to counsel, appellant should be acquitted.

For perspective, in cases involving illegal possession of dangerous drug, even for the most miniscule amount, imprisonment of at least twelve years and one day awaits violators. It is thus of utmost importance that the safeguards against abuses of power in the conduct of drug-related arrests be strictly implemented. The purpose is to eradicate wrongful arrests and, worse, convictions. The pernicious practice of switching, planting or contamination of the corpus delicti under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.⁵³

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated June 10, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01728, is **REVERSED AND SET ASIDE**. "Jingle" Lean Noel Dizon is **ACQUITTED** of violations of Section 5 and Section 11, Article II of Republic Act 9165.

⁵⁰ TSN dated April 16, 2013, p. 32.

⁵¹ 482 Phil. 828, 851 (2004).

⁵² *Id.*

⁵³ *Largo v. People*, G.R. No. 201293, June 19, 2019 citing *People v. Luna*, G.R. No. 219164, March 21, 2018


The Court further **DIRECTS** the Director of the Bureau of Corrections, a) to cause the immediate release of Lean Noel Dizon from custody unless he is being held for some other lawful cause; and b) to inform the Court of the action taken within five days (5) from notice.

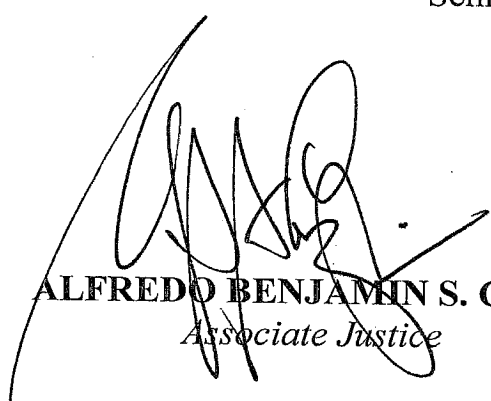
Let entry of judgment be issued immediately.

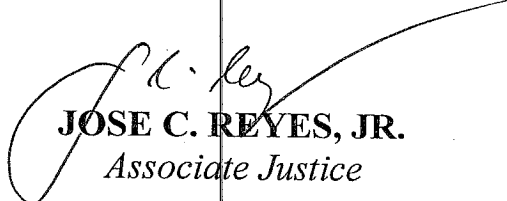
SO ORDERED.

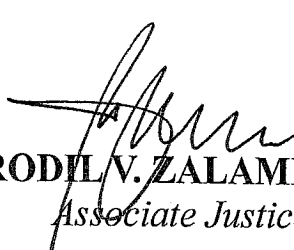

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

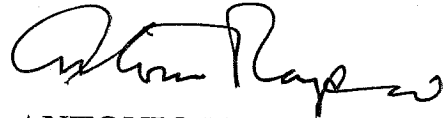

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

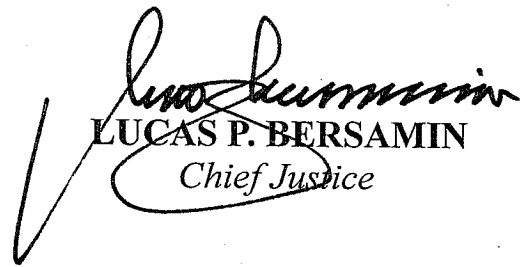
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above 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