



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** which reads as follows:*

**“G.R. No. 248992 – ALEX SILVESTRE y DELA CRUZ, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.**

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision<sup>1</sup> dated August 30, 2018 (assailed Decision) and Resolution<sup>2</sup> dated August 20, 2019 of the Court of Appeals, Special Fifteenth Division (CA) in CA-G.R. CR No. 40273, which affirmed the Decision<sup>3</sup> dated May 31, 2017 rendered by the Regional Trial Court of Manila, Branch 42 (RTC) in Criminal Case No. 16-325617, finding petitioner Alex Silvestre y Dela Cruz (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (R.A.) 9165,<sup>4</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended. The Court acquits petitioner for failure of the prosecution to prove his guilt beyond reasonable doubt.

In cases involving dangerous drugs, the prosecution has the burden to prove compliance with the chain of custody requirements under Section 21, Article II of R.A. 9165, to wit: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or

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<sup>1</sup> *Rollo*, pp. 34-44. Penned by Associate Justice Mario V. Lopez (now a Member of this Court) and concurred in by Associate Justices Carmelita Salandanan Manahan and Ronaldo Roberto B. Martin.

<sup>2</sup> *Id.* at 46-50.

<sup>3</sup> *CA rollo*, pp. 52-61. Penned by Presiding Judge Dinnah C. Aguila-Topacio.

<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 on June 7, 2002.

counsel, (b) an elected public official, (c) a representative from the media or the National Prosecution Service, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within 24 hours from confiscation for examination.<sup>5</sup>

The preservation of the integrity and identity of the *corpus delicti* requires strict compliance with the foregoing requirements, otherwise *the crime of the illegal sale and illegal possession of dangerous drugs may not be established beyond reasonable doubt*.<sup>6</sup> Only by such strict compliance can grave mischiefs of planting, switching and contamination of evidence be ruled out and the legitimacy of the buy-bust operation be established. In other words, non-compliance with Section 21 is tantamount to a failure to establish an essential element of the crime; and will therefore result in the acquittal of an accused.<sup>7</sup>

The crucial and unjustified departures from the prescribed procedure under Section 21 of R.A. 9165 are fatal to the prosecution's case, and ultimately prevented the prosecution from establishing petitioner's guilt beyond reasonable doubt.

*First*, the apprehending police officers in the instant case did not comply with the requirement pertaining to where and when the marking, inventory, and photographing of the seized drugs should be conducted. In a plethora of cases, including *People v. Dahil*,<sup>8</sup> *People v. Bartolini*,<sup>9</sup> *People v. Villarta*,<sup>10</sup> *People v. Marcelo*,<sup>11</sup> *Largo v. People*,<sup>12</sup> and *People v. Castillo*,<sup>13</sup> the Court ruled that marking, as the starting point in the custodial link, must be made immediately upon confiscation because succeeding handlers of the seized specimens will use the markings as reference. Immediate marking is indispensable as it ensures that the illegal drug confiscated from the accused is the same as the one subjected to inventory and photographing and later on presented in court as evidence of the *corpus delicti*. In these cases, the Court acquitted the accused on reasonable doubt, because the apprehending police officers failed to comply with the foregoing requirements of Section 21. More specifically, the apprehending police

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<sup>5</sup> *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, 888 SCRA 604, 618-619.

<sup>6</sup> See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500-501.

<sup>7</sup> *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 496.

<sup>8</sup> 750 Phil. 212 (2014).

<sup>9</sup> G.R. No. 215192, July 27, 2016, 798 SCRA 711.

<sup>10</sup> G.R. No. 217887, March 14, 2018, 859 SCRA 193.

<sup>11</sup> G.R. No. 228893, November 26, 2018, 887 SCRA 97.

<sup>12</sup> G.R. No. 201293, June 19, 2019, 905 SCRA 1.

<sup>13</sup> G.R. No. 238339, August 7, 2019.

WA



- Q Upon arrival [at] the police station, what happened next?
- A We are still waiting for the media representative, ma'am.
- Q And what time did Mr. Danny Garendola [arrive] in the police station?
- A I cannot recall, I cannot estimate or may[be] 7:30 [p.m.]
- Q **And that what was the time you marked the evidence?**
- A **Yes, ma'am.**
- Q **After the [lapse] of three (3) hours?**
- A **Yes.<sup>16</sup>**

*Second*, the apprehending police officers miserably failed to comply with the requirement of the presence of the required insulating witnesses during the marking, inventory, and photographing. In a consistent line of cases, including *People v. Mendoza*,<sup>17</sup> *People v. Reyes*,<sup>18</sup> *People v. Sagana*,<sup>19</sup> *People v. Calibod*,<sup>20</sup> *People v. Tomawis*,<sup>21</sup> *Hedreyda v. People*,<sup>22</sup> *People v. Sta. Cruz*,<sup>23</sup> *Tañamor v. People*,<sup>24</sup> *People v. Arellaga*,<sup>25</sup> and *People v. Casilag*,<sup>26</sup> this Court has repeatedly emphasized that the presence of all the required witnesses at the time of the inventory and photography is mandatory, and the law imposes the said requirement because their presence serves to protect against the possibility of planting, switching, contamination or loss of the seized drugs. The presence of these disinterested witnesses would belie any doubt as to the source, identity, and integrity of the seized illicit drugs.

In the instant case, by PO2 Medrano's own testimony, only the representative of the media was present:

- [SACP MENDOZA:] Is it not that you should do the marking in the place of the incident?
- [PO2 Medrano:] The place became unfriendly at that time, Sir.

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<sup>16</sup> Id. at 7-8. Emphasis supplied.

<sup>17</sup> 736 Phil. 749 (2014).

<sup>18</sup> G.R. No. 199271, October 19, 2016, 806 SCRA 513.

<sup>19</sup> 815 Phil. 356 (2017).

<sup>20</sup> G.R. No. 230230, November 20, 2017, 845 SCRA 370.

<sup>21</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131.

<sup>22</sup> G.R. No. 243313, November 27, 2019.

<sup>23</sup> G.R. No. 244256, November 25, 2019.

<sup>24</sup> G.R. No. 228132, March 11, 2020.

<sup>25</sup> G.R. No. 231796, August 24, 2020.

<sup>26</sup> G.R. No. 242159, February 5, 2020.

*WAB*

- Q And what happened next?  
A We proceeded to the police station 4, Sampaloc, Sir.
- Q **What happened when you reached station 4?**  
A **We presented to PO3 Parajado the investigator on case so that he could contact the media to witness the inventory and marking of the evidence, sir.**
- Q **Was there [a] Media Representative?**  
A **Yes, sir. Mr. Danny Garendola came.**
- Q **Aside from Mr. Garendola who witness[d] the inventory, who else?**  
A **The suspect also[,] me and Magbitang, sir.**
- Q **It was inventoried in the Police Station?**  
A **Yes, sir.<sup>27</sup>**

The CA here was in clear error when it stated<sup>28</sup> that nowhere in the rules is it required that all the insulating witnesses must be present during the procedure they are meant to insulate. This is plainly contrary to both the categorical requirement provided by R.A. 9165, as amended, its Implementing Rules and Regulations (IRR), as well as this Court's consistent ruling on this requirement in a long string of cases.

Following the aforesaid cases, herein petitioner should perforce be acquitted because the apprehending police officers in this case also failed to substantially comply with the mandatory requirements of Section 21.

While jurisprudence provides that strict compliance with the requirements of Section 21 is not always possible given the wide range of varying field conditions, the IRR of R.A. 9165 nonetheless state that "non[-]compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the

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<sup>27</sup> Supra note 15, at 4. Emphasis supplied.

<sup>28</sup> *Rollo*, p. 41, where the CA stated:

"The absence of an elected public official during the inventory and marking of the evidence does not render its seizure void. To be sure, the rules do not state that the representative from the media, the Department of Justice (DOJ), and any elected public official should all be present during the inventory, lest the evidence will be inadmissible. The presence of a media representative, the police officers, and the appellant himself is sufficient to ensure that the proper procedure is observed and that the rights of the appellant are safeguarded."

*mt*

seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.”

Thus, for this saving clause to apply, the prosecution needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>29</sup>

In the present case, the prosecution failed to establish any justifiable ground for the apprehending police officers’ failure to comply with the requirements of Section 21. The submission that the marking was not conducted at the site of seizure because the immediate environment “became unfriendly” is too general or crude, at best, and does not suffice to excuse the apprehending police officers from complying with Section 21 in this respect.

The failure of the prosecution to justify or explain the apprehending police officers’ non-compliance in this case further underscores the doubt and suspicion about the legitimacy of petitioner’s arrest, and the integrity of the evidence of the *corpus delicti* allegedly confiscated from him.

Moreover, contrary to the findings of the RTC and the CA, the prosecution failed to establish an unbroken chain of custody of the seized illicit drugs. To establish an unbroken chain of custody, “it is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness’ possession; its condition when received and at the time it was delivered to the next link in the chain.”<sup>30</sup>

This requirement was, however, not shown to have been complied with in this case. What the records do show is that the prosecution failed to prove that the identity and integrity of the seized items were preserved. Contrarily, and once more, PO2 Medrano’s testimony was particularly revealing of the slipshod way with which the seized item was handled, not in the least through “turn-overs” that were improperly documented, which made it unclear as to whether it was him or Police Officer 3 Henry Parajado (PO3 Parajado) who finally turned the seized item over to the crime laboratory for analysis:

[SACP MENDOZA:]  
[PO2 Medrano:]

What did you do with the evidence?  
I kept it before it was brought to the  
crime lab office, sir.

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<sup>29</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613.

<sup>30</sup> *People v. Gajo*, G.R. No. 217026, January 22, 2018, 852 SCRA 274, 287.

Q Did you not turn [over] to the investigator?

A **I turned over to PO3 Parajado, and he turned over to me before he turned over to the crime lab, sir.**<sup>31</sup>

Finally, the Court finds that both the trial court and CA unexplainably failed to see the apprehending police officers' palpable derogation of Section 21. It equally escapes the Court how the lower courts could have still relied wholesale on the presumption of regularity in the performance of official duty in favor of said apprehending officers. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.<sup>32</sup> More importantly, the presumption of regularity in the performance of duty, a mere rule of evidence, cannot overcome the presumption of innocence in favor of the accused guaranteed by no less than our Constitution.<sup>33</sup>

The blatant and unjustified breaches of procedure committed by the apprehending police officers in the seizure, custody, and handling of the seized drug in this case create more than reasonable doubt on the guilt of petitioner. The prosecution in this case failed to guarantee the integrity of the *corpus delicti*, and instead counted almost solely on the self-serving assurances of the apprehending police officers. Thus, absent any proof beyond reasonable doubt of the *corpus delicti* of the crime charged, the presumption of petitioner's innocence must be upheld.

To be sure, the Court recognizes that the instant case involves a warrantless drug arrest not in relation to a buy-bust operation. However, the Court also recognizes that this remains a drug-related prosecution, which nevertheless triggers the more watchful safeguards raised by R.A. 9165 and its relevant rules. This, after all, is still a case where the very *corpus delicti*, its integrity and identity, spells the difference between the accused's innocence and guilt. Most certainly, other situations of drug-related arrests may admit of substantial compliance, but in no way should the requirements under Section 21, R.A. 9165 be so slackened as to completely erode the core safeguards that any and all drug cases call for.

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<sup>31</sup> Supra note 15, at 5. Emphasis supplied.

<sup>32</sup> Id.

<sup>33</sup> *People v. Escaran*, G.R. No. 212170, June 19, 2019, 905 SCRA 86, 108.


**WHEREFORE**, the instant appeal is hereby **GRANTED**. The Decision dated August 30, 2018 and Resolution dated August 20, 2019 of the Court of Appeals, Special Fifteenth Division, in CA-G.R. CR No. 40273, are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Alex Silvestre y Dela Cruz is **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished the Superintendent of New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken.

The letter dated October 5, 2020 of Ms. Jane Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, in compliance with the Resolution dated June 23, 2020, transmitting the rolo of CA G.R. CR No. 40273 with 151 pages, one (1) folder of original record, one (1) folder of transcript of stenographic notes, and one (1) envelope abstract, is **NOTED**.

**SO ORDERED.”**

**By authority of the Court:**

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

by:

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