



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 June 2021** which reads as follows:*

“G.R. No. 253653 (*People of the Philippines v. Joel Nazareno y Paulo*). –

Appellant waived his right to assail the validity of his warrantless arrest

On appellant Joel Nazareno y Paulo’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.¹ 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 he or she voluntarily submits to the jurisdiction of the trial court.² The accused’s voluntary submission to the jurisdiction of the court and his or her active participation during the trial cures any defect or irregularity that may have attended his or her arrest.³

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

¹ See *Lapi v. People*, G.R. No. 210731, February 13, 2019.

² *People v. Alunday*, 586 Phil. 120, 133 (2008).

³ See *People v. Bacla-an*, 445 Phil. 729, 748 (2003).

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 the accused though to timely object to the illegality of his arrest does not preclude him or her from questioning the admissibility of the evidence seized as an incident of the warrantless arrest.⁴ Its inadmissibility is not affected when the accused fails to timely question the court's jurisdiction over his or her person. Jurisdiction over the person of the accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.⁵

*The chain of
custody was
broken*

Appellant was indicted for illegal sale and possession of dangerous drugs allegedly committed on January 27, 2018. Thus, the applicable law is Republic Act No. 9165 (RA 9165), as amended by Republic Act No. 10640. Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, to wit:

X X X X

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *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

⁴ See *Homar v. People*, 768 Phil. 195, 209 (2015).

⁵ *Sapi v. People*, 810 Phil. 642, 654 (2017).

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

x x x x

The Implementing Rules and Regulation (IRR) of RA 9165 further mandates:

x x x x

Section 21. (a) 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: x x x 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; (Emphasis supplied)

x x x x

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.⁶ 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.⁷ The saving clause under Section 21(a), Article II, RA 9165 IRR 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.⁸

Generally, there are four (4) 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.⁹

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, the physical inventory and taking of photograph of the seized items should be done in the presence of the accused or his/her representative or counsel, together with an elected public official and a representative of the Department of Justice (DOJ) or the media.

⁶ See *People v. Barte*, 806 Phil. 533, 542 (2017).

⁷ See *People v. Dumagay*, 825 Phil. 726, 739 (2018).

⁸ *People v. Frias*, G.R. No. 234686, June 10, 2019.

⁹ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

Here, the first link of the chain of custody rule was breached. According to the prosecution, the inventory was done at the Barangay Hall of Barangay Tagumpay, Project 4, Quezon City, in the presence of Barangay Kagawad Ma. Relita Borac only. Police Senior Inspector Noel Victorino Magante (PSI Magante) claimed to have called his contacts from the media and the DOJ, but no one supposedly responded.

In *People v. Ferma, Jr.*,¹⁰ the Court acquitted Romero Ferma, Jr. y Viado because only a barangay official witnessed the inventory, thus:

Here, the first link of the chain of custody had already been breached early on. **Based on the testimonies of the prosecution witnesses, the inventory was done at the barangay hall of Barangay Carmona, Makati City and only in the presence of Barangay Captain Joselito Salvador. The prosecution acknowledged that the arresting officers were not able to secure the presence of a representative of either the DOJ or the media as required by RA 9165, as amended. The prosecution though reasoned that it was so because the arresting officers did not have the contact numbers of said representatives.** (Emphasis supplied)

Likewise, in *Flores and Sarmiento v. People*,¹¹ the Court acquitted Jhany Flores y Cabrerros and Leonardo Sarmiento y Tupasi because only a barangay kagawad was present during the inventory of the seized items. Neither a representative from the DOJ nor the media was present.

The Court has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory. Under the law, the presence of the insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself – the very prohibited substance itself – and for that reason imperils the prosecution's case.¹²

Anent the **second link**, the prosecution proved that Police Officer I Roderick Furuc (PO1 Furuc) was in possession of the seized illegal drugs from the time it was recovered from appellant up until he reached the police station. He submitted the seized items to Senior Police Officer 2 Edgardo Sanchez for recording and to Police Officer I Reynaldo Nicdao for investigation.

As for the **third link**, PO1 Furuc brought the specimens to the QCPD crime laboratory where the same were received by Forensic Chemist Police Chief Inspector Anamelisa Bacani (PCI Bacani), who in turn, did a qualitative examination thereon. The results showed that the specimens tested positive for *Methamphetamine Hydrochloride*. Thereafter, PCI Bacani marked the plastic sachets and placed them inside a transparent plastic bag sealed with tape. She also marked the sealed plastic bag and turned it over to Police Officer I Junia Tuccad (PO1 Tuccad), the evidence custodian.

¹⁰ G.R. No. 249259, January 13, 2021.

¹¹ G.R. No. 247635, December 9, 2020.

¹² *People v. Manansala*, G.R. No. 229509, July 03, 2019.

The **fourth link**, however, was not accounted for. The **fourth link** involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.¹³ Here, there is no information on how PCI Bacani safeguarded the seized items after the examination until they were presented in court.

True, failure to strictly comply with rules of procedure does not *ipso facto* invalidate or render void the seizure and custody over the items so long as the prosecution is able to show that “(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”¹⁴ Here, there is no justifiable reason why the police failed to secure the presence of either a representative from the DOJ or media to complement the barangay kagawad. Additionally, the unexplained breach of the fourth link doubly casts doubt on the integrity and evidentiary value of the seized items.

Indeed, strict adherence to the chain of custody rule must be observed, that is, the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-à-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.¹⁵ Surely, the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.¹⁶ Here, the presumption was overturned by compelling evidence on record of the breach of chain of custody rule.

We thus find that the prosecution utterly failed to 1) prove the *corpus delicti* of the crime especially since the amount involved in this case is minuscule, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives;¹⁷ (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the Chain of Custody Rule was not complied with. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 18, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10877 is **REVERSED AND SET ASIDE**. Appellant Joel Nazareno y Paulo is **ACQUITTED** of violations of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. R-QZN-18-01009-CR and Section 11, Article II of Republic Act No. 9165 in Criminal Case No. R-QZN-18-01010-CR.

¹³ *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

¹⁴ *Supra* note 7.

¹⁵ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

¹⁶ See *People v. Cabiles*, 810 Phil. 969, 976 (2017).

¹⁷ *People v. Pagsigan*, G.R. No. 232487, September 03, 2018, 878 SCRA 545, 562.

June 16, 2021

The Director of the Bureau of Corrections is **ORDERED** to (a) immediately release Joel Nazareno y Paulo from custody unless he is being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of final judgment be issued immediately.

SO ORDERED.” (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

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OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

JOEL NAZARENO y PAULO (x)
Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

THE SUPERINTENDENT (x)
New Bilibid Prison
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 79
Quezon City
(Crim. Case Nos. R-QZN-18-01009-CR &
R-QZN-18-01010-CR)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 10877

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