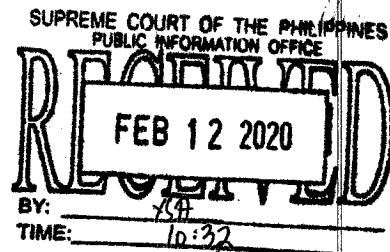




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **27 November 2019** which reads as follows:

G.R. No. 242033 (Jefferson Javier y Estilloso v. People of the Philippines)

Before this Court is a petition for review on *certiorari*¹ seeking to reverse and set aside the Decision² dated March 22, 2018 and the Resolution³ dated September 11, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39928 which affirmed the Decision⁴ dated April 5, 2017 of the Regional Trial Court of Vigan City, Ilocos Sur, Branch 20 (RTC) in Criminal Case No. 7229-V-2013 finding petitioner Jefferson Javier y Estilloso (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

This case stemmed from an Information⁶ filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that at around 3 o'clock in the afternoon of July 26, 2013, the Municipal Police Station of Bantay, Ilocos Sur implemented a buy-bust operation against petitioner, then a policeman with a rank of Police Officer 1. However, before the buy-bust sale was consummated through petitioner's act of handing over a plastic sachet containing white crystalline substance to the poseur-buyer, Senior Police Officer 1 Miguel Pigao (SPO1 Pigao), he recognized the latter as a policeman, thus prompting him to bring back the plastic sachet into his belt bag.⁷ Immediately thereafter, the rest of the buy-bust team swooped in to the scene, arrested petitioner, and searched his body and his belt bag, which yielded, *inter alia*, two (2) plastic sachets containing suspected *shabu* and one (1) metal box containing suspected

¹ *Rollo*, pp. 39-58.

² *Id.* at 61-84. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring.

³ *Id.* at 90-93. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Myra V. Garcia-Fernandez and Rafael Antonio M. Santos, concurring.

⁴ *Id.* at 97-120. Penned by Presiding Judge Marita Bernales Balloquing.

⁵ 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.

⁶ See *rollo*, pp. 12-13.

⁷ See *id.* at 15.

cc/ra

dried *marijuana* leaves and fruiting tops.⁸ The prosecution then claimed that after an inventory was conducted in the presence of petitioner and the buy-bust team, petitioner and the seized items were taken to the police station. Thereat, the necessary documentation was prepared and thereafter, the seized items were taken to the crime laboratory where, after qualitative examination, the contents of the seized plastic sachets and the metal box tested positive for *shabu* and *marijuana*, respectively.⁹

In his defense, petitioner denied the charges against him, claiming instead that he was set up by his co-policemen. He narrated that on the day he was arrested, the Chief of Police instructed him to look for a drug personality in Vigan. When the said personality could not be found, petitioner was directed to go to Bantay Arcade where he was met by his fellow police officers. Moments later, they pulled and confiscated his belt bag, insisting that it contained illegal drugs. He was then brought to the Bantay Police Station where they showed him his belt bag containing *marijuana* and *shabu*.¹⁰

In a Decision¹¹ dated April 5, 2017, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, without subsidiary penalty in case of insolvency, and a fine in the amount of ₱300,000.00.¹² It ruled that the prosecution proved with moral certainty all the elements of the crime charged.¹³ Likewise, the prosecution was able to establish the identity and evidentiary value of the *corpus delicti*, as it was shown that the confiscated items were properly marked, preserved, and brought to the court.¹⁴ Aggrieved, petitioner appealed¹⁵ to the CA.

In a Decision¹⁶ dated March 22, 2018, the CA affirmed petitioner's conviction with modification, sentencing him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, without subsidiary penalty in case of insolvency, and a fine in the amount of ₱300,000.00.¹⁷ Ultimately, it upheld the validity of petitioner's arrest and the illegal drugs' seizure despite the police officers' failure to conduct the requisite photo taking, not to mention their failure to secure the presence of a representative from the media and the Department of Justice (DOJ) and an elected public official during the conduct of inventory, considering that the

⁸ See *id.*

⁹ See *id.* at 16-18.

¹⁰ See *id.* at 18-20.

¹¹ *Id.* at 97-120.

¹² *Id.* at 119-120.

¹³ See *id.* at 115-118.

¹⁴ See *id.* at 118-119.

¹⁵ Copy of the appeal is not attached to the *rollo*.

¹⁶ *Rollo*, pp. 61-84.

¹⁷ *Id.* at 83.

integrity and evidentiary value of the seized drugs were nonetheless preserved.¹⁸

Undaunted, petitioner filed a motion for reconsideration,¹⁹ which was denied in a Resolution²⁰ dated September 11, 2018; hence, this petition that petitioner's conviction be overturned.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,²¹ 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.²² Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²³

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.²⁴ 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. In this regard, case law recognizes that “[m]arking upon immediate confiscation contemplates even marking at the nearest police

¹⁸ See *id.* at 75-80.

¹⁹ Dated April 17, 2018. *Id.* at 85-89.

²⁰ *Id.* at 90-93.

²¹ 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, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

²² See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.* at 370; *People v. Miranda*, *id.* at 53; and *People v. Mamangon*, *id.* at 313. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²³ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁴ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 21; *People v. Sanchez*, *supra* note 21; *People v. Magsano*, *supra* note 21, at 153; *People v. Manansala*, *supra* note 21, at 370; *People v. Miranda*, *supra* note 21, at 53; and *People v. Mamangon*, *supra* note 21, at 313. See also *People v. Viterbo*, *supra* note 22.

station or office of the apprehending team.”²⁵ 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.²⁶

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 10640,²⁷ “a representative from the media and the [DOJ], and any elected public official”;²⁸ or (b) if **after** the amendment of RA 9165 by RA 10640, “an elected public official and a representative of the National Prosecution Service²⁹ or the media.”³⁰ 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.”³¹

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.”³² 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.”³³

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not

²⁵ *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).

²⁶ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

²⁷ Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG 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.’” As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” RA 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

²⁸ Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

²⁹ The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled “REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE” [April 11, 1978] and Section 3 of RA 10071, entitled “AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE” otherwise known as the “PROSECUTION SERVICE ACT OF 2010” [lapsed into law on April 8, 2010]).

³⁰ Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

³¹ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, supra note 21. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

³² See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 23, at 1038.

³³ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

always be possible.³⁴ 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.³⁵ The foregoing is based on the saving clause found in Section 21 (a),³⁶ Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.³⁷ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁸ 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.³⁹

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.⁴⁰ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.⁴¹ 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 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.⁴²

Notably, the Court, in *People v. Miranda*,⁴³ 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, then 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

³⁴ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³⁵ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁶ 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[.]*” (Emphasis supplied)

³⁷ 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.*” (Emphasis supplied)

³⁸ *People v. Almorfe*, supra note 35.

³⁹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁴⁰ See *People v. Manansala*, supra note 21, at 375.

⁴¹ See *People v. Gamboa*, supra note 23; citing *People v. Umipang*, supra note 23, at 1053.

⁴² See *People v. Crispo*, supra note 21, at 376-377.

⁴³ Supra note 21.

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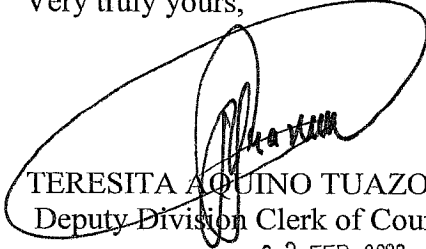
the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."⁴⁴

In this case, while the prosecution claimed that the arresting officers conducted an inventory of the items seized from petitioner, records are glaringly bereft of any proof that such inventory was indeed conducted, there being no inventory sheet attached therein. Moreover, it also appears that the arresting officers failed to comply with the photography requirement as photographs of the items purportedly seized from petitioner were likewise noticeably absent from the record. Furthermore, even assuming *arguendo* that such inventory and photography were done by the arresting officers, the conduct thereof was not made in the presence of the required witnesses, as the prosecution itself⁴⁵ – which was then acknowledged by the CA⁴⁶ – admitted to such fact. Verily, it was incumbent upon the prosecution to account for the foregoing deviations from the chain of custody rule, and to provide justifiable reasons therefor. Since the prosecution failed to provide for such justification, the Court is constrained to rule that the integrity and evidentiary value of the items purportedly seized from petitioner had been compromised. Under such circumstances, petitioner's acquittal is perforce in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 22, 2018 and the Resolution dated September 11, 2018 of the Court of Appeals in CA-G.R. CR No. 39928 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jefferson Javier y Estilloso is **ACQUITTED** of the crime 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. (LAZARO-JAVIER, *J.*, designated Additional Member per Raffle dated November 27, 2019, vice Inting, *J.*; ZALAMEDA, *J.*, designated Additional Member per Special Order No. 2727 dated October 25, 2019.) "

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *with 1/21*
03 FEB 2020

⁴⁴ See id. at 61

⁴⁵ See *rollo*, p. 66

⁴⁶ See id. at. 80.

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Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City
and/or
c/o The Jail Warden (reg)
Provincial Jail of Taleb
Bantay, Ilocos Sur

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

THE JAIL WARDEN (reg)
Provincial Jail of Taleb
Bantay, Ilocos Sur

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 20
Vigan City, Ilocos Sur
(Crim. Case No. 7229-V-2013)

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