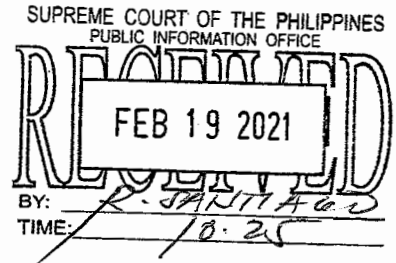




Republic of the Philippines
Supreme Court
Manila
THIRD DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 16, 2020, which reads as follows:

“**G.R. No. 231923 – (People of the Philippines v. Rogelio Tariga y Amper)**. - On appeal is the February 28, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01197-MIN, which denied accused-appellant Rogelio Amper Tariga’s (**Rogelio**) appeal from the January 4, 2013 Decision² of the Regional Trial Court, Branch 30, Tagum City, Davao del Norte (**RTC**) in Criminal Case No. 17050 finding him guilty for Violation of Section 26, in relation to Section 5, of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002 (**RA 9165**).³

The Antecedents

On January 8, 2010, two separate Informations were filed against Rogelio.

In Criminal Case No. 17050:

That on or about January 5, 2010, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and knowingly commenced by overt acts the selling, dealing and distribution of two (2) rolled dried marijuana wrapped in a newspaper weighing 7.4945 and 5.8468 grams, respectively and one (1) rolled dried marijuana wrapped in a color yellow paper weighing 1.0143 grams, with a total weight of 14.3556 grams to PO3 Divina C. Agocoy, who acted as sham

¹ CA *rollo*, pp. 157-172; penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos.

² *Records*, pp. 174-187; penned by Judge Rowena Apao-Adlawan. The RTC Decision also found Rogelio guilty in Criminal Case No. 17481 for Violation of Section 15 of RA 9165, although this finding has not been touched upon by the CA in its assailed Decision.

³ 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.

buyer, but the selling, dealing and distribution was not consummated due to the fact that accused threw away the said marijuana.

CONTRARY TO LAW.⁴

In Criminal Case No. 17481:

That on or about January 5, 2010, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who was arrested for violation of Section 26 of Republic Act No. 9165, did then and there willfully, unlawfully and knowingly use dangerous drugs and when subjected to initial drug screening and confirmatory tests, accused was found positive for use of THC metabolites, a dangerous drug.

CONTRARY TO LAW.⁵

On March 17, 2010, Rogelio was arraigned and he pleaded not guilty on both charges.⁶ On November 10, 2010, pre-trial was held.⁷ Trial followed.

Version of the Prosecution:

On January 4, 2010, a confidential informant (CI) informed the team of Police Senior Inspector Allan Putian in Tagum City Police Station about the alleged illegal drug activity of a certain "Boboy" in the Tagum City Public Market.⁸ To validate the information, the CI was instructed to make a test buy in the afternoon of the same day which proved to be successful.⁹

Hence, in the morning of the following day, January 5, 2010, a team was formed to conduct a buy bust operation based on the information given by the CI.¹⁰ Police Officer 3 Divina Agocoy (PO3 Agocoy) was designated as the poseur buyer; Police Officer 3 Leonardo Abrenica (PO3 Abrenica) was designated as the immediate back-up.¹¹ The other members of the team will serve as perimeter security.¹² PO3 Agocoy was given a two hundred peso bill as buy bust money.¹³

After preparing the required documents and coordination with the Philippine Drug Enforcement Agency (PDEA), the team, together with the CI, proceeded to the buy bust area in the Tagum City Public Market at around 1:00 p.m. of the same day.¹⁴ PO3 Agocoy and the CI walked towards the fish

⁴ *Records*, p. 1.

⁵ *Id.* at 174-187.

⁶ *Id.* at 33, 36; Order and Certificate of Arraignment, both dated March 17, 2010.

⁷ *Id.* at 66-67; Pre-Trial Order dated November 10, 2010.

⁸ TSN, February 2, 2011, pp. 4-5; TSN, March 16, 2011, pp. 5-6; TSN, August 24, 2011, p. 5.

⁹ *Id.*

¹⁰ TSN, March 16, 2011, pp. 7-9; TSN, August 24, 2011, pp. 7-8.

¹¹ TSN, August 24, 2011, pp. 7-8.

¹² *Id.*

¹³ TSN, March 16, 2011, pp. 7-8.

¹⁴ *Id.* at 10; TSN, February 2, 2011, pp. 6-8; TSN, August 24, 2011, p. 9.

landing area of the public market.¹⁵ Meanwhile, PO3 Abrenica and the other team members positioned themselves at a considerable distance from PO3 Agocoy and the CI.¹⁶

As PO3 Agocoy and the CI were approaching the area, the latter saw Rogelio.¹⁷ The CI introduced PO3 Agocoy as the potential buyer.¹⁸ PO3 Agocoy asked Rogelio, "*Bay, naa ka diha? Papalita ko'g dos syentos lang*" (Do you have any? Can I buy worth ₱200?).¹⁹ PO3 Agocoy stated in her testimony that she was referring to marijuana in uttering the foregoing statements.²⁰ When Rogelio nodded, PO3 Agocoy handed the marked money to Rogelio²¹ who then placed it in his pocket.²² All the while, Rogelio was intently staring at PO3 Agocoy as if he was assessing the police officer.²³ He continued to stare when he took something from his back.²⁴ Then, instead of handing it over to PO3 Agocoy, Rogelio threw away a package that was wrapped in yellow cellophane.²⁵ He immediately ran away from PO3 Agocoy to escape.²⁶

PO3 Abrenica and the other team members at once chased Rogelio while PO3 Agocoy picked up the package.²⁷ PO3 Abrenica and the other team members eventually collared Rogelio and arrested him.²⁸ PO3 Agocoy caught up with them and frisked Rogelio. She found in his possession the two hundred peso bill that she previously gave as payment.²⁹ PO3 Agocoy opened the package only after arresting and frisking Rogelio.³⁰ Inside the package were three packages of marijuana further wrapped in newspaper and yellow paper.³¹ Immediately thereafter, PO3 Agocoy and PO3 Abrenica placed their signatures on the packages.³²

Rogelio was then brought to the police station. At the station, PO3 Agocoy showed the seized items to Senior Police Officer 2 Corsino Luengas (**SPO2 Luengas**), and the latter also affixed his signature on the packages.³³

Inventory and photographing of the seized items were made on January 6, 2010 in the presence of three witnesses, namely: Wilvie N. Tuba as

¹⁵ TSN, March 16, 2011, pp. 10-11.

¹⁶ TSN, August 24, 2011, pp. 10-11.

¹⁷ TSN, March 16, 2011, p. 11.

¹⁸ Id.

¹⁹ Id. at 12.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 13.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ TSN, August 24, 2011, p. 13.

²⁹ Id.; TSN, March 16, 2011, p. 14.

³⁰ Id.

³¹ TSN, March 16, 2011, p. 15.

³² Id.; TSN, August 24, 2011, p. 14.

³³ TSN, March 16, 2011, p. 16.

representative of the media, Noel P. Palma as representative of the Department of Justice (DOJ), and Niño C. Cutin as the elected official.³⁴ The team prepared the necessary requests on January 6, 2010 for the conduct of laboratory test on the seized items and drug test of Rogelio.³⁵ However, the seized items were delivered to the forensic laboratory only on January 7, 2010.³⁶

PO3 Agocoy admitted that she retained custody of the seized items until their belated delivery to the forensic laboratory on January 7, 2010.³⁷ In her testimony, PO3 Agocoy clarified that she was not able to deliver the seized items to the forensic laboratory immediately as they needed to conduct a follow up operation on the case.³⁸ She stated that she kept the seized items in her locker for two days until she delivered the items to the forensic laboratory for examination.³⁹

Police Chief Inspector Virginia S. Gucor was the forensic chemist who conducted the laboratory tests on the seized items and the drug test on Rogelio.⁴⁰ She concluded that the seized items are indeed marijuana, a dangerous drug.⁴¹ Meanwhile, Rogelio tested positive for THC Metabolites, a dangerous drug.⁴² The confirmatory test on Rogelio's urine confirmed the positive result.⁴³

Version of the Defense:

Rogelio, on the other hand, denied the charges. He claimed that he worked as a fish slicer in the public market.⁴⁴ Armando Tariga, Rogelio's brother, stated in his testimony that on January 4, 2010, his brother stayed in their house the whole day because it was the birthday of his son (Rogelio's nephew).⁴⁵ He asked Rogelio to help with the cooking for the birthday celebration.⁴⁶

On January 5, 2010, Rogelio reported for work in the morning. At around 1:00 in the afternoon, he claimed that his friend Jim Boy and the latter's girlfriend approached and asked him to go with them to a videoke house.⁴⁷ On the way there, they met Boy Ade, a police officer that he knew.⁴⁸ Rogelio

³⁴ Id. at 30; records, p. 10; Inventory of Property Seized as Exhibit "F".

³⁵ TSN, supra note 13, pp. 17-19; records, p. 128; Request for Laboratory Examination dated January 6, 2010 as Exhibit "E".

³⁶ TSN, March 16, 2011, pp. 17-19; TSN, January 19, 2011, pp. 5-6; records, p. 125; Chemistry Report No. D-02-2010 dated January 7, 2010 as Exhibit "D."

³⁷ TSN, March 16, 2011, pp. 17-18

³⁸ Id.

³⁹ Id.

⁴⁰ TSN, January 19, 2011, pp. 5-6.

⁴¹ Id. at 6-9; records, p. 125; Chemistry Report No. D-02-2010 dated January 7, 2010 as Exhibit "D".

⁴² TSN, January 19, 2011; pp. 11-12.

⁴³ Id.

⁴⁴ TSN, November 17, 2011, p. 2.

⁴⁵ TSN, January 4, 2012, pp. 4-5.

⁴⁶ Id.

⁴⁷ TSN, November 17, 2011, p. 4.

⁴⁸ Id.

claimed that Boy Ade put his arms around his shoulder and pointed a gun at him.⁴⁹ Still with Jim Boy and his girlfriend, Boy Ade led them to a place called Cristo Rey, where there are plenty of trees.⁵⁰ The police officer said that he was looking for something.⁵¹ Then, Boy Ade frisked him and found a two hundred peso bill.⁵² Rogelio claimed that the two hundred peso bill was given to him by Jim Boy while on their way to the videoke house.⁵³

Boy Ade made a call, and not long after, six more police officers arrived at the scene and arrested Rogelio.⁵⁴ Rogelio stated that SPO2 Luengas and PO3 Agocoy were among the six police officers who arrived.⁵⁵ He further stated that PO3 Agocoy frisked him and found the two hundred peso bill, which was allegedly returned to him by Boy Ade.⁵⁶ They proceeded to the police station and the police officers began their investigation.⁵⁷ On cross examination, Rogelio admitted that he is just a user and not a seller of marijuana.⁵⁸

Ruling of the Regional Trial Court:

On January 4, 2013, the RTC rendered its Decision on the cases. In Criminal Case No. 17050, Rogelio was found guilty for Violation of Section 26 in relation to Section 5 of RA 9165, or Attempted Sale of Dangerous Drugs and sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000), and the cost of the suit. The RTC found that the elements of Illegal Sale of Dangerous Drugs were present. However, when Rogelio threw the package on the ground upon sensing that it was an entrapment operation, the sale was interrupted.⁵⁹ Rogelio had the intent to sell dangerous drugs, and had already commenced the commission of the crime through overt acts.⁶⁰ But due to the act of throwing the package on the ground, the sale was never consummated but merely attempted.⁶¹

In Criminal Case No. 17481, the RTC also found Rogelio guilty for Violation of Section 15 of RA 9165, or Use of Dangerous Drugs. He was ordered to undergo rehabilitation for a period of six months. The RTC ruled that Rogelio did not present evidence to rebut the finding that his urine was positive for the presence of dangerous drugs, in addition to the fact that he openly admitted in court that he is a user of marijuana.⁶²

⁴⁹ Id. at 5.

⁵⁰ Id.

⁵¹ Id. at 6.

⁵² Id.

⁵³ Id.

⁵⁴ Id. at 7.

⁵⁵ Id.

⁵⁶ Id. at 8.

⁵⁷ Id. at 8-9.

⁵⁸ Id. at 13, 16.

⁵⁹ *Records*, pp. 174-187.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, based on the foregoing premise, judgment is hereby rendered as follows:

In Criminal Case No. 17050, as the prosecution's evidence overwhelmingly proved the guilt of the accused beyond reasonable doubt, the accused is CONVICTED of the crime of violation of Section 26 in relation to Section 5, Article II of RA 9165 and is hereby sentenced to suffer LIFE IMPRISONMENT and to pay the fine of Five hundred thousand pesos (P500,000) and as well as to pay the cost of the suit.

In Criminal Case No. 17481, the accused is CONVICTED for violation of Section 15, Article II of RA 9165 and is sentenced to suffer rehabilitation period of six (6) months.

Pursuant to Section 21(7) of RA No. 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the marijuana subject matter in Criminal Case No. 17050. Otherwise, the Branch Clerk of Court is hereby directed to forward the same to the PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.⁶³

Rogelio elevated his case to the CA by filing a notice of appeal before the RTC.⁶⁴

Ruling of the Court of Appeals:

On February 28, 2017, the CA rendered its Decision denying the appeal and affirming the RTC's ruling in Criminal Case No. 17050.⁶⁵ The appellate court agreed with the trial court that the elements of Attempted Illegal Sale of Dangerous Drugs were present and that it is not uncommon that the sale transaction of dangerous drugs is merely conducted by use of words, signs, or gestures.⁶⁶ It further held that the apprehending team had substantially complied with the chain of custody rule.⁶⁷

However, the CA did not touch upon the RTC's ruling in Criminal Case No. 17481. It noted that the notice of appeal filed before the RTC only pertained to Rogelio's conviction in Criminal Case No. 17050.⁶⁸ Hence, only

⁶³ Id. at 186-187.

⁶⁴ Id. at 192-193; Notice of Appeal dated January 11, 2013.

⁶⁵ CA *rollo*, pp. 157-172.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ *Records*, pp. 192-193. The relevant portion of the notice of appeal dated January 11, 2013 is as follows:

Accused/ Appellant, through the Public Attorney's Office, respectfully serves notice that he is appealing the Decision dated January 4, 2013 rendered by the Honorable Court in this case on January 10, 2013, the dispositive portion of which reads:

WHEREFORE, based on the foregoing premise, judgment is hereby rendered as follows:

the execution of judgment in Criminal Case No. 17050 has been stayed.⁶⁹ Consequently, the judgment in Criminal Case No. 17481 became final and executory.⁷⁰

The dispositive portion of the appellate court's Decision reads:

ACCORDINGLY, the appeal is DENIED. The Decision dated 4 January 2013 of the Regional Trial Court, 11th Judicial Region, Branch 30, Tagum City, Davao del Norte, in Criminal Case No. 17050, is AFFIRMED.

SO ORDERED.⁷¹

Aggrieved, Rogelio elevated his case before this Court.⁷² The parties opted not to file supplemental briefs with this Court and to adopt their discussions in their briefs filed with the CA.⁷³

Rogelio contends that: (1) the prosecution failed to perform its obligation of proving the elements of both charges—Attempted Sale, and Use of Illegal Drugs; (2) the markings made on the alleged seized narcotic drugs are marred with doubts as the placing of only the signatures of PO3 Agocoy and PO3 Abrenica on the three different packages never helped to distinguish one evidence from another, and; (3) the chain of custody was never established beyond reasonable doubt as there is nagging doubt as regards the identity of the person who kept and took custody of the drugs before these were submitted for laboratory examination.⁷⁴

Conversely, the People, through the Office of the Solicitor General, maintains that the RTC has correctly convicted Rogelio for Violation of Section 26 in relation to Section 5, and Section 15 of RA 9165 in holding that the elements of the foregoing crimes were present, and that the chain of custody rule was aptly observed.⁷⁵

In Criminal Case No. 17050, as the prosecution's evidence overwhelmingly proved the guilt of the accused beyond reasonable doubt, the accused is **CONVICTED** of the crime of violation of Section 26 in relation to Section 5, Article II of RA 9165 and is hereby sentenced to suffer **LIFE IMPRISONMENT** and to pay the fine of Five hundred thousand pesos (P500,000) and as well as to pay the cost of the suit.

XXXXXX

SO ORDERED.

⁶⁹ CA *rollo*, pp. 157-172.

⁷⁰ Id.

⁷¹ Id. at 171-172.

⁷² Id. at 176-178; Notice of Appeal dated March 9, 2017.

⁷³ *Rollo*, pp. 29-37; Manifestation and Motion of Plaintiff-Appellee dated September 19, 2017 and Manifestation of Accused-Appellant dated September 26, 2017.

⁷⁴ CA *rollo*, pp. 30-47; Brief for the Accused-Appellant dated June 16, 2015.

⁷⁵ Id. at 102-149; Brief for the Appellee dated February 1, 2016.

Issue

Whether or not Rogelio is guilty of Attempted Sale of Dangerous Drugs under Section 26 in relation to Section 5 of RA 9165.

Our Ruling

There is merit in the appeal. Rogelio must be acquitted.

Rogelio was charged with and convicted of Violation of Section 26 in relation to Section 5 of RA 9165, or Attempted Sale of Illegal Drugs, in Criminal Case No. 17050. The provisions read:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Section 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x

To successfully prosecute the offense of Sale of Illegal Drugs under Section 5 of RA 9165, the following elements must be present: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁷⁶ In a buy-bust operation, the receipt by the poseur-buyer of the dangerous drug and the corresponding receipt by the seller of the marked money consummate the Illegal Sale of Dangerous Drugs.⁷⁷ The case of *People v. Tumalak*⁷⁸ discussed that the consummation of the commission of the crime of Sale of Illegal Drugs happens “the moment the buyer receives the drug from the seller.” What is important is that the buyer received the illegal drug from the accused.⁷⁹

⁷⁶ *People v. Magalong*, G.R. No. 231838, March 4, 2019 citing *People v. Sic-Open*, 795 Phil. 859, 869-870 (2016); *People v. Eda*, 793 Phil. 885, 896 (2016); *People v. Amaro*, 786 Phil. 139, 146-147 (2016); and *People v. Ros*, 758 Phil. 142, 159 (2015).

⁷⁷ *People v. Addin*, G.R. No. 223682, October 9, 2019 citing *People v. Magalong*, *id.*

⁷⁸ 791 Phil. 148, 155 (2016), citing *People v. Simon*, 304 Phil. 725 (1994).

⁷⁹ *Id.*

Section 26 of RA 9165 allows for the punishment of Sale of Illegal Drugs in the attempted stage. A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.⁸⁰ The crime of Attempted Sale of Illegal Drugs is necessarily included in the crime of Illegal Sale of Dangerous Drugs.⁸¹

In the crime of Attempted Sale of Illegal Drugs, the accused must have shown the intention to sell illegal drugs and have commenced the sale through performance of overt acts.⁸²

In this case, the evidence presented sufficiently show that Rogelio intended to sell marijuana to PO3 Agocoy. When asked if he has marijuana worth ₱200, Rogelio nodded. His act of nodding shows that he had the intent to sell marijuana to PO3 Agocoy at that point in time. Moreover, without hesitation, he took the ₱200 bill given by PO3 Agocoy that served as payment and placed it in his pocket. His overt acts effectively commenced the Sale of Illegal Drugs. But, as stated in the testimonies of PO3 Agocoy and PO3 Abrenica, Rogelio threw the package containing the marijuana on the ground instead of handing it over to PO3 Agocoy after receiving the payment. This prevented the sale from reaching the consummated stage. Applying the words of *People v. Tumulak*, the sale was not consummated because PO3 Agocoy did not receive the object of the sale from Rogelio. Hence, the CA and the RTC correctly found that there was merely an Attempted Sale of Illegal Drugs under Section 26 in relation to Section 5 of RA 9165.

The complication in this case lies in the observance of the chain of custody rule in relation to proving the identity of the object of the sale, *i.e.*, the dangerous drugs. The Court agrees with Rogelio that the chain of custody rule was not properly observed during the operation.

Related to establishing the element of identity of the object of the illegal sale is the observance of the chain of custody rule provided in Section 21 of RA 9165. The relevant portion of the provision reads:

Section 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:

⁸⁰ An Act Revising the Penal Code and Other Penal Laws [THE REVISED PENAL CODE], Act No. 3815, Art. 6 (1930).

⁸¹ See *People v. Buniag*, G.R. No. 217661, June 26, 2019 citing *People v. Tumulak*, *supra*.

⁸² See *People v. Laylo*, 669 Phil. 111, 121 (2011), citing *People v. Adam*, 459 Phil 676 (2003).

(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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

In relation to this, Section 21 of the Implementing Rules and Regulations of RA 9165 (**IRR of RA 9165**) also provides for the same requirements. The relevant portion of the provision reads:

Section 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:

(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: 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, 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;

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;⁸³

⁸³ Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," Sec. 21, Art. II (2002).

The foregoing provisions provide that the marking, photographing, and inventory of the seized items must be done immediately after seizure and confiscation of the items in the presence of three witnesses—a representative from the media, a representative of the DOJ, and any elected official.⁸⁴ It further provides that the seized items must be transmitted to the PDEA forensic laboratory within 24 hours from seizure. The purpose of this rule is to preserve the integrity and evidentiary value of the seized dangerous drugs in order to fully remove doubts as to their identity.⁸⁵ The chain of custody rule demands utmost compliance from the authorities. Nevertheless, Section 21 of the IRR of RA 9165, as applied in various cases, provides for a saving clause where “non-compliance with the requirements of this rule will not automatically render the seizure and custody of the items void and invalid, so long as: (a) there is a justifiable ground for such non-compliance; and (b) the evidentiary value of the seized items are properly preserved.”⁸⁶ Deviation or departure from the procedure stated in the provision must be justified and should not compromise the integrity and evidentiary value of the seized items.⁸⁷

The Court notes that Rogelio’s apprehending officers did not observe the requirement of transmitting the seized dangerous drugs to the forensic laboratory for examination within 24 hours from their seizure.

It is worthy to mention that in the case of *People v. Sumili*,⁸⁸ this Court has had the occasion to acquit the accused for failure of the police officers to observe the abovementioned 24-hour requirement. The seized items were delivered two days after the buy bust operation.⁸⁹ The prosecution did not provide any adequate explanation regarding the delay.⁹⁰ And, the records did not indicate who had custody of the seized items during the two-day delay.⁹¹ The Court found that these circumstances presented a substantial and unexplained gap in the chain of custody, thereby compromising the integrity and evidentiary value of the *corpus delicti*.⁹²

In the present case, PO3 Agocoy transmitted the seized marijuana two days after seizure. The operation happened on January 5, 2010; the seized marijuana was transmitted to and received by the forensic laboratory on January 7, 2010 as stated in Chemistry Report No. D-02-2010 and in the testimonies of the prosecution witnesses. For two days, the seized items were kept in PO3 Agocoy’s locker. PO3 Agocoy and the other police officers attributed the cause of the delay in transmission to the fact that the team had

⁸⁴ See *People v. Addin*, supra note 75.

⁸⁵ See *People v. Caramat*, G.R. No. 231366, December 11, 2019, citing *People v. Alboka*, 826 Phil 487 (2018).

⁸⁶ *People v. Ygoy*, G.R. No. 215712, August 7, 2019, citing *Belmonte v. People*, 811 Phil. 844 (2017).

⁸⁷ Id.

⁸⁸ 753 Phil 342 (2015).

⁸⁹ Id. at 351.

⁹⁰ Id. at 352.

⁹¹ Id.

⁹² Id. at 353.

to conduct a follow-up operation as to Rogelio's source. This is simply unacceptable.

The prosecution cannot just rely on the saving clause provided in the IRR of RA 9165. As mentioned, the clause requires the showing of justifiable grounds for non-compliance, and that the integrity and evidentiary value of the seized items were duly preserved. The prosecution failed to offer evidence to show justifiable grounds for non-compliance. PO3 Agocoy's explanation to justify the delay that they had to conduct a follow up operation does not convince this Court. Their office should have exerted earnest efforts to comply with the parameters set by the law on chain of custody in this operation. The prosecution also failed to prove that the integrity and evidentiary value of the seized items were preserved despite this lapse in procedure. The prosecution did not show that indeed no other person had accessed PO3 Agocoy's locker during that two-day stretch. The explanation that only PO3 Agocoy had access to the key does not suffice. It goes without saying that there is a clear possibility that the seized items may have been tampered or even replaced during that two-day period thereby casting doubt on the true identity of the dangerous drug.

It is a well-settled rule that in criminal cases, the accused's guilt must be proven beyond reasonable doubt.⁹³ This burden lies with the prosecution. Here, the prosecution was not able to prove Rogelio's guilt beyond reasonable doubt. We find that the failure to observe the chain of custody rule seriously compromised the integrity of the seized items and ultimately casted reasonable doubt on Rogelio's guilt.

With regard to the trial court's decision in Criminal Case No. 17481 that convicted Rogelio for Illegal Use of Dangerous Drugs, the Court agrees with the CA that said judgment has become final and executory for Rogelio's failure to file a notice of appeal. It was only the Decision of the RTC in Criminal Case No. 17050 that was appealed to the CA and eventually to this Court via the present appeal.

WHEREFORE, the appeal is hereby **GRANTED**. The assailed February 28, 2017 Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 01197-MIN affirming the January 4, 2013 Decision of the Regional Trial Court, Branch 30, of Tagum City, Davao del Norte, is **REVERSED** and **SET ASIDE**. Accused-appellant Rogelio Tariga y Amper is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he has commenced his sentence in Crim. Case No. 17481 emanating from the same January 4, 2013 Decision of the trial court.

Let a copy of this Resolution be furnished the Superintendent of Davao Prison and Penal Farm, Bureau of Corrections, Davao del Norte, for immediate implementation. Furthermore, the Superintendent is **DIRECTED**

⁹³ Rule 133, Sec. 2, Revised Rules on Evidence.

to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.” (*J. Lopez* designated as additional member per raffle dated November 11, 2020 vice *J. Inting* who recused due to prior action in the Court of Appeals.)

By authority of the Court:

Mis-PPC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
GER
2/15/21

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CA G.R. CR HC No. 01197 MIN
9000 Cagayan de Oro City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 30, Tagum City
8100 Davao del Norte
(Criminal Case No. 17050)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Regional Superintendent
DAVAO PRISON & PENAL FARM
8105 B.E. Dujali, Davao del Norte

Mr. Rogelio Tariga y Amper
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