



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

“G.R. No. 247309 (Arnold J. Jayectin v. People of the Philippines)

The Case

This petition¹ assails the following dispositions of Court of Appeals in CA-G.R. CR No. HC 01804-MIN, *viz.*:

- a) Decision² dated November 23, 2018 affirming petitioner Arnold J. Jayectin’s conviction for violation of Section 11 of Republic Act No. 9165 (RA 9165);³ and
- b) Resolution dated April 16, 2019 denying reconsideration.

The Proceedings Before the Trial Court

The Charge

By Informations dated July 13, 2012, petitioner Arnold J. Jayectin was charged with violation of Sections 5 and 11 of RA 9165, thus:

Criminal Case No. 5911-12

That on or about July 11, 2012, in Mati, Davao Oriental, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, did then and there willfully, unlawfully and

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¹ Filed under Rule 45 of the Rules of Court.
² Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Walter S. Ong and Evalyn M. Arellano-Morale.; *rollo*, pp. 34-45.
³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

feloniously sell, trade, and deliver, 0.0207 gram of Methamphetamine Hydrochloride, commonly known as “*shabu*”, a dangerous drug, without proper license, authority or permit from the authorities.

CONTRARY TO LAW.

Criminal Case No. 5912-12

That on or about July 11, 2012, in Mati, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession 0.0065 grams of Methamphetamine Hydrochloride commonly known as “*shabu*”, a dangerous drug, without proper license, authority or permit from the authorities.

CONTRARY TO LAW.⁴

The case was raffled to the Regional Trial Court (RTC) – Branch 6, Mati City, Davao Oriental.

On arraignment, petitioner pleaded *not guilty* to both charges.

During the joint trial, Investigating Officer I Eleazar Arapoc (IO1 Arapoc) and forensic chemist Police Inspector Jade Ryan Bajade (PI Bajade) testified for the prosecution.⁵ On the other hand, the defense presented petitioner, Crisadel Sanchez,⁶ Jerome Cañeta and Erika Evaristo.⁷

The Prosecution’s Version

IO1 Eleazar Arapoc testified that on July 11, 2012 around 10 o’clock in the morning, a confidential informant went to the Davao Oriental Provincial Drug Enforcement Office to report that a certain alias “Dakor” was selling *shabu* at Purok Street, Sto. Niño, Barangay Central, Mati City.

Acting on this report, he checked their office records and identified “Dakor” as petitioner Arnold J. Jayectin, a subject in one of their surveillance operations. He thus suggested to Regional Director Emerson Rosales that they conduct a buy-bust operation for petitioner’s arrest. Rosales agreed and dispatched his subordinates to form a buy-bust team which consisted of him (IO1 Arapoc), Agents

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⁴ *Rollo*, pp. 35; 80-81.

⁵ *Id.* at 81-84.

⁶ Petitioner’s sister-in-law.

⁷ Petitioner’s neighbors; *rollo*, pp. 84-87.

Christian Depalubos who acted as poseur-buyer, Marlo Laurente as back-up and photographer, and Rey Pavillar. Subsequently, the team coordinated with the Chief of Police of Mati Police Station who assigned Police Officer Rodante Barona as team leader. The team gave Agent Depalubos a ₱500 bill with his initials "CPD" marked at the bottom right portion as boodle money. Thereafter, they proceeded to petitioner's house at Purok Sto. Niño, Barangay Central, Mati City.⁸

He stayed about 10 to 15 meters away from Agent Depalubos and the confidential informant who were outside petitioner's house. He saw petitioner hand an item to Agent Depalubos who, in turn, handed over something to petitioner as well. Though he witnessed the exchange, he did not clearly see what the items were.⁹

Thereupon, Agent Depalubos signaled him that the sale had been consummated, prompting him to rush to the scene. Petitioner sensed the impending arrest and started to flee but failed to escape. He (IO1 Arapoc) introduced himself as a Philippine Drug Enforcement Agency (PDEA) agent, frisked petitioner, and recovered the ₱500.00 boodle money and one (1) sealed plastic sachet with suspected *shabu*. He immediately marked the seized items in the presence of Agent Pavillar, PO Varona, petitioner and petitioner's relatives. He placed the items inside an envelope which he kept in his possession until they reached the Mati Police Station.¹⁰

He delivered the seized items for inventory and photograph in the presence of insulating witnesses from the media (Peter Macado), the Department of Justice (DOJ) and an elected official from Mati City (Kagawad Peter Peña) and explained that inventory was done at the Mati Police Station because the required witnesses were not yet available when they conducted the operation. Subsequently, he submitted the specimen to the crime laboratory where PO1 Yparraguirre received the same for qualitative examination.¹¹

Police Inspector Bajade testified that he was with PO1 Yparraguirre when the latter received the seized items from IO1 Arapoc. He conducted the qualitative examination thereon and formalized his findings in Chemistry Report D-014-12, confirming both seized items tested positive for Methamphetamine Hydrochloride, commonly known as *shabu*. After examination, he

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⁸ *Rollo*, pp. 37, 81-82, 91.

⁹ *Id.* at 37, 82.

¹⁰ *Id.* at 37.

¹¹ *Id.* at 83.

turned over the items to the evidence custodian, PO1 Baliguia. He added that the evidence room where the specimens were stored was secured by three (3) locks, the keys of which in the possession of the designated persons-in-charge.¹²

The prosecution offered the following evidence: Affidavit of Arresting Officer Agent Eleazar R. Arapoc; Inventory of Evidence/Property Seized dated July 11, 2012; photocopy of buy-bust money; pictures during inventory/markings; Chemistry Report No. DT-009-12; and masking-taped cellophane containing sachets of *shabu*.

The Defense's Evidence

Petitioner **Arnold J. Jayectin**, countered that on July 11, 2012, he was in his house with his family watching television, when a group of six (6) men and one (1) woman suddenly barged in, handcuffed him, and forced him to board a vehicle. They searched the house and allegedly found a pencil case, empty lighters, aluminum foil and a wallet. The group asked him if those items were his, but he admitted ownership of the wallet only. They took a video of him with the alleged confiscated items then brought him to the police station.¹³ At the police station, an agent got a sachet of *shabu* and a ₱500 bill and placed them on the table while another agent took a video in the presence of a media representative and a barangay official.¹⁴

Crisadel Sanchez testified that she was the wife of petitioner's brother-in-law and they lived in the same house. On July 11, 2012, around 2 o'clock in the afternoon, she was taking care of her child when PDEA agents arrived, kicked the door open, pointed their guns at them, and asked for petitioner. Meanwhile, petitioner was watching television in the living room with his children when the PDEA team took him. She heard a commotion from the living room, so she took her child, went outside, and saw the agents take petitioner away.¹⁵

Jerome Canete testified that he was at the balcony of petitioner's house when the PDEA team arrived. They kicked the door open and arrested petitioner who was in his bedroom. The team took petitioner with them but showed no warrant when they barged into the house.¹⁶

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¹² *Id.* at 81.

¹³ *Id.* at 81. ¹³ *Id.* at 84.

¹⁴ *Id.*

¹⁵ *Id.* at 85.

¹⁶ *Id.* at 86.

Erika Evaristo testified that she and petitioner were neighbors, her house just about twenty (20) steps away from his. She was not around when the arrest took place. But when she arrived, she saw several policemen in the area with petitioner in handcuffs.¹⁷

The Trial Court's Ruling

As borne by its Decision¹⁸ dated November 10, 2017, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered as follows:

1. In Criminal Case NO. 5912-12, the Court finds accused ARNOLD JAYECTIN, GUILTY beyond reasonable doubt of the charge of violation of Sec. 5, Art. II, RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;
2. In Criminal Case NO. 5911-12, the Court finds accused ARNOLD JAYECTIN, GUILTY beyond reasonable doubt of the charge for violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one day as minimum to Twenty (2) years as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00);

The clerk of court is directed to transmit the dangerous drugs seized to the PDEA Regional Office XI for destruction. The marked money seized shall be forfeited in favor of the state and shall be deposited to the national treasury.

SO ORDERED.¹⁹

It ruled that all the elements of the crimes charged were sufficiently established and the chain of custody over the seized drugs was unbroken.²⁰

The Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering the verdict of conviction despite: the defective information on the purported sale which failed to allege the amount paid for the *shabu*;

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¹⁷ *Id.* at 87.

¹⁸ Penned by Presiding Judge Nino A. Batingana.

¹⁹ *Rollo*, pp. 98-99.

²⁰ *Id.* at 88-98.

the violation of his right against unreasonable searches and seizure owing to the absence of an actual and legitimate buy-bust operation; the prosecution's failure to establish the integrity and identity of the seized item beyond reasonable doubt; and the arresting officers' failure to observe the chain of custody rule, *viz.*:

First, the prosecution only offered the testimonies of IO1 Arapoc who acted as back-up and PI Bajade, the forensic chemist. The persons who had personal knowledge of the supposed sale, *i.e.*, Agent Depalubos and the confidential informant, were never called to take the witness stand;²¹

Second, only IO1 Arapoc testified on the marking, tagging, taking of photographs and delivery of the seized to establish the identity of the *corpus delicti*. His uncorroborated testimony on these stages was not sufficient to establish compliance with the chain of custody rule;²²

Finally, IO1 Arapoc testified that he possessed the seized items from the time he frisked petitioner until he turned them over to the crime laboratory without surrendering it to the investigating officer;²³

The Office of the Solicitor General (OSG), through Assistant Solicitor General Renan E. Ramos and Associate Solicitor Analyn G. Avila defended the verdict of conviction.²⁴ It argued that all the elements of illegal possession and illegal sale of dangerous drugs were established; the integrity and evidentiary value of the seized items were preserved despite non-compliance with Section 21, RA 9165; and the *corpus delicti* was identified during trial.

The Court of Appeals' Ruling

By Decision dated November 23, 2018, the Court of Appeals affirmed conviction for illegal possession of dangerous drugs, but acquitted petitioner of illegal sale of dangerous drugs on reasonable doubt, *viz.*:²⁵

WHEREFORE, premises considered, the 10 November 2017 Joint Decision of the RTC Branch 6 of Mati, Davao Oriental in Criminal Case No. 5912-12 for violation of Section 11, R.A. 9165 is hereby AFFIRMED. The RTC Branch 6's Decision in

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²¹ *Id.* at 70-71.

²² *Id.* at 74-75.

²³ *Id.* at 75-76.

²⁴ at 100-114.

²⁵ *Id.* at 34-45.

Criminal Case No. 5911-12 for violation of Section 5, R.A. 9165 is REVERSED and SET ASIDE and the accused-appellant Arnold J. Jayectin is ACQUITTED by reason of reasonable doubt.

SO ORDERED.

The Court of Appeals held that the failure of the information to specify the amount of consideration for the sale of dangerous drugs did not render said information defective. At any rate, petitioner had already waived his right to object to any supposed defect in the information for illegal sale of dangerous drug since he did not file a motion to quash before he entered his plea, as decreed by section 9, Rule 117.²⁶

Be that as it may, it acquitted petitioner of illegal sale of dangerous drug because the prosecution failed to prove the elements thereof beyond reasonable doubt. It maintained that the uncorroborated testimony of IO1 Arapoc was not sufficient to convict petitioner. While he was present during the alleged sale, he did not personally see what items were exchanged between Agent Depalubos and petitioner. Too, the prosecution also failed to establish the identity of the alleged shabu beyond reasonable doubt. For the arresting officer, Agent Depalubos, was not presented to testify on the shabu he allegedly bought, who marked it, and who kept possession of it from sale to its examination. Thus, its identity and integrity have been compromised. The prosecution offered no explanation for his non-presentation as witness.²⁷

As for the charge of illegal possession of dangerous drugs, the Court of Appeals found that all the elements of the crime were present and rendered a verdict of conviction thereon. IO1 Arapoc testified that he recovered a sachet later positively identified to contain *shabu* when he frisked petitioner during the buy-bust operation. His conscious possession of dangerous drugs was made manifest by his attempt to flee, lack of resistance when he was caught, and non-protest which the appellate court found contrary to natural course of things.²⁸

It also rejected petitioner's theory that the buy-bust operation was not sufficiently established. Petitioner posited that there was no buy-bust operation to speak of, but did not adduce evidence to support

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²⁶ Section 9. Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8)

²⁷ *Rollo*, pp. 40-42

²⁸ *Id.* at 42-43.

his claim. To be sure, he failed to rebut the authenticity and due execution of the documents proving the operation, such as the Authority to Operate, and the PDEA Region XI's Journal containing a recital of the events that transpired.²⁹ Thus the presumption of regularity in the performance of official functions prevailed over petitioner's unsubstantiated claims.

More, the *shabu* seized from petitioner was duly identified and its chain of custody, properly observed. IO1 Arapoc testified that he possessed the seized item from arrest until he surrendered it to PO1 Yparraguirre who, in turn, turned it over to forensic chemist PI Bajade.³⁰

It denied petitioner's Motion for Reconsideration on April 16, 2019.

The Present Petition

Petitioner now seeks for a verdict of acquittal from the Court through his present petition for review on *certiorari*.³¹

He maintains that: the warrantless search was unreasonable and illegal, rendering the seized item from his person inadmissible in evidence; and the prosecution failed to strictly observe the procedural requirements for preserving the *corpus delicti* under Section 21, RA 9165, thus compromising the identity and integrity of the allegedly seized items:

For one, the Court of Appeals noted that the prosecution failed to discharge its burden to prove with moral certainty that the alleged sale took place, thereby acquitting him of that charge. This effectively negates the validity of the buy-bust operation. By virtue of necessary implication, the search incident to the arrest is also invalid, making the seized items inadmissible in evidence for the charge of alleged possession. To be sure, he was arrested without warrant; he was neither caught in *flagrante delicto* nor arrested in hot pursuit. Verily, it can hardly be argued that petitioner was searched following a valid warrantless arrest.³²

For another, granting without admitting that the case for illegal possession of illegal drugs can proceed independently from the charge of selling illegal drugs, the prosecution, nonetheless, failed to prove

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²⁹ *Id.* at 43.

³⁰ *Id.* at 42-45.

³¹ *Id.* at 13-29.

³² *Id.* at 23-25.

that the identity and integrity of the *corpus delicti* were preserved and maintained. Evidently, the insulating witnesses were all absent during the marking of the seized items, falling short of what the law demands. Worse, the prosecution offered no explanation for this non-compliance.

In its *Comment*,³³ the OSG, counters: the prosecution has duly proven that petitioner possessed the plastic sachet of *shabu*; all elements of illegal possession of dangerous drugs are present; petitioner's theory that his acquittal in the charge of illegal sale invalidates the buy-bust operation, making his arrest for possession also invalid is baseless; and that the police officers faithfully complied with the strict requirements of the chain of custody rule.

Issues

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the illegality of the search on petitioner incident to his arrest for the alleged sale of dangerous drugs?

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the search on the person of petitioner and to the chain of custody over the *corpus delicti*?

Ruling

We acquit.

***The drug item seized from petitioner
is inadmissible in evidence***

Article III, Section 2 of the Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The same provision mandates that no search warrant shall issue except upon probable cause to be determined personally by a judge. The requirement of a warrant, however, may be dispensed with if the search was made as an incident of a lawful arrest, *viz.*:

RULE 126 Search and Seizure

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³³ *Id.* at 125-134.

Section 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

Here, petitioner got arrested on July 11, 2012 after a supposed buy-bust operation. Following his arrest, IO1 Arapoc frisked petitioner and allegedly recovered a sealed plastic sachet containing *shabu*. As it was, petitioner was already acquitted of illegal sale of dangerous drugs, the very cause of his arrest. But despite this acquittal, petitioner remains charged with illegal possession of dangerous drug.

As petitioner correctly argued though, the drug item allegedly seized from him incidental to his arrest is inadmissible in evidence. *Veridiano v. People*³⁴ is instructive on this point. There, the Court held that when a warrantless arrest is unlawful, the search incidental thereto cannot be justified. Too, the failure of the accused to assail the validity of his arrest before he or she enters his or her plea would not preclude said accused from questioning the admissibility of the evidence allegedly seized from him or her upon arrest. Thus:

The invalidity of an arrest leads to several consequences among which are: (a) the failure to acquire jurisdiction over the person of an accused; (b) criminal liability of law enforcers for illegal arrest; and (c) any search incident to the arrest becomes invalid thus rendering the evidence acquired as constitutionally inadmissible.

Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea. Otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest."

x x x x

Nevertheless, **failure to timely object to the illegality of an arrest does not preclude an accused from questioning the admissibility of evidence seized. The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner.** Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.

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³⁴ 810 Phil. 642, 653-662 (2017).

In this case, petitioner's arrest could not be justified as an *in flagrante delicto* arrest under Rule 113, Section 5(a) of the Rules of Court. **He was not committing a crime** at the checkpoint. x x x

The warrantless arrest cannot likewise be justified under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure. **The law enforcers had no personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense.**

In the case at bar, the Court of Appeals essentially ruled against the validity of petitioner's arrest following the supposed buy-bust operation, and with good reason. For as IO1 Arapoc admitted, he did not clearly see the exchange between petitioner and Agent Depalubos owing to the distance from where he stood. He testified that he was about ten (10) to fifteen (15) meters away from the two (2) when the alleged sale was consummated. IO1 Arapoc simply relied on the pre-arranged signal when he moved in to arrest petitioner. But without the testimony of Agent Depalubos, the poseur-buyer himself, these circumstances hardly constitute sufficient ground for arrest. *People v. Amin*³⁵ elucidates:

[T]he non-presentation of the poseur-buyer is fatal to the cause of the prosecution. In *People v. Andaya*,³⁶ the importance of presenting the poseur-buyer's testimony before the trial court was underscored by the Court in this wise:

x x x x

In the same case, we emphasized that "[t]here would have been no issue against [the buy-bust operation], except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction." It was even noted in that case that the "members of the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the poseur-buyer."

x x x x

The testimonies of prosecution witnesses x x x **(who was 10 meters away)** cannot be considered as eyewitness accounts of the illegal sale. There was no indication that they directly saw an illegal drug being sold to the poseur-buyer. In *People v. Guzon*,³⁷ we held that "the police officer, who admitted that he

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³⁵ 803 Phil. 557, 563-565 (2017), citing *People v. Andaya*, 745 Phil. 237 (2014).

³⁶ 745 Phil. 237 (2014).

³⁷ 719 Phil. 441, 461-462 (2013).

was seven (7) to eight (8) meters away from where the actual transaction took place, could not be deemed an eyewitness to the crime."

Indeed, IO1 Arapoc had no personal knowledge of whether petitioner was committing or had committed a crime. From his point of view, IO1 Arapoc could not have known whether there was a transaction or if petitioner had any illegal object on his person. Hence, the testimony of Agent Depalubos was indispensable for establishing the basis for the arrest. Without any legal basis for the arrest, no foundation is laid on which IO1's warrantless search of petitioner could have stood. Consequently, the items illegally seized from petitioner are inadmissible in evidence against him.

On this ground alone, petitioner should already be acquitted on the charge of illegal possession of dangerous drugs. Yet the Court of Appeals affirmed petitioner's conviction, relying on the authenticity and due execution of the documents allegedly proving the operation, i.e. the Authority to Operate and the PDEA Region XI's Journal.

We do not agree.

Curiously, the Court of Appeals adopted two (2) different standards for proving that a buy-bust operation actually took place. On the one hand, it found the prosecution's failure to call Agent Depalubos to the witness stand fatal in proving that petitioner was caught in flagrante delicto selling shabu. Thus, it acquitted petitioner of the charge of illegal sale of dangerous drugs. But on the other hand, it found the prosecution's documentary evidence sufficient to establish the operation and sustained the verdict of conviction against petitioner for illegal possession of dangerous drugs. Between these two (2) standards the former finds legal mooring in *People v. Amin*, as earlier illustrated.

Indeed, the Court of Appeals erred in relying on the authenticity and due execution of the prosecution's documentary evidence. For these circumstances bear upon a document's admissibility in evidence, not on its probative value. This underscores the indispensability of Agent Depalubos' testimony who would have been able to establish the veracity of the contents of the prosecution's documentary evidence. Without this crucial testimony, petitioner's acquittal, not just for illegal sale but also for illegal possession of dangerous drugs, is in order.

The prosecution failed to establish an unbroken chain of custody of the corpus delicti

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At any rate, petitioner should nonetheless be acquitted for the buy-bust team's violation of the chain of custody rule.

To recall, petitioner was charged with unauthorized possession of dangerous drug allegedly committed on July 11, 2012. The governing law, therefore, is RA 9165. Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

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:

(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 added)

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The IRR of RA 9165 further commands:

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: 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 noncompliance 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 added)

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To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody:³⁸ *first*, the seizure and marking 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.³⁹

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.⁴⁰

Records show that the arresting officers here had breached the chain of custody rule in its early, yet crucial, stages.

Prosecution witness IO1 Arapoc testified:

xxxx

- Q What thing did you marked (sic)?
A After the seizure I immediately marked the recovered money and at the same time the shabu, Your Honor.
- Q Where?
A At the place of arrest.
- Q Immediately after the seizure?
A Yes, Your Honor.
- Q In the presence of whom?**
A In the presence of the accused[’s] relatives, Your Honor.

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³⁸ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. “Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

xxxx

³⁹ *Jacson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

⁴⁰ *Id.*, citing *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

Q What about your companions, were they present?

A Yes, Your Honor.

Q Who were they?

A Agent Rey Pavillar and the team leader of PNP.⁴¹

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Q What about the sachet of shabu?

A Submitted it to the crime laboratory, Your Honor.

Q You did not keep that in your office?

A No, Your Honor.

Q Who brought the shabu and the marked money at your office after the arrest?

A Me and agent Depalubos.

Q And who was in possession of those items after the arrest?

A I took possession of the confiscated items, your honor, the one (1) piece of shabu and the 500.00 marked money.

Q You did not give it to any of your companions?

A No, Your Honor.

Q Until you reached your office?

A Office of Mati Police Station, Your Honor.

Q And upon arriving at the office did you give it to somebody, the shabu and the marked money?

A No, Your Honor.

Q You were in possession of that items until when?

A Until we reached the office of crime laboratory.⁴²

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Q Now, were these pictures taken, the accused together with the shabu and the marked money at the Mati Police Station?

A Yes, Your Honor.

Q Who took the pictures?

A Agent Marlaw Laurente took pictures

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⁴¹ TSN dated February 18, 2014, p. 18; Original Record of TSNs, p. 25.

⁴² TSN dated February 18, 2014, p. 21; Original Record of TSNs, p. 28.

Q Who were present during the picture taking?
A We invited witnesses, representatives from the media, from the DOJ and elected official from the City of Mati.

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Q **Inside the?**
A **Mati Police Station.**⁴³

CROSS-EXAMINATION

XXXX

Q So, before that buy-bust operation you already received information regarding the illegal activities of the accused?

A Yes, Your Honor.

Q How long was that before the buy bust operations?
A Since I was assigned here in Davao Oriental as OIC.

XXXX

Q **Since you said that this person alias Dakor has already been under the surveillance of your office for about 3 months already prior to the buy bust operation, it means that you already know this person alias Dakor?**

A **Yes, ma'am.**⁴⁴

XXXX

Q Where did you conduct your inventory?

A We conducted our inventory at the Mati Police Station.

Q You did not conduct your inventory in the house of the accused?

A We only did the tagging in the house, the marking, sub marking and then, we did the inventory at the Mati Police Station.

Q Why did you not do it in the house of the accused?

A **Because during that time, we did not have witnesses yet available and so, what we did, I ordered the team to bring the subject including**

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⁴³ TSN dated February 18, 2014, pp. 24-25; Original Record of TSNs, pp. 31-32.

⁴⁴ TSN dated February 18, 2014, pp. 28-29; Original Record of TSNs, pp. 35-36.

the seized items to the nearest Police Station and to conduct the inventory.⁴⁵

(Emphases supplied)

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For one, IO1 Arapoc admitted to marking the seized items in the presence of the other police officers, petitioner himself, and petitioner's relatives, but in the absence of the insulating witnesses. In *People v. Binasing*,⁴⁶ the Court required that the marking be done in the presence of the accused or his representative or counsel **and the insulating witnesses**. The law mandates that these witnesses be present during the **marking**, the actual inventory, and the taking of photographs of the seized items to deter the possibly planting of evidence. Failure to comply is fatal to the prosecution's case.

In *People v. Mendoza*,⁴⁷ the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. Too, in *People v. Macud*,⁴⁸ the Court reiterated the rule that inexcusable non-compliance effectively invalidates the seizure and subsequent custody of the seized item, compromising its identity and integrity.

While non-compliance may be allowed under justifiable circumstances, jurisprudence states that the prosecution must show that the police officers exerted earnest efforts to comply with the procedure.⁴⁹

In *People v. Lim*,⁵⁰ the Court held that mere statements of unavailability of the required witnesses, by themselves do not excuse non-compliance with Section 21, RA 9165. It is still necessary for the prosecution to establish that earnest efforts were made to secure the presence of the required witnesses. Also, in *People v. Claudel*,⁵¹ the Court emphasized that a buy-bust operation is, by its nature, a planned activity. The insulating witnesses should have already been physically present at the time of marking to safeguard the process.

Here, the police officers failed to show genuine and sufficient effort to secure the presence of the representatives during the operations. IO1 Arapoc simply stated that the required witnesses were

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⁴⁵ TSN dated February 25, 2014, pp. 13-14; Original Record of TSNs, pp. 52-53.

⁴⁶ G.R. No. 221439, July 4, 2018.

⁴⁷ 736 Phil. 749 (2014)

⁴⁸ 822 Phil. 1016, 1041 (2017).

⁴⁹ *People v. Miranda*, 824 Phil. 1042, 1052-1053 (2018).

⁵⁰ G.R. No. 231989, September 4, 2018, citing *People v. Ramos*, 826 Phil. 981 (2018).

⁵¹ G.R. No. 219852, April 3, 2019.

unavailable at that time which is hardly acceptable. IO1 Arapoc admitted that they had been surveilling petitioner for three (3) months. They could have already scheduled the buy-bust operation with the required representatives during this period. Yet no arrangement with the representatives was made. Thus, their absence during marking was inexcusable.

For another, the absence of the second link, i.e. the turnover of the seized item by the apprehending officer to the investigating officer, is too glaring to ignore. Verily, this step is necessary because it is the investigating officer who conducts proper investigation and prepares the necessary documents for the developing criminal case.⁵² In *People v. Remigio*,⁵³ the apprehending officer did not transfer the seized items to the investigating officer and kept them in his possession from the time of confiscation until delivery to the forensic chemist. The Court considered this as violation of the chain of custody rule and acquitted appellant therein.

While it can be argued that there was no break in the second link for the seized item *did not change hands*,⁵⁴ IO1 Arapoc's extended possession of the seized item casts more doubt than assurance here, especially since the chain had been broken from its incipience. Indeed, without the presence of the required witnesses during the crucial marking stage as demanded by law, the arresting officer could have very well mislabeled, misplaced, or exchanged the items even inadvertently. More so, Agent Depalubos who acted as poseur-buyer was not presented to testify on the alleged sale and to identify the item he purportedly bought from petitioner. Yet, two sachets of were offered in evidence. The Court then is left with objects of doubtful identities that are certainly not sufficient to warrant a verdict of conviction.

Although a saving clause in the IRR of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved."⁵⁵ Here, since the arresting officers offered no valid explanation for the procedural deficiencies, the saving clause cannot be validly be invoked, barring the proviso from coming into play.

Verily, a verdict of acquittal is in order.

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⁵² *People v. Dahil*, 750 Phil. 212, 231 (2015).

⁵³ 700 Phil. 452 (2012), cited in *People v. Dahil*.

⁵⁴ *People v. Siaton*, 789 Phil. 87, 103 (2016).


⁵⁵ See Section 21 (a), Article II, of the IRR of RA 9165.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 23, 2018 of the Court of Appeals in CA-G.R. CR HC No. 01804-MIN is **REVERSED** and **SET ASIDE**.

ARNOLD J. JAYECTIN is **ACQUITTED**. The Director of the Bureau of Corrections, Mandaluyong City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
9/11/24

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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PUBLIC ATTORNEY'S OFFICE
Regional Special and Appealed Cases Unit
Counsel for Petitioner
BJS Building, Tiano Bros. cor. San Agustin
Streets, 9000 Cagayan de Oro City

Mr. Arnold J. Jayectin
Petitioner
c/o The Superintendent
Davao Prison and Penal Farm
B.E. Dujali, 8105 Davao del Norte

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

Court of Appeals
9000 Cagayan de Oro City
(CA-G.R. CR HC No. 01804-MIN)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 6
Mati, 8200 Davao Oriental
(Crim. Case Nos. 5911-12 & 5912-12)

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