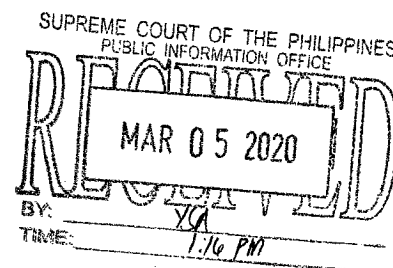




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila
SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **05 February 2020** which reads as follows:

“G.R. No. 234650 (*People of the Philippines v. Edward Colinares y Cuyong and Miguel Dormido y Lagare*). – This is an appeal¹ seeking to reverse and set aside the Decision² dated June 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01359-MIN which affirmed the Consolidated Judgment³ dated September 2, 2014 of Branch 40, Regional Trial Court (RTC), Cagayan de Oro City. The assailed Consolidated Judgment found accused-appellant Edward Colinares y Cuyong (Colinares), in Criminal Case No. 2009-833, guilty beyond reasonable doubt of violating Section 11, Paragraph 2 (3), Article II of Republic Act No. (RA) 9165. The Consolidated Judgment also convicted both accused-appellants Colinares and Miguel Dormido y Lagare (Dormido) of violating Section 5, Article II of RA 9165 in Criminal Case No. 2009-832.

Facts

The instant cases stemmed from three Informations⁴ filed before the RTC. The Information in Criminal Case No. 2009-831⁵ charged Dormido with the offense of Illegal Possession of Drugs Paraphernalia, defined and penalized under Section 12, Article II of RA 9165. In Criminal Case No. 2009-833,⁶ Colinares, on the other hand, was indicted for the offense of Illegal Possession of Dangerous Drugs under Section

¹ Rollo, pp. 21-22.

² *Id.* at 3-18; penned by Associate Justice Edgardo A. Camello with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

³ CA rollo, pp. 65-81; penned by Presiding Judge Ma. Corazon B. Gaité-Llenderal.

⁴ Records (Criminal Case. No. 2009-833), p. 27; Records (Criminal Case No. 2009-832), p. 35; rollo, pp. 3-5.

⁵ Rollo, pp. 3-4.

⁶ Records (Criminal Case. No. 2009-833), p. 27.

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11, Article II of RA 9165. In Criminal Case No. 2009-832,⁷ both accused-appellants Dormido and Colinares were charged with Illegal Sale of Prohibited Drugs under Section 5, Article II of RA 9165.

The prosecution alleged that on December 4, 2009, the Philippine Drug Enforcement Agency (PDEA), Region X, implemented a buy-bust operation against Dormido and Colinares. Intelligence Officer 3 Rubietania Gacus (IO3 Gacus) and the confidential informant acted as *poseur*-buyers in the case. They went to King William Inn along Cruz-Taal Street to secure Room E, while the buy-bust team awaited for IO3 Gacus' pre-arranged signal.⁸

Dormido and Colinares met up with IO3 Gacus and the confidential informant in Room E of King William Inn. The confidential informant told Colinares that IO3 Gacus was interested to buy *shabu* worth ₱500. After IO3 Gacus handed the pre-marked buy-bust money to Colinares, Dormido handed to IO3 Gacus the sachet containing white crystalline substance. Immediately thereafter, the rest of the buy-bust team swooped in to the scene and arrested Dormido and Colinares. IO1 Albert Orellan (IOI Orellan) frisked them and recovered from Colinares the buy-bust money and another sachet of *shabu*. After marking the seized items and taking of photographs, IOI Orellan prepared the inventory of the seized items inside Room E of King William Inn. Thereafter, Dormido, Colinares, and all the specimen were brought to the PDEA office. IOI Orellan prepared the letter-requests⁹ for laboratory examination¹⁰ and then turned over the seized items to the crime laboratory. After a qualitative examination, the contents of the two seized plastic sachets which weighed 0.01 gram and 0.04 gram of white crystalline substance tested positive for methamphetamine hydrochloride.¹¹

In their defense, Dormido and Colinares denied the charges against them. They claimed that on December 4, 2009, they incidentally rode the same passenger jeepney. Dormido was going to the Land Transportation Office (LTO), while Colinares was then looking for a Land Bank branch to do an errand for his father. Eventually, Dormido accompanied Colinares to search for other Land Bank branches as the other branches were offline. According to Dormido, Colinares received a

⁷ Records (Criminal Case No. 2009-832) p. 35.

⁸ *Rollo*, p. 7.

⁹ See *id.* at 8.

¹⁰ Records (Criminal Case. No. 2009-833) p. 2.

¹¹ *Rollo*, pp. 7-9.

text message from a classmate, asking Colinares to meet up at King William Inn. When they went to the place, a vehicle suddenly stopped in front of them, arrested them, and brought them inside the King William Inn. There, Dormido learned that they were being accused of violating the Comprehensive Dangerous Drugs Act.¹²

Colinares corroborated Dormido's testimony. However, Colinares did not mention anything about a classmate of him texting him to go to King William Inn. According to Colinares, they were simply passing by King William Inn when a group of persons suddenly alighted from a vehicle, and forcibly brought them inside the Inn. There, they were asked to point at the things placed on the table such as lighters, aluminum foil, and an improvised needle. After two hours, a *barangay kagawad* arrived who was asked to sign a paper. Colinares also testified that he never saw IO3 Gacus during their arrest and detention. He only saw IO3 Gacus for the first time inside the courtroom.¹³

Ruling of the RTC

In the Consolidated Judgment¹⁴ dated September 2, 2014, the RTC found Dormido not guilty of the offense of Illegal Possession of Drugs Paraphernalia. The RTC, however, convicted him, together with Colinares, of the offense of Illegal Sale of Prohibited Drugs. Additionally, Colinares was found guilty beyond reasonable doubt of the offense of Illegal Possession of Dangerous Drugs. The RTC ruled that the prosecution was able to establish the identity and evidentiary value of the *corpus delicti* from the time the items were seized from Dormido and Colinares, to their delivery to the laboratory for examination, until their presentation in court as part of the evidence for the prosecution. Aggrieved, Dormido and Colinares appealed to the CA.

Ruling of the CA

In the Decision¹⁵ dated June 8, 2017, the CA affirmed Dormido and Colinares' conviction. It upheld the validity of their arrest and seizure of the *shabu* despite the PDEA agents' failure to strictly comply with the requirements of Section 21, Article II of RA 9165.

¹² *Rollo*, pp. 9-10.

¹³ *Id.* at 10-11.

¹⁴ *CA rollo*, pp. 65-81.

¹⁵ *Rollo*, pp. 3-18.

Ruling of this Court

The appeal is with merit.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,¹⁶ 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.¹⁷ 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.¹⁸

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁹ 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 station or office of the apprehending team.”²⁰ 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

¹⁶ 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 357; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 95; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil. 730, 736 (2015).

¹⁷ See *People v. Crispo*, *id.* at 396; *People v. Sanchez*, *id.* at 104; *People v. Magsano*, *id.* at 152; *People v. Manansala*, *id.* at 370; *People v. Miranda*, *id.* at 52; and *People v. Mamangon*, *id.* at 313; See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁸ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 570 citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

¹⁹ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; citing *People v. Viterbo*, *supra* note 170. See also *People v. Alagarme*, 754 Phil. 449, 459-460.

²⁰ *People v. Mamalumpo*, 767 Phil. 845, 855 (2015), see *Imson v. People*, 669 Phil. 262, 271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.²¹

The law further requires that the 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 10640,²² a representative from the media AND the Department of Justice, and any elected public official;²³ or (b) if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media.²⁴ 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.”²⁵

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. 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.”²⁶

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁷ As such, the failure of the apprehending team to strictly comply with it 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 noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁸ The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165,²⁹ which was later adopted into the text of

²¹ See *People v. Tumalak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015) citing *People v. Ocfemia, Id.* at 346-347.

²² 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,’” approved on July 15, 2014.

²³ Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

²⁴ Section 21, Article II of RA 9165, as amended by RA 10640.

²⁵ See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁶ See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citations omitted.

²⁷ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁸ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

²⁹ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “Provided, further, that non-

RA 10640.³⁰ It should however be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³¹ and that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³²

Anent the witness requirement, noncompliance 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.³³ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for noncompliance.³⁴ 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.³⁵

Notably, the Court, in *People v. Miranda*,³⁶ 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, 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 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,

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[.]”

³⁰ 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.”

³¹ *People v. Almorfe*, *supra* note 28.

³² *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³³ See *People v. Manansala*, *supra* note 16.

³⁴ See *People v. Gamboa*, *supra* note 18 at 569, citing *People v. Umipang*, *supra* note 13 at 1053.

³⁵ See *People v. Crispo*, *supra* note 16 at 376-379.

³⁶ See *People v. Manansala*, *supra* note 16.

become apparent upon further review.”³⁷

In this case, the marking and inventory of the seized items were not made in the presence of an elected public official, the media, and a representative from the DOJ. No less than IO1 Orellan admitted that when the *barangay kagawad* and the media arrived, the listing of the items allegedly recovered from Dormido and Colinares was already made. This fact was also admitted by *Kagawad* Erwin Climaco (*Kagawad* Climaco), when he testified that upon his arrival at Room E of King William Inn, the alleged seized items were already placed on the table, and that he was only made to sign a paper. This only shows that he did not actually see the actual conduct of the inventory. In fact, *Kagawad* Climaco even belied the testimony of IO1 Orellan that a media representative came to witness the procedure at the crime scene. According to *Kagawad* Climaco, no media representative was present at that time. This clarifies why the alleged media representative was not presented during the trial despite having been listed as one of the prosecution’s witnesses.

Notably, *Kagawad* Climaco also failed to identify Dormido and Colinares in the court room. *Kagawad* Climaco testified that he never even saw the faces of Dormido and Colinares while he was in Room E of King William Inn. He explained that Dormido and Colinares were handcuffed and were made to face the wall the entire period. This perhaps is the reason why the Inventory³⁸ was left unsigned by Dormido and Colinares, as they were unable to witness the marking and inventory of the items allegedly seized from them. Although it was incumbent upon the prosecution to account for their deviation from Section 21, Article II of RA 9165, the prosecution did not present any justifiable reason for their lapses. Neither did they show that genuine and sufficient efforts were exerted by the apprehending officers in securing the presence of the required witnesses. In view of the foregoing, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Dormido and Colinares were compromised, thereby necessitating their acquittal from the crimes charged.

WHEREFORE, the appeal is **GRANTED**. The assailed Decision dated June 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No.

³⁷ See *id.* at 61.

³⁸ Exhibit “G,” Index of Exhibit, p. 6.

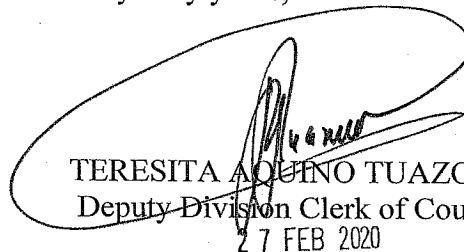
01359-MIN is **REVERSED** and **SET ASIDE**. Accused-appellants Edward Colinares y Cuyong and Miguel Dormido y Lagare are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt in Criminal Case No. 2009-832 and Criminal Case No. 2009-833. Accused-appellants Edward Colinares y Cuyong and Miguel Dormido y Lagare are **ORDERED** immediately **RELEASED** from detention, unless they are otherwise legally confined for another cause.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of accused-appellants Edward Colinares y Cuyong and Miguel Dormido y Lagare unless they are being held in custody for any other unlawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED." (HERNANDO, J., on official leave.)

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *whh. 2/26*
27 FEB 2020