



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **28 April 2021** which reads as follows:*

“G.R. No. 246420 (*People of the Philippines v. Nelly Ortizano y Arce*).—Assailed in this appeal is the January 30, 2019 Decision¹ of the Court of Appeals (CA) in CA-G.R CR-HC No. 02658, which affirmed the Regional Trial Court’s (RTC) judgment of conviction against Nelly Ortizano y Arce for Illegal Sale and Illegal Possession of Dangerous Drugs.

ANTECEDENTS

On April 24, 2014, the Bacolod City Police Station received a report from an asset that Nelly Ortizano y Arce (Nelly) was selling illegal drugs at Purok Kagaykay, Barangay 2, Bacolod City. To confirm the report, Chief Police Superintendent Jefferson Descallar (P/Supt. Descallar) directed Police Officer 1 EJ C. Iwarata (PO1 Iwarata), among others, to conduct surveillance monitoring. The policemen observed the target area for about three hours, and saw several persons entering and exiting Nelly’s house. Thus, P/Supt. Descallar coordinated with the Philippine Drug Enforcement Agency (PDEA) Region 6, and organized simultaneous entrapment operations with four groups – Police Station 2, City Anti-Illegal Drugs Special Operations Task Group, K9, and Special Operation Group – against several individuals, including Nelly. PO1 Iwarata was designated as the poseur-buyer for the buy-bust operation against Nelly. The Coordination Form, Pre-Operation Report, and buy-bust money were also prepared.²

Around 11:00 p.m. of the same day, the teams proceeded to carry out the operations and went to Nelly’s house. While walking towards the house,

¹ *Rollo*, pp. 5-18; penned by Associate Justice Edward B. Contreras, with the concurrence of Associate Justices Gabriel T. Ingles and Dorothy P. Montejo-Gonzaga.

² *Id.* at 7; *CA rollo*, pp. 36-38.

PO1 Iwarata saw Nelly outside the door and asked if her items were good. Unfamiliar with him, Nelly asked who he was, and PO1 Iwarata responded that he used to hang out at the gambling place. Assuaged, Nelly invited him inside the house. PO1 Iwarata said he wanted to buy *shabu* worth ₱200.00, and handed Nelly two ₱100.00 bills bearing serial numbers LG992290 and XA345212. PO1 Iwarata then followed Nelly into a room where she ordered a certain Celso to get the items. Thereafter, Celso gave PO1 Iwarata one small heat-sealed transparent sachet containing white crystalline substance. PO1 Iwarata placed the sachet in his pocket, and made a missed call to P/Supt. Descallar to signal the completion of the transaction.³

There, PO1 Iwarata introduced himself as a police officer and arrested Nelly. After frisking, the police recovered the buy-bust money from Nelly. On a table, PO1 Iwarata saw two elongated plastic sachets containing white crystalline substance, eleven unsealed plastic sachets with traces of white crystalline substance, one improvised tooter, six aluminum foils, three improvised scoops, thirteen disposable lighters, two scissors, one cellular phone, and one pack of empty sachets. At the place of arrest, PO1 Iwarata marked the sachet he bought with “NAO A,” and the two elongated sachets he seized from the table with “NAO B-1” and “NAO B-2.” The drug paraphernalia were likewise marked. The seized items were inventoried and photographed in the presence of Barangay Captain Richard Barber, Kagawad Victor D. Aliguin, and media representative Malou Flejoles. Soon after, Nelly and the seized items were brought to Police Station 2 where the apprehending team recorded the arrest in the police blotter, and prepared a request for laboratory examination. Later, PO1 Iwarata brought the seized items to Negros Occidental Provincial Crime Laboratory. In Chemistry Report No. D-134-2014, Police Chief Inspector Paul Jerome Sedigo Puentespina concluded that the sachets marked with “NAO A,” “NAO B-1,” and “NAO B-2” yielded positive results for methamphetamine hydrochloride, a dangerous drug.⁴

Accordingly, Nelly was charged with violation of Sections 5⁵ and 11,⁶ Article II of Republic Act (RA) No. 9165⁷ in two separate Informations:

[Criminal Case No. 14-39107 - for sale of dangerous drugs]

That on or about the 24th day of April, 2014, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, did then and there wilfully, unlawfully and feloniously sell, deliver, give away to Police Poseur buyer, PO1 EJ C Iwarata in a buy-bust operation, one (1) heat sealed transparent plastic sachet containing methamphetamine hydrochloride or shabu, a dangerous drug, weighing 0.02 gram which in exchange for two (2) One Hundred (Php100.00) Peso bills with Serial Nos.

³ *Id.* at 7-8; CA *rollo*, pp. 38-39.

⁴ *Id.* at 8; CA *rollo*, pp. 39-41.

⁵ Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

⁶ Possession of Dangerous Drugs.

⁷ “Comprehensive Dangerous Drugs Act of 2002.”

LG992290 and XA345212 marked money in violation of the aforementioned law.

Act contrary to law.⁸

[*Criminal Case No. 14-39108 - for possession of dangerous drugs*]

That on or about the 24th day of April 2014, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and feloniously have in her possession and under her custody two (2) heat sealed transparent plastic sachets, containing methamphetamine hydrochloride or shabu, a dangerous drug, having a total weight of 0.05 gram in violation of the aforementioned law.

Act contrary to law.⁹

Nelly denied the accusations against her and claimed that she was framed by the police. She testified that she was sleeping at her house when three officers kicked the door open, and asked her to show them the “bulto.” When Nelly answered that she does not know, the police placed something on the table and arrested her.¹⁰

In a Decision¹¹ dated August 31, 2017, the RTC found Nelly guilty of selling and possessing dangerous drugs, and ruled that the prosecution proved the necessary links in the chain of custody, thus:

WHEREFORE, finding the accused Nelly Ortizano y Arce GUILTY beyond reasonable doubt of: (a) Violation of Section 5 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs), Article II of Republic Act 9165 in Criminal Case 14-39107; and (b) Violation of Section 11 (Possession of Dangerous Drugs), Article II of the same law in Criminal Case 14-39108, judgment is hereby rendered sentencing her to suffer: (1) Life Imprisonment, and to pay a fine of Php500,000.00 in Criminal Case No. 14-39107; and indeterminate prison term of Twelve (12) years and One (1) day, as minimum, to Fifteen (15) years, as maximum, and to pay a fine of Php300,000.00 in Criminal Case 14-39108. She is also to bear the accessory penalties provided by law. Costs against the accused.

The subject one (1) heat-sealed plastic sachet containing shabu with “NAO A” markings (buy-bust) (Exhibit “C-1” – 0.02 gram); two (2) elongated heat-sealed plastic sachets containing shabu with “NAO B-1” markings (Exhibit “C-2” – 0.03 gram) and “NAO B-2” markings (Exhibit “C-3” – 0.02 gram) (recovered); and eleven (11) unsealed plastic sachets with traces/residue of shabu with “NAO C-1” to “NAO C-11” markings (Exhibit “C-4” to “C-14”), being dangerous drugs, are hereby ordered confiscated and/or forfeited in favor of the government and to be immediately delivered or turned over to the Philippine Drug Enforcement

⁸ *Id.* at 5-6.

⁹ *Id.* at 6.

¹⁰ *Id.* at 8; *CA rollo*, p. 42.

¹¹ *CA rollo*, pp. 35-45; penned by Judge Therese Blanche A. Bolunia. Docketed as Criminal Case Nos. 14-39107 and 14-39108.

Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

The prompt commitment of accused NELLY ORTIZANO y ARCE to the national penitentiary for service of sentence hereby is furthermore ordered.

SO ORDERED.¹²

Aggrieved, Nelly elevated the case to the CA.¹³ On January 30, 2019, the CA affirmed the RTC's findings, and held that the chain of custody remained intact from the time the contraband was seized until it was presented in court.¹⁴ Hence, this appeal. Nelly argues that the prosecution failed to establish the integrity of the chain of custody.¹⁵

RULING

We acquit.

In *Illegal Sale and Illegal Possession of Dangerous Drugs*, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.¹⁶ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹⁷ The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.¹⁸ Here, the records reveal a broken chain of custody.

Notably, the alleged crimes happened before RA No. 10640¹⁹ amended

¹² *Id.* at 45.

¹³ *Id.* at 17-34; 51-68.

¹⁴ The dispositive portion of the Decision, reads:

WHEREFORE, the appeal is DENIED. The Decision of the RTC, Branch 47, Bacolod City, dated August 31, 2017, in Criminal Case Nos. 14-39107 and 14-39108, is hereby AFFIRMED in toto.

SO ORDERED. (*Rollo*, p. 18.)

¹⁵ *Id.* at 29-32, 35-36. In their Manifestations, the parties dispensed with the filing of Supplemental Briefs, and adopts their Appellant's and Appellee's Briefs filed before the CA as their respective Supplemental Briefs.

¹⁶ *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1050 (2018); *People v. Mamangon*, 824 Phil. 728, 736 (2018); and *People v. Partoza*, 605 Phil. 883, 890 (2009).

¹⁷ *People v. Ismael*, 806 Phil. 21, 30-31 (2017); and *Malillin v. People*, 576 Phil. 576, 587 (2008).

¹⁸ *People v. Bugtong*, 806 Phil. 628, 638-639 (2018).

¹⁹ 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." RA No. 10640 took effect on August 7, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the

RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations (IRR) shall apply, to wit:

[Section 21, paragraph 1, Article II of RA No. 9165]

(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 copies of the inventory and be given a copy thereof. (Emphases supplied.)

[Section 21(a), Article II of the IRR of RA No. 9165]

(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.** (Emphases supplied.)

Any deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.²⁰ In *People v. Lim*,²¹ it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the earnest efforts made to secure their attendance, viz.:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umpiang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is

National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

²⁰ *People v. De la Cruz*, 591 Phil. 259, 272 (2008).

²¹ G.R. No. 231989, September 4, 2018.

to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were unreasonable. (Emphases in the original; citation omitted.)

Here, the absence of the required insulating witness puts serious doubt as to the integrity of the chain of custody. There was no representative from the DOJ during the inventory and photograph of the seized items. Admittedly, only *barangay* officials and a media representative witnessed the inventory. There was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives failed to provide any justification for the absence of the DOJ representative, and show that the integrity of the evidence had all along been preserved. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the seized item and no opportunity for someone not in the chain to have possession of the item. To be sure, the prosecution merely explained that “*as per Certificate of Inventory, no DOJ representative was present during the conduct thereof.*”²² In *People v. Caray*,²³ we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirement of the chain of custody rule. Similarly, in *Matabilas v. People*,²⁴ sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance. Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drug.²⁵ The utter disregard of the required procedures created a huge gap in the chain of custody.

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable and cannot be regarded as binding truth.²⁶ Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.²⁷

²² *Rollo*, p. 6.

²³ G.R. No. 245391, September 11, 2019.

²⁴ G.R. No. 243615, November 11, 2019.

²⁵ See *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

²⁶ *Malillin v. People*, 576 Phil. 576, 587 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).

²⁷ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

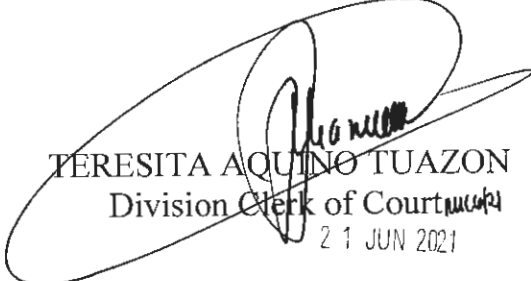
We reiterate that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent woman. The Court cannot tolerate the lax approach of law enforcers in handling the *very corpus delicti* of the crime. Hence, Nelly Ortizano y Arce must be acquitted of the charges against her given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated January 30, 2019 in CA-G.R. CR-HC No. 02658 is **REVERSED**. Nelly Ortizano y Arce is **ACQUITTED** in Criminal Case Nos. 14-39107 and 14-39108, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five (5) days from receipt of this Resolution.

SO ORDERED." (Lopez, J. Y., *J.*, designated additional Member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
21 JUN 2021

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NELLY ORTIZANO y ARCE (x)
Accused-Appellant
c/o The Superintendent
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THE SUPERINTENDENT (x)
Correctional Institution for Women
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THE DIRECTOR (x)
Bureau of Corrections
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HON. PRESIDING JUDGE (reg)
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(Crim. Case Nos. 14-39107 and 14-39108)

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