



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:*

**“G.R. No. 242951 (People of the Philippines, Plaintiff-Appellee, v. Nixon Tapales Dagami a.k.a. “Xon,” Accused-Appellant).** – This appeal seeks to reverse and set aside the Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02102, that affirmed the Decision<sup>2</sup> of Branch 53, Regional Trial Court (RTC) of Lapu-Lapu City in Criminal Case Nos. 018726-L & 018727-L, which found appellant Nixon Tapales Dagami alias “Xon” (appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165.<sup>3</sup>

**Antecedents**

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165 in an Information, the accusatory portions of which read –

**Criminal Case No. 018726-L**

That on the 1<sup>st</sup> day of March 2007, at about 7:00 o'clock in the evening, in Babag II, Lapu-Lapu City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and convey to another person one (1) heat-sealed plastic packet, marked as “NTD,” containing 0.01 gram of

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<sup>1</sup> *Rollo*, pp. 4-18; dated 27 July 2018; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Louis P. Acosta of the Court of Appeals.

<sup>2</sup> *CA rollo*, pp. 47-53; dated 31 March 2015; penned by RTC Presiding Judge Anna Marie P. Militante.

<sup>3</sup> Comprehensive Dangerous Drugs Act of 2002.

white crystalline substance, which when subjected to laboratory examination gave positive result for the presence of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

Criminal Case No. 018727-L

That on the 1<sup>st</sup> day of March 2007, at about 7:00 o'clock in the evening, in Babag II, Lapu-Lapu City, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession, control[,] and custody nine (9) heat-sealed transparent plastic sachets, marked "NTD-1" thru "NTD-9," containing a total net weight of 0.09 gram of white crystalline substance, which when subjected to laboratory examination gave positive result for the presence of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>5</sup>

Appellant pleaded not guilty.<sup>6</sup> After pre-trial, trial on the merits ensued.<sup>7</sup>

On 01 March 2007, a buy-bust team was organized to entrap appellant after receiving a tip from a confidential informant (CI) that he was engaged in illegal drug trade activities in Babag II, Lapu-Lapu City.<sup>8</sup> During the buy-bust operation, appellant sold and handed to poseur-buyer, Police Officer 2 Jupiter Nurab (PO2 Nurab), one (1) plastic sachet containing white crystalline substance of suspected *shabu* worth Php100.00 taken from a small face cream container.<sup>9</sup> Upon appellant's receipt of the buy-bust money, PO2 Nurab arrested him and did a bodily search on his person which yielded the buy-bust money and nine (9) more plastic sachets of suspected *shabu*.<sup>10</sup>

PO2 Nurab then handed to SPO3 Mario Poblete the plastic sachet of suspected *shabu*, subject of the sale. On the other hand, PO2 Romeo Cabras marked the seized items and prepared an inventory at the place of arrest. The team proceeded to the police station where PO3 Rudino Amistad took photographs of the ten (10) plastic sachets seized from appellant. Thereafter, PO2 Victor Pepito submitted the

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<sup>4</sup> Records, Vol. I, p. 1.

<sup>5</sup> *Id.*, Vol. II, p. 1.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> *Id.* at 28-30.

<sup>8</sup> TSN dated 14 August 2007, pp. 6-9.

<sup>9</sup> *Id.* at 12-17.

<sup>10</sup> *Id.* at 18-19.

seized items to the crime laboratory.<sup>11</sup> Per Chemistry Report No. D-259-2007<sup>12</sup> issued by Forensic Chemist Jude Daniel M. Mendoza, all the seized items tested positive for methamphetamine hydrochloride, a dangerous drug.

On the other hand, appellant denied the accusations against him. He claimed that in the afternoon of 08 February 2007, he was on his way to his uncle's house when two (2) police officers approached him and asked if he knew a certain Ruel Dungog. When he answered in the negative, they poked a gun at him and mauled him. He was ushered in a vehicle and while on the road, the police officers offered to release him in exchange for a sum of money. Because he could not produce a single centavo, the police officers jailed him. The next day, they took photograph of him with a plastic sachet of *shabu* and a sum of money on a table.<sup>13</sup>

### Ruling of the RTC

In a Decision dated 31 March 2015,<sup>14</sup> the RTC convicted appellant of Section 5 (Illegal Sale of Dangerous Drugs) and Section 11 (Illegal Possession of Dangerous Drugs), Article II of RA 9165, the dispositive portion of which stated:

WHEREFORE, judgment is hereby rendered finding accused, Nixon Tapales Dagami aka "Xon," GUILTY BEYOND REASONABLE DOUBT of Violations of Sections 5 and 11, Article II of R.A. no. 9165. Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (P500,000.00) PESOS and; the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM and to pay a fine in the amount of THREE HUNDRED THOUSAND (P300,000.00) PESOS, respectively. The preventive imprisonment accused has undertaken shall be credited to the service of his sentence.

The subject sachets of *shabu* with marking "NTD" (Exhibit "D"), as the nine (9) pieces [of] small heat-sealed clear packs (Exhibits "E," "E-1" to "E-8") containing *shabu* with markings "NTD-1" to "NTD-9" are declared forfeited in favor of the Government, to be disposed of pursuant to the provisions of R.A. 9165 and related rules and regulations.

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<sup>11</sup> *Id.* at 19-34.

<sup>12</sup> Records, Vol. 1, p. 6.

<sup>13</sup> *Rollo*, p. 50.

<sup>14</sup> CA *rollo*, pp. 47-53; penned by Judge Anna Marie P. Militante.

Furnish all concerned with a copy of this Decision.

**SO ORDERED.**<sup>15</sup>

The RTC held that the prosecution successfully discharged the burden of proof in the cases of Illegal Sale and Illegal Possession of Dangerous Drugs. The trial court relied on the statements of the prosecution witnesses as against the bare denials of appellant. The RTC further held that the failure of the arresting officers to strictly comply with the three-witness requirement mandated by law is of no moment because the identity and the evidentiary value of the items seized were never compromised. The seized items were in exclusive custody of the arresting officers from the moment of confiscation until their submission to the crime laboratory.<sup>16</sup>

### **Ruling of the CA**

On 27 July 2018, the CA promulgated its assailed Decision affirming appellant's conviction, thus:

**WHEREFORE**, the Decision dated March 31, 2015 rendered by the Regional Trial Court, Branch 53, Lapu-Lapu City in Criminal Case No. 018726-L and Criminal Case No. 018727-L convicting accused-appellant Nixon Tapales Dagami a.k.a. "Xon" of Violation of Section[s] 5 and 11 respectively, of Article II of R.A. 9165 or the Dangerous Drugs Act is **AFFIRMED**.

With costs against accused-appellant.

**SO ORDERED.**<sup>17</sup>

On appeal, the CA ruled that appellant was caught *in flagrante delicto* selling illegal drugs to poseur-buyer PO2 Nurab.<sup>18</sup> He was likewise caught in his possession of and under his custody nine (9) plastic sachets of *shabu* without legal authority to possess the same.<sup>19</sup> The CA brushed aside appellant's defense of denial, frame-up, and extortion for being unsubstantiated.<sup>20</sup> Hence, this appeal.

### **Issue**

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<sup>15</sup> *Id.* at 52-53.

<sup>16</sup> *Id.* at 52.

<sup>17</sup> *Rollo*, p. 17.

<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 12-13.

<sup>20</sup> *Id.* at 16.

The sole issue in this case is whether or not the CA correctly affirmed appellant's conviction for the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs under RA 9165.

### Ruling of the Court

We find the appeal meritorious.

To secure a conviction for illegal sale of dangerous drugs, the prosecution must establish the presence of the following elements: (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.<sup>21</sup> As to the illegal possession of dangerous drugs, the following elements should be ascertained: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>22</sup>

In both cases, it is essential that the identity of the prohibited drugs seized from the accused be established beyond reasonable doubt, and that the prohibited drugs offered in court as exhibit are the same as those recovered from the accused. This requirement is known as the chain of custody rule under RA 9165 which was created to obviate any doubt concerning the identity of the seized drugs.<sup>23</sup>

Section 21, Article II of RA 9165, applicable at the time of the commission of the offenses, lays down the chain of custody rule, outlining the procedures the arresting officers must follow in handling seized drugs in order to preserve their integrity and evidentiary value. The relevant portion of Section 21 (1) reads —

(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 supplied)

Supplementing the foregoing provision, Section 21 (a) of the IRR of RA 9165 states:

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<sup>21</sup> *People v. Ramos*, G.R. No. 236455, 19 February 2020 [Per CJ Peralta].

<sup>22</sup> *People v. Suating*, G.R. No. 220142, 29 January 2020 [Per J. Leonen].

<sup>23</sup> *People v. Ambrosio*, G.R. No. 234051, 27 November 2019 [Per J. Zalameda].

(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 supplied)

To show an unbroken chain of custody, the following links must be proven by the prosecution: first, the seizure and marking, if practicable, 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 from the forensic chemist to the court.<sup>24</sup>

We hold that the prosecution failed to prove the first link. Under the first link, the prosecution must prove that the arresting officers marked the seized items immediately after the arrest and prepared the inventory<sup>25</sup> in the presence of the accused, and the three (3) mandatory third-party witnesses, namely, a representative each from the media and the DOJ as well as any elected public official pursuant to Section 21(1) of RA 9165 and Section 21(a) of its IRR. The presence of the three (3) witnesses required by Section 21 is precisely intended to guard against the pernicious practice of policemen in planting evidence.<sup>26</sup> Without the “insulating presence” of such witnesses during the confiscation and marking of the drugs, the evils of switching, “planting” or contamination of evidence that had tarnished buy bust operations under RA 6425 would again return

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<sup>24</sup> *People v. Alon-Alon*, G.R. No. 237803, 27 November 2019 [Per J. Zalameda].

<sup>25</sup> *Largo v. People*, G.R. No. 201293, 19 June 2019 [Per J. Lazaro-Javier].

<sup>26</sup> *People v. Advincula*, G.R. No. 201576, 22 July 2019 [Per J. Carandang].

as to negate the integrity and credibility of the seizure of such contraband.<sup>27</sup>

In the case at bar, the testimonies of the prosecution witnesses showed non-compliance with the three-witness rule: first, all three third-party witnesses were absent during the actual confiscation and marking of the items at the place of arrest; and second, none of the third-party witnesses were again present during the inventory and photograph of the seized items. The phrase "immediately after seizure and confiscation" found in both RA 9165 and its IRR means that the required witnesses should already be physically present at the time or near the place of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.<sup>28</sup>

However, despite non-compliance with the aforesaid legal requirements, conviction may still ensue where the prosecution alleges and proves justifiable grounds for the arresting officers' non-compliance therewith, and establishes the steps taken to ensure that the integrity and evidentiary value of the seized items were preserved. The prosecution must also prove that the apprehending team exerted earnest efforts to obtain the attendance of mandatory witnesses.<sup>29</sup>

In this case, the prosecution failed to discharge their duty of proving the measures they took to ensure the preservation of the seized items integrity and evidentiary value. Worse, they did not offer any explanation why all of the mandatory third-party witnesses were absent not only during the actual confiscation and marking but also during the inventory and photographing of the seized items. The prosecution has the *positive duty* to prove its reasons for the procedural lapses.<sup>30</sup>

The arresting officers' glaring non-observance of the procedure set out by Section 21 of RA 9165 raises serious doubt if the illegal drugs presented in court are the same illegal drugs seized from the appellant.<sup>31</sup> It must be emphasized that strict adherence to Section 21 is required where the quantity of the illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of

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<sup>27</sup> *People v. Sanico*, G.R. No. 240431, 07 July 2020 [Per J. Caguioa, Separate Concurring Opinion].

<sup>28</sup> *People v. Sanico*, G.R. No. 240431, 07 July 2020 [Per CJ Peralta].

<sup>29</sup> *People v. Silayan*, G.R. No. 229362, 19 June 2019 [Per J. Carpio].

<sup>30</sup> *People v. Ternida*, G.R. No. 212626, 03 June 2019 [Per J. Leonen].

<sup>31</sup> *People v. Sali*, G.R. No. 236596 (Resolution), 29 January 2020 [Per CJ Peralta].

evidence.<sup>32</sup> So should it be in this case where the *shabu* appellant allegedly sold and possessed amounted to a paltry 0.01 gram and 0.09 gram, respectively.


The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance by the arresting officers. Otherwise, the *raison d'etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave the door open for tampering, substitution, and planting of evidence.<sup>33</sup> The arresting officers in this case fell miserably short of this standard. And where, as in this case, there is no justifiable reason for the arresting officers' non-compliance with the chain of custody rule, it is the Court's duty to overturn the verdict of conviction.<sup>34</sup>

**WHEREFORE**, the appeal is hereby **GRANTED**. The Decision dated 27 July 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02102, affirming the conviction of appellant **NIXON TAPALES DAGAMI a.k.a. "XON"** for the offenses of Illegal Sale and Illegal Possession of Dangerous Drugs, is **REVERSED** and **SET ASIDE**. He is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

The Court **DIRECTS** the Director of the Bureau of Corrections to implement the immediate release of **NIXON TAPALES DAGAMI a.k.a. "XON,"** and to report on his/her compliance within five (5) days from receipt hereof.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
2021

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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<sup>32</sup> *People v. Padua*, G.R. No. 239781 (Resolution), 05 February 2020 [Per CJ Peralta].

<sup>33</sup> *People v. Que*, G.R. No. 212994, 31 January 2018 [Per J. Leonen].

<sup>34</sup> *People v. Bombasi*, G.R. No. 230555, 09 October 2019 [Per J. Lazaro-Javier].





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(CA-G.R. CR HC No. 02102)

The Hon. Presiding Judge  
Regional Trial Court, Branch 53  
Lapu-Lapu City, 6015 Cebu  
(Crim. Case Nos. 018726-L  
& 018727-L)

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