



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **18 January 2021** which reads as follows:*

“G.R. No. 253830 (*Dominic Peralta y Reyes v. People of the Philippines*).

Before the Court is a Rule 45 petition¹ seeking to reverse and set aside the July 31, 2019 Decision² of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09360. The CA affirmed the September 18, 2015 Decision³ of the Regional Trial Court (RTC) of Laoag City, Branch 13, that found Dominic Peralta y Reyes (Dominic) guilty of illegal sale of dangerous drugs under Section (Sec.) 5 of Republic Act (RA) No. 9165, or the “Comprehensive Dangerous Drugs Act.”

At the outset, the Court resolves to **GRANT** petitioner’s motion for extension of thirty (30) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

After a careful review of the case, the Court reverses and sets aside the assailed rulings of the CA and the RTC. The Court resolves to acquit Dominic for failure of the prosecution to prove that the apprehending team complied with the mandatory requirements of Sec. 21, of RA No. 9165. We find that the identity of the *corpus delicti* had been compromised.

Foremost, there was a failure to immediately mark the drugs at the place of arrest. The marking was instead, done at the police station. Thus, during the buy bust team’s transit to the police station, the sachet of *shabu* remained unmarked causing a significant gap in the chain of custody that may have compromised the evidence. In *People v. Ismael*,⁴ the Court

¹ *Rollo*, pp. 11-35.

² *Id.* at 62-81; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin.

³ *Id.* at 40-56.

⁴ 806 Phil. 21 (2017).

4/20

highlighted the importance of marking the seized drugs immediately upon arrest, *viz.*:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking**, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, **should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**⁵ [Emphases ours.]

Although the prosecution explained – that Dominic was resisting arrest and that people were starting to converge at the scene – to justify the belated marking conducted at the police station, the apprehending team’s observance of the requirements of the law still could not suffice.

Section 21, Article (Art.) II of RA No. 9165,⁶ prior to its amendment by RA No. 10640,⁷ outlines the post-seizure procedure for the custody and

⁵ *Id.* at 31-32, citing *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

⁶ Section 21 of RA No. 9165 reads:

SEC. 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous 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.] (Emphases supplied.)

This is implemented by Sec. 21 (a), Art. II of the Implementing Rules and Regulations of RA No. 9165 which states:

SEC. 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, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and

disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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.⁸

The prosecution bears the positive duty to initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence.⁹ Specifically, it must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained on the ground of just and valid circumstances,¹⁰ and earnest effort to secure the attendance of the necessary witnesses must be proven.¹¹

In this case, only elected *barangay* officials witnessed the inventory of the seized prohibited drugs. The prosecution offered no explanation as to the absence of a representative from the DOJ and the media. Thus, there was an unjustified failure to comply with the procedure laid down by Sec. 21 of RA No. 9165.

We emphasize that the presence of the persons who should witness the post-operation measures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.¹² The insulating presence of such witnesses would have preserved an unbroken chain of custody¹³ considering that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to

invalid such seizures of and custody over said items[.]

⁷ 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," which took effect on July 23, 2014. RA No. 9165, prior to its amendment, is applicable in this case since the commission of the crime happened before the enactment of the amendatory law.

⁸ All three insulating witnesses are required under RA No. 9165 before its amendment; *People v. Lim*, G.R. No. 231989, September 4, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Sipin*, 833 Phil. 67, 88-89 (2018); *People v. Reyes*, 830 Phil. 619, 627 (2018); and *People v. Mola*, 830 Phil. 364, 373-374 (2018).

⁹ *People v. Padua*, G.R. No. 239781, February 5, 2020, citing *People v. Sipin*, 833 Phil. 67, 92 (2018).

¹⁰ *Id.* The following are the reasons to justify the absence of any of the necessary insulating witnesses: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

¹¹ *Id.*

¹² *People v. Macud*, 822 Phil. 1016, 1041 (2017).

¹³ *Id.*

ensure that the procedural safeguards provided by law are strictly observed. Moreover, we cannot merely gloss over the glaring lapses committed by the police officers, especially when what had been allegedly seized from Dominic was 0.0190 gram of *shabu*, a miniscule amount that can be readily planted, tampered, or altered.¹⁴

In sum, it must be stressed that the prosecution has the burden of proving compliance with Sec. 21 of RA No. 9165 and providing a sufficient explanation in case of non-compliance. Breaches of the procedure outlined in Sec. 21 committed by police officers, if left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.¹⁵

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Decision dated July 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 09360 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Dominic Peralta y Reyes is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.” (J. Rosario designated additional Member *per* Special Order No. 2797 dated November 5, 2020; on official leave).

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *Wjh*

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6/30

¹⁴ See *People v. Adobar*, 832 Phil. 731, 769 (2018); *People v. Alvarado*, 830 Phil. 785, 810 (2018); *People v. Abelarde*, 824 Phil. 123, 131-132 (2018).

¹⁵ *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018.

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c/o The Director
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-and/or-
Brgy. 11, Laoag City (reg)
Ilocos Norte

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 13
Laoag City
(Crim. Case Nos. 15843 & 15844)

THE DIRECTOR (x)
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