REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **21 June 2021** *which reads as follows*:

"G.R. No. 250902 (*People of the Philippines v. Alberto Lopez y Dela Cruz*). – Considering the failure of the Office of the Solicitor General to file supplemental brief required in the Resolution dated June 8, 2020 despite receipt of a copy of the aforesaid resolution on November 20, 2020, the Court resolves to **DEEM** as **WAIVED** the filing of its supplemental brief.

Appellant waived his right to assail the validity of his warrantless arrest

On the warrantless arrest of Alberto Lopez *y* Dela Cruz (appellant), suffice it to state that any objection involving arrest or how the court acquired jurisdiction over the person of the accused must be made before arraignment; otherwise, the objection is deemed waived.[1] The legality of an arrest affects only the jurisdiction of the court over the person of the accused, and any defect in the arrest may be deemed cured when he or she voluntarily submits to the jurisdiction of the trial court.[2] The accused's voluntary submission to the jurisdiction of the court and his or her active participation during the trial cures any defect or irregularity that may have attended his or her arrest.[3]

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[1] See *Lapi v. People*, G.R. No. 210731, February 13, 2019.
[2] *People v. Alunday*, 586 Phil. 120, 133 (2008).
[3] See *People v. Bacla-an*, 445 Phil. 729, 748 (2003).

Here, appellant did not raise any objection to his warrantless arrest before he got arraigned. He, in fact, voluntarily submitted to the court's jurisdiction by entering a plea of not guilty, and thereafter, actively participating in the trial. As it was, his present challenge against his warrantless arrest came too late in the day as he raised it only for the first time on appeal before the Court of Appeals. This belated stance certainly cannot undo his waiver and the consequent proceedings that took place below as well as the appellate proceedings before the Court of Appeals.

The failure of the accused though to timely object to the illegality of his arrest does not preclude him or her from questioning the admissibility of the evidence seized as an incident of the warrantless arrest.[4] Its inadmissibility is not affected when the accused fails to timely question the court's jurisdiction over his or her person. Jurisdiction over the person of the accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.[5]

The chain of custody was broken

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.[6] The dangerous drug seized from an accused constitutes such *corpus delicti*. It is thus imperative for the prosecution to establish that the identity and integrity of the dangerous drug were duly preserved in order to sustain a verdict of conviction.[7] It must prove that the dangerous drug seized from the accused is indeed the substance offered in court with the same unshakeable accuracy as that required to sustain a finding of guilt.

Appellant was arrested on August 16, 2016 and subsequently charged with violations of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165). Thus, the applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640). Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

> x x x x
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> 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, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as

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[4] See *Homar v. People*, 768 Phil. 195, 209 (2015).
[5] *Veridiano v. People*, 810 Phil. 642, 654 (2017).
[6] See *People v. Calates*, 829 Phil. 262, 269 (2018).
[7] See *Calahi v. People*, 820 Phil. 886, 894 (2017), *citing People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1106 (2012).

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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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** 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, 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." (Emphasis supplied)

x x x x

The Implementing Rules and Regulations (IRR) of RA 9165 further mandates:

x x x x

> **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: x x x 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**; (Emphasis supplied)

x x x x

Generally, there are four (4) links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.[8]

[8] *People v. De Leon*, G.R. No. 227867, June 26, 2019.

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, it includes the physical inventory and taking of photograph of the seized items which should be done in the presence of the accused or his/her representative or counsel, together with an elected public official **and** a representative of the Department of Justice (DOJ) **or** the media.

Here, the first link of the chain of custody had already been breached early on.

At the outset, the marking was not done immediately after arrest and seizure of the specimens. In ***People v. Castillo***,[9] the Court explained the importance of immediately marking the *corpus delicti* after seizure:

> In ***People v. Saunar***, this Court discussed the purpose of marking and emphasized that it is a separate requirement from inventorying and photographing:
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> > Although the requirement of "marking" is not found in Republic Act No. 9165, its significance lies in ensuring the authenticity of the *corpus delicti*. In ***People v. Dahil***:
> >
> > > in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. *The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence* (Emphasis supplied) (Citations omitted)

To justify their failure to immediately mark the seized items at the place of arrest, the police officers cited the following reasons: 1) it was late in the evening; 2) they were in a public street; and 3) that appellant's relatives lived nearby. In ***People v. Mola***,[10] the Court stated that "*[t]he insinuation that the safety and security of his person or of the items seized was under immediate or extreme danger was self-serving as it was not substantiated or corroborated by evidence.*"

In truth, however, these are mere unsubstantiated statements which cannot validly justify non-compliance with the mandatory procedure for

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[9] G.R. No. 238339, August 07, 2019.
[10] 830 Phil. 364, 378 (2018).

immediate marking of the seized items in the place of seizure and arrest. Indeed, 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 circumstance, their actions were reasonable.*"[11]

Additionally, there was a significant gap from the time the items were seized until they were finally marked at the barangay hall. To recall, the police officers first travelled from Tulay 10 to the barangay hall. Once there, the police officers spent some time calling for barangay kagawads and waiting for the latter to respond or arrive. It also took some time for them to contact representatives from the DOJ and the media. Meantime, the seized items remained unmarked and there is no testimony or evidence how Police Officer 2 Joel Bancure (PO2 Bancure), who was in custody of the drugs, continued to ensure integrity and evidentiary value of the drugs before the actual marking, inventory, and photographing were finally done. In ***People v. Zanoria***,[12] the Court said that "*[e]ven if the transfer from the place of arrest to the police station may be justified, this is by no means a blanket authorization to be lackadaisical in the process. The risk of alteration, tampering, contamination, and substitution persists until the presentation of evidence in court. At every step of the way, police officers are expected to zealously adhere to precautions on chain of custody.*"

Further, PO2 Bancure claimed that he slid the three (3) confiscated sachets into three (3) different pockets in his pants. Yet, there is no testimony on how PO2 Bancure was able to distinguish which of the these (3) sachets was the one he bought from appellant and which one was recovered from appellant during the warrantless search. This is a fatal deviation from the prescribed procedure as explained in ***People v. Asaytuno, Jr.***,[13] thus:

> The prosecution's recollection of how PO2 Limbauan "pocketed" the sachet supposedly sold to him fails to assuage doubts. *People v. Dela Cruz* concerned a similar situation where, after sachets were supposedly taken from the accused, a police officer claimed to have kept those sachets in his pockets. *Dela Cruz* decried such a manner of handling as "fraught with dangers[,]" "reckless, if not dubious[,]" and "a doubtful and suspicious way of ensuring the integrity of the items:"
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> > The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.
> >
> > The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in

[11] *People v. Labsan*, G.R. No. 227184, February 06, 2019.
[12] G.R. No. 226396, December 02, 2019.
[13] G.R. No. 245972, December 02, 2019.

> his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.
>
> Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.
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> Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell - hook, line, and sinker - for PO1 Bobon's avowals is mind-boggling.
>
> Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.
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> **Other than the standalone assurances of police officers who laid them out for inventory, there is, in this case, no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. Right at the onset, the chain of custody was jeopardized. From the beginning, there was doubt on the origin and identity of the items that would later be inventoried, photographed, examined, and presented as evidence. No amount of subsequent safety measures can cure this germinal defect.** (Emphasis supplied) (citations omitted)

Verily, the failure of the police officers to mark the sachets immediately after seizure already tainted the chain of custody. As a consequence, to quote *Asaytuno, Jr.*, "*[n]o amount of subsequent safety measures can cure this germinal defect.*"

Another break in the first link is that the inventory was done in the presence of appellant, Ryan Basa, and Barangay Lupon Member Virginia Racca – who was not an elected official, a DOJ representative nor a media representative. The prosecution acknowledged that the arresting officers were not able to secure the presence of the witnesses as required by RA 9165, as amended. The prosecution though reasoned that they tried to call for barangay officials but nobody came and that none of their contacts from the DOJ or the media answered. They explained that the non-appearance of the required witnesses can be attributed to the ungodly hour during which the inventory and photographing were being conducted.

In ***People v. Igpuara***,[14] the Court acquitted Liza Igpuara because of the complete absence of the required witnesses during the inventory and photographing, thus:

> The arresting officers failed to give any explanation why they did not coordinate earlier with an elected public official and a representative from the DOJ or the media to ensure their presence. They did the surveillance around 5:30 in the afternoon of April 22, 2016 and the buy-bust operation around 9:30 in the evening. They had a window of at least four (4) hours to ensure the presence of an elected official and a representative from the DOJ or the media.
>
> As it was, however, the arresting officers waited until after appellant got arrested before they purportedly tried to contact a media representative who said she could not come. There was no showing that they even contacted another media representative to witness the marking, inventory, and photographing. As for the DOJ representative, they did not bother at all to even try calling one because it was already 10 o'clock in the evening. The Court, however, takes judicial notice of the skeletal force of DOJ prosecutors assigned in different cities and municipalities beyond regular office hours. With respect to the elective official, although they claimed to have called a barangay official to witness the marking, inventory, and photographing, the latter allegedly failed to come. But who was he, there was no mention. Even then, one barangay kagawad Randy C. Cruz came much later after the marking was already accomplished. He had nothing more to witness. His belated presence does not cure the incipient absence of any of the three (3) insulating witnesses during the marking, inventory and photographing.
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> x x x x
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> Here, the insulating presence of the required witnesses would have preserved an unbroken chain of custody. But due to the arresting officers' failure to secure through earnest efforts the presence of these witnesses, an unjustified gap was created in the chain of custody.

The Court has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory. Under the law, the presence of the insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself - the very prohibited substance itself - and for that reason imperils the prosecution's case.[15]

Here, the Court is not convinced by the prosecution's excuses as to why none of the insulating witnesses were present during the marking, inventory and photographing. The prosecution's explanation that none of the barangay elective officials came despite notification and that none of the police officers' contacts from the DOJ and the media responded to their invitation, are not up to the 'earnest efforts' standard set by law.

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[14] G.R. No. 246418, February 26, 2020.
[15] *People v. Manansala*, G.R. No. 229509, July 03, 2019.

Indeed, 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 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 the 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 reasonable.[16]

The saving clause under Section 21 (a), Article II, RA 9165 IRR ordains that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[17] In this case, the saving clause is not triggered for the prosecution failed to prove that the police officers' non-compliance with the prescribed procedure was justified and it is very clear that the integrity and evidentiary value of the seized items have already been tainted.

We thus find that the prosecution utterly failed to: 1) prove the *corpus delicti* of the crime especially since the amount involved in this case is minuscule, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives;[18] (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the Chain of Custody Rule was not complied with. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 17, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11107 is **REVERSED** and **SET ASIDE**. Appellant **ALBERTO LOPEZ *y* DELA CRUZ** is **ACQUITTED** in Criminal Case No. 16-1704-NAV and Criminal Case No. 16-1705-NAV.

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[16] *People v. Ramos*, 826 Phil. 981, 996-997 (2018).
[17] *People v. Frias*, G.R. No. 234686, June 10, 2019.
[18] *People v. Pagsigan*, G.R. No. 232487, September 03, 2018, 878 SCRA 545, 562.

The Director of the Bureau of Corrections is **ORDERED** to a) immediately release **ALBERTO LOPEZ *y* DELA CRUZ** from custody unless he is being held for some other lawful cause or causes; and b) submit a report on the action taken within five (5) days from notice.

Let entry of judgment be issued immediately.

SO ORDERED." (**J. Lopez, *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
02 JUL 2021

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 286
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(Crim. Case Nos. 16-1704-NAV and
16-1705-NAV)

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