



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. 250645 (*People of the Philippines v. Regie D. Apelanio*). –
The Court resolves to:

(1) **NOTE** the Office of the Solicitor General’s (OSG) Manifestation (in Lieu of Supplemental Brief) dated October 19, 2020, stating that it would no longer file a supplemental brief, and it was adopting its Brief for the Plaintiff-Appellee dated February 12, 2019 filed before the Court of Appeals as its supplemental brief; and

(2) **DISPENSE** with the filing of appellant Regie D. Apelanio’s supplemental brief, it appearing that, as of December 14, 2020, appellant has not filed a supplemental brief/manifestation in lieu thereof in view of the non-mandatory directive in the Resolution dated March 4, 2020 which required the parties to file their respective supplemental briefs “if they so desire.”

This appeal assails the Decision¹ dated September 19, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 02027-MIN entitled “*The People of the Philippines v. Regie D. Apelanio*” affirming appellant’s conviction for violation of Section 5, Article II of Republic Act No. 9165² (RA 9165).

¹ Penned by Associate Justice Loida S. Posadas-Kahulugan and concurred in by Associate Justices Edgardo T. Lloren and Angelene Mary W. Quimpo-Sale, *rollo*, pp. 4-17.

² Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

We acquit.

Appellant was charged with illegal sale of a total of 0.1216 grams of *shabu* allegedly committed on October 2, 2014. The governing law, therefore, is RA 9165, as amended by Republic Act No. 10640 (RA 10640).³

For a successful prosecution of an offense for illegal sale of dangerous drugs, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. It is also essential to prove that the transaction or sale actually took place and that the object of the transaction is properly presented as evidence in court and shown to be the same drugs seized from the accused.⁴

In illegal drug cases, the drug itself constitutes the *corpus delicti* of the offense. To sustain a verdict of conviction, it is not enough to prove the conduct of an entrapment operation. The prosecution must also establish that the identity and integrity of the dangerous drug were duly preserved.⁵

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking 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 by the forensic chemist to the court.⁶

We focus on the first link.

The *first link* refers to seizure and marking which should be immediately done at the place of arrest and seizure. It includes the physical inventory and taking of photographs of the seized items in the presence of the accused and third-party witnesses. This link has been breached by the apprehending officers as the marking of the seized items was done without appellant's presence.

³ 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."

⁴ *People v. Ismael*, 806 Phil. 21, 29 (2017).

⁵ *People v. Burdeos*, G.R. No. 218434, July 17, 2019; *People v. Barte*, 806 Phil. 533, 542 (2017).

⁶ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

Section 21,⁷ Article II of RA 9165, as amended by RA 10640 prescribes the standard in preserving the *corpus delicti* in illegal drug cases. This makes up the chain of custody rule. The conduct of physical inventory, including the marking and photographing of the seized items by the seizing police officers,⁸ must be done immediately after seizure and confiscation⁹ and in the presence of the accused or his/her representative or counsel and the required witnesses, *i.e.*, an elected public official and a representative of the National Prosecution Service or the media, to ensure that they are the same items which entered the chain of custody.¹⁰

In *People v. Martinez*,¹¹ the Court ordained that consistency with the “chain of custody” rule requires that the “marking” of the seized items should be done in the presence of the apprehended violator immediately upon confiscation in order to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence. This step initiates the process of protecting innocent persons from dubious and fabricated searches, and of protecting the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft.

Here, the marking of the seized items was not done in the presence of appellant. PO1 Clifford Deguiño (PO1 Deguiño) only testified that the marking of the sachets of *shabu* was witnessed by barangay officials and the media. After marking the sachets, he placed them in the evidence box and brought the same to the crime laboratory the following day. He did not mention appellant as among those who witnessed the marking:

- Q. After the arrest of the accused, what did you do with the two (2) sachets of shabu?
A. I presented it to our investigator.

⁷ Section 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 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.

⁸ *People v. Lumaya*, 827 Phil. 473, 489 (2018); *People v. Salvador*, 726 Phil. 389, 404 (2014).

⁹ *See People v. Alfredo Doctolero, Jr.*, G.R. No. 243940, August 20, 2019.

¹⁰ *People v. Ramirez and Lachica*, 823 Phil. 1215, 1223 (2018) citing *People v. Sanchez*, 590 Phil. 214, 231 (2008).

¹¹ 652 Phil. 347, 377 (2010).

- Q. Who was that investigator?
A. PO2 Pelmar Castillo.
- Q. **When you presented the sachets of shabu to that Investigator, were there any other persons present in the area?**
A. **Yes, sir.**
- Q. **Who were those persons?**
A. **Barangay officials, media and some students who were there in the scene.**
- Q. And after you presented that two (2) sachets of shabu, what did you do next with the sachets of shabu?
A. I kept it in my custody.
- Q. What else did you do to that shabu?
A. I placed it in the evidence box.
- Q. After you presented that two (2) sachets of shabu to the investigator, what did the Investigator do with the shabu?
A. They were (sic) made some markings. –
- Q. **Who made the markings?**
A. **I was the one.**
- Q. **[At] the presence of the persons you mentioned a while ago?**
A. **Yes, Sir.**
- Q. What are the markings, Mr. Witness?
A. CBD-1 and CBD-2.

x x x x

- Q. **So, after the markings, Mr. Witness, what did you do with the sachets of shabu?**
A. **I placed it in the evidence box.**
- Q. **After that, what happened next?**
A. **In the following morning, I brought it to the crime laboratory.**¹²
(Emphases added)

Apart from PO1 Deguiño, no other witness was presented to testify that the marking was done in the presence and within the view of appellant. Neither did the trial court nor the Court of Appeals address this issue. The trial court focused mainly on the witnesses present during the marking, sans any discussion on the apparent absence of appellant himself, thus:

The sachet of shabu subject of the sale was marked at the scene of the crime with CBD-1 and CBD-2 and an inventory as well as photographs were taken therein **in the presence of the witnesses** as required under Section 21 of RA 9165. The said sachets remained in the possession of

¹² CA rollo, pp. 35-36.

PO1 Deguino until the same were turned over to the Crime Laboratory where the said item was received by PO1 Antallan and thereafter obtained by Police Inspector Jovita, the Forensic Chemist, who subjected the same to laboratory examination. This particular sachets of shabu were then submitted to the court when Jovita took the stand and were marked as Exhibit "T" and Exhibit "T1".¹³ (Emphasis supplied)

Since the prosecution failed to establish that the marking of the seized items was done in the presence of appellant, the chain of custody was breached. Hence, it cannot be said that the identity, integrity, and evidentiary value of the *corpus delicti* were deemed preserved. A verdict of acquittal is indubitably in order.

Indeed, RA 9165 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established procedures so long as the integrity and evidentiary value of the seized items are properly preserved. The Court, however, cannot apply such liberality in this case as there is no occasion for the *proviso* "as long as the integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

Where there was non-compliance with the requirements set forth in Section 21, Article II of RA 9165, as in this case, there can be no presumption that the official duties have been regularly performed by the police officers.¹⁴ The presumption of regularity cannot preponderate over the presumption of innocence in favor of the accused.¹⁵ Since the prosecution failed to establish an unbroken chain of custody. Appellant's acquittal must perforce follow.

ACCORDINGLY, the appeal is **GRANTED** and the Decision dated September 19, 2019 in CA-G.R. CR-HC No. 02027-MIN, **REVERSED** and **SET ASIDE**.

Appellant **REGIE D. APELANIO** is **ACQUITTED** of Violation of Section 5, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of Bureau of Corrections to cause his immediate release from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let the corresponding entry of final judgment be immediately issued.

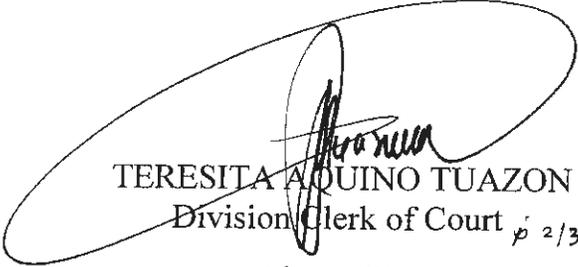
¹³ *Id.* at 50

¹⁴ *People v. Balibay*, 742 Phil. 746, 757 (2014).

¹⁵ *Largo v. People*, G.R. No. 201293, June 19, 2019.

SO ORDERED.” (Rosario, *J.*, additional member per S.O. No. 2797 dated November 5, 2020; On official leave)

By authority of the Court:


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Division Clerk of Court p 2/3
03 FEB 2021

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