



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **09 December 2020** which reads as follows:*

“G.R. No. 247635 (*Jhany Flores y Cabrerros and Leonardo Sarmiento y Tupasi vs. People of the Philippines*). — Petitioners seek a verdict of acquittal from the Court *via* the present Petition for Review on *Certiorari*. They fault the Court of Appeals for affirming the verdict of conviction against them for violation of Section 11, Article II of Republic Act No. 9165 (RA 9165) despite **first**, their alleged illegal warrantless arrest, and **second**, the alleged absence of a representative from the Department of Justice (DOJ) or media during the inventory and photographing of the seized items.

In its Comment¹ dated December 6, 2019, the Office of the Solicitor General (OSG) asserts that the prosecution had sufficiently proved beyond reasonable doubt all the elements of the crime charged including the integrity and evidentiary value of the seized illegal drugs.

Issue

Did the Court of Appeals err when it affirmed petitioners’ conviction for violation of Section 11 (Illegal Possession of Dangerous Drugs) of Art. II of RA 9165?

Ruling

On petitioners Jhany Flores y Cabrerros and Leonardo Sarmiento y Tupasi’s warrantless arrest, suffice it to state that any objection involving

¹ *Rollo*, pp. 130-145.

arrest or the procedure for acquiring jurisdiction over the person of the accused must be made before arraignment; otherwise, the objection is deemed waived.² 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.³ 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.⁴

Here, petitioners did not raise any objection to their warrantless arrest before they got arraigned. They 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, their present challenge against their warrantless arrest came too late in the day as they raised it only for the first time on appeal before the Court of Appeals. This belated stance certainly cannot undo their 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 or her arrest does not preclude him or her from questioning the admissibility of the evidence seized as an incident of the warrantless arrest.⁵ 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.⁶

The Court thus moves on to the core issue: Did the *Bantay Bayan* Operatives comply with the chain of custody rule in handling the illegal drugs in question?

Petitioners were indicted for Illegal Possession of Dangerous Drugs allegedly committed on October 3, 2016. 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, to wit:

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 instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

² *Lapi v. People*, G.R. No. 210731, February 13, 2019.

³ *People v. Alunday*, 586 Phil. 120, 133 (2008).

⁴ *People v. Bacla-An Lapitaje*, 445 Phil. 729 (2003).

⁵ *Ongcoma Hadji Homar v. People*, 768 Phil. 195 (2015).

⁶ *Veridiano v. People*, 810 Phil. 642, 654 (2017).

“(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)

The IRR of RA 9165 further mandates:

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 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)

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, is tasked to establish that the substance illegally possessed by petitioners is the same substance presented before the court.⁷ It is the prosecution’s onus to prove every link in the chain of custody — from the time the drug is seized from the accused, until the time it is presented in court as evidence.⁸ The saving clause under Section 21 (a), Article II, RA 9165 IRR commands 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.⁹

Generally, there are four 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

⁷ *People v. Garcia Miranda*, G.R. No. 218126, July 10, 2019.

⁸ *People v. Dumagay*, 825 Phil. 726, 739 (2018).

⁹ *People v. Frias*, G.R. No. 234686, June 10, 2019.

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.¹⁰

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, it includes that the physical inventory and taking of photograph of the seized items 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 DOJ or the media.

In the present case, early on the first link of the chain of custody had already been breached. Based on the testimonies presented by the prosecution, the inventory was done at the Barangay Hall of Brgy. Southside, Makati City only in the presence of *Barangay Kagawad* Danilo Tolentino (*Brgy. Kagawad* Tolentino) of Brgy. Southside. There was no mention of the similar presence of a media representative or a DOJ representative as required by RA 9165, as amended. Notably, the prosecution failed to acknowledge this lapse, let alone, provide any explanation therefor.

In *People v. Paz*,¹¹ the Court acquitted Mark Andrew Paz because only the *barangay kagawad* was present. Noticeably absent was a representative from the DOJ or the media.

Likewise, in *People v. Vistro*,¹² the Court acquitted Jonathan Vistro because only a *barangay* official witnessed the inventory, thus:

In this case, while a barangay official signed as a witness in the Certificate of Inventory, there was no mention that the inventory and photograph of the seized shabu was done in the presence of representatives from the media and the DOJ. **The arresting officer merely testified that the buy-bust team marked the seized shabu in the police station since the barangay captain and other officials of the place where the crime was committed were relatives of the appellant. He failed to provide a justifiable ground for the absence of the representatives from the media and the DOJ during the inventory and photograph of the seized shabu at the police station. The failure of the prosecution to secure the attendance of these witnesses, without providing any reasonable justification therefor, creates doubt as to the integrity and evidentiary value of the seized shabu. Thus, there is no recourse for this Court other than to reverse the conviction of appellant.** (Emphasis supplied)

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.¹³

¹⁰ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

¹¹ G.R. No. 233466, August 7, 2019.

¹² G.R. No. 225744, March 6, 2019.

¹³ *People v. Manansala*, G.R. No. 229509, July 03, 2019.

All told, the Court finds that the prosecution utterly failed to (1) prove the *corpus delicti* of the crime; (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.

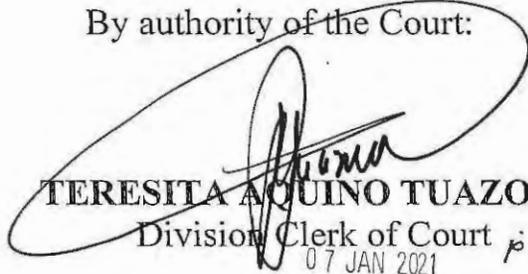
WHEREFORE, the petition is **GRANTED**. The Decision dated September 17, 2018 of the Court of Appeals in CA-G.R. CR No. 39482 is **REVERSED** and **SET ASIDE**. Petitioners Jhany Flores y Cabrerros and Leonardo Sarmiento y Tupasi are **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release of Jhany Flores y Cabrerros and Leonardo Sarmiento y Tupasi from custody unless they are being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment be issued.

SO ORDERED. (Rosario, J., designated additional member per Special Order No. 2797 dated November 5, 2020)."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court p 116
07 JAN 2021

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 65
Makati City
(Crim. Case Nos. R-MKT-02212-CR &
R-MKT-02213-CR)

JHANY FLORES y CABRERROS (x)
LEONARDO SARMIENTO y TUPASI (x)
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c/o The Director
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