

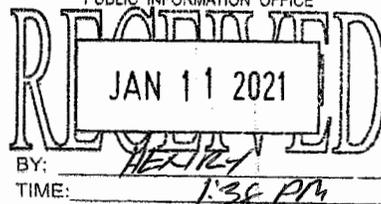


Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 29, 2020**, which reads as follows:

“G.R. No. 242153 (*Eduardo Cabubas y Alegria, Petitioner, v. People of the Philippines, Respondent*). – This Petition for Review on *Certiorari*<sup>1</sup> assails the 07 June 2018 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 39645, which affirmed the conviction of petitioner Eduardo Cabubas y Alegria (petitioner) for violation of Section 11, Article II, Republic Act No. (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

**Antecedents**

Petitioner was indicted for violation of Section 11, Article II of RA 9165, allegedly committed as follows:

That on or about the 11<sup>th</sup> day of June 2014, in Quezon City, Philippines, the said accused, not authorized by law to possess any dangerous drug, did[,] then and there[,] willfully, unlawfully[,] and knowingly have in her [*sic*] possession and control four (4) small heat-sealed transparent sachets[,] containing, viz:

A (JC/EC1)=0.03 gram  
B (JC/EC2)=0.04 gram  
C (JC/EC3)= 0.04 gram  
D (JC/EC4)=0.04 gram

all in the total net weight of Zero Point One Five (0.15gm) gram of white crystalline substance containing METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

<sup>1</sup> *Rollo*, pp. 11-30.

<sup>2</sup> *Id.* at 32-40; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Henri Jean Paul B. Inting (now a member of this Court) of the Ninth Division, Court of Appeals, Manila.

When arraigned, petitioner pleaded not guilty to the charge.<sup>4</sup> Pre-trial<sup>5</sup> and trial on the merits ensued, thereafter.

### Evidence for the Prosecution

On 11 June 2014, SPO1 Jameson Centeno (SPO1 Centeno) and several other police officers were conducting surveillance operations along Mirasol Street, Brgy. San Roque, Cubao, Quezon City.<sup>6</sup> Upon reaching Eagle Star Bus Terminal, they saw petitioner and four (4) other men playing *cara y cruz*.<sup>7</sup> Then and there, they alighted from their vehicle and approached petitioner's group to apprehend them.<sup>8</sup>

While SPO1 Centeno was frisking petitioner, the latter took out four (4) sachets containing white crystalline substance from his right pocket, and threw them away.<sup>9</sup> SPO1 Centeno picked the sachets from the ground before the police officers brought the arrested men to the police station. There, SPO1 Centeno marked the recovered sachets with "JC/EC1, JC/EC2, JC/EC3, and JC/EC4,"<sup>10</sup> before turning them over to police investigator PO3 Harold Polistico (PO3 Polistico).<sup>11</sup>

PO3 Polistico prepared the Chain of Custody Form, Inventory of Seized Items, which was later signed by Brgy. Chairman Mortego. SPO1 Centeno then brought the seized items to the crime laboratory where they were confirmed positive for Methamphetamine Hydrochloride by PCI Maridel Rodis-Martinez (PCI Rodis-Martinez).<sup>12</sup>

### Evidence for the Defense

The defense offered the lone testimony of petitioner. He admitted that he was arrested for playing *cara y cruz*, but denied the charge of illegal possession of dangerous drugs. He claimed that the police took his money.<sup>13</sup>

### Ruling of the RTC

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<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. at 62.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 63.

In a Judgment<sup>14</sup> dated 2 March 2017, the RTC found petitioner guilty beyond reasonable doubt of the charge of illegal possession of dangerous drugs, and sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum. He was likewise ordered to pay a fine of Php300,000.00.<sup>15</sup>

The RTC found the prosecution's evidence sufficient to prove the elements of the offense of illegal possession.<sup>16</sup> It also found no break in the chain of custody despite the fact that the marking and inventory were conducted in the police station, and absence of representatives from the media and DOJ.<sup>17</sup>

**Ruling of the CA**

On appeal, the CA agreed with the RTC's findings,<sup>18</sup> adding that petitioner did not successfully discredit the prosecution's evidence, as he failed to impute ill-motive on the part of the apprehending officers.<sup>19</sup>

Hence, petitioner filed this present petition for review where he harps on the alleged gaps in the chain of custody, as well as the non-compliance of the police officers with Sec. 21(a) of the Implementing Rules and Regulations of RA 9165.<sup>20</sup>

**Ruling of the Court**

The petition is meritorious.

Section 11 of Article II of RA 9165 states:

SECTION 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

X X X

X X X

X X X

<sup>14</sup> Id. at 61-66, penned by Presiding Judge Nadie Jessica Corazon J. Fama.

<sup>15</sup> Id. at 66

<sup>16</sup> Id. at 64.

<sup>17</sup> Id. at 64-65.

<sup>18</sup> Id. at 32-40.

<sup>19</sup> Id. at 37.

<sup>20</sup> Id. at 17.

  
(145)  


(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Parenthetically, to secure a conviction for illegal possession of dangerous drugs, the following elements must concur: (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 said drugs.<sup>21</sup>

In addition, the State is also burdened with the responsibility of adducing, identifying, and proving in court the *corpus delicti*, or the drug subject of the offense.<sup>22</sup> In this regard, Section 21 of RA 9165, as amended by RA 10650, provides:

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:

(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 person/s 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 with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the**

<sup>21</sup> See *People v. Ismael*, 806 Phil. 21-38 (2017); G.R. No. 208093, 20 February 2017, 818 SCRA 122, 132.

<sup>22</sup> See *People v. Angeles*, G.R. No. 229099, 27 February 2019.

**seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**

xxx xxx xxx (Emphasis supplied)

The prosecution failed to establish the identity of the prohibited drugs submitted into evidence in this case.

*The seized items were not marked at the place of apprehension*

Proper procedure requires that the apprehending officer must affix his initials or signature or any identifying mark on the dangerous drugs, in the presence of accused, immediately upon arrest in order to set apart the dangerous drug from other materials from the moment of seizure until they are disposed of at the close of criminal proceedings.<sup>23</sup> Such prompt marking is important because the subsequent handlers of the seized items will use the marking as reference. The marking also sets apart the seized item from other materials from the moment it was confiscated until its disposal after the proceedings.<sup>24</sup>

In this case, the records do not bear any explanation as to why SPO1 Centeno marked the seized sachets at the police station instead of the place of arrest and seizure. It likewise remains unclear how he handled the sachets from the time of such seizure up to the time they reached the police station. During SPO1 Centeno's cross-examination, he even testified that he cannot prove whether the items he marked at the police station were the same items he confiscated from the petitioner at the time of the arrest.<sup>25</sup> Such testimony engenders doubt on whether the crucial step in the marking of evidence was complied with. It puts into question whether the drug may have been switched, tampered with, altered, or substituted.<sup>26</sup>

Evidently, the failure to immediately mark the *shabu* after confiscation constitutes a serious gap in the chain of custody of the seized illegal drugs.

*The required witnesses were not present at the time of seizure and apprehension*

<sup>23</sup> *People v. Cupcupin*, G.R. No. 236454, 05 December 2019.

<sup>24</sup> *People v. Gajo*, G.R. No. 217026, 22 January 2018, 852 SCRA 274.

<sup>25</sup> *Rollo*, p. 63.

<sup>26</sup> *See People v. Cupcupin*, G.R. No. 236454, 05 December 2019.

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photography of the seized items be conducted immediately after the seizure and confiscation of the same. The law further requires that the inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>27</sup> a representative from the media AND the Department of Justice (DOJ), and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service OR the media. The law requires the presence of these witnesses primarily to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.<sup>28</sup>

The Information charges accused-appellant of committing the offense charged on 11 July 2014, prior to the effectivity of the amendatory RA 10640.<sup>29</sup> Hence, the old law applies.

In this case, however, the records indubitably show that there were no representatives from the DOJ and the media at the time of the inventory, marking and photographing of the evidence. Only *Brgy.* Chairman Mortego was available that time, and whose presence was secured only after the arrest of petitioner.<sup>30</sup> To justify this deviation, SPO1 Ceteno testified that the absence of the DOJ and media representative was because of poor weather condition.<sup>31</sup>

Unlike the RTC and CA, this Court finds this explanation untenable.

Recent jurisprudence has been consistent in holding that while the absence of these required witnesses does not *per se* render the confiscated items inadmissible, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.<sup>32</sup> And while the earnestness of these efforts must be examined on a case-to-case basis, the overarching

<sup>27</sup> *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*, approved on 15 July 2014.

<sup>28</sup> *See People v. Bangalan*, G.R. No. 232249, 03 September 2018, 878 SCRA 533, 541.

<sup>29</sup> In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018, 884 SCRA 276), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter, or on 07 August 2014, pursuant to Section 5 of the law. *See also People v. Bangalan*, G.R. No. 232249, 03 September 2018, 878 SCRA 533.

<sup>30</sup> *Rollo*, pp. 36 and 62-63.

<sup>31</sup> *Id.* at 62.

<sup>32</sup> *See People v. Patacsil*, G.R. No. 234052, 06 August 2018.

objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>33</sup>

The absence of the required witnesses was found justified in the following cases: (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 and media representatives 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.<sup>34</sup>

In the instant case, however, SPO1 Centeno's sweeping statement that poor weather condition was the reason for the absence of the DOJ and media representative, without even a showing that they were contacted to witness the inventory, would not suffice. Certainly, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.<sup>35</sup>

*There is no evidence establishing the handling and preservation of the seized items from the forensic chemist to their submission in court*

In addition to the transfer of the custody of the seized illegal drugs from the accused-appellant to the police investigators, the prosecution must also prove that proper safeguards were observed while the seized items were in the possession of the forensic chemist until their submission in court. In *People v. Pajarin*,<sup>36</sup> the Court ruled that in stipulating to dispense with the attendance of the police chemist, the parties should state that he: 1) received the seized article marked, properly sealed and intact; 2) resealed it after examination of the content; 3) and placed his own marking on the same to ensure that it could not be tampered pending trial.<sup>37</sup>

<sup>33</sup> See *People v. Aure, et al.*, G.R. No. 237809, 14 January 2019, 890 SCRA 361, 371.

<sup>34</sup> See *Limbo v. People*, G.R. No. 238299, 01 July 2019 citing *People v. Lim*, G.R. No. 231989, 04 September 2018.

<sup>35</sup> See *People v. Patacsil*, G.R. No. 234052, 06 August 2018.

<sup>36</sup> 654 Phil 461-467 (2011); G.R. No. 190640, 12 January 2011, 639 SCRA 489.

<sup>37</sup> *People v. Galisim*, G.R. No. 231305, 11 September 2019 citing *People v. Pajarin*, 654 Phil. 461-467 (2011), G.R. No. 190640, 12 January 2011, 639 SCRA 489.

In this case, the stipulations of the parties with respect to the forensic chemist's testimony are as follows:

1. PCI Maridel Rodis-Martinez is the Chief of Chemistry Section of QCPD Cavite Crime Laboratory;
2. On June 11, 2014, she received a Request for Laboratory Examination, together with four (4) heat-sealed transparent plastic sachets containing white crystalline substance, with markings "JC/EC1", "JC/EC2", "JC/EC3", and "JC/EC4";
3. She conducted a qualitative examination on the specimens and found that the specimens submitted were positive for the presence of Methamphetamine hydrochloride, a dangerous drug;
4. After examination, she sealed and turned over the specimens to the evidence custodian, PO1 Junia Tuccad, on June 12, 2014, as shown in the logbook.
5. She retrieved the specimens from the evidence custodian, and she presented them in court on April 30, 2015;
6. She can identify the Request for Laboratory Examination, and the specimens subject of this case; and
7. xxx she has no personal knowledge as to the source of specimen turned over to her for examination.<sup>38</sup>

Evidently, the aforesaid stipulations do not comply with the requirements set forth in *People v. Pajarin*. Specifically, it does not appear that the forensic chemist made her own markings on the seized items.

Moreover, the prosecution also failed to present PO1 Junia Tuccad (PO1 Tuccad), the evidence custodian, who could have testified on the circumstances under which he or she received the items after they were examined. Since PO1 Tuccad's possession of the seized items was a vital link in the chain of custody, it was necessary for the court to know from her what she did with the seized items during the time they were in her custody, up to the time they were transferred to the trial court.<sup>39</sup> There was a change in the custody of the seized items which should have been explained and accounted for by the prosecution,<sup>40</sup> without which, it cannot be ascertained whether the seized items presented in evidence were the same ones confiscated from petitioner.<sup>41</sup>

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<sup>38</sup> *Rollo*, p. 62.

<sup>39</sup> *See People v. Luminda*, G.R. No. 229661, 20 November 2019.

<sup>40</sup> *See People v. Wisco*, G.R. No. 237977, 19 August 2019.

<sup>41</sup> *See People v. Luminda*, G.R. No. 229661, 20 November 2019.

July 29, 2020

It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>42</sup> Thus, contrary to the common conclusions of the RTC and the CA, the Court finds and so holds that the actions by the police officers in this case cannot be considered as substantial compliance with the procedures under Section 21. The aforementioned lapses on the part of the police officers are serious enough to compromise the identity and integrity of the drugs allegedly recovered from petitioner which, in effect, creates a reasonable doubt on his criminal liability.<sup>43</sup> Hence, he must be acquitted.

**WHEREFORE**, the petition is hereby **GRANTED**. The 07 June 2018 Decision of the CA in CA-G.R. CR No. 39645 is **REVERSED** and **SET ASIDE**. Accordingly, petitioner EDUARDO CABUBAS y ALEGRIA is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution, and to report to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.**" (Leonen, J., on leave)

By authority of the Court:

**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
1229 Legaspi Village, Makati City

Atty. Anita Jamerlan-Rey  
Clerk of Court  
COURT OF APPEALS  
CA G.R. CR No. 39645  
1000 Manila

<sup>42</sup> *People v. Patacsil*, G.R. No. 234052, 06 August 2018.

<sup>43</sup> *See People v. Dahil*, G.R. No. 212196, 02 January 2015.

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 79, 1100 Quezon City

Eduardo Cabubas y Alegria  
c/o The Director General  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
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**G.R. No. 242153**

*joy*

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Manila

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THIRD DIVISION

EDUARDO CABUBAS y  
ALEGRIA,  
Petitioner,

G.R. No. 242153

-versus-

PEOPLE OF THE PHILIPPINES,  
Respondent.  
x-----/

ORDER OF RELEASE

**TO: The Director**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**Thru: The Superintendent**  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Mandaluyong City

**GREETINGS:**

WHEREAS, the Supreme Court on July 29, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

“ **WHEREFORE**, the petition is hereby **GRANTED**. The 07 June 2018 Decision of the CA in CA-G.R. CR No. 39645 is **REVERSED** and **SET ASIDE**. Accordingly, petitioner

EDUARDO CABUBAS y ALEGRIA is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Resolution, and to report to this Court the action taken hereon within five (5) days from receipt.

**SO ORDERED.**" (Leonen, J., on leave)

**NOW, THEREFORE,** you are hereby ordered to immediately release **Eduardo Cabubas y Alegria**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **ALEXANDER G. GESMUNDO**, Acting Chairperson of the Third Division of the Supreme Court of the Philippines, this **29<sup>th</sup>** day of **July 2020**.

Very truly yours,

**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*  
GER  
y6/21

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G.R. No. 242153 

