REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **07 October 2020** *which reads as follows*:

"G.R. No. 251312 (Jennifer Mascariola *y* David *v.* People of the Philippines). – The Court resolves to: (*a*) **NOTE** the manifestation dated 30 July 2020 by Atty. Criscelyn B. Carayugan-Lugo, Branch Clerk of Court, Regional Trial Court (RTC) Branch 87, Quezon City, informing the Court that the original record of R-QZN-16-12542-CR has not been returned by the Court of Appeals (CA) to the RTC from the time the same was forwarded thereto for purposes of appeal on 15 November 2018, per the attached transmittal letter as stamp-received by the CA on even date, and praying that this manifestation be deemed substantial compliance with the Resolution dated 8 June 2020; and (*b*) **DISPENSE WITH** the comment of respondent on the petition.

Before this Court is a petition for review on *certiorari*[1] seeking to reverse and set aside the Decision[2] dated October 18, 2019 and the Resolution[3] dated January 8, 2020 of the Court of Appeals (CA) in CA-G.R. CR No. 42462, which affirmed the Decision[4] dated September 13, 2018 of the Regional Trial Court of Quezon City, Branch 87 (RTC) in Crim. Case No. R-QZN-16-12542-CR finding petitioner Jennifer Mascariola *y* David (petitioner) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002.'

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1 *Rollo*, pp. 11-32.

2 Id. at 36-47. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Samuel H. Gaerlan (now a member of this Court) and Germano Francisco D. Legaspi, concurring.

3 Id. at 50-53.

4 Id. at 76-81. Penned by Presiding Judge Aurora A. Hernandez-Calledo.

5 Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

The instant case stemmed from an Information[6] filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that on October 24, 2016, members of the Station Anti-Illegal Drugs – Special Operation Task Group of the Quezon City Police Department (QCPD) received a tip from a confidential informant about the illegal drug trade activities of petitioner along Agno Extension, Barangay Tatalon, Quezon City. After coordinating with the Philippine Drug Enforcement Agency, at around 7:30 in the evening, the buy-bust team, with Police Officer (PO) 1 Alvin Daulayan (PO1 Daulayan) as the poseur-buyer and PO1 Jocelyn De Guia (PO1 De Guia) as the immediate back-up, was dispatched to the target area. Upon spotting petitioner, PO1 Daulayan and the confidential informant approached her. After some time, PO1 De Guia saw PO1 Daulayan give the pre-arranged signal, indicating that the sale had been consummated.[7] This prompted PO1 De Guia to rush in, apprehend petitioner, and search her person, which yielded three (3) small heat-sealed transparent plastic sachets containing suspected *shabu* and the buy-bust money. Marking was conducted at the place of apprehension immediately after the arrest, but the inventory and photography were conducted at the barangay hall, as the place of apprehension became crowded.[8] The inventory and photography were witnessed by petitioner and Barangay *Kagawad* Rene Boy Santos, who signed the Inventory Report.[9] Subsequently, the confiscated items were delivered to the QCPD Crime Laboratory, where, after examination,[10] tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.

For her part, petitioner denied the charges against her and instead, claimed that she was with her husband and son when one (1) female and four (4) male police officers came to their house and sought her help in locating Ramil[11] Sarmiento and Jay-Ar Bibat. She then accompanied the police officers to the houses of the said individuals, but when they were not able to find the persons they were looking for, they took her to the police station instead.[12]

In a Decision[13] dated September 13, 2018, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, and to pay a fine in the amount of ₱300,000.00 with subsidiary imprisonment in case of insolvency.[14] It found that the prosecution was able to sufficiently establish the presence of all the elements of the crime

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6 Records, p 1-2.

7 A separate charge for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 was filed against petitioner before the RTC, Branch 98. See Transcript of Stenographic Notes, May 7, 2018, pp. 6-7.

8 See *rollo*, pp. 37-39 and 76-77.

9 Dated October 24, 2016. Records, pp. 10-11.

10 See Chemistry Report No. D-1772-16 dated October 24, 2016; id. at 17.

11 "Ronil" in some parts of the record.

12 See *rollo*, pp. 40 and 78.

13 Id at 76-81.

14 Id at 80.

charged, and that the saving clause under Section 21, Article II of RA 9165, as amended, applies in the instant case as the prosecution sufficiently explained the procedural lapses committed and, in any case, the identity and integrity of the seized evidence had been preserved despite such lapses. It accorded full faith and credit to the testimonies of the prosecution witnesses in view of the presumption of regularity in the performance of official duties. However, it rejected petitioner's unsubstantiated defense of denial.[15] Aggrieved, petitioner appealed[16] to the CA.

In a Decision[17] dated October 18, 2019, the CA **affirmed** petitioner's conviction, concurring with the RTC's finding that the arresting officers substantially complied with the chain of custody rule, and that the integrity and evidentiary value of the seized items had been preserved.[18]

Aggrieved, petitioner moved for reconsideration[19] but was denied in a Resolution[20] dated January 8, 2020. Hence, this petition seeking that petitioner's conviction be overturned.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Possession of Dangerous Drugs under RA 9165,[21] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[22] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[23]

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the

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15 See id. 78 to 80.
16 See Notice of Appeal dated October 2, 2018; records, pp. 96-97.
17 *Rollo*, pp. 36-47.
18 See id. at 41-46.
19 See motion for reconsideration dated November 19, 2019; id. 101-112.
20 Id. at 50-53.
21 The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1050 (2018); and *People v. Mamangon*, 824 Phil. 728, 736 (2018); all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil.730, 736 [2015].)
22 See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).
23 See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 570, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

crime. [24] As part of the chain of custody procedure, the law requires; *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that '[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.'[25] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[26]

The law further requires that said 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,[27] a representative from the media ***and*** the [Department of Justice (DOJ)], and any elected public official;'[28] or (*b*) if **after** the amendment of RA 9165 by RA 10640, 'an elected public official and a representative of the National Prosecution Service[29] ***or*** the media.'[30] The presence of these witnesses safeguards the establishment of the chain of custody and removes any suspicion of switching, planting, or contamination of evidence.[31]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[32] This is because the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.[33]

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24 *Aranas v. People*, G.R. No. 242315, July 3, 2019. See also *People v. Piñero*, G.R. No. 242407, April 1, 2019; *People v. Crispo*, supra note 21, at 369; *People v. Sanchez*, supra note 21, at 104; *People v. Magsano*, supra note 21, at 959; *People v. Manansala*, supra note 21, at 586; *People v. Miranda*, supra note 21, at 1051; *People v. Mamangon*, supra note 21, at 736; and *People v. Viterbo*, supra note 22, at 601.

25 *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

26 See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

27 Entitled "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.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News Section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

28 Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

29 Which falls under the DOJ. (See Section 1 of Presidential Decree No. [PD] 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

30 Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

31 See *People v. Miranda*, supra note 20, at 1050. See also *People v. Mendoza*, 736 Phil. 749, 761 (2014).

32 See *People v. Miranda*, supra note 20, at 1059, citing *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215 and *People v. Umipang*, supra note 23, at 1038.

33 See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

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Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[37] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[39]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[40] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] 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 fully well that they would have to strictly comply with the chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that '[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value,

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34 See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

35 See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

36 Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that noncompliance 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)

37 Section 1 of RA 10640 pertinently states: "***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)

38 *People v. Almorfe*, supra note 35.

39 *People v. De Guzman*, 630 Phil. 637, 649 (2010).

40 See *People v. Manansala*, supra note 21, at 591.

41 See *People v. Gamboa*, supra note 23, citing *People v. Umipang*, supra note 23, at 1053.

42 See *People v. Crispo*, supra note 21, at 376-377.

43 Supra note 21.

albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.'[44]

The buy-bust operation in this case was conducted on October 24, 2016, and under the amendments to Section 21, Article II of RA 9165 already in effect at the time, the required witnesses to the inventory and photography of the seized items – in addition to the accused himself or his counsel – are 'an elected public official and a representative of the National Prosecution Service[45] ***or*** the media.'[46] Records reveal however, that there was no representative from the DOJ *or* the media during the conduct of the inventory and photography of the seized items. This is readily apparent from the Inventory Report,[47] which did not bear the signature of either a DOJ or media representative. PO1 De Guia herself confirmed this fact in her testimony, to wit:

Direct Examination of PO1 De Guia

[SACP Raymund Oliver S. Almonte]: **Do you know if there are witnesses from the DOJ and from the media?**

[PO1 De Guia]: **None, sir,** but our team leader called them up, sir.

Q: Were you present when your team leader called up these representatives?

A: Yes, sir, I was with him when he called these representatives, sir.

Q: Do you come to know why the representatives from the DOJ and the media failed to appear?

A: The team leader informed us that the representatives from the DOJ and media are not available, sir.[48]

It may be true, from the foregoing statements, that the arresting officers attempted to find the required witnesses but failed. However, records are devoid of evidence to show that the apprehending officers exerted genuine and sufficient efforts to secure the presence of either a representative from the DOJ or the media. Therefore, contrary to the findings of the courts *a quo*, the saving clause in RA 10640 is inapplicable in the instant case.

To reiterate, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as grounds for non-compliance. The prosecution's failure to provide justifiable reasons for their deviation from the mandated procedure is fatal to its case. Thus, the Court is constrained to rule that the integrity and evidentiary value of the items purportedly

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44 See id. at 1059.

45 Which falls under the DOJ (See Section 1 of PD 1275).

46 Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

47 Dated October 24, 2016. Records, pp. 10-11.

48 TSN, May 7, 2018, p. 10; emphases supplied.

seized from petitioner had been compromised. Under such circumstances, petitioner's acquittal is perforce in order.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 18, 2019 and the Resolution dated January 8, 2020 of the CA in CA-G.R. CR No. 42462 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jennifer Mascariola *y* David is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (*a*) cause petitioner's immediate release, unless she is being lawfully held in custody for any other reason; and (*b*) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

SO ORDERED. (Baltazar-Padilla, *J.*, on leave.)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
30 OCT 2020

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