



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 September 2020** which reads as follows:*

“**G.R. No. 250019 (Nestor Bacarra y Nablo v. People of the Philippines)**.
– Before this Court is a petition for review on *certiorari*¹ seeking to reverse and set aside the Decision² dated June 21, 2019 and the Resolution³ dated October 15, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40355, which affirmed the Decision⁴ dated June 24, 2017 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Crim. Case No. 13-530 finding petitioner Nestor Bacarra y Nablo (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.’

The Facts

This case stemmed from an Information⁶ filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. The prosecution alleged that on December 3, 2013, Police Officer 1 Raul G. Paran (PO1 Paran) and his fellow policemen were monitoring Barangay Calumpang, Binangonan, Rizal because of rampant robbery in the area, when they saw two (2) men engaged in a fist fight. When they approached

¹ Rollo, pp. 12-29.

² Id. at 33-40. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Rodil V. Zalameda (now a member of the Court) and Edwin D. Sorongon, concurring.

³ Id. at 42-43. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Franchito N. Diamante and Edwin D. Sorongon, concurring.

⁴ Id. at 59-60. Penned by Presiding Judge Dennis Patrick Z. Perez.

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.

⁶ Records, p. 1.

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and introduced themselves to the men, one ran away but PO1 Paran was able to grab a hold of the other one, who was identified as herein petitioner. PO1 Paran then frisked petitioner and found a plastic sachet of suspected illegal drugs in the latter's pocket. Because they did not have the materials to mark the confiscated item, PO1 Paran kept the plastic sachet in his custody and brought petitioner to the Binangonan Police Station, where he marked the seized item with the initials 'NES.'⁷ After petitioner was booked and investigated, PO1 Paran delivered the suspected illegal drugs to the crime laboratory, where it tested positive for *methamphetamine hydrochloride* or *shabu*, a dangerous drug.⁸

For his part, petitioner denied the charges against him, claiming instead that on the date and time in question, he was sleeping in his house together with his family, when they were awakened by loud banging on the door. Petitioner then instructed his daughter to see who it was but no one answered. Four (4) armed policemen then barged into the house and proceeded to search it. When the search yielded nothing, they handcuffed and pointed a gun at petitioner, and subsequently brought him to the police station. Thereat, the police officers forced petitioner to admit ownership of a plastic sachet containing illegal drugs, which he denied.⁹

In a Decision¹⁰ dated June 24, 2017, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and pay a fine in the amount of ₱300,000.00.¹¹ The RTC gave full faith and credit to the testimony of the prosecution witnesses, who, being police officers, are presumed to have performed their duties in a regular manner. Moreover, it held that the chain of custody was properly established and preserved. Finally, it found petitioner's uncorroborated denials and allegations of frame-up untenable.¹² Aggrieved, petitioner appealed¹³ to the CA.

In a Decision¹⁴ dated June 21, 2019, the CA **affirmed** the RTC ruling.¹⁵ It held that petitioner was validly arrested without a warrant, thus, the dangerous drug found in his possession during the search following his valid arrest is admissible in evidence. It found that the prosecution was able to establish the chain of custody, and that the integrity and evidentiary value of the seized drug were properly preserved in substantial compliance with Section 21 (1), Article II of RA 9165. Finally, it ruled that petitioner failed

⁷ See Receipt/Inventory of Seized Drug; id. at 35.

⁸ See Chemistry Report No. D-473-13 dated December 3, 2013; id. at 14.

⁹ See *rollo*, pp. 34-35.

¹⁰ Id. at 59-60.

¹¹ Id. at 60.

¹² See id.

¹³ Not attached to the *rollo*.

¹⁴ *Rollo*, pp. 33-40.

¹⁵ Id. at 40.

to overcome the presumption that the police officers handled the seized drugs with regularity, and that they properly discharged their duties.¹⁶ Dissatisfied, petitioner moved for reconsideration, which was, however, denied in a Resolution¹⁷ dated October 15, 2019.

Hence, this petition seeking that petitioner's conviction be overturned.

The Court's Ruling

The petition is meritorious.

In cases of Illegal Possession of Dangerous Drugs under RA 9165,¹⁸ 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.¹⁹ 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.²⁰

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 crime.²¹ 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.²² The law further requires that said inventory and photography be

¹⁶ See *id.* at 36-40.

¹⁷ *Id.* at 42-43.

¹⁸ 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*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015].)

¹⁹ 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).

²⁰ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²¹ See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; *People v. Crispo*, *supra* note 18; *People v. Sanchez*, *supra* note 18; *People v. Magsano*, *supra* note 18; *People v. Manansala*, *supra* note 18; *People v. Miranda*, *supra* note 18; and *People v. Mamangon*, *supra* note 18. See also *People v. Viterbo*, *supra* note 19.

²² 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." (*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].) 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

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 10640,²³ a representative from the media **and** the DOJ, and any elected public official;²⁴ or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service²⁵ **or** the media.²⁶ 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.’²⁷

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.²⁸ This is because “[t]he law has been ‘crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.’”²⁹

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³⁰ 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.³¹ The foregoing is based on the saving clause found in Section 21 (a),³² Article II of the Implementing Rules and Regulations

chain of custody. (See *People v. Tumalak*, 791 Phil. 1q48, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

²³ 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.

²⁴ Section 21 (1), Article II of RA 9165.

²⁵ Which falls under the DOJ. (See Section 1 of Presidential Decree No. 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].)

²⁶ Section 21 (1), Article II of RA 9165, as amended by RA 10640.

²⁷ See *People v. Miranda*, supra note 18. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁸ See *People v. Miranda*, id. at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 20, at 1038.

²⁹ See *People v. Segundo*, 814 Phil. 697 (2017), citing *People v. Umipang*, id.

³⁰ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³¹ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³² Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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,**

(IRR) of RA 9165, which has now been crystallized into the text of RA 10640.³³ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³⁴ 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.³⁵

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.³⁶ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁷ 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.³⁸

Notably, the Court, in *People v. Miranda*,³⁹ 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, x x x 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, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”⁴⁰

In this case, there was an absolute non-compliance with the witness requirement rule, there being no media representative, DOJ representative, and elected public official during the conduct of the inventory and

shall not render void and invalid such seizures of and custody over said items[.]” (Emphasis supplied)

³³ 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)

³⁴ *People v. Almorfe*, supra note 31.

³⁵ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁶ See *People v. Manansala*, supra note 18, at 375.

³⁷ See *People v. Gamboa*, supra note 20, citing *People v. Umipang*, supra note 20, at 1053.

³⁸ See *People v. Crispo*, supra note 19, at 376-377.

³⁹ Supra note 19.

⁴⁰ See id. at 61.

photography of the seized item.⁴¹ This is readily apparent from the Receipt/Inventory of Evidence Seized,⁴² which was bereft of signatures of any of the required witnesses. Such procedural lapse is confirmed by the testimony of PO1 Paran, to wit:

Testimony of PO1 Paran

[Prosecutor Jaime D. Co]: Now who prepare the inventory?

[PO1 Paran]: Me sir.

Q: I noticed Mr. Witness in this inventory there were slots allotted for media representative, DOJ representative and elected official, and it seems that they were not filled out, why is it so Mr. Witness?

A: During the incident, when we already arrested the accused, we immediately brought him at the police station and **since it was already night time we were not able to get an elected official or media representative sir.**⁴³

Indeed, while 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, it is nevertheless incumbent upon the prosecution to account for such deviation, which in this case is the absence of the required witnesses, by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his or her presence. Here, records show that the prosecution failed to establish justifiable grounds for non-compliance.

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

WHEREFORE, the petition is **GRANTED**. The Decision dated June 21, 2019 of the Court of Appeals in CA-G.R. CR No. 40355 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Nestor Bacarra y Nablo is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to: (a) cause petitioner's immediate release, unless he 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.

⁴¹ The arrest in this case happened prior to the enactment of RA 10640, and as such, the required witnesses are: (a) an elected public official, (b) a DOJ representative; **AND** (c) a media representative.

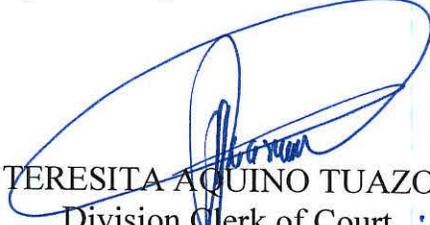
⁴² See Receipt/Inventory of Seized Drug; records, p. 35.

⁴³ TSN, July 30, 2014, p. 14; emphasis supplied.

Let entry of judgment be issued immediately.

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

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
16 OCT 2020 p 10/16

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NESTOR BACARRA y NABLO (x)

Petitioner
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)

Regional Trial Court, Branch 67
1940 Binangonan, Rizal
(Crim. Case No. 13-530)

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