



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 June 2021** which reads as follows:*

“G.R. No. 252491 (*People of the Philippines v. Rafael Alfonso y Paguio*). — The conviction of Rafael Alfonso y Paguio (Rafael) for Illegal Sale and Illegal Possession of Dangerous Drugs is the subject of review in this appeal assailing the Decision¹ dated September 13, 2019 of the Court of Appeals in CA- G. R. CR-HC No. 10383, which affirmed the Decision² dated November 3, 2017 of the Regional Trial Court of Olongapo City, Branch 75 (RTC) in Criminal Case Nos. 2017-702 and 2017-703, respectively.

We acquit.

A successful prosecution for the sale and possession of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crimes. It is imperative to prove with moral certainty that the intrinsic worth of the pieces of evidence, especially the identity and integrity of the *corpus delicti*, have been preserved. Evidence must show beyond reasonable doubt that the illegal drug presented in court is the same illegal drug actually seized from the accused. The rationale behind this stringent requirement is the unique characteristic of the illegal drug that renders it indistinct, not readily identifiable, and usually open to tampering, alteration, or substitution either by accident or by deliberate act,³ especially when the seized item is in small quantities.

¹ *Rollo*, pp. 3-16. Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justices Samuel H. Gaerlan (now a member of the Court) and Eduardo B. Peralta, Jr.

² *CA rollo*, pp. 51-57. Penned by Judge Raymond C. Viray.

³ See *People v. Nuarin*, 764 Phil. 550, 557 (2015).

In this regard, the law provides procedural safeguards to remove any doubt on the identity and integrity of the seized drug. This procedure is known as the chain of custody rule. Chain of custody is “the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. x x x.”⁴

Pertinent in this case is the first link in the chain of custody, *i.e.*, the seizure and marking.⁵ “Marking” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the seized items.⁶ Notably, Republic Act (RA) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002” as amended by RA No. 10640,⁷ is silent on when or where marking should be done.⁸ In the oft-cited case of *People v. Sanchez*,⁹ we emphasized that marking is the first and most crucial step in the custodial link as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the law enforcement officers from harassment suits grounded upon allegations of evidence planting. Proper marking serves to separate one evidence from the other, making each of them distinct to prevent switching, planting, or contamination. Hence, it is vital that the seized item be **immediately marked upon confiscation** in the presence of the violator because the succeeding handlers of the specimen will use the markings as reference.¹⁰

To be sure, both this Court and the Legislature are not unaware of, or indifferent to, the varying field conditions that render strict compliance with the chain of custody procedure impractical or impossible. Verily, Section

⁴ Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment, Section 1 (b); *People v. Omamos*, G.R. No. 223036, July 10, 2019.

⁵ *People v. Hemertiza*, 807 Phil. 1017, 1030 (2017), citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

⁶ *People v. Nuarin*, *supra* note 3.

⁷ 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,’” approved on July 15, 2014, which states that it shall “take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.” Verily, a copy of the law was published on July 23, 2014 in the respective issues of “The Philippine Star” (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and the “Manila Bulletin” (Vol. 499, No. 23; World News Section, p. 6). Thus, RA No. 10640 appears to have become effective on August 7, 2014.

⁸ *People v. Ramirez*, 823 Phil. 1215, 1225 (2018). Note, however, that the AMENDMENT TO THE GUIDELINES ON THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF SECTION 21 OF RA NO. 9165, AS AMENDED BY RA NO. 10640, Section 1(A.1.3) states that “[i]n warrantless seizures, the marking x x x of the seized items in the presence of the violator **shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable.** (Emphases supplied.)

x x x x

⁹ 590 Phil. 214 (2008).

¹⁰ See *People v. Omamos*, *supra* note 4; *People v. Ramirez*, *supra* note 8; *People v. Nuarin*, *supra* note 3, at 557-558.

21(a)¹¹ of the IRR of RA No. 9165, as amended by RA No. 10640, provides that deviation from the procedure would not *ipso facto* render the seizure and custody over the items 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 were properly preserved. For this saving clause to apply, however, the prosecution must satisfactorily explain the reasons behind the procedural lapses, and prove the justifiable ground for non-compliance as a fact.¹²

Here, it is undisputed that the apprehending officers did not mark the seized items at the place of arrest. They admittedly opted to conduct the initial custody requirements at the police station because the accused was resisting arrest, and the buy-bust operation took place along a street. These explanations are untenable. There was no allegation, much less proof, that the buy-bust team could not effectively subdue Rafael who was refusing to surrender. In contrast, the prosecution proved that after PO1 Ruben Yusi signalled the completion of the transaction, the back-up officers rushed to restrain Rafael. Indeed, Rafael was already placed in handcuffs before the team proceeded to the police station. Likewise, the fact that the buy-bust operation was conducted along the street is a flimsy excuse. The buy-bust team, which was composed of four trained policemen, could have effectively secured a portion of the street to perform the simple act of marking. Neither was there any showing of danger that necessitated the team's immediate departure from the place of apprehension. In *People v. Ramirez*,¹³ the apprehending officer claimed that it was not safe to mark, inventory, and photograph the confiscated items at the place of arrest, a parking lot in SM Bicutan.¹⁴ The Court did not sustain this excuse considering that there were more than enough Philippine Drug Enforcement Agency agents at that moment to ensure the security in the area while marking the seized items.¹⁵ Evenly, the Court noted that it will not take more than five (5) to ten (10) minutes for the officer to mark the items.¹⁶ As in this case, we find no justifiable explanation for the apprehending officers' failure to mark the three (3) sachets of *shabu* immediately upon its confiscation and before transport.

In brief, the sachets presented in evidence against Rafael remained unmarked from the time it was allegedly confiscated up to the team's arrival in the police station. Doubts, therefore, linger as to the items' identity, integrity, and whereabouts during the period of transport, creating a critical gap in the chain of custody, which warrants Rafael's acquittal. The prosecution's case fails due to this unjustified deviation from the chain of custody rule despite the defense's evidence being far from strong.

¹¹ "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[.]"

¹² See *People v. Suarez*, G.R. No. 249990, July 8, 2020.

¹³ *Supra* note 8.

¹⁴ *Id.* at 1226.

¹⁵ *Id.* at 1226-1227.

¹⁶ *Id.* at 1227.

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We stress, the marking of the seized items must be made immediately after the arrest. Only if there are justifiable reasons may it be done at the nearest police station or at the nearest office of the apprehending team.¹⁷ In *People v. Ameril*,¹⁸ citing *People v. Coreche*,¹⁹ we ruled that the authorities' failure to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti*, and suffices to rebut the presumption of regularity in the performance of official duties.²⁰ In fact, even before the enactment and effectivity of RA No. 9165, the Court has been consistent in holding that the failure to mark the drugs immediately after they were seized from the accused casts doubts on the prosecution's evidence, warranting acquittal on reasonable doubts.²¹

FOR THESE REASONS, the appeal is **GRANTED**. The Decision dated September 13, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10383 is **REVERSED and SET ASIDE**. Rafael Alfonso y Paguio is **ACQUITTED** of the offenses of Illegal Sale of Dangerous Drugs in Criminal Case No. 2017-702 and Illegal Possession of Dangerous Drugs in Criminal Case No. 2017-703, for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully detained for another cause.

Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is **DIRECTED to REPORT** to this Court the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED." (Lopez, J. Y., *J*, designated additional member *per* Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *mc 1/24*

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¹⁷ See *People v. Suarez*, *supra* note 12.

¹⁸ 799 Phil. 484 (2016).

¹⁹ 612 Phil. 1238 (2009).

²⁰ *Id.* at 1245.

²¹ *Id.* at 1245-1246, citing *People v. Laxa*, 414 Phil. 156 (2001), in which marijuana specimens were marked only at the police station; and *People v. Casimiro*, 432 Phil. 966 (2002), involving marijuana bricks belatedly marked at the police headquarters.

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THE SUPERINTENDENT (x)
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HON. PRESIDING JUDGE (reg)
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(Crim. Case Nos. 2017-702 and 2017-703)

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