



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **12 May 2021** which reads as follows:*

“G.R. No 239852 (*Lando Dela Cruz y Sablay v. People of the Philippines*). — This Petition for Review on *Certiorari*¹ under Rule 45 of the Revised Rules of Court challenges the Decision² dated January 30, 2018 and Resolution³ dated May 24, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39259, which affirmed petitioner Lando Dela Cruz y Sablay’s (Dela Cruz) conviction for illegal possession of shabu in the Decision⁴ dated September 29, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 65, in Criminal Case No. R-MKT-16-00425-CR.

ANTECEDENTS

In an Information dated May 31, 2016,⁵ Dela Cruz was charged with Illegal Possession of a Dangerous Drug under Section 11,⁶ Article II of Republic Act (RA) No. 9165⁷ as follows:

¹ *Rollo*, pp. 12-26.

² *Id.* at 30-44; penned by Justice Renato C. Francisco, with the concurrence of Associate Justices Japar B. Dimaampao and Rodil V. Zalameda (now a Member of the Court).

³ *Id.* at 46-47.

⁴ *Id.* at 76-81.

⁵ *Id.* at 31.

⁶ SEC. 11. *Possession of Dangerous Drugs*. — x x x.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x

(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 x x x, methamphetamine hydrochloride or “shabu”, x x x.

⁷ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS 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. Signed on June 7, 2002.

On the 26th day of May 2015 [*sic*], in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody, and control white crystalline substance containing methamphetamine hydrochloride, which is a dangerous drug, with a total weight of zero point zero three (0.03) gram, in violation of the above-cited law.

CONTRARY TO LAW.⁸

When arraigned on June 15, 2016, Dela Cruz pleaded “not guilty” to the charge. Pre-trial, and thereafter, trial ensued.⁹

During trial, PO2 Sherwin Limbauan (PO2 Limbauan) took the witness stand for the prosecution. He testified that at around 8:30 p.m. of May 26, 2016, SPO2 Jose Maria H. Buenaventura (SPO2 Buenaventura) of the Makati Central Police Station received a phone call from a concerned citizen regarding an illegal gambling activity along Sunrise Street, Barangay La Paz, Makati City, wherein drugs were used as bet money. SPO2 Buenaventura relayed the information to PS/Insp. Roman B. Salazar (PS/Insp. Salazar), Chief of the Station Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG). In response, PS/Insp. Salazar instructed SPO2 Buenaventura, PO3 Luisito Leif F. Marcelo, and PO2 Limbauan to proceed to the area and verify the report. The officers immediately proceeded to the reported area and saw four men playing “dice,” a form of illegal gambling. They arrested and frisked all four. Among the four was Dela Cruz, from whom PO2 Limbauan confiscated one small heat-sealed transparent plastic sachet containing white crystalline substance, five ₱20.00-bills, and two dice. The officers then brought Dela Cruz, along with the three other arrested men, as well as the seized items, to the Barangay Hall of La Paz. The seized items were in PO2 Limbauan’s custody. Upon arrival at the barangay hall, PO2 Limbauan marked the plastic sachet with his initials “SCL,” conducted the inventory, and took photographs in front of Dela Cruz and Kagawad Christopher Cabo. Thereafter, PO2 Limbauan turned over the seized items to SPO2 Noli P. Jucal (SPO2 Jucal), the case investigator, who prepared the Investigation Data Form and written requests for examination, and brought the seized plastic sachet to the Southern Police District Crime Laboratory for examination. The item for examination was received by PCI May Andrea A. Bonifacio (PCI Bonifacio) from SPO2 Jucal. Per PCI Bonifacio’s Chemistry Report No. D-544-16, the examined item yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*. It was also PCI Bonifacio who presented the plastic sachet in court.¹⁰

⁸ *Rollo*, p. 31.

⁹ *Id.*

¹⁰ *Id.* at 31-32, 40.

In defense, Dela Cruz denied the charge against him and narrated that on the day of the incident, he and his friends were playing “dice” inside a compound along Sunrise Street, Barangay La Paz when two armed men in civilian clothes suddenly arrested and frisked them. He averred that the drug was not seized from him, but from his friend who managed to evade arrest.¹¹

In a Decision¹² dated September 29, 2016, the RTC found that the prosecution was able to prove that Dela Cruz was consciously aware of his possession of shabu, a dangerous drug, without being authorized by law. An unbroken chain of custody was also found to be established, thus:

WHEREFORE, in view of the foregoing, the court finds accused, Lando dela Cruz y Sablay, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II of R.A. NO. 9165 and sentences 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, and to pay a fine of Three Hundred Thousand Pesos ([P]300,000.00).

The period of detention of the accused should be given full credit.

Let the dangerous drug subject matter of this case be disposed of in the manner provided for by law.

SO ORDERED.¹³

On appeal, the CA affirmed the RTC ruling in its Decision¹⁴ dated January 30, 2018. Pertinently, the CA found that the apprehending officers’ failure to strictly comply with the chain of custody requirements under Section 21 of RA No. 9165 and its Implementing Rules and Regulations did not affect the evidentiary weight of the seized drug. According to the appellate court, the officers’ failure to mark, take photograph, and conduct the inventory at the place of arrest and confiscation was justified because the incident caused a commotion in the compound. The CA, thus, sustained the presumption of regularity in the performance of official duties on the part of the apprehending officers. It disposed:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 29 September 2016 of Branch 65, Regional Trial Court of Makati City in Criminal Case No. R-MKT-16-00425-CR is **AFFIRMED**.

SO ORDERED.¹⁵

Petitioner’s motion for reconsideration was likewise denied in CA Resolution¹⁶ dated May 24, 2018. Hence, this petition. In the main, petitioner argues that the irregularities in the handling of the *corpus delicti* compromised

¹¹ *Id.* at 33.

¹² *Id.* at 76-81.

¹³ *Id.* at 80-81.

¹⁴ *Id.* at 30-44.

¹⁵ *Id.* at 43.

¹⁶ *Id.* at 46-47.

its identity and integrity, warranting his acquittal. The presumption of regularity in the performance of duty enjoyed by the officers cannot be applied when such performance was irregular on its face.¹⁷

ISSUE

Whether the CA erred in affirming petitioner's conviction for Violation of Section 11, Article II of RA No. 9165.

RULING

The Petition is meritorious.

To convict an accused for Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements beyond reasonable doubt: (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.¹⁸ A successful prosecution in any drugs case, however, requires more than a cursory collection and presentation of evidence to prove the elements of the offense. It is crucial to establish with moral certainty the identity and integrity of the dangerous drug, which constitutes the *corpus delicti* of the offense. The burden is upon the prosecution to prove beyond reasonable doubt that the illegal drug presented in court is the same drug actually seized from the accused. The rationale behind this stringent requirement lies behind the unique characteristic of narcotic substances that renders them indistinct, not readily identifiable, and usually open to tampering, alteration, or substitution either by accident or by deliberate act, especially when seized in small quantity.¹⁹

In this regard, the law outlined a specific and mandatory procedure in handling confiscated drugs in order to preserve their integrity and evidentiary value. Notably, the offense subject of this appeal was alleged to have been committed after the effectivity of RA No. 10640,²⁰ which amended RA No. 9165. Section 21 of RA No. 9165, as amended by RA No. 10640 requires that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof 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

¹⁷ *Id.* at 17-23.

¹⁸ *Mesa v. People*, G.R. No. 241135, October 14, 2019.

¹⁹ *Mallillin v. People*, 576 Phil. 576, 588-589 (2008).

²⁰ 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, 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, 2013 in the respective issues of the *The Philippines Star* (Vol. XXVIII, No. 359, Philippine Star Metro Section, p. 21) and the *Manila Bulletin* (Vol. 499, No. 23; World News Section, p. 6): hence, RA. No. 10640 became effective on August 7, 2014.

Prosecution Service (NPS) of the Department of Justice (DOJ) or the media who shall be required to sign the copies of the inventory and be given a copy thereof. Strict compliance with these procedural safeguards is imperative to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.²¹

Cognizant, however, of the varying field conditions that may cause full compliance with the procedure impractical or impossible, Section 21 of RA No. 9165, as amended, provides for a saving clause stating that non-compliance shall not render the seizure and custody over the confiscated items void and invalid provided: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. While strict compliance may be excused under this saving clause, the requirements that the prosecution satisfactorily explain the reason/s behind the deviation from the mandatory procedure and prove the offered justification as a fact are non-negotiable.²²

Here, it is undisputed that there were deviations committed by the apprehending officers in handling the confiscated items after Dela Cruz's arrest, which breached the chain of custody rule.

First. The seized items were not immediately marked upon confiscation. The object evidence remained unmarked from the time they were allegedly confiscated from Dela Cruz up to the team's arrival at the *barangay* hall. This is fatal to the prosecution's case, especially with regard to the small plastic sachet containing a miniscule amount of suspected drug (0.03 gram of *shabu*), which is obviously fungible and open to tampering. In the oft-cited case of *People v. Sanchez*,²³ 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 items be **immediately marked upon confiscation** in the presence of the violator because the succeeding handlers of the specimen will use the markings as reference.²⁴ To be specific, the chain of custody rule requires that the marking of the seized items be done immediately after the arrest and seizure, and **only if** there are justifiable reasons may it be done at the nearest police station or at the nearest office of the apprehending team.²⁵

The police officers in this case claimed that it was not advisable to undertake the initial custodial procedure of marking, photograph, and

²¹ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

²² See *People v. Suarez*, G.R. No. 249990, July 8, 2020.

²³ 590 Phil. 214, 241 (2008).

²⁴ *People v. Nuarin*, 764 Phil. 550, 557-558 (2015); *People v. Omamos*, G.R. No. 223036, July 10, 2019; *People v. Ramirez*, 823 Phil. 1215, 1225 (2018), citing *People v. Sanchez*, 590 Phil. 214, 241 (2008) cited in *People v. Ameril*, 14 November 2016.

²⁵ *People v. Suarez*, *supra* note 22.

inventory in the place of arrest for “security reasons.” This claim, however, is uncorroborated and self-serving. The gathering of the people in the area where Dela Cruz’s group was arrested did not show that their life and security was imperiled. No other circumstance was alleged to support the officers’ claim that it was unsafe to stay in the area for a few more minutes to mark one small plastic sachet. Apropos is the Court’s ruling in *People v. Ramirez*,²⁶ viz.:

From his testimony, we gather that IO1 Bautista claims that it was not safe that the marking, physical inventory, and photography be done at the parking lot of SM Bicutan. Contrary to the position taken by the lower courts, we cannot say that IO1 Bautista's failure to mark the two (2) heat-sealed transparent plastic sachet immediately after confiscation was excusable. **We take note of the fact that there were more than enough PDEA agents at that moment to ensure that the area was secure for IO1 Bautista to mark the confiscated items. We do not think it would take more than five (5) to ten (10) minutes for IO1 Bautista to do this.**²⁷

To be sure, this is not the first time that the Court would rule for acquittal on the ground of reasonable doubt for failure of the law enforcement officers to mark the seized drug at the time of arrest and confiscation. In *People v. Ameril*,²⁸ citing *People v. Coreche*,²⁹ we held that the authorities’ failure to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti*. 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.³⁰

Second. Even if we forgo such lapse, the custodial procedure was conducted without the mandatory presence of a representative from the DOJ or the media. It is undisputed that only a local official, Kagawad Cabo, was present when the inventory and marking were conducted at the *barangay* hall. In *People v. Mendoza*,³¹ we explained that without the presence of the insulating witnesses in the crucial process of handling the seized items, “the evils of switching, planting or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [drugs] x x x [that] adversely affected the trustworthiness of the incrimination of the accused.”³² What is more, no justification was offered for this non-compliance.

In all, it bears stressing that the procedure in Section 21 of RA No. 9165,

²⁶ 823 Phil. 1215 (2008).

²⁷ 823 Phil. 1215, 1226-1227 (2008).

²⁸ 799 Phil. 484, 496 (2016).

²⁹ 612 Phil. 1238 (2009).

³⁰ *Id.* at 1245-1246, citing *People v. Laxa*, 414 Phil. 156 (2001)[, which involved marijuana specimens marked only at the police station]; and *People v. Casimiro*, 432 Phil. 966 (2002)[, which involved marijuana brick marked only at the police headquarters].

³¹ 736 Phil. 749 (2014).

³² *Id.* at 764.

as amended by RA No. 10640, is a matter of substantive law, which cannot be brushed aside as a sheer procedural technicality. It must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances.³³ Such is not the case here. The unjustified deviations committed by the apprehending officers led us to suspect the integrity and evidentiary value of the *corpus delicti*, rendering petitioner's conviction doubtful.

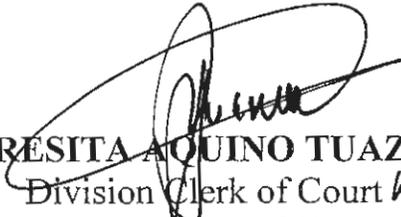
FOR THESE REASONS, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated January 30, 2018 and Resolution dated May 24, 2018 of the Court of Appeals in CA-G.R. CR No. 39259 are hereby **REVERSED and SET ASIDE**. Accordingly, Lando Dela Cruz y Sablay is **ACQUITTED** of the offense charged in Criminal Case No. R-MKT-16-00425-CR.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of **Lando Dela Cruz y Sablay** unless he is being held in custody for any other lawful 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 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 7/16*
16 JUL 2021

³³ *Santos v. People*, G.R. No. 232950, August 13, 2018.

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. R-MKT-16-00425-CR)

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