



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. 251919 (*People of the Philippines v. Wilfredo Areola, Jr. y Casica alias “Mokong”*). – We acquit.

Accused-appellant Wilfredo Areola, Jr. y Casica alias “Mokong” was charged with illegal sale of 0.210 gram¹ and illegal possession of 0.206 and 0.086 gram² of *shabu*, allegedly committed on October 3, 2015.

¹ CA *rollo*, p. 76. Information for Criminal Case No. T-6203, as quoted in RTC’s Decision dated November 14, 2017, *viz.*:

Criminal Case No. T-6203

That on or about the 2:00 o’clock in the afternoon of October 3, 2015 at Brgy. Amistad, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell, one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride or “SHABU”, weighing 0.210, marked as “MMM”, a dangerous drug, in [exchange of] one piece of five hundred peso (Php500.00) bill with serial number MJ216686 and which [sic] marked as “AAAD”.

CONTRARY to Sec. 5, Art. II of Republic Act 9165, otherwise known as “Comprehensive Dangerous Drugs Act of 2002.

² *Id.* at 77. Information for Criminal Case No. T-6204, as quoted in RTC’s Decision dated November 14, 2017, *viz.*:

Criminal Case No. T-6204

That on or about the 2:00 o’clock in the afternoon of October 3, 2015 at Brgy. Amistad, municipality of Tayug, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the elements of PNP-Tayug, Pangasinan conducted a [buy-bust] operation against the above-named accused and after body search, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody two (2) heat-sealed transparent plastic sachet [sic] containing methamphetamine hydrochloride or “SHABU”, a dangerous drug, weighing 0.206 gram and 0.086 gram, which [sic] marked as “MMM1” and “MMM2”, respectively.

CONTRARY to Sec. 11, Art. II of Republic Act 9165, otherwise known as “Comprehensive Dangerous Drugs Act of 2002.

The governing law is Republic Act No. 9165 (RA 9165), as amended by Republic Act No. 10640 (RA 10640).³

In both illegal sale and illegal possession of dangerous drugs, the drug itself constitutes the *corpus delicti* of the offense. The prosecution must, therefore, prove that the dangerous drug seized from the accused is the same substance eventually offered in court.⁴ For this purpose, Section 21,⁵ Article II of RA 9165, as amended by RA 10640 prescribe the standard in preserving the *corpus delicti* in illegal drug cases. This makes up the chain of custody rule.

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁶

The conduct of physical inventory, which includes the marking of the items by the seizing police officers⁷ and photographing of the seized items, must be done immediately after seizure and confiscation⁸ and in the presence of the accused or his/her representative or counsel and the required witnesses to ensure that they are the same items which enter the chain of custody.⁹

Here, the prosecution failed to establish an unbroken chain of custody.

³ 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.

⁴ *People v. Barte*, 806 Phil. 533, 542 (2017).

⁵ 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 persons 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 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.**

⁶ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019; *People v. Leano*, G.R. No. 246461, July 28, 2020.

⁷ *People v. Lumaya*, 827 Phil. 473, 489 (2018); *People v. Salvador*, 726 Phil. 389, 406 (2014).

⁸ See *People v. Doctolero, Jr.*, G.R. No. 243940, August 20, 2019; *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

⁹ *People v. Ramirez*, 823 Phil. 1215, 1225 (2018) citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

First, the seized illegal drugs were not immediately marked after confiscation. The prosecution admitted about thirty (30) minutes had elapsed from the time the illegal drugs were confiscated before the same were marked. While the prosecution claimed that the police officers were waiting for the arrival of the witnesses during the said thirty-minute interval, it did not give a credible account on the whereabouts and handling of the subject drugs in the interim. Neither did it offer any valid justification why they had to delay the marking and wait for the witnesses to arrive.

Marking is the placing by the arresting officer or the poseur-buyer of his initials and signature on the items after they have been seized.¹⁰ While the matter of marking of the seized illegal drugs in warrantless seizures is not expressly specified in Section 21, consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches on one hand, and of protecting the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft, on the other.¹¹

The immediate marking of the seized illegal drugs is vital because succeeding handlers of the specimens will use the markings as reference.¹² The marking obviates switching, “planting,” or contamination of evidence as it separates the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings. 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.¹³

In *People v. Ramos*,¹⁴ the police officers admitted that they failed to mark the seized drugs immediately after confiscation and they waited until they arrived at the police station, around twenty (20) minutes away from the scene of the buy-bust operation, before they marked the seized items. One officer explained that the belated marking was due to their failure to bring marking pens, while the other said that they could not immediately mark the items because the required witnesses were not yet present then. The Court ruled that either explanation was not sufficient to justify their non-compliance with the first step of the mandatory rules on custody, thus:

The witnesses' absence at the time of seizure is not a justifiable ground for not immediately marking the items, since they should have, at the onset, been present or near the place of seizure.

¹⁰ *People v. Adobar*, 832 Phil. 731, 763 (2018).

¹¹ See *People v. Beran*, 724 Phil. 788, 819-820 (2014), citing *People v. Sanchez*, 590 Phil. 214 (2008)

¹² *People v. Adobar*, supra, at 764.

¹³ *People v. Umipang*, 686 Phil. 1024, 1049-1050 (2012).

¹⁴ G.R. No. 225325, August 28, 2019.

Since the law requires the apprehending team to conduct the inventory in front of the required witnesses and immediately after seizure, this necessarily means that, in buy-bust operations, the required witnesses must be present at the time of seizure.

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Police officers are given time to prepare for a buy-bust operation and make necessary arrangements beforehand, fully aware of the strict procedure to follow under Section 21 of the Comprehensive Dangerous Drugs Act. Assuming that the apprehending team in this case really could not have immediately marked the seized drugs because they had no marker or because the required witnesses were absent, both circumstances were entirely of their own making. If these rendered the immediate marking impracticable, such impracticability was their fault and cannot be used as an excuse to not immediately mark the items. If anything, the lack of foresight that led to these circumstances shows that the team did not exert genuine effort to comply with the chain of custody rule.

Second, the prosecution was silent as to what happened to the confiscated drugs after the police officers delivered them to the crime laboratory. The officer or custodian, who received the seized drugs from PO1 Mike Malubay, was not presented to testify on how he handled and preserved the integrity of the items he received until they got examined by the forensic chemist.

In *People v. Burdeos*,¹⁵ where the prosecution failed to show how the specimen was handled while under the custody of the officer who received it and how the same was subsequently turned over to the forensic chemist who conducted the examination, the Court declared that such glaring gap in the chain of custody tainted the integrity of the *corpus delicti*.

Third, there is no evidence showing how the forensic chemist handled the illegal drugs from the time they were turned over to her up to their presentation in court. There was, therefore, no certainty that the integrity of the *corpus delicti* was properly preserved.¹⁶

In *People v. Baltazar*,¹⁷ the Court acquitted the accused for lack of evidence on how the illegal drugs were brought to court. The prosecution failed to show how the alleged seized items were stored after they were examined by the forensic chemist, who handled the specimens after examination, and where the same were kept until they were retrieved and presented in court.

In view of the foregoing procedural lapses in the chain of custody, the identity, integrity, and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

¹⁵ See G.R. No. 218434, July 17, 2019.

¹⁶ See *People v. Diamante*, G.R. No. 231980, October 9, 2019.

¹⁷ See G.R. No. 229037, July 29, 2019.

True, RA 9165 contains a saving clause allowing liberality whenever there are compelling reasons to otherwise warrant deviation from the established procedures so long as the integrity and evidentiary value of the seized items are properly preserved. The saving clause, however, applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds.¹⁸

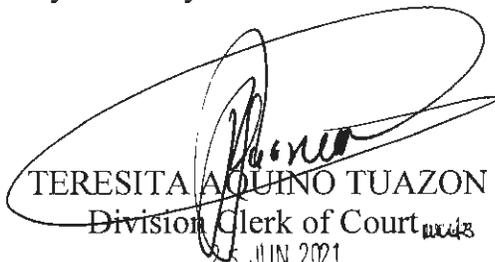
Here, the Court cannot apply such liberality as there is no occasion for the *proviso* “as long as the integrity and the evidentiary value of the seized items are properly preserved,” to even come into play. The deviation from the procedures mandated under RA 9165, as amended was not acknowledged, much less adequately explained.

Where there was non-compliance with the requirements set forth in Section 21, Article II of RA 9165, as amended as in this case, there can be no presumption that the official duties have been regularly performed by the police officers.¹⁹ The presumption of regularity cannot preponderate over the presumption of innocence in favor of the accused.²⁰ Since the prosecution failed to establish an unbroken chain of custody, accused-appellant’s acquittal must perforce follow.

ACCORDINGLY, the appeal is **GRANTED**. The assailed Decision dated November 15, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10362 is **REVERSED**. Accused-appellant Wilfredo Areola, Jr. y Casica alias “Mokong” is **ACQUITTED** in Criminal Case Nos. T-6203 and T-6204. The Director of the Bureau of Corrections is ordered to a) immediately release Wilfredo Areola, Jr. y Casica alias “Mokong” from custody unless he is being held for some other lawful cause; and b) submit his or her report on the action taken within five (5) days from notice. Let an entry of final judgment be issued immediately.

SO ORDERED.” (J. Lopez, *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
25 JUN 2021

¹⁸ *People v. Hementiza*, 807 Phil. 1017, 1038 (2017).

¹⁹ *People v. Balibay, et al.*, 742 Phil. 746, 757 (2014).

²⁰ *Largo v. People*, G.R. No. 201293, June 19, 2019.

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 52
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(Crim. Case Nos. T-6203 & T-6204)

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