

BY: YCA
TIME: 1:42pm

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:*

“G.R. No. 242815 - People of the Philippines v. Arlan Agbay y Rual,

Assailed in this appeal¹ is the Decision² dated May 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09028, which affirmed the Judgment³ dated January 31, 2017 of the Regional Trial Court (RTC), Branch 79, Quezon City in Criminal Case No. R-QZN-14-07009-CR finding accused-appellant Arlan Agbay y Rual (Agbay) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On July 27, 2014, Agbay was charged in an Information⁴ for the sale of 24.88 grams of methamphetamine hydrochloride (*shabu*), in violation of R.A. No. 9165. When arraigned, Agbay pleaded not guilty to the charge. Trial on the merits thereafter ensued.

The prosecution presented as witnesses Senior Police Officer 1 Eugene Lim (SPO1 Lim) and Police Officer 1 Peggy Lynne Vargas (PO1 Vargas).

The prosecution witnesses narrated that on July 26, 2014, at around 1:00 p.m., a confidential informant reported the illegal drug

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¹ *Rollo*, pp. 16-17.

² Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Germano Francisco D. Legaspi, concurring; *id.* at 2-15.

³ Penned by Presiding Judge Nadine Jessica Corazon J. Fama; *CA rollo*, pp. 42-51.

⁴ *Id.* at 42.

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activities of Agbay to Police Inspector Noel Almerino (PIInsp. Almerino) at the District Anti-Illegal Drugs (DAID) Office in Camp Karingal, Quezon City. Acting on the tip, DAID Chief Police Senior Inspector Roberto Razon (PSI Razon) formed a team composed of PIInsp. Almerino (team leader), SPO1 Lim (poseur-buyer), PO3 Jacinto Caranguian, PO3 Neil Dumlao, and PO1 Melvin Castillo (back-up and arresting officers) that shall conduct the buy-bust operation against Agbay. The buy-bust team prepared the documents pertinent to the entrapment operation, which include the inventory receipt, coordination form, and pre-operational report.⁵

As per PIInsp. Almerino's instruction, the informant called Agbay for the purchase of ₱50,000.00 worth of *shabu* on July 27, 2014, between 10:30 and 11:30 p.m. at Honey West Apartelle, along West Avenue Barangay Paltok, Quezon City.⁶ PSI Razon gave the team two marked ₱1,000.00 bills placed on top of 48 pieces of boodle money as consideration.⁷

On July 27, 2014, at around 9:00 p.m., the entrapment team went to the place of transaction. Agbay instructed the informant and SPO1 Lim to proceed to the parking area of the apartelle. When the three finally met, the informant introduced SPO1 Lim as the buyer. Agbay asked for the payment and SPO1 Lim handed the agreed price of ₱50,000.00. In exchange, Agbay gave SPO1 Lim a plastic sachet containing white crystalline substance suspected to be *shabu*. SPO1 Lim inspected the plastic sachet and thereafter removed his bull cap to signify that the transaction has been consummated. When the back-up officers rushed to the area of operation, SPO1 Lim held Agbay, introduced himself as a police officer and apprised the latter of his constitutional rights. He marked the plastic sachet of *shabu* with "EL," "AA," and "7-27-14" and took photographs of it while at the parking lot, in the presence of Agbay and the apprehending team. PO1 Vargas, on the other hand, recovered the buy-bust money from Agbay.⁸

SPO1 Lim started the inventory of the evidence at the place of operation. However, because it started raining, the apprehending team left the area and went to the Barangay Hall of Bahay Paltok where SPO1 Lim continued the inventory. Thereat, *Barangay Kagawad* Adresito Reyes certified that the team conducted a buy-bust operation which resulted in the arrest of Agbay and the seizure of the buy-bust

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⁵ Id. at 64-65.

⁶ Id. at 64.

⁷ Id. at 65.

⁸ Id. at 65-66.

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money and the marked plastic sachet containing the suspected *shabu*. When the buy-bust team returned to the DAID Office, SPO1 Lim kept custody of the plastic sachet bought from Agbay. He turned over the plastic sachet to PO1 Bautista who prepared the request for laboratory examination. Not for long, PO1 Bautista returned the plastic sachet to SPO1 Lim. After signing the chain of custody form, PO1 Bautista and SPO1 Lim brought the plastic sachet to the Quezon City Police District Crime Laboratory Station 10. It was SPO1 Lim who personally delivered the plastic sachet to PCI Maridel Martinez (PCI Martinez), the forensic chemist on duty, at 1:20 in the morning of July 28, 2014. When tested, the contents of the plastic sachet yielded positive for the presence of methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug. PCI Martinez turned over the subject specimen to PO1 Junia Tuccad, the evidence custodian. On September 30, 2014, PCI Martinez retrieved the plastic sachet pursuant to a subpoena issued by the trial court for the preliminary conference of the case.⁹

Agbay testified in his defense. He recalled that on July 26, 2014, while he was walking along the highway of San Francisco Del Monte Avenue, Quezon City, two persons held his wrists, boarded him in a vehicle and brought him in West Avenue, Quezon City. He was transferred to another vehicle and finally sent to Camp Karingal where he was instructed to cooperate with them. When he failed to provide any information, a case was filed against him.¹⁰

On January 31, 2017, the RTC found Agbay guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and sentenced him to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00. The RTC declared that the prosecution was able to prove all the elements of illegal sale of dangerous drugs. It gave weight to the declarations of SPO1 Lim that Agbay was caught *in flagrante delicto* selling a plastic sachet containing white granules which, upon examination by a forensic chemist, was confirmed to be *shabu*. It stressed that the failure of the apprehending officers to immediately conduct an inventory of the seized evidence at the place of arrest as well as the absence of the representatives from the Department of Justice (DOJ) and the media did not render the seized *shabu* inadmissible since the prosecution was able to show that the integrity and the evidentiary value of the drugs had been preserved.¹¹

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⁹ Id. at 66-68.

¹⁰ Id. at 32.

¹¹ Id. 47-50.

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On appeal, the CA affirmed Agbay's conviction after finding that the prosecution sufficiently established the links in the chain of custody in accordance with Section 21 of R.A. No. 9165. Citing *People v. Saldivar*,¹² the appellate court emphasized that R.A. No. 9165 and its Implementing Rules and Regulations (IRR) do not require perfect adherence to the procedural aspect of the chain of custody rule but merely substantial compliance as long as the integrity and evidentiary value of the seized items are preserved as in the present case. It likewise applied the presumption of regularity in the performance of the official duties for failure of the defense to show the police officers' ill-motive that impelled them to falsely file charges against him.

Hence, this appeal for the review and reversal of Agbay's conviction.

Our Ruling

The appeal is meritorious.

Agbay was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the elements of which are as follows: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. To secure conviction for illegal sale of *shabu*, it is vital for the prosecution to prove with moral certainty the existence and, more importantly, the identity of the dangerous drug which constitutes the *corpus delicti* of the crime.¹³

It bears stressing, however, that narcotic substances such as *shabu* are so unique and indistinct in character which render them highly susceptible to contamination or substitution. Thus, the Court has always impressed upon the prosecution the need to observe the procedural safeguards set forth in R.A. No. 9165 and prove an unbroken chain of custody if only to remove unnecessary doubts on the identity of the prohibited drug. More precisely, the prosecution must be able to account for each link in the chain of custody as reiterated in *People v. Kamad*:¹⁴ *first*, the seizure and marking, if practicable, 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

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¹² 737 Phil. 174, 189 (2014).

¹³ *People v. Calibod*, G.R. No. 230230, November 20, 2017, 845 SCRA 370, 379.

¹⁴ 624 Phil. 289, 304 (2010).

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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 from the forensic chemist to the court.

Encapsulated in Section 21 of R.A. No. 9165, the chain of custody rule mandates, among others, the members of the apprehending team to conduct the physical inventory and photograph of the seized items **immediately after seizure and confiscation**. While the law is silent on the marking requirement, it is jurisprudentially ordained that the seized illegal drug must likewise be marked immediately at the place of arrest or at the time of seizure and confiscation to erase any suspicion on the authenticity of the *corpus delicti*.¹⁵ Corollarily, the marking, inventory and photographing must also be made **in the presence of (1) the accused** or the person/s from whom the items were confiscated and/or seized, or his/her representative or counsel; **(2) a representative from the media; (3) a representative from the Department of Justice (DOJ); and (4) any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.¹⁶ However, with the approval of R.A. No. 10640 on July 15, 2014,¹⁷ the required witnesses are trimmed down to: **(1) the accused** or the person/s from whom the items were confiscated and/or seized, or his/her representative or counsel; **(2) any elected public official; and (3) a representative from the DOJ or the media**.¹⁸ At any rate, full and faithful compliance with the aforementioned procedural safeguards is required. As held in *People v. Jagdon*,¹⁹ non-observance of the third-party witness requirement practically generates serious doubt on the integrity of seized illegal drug and, ultimately, creates reasonable doubt in the conviction of the accused.

Agbay was caught *in flagrante delicto* selling *shabu* on July 27, 2014 or after the approval of the amendatory law. The apprehending team only needed to secure the presence of two witnesses during the inventory and photographing: an elected public official and a representative either from the DOJ or the media. Still, it did not comply with the requirement of the law. Only one witness was present during the inventory of the seized article at the *barangay* hall and not

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¹⁵ *People v. Tampan*, G.R. No. 222648, February 13, 2019.

¹⁶ Section 21 (1) and (2) Article II of R.A. No. 9165 and its Implementing Rules and Regulations.

¹⁷ 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."

¹⁸ Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

¹⁹ *People v. Jagdon*, G.R. No. 234648, March 27, 2019.

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even one was seen during the marking and photographing at the place of arrest and seizure. Considering the reduced number of witnesses, it should not have been difficult for the arresting officers to effect compliance with the witness requirement of Section 21. The members of the entrapment team knew fully well the drastic consequences of non-adherence to Section 21. They were aware that the absence of the required witnesses during the inventory and photographing of the seized item is fatal to the prosecution's cause especially when no justification is provided. They cannot feign ignorance of the requirements and prescribed procedure in Section 21 since they have been incorporated in the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation.²⁰ This notwithstanding, they still disregarded the requirements listed in R.A. No. 9165 and its IRR.

Notably, nowhere in the records does it appear that the apprehending officers genuinely endeavoured to secure the attendance of the insulating witnesses during the buy-bust operation. The buy-bust team received the tip on Agbay's illegal drug activities as early as 9:00 a.m. of July 26, 2014 and had more than 24 hours to accomplish the pre-operation documents and convene the persons required by law to witness the marking, inventory, and photographing immediately upon seizure and confiscation. Lamentably, the buy-bust team demonstrated plain indifference to the requirements of the law.

Time and again, the Court has held that the procedure embodied in Section 21 of R.A. No. 9165 is a matter of substantive law which cannot be treated as a simple procedural technicality.²¹ The case of *People v. Tomawis*,²² underscored the good reason behind the necessity of strict adherence to Section 21 and its IRR, thusly:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R[.]A[.] 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 subject sachet that was evidence

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²⁰ *People v. Labsan*, G.R. No. 227184, February 6, 2019, p. 13.

²¹ *People v. Adobar*, G.R. No. 222559, June 6, 2018.

²² *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

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of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. (Citation omitted)

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would believe any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame[-]up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of R[.]A[.] No. 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.” (Emphasis in the original)

The Court is not unmindful of the so-called saving clause found in Section 21 which provides 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.” It reflects the Court’s positive acknowledgement that strict and faithful compliance with the law may not be possible at all times. Thus, even if there were procedural lapses in the conduct of a buy-bust, the seizure and custody over the illicit drug remain legal and valid as long as these conditions are met: (a) the existence of justifiable grounds; and (b) the integrity and evidentiary value of the seized items are properly preserved by the police officers.²³ It is only when these requisites have been shown to exist that the Court allows deviation from the standard procedure in anti-narcotics operations.

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²³ Supra note 15.

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In the case at bench, the prosecution, in its weak attempt to trigger the saving clause, offered this as justification:

Since the transaction happened at night[,] it would have been difficult for the buy-bust team to have contacted a representative from the DOJ and media. Their absence then can be said to be excusable. Also, it must be noted that a *Barangay* Official was present during [the] continuation of the inventory making. Barangay Kagawad Reyes was the official present at that time and he even gave a Certification attesting to the conduct of the entire buy-bust operation.²⁴

Nighttime *per se* is not a sufficient ground to depart from the procedure prescribed by the law. To emphasize, it was PInsp. Almerino himself who instructed the informant to arrange the transaction with Agbay between 10:30 to 11:30 p.m. of July 27, 2014. The apprehending team had more than sufficient time to contact an elected public official and a DOJ representative or media representative, inform them of the entrapment operation, and request their presence to witness the inventory and photographing. But the records are bereft of any showing that the police operatives exerted sincere efforts to reach out to, and coordinate with an elected public official and a representative from the DOJ or the media to observe and attest to the marking, inventory and photographing at the place of arrest. There was also no indication that they sought the attendance of a representative from the DOJ or the media during the inventory at the *barangay* hall to act as their second independent witness. They easily brushed aside the witness requirement simply because it did not serve their comfort and convenience at the time. The police officers, at the very least, could have alleged and established that the presence of the insulating witnesses was not obtained for reasons beyond their control. The apprehending team could have tendered any of these justifications, as enumerated in *People v. Lim*:²⁵

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat

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²⁴ CA rollo, p. 89.

²⁵ *People v. Lim*, G.R. No. 231989, September 4, 2018.

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of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (Emphases in the original and citation omitted)

Unfortunately, in this case, the police operatives did not proffer similar explanation that would have convinced this Court to permit substantial compliance with the chain of custody rule. The unjustified noncompliance with Section 21 creates a substantial gap in the chain of custody²⁶ and renders the integrity and evidentiary value of the seized illegal drug compromised. Jurisprudence tells us that failure to demonstrate compliance with even just one of the links in the chain of custody creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.²⁷ Thus, even if the prosecution has duly proven the second, third, and fourth link in the chain, the Court cannot sustain Agbay's conviction in view of the serious breach in the chain present from its very inception.

The apprehending team's failure to completely secure the presence of the insulating witnesses during the marking, inventory, and photographing of the seized dangerous drug and provide adequate explanation as to its noncompliance with the requirements of the law cannot be regarded as slight deviations. To do so would be to lower the guard against the practice of planting, substitution, or tampering of evidence which R.A. No. 9165 and its IRR seek to eradicate. Undoubtedly, the arresting officers' serious procedural lapses in the conduct of the buy-bust operation put into question the identity and integrity of the *corpus delicti* and destroy the case of the prosecution. The prosecution having failed to discharge its burden to prove guilt beyond reasonable doubt, the Court acquits Agbay from the charge of illegal sale of dangerous drugs.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated May 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09028 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Arlan Agbay, y Rual is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

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²⁶ *Veriño v. People*, G.R. No. 225710, June 19, 2019.

²⁷ *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

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Let a copy of this Resolution be furnished the Director of the Bureau of Corrections, for immediate implementation. Said director is **ORDERED** to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.” *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court

By:

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