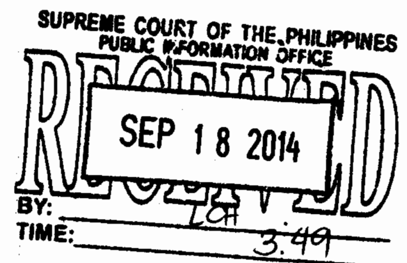

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **July 30, 2014,** *which reads as follows:*

G.R. No. 191146 - ELISEO DE VERA, JR., Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Before the Court is the Petition for Review on *Certiorari* under Rule 45, in relation to Rule 122, Section 3(e), of the Rules of Court, filed by petitioner Eliseo de Vera, Jr., seeking the reversal and setting aside of the Decision dated September 25, 2009 of the Court of Appeals in CA-G.R. CR No. 31151, which affirmed the Decision dated September 27, 2007 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 205, in Crim. Case No. 04-668, finding petitioner guilty of illegal possession of 0.52 gram of methamphetamine hydrochloride, more popularly called *shabu*, in violation of Article II, Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information dated July 7, 2004, filed before the RTC, petitioner was charged as follows:

> The undersigned Assistant City Prosecutor accuses **ELISEO DE VERA, JR. y ASPREC @ Bebot** of the crime of ***Violation of Section 11, Par. 1 of [Republic Act] No. 9165 otherwise known as the "Comprehensive Dangerous [Drugs] Act of 2002"*** committed as follows:

> That on or about the 6th day [of] July 2004, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law did then and there willfully, unlawfully and feloniously have in his possession, custody and control Methylamphetamine Hydrochloride, a dangerous drug weighing 0.52 grams contained in twelve (12) small heat-sealed transparent plastic sachets, in violation of the above-cited law.[1]

Petitioner pleaded not guilty during his arraignment.

At the pre-trial, the parties agreed to stipulate on the following: (a) the expertise of Police Inspector (P/Insp.) May Andrea Bonifacio (Bonifacio), a forensic chemist and witness for the prosecution, who conducted the laboratory examination of the submitted specimens; (b) P/Insp. Bonifacio's conduct of the laboratory examination; and (c) P/Insp. Bonifacio's Physical Science Report No. D-505-04S, stating that after qualitative examination, the submitted specimens tested positive for methylamphetamine hydrochloride, a dangerous drug. It was qualified though that P/Insp. Bonifacio had no personal knowledge about the source of the submitted specimen or the circumstances surrounding petitioner's arrest.

The prosecution called the arresting officers, Police Officer (PO) 1 Mark Sherwin Forastero (Forastero) and PO1 Joey Tan (Tan), to the witness stand. Their testimonies, together with the supporting object and documentary evidence of the prosecution, were summarized by the RTC, as follows:

> PO1 Mark Sherwin Forastero, a police officer assigned at the Station Anti-Illegal Drugs-Special Operation Task Force (SAID-SOTF), Muntinlupa City, informed the court that he was at work thereat from 9:00 o'clock in the morning of 6 July 2004 until 2:00 o'clock in the morning of the following day. The unit was tasked to conduct surveillance operation then. As part of their standard operating procedure, a pre-operation report/coordination sheet covering the same (Exhibit "E") was faxed to the Philippine Drug Enforcement Agency (PDEA), as evidenced by a transmission slip (Exhibit "E-1") and a control number given (Exh. "E-2"). Aside from himself, the team consisted of SPO1 Vega as team leader, PO3s Macalla and Madriaga, and PO1s Natuel, Respicio, Tan, and Gumayon as members. On dispatch at 2:00 o'clock in the afternoon of 6 July 2004, they went to

[1] Records, p. 1.

Bayanan. In the middle of their operation, SPO1 Vega received a text message from P/Insp. Silungan instructing them to proceed to Summitville because of a reported ongoing sale of dangerous drugs in the area. They did as told. They parked along the highway near Amber Machine Shop and proceeded on foot to the target area more or less fifty (50) meters away. PO1 Tan was his buddy. They took the main road of Summitville which was sloping and entered the first alley from the National Road. From a distance of five meters, PO1 Forastero saw a man wearing a cap, later identified as Eliseo De Vera, talking to a man with no upper garment to whom he showed the contents of a green coin purse. The duo were blocking the alley which had houses on both sides. When the witness went closer, he saw from a distance of about three meters that the green coin purse contained sachets of white crystalline substance, prompting him to approach the men. When PO1 Forastero was a mere one meter away, the person who was talking to Eliseo noticed his presence and immediately ran away. PO1 Tan ran after the man but was unable to arrest him. Eliseo was frozen in surprise, enabling the witness to seize him and confiscate the green coin purse where he found twelve transparent plastic sachets containing white crystalline substance suspected to be shabu. PO1 Tan assisted in the arrest. They brought Eliseo to their office where he was investigated. The witness took custody of the confiscated shabu from the place of the arrest until they reached their office where he marked the items "ED-1" to "ED-12" (Exhs. "B-1" to "B-12"), and the green coin purse with "ED13" (Exh. "B-13"). They prepared a spot report (Exh. "F") and faxed the same to PDEA, as evidenced by transmission reports (Exhs. "F-1" to "F-3"). There were three transmission reports as the line was busy and it was only on the third try that the spot report was received by PDEA. Requests for laboratory examination and drug test (Exhs. "A" and "G") were prepared. It was the witness who carried the confiscated items from their office to the crime laboratory where he had them personally received, as evidenced by stamp marks of receipt thereon (Exhs. "A-1" and "G-1"). The laboratory examination found the white crystalline substance positive for the presence of methylamphetamine hydrochloride, as indicated in a physical science report dated 6 July 2004 (Exh. "C"). It was PO1 Tan who got the result of the drug test which was negative. He proceeded to identify a statement that he jointly exhibited [executed] with PO1 Tan (Exhs. "D" and "D-1") which he attested to. Mr. Forastero identified accused in open court.

PO1 Joey Tan corroborated the testimony of PO1 Mark Sherwin Forastero in part but said that what he saw in a narrow and winding alley in Summitville, Munting Nayon, where he followed the first witness, was the latter's approach of two men who stood facing each other, one of whom turned out to be the accused. When one of them fled, he gave chase on his buddy Forastero's saying, "Positive". After failing to catch the man, the witness went back to PO1 Forastero and assisted him in arresting accused Eliseo. PO1 Forastero showed him the confiscated items. They informed Eliseo of his constitutional rights. He saw PO1

Forastero mark the recovered items in the office to where the latter carried them (Exhs. "B-1" to "B-12"). It was the same officer who handcarried the sachets to the crime laboratory for examination, witness having driven the vehicle thereto. PO1 Tan also identified the affidavit which he and the first witness jointly executed (Exh. "D"), likewise attesting to the same. The witness identified accused in open court.[2]

Petitioner was the sole witness for the defense. The RTC gave the following gist of petitioner's testimony:

Accused Eliseo De Vera Jr. was the lone defense witness. He identified himself as a resident of 362 Summitville, Putatan, Muntinlupa City before his arrest. On 6 July 2004, at around 3:30 o'clock in the afternoon, he was at home preparing to leave for his sister Corazon Soriano's house to get his carpentry tools. Because Corazon was out, he just left, unable to get his carpentry tools. Along the way and about eight meters from the house of Corazon, he was picked up by two men, one of whom had chinky eyes, and another who was identified as an "asset" and whom he later came to know as Dalton. The latter held the back of the witness' shorts while his companion pulled his arm across his back. They asked for his name and he told them it was Bebot. When they learnt of his full identity, they arrested him. He was frisked but nothing was recovered. Dalton tried to insert a green coin purse he was holding into accused's pocket. Mr. De Vera resisted and volunteered to empty his pocket instead. At that time, all that it contained were coins for buying cigarettes. Dalton repulsed him and inserted the green coin purse into his pocket, then took it out again and informed his companion that it was recovered from accused who denied it. He was immediately brought to [Drug Abuse Prevention and Control Office (DAPCO)] where the "asset" poured the contents of the green coin purse on top of a table. They were 12 pieces of longish plastic containing shabu. They forced him to admit that they were his. Macalla and the driver in the process mauled him. He complained that he could hardly breathe and informed Macalla that the shabu came from their "asset". Thereafter, he was detained. Accused acknowledged that he was not aware of any grudge harbored against him by any of the arresting officers.[3]

On September 27, 2007, the RTC promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the court hereby pronounces a guilty verdict against accused Eliseo de Vera Jr. for illegal possession of 0.52 gram of methamphetamine hydrochloride, a dangerous drug, in violation of Section 11, [Republic Act No.] 9165, accordingly sentencing him, pursuant thereto and applying the

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[2] *Rollo*, pp. 59-61.
[3] Id. at 61.

> Indeterminate Sentence Law, to imprisonment of a minimum of twelve years and one day and a maximum of fifteen years, and payment of a fine of ₱300,000.00. Cost against accused.
>
> Pursuant to Section 21(7), Republic Act 9165, Trial Prosecutor Brenn S. Taplac shall, after promulgation hereof, inform the Dangerous Drugs Board of the final termination of the case and request this court for the turn over of the dangerous drug subject matter thereof to the PDEA for proper disposition and destruction within twenty-four hours from its receipt.[4]

Petitioner appealed to the Court of Appeals. In its Decision dated September 25, 2009, the Court of Appeals denied petitioner's appeal and affirmed the judgment of conviction and penalties rendered by the RTC. In its Resolution dated February 1, 2010, the appellate court denied petitioner's Motion for Reconsideration.

Hence, the instant Petition wherein petitioner raises the following issues:

I

> WHETHER THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN AFFIRMING PETITIONER'S CONVICTION DESPITE THE INADMISSIBILITY OF THE ALLEGED SEIZED SHABU.

II

> WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE PROHIBITED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME.[5]

Petitioner argues that the RTC should not have admitted into evidence the 12 plastic sachets of alleged *shabu*, since these were taken from petitioner through an invalid search of his person following his unlawful and warrantless arrest. Petitioner asserts that he was not caught *in flagrante delicto.* Petitioner was merely talking to another man when the police officers chanced upon him, so there was no legal ground for the police officers to arrest petitioner at that particular time without a warrant as the latter had not committed or was not actually committing a crime. Being in no position to effect a warrantless arrest, the police officers were

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4 Id. at 63.
5 Id. at 15.

likewise barred from effecting a search and seizure on the person of petitioner. It is only after a person is lawfully arrested, can an incidental search be validly conducted on his person. Petitioner further points out that it is highly doubtful for PO1 Forastero to have actually seen the contents of a small coin purse being held in the palm of one's hand, especially when the view could have been easily blocked by the bodies of other persons standing in the area. PO1 Forastero's bare and self-serving testimony was too weak to satisfy the constitutional requirement of probable cause for petitioner's arrest and search of his person without warrants. Lastly, petitioner maintains that the prosecution failed to establish the identity of the prohibited drugs, which constitute the *corpus delicti* of the offense given that: (1) the drugs were marked by PO1 Forastero only at the police station; (2) the police officers did not make a physical inventory and take photographs of the seized items, in violation of Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165; and (3) there is a gap in the chain of custody as there is no information on what happened to the drugs after laboratory examination.

The present appeal has no merit.

The *shabu* seized from petitioner is admissible in evidence. The following discussion of the Court in *Ambre v. People*[6] on a valid warrantless search and seizure incident to a lawful warrantless arrest is relevant to the case at bar:

> Section 2, Article III of the Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of said constitutional provision. Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree. In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding.
>
> This exclusionary rule is not, however, an absolute and rigid proscription. One of the recognized exception[s] established by jurisprudence is search incident to a lawful arrest. In this exception, the law requires that a lawful arrest must precede the search of a person and his belongings. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. Section 5, Rule 113 of the Rules of Criminal Procedure, however, recognizes permissible warrantless arrests:

6 G.R. No. 191532, August 15, 2012, 678 SCRA 552, 561-562.

> "Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:
>
> **(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;**
>
> (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. x x x.
>
> Section 5, above, provides three (3) instances when warrantless arrest may be lawfully effected: (a) arrest of a suspect *in flagrante delicto*; (b) arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; (c) arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.
>
> In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

In searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search. Although probable cause eludes exact and concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.[7]

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[7] *Sy v. People*, G.R. No. 182178, August 15, 2011, 655 SCRA 395, 405-406.

In the case at bar, the police officers involved are experienced in anti-narcotics operations, being members of the Station Anti-Illegal Drugs-Special Operation Task Force (SAID-SOTF). They were conducting legitimate surveillance operation in the afternoon of July 6, 2004 when they received a tip regarding the ongoing sale of dangerous drugs in Summitville. Hence, the police officers were already on heightened alert as they were patrolling Summitville on foot. PO1 Forastero's attention was caught by a pair of men, one of whom was petitioner, talking to each other and blocking an alley. As PO1 Forastero approached the two men, he observed petitioner showing the other man the contents of a green coin purse. When PO1 Forastero was nearer, about three meters away, he saw that petitioner's green coin purse contained sachets of white crystalline substance, which PO1 Forastero suspected was *shabu*. Upon noticing PO1 Forastero, the man who petitioner was talking to ran away, leaving petitioner behind. It was at this point that PO1 Forastero seized petitioner and confiscated from the latter the green coin purse and its contents. When PO1 Tan returned from his unsuccessful chase of the man who ran away, PO1 Forastero showed him the items confiscated from petitioner. The police officers then apprised petitioner of his rights and arrested him. The tip received by the police officers of an ongoing sale of dangerous drugs in the area, PO1 Forastero's plain view of the sachets of white crystalline substance in the green coin purse held by petitioner, and the flight of petitioner's companion upon seeing the police officers, all together constituted probable cause for PO1 Forastero to believe that petitioner was right there and then committing a crime by being in possession of *shabu*, a dangerous drug, therefore, justifying the warrantless arrest of petitioner, and on the occasion thereof, the warrantless search of petitioner's person and seizure of the dangerous drugs found in petitioner's possession.

There is no reason for the Court to disturb the findings of fact of the RTC and the Court of Appeals, particularly, the weight and credence accorded by both courts to PO1 Forastero's testimony. In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate

testimonial evidence properly. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[8]

In addition, the defense of frame-up, like denial and alibi, has invariably been viewed by the courts with disfavor, for it can easily be concocted. It is a common and standard ploy employed by the accused in prosecutions for violation of the Dangerous Drugs Act. It is true that in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, there will be disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts accept in every instance this form of defense which can be so easily fabricated. Hence, for such defense to prosper, the evidence must be clear and convincing. Unfortunately, such is not the case for petitioner. The total absence of proof of motive on the part of the police officers for falsely imputing such a serious crime to petitioner, the presumption of regularity in the performance of official duty by the police officers, as well as the findings of the RTC and the Court of Appeals on the credibility of witnesses, shall prevail over petitioner's self-serving and uncorroborated claim of frame-up.[9]

The integrity and the evidentiary value of the dangerous drugs seized from petitioner have been preserved since the prosecution satisfactorily established the chain of custody of the same.

In every prosecution for illegal sale of prohibited drugs, as well as other violations of Republic Act No. 9165, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material. Thus, it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.[10] Article II, Section 21(1) of Republic Act No. 9165, together with Article II, Section 21(a) of the Implementing Rules and Regulations, lay down the procedure intended to preserve the chain of custody of confiscated, seized, or surrendered dangerous drugs.

[8] *People v. Naquita*, 582 Phil. 422, 437-438 (2008).
[9] *People v. Sy*, 438 Phil. 383, 403-405 (2002).
[10] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 717-718.

In *Dolera v. People*,[11] the Court pronounced that the marking of dangerous drug by the apprehending officer or team in case of warrantless seizures, as the present case, must be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. This is in line with the chain of custody rule.

As for the absence of a physical inventory and photographs of the confiscated dangerous drugs, the Court has previously held that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. The police officers' failure to strictly comply with Article II, Section 21(1) of Republic Act No. 9165 did not affect the evidentiary weight of the dangerous drugs seized from petitioner as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.[12] The Court of Appeals was able to completely trace the chain of custody of the dangerous drugs in this case, *viz*:

> Records reveal that upon confiscation of the purse containing the 12 plastic sachets from [petitioner], the same were kept in the custody of PO1 Forastero who brought them to the police station and marked them with the initials "ED-1" to "ED-13." He was likewise the one who brought the substances to the crime laboratory for examination where forensic chemist P/Insp. May Andrea A. Bonifacio performed a qualitative examination thereon and found them positive for methylamphetamine hydrochloride. While the latter was no longer presented in open court to testify regarding the source of the seized items, the parties had stipulated that she received a laboratory examination request from the DAPCO, in relation to [petitioner's] arrest, together with the subject sachets, which she examined and found positive for dangerous drugs. Thus, the integrity of the drugs seized from [petitioner] has been preserved.[13]

The dangerous drugs, as marked by PO1 Forastero, were presented during trial and identified by PO1 Forastero himself, and submitted to the RTC as evidence for the prosecution.

Undeniably, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. Moreover, the integrity of the evidence is presumed to be preserved, unless there is a showing of bad

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[11] 614 Phil. 655, 667-668 (2009).

[12] *People v. Hambora*, G.R. No. 198701, December 10, 2012, 687 SCRA 653, 661.

[13] *Rollo*, p. 87.

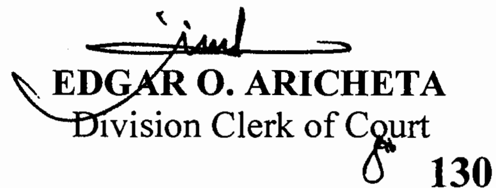
faith, ill will, or proof that the evidence has been tampered with. In this case, petitioner bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that they properly discharged their duties. Failing to discharge such burden, there can be no doubt that the drugs seized from petitioner were the same ones examined in the crime laboratory. Evidently, the prosecution established the crucial link in the chain of custody of the seized drugs.[14]

Under Section 11 of Republic Act No. 9165, the penalties for possession of less than five grams of methamphetamine hydrochloride or *shabu* is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Thus, the penalties imposed by the RTC, as affirmed by the Court of Appeals, of imprisonment of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, plus a fine of Three Hundred Thousand Pesos (₱300,000.00), being within the range set by law, are proper.

WHEREFORE, the instant appeal is without merit and the Decision dated September 25, 2009 of the Court of Appeals in CA-G.R. CR No. 31151 is **AFFIRMED**.

SO ORDERED."

Very truly yours,



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14 *People v. Quiamanlon*, supra note 10 at 718-720.

Mr. Eliseo De Vera, Jr.
Petitioner
c/o The Director
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The Hon. Presiding Judge
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(Crim. Case No. 04-668)

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