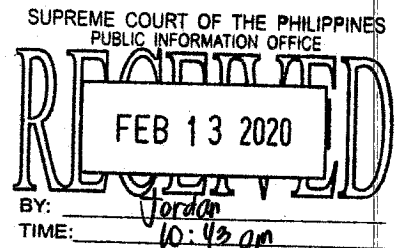




Republic of the Philippines
Supreme Court
Manila



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. 225626 (People of the Philippines v. Jerry Bolivar y Molina)

The Case

This appeal assails the Decision¹ dated February 22, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01832 affirming appellant Jerry Bolivar’s conviction for: (a) violation of Section 5, Article II of Republic Act 9165² (RA 9165) and imposing on him life imprisonment and Five Hundred Thousand Pesos (₱500,000.00) fine; and (b) Section 11 of the same act and imposing on him twelve (12) years and one day as minimum to fourteen (14) years and eight months as maximum and Three Hundred Thousand (₱300,000.00) fine.

The Charge

Appellant Jerry Bolivar y Molina was charged with violation of Sections 5 and 11, Article II of RA 9165, for the sale of one sachet containing 0.06 gram of *methamphetamine hydrochloride*, otherwise known as “*shabu*” and possession of three (3) plastic sachets of the same drug weighing 0.97 gram under two (2) separate Informations, respectively, *viz:*

Criminal Case No. 08-65200
Section 5 (illegal sale)

- over – nineteen (19) pages ...

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¹ Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Pablito A. Perez and Gabriel T. Robeniol; *Rollo*, pp. 5-18.

² Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

That on or about the 18th day of February, 2008, in the City of Iloilo, Philippines and within the jurisdiction of this court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally sell and deliver to PO1 Rolando Mendez 0.06 gram of methamphetamine hydrochloride (*shabu*), a dangerous drug, in consideration of ₱ 400.00, without the authority to sell and distribute the same; that three (3) pieces of one hundred bills with Serial Nos. WG550476, QM331555 and RF 937937 and two (2) fifty peso bills with Serial Numbers QH437384 and NV337409 used as buy bust money were recovered from the possession of the accused.

CONTRARY TO LAW.³

Criminal Case No. 08-65199
Section 11 (illegal possession)

That on or about the 18th day of February, 2008, in the City of Iloilo, Philippines and within the jurisdiction of this court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally have in his possession and control 0.97 grams of methamphetamine hydrochloride (*shabu*), a dangerous drug, without authority to possess the same.

CONTRARY TO LAW.⁴

On arraignment, appellant pleaded “not guilty” to both charges. Trial ensued.

The Proceedings Before the Trial Court

PO1 Wilfredo Tagle, Jr., PO2 Rolando Mendez, and PO1 Franz Gerald Lim testified for the prosecution while appellant testified as sole witness for the defense.

Version of the Prosecution

In the afternoon of February 18, 2008, after a test-buy confirmed that appellant was engaged in illicit trade of drugs, intelligence officers from the Iloilo City Mobile Group (ICMG), Philippine National Police (PNP) organized a buy bust team consisting of PO2 Rolando Mendez⁵ and the confidential informant as poseur buyers, PO1 Franz Gerald Lim as immediate back-up, PO1 Wilfredo Tagle, Jr. as evidence custodian, and a few more police officers as additional back-up.⁶

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³ *Rollo*, p. 6.

⁴ *Id.*

⁵ Referred to in some parts of the record as PO1 Rolando Mendez.

⁶ *Rollo*, p. 7.

Three (3) One Hundred Peso (P100.00) bills bearing serial number WG550476, QM331555, and RF937937, and two (2) Fifty Peso (P50.00) bills bearing serial numbers QH437384 and NV337409, were marked and given to PO2 Mendez as buy bust money.⁷

On even date, around 6:45 in the evening, PO2 Mendez and PO1 Lim, accompanied by the confidential informant arrived at appellant's residence at Zone 2, *Barangay Bakhaw*, Mandurriao, Iloilo City.⁸

As the group was approaching appellant's residence, they saw appellant loitering outside. The confidential informant then called appellant who immediately approached and asked what they wanted.⁹

PO2 Mendez replied that he wanted to purchase Four Hundred Pesos (P400.00) worth of *shabu* then gave appellant the buy bust money which the latter slid into his right front pocket. Appellant later took out one (1) plastic sachet containing white crystalline substance and handed it to PO2 Mendez.¹⁰

PO2 Mendez took the sachet, grabbed appellant, and introduced himself as a police officer. Appellant tried to resist but was overpowered by the combined forces of PO1 Lim and PO2 Mendez. On PO1 Lim's call, the additional back up together with several elected barangay officials closed in.¹¹

PO1 Lim's incidental search on appellant's person yielded three (3) more plastic sachets containing the same white crystalline substance, as well as the buy bust money. A black wallet containing empty plastic sachets was also retrieved from appellant.¹²

PO2 Mendez handed over the seized items to evidence custodian PO1 Tagle. The latter did an initial inventory and marked the plastic sachet subject of the sale "JB Buy Bust" and the three (3) plastic sachets recovered from appellant's person "JB-P1", "JB-P2" and "JB-P3".¹³

Appellant and the seized items were brought to the ICMG office.¹⁴

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⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 8.

¹⁴ *Id.*

The next day, PO1 Tagle brought the recovered substances and buy bust money to the Prosecutor's Office where another inventory was conducted, this time witnessed by appellant himself and representatives from the Department of Justice, the media, and the arresting officers themselves. Thereafter, PO1 Tagle brought the seized items, along with the letter request for examination to the PNP Regional Crime Laboratory Office VI, Camp Martin T. Delgado, Fort San Pedro, Iloilo City.¹⁵

Forensic chemist Police Superintendent Angela Lechonito Baldevieso issued Chemistry Report No. D-D-35-08 indicating that the contents of the plastic sachet marked "JB Buy Bust" containing 0.06 gram of white crystalline substance, and the three (3) plastic sachets marked "JB-P1", "JBP2", and "JB-P3" containing 0.34, 0.29, 0.34 gram of white crystalline substance, respectively, were all positive for *methamphetamine hydrochloride*, a dangerous drug.¹⁶

The prosecution offered as documentary evidence the Letter Request for Laboratory Examination,¹⁷ Chemistry Report No. D-035-08,¹⁸ Pre-operational Report,¹⁹ Coordination Form,²⁰ and Inventory of Confiscated/Seized Articles dated February 18, 2008.²¹

Version of the Defense

Appellant testified that at the time of the alleged incident, he was resting at home, when his wife informed him that three (3) unknown men were looking for him. When he walked down to the living room, these men immediately threw on him a black wallet and brandished their guns at him. He raised his hands in fear and sat down. One (1) of the three (3) men used his phone to call for back-up. When the back up arrived, the three revealed themselves as police officers and then examined the wallet they threw at him which yielded drugs.²²

The defense did not offer any documentary evidence.

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¹⁵ *Id.*

¹⁶ *Id.* at 9.

¹⁷ Record, p. 10.

¹⁸ *Id.* at 11.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 14.

²¹ *Id.* at 5.

²² *Rollo*, p. 9.

The Trial Court's Decision

By Decision dated February 28, 2014,²³ the trial court found appellant guilty of both charges, *viz*:

WHEREFORE, judgment is hereby rendered as follows:

1. Finding accused Jerry Bolivar y Molina guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165 under Criminal Case No. 08-65200 and sentencing him to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand (P500,000.00) Pesos; and

2. Finding accused Jerry Bolivar y Molina guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act 9165 under Criminal Case No. 08-65199 and sentencing him to suffer an indeterminate penalty of imprisonment ranging from Twelve (12) years and One (1) day, as minimum to Fourteen (14) years, as maximum and to pay the fine of Three Hundred Thousand (Php 300,000.00) Pesos.

Said accused is entitled to the full benefits of his preventive detention provided he abides with the disciplinary rules and regulations imposed upon convicted prisoners pursuant to the provision of Article 29 of the Revised Penal Code.

The *shabu* (Exhibits "I", "J", "K" and Exhibit "L") subject of both cases, including its container "M" are confiscated in favor of the government and the Branch Clerk of Court is directed to immediately turn-over said items to the Philippine Drug Enforcement Agency, Region 6 for proper disposition in accordance with existing rules and regulations.

The buy-bust money (Exhibit "N" and "N-1" to "N-4") are hereby ordered to be returned to the Iloilo City Mobile Group, Philippine National Police.

SO ORDERED.²⁴

The trial court found it hard to believe that authorities will just simply enter a random house and implicate someone in the commission of a serious offense. Also, it found as implausible for the police authorities to still call for barangay officials if their main intention was truly to frame up appellant. The trial court pointed out that appellant's defense of denial and frame-up had been viewed with disfavor for these defenses can easily be concocted and are standard

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²³ Penned by Acting Presiding Judge Victor E. Gelvezon; *Rollo*, pp. 58-75.

²⁴ *Rollo*, pp. 73-74.

defenses in most prosecutions for violation of the Dangerous Drug Act.²⁵

It gave credence to the testimonies of the arresting police officers who as officers of the law are presumed to have performed their duties in a regular manner in the absence of evidence to the contrary.²⁶

For the other sachets of *shabu* recovered from appellant, the trial court found them admissible in evidence. For at the time these were recovered, appellant allegedly had just committed the offense of illegal sale of dangerous drugs. These sachets, therefore, are but the product of a lawful search incidental to appellant's lawful arrest.²⁷

On the chain of custody, the trial court pointed out that the recording made by PO1 Tagle at the house of appellant partakes of the inventory contemplated under Section 21 of RA 9165. The absence of the required witnesses was subsequently cured when another inventory was conducted at the Prosecutor's Office in the presence of appellant himself, arresting officers, and representatives from the Department of Justice and the media.²⁸

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of the offenses charged despite the purported inconsistencies in the prosecution witnesses' testimonies and the prosecution's failure to establish the chain of custody of the *corpus delicti*.²⁹

On the other hand, the Office of the Solicitor General (OSG) riposted that the alleged inconsistencies specified were minor details which did not hinge on the elements of the offenses charged. As poseur buyer, PO2 Mendez gave a detailed account of how the sale took place.³⁰

The Court of Appeals' Ruling

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²⁵ *Id.* at 65.

²⁶ *Id.* at 66.

²⁷ *Id.* at 67-68.

²⁸ *Id.* at 70-72.

²⁹ *Id.* at 11-12.

³⁰ *Id.* at 12-13.

By Decision dated February 22, 2016,³¹ the Court of Appeals affirmed.³²

It ruled that the prosecution witnesses' testimonies showed how appellant sold to the buy bust team one (1) plastic sachet containing *shabu* and how the buy bust money as well as three (3) other sachets of drugs were recovered from his person post arrest.

The Court of Appeals found that the minor inconsistencies in the prosecution witnesses' testimonies were peripheral issues which did not detract from the existence of a consummated sale of illegal drugs. Too, appellant failed to prove ill motive on the part of the arresting team as to falsely impute a crime on him.

The Court of Appeals adopted the trial court's conclusion that it was unbelievable, incredulous and contrary to ordinary human experience and behavior for ICMG agents to just forcefully barge into appellant's house, arbitrarily throw a black wallet containing *shabu* at him, aim their firearms at his person and arrest him, sans any reason at all or prior bad blood between him and these agents.

The Present Appeal

Appellant now faults the Court of Appeals for concluding that he failed to present convincing exculpatory evidence; crediting the arresting officers with the presumption of regularity in the performance of their official duty; and sustaining in evidence the admission of the seized dangerous drugs despite violation of the chain of custody rule.

In refutation, the OSG essentially reiterates its arguments before the Court of Appeals.

Issue

Did the arresting police officers comply with the chain of custody rule?

Ruling

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.³³

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³¹ Penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Pablito A. Perez and Gabriel T. Robeniol; *Rollo*, pp. 5-18.

³² *Rollo*, p.17.

³³ *People v. Calates*, G.R. No. 214759, April 4, 2018.

The dangerous drugs seized from appellant constitute such *corpus delicti*. It is thus imperative that the prosecution establish that the identity and integrity of the dangerous drugs were duly preserved in order to support a verdict of conviction.³⁴ It must prove that the substance seized from appellant is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

The illegal sale and possession of dangerous drugs were allegedly committed on February 18, 2008. The applicable law, therefore, is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz.:

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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 complements the foregoing provision, viz.:

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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

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³⁴ *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 20, citing *People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

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, 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;

x x x

x x x

x x x

These provisions embody the chain of custody rule. It 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. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.³⁵

*People v. Lacdan*³⁶ reiterated that the following four (4) links in the chain of custody must be proved:

First, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

Second, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We give emphasis to the first, third, and fourth links which appellant avers were breached.

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³⁵ *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 244.

³⁶ G.R. No. 232161, August 14, 2019.

The *first link* refers to seizure and marking. "Marking" refers to the apprehending officer or the poseur-buyer placing his/her initials and signature on the seized item. It is of utmost importance that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.³⁷ Marking though should be done in the presence of the apprehended violator and the witnesses mentioned under Section 21 of RA 9165 immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.³⁸

The first link also includes compliance with physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.

Here, arresting officer PO2 Mendez testified that the seized items were immediately turned over to their exhibit custodian PO1 Tagle after the buy bust operation, thus:

Q: Thereafter, after these items which were inside the wallet and were also ascertained, what happened next?

A: PO1 Tagle conducted an inventory, sir.

Q: Who turned the items over to PO1 Tagle for purposes of inventory?

A: I gave it to PO1 Tagle the *shabu* which I purchased and the items recovered by PO1 Lim were also given to PO1 Tagle.³⁹

On the other hand, PO1 Tagle testified that after the seized items were turned over to him by PO2 Mendez and PO1 Lim at the place of the arrest, he immediately inventoried and marked the same in the presence of PO2 Mendez, PO1 Lim, Brgy. Capt. Ruby Gallano and Brgy. Kagawad Eduardo Alegrado, *viz*:

Q: Could you recall in relation to your assignment of duty as exhibit custodian, could you recall if items were turned over to you in your capacity as exhibit custodian?

A: Yes, sir.

Q: What items were that which were turned over to you?

A: The 400.00 peso bills consisting of 3 pieces P100.00 bills and 2 pieces P50.00 bills, 1 piece suspected plastic sachet of *shabu*

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³⁷ *People v. Ismael*, 806 Phil. 21, 29 (2017).

³⁸ *People v. Mendoza*, 736 Phil. 749, 761 (2014).

³⁹ TSN, November 11, 2011, p. 8.

buy bust, 3 pieces plastic sachets of *shabu* from the possession, black wallet type marked "sharp" containing plastic sachets used for packing.

Q: Where were these items turned over to you, in what place?

A: At the house of Jerry Bolivar.

Q: And who turned over these items which you just mentioned?

A: PO1 Rolando Mendez and PO1 Franz Gerald Lim.

Q: When these items were turned over to you, what did you do with these items?

A: I recorded it in the inventory of seized articles.

Court: Right there and then?

A: Yes, your Honor.

Q: And after you recorded these items turned over to you, what did you do next?

A: I marked the items which was (sic) recovered and turned over to me, sir.

Q: I am showing to you a document already marked by this Honorable Court as Exhibit "C". Please examine this document and tell if you are familiar with this document.

A: This is the document which I prepared during the operation.

Q: And there is a signature above name PO1 Rolando Mendez and PO1 Franz Gerald Lim. Do you know whose signature appearing therein?

A: The signature of PO1 Mendez and PO1 Lim.

Q: Why do you know that these are the signatures of PO1 Mendez and Lim?

A: They signed in my presence, sir.

Q: Likewise, there is a signature above name Brgy. Capt. Ruby Gallano and Brgy. Kagawad Eduardo Alegrado. Do you know whose signatures appearing in these respective names?

A: Yes, sir. They signed in my presence.

Court: Why were they there? When you arrived, they're already there?

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A: No, Your Honor. We summoned first the barangay officials before a body search was conducted.

Q: You mentioned Mr. Witness that these persons which you just identified, specifically in what place did they sign this document?

A: At the house of Jerry Bolivar, sir.

Q: You said you marked the items which were turned over to you. What markings did you place on these items, if you can recall?

A: The sachets containing white crystalline substance believed to be *shabu* marked as "JB buy bust".

Court: You were the one who made the marking?

A: Yes, Your Honor.

Court: Why did you mark it buy bust?

A: Because that was turned over to me by PO1 Lim which was according to him is the buy bust item. Then the 3 plastic sachets containing suspected *shabu* marked as "JB-P1", "JB-P2", "JB-P3".⁴⁰

x x x

x x x

x x x

Q: After you made these markings on these items, what did you do next with these items?

A: We prepared the request for Crime Laboratory for the following day. Then, the documents to be presented at the fiscal's office for inventory.

Q: That evening, who took custody of the items turned over to you?

A: Me, sir.

Court: Why? Who is the exhibit custodian of your office?

A: Me, Your Honor.⁴¹

x x x

x x x

x x x

Q: You said that the following day, you prepared the document. Where did you proceed the following day?

A: We proceeded to the fiscal's office for inventory.

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⁴⁰ TSN, July 18, 2008, pp. 5-10.

⁴¹ *Id.* at 10.

Q: When was the document prepared? The following day or that night?

A: That night, your Honor.⁴²

x x x

x x x

x x x

Q: To whom did you proceed for inventory?

A: At the Office of Prosecutor Togonon.

Q: Who were present at that time?

A: Media representative Julius Padilla.

Q: How about the others, aside from him?⁴³

x x x

x x x

x x x

A: The arresting officers PO1 Mendez, PO1 Lim, the accused Jerry Bolivar and Pros. Togonon.⁴⁴

x x x

x x x

x x x

Q: Aside from them, were there barangay officials?

A: No, sir. We invited them during the inventory but they have some work.

Q: And what was done before Pros. Togonon?

A: Pros. Togonon checked the items then signed the inventory of confiscated/seized articles in our presence.⁴⁵

From PO2 Mendez and PO1 Tagle's testimonies, it is clear that the proper procedure for handling the seized dangerous drugs as prescribed under Section 21 of RA 9165 was not at all complied with.

One. The marking was not done in the presence of appellant and the required witnesses. PO1 Tagle did not mention who were the persons present when the marking was done. He only testified on where he marked the seized items and the markings he put on them.

Two. The inventory was conducted twice: *first*, at the time of the arrest with only the barangay officials as witnesses, and *another*

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⁴² *Id.* at 11.

⁴³ *Id.*

⁴⁴ *Id.* at 12.

⁴⁵ *Id.*

on the following day at the Prosecutor's Office with appellant, the arresting officers, a media representative, and a prosecutor, as witnesses.

RA 9165 and its IRR both expressly ordain that the inventory of the seized items must be made immediately after seizure of the alleged dangerous drugs 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, representatives from the media and the Department of Justice (DOJ), and any elected public official. This was not complied with here. True, an initial inventory was made at the time of arrest, but this was done in the presence of the barangay officials only. For some unknown reason, appellant, who was also at the *situs criminis*, was not even called to witness the inventory. More, representatives from the media and the DOJ were only called in the following day. The Court has repeatedly held that the required witnesses must be present even as early as the time of arrest. *People v. Escara*⁴⁶ is apropos:

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*, the Court elucidated on the purpose of the law in mandating the presence of the required [insulating] witnesses as follows:

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 RA 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 of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three [3] 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 belie 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

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⁴⁶ G.R. No. 212170, June 19, 2019.

the witnesses would be to able testify that the buy bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 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 supplied)

Three. PO1 Tagle's testimony did not at all mention that the required photograph of the seized items as taken. Notably, too, the prosecution's offer of documentary evidence did not bear this vital evidence.

In *People v. Alagarme*⁴⁷ and *People v. Arposeple*,⁴⁸ the Court ruled that the arresting officers' failure to photograph the seized dangerous drug militated against the guilt of an accused. For then the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

In fine, the *first link* had been incipiently broken not once, not twice, but thrice pertaining to the required marking, the inventory, and photograph of the confiscated dangerous drugs.

The **third link** pertains to the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination. Here, while PO1 Tagle testified that he was the one who delivered the seized items together with the letter request to the crime laboratory, he failed to testify on who received these items from him. PO1 Tagle likewise failed to testify on how he handled the seized items from the time the marking and inventory had been completed until the items were sent to the laboratory for examination the next day. It was not even shown how the seized items were stored in the interim.

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⁴⁷ 754 Phil. 449, 461 (2015).

⁴⁸ G.R. No. 205787, November 22, 2017.

In *People v. Bermejo*⁴⁹ and *People v. Carlit*,⁵⁰ the Court acquitted the accused when the investigating officer who was in custody of the dangerous drug before the same was sent to the crime laboratory for examination failed to testify on how he handled the drug after it was placed in his custody until it was brought to the forensic chemist. It was emphasized that “*during the interim time - from when the specimen was placed under his custody until the time it was brought to court - the threat of tampering, alteration, or substitution of the corpus delicti still existed.*”

In sum, the *third link* here appears to have been as broken as the first link.

Finally, the *fourth link* refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.⁵¹ In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimens.⁵²

Here, Forensic Chemist Police Superintendent Baldevieso did not testify on how she supposedly received, handled, examined, and preserved the integrity of the dangerous drugs from the time she received them until they left her custody.

In *People v. Dahil and Castro*,⁵³ the Court acquitted the accused therein in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, *viz*:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general

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⁴⁹ G.R. No. 199813, June 26, 2019; Also see *People v. Gayoso*, 809 Phil. 19, 33 (2017).

⁵⁰ *People v. Lim*, G.R. No. 233744, February 28, 2018.

⁵¹ *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

⁵² Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

⁵³ 750 Phil. 212, 237 (2015).

stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

People v. Mallillin⁵⁴ decreed:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain**, from the moment the item was picked up to the time it is offered into evidence, **in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the **precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.** (Emphasis supplied)

Like the first and the third links, therefore, the final link in this case had also been breached.

Surely, the repeated lapses in the chain of custody rule here had cast serious doubt on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived appellant of his right to liberty.

In any event, while the chain of custody should ideally be perfect and unbroken, it is almost always impossible to obtain it.⁵⁵ In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.⁵⁶

Here, the police officers did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. They did not even acknowledge that they did not follow the proper sequence of the required marking and inventory; and they omitted the required photograph. In sum, the condition for the saving

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⁵⁴ *Mallillin v. People*, 576 Phil. 576 (2008).

⁵⁵ *People v. Adrid*, 705 Phil. 654, 672 (2013).

⁵⁶ See Section 21 (a), Article II of the IRR of RA 9165.

clause to become operational was not fulfilled. For this reason, 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.

In *People v. Año*,⁵⁷ the Court decreed that if the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.

The presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers unjustifiably failed to comply with the requirements laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.⁵⁸

All told, the lapses in the procedure laid out in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drugs here had impeached their integrity and evidentiary value. As the dangerous drugs presented before the court constitute the *corpus delicti* of the offenses charged, it must be proven with moral certainty that these are the same items seized from appellant during the buy bust operation and the three (3) other sachets incidentally discovered from him by the arresting officer after his arrest. Since the prosecution miserably failed to discharge this burden, the Court is constrained to render a verdict of acquittal.

WHEREFORE, the appeal is **GRANTED** and the Decision dated February 22, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01832, **REVERSED** and **SET ASIDE**. Appellant Jerry Bolivar y Molina is **ACQUITTED** of violations of Sections 5 and 11, Article II of Republic Act 9165.

The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to: (a) cause the immediate release of Jerry Bolivar y Molina from custody unless he is being held for some other lawful cause or causes; and (b) to submit his report on the action taken within five (5) days from notice. Let entry of judgment be immediately issued.

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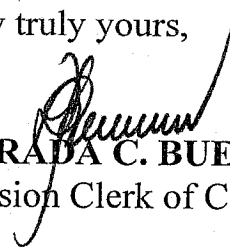
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⁵⁷ G.R. No. 230070, March 14, 2018.

⁵⁸ *Supra*, Note 46.

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

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{off. of}
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The Hon. Presiding Judge
Regional Trial Court, Branch 36
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