

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. 245494 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, vs. ANTHONY DE OCAMPO y FABIAN AND ARVIN ESGUERRA y BARGOLA, Accused-appellants.

This appeal assails the Decision¹ dated August 31, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09565 affirming the trial court’s verdict of conviction against appellant Anthony De Ocampo y Fabian (De Ocampo) for violation of Sec. 11, paragraph 2(3), Article II of Republic Act No. 9165 (RA 9165) as amended by Republic Act No. 10640 (RA 10640) and appellants Anthony De Ocampo y Fabian and Arvin Esguerra y Bargola (Esguerra) for violation of Sec. 5, Art. II in relation to Sec. 26 of the same law.

The Facts and the Plea:

Appellants were charged in four (4) separate Informations dated September 16, 2014 for violations of Sections 11, 12 and 5 in relation to Section 26 of RA 9165, viz.:

Crim. Case No. 23462-2014-C – ARVIN ESGUERRA y BARGOLA
For Violation of Sec. 12, Art. II of RA No. 9165

That on or about September 12, 2014, in the Municipality of BAY, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess one pipe and one disposable lighter, a paraphernalia used in consuming a dangerous drug, without the corresponding authority of law.

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¹ Penned by Associate Justice Ronaldo Roberto B. Martin concurred in by Associate Justice Apolinario D. Bruselas Jr., and Associate Justice Myra V. Garcia-Fernandez, all members of the Tenth Division, *rollo*, pp. 3-34.

CONTRARY TO LAW.²

Crim. Case No. 23463-2014-C – ARVIN ESGUERRA y BARGOLA
For Violation of Sec. 11, Art. II of RA No. 9165

That on or about September 12, 2014, in the Municipality of BAY, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess one heat sealed transparent plastic sachet containing 0.48 gram of methamphetamine hydrochloride and one heat sealed transparent plastic sachet of marijuana weighing 0.03 gram, both dangerous drugs, without the corresponding authority of law.

CONTRARY TO LAW.³

Crim. Case No. 23464-2014-C – ANTHONY DE OCAMPO y FABIAN

For Violation of Sec. 11, Art. II of RA No. 9165

That on or about September 12, 2014, in the Municipality of BAY, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess two heat sealed transparent plastic sachets having a total net weight of 0.10 gram of [m]ethamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.⁴

Crim. Case No. 23465-2014-C – ANTHONY DE OCAMPO y FABIAN and ARVIN ESGUERRA y BARGOLA

For Violation of Sec. 5 in relation to Sec. 26, Art. II of RA No. 9165

That on or about September 12, 2014, in the Municipality of BAY, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously sell and deliver one heat sealed transparent plastic sachet containing 0.03 gram of [m]ethamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.⁵

Both appellants pleaded not guilty to the respective charges against them.⁶ Thereafter, the cases were consolidated and jointly tried.

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² RTC Crim. Case No. 23462-2014-C, Record, p. 1.

³ RTC Crim. Case No. 23463-2014-C, *id.*

⁴ RTC Crim. Case No. 23464-2014-C, *id.*

⁵ RTC Crim. Case No. 23465-2014-C, *id.*

⁶ *Rollo*, p. 6.

During trial, the prosecution presented PO1 Joseph Mangompit and PO1 Al Raymond Geminiano.⁷

On the other hand, the defense presented appellant Arvin Esguerra y Bargola. As for the proposed testimony of appellant Anthony De Ocampo y Fabian, the parties stipulated that he would corroborate Esguerra's testimony and interpose the same defenses of denial and frame up.⁸

Version of the Prosecution

PO1 Joseph Mangompit (PO1 Mangompit) testified that a confidential agent tipped them off that appellant De Ocampo was engaged in the sale of dangerous drugs on Daang Bakal, Brgy. Maitim, Bay, Laguna. After coordinating with the Philippine Drug Enforcement Agency (PDEA), a buy-bust team was formed where he got designated as poseur-buyer and PO1 Al Raymond Geminiano (PO1 Geminiano) as back-up. PO1 Mangompit had previously arranged to buy *shabu* from appellant De Ocampo.⁹

The team arrived at the area of operation around 5:30 in the afternoon. Appellant De Ocampo was then waiting at the gate of his house. PO1 Mangompit approached and handed the five hundred peso (P500.00) bill marked money to appellant De Ocampo. Thereupon, appellant De Ocampo instructed another person appellant (Esguerra) "*Vin paabot ng isang limang daan.*" Appellant Esguerra obliged by handing appellant De Ocampo one heat sealed plastic sachet containing white crystalline substance. Appellant De Ocampo, in turn, handed it to PO1 Mangompit. After the transaction, he scratched his head to signal that the transaction was already completed. He then arrested appellant De Ocampo through the assistance of the other members of the buy-bust team. Appellant Esguerra attempted to escape but was eventually caught by PO1 Geminiano.¹⁰

The operatives conducted the preventive search, marking, and inventory at the police station since a crowd was already forming at the place of operation. The preventive search yielded two (2) more plastic sachets with white crystalline substance inside appellant De Ocampo's pocket.¹¹ The plastic sachet subject of the buy-bust

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⁷ *Id.* at 7.

⁸ TSN, June 21, 2017, pp. 5-6.

⁹ *Rollo*, pp. 9-10.

¹⁰ *Id.*

¹¹ TSN, March 28, 2017, p. 8.

operation was marked "ADO-BB-1" while the two (2) plastic sachets recovered during the preventive search were marked "ADO2," and "ADO-3."¹² Thereafter, investigator PO1 Lapitan prepared the request for laboratory examination.¹³

PO1 Al Raymond Geminiano testified that he served as PO1 Mangompit's back-up security. During the buy-bust operation, he was strategically positioned three (3) to five (5) meters away from PO1 Mangompit and appellant De Ocampo. While he was not able to hear and understand the conversation between them, he was able to witness the exchange of marked money and the sachet containing white crystalline substance during the transaction. After PO1 Mangompit gave the pre-arranged signal, he was about to close in when he noticed appellant Esguerra running away from the scene. He chased and arrested him. He also instructed appellant Esguerra to empty his pocket¹⁴ which yielded one (1) plastic sachet containing white crystalline substance, one (1) plastic sachet of marijuana, one (1) pipe and one (1) lighter which were subsequently marked as "AE-1," "AE-2," "AE-3" and "AE-4," respectively.¹⁵

Per Chemistry Report No. LD-785-14,¹⁶ Forensic Chemist Grace Plantilla Bombasi (FC Bombasi) found the contents of the plastic sachets marked "ADO-BB-1," "ADO-2," and "ADO-3" positive for methamphetamine hydrochloride (*shabu*), a dangerous drug. On the other hand, the contents of the plastic sachets marked "AE-1" and "AE-2" yielded positive for methamphetamine hydrochloride and marijuana respectively, both dangerous drugs.¹⁷

The prosecution offered the following exhibits: *Sinumpaang Salaysay* jointly executed by PO1 Joseph Mangompit and PO1 Al Raymond Geminiano; Request for Laboratory Examination; Chemistry Report No. LD-784-14; Chemistry Report No. LD-785-14; one plastic sachet of methamphetamine hydrochloride marked as "ADO-BB-1" one plastic sachet of methamphetamine hydrochloride marked as "ADO-2;" one plastic sachet of methamphetamine hydrochloride marked as "ADO-3;" one plastic sachet of methamphetamine hydrochloride marked as "AE-1;" one plastic sachet of marijuana leaves marked as "AE-2;" Certificate of

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¹² *Id.* at 11.

¹³ *Id.*

¹⁴ *Rollo*, pp. 11-12.

¹⁵ TSN, May 10, 2017, p. 5.

¹⁶ RTC Crim. Case No. 23463-14-C, Record, p. 10.

¹⁷ *Id.* at 9.

Inventory; photographs; one (1) piece five hundred peso (₱500.00) bill marked money; Coordination Form; Pre-Operation Report; and the Chain of Custody.¹⁸

Version of the Defense

Appellant Arvin Esguerra denied the charge and decried he was framed-up. He testified that on September 12, 2014, around 2 o'clock in the afternoon, he was in his house where he was negotiating to sell a cellular phone. Thereafter, four (4) men wearing civilian clothes suddenly barged into his house and arrested him and appellant De Ocampo. They were instructed to board a vehicle and taken to the police station. There, they were subjected to a search which yielded negative results for prohibited drugs. Suddenly, the police officers brought out *shabu* and marijuana claiming these were in their possession. They were then instructed to stand beside these items for photograph. They obliged because the men threatened to crush their fingers if they refused.¹⁹

As stated, the parties dispensed with the presentation of appellant De Ocampo as they stipulated that his proposed testimony would simply corroborate and adopt appellant Esguerra's defenses of denial and frame up.²⁰

The Trial Court's Decision: As borne by its Decision²¹ dated July 6, 2017, the trial court rendered a verdict of acquittal for appellant Esguerra on the charges of illegal possession of drugs and illegal possession of drug paraphernalia; and a verdict of conviction against appellant De Ocampo for illegal possession of drugs and against both appellants De Ocampo and Esguerra for illegal sale of prohibited drugs under Section 5, Art. II in relation to Section 26 of RA 9165 as amended by RA 10640. The trial court, thus, held:

IN VIEW OF THE FOREGOING, in Criminal Case No. 23462-2014-C, on the charge of possession of paraphernalia for dangerous drugs, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, **ARVIN ESGUERRA y BARGOLA** is **ACQUITTED** of the crime charged.

In Criminal Case No. 23463-2014-C, on the charge of possession of dangerous drugs, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, **ARVIN ESGUERRA y BARGOLA** is **ACQUITTED** of the crime charged.

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¹⁸ CA rollo, p. 70.

¹⁹ *Id.*

²⁰ TSN, June 21, 2017, pp. 5-6.

²¹ CA rollo, pp. 65-80.

In Criminal Case No. 23464-2014-C, the Court finds accused, **ANTHONY DE OCAMPO y FABIAN, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to PAY A FINE of THREE HUNDRED THOUSAND (P300,000.00) PESOS.**

In Criminal Case No. 23465-2014-C, the Court finds accused **ANTHONY DE OCAMPO y FABIAN and ARVIN ESGUERRA y BARGOLA GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165 in relation to Section 26 of the same law. Both accused are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND PESOS (P500,000.00) PESOS.**

The Branch Clerk of Court is hereby ordered to turn-over the methamphetamine hydrochloride (*shabu*) subject of these cases for proper disposition and destruction.

SO ORDERED.²²

The trial court gave full credence to the police officers' testimonies, upholding the presumption of regularity in the performance of their duty, sans any showing that they were impelled by any ulterior motive. Consequently, it rejected appellants' defenses of denial and frame-up.

The trial court further found that the marking and inventory requirements were substantially complied with, and the integrity of the seized items, preserved.

As for the charges of illegal possession of drugs and illegal possession of drug paraphernalia against appellant Esguerra, the trial court ruled there was a breach in the chain of custody. For the identity of the police officer who was in actual possession of seized items from confiscation until their turn-over to PO1 Mangompit for laboratory examination was not clearly established.

The Proceedings before the Court of Appeals: On appeal, appellants faulted the trial court insofar as the verdict of conviction was concerned. They emphasized the alleged questionable narrative regarding the buy-bust operation and the failure of the prosecution to prove the elements of the offenses they were convicted of. They further asserted:

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²² *Id.* at 79-80.

First, the buy-bust operation did not involve the so-called confidential informant for the police team had supposedly conducted a prior “*surveillance and casing*” on their own.

Second, appellant De Ocampo was not waiting at the main gate of their house prior to the transaction because the police blotter revealed he came out of their house prior to the transaction.

Third, based on PO1 Mangompit and PO1 Geminiano’s joint sworn statement, appellant De Ocampo was already handcuffed when he was ordered to empty his pocket. It was, thus, impossible for one to empty his pocket with his hands cuffed.

Fourth, when PO1 Mangompit scratched his head to signal that the transaction was already completed, he immediately effected appellant’s arrest giving no time for the latter to have slid the buy-bust money into his secret pocket.


Too, the apprehending officers violated Section 21 of RA 9165, as amended by RA 10640, for failure to properly mark the seized items and to secure them in a sealed container. The inventory was only signed by a barangay official and PO1 Mangompit. Not even appellants’ signatures were to be found in the inventory.

Lastly, the integrity of the seized items was not preserved due to the procedural lapses committed by the apprehending police officers. One, the seized items were not properly marked. Two, the last link in the chain of custody was broken since the prosecution did not present evidence that FC Bombasi resealed each sachet after the laboratory examination. Neither did she testify, nor was it stipulated that she actually brought the items to the trial court without any court personnel gaining custody of the same before they were actually presented in evidence. The last link in the chain of custody, therefore, was broken.

The Court of Appeals’ Ruling: The Court of Appeals affirmed through its assailed Decision dated August 31, 2018. It held that PO1 Mangompit sufficiently established the identities of the seller and buyer, the one heat sealed seized item which contained 0.03 gram of white crystalline substance subject of the sale, and the five hundred peso (P500.00) bill as marked money. In the same vein, conspiracy was established as between appellants De Ocampo and Esguerra. They were both present at the scene of the crime. Upon receipt of the

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marked money, appellant De Ocampo instructed appellant Esguerra to hand him *shabu* worth five hundred pesos (P500.00). De Ocampo, in turn, handed the same to PO1 Mangompit.

Further, the prosecution sufficiently established the elements of illegal possession of dangerous drugs as against appellant De Ocampo. The preventive search on appellant De Ocampo's person at the police station yielded two (2) other plastic sachets with white crystalline substance.

The appellate court rejected appellants' argument that the team of police officers already conducted surveillance and casing prior to the buy bust operation without the assistance of the confidential informant. The presence of the confidential informant during the buy bust operation is not essential to the prosecution of illegal sale of drugs. More, the inconsistencies in the testimonies of PO1 Mangompit and PO1 Geminiano did not undermine these witnesses' credibility.

As for the integrity of the seized items, the buy bust team substantially complied with the chain of custody rule. The fact that it was only the barangay kagawad who witnessed the marking and inventory of the seized items did not render appellants' arrest illegal nor the seized items inadmissible in evidence.

Finally, appellants' defense of denial cannot prevail over the established existence of a valid buy-bust operation.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for their acquittal. In compliance with Resolution dated June 10, 2019,²³ both appellants²⁴ and the OSG²⁵ manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellants' conviction for the offenses charged?

Ruling

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²³ *Rollo*, p. 42.

²⁴ *Id.* at 56-58.

²⁵ *Id.* at 50-52.

We acquit.

Appellant Esguerra was charged with illegal possession of drug paraphernalia (Crim. Case No. 23462-2014-C for violation of Sec. 12, Art. II of RA 9165) and possession of dangerous drugs (Crim. Case No. 23463-2014-C for violation of Sec. 11, Art. II of RA 9165). The trial court acquitted him of these charges as the prosecution failed to prove his guilt beyond reasonable doubt.

On the other hand, appellant De Ocampo was charged with possession of dangerous drugs (Crim. Case No. 23464-2014-C for violation of Sec. 11, Art. II of RA 9165). Appellants De Ocampo and Esguerra were jointly charged with illegal drug trading (Crim. Case No. 23465-2014-C for violation of Sec. 5 in relation to Sec. 26, Art. II of RA 9165). They were convicted thereof.

Illegal possession of dangerous drugs is defined and penalized under Section 11, Article II of RA 9165. To secure the conviction, the prosecution must prove that: (a) the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²⁶

On the other hand, illegal sale of dangerous drugs is defined and penalized under Sec.5, Art. II of the same law. To secure the conviction, the prosecution must prove: (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.²⁷

Appellants here were charged as co-conspirators in the sale of a dangerous drug. The pertinent provisions of RA 9165 as amended, read:

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SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including

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²⁶ See *Ramos v. People*, G.R. No. 233572, July 30, 2018.

²⁷ See *People v. Jugo y Villanueva*, G.R. No. 231792, January 29, 2018.

any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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SECTION 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

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(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

xxx xxx xxx

In the prosecution of drug related cases, the identity of the dangerous drug must be established with moral certainty. Failure to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.²⁸

Here, the Informations alleged that the offenses were committed on September 12, 2014. The governing law, therefore, is RA 9165, as amended by RA 10640.²⁹ Section 21(1) provides:

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

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²⁸ See *Fuentes y Garcia v. People*, G.R. No. 228718, January 7, 2019.

²⁹ 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," July 15, 2014.

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.

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Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, defines chain of custody as follows:

“Chain of Custody” means 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 to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The significance of the chain of custody rule was explained in *Mallillin v. People*,³⁰ viz.:

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 in 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.

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³⁰ 576 Phil. 576, 587-588 (2008).

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination, and even substitution and exchange. In other words, the exhibits' level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.

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A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases by accident or otherwise in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

In *People v. Nandi*,³¹ the Court highlighted the following links to be established in the chain of custody of the seized item:

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 turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

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³¹ 639 Phil. 134, 144-145 (2010).

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

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the offense.³²

Here, the prosecution utterly failed to sufficiently establish the chain of custody. For the apprehending officers committed serious procedural lapses, which effectively impeached the seized item's integrity.

First, although the apprehending officers were justified in marking and conducting the inventory and photograph of the seized items at the police station, they nonetheless failed to comply with the required two witness rule.

The first link in the chain of custody refers to the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer. As starting point of the chain of custody, the immediate marking of the specimen is necessary because it serves as reference for and by the subsequent handlers of the item.³³

Section A.1. in relation to Section A.1.3 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 as amended by RA 10640 instructs:

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

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A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place

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³² See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

³³ See *People v. Bugtong*, G.R. No. 220451, February 26, 2018.

where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

Here, the apprehending police officers were justified when they conducted the marking, inventory and photograph at the police station since a crowd had already begun milling around the place of arrest. *People v. Arciaga*³⁴ is a precedent where the Court held that for the same security reason, the buy-bust team was justified in conducting the marking, inventory, and photograph of the seized items at the PDEA-RO 7 Office.

But then, the required two-witness rule was not complied with during the inventory, particularly the presence of a representative from the National Prosecution Service or the media. Section A.1.5 of the Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 as amended by RA 10640 provides:

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, *with elected public official and a representative of the National Prosecution Service (NPS) or the media*, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer. (*Emphasis supplied*)

Indeed, the law demands that the inventory and photograph should be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.³⁵

The presence of the representative from the media [*or*] the Department of Justice (DOJ), *and* of any elected public official is necessary precisely to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. Simply put, their presence is a safeguard against planting of evidence and frame-up. Securing the presence of these persons is not impossible. It is not

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³⁴ G.R. No. 239471, January 14, 2019.

³⁵ See *People v. Piñero*, G.R. No. 242407, April 1, 2019.

enough for the apprehending officers to merely mark the seized item; the buy-bust team must also conduct a physical inventory and photograph the seized item in the presence of these persons required by law.³⁶ On this score, PO1 Mangompit testified:

PO1 JOSEPH MANGOMPIT
(On direct examination) PROS. BARUT:

Q. After the two were arrested, what happened next?

A. Because after both were arrested, we already brought them to the Police Station because there was already a crowd formed, ma'am.

Q. And what happened at the Police Station?

A. When we arrived at the Police Station, **we immediately called the Barangay Kagawad, Serapio Osmena** to witness the markings, ma'am.

Q. Did that Barangay Official arrive?

A. Yes, ma'am.

Q. And what happened?

A. We conducted the preventive search and we recovered, (2) plastic sachets on his pocket, ma'am.

True, the buy-bust team coordinated with the barangay official after the arrest. There was, however, no explanation as to the absence of the second required witness. Neither was there any apparent effort on the part of the police officers to coordinate with the media or the DOJ. In fact, the inventory³⁷ was not even signed by appellants nor was there any annotation that they refused to sign it. The only signatures that appeared in the inventory were those of PO1 Mangompit and Barangay Kagawad Serapio O. Mendoza.

In *People v. Bayang*,³⁸ the Court acquitted the accused for failure of the apprehending police officers to secure the presence of the second required witness from the media or the National Prosecution Service.

Under varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void, provided that the prosecution satisfactorily proves that: (a) there is a

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³⁶ See *People v. Bayang*, G.R. No. 234038, March 13, 2019.

³⁷ Exhibit "E," RTC Record, p. 14.

³⁸ G.R. No. 234038, March 13, 2019.

justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. For the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³⁹

Second, there was no turnover of the seized items to the investigating officer.

The second link in the chain of custody refers to the turnover of the illegal drug seized to the investigating officer. The investigating officer must certainly have possession of the illegal drugs to conduct the proper investigation and prepare the necessary documents for the developing criminal case.⁴⁰

Here PO1 Mangompit admitted he did not turn the custody over the seized items to the investigator:

PO1 JOSEPH MANGOMPIT
(On direct examination) PROS. BARUT:

xxx xxx xxx

Q. You said that you brought the persons of the accused to the Crime Laboratory?

A. Yes, ma'am.

Q. How about the illegal drugs?

A. We also brought the sachets of illegal drugs to the Crime Lab., ma'am.

Q. Who prepared the Request for the Laboratory Examination?

A. Our Investigator, ma'am.

Q. Who is your Investigator?

A. PO Lapitan, ma'am.

Q. Where were you when PO Lapitan prepared the Request for Laboratory Examination?

A. I was there inside the Office, ma'am.

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³⁹ See *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

⁴⁰ See *People v. Dahil*, 750 Phil. 212, 231 (2015).

Q. How did PO Lapitan know the number of evidence to be examined and the markings?

A. We showed the items to him, ma'am.

Q. Was there an instance wherein you turn over custody of this evidence to the Investigator?

A. None, ma'am.⁴¹

The seized items remained in the custody of PO1 Lapitan while the request for laboratory examination was being prepared until their transfer to the forensic chemist. Such procedural breach necessarily affects the integrity and evidentiary value of the seized items.

In *People v. Remigio*,⁴² the apprehending police officer did not transfer the seized items to the investigating officer, a serious breach which the arresting police officers did not acknowledge, much less explain. The Court found such irregularity as sufficient ground to acquit the accused.

Surely, the Court cannot close its eyes to the lapses committed by the apprehending police officers. The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, first, the presumption is precisely just that — a mere presumption. Once challenged by evidence, as in this case, it cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.⁴³

In sum, the prosecution here utterly failed to establish the elements of either illegal possession or sale of dangerous drugs by proof beyond reasonable doubt. Appellants' acquittal necessarily must follow.

WHEREFORE, the appeal is **GRANTED**.

Appellant Anthony De Ocampo y Fabian is **ACQUITTED** of violation of Section 11, paragraph 2 (3), Article II of RA 9165 as amended by RA 10640.

Appellants Anthony De Ocampo y Fabian and Arvin Esguerra y Bargola are **ACQUITTED** of violation of Section 5, Article II in

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⁴¹ TSN, March 28, 2017, 1:30 PM.

⁴² 700 Phil. 452, 469 (2012).

⁴³ See *People v. Ambrosio*, 471 Phil. 241, 250 (2004); citing *People v. Tan*, 432 Phil. 171, 197 (2002).

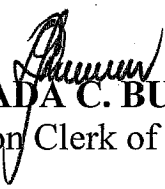
relation to Section 26 of RA 9165 as amended by RA 10640 for failure of the prosecution prove their guilt beyond reasonable doubt.

The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of appellants Anthony De Ocampo y Fabian and Arvin Esguerra y Bargola from custody unless they are being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let the corresponding entry of final judgment be immediately issued.

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

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09565)

The Hon. Presiding Judge
Regional Trial Court, Branch 37
Calamba City, 4027 Laguna
(Crim. Case Nos. 23464-2014-C
& 23465-2014-C)

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

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Judgment Division (x)
Supreme Court

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