



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 9, 2020** which reads as follows:*

“G.R. No. 249645 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ALEXIS ALEJANDRO BACULI, alias “CHACA,” accused-appellant.

After a careful review of the records of the instant case, the Court reverses and sets aside the Decision¹ dated July 22, 2019 of the Court of Appeals – Cagayan de Oro City Special Twenty-Third Division (CA), in C.A.-G.R. CR-HC No. 01929-MIN which affirmed the Decision² dated December 5, 2017 of Branch 13, Davao City Regional Trial Court (RTC) in Criminal Cases Nos. 70,296-11 and 70,297-11 both titled “*People of the Philippines v. Alexis Alejandro Baculi, Alias ‘Chaca,’*” finding the accused Alexis Alejandro Baculi (Baculi) guilty beyond reasonable doubt for violations of Sections 5 and 11 of Republic Act No. 9165 (R.A. No. 9165), otherwise known as *The Comprehensive Dangerous Drugs Act of 2002*.³

For failure to establish the *corpus delicti* of the offense due to the failure of the apprehending officers to faithfully abide by the chain of custody rule under Section 21, Article II of R.A. No. 9165, the Court acquits the Baculi.

In cases involving dangerous drugs, the Court must determine whether the dangerous drug, the *corpus delicti* of the crime,⁴ reached

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¹ *Rollo*, pp. 5-40. Penned by Associate Justice Loida S. Posadas-Kahulugan, with Associate Justice Oscar V. Badelles and Associate Justice Florencio M. Mamauag, Jr. concurring.

² *CA rollo*, p. 64-74. Penned by Presiding Judge Rowena M. Apao-Adlawan.

³ The commission of the alleged crimes transpired prior to the amendment of Section 21, R.A. No. 9165 by R.A. No. 10640.

⁴ *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, 827 Phil. 457, 465 (2018); *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018).

the court with its identity and integrity preserved. This must be established with moral certainty.⁵ In arriving at this certainty, the very nature of prohibited drugs, it being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime.⁶

Thus, in order to obviate any unnecessary doubt as to its identity, it is imperative for the prosecution to show that the dangerous drug seized from the accused is the very same substance offered in court and that the identity of the seized item is established with the same unwavering exactitude as that required to make a finding of guilt.⁷ Otherwise stated, the prosecution must be able to account for each link of the chain of custody from the moment the drug is seized up to its presentation in court as evidence.⁸

The prosecution's burden of proving the *corpus delicti* is discharged by a faithful compliance of Section 21, Article II of R.A. No. 9165, the law applicable at the time of the commission of the offenses. Said provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs be turned over to the Philippine National Police (PNP) Crime Laboratory within 24 hours from confiscation for examination.

The Court stresses that the aforementioned requirements laid down in Section 21 of R.A. No. 9165 are mandatory in nature.⁹ In several cases which include *People v. Garcia*,¹⁰ *People v. Royol*,¹¹ *People v. Gabriel*,¹² *People v. Del Rosario*,¹³ *People v. Ordiz*,¹⁴

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⁵ *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

⁶ *People v. Lopez*, G.R. No. 247974, July 13, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66294>>.

⁷ *People v. Labsan*, G.R. No. 227184, February 6, 2019, 892 SCRA 112, 128-129.

⁸ *People v. Año*, 828 Phil. 439, 448 (2018).

⁹ *People v. Cardenas*, G.R. No. 229046, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65761>>.

¹⁰ 599 Phil. 416 (2009).

¹¹ G.R. No. 224297, February 13, 2019, 893 SCRA 54.

¹² G.R. No. 228002, June 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65279>>.

¹³ G.R. No. 235658, June 22, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66342>>.

¹⁴ G.R. No. 206767, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65741>>.

*People v. Zapanta*¹⁵ and *People v. Saragena*,¹⁶ the Court acquitted the accused due to failure of the police officers to comply with **all** the requirements of Section 21. In these cases, the wholesale violation of Section 21 led to an obvious failure to establish the *corpus delicti* and, hence, to the acquittal of the accused based on reasonable doubt.

After a careful review of the records and the testimonies offered by the prosecution in the instant case, the Court is of the considered view that the integrity and identity of the *corpus delicti* are compromised.

First, the items seized were not marked immediately upon confiscation and in the presence of the accused. Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized.¹⁷ It is the starting point in the custodial link. As such, this must be made immediately upon confiscation.¹⁸ Succeeding handlers will use the markings as reference,¹⁹ thereby preserving an unbroken chain of custody of the seized items. The importance of this requirement has been repeatedly emphasized by the Court as stated in the case of *People v. Dahil*:²⁰

x x x “Marking” means the placing **by the apprehending officer or the poseur-buyer** of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, **it is vital that the seized contraband be immediately marked** because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, **thus, preventing switching, planting or contamination of evidence.**

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.**²¹ (Additional emphasis and underscoring supplied).

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¹⁵ G.R. No. 230227, November 6, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66244>>.

¹⁶ 817 Phil. 117 (2017).

¹⁷ *People v. Gayoso*, 808 Phil. 19, 31 (2017).

¹⁸ *People v. Sabdula*, 733 Phil. 85, 95 (2014).

¹⁹ *People v. Dahil*, 750 Phil. 212, 232 (2015).

²⁰ Id.

²¹ Id. at 232; see also *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 365-366

Immediate marking is vital as it ensures that the item seized from the accused is the same item which enters the chain of custody. In this regard, the Court, in *People v. Beran*,²² explained:

What Section 21 of R.A. No. 9165 and its implementing rules do not expressly specify is the matter of marking of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the “chain of custody” rule requires that **the marking of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.** This step initiates the process of protecting innocent persons from dubious and concocted searches, and protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.²³ (Emphasis and underscoring supplied)

Thus, the Court, in *People v. Paz*,²⁴ *People v. Hementiza*,²⁵ *People v. Diputado*,²⁶ *People v. Beran*,²⁷ *People v. Ismael*,²⁸ *People v. Dahil*,²⁹ where the buy-bust team failed to mark the seized items immediately after confiscation at the place of arrest but only at the barangay hall or police station, and in cases such as *People v. Gonzales*³⁰ and *People v. Angngao*,³¹ where it was not explained where and how the markings were made, the Court harbored serious doubts as to the identity and integrity of the seized dangerous drugs warranting the acquittal of the accused.

It is undisputed in the instant case that the seized items were not marked immediately upon confiscation. SPO2 Daquigan, the apprehending officer, testified that after seizing the items from Baculi, he merely placed the items in plastic cellophanes and kept them in his custody as they proceeded back to the police station.³² The prosecution failed to elicit further details as to how these plastic cellophanes were kept and how these were handled.

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²² 724 Phil. 788 (2014).

²³ Id. at 819-820.

²⁴ G.R. No. 233466, August 7, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65403>>.

²⁵ 807 Phil. 1017 (2017).

²⁶ 813 Phil. 160 (2017).

²⁷ Supra note 22.

²⁸ 806 Phil. 21 (2017).

²⁹ Supra note 19.

³⁰ 708 Phil. 121 (2013).

³¹ 755 Phil. 597 (2015).

³² TSN dated November 5, 2015, p. 10.

The prosecution justified the apprehending officer's failure by offering the explanation that the buy-bust area is a public place and was populated.³³ This, however, fails to clear the high standard required by the law in justifying any deviation from the chain of custody rule.

It should be noted that the apprehending officers, with the benefit of foresight and planning attendant in buy-bust operations, knew fully well that the area of operation was a public market and a bustling place at 3:00 in the afternoon. The apprehending team could have easily ensured that the marking, inventory and photographing were done in a manner consistent with the law while taking into consideration the field conditions of the area of operation. The fact that the buy-bust area is a populated public place cannot *ipso facto* justify non-compliance with the stringent requirements of Section 21 of R.A. No. 9165.

In *People v. Mola*,³⁴ the Court considered the excuse that there were many persons in the buy-bust area as hollow. In *People v. Sampa*,³⁵ the Court refused to lend credence to the alleged existence of commotion in the public area as the prosecution did not attempt to provide details of circumstances surrounding the alleged commotion that prompted the buy-bust team to delay the marking, inventory and photograph taking. In *People v. Dela Torre*,³⁶ the Court found the justification that the delay in marking was "to avoid any commotion or any untoward incident" as insufficient to justify the deviation. In *People v. Cornel*,³⁷ the Court ruled that the buy-bust team could have easily contained any commotion in the public area and should have been able to conduct the marking and inventory at the place of seizure. Similarly, in *People v. Sood*,³⁸ the excuse of an existence of a commotion was struck down since the buy-bust team could have easily ensured that the conduct of the marking, inventory, and photographing would cause minimal disruption to the area.

The Court finds no reason to deviate from the foregoing pronouncements which apply with equal force in the case at bar.

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³³ *Id.*; *rollo*, p. 32.

³⁴ 830 Phil. 364, 378 (2018).

³⁵ G.R. No. 242160, July 8, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65516>>.

³⁶ G.R. No. 225789, July 29, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65512>>.

³⁷ G.R. No. 229047, April 16, 2018, 861 SCRA 267, 282.

³⁸ G.R. No. 227394, June 6, 2018, 865 SCRA 368, 391.

Further eroding the identity and integrity of the dangerous drugs is the fact that the belated marking was not made in the presence of Baculi. The Court, in *People v. Sanchez*,³⁹ emphasized the paramount importance of having the seized items marked immediately upon confiscation and in the presence of the apprehended violator as this initiates the process of protecting innocent persons from dubious and concocted searches and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.⁴⁰

The CA erred in concluding that just because Baculi “was endorsed together with the seized items,”⁴¹ then it can be “deduced x x x that the marking was done before the accused-appellant.”⁴² Endorsement is different from marking and the conduct of one does not necessarily mean compliance with the other. What remains clear, however, is the absence of any evidence, testimonial or otherwise, showing that the seized items were indeed marked in the presence of Baculi.

It needs no elaboration that the immediate marking of the items seized in the presence of the accused is indispensable in establishing their identity in court. Failing which, the very existence of the *corpus delicti* is cast in serious doubt.

Second, the physical inventory and photographing of the dangerous drugs were made a day after the apprehension and seizure. In *People v. Supat*,⁴³ the Court explained that the phrase “immediately after seizure and confiscation” in Section 21 of R.A. No. 9165 means that the physical inventory and photographing of dangerous drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. No. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.

In *People v. Lim*,⁴⁴ the Court explained that the inventory and photograph taking in a place other than where the arrest and confiscation took place may only be allowed, among others, when

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³⁹ 590 Phil. 214 (2008).

⁴⁰ Id. at 240-241.

⁴¹ *Rollo*, p. 33.

⁴² Id.

⁴³ G.R. No. 217027, June 6, 2018, 865 SCRA 45, 66.

⁴⁴ G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

there is threat to the safety and security of the apprehending officers and witnesses. As such, in *People v. Amores*,⁴⁵ the Court found in favor of the accused the fact that the prosecution did not allege or prove that the safety and security of the police officers were at risk which would have justified the deviation from the requirements of Section 21.

Having found the apprehending officers' excuse in failing to perform the initial custodial requirement of marking at the place of apprehension inadequate, the inventory and photographing done at the police station were likewise in clear violation of the chain of custody rule. The prosecution made no effort in explaining the police operatives' decision of not taking inventory and photographs at the place of arrest and confiscation. There is no showing that their safety and security were at risk.

Worse, the physical inventory and taking of photographs were done **a day after the arrest and seizure**.⁴⁶ In the interim, the seized items were placed in the personal locker of the apprehending officer.⁴⁷ The prosecution made no attempt at justifying such a delay. Moreover, the assurances made by the apprehending officer that his personal locker has only one key and that it is accessible only by him⁴⁸ leave much to be desired in assuaging the law's highly circumspect treatment in the handling of dangerous drugs.

In *People v. Sanico*,⁴⁹ the Court overturned the conviction of the accused since it was shown, among other lapses, that the inventory of the seized items was done a day after the arrest of the accused therein. Similarly, in *People v. Borja*,⁵⁰ the inventory and photographing were done a day after the arrest of the accused. The Court in *Borja* noted that the postponement of the inventory and photographing defeated its very purpose — to ensure that the drugs seized are the very same drugs that are presented in court. In *People v. Redondo*,⁵¹ where the seized items were marked one whole day after their confiscation, the Court acquitted the accused since a significant and unexplained break in the chain of custody had been made.

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⁴⁵ G.R. No. 243658, December 10, 2019.

⁴⁶ TSN dated November 5, 2015, p. 13.

⁴⁷ TSN dated November 5, 2015, p. 12.

⁴⁸ Id.

⁴⁹ G.R. No. 240431, July 7, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66318>>.

⁵⁰ G.R. No. 233795, March 4, 2020.

⁵¹ G.R. No. 245488, September 16, 2020.

Third, the three insulating witnesses were not present at the time of the seizure of the dangerous drugs. Indeed, while the IRR of R.A. No. 9165 allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three insulating witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' seizure and confiscation — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁵² It is at this point when their presence is most needed to ensure the source, identity and integrity of the seized drug.⁵³

The Court has repeatedly pointed out that this requirement can easily be complied by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.⁵⁴ In *People v. Gamboa*, the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Considering that buy-bust operations are planned operations, police officers are given sufficient time to prepare and consequently make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed by Section 21, Article II of R.A. No. 9165.⁵⁵ They are therefore compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁵⁶

The prosecution made no attempts at showing compliance with the statutory requirement nor offered any justification for such an egregious lapse. It does not appear in the records that the buy-bust team tried to secure the presence of the witnesses at the time of apprehension. This simply was not factored in the preparation of the buy-bust operation nor in the actual conduct of the same.

The fact that the three insulating witnesses were present during the physical inventory and photograph taking a day after the apprehension and confiscation did not and cannot cure non-compliance with Section 21, Article II of R.A. No. 9165.

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⁵² *People v. De Leon*, G.R. No. 214472, November 28, 2018, 887 SCRA 349, 364; *People v. Labsan*, G.R. No. 227184, February 6, 2019, 892 SCRA 112, 116.

⁵³ *People v. Callejo*, G.R. No. 227427, June 6, 2018, 865 SCRA 405, 431.

⁵⁴ *People v. Labsan*, supra note 7, at 130; *People v. Supat*, supra note 43, at 67; *People v. Casco*, G.R. No. 212819, November 28, 2018, 887 SCRA 322, 335-336.

⁵⁵ Supra note 5, at 569-570.

⁵⁶ Id. at 570.

As such, the Court, in *People v. Bolivar*,⁵⁷ where the witnesses were only called the following day, emphasized that the required witnesses must be present even as early as the time of arrest. In this regard, the Court, in *People v. Tomawis*,⁵⁸ noted that 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.⁵⁹

Strict adherence with Section 21, Article II of R.A. No. 9165 remains to be the rule. This is a singular and rigid standard.⁶⁰ Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin requirements of: (1) existence of justifiable reasons and (2) preservation of the integrity and evidentiary value of the seized items.⁶¹ In the case at bar, the prosecution failed on both counts.

Indeed, much has been said about the conduct of buy-bust operations as a tool in flushing out illegal transactions that are otherwise conducted covertly and in secrecy.⁶² While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations⁶³ and has generally left to the discretion of police authorities the selection of effective means to apprehend drug dealers,⁶⁴ the buy-bust operations’ peculiar characteristic of having the benefit of planning and coordination⁶⁵ impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards.⁶⁶

All things considered, it is not gratuitous to state that the buy-bust team took a cavalier approach in observing the chain of custody rule. Breaches of the procedure outlined in Section 21 committed by

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⁵⁷ G.R. No. 225626, December 5, 2019.

⁵⁸ 830 Phil. 385 (2018).

⁵⁹ Id. at 409.

⁶⁰ *People v. Lopez*, supra note 6.

⁶¹ IRR of R.A. No. 9165, Sec. 21 (a).

⁶² *People v. Garcia*, supra note 10, at 246-427.

⁶³ *Castro v. People*, 597 Phil. 722, 730-731 (2009).

⁶⁴ *Quinicot v. People*, 608 Phil. 259, 274-275 (2009).

⁶⁵ *People v. Luna*, 828 Phil. 671, 688 (2018).

⁶⁶ *People v. Umipang*, supra note 5 at 1033.


the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond a reasonable doubt.⁶⁷ Without any justifiable explanation, which must be proven as a fact,⁶⁸ the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.⁶⁹

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 22, 2019 of the Court of Appeals, Special Twenty-Third Division, Cagayan de Oro City in C.A.-G.R. CR-HC No. 01929-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **ALEXIS ALEJANDRO BACULI, ALIAS "CHACA"** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Resolution be sent to the Superintendent of the Davao Prison and Penal Colony, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *ms/n*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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⁶⁷ *People v. Fulinara*, G.R. No. 237975, June 19, 2019, 905 SCRA 488, 513, citing *People v. Sumili*, 753 Phil. 342 (2015).

⁶⁸ See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁶⁹ *People v. Gonzales*, 708 Phil. 121, 123 (2013).



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(CA-G.R. CR HC No. 01929-MIN)

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(Crim. Case Nos. 70-296-11
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