



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated May 3, 2021, which reads as follows:

“G.R. No. 229221 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. JULIAN MIJARES y CAPUA, *accused-appellant*). — This Court resolves an appeal filed by accused-appellant Julian Mijares y Capua (Mijares) challenging the Court of Appeals’ Decision,¹ which affirmed in *toto* the Regional Trial Court’s Decision² convicting Mijares of the offenses of illegal sale and illegal possession of dangerous drugs.³

In two separate Informations, Mijares was charged with violating Sections 5⁴ and 11⁵ of Republic Act No. 9165, otherwise known as the

¹ *Rollo*, at 2–24. The February 10, 2016 Decision in CA-G.R. CR. HC No. 07193 was penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela of the Sixth Division, Court of Appeals, Manila.

² *CA Rollo*, pp. 18–27. The September 17, 2014 Decision in Criminal Case Nos. 16503-2009-C and 16504-2009-C was penned by Presiding Judge Caesar C. Buenagua of Branch 37, Regional Trial Court, Calamba City.

³ *Id.* at 26–27.

⁴ Republic Act No. 9165 (2002), sec. 5 provides:

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 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.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section. 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 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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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

5 Republic Act No. 9165 (2002), sec. 11 provides:

SECTION 11. *Possession of Dangerous Drugs.* 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

Comprehensive Dangerous Drugs Act of 2002. These Informations read:

Criminal Case No. 16503-2009-C
(For violation of Section 11, Article II, RA No. 9165)

“That on about 2:30 p.m. of 24 June 2009, at Silangan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess three (3) small heat-sealed plastic sachets containing 3.69 grams of Marijuana, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.”

Criminal Case No. 16504-2009-C
(For Violation of Section 5, Article II of RA No. 9165)

“That on about 2:30 p.m. of 24 June 2009, at Silangan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver two (2) small heat-sealed plastic sachets containing 4.01 grams of Marijuana, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.”⁶ (Citations omitted)

According to the prosecution, an informant conveyed a tip to the Los Baños Municipal Police Station that a certain “Timo,” who turned out to be Mijares, was selling drugs behind a house near the bridge in Silangan Bayog, Los Baños, Laguna.⁷ Acting on this tip, police officers formed a buy-bust team with Senior Police Officer II Tagumpay Enriquez Legaspi (SPO2 Legaspi) as team leader and Police Officer II Alberto Gapaz Belarmino (PO2 Belarmino) and Police Officer I Jeremias Alemania Ramos (PO1 Ramos) as back-up.⁸ A civilian asset was to serve as poseur-buyer.⁹ The team prepared marked money in the form of a hundred-peso bill.¹⁰

The buy-bust team went to the target area at about 2:30 p.m. on June 24, 2009. There, the civilian asset approached Mijares. Meanwhile, the rest of the buy-bust team took positions some 20 meters away. From their

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁶ *Rollo*, p. 5.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.*

positions, they saw the civilian asset hand the marked bill to Mijares in exchange for two plastic sachets. At the sight of this exchange, the buy-bust team rushed to Mijares and arrested him. The civilian asset surrendered the two sachets to PO2 Belarmino. Apart from this, SPO2 Legaspi recovered three more sachets from Mijares and PO1 Ramos recovered the marked money from him.¹¹

Within the day, Mijares was brought to the police station for investigation. There, the buy-bust team turned over the seized items to PO1 Ramos. Only following this did PO1 Ramos mark the items as "JM1" and "JM2" for the two sachets that were the object of the sale from Mijares, and as "JM3," "JM4," and "JM5" for the three other sachets.¹²

Thereafter, Police Superintendent Chito Galvez Bersaluna prepared a written request for laboratory examination. PO1 Ramos brought the seized items to the crime laboratory. Their contents subsequently tested positive for marijuana.¹³

Mijares maintained that he was framed-up. He claimed to have been at home on June 24, 2009, when five police officers arrived. These police officers had previously come from his brother's house, some 150 meters away. The police officers demanded that he tell them the whereabouts of his brother and that he show them the marijuana he was supposedly keeping. They then searched his house but found nothing. Thereafter, two police officers dragged him to his brother's house. By the time he got back to his house, the police officers showed him the marijuana he allegedly owned. He was then taken to the police station, where pictures of him were taken while pointing to the marijuana supposedly obtained from him.¹⁴

The Regional Trial Court found Mijares guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs. The dispositive portion of its Decision reads:

IN VIEW OF THE FOREGOING, in Criminal Case No. 16503-2009-C, the Court finds the accused, JULIAN MIJARES y CAPUA, 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.

¹¹ Id. at 3.

¹² Id.

¹³ Id. at 4.

¹⁴ Id.

In Criminal Case No. 16504-2009-C, the Court finds the accused, JULIAN MIJARES y CAPUA, GUILTY BEYOND REASONABLE DOUBT of violation of Section 5, Article II of Republic Act 9165. The accused is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

The Branch Clerk of Court is hereby ordered to turn over the marijuana subject of this case to POLA for proper disposition and destruction.

SO ORDERED.¹⁵

The Court of Appeals affirmed *in toto* the Decision of the Regional Trial Court.¹⁶

Thereafter, Mijares filed his Notice of Appeal.¹⁷

For this Court's resolution is the issue of whether or not accused-appellant Julian Mijares y Capua is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs, as penalized in Sections 5 and 11 of Republic Act No. 9165.

This Court resolves to acquit accused-appellant.

The actions of the arresting officers are tainted with glaring, unjustified violations of the mandatory chain of custody requirements spelled out in Section 21 of the Comprehensive Dangerous Drugs Act. Their deficiencies engender reasonable doubt on an essential element—the *corpus delicti*—of the offenses of which accused-appellant is charged.

The elements for successful prosecution of the offenses penalized by Sections 5 and 11 of the Comprehensive Dangerous Drugs Act are settled. In both offenses, the integrity of the *corpus delicti* is pivotal.¹⁸

For there to be a successful prosecution for the illegal sale of dangerous drugs, punished under Section 5 of the Comprehensive Dangerous Drugs Act, the following elements must be established: "(1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor."

As to the illegal possession of dangerous drugs, punished under Section 11 of the Comprehensive Dangerous Drugs Act, it must be

¹⁵ Id. at 6-7.

¹⁶ Id.

¹⁷ *Rollo*, pp. 25-27.

¹⁸ *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division].

established that "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."

In both illegal sale and illegal possession of dangerous drugs, "the illicit drugs confiscated from the accused comprise the corpus delicti of the charges." Thus, their identity and integrity must be established beyond reasonable doubt. It is the prosecution's duty "to ensure that the illegal drugs offered in court are the very same items seized from the accused."¹⁹

On the matter of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act mandates chain of custody requirements as regards confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. On July 15, 2014, Section 21 was amended by Republic Act No. 10640. However, the incidents subject of this case occurred in 2009. Thus, they are governed by Section 21's original formulation. As originally formulated, Section 21(1) reads:

Section 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(1)'s requirements were summarized in *Lescano v. People*:²⁰

As regards the items seized and subjected to marking, Section 21 (1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21 (1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures,

¹⁹ *People v. Castillo*, G.R. No. 238339, August 7, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division].

²⁰ 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.²¹

Multiple unjustified deviations from Sections 21(1)'s requirements taint this case.

First, not even one of the required witnesses— a representative from the media, an elected public official, and a representative of the Department of Justice—was present during the actual arrest and seizure.

The need for these witnesses to be present right at the conduct of arrest and seizure was explained in *People v. Tomawis*:²²

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 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 frameup as the witnesses would be able to testify that the buy-

²¹ Id. at 475.

²² G.R. No. 228890, April 18, 2018 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>> [Per J. Caguioa, Second Division].

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.”²³ (Citations omitted)

Second, no proper marking, inventory, and taking of photographs of the seized items were conducted. These should have been done immediately at the supposed place of arrest and seizure. While the supposedly seized sachets were marked, such marking was not done until accused-appellant had been taken to the police station.

As a rule, the inventory and taking of photographs must be done immediately at the place of arrest. *People v. Sultan*²⁴ explains:

...Section 21 mandates the conduct of inventory and taking of photographs “immediately after seizure and confiscation,” which means that these must be done at the place of the arrest. *Que* explained:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. . . .

Section 21 (1)'s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence].²⁵ (Citation omitted)

²³ *Id.*

²⁴ *People v. Sultan*, G.R. No. 225210, August 7, 2019
<<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division]

²⁵ *Id.*

The actions of the police officers in this case fail to account for precautions that they took to preserve the integrity of the allegedly seized sachets. As it is, there is none but the prosecution's self-serving assertion of credibility.

In prior cases, this Court has taken exception to self-serving guarantees of allegedly seized items' integrity. In *Sultan*, for example, this Court decried a police officer's pocketing of purportedly seized drugs. Citing *People v. Dela Cruz*,²⁶ this Court explained how such conduct is an empty guarantee of the identity and integrity of items claimed to have been seized from the accused:

Here, the prosecution established that from the place of seizure to the barangay hall, PO2 Hechanova had sole custody of the supposedly confiscated items. But this alone cannot be taken as a guarantee of the items' integrity. On the contrary, an officer's act of personally and bodily keeping allegedly seized items, without any clear indication of safeguards other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.

In *People v. Dela Cruz*, this Court reprehended the act of a police officer who, having custody of the sachets seized from a buy-bust operation, recklessly kept them in his pockets until they were supposedly turned over for examination:

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

²⁶ 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that "noncompliance of (sic) 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." Plainly, the prosecution has not shown that — on September 14, 2004, when Dela Cruz was arrested and the sachets supposedly seized and marked — there were "justifiable grounds" for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving assertion that the integrity of the seized sachets has, despite all its lapses, nevertheless been preserved.

In Dela Cruz, this Court did not approve of the incautious keeping of allegedly seized narcotics even as the prosecution averred separating them in different pockets as a supposed measure to preserve integrity. With greater reason should this Court, in this case, reject PO2 Hechanova's claim. The bare assertion that PO2 Hechanova had possession of the items, without so much as a simulation of safekeeping measures such as the segregation in Dela Cruz, is a blatant gap in the chain of custody. The dearth of specific and detailed descriptions of how the allegedly seized items had been preserved while in transit amounts to a broken, unreliable chain of custody. This is fatal to the prosecution's case.²⁷ (Citations omitted)

This case is even worse than *Sultan* and *Dela Cruz*. Hardly any effort to ensure the identity and integrity of the supposedly seized sachets was substantiated by the prosecution.

In appropriate instances, exceptions to Section 21's chain of custody requirements may be entertained. However, "the prosecution bears the burden of first acknowledging procedural lapses and specifically plead justifiable grounds for these lapses. It must also plead specific safety measures taken in view of the deviations made from the chain of custody requirements."²⁸

Concerning required witnesses missing during arrest, seizure, marking, inventory, and taking of photographs, "it must be alleged and demonstrated that earnest efforts were undertaken to secure their

²⁷ *People v. Sultan*, G.R. No. 225210, August 7, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

²⁸ *People v. Castillo*, G.R. No. 238339, August 7, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division], citing *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

attendance."²⁹ *People v. Lim*,³⁰ penned by Chief Justice Diosdado M. Peralta, explained:

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are 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.³¹ (Citations omitted)

Here, the police officers failed to offer satisfactory justifying grounds for the absence of every single required witness and their inability to properly mark and inventory and take photographs of the seized items.

Unfortunately, the Regional Trial Court and the Court of Appeals were, in this case, satisfied with the presumption of regularity in the police officers' performance of their duty. However, this Court has made it clear that this presumption cannot stand when irregularities attend the operations of law enforcers.³² Again, in *People v. Lim*,³³ this Court, through Chief Justice Peralta, explained:

²⁹ *Id.*

³⁰ G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

³¹ *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

³² *People v. De Guzman*, 299 Phil. 849, 854 (1994) [Per J. Puno, Second Division].

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law[.]" It is not a justification for dispensing with such compliance:

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the corpus delicti without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.

Jurisprudence has thus been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained custody of the seized items is "negate[d]":

In *People v. Orteza*, the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

First, there appears nothing in the records showing that police officers

³⁵ *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. It negates the presumption that official duties have been regularly performed by the police officers.

IN FINE, the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.

The Comprehensive Dangerous Drugs Act requires nothing less than [sic] strict compliance. Otherwise, the *raison d'être* of the chain of custody requirement is compromised. Precisely, deviations from it leave open the door for tampering, substitution and planting of evidence.

Even the performance of acts which approximate compliance but do not strictly comply with the Section 21 has been considered insufficient. *People v. Magat*, for example, emphasized the inadequacy of merely marking the items supposedly seized: "Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165"[.]³⁴ (Citations omitted)

The sheer multiplicity of deviations from chain of custody requirements in this case, accompanied by the prosecution's inability to substantiate justifications for such deviations, casts insurmountable doubt on the identity and integrity of the marijuana, the *corpus delicti*, around which this case revolves. There remains reasonable doubt on accused-appellant's guilt, for which reason he must be acquitted.

WHEREFORE, the decisions of the Regional Trial Court, National Capital Region, Branch 37, Calamba City in Criminal Case No. 16503-2009-C and Criminal Case No. 16504-2009-C and the Court of Appeals in CA-G.R. CR-HC No. 07193 are hereby **REVERSED** and **SET ASIDE**.

³⁴ Id.

Accused-appellant Julian Mijares y Capua is hereby **ACQUITTED** of the charges of illegal sale and illegal possession of dangerous drugs as penalized by Sections 5 and 11 of the Comprehensive Dangerous Drugs Act. He is ordered **RELEASED** from confinement unless he is being held for some other legal grounds.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General is directed to report to this Court, within five days from receipt of this Resolution, the action he has taken. For their information, copies shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of marijuana to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.”

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

RP
5/12/21

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Mr. Julian Mijares y Capua
c/o The Superintendent
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 37, Calamba City
(Crim. Case Nos. 16503-2009-C and 16504-2009-C)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
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1770 Muntinlupa City

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