



Republic of the Philippines  
**Supreme Court**  
 Manila

**FIRST DIVISION**

**THE PEOPLE OF THE  
 PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 246999**

Present:

PERALTA, *CJ.*, Chairperson,  
 CAGUIOA,  
 REYES, J., JR.,  
 LAZARO-JAVIER, and  
 LOPEZ, *JJ.*

-versus-

**MARVIN BALBAREZ y  
 HERNANDEZ,**  
 Accused-Appellant.

Promulgated:

**JUL 28 2020**

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**R E S O L U T I O N**

**LOPEZ, J.:**

The conviction of Marvin Balbarez for illegal possession of dangerous drugs is the subject of review in this appeal assailing the Court of Appeals' Decision<sup>1</sup> dated July 11, 2018 in CA-G.R.-HC No. 09558, which affirmed the findings of the Regional Trial Court (RTC).

**ANTECEDENTS**

Marvin ranked second on the list of the top ten drug personalities in Los Baños, Laguna.<sup>2</sup> On April 23, 2011, the municipal police planned a buy-bust operation against Marvin based on reports that he is selling shabu in Barangay Malinta. In the briefing, the police asset was designated as *poseur-buyer* while Police Officer (PO) 2 Michael Angelo Palanca, PO1 Ruperto Lapitan, Jr., and PO1 Jeremias Ramos acted as apprehending officers. After coordination with the Philippine Drug Enforcement Agency, the operatives proceeded to the target area. Thereat, the *poseur-buyer* gave the boodle money to Marvin. Upon receipt of the payment, Marvin handed to the

<sup>1</sup> *Rollo*, pp. 4-25; penned by Associate Justice Ramon A. Cruz, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Pablito A. Perez.

<sup>2</sup> *CA rollo*, p. 84.

*poseur-buyer* a plastic sachet containing white crystalline substance.<sup>3</sup> At that moment, the *poseur-buyer* executed the pre-arranged signal by flicking the sachet.

The buy-busy team rushed in, introduced themselves as police officers, and arrested Marvin. The *poseur-buyer* turned over the sachet to PO1 Ramos, who marked it with "MHB1." On the other hand, PO2 Palanca searched Marvin and recovered from him two plastic sachets. PO2 Palanca gave the sachets to PO1 Ramos, who marked them with "MHB2" and "MHB3." Also, the entrapment team took photographs of the seized items at the police station.<sup>4</sup> Thereafter, PO1 Ramos forwarded the contrabands to Police Chief Inspector Dona Villa Huelgas for laboratory examination. The substances tested positive for methamphetamine hydrochloride.<sup>5</sup> Thus, Marvin was charged with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165 before the RTC docketed as Criminal Case Nos. 18225-2011-C and 18228-2011-C, respectively, to wit:

**[Criminal Case No. 18225-2011-C]**

That on or about 23 April 2011, in the 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 one (1) small heat-sealed transparent plastic sachet containing 0.02 gram of methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.<sup>6</sup>

**[Criminal Case No. 18228-2011-C]**

That on or about 23 April 2011, in the 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 two (2) heat-sealed transparent plastic sachet containing 0.04 gram of methamphetamine hydrochloride, a dangerous drug, without the corresponding authority of law.

CONTRARY TO LAW.<sup>7</sup>

Marvin denied the accusations and claimed he was driving his tricycle, with two passengers on board, when PO1 Ramos flagged him down. Afterward, PO1 Ramos brought them to the police station and were ordered to strip their clothes. Later, the passengers were allowed to go home while he was left incarcerated.<sup>8</sup>

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<sup>3</sup> *Id.* at 85.

<sup>4</sup> *Id.* at 86.

<sup>5</sup> See records, p. 12.

<sup>6</sup> *Id.* at 1; *rollo*, p. 5.

<sup>7</sup> *Rollo*, p. 5.

<sup>8</sup> *CA rollo*, p. 41.



On May 30 2016, the RTC convicted Marvin of the charges.<sup>9</sup> On July 11, 2018, the Court of Appeals acquitted Marvin of illegal sale (Case No. 18225-2011-C) but affirmed his guilt as to illegal possession (Criminal Case No. 18228-2011-C) of dangerous drugs,<sup>10</sup> thus:

**WHEREFORE**, in view of the foregoing, the appeal is **PARTIALLY GRANTED**. The Decision dated May 30, 2016 rendered by the Regional Trial Court in Calamba City Laguna, Branch 36 in Criminal Case No. 18228-2011-C for Violation of Section 11, Article II of R.A. No. 9165 is **AFFIRMED**. For failure to prove the guilt of the accused-appellant beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165, the disposition in the aforesaid Decision pertaining to Criminal Case No. 18225-2011-C is **REVERSED and SET ASIDE**, and accused-appellant is **ACQUITTED** of the said charge.

**SO ORDERED.**<sup>11</sup> (Emphasis in the original.)

### RULING

We acquit.

In illegal possession of dangerous drugs, the contraband itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.<sup>12</sup> Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.<sup>13</sup> Indeed, the prosecution must satisfactorily established the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and, (4) the submission of the item by the forensic chemist to the court.<sup>14</sup> Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640<sup>15</sup> amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations shall apply, to wit:

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<sup>9</sup> *Id.* at 59-69.

<sup>10</sup> *Rollo*, pp. 4-24.

<sup>11</sup> *Id.* at 23-24.

<sup>12</sup> See also *People v. Cariño*, G.R. No. 233336, January 14, 2019, 890 SCRA 346; *People v. Crispo, et al.*, 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); *People v. Miranda*, 824 Phil. 1042 (2018); and *People v. Mamangon*, 824 Phil. 728, 736 (2018); *People v. Partoza*, 605 Phil. 883, 890 (2009).

<sup>13</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017).

<sup>14</sup> *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

<sup>15</sup> RA No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.



**[Section 21, paragraph 1, Article II of RA 9165]**

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof.

**[Section 21(a), Article II of the IRR of RA 9165]**

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof: x x x *Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;* (Emphases and italics supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.<sup>16</sup> Later, we emphasized the importance of the presence of the three insulating witnesses during the physical inventory and the photograph of the seized items.<sup>17</sup> In *People v. Lim*,<sup>18</sup> it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

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. Umpiang*, 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 noncompliance. These

<sup>16</sup> *People v. De la Cruz*, 591 Phil. 259, 272 (2008), citing *People v. Orteza*, 555 Phil. 700 (2007); *People v. Santos, Jr.*, 562 Phil. 458, 469-470 (2007); *People v. Nazareno*, 559 Phil. 387, 392 (2007).

<sup>17</sup> *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

<sup>18</sup> G.R. No. 231989, September 4, 2018.

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. (Emphasis in the original.)

Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.<sup>19</sup> In *People v. Caray*,<sup>20</sup> we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,<sup>21</sup> sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, the absence of the required insulating witnesses during the inventory and photograph of the seized items puts serious doubt as to the integrity of the chain of custody. Admittedly, there was no representative from the media and the Department of Justice, and any elected public official. The allegation that Marvin made a scene during the arrest which prompted the police to leave the crime scene was unsubstantiated. Worse, there was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives likewise failed to provide any justification showing that the integrity of the evidence had all along been preserved.

Moreover, the link between the investigating officer and the forensic chemist was not established with certainty. The police officers did not 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. Foremost, the records do not show whether PO1 Ramos is the investigating officer. Secondly, PO1 Ramos' testimony lacks details on how the seized items fell into the hands of the forensic chemist. Third, the request for laboratory examination indicates the possibility that a certain PO1 Geminano and PO1 Valencia are included in the chain of custody but were not presented as witnesses. Lastly, P/Chief Insp. Huelgas' testimony and the stipulation of the parties are insufficient. In *People of the Philippines v. Pajarin*,<sup>22</sup> this Court identified the following matters which are ordinarily covered by the testimony of the forensic chemist who examines the seized items: (1) that he received the seized article as marked, properly sealed and

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<sup>19</sup> *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, *supra* note 17; and *People v. Maralit y Casilang*, G.R. No. 232381, August 1, 2018.

<sup>20</sup> G.R. No. 245391, September 11, 2019.

<sup>21</sup> G.R. No. 243615, November 11, 2019.

<sup>22</sup> 654 Phil. 461 (2011).



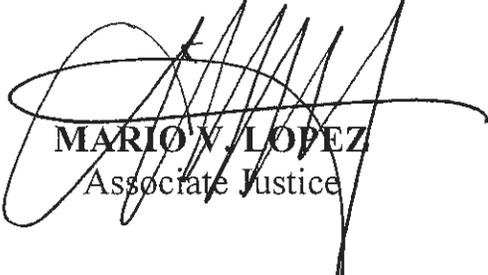
intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial. Should the parties decide to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. These circumstances were neither stipulated by the parties nor mentioned in the testimony of P/Chief Insp. Huelgas.<sup>23</sup>

In sum, the utter disregard of the required procedures created a huge gap in the chain of custody. We reiterate that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the *very corpus delicti* of the crime. Hence, Marvin must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

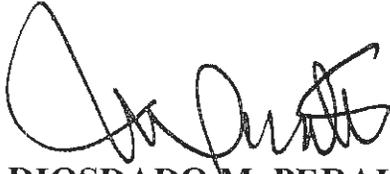
**FOR THESE REASONS**, the appeal is **GRANTED**. The Court of Appeals' Decision dated July 11, 2018 in CA-G.R. CR-HC No. 09558 is **REVERSED** and **SET ASIDE**. Marvin Balbarez y Hernandez is **ACQUITTED** in Criminal Case No. 18228-2011-C and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Decision.

**SO ORDERED.**

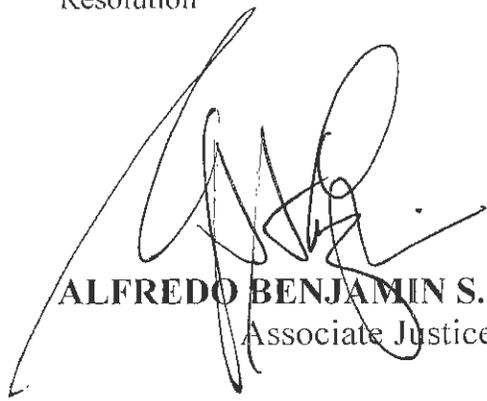
  
**MARION V. LOPEZ**  
Associate Justice

**WE CONCUR:**

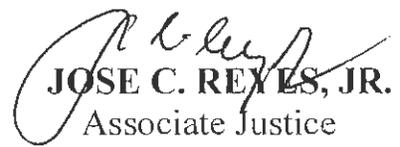
  
**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson

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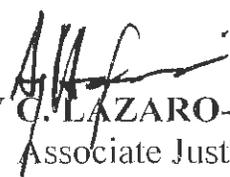
<sup>23</sup> TSN, January 18, 2012, p. 5.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



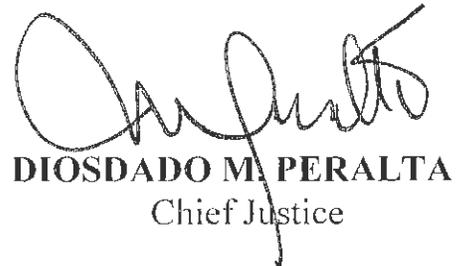
**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice