Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

# N O T I C E

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated* **August 27, 2020** *which reads as follows:*

**"G.R. No. 232081 – PEOPLE OF THE PHILIPPINES vs. DONEL BAURAN AND INDAY SULDA**

## The Case

Appellants Donel Bauran and Inday Sulda assail the Court of Appeals' Decision[1] dated September 22, 2016, affirming their conviction for possession, control, and transport of dangerous drugs in violation of Republic Act No. 9165 (RA 9165).[2]

## Proceedings Before the Trial Court

### The Charge

By Information[3] dated May 19, 2009, appellants Donel Bauran and Inday Sulda, together with Arnel Bautisado were charged with possession, control, and transport of dangerous drugs in violation of RA 9165, *viz.*:

> That on or about the 18th day of May, 2009, in the evening at barangay Dagumbaan, municipality of Talakag, province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully, and feloniously have in their possession, control and transport dangerous drugs on board a motorcycle DT Yamaha with

- over – twenty-five (25) pages ...

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1 Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, all members of the Twenty-Second Division, *rollo*, pp. 3-16.

2 Comprehensive Dangerous Drugs Act of 2002.

3 Record, p. 2.

> Plate No. TM-0287, 571.07 grams of fresh marijuana fruiting tops, 197.80 grams of dried marijuana fruiting tops, 85.35 grams fresh marijuana fruiting tops and 196.92 grams of dried marijuana fruiting tops with a total weight of 1051.14 grams, classified as a dangerous drug, without any permit or authority from the government.
>
> CONTRARY to and in violation of R.A. 9165.

The case was raffled to the Regional Trial Court (RTC) – Branch 11, Manolo, Fortich, Bukidnon.[4]

On arraignment, appellants and their co-accused pleaded "not guilty."[5] Trial ensued.

**The Prosecution's Version**

On May 18, 2009, Senior Police Officers 1 Benjamin Gallentes (SPO1 Gallentes), Petisme Eliron (SPO1 Eliron), and Melvin Gawingan (SPO1 Gawingan) of the Philippine National Police (PNP) Talakag Police Station, Talakag, Bukidnon put up a checkpoint at Barangay Dagumbaan, Talakag, Bukidnon, in front of Greenfield Valley Eatery.[6] The checkpoint had been conducted to implement the municipality's "No Plate, No Travel" policy.[7]

Around 8 o'clock in the evening of May 18, 2009, SPO1 Gawingan saw a Yamaha DT Motorcycle approaching the checkpoint. He did not readily see the plate number as it was placed at the side of the motorcycle's chassis. He flagged down the said motorcycle driven by Bautisado and boarded by appellants Bauran and Sulda.[8] Bautisado, however, did not stop the motorcycle and instead, accelerated the engine.[9] SPO1 Gawingan was able to get hold of the motorcycle's handlebar, causing the motorcycle to fall.[10] SPO1 Gawingan gripped Bauran's jacket[11] while Bautisado and Sulda ran away.[12] SPO1 Gallentes and Eliron chased Bautisado and Sulda and eventually apprehended them.[13] The police officers then gathered Bautisado and appellants on the side of the road near the checkpoint.[14]

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4 *Id.*
5 *Id.* at 18.
6 *Rollo,* p. 4.
7 TSN, March 3, 2011, p. 5.
8 *Rollo*, p. 4.
9 TSN, June 26, 2012, pp. 6-7.
10 TSN, June 11, 2012, p. 4.
11 *Id.*
12 *Rollo*, p. 4.
13 *Id.*
14 TSN, June 26, 2013, p. 9.

SPO1 Gallentes introduced themselves as police officers.[15] Suspecting that Bautisado and appellants were armed, they frisked and ordered them to raise their t-shirts. But they failed to find any dangerous weapons.[16] They, however, noticed that Sulda had a backpack while Bauran had a sling bag. SPO1 Gawingan ordered Sulda to open the *closely secured* backpack to which the latter heeded.[17] When Sulda opened the backpack, they saw four (4) *closely tied* cellophanes with colors green, blue, white, and red.[18] SPO1 Gawingan directed Sulda to open the four (4) cellophanes[19] and inside, they saw dried and fresh marijuana fruiting tops.[20] SPO1 Gawingan, too, ordered Bauran to open the sling bag but only found a lipstick.[21]

Thereafter, they called Barangay Kagawad Vicky Nanulan (Kagawad Nanulan) to witness the contents of the cellophanes.[22] When Kagawad Nanulan arrived, they showed her the cellophanes containing the marijuana.[23] SPO1 Gawingan took pictures at the *situs criminis*.[24] SPO1 Gallentes prepared the inventory which he and Kagawad Nanulan signed.[25]

SPO1 Gawingan apprised Bautisado and appellants their constitutional rights.[26] Afterwards, they brought appellants and the seized items to Talakag Police Station.[27]

At the police station, SPO1 Gawingan marked[28] the four (4) cellophanes but failed to testify what specific markings had been written on each of the four (4) colored cellophanes. SPO1 Eliron prepared the Request for Laboratory Examination and Request for Drug Test signed by SPO4 Dante Nallano (SPO4 Nallano).[29]

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15 *Rollo*, p. 5.
16 TSN, March 3, 2011, p.40; TSN, June 26, 2012, p. 10.
17 TSN, March 3, 2011, p. 34.
18 TSN, June 11, 2012, p. 7.
19 TSN, March 3, 2011, p. 10.
20 TSN, June 11, 2012, p. 7.
21 *Id.* at 8.
22 *Id.* at 7.
23 TSN, March 3, 2011, p. 11.
24 *Id.* at 13.
25 Record, p. 9.
26 TSN, June 11, 2012, p. 9.
27 TSN, March 3, 2011, p. 12.
28 TSN, June 11, 2012, p. 23.
29 Record, pp. 121-123.

At 11 o'clock in the evening of May 18, 2009, SPO1 Gawingan and Eliron, together with Bautisado and appellants, proceeded to Camp Evangelista, Cagayan de Oro Crime Laboratory.[30] Around 11:40 in the evening, Forensic Chemist Charity Caceres (Forensic Chemist Caceres) received the **unsealed**[31] cellophanes with the following markings: one (1) green cellophane marked as "A-1-PBE;" one (1) blue cellophane marked as "A-2-PBE;" one (1) white cellophane marked as "A-3-PBE;" and one (1) red cellophane marked as "A-4-PBE."[32] Forensic Chemist Caceres also conducted a drug test on Bautisado and appellants.[33]

Per Chemistry Report No. D-103-2009 dated May 18, 2009, under the heading "Specimen Submitted," Forensic Chemist Caceres indicated that she received **only two (2) specimens**, *viz.*: 1) one [1] unsealed green colored plastic cellophane with attached markings "EXH-A-1-PBE;" and 2) one [1] unsealed blue colored plastic cellophane with attached markings "EXH-A2-PBE." However, under the heading "Conclusion," Forensic Chemist Caceres indicated that specimens "A-1, A-2, A-3, and A-4 contained marijuana, a dangerous drug."[34] She failed to indicate, though, the total weight of the examined specimens.[35] Meanwhile, appellant Bauran tested positive while Bautisado and Sulda tested negative in the drug test.[36]

The prosecution submitted the following evidence: 1) Joint Affidavit;[37] 2) Inventory Sheet;[38] 3) Request for Laboratory Examination and Drug Test;[39] 4) Chemistry Report No. D-103-2009 and DTCrim 088-010-2009; 5) Photographs of seized items;[40] and 6) the seized backpack and marijuana fruiting tops.[41]

**The Defense's Version**

Appellant Bauran testified that on May 18, 2009, he was at home in Landing, San Isidro, Talakag, Bukidnon. Around 7 o'clock of that day, appellant Sulda, then his girlfriend,[42] and Bautisado arrived

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30 TSN, June 11, 2012. p. 22.
31 TSN, August 12, 2010, p. 18.
32 *Id.* at 12.
33 Record, p. 120.
34 *Id.* at 119.
35 TSN, August 12, 2010, p. 13.
36 Record, p. 120.
37 *Id.* at 7-8.
38 *Id.* at 9.
39 *Id.* at 121-123.
40 *Id.* at 124.
41 *Id.* at 116.
42 TSN, March 18, 2013, p. 6.

at his house on board a motorcycle.[43] Sulda asked if he could accompany her at her mother's house in Barangay Dominorog, Mansalino, Talakag, Bukidnon. She told him that she would give money to her mother.[44] He agreed.[45] He brought a sling bag while Sulda had a backpack.[46]

When they arrived in Barangay Dominorog, Mansalino, Talakag, Bukidnon, Sulda introduced him to her mother and siblings. Together with Bautisado, they had lunch and drank some wine. Around 3:30 in the afternoon, the three (3) of them left Mansalino.[47]

When they arrived at a checkpoint in Green Valley, Barangay Dagumbaan, Talakag Bukidnon, they heard a gun burst.[48] Bautisado stopped the vehicle and jumped at a canal while Sulda ran but later got apprehended by a police officer. The three (3) of them were held by police officers who asked them to point at a red cellophane beside a certain bag.[49] Afterwards, the police officers accosted them and they went to Talakag Police Station.[50] Around 11 o'clock in the evening, they proceeded to Cagayan de Oro Crime Laboratory.[51]

On the other hand, appellant Sulda claimed that on May 18, 2009, she was at home in Barangay Landing, Talakag, Bukidnon.[52] Bauran arrived on board a motorcycle driven by Bautisado, a complete stranger.[53] Bauran asked her if they could go to the mountains in Dominorog, Talakag, Bukidnon. She agreed so that she could visit her mother, a resident of Barangay Dominorog.[54] She brought with her a sling bag containing lotion, lipstick, and face powder while Bauran had a backpack.[55] They used Bautisado's motorcycle, left her home around 8 o'clock in the morning and arrived in Dominorog around 10 o'clock in the morning.[56]

Bauran and Bautisado dropped her off at her mother's house while the two (2) men went to Mansilanon, Bumbara, Lanao del Sur.[57]

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[43] *Id.*
[44] *Id.*
[45] *Id.* at 7.
[46] *Id.* at 13.
[47] *Id.* at 11.
[48] *Id.* at 17.
[49] *Id.* at 20-22.
[50] *Id.* at 23.
[51] *Id.* at 24.
[52] TSN, July 16, 2013, p. 4.
[53] *Id.*
[54] *Id.* at 5.
[55] TSN, August 5, 2013, p. 2.
[56] TSN, July 16, 2013, p. 6.
[57] TSN, August 5, 2013, p. 3.

Bauran and Bautisado returned around 3 o'clock in the afternoon. She wanted to stay in her mother's house but Bauran forced her to board the motorcycle.[58] When she was about to board, Bauran asked her to carry the backpack since he would be sitting in the middle. She agreed.[59]

On their way home, they heard gunshots at Green Valley.[60] Bautisado stopped the motorcycle.[61] She got scared and ran but SPO1 Eliron was able to get hold of her.[62] Bautisado also ran but another police officer grabbed him while Bauran got tied by still another. The police officers gathered the three (3) of them alongside a road where the motorcycle stopped.[63]

SPO1 Eliron pointed a gun at her and ordered her to open the backpack. She agreed.[64] She failed to see the contents of the bag because SPO1 Eliron closed it back.[65] They were later brought to the police station.[66]

Sulda's mother, Ana, corroborated her statement that Bautisado and Bauran left her in their home in Barangay Dominorog, Mansalino, Talakag, Bukidnon while the two (2) men went to another place. Bautisado and Bauran only returned around 4 o'clock in the afternoon and left right after together with her daughter.[67]

For his part, Bautisado testified that he was a habal-habal driver since 2007. Jerry Talipan, also a habal-habal driver and President of the Highlander Motorist Association of Dansolihon corroborated his testimony.[68]

On May 18, 2009, appellants Bauran and Sulda hired him on *pakyaw* basis for ₱600.00 for a round trip from Dansolihon terminal to Dominorog, Talakag, Bukidnon. Bauran and Sulda told him they would just give money to Sulda's mother, a resident of Dominorog.[69]

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58 *Id.* at 5.
59 *Id.*
60 *Id.*
61 *Id.* at 7.
62 *Id.*
63 *Id.*
64 *Id.* at 8.
65 *Id.*
66 *Id.* at 9.
67 TSN, September 3, 2013, p. 5.
68 CA *rollo*, p. 30.
69 TSN, February 18, 2013, p. 7.

They left Dansolihon terminal around 8 o'clock in the morning and arrived at a house in Dominorog around 11 o'clock in the morning. He told Bauran and Sulda he would just wait for them should they already wish to go back to Dansolihon. Bauran and Sulda only returned around 1 o'clock in the afternoon.

On their way back to the terminal, they heard a gunshot at Green Valley.[70] He also heard someone shouting "don't move!."[71] Suddenly, SPO1 Gawingan, whom he knew, kicked his motorcycle. As a result, he fell into a canal.[72] The police officers kicked him and Bauran while Sulda ran away but was held by another police.[73] Later, the police officers searched appellants' bags where they allegedly found marijuana fruiting tops.[74] Thereafter, they went to the police station.[75]

**The Trial Court's Ruling**

By Judgment[76] dated July 14, 2014, the trial court found appellants guilty as charged but acquitted their co-accused Bautisado for lack of evidence to prove that he acted in conspiracy with appellants,[77] thus:

> WHEREFORE, premises above considered and for failure of the prosecution to prove the guilt of accused Arnel Bautisado, beyond reasonable doubt, Arnel Bautisado is acquitted of the charge and ordered released from detention unless held for some other legal or lawful cause. However, Inday Sulda and Donel Bauran are found guilty of the crime charged and hereby sentences the accused to suffer each, the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos. The preventive detention undergone by accused Donel Bauran and Inday Sulda are credited to their penalty of imprisonment, the remainder of which, they shall serve at the proper penal institution at the Davao Prison and Penal Farm, B.E., Dujali, Davao del Norte (Bauran) and the Women(')s Correctional Institution (Sulda). Exhibits "C", "D", "D-3" are ordered confiscated in favor of the Government and to be disposed in accordance with law.
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> SO ORDERED.[78]

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70 *Id.* at 13.
71 *Id.* at 15.
72 *Id.*
73 *Id.* at 18.
74 *Id.* at 19.
75 *Id.* at 20.
76 Penned by Judge Jose U. Yamut, Sr., CA *rollo*, pp. 26-34.
77 *Id.* at 32.
78 *Id.* at 33-34.

The trial court ruled that appellants conspired to transport the marijuana.[79] The police officers had probable cause to search appellants' bags when they failed to stop at the checkpoint and attempted to flee.[80] Too, the policemen had to ensure their safety as the backpack and sling bag might contain concealed weapons, therefore, justifying their search and consequent seizure of the marijuana.[81]

**The Proceedings before the Court of Appeals**

On appeal, both appellants Bauran and Sulda argued: the police officers had no probable cause to search their bags, thus, violating their constitutional rights against illegal search and seizure;[82] and the police officers failed to immediately mark the alleged seized items at the *situs criminis*.[83] Appellant Bauran added there were no representatives from the Department of Justice (DOJ), and the media at the time of the inventory of the seized items.[84]

For its part, the Office of the Solicitor General (OSG) through Assistant Solicitor General Reynaldo Saludares and State Solicitor Manelyn E. Caturla, countered, in the main: 1) the police officers had probable cause to effect a warrantless search and seizure, and thereafter, validly arrested appellants;[85] and 2) the integrity and evidentiary value of the seized items were preserved.[86]

**The Court of Appeals' Ruling**

By Decision[87] dated September 22, 2016, the CA affirmed. It held that appellants' refusal to stop at the checkpoint and their act of running away were overt acts indicative of a criminal conduct.[88] The police officers had probable cause to search appellants' bags which upon inspection, contained four (4) cellophanes with marijuana fruiting tops.[89] The search was therefore valid and so was appellants' arrest.[90]

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79 *Id.* at 33.
80 *Id.*
81 *Id.*
82 *Id.* at 19 & 46.
83 *Id.* at 22 & 44.
84 *Id.* at 23.
85 *Id.* at 77-80.
86 *Id.* at 82.
87 *Rollo*, pp. 3-16.
88 *Id.* at 10.
89 *Id.* at 9.
90 *Id.*

Although there were no representatives from the DOJ and the media at the time of the inventory, the integrity and evidentiary value of the seized items had not been compromised from the moment they were seized until presented in court as evidence.[91] The dispositive portion reads, thus:

> **WHEREFORE**, the appeal is **DENIED**. The Judgment of Branch 11 of the Regional Trial Court of Manolo Fortich, Bukidnon dated 14 July 2014 in Criminal Case No. 09-05-3843 for Violation of Republic Act No. 9165 is **AFFIRMED**.
>
> SO ORDERED.[92]

## The Present Appeal

Appellants now seek affirmative relief from the Court and plead anew for their acquittal.

In compliance with Resolution[93] dated July 26, 2017, the OSG manifested that in lieu of a supplemental brief, it was adopting its appellee's brief before the Court of Appeals.[94]

On April 16, 2018, appellant Bauran filed his supplemental brief emphasizing he was not in possession of the backpack containing the marijuana.[95]

On December 16, 2019, appellant Sulda filed her supplemental brief reiterating that the illegal drugs allegedly seized cannot be used against her for being fruits of a poisonous tree.[96]

## Core Issues

(1) Did the police officers violate appellants' constitutional rights against illegal search and seizure?

(2) Did the police officers break the chain of custody rule?

## Ruling

We acquit.



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[91] *Id.* at 11.
[92] *Id.* at 16.
[93] *Id.* at 26.
[94] *Id.*
[95] *Id.* at 34-35.
[96] *Id.* at 49-53.

Appellants essentially argue that the police officers had no probable cause at the time they searched their respective backpack and sling bag. The consequent seizure of the alleged marijuana fruiting tops, therefore, cannot be used as evidence against them as it violates their constitutional right against illegal search and seizure.

The prosecution, on the other hand, counters that appellants' failure to stop at the checkpoint and their attempt to flee piqued the police officers' suspicion that appellants were hiding something. The consequent search of appellants' belongings confirmed they were in possession of marijuana, a dangerous drug.

We find for appellants.

Indeed, Section 2, Article III of the Constitution[97] ordains the inviolable right of the people to be secured in their persons and properties against unreasonable searches and seizures. This right, however, is not absolute and admits certain exceptions, *viz.*: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;[98] (2) seizure of evidence in plain view;[99] (3) search of moving vehicles;[100] (4) consented warrantless search;[101] (5) customs search; (6) stop and frisk situations (Terry search);[102] and (7) exigent and emergency circumstances.[103]

In ***People v. Mariacos***,[104] the Court clarified that the essential requisite of probable cause must first be satisfied before a warrantless

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[97] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[98] *People v. Figueroa*, 319 Phil. 21-26 (1995); *Morfe v. Mutuc, et al.*, 130 Phil. 415-422 (1968); *Davis v. United States*, 328 U.S. 582.

[99] *Obra, et al. v. CA, et al.*, 375 Phil. 1052 (1999); *People v. Bagista*, 288 Phil. 828-840 (1992); *Padilla v. CA, et al.*, 336 Phil. 383-414 (1997); *People v. Lo Ho Wing, et al.*, 271 Phil. 120-132 (1991); *Coolidge v. New Hampshire*, 403 U.S. 443.

[100] *People v. Escaño, et al.*, 380 Phil. 719-736 (2000); *Aniag, Jr. v. Comelec*, 307 Phil. 437-461 (1994); *People v. Saycon*, 306 Phil. 359-373 (1994); *People v. Bocalan*, 293 Phil. 538-548 (1993); *Valmonte v. de Villa*, 258 Phil. 838-848 (1989); *Carroll v. United States*, 267 U.S. 132.

[101] *People v. Montilla*, 349 Phil. 640, 656 (1998); *People v. Cuizon*, 326 Phil. 345-374 (1996); *Mustang Lumber v. CA, et al.*, 327 Phil. 214-249 (1996); *People v. Ramos*, 294 Phil. 553-579 (1993); *People v. Omaweng*, 288 Phil. 350-360 (1992).

[102] *People v. Solayao*, 330 Phil. 811, 818 (1996); *Posadas v. Court of Appeals*, 266 Phil. 306-313 (1990), citing *Terry v. Ohio*, 20 L. Ed. 2d 896.

[103] *People v. de Gracia*, 304 Phil. 118, 133 (1994), citing *People v. Malmstedt*, 275 Phil. 447-472 (1991) and *Umil, et al. v. Ramos, et al.*, 265 Phil. 325-365 (1990).

[104] 635 Phil. 315-337 (2010).

search and seizure may be lawfully conducted. Without probable cause, the articles seized cannot be admitted in evidence against the person arrested.

In earlier decisions, the Court sustained the presence of probable cause in the following instances: (a) where there was a distinctive odor of marijuana that emanated from the plastic bag carried by the accused;[105] (b) where the accused who rode a jeepney had been stopped and searched by policemen who had *earlier received confidential reports* that said accused would transport a quantity of marijuana;[106] (c) where Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province had in his possession prohibited drugs. When the Narcom agents confronted the accused Caucasian due to a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so;[107] (d) where the moving vehicle was stopped and searched on the basis of *intelligence information and clandestine reports* by a deep penetration agent or spy — one who participated in the drug smuggling activities of the syndicate to which the accused belonged — that said accused would bring prohibited drugs into the country;[108] (e) where the arresting officers had *received a confidential information* that the accused, whose identity as a drug distributor was established in a previous test-buy operation, would board MV *Dona Virginia* and probably carry *shabu* with him;[109] (f) where police officers received a verified information that the accused, who was carrying a suspicious-looking gray luggage bag, would transport marijuana to Manila;[110] and (g) where the appearance of the accused and the color of the bag he was carrying fitted the description given by a civilian asset.[111]

Here, records bore the following facts: SPO1 Gallentes, Eliron, and Gawingan put up a checkpoint at Barangay Dagumbaan, Talakag, Bukidnon to **specifically implement the "No Plate, No Travel" policy**.[112] SPO1 Gawingan saw an approaching motorcycle driven by Bautisado and boarded by appellants. He flagged down Bautisado's motorcycle but the latter did not stop. SPO1 Gawingan held the motorcycle's handlebar and he was able to hold Bauran. Meanwhile, Bautisado and Sulda allegedly ran away, but later on apprehended.

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[105] *People v. Claudio*, 243 Phil. 795-805 (1988).
[106] *People v. Maspil, Jr.*, 266 Phil. 815-829 (1990).
[107] *People v. Malmstedt*, 275 Phil. 447-472 (1991).
[108] *People v. Lo Ho Wing*, 271 Phil. 120-132 (1991).
[109] *People v. Saycon*, 306 Phil. 359-373 (1994).
[110] *Id.*
[111] *People v. Valdez*, 363 Phil. 481-494 (1999).
[112] TSN, March 3, 2011, p. 5.

Suspecting that appellants had been concealing deadly weapons, the police officers **frisked appellants, ordered them to raise their t-shirts, but found none.** Despite finding no weapons, the police officers **further** conducted an **extensive** search. SPO1 Gallentes ordered Sulda to open the *closely secured* backpack, and the latter heeded.[113] When Sulda opened the bag, they saw four (4) *closely tied* cellophanes colored green, blue, white, and red.[114] SPO1 Gawingan further directed Sulda to open the four (4) cellophanes which eventually revealed marijuana fruiting tops.[115]

We highlight the police officers' act of further ordering appellants to **raise their t-shirts despite initially frisking them and finding no incriminating objects against them.** At this point, the police officers already went beyond the boundary of a "stop and frisk" or pat-down search.[116]

In ***People v. Chua***,[117] a "stop and frisk" search is defined as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapons or contraband." The allowable scope of a "stop and frisk" search is limited to a protective search of **outer clothing** for weapons.[118] As in ***Manalili v. Court of Appeals***[119] jurisprudence also allows "stop and frisk" in cases involving dangerous drugs.

Here, the **search was flawed at its inception**. The police officers went beyond the search of appellants' outer clothing even though at first instance, that is, through a prior frisk, they had not been able to find any deadly weapons on them.[120] Also, they were not even surveying the area of arrest for the presence of illegal firearms. Neither did they have any verified information that the area was a known place for contraband violators. Indeed, the police officers' ***overindulgence*** in searching appellants' persons and their belongings violated the latter's right to personal security enshrined under the Bill of Rights.

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[113] *Id.* at 34.
[114] TSN, June 11, 2012, p. 7.
[115] *Id.*
[116] *Minnesota v. Dickerson,* 508 U.S. 366, 113 S.Ct. 2130 (June 7, 1993) cited in *Esquillo v. People,* 643 Phil. 577, 612 (2010).
[117] 444 Phil. 757, 773-774 (2003).
[118] *Id.*
[119] 345 Phil. 632, 636 (1997).
[120] *Malacat v. CA,* 347 Phil. 462-492 (1997) cited in *People v. Comprado,* G.R. No. 213225, April 4, 2018, 860 SCRA 420, 431.

Notwithstanding appellants' purported refusal to stop at the checkpoint and attempt to flee, the search that led to the supposed discovery of the seized items had, nevertheless, become unlawful the **moment the police officers continued with another extensive search** now aimed at appellants' bags. As discussed, despite **initially** frisking appellants, and **subsequently ordering** them to raise their t-shirts, they failed to find any deadly weapons. Thus, the police officers' act of *further proceeding* to search appellants' belongings, **regardless of their own admission that appellants were unarmed**, constitutes an invalid and unconstitutional search. We cannot validate an illegal search on the justification that, after all, the articles seized are illegal.[121] The Court cannot condone violation of guaranteed rights under the Constitution. **Neither should the Court allow law enforcers to go on fishing expeditions.**[122]

In ***People v. Cristobal***,[123] appellant ran away from a checkpoint but later on got apprehended by the police. The police officers frisked him for a deadly weapon but found none. The police officers, though, asked appellant to remove the bulging plastic bag from his pocket. Appellant obliged. Eventually, the police officers discovered *shabu* inside the plastic bag. The Court held that the police officers' act of ***further proceeding an intrusive search*** of Cristobal's body and belongings, despite their own admission that they were unable to find any weapon on him, constitutes an invalid and unconstitutional search. As the seized items were fruits of a poisonous tree, the Court acquitted Cristobal for violation of RA 9165.

Further, even if we consider as gospel truth the prosecution's version on appellants' alleged attempt to flee, the conclusion will not be any different. Flight **alone** cannot be used as basis for any reasonable suspicion that criminal activity was afoot. In the same way that "**non-flight is not proof of innocence**" as ruled by the Court in ***People v. Del Castillo***.[124]

Indeed, a person's flight cannot immediately justify an ***overboard*** and ***obtrusive*** search of his person and his personal effects. For even in high crime areas, there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party.[125]

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[121] Justice Cruz, dissenting opinion in *People v. Bocalan*, 293 Phil. 538-548 (1993).
[122] *People v. Cogaed*, 740 Phil. 212, 241 (2014). [123] G.R. No. 234207, June 10, 2019.
[123] G.R. No. 234207, June 10, 2019.
[124] 584 Phil. 721, 730 (2008).
[125] *State v. Nicholson,* 188 S.W.3d 649 (Tenn. 2006).

The Court decreed in ***Valdez v. People***,[126] *viz.*:

> **Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt.** Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz* that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one. (Emphasis supplied)

In ***People v. Chua Ho San***,[127] the Court likewise held that appellant's alleged suspicious behavior in attempting to flee from the police authorities, **standing alone,** did not sufficiently establish that Chua had been engaged in the felonious activity of transporting illegal drugs. Thus:

> In the case at bar, the Solicitor General proposes that the following details are suggestive of probable cause — persistent reports of rampant smuggling of firearm and other contraband articles, CHUA's watercraft differing in appearance from the usual fishing boats that commonly cruise over the Bacnotan seas, CHUA's illegal entry into the Philippines . . ., **Chua's suspicious behavior, *i.e.*, he attempted to flee when he saw the police authorities**, and the apparent ease by which CHUA can return to and navigate his speedboat with immediate dispatch towards the high seas, beyond the reach of Philippine laws.
>
> This Court, however, finds that these do not constitute "probable cause." **None of the telltale clues, *e.g.*, bag or package emanating the pungent odor of marijuana or other prohibited drug, confidential report and/or positive identification by informers of courier of prohibited drug and/or the time and place where they will transport/deliver the same, suspicious demeanor or behavior, and suspicious bulge in the waist — accepted by this Court as sufficient to justify a warrantless arrest exists in this case. There was no classified information that a foreigner would disembark at Tammocalao beach bearing prohibited drug on the date in question. Chua was not identified as a drug courier by a police informer or agent.** The fact that the vessel that ferried him to shore bore no resemblance to the fishing boats of the area did not automatically mark him as in the process of perpetrating an offense. xxx (Emphasis and underscoring supplied)

Here, the police authorities were not armed with any confidential report or verified tipped information that appellants were



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[126] 563 Phil. 934, 948 (2007).
[127] 367 Phil. 703, 718-719 (1999), cited in *Caballes v. Court of Appeals,* 424 Phil. 263, 483-484 (2002).

carrying illegal firearms or illegal drugs which could have otherwise sustained their initial suspicion. To repeat, the purpose of the checkpoint had been to implement the "no plate, no travel policy." **No other**. In fine, all the police officers had was a suspicion that appellants' *closely secured* bags might contain prohibited items. SPO1 Eliron confirmed that they had **no personal knowledge** that appellants' bags contained illegal items, thus:

> Q: Mr. Witness did you open the backpack?
> A: No sir.
>
> Q: You did not open the back pack because you believed that it is illegal to open the back pack?
> A: Yes sir.
>
> **Q: So, you have no personal knowledge that what was inside the back pack if it is illegal items?**
> **A: Yes sir.** [128] (Emphasis supplied)

The Court in ***People v. Malmstedt***[129] elucidated that ***any*** evidence taken in violation of the accused's constitutional right against illegal search and seizure, **even if confirmatory of the initial suspicion, is inadmissible** "for any purpose in any proceeding."

The Court is not unmindful of cases upholding the validity of consented warrantless searches and seizure. In case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it must first appear that (1) the right exists; (2) the person involved had knowledge, either actual or constructive of the existence of such right; and (3) the said person had an actual intention to relinquish the right.[130]

Here, the police officers' obtrusive search does not fall under the classification of consented search.

Records do not show that appellants intentionally surrendered their right against unreasonable searches and seizures. There was no evidence affirming that SPO1 Gawingan at least asked or requested permission to search appellants' belongings. In fact, he was only ***informing, nay, imposing*** upon appellants that they would search their bags and the contents thereof. In any event, it was not even shown at all that appellants consented to the search.



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[128] TSN, June 26, 2012, p. 30.
[129] 275 Phil. 447, 461 (1991).
[130] *Caballes v. Court of Appeals*, 424 Phil. 263, 289 (2002).

***Caballes v. Court of Appeals***[131] is apropos, *viz.*:

> In the case at bar, the **evidence is lacking that the petitioner intentionally surrendered his right against unreasonable searches.** The manner by which the two police officers allegedly obtained the consent of petitioner for them to conduct the search **leaves much to be desired. When petitioner's vehicle was flagged down, Sgt. Noceja approached petitioner and "*told him I will look at the contents of his vehicle and he answered in the positive.*" We are hard put to believe that by uttering those words, the police officers were asking or requesting for permission that they be allowed to search the vehicle of petitioner.** xxx The "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty. In addition, in cases where this Court upheld the validity of consented search, it will be noted that the police authorities expressly asked, in no uncertain terms, for the consent of the accused to be searched. And the consent of the accused was established by clear and positive proof. **In the case of herein petitioner, the statements of the police officers were *not asking for his consent;* they were *declaring* to him that they will look inside his vehicle.** (Emphasis supplied)

Neither can appellants' passive submission be construed as an implied acquiescence to the warrantless search.

In ***People v. Barros***,[132] the Court struck down the warrantless search done by the police officers as illegal. The Court ruled the accused should not be presumed to have waived the unlawful search conducted simply because he failed to object the search.

***People v. Burgos***[133] likewise instructs:

> **As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizens** in the position of either contesting an officer's authority by force, **or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto,** but is merely a demonstration of regard for the supremacy of the law. (Emphasis supplied)

The Court, in ***Sindac v. People***,[134] emphasized:

> Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the**



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[131] *Id.*
[132] 301 Phil. 553, 572 (1994).
[133] 228 Phil. 1, 17 (1986).
[134] 794 Phil. 421, 428 (2016).

> **strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. (Emphasis and underscoring supplied)

Consequently, being the proverbial fruits of the poisonous tree, the seized marijuana fruiting tops here cannot be used as evidence against appellants without violating their constitutional guaranty against unreasonable search and seizure. ***The poisonous fruit should not be allowed to wash clean the tree.***[135] Without the object evidence, nothing remains of the case against appellants.[136] A verdict of acquittal, therefore, is in order.

In any event, notwithstanding the irregularity in the search and seizure of the evidence here, **appellants' acquittal still stands** for failure of the prosecution to show that the *corpus delicti* had been preserved from the moment they were seized until presented in court as evidence.

There are four (4) critical links in the chain of custody of dangerous drugs:[137] ***first,*** seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second,*** turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third,*** turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth,*** turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[138]

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[135] Justice Cruz's dissenting opinion in *People v. Malmstedt,* 275 Phil. 447-472 (1991).

[136] *People v. Cristobal,* G.R. No. 234207, June 10, 2019.

[137] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

xxx

b. "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[.]

xxx

[138] *People v. Villar*, 799 Phil. 378, 389 (2016).

Here, the prosecution failed to establish an unbroken chain of custody.

***First***, the marking was not immediately done following appellants' arrest and seizure of the items. The testimonies of SPO1 Eliron and Gawingan revealed, thus:

> **SPO1 Eliron:**
> Q: After apprising them of their constitutional rights, what transpired next?
> A: We summoned one Kagawad of the barangay for the inventory of the marijuana.
>
> Q: Who was the Kagawad?
> A: Kagawad Vicky Daayata
> xxx xxx xxx
>
> Q: Did she arrive?
> A: Yes sir.
>
> Q: When she arrived, what did you do?
> A: We let her witness that the marijuana came from the group.
> xxx xxx xxx
>
> Q: You said you made an inventory, did the barangay kagawad sign the inventory?
> A: Yes sir.
>
> Q: After taking the inventory, what else did you do there?
> **A: After the inventory, we kept the marijuana and brought it to our Police Station for documentation.**
> xxx xxx xxx
>
> Q: Now when you arrived at the Police Station together with the three accused, what transpired there?
> A: The incident was placed on the blotter.
>
> Q: After taking the blotter, what transpired next?
> A: We placed them inside the detention cell.
>
> Q: How about the alleged marijuana which was contained in the cellophanes placed inside the backpack, what did you do with it?
> **A: Our Investigator placed the markings on the cellophanes to be brought at the Crime Laboratory.**
> (Emphasis supplied)[139]



[139] TSN, June 26, 2012, pp. 13-18.

> **SPO1 Gawingan:**
> Q: At the time you brought these plastic bags from the police station to the PNP Crime Laboratory, what did you do with these plastic bags and backpack?
> A: **At the police station, after taking the pictures I made the marking** we arrested them at 8:00 in the evening, and then at 11:40 we were already at the crime laboratory.
>
> Q: Was that indicated in the plastic bags?
> A: Yes sir.[140] (Emphasis supplied)

The Court has invariably ruled that failure of the authorities to immediately mark the seized drug renders doubtful the identity and integrity of the *corpus delicti.*[141] ***People v. Calvelo***[142] ordains, thus:

> The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made** in the presence of the apprehended violator **immediately upon arrest.** xxx **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.** (Emphasis and underscoring supplied)

Here, SPO1 Gawingan purportedly marked the items at Talakag Police Station prior to their turnover to Forensic Chemist Caceres. The prosecution witnesses, however, **did not give any explanation** why the marking had not been promptly made at the *situs criminis*. Notably, SPO1 Gawingan could have easily placed the markings on the cellophanes considering SPO1 Gallentes and Eliron were with him and there was no serious threat to their safety or possibility for appellants to escape.[143] He simply decided to mark the seized items at the police station, **nothing more**. This casts serious doubt on the identity and integrity of the seized items. For we cannot foreclose the possibility that what SPO1 Gawingan marked at the police station might not be the same items allegedly found in appellants' belongings.

We note, too, that SPO1 Gawingan failed to testify what markings he had specifically written on each of the four (4) respective colored cellophanes. Upon perusal of the records, it was only during the testimony of Forensic Chemist Caceres that the trial court had



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[140] TSN, June 11, 2012, p. 23.
[141] *People v. De Leon*, G.R. No. 214472, November 28, 2018.
[142] G.R. No. 223526, December 6, 2017, 848 SCRA 225, 247.
[143] *People v. Bintaib,* G.R. No. 217805, April 2, 2018, 860 SCRA 169-187.

been apprised of these specific markings on the four (4) cellophanes, thus: one (1) green cellophane marked as "A-1-PBE;" one (1) blue cellophane marked as "A-2-PBE;" one (1) white cellophane marked as "A-3-PBE," and one (1) red cellophane marked as "A-4-PBE."[144] Although these markings were mentioned during trial, Forensic Chemist Caceres **did not exactly confirm which markings specifically match the respective four (4) cellophanes**, thus:

> Atty. Navarro: Your Honor please, the witness brought out four (4) plastic bags from the back pack Your Honor. May we request that the first plastic bag, the green plastic bag be marked as our Exhibit "D".
> Court: Okay, mark that.
>
> Atty. Navarro: May we request that the second plastic bag, blue plastic bag be marked as our Exhibit "D-1".
> Court: Mark the blue plastic bag.
>
> Atty. Navarro: May we request You Honor please that the white plastic bag containing marijuana leaves be marked as our Exhibit "D-2" Your Honor. And the 4th plastic bag which is actually the red plastic bag, may we request the same to be marked as our Exhibit "D-3" Your Honor.
> Court: Okay, mark that. Continue.
>
> Q: I notice Ms. Witness that each of the four (4) plastic bags has a marking or a label, actually the first plastic bag has a marking Exhibit "A" and the initials "PBE", the second plastic bag has a marking or label Exhibit "A-2-PBE, the third plastic bag has a marking or label Exhibit "A-3-PBE", and the fo(u)rth plastic bag has a marking or label Exhibit "A-4-PBE", if you know who made those markings?
> A: I don't know sir. It was premarked already when I received the specimens.[145]

The Court, therefore, is prompted to do a guesswork whether the markings mentioned by the prosecution lawyer during trial consistently matched SPO1 Gawingan's purported markings of the four (4) cellophanes allegedly turned over to Forensic Chemist Caceres.

Even Chemistry Report No. D-103-2009 dated May 19, 2009 did nothing to fill the gap in the marking of the seized specimens as the report itself was fraught with **glaring discrepancy**. Under the heading "Specimen Submitted," Forensic Chemist Caceres indicated that she received **only two (2) specimens**, *viz.*: 1) one (1) unsealed



[144] TSN, August 12, 2010, p. 12.
[145] *Id.*

green colored plastic cellophane with attached markings "EXH-A-1-PBE;" and 2) one (1) unsealed blue colored plastic cellophane with attached markings "EXH-A-2-PBE." However, under the heading "Conclusion," Forensic Chemist Caceres noted that specimens "A-1, A-2, A-3, and A-4 contain marijuana, a dangerous drug." She failed to indicate, too, the total weight of the examined specimens.[146] **Based on this discrepancy alone**, there was already a significant break in the chain because of the uncertainty whether the examined specimens in the laboratory were the same items confiscated from appellants. If the point of marking is to set the seized items apart from other pieces of evidence of similar nature or to ensure that there was no contamination of evidence, we cannot say those objectives were met under these circumstances[147] **regardless of the volume of the drugs here involved.**

Section 21, Article II, paragraph 3 of RA 9165[148] provides that "when the volume of the dangerous drugs does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued. Thereafter, a final certification shall be issued immediately upon completion of the said examination and certification." There is **nothing** under the said section, however, which states that the relative weight of the drugs, specifically if bulky, large, or heavy, completely assures that the seized evidence is no longer susceptible to contamination. As it was, SPO1 Gawingan's delayed marking of the seized items and the inconsistent details in the chemistry report tainted the identity and integrity of the seized marijuana fruiting tops.

***Second***, the inventory and photograph of the seized items were only made in the presence of appellants and Barangay Kagawad Nanulan. The prosecution admitted the absence of representatives from the DOJ and the media. SPO1 Gawingan relevantly testified, thus:

> Q: Mr. Witness, you would also agree with me that in the said inventory, you were not a signatory correct?
> A: Yes, sir.

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[146] *Id.* at 13.

[147] *Mapandi v. People,* G.R. No. 200075. April 4, 2018, 860 SCRA 381, 396.

[148] Section 21, Article II (3) of RA 9165: A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

> Q: The three (3) accused in this case were not able to sign it also, correct?
> A: Yes sir.
>
> **Q: And during that time Mr. Witness, you did not coordinate with the person from the media?**
> **A: Yes sir.**
>
> **Q: You did not also coordinate with the person from the Department of Justice?**
> **A: Yes sir.** [149] (Emphasis supplied)

The incident here happened in 2009 or before the enactment of RA 10640 in 2014, thus, the applicable law is RA 9165. Section 21 of its Implementing Rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of **no less than three (3) witnesses**, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ), **and**; (c) any elected public official - - - who shall be required to sign copies of the inventory and given copy thereof. The presence of these three (3) insulating witnesses is intended to guarantee against planting of evidence or frame up. They are necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[150]

The prosecution utterly failed to offer ***any*** explanation on the absence of representatives from the DOJ and the media. While their absence during the inventory may be excused as the Court held in ***People v. Sali***[151] when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault, nothing of such nature existed in this case. Neither did the police officers exert ***genuine and sufficient efforts*** to secure the presence of these required witnesses.

In ***People v. Rojas***,[152] the witnesses of the State did not provide any explanation on the absence of the representatives from the DOJ and the media during the inventory. The Court ruled that the integrity of the seized *shabu* had been compromised. For this, the Court rendered a verdict of acquittal.

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[149] TSN, June 11, 2012, p. 37.
[150] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018, citing *People v. Sagana*, 815 Phil. 356, 373 (2017).
[151] G.R. No. 231989, September 4, 2018.
[152] G.R. No. 222563, July 23, 2018.

Similarly, in ***People v. Año***,[153] the prosecution offered no explanation to justify the absence of representatives from the media and the DOJ during the inventory and photograph of seized dangerous drugs. The Court ruled that the unjustified gaps in the chain of custody went against the finding of guilt against the accused.

***Third***. SPO1 Gawingan and Eliron testified they went together to the Crime Laboratory and turned over the seized items to Forensic Chemist Caceres. There is nothing on the records, however, which showed how SPO1 Gawingan and Eliron properly handled or stored the seized items prior to its qualitative examination. In fact, it was indicated in Chemistry Report No. D103-2009 dated May 19, 2009 that the specimens were **unsealed** at the time they were turned over to Forensic Chemist Caceres. In turn, Forensic Chemist Caceres confirmed that the seized items were not safely secured:

> Q: When you took the four (4) plastic bags from the inside of the back pack, these plastic bags, cellophane bags were already unsealed?
> A: Yes sir.
>
> **Q: They were not sealed at the time you received them?**
> **A: Yes sir.** [154] (Emphasis supplied)

***People v. Gajo***[155] ordains that persons who had custody of the seized item should be able to testify on precautionary measures taken to ensure that its integrity and evidentiary value remained intact from the time it was confiscated until presented in court as evidence, thus:

> xxx to establish an unbroken chain of custody, every person who touched the seized illegal drug must describe how and from whom it was received; its condition upon receipt, including its condition upon delivery to the next link in the chain.

The Court, in ***People v. Gayoso***,[156] acquitted Gayoso for the prosecution's failure to adduce evidence how the seizing officers properly handled and preserved the drug kept under their custody until it was turned over to the forensic chemist for qualitative examination. Thus, it cannot be reasonably concluded that the confiscated item was the same one seized from Gayoso, and eventually presented in court as evidence.



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[153] G.R. No. 230070, March 14, 2018.
[154] TSN, August 12, 2010, pp. 17-18.
[155] See 576 Phil. 576, 587 (2008).
[156] 808 Phil. 19, 31 (2017).

***Lastly***, Forensic Chemist Caceres, too, did not testify on how the illegal drug was safeguarded, if at all, after she received the same and following her qualitative examination thereof, and prior to her appearance in court. Indeed, no explanation was given regarding the proper handling and storage of the seized drugs in the interim – from the moment the seized items were received for laboratory examination until they were presented in court.

In ***People v. Gutierrez***[157] the forensic chemist failed to testify on how the seized items were handled after the qualitative examination thereon yielded positive for methamphetamine hydrochloride. The Court ruled that this necessary detail imputes uncertainty on the integrity of the seized items presented in court as evidence warranting Gutierrez's acquittal.

The prosecution witnesses here failed to describe the precautions taken to ensure that there had been no change in the condition of the items and no opportunity for someone not in the chain to have possession of the same. The prosecution cannot apply the saving mechanism of Section 21 of the IRR of RA 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved in the first place.[158]

All told, the violation of appellants' constitutional right against unreasonable searches and seizure **worsened** by the multiple breaches of the chain of custody rule warrants a verdict of acquittal.

**WHEREFORE,** the appeal is **GRANTED.** The Decision dated September 22, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01343-MIN is **REVERSED** and **SET ASIDE.** Appellants Donel Bauran and Inday Sulda are **ACQUITTED** in Criminal Case No. 09-05-3843.

The Court **DIRECTS** the Director of Prisons, Davao Penal Colony and Penal Farm, Panabo, Davao del Norte and the Director of Prisons of the Correctional Institution for Women-Mindanao, Davao Prison and Penal Farm, Sto. Thomas, Panabo, Davao del Norte[159] to cause the immediate release from custody of Appellants Donel Bauran

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[157] Phil 285 (2009).

[158] *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42-62.

[159] By Resolution dated January 31, 2018, the Court noted the letter dated October 4, 2017 of PIS Gerardo F. Padilla, MPA, Acting Superintendent of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, confirming the confinement therein of appellant Donel Bauran since December 4, 2014, and informing this Court that appellant Inday Sulda is confined at the Correctional Institution for Women-Mindanao since November 28, 2014, *rollo,* p. 32.

and Inday Sulda respectively, unless they are being held for some other lawful cause; and inform the Court of the action taken within five (5) days from notice.

Let an entry of final judgment be issued immediately.

**SO ORDERED."**

**By authority of the Court:**

**LIBRADA C. BUENA**
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**
Deputy Division Clerk of Court
**40-B2**

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