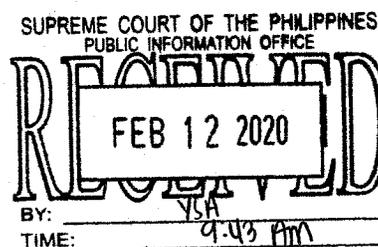




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 15, 2020** which reads as follows:

“G.R. No. 227995 – PEOPLE OF THE PHILIPPINES vs. CRIS PELIÑO Y MINGLANILLA AND MYLENE GONZALES Y JARIEL

The Case

Appellants assail the Decision¹ dated April 27, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07167 entitled “*People of the Philippines v. Cris Peliño y Minglanilla and Mylene Gonzales y Jariel*,” which affirmed appellants’ conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Appellants were charged under the following information:

The undersigned Associate Prosecution Attorney II, under oath, hereby accuses **CRIS PELIÑO y MINGLANILLA** of Barangay Poblacion Aguada, Puerto Galera, Oriental Mindoro and **MYLENE GONZALES y JARIEL** of Barangay Sabang, Puerto Galera, Oriental Mindoro with the crime of **Violation of Sec. 5, Art. II of RA 9165** otherwise known as “*The Comprehensive Dangerous Drugs Act of 2002*”, committed as follows:

That on or about the 28th day of March 2009, at around 6:30 o’clock in the evening, in Barangay Sabang, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the

- over – seventeen (17) pages ...

¹ CA rollo, pp. 147-164

above-named accused, in active conspiracy with each other and without any legal authority nor corresponding license, did then and there willfully, unlawfully and feloniously sell, trade and deliver to a poseur-buyer 3.534 grams of marijuana, a dangerous drug under the law.

CONTRARY TO LAW.²

The case was raffled to the Regional Trial Court, Oriental Mindoro Branch 39.

On arraignment, appellants pleaded not guilty.³ Trial ensued.

Prosecution's Version

The prosecution presented IO2 Julita Digol and Forensic Chemical Officer Engr. Ernesto Niduaza, Jr. whose testimonies may be summarized, as follows:

On March 28, 2009, around 9 o'clock in the morning, a confidential informant (CI) showed up at the office of the Philippine Drug Enforcement Agency (PDEA) in Calapan City, Oriental Mindoro to report an illegal drug peddler of marijuana in Bgy. Sabang, Puerto Galera who was known as "Love."⁴ Officer-In-Charge (OIC) Marijane T. Ojastro immediately organized a team to conduct a buy-bust operation on alias "Love," appointing Intelligence Officer 1 (IO1) Gina Luz T. Cruz as team leader and IO2 Julita Digol as poseur buyer.⁵ IO1 Cruz submitted two (2) pieces of ₱500.00 bills to the Philippine National Police (PNP) Crime Laboratory in Calapan City for ultraviolet powder dusting which bills would be used during the planned buybust. The buy-bust money was marked with IO2 Digol's initials "JTD."⁶

The buy-bust team left for, and reached, Bgy. Sabang, Puerto Galera at around 5 o'clock in the afternoon.⁷ They proceeded to Broadway Lodging House where IO2 Digol and the CI occupied a room at the third floor while the back-up team stayed at the ground floor of the hotel. Inside the room, the CI texted alias "Love" that he

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² Record, p. 1.

³ *Id.* at 65.

⁴ TSN, October 28, 2009, p. 5.

⁵ *Id.*

⁶ *Id.* at 6.

⁷ *Id.* at 10.

was waiting in a room on the third floor of Broadway.⁸ Around 6:25 in the evening, alias "Love" replied that he was already at the hotel's third floor. The CI opened the door and saw alias "Love" standing outside with his female companion, alias "MC."⁹ Alias "Love" turned out to be appellant Cris Peliño and his companion alias "MC," appellant Mylene Gonzales.

Peliño entered the room and immediately demanded payment for the "item" which he had in his possession. IO2 Digol handed the two (2) marked ₱500 bills to Gonzales, who counted the bills and turned them over to Peliño. For his part, Peliño handed her the "item."¹⁰ IO2 Digol "miss called" IO1 Cruz, to indicate that the sale had been consummated. Immediately, the backup team rushed to the hotel room on the third floor and arrested Peliño and Gonzales.¹¹ IO2 Digol marked the items at the place of arrest. The team, however, decided to conduct the inventory to Calapan City, since doing it in the hotel room itself was risky that considering that Peliño's relatives were around.¹²

After the inventory, the seized items - a transparent plastic sachet (marked JTD 03-28-09), intermediate paper (marked JTD1 03-28-09) and suspected dried marijuana leaves (marked JTD2 03-28-09) - were brought to the PNP Crime Laboratory for analysis. Peliño and Gonzales were also brought there for physical examination.¹³ Engr. Niduaza received the confiscated items from IO2 Digol. He logged his receipt in the logbook and conducted tests on the seized items.¹⁴ The tests yielded positive result for marijuana. Chemistry Report No. D-009-09 dated March 29, 2009¹⁵ bore his findings.

After examination, Engr. Niduaza placed the specimen in a white mailing envelope marked D-009-09 dated March 29, 2009 with the initials ECN and his signature.¹⁶ The physical examination on Peliño and Gonzales showed the presence of ultraviolet fluorescent powder on their hands.¹⁷

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⁸ *Id.* at 11.

⁹ *Id.* at 12.

¹⁰ *Id.* at 13.

¹¹ *Id.*

¹² *Id.* at 17.

¹³ *Id.* at 18.

¹⁴ TSN, June 29, 2010, p. 6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 12.

The prosecution and defense stipulated on the authenticity of the signatures of IO1 Noel Briguel on the request for dusting (Exhibit "C"),¹⁸ of Brgy. Capt. Anacleto Vergara and Dennis Nebrejo on the Inventory of Confiscated/Seized Items (Exhibit "M").¹⁹ and of Brgy. Capt. Benjamin De Chavez on the certification on the conduct of anti-drug operation (Exhibit "P").²⁰

The prosecution submitted its formal offer of documentary evidence²¹ on August 2, 2011 which the trial court admitted under Order dated August 31, 2011.²²

The Defense's Version

The respective testimonies of appellants Peliño and Gonzales may be synthesized, as follows:

Gonzales

She hails from Quezon City, albeit, she had been working as entertainer in Sabang, Puerto Galera for about nine (9) months already before she got arrested. She left behind her three (3) minor children to the care of her parents while she was working in Puerto Galera.

In the morning of March 28, 2009, she was doing her laundry when a certain Arnold, a "habal-habal" driver, knocked at the door of her rented room in Triple A Hotel. He inquired if she was available for "booking" of "clients." She said yes and agreed to go with him to Broadway Hotel where they met the client who was introduced to her as "Adra." She and Adra had sex, for which, the latter paid her ₱1,500.00 as "bar fine." She was already getting dressed when Adra told her to stay as he had more friends coming over to the hotel. She agreed to stay and waited for the next "client." She and the second "client," too, had sex.

After they had sex, the second "client," like the first one, told her not to leave and wait for his other male companions. This time, she refused to stay because she was already tired. Meantime, the male companions of her second "client" arrived and refused to let her leave the hotel room. Arnold and Adra were both with them. They told her they would go bar-hopping together. She was brought downstairs by

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¹⁸ TSN, March 23, 2011, p. 2.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 4-5.

²¹ Record, pp. 168-172.

²² *Id.* at 174.

the men and made to board a waiting van. She heard one (1) of the men inside the van say “*Bitbitin nyo na. Isakay niyo na. Baka mag-eskandalo iyan mabulilyaso pa.*” She then noticed that the van’s driver was wearing a shirt with a PDEA logo emblazoned on it.

They drove towards the direction of the Poblacion then the White Beach. There, another man she did not know boarded the van. She later learned that the man was appellant Peliño. She and Peliño were brought to the PDEA office in Calapan City. She denied ever using drugs even though she was engaged in the sex trade.

Peliño

He had been a resident of Puerto Galera for five (5) years, making a living as a “habal-habal” (motorcycle-for-rent) driver. On March 28, 2009, he was on his way home from White Beach, Puerto Galera. When he stopped at a nearby bakery to buy bread for his grandmother, four (4) men in civilian clothes approached and warned him not to create a commotion as they were merely inviting him to the police station. He attempted to escape but a van arrived and several men alighted, poking their guns at him. They forcibly boarded him into the van. He saw a woman inside the van, but he did not know who she was. He only learned later that her name was Mylene Gonzales. He was not taken to the police station but to the PDEA office in Calapan City. There, he requested to talk to any of his relatives to inform them of his whereabouts and a lawyer to assist him during the questioning. His requests went unheeded. He denied being ever involved in the illegal sale of marijuana.

Despite its manifestation, the defense did not submit a formal offer of evidence.

Ruling of the Trial Court

By Decision²³ dated December 3, 2013, the trial court, rendered a verdict of conviction, thus:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered finding the accused **CRIS PELIÑO y MINGLANILLA and MYLENE GONZALES y JARIEL GUILTY** beyond reasonable doubt as principals of the crime charged in the aforementioned Information and in default of any modifying circumstances attendant, hereby sentences them to suffer the penalty of **LIFE IMPRISONMENT and to pay a fine of**

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²³ *Id.* at 224-232.

FIVE HUNDRED THOUSAND (P500,000.00) PESOS with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any.

The 3.534 grams of marijuana subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

SO ORDERED.²⁴

Proceedings before the Court of Appeals

On appeal, appellants faulted the trial court for rendering the verdict of conviction. They both harped on the fact that the inventory was not conducted at the place of arrest in Brgy. Sabang, Puerto Galera. The supposed risk posed to the apprehending team by relatives of the arrested drug peddler at the place of arrest was not even substantiated. Notably, the buy-bust team secured a certification on the conduct of anti-drug operation (Exhibit "P")²⁵ from Barangay Captain Benjamin De Chavez of Brgy. Sabang, Puerto Galera and, yet, the team chose not to conduct the inventory of the alleged seized drug in his presence and opted to do it some fifty-six (56) kilometers away at the PDEA office in Brgy. Sto. Nino, Calapan City. During the two-hour drive en route the PDEA office, the seized item was exposed to the possibility of alteration, contamination, and/or substitution, thus, raising a question on whether the drug submitted for laboratory examination and presented in court was the one actually recovered during the alleged buy-bust operation.

Appellants also pointed out some alleged deficiencies in the testimonies of prosecution witnesses which supposedly engendered doubt on whether a buy-bust operation actually took place or whether the integrity of the confiscated drug was preserved, thus: (1) The room number occupied by the supposed poseur-buyer and tipster during the purported buy-bust operation was never mentioned by any of the prosecution witnesses; (2) IO2 Digol did not mention who received the item at the crime laboratory; and (3) there was no explanation on the supposed risk which impelled the apprehending team to conduct the inventory in a place other than the place of arrest.

The People, through the Office of the Solicitor General (OSG), represented by Assistant Solicitor General Myrna N. Agno-Canuto and Associate Solicitor I Rose Celine R. Europa filed its Consolidated Appellee's Brief dated September 30, 2015. It argued that all the

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²⁴ *Id.* at 232.

²⁵ *Id.* at 42.

elements of illegal sale of marijuana had been sufficiently established: the identities of appellants as sellers, on one hand, and IO2 Digol as poseur buyer, on the other; and the delivery of the prohibited drug by appellants to IO2 Digol who, in turn, paid ₱1,000.00 therefor.

Too, the chain of custody was duly complied with indicating that the integrity and evidentiary value of the confiscated marijuana was preserved. IO2 Digol never lost possession and control of the seized marijuana from its seizure until its submission to the crime laboratory. She immediately marked the marijuana after appellants got arrested. She also conducted a complete inventory of the item as soon as the apprehending team arrived at the PDEA office on the same day. She personally submitted the specimen to the crime laboratory. It was received by PO1 Carreon who turned it over to Engr. Niduaza for examination. Engr. Niduaza personally brought the item when she went to court and testified for the prosecution.

Appellants erroneously claimed that the inventory should have been done at the place of arrest. The IRR of RA 9165 provides that marking of evidence may be done in the presence of the violator, in the nearest police station or nearest office of the apprehending team which is the PDEA office in Calapan City in this case. At any rate, non-compliance with these requirements may be excused on justifiable grounds so long as the integrity and evidentiary value of the seized items are properly preserved.

By Decision dated April 27, 2016, the Court of Appeals affirmed. It found that both elements of violation of Section 5, RA 9165 had been established by the prosecution beyond reasonable doubt: (1) The identities of appellants Peliño and Gonzales as sellers on one hand, and IO2 Digol as poseur-buyer, on the other; and (2) The object of the sale was marijuana which appellants handed to IO2 Digol for a consideration of ₱1,000.00, which item and money were presented in court.

The arresting officers substantially complied with the requirement on the preservation of chain of custody from the time the illegal drug was seized from appellants, marked at the place of arrest and inventoried at the PDEA office, examined at the crime laboratory, and presented in court as evidence. With the preservation of the chain of custody, the prosecution was able to establish that the marijuana presented in court was the very same item seized from appellants during the buy-bust operation.

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The Present Appeal

Appellants now seek anew a verdict of acquittal. They reiterate the argument that the chain of custody rule specifically pertaining to the place where the inventory should have been conducted was violated, hence, their acquittal is in order.

Issue

Was the chain of custody rule complied with in this case?

Ruling

To secure a conviction for illegal sale of dangerous drugs, the prosecution must establish the presence of the following elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*, the illegal drug itself, as evidence.²⁶

The prosecution must prove that the integrity of the illegal drug presented in evidence had been preserved - from confiscation, while undergoing marking and inventory procedures, while in transit, during submission to laboratory analysis, until its presentation in court. There should not have been any possibility or window of opportunity for switching, alteration, modification, or tampering of the drug specimen. Indeed, primordial importance must be given to the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.²⁷

Compliance with the chain of custody rule removes any doubt as regards the preservation of the integrity and evidentiary value of the seized drug. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing the Comprehensive Dangerous Drugs Act of 2002, defines *chain of custody*, viz.:

“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 the seized

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²⁶ See *People v. Honrado, et al.*, 683 Phil. 45, 52 (2012) (citations omitted).

²⁷ See *People v. Gayoso*, 808 Phil. 19, 22 (2017).

item shall include the identity and signature of the person who held temporary custody of seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The chain of custody rule simply requires that every person who came in contact with the seized drug must observe the procedure for its proper handling in order to remove any doubt that it was changed, altered, substituted, or modified before its presentation in court. The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.²⁸

In buy-bust operations, there is an even greater need to ensure strict observance of the chain of custody rule to reduce the risk of serious abuses by law enforcement officers in this mode of apprehension of drug personalities. *People v. Caranto*²⁹ elucidates:

The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan*, when we recognized that “by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.”

Gaps in the chain of custody

The four (4) links in the chain of custody are, as follows:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

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²⁸ *People v. Balibay*, 742 Phil. 746, 756 (2014).

²⁹ 728 Phil. 507, 517-518 (2014) (citations omitted).

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

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.³⁰

The prosecution must establish that there had been no break in any of the four (4) links in the chain. Record, however, shows that there had been gaps in the chain of custody here:

1. First Link

a. Discrepancy in the marking

Section 21(1), RA 9165³¹ pertains to the first link in the chain of custody and it prescribes the standard for handling, storage and initial custody of the confiscated illegal drug, viz.:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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.

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³⁰ See *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015) (citations omitted).

³¹ RA 9165 was amended by RA 10640 which was approved on July 15, 2014. Appellants here were arrested on March 28, 2009, hence, the unamended version of RA 9165 applies to him.

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) fills in the details pertaining to the place of inventory and adds a saving clause in case of non-compliance with the procedure outlined, thus:

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:

(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 persons 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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, 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.

xxx xxx xxx

Here, there is a gap in the first link of the chain of custody due to the poseur-buyer's varying testimonies on where the marking of the seized item was actually done. On October 28, 2009, IO2 Digol testified, viz.:

xxx

Q: So, Madam Witness where did you conduct the marking of the items?

A: At the PDEA Office Ma'am located at Unit 14 Filipiniana Complex, Calapan City, Or. Mindoro

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Q: Why did you make that marking in your office when you made the buybust operation, when you effected the buy-bust operation in Sabang, Puerto Galera?

A: Because the place would be risky for us if we were to make the markings in that place.³²

xxx

On cross, IO2 Digol gave a different answer on where exactly the marking of evidence was done, thus:

xxx

Q: Now, Madam Witness you also further stated that you did the markings of all the confiscated items. As a matter of fact, on page 7 of this transcript of stenographic notes on October 28 you said that (discontinued) no rather on page 14 you said that you did the marking of pieces of evidence confiscated. My question is where did you exactly conduct the markings of these evidences?

A: It was in the third floor of Broadway Lodging House, sir.³³

xxx

Marking of the evidence is a crucial step in a drug operation. Marking sets apart and identifies the illegal drug from all other materials present and/or seized at the *locus criminis*. It makes the illegal drug readily identifiable from all the other evidence confiscated from appellant. IO2 Digol's inconsistent testimony, however, engenders doubt on whether the requirement on marking of evidence was properly complied with. This uncertainty gives rise to the possibility that the drug may have been switched, tampered with, altered, or substituted.

b. Absence of insulating witnesses during the marking of evidence

In *People v. Sood*,³⁴ the Court explained the reason for requiring the presence of the three (3) insulating witnesses at least during the marking of the seized drug:

The Court again takes this opportunity to emphasize that the presence of the three witnesses required by Section 21 is precisely to protect and guard against the pernicious practice of policemen in planting evidence. Without the insulating presence of the three witnesses during the seizure and marking of the drugs, the

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³² TSN, October 28, 2009, p. 17.

³³ TSN, February 17, 2010, p. 8.

³⁴ G.R. No. 227394, June 06, 2018, 865 SCRA 368, 389.

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 seized drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of accused-appellant.

Here, IO2 Digol testified that none of the three (3) insulating witnesses required under Section 21 of RA 9165 was present during the marking of evidence, thus:

xxx

Q: And who were present at the time you conducted the markings of these exhibits?

A: The apprehended suspects and the rest of the team.

Q: Only the rest of the team?

A: Yes.

Q: Were there third parties who witnessed the markings of these exhibits?

A: None, sir.³⁵

xxx

And based on the photographs³⁶ presented in evidence, only two (2) witnesses, *i.e.*, the barangay official and media representative, appeared during the inventory of seized items in the PDEA office which is even far from the crime scene.

The applicable law here is RA 9165 (before its amendment). It requires the presence of three (3) insulating witnesses *i.e.*, a representative each from the media and the Department of Justice (DOJ), and an elected public official.

Surely, the presence of only two (2) witnesses and only during the inventory (but not when the marking was actually done) could no longer serve to insulate the marking and inventory of the confiscated items from the evils of planting, switching, and/or contamination which is sought to be prevented by the law. Verily, the reliability and trustworthiness of the seized evidence as required by had been destroyed.

c. Lack of safeguards to preserve integrity of seized drug during transit

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³⁵ TSN, February 17, 2010, p. 9.

³⁶ Record, pp. 21-22.

While we accept the explanation of the arresting officers pertaining to their decision to postpone the inventory and do it somewhere else in view of the risk or danger of retaliation Peliño's relatives may pose in their lives, we note the sheer lack of testimony on the safety measures adopted by the police officers in custody of the seized drug en route the PDEA office which was about fifty-six (56) kilometers away.

In *People v. Que*,³⁷ due to the failure of the prosecution to identify measures taken during transit from the target area to the police station ensuring the integrity of the seized sachets allegedly obtained and negating any possibility of adulteration or substitution, the accused was acquitted. The Court held there that non-compliance with Section 21, Article II of RA 9165 is tantamount to a failure on the part of the prosecution to establish the identity of the *corpus delicti*.

2. Missing Second Link

The second link in the chain of custody involves the turnover of the seized item by the apprehending officer to the investigating officer who will prepare the same for submission to the crime laboratory to confirmatory tests. The investigating officer, who comes in contact with the seized substance, must, therefore, fully account for the manner in which he or she handled the evidence, including the measures he or she employed to ensure that the item was not tampered, switched, contaminated, or substituted while in his or her custody.

This step, however, was totally omitted here. IO2 Digol narrated that after the inventory of the seized item in the PDEA office, she submitted the same to the crime laboratory. She never mentioned that the seized drug was turned over to an investigating officer for preparation of necessary documents for processing of the confiscated drug. She relevantly testified:

xxx

Q: So, after conducting the corresponding inventory, what did you do next Madam Witness in connection with the case?

A: The apprehended suspects a.k.a. Love and a.k.a. MC were booked and photographs were taken ma'am and brought to the PNP crime lab for examination of ultraviolet powder and for lab examination of evidence ma'am.

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³⁷ See G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500-501; citing *People v. Morales*, 630 Phil 215, 225 (2010).

Q: What are these evidences (sic) that you are referring to that were brought to the crime lab together with the suspects?

A: The one transparent plastic ma'am with marking JTD 03-28-09 and the one white intermediate paper with marking JTD1 03-28-09 and the dried marijuana with marking JTD2 03-28-09.³⁸

xxx

Even on cross, there was uncertainty as to who actually processed the seized drug in the PDEA office in preparation for its turn-over to the crime laboratory, thus:

xxx

Q: And when it was confiscated from the suspects who were holding it?

A: Me, sir.

Q: And to whom did you turn over the said seized specimen?

A: To the crime lab, sir.

Q: That was in Calapan City?

A: Yes.³⁹

xxx

Again, the prosecution did not offer any explanation why the apprehending team failed to comply with the second link in the chain of custody. The Court has held that *without* identifying the officer to whose custody the seized item was actually entrusted at the police station, or in this case --- the PDEA office, the second link in the chain of custody was deemed not to have been established.⁴⁰

In illegal sale of prohibited drugs, there could be no conviction if there is persistent doubt on the identity of the drug which was presented in court. The presence of the elements of sale of the illegal drug must be established with the same degree of certitude that the substance illegally possessed and sold is the same substance offered in court as exhibit.⁴¹ Otherwise, a verdict of acquittal becomes inevitable.

The repeated breach by the apprehending team of the chain of custody here is fatal to the prosecution's cause. The attendant gaps in

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³⁸ TSN, October 28, 2009, p. 18.

³⁹ TSN, February 17, 2010, p. 17.

⁴⁰ See *People v. Enad*, 780 Phil. 346, 367 (2016), citing *People v. Capuno*, 655 Phil. 226, 242 (2011).

⁴¹ See *People v. Hementiza*, 807 Phil. 1017, 1038 (2017), citing *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

the chain of custody engender serious doubts that the illegal drug presented in evidence was the very same substance allegedly seized from appellants during the buybust operation. Due to these lingering doubts, the Court is strongly constrained to overturn the verdict of conviction.

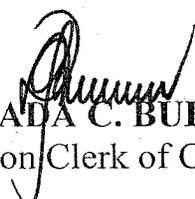
WHEREFORE, the appeal is **GRANTED**. The Decision dated April 27, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07167 is **REVERSED** and **SET ASIDE**. Appellants **CRIS PELIÑO y MINGLANILLA** and **MYLENE GONZALES y JARIEL** are **ACQUITTED** of violation of Section 5, Article II of RA 9165.

The Director of the Bureau of Corrections and Superintendent of the Correctional Institution for Women are ordered to immediately **RELEASE** from custody **CRIS PELIÑO y MINGLANILLA** and **MYLENE GONZALES y JARIEL**, respectively, unless they are being held for some other lawful cause, and **SUBMIT** their respective compliance reports within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *ms/r*
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The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 07167)

The Hon. Presiding Judge
Regional Trial Court, Branch 39
5200 Calapan City
(Crim. Case No. CR-09-9514)

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