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Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated February 12, 2020, which reads as follows:*

**“G.R. No. 247903 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. MARK ARBITRARIO y CRISOLO alias “MARK” and ARMANDO GARCIA y VECTA alias “DONG,” *accused-appellants*). —** This Court resolves the appeal of the Court of Appeals Decision<sup>1</sup> affirming the Regional Trial Court’s conviction<sup>2</sup> of Mark Arbitrario y Crisolo alias “Mark” (Arbitrario) and Armando Garcia y Vecta alias “Dong” (Garcia) for the illegal sale of dangerous drugs.

In an Information,<sup>3</sup> Arbitrario and Garcia were charged with violating Section 5<sup>4</sup> of Republic Act No. 9165, otherwise known as the

<sup>1</sup> *Rollo*, pp. 3–22. The Decision dated April 17, 2018 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rodil V. Zalameda (now a member of this Court) and Associate Justice Renato C. Francisco of the Sixth Division, Court of Appeals, Manila.

<sup>2</sup> *CA rollo*, pp. 49–54. The Decision was penned by Judge Gina M. Bibat-Palamos.

<sup>3</sup> *Rollo*, p. 4.

<sup>4</sup> Republic Act No. 9165 (2002), sec. 5 provides:

SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

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

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

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

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

Comprehensive Dangerous Drugs Act of 2002. This Information read:

On the 24<sup>th</sup> day of February 2014, in the City of Makati, the Philippines, accused, not being authorized by law and without the corresponding license or prescription, conspiring and confederating together and both of them aiding each other, did then and there wil[l]fully, unlawfully and feloniously sell, distribute, and transfer zero point zero two (0.02) gram of white crystalline substance containing met[h]amphetamine hydrochloride (shabu), a dangerous drug, in consideration of the amount of one thousand (Php 1,000) pesos, in violation of the afore-cited law.

CONTRARY TO LAW.<sup>5</sup> (Citation omitted)

During arraignment, both Arbitrario and Garcia entered a plea of not guilty to the crime charged.<sup>6</sup> Trial ensued.

The prosecution presented Police Senior Inspector Rendielyn Sahagun (Senior Inspector Sahagun), Police Officer 3 Voltaire Esguerra (PO3 Esguerra) and Senior Police Officer 1 Randy Obedoza (SPO1 Obedoza) as its witnesses.<sup>7</sup>

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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section. Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

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

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

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

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

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

<sup>5</sup> *Rollo*, p. 4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 5.

According to the prosecution, the Station Anti-Illegal Drugs Special Operation Task Group of Makati City conducted a briefing to plan the buy-bust operation on February 24, 2014. A team was then formed. SPO1 Obedoza, designated as the poseur-buyer, was given a ₱1,000.00 bill as buy-bust money.<sup>8</sup>

Later that day, at around 6:30 p.m., the buy-bust team went to Pagulayan Street in Makati City to meet with the informant and other operatives, and from there they all proceeded to San Lucas Street, the target area. There, they noticed two (2) men they figured to be Arbitrario and Garcia. When the group approached them, the informant introduced SPO1 Obedoza to Arbitrario as “a person in need of shabu.”<sup>9</sup>

Arbitrario asked SPO1 Obedoza how much he was willing to buy, to which SPO1 Obedoza replied ₱1,000.00. Asked for the money, SPO1 Obedoza handed the marked ₱1,000.00 bill to Arbitrario who, in turn, handed the money to Garcia. Afterward, Arbitrario took out a plastic sachet of shabu from his right pocket and handed it to SPO1 Obedoza.<sup>10</sup>

SPO1 Obedoza kept the shabu in his left pocket. Then, right after the exchange, he signaled to the rest of the team that the sale had been consummated. He then held both Arbitrario and Garcia by their pants and introduced himself as a police officer. Another officer who had joined informed Arbitrario and Garcia of their constitutional rights. Garcia was ordered to empty his pockets, revealing the marked ₱1,000.00 bill.<sup>11</sup>

The team brought Arbitrario and Garcia to the Makati Anti-Drug Abuse Council and Station Anti-Illegal Drugs office, where they inventoried and photographed the seized articles. The Inventory Receipt was prepared and signed in the presence of the Barangay Poblacion Chair Benhur Cruz (Barangay Chair Cruz).<sup>12</sup>

SPO1 Obedoza then turned over the items to the assigned investigator, PO3 Esguerra, who then prepared the Request for Laboratory Examination and other documents.<sup>13</sup> PO3 Esguerra returned the items to SPO1 Obedoza, who then delivered the seized specimen to the crime laboratory, where it was received by forensic chemist, Senior Inspector Sahagun.<sup>14</sup>

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<sup>8</sup> CA rollo, pp. 50–51.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 6–7.

<sup>14</sup> Id. at 7 and CA rollo, p. 50.

Upon receipt of the plastic sachet, Senior Inspector Sahagun marked it and prepared a Chain of Custody Form. The contents of the sachet weighed 0.02 gram. After a clinical analysis, the contents tested positive for methamphetamine hydrochloride or shabu.<sup>15</sup>

For its part, the defense presented Arbitrario, Garcia, and Arbitrario's live-in partner, Mary Grace Bañares (Bañares), as its witnesses.<sup>16</sup>

Arbitrario pleaded an alibi and asserted that he was framed. According to him, on February 23, 2014, he was at home on San Lucas Street, with Bañares and his daughters sleeping, when two (2) men arrived and ordered him to come with them. The men searched his home and beat him. They then dragged him from his house while in handcuffs and led him to a van where he saw Garcia already being held. From there, they were taken to the Station Anti-Illegal Drugs office where they were detained. Much to Arbitrario's surprise, Bañares, who had followed them on a motorcycle, was also detained.<sup>17</sup>

The next day, Arbitrario and Bañares were taken out of their cell and were shown an ashtray, money, and a plastic sachet. Barangay Chair Cruz arrived and said that only Bañares may be released. Arbitrario was returned to his cell.<sup>18</sup>

Bañares corroborated Arbitrario's narration of the events.<sup>19</sup>

Garcia denied the charge against him. He claimed that on February 23, 2014, he was watching television at home when two (2) armed men in civilian attire arrived. They handcuffed him and asked him to bring out his shabu, but he claimed that he had none. He was then taken inside a van. The van stopped at another house on San Lucas Street, where the officers brought out Arbitrario and Bañares. The remainder of Garcia's testimony recalled the same circumstances Arbitrario testified to after being brought to the van.<sup>20</sup>

In a January 13, 2016 Decision,<sup>21</sup> the Regional Trial Court found Arbitrario and Garcia guilty beyond reasonable doubt of illegal sale of dangerous drugs. It held that the elements of the offense were sufficiently established by the prosecution<sup>22</sup> and that the integrity and evidentiary value

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<sup>15</sup> Id. at 7.

<sup>16</sup> Id. at 8-9.

<sup>17</sup> Id. at 8.

<sup>18</sup> Id.

<sup>19</sup> Id. at 9.

<sup>20</sup> Id.

<sup>21</sup> *CA rollo*, pp. 49-54. The Decision was penned by Judge Gina M. Bibat-Palamos.

<sup>22</sup> Id. at 53.

of the seized article were duly preserved.<sup>23</sup> It also relied on the presumption of regularity in the police officers' discharge of their official duties.<sup>24</sup> The dispositive portion of this Decision read:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused Mark Arbitrario y Crisolo and Armando Garcia y Vecta, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing each of them to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.<sup>25</sup>

Arbitrario and Garcia appealed to the Court of Appeals. Among others, they alleged that the integrity and evidentiary value of the seized article were compromised as the marking was not done immediately at the place of the arrest, but in the Makati Anti-Drug Abuse Council office, which was approximately 40 to 45 minutes away.<sup>26</sup>

Arbitrario and Garcia also maintained that the presumption of regularity in the police officers' performance of official duties could not hold since there was a deviation on the proper procedure laid down by law.<sup>27</sup>

In its assailed April 17, 2018 Decision,<sup>28</sup> the Court of Appeals affirmed the Regional Trial Court Decision *in toto*. It stated that the deviation from proper procedure of marking was justified. It lent credence to SPO1 Obedoza's assertion that, as people were gathering around the target area, they were forced to conduct the marking and inventory in the Makati Anti-Drug Abuse Council office instead.<sup>29</sup>

The dispositive portion of this assailed Decision read:

WHEREFORE, the appeal is **DISMISSED**. The *Decision* of the Regional Trial Court, Makati City, Branch 64 dated January 3, 2016 is hereby **AFFIRMED *in toto***.

SO ORDERED.<sup>30</sup> (Emphasis in the original, citation omitted)

Thereafter, Arbitrario and Garcia filed their Notice of Appeal.<sup>31</sup>

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<sup>23</sup> Id. at 53-54.

<sup>24</sup> Id. at 54.

<sup>25</sup> Id.

<sup>26</sup> *Rollo*, pp. 13 and 15.

<sup>27</sup> Id. at 14-15.

<sup>28</sup> Id. at 3-22.

<sup>29</sup> Id. at 20-21.

<sup>30</sup> Id. at 22.

<sup>31</sup> Id. at 24-26.

In a May 28, 2018 Resolution,<sup>32</sup> the Court of Appeals gave due course to the Notice of Appeal and ordered that the records of the case be elevated to this Court.

For this Court's resolution is the issue of whether or not accused-appellants Mark Arbitrario y Crisolo alias "Mark" and Armando Garcia y Vecta alias "Dong" are guilty beyond reasonable doubt of the illegal sale of dangerous drugs, as penalized in Section 5 of Republic Act No. 9165.

After a thorough evaluation of the records of this case, this Court resolves to acquit accused-appellants for the arresting officers' failure to comply with the mandatory requirements in handling the seized illegal drugs, as provided in Section 21 of Republic Act No. 9165. This engenders reasonable doubt on an essential element—the *corpus delicti*—of the offense.

The elements for conviction of the crime of illegal sale of dangerous drugs, as penalized by Section 5 of Republic Act No. 9165, are settled:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.<sup>33</sup>

Concerning *corpus delicti*, Section 21 of Republic Act No. 9165 spells out the chain of custody requirements for handling seized and/or surrendered drugs and/or drug paraphernalia. Although Section 21 was amended by Republic Act No. 10640 on July 15, 2014, the incidents involved in this case occurred in February 2014. Thus, Section 21's original formulation governs. Section 21(1), as originally worded, states:

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

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence

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<sup>32</sup> Id. at 27.

<sup>33</sup> *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per J. Tinga, Second Division].

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[.]

This case is tainted with unjustified deviations from Section 21(1).

First, none of the required third-party witnesses—an elected public official, a representative from the media, and a representative from the Department of Justice—was present during the actual arrest and seizure.

In *People v. Tomawis*,<sup>34</sup> this Court explained the basic wisdom underlying the need for the presence of these witnesses during actual arrest and seizure:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near

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<sup>34</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”<sup>35</sup> (Citations omitted)

Second, the marking, inventory, and taking of photographs were not done immediately at the supposed place of arrest and seizure. Accused-appellants recall that these were not even done until the day after they had been placed in custody.

Jurisprudence has clarified that, as a rule, the inventory and taking of photographs must be done immediately, at the place of arrest:

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

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

Section 21 (1)’s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence[.]<sup>36</sup> (Citation omitted)

Even if this Court discounts accused-appellants’ assertion that the marking, inventory, and taking of photographs were merely done for show the day after their arrest, the police officers’ mere failure to immediately do these at the place of arrest already compromises the prosecution’s cause.

Making things worse is the utter lack of precautions taken to preserve the integrity of the seized sachet. To recall, all that the prosecution asserted was that SPO1 Obedoza “kept the same in his left pocket.”<sup>37</sup>

Jurisprudence has repeatedly decried police officers’ placing of the allegedly seized drugs in their pockets as an untrustworthy guarantee of the evidence’s identity and integrity:

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<sup>35</sup> Id. at 149–150.

<sup>36</sup> *People v. Sultan*, G.R. No. 225210, August 7, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

<sup>37</sup> *Rollo*, p. 6.

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

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

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

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

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

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

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that "noncompliance of (sic) these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." Plainly, the prosecution has not shown that — on September 14, 2004, when dela Cruz was arrested and the sachets supposedly seized and marked — there were "justifiable grounds" for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving

assertion that the integrity of the seized sachets has, despite all its lapses, nevertheless been preserved.

In *Dela Cruz*, this Court did not approve of the incautious keeping of allegedly seized narcotics even as the prosecution averred separating them in different pockets as a supposed measure to preserve integrity. With greater reason should this Court, in this case, reject PO2 Hechanova's claim. The bare assertion that PO2 Hechanova had possession of the items, without so much as a simulation of safekeeping measures such as the segregation in *Dela Cruz*, is a blatant gap in the chain of custody. The dearth of specific and detailed descriptions of how the allegedly seized items had been preserved while in transit amounts to a broken, unreliable chain of custody. This is fatal to the prosecution's case.<sup>38</sup> (Citations omitted)

Third, at the point when a required witness was present, it was only during the preparation and signing of the Inventory Receipt, not during the actual inventory itself. Even then, only Barangay Chair Cruz was present.<sup>39</sup> There were no representatives from the media and the Department of Justice.

On occasion, exceptions to Section 21's chain of custody requirements may be entertained. For exceptions to be appreciated, however, "the prosecution bears the burden of first acknowledging procedural lapses and specifically plead justifiable grounds for these lapses. It must also plead specific safety measures taken in view of the deviations made from the chain of custody requirements."<sup>40</sup> Particularly with respect to required witnesses who are absent, "it must be alleged and demonstrated that earnest efforts were undertaken to secure their attendance."<sup>41</sup> As this Court has explained:

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

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives,

<sup>38</sup> *People v. Sultan*, G.R. No. 225210, August 7, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

<sup>39</sup> *Rollo*, p. 6.

<sup>40</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division] citing *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

<sup>41</sup> *Id.*

given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.<sup>42</sup> (Citations omitted)

The police officers here have never bothered to even offer any justifiable grounds for the absence of two (2) of the required witnesses. It also does not escape this Court’s attention that the sole witness present appeared to have merely signed the Inventory Receipt instead of actually observing the conduct of inventory.

The Regional Trial Court and the Court of Appeals erred in relying on the presumption of regularity in the police officers’ performance of official duty to justify accused-appellants’ conviction. This presumption cannot stand when irregularities are manifest.<sup>43</sup> In *People v. Kamad*:<sup>44</sup>

The presumption [of regularity in the performance of official duty] applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.<sup>45</sup>

The plethora of errors concerning chain of custody requirements casts serious doubt on the identity and integrity of the narcotics—the *corpus delicti*—at the core of this case. For the prosecution’s failure to establish an element of the offense charged beyond reasonable doubt, this Court is constrained to acquit accused-appellants.

<sup>42</sup> *People v. Lim*, G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

<sup>43</sup> *People v. De Guzman*, 299 Phil. 849, 854 (2014) [Per J. Puno, Second Division].

<sup>44</sup> 624 Phil. 289 (2010) [Per J. Brion, Second Division].

<sup>45</sup> *Id.* at 311.

**WHEREFORE**, the Court of Appeals' April 17, 2018 Decision in CA-G.R. CR-HC No. 08221 is **REVERSED** and **SET ASIDE**. Accused-appellants Mark Arbitrario y Crisolo alias "Mark" and Armando Garcia y Vecta alias "Dong" are **ACQUITTED** of illegal sale of dangerous drugs and are ordered **RELEASED** from confinement unless they are being held for some other legal grounds.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Resolution. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

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

**SO ORDERED.**" (*Zalameda, J., no part, for having concurred in the assailed Court of Appeals decision; Perlas-Bernabe, J., designated additional Member per Raffle dated November 25, 2019; Carandang, J., on special leave.*)

Very truly yours,

*Misael D. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court

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COURT OF APPEALS  
CA G.R. CR HC No. 08221  
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OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 64, 1200 Makati City  
(Criminal Case No. 14-188)