



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 August 2021** which reads as follows:*

“G.R. 245928 (*People of the Philippines v. Melchor Aseñero*). - On appeal¹ is the October 19, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 01682-MIN which affirmed the January 17, 2017 Decision³ of the Regional Trial Court (RTC), Branch 4 of Panabo City, Davao del Norte, in Criminal Case Nos. 377-2012 and 378-2012. The RTC found accused-appellant Melchor Aseñero (accused-appellant/Aseñero) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

Version of the Prosecution:

On August 29, 2012, around 3 P.M. at the Peñaplata Police Station, Island Garden City of Samal (IGACOS), a confidential informant (CI) reported that accused-appellant is engaged in illegal trade of dangerous drugs.⁴

The Chief of Police, Police Superintendent Marlon H. Pinote (PSupt. Pinote), immediately formed a buy-bust operation team composed of the following: Police Senior Inspector Lito Impas (PSI Impas), Senior Police Officer Arturo Lee, Senior Police Officer 1 Kenneth John Flores (SPO1 Flores), SPO1 Ric Susvilla, and Police Officer Edmund V. Siarot (PO Siarot), who will act as the *poseur*-buyer. During the briefing, PO Siarot marked a ₱1,000.00 bill to be used as buy-bust money.⁵ The team coordinated with the Philippine Drug Enforcement Agency (PDEA) XI Davao del Norte as evidenced by a Certificate of Coordination.⁶ To signal the consummation of the transaction, the team

¹ *Rollo*, pp. 21-22.

² *Id.* at 5-20; penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong.

³ *CA rollo*, pp. 42-57; penned by Judge Dorothy P. Montejo-Gonzaga.

⁴ *Rollo*, p. 7.

⁵ *Records*, p. 11.

⁶ *Id.* at 26.

agreed that they will wait for PO Siarot to remove his cap.⁷

Afterwards, the entrapment team proceeded to the target area, specifically Purok 5, Sitio Kabukiran, Barangay Miranda, Babak District, IGACOS. Upon reaching the vicinity around 3:50 P.M.,⁸ the team members positioned themselves and waited. Subsequently, the CI informed them that accused-appellant is arriving on board a red Honda XRM motorcycle.⁹

When Aseñero arrived, the CI introduced PO Siarot as the buyer. After accused-appellant asked how much was needed, PO Siarot replied that he wanted items worth ₱1,000.00. Thereafter, accused-appellant drove slowly and parked a few meters away, while the CI and PO Siarot followed him. Aseñero alighted from the motorcycle and retrieved from the utility box a pack wrapped in newspaper and handed it over to PO Siarot. After inspection, PO Siarot gave the marked money to accused-appellant who in turn immediately kept it inside his right pocket. PO Siarot executed the pre-arranged signal so the team rushed to arrest accused-appellant.¹⁰ They cuffed and frisked him to ensure that he did not conceal any weapon.¹¹

When a representative from the Department of Justice (DOJ), Patricio Colinares (Colinares),¹² *Barangay* Captain Maynard Galutira (Galutira), and *Barangay Kagawad* Manuel Pichon III (Pichon)¹³ arrived, the police officers conducted the search and seizure on accused-appellant. The inventory, marking, tagging and photographing¹⁴ were completed around 6:30 P.M.¹⁵ The entrapment team seized the following items: a) a wrapped newspaper; b) four (4) packs of marijuana fruiting tops wrapped with elementary paper; c) one (1) small pack of dried fruiting marijuana wrapped with elementary paper; d) two (2) ₱500.00 bills and the marked ₱1,000.00 bill; and e) two (2) ₱100.00 bills as well as three (3) ₱50.00 bills. They also recovered two (2) boxes wrapped with newspaper containing dried marijuana fruiting tops from the motorcycle's utility box.¹⁶

PO Siarot prepared and signed the following documents evidencing the inventory which were also signed by Colinares, *Barangay* Captain Galutira and *Barangay Kagawad* Pichon as witnesses, to wit: 1) Receipt/Inventory of Property Seized¹⁷ for one (1) pack of marijuana fruiting tops wrapped with newspaper and sealed with packaging tape as well as the marked ₱1,000.00 bill, both subjects of the buy-bust sale; 2) Receipt/Inventory of Property Seized¹⁸ for

⁷ *Rollo*, p. 7.

⁸ *CA rollo*, p. 44.

⁹ *Rollo*, p. 7.

¹⁰ *Id.* at 7.

¹¹ *CA rollo*, p. 44.

¹² *Records*, pp. 12, 16; TSN, March 14, 2013, p. 12.

¹³ *Id.* at 12, 16; TSN, February 13, 2014, p. 8.

¹⁴ *Records*, pp. 27-34.

¹⁵ *CA rollo*, p. 44.

¹⁶ *Rollo*, p. 8.

¹⁷ *Records*, pp. 18-19.

¹⁸ *Id.* at 104-105.

one (1) pack of marijuana fruiting tops wrapped with newspaper and sealed with packaging tape as well as one (1) small pack of marijuana fruiting tops wrapped with newspaper and sealed with packaging tape; 3) Receipt/Inventory of Property Seized¹⁹ for five (5) packs of marijuana fruiting tops wrapped with elementary writing paper and three (3) sheets of improvised cigarette rolling paper with tag; 4) Receipt/Inventory of Property Seized²⁰ for three (3) ₱50.00 bills, one (1) piece of key, and one (1) match box; and 5) Receipt/Inventory of Property Seized²¹ for one (1) motorcycle, two (2) ₱500.00 bills, and two (2) ₱100.00 bills.

After conducting the inventory at the crime scene, they proceeded to the police station where the team members prepared the other necessary documents. PO Siarot turned over the confiscated items to the team investigator, SPO1 Kenneth John Flores.²² The team also requested²³ for the examination of the seized items²⁴ and accused-appellant's urine sample.²⁵ The specimens were then turned over to SPO1 Michael Allera (SPO1 Allera), the Duty Desk Officer of the PNP Crime Laboratory, Davao City.²⁶

P/SInsp. April dela Rosa-Fabian (PSI Fabian), the Forensic Chemist of the Provincial Crime Laboratory Office of Tagum City, examined the samples of the specimens. The screening and confirmatory tests revealed that these tested positive for marijuana.²⁷ Accused-appellant's urine sample likewise tested positive for THC metabolite (marijuana) and methamphetamine hydrochloride (*shabu*).²⁸ During her testimony, PSI Fabian confirmed that she received the requests and specimens from SPO1 Allera.²⁹ She claimed that after completing the tests, she surrendered the confiscated items to the Evidence Custodian at the time, SPO2 Antonio Alcozar (SPO2 Alcozar).³⁰ After SPO2 Alcozar retired, she succeeded him as the Acting Evidence Custodian. PSI Fabian averred that the seized items were kept in the Evidence Room before these were turned over to the trial court and that she was the only one who had access to it.³¹ Additionally, she identified the Chain of Custody Forms.³²

During his testimony, PSI Impas confirmed that he was the team leader and narrated the events as presented by the prosecution.³³ He stated that PO

¹⁹ Id.

²⁰ Id. at 110-111.

²¹ Id. at 108-109.

²² Id. at 25; Turn-Over of Confiscated/Seized Evidence.

²³ The requests were signed by PSupt. Pinote.

²⁴ Records, p. 20; Request for Laboratory Examination of subject of the buy-bust sale; *records*, p. 20; records, pp. 112-113; Request for Laboratory Examination of the other seized dangerous drugs.

²⁵ Id. at 23; Request for Urine Test.

²⁶ *Rollo*, p. 8.

²⁷ Records, pp. 21, 114; Chemistry Report Nos. D-347-12, D-348-12.

²⁸ Id. at 22; Chemistry Report No. DT-399-12 (August 30, 2012); id. at 258; Chemistry Report No. DT-399A-12 (September 7, 2012).

²⁹ TSN, November 14, 2013, pp. 4-6.

³⁰ Id. at 7, 9.

³¹ Id. at 10.

³² *Rollo*, p. 8; *records*, pp. 256-257, 303-304, 391-392, 393-394; TSN, November 14, 2013, p. 7.

³³ TSN, March 14, 2013, pp. 5-12.

Siarot had possession of the seized items from the crime scene until they reached the police station,³⁴ where these were presented to the Duty Desk Officer for recording.³⁵ During his re-direct examination, PSI Impas asserted that the CI informed them that there was a transaction prior to the buy-bust operation.³⁶

SPO1 Flores testified that he was designated as the investigator and recounted the prosecution's version of the incident.³⁷ He asserted that the DOJ and *barangay* representatives were present during the searching, marking, tagging, inventory, and photographing at the crime scene.³⁸ He emphasized that he received the seized items from PO Siarot and subsequently turned it over to SPO1 Allera of the Crime Laboratory.³⁹ On cross-examination, however, SPO1 Flores averred that they did not conduct another search anymore when the representatives from the DOJ and the *barangay* arrived.⁴⁰

Similarly, PO Siarot narrated the details as alleged by the prosecution.⁴¹ He maintained that he held possession of the items from the seizure until he showed the items to the Duty Desk Officer at the police station.⁴² He emphasized that he only presented the seized items to the Duty Desk Officer for purposes of the blotter but did not turn over the same to the latter. Instead, he confirmed turning over the seized items to the investigator, SPO1 Flores.⁴³ During his cross-examination, PO Siarot asserted that the representatives from the DOJ and the *barangay* were already present before he conducted the search on accused-appellant.⁴⁴

Barangay Captain Galutira testified that he, along with *Barangay Kagawad* Pichon and Colinares, witnessed the conduct of the inventory. Likewise, he signed the documents evidencing the inventory and identified the photographs which were taken at the scene. He admitted, however, that he was not yet around when the search on accused-appellant and his motorcycle were conducted⁴⁵ and that Colinares as well as *Barangay Kagawad* Pichon arrived ahead of him. Even so, he asserted that *Barangay Kagawad* Pichon witnessed the search because he asked the latter about it.⁴⁶ On cross-examination, *Barangay* Captain Galutira stated that he arrived past 5:00 P.M. and was informed that the entrapment happened around 3:30 P.M.⁴⁷

³⁴ TSN, April 4, 2013, pp. 11-12.

³⁵ *Id.* at 12.

³⁶ *Id.* at 13.

³⁷ TSN, February 13, 2014, pp. 6-9; August 14, 2014, pp. 2-5.

³⁸ TSN, August 14, 2014, p. 3.

³⁹ *Id.* at 5.

⁴⁰ TSN, April 16, 2015, p. 6.

⁴¹ TSN, June 4, 2015, pp. 4-14; September 3, 2015, pp. 9-11.

⁴² TSN, September 3, 2015, p. 9.

⁴³ *Id.* at 10.

⁴⁴ *Id.* at 15.

⁴⁵ TSN, November 19, 2015, pp. 4-5.

⁴⁶ *Id.* at 5-6.

⁴⁷ *CA rollo*, pp. 50-51.

Version of the Defense:

Accused-appellant alleged that he owned a *sari-sari* store and engaged in the transportation of passengers *via* his motorcycle. He claimed that on the day of the incident, while traversing his usual route and passing by Sitio Kabukiran, Barangay Miranda, Babak District, IGACOS, five (5) men flagged him down. He stopped his motorcycle as he thought that they were prospective passengers. To his surprise, three (3) of the men in civilian clothing pointed their guns at him. He initially thought that they wanted to rob him until they declared that he was being arrested and that they were looking for a firearm. The men handcuffed and frisked him, and then took the money he kept in his pocket. Afterwards, they made him turn his back so that he could no longer see them.⁴⁸

After a while, the men made him turn around. He saw them placing a piece of paper on the ground and subsequently writing something on it. He similarly noticed the presence of *barangay* officials who were asked to sign a document. Accused-appellant admitted that he was informed that the charge was related to drugs. He saw the drugs in the area because these were opened before he was brought to the police station.⁴⁹

During cross-examination, accused-appellant conceded seeing marijuana before (*via* television) but denied using the drug. Relevantly, he admitted to using *shabu* occasionally.⁵⁰ Yet, he also asserted that he only used *shabu* once because of a friend's influence but denied selling drugs.⁵¹ Aseñero likewise averred that he did not have prior acquaintance with the five (5) police officers.⁵²

On August 31, 2012, two separate Informations⁵³ were filed charging accused-appellant with violating Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

Criminal Case No. 377-2012 (Illegal Sale):

That on or about August 29, 2012, in the Island Garden City of Samal, Davao Del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously engage in the sale and trading of suspected dried marijuana leaves with a total weight of 58.7 grams with poseur-buyer PO2 Edmund Siarot, which upon qualitative laboratory examination, was determined to be positive for marijuana, a dangerous drug.

CONTRARY TO LAW.⁵⁴

⁴⁸ *Rollo*, p. 9; TSN, August 18, 2016, pp. 4-6.

⁴⁹ *Id.*; *id.* at 6-7.

⁵⁰ *Id.*; *id.* at 8.

⁵¹ TSN, August 18, 2016, pp. 7-9.

⁵² *Rollo*, p. 9; TSN, August 18, 2016, p. 10.

⁵³ Records; pp. 4 and 86.

⁵⁴ *Id.* at 4...

Criminal Case No. 378-2012 (Illegal Possession):

That on or about August 29, 2012, in the Island Garden City of Samal, Davao Del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while not being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and custody, prohibited substance consisting of dried marijuana leaves weighing 61.3 grams.

CONTRARY TO LAW.⁵⁵

During his arraignment, Melchor entered a plea of “not guilty”⁵⁶ on both charges.

At the pre-trial, the parties stipulated on the following: “a) that the accused was riding a red Honda XRM motorcycle at the time of his arrest; b) the accused, while driving his motorcycle, was flagged down by [ununiformed] men; c) the accused was riding alone with his motorcycle; and d) the accused was arrested along the highway of Sitio Kabukiran, Barangay Miranda, Babak Dist., Island Garden City of Samal.”⁵⁷ Afterwards, the cases were consolidated and tried jointly.⁵⁸

During trial, the parties stipulated on the testimony of SPO1 Allera as follows: “a) that he was the one who received Exhibit ‘M’ for Crim. Case No. CrC 377-2012, with marking EVS-1 from Officer Flores, as reflected in the letter-request marked as Exhibit ‘D,’ and b) that he was the one who received Exhibits ‘M’ to ‘M-6,’ for Crim. Case No. 378-2012, from Officer Flores with marking EVS-2, 3, 4, 5, 9, 16 and 17. After receiving the said items, the witness [SPO1 Allera] turned them over to PSI April Fabian for examination as shown in the Chain of Custody Form marked as Exhibit ‘O.’”⁵⁹

Ruling of the Regional Trial Court:

In its Decision⁶⁰ dated January 17, 2017, the RTC found accused-appellant guilty as charged. It ruled that accused-appellant’s defenses of denial and frame-up should fail.⁶¹ As regards the chain of custody, the trial court held that:

[A]ll persons who were able to take custody of the drugs were presented in court. As the Chain of Custody forms show, the court is guided by the chain which started with Officer Siarot being the *poseur-buyer* who marked the drug items at the scene of the crime, then to Officer Flores who then also delivered the items to Officer Fabian who was the Chemist until the items were eventually exhibited in court. While Officer Alcozar was not able to take the stand because he had

⁵⁵ Id. at 86.

⁵⁶ Id. at 60-62.

⁵⁷ Id. at 74.

⁵⁸ CA rollo, p. 43.

⁵⁹ Records, p. 325.

⁶⁰ CA rollo, pp. 42-57.

⁶¹ Id. at 52-53.

already retired, the fact of the custody of the items from him to the chemist who was also designated thereafter as the acting evidence custodian was clearly explained by the latter herself [PSI Fabian]. In short, the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer until the final custodian.⁶²

The trial court noted that the police officers conducted the inventory in the presence of the DOJ representative, the *Barangay* Captain and the *Barangay Kagawad*. Such fact was proven through the photographs as well as the Receipt/Inventory of Property Seized Forms.⁶³ Moreover, it held that there is a presumption that the police officers regularly performed their duties since accused-appellant failed to establish that they had any ill motive against him.⁶⁴ The dispositive portion of the RTC's Decision reads:

WHEREFORE, premises considered, the court finds xxx accused MELCHOR ASEÑERO **GUILTY** beyond reasonable doubt for Violations of R.A. No. 9165 and imposes upon him the following:

1. In Criminal Case No. 377-2012 for Violation of Section 5, Article II, R.A. No. 9165, the penalty of Life Imprisonment and a fine of [P500,000.00]; and

2. In Criminal Case No. 378-2012 for Violation of Section 11, Article II, R.A. No. 9165, the indeterminate penalty of Six (6) Years and One (1) Day as minimum to Twelve (12) Years and a fine of [P300,000.00] without subsidiary imprisonment.

The foregoing penalties of imprisonment in both cases shall be served by the accused simultaneously.

Finally, the eight (8) packs of marijuana and the remaining non-drug items, other than the monies, are hereby confiscated in favor of the government and shall be turned-over by the Clerk of Court to the PDEA for their proper disposition. As regards the genuine buy-bust money, the same is escheated in favor of the State and shall be immediately remitted by the Clerk of Court to the appropriate government account. The remaining amount of P1,300.00 shall be returned to the accused.

SO ORDERED.⁶⁵

Aggrieved, accused-appellant appealed⁶⁶ to the CA and assigned this sole error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND

⁶² Id. at 55.

⁶³ Id.

⁶⁴ Id. at 56.

⁶⁵ Id. at 56-57.

⁶⁶ Id. at 15-16.

REASONABLE DOUBT.⁶⁷

Accused-appellant argued that the chain of custody was broken as the Duty Desk Officer at the police station who supposedly recorded the seized items was not named. The said officer was likewise not presented in court, revealing a gap in the chain of custody.⁶⁸ Additionally, the prosecution did not present SPO2 Alcozar, the evidence custodian who had the seized items for safekeeping at the time, although PSI Fabian relieved him after his (SPO2 Alcozar's) retirement. SPO2 Alcozar's testimony would have been informative as he could testify to the integrity of the items given that there is a huge number of drugs kept in the Evidence Room.⁶⁹

He asserted that the *corpus delicti* was not proven since the prosecution failed to show that the drugs alleged in the Informations are the same ones presented in court. He asserted that PO Siarot, during his testimony, was uncertain about which of the dried marijuana leaves was sold to him or which were the ones taken from the pockets of accused-appellant.⁷⁰

Aseñero maintained that there was no buy-bust operation.⁷¹ He pointed out that only *Barangay* Captain Galutira testified while *Barangay Kagawad* Pichon and Colinares did not. Thus, they could not be subjected to cross-examination. Additionally, *Barangay* Captain Galutira denied witnessing the search of the accused-appellant and stated that the seized items were already placed in a white paper on the grass.⁷² He insisted that he must be acquitted as there is no moral certainty of his guilt, and that he should be presumed innocent unless proven otherwise.⁷³

On the other hand, the People, through the Office of the Solicitor General, contended that all the elements of Illegal Sale and Possession of Dangerous Drugs were proven beyond reasonable doubt. Accused-appellant's arrest was pursuant to a valid and well-documented buy-bust operation.⁷⁴

It averred that the prosecution established the links in the chain of custody. There was substantial compliance with the legal requirements on the handling of the confiscated items, and that the integrity and evidentiary value have not been diminished.⁷⁵ Furthermore, the prosecution has the prerogative who to present as witnesses and that the documentary evidence exhibited the unbroken chain of custody.⁷⁶ The law does not require that the witnesses needed to be present during the search of the accused. Lastly, it stated that the

⁶⁷ Id. at 24.

⁶⁸ Id. at 31-32.

⁶⁹ Id. at 32-34.

⁷⁰ Id. at 34-35.

⁷¹ Id. at 35.

⁷² Id. at 36-38.

⁷³ Id. at 38-39.

⁷⁴ Id. at 71-73.

⁷⁵ Id. at 73-74.

⁷⁶ Id. at 74-75.

presumption of regularity in the performance of official duties remained un rebutted.⁷⁷

Ruling of the Court of Appeals:

The CA, in its assailed October 19, 2018 Decision,⁷⁸ held that the chain of custody of seized items was duly complied with, as the links were not broken.⁷⁹ Although the Duty Desk Officer who received and recorded the seized items, as well as SPO2 Alcozar (evidence custodian who later retired), was not presented in court, such is not a fatal error since the prosecution has the discretion on how it will present its case.⁸⁰ The integrity of the evidence is presumed to have been preserved unless there was bad faith or proof that the evidence was tampered with. If so, such would overturn the presumption of regularity in the performance of official duties by the police.⁸¹ It underlined that the *corpus delicti* was proven.⁸²

The appellate court ruled that accused-appellant failed to overcome the presumption of regularity of the conduct of the buy-bust operation.⁸³ It found that the presence of three (3) witnesses during the inventory safeguarded the seized evidence from tampering. Even if *Barangay Kagawad* Pichon and Colinares were not presented in court; it did not taint the validity of the entrapment operation.⁸⁴

Hence, the CA held that the prosecution established all the elements of both Illegal Sale and Possession of dangerous drugs.⁸⁵ Moreover, it found that accused-appellant's uncorroborated denial is a weak defense and cannot prevail over the positive testimonies of the prosecution witnesses.⁸⁶ The appellate court affirmed the ruling of the RTC as follows:

WHEREFORE, the Decision dated January 17, 2017 of the Regional Trial Court, 11th Judicial Region, Branch 4, Panabo City, Davao del Norte in Criminal Case Nos. 377-2012 and 378-2012 finding accused-appellant Melchor Aseñero guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby AFFIRMED.

SO ORDERED.⁸⁷

Discontented, accused-appellant appealed⁸⁸ before this Court.

⁷⁷ Id. at 76.

⁷⁸ *Rollo*, pp. 5-20.

⁷⁹ Id. at 11-13.

⁸⁰ Id. at 13-14.

⁸¹ Id. at 14.

⁸² Id. at 14-15.

⁸³ Id. at 15-16.

⁸⁴ Id. at 17.

⁸⁵ Id. at 18-19.

⁸⁶ Id. at 19.

⁸⁷ Id. at 20.

⁸⁸ Id. at 21-22, 24.

Issue:

Whether accused-appellant is guilty beyond reasonable doubt of the crimes of Illegal Sale and Possession of prohibited drugs.

Our Ruling

The appeal has merit.

At the outset, it must be pointed out that the CA confirmed accused-appellant's supposed conviction for the sale and **use** (not possession) of dangerous drugs in its discussion. Nonetheless, the dispositive portion of the CA's assailed Decision affirmed his conviction for the sale and **possession** of dangerous drugs as charged in the Informations and as found by the RTC. On this score, the CA made a slight error.

In any case, "it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.⁸⁹ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."⁹⁰ Thence, it should be emphasized that proof beyond reasonable doubt⁹¹ is the quantum of proof required in criminal cases such as the case at bench. A departure from this standard justifies the acquittal of the accused-appellant.

Pursuant to Section 5, Article II of RA 9165, to successfully prosecute the Sale of Illegal Drugs, two requisites must be satisfied: "(a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment"⁹² Based on the prosecution's allegations, the elements appear to be present. During the entrapment operation, accused-appellant sold one (1) pack of marijuana to PO Siarot, the *poseur*-buyer. Accused-appellant's receipt of the ₱1,000.00 marked money consummated the illegal sale.

In the same way, Section 11, Article II of RA 9165 provides that for the successful prosecution of Illegal Possession of Dangerous Drugs, these conditions must be present: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug."⁹³ During the search on accused-appellant's person and his motorcycle, the police officers were supposedly able to retrieve more sachets and packs of marijuana

⁸⁹ *People v. Rivera*, G.R. No. 252886, March 15, 2021 citing *People v. Dahil*, 750 Phil. 212, 225 (2015).

⁹⁰ *Id.*, citing *People v. Comboy*, 782 Phil. 187, 196 (2016).

⁹¹ RULES OF COURT, Rule 133 § 2.

⁹² *People v. Rivera*, supra citing *People v. De Dios*, G.R. No. 243664, January 22, 2020.

⁹³ *Id.*

from him, even when he had no authority by law to possess those drugs. Based on this allegation, he had actual and constructive possession⁹⁴ of the said drugs.

Moreover, accused-appellant did not show that the police officers who conducted the entrapment harbored any ill motive against him. With this, the testimonies of the prosecution's witnesses should be given credence since there is a presumption that they regularly performed their official duties.⁹⁵ Yet, as the circumstances evidently demonstrated in this case, "[the police officers'] **failure to observe the proper procedure *without justifiable cause* effectively obliterates that presumption.**"⁹⁶

Unfortunately, the entrapment team did not strictly follow the established procedure regarding the seizure and custody of dangerous drugs which is found in Section 21 (1), Article II of RA 9165, viz.:

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

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

In view of this, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or

⁹⁴ See: *People v. Manalang*, G.R. No. 226153 (*Notice*), March 3, 2021 citing *People v. Magayon*, G.R. No. 238873, September 16, 2020.

“[P]ossession under the law includes not only actual possession but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.”

⁹⁵ *People v. Dungo*, G.R. No. 229720, August 19, 2019 citing *People v. De Guzman*, 630 Phil. 637, 655 (2010).

⁹⁶ *Id.*

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;⁹⁷ (Emphasis Ours).

Notably, the entrapment, arrest and seizure transpired on August 29, 2012. Thence, “[a]s part of the chain of custody procedure, RA 9165 requires that the physical inventory and photographing of the seized items be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as the required insulating witnesses, namely: (a) **if prior to the amendment of [Section 21, Article II of] RA 9165 by RA 10640**⁹⁸ [on July 15, 2014],⁹⁹ **a representative from the media AND the Department of Justice (DOJ), AND any elected public official x x x.** The law requires the presence of these witnesses primarily ‘to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.’”¹⁰⁰

In this case, three (3) representatives witnessed the inventory of the seized items at the place of arrest, *Barangay* Chairman Galutira, *Barangay Kagawad* Pichon and Colinares, the DOJ representative. The presence of a media representative, however, is noticeably absent.

In view of this, the prosecution must justify the buy-bust team’s non-compliance with the procedure founded on meritorious grounds, as long as the integrity and evidentiary value of the confiscated items were preserved. In other words, the prosecution must prove an unbroken chain of custody.

*People v. Lim*¹⁰¹ teaches that the presence of the three insulating witnesses during the physical inventory and photographing of the confiscated items is important. If there is any absence:

[I]t must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action [from] the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative

⁹⁷ *People v. Manansala*, G.R. No. 228825, July 28, 2020.

⁹⁸ An Act To Further the Anti-Drug Campaign of the Government, Amending For the Purpose Section 21 of Republic Act No. 9165, Otherwise Known As The “Comprehensive Dangerous Drugs Act of 2002.”

⁹⁹ Took effect on August 7, 2014; *Sayson v. People*, G.R. No. 249289 (*Resolution*), September 28, 2020.

¹⁰⁰ *Time v. People*, G.R. No. 254604 (*Notice*), March 15, 2021 citing *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

¹⁰¹ G.R. No. 231989, September 4, 2018.

and an elected public official within the period required under Article 125 of the Revised Penal Code prove[d] futile through no fault of the arresting officers, who face[d] the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.¹⁰²

The prosecution should prove that the police officers employed earnest efforts to secure the attendance of the key witnesses pursuant to Section 21, Article II of RA 9165. Hence,

x x x [I]t 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 [No.] 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for a ‘sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.’ Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**¹⁰³

In fine, “[j]urisprudence requires genuine and earnest efforts in contacting the insulating witnesses to justify deviation from the chain of custody rule. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable grounds for non-compliance.”¹⁰⁴ In the case at bench, the police officers did not even bother to explain the absence of a media representative. The records are bereft of any semblance of effort to secure the presence of a representative from the media. It should be noted that the buy-bust operation was planned. If the police officers had time to coordinate with the PDEA and secure the presence of the DOJ representative and the local elective officers, then why was a media representative left out?¹⁰⁵ Worse, the police officers did not give a justifiable ground in a sworn affidavit, “coupled with a statement on the steps they took to preserve the integrity of the seized

¹⁰² G.R. No. 231989, September 4, 2018; citations omitted.

¹⁰³ *Ramos v. People*, G.R. No. 233572, July 30, 2018.

¹⁰⁴ *Time v. People*, supra note 100, citing *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

¹⁰⁵ *Id.*

item” for the lack of media representative.¹⁰⁶

In this case, it seemed that calling in the representatives to witness the inventory was an afterthought. *Barangay* Captain Galutira did not clarify if he was informed beforehand about the planned buy-bust operation. Since *Barangay Kagawad* Pichon and Colinares did not testify, there is no basis to say that they had prior knowledge of the conduct of the entrapment operation.

To reiterate, this was an entrapment operation. “Police officers are given time to prepare for a buy-bust operation and make necessary arrangements beforehand, fully aware of the strict procedure they need to follow under Sec. 21, Art. II of R.A. No. 9165.”¹⁰⁷ The team members had time to plan even if they immediately conducted the operation after receiving the information from the CI. They received the tip around 3 P.M., conducted a short briefing, and arrived at the place of operation at 3:50 P.M. Notwithstanding the short span of time, they still had the opportunity and resources to contact the DOJ, the *barangay* officials and the PDEA (for coordination). Why then could they not contact any media representative? The operation happened in the afternoon so undoubtedly, members of the media can still be reached. It is highly suspect why the media representative was not mentioned at all. Clearly, earnest efforts were not made or at the least explained. “Also, considering the fact that the buy-bust operation was arranged and/or scheduled in advance, the police officers had sufficient time to secure the presence of the required witnesses.”¹⁰⁸

In addition to the prosecution’s failure to comply with the requirement as regards the insulating witnesses, there was as well as gap in the chain of custody.

In relation to this, “the chain of custody is divided into four (4) links: 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; 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.”¹⁰⁹

In this case, it appeared that there is an anomaly in the second link. Apparently, before the seized items were turned over by PO Siarot to SPO1 Flores (the investigating officer), the former presented it first to the unnamed Duty Desk Officer at the time. Although PO Siarot claimed that the said Duty Desk Officer only recorded the seized items, there was no assurance that these were not tampered during such time.

¹⁰⁶ *People v. Sanico*, G.R. No. 240431, July 7, 2020 citing *People v. Saragena*, 817 Phil. 117 (2017).

¹⁰⁷ *People v. Miraflor*, G.R. No. 233532 (*Notice*), March 15, 2021 citing *People v. Ramos*, G.R. No. 225325, August 28, 2019.

¹⁰⁸ *Id.*

¹⁰⁹ *People v. Rivera*, G.R. No. 252996, March 15, 2021 citing *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015).

With regard to the fourth link which “refers to the turnover and submission of the dangerous drugs from the forensic chemist to the court,”¹¹⁰ the forensic chemist must testify to the following details related to the handling and analysis of the seized drugs: “when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be.”¹¹¹

In this case, while PSI Fabian conducted the necessary tests on the seized items and testified about it, she still turned the items over to the evidence custodian at the time, SPO2 Alcozar, who then held custody of the same. Since SPO2 Alcozar did not testify (due to his retirement), it is not clear how the items were turned over to PSI Fabian again, who was subsequently appointed as the Acting Evidence Custodian. Hence, there is doubt if the specimens presented in court were the same ones which were purportedly retrieved from accused-appellant during the entrapment operation.

In order to preserve the identity, integrity, and evidentiary value of the seized items, every link in the chain of custody should be established. Any uncertainty with at least one of the links raises reasonable doubt that the items seized from the accused-appellant are not the same ones presented in court.¹¹²

To reiterate, the following individuals did not testify: 1) *Barangay Kagawad* Pichon; 2) Colinares, the DOJ representative; and 3) SPO2 Alcozar, the one who supposedly kept the items in the Evidence Room and turned it over to PSI Fabian after his retirement. If the testimonies of these individuals were offered, some of the lapses of the whole operation, as well as the custody of the seized items, could have been explained. Regrettably, the prosecution decided that their testimonies were not crucial to the case.

In light of the foregoing discussion, although it appeared that the elements of the illegal sale and possession of dangerous drugs were present, the police officers' lapses caused uncertainty on the integrity and evidentiary value of the confiscated items. Thus, the prosecution failed to show proof beyond reasonable doubt to secure a conviction. Given that the chain of custody was broken resulting in the questionable integrity and evidentiary value of the seized items, the Court is left with no other alternative but to reverse the conviction of accused-appellant for both crimes based on reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The assailed October 19, 2018 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 01682-MIN is **REVERSED and SET ASIDE**. Accused-appellant Melchor Aseñero is **ACQUITTED** for both crimes for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from

¹¹⁰ *Time v. People*, supra note 100, citing *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

¹¹¹ *Id.*, citing Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

¹¹² *People v. Rivera*, supra note 109, citing *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

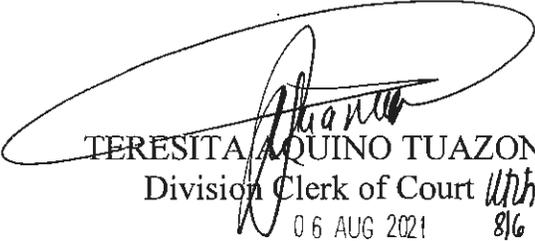
detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. Furthermore, the Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 06 AUG 2021 816

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THE SUPERINTENDENT (reg)
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 Panabo City, Davao del Norte

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 4
 Panabo City, Davao del Norte
 (Crim. Case Nos. 377-2012 & 378-2012)

COURT OF APPEALS (reg)
 Cagayan de Oro City
 CA-G.R. CR-HC No. 01682-MIN

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