



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2022** which reads as follows:*

**“G.R. No. 243632 (People of the Philippines, Plaintiff-Appellee v. Jovilyn Dela Cruz y Dominguez, Accused-Appellant).**

This is an appeal seeking to reverse and set aside the December 20, 2016 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07583, which affirmed the September 22, 2014 Decision<sup>2</sup> of the Regional Trial Court of Olongapo City, Branch 72 (RTC), in Criminal Case Nos. 48-2011 and 49-2011. The RTC found Jovilyn Dela Cruz y Dominguez (*accused-appellant*) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the “*Comprehensive Dangerous Drugs Act of 2002.*”

*Antecedents*

Accused-appellant was charged with violation of Secs. 5 and 11, Art. II of R.A. No. 9165 under two (2) separate Informations, both dated January 31, 2011:

**Criminal Case No. 49-2011  
(Violation of Section 5, Article II, R.A. No. 9165)**

That on or about the twenty-seventh (27<sup>th</sup>) day of January 2011, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly deliver and sell to another person

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<sup>1</sup> *Rollo*, pp. 2-15; penned by Associate Justice Jhosep Y. Lopez (now a Member of this Court) with Associate Justices Leoncia R. Dimagiba and Edwin D. Sorongon, concurring.

<sup>2</sup> *CA rollo*, pp. 14-30; penned by Presiding Judge Richard A. Paradeza.

Php100.00 (SN-FP926828) worth of marijuana fruiting tops, which is a dangerous drug weighing One Gram and Five Hundred Ninety Two Thousandths of a gram (1.592) placed in one (1) heat[-]sealed transparent plastic sachet.

CONTRARY TO LAW.<sup>3</sup>

**Criminal Case No. 48-2011  
(Violation of Section 11, Article II, R.A. No. 9165)**

That on or about the twenty-seventh (27<sup>th</sup>) day of January 2011, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in her effective possession and control One Gram and Five [H]undred [Ninety] [T]hree Thousandths of a gram (1.593) of marijuana fruiting tops in one (1) heat-sealed transparent plastic sachet, said accused not having the corresponding license or prescription to possess said dangerous drugs.

CONTRARY TO LAW.<sup>4</sup>

During her arraignment on March 17, 2011, accused-appellant pleaded “not guilty” to the crimes charged. After pre-trial was terminated, trial on the merits ensued.<sup>5</sup>

The CA summarized the evidence for the prosecution and the defense as follows:

**Evidence for the Prosecution**

As part of its testimonial evidence, the prosecution adopted the testimonies of PO2 David Servius Domingo and PO1 Ferdinand Mataverde during the hearing on the application for bail. Their salient testimonies established the following:

On 27 January 2011, at around 1:00 o'clock in the morning, Captain Julius Javier (“**Capt[.] Javier**”) of the Olongapo City Anti-Illegal Drugs Unit (“**CAIDSOT**”) received a report from a confidential informant about the alleged illegal sale of drugs of a certain Jovilyn dela Cruz also known as Jovy Santos at Foster St., New Banicain, Olongapo City. Acting on the said report, Capt. Javier immediately briefed the members of the CAIDSOT and formed a buy-bust team. PO2 David Sergius Domingo (“**PO2 Domingo**”) was designated as the poseur-buyer while the rest of the team was assigned as back-up officers. Thereafter, Capt. Javier gave PO2 Domingo a One Hundred Peso (P100.00) bill as buy-bust money which the latter pre-marked with his initials “DSD”.

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<sup>3</sup> Id. at 15.

<sup>4</sup> Id. at 14-15.

<sup>5</sup> *Rollo*, p. 3.

After coordinating with the Philippine Drug Enforcement Agency (“**PDEA**”), the buy-bust team together with the confidential informant proceeded to the target area. Upon arrival thereat at around 3:00 o’clock in the morning, PO2 Domingo and the confidential informant immediately separated from the rest of the team. Not long thereafter, accused-appellant appeared from the parked vehicles and approached the confidential informant. After exchanging pleasantries, the confidential informant introduced accused-appellant to PO2 Domingo. Accused-appellant then asked PO2 Domingo whether he will buy “stuff”. When PO2 Domingo answered in the affirmative, accused-appellant handed to him a transparent plastic sachet suspected to be containing dried marijuana leaves. In exchange, PO2 Domingo gave the pre-marked P100.00 bill to accused-appellant. At this juncture, PO2 Domingo grabbed the hands of accused-appellant as pre-arranged signal that the sale has been consummated.

Immediately, the rest of the buy-bust team arrived at the crime scene. PO1 Ferdinand Mataverde (“**PO1 Mataverde**”) informed accused-appellant her constitutional rights and placed her under arrest. Subsequently, PO1 Mataverde instructed accused-appellant to empty her pocket. As a result, accused-appellant brought out the P100.00 bill buy-bust money and another transparent plastic sachet suspected to be containing dried marijuana leaves.

Thereafter, a man later identified as the boyfriend of accused-appellant, who was armed with a samurai sword arrived at the crime scene and created a commotion. However, PO1 Mataverde immediately pacified and arrested him. Soon thereafter, the man was charged for Violation of B.P. No. 6.

Subsequently, the transparent plastic sachet suspected to be containing dried marijuana leaves object of the sale between PO2 Domingo and accused-appellant was marked by PO2 Domingo with his initials, “DSD” at the place of arrest and turned over the same to police investigator SPO2 Allan delos Reyes (“**SPO2 delos Reyes**”). On the other hand, PO1 Mataverde marked the transparent plastic sachet suspected to be containing dried marijuana leaves which he recovered from accused-appellant’s pocket with his initials, “FM”.

Thereafter, the team proceeded to the Police Station where PO1 Mataverde turned over the transparent plastic sachet suspected to be containing dried marijuana leaves which he recovered from accused-appellant to SPO2 delos Reyes. Subsequently, SPO2 delos Reyes conducted an inventory and took pictures of the seized items in the presence of [Department of Justice] representative, Jaime P. Navarro. SPO2 delos Reyes likewise prepared the request for laboratory examination which PO2 Domingo personally brought together with the seized items to

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the crime laboratory. Forensic testing subsequently confirmed that the two (2) transparent plastic sachets seized from accused-appellant are indeed marijuana, a dangerous drug.

When these two (2) transparent plastic sachets containing dried marijuana leaves were presented in court, the prosecution witnesses identified that these were the same items seized from accused-appellant during the operation.

#### Evidence for the Defense

For its part, the defense presented accused-appellant Jovilyn dela Cruz, Maribeth Ugto and Melody dela Cruz as witnesses.

Accused-appellant testified that on 26 January 2011 at around midnight, she was at a nearby house of her sister-in-law having conversation with her aunt who was visiting from Sta. Rita, Olongapo City. She went back to her house at around 1:00 o'clock in the morning when she heard her husband's friend, Boy Pinlac ("Boy") knocking on her front door. She claimed that Boy needed money for his brother's hospitalization. Feeling sorry, she invited him to go inside her house so that she could lend him the money.

As she was about to enter her bedroom, someone knocked on the front door. When she opened the same, she was surprised to see six (6) armed men in civilian clothes looking for Boy. Upon entering, the men immediately handcuffed Boy and conducted a search around the house. She asked them if they have a search warrant and was told that they do not have one, as it is no longer the practice. They took her cellular phone, her Ipod, her children's cellular phones and a samurai placed inside the dresser.

Subsequently, she and Boy were boarded in the same car. However, before leaving, she was transferred to another car. On their way to the police station or somewhere in Ulo ng Apo, she saw Boy's car went towards Kalaklan.

Upon reaching the police station, SPO2 delos Reyes and police officer Sherwin Tan asked her for Fifty Thousand Pesos (P50,000.00) so that she could go home. Unable to give the same, she was detained. She asked the reason therefor, but she received no reply. Instead, she was made to point to some object on top of the table.

To corroborate her testimony, **Maribeth V. Ugto** testified that on 26 January 2011 at around midnight, she was with some neighbors, sitting in front of her house across accused-appellant's house. She was waiting for jeepney drivers who rented her aunt's jeepneys to receive the boundary. While waiting, she saw a man knock on accused-appellant's front door. She then saw accused-appellant came [*sic*] out of her sister-in-law's house to talk to the man, after which both of them entered accused-appellant's house.

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Thereafter, two (2) cars arrived and several armed men in civilian clothes went directly to accused-appellant's house. After a few minutes, the armed men came out of the house together with accused-appellant and another male person.

On the other hand, **Melody dela Cruz**, sister of accused-appellant testified that on 26 January 2011 at around midnight, she was inside her house, when she heard a commotion. Consequently, she went out of the house and saw accused-appellant and a certain Boylet being carried out of the house by several armed men in civilian clothes. When she went near them, accused-appellant told her to look after the children. She denied that accused-appellant was engaged in the illegal sale of drugs.<sup>6</sup>

### *The RTC Ruling*

In its September 22, 2014 Decision, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes charged. The dispositive portion of the decision reads:

**IN THE LIGHT OF THE FOREGOING**, the Court finds the accused **JOVILYN DELA CRUZ y DOMINGUEZ GUILTY** beyond reasonable doubt for Violation of Sections 5 and 11 Article II of Republic Act [No.] 9165, and hereby sentences her to serve an imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay the fine of three hundred thousand (Php300,000.000) pesos without any subsidiary imprisonment in case of insolvency in Criminal Case No. 48-2011, and the penalty of life imprisonment and to pay the fine of five hundred thousand (Php500,000.00) pesos in Criminal Case No. 49-2011.

The One Gram and Five [H]undred [Ninety] [T]hree Thousandths of a gram (1.593) of marijuana fruiting tops in one (1) heat-sealed transparent plastic sachet under Criminal Case No. 48-11 and the One Gram and Five Hundred Ninety Two [T]housandths of a gram (1.592) placed in one (1) heat sealed transparent plastic sachet under Criminal Case No. 49-11 are ordered confiscated and forfeited in favor of the government and forwarded to the Philippine Drug Enforcement Agency for proper disposition pursuant to Section 20 in relation to Section 21 of Republic Act [No.] 9165.

**SO ORDERED.**<sup>7</sup>

The RTC held that the prosecution was able to present a complete picture detailing the buy-bust operation conducted by the operatives of CAIDSOT against accused-appellant, beginning from

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<sup>6</sup> Id. at 4-7.

<sup>7</sup> CA rollo, p. 30.

the receipt of the information relative to the illegal drug activity, the formation of the team that would carry out the buy-bust operation, the coordination with the PDEA, the manner in which the operation was carried out, the consummation of the sale between accused-appellant and the poseur-buyer, and the discovery of the other sachet of marijuana fruiting tops from accused-appellant. In view of the foregoing, it rejected the defense of frame-up interposed by accused-appellant.<sup>8</sup>

Dissatisfied, accused-appellant filed an appeal with the CA.

### *The CA Ruling*

In its December 20, 2016 Decision, the CA denied the appeal and affirmed the RTC decision. The *fallo* of the CA decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The Decision dated 22 September 2014 of the Regional Trial Court of Olongapo City, Branch 72 in Criminal Case Nos. 48-2011 and 49-2011 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>9</sup>

The CA held that all the elements for violation of Secs. 5 and 11, Art. II of R.A. No. 9165 were established by the prosecution through the detailed testimony of its witnesses. It declared that noncompliance with the strict directives of Sec. 21 of R.A. No. 9165 is not fatal as long as the integrity and evidentiary value of the seized items are preserved, which it was in this case. It declared that the prosecution established all the crucial links in the chain of custody of the seized items.<sup>10</sup>

Unfazed, accused-appellant filed the present appeal before the Court.

On April 1, 2019, the Court issued a Resolution<sup>11</sup> to the parties requiring them to file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.

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<sup>8</sup> Id. at 25-29.

<sup>9</sup> *Rollo*, p. 15.

<sup>10</sup> Id. at 8-14.

<sup>11</sup> Id. at 22-23.

On June 25, 2019, the Office of the Solicitor General (*OSG*) filed its Manifestation and Motion,<sup>12</sup> stating that it was adopting its Brief for the Appellee,<sup>13</sup> dated September 19, 2016, as its supplemental brief. On June 28, 2019, accused-appellant filed her Manifestation (In Lieu of a Supplemental Brief),<sup>14</sup> stating that she had exhaustively argued all relevant issues in her Brief for the Accused-Appellant<sup>15</sup> before the CA and is, thus, dispensing with the filing of a supplemental brief.

### Issues

Accused-appellant ascribes the following errors on the part of the CA:

#### I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE BUY BUST TEAM TO COMPLY WITH SECTION 21, ARTICLE II OF R.A. NO. 9165.

#### II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.<sup>16</sup>

Accused-appellant argues that the evidence on record is wanting with respect to the identity of the allegedly seized drugs. She points to the failure of the police officers to comply with the requirements of Sec. 21, Art. II of R.A. No. 9165, as well as the failure to establish an unbroken chain of custody. She asserts that the inventory receipt and chain of custody submitted in evidence show that no media representative and elected public official were present. Only a certain "Jaime Navarro" (*Navarro*), the DOJ representative, signed as witness. His attendance is even suspect as the inventory occurred at 5:00 a.m. but Navarro's signature on the inventory receipt stated that he signed it at around 3:00 p.m. While the failure to secure

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<sup>12</sup> Id. at 24-27.

<sup>13</sup> CA *rollo*, pp. 99-117.

<sup>14</sup> *Rollo*, pp. 31-33.

<sup>15</sup> CA *rollo*, pp. 48-69.

<sup>16</sup> Id. at 51.

the attendance of the mandatory witnesses may be excused, it must be shown that the team exerted genuine and sufficient effort to look for the required representatives. Herein, the prosecution did not provide a sufficient explanation for such non-compliance.<sup>17</sup>

Accused-appellant also asserts that the prosecution failed to establish, with moral certainty, that the integrity and evidentiary value of the allegedly seized drugs were preserved. The break in the chain of custody occurred when no competent witness was presented to testify as to the third and fourth links in the chain of custody – neither the forensic chemist nor the evidence custodian was presented. Thus, given the gaps in the chain of custody, the presumption of regularity in the performance of functions cannot be applied. Accused-appellant's guilt was not proven beyond reasonable doubt.<sup>18</sup>

### The Court's Ruling

The petition is meritorious. Accused-appellant should be acquitted because the *corpus delicti* in the instant case was not established.

The Court has previously held that “[i]n drug-related prosecutions, the **State bears the burden not only of proving the elements of the offenses of sale and possession of *shabu* under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime.** ‘*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two (2) things, viz.: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result.’ **The dangerous drug is itself the very *corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug.**”<sup>19</sup> Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* x x x when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.<sup>20</sup> (emphases supplied)

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<sup>17</sup> Id. at 58-64.

<sup>18</sup> Id. at 64-67.

<sup>19</sup> *People v. Bautista*, 682 Phil. 487, 499-500 (2012).

<sup>20</sup> Id. at 500.

Sec. 21, Art. II of R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs, 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:

(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.** (emphases supplied)

Meanwhile, its implementing rules and regulations 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:

(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 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-**

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**compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]** (emphases supplied)

Plainly, Sec. 21 requires that three (3) witnesses – a representative from the media, a representative from the DOJ, and any elected public official – be present during the physical inventory and photography of the seized items. Aside from being present during the physical inventory and photography of the seized items, they must also receive a copy of said inventory.

In the instant case, it is an established fact that two (2) of the mandatory witnesses, a media representative and an elected public official, were not present during the physical inventory and photography of the seized items. Further, while a certain Navarro, the DOJ representative, signed as witness on the inventory receipt and chain of custody, his actual attendance during the physical inventory and photography of the seized items is suspect. Navarro indicated that he signed the inventory at 3:00 p.m. but the inventory was done at 5:00 a.m. PO1 Mataverde addressed this in his testimony:

Q And after you finished the inventory as well as the picture taking it was already around 5:00 o'clock in the morning?

A Yes ma'am.

Q Not in the afternoon?

A Yes ma'am.

Q In the certificate of inventory which you identify (*sic*), and the fact that Jaime Navarro signed the certificate of inventory, it was at around 3:00 in the afternoon?

A No ma'am.

Q Please go over to the inventory report and chain of custody and you identify the signature appearing on the name of the witness Jaime P. Navarro, there appears to be the time printed thereat which appears to be 3:00 p.m., what can you say to this?

A On the document ma'am which indicates the hour 3:00 p.m., but he signed this in the morning.

Q He signed in the morning but he placed 3:00 p.m.?

A Yes ma'am.<sup>21</sup>

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<sup>21</sup> CA rollo, p. 62.

As may be observed from the foregoing exchange, it is evident that PO1 Mataverde initially stated that Navarro signed the certificate of inventory at around 5:00 a.m. during the inventory. However, when confronted with the time printed next to the signature of Navarro, he recanted and stated Navarro signed in the morning but placed the time at 3:00 p.m. This is highly irregular and does not conform with common human experience. Thus, aside from missing two (2) of the required mandatory witnesses, the presence of the supposed third mandatory witness is also suspect and cannot be relied upon.

On the basis of the foregoing, the Court finds that there was failure to comply with the requisites of Sec. 21. Admittedly, such failure may be excused provided there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.<sup>22</sup> These requirements are cumulative, not alternative. Thus, in order to excuse failure to comply with the requirements of Sec. 21, there must be both justifiable reason for such failure and proof that the integrity and evidentiary value of the evidence were maintained. It is not enough that only the second requisite is met.

The prosecution must allege and prove the presence of a justifiable ground. The Court held in *People v. Lim*<sup>23</sup> that:

It 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 of the accused or any person/s acting for and in his/her behalf; (3) the elected officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face 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.**

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

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<sup>22</sup> *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019, 926 SCRA 613, 640.

<sup>23</sup> G.R. No. 231989, September 4, 2018, 879 SCRA 31.

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, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These 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>24</sup> (emphases in the original; citations omitted)

Herein, the prosecution did not provide any justifiable ground for the failure to secure the presence of the mandatory witnesses. There is also no proof that the police officers exerted earnest efforts to secure their presence. Notably, based on the facts, it does not appear that there was any necessity for urgent action on the matter. The police could have waited to secure the presence of the required witnesses before conducting the inventory. Clearly, there was an utter disregard for the requirements of Sec. 21, Art. II of R.A. No. 9165. Such noncompliance is fatal. It must be remembered that:

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<sup>24</sup> Id. at 61-63.

The significance of complying with Section 21's requirements cannot be overemphasized. **[Noncompliance] is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, [noncompliance] will, thus, engender the acquittal of an accused.**<sup>25</sup> (emphases supplied)

The failure to comply with the requirements of Sec. 21, Art. II of R.A. No. 9165 cannot be excused in the absence of justifiable ground and earnest efforts to strictly comply with its provisions. The identity of the *corpus delicti* was not established. The acquittal of accused-appellant is proper.

Aside from the failure to comply with the requirements of Sec. 21, the Court also harbors serious concerns over the integrity and evidentiary value of the seized items due to material gaps in the chain of custody of the seized items.

The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established. The links to be established 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; *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 from the forensic chemist to the court.<sup>26</sup>

As to the first link of the chain, the Court has held that “[a]side from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.”<sup>27</sup>

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<sup>25</sup> *People v. Dela Cruz*, 744 Phil. 816, 827 (2014).

<sup>26</sup> *People v. Salvador*, 726 Phil. 389, 405 (2014).

<sup>27</sup> *Ramos v. People*, 826 Phil. 663, 684 (2018).

In the instant case, the transparent plastic sachet containing dried marijuana leaves object of the sale was marked by PO2 Domingo with his initials “DSD” at the place of arrest and then he turned it over to SPO2 delos Reyes. Meanwhile, PO1 Mataverde marked, with his initials “FM,” the transparent plastic sachet containing dried marijuana leaves he recovered from accused-appellant’s pocket.

There is no indication that PO2 Domingo and PO1 Mataverde placed the transparent plastic sachets they allegedly retrieved from accused-appellant in an envelope or evidence bag. Thus, the purpose of securing the items from tampering, especially as it involved minuscule amounts, was not served, making the same susceptible to alteration or damage.

Further, the turnover of the seized items by PO2 Domingo and PO1 Mataverde to SPO2 delos Reyes, as well as the turnover of the seized drugs to the forensic chemist, was not established in the instant case. It is unclear whether PO1 Mataverde turned over the seized sachet marked with “FM” to SPO2 delos Reyes. It is also unclear who exactly turned over the seized sachets, marked “DSD” and “FM,” to the forensic chemist. PO2 Domingo initially testified that he was the one who brought the specimens to the crime laboratory.<sup>28</sup> However, he later on stated it was actually SPO2 delos Reyes who turned them over to the forensic chemist.<sup>29</sup> This was never clarified. Thus, it cannot be said that the second and third links were established beyond reasonable doubt.

Finally, the fourth link was also not established. Unfortunately, there is no testimony as to the events that transpired after the turnover of the seized items to the forensic chemist.

The Court held in *People v. Pajarin*<sup>30</sup> that, “as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered with pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned.”<sup>31</sup>

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<sup>28</sup> CA *rollo*, pp. 65-66.

<sup>29</sup> *Id.* at 66.

<sup>30</sup> 654 Phil. 461 (2011).

<sup>31</sup> *Id.* at 466.

No testimony was offered by the prosecution alluding to or attempting to establish the foregoing. There is no indication that the forensic chemist in the instant case, who appears to be unnamed as he or she was not mentioned in any of the testimonies, received the seized items marked, properly sealed, and intact. There is also no mention that he/she resealed the seized items after conducting examination. Further, there is no statement on whether or not he/she marked the seized items to ensure that they could not be tampered with pending trial. Thus, the fourth link in the chain was likewise not established.

From the foregoing, it is apparent that all links in the chain of custody were not established. Thus, the Court cannot conclude that the identity, integrity, and evidentiary value of the seized items were preserved. There is reasonable doubt as to the *corpus delicti*.

Due to the serious defects in the physical inventory and photography of the seized evidence, as well as the substantive flaws in the chain of custody of the seized marijuana, the identity of the seized evidence presented before the Court is highly uncertain. The prosecution failed to prove the *corpus delicti* of the crimes charged, thus casting reasonable doubt on whether accused-appellant indeed committed the serious crimes ascribed to her by the State. As such, the Court must acquit accused-appellant on the basis of reasonable doubt.

**WHEREFORE**, premises considered, the Court **GRANTS** the appeal; **REVERSES** and **SETS ASIDE** the December 20, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07583; **ACQUITS** accused-appellant Jovilyn Dela Cruz y Dominguez; and **ORDERS** her **IMMEDIATE RELEASE FROM DETENTION**, unless she is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent is **ORDERED** to **REPORT** to the Court the action he/she has taken within five (5) days from receipt hereof.

Let entry of judgment be issued immediately.

- over -

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**SO ORDERED.”**

**By authority of the Court:**

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

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**122-A**

The Solicitor General  
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1229 Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. CR-HC No. 07583)

The Hon. Presiding Judge  
Regional Trial Court, Branch 72  
2200 Olongapo City  
(Crim. Case Nos. 48-2011 & 49-2011)

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Accused-Appellant  
c/o The Superintendent  
Correctional Institution for Women  
1550 Mandaluyong City

The Superintendent (x)  
Correctional Institution for Women  
1550 Mandaluyong City

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

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