



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 22, 2022** which reads as follows:*

“G.R. No. 249696 (*Richard Magno y Fernando v. People of the Philippines*). – For this Court’s resolution is the Petition for Review on *Certiorari*¹ dated November 22, 2019, assailing the Decision² dated May 23, 2019 and the Resolution³ dated October 1, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40340, which affirmed the Decision⁴ dated June 29, 2017 of the Regional Trial Court, Branch 68, Camiling, Tarlac (RTC) in Criminal Case No. 13-128 finding petitioner Richard Magno y Fernando (*Magno*) guilty beyond reasonable doubt of illegal possession of dangerous drugs under Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information⁵ dated July 10, 2013, the prosecution charged Magno with illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165, thus:

That on or about July 9, 2013[,] at around 7:45 o’clock in the evening at Brgy. Cacamilangan Norte, in the Municipality of Camiling, province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused did and there willfully, unlawfully and feloniously have in [his] possession and control one (1) heat-sealed transparent plastic [sachet] containing dried Marijuana fruiting tops[,] a dangerous drug without being authorized by law, weighing 11.110 grams, more or less.

When Magno was arraigned on August 6, 2013, he pleaded not guilty.⁶ Thereafter, pre-trial and trial ensued.⁷

¹ *Rollo*, pp. 12-32.

² Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Victoria Isabel A. Paredes and Ruben Reynaldo G. Roxas, concurring; *id.* at 37-52.

³ *Id.* at 54-55.

⁴ Penned by Presiding Judge Jose S. Vallo; *id.* at 86-91.

⁵ *Rollo*, p. 56.

⁶ *Id.* at 38.

⁷ *Id.*

The prosecution presented Police Officer (*PO*) 2 Alexander Juan (*PO2 Juan*), *PO3* Tirso Navero (*PO3 Navero*), and Police Senior Inspector (*PS/Insp.*) Roanaline B. Baligod (*PS/Insp. Baligod*), the forensic chemist who examined the seized items.⁸

On July 9, 2013, at around 7:00 p.m., *PO2* Juan of the Camiling Police Station, Camiling, Tarlac, learned from a civilian informant that a certain Roderic Fernandez (*Fernandez*) a.k.a. “*Inggo*” was selling marijuana at Cacamilangan Norte, Camiling, Tarlac.⁹ *PO2* Juan informed Police Chief Edison Pascasio, who immediately formed a buy-bust team composed of *PO2* Juan, *PO3* Edgar Esteban (*PO3 Esteban*), *PO3* Navero, *PO1* Nestor Agustin (*PO1 Agustin*), and *PO1* Abel Corpuz (*PO1 Corpuz*).¹⁰ The team designated *PO2* Juan as the poseur-buyer and the rest of the team as immediate back-up.¹¹ The team also gave *PO2* Juan a ₱500.00 bill to be used as buy-bust money, which *PO2* Juan marked with his initials “AAJ.”¹² *PO3* Esteban coordinated with the Philippine Drug Enforcement Agency (*PDEA*), Camp Olivas City, San Fernando, Pampanga, and the *barangay* officials of Cacamilangan Norte for the conduct of a buy-bust operation.¹³ Upon *PDEA*’s clearance, the buy-bust team proceeded with the operation.¹⁴ When the buy-bust team reached the target area, they spread out and strategically positioned themselves while awaiting the suspects.¹⁵

Not long thereafter, Fernandez, together with Gigi Sudaria (*Sudaria*), Mark Veloria (*Veloria*), and Magno (*Magno, et al.*) arrived at the target area on board a red tricycle.¹⁶ Fernandez alighted from the tricycle, while his companions remained seated. The police asset approached Fernandez.¹⁷ When they were already near each other, the police asset introduced *PO2* Juan to Fernandez as the marijuana’s buyer.¹⁸ At first, Fernandez doubted *PO2* Juan’s identity as a buyer.¹⁹ Eventually, due to the police asset’s assurance, Fernandez and *PO2* Juan consummated the sale by exchanging the marijuana with the marked money.²⁰ Thereafter, *PO2* Juan held Fernandez’s hands, introduced himself as a police officer, and informed Fernandez of his constitutional rights.²¹ Fernandez’s companions tried to leave Fernandez behind, but *PO2* Juan’s back-ups timely arrived at the scene and prevented

⁸ *Id.*
⁹ *Id.*
¹⁰ *Id.*
¹¹ *Id.* at 38-39.
¹² *Id.* at 38.
¹³ *Id.* at 39.
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*
²⁰ *Id.*
²¹ *Id.*

them from escaping.²² PO2 Juan's back-ups "psyched" Magno, Sudaria, and Veloria to voluntarily bring out a transparent plastic sachet containing dried marijuana fruiting tops from each of their possession.²³

Since people were converging at the crime scene, and considering that there were only five police officers for four accused, the buy-bust team proceeded to their police station.²⁴ On their way, PO2 Juan possessed the seized items. At the police station, PO2 Juan marked the seized items with his initials "AAJ," for the purchased marijuana fruiting tops, "AAJ-1," for the brick of dried marijuana fruiting tops wrapped in brown packaging tape, "AAJ-2," for the heat-sealed transparent plastic sachet containing dried marijuana fruiting tops weighing 11.110 grams, "AAJ-3," for the heat-sealed transparent plastic sachet containing dried marijuana fruiting tops weighing 8.186 grams, and "AAJ-4," for the heat-sealed transparent plastic sachet containing dried marijuana fruiting tops weighing 8.186 grams.²⁵ PO3 Esteban prepared the confiscation receipt, the request for laboratory examination of the seized items, and the request for drug test of all the four accused; on the other hand, PO1 Corpuz took photographs of Magno, *et al.* in the act of pointing to the seized items.²⁶ Magno, *et al.* and *Barangay Kagawad* Marcelino Babas (*Babas*) signed the confiscation receipt.²⁷

After the buy-bust team accomplished all the necessary papers, PO2 Juan personally submitted the requests for laboratory examination and drug test to the receiving clerk, PO3 Dinoy, and the seized items to PS/Insp. Baligod.²⁸ Per Chemistry Report No. D-117-13 Tarlac, PSI Baligod found the items marked as "AAJ" to "AAJ-4" positive for marijuana, a dangerous drug under R.A. No. 9165.²⁹

For his defense, Magno stated that on July 9, 2013, at about 7:45 p.m., while he and his companions were eating at Lina's Canteen located at Rizal St., Poblacion, Camiling, Tarlac, a police patrol car arrived in front of the said canteen.³⁰ Five police officers in civilian clothes alighted from the patrol car.³¹ Subsequently, the police officers approached Magno, *et al.* and handcuffed them.³² Magno asked the police officers why they were being handcuffed, but the police officers did not reply.³³ Instead, the police officers brought Magno, *et al.* to the Camiling Police Station.³⁴

²² *Id.*
²³ *Id.*
²⁴ *Id.*
²⁵ *Id.*
²⁶ *Id.* at 39-40.
²⁷ *Id.* at 39.
²⁸ *Id.* at 40.
²⁹ *Id.*
³⁰ *Id.*
³¹ *Id.*
³² *Id.*
³³ *Id.*
³⁴ *Id.*

While at the police station, a man wearing a bull cap, whose face was covered with a handkerchief, together with another man who was later identified as the chief of police, emerged from a room.³⁵ The chief of police asked the man wearing a bull cap if Magno, *et al.* were his companions.³⁶ When the man wearing a bull cap did not reply, the chief of police ordered his personnel, "*Ilabas ang damo, ilabas din ito.*"³⁷ Afterwards, a police officer also emerged from a room with a bag containing the marijuana fruiting tops, which he placed on a table.³⁸ The police officers ordered Magno, *et al.* to point at the seized items.³⁹ When they refused to do so, the police officers informed Magno, *et al.* that other detainees will maul them.⁴⁰ Because of fear, Magno, *et al.* allowed the police officers to photograph them while in the act of pointing at the seized items.⁴¹ Thereafter, the police officers incarcerated them at the Camiling District Jail.⁴² While in detention, Magno wrote a note about what really transpired while they were eating at the canteen on July 9, 2013.⁴³

After trial on the merits, the RTC rendered a Decision⁴⁴ dated June 29, 2017, finding Magno guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs defined and penalized under Section 11, Article II of R.A. No. 9165. The RTC found that the prosecution faithfully complied with the chain of custody rule, PO2 Juan's back-ups successfully "psyched" Magno into voluntarily bringing one of the seized items from his possession, and the police officers were able to preserve the integrity of the seized items. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered finding accused Richard Magno y Fernando guilty beyond reasonable doubt of illegal possession of dangerous drugs as defined and penalized under Section 11, Article II of RA 9165 and hereby sentences (sic) him to an indeterminate prison term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years[,] and to pay a Fine of Php300,000.00.

Let the confiscated substance be forwarded to the PDEA authorities for proper disposal.

SO ORDERED.⁴⁵

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 40-41.

⁴⁴ *Id.* at 86-91.

⁴⁵ *Id.* at 91.

Aggrieved, Magno filed an appeal with the CA, arguing that the RTC erred in (1) finding his arrest lawful and the evidence seized from him admissible in evidence, (2) relying on the presumption of regularity in the performance of official duties, and (3) convicting him of the crime despite the police officers' noncompliance with Section 21 of R.A. No. 9165.⁴⁶

On May 23, 2019, the CA rendered the assailed Decision⁴⁷ dismissing Magno's appeal and affirming the RTC. The CA ruled that the prosecution proved all the elements of the offense. It affirmed the RTC's finding of faithful compliance with the chain of custody rule and the police officers' lawful warrantless search and arrest. According to the CA, there was no doubt that the police officers properly preserved the integrity and evidentiary value of the seized items. Finally, the CA gave weight to the RTC's findings of fact and upheld the presumption of regularity in the police officers' performance of their official duties. The dispositive portion of the CA decision reads:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated June 29, 2017 of the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68, in Criminal Case No. 13-128, convicting accused-appellant of violation of Section 11, Article II of Republic Act No. 9165, is hereby **AFFIRMED**. No costs.

SO ORDERED.⁴⁸

Magno moved for reconsideration,⁴⁹ but the CA denied it in a Resolution⁵⁰ dated October 1, 2019.

Hence, the petition.

The sole issue before this Court is whether the CA erred in affirming the RTC, which found petitioner guilty beyond reasonable doubt for the crime of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165.

We acquit.

At the outset, it bears noting that the RTC's findings of fact, which are entitled to great weight, will not be disturbed on appeal.⁵¹ Nevertheless, this Court will not hesitate to review the RTC's findings if facts of weight and

⁴⁶ *Id.* at 63.

⁴⁷ *Id.* at 37-52.

⁴⁸ *Id.* at 52.

⁴⁹ *Id.* at 54.

⁵⁰ *Id.* at 54-55.

⁵¹ *Mallillin v. People*, 576 Phil. 576, 586 (2008).

substance have been overlooked, misapprehended, or misapplied.⁵² Here, the RTC and the CA misappreciated several circumstances. Had it not been so, they would have reached a different conclusion.

The police officers illegally searched petitioner

Petitioner posits that the search made on him was unlawful, having been done preceding his arrest, thereby rendering any evidence confiscated from him inadmissible in evidence.⁵³ Petitioner insists that he was merely an innocent passenger in the tricycle driven by Veloria, and a co-passenger with the alleged buy-bust target, Fernandez.⁵⁴ At the time, petitioner was not engaged in any illegal activity that could have alerted the police to search him.⁵⁵ Further, Veloria's act of starting up the tricycle, which the police officers interpreted as an attempt to flee and considered suspicious, does not create a reasonable suspicion on the police officers' part that petitioner was committing a crime.⁵⁶ The prosecution did not even allege that petitioner knew about the transaction between PO2 Juan and Fernandez.⁵⁷

This Court finds that the police officers' search on petitioner was illegal. Generally, there must be a valid search warrant before a law enforcer can validly search or seize a person's house, papers, or effects.⁵⁸ Yet, exceptional circumstances exist to render a search reasonable despite being warrantless,⁵⁹ which are: "(1) a 'warrantless search incidental to a lawful arrest,' (2) search of 'evidence in 'plain view,' (3) 'search of a moving vehicle,' (4) 'consented warrantless search[es],' (5) 'customs search,' (6) 'stop and frisk,' and (7) 'exigent and emergency circumstances.'"⁶⁰

This Court finds that none of these exceptional circumstances are present here.

The CA's main premise for declaring the search against petitioner as lawful is because the police officers "psyched" petitioner into bringing out the seized item from his possession, thus:

We also conform to the trial court's findings that the prosecution established *that the back-ups of the poseur[-]buyer were able to [psych] the appellant into voluntarily bringing out from his pocket the subject*

⁵² *Id.*

⁵³ *Rollo*, p. 20.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 21.

⁵⁷ *Id.*

⁵⁸ *Veridiano v. People*, 810 Phil. 642, 655-656 (2017), citing *People v. Aruta*, 351 Phil. 868, 878 (1998).

⁵⁹ *Id.* at 656, citing *People v. Cogaed*, 740 Phil. 212, 227 (2014).

⁶⁰ *Id.*

transparent plastic sachet containing dried marijuana fruiting tops and handing the same to them. The trial court noted that the appellant's apprehensiveness and attempt to leave behind their companion, Roderic Fernandez, who was caught in *flagrante delicto* selling marijuana to poseur[-]buyer PO2 Juan aroused suspicion that he was hiding something illegal, thus, compelling the latter to [psych] the appellant in bringing out from his pocket the subject illegal drug.⁶¹

The CA then discussed that, when an accused is caught *in flagrante delicto*, "the police officers are not only authorized, but are duty bound, to arrest him even without a warrant."⁶²

To be sure, "psyching" a suspect is not one of the exceptional circumstances that will render a search lawful when it is not. Indeed, neither the CA nor the RTC discussed how the back-up police officers "psyched" petitioner into bringing out the seized item. Did the police officers employ force, intimidation, manipulative behavior, or threat? This Court cannot conclude with certainty. Resort to guesswork magnifies the dubious nature of the police officers' act of "psyching" petitioner. What is certain is that, when petitioner brought out the seized item, he did not do so voluntarily, otherwise, there would have been no need for the police officers to "psych" him in the first place.

Likewise, this Court cannot consider the search as incidental to a lawful arrest on the basis of Fernandez's *in flagrante delicto* arrest. Needless to say, it was Fernandez whom the police officers caught *in flagrante delicto*, not petitioner. The prosecution must, therefore, rely on another basis to establish the validity of petitioner's warrantless search and arrest apart from Fernandez's *in flagrante delicto* arrest.

In any event, to come within the purview of a search incidental to a lawful arrest, the arrest must precede the search.⁶³ The process cannot be reversed.⁶⁴ While respondent maintains that the police officers arrested petitioner first before searching him, the reverse is true. Both the RTC and the CA found that the back-up police officers "psyched" petitioner first before arresting him. In fact, it was because of PO2 Juan's suspicion that petitioner was hiding something illegal that compelled him "to psyche [accused]-appellant into voluntarily bringing out from his pocket the subject transparent plastic sachet."⁶⁵

True, "a search substantially contemporaneous with an arrest can precede the arrest if the police officers have probable cause to make the arrest

⁶¹ *Rollo*, p. 44. (Emphasis supplied; italics in the original)

⁶² *Id.* at 45.

⁶³ *People v. Racho*, 640 Phil. 669, 676 (2010).

⁶⁴ *Id.*

⁶⁵ *Rollo*, p. 44.

at the outset of the search.”⁶⁶ The police officers in the present case, however, did not have probable cause to arrest the petitioner in the first place.

In *People v. Racho*,⁶⁷ the informant’s tip that the appellant would arrive in Baler, Aurora with *shabu* prompted the police to arrest the appellant without a warrant.⁶⁸ There, this Court ruled that reliable information alone is not sufficient to justify a warrantless arrest.⁶⁹ It must be coupled with the performance of some overt act that would indicate that the accused has committed, is actually committing, or is attempting to commit an offense.⁷⁰

Here, the police officers apprehended petitioner based on two factual circumstances: (1) petitioner was with Fernandez at the time the latter was caught *in flagrante delicto*; and (2) petitioner allegedly attempted to flee the crime scene during the buy-bust operation.⁷¹ Yet, this Court cannot conclude that, in merely being with Fernandez and attempting to leave the crime scene, petitioner has committed, is actually committing, or is attempting to commit an offense. In fact, petitioner reasoned that he was merely a passenger on board the tricycle being driven by Veloria, and it was Veloria who ignited the tricycle’s engine, while Fernandez transacted with PO2 Juan.⁷² Just because petitioner was Fernandez’s companion, who attempted to leave Fernandez behind, does not mean that petitioner was committing a crime then. Even the tip received by the police officers from the civilian informant referred to Fernandez only, not petitioner. Accordingly, this Court cannot validate the warrantless search because the police officers failed to establish probable cause to arrest petitioner.

Section 3(2), Article III of the 1987 Constitution provides that “[a]ny evidence obtained in violation of this or the preceding Section shall be inadmissible for any purpose in any proceeding.” As the fruit of the poisonous tree, the seized item is inadmissible in evidence.⁷³ Without the seized item – the *corpus delicti* of the crime – the Court can hardly convict petitioner based on the remaining evidence.

*The police officers failed to preserve
the identity of the seized items*

Even assuming *arguendo* that the police officers’ search upon petitioner was the product of a valid warrantless search, this Court finds that the police

⁶⁶ *People v. Racho*, *supra* note 63.

⁶⁷ *Id.*

⁶⁸ *Id.* at 677.

⁶⁹ *Id.* at 678.

⁷⁰ *Id.*

⁷¹ *Rollo*, p. 164.

⁷² *Id.* at 20-21.

⁷³ *People v. Racho*, *supra* note 63, at 681.

officers did not faithfully comply with the chain of custody rule. They failed to preserve the identity and integrity of the seized item.

To sustain a conviction for illegal possession of dangerous drugs, the prosecution must establish the following elements: “(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.”⁷⁴ In all prosecutions involving dangerous drugs, the identity of the dangerous drug, which is evidence of the *corpus delicti*, must be established beyond reasonable doubt.⁷⁵ At all times, the prosecution must endeavor to protect the identity of the dangerous drugs by establishing an unbroken chain of custody – the prosecution must account for each link in the chain, from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.⁷⁶

The police officers must ensure that the seized items are the same ones brought to court.⁷⁷ To this end, their compliance with the chain of custody requirement becomes paramount.⁷⁸ Accordingly, the four links in the chain of custody of the seized items are:

1. The seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;
2. The turnover of the illegal drug seized by the apprehending officer to the investigating officer;
3. The turnover by the investigating officer to the forensic chemist for laboratory examination; and
4. The turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁷⁹

The police officers must faithfully comply with the chain of custody requirement because it is a proven “method of authenticating evidence”⁸⁰ to prove the integrity of the *corpus delicti*.⁸¹ The degree of thoroughness required when handling seized drugs is understandable, considering that “narcotic substances are not readily identifiable and, thus, require further examination for their composition and nature to be determined.”⁸² Since seized drugs are characterized as not being readily identifiable, the chain of custody protects the integrity of the seized drugs by safeguarding their nature, quantity (*e.g.*, weight), relation to the incident that allegedly caused their

⁷⁴ *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019, 909 SCRA 465, 479, citing *People v. Morales*, 630 Phil. 215, 228 (2010).

⁷⁵ *People v. Lumaya*, 827 Phil. 473, 484 (2018).

⁷⁶ *Id.*

⁷⁷ *People v. Dela Cruz*, *supra* note 74, at 482, citing *People v. Que*, 824 Phil. 882 (2018).

⁷⁸ *Id.*

⁷⁹ *Id.* at 481-482, citing *People v. Nandi*, 639 Phil. 134 (2010).

⁸⁰ *Mallillin v. People*, *supra* note 51, at 587.

⁸¹ *People v. Dela Cruz*, *supra* note 74, at 483.

⁸² *Id.* at 482, citing *People v. Holgado*, 741 Phil. 78, 93 (2014).

seizure, and relation to the person/s alleged to have been in possession of or peddling them.⁸³

Needless to say, prosecutions involving dangerous drugs are governed by two unchangeable circumstances – the prosecution must always prove the evidence of the *corpus delicti* beyond reasonable doubt, and the police officers must always protect the identity and integrity of the seized items during their handling and custody. Therefore, the case of the prosecution rises or falls depending on the meticulousness employed by the police officers in preserving the identity and integrity of the seized items, which, in turn, depends on their faithful compliance with the chain of custody rule.

Here, this Court finds that the police officers have not faithfully complied with the chain of custody rule. There are serious breaks in the chain of custody, which render the identity and integrity of the seized items dubious.

There are breaks in the first link of the chain

As earlier discussed, the first link in the chain of custody is the seizure and marking of the illegal drug recovered from the accused by the apprehending officer.

To preserve the seized items' identity and integrity during seizure and marking, this Court is guided by Section 21(1), Article II of R.A. No. 9165, which states:

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

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof,**⁸⁴

⁸³ *Id.*

⁸⁴ Emphasis supplied.

R.A. No. 10640, which took effect on August 7, 2014, amended Section 21, which now reads:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally, That noncompliance of 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.

Since petitioner allegedly committed the crime on July 9, 2013, or before the effectivity of R.A. No. 10640, this Court shall apply Section 21(1) as originally worded.

While marking is different from inventory-taking and photography,⁸⁵ it is an important component of the first link in the chain. Marking is the “placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized.”⁸⁶ Marking “serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.”⁸⁷ In other words, markings are used as reference, which is why this Court underscores the importance of prompt markings.⁸⁸

⁸⁵ *People v. Dahil, et al.*, 750 Phil. 212, 232 (2015).

⁸⁶ *Id.*

⁸⁷ *Id.*, citing *People v. Alejandro*, 671 Phil. 33, 46 (2011).

⁸⁸ *People v. Lumaya, supra* note 75, at 489.

Here, the police officers conducted the marking, together with the inventory and photography, at the police station.⁸⁹ In this regard, this Court must, at all times, be guided by the paramount question and consideration in all prosecutions involving dangerous drugs – were the identity and integrity of the seized items preserved? This Court finds that the police officers failed in this duty.

The police officers' testimonies about who seized which contraband from whom are conflicting.⁹⁰ At one point, PO2 Juan testified that PO3 Esteban seized the contraband from petitioner.⁹¹ Later, PO3 Navero testified that it was PO3 Agustin who seized the contraband from petitioner.⁹² Notably, the police officers seized five different items, all of which were marked at the police station.⁹³ How then could PO2 Juan, who allegedly remained in possession of the seized items all the way to the police station, tell which contraband was seized from petitioner or the rest of his companions? Undeniably, the prosecution presented neither PO3 Esteban nor PO3 Agustin to testify on how either of them handled the seized item. The seized item changed hands multiple times from the scene of the crime to the police station, without any marking to help preserve its identity and integrity. Evidently, the probability that the police officers could have altered the seized items absent prompt markings is too high for this Court to simply brush aside.

Finally, following Section 21(1) as originally worded, the law requires the presence of three insulating witnesses - a representative from the media and the DOJ, and any elected public official. But as found by the CA and the RTC, only *Barangay Kagawad* Babas signed the confiscation receipt. From these incipient breaks in the first link, the Court can already tell that the police officers sorely failed to uphold their avowed duty to preserve the identity and integrity of the seized items.

There are breaks in the fourth link of the chain

The fourth link refers to the turnover of the seized drugs by the forensic chemist to the court for presentation as evidence in the criminal case.⁹⁴ Consequently, the forensic chemist must testify on the details pertaining to the handling and analysis of the dangerous drug submitted for examination – “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.”⁹⁵

⁸⁹ *Rollo*, pp. 39-40.

⁹⁰ *Id.* at 79.

⁹¹ *Id.* at 80.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *People v. Dahil, et al.*, *supra* note 85, at 237.

⁹⁵ *People v. Rivera*, G.R. No. 252886, March 15, 2021, citing *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 382.

In *People v. Dahil, et al.*,⁹⁶ one of the reasons why this Court acquitted the accused was because the forensic chemist, instead of personally testifying on the safekeeping of the drugs, resorted only to a general stipulation of her testimony. Thus:

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoenae were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

The case of *People v. Gutierrez* also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim - from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized *shabu* between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted.⁹⁷ (Citations omitted)

In the present case, PS/Insp. Baligod did not testify on how she handled the seized items, how she kept the seized items while in her custody until transferred to the court, and the safekeeping measures she took. While she did testify that a certain "PO3 Dinoy" received the seized items from PO2 Juan,⁹⁸ the prosecution did not present PO3 Dinoy to testify on the safety measures he took to preserve the identity and integrity of the seized items and the manner of his turn over thereof to PS/Insp. Baligod. Obviously, the police officers breached crucial links in the chain of custody.

As a rule, the chain of custody should be perfect and unbroken.⁹⁹ Nevertheless, the Implementing Rules and Regulations of R.A. No. 9165 provide a saving clause that allows leniency, provided compelling reasons exist to warrant a deviation from established protocol and the integrity and evidentiary value of the seized items have been properly preserved.¹⁰⁰ Here, the police officers neither bothered to explain their lapses nor provided compelling reasons why they failed to comply with the chain of custody rule.

⁹⁶ *Supra* note 85.

⁹⁷ *Id.* at 237-238. (Citations omitted)

⁹⁸ *Rollo*, p. 82.

⁹⁹ *People v. Omamos*, *supra* note 95, at 383.

¹⁰⁰ *Id.* at 383-384.

As a final note, this Court laments the haphazard appreciation of the facts by both the RTC and the CA. Had they exercised more circumspection, they would have seen the police officers' glaring disregard of established protocol that rendered the identity and integrity of the seized items highly questionable. Since the dangerous drug presented before the court is the *corpus delicti* of the offense, the prosecution must prove with moral certainty that it was the same item seized by the police officers from petitioner during the buy-bust operation.¹⁰¹ The prosecution's failure to discharge this burden means an acquittal for petitioner on the ground of reasonable doubt. Moreover, both the RTC's and the CA's reliance on the presumption of regularity in the police officers' performance of their official duties is misplaced. It is well settled that an unjustified compliance with the chain of custody rule easily trumps the presumption.¹⁰²

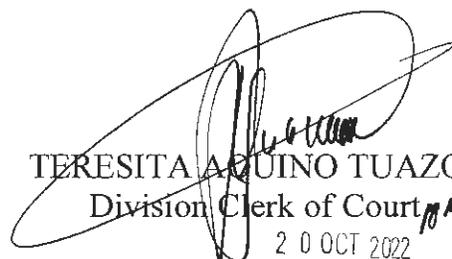
FOR THESE REASONS, the instant petition is **GRANTED**. The assailed Decision dated May 23, 2019 and the Resolution dated October 1, 2019 of the Court of Appeals in CA-G.R. CR No. 40340 are **REVERSED** and **SET ASIDE**. Petitioner Richard Magno y Fernando is **ACQUITTED** on the ground of reasonable doubt.

Copies shall be furnished to the Chief of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let an entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *pp 10/20*
20 OCT 2022

¹⁰¹ *Id.* at 385.

¹⁰² *People v. Dela Cruz*, *supra* note 74, at 489.

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

RICHARD MAGNO y FERNANDO (reg)
Petitioner
Purok 3, Brgy. Mabilang
2307 Paniqui, Tarlac

PHILIPPINE NATIONAL POLICE (reg)
Camp Crame, 1100 Quezon City

THE DIRECTOR GENERAL (reg)
Philippine Drug Enforcement Agency
National Government Center
NIA Northside Road, Brgy. Pinyahan
Quezon City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 68
Camiling, Tarlac
(Crim. Case No. 13-128)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 40340

Please notify the Court of any change in your address.
GR249696. 6/22/2022(161)URES(a) 