



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

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

**“G.R. No. 252145 (People of the Philippines v. Rommel Donaire y Rellosa).** – This resolves the appeal<sup>1</sup> filed by accused-appellant Rommel Donaire y Rellosa (accused-appellant) against the November 18, 2019 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 12022, which affirmed the March 19, 2018 Decision<sup>3</sup> of the Regional Trial Court, Branch 75, Olongapo City (RTC), convicting him of violation of Sections 5<sup>4</sup> and 11<sup>5</sup> of Republic Act (R.A) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**Antecedents**

Accused-appellant was charged in two separate Informations for Illegal Sale and Illegal Possession of Dangerous Drugs, committed as follows:

**Criminal Case No. 2016-1223**  
**for Illegal Sale of Dangerous Drugs**

<sup>1</sup> Rollo, pp. 19-20.

<sup>2</sup> Id. at 3-18. Penned by Associate Justice Pedro B. Corales, with Associate Justices Marlene Gonzales-Sison and Ronaldo Roberto B. Martin, concurring.

<sup>3</sup> CA rollo, pp. 61-70. Rendered by Judge Raymond C. Viray.

<sup>4</sup> **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x

<sup>5</sup> **Section 11. Possession of Dangerous Drugs.** – x x x

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

That on or about the eleventh (11<sup>th</sup>) day of July, 2016, 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 sell and deliver to PO1 Bayani B. Mayoyo, Jr. P500.00 (SN-DL564578, QL005311, QM155441, NQ050751 and FS445703) worth of Methamphetamine Hydrochloride, otherwise known as "Shabu", a dangerous drug, weighing One Hundred Ninety-Six Thousandths (0.196) of a gram placed in one (1) heat-sealed transparent plastic sachet.

CONTRARY TO LAW.<sup>6</sup>

**Criminal Case No. 2016-1224**  
**for Illegal Possession of Dangerous Drugs**

That on or about the eleventh (11<sup>th</sup>) day of July, 2016, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused-appellant, did then and there willfully, unlawfully and knowingly have in his effective possession and control three (3) heat-sealed plastic sachets of Methamphetamine Hydrochloride, otherwise known as "Shabu", with the following markings and weight:

B1 (Exh B SGR MKF)	=	0.089 gram
B2 (Exh B1 SGR MKF)	=	0.050 gram
B3 (Exh B2 SGR MKF)	=	<u>0.046 gram</u>
<b>TOTAL</b>	=	<b>0.185 gram</b>

and three (3) heat-sealed transparent plastic sachets of Marijuana with the following markings and weight:

C1 (Exh SGR-MKF)	=	1.046 gram
C2 (Exh C1 SGR-MKF)	=	0.960 gram
C3 (Exh C2 SGR-MKF)	=	<u>1.021 gram</u>
<b>TOTAL</b>	=	<b>3.027 gram[s]</b>

which are all dangerous drugs, said accused not having the corresponding license or prescription to possess the same.

CONTRARY TO LAW.<sup>7</sup>

When arraigned, the accused-appellant pleaded not guilty to the offenses charged.<sup>8</sup>

The prosecution witnesses related that the Olongapo City Police Station 1 (OCPS-1) received information from a confidential informant (CI) that the accused-appellant was selling drugs. Acting on the tip, the OCPS-1 conducted a surveillance on the accused-appellant for several weeks, and learned that the latter was selling drugs at East Bajac-Bajac, Baretto Street corner Afable Street, Olongapo City.<sup>9</sup>

<sup>6</sup> *Rollo*, p. 4.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *CA rollo*, p. 61.

<sup>9</sup> *Rollo*, p. 6.

On July 11, 2016, the OCPS-1 planned a buy-bust operation. The buy-bust team was composed of Police Officer (PO) 1 Bayani Mayoyo (PO1 Mayoyo) as the poseur-buyer, PO1 Stevie Rivera (PO1 Rivera) as the backup officer, and PO2 Michael Ferrer (PO2 Ferrer) as the investigator. The buy-bust team coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>10</sup>

At around 6 o'clock in the evening of even date, PO1 Mayoyo and the CI arrived at Afable Street corner Barretto Street and waited for the accused-appellant. The accused-appellant arrived and approached the CI, whom he knew. They talked for around ten (10) minutes. The accused-appellant asked the CI who his companion was, and the latter introduced PO1 Mayoyo as a drug user. The accused-appellant asked PO1 Mayoyo how much he wanted to purchase, and the latter replied that he would buy worth ₱500.00. The accused-appellant immediately asked for the money, which PO1 Mayoyo discreetly handed to him. Then, the accused-appellant handed PO1 Mayoyo a sachet of *shabu*.<sup>11</sup>

Immediately, PO1 Mayoyo executed the pre-arranged signal by tying his shoelace. PO1 Rivera rushed to the scene and arrested the accused-appellant. PO1 Rivera frisked the accused-appellant for any deadly weapons and recovered from the latter's left pocket the marked money, and from his right pocket, other bills worth ₱180.00, three (3) sachets of *shabu*, and three (3) sachets of marijuana.<sup>12</sup>

Thereafter, the buy-bust team returned to the police station and PO2 Ferrer prepared the inventory. PO1 Mayoyo marked the *shabu* sachet subject of the buy-bust with his initials "BBM," in the presence of the accused-appellant, Barangay Kagawad Cesar Lagos, and media representative Alvin Ramos.<sup>13</sup>

After which, PO1 Mayoyo turned over the marked sachet to PO2 Ferrer, who likewise placed his markings "MKF." PO1 Rivera also marked the other sachets recovered from the accused-appellant's pocket, and turned them over to PO2 Ferrer. Pictures were taken during the inventory and all of them signed the inventory receipt.<sup>14</sup>

Subsequently, PO2 Ferrer delivered all the seized items to the crime laboratory. Forensic Chemist Police Senior Inspector Maria Cecilia Tang conducted a qualitative examination, and found that the seized drugs tested positive for methamphetamine hydrochloride and marijuana. The accused-appellant also tested positive for drug use.<sup>15</sup>

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<sup>10</sup> Id. at 6-7.

<sup>11</sup> Id. at 7.

<sup>12</sup> CA *rollo*, p. 63.

<sup>13</sup> *Rollo*, p. 7.

<sup>14</sup> Id.

<sup>15</sup> Id.

On the other hand, the accused-appellant vehemently denied the charges leveled against him. He claimed that on July 11, 2016, he was at Goldilocks, Rizal Avenue, Olongapo City, buying a birthday cake for his girlfriend. When he came out of the establishment, two (2) men, whom he later identified as PO1 Mayoyo and PO1 Rivera, suddenly put their arms on his shoulders and warned him not to run, otherwise, they would shoot him. Then, he was taken to the police station.<sup>16</sup>

Upon arriving at the station, he was ordered to undress while the police officers ate the cake he bought. When the officers were done eating, they ordered him to wear his clothes and instructed him to enter the detention cell, without explaining why he was being detained or showing him the drugs allegedly confiscated from him. He denied using drugs and bewailed that he was framed up because PO1 Mayoyo was the former boyfriend of his girlfriend.<sup>17</sup>

### Ruling of the RTC

On March 19, 2018, the RTC rendered a Decision<sup>18</sup> finding the accused-appellant guilty of the crimes charged. The RTC found that the prosecution sufficiently established all the elements for illegal sale and possession of dangerous drugs, and proved the integrity and evidentiary value of the seized items. The RTC decreed as follows:

*WHEREFORE*, judgment is rendered as follows:

1. In *Criminal Case No. 2016-1223*, the Court finds *Rommel Donaire y Rellosa GUILTY* beyond reasonable doubt of *Violation of Section 5, R.A. 9165* and sentences him *to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00 plus cost*, without subsidiary imprisonment in case of insolvency; and
2. In *Criminal Case No. 2016-1224*, the Court finds *Rommel Donaire y Rellosa GUILTY* beyond reasonable doubt of *Violation of Section 11, R.A. 9165* and sentences him *to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of Php300,000.00 without subsidiary imprisonment in case of insolvency*.

The accused shall also suffer the accessory penalties under Section 35, R.A. 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The four (4) shabu sachets and three (3) marijuana sachets marked and offered in evidence are ordered confiscated in favor of the government and to be disposed of in accordance with law.

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

<sup>17</sup> Id.

<sup>18</sup> CA *rollo*, pp. 61-70.

SO DECIDED.<sup>19</sup>

Aggrieved, the accused-appellant filed a Notice of Appeal<sup>20</sup> with the RTC, which was given due course in the RTC Order<sup>21</sup> dated April 4, 2018.

### Ruling of the CA

In a Decision<sup>22</sup> dated November 18, 2019, the CA affirmed the RTC ruling. It held that all the elements for illegal sale and possession of dangerous drugs were sufficiently proven through the credible testimonies of the prosecution witnesses.<sup>23</sup> It noted that the accused-appellant was caught in *flagrante delicto* selling *shabu* during a buy-bust operation.<sup>24</sup> It ratiocinated that the integrity and evidentiary value of the seized drugs were preserved.<sup>25</sup> It further observed that the buy-bust team fully complied with the required chain of custody of the seized drugs as provided under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640.<sup>26</sup> It also applied the presumption of regularity in the performance of the police officers' duties.<sup>27</sup> Finally, it rejected the accused-appellant's contention that the drugs seized were fruits of a poisonous tree, as well as the latter's defenses of denial and frame-up.

The dispositive portion of the CA ruling states:

**WHEREFORE**, the instant appeal is **DENIED**. The March 19, 2018 Decision of the Regional Trial Court, Branch 75, Olongapo City in Crim. Case Nos. 2016-1223 and 2016-1224 [are] **AFFIRMED**.

**SO ORDERED.**<sup>28</sup>

Dissatisfied, the accused-appellant filed a Notice of Appeal<sup>29</sup> with the CA.

### Issue

The crux of the case is whether or not the accused-appellant is guilty beyond reasonable doubt of the crimes of illegal sale and illegal possession of dangerous drugs.

The accused-appellant and the Office of the Solicitor General (OSG) filed their respective Manifestations<sup>30</sup> indicating that they are adopting the

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<sup>19</sup> Id. at 69-70.  
<sup>20</sup> Id. at 10.  
<sup>21</sup> Id. at 11.  
<sup>22</sup> *Rollo*, pp. 3-18.  
<sup>23</sup> Id. at 14.  
<sup>24</sup> Id. at 13-14.  
<sup>25</sup> Id. at 15.  
<sup>26</sup> Id. at 16.  
<sup>27</sup> Id. at 17.  
<sup>28</sup> Id. at 17-18.  
<sup>29</sup> Id. at 19-20.  
<sup>30</sup> Id. at 27-29; and 34-36.

Briefs<sup>31</sup> they filed before the CA in lieu of their Supplemental Briefs before the Court.

Seeking his exoneration from the charges, the accused-appellant maintains that a buy-bust operation did not actually take place. Consequently, he argues that his warrantless arrest was illegal, and the purportedly seized drugs were merely planted. He further asserts that the illegal drugs presented in court are the fruits of a poisonous tree and are thus, inadmissible.<sup>32</sup>

Moreover, the accused-appellant claims that the police officers failed to comply with Section 21 of R.A. No. 9165.<sup>33</sup> He points out that they marked the seized items at the police station, without indicating the approximate time of the marking, to prove its immediacy.<sup>34</sup> He also urges that the police officers failed to prove on record that there were indeed a barangay official and a media officer during the marking.<sup>35</sup> He further laments that said witnesses were not present during his apprehension and the seizure of the alleged drugs. He likewise questions why they were not presented in court.<sup>36</sup>

Furthermore, the accused-appellant bewails that the prosecution failed to establish a complete chain of custody of the allegedly seized items.<sup>37</sup> There was no testimony from the officers as to where they placed the allegedly seized items while in transit from the area of arrest to the police station, and later, to the crime laboratory.<sup>38</sup> They also failed to describe the precautions taken to ensure that there had been no alteration of the items' condition, or a change of hands.<sup>39</sup>

Finally, the accused-appellant claims that the RTC erred in not giving weight to his defenses of denial and frame-up.<sup>40</sup>

On the other hand, the People of the Philippines, through the OSG, counters that the prosecution proved all the elements for violation of Sections 5 and 11 of R.A. No. 9165, beyond reasonable doubt.<sup>41</sup> The OSG retorts that the police officers substantially complied with all the requirements under Section 21 of R.A. No. 9165. It explains that the seized items were immediately marked at the police station, and bore the initials and signature of the apprehending officers.<sup>42</sup> Likewise, it urges that each link in the chain was clearly accounted for.<sup>43</sup> Lastly, it avows that the testimonies of the

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<sup>31</sup> CA *rollo*, pp. 33-58; and 81-100.

<sup>32</sup> Id. at 46.

<sup>33</sup> Id. at 46-47.

<sup>34</sup> Id. at 50.

<sup>35</sup> Id.

<sup>36</sup> Id. at 45.

<sup>37</sup> Id. at 52.

<sup>38</sup> Id. at 53.

<sup>39</sup> Id.

<sup>40</sup> Id. at 55.

<sup>41</sup> Id. at 90-91.

<sup>42</sup> Id. at 94-95.

<sup>43</sup> Id. at 96.

apprehending officers must be accorded full faith and credit in view of the presumption of regularity in the performance of their official duties.<sup>44</sup>

### Ruling of the Court

#### The appeal is impressed with merit.

The government's right to curb the proliferation of dangerous drugs should never be achieved by transgressing the accused's constitutional right to be presumed innocent until his/her guilt is established beyond reasonable doubt.

Significantly, to sustain a conviction for illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the prosecution must prove with moral certainty: (i) the identity of the buyer and the seller; (ii) the object of the sale and its consideration; and (iii) the delivery of the thing sold and the payment therefor.<sup>45</sup>

On the other hand, in illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the prosecution must establish that: (i) the accused was in possession of dangerous drugs; (ii) said possession was not authorized by law; and (iii) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>46</sup>

Essentially, in illegal sale and illegal possession of dangerous drugs, the drugs seized from the accused constitutes the *corpus delicti* of the offense.<sup>47</sup> Consequently, it is imperative for the prosecution to show an unbroken chain of custody over the illegal drug, and to present the object of the transaction and show that it is the same substance seized from the accused.<sup>48</sup>

The chain of custody pertains to the duly recorded authorized movements and custody of the seized drug from its seizure, receipt in the forensic laboratory, safekeeping, until its eventual presentation in court.<sup>49</sup>

In *People v. Maneclang*,<sup>50</sup> the Court enumerated the four links in the chain of custody as follows:

There are four links that must be established in the chain of custody, to wit: '1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for

<sup>44</sup> Id. at 98.

<sup>45</sup> *People v. Ismael*, 806 Phil. 21, 29 (2017), citing *People v. Alberto*, 625 Phil. 545, 554 (2010), citing *People v. Dumlao*, 584 Phil. 732, 739 (2009).

<sup>46</sup> *People v. Ismael*, Id. at 29, citing *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

<sup>47</sup> *People v. Ismael*, supra.

<sup>48</sup> Id.

<sup>49</sup> *People v. Garcia*, G.R. No. 215344, June 10, 2019, citing *People v. Guzon*, 719 Phil. 441,451 (2013).

<sup>50</sup> G.R. No. 230337, June 17, 2019.

examination; and, 4) the turnover and submission thereof from [the] forensic chemist to the court.<sup>51</sup>

Significantly, marking is the first and most crucial step in the chain of custody, as it initiates the process of protecting innocent persons from dubious and concocted searches.<sup>52</sup> Proper marking separates 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, thereby obviating switching, contaminating or planting of evidence. Given the importance of marking, it must be performed in a prompt and meticulous fashion, as soon the drugs are seized from the accused.<sup>53</sup>

In line with this, Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,<sup>54</sup> lays down the procedure for the proper custody of the seized dangerous drugs:

**Section 1.** Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002”, is hereby amended to read as follows:

*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.

**Unfortunately, in this case, the police officers committed numerous lapses that cast doubt on the identity and integrity of the seized items.**

<sup>51</sup> Id., citing *People v. Gajo, et al.*, 824 Phil. 140, 152 (2018).

<sup>52</sup> *People v. Ramirez, et al.*, 823 Phil. 1215, 1225 (2018).

<sup>53</sup> *People v. Ismael*, supra note 45 at 31-32, citing *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

<sup>54</sup> The crime was committed on July 11, 2016, after the enactment of R.A. No. 10640.

**First**, the seized items were marked, inventoried, and photographed not at the place of arrest, but at the police station. The police officers failed to offer any justifiable reason to explain their departure from the established rule.

**Second**, the police officers failed to prove that the seized items were marked promptly after the accused-appellant's arrest. The officers failed to state the distance from the place of arrest to the police station, to prove that the station where they marked, inventoried, and photographed the seized items was in fact the nearest one from the place of arrest, as mandated by law.

Also, it is uncertain when the police officers arrived at the police station and marked the seized items. The police officers failed to state the time when the marking took place, save for the vague assertion that the items were marked after arriving at the police station. To add to the confusion, PO3 Rivera claims that they arrived at the police station at around 7:20 p.m., yet the police blotter entry shows their arrival to have been at 9:45 p.m.<sup>55</sup> PO3 Rivera failed to explain the reason behind such discrepancy. This unexplained gap from the arrest to the marking of the evidence mars the integrity of the seized items.

**Third**, the police officers admitted that PO1 Mayoyo had sole possession of the sachet of *shabu* subject of the charge of illegal sale, while PO3 Rivera exclusively held on to the 3 sachets of *shabu* and 3 sachets of marijuana, subject of the charge of illegal possession, from the moment of their confiscation until their marking. These officers failed to provide any details on how they handled and safely kept the dangerous drugs. Simply, they tersely and vaguely stated that they held on to the seized items, without providing details and assurances that they were safely kept and segregated.

Relatedly, in *People v. Asaytuno*,<sup>56</sup> *People v. Dela Cruz*,<sup>57</sup> and *People v. Abdulah*,<sup>58</sup> the Court criticized the fact that the seized drugs remained in the sole possession of a single police officer, whose manner of handling was questionable and unaccounted for. As stringently declared in *People v. Abdulah*.<sup>59</sup>

This Court has previously decried police officers' plain claims of having close, personal custody of allegedly seized items in transit. This lone assertion, as pointed out in *People v. Dela Cruz*, is "fraught with dangers," "reckless, if not dubious," and "a doubtful and suspicious way of ensuring the integrity of the items":

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Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive

<sup>55</sup> CA rollo, p. 63.

<sup>56</sup> G.R. No. 245972, December 02, 2019.

<sup>57</sup> 744 Phil. 816 (2014).

<sup>58</sup> G.R. No. 243941, March 11, 2020.

<sup>59</sup> Id.

Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.<sup>60</sup>

Verily, PO1 Mayoyo and PO3 Rivera's sole custody of the unmarked seized items, along with their failure to provide assurances that they safely kept and handled them while in transit to the police station, cast doubt on the identity and integrity of the items that entered the chain of custody.

**Fourth**, the required witnesses were belatedly "called-in" after the arrest and seizure.

In *Tañamor v. People*,<sup>61</sup> the Court stressed that the required witnesses must be present during the confiscation of the dangerous drugs:

Secondly, the prosecution's case must also fail on the ground that the required insulating witnesses were not present during the confiscation, but were merely "called in" at the station, both belatedly and after the process they were supposed to insulate.

Undoubtedly, the requirement of the presence of the mandatory two insulating witnesses in this case is inseparable from the requirement of physical inventory and photographing at the place of seizure. **Stated differently, since the physical inventory and photographing of the seized items must, as a general rule, be done at the place of seizure, it follows that the two insulating witnesses whose presence are required during the inventory and photographing must also be in or within the area of the site of seizure.**

Considering the notoriety of buy-bust operations as possible tools for extortion, and the seeming habit of "calling in" witnesses, the Court has already taken steps to untangle confusions on this point. In *People v. Castillo*, the Court categorically clarified:

**'The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the required witnesses must also be present during the seizure and confiscation.'** The presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized.'

**It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory and serves a crucial purpose.** In *People v. Tomawis*, the Court explained the rationale behind the requirement of the insulating witnesses:

<sup>60</sup> Id., citing *People v. Dela Cruz*, supra note 57 at 834-835.

<sup>61</sup> G.R. No. 228132, March 11, 2020.

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

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

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.<sup>62</sup> (Emphasis supplied and citations omitted)

Lamentably, the insulating witnesses merely participated after the confiscation of the dangerous drugs. It cannot be gainsaid that the police officers could have easily invited the witnesses during the arrest and seizure, considering that their buy-bust was planned in advance, and was conceived after weeks of surveilling the accused-appellant’s purported drug activities. In fact, PO3 Rivera testified that before the briefing, the witnesses were already called in.<sup>63</sup> Ironically, despite this claim, the insulating witnesses were not present during the arrest and seizure of the dangerous drugs.<sup>64</sup>

As elucidated in *Tañamor v. People*,<sup>65</sup> the police operatives’ pernicious practice of not bringing the required witnesses to the intended place of arrest,

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<sup>62</sup> Id.  
<sup>63</sup> CA rollo, p. 63.  
<sup>64</sup> Id.  
<sup>65</sup> Supra note 61.

when they could easily do so, but instead, calling them in to the place of inventory to witness the inventory and photographing of the drugs after the buy-bust operation had been completed, does not achieve the law's purpose of having the witnesses prevent the planting of drugs.<sup>66</sup> Thus, the belated participation of the required witnesses further engenders doubt on the integrity of the seized items, especially against the accused-appellant's defenses of frame-up and planting of evidence.

Amidst all the violations in the marking, custody, and disposition of the seized items, the prosecution conveniently harps on the substantial compliance with the rules, without offering any justifiable reason to explain the police officers' mishaps.

To stress, *People v. Lim*<sup>67</sup> underscores that in case of non-observance of Section 21 of R.A. No. 9165, the police officers must state their justification and explain the steps they have taken to preserve the integrity and evidentiary value of the seized items.

Similarly, *People v. Crispo, et al.*<sup>68</sup> emphasizes the prosecutors' duty to acknowledge and justify any perceived deviations from the procedure; since the State carries the heavy burden of proving not only the elements of the offense, but also establishing the integrity of the *corpus delicti*.<sup>69</sup>

It bears noting that the aforementioned lapses in the marking and custody of the seized drugs may not be brushed aside on the basis of the police officers' alleged substantial compliance with the Rules. Certainly, their acts may not be regarded as substantial compliance, but rather, gross violations of R.A. No. 9165, as amended, and its Implementing Rules and Regulations.

Furthermore, the police officers may not conveniently harp on the presumption of regularity in the performance of their duties. The presumption of regularity shall not prevail over the constitutional right of the accused to be presumed innocent;<sup>70</sup> neither does it apply in case of the flagrant disregard of the rules.<sup>71</sup>

It becomes+ all too apparent that the transgressions committed by the police officers have produced doubts on the identity and integrity of the items that entered into the chain of custody. Without adequate proof of the *corpus delicti*, the conviction cannot stand. Thus, an acquittal must ensue.

**WHEREFORE**, the appeal is **GRANTED**. The assailed November 18, 2019 Decision of the Court of Appeals in CA-G.R. CR HC No. 12022 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rommel

<sup>66</sup> Id.

<sup>67</sup> G.R. No. 231989, September 4, 2018.

<sup>68</sup> 828 Phil. 416 (2018), citing *People v. Umipang*, 686 Phil 1024, 1052 (2012).

<sup>69</sup> Id. at 436, citing *People v. Umipang*, id.

<sup>70</sup> *People v. Hementiza*, 807 Phil. 1017, 1033-1034 (2017).

<sup>71</sup> *People v. Garcia*, supra note 49.

Donaire y Rellosa is **ACQUITTED** due to the failure of the prosecution to prove his guilt beyond reasonable doubt.

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

**SO ORDERED.”**

By authority of the Court:

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

*JB 9/13/22*

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COURT OF APPEALS  
 CA G.R. CR HC No. 12022  
 1000 Manila

OFFICE OF THE SOLICITOR GENERAL  
 134 Amorsolo Street  
 Legaspi Village, 1229 Makati City

The Presiding Judge  
 REGIONAL TRIAL COURT  
 Olongapo City, 2200 Zambales  
 (Crim. Case Nos. 2016-1223 and 2016-1224)

The Director General  
 BUREAU OF CORRECTIONS  
 1770 Muntinlupa City

The Superintendent  
 New Bilibid Prison  
 BUREAU OF CORRECTIONS  
 1770 Muntinlupa City

Mr. Rommel Donaire y Rellosa  
 c/o The Superintendent  
 New Bilibid Prison  
 BUREAU OF CORRECTIONS  
 1770 Muntinlupa City

PGEN. Rodolfo S. Azurin, Jr.  
CHIEF, PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

The Chairman  
DANGEROUS DRUGS BOARD  
3<sup>rd</sup> Floor DDB-PDEA Bldg.,  
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**G.R. No. 252145**

*lpy*

*JB*

  
**URES**



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 252145

-versus-

ROMMEL DONAIRE y RELLOSA  
Accused-Appellant.

x-----/

**ORDER OF RELEASE**

**TO: The Director General**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**Thru: The Superintendent**  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**GREETINGS:**

WHEREAS, the Supreme Court on June 22, 2022 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

**“WHEREFORE**, the appeal is **GRANTED**. The assailed November 18, 2019 Decision of the Court of Appeals in CA-G.R. CR HC No. 12022 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rommel Donaire y Rellosa is **ACQUITTED** due to the failure of the prosecution to prove his guilt beyond reasonable doubt.

-over-

The Presiding Judge  
REGIONAL TRIAL COURT  
Olongapo City, 2200 Zambales  
(Crim. Case Nos. 2016-1223 and 2016-1224)

Mr. Rommel Donaire y Rellosa  
c/o The Superintendent  
New Bilibid Prison  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

PGen. Rodolfo S. Azurin, Jr.  
CHIEF, PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
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G.R. No. 252145

JP