



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **25 April 2022** which reads as follows:*

“**G.R. No. 254808** (*People of the Philippines v. James Pitogo Pelenio a.k.a. Van-van*). — On appeal¹ is the June 26, 2020 Decision² rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01973-MIN, which affirmed the April 25, 2018 Joint Judgment³ of the Regional Trial Court (RTC), Branch 43, of Gingoog City, in Criminal Case Nos. 2017-6827 and 2017-6828. The RTC found accused-appellant James Pitogo Pelenio (Pelenio) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ or the “Comprehensive Dangerous Drugs Act of 2002.”

Version of the prosecution:

On April 29, 2017, at around 6:00 p.m., Police Superintendent Roel Leyaley Lami-ing, Acting Chief of Police of Gingoog City Police Station, presided over a briefing for the conduct of a buy-bust operation against Pelenio. The following were in attendance: Senior Police Officer 2 Jan T. Jomen, Police Officer (PO) 3 Leo I. Pontillas, Jr. (PO3 Pontillas) (investigating officer), PO3 Kenneth L. Lofranco (PO3 Lofranco), PO3 Sofia D. Pensinabes, PO2 Polkem Macarayo (PO2 Macarayo), PO1 Joshua James Ranario, Police Senior Inspector (PSI) Ismael Virgil O. Gundaya (PSI Gundaya), and PO1 Jovanni P. Sabanal (PO1 Sabanal), who was designated as the *poseur*-buyer.⁵

¹ *Rollo*, pp. 25-26, 28.

² *Id.* at 5-24. Penned by Associate Justice Richard D. Mordeno and concurred in by Associate Justices Edgardo T. Lloren and Loida S. Posadas-Kahulugan.

³ *CA rollo*, pp. 55-70. Penned by Judge Mirabeaus A. Undalok.

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

⁵ *Rollo*, p. 8; TSN, September 11, 2017, pp. 3-6.

PO3 Pontillas handed over to PO1 Sabanal a ₱500.00 bill with serial number MC733300⁶ which will be used as buy-bust money during the operation. PO3 Pontillas recorded such fact in the police blotter under entry number 0417.⁷ Likewise, a picture of Pelenio was shown to PO1 Sabanal. The police officers agreed that when PO1 Sabanal says, “Police, do not run,” it would signal the consummation of the sale.⁸ The entrapment operation was coordinated with the Philippine Drug Enforcement Agency (PDEA) under PDEA Pre-Operation No. 30002-042017-0384.⁹

After the briefing, the police officers proceeded to the target area at Purok 1, Barangay 18-A, Gingoog City. The confidential informant (CI), who would facilitate the intended transaction between PO1 Sabanal and Pelenio, accompanied them.¹⁰

At around 7:10 p.m., PO1 Sabanal and the CI arrived at the target area. The CI saw Pelenio and told him that a prospective buyer came with him. Pelenio then asked PO1 Sabanal how much *shabu* he wanted to buy. PO1 Sabanal replied that he needed ₱500.00 worth of *shabu*. Thereafter, PO1 Sabanal retrieved the marked money from his pocket and gave it to Pelenio, who in turn handed over a plastic transparent sachet containing suspected *shabu*. PO1 Sabanal placed the sachet inside the front right pocket of his short pants. Subsequently, PO1 Sabanal declared that he is a police officer. Pelenio tried to escape but PO1 Sabanal grabbed his arm. With a stern voice, PO1 Sabanal warned Pelenio not to run away.¹¹

While holding on to Pelenio’s arm, PO1 Sabanal immediately handcuffed the former’s wrists and informed him of his constitutional rights. By this time, PSI Gundaya, PO3 Lofranco, and the other police officers had already rushed to the crime scene to secure the area after they heard PO1 Sabanal’s pre-arranged signal. PSI Gundaya called a media representative and the barangay officials to witness the inventory and marking of the seized evidence. Subsequently, Ofelia Mandokita (Mandokita) of *Radyo ng Bayan, Barangay* Captain Ernesto Quider (*Barangay* Captain Quider), *Barangay Kagawads* Ruel Amper (Amper) and Judith Ratilla (Ratilla), arrived. PO3 Pontillas requested them to frisk him in order to erase any suspicion that he might plant evidence. The witnesses did not find anything illegal in PO3 Pontillas’ possession after checking. PO1 Sabanal also turned over to PO3 Pontillas the product of the buy-bust operation, specifically the plastic transparent sachet containing suspected *shabu*.¹²

⁶ Records, Crim. Case No. 2017-6828, p. 20; Crim. Case No. 2017-6827, p. 21.

⁷ Id. at 19; id. at 20.

⁸ *Rollo*, p. 8; TSN, September 11, 2017, pp. 3-6.

⁹ Affidavit of PO3 Pontillas; records, Crim. Case No. 2017-6828, p. 8; Crim. Case No. 2017-6827, p. 9.

¹⁰ *Rollo*, pp. 8-9.

¹¹ *Rollo*, p. 9; TSN, September 11, 2017, pp. 6-7.

¹² Id.; id. at 7-8; TSN, September 26, 2017, pp. 10-13; October 24, 2017, p. 5.

Afterwards, PO3 Pontillas searched Pelenio's body in the presence of the witnesses. While doing the search, PO3 Pontillas noticed that Pelenio dropped something on the ground. Upon inspection, PO3 Pontillas saw a ₱500.00 bill. He continued the search and found a yellow plastic cannister in the back pocket of Pelenio's short pants. PO3 Pontillas opened it and found three plastic transparent sachets containing suspected *shabu*. Thereafter, he marked the sachet subject of the buy-bust with "LIP-1-BB-JPP" and wrote "LIP-3-BB-JPP to LIP-5-BB-JPP" on the other three confiscated sachets. Similarly, he marked the buy-bust money with "LIP-2-BB-JPP." After marking, PO3 Pontillas conducted an inventory¹³ of the seized items in front of the witnesses.¹⁴ PO2 Macarayo documented the frisking, marking, and inventory by taking photographs.¹⁵

PO3 Pontillas took custody of the seized items and brought them to the Gingoog City Police Station together with Pelenio. After arrival, PO3 Pontillas prepared the letter-request for laboratory examination¹⁶ of the seized items which he then submitted to the Crime Laboratory the next day. Police Chief Inspector Joseph Esber (PCI Esber) received the letter-request as well as the confiscated items and conducted the laboratory examination. After evaluation, PCI Esber sealed the specimens with a tape and marked these with "D-61-2017 MIS OR," his initials "JTE," and his signature.¹⁷ The specimens tested positive for *methamphetamine hydrochloride*, a dangerous drug, as evidenced by Chemistry Report No. D-61-2017.¹⁸

During his testimony, PO1 Sabanal insisted that even if he was not the one who marked the buy-bust item, he turned over to PO3 Pontillas the sachet he bought from Pelenio. Additionally, he was beside PO3 Pontillas when the latter marked the buy-bust item.¹⁹

During PO2 Macarayo's cross-examination, he stated that the buy-bust money and the dangerous drugs were retrieved from the ground on top of leaves and twigs.²⁰

Barangay Captain Quider confirmed that he frisked PO3 Pontillas and that he was present when Pelenio was searched wherein sachets of *shabu* were confiscated from him.²¹

PO3 Pontillas averred that after they arrived at the police station, he stored the seized items in his private locker (with lock) located at their Intelligence Office which only he had access to. The next day, he requested for the laboratory examination of the seized items, which the Officer-In-Charge, PCI Esber,

¹³ Records, Crim. Case No. 2017-6828, p. 18; Crim. Case No. 2017-6827, p. 19.

¹⁴ *Rollo*, pp. 9-10; TSN, September 11, 2017, pp. 8-9; September 26, 2017, pp. 13-15.

¹⁵ Records, Crim. Case No. 2017-6827, pp. 92-95; TSN, September 13, 2017, p. 1.

¹⁶ Records, Crim. Case No. 2017-6828, p. 16; Crim. Case No. 2017-6827, p. 17.

¹⁷ *CA rollo*, p. 60; TSN, September 26, 2017, pp. 16-17.

¹⁸ Records, Crim. Case No. 2017-6828, p. 17; Crim. Case No. 2017-6827, p. 18; *rollo*, pp. 10-11.

¹⁹ TSN, September 11, 2017, pp. 13-15.

²⁰ TSN, September 13, 2017, pp. 2-3.

²¹ TSN, September 26, 2017, p. 3.

received.²² On cross-examination, PO3 Pontillas admitted that he did not personally witness the sale between Pelenio and PO1 Sabanal.²³ However, he insisted that Pelenio dropped the illegal items on the ground on top of the pile of leaves.²⁴ He clarified that the said items came from Pelenio's back pocket before the latter dropped these on the ground.²⁵

Version of the defense:

Pelenio averred that on April 29, 2017, he was in his house watching over his child. At around 3 p.m., he informed his live-in partner that he is going to the market. After buying rice and food, he went home. Along the way, he met his father who notified him that PO3 Kenneth Lofranco, a police officer, is looking for him, supposedly to ask for help. Pelenio's father told him that PO3 Lofranco's group passed at the back of the house. Pelenio tried to follow PO3 Lofranco after giving the food to his live-in partner, but he was not able to catch up with him. His live-in partner then prepared dinner. After cooking, Pelenio stepped outside to meet his neighbor, Bob Marlie Galarion (Galarion), who told him that PO3 Lofranco was looking for him. As he was about to return inside, Pelenio met PO1 Sabanal.²⁶

Pelenio asserted that PO3 Lofranco and PO1 Sabanal went to his house at around 1:00 p.m. and showed him a picture of a person on a mobile phone. Although the person on the picture looked familiar, he did not know his name. Pelenio added that he knows who PO3 Lofranco is because they have been neighbors for quite some time but that it was his first time meeting PO1 Sabanal.²⁷

After talking to Galarion, Pelenio went back home but he encountered PO1 Sabanal along the way. Suddenly, PO1 Sabanal instructed him to get down on the ground but he refused because he did not commit any crime. Behind him, Pelenio heard PO3 Pontillas ordering him to drop to the ground. Pelenio asked them what crime he supposedly committed. Pelenio recognized PO3 Pontillas because the latter had arrested many persons in their area. However, PO3 Pontillas kicked him on the back so he fell to the ground. While Pelenio was lying on the ground, PO3 Pontillas handcuffed him and instructed him to get up. Thereafter, Pelenio was taken to a secluded area about 11 meters away. The pathway was lighted but there were no other people around. The police officers made him lean on a concrete wall and sit on a pile of *Talisay* leaves. Out of fear, Pelenio did not protest anymore. Subsequently, PO3 Pontillas called for the presence of the *barangay* officials and a media representative. A few minutes later, the witnesses arrived.²⁸

²² Id. at 16.

²³ Id. at 17-18.

²⁴ Id. at 21-22, 25.

²⁵ Id. at 23-25.

²⁶ *Rollo*, p. 11; *CA rollo*, p. 61; TSN, January 23, 2018, pp. 3-4.

²⁷ *Rollo*, p. 11; *CA rollo*, p. 61; TSN, January 23, 2018, pp. 4-5.

²⁸ Id. at; id.; id. at 5-6.

Pelenio told *Barangay* Captain Quider that he did nothing wrong. After requiring Pelenio to stand, PO3 Pontillas frisked him. However, nothing was confiscated from him. PO3 Pontillas squatted and searched through the pile of *Talisay* leaves, then found a ₱500.00-bill, as well as a lighter. PO3 Pontillas poured out the contents of the lighter and supposedly found a small cellophane. Pelenio insisted on his innocence and denied ownership of the ₱500.00 bill. He alleged that the police officers planted evidence against him because he refused to heed their request to monitor the person whose picture appeared on the mobile phone. He feared that doing so would put his family in danger as he is a long-time resident of Barangay 18-A, Gingoog City.²⁹

The proceedings:

On May 2, 2017, two separate Informations were filed charging Pelenio with violations of Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

Criminal Case No. 2017-6827 (Illegal Sale):

That on April 29, 2017 at more or less 7:10 o'clock in the evening at Purok 1, Barangay 18-A, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there willfully, unlawfully and feloniously, sell, deliver and give away to a police poseur-buyer PO1 JOVANNI PACULBA SABANAL in a buy-bust operation one (1) small heat sealed transparent plastic sachet with markings LIP-1-BB-JPP having a total net weight of 0.0269 gram of white crystalline substance known as SHABU in exchange [for] one (1) piece P500.00 with serial number MC733300.

Contrary to law and in Violation of Section 5, Article II of Republic Act No. 9165 Comprehensive Dangerous Drugs Act of 2002.³⁰

Criminal Case No. 2017-6828 (Illegal Possession):

That on or about April 29, 2017 at more or less 7:10 o'clock in the evening at Purok 1, Barangay 18-A, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without lawful authority, did then and there willfully, unlawfully and feloniously, [possess] and [have] under his control, three (3) small [heat-sealed] transparent plastic [sachets] with markings LIP-3-JPP through LIP-5-JPP containing [white] crystalline substance known as SHABU having a total net weight of 0.0669 grams, [a dangerous drug].

Contrary to law and in Violation of Section 11, Article II of Republic Act No. 9165 Comprehensive Dangerous Drugs Act of 2002.³¹

²⁹ Id. at 12; id. at 62; id. at 7-8.

³⁰ Records, Crim. Case No. 2017-6827, p. 5.

³¹ Records, Crim. Case No. 2017-6828, p. 5.

Since the two cases were raffled to different branches of the RTC, the prosecution moved to consolidate these cases which was granted.³²

During his arraignment, Pelenio entered pleas of “not guilty”³³ on both charges. Joint trial ensued.

At the pre-trial, the parties stipulated on the following: (1) the identity of the Pelenio; (2) the jurisdiction of the trial court over the case (but not over the person of Pelenio); and (3) the warrantless arrest of Pelenio.³⁴

During trial, the parties also stipulated on the following: “the existence and due execution of Exhibit ‘F’ – Letter-Request and Exhibit ‘F-1’ – the rubber stamp impression; the existence of Exhibit ‘I’ to Exhibit ‘I-1’ with marking LIP-1-BB-JPP; and Exhibit ‘J’ to Exhibit ‘J-2’ with markings LIP-3-JPP through LIP-5-JPP.”³⁵

The parties further stipulated that PCI Esber “properly handled the drugs evidence in accordance with the law and that he does not know the source and origin of the *shabu* which he examined.”³⁶ Specifically, they agreed that:

(1) on [April 30, 2017] at around 8:30 A.M., [PCI Esber] received from [PO3 Pontillas] xxx xxx xxx the Letter-Request for laboratory examination of the dangerous drugs.

(2) the [specimens marked as LIP-1-BB-JPP and LIP-3-BB-JPP to LIP-5-BB-JPP] sought to be examined was received by [PCI Esber] in the same condition which was transmitted by [PO3 Pontillas].

(3) [PCI Esber] personally conducted the laboratory examination on the earlier specimen presented immediately upon receipt thereof.

(4) the laboratory examination was concluded at 11:45 A.M. on April 30, 2017.

(5) the laboratory examination [of] the same specimen was conducted in accordance with law.

(6) the [specimens] were all positive for the presence of [*methamphetamine hydrochloride*], a dangerous [drug, as reflected in the Chemistry Report].

³² Records, Crim. Case No. 2017-6828, p. 26.

³³ His arraignment for the two charges were conducted on different days; records, Crim. Case No. 2017-6828, pp. 32-33; Crim. Case No. 2017-6827, pp. 27-28.

³⁴ Records, Crim. Case No. 2017-6828, p. 41.

³⁵ Id. at 49.

³⁶ Id.

(7) the specimen was [tape-sealed] by the witness [PCI Esber] and [he] affixed his signature after the conduct of the laboratory examination thereon and turned over the specimen to the evidence custodian for safekeeping in his presence under his direct control and supervision by this witness [PCI Esber] being a Chief of Office.

(8) the subject specimen was retrieved by the witness [PCI Esber] from the evidence custodian on August 29, 2017 and the same was received by him [in] the same condition that the witness [PCI Esber] turned over the specimen to the evidence custodian for safekeeping.³⁷

Moreover, the parties stipulated on the existence and authenticity of the photographs which PO2 Macarayo took.³⁸ They agreed that: “Ofelia Mandokita was invited to witness the police operation on April 29, 2017 at Purok 1, Barangay 18-A, Gingoog City; she was present when [PO3 Pontillas] was frisked; she was also around when [Pelenio] *alias* Vanvan was likewise frisked; she was also around when the illegal items were marked and subjected to inventory; and she also identified the certificate of inventory already marked as Exhibit ‘E.’”³⁹

Ruling of the Regional Trial Court:

In its Joint Judgment⁴⁰ dated April 25, 2018, the RTC found Pelenio guilty of Illegal Sale and Possession of *shabu*. The prosecution, through the testimonies of the police officers who conducted the entrapment operation, proved all the elements of the charged crimes. The chain of custody was preserved, and the presumption of regularity in the performance of duties prevailed over Pelenio’s defenses of denial and frame-up.⁴¹

The dispositive portion of the RTC’s Joint Judgment reads:

WHEREFORE, premises considered, the Court finds JAMES PITOGO PELENIO A.K.A. VAN-VAN guilty beyond reasonable doubt in Criminal Case No. 2017-6827 for violation of Section 5, Article II, RA No. 9165 and sentences him to life imprisonment and a fine of Five hundred thousand pesos (Php 500,000.00).

The Court finds JAMES PITOGO PELENIO A.K.A. VAN-VAN also guilty beyond reasonable doubt in Criminal Case No. 2017-6828 for violation of Section 11, Article II, RA No. 9165 and sentences him to an indeterminate penalty of twelve (12) years and one (1) day to sixteen (16) years and a fine of Three hundred thousand pesos (Php300,000.00).

³⁷ TSN, August 29, 2017, pp. 3-5.

³⁸ Records, Crim. Case No. 2017-6828, p. 59.

³⁹ Records, Crim. Case No. 2017-6828, p. 71; TSN, October 24, 2017, p. 3.

⁴⁰ *CA rollo*, pp. 55-70.

⁴¹ *Id.* at 63-69.

The shabu consisting of four (4) sachets is confiscated in favor of the government and disposed of in accordance with laws and regulations on the matter.

JAMES PITOGO PELENIO A.K.A. VAN-VAN shall serve his two (2) sentences at Davao Penal Colony, Dujali, Davao del Norte. His preventive detention at BJMP-Gingoog City is fully credited in the service of his sentence.

SO ORDERED.⁴²

Pelenio appealed⁴³ to the CA.

Ruling of the Court of Appeals:

The CA, in its assailed June 26, 2020 Decision,⁴⁴ denied the appeal and affirmed the RTC's Decision.⁴⁵ It ruled that there was no broken link in the chain of custody.⁴⁶ Pelenio failed to show any ill motive on the part of the police officers, who are presumed to have regularly performed their duties.⁴⁷

Aggrieved, Pelenio appealed⁴⁸ before this Court.

Issue

Thus, the main issue is whether Pelenio is guilty beyond reasonable doubt of the Illegal Sale and Possession of Dangerous Drugs.

Our Ruling

The appeal has merit.

“It is well-settled that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.”⁴⁹ This power to review includes the Court's authority to acquit the accused-appellant when warranted.

Pelenio was charged with Illegal Sale and Possession of Dangerous Drugs. “For Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165,

⁴² Id. at 69-70.

⁴³ Id. at 19-21.

⁴⁴ *Rollo*, pp. 5-24.

⁴⁵ Id. at 23.

⁴⁶ Id. at 18-22.

⁴⁷ Id. at 23.

⁴⁸ Id. at 25-26, 28.

⁴⁹ *People v. Siat*, G.R. No. 233529, October 4, 2021, citing *People v. Bernardo*, G.R. No. 242696, November 11, 2020.

the elements are the following: (1) identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. On the other hand, the offense of Illegal Possession of Dangerous Drugs under Section 11 of the same law has the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of such dangerous drugs.”⁵⁰

It appears that Pelenio was caught selling and possessing dangerous drugs. Regarding the sale, the prosecution showed that Pelenio sold *shabu* contained in a transparent plastic sachet to PO1 Sabanal, the *poseur*-buyer. Pelenio’s receipt of the ₱500.00-marked bill supposedly consummated the sale. As for the charge of Illegal Possession, the police officers conducted a search upon Pelenio’s body after his arrest in the presence of the required witnesses. PO3 Pontillas purportedly confiscated three more sachets of *shabu* from Pelenio, who did not have the authority to possess the said drugs. Based on the testimonies of the prosecution witnesses, especially that of PO3 Pontillas, Pelenio dropped on the ground the marked money and the other sachets of drugs which originally came from the back pocket of his pants.⁵¹

Nevertheless, the Court should assess if the entrapment team followed the procedure regarding the seizure and custody of dangerous drugs according to RA 9165 (as amended by RA 10640). Since the entrapment, arrest, and seizure in this case occurred on April 29, 2017, the guidelines provided after the law’s amendment (on July 23, 2014) should apply.

Relevantly, “[i]n *People v. Lim*⁵² (*Lim*), the Court stressed the importance of the presence of the required witnesses, at the time of the physical inventory and photograph of the seized items pursuant to Section 21 of RA 9165, as amended [by RA 10640].⁵³ The law further requires that the said inventory and

⁵⁰ *People v. Pelaez*, G.R. No. 225631, September 27, 2021, citing *People v. Buesa*, G.R. No. 237850, September 16, 2020.

⁵¹ TSN, September 26, 2017, pp. 21-22.

⁵² *People v. Bautista*, G.R. No. 243671, October 4, 2021, citing *People v. Lim*, G.R. No. 231989, September 4, 2018.

⁵³ *People v. Miraflores*, G.R. No. 233532, March 15, 2021 stating that RA 10640, Entitled “An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002” provides:

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

photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as the third-party witnesses namely: (i) if prior to the amendment of RA 9165 by RA 10640, a representative from the media and the Department of Justice, and any elected public official; or if after the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) or the media.”⁵⁴

In this case, the required witnesses, as well as Pelenio (although he did not sign the Certificate of Inventory), were present during the physical inventory and the photography of the seized items. Specifically, local elected officers, *Barangay* Captain Quider and *Barangay Kagawads* Amper and Ratilla, as well as a media representative, Mandokita of *Radyo ng Bayan*, witnessed the inventory and the photography. Under the amended law, the presence of a DOJ representative is not required as long as a member of the media and an elected public official were present. Thus, at least for the third-party witnesses aspect, the prosecution complied with the mandate of the amended law.

Pelenio insisted, however, that there was a breach in the chain of custody of the confiscated items. Before delving into the links, the Court notes that only PO1 Sabanal and the CI witnessed the sale. PO3 Pontillas and the other police operatives did not see the sale⁵⁵ as they were positioned in an alley which was around five to 10 meters away.⁵⁶ Unfortunately, the CI did not testify or file an affidavit to support the prosecution’s allegations.

In any case, “[t]o establish an unbroken chain of custody, four links must be duly proven: (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 of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.”⁵⁷

As for the first link in relation to the sale, Pelenio pointed out that PO1 Sabanal, the apprehending officer, did not immediately mark the product of the buy-bust operation. Instead, PO1 Sabanal placed it inside his pocket without any justification for the delay in marking or why he had to wait for PO3 Pontillas to receive it before marking it. Jurisprudence explains that:

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.”
x x x x (Emphasis supplied).

⁵⁴ *People v. Bautista*, supra note 52, citing *People v. Esguerra*, G.R. No. 243986, January 22, 2020.

⁵⁵ TSN, September 26, 2017, pp. 17-18.

⁵⁶ Id. at 11-12, 18.

⁵⁷ *People v. Lacsamana*, G.R. No. 250176, October 11, 2021, citing *People v. Mammad*, 769 Phil. 782, 790 (2015) which cited *People v. Salvador*, 726 Phil. 389, 405 (2014).

Marking is the placing by the arresting officer or the poseur-buyer of his initials and signature on the items after they have been seized.⁵⁸ While the matter of marking of the seized illegal drugs in warrantless seizures is not expressly specified in Section 21, consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches on one hand, and of protecting the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft, on the other.⁵⁹

The immediate marking of the seized illegal drugs is vital because succeeding handlers of the specimens will use the markings as reference.⁶⁰ The marking obviates switching, ‘planting,’ or contamination of evidence as it 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 criminal proceedings. Failure to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.⁶¹

Even if such marking should be performed “if practicable,” PO1 Sabanal admitted to keeping the sachet in his pocket without marking it. He did not explain why he had to do so. Similarly, he did not describe how he safeguarded the confiscated item while it was inside his pocket. Thence,

In *People v. [Dela] Cruz*,⁶² the Court ruled that keeping seized narcotics in a police officer’s pockets is fraught with dangers:

Even without referring to the strict requirements of Section 21, **common sense dictates that a single police officer’s act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of [the apprehending officer’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 [the apprehending officer’s] avowals is mind-boggling. (Emphasis supplied)

Needless to state, keeping seized narcotics in the pocket of a seizing officer is a dubious way of ensuring its integrity. Worse, there was an absence of testimony by [the apprehending officer] with regard to any precautions he undertook to secure the seized plastic sachet from contamination, substitution, or alteration. Such circumstance cannot be overlooked by the Court xxx.⁶³

⁵⁸ *People v. Areola, Jr.* G.R. No. 251919 (Notice), May 12, 2021, citing *People v. Adobar*, 832 Phil. 731, 763 (2018).

⁵⁹ *Id.*, citing *People v. Beran*, 724 Phil. 788, 819-820 (2014) which cited *People v. Sanchez*, 590 Phil. 214, 241 (2008).

⁶⁰ *Id.*, citing *People v. Adobar*, 832 Phil. 731, 763 (2018).

⁶¹ *Id.*, citing *People v. Umipang*, 686 Phil. 1024, 1049-1050 (2012).

⁶² *People v. Batacao*, G.R. No. 238207, June 21, 2021, citing *People v. Dela Cruz*, 744 Phil. 816, 834 (2014).

⁶³ *Id.*

Additionally, the miniscule amount contained in the buy-bust item adds to the suspicion that it could have been manipulated. Besides, a couple of moments had passed before the other police officers arrived after Pelenio's apprehension by PO1 Sabanal. Given the small quantity of drugs involved, tampering might have occurred during this short window of time. This is regardless of the seeming compliance with the second link, which was the transfer of custody of the seized item from the apprehending officer, PO1 Sabanal, to the investigating officer, PO3 Pontillas.

With regard to the charge of Illegal Possession, it was established that the police made Pelenio sit on the pile of leaves and not on clear ground.⁶⁴ Thus, there is a possibility that evidence might have been planted due to the disarray, considering that the incident occurred at night. Furthermore, the prosecution's witnesses were not consistent in stating that the other sachets were retrieved from Pelenio's pocket or from the pile of leaves. Although PO3 Pontillas asserted in his testimony that Pelenio dropped the items on the ground, he failed to mention this significant detail in his Judicial Affidavit.⁶⁵

As for the third link, there is a clear deviation from the procedure. PO3 Pontillas stored the confiscated items in his locker. He did not justify why he had to do so notwithstanding his assertions that there was a lock and that he was the only one who had access to it until he turned the items over to the crime laboratory. In addition, he did not state if a night duty officer kept watch and secured the office or the locker itself. Simply put, he gave no assurance that no possibility of tampering could have transpired especially considering the small amount of the seized items which made them susceptible to manipulation. Nonetheless, PO3 Pontillas specified that he personally transferred custody of the confiscated items to the forensic officer, PCI Esber, and the latter acknowledged receipt during his testimony.

With regard to the fourth link, some details were not expounded on since the parties stipulated on PCI Esber's testimony. PCI Esber stated that after examination, he marked and sealed the items then turned it over to the evidence custodian for safekeeping. Thereafter, he retrieved the same items from the evidence custodian before bringing the same to the trial court for presentation as evidence. However, PCI Esber did not disclose the name of the evidence custodian and did not clarify how the specimens were handled and subsequently turned over to the evidence custodian. Unfortunately, the evidence custodian did not testify to prove that the items were kept intact and untampered. Similarly, PCI Esber did not explain how he ensured that during storage with the evidence custodian, the confiscated items could not have been compromised. In other words, PCI Esber's testimony is lacking.

Based on these observations, and due to the evident procedural lapses committed by the police, the integrity and evidentiary value of the seized items

⁶⁴ TSN, September 26, 2017, p. 20.

⁶⁵ Id. at 23-25.

were not preserved. Hence, the pieces of evidence which the prosecution introduced are tainted with uncertainties. To stress, [i]f deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.”⁶⁶ Moreover, “[t]he presumption of regularity cannot preponderate over the presumption of innocence in favor of the accused.”⁶⁷ Since the quantum of proof required in criminal cases is proof beyond reasonable doubt,⁶⁸ which the prosecution failed to establish, the Court is constrained to reverse the conviction of Pelenio for both crimes.

WHEREFORE, the appeal is **GRANTED**. The assailed June 26, 2020 Decision rendered by the Court of Appeals in CA-G.R. CR-HC No. 01973-MIN is **REVERSED and SET ASIDE**. Accused-appellant **JAMES PITOGO PELENIO** *alias* VAN-VAN is **ACQUITTED** for both crimes for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Superintendent of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. Furthermore, the Superintendent is **DIRECTED** to report to this Court the action taken hereon within five days from receipt of this Resolution.

The Court **NOTES**:

1. the letter dated December 15, 2021 of C/Insp. Raul B. Sinadjan, Jr., Chief, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, informing the Court that they received accused-appellant James Pelenio y Pitogo for confinement at the Davao Prison and Penal Farm on June 28, 2018; and

2. the manifestation (in lieu of supplemental brief) dated March 10, 2022 of the Public Attorney’s Office, in compliance with the Resolution dated October 6, 2021 [inadvertently indicated as October 21, 2022], adopting the brief filed before the Court of Appeals as accused-appellant’s supplemental brief as the same had adequately discussed all the matters pertinent to his defense, and praying that the Court admit the same despite its belated filing due to human frailty and heavy workload.

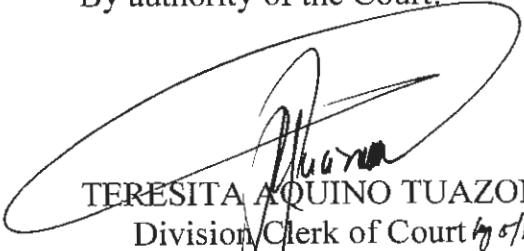
⁶⁶ *People v. Batacao*, supra note 62, citing *People v. Doria*, G.R. No. 227854, October 9, 2019.

⁶⁷ *People v. Areola, Jr.*, supra note 58, citing *Largo v. People*, G.R. No. 201293, June 19, 2019.

⁶⁸ RULES OF COURT, Rule 133, Section 2.

SO ORDERED.” (Perlas-Bernabe, S.A.J., on official leave; Hernando, J., Acting Chairperson per Special Order No. 2887 dated April 8, 2022)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court *by 5/17*
 20 MAY 2022

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 Special and Appealed Cases Division
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 Accused-Appellant
 c/o The Superintendent
 Davao Prison and Penal Farm
 B.E. Dujali, 8105 Davao del Norte

THE SUPERINTENDENT (reg)
 Davao Prison and Penal Farm
 B.E. Dujali, 8105 Davao del Norte

THE DIRECTOR (x)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 43
 Gingoog City
 (Crim. Case No. 2017-6827)

*CInsp. RAUL B. SINADJAN, JR.(reg)
 Chief, Inmate Documents and Processing Division
 Bureau of Corrections
 Muntinlupa City

JUDGMENT DIVISION (x)
 Supreme Court, Manila

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 Supreme Court, Manila

COURT OF APPEALS (reg)
 Cagayan de Oro City
 CA-G.R. CR-HC No. 01973-MIN

*For this resolution only
Please notify the Court of any change in your address.
 GR254808. 04/25/2022(165)URES(a)