



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **October 10, 2022** which reads as follows:*

**“G.R. No. 243787 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, v. DANTE CRUZ y PICARA, *accused-appellant*).** – Buy-bust operations must observe the requirements set forth in Section 21 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. In case of noncompliance, the prosecution must allege and prove justifiable grounds therefor, or risk engendering doubt that drugs were seized during a buy-bust operation.

This Court resolves the appeal filed by Dante Cruz y Picara (Cruz) assailing the Decision<sup>1</sup> of the Court of Appeals, which, in turn, affirmed the Decision<sup>2</sup> of the Regional Trial Court finding Cruz guilty beyond reasonable doubt of illegal use, illegal sale for dangerous drugs, and illegal possession of drug paraphernalia, in violation of Republic Act No. 9165.

In three separate Informations, Cruz and Jefferson Sta. Ana y Cabantog (Cabantog) were charged with illegal use, illegal sale of dangerous drugs, and illegal possession of drug paraphernalia, punished under Sections 5, 11, and 12 of Republic Act No. 9165.

The accusatory portion of the Information in Criminal Case No. 2013-4259-D-MK reads:

That on or about the 5<sup>th</sup> day of December 2013, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating with each other without being authorized by law did then and there wilfully and unlawfully and knowingly sell to PO3 RONNEL BANGALAN, a poseur

<sup>1</sup> *Rollo*, pp. 2–16. The May 25, 2018 Decision in CA-G.R. CR HC No. 08053 was penned by Associate Justice Maria Filomena D. Singh (now a Member of this Court) and concurred in by Associate Justices Sesinando E. Villon and Edwin D. Sorongon of the Tenth Division of the Court of Appeals, Manila.

<sup>2</sup> *CA rollo*, pp. 43–50. The November 26, 2015 Decision in Criminal Case Nos. 2013-4259-62-D-MK was penned by Presiding Judge Armando C. Velasco of the Regional Trial Court of Marikina City, Branch 263.

buyer, 0.07 gram of white crystalline substance, tested positive for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.<sup>3</sup>

**In Criminal Case No. 2013-4261-D-MK:**

That on or about the 5<sup>th</sup> day of December 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, wilfully and unlawfully have in his possession, direct custody and control two (2) heat-sealed transparent plastic sachet of white crystalline substance, both weighing 0.03 gram positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.<sup>4</sup>

**In Criminal Case No. 2013-4262-D-MK:**

That on or about the 5<sup>th</sup> day of December 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously have in her possession, direct custody and control the following drug paraphernalia, to wit: One (1) small transparent plastic sachet containing one folded aluminium foil containing traces of shabu, One Empty small plastic bottle of nail polish remover as improvised burner and one improvised glass pipe, all instruments or paraphernalia fit or intended for smoking, in violation of the above-cited law.<sup>5</sup>

Upon arraignment, Cruz pleaded not guilty to the charges. Pre-trial thereafter followed, and upon its termination, trial on the merits then ensued.

The prosecution presented the testimony of Police Officer III Ronnel M. Bangalan (PO3 Bangalan).

According to PO3 Bangalan, at about 4:00 p.m. on December 5, 2013, a confidential informant reported to the Special Anti-Illegal Drugs Special Operation Task Force Group (Task Force) at Marikina City Station. According to the informant, the selling of dangerous drugs would take place that day at Bonifacio Avenue, Barangka, Marikina City. Thus, the Task Force Group formed a buy-bust team, with PO3 Bangalan as the designated poseur buyer,<sup>6</sup> and coordinated with the Philippine Drug Enforcement Agency and Task Force. They made a pre-operational report stating the names of the targets. Cruz was among the persons named in the pre-operational report.<sup>7</sup>

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<sup>3</sup> Id. at 43.

<sup>4</sup> Id. at 43-44.

<sup>5</sup> Id. at 44.

<sup>6</sup> *Rollo*, p. 3.

<sup>7</sup> Id.

Afterwards, they proceeded to Bonifacio Avenue. The team surveilled the area, then proceeded to an alley where the target, Cruz, was said to reside. However, he was not there. They asked a person in the alley, later identified as Sta. Ana, of Cruz's whereabouts. Sta. Ana called and found Cruz. The informant confirmed Cruz was their target, and PO3 Bangalan asked "*Kung pwedeng bumili ng bato worth P500.00?*" The informant and Cruz confirmed that they wanted to purchase illegal drugs. He then revealed a pouch that contained three sachets of white crystalline substance and gave two sachets to PO3 Bangalan, in exchange for the marked money. Then, PO3 Bangalan signaled to the rest of the team that the sale had been consummated. With Senior Police Officer I Luis Fortuno (SPO1 Fortuno), PO3 Bangalan arrested and frisked Cruz. PO3 Bangalan also frisked Sta. Ana. They found drug paraphernalia and the three sachets containing white crystalline substances on Cruz. On Sta. Ana, they found one sachet containing white crystalline substance.<sup>8</sup>

PO3 Bangalan immediately prepared the inventory for the seized items, which was signed by a barangay kagawad, and a media representative. Thereafter, the Crime Laboratory Office was requested to examine the seized items.<sup>9</sup>

Sta. Ana and Cruz testified in their defense. They testified that on the evening of December 5, 2013, Sta. Ana was in Cruz's house located in Bonifacio Highway, Barangka, fixing the stereo of Cruz's jeepney. While inside, they heard a sudden loud sound, and five to six armed men entered. They pointed their guns at Sta. Ana and Cruz, yelled at them, telling them not to move. They were looking for something in the house, but neither Sta. Ana nor Cruz knew what was happening. They took items such as a digital camera, television set, and electric fan, and when asked, did not explain why they were taking Cruz's things. One of the armed men took what appeared to be plastic sachets from a bag, laid them in front of Sta. Ana and Cruz, and took pictures of them. According to Cruz, when he asserted that those items were not his, one of the armed men told him to be quiet and motioned as though he would strike Cruz with his gun.<sup>10</sup>

Thereafter, Sta. Ana and Cruz were taken to the police station, where they learned they had been charged with violation of Republic Act No. 9165.<sup>11</sup>

In its November 26, 2015 Decision,<sup>12</sup> the Regional Trial Court found that the prosecution failed to sufficiently prove Sta. Ana's guilt. It reasoned that, assuming that the prosecution's narration of events was correct, Sta.

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<sup>8</sup> CA Rollo, p. 45.

<sup>9</sup> Id. at 45-46.

<sup>10</sup> Id.

<sup>11</sup> Id. at 47-48.

<sup>12</sup> Id. at 43-50.

Ana was not doing anything suspicious or illegal when the police officers searched him. Thus, assuming that the police officers discovered shabu in his possession upon searching him, said search was unreasonable, and the seized shabu was therefore not admissible in evidence.<sup>13</sup>

Cruz, on the other hand, was convicted of the crimes charged. The Regional Trial Court found that the evidence established that a buy-bust operation had taken place. It found that the prosecution had established the integrity of the evidence seized and thus proved Cruz was guilty of the crimes charged beyond reasonable doubt.<sup>14</sup>

The dispositive portion of the Regional Trial Court Decision reads:

WHEREFORE, above premises considered, the court finds accused JEFFERSON STA. ANA NOT GUILTY of the charges against him for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt.

On the other hand, accused DANTE CRUZ y PICARA is hereby found GUILTY of violation of Section 5 of Article II of R.A. No. 9165 beyond reasonable doubt. He is sentenced to suffer the penalty of life imprisonment and to pay the fine of P500,000.00.

Likewise, accused Dante Cruz y Picara is found GUILTY of Section 11 of Article II of R.A. No. 9165 and is sentenced to suffer the penalty of imprisonment of THIRTEEN (13) YEARS and to pay the fine of P300,000.00.

Finally, accused DANTE CRUZ y PICARA is also adjudged GUILTY of Section 12 of R.A. No. 9165 and is hereby sentenced to suffer the penalty of imprisonment of SEVEN (7) MONTHS and to pay the fine of P10,000.00.

SO ORDERED.<sup>15</sup>

Cruz appealed his conviction before the Court of Appeals. He argued that the rationale behind Sta. Ana's acquittal applies to his case, as well.<sup>16</sup> Further, Cruz pointed out that Republic Act No. 9165 requires the presence of a representative of the Department of Justice during the inventory of the seized items. No such representative was present in Cruz's case.<sup>17</sup>

The Office of the Solicitor General argued that strict compliance with Section 21 of Republic Act No. 9165 is not essential, considering that it is not always possible in the field.<sup>18</sup>

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<sup>13</sup> Id. at 48.

<sup>14</sup> Id. at 49.

<sup>15</sup> Id. at 50.

<sup>16</sup> Id. at 34.

<sup>17</sup> Id. at 35.

<sup>18</sup> Id. at 95.

The Court of Appeals affirmed the Regional Trial Court Decision. Regarding the absence of a Department of Justice representative to witness the inventory of the seized items, the Court of Appeals held that it does not affect the admissibility of the evidence because the apprehending team substantially complied with the requirements of Republic Act No. 9165:<sup>19</sup>

Aside from the lack of the signature of a representative of the DOJ on the Inventory of Evidence Form dated 05 December 2013, the evidence on record established that the chain of custody of the seized sachets of *shabu* has been preserved. Hence, the sachets of *shabu* and the drug paraphernalia that were presented during the course of the trial before the RTC are admissible in evidence.<sup>20</sup>

Thus, the Court of Appeals reasoned that the prosecution established the elements of the crime charged:

Here, the elements for all the offenses charged against Dante have been established by the prosecution beyond reasonable doubt.

First, the heat-sealed plastic sachets containing *shabu*, as well as the other paraphernalia, retrieved from Dante's person were seized as a result of a buy-bust operation that was lawfully conducted by the members of the SAID-SOTG.

Second, PO3 Bangalan, who acted as the poseur buyer, identified (a) Dante as the seller of the *shabu*; (b) the marked money used during the operation; and, (c) the items confiscated from Dante.

Third, Dante was unable to present a valid justification for his possession of the heat-sealed plastic sachets containing *shabu* and the drug paraphernalia.<sup>21</sup>

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the appeal is DENIED. The Decision dated 26 November 2015 issued by Branch 263 of the Regional Trial Court of Marikina City in Criminal Cases Nos. 2013-4259-D-MK, 2013-4261-D-MK, and 2013-4262-D-MK is AFFIRMED.

SO ORDERED.<sup>22</sup>

Thus, Cruz elevated the matter to this Court.<sup>23</sup>

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<sup>19</sup> *Rollo*, p. 12.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 15–16.

<sup>22</sup> *Id.* at 16.

<sup>23</sup> *CA rollo*, p. 130.

The sole issue for this Court's resolution is whether the prosecution established beyond reasonable doubt that Dante Cruz y Picara violated Section 5 of the Comprehensive Dangerous Drugs Act.

This Court grants the appeal.

For a successful prosecution of possession of dangerous drugs, the identity and integrity of the *corpus delicti*, or "the body of crime that will establish that a crime was committed,"<sup>24</sup> must be indisputably shown. The *corpus delicti* is the "confiscated illicit drug itself, the integrity of which must be preserved."<sup>25</sup> The prosecution thus has to establish this identity beyond reasonable doubt, ensuring that the illegal drugs submitted in evidence were the same items seized from the accused.<sup>26</sup>

To preserve this identity, Section 21 of Republic Act No. 9165 provides for chain of custody requirements regarding confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. The incidents here occurred prior to the enactment of Republic Act No. 10640, amending Republic Act No. 9165. Thus, this case is governed by Section 21 as originally formulated, which reads:

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

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

In recognition of the risks peculiar to narcotics and to guard against the evils of switching, planting, or contamination of evidence thereof, this Court follows strict standards for their handling:

Hence, *in authenticating the same, a standard more stringent than*

<sup>24</sup> *People v. Saragena*, 817 Phil. 117, 131 (2017) [Per J. Leonen, Third Division].

<sup>25</sup> *Id.*

<sup>26</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division].

*that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.*<sup>27</sup> (Emphasis supplied)

Thus, as required under Republic Act No. 9165, to ensure that the items marked and photographed are the same items taken from an accused, the inventory and taking of photographs must be done immediately and in the presence of certain insulating witnesses, namely, “a representative from the media and the Department of Justice, and any elected public official.”<sup>28</sup>

In this case, no Department of Justice representative witnessed the inventory, contrary to the procedure mandated by law.

The Court of Appeals was incorrect when it concluded that the evidence sufficiently established the chain of custody despite this lapse. The procedure under Republic Act No. 9165 cannot simply be brushed aside without grounds.<sup>29</sup> Section 21 of Republic Act No. 9165 allows for a degree of flexibility in the procedure’s observance, but justifiable grounds must exist to excuse any noncompliance.<sup>30</sup>

In this case, the Office of the Solicitor General insists that the integrity of the allegedly seized item was maintained.<sup>31</sup> The Office of the Solicitor General asserts that the absence of one of the required witnesses does not affect the case:

PO3 Bangalan testified as to how he and his back up, SPO1 Fortuno, immediately arrested appellant, frisked him, and searched him after the sale of illegal drugs was consummated. They recovered three sealed transparent plastic sachets containing “shabu” and various drug paraphernalia from him. They also frisked Sta. Ana, and found one plastic sachet of “shabu” in his possession.

PO3 Bangalan immediately conducted an inventory of the evidence seized from appellant and Sta. Ana at the place of arrest. He marked the evidence as “DPC-1 12-5-13” to “DPC-6 12-5-13.” At the barangay hall, representatives from the barangay and the media signed the inventory. SPO1 Fortuno took photographs of the evidence. PO3 Bangalan then turned over the seized evidence to PCI Libres of the Crime Laboratory Office, together with an official request for the laboratory examination of the evidence.

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<sup>27</sup> *Mallillin v. People*, 576 Phil. 576, 589 (2008) [Per J. Tinga, Second Division].

<sup>28</sup> *People v. Sultan*, G.R. No. 225210, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

<sup>29</sup> *People v. Manansala*, 826 Phil. 578,591 (2018) [Per J. Perlas-Bernabe, Second Division] citing *People v. Macapundag*, 807 Phil. 234 (2017) [Per J. Perlas-Bernabe, First Division].

<sup>30</sup> *People v. Sipin*, 833 Phil. 67,79 (2018) [Per J. Peralta, Second Division].

<sup>31</sup> *CA Rollo*, p. 94.

The fact that no representative from the DOJ signed the inventory of the seized drugs will not serve to acquit appellant. It was established that representatives from the barangay and the media signed the inventory. In *People v. Concepcion*, it was held that the absence of a member of the media or representative from the DOJ during the inventory is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.<sup>32</sup>

Contrary to this argument, the law does not grant the apprehending team the discretion to unilaterally excuse the presence of one of the required witnesses. Rather, the prosecution must allege and prove the buy-bust team's justifiable grounds for noncompliance. It has the positive duty to recognize the team's failures to comply and to explain and prove its excuses under the rules on evidence. In *People v. Sipin*,<sup>33</sup> this Court enumerated some examples of grounds which, if alleged and proved, could be invoked to sufficiently explain an apprehending team's noncompliance with the mandated witness requirement:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) *their attendance was impossible because the place of arrest was a remote area*; (2) *their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf*; (3) *the elected official themselves were involved in the punishable acts sought to be apprehended*; (4) *earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention*; or (5) *time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape*.<sup>34</sup> (Emphasis supplied and citations omitted)

The prosecution asserts that the presumption of regularity and integrity must prevail without offering any justifiable grounds for noncompliance.<sup>35</sup> In *Sipin*, this Court explained that presumptions of regularity could not be invoked when there are already lapses that in themselves are irregularities:

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the

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<sup>32</sup> Id. at 94–96.

<sup>33</sup> 833 Phil. 67 (2018) [Per J. Peralta, Second Division].

<sup>34</sup> Id. at 93.

<sup>35</sup> CA *Rollo*, p. 97.



lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officers/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.<sup>36</sup> (Citations omitted)

Thus, concerning the absence of required witnesses, “it must be alleged and demonstrated that earnest efforts were undertaken to secure their attendance.”<sup>37</sup>

The prosecution has not shown any earnest efforts to secure the presence of all the required witnesses, nor has it established any justifiable reasons for failing to observe the procedure mandated by Republic Act No. 9165. This is fatal to the case against accused-appellant.

A conviction in criminal proceedings requires proof beyond reasonable doubt. Proof beyond reasonable doubt does not require absolute certainty; rather, it calls for moral certainty since “[t]he conscience must be satisfied that the accused is responsible for the offense charged.”<sup>38</sup> It is no less than the bill of rights, which recognizes every person’s right to be presumed innocent until proven otherwise, that requires this quantum of evidence.<sup>39</sup>

The minuscule amount of drugs allegedly seized from accused-appellant merits a higher level of scrutiny on the credible evidence against him.<sup>40</sup>

The prosecution must establish the accused’s guilt purely on the strength of its own evidence, and the prosecution failed in this task. Necessarily, accused-appellant’s acquittal must follow.

**FOR THESE REASONS, the Appeal is GRANTED.** The May 25, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 08053,

<sup>36</sup> *People v. Sipin*, 833 Phil. 67, 93–94 (2018) [Per J. Peralta, Second Division].

<sup>37</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division], citing *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

<sup>38</sup> *Veriño v. People*, G.R. No. 225710, June 19, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65375>> [Per J. Leonen, Third Division] citing *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per J. Davide, Jr., First Division] citing *People v. Casinillo*, 288 Phil. 688 (1992) [Per J. Davide Jr., Third Division].

<sup>39</sup> CONST., art. III, sec.14(2) provides:

....  
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>40</sup> *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

which affirmed the November 26, 2015 Decision of the Regional Trial Court of Marikina City, Branch 263 in Criminal Case Nos. 2013-4259-62-D-MK is **REVERSED** and **SET ASIDE** due to reasonable doubt. Accused-appellant Dante Cruz y Picara is **ACQUITTED** and ordered **RELEASED** from confinement unless he is being held for some legal grounds.

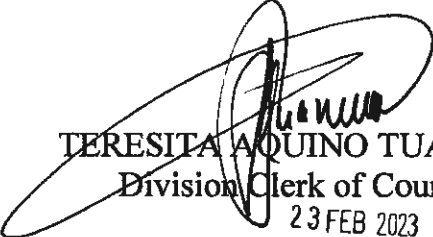
Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Resolution. For their information,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

The Regional Trial Court, Branch 263, Marikina, is directed to turn over the sachets of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court <sup>mm</sup><sub>2</sub>/23  
23 FEB 2023

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Makati City

DANTE CRUZ y PICARA (x)  
Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

- more -

**(384)URES(a)**

THE SUPERINTENDENT (x)  
New Bilibid Prison  
1770 Muntinlupa City

DANGEROUS DRUGS BOARD (reg)  
3/F, DDB-PDEA Building  
National Government Center  
NIA Road, Pinyahan, Quezon City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 263  
Marikina City  
(Crim. Case No. 2013-4259-D-MK)

POLICE GENERAL (reg)  
Philippine National Police  
National Headquarters  
Camp Crame, Quezon City

THE DIRECTOR GENERAL (reg)  
Philippine Drug Enforcement Agency  
National Government Center  
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