



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **February 22, 2023** which reads as follows:*

**“G.R. No. 257748 (People of the Philippines, Plaintiff-Appellee v. Michael Sequera y Miguel a.k.a. “Mike,” Accused-Appellant). — Assailed in this Appeal<sup>1</sup> is the Decision<sup>2</sup> of the Court of Appeals (CA), which affirmed the Decision<sup>3</sup> of the Regional Trial Court (RTC), finding Michael Sequera y Miguel a.k.a. “Mike” (*Sequera*) guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended by R.A. No. 10640.**

**Facts**

On June 21, 2018, an Information was filed before Branch 62, RTC, La Trinidad, Benguet, charging Sequera of violating Section 5 of R.A. No. 9165, docketed as Criminal Case No. 18-CR-12442.<sup>4</sup> The Information reads:

That on or about the 8<sup>th</sup> day of June 2018, at Buyagan, Poblacion, Municipality of La Trinidad, Benguet Province, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and knowingly sell and deliver to PO2 FERNANDEZ PALIPA, a member of the Philippine National Police, who acted as poseur-buyer, one (1) sachet of methamphetamine hydrochloride also known as “shabu” weighing 1.9909 grams, a dangerous drug in violation of the said law.

CONTRARY TO LAW.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 3–6. Via Notice of Appeal.

<sup>2</sup> *Id.* at 9–28. The September 30, 2020 Decision in CA-G.R. CR-H.C. No. 13506 was penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Louis P. Acosta, Special Eight Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 31–55. The August 15, 2019 Decision in Criminal Case No. 18-CR-12442 to 12443 was penned by Judge Danilo Camacho, Branch 62, Regional Trial Court, La Trinidad, Benguet.

<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.*

Another Information<sup>6</sup> was filed on June 21, 2018, the subject of Criminal Case No. 18-CR-12443, where Sequera was charged with violating Section 11 of R.A. No. 9165:

That on or about the 8<sup>th</sup> day of June 2018, at Buyagan, Poblacion, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and knowingly possess and control one (1) sachet of methamphetamine hydrochloride also known as "shabu", a dangerous drug, weighing 0.3210 gram, in violation of the said law.

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

Upon arraignment, Sequera, with the assistance of counsel, entered his plea of not guilty to the crimes charged. Joint trial on the merits commenced.<sup>8</sup>

The prosecution presented the following as witnesses: (1) Police Officer 3 Fernandez Palipa (*PO3 Palipa*),<sup>9</sup> (2) PO3 Paul Allen Joseph (*PO3 Joseph*),<sup>10</sup> (3) Senior Police Officer 1 Ryan Antonio (*SPO1 Antonio*),<sup>11</sup> (4) PO3 Franklin Jay Aquisio (*PO3 Aquisio*),<sup>12</sup> (5) PO2 Soriano Pablo (*PO2 Pablo*),<sup>13</sup> and (6) Police Chief Inspector Rowena Canlas (*PCI Canlas*).<sup>14</sup>

According to the prosecution, at about past 3:00 p.m. of June 8, 2018, the La Trinidad Municipal Police Station received a report from a confidential informant that a certain Mike Sequera a.k.a "Mike" wanted to dispose of the remaining stock of shabu in his possession worth PHP 14,000.00. PO3 Palipa instructed the confidential informant to continue communicating with Sequera. The confidential informant told Sequera that he knew of a prospective client interested to make a purchase. PO3 Palipa instructed the confidential informant to agree with the offer and to ask him to set the time and place of transaction. The confidential informant relayed that Sequera agreed to transact in his boarding house located at Buyagan, La Trinidad, Benguet at around 6:30 p.m. of the same day.<sup>15</sup>

The Chief of Police, Police Chief Inspector Benson Macli-ing, directed the formation of a team to conduct a buy-bust operation in coordination with the Philippine Drug Enforcement Agency (*PDEA*). During

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> TSN, September 10, 2018, pp. 62-96. Also referred to as PO2 Palipa in some parts of the *rollo*.

<sup>10</sup> TSN, September 4, 2018, pp. 9-12.

<sup>11</sup> *Id.* at 13-21.

<sup>12</sup> *Id.* at 37-60.

<sup>13</sup> TSN, September 18, 2018, pp. 97-115.

<sup>14</sup> TSN, September 4, 2018, pp. 22-36.

<sup>15</sup> Records (R-2495), p. 9.

the briefing, PO3 Palipa was designated as poseur-buyer, PO2 Pablo as arresting officer, PO3 Aquisio as investigator/photographer, and SPO1 Christopher Tudias (*Tudias*) as perimeter security. PO3 Palipa was given two pieces of genuine PHP 1,000.00 bill and boodle money consisting of 12 pieces of photocopied PHP 1,000.00 bill to be used as buy-bust money.<sup>16</sup>

At around 6:10 p.m., the buy-bust team, together with the confidential informant, proceeded to the agreed location of the transaction. PO3 Aquisio and SPO1 Tudias positioned themselves outside the alley as perimeter security, while PO2 Pablo stayed by the main door as immediate back-up. PO3 Palipa and the confidential informant then entered through the open main door and proceeded to Sequera's unit on the first floor.<sup>17</sup>

The confidential informant opened the door and told Sequera, "*Addadtoy diay agala ti items*" (The person who will get the items is here). As soon as Sequera came out of the room, the confidential informant introduced PO3 Palipa as Rudy, the buyer. When the confidential informant asked where the shabu was, Sequera pulled out from his right pocket one plastic sachet containing white crystalline substance and handed it to the confidential informant, who then gave it to PO3 Palipa. After PO3 Palipa checked the contents of the sachet, he handed the buy-bust money to Sequera. As Sequera was about to count the money, PO3 Palipa held his hand and introduced himself as a police officer.<sup>18</sup> Seeing what transpired, PO2 Pablo entered the house to assist PO3 Palipa in effecting the arrest of Sequera. PO3 Palipa then subjected Sequera to a body frisk which yielded another small heat-sealed plastic sachet containing white crystalline substance and a cellphone. At the hallway, PO3 Palipa marked the plastic sachet bought from appellant as "FAP/06-08-18 BB" while the other plastic sachet found in appellant's possession was marked as "FAP/06-08-18-1," with his signature on the two items. PO3 Aquisio took photographs of the initial markings conducted by PO3 Palipa.<sup>19</sup>

The prosecution claims that since other boarders were arriving and opening their doors, and that children were present at the place of arrest, SPO1 Tudias informed the team that it is better to continue the marking and inventory at the police station to avoid disturbance at the site.<sup>20</sup> While in transit, PO3 Palipa took custody of the seized plastic sachets and kept the non-drug items in his pockets.<sup>21</sup>

At the police station, PO3 Palipa prepared the inventory of the seized items in the presence of Barangay Kagawad Manuel Amoy, Jr., Jennifer

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

<sup>17</sup> *Id.*

<sup>18</sup> *Rollo*, p. 12-13.

<sup>19</sup> *Id.* at 46.

<sup>20</sup> Records (R-2495), p. 10.

<sup>21</sup> TSN, September 10, 2018, p. 90.

Balaswit of Bombo Radyo-Baguio, and Agent Samuel Poking, Jr. of the PDEA, all of whom affixed their respective signatures in the inventory of confiscated/seized items<sup>22</sup> (*Inventory*) dated June 8, 2018. Photographs were also taken during the inventory-taking. PO3 Palipa turned over the seized plastic sachets to the Philippine National Police Regional Crime Laboratory, after which they were received therein by SPO1 Randy Pocte (*SPO1 Pocte*) at 9:10 p.m. on June 8, 2018. SPO1 Pocte immediately turned over the same to Forensic Chemist PCI Canlas for qualitative examination.<sup>23</sup>

In chemistry report no. D-47-2018 dated June 8, 2018, PCI Canlas found both plastic sachets positive for methamphetamine hydrochloride or shabu, with “FAP/06-08-18BB” weighing one point nine nine zero nine (1.9909) grams and “FAP/06-08-18-1” weighing zero point three two one zero (.3210) gram.<sup>24</sup> PCI Canlas then placed the plastic sachets into the bigger plastic sachet and sealed it with a masking tape which she marked with “D-47-2018,” the date “June 8, 1018,” her initials “RFC,” and her signature. This was then turned over to PO3 Joseph, the evidence custodian, for safekeeping.<sup>25</sup> On August 30, 2018, PO3 Joseph retrieved the drug specimens from the evidence cabinet for presentation to the court.<sup>26</sup>

Sequera was the lone witness for the defense.<sup>27</sup> He testified that on June 8, 2018, at about 3:00 p.m., he was cleaning his room when four people entered through the partially opened door. He recognized only one of them, Buko Deogenes (*Deogenes*), his trading partner, who was already in handcuffs at the time. The three others were armed and wearing civilian clothing; two of them pointed their guns at Sequera. He was then handcuffed and his room was searched for illegal drugs but nothing was found. They took his money amounting to PHP 140,000.00 which he intended to use in his strawberry trading business. Sequera added that it was only at the police station where he saw the plastic sachets of shabu allegedly seized from him for the first time.<sup>28</sup> Sequera asserts that the plastic sachets of shabu were seized from Deogenes, who pinpointed him as a substitute under the “*palit-ulo*” scheme.<sup>29</sup>

On August 15, 2019, the RTC found Sequera guilty beyond reasonable doubt of violating Sections 5 and 11 of R.A. No. 9165, as amended.<sup>30</sup> The RTC gave credence to the testimony of the prosecution witnesses and found that a legitimate buy-bust operation was conducted against Sequera. The RTC observed that although the seized items recovered from Sequera were not inventoried and photographed in the presence of the witnesses at the

<sup>22</sup> Records (R-2495), p. 37

<sup>23</sup> *Rollo*, p. 13.

<sup>24</sup> *Id.* at 13-14.

<sup>25</sup> TSN, September 4, 2018, p. 33.

<sup>26</sup> *Id.* at 34.

<sup>27</sup> TSN, January 23, 2019, pp. 117-146.

<sup>28</sup> *Id.* at 125.

<sup>29</sup> *Id.* at 123.

<sup>30</sup> *Rollo*, pp. 31-55.

place of confiscation and arrest as required under Section 21 of R.A. No. 9165, as amended, the requirements under the provision were substantially, if not fully, complied with at the police station, after the required witnesses arrived.<sup>31</sup> The RTC likewise found that the chain of custody requirement was duly complied with.<sup>32</sup> The dispositive portion of the Decision reads:

WHEREFORE, [i]n the light of the foregoing discussion, the court hereby finds accused Michael Sequera [y] Miguela, a.k.a. "Mike" guilty beyond reasonable doubt of the offenses charged in these two (2) cases.

In Criminal Case No. 18-CR-12442, the accused is hereby imposed the penalty of "*life imprisonment*", and to pay a fine of [One Million Pesos (PHP 1,000,000.00)]; and

In Criminal Case No. 18-CR-12443, the accused is hereby imposed the penalty of *imprisonment [of] twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum*, and to pay a fine of [Three Hundred Thousand Pesos (PHP 300,000.00)], plus costs.

**SO ORDERED.**<sup>33</sup> (Emphasis in the original)

On August 27, 2019, Sequera filed a Notice of Appeal.<sup>34</sup>

In its September 30, 2020 Decision, the CA affirmed the Decision of the RTC. The CA found that the prosecution had sufficiently proven the guilt of Sequera beyond reasonable doubt. The CA held that the RTC correctly gave full credence to the testimonies of PO3 Palipa and PO2 Pablo and that the prosecution evidence was further supported by the physical evidence on record. In addition, the CA found that there was no break in the chain of custody over the seized plastic sachets of shabu and that the integrity and the evidentiary value thereof had been preserved.<sup>35</sup>

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated August 15, 2019 of the Regional Trial Court, Branch 62, La Trinidad, Benguet is **AFFIRMED**.

**SO ORDERED.**<sup>36</sup> (Emphasis in the original)

Aggrieved, Sequera filed a Notice of Appeal on October 21, 2020.<sup>37</sup>

<sup>31</sup> *Id.* at 54.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 55.

<sup>34</sup> CA *rollo*, p. 16.

<sup>35</sup> *Rollo*, p. 15.

<sup>36</sup> *Id.* at 28.

<sup>37</sup> CA *rollo*, pp. 127--129.

### Issue

Whether the CA correctly affirmed Michael Sequera y Miguel's conviction for the illegal possession and sale of dangerous drugs

### This Court's Ruling

The Appeal has merit.

As a general rule, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Parties may only raise issues that can be determined without having to review or reevaluate the evidence on record. However, the general rule admits exceptions, as when the CA renders judgment based on a misappreciation of facts and overlooks undisputed facts, which must be properly considered to arrive at a just conclusion.<sup>38</sup> Considering that this exception applies to the present petition, this Court may proceed to resolve questions of fact in order to arrive at a just and fair conclusion.

A buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.<sup>39</sup> As established in a long line of jurisprudence, what is material in a successful prosecution for the illegal sale of dangerous drugs is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.<sup>40</sup> In instances where there was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.<sup>41</sup>

Sequera argues that the integrity and evidentiary value of the seized items were not properly preserved.<sup>42</sup> In particular, Sequera cites the failure to conduct the physical inventory of the seized items immediately after seizure and confiscation; the presence of the required witnesses only during the inventory at the police station, and not at the time of the marking of the allegedly seized sachets of illegal drugs at the place of arrest; and absence of Sequera's signature on the inventory of seized/confiscated items.<sup>43</sup>

<sup>38</sup> *Bello v. People*, G.R. No. 249425, August 31, 2022 [Notice, First Division] at 7. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>39</sup> *People v. Bricero*, 842 Phil. 1028, 1053 (2018) [Per J. Caguioa, Second Division]. (Citation omitted)

<sup>40</sup> *People v. Vistro*, G.R. No. 225744, March 6, 2019 [Per J. Del Castillo, First Division] at 4. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>41</sup> *Supra* note 39.

<sup>42</sup> CA rollo, p. 41.

<sup>43</sup> *Id.* at 41-42.

In *People v. Veedor*,<sup>44</sup> this Court emphasized that in prosecutions involving dangerous drugs, it is “fundamental that the identity of the dangerous drugs be established beyond reasonable doubt, along with the other elements of the offense(s) charged,”<sup>45</sup> especially in view of the unique characteristics of dangerous drugs which render them not readily identifiable and easily susceptible to tampering, alteration or substitution:

For prosecutions involving dangerous drugs, we have consistently held that “the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.” It is therefore fundamental that the identity of the dangerous drug be established beyond reasonable doubt, along with the other elements of the offense/s charged. “Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.”

However, it must be stressed that “the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165.” **Given the unique characteristics of dangerous drugs which render them not readily identifiable and easily susceptible to tampering, alteration or substitution, it is essential to show that the identity and integrity of the seized drugs have been preserved.**<sup>46</sup> (Emphasis supplied)

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, outlines the procedure that apprehending teams must follow when seizing dangerous drugs to show the preservation of the identity and integrity of the seized drugs:

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

<sup>44</sup> 834 Phil. 88 (2018) [Per J. Del Castillo, First Division].

<sup>45</sup> *Id.* at 89.

<sup>46</sup> *Id.* at 96–97.

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. (Emphasis in the original)

The chain of custody requirement ensures that the substance illegally possessed by the accused is the same substance presented in court and removes unnecessary doubts concerning the identity of the evidence. The prosecution, therefore, must establish the following links in the chain of custody based on the statutory requirements outlined in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640:

*First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

*Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

*Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

*Fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>47</sup> (Emphasis in the original)

A careful review of the records shows that there were substantial gaps in the chain of custody of the seized drugs. The police officers failed to observe the procedural requirements outlined in R.A. No. 9165, as amended, and did not provide an adequate explanation for the deviations from such requirements.

*First*, the physical inventory of the seized items was not conducted immediately after seizure and confiscation.

After effecting the arrest of Sequera, PO3 Palipa marked the plastic sachets recovered from Sequera at the hallway of the boarding house. However, the inventory of these seized sachets containing illegal drugs, and the marking and inventory of the non-drug items seized from Sequera,<sup>48</sup>

<sup>47</sup> *Eugenio v. People*, G.R. No. 253526, November 11, 2021 [Notice, First Division] at 2. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>48</sup> TSN, September 10, 2018, p. 76. When asked what were the items marked in the police station, PO2 Palipa responded as follows: “[t]he two (2) genuine One Thousand Peso (P1,000.00) bills, the twelve (12) photocopies of One Thousand Peso (P1,000.00) and the Samsung cellular phone. . .”



were done at the police station around one and a half hours after his arrest.<sup>49</sup> The prosecution claims that the purpose of transferring to the police station for the marking of the non-drug items and the inventory was to avoid disturbing the other boarders.<sup>50</sup> PO3 Palipa cited that the team was short on time to mark the non-drug items and that the transfer to the police station was instructed by their team leader.<sup>51</sup>

It bears noting that the phrase “immediately after seizure and confiscation” in R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*)<sup>52</sup> means that the law intended the physical inventory and photographing of the drugs to be made immediately after or at the place of apprehension.<sup>53</sup> While the *IRR* of R.A. No. 9165 provides that the marking, photographing, and inventory of the seized items may be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures,”<sup>54</sup> this applies only in the narrow instances when doing so at the place of apprehension is not practicable, and with a satisfactory justification therefor.<sup>55</sup> In this regard, the mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to compliance with Section 21 of R.A. No. 9165 and its *IRR*, especially if such invocation is not sufficiently explained in the records of the case and supported by credible evidence.<sup>56</sup>

In earlier cases, this Court refused to consider a crowd of onlookers starting to gather<sup>57</sup> or there being too many people present at the area of the arrest<sup>58</sup> as sufficient justification to deviate from the stringent requirements in Section 21. In *People v. Salenga*,<sup>59</sup> the excuse proffered by the police officers involved in the buy-bust operation was that the crowd was getting bigger at the place of seizure. This Court found that “such general excuse was an invalid reason to conduct the inventory at the nearest police station because it was not proven that it was actually not practicable to conduct the

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<sup>49</sup> TSN, September 10, 2018, p. 92.

<sup>50</sup> *Rollo*, p. 13.

<sup>51</sup> TSN, September 10, 2018, pp. 75–76.

<sup>52</sup> Implementing Rules and Regulations (*IRR*) of Republic Act No. 9165 (2002), sec. 21(a), Comprehensive Dangerous Drugs Act of 2002.

<sup>53</sup> *People v. Guinoo*, G.R. No. 238114, September 16, 2020 [Notice, First Division] at 4. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>54</sup> Implementing Rules and Regulations (*IRR*) of Republic Act No. 9165 (2002), sec. 21(a), Comprehensive Dangerous Drugs Act of 2002.

<sup>55</sup> *Tañamor v. People*, G.R. No. 228132, March 11, 2020 [Per J. Caguioa, First Division] at 11. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>56</sup> *Id.*

<sup>57</sup> *People v. Garcia*, G.R. No. 227858, October 7, 2020 [Notice, First Division] at 3; *People v. Andanar*, G.R. No. 246284, June 16, 2021 [Per J. Lazaro-Javier, Second Division]; and *People v. Dumanjug*, G.R. 235468, July 1 2019 [Per J. Caguioa, Second Division] at 11. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>58</sup> *People v. Mangilit*, G.R. No. 254034, February 15, 2022 [Notice, First Division] at 12. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>59</sup> G.R. No. 239903, September 11, 2019 [Per J. Jardeleza, First Division].

inventory at the place of seizure.”<sup>60</sup> Similarly, this Court held in *Bello v. People*<sup>61</sup> that the “mere fact that there was a crowd gathering at the place of arrest is insufficient to establish that it was not practicable to immediately conduct the inventory and taking of photographs thereat.”<sup>62</sup>

Clearly, avoiding disturbance to the other boarders is insufficient justification for the continuation of the marking and the inventory and photographing of the seized items to be conducted at the police station instead. This is made even more pronounced by the fact that PO3 Palipa was able to mark the seized sachets immediately at the place of arrest. PO3 Aquisio even recognized that it would have been easy, or at the very least, possible, to complete the marking for all the items confiscated.<sup>63</sup>

Q: Now, it was easy for you to mark all the items on-site or it is possible at the time for you to mark all the items confiscated at the time at the place of the incident?

A: Supposedly, Sir

Q: But you did not mark the none-drug items on-site?

A: Yes, sir.

Q: Why?

A: Because considering there were other boarders there, . . . there was little commotion, the other boarders went out . . ., and there was a woman holding a baby there[,] that is why we left, Sir.

While nothing prevented the apprehending team from continuing the marking, inventory, and photographing of the seized items right then and there, it bears noting that none of the required insulating witnesses were present at the time or near the place of the arrest of Sequera and the seizure of the illegal drugs. In fact, no third party witness observed the marking of the plastic sachets containing illegal drugs allegedly seized from Sequera.

In *People v. Musor*,<sup>64</sup> as cited in *People v. Cañete*,<sup>65</sup> this Court clarified that regardless of whether the inventory and photographing of the seized drugs is conducted in an alternative location, the requirement of having the required witnesses to be physically present at the time or near the place of apprehension is not dispensed with:

**Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the**

<sup>60</sup> *Bello v. People*, *supra* note 38, at 12. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>61</sup> *Supra* note 38.

<sup>62</sup> *Id.* at 12. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>63</sup> TSN, September 4, 2018, p. 18.

<sup>64</sup> 842 Phil. 1159 (2018) [Per J. Caguioa, Second Division].

<sup>65</sup> G.R. No. 242018, July 3, 2019 [Per J. Caguioa, Second Division].

**requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.<sup>66</sup> (Emphasis in the original)

The present case is similar to *Cañete*, where it was only at the time of the inventory and photographing that the witnesses required under R.A. 9165 came into the picture. This Court found that “this is a blatant disregard of the safeguards intended by the law, which is to place disinterested ‘insulating witnesses’ at the earliest point of contact where the evil of planting of evidence is most present.”<sup>67</sup> Likewise, in *People v. Calleja*,<sup>68</sup> this Court found that “having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Given their absence in the most crucial stages of the operation, it is clear that the required witnesses themselves had no personal knowledge of the supposed sale and subsequent apprehension, search, and seizure.”<sup>69</sup>

In *People v. Tomawis*,<sup>70</sup> this Court denounced the practice of police operatives *calling in* the insulating witnesses after the buy-bust operation has already been finished to witness the inventory and photographing of the illegal drugs:

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.**

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”<sup>71</sup> (Emphasis supplied)

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<sup>66</sup> *Id.* at 8. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>67</sup> *Id.* at 10. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>68</sup> *People v. Calleja*, G.R. No. 250865, June 16, 2021 [Per J. Lopez, J., Third Division].

<sup>69</sup> *Id.* at 14. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

<sup>70</sup> 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

<sup>71</sup> *Id.* at 409. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

These gaps in the chain of custody pertaining to the marking, inventory, and photographing of the seized items compromised the integrity and evidentiary value of the seized items. More, the prosecution failed to show any justification for the non-compliance with the chain of custody requirements.

*Second*, the police officers mishandled the preparation of the buy-bust money. The 2014 Manual on Anti-Illegal Drugs Operation and Investigation of the Philippine National Police requires that the buy-bust money be “duly marked or dusted with ultra-violet powder by the PNP Crime Laboratory and properly photographed, reproduced and/or recorded indicating the serial numbers[.]”<sup>72</sup> Here, not only did the police officers fail to pre-mark the buy-bust money, they did not even mark the buy-bust money immediately after the operation:<sup>73</sup>

Q: Let me direct your attention to the buy bust money. You said there was actually a buy bust money given to you, correct?

A: Yes, Sir.

Q: But it was only two thousand (2,000), correct, initially?

A: Yes, Sir.

.....

Q: In fact, when it was given to you, you did not pre-mark it, correct?

A: Yes, Sir.

Q: And as you said you did not mark them immediately after the arrest of the accused at the place of operation, correct?

A: Yes, Sir.<sup>74</sup>

*Finally*, the records are bereft of evidence showing that sufficient safeguards were placed to ensure the integrity and evidentiary value of the seized items. Considering the miniscule amount of illegal drugs involved, it was all the more necessary to establish that adequate security measures were resorted to in order to negate any possibility of adulteration or substitution. Failing to do so constituted a serious gap in the chain of custody.

After the conclusion of the buy-bust operation, the drug evidence remained in the sole possession of PO3 Palipa. The second link in the chain of custody requires the turnover of the illegal drug(s) seized by the apprehending officer to the investigating officer. There is no showing that such a turnover was made here.<sup>75</sup>

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<sup>72</sup> Manual on Anti-Illegal Drugs Operation and Investigation (2014), Philippine National Police.

<sup>73</sup> TSN, September 10, 2018, p. 88.

<sup>74</sup> *Id.* at 88–89.

<sup>75</sup> Records, p. 61.

PO3 Palipa testified that he held onto the drug evidence and placed the unmarked non-drug items in his pockets while *en route* to the police station.<sup>76</sup> No additional information was given or evidence presented demonstrating the manner by which PO3 Palipa addressed the risks of tampering during this time. PO3 Palipa even admitted that no evidence kit was used during the entire operation.<sup>77</sup> Upon arrival at the police station, the marking did not immediately commence, and while Sequera was undergoing a medical examination, the seized items were placed on a table in the investigation office which only the police officers had access to.<sup>78</sup>

In *People v. Sultan*,<sup>79</sup> this Court observed that the apprehending officer having sole custody of the supposedly confiscated items. Alone, this cannot be taken as a guarantee of the items' integrity and instead, may be prejudicial to the integrity of the items in the absence of safeguards other than his or her mere possession.<sup>80</sup>

In *People v. Bambang*,<sup>81</sup> which cited *Sultan*, in an effort to show that the law enforcers did not compromise the integrity and evidentiary value of the *corpus delicti*, the prosecution emphasized that the apprehending police officer had exclusive control over the seized drugs by keeping them inside his pockets. This Court concluded that this kind of safekeeping is not acceptable, adding that not only did the prosecution fail to proffer any justification as to why the police officers failed to immediately mark the items upon seizure, it also failed to show the precautions and safeguards they undertook to preserve the identity, integrity, and evidentiary value of the *corpus delicti*.<sup>82</sup>

Given that the amount involved is miniscule, more efforts should have been undertaken to secure the seized drugs. This Court in *People v. Holgado*<sup>83</sup> concluded that when miniscule amounts of narcotics are involved, there is a greater need for more exacting compliance with Section 21 of R.A. No. 9165:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical

<sup>76</sup> TSN, September 10, 2018, pp. 75–76 and 89–92.

<sup>77</sup> TSN, September 10, 2018, p. 92.

<sup>78</sup> TSN, September 10, 2018, p. 94.

<sup>79</sup> G.R. No. 225210, August 7, 2019 [Per J. Leonen, Third Division].

<sup>80</sup> *Id.* at 12.

<sup>81</sup> G.R. No. 252900, September 21, 2022 [Notice, First Division].

<sup>82</sup> *Id.* at 8–9. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>83</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”<sup>84</sup>

This Court has acknowledged that a perfect chain may be impossible to obtain at all times because of varying field conditions.<sup>85</sup> For this reason, the IRR of R.A. No. 9165 provides a saving clause allowing leniency whenever justifiable grounds exist, which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.<sup>86</sup> However, here, the prosecution was unable to satisfactorily show the preservation of the integrity and the evidentiary value of the seized items and given that the deviations from the requirements under the chain of custody were inadequately addressed, the condition for the saving clause to become operational was not met.

While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot, by itself, constitute proof of guilt beyond reasonable doubt.<sup>87</sup>

In *People v. Abadilla*,<sup>88</sup> this Court emphasized that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or **when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.<sup>89</sup> In view of the foregoing gaps in the chain of custody, the acquittal of Sequera is merited.

**FOR THESE REASONS**, premises considered, the Appeal is **GRANTED**. The Decision dated September 30, 2020 of the Court of Appeals in CA-G.R. No. CR-H.C. No. 13506, which affirmed the Decision dated August 15, 2019 of the Regional Trial Court of La Trinidad, Benguet, Branch 62, is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **Michael Sequera y Miguel** is **ACQUITTED** for the prosecution’s failure to prove his guilt beyond reasonable doubt. He is ordered to be **RELEASED** from confinement unless he is being held for some other legal grounds.

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<sup>84</sup> *Id.* at 99.

<sup>85</sup> *People v. Dela Torre*, G.R. No. 225789, July 29, 2019 [Per J. Lazaro-Javier, Second Division] at 10. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website. (Citation omitted)

<sup>86</sup> *Id.* This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website. (Citation omitted)

<sup>87</sup> *People v. Añonuevo*, G.R. No. 251707, July 28, 2021 [Notice, First Division] at 5. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

<sup>88</sup> 841 Phil. 612 (2018) [Per J. Reyes, A., Jr., Second Division].

<sup>89</sup> *Id.* at 623. (Citation omitted)

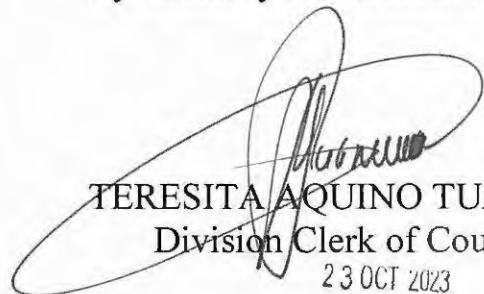
Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he/she has taken to this Court within five (5) days from receipt of this Resolution. For their information,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

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

Let entry of final judgment be issued immediately.

**SO ORDERED.”**

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *pg 10/23*  
23 OCT 2023

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MICHAEL SEQUERA y MIGUEL a.k.a. "MIKE" (x)  
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c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (x)  
Bureau of Corrections  
1770 Muntinlupa City

THE SUPERINTENDENT (x)  
New Bilibid Prison  
1770 Muntinlupa City

THE CHIEF (reg)  
Philippine National Police  
Camp Crame, 1100 Quezon City

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

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 62  
La Trinidad, Benguet  
(Crim. Case Nos. 18-CR-12442 to 12443)

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