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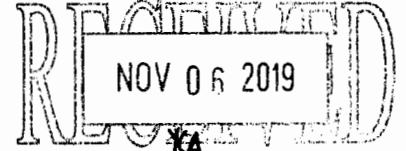


Mis DC Batt  
MISAELO DOMINGO C. BATTUNG III  
Deputy Division Clerk of Court  
Third Division

OCT 31 2019.

Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



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TIME: 2:16

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 238339  
Plaintiff-Appellee,

Present:

-versus-

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

JOMAR CASTILLO y  
MARANAN, Accused-Appellant.

Promulgated:  
August 7, 2019

Mis DC Batt

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DECISION

LEONEN, J.:

“The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the required witnesses must also be present during the seizure and confiscation.”<sup>1</sup> The presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized.

<sup>1</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 521 [Per J. Leonen, Third Division].

This Court resolves an appeal<sup>2</sup> from the Decision<sup>3</sup> of the Court of Appeals. The Court of Appeals affirmed with modifications the Regional Trial Court Decision<sup>4</sup> finding Jomar Castillo y Maranan guilty beyond reasonable doubt for violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs) of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On October 27, 2006, two (2) separate Informations were filed against Castillo, respectively charging him with violation of Sections 5 and 11 of the Comprehensive Dangerous Drugs Act.

The accusatory portion of the Information charging him with illegal possession of dangerous drugs read:

CRIMINAL CASE NO. 0537-2006

“That on or about the 26<sup>th</sup> day of October 2006, at about 12:00 o’clock (*sic*) noon, at Barangay 7, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his custody, control and possession .14 gram/s of Methamphetamine Hydrochloride, locally known as “shabu”, a dangerous drug contained in four (4) plastic sachet/s.

Contrary to law.”<sup>5</sup>

The accusatory portion of the Information charging him with illegal sale of dangerous drugs read:

CRIMINAL CASE NO. 0538-2006

“That on or about the 26<sup>th</sup> day of October, 2006, at about 12:00 o’clock (*sic*) noon at Barangay 7, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully sell, deliver, dispose or give away to a police informer poseur-buyer, 0.05 gram/s of Methamphetamine Hydrochloride locally known as “shabu”, which is a dangerous drug contained in one (1) plastic sachet/s.

Contrary to law.”<sup>6</sup> (Citation omitted)

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<sup>2</sup> *Rollo*, pp. 19–21.

<sup>3</sup> *Id.* at 2–18. The September 29, 2017 Decision in CA-G.R. CR 11.C. No. 06559 was penned by Associate Justice Renato C. Francisco, and concurred in by Associate Justices Sesinando E. Villon and Associate Justice Manuel M. Barrios of the Ninth Division, Court of Appeals, Manila.

<sup>4</sup> *CA rollo*, pp. 73–82. The Decision, in Criminal Case Nos. 0537-2006 and 0538-2006, was penned by Judge Albert A. Kalalo of Branch 12, Regional Trial Court, Lipa City.

<sup>5</sup> *Rollo*, p. 3.

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

On arraignment, Castillo pleaded not guilty to both charges. Trial on the merits then followed.<sup>7</sup>

The prosecution presented seven (7) witnesses: three (3) police officers, Senior Police Officer 2 Danilo Yema (SPO2 Yema), SPO1 Danilo Quinio (SPO1 Quinio), and SPO2 Cleofe Pera (SPO2 Pera), from the Lipa City Police Station; two (2) police officers, Lito Vargas and Herbert Bereña, from the Batangas Provincial Crime Laboratory; Rodel Limbo (Limbo), the representative from the Department of Justice; and Police Senior Inspector Rose Acero Marino (Police Senior Inspector Marino), the forensic chemist.<sup>8</sup>

According to the prosecution, a week prior to October 26, 2006, the Lipa City Police Station obtained information that Castillo was selling illegal drugs. After SPO2 Yema had confirmed the tip with the barangay captain and Castillo's neighbors, a buy-bust team was formed.<sup>9</sup>

At 12:00 noon on October 26, 2006, the team composed of SPO2 Yema, SPO1 Quinio, SPO3 Whency Aro, SPO2 Pera, and SPO3 Fortunato Katigbak, together with a civilian asset, arrived near a covered basketball court in Barangay 7, Lipa City to conduct the buy-bust operation against Castillo. Assigned to be the poseur-buyer, the asset was given the marked money consisting of a one-piece ₱100.00 bill and a one-piece ₱200.00 bill.<sup>10</sup>

Upon seeing Castillo, the asset approached him while the police officers watched from their vehicle about 10 meters away from the basketball court. The officers saw the asset hand over the marked money to Castillo. Castillo, in turn, pulled out of his pocket a plastic playing cards case and from it, took out a small sachet, which he gave to the asset. After the exchange, the asset touched his head, signaling that the transaction had been consummated.<sup>11</sup>

At the signal, the police officers alighted from the vehicle and approached the asset and Castillo. The asset gave the plastic sachet to SPO2 Yema while SPO1 Quinio seized the marked money from Castillo. After a body search on Castillo, SPO2 Yema recovered four (4) plastic sachets containing crystalline substances suspected to be shabu, which were all placed inside a plastic case of playing cards.<sup>12</sup>

The officers brought the items inside their vehicle, which was still parked near the place of arrest. There, SPO2 Yema marked the plastic

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<sup>7</sup> Id.

<sup>8</sup> Id. at 4 and CA *rollo*, pp. 74-75.

<sup>9</sup> Id. at 4.

<sup>10</sup> Id. at 4 and CA *rollo*, p. 75.

<sup>11</sup> Id. at 4-5.

<sup>12</sup> Id. at 5.

sachet subject of the buy-bust “DRY-JMC-BB,” and the other four (4) plastic sachets recovered from the body search “DRY-JMC-P-1” to “DRY-JMC-P-4.” The plastic playing cards case was marked “DRY-JMC-P.” Afterwards, the officers brought Castillo to the Lipa City Police Station.<sup>13</sup>

There, the prosecution further narrated, the seized items were photographed along with the marked money and Castillo. The seized items were also inventoried, as witnessed by Limbo, the Department of Justice representative, Barangay Chair Christopher Latayan (Barangay Chair Latayan), SPO2 Yema, and Castillo, who all signed the Certificate of Inventory. SPO2 Yema and SPO1 Quinio then prepared and signed a Joint Affidavit of Arrest.<sup>14</sup>

SPO2 Pera also prepared a Letter-Request for Laboratory Examination of the substances seized. Police Officer Cesario Mandahuyan brought the letter-request, together with the seized items, to the Provincial Crime Laboratory Office.<sup>15</sup> Upon examination, the forensic chemist, Police Senior Inspector Marino, reported that the confiscated substances yielded positive results for shabu.<sup>16</sup>

In his defense, Castillo testified that at around 12:00 noon on October 26, 2006, he was waiting for his peers at the basketball court in Sinagtala, Barangay 7 to play basketball when a vehicle arrived.<sup>17</sup> Two (2) police officers alighted from it and approached him. They poked a gun at his side, arrested him, and brought him to the Lipa City Police Station.<sup>18</sup>

There, Castillo saw what appeared to be shabu on a table. One (1) of the police officers forced him to point to the substance while his photo was being taken. Afterwards, he was detained.<sup>19</sup>

Castillo testified that the arresting officers were the same officers who had previously arrested him in a holdup incident months prior, only to release him three (3) days later to look for the other three (3) people involved in the incident.<sup>20</sup> He added that he had hidden from the police officers until he was arrested in what was supposedly a buy-bust operation.<sup>21</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> *CA rollo*, p. 77.

<sup>16</sup> *Rollo*, p. 6.

<sup>17</sup> *CA rollo*, p. 77.

<sup>18</sup> Id.

<sup>19</sup> *Rollo*, p. 6.

<sup>20</sup> Id.

<sup>21</sup> Id. at 7.

In its July 25, 2013 Joint Decision,<sup>22</sup> the Regional Trial Court found Castillo guilty beyond reasonable doubt of the offenses charged. The dispositive portion of the Decision read:

**WHEREFORE**, premises considered, the Court finds the accused Jomar Castillo y Maranan **GUILTY** of the offenses charged for violation of Sections 5 and 11 of Article II of Republic Act 9165, and is hereby sentenced to suffer the penalty of:

- a) Criminal Case No. 0537-2006 (Section 11, Article II of R.A. 9165) – Imprisonment for a period of Twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of P300,000.00.
- b) Criminal Case No. 0538-2006 (Section 5, Article II of R.A. 9165) – Life Imprisonment and to pay a fine of P500,000.00; and

The period of the accused preventive imprisonment shall be credited in the service of his sentence.

The methamphetamine hydrochloride subject of these cases are ordered to be turned over to the PDEA Region IV Office for proper disposition under proper receipt.

Let a Commitment Order be issued for the transfer of the accused Jomar Castillo y Maranan from the BJMP Lipa City Jail to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

SO ORDERED.<sup>23</sup> (Emphasis in the original)

The Regional Trial Court found that the prosecution established the elements of the crimes charged. For the charge of illegal sale of dangerous drugs, the trial court noted how SPO2 Yema and SPO1 Quinio testified on the exchange of shabu and the marked money representing the consideration for the shabu.<sup>24</sup> For the charge of illegal possession, it noted the officers' testimonies on the confiscation of four (4) plastic sachets of shabu from Castillo upon the body search.<sup>25</sup> It maintained that the integrity of the confiscated items was preserved.<sup>26</sup>

In its October 25, 2013 Order,<sup>27</sup> the Regional Trial Court denied Castillo's Motion for Reconsideration.

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<sup>22</sup> CA *rollo*, pp. 73–82.

<sup>23</sup> Id. at 81–82.

<sup>24</sup> Id. at 78.

<sup>25</sup> Id. at 79.

<sup>26</sup> Id.

<sup>27</sup> Id. at 83–84. The Order was penned by Judge Albert A. Kalalo of Branch 12, Regional Trial Court, Lipa City.

On appeal before the Court of Appeals,<sup>28</sup> Castillo argued that the buy-bust operation did not actually happen. Assuming that it did take place, he claimed that the prosecution failed to establish the police officers' compliance with the Comprehensive Dangerous Drugs Act's chain of custody requirements.<sup>29</sup> He pointed out supposed gaps in the chain of custody, including, among others, irregularities in the seized items' marking and the belated presence of the Department of Justice representative, only arriving at the police station when the inventory had already been prepared.<sup>30</sup>

In its Brief,<sup>31</sup> the Office of the Solicitor General maintained that the integrity of the seized items had been preserved and that the requisite chain of custody was followed.<sup>32</sup>

In its assailed September 29, 2017 Decision,<sup>33</sup> the Court of Appeals affirmed Castillo's conviction with modifications. The dispositive portion of the Decision read:

**WHEREFORE**, premises considered, the appeal is **DENIED**. The Joint Decision dated 25 July 2013 of Branch 12, Regional Trial Court of Lipa City in Criminal Case Nos. 0537-2006 & 0538-2006 is **AFFIRMED with MODIFICATIONS**, *to wit*:

1. In *Criminal Case No. 0537-2006*, accused-appellant **JOMAR CASTILLO Y MARANAN** is sentenced to suffer the penalty of imprisonment of 12 years and 1 day as minimum to 14 years and 8 months as maximum and ordered to pay a FINE of Three Hundred Thousand Pesos (Php300,000.00.).

2. In *Criminal Case No. 0538-2006*, accused-appellant **JOMAR CASTILLO Y MARANAN** is not eligible for parole.

**SO ORDERED.**<sup>34</sup> (Emphasis in the original)

The Court of Appeals maintained that all the elements of illegal sale and illegal possession of dangerous drugs were proven.<sup>35</sup> It held that SPO2 Yema substantially complied with the requisites in marking the seized items.<sup>36</sup> It also found that there was no break in the chain of custody of the items seized.<sup>37</sup> While the police officers did not strictly comply with the requirements of Section 21 of the Comprehensive Dangerous Drugs Act, the Court of Appeals ruled that this did not affect the evidentiary weight of the

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<sup>28</sup> Id. at 39–72.

<sup>29</sup> Id. at 60–61.

<sup>30</sup> Id. at 62–65.

<sup>31</sup> Id. at 107–132.

<sup>32</sup> Id. at 120–129.

<sup>33</sup> *Rollo*, pp. 2–18.

<sup>34</sup> Id. at 17.

<sup>35</sup> Id. at 9–10.

<sup>36</sup> Id. at 12.

<sup>37</sup> Id. at 13.

drugs seized from Castillo.<sup>38</sup> It further noted that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction.<sup>39</sup>

Castillo filed a Notice of Appeal,<sup>40</sup> which was given due course by the Court of Appeals.<sup>41</sup> In this Court's June 4, 2018 Resolution,<sup>42</sup> the parties were allowed to file supplemental briefs. However, both the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,<sup>43</sup> and accused-appellant<sup>44</sup> manifested that they would no longer file supplemental briefs.

For this Court's resolution is the issue of whether or not the prosecution has established beyond reasonable doubt accused-appellant Jomar Castillo y Maranan's guilt for violation of Article II, Sections 5 and 11 of the Comprehensive Dangerous Drugs Act.

Accused-appellant's conviction must be reversed and set aside. There remains reasonable doubt on his guilt for the crimes charged.

## I

To secure a conviction in a criminal case, the prosecution must prove the guilt of an accused beyond reasonable doubt. Proof beyond reasonable doubt requires that "every fact necessary to constitute [a] crime . . . be established."<sup>45</sup> While not requiring absolute certainty, this standard requires that the prosecution establish moral certainty, "or that degree of proof which produces conviction in an unprejudiced mind."<sup>46</sup> The need to establish guilt beyond reasonable doubt proceeds from the due process clause and the constitutional right of an accused to be presumed innocent.<sup>47</sup>

For there to be a successful prosecution for the illegal sale of dangerous drugs, punished under Section 5<sup>48</sup> of the Comprehensive

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<sup>38</sup> Id. at 14.

<sup>39</sup> Id. at 15.

<sup>40</sup> Id. at 19–21.

<sup>41</sup> Id. at 22.

<sup>42</sup> Id. at 24–25.

<sup>43</sup> Id. at 26–30.

<sup>44</sup> Id. at 32–36.

<sup>45</sup> *People v. Pagaduan*, 641 Phil. 432, 447 (2010) [Per J. Brion, Third Division].

<sup>46</sup> RULES OF COURT, Rule 133, sec. 2.

<sup>47</sup> *People v. Morales*, 630 Phil. 215, 219 (2010) [Per J. Del Castillo, Second Division] and *Macayan v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division].

<sup>48</sup> Republic Act No. 9165 (2002), sec. 5 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute,

Dangerous Drugs Act, the following elements must be established: “(1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.”<sup>49</sup>

As to the illegal possession of dangerous drugs, punished under Section 11<sup>50</sup> of the Comprehensive Dangerous Drugs Act, it must be

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dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a “financier” of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section.

<sup>49</sup> *People v. Unisa*, 674 Phil. 89, 108 (2011) [Per J. Perez, Second Division] citing *People v. Manlangit*, 654 Phil. 427 (2011) [Per J. Velasco, First Division].

<sup>50</sup> Republic Act No. 9165 (2002), sec. 11 provides:

SECTION 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic



established that “(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.”<sup>51</sup>

In both illegal sale and illegal possession of dangerous drugs, “the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.”<sup>52</sup> Thus, their identity and integrity must be established beyond reasonable doubt.<sup>53</sup> It is the prosecution’s duty “to ensure that the illegal drugs offered in court are the very same items seized from the accused.”<sup>54</sup>

Complying with the chain of custody requirement “ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>55</sup> Section 21 of the Comprehensive Dangerous Drugs Act outlines the rules governing the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. It states:

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;

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value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

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

<sup>51</sup> *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division].

<sup>52</sup> *People v. Sagana*, 815 Phil. 356, 367 (2017) [Per J. Leonen, Second Division] citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>53</sup> *People v. Saunar*, 816 Phil. 482, 491 (2017) [Per J. Leonen, Second Division].

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

<sup>55</sup> *People v. Sagana*, 815 Phil. 356, 368 (2017) [Per J. Leonen, Second Division] citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

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- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

The requirements laid down in Section 21 of Republic Act No. 9165 have since been amended by Republic Act No. 10640.<sup>56</sup> Amendments were made specifically with respect to the required third-party witnesses, the specific locations where the physical inventory and taking of photographs

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<sup>56</sup> Republic Act No. 10640 (2014), sec. 1 provides:

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

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items[;]

....  
(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

must be conducted, and the inclusion of a proviso governing noncompliance with the chain of custody requirements.<sup>57</sup>

## II

The exact procedure spelled out by Section 21 addresses the great possibility of abuse<sup>58</sup> that may attend buy-bust operations, given the notoriety of anti-narcotics operations as “a tool for extortion.”<sup>59</sup> In *Mallillin v. People*,<sup>60</sup> this Court underscored the fungible nature of dangerous drugs, warranting the need for faithful compliance with the chain of custody requirements:

Indeed, 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 characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. . . .

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than 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>61</sup> (Citation omitted)

Specifically, compliance with the chain of custody requirements under Section 21 protects the integrity of confiscated drugs in four (4) aspects:

[F]irst, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.<sup>62</sup>

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<sup>57</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 514–515 [Per J. Leonen, Third Division].

<sup>58</sup> *People v. Segundo*, 814 Phil. 697, 719–720 (2017) [Per J. Leonen, Second Division] citing *People v. Tan*, 401 Phil. 259, 273 (2010) [Per J. Melo, Third Division].

<sup>59</sup> *Id.* at 719.

<sup>60</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>61</sup> *Id.* at 588–589.

<sup>62</sup> *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].

There are four (4) links in the chain of custody of the confiscated item that need to be established:

*[F]irst*, 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>63</sup>

The seizure and marking of the dangerous drugs from the accused to the apprehending officer form the first crucial link in the chain of custody. While the marking of the dangerous drugs seized from the accused does not explicitly form part of the chain of custody requirements under Section 21, it is indispensable in ensuring that the integrity and evidentiary value of the dangerous drugs have been preserved.<sup>64</sup>

In *People v. Saunar*,<sup>65</sup> this Court discussed the purpose of marking and emphasized that it is a separate requirement from inventorying and photographing:

Although the requirement of “marking” is not found in Republic Act No. 9165, its significance lies in ensuring the authenticity of the *corpus delicti*. In *People v. Dahil*:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. “Marking” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. *The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.*<sup>66</sup> (Emphasis supplied, citations omitted)

<sup>63</sup> *People v. Nandi*, 639 Phil. 134, 144–145 (2010) [Per J. Mendoza, Second Division] citing *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, First Division].

<sup>64</sup> *People v. Gonzales*, 708 Phil. 121, 131 (2013) [Per J. Bersamin, Second Division].

<sup>65</sup> 816 Phil. 482 (2017) [Per J. Leonen, Second Division].

<sup>66</sup> *Id.* at 496–497.

Such significance impels the presence of third-party witnesses during the actual seizure and marking, which must *immediately* follow seizure.<sup>67</sup> The presence of third-party witnesses during seizure and marking ensures that whatever items are subsequently inventoried, photographed, examined, and presented in court are the same substances that were initially obtained from the accused.

In *People v. Tomawis*,<sup>68</sup> this Court declared that the third-party witnesses required by Section 21 must be present as early as the time of apprehension:

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. In addition, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. *By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension*—a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

....

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

*The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and*

<sup>67</sup> See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520–521 [Per J. Leonen, Third Division].

<sup>68</sup> G.R. No. 228890, April 18, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>> [Per J. Caguioa, Second Division].

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*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>69</sup> (Emphasis supplied, citations omitted)*

### III

Here, the absence of witnesses during seizure and marking casts reasonable doubt on the actual origin and identity of the drugs introduced in evidence as those allegedly seized from accused-appellant. Ultimately, this same absence casts reasonable doubt on accused-appellant’s guilt for the offenses with which he is charged.

The prosecution maintains that after the alleged confiscation of items from accused-appellant, the buy-bust team went inside their vehicle parked near the place of arrest, and there did the marking. This claim alone acknowledges the ostensibly clandestine conduct of the police officers. Moreover, there is no independent guarantee on the integrity of whatever it was that the police officers did next. Other than them and their self-serving assurances, no other person could attest to how they conducted themselves at the place of the arrest and, ultimately, in the isolation of their own vehicle.

It was also only at the police station that Limbo, the Department of Justice representative, and Barangay Chair Latayan were called in to witness the inventory and photographing. It is clear that the required witnesses themselves had no personal knowledge of the supposed sale and subsequent apprehension, search, seizure, and marking.

Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. Having their presence only at a very late stage reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite lacking authentic knowledge on the items confronting them. They are then reduced to rubberstamps, oblivious to how the dangers sought to be avoided by their presence may have already transpired.

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<sup>69</sup> Id.

#### IV

Prior to its amendment in 2014 by Republic Act No. 10640, Section 21(1) of the Comprehensive Dangerous Drugs Act required three (3) third-party witnesses: a representative from the media, a representative from the Department of Justice, and an elected public official. All of these witnesses needed to be present here considering that the incidents of this case occurred in 2006, long before Republic Act No. 10640 took effect.

Even when overlooking the absence of third-party witnesses during the actual sale, arrest, search, seizure, and marking, it remains that the required witnesses were incomplete during the subsequent inventory and taking of photographs. No representative from the media was present alongside Limbo and Barangay Chair Latayan. Worse, while an inventory was done, such inventory had already been prepared by the time Limbo arrived at the police station.<sup>70</sup> These procedural lapses could only raise greater doubt on to the identity, origin, and integrity of the items allegedly seized from accused-appellant.

#### V

Noncompliance with Section 21 of the Comprehensive Dangerous Drugs Act is not, in all cases, fatal to the prosecution. Conviction can ensue as long as the integrity and the evidentiary value of the confiscated items are properly preserved.<sup>71</sup>

Prior to the amendments introduced by Republic Act No. 10640, the Implementing Rules and Regulations of Republic Act No. 9165 provided some flexibility during the initial custody of the substance seized. It included the proviso that reads: “non-compliance with 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 of and custody over said items[.]”

However, to successfully invoke this saving clause, the prosecution bears the burden of first acknowledging procedural lapses and specifically plead justifiable grounds for these lapses. It must also plead specific safety measures taken in view of the deviations made from the chain of custody requirements.<sup>72</sup> Specifically on the absence of the required witnesses, it

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<sup>70</sup> *Rollo*, p. 13.

<sup>71</sup> *People v. Pringas*, 558 Phil. 579, 593 (2007) [Per J. Chico-Nazario, Third Division].

<sup>72</sup> *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

must be alleged and demonstrated that earnest efforts were undertaken to secure their attendance. In *People v. Lim*:<sup>73</sup>

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.<sup>74</sup> (Citations omitted)

Here, the prosecution has never bothered to prove, let alone plead, any justifiable ground accounting for the buy-bust team’s deviation from the prescribed procedure. All it offered were sweeping and self-serving assurances of compliance and integrity. These cannot serve to condone the police officers’ deviation.

Noncompliance with the chain of custody requirements raises doubts on the credibility of the *corpus delicti*, and consequently, on the very claim that an offense penalized by the Comprehensive Dangerous Drugs Act was committed.<sup>75</sup> The prosecution’s failure to establish beyond reasonable doubt

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<sup>73</sup> G.R. No. 231989, September 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400/>> [Per J. Peralta, En banc].

<sup>74</sup> Id.

<sup>75</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 503 [Per J. Leonen, Third Division].



the critical elements of the offenses charged against accused-appellant can only serve to warrant his acquittal.<sup>76</sup>

**WHEREFORE**, the September 29, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06559 is **REVERSED** and **SET ASIDE**. Accused-appellant Jomar Castillo y Maranan is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for some other lawful cause.


Let a copy of this Decision 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 has taken to this Court within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.


Let entry of final judgment be issued immediately.

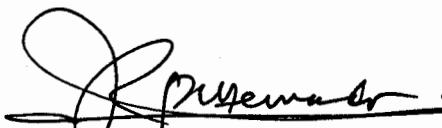
**SO ORDERED.**

  
**MARVIC M. V. F. LEONEN**  
 Associate Justice

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson

  
**ANDRES B. REYES, JR.**  
 Associate Justice

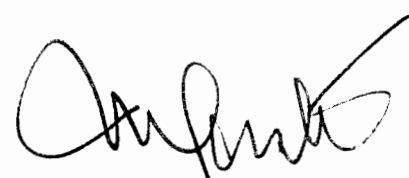
  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

<sup>76</sup> *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

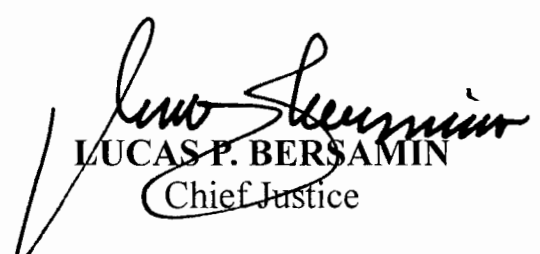
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice

**CERTIFIED TRUE COPY**

*Mis D C Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Deputy Division Clerk of Court  
Third Division

OCT 31 2019