



Mis D C Batt  
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Third Division

FEB 20 2020

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES  
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PEOPLE OF THE PHILIPPINES, G.R. No. 245972  
Plaintiff-Appellee,

Present:

-versus-

LEONEN J., Chairperson,  
GISMUNDO,\*  
CARANDANG,  
LAZARO-JAVIER,\*\* and  
ZALAMEDA, JJ.

MARTIN H. ASAYTUNO, JR. and  
RENATO H. ASAYTUNO,  
Accused-Appellants.

Promulgated:  
December 2, 2019  
Mis D C Batt

X-----X

DECISION

LEONEN, J.:

Law enforcers' failure to strictly comply with the Comprehensive Dangerous Drugs Act's chain of custody requirements engenders the prosecution's failure to establish the *corpus delicti* in drug offenses.<sup>1</sup> This is especially true for cases that involve miniscule amounts of dangerous drugs.<sup>2</sup> When there is doubt on the identity and integrity of the *corpus delicti*, an accused's acquittal must necessarily follow.<sup>3</sup>

\* On official business.

\*\* Designated additional Member per Special Order No. 2728.

<sup>1</sup> *People v. Dela Cruz*, 744 Phil. 816, 825-826 (2014) [Per J. Leonen, Second Division] citing *People v. Morales*, 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

<sup>2</sup> *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per J. Leonen, Third Division].

<sup>3</sup> *People v. Coreche*, 612 Phil. 1238, 1245-1246 (2009) [Per J. Carpio, First Division].

This resolves an appeal from the assailed Decision<sup>4</sup> of the Court of Appeals in CA-G.R. CR-HC No. 08002. This Decision affirmed the Regional Trial Court's prior Decision<sup>5</sup> finding accused-appellants Martin H. Asaytuno, Jr. (Martin) and Renato H. Asaytuno (Renato) guilty beyond reasonable doubt of illegal sale of dangerous drugs, in violation of Section 5<sup>6</sup> of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The same Regional Trial Court Decision found Martin guilty beyond reasonable doubt of illegal possession of dangerous drugs, in violation of Section 11<sup>7</sup> of Republic Act No. No. 9165.

<sup>4</sup> *Rollo*, p. 3–16. The Decision dated March 22, 2018 was penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Ricardo R. Rosario and Associate Justice Ronaldo Roberto B. Martin of the Fourteenth Division, Court of Appeals, Manila.

<sup>5</sup> *CA rollo*, pp. 14–21. The Decision dated October 19, 2015 was penned by Judge Josephine M. Advento-Vito Cruz of Branch 135, Regional Trial Court of Makati.

<sup>6</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, 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>7</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 (MDMA) 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:

In an Information,<sup>8</sup> which was the subject of Criminal Case No. 15-547, Martin and Renato were charged with illegal sale of dangerous drugs, as follows:

The undersigned prosecutor accuses MARTIN ASAYTUNO JR. y HALILI @Jun and RENATO ASAYTUNO y HALILI @Ato of the crime of violation of REPUBLIC ACT 9165 sec. 5, committed as follows:

On the 25<sup>th</sup> day of February 2015, in the city of Makati, the Philippines, accused, conspiring and confederating together, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point forty three (0.43) gram, a dangerous drug, in consideration of Php1,000.

CONTRARY TO LAW.<sup>9</sup>

In another Information,<sup>10</sup> which was the subject of Criminal Case No. 15-548, Martin was charged with illegal possession of dangerous drugs, as follows:

The undersigned prosecutor accuses MARTIN ASAYTUNO JR. y HALILI @Jun of the crime of violation of REPUBLIC ACT 9165 sec. 11, committed as follows:

On the 25<sup>th</sup> day of February 2015, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in

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(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 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>8</sup> CA *rollo*, pp. 10–11.

<sup>9</sup> Id. at 10.

<sup>10</sup> Id. at 12–13.

his possession, direct custody and control a total of zero point twenty nine (0.29) grams of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.

Upon arraignment, both Martin and Renato pleaded “not guilty” to the offenses charged.<sup>11</sup>

The prosecution presented the following as witnesses: (1) P/Insp. Crisanto Racoma (P/Insp. Racoma); PO2 Sherwin Limbauan (PO2 Limbauan); (2) PO1 Mario Pagulayan (PO1 Pagulayan); (3) Barangay Kagawad Virgilio S. Awit (Kagawad Awit); and (4) PCI May Andrea Bonifacio (PCI Bonifacio).<sup>12</sup>

According to the prosecution, following a report made on the drug activities of an alias “Jun” at Barangay East Rembo, Makati City, P/Supt. Mario Ignacio directed that a buy-bust operation be conducted. A briefing for the operation was held by P/Insp. Racoma at around 9:00 p.m. on February 24, 2015.<sup>13</sup> PO2 Limbauan was designated as the poseur-buyer, while PO1 Pagulayan was designated as the back-up operative. PO2 Limbauan was given a marked<sup>14</sup> ₱1,000.00 peso bill to be used as buy-bust money.<sup>15</sup>

Thereafter, PO1 Pagulayan coordinated with the Philippine Drug Enforcement Agency and secured Coordination Form No. 0215-00272.<sup>16</sup> However, upon verification with their informant, the buy-bust team learned that Jun was no longer in the area. Because of this, the team suspended the operation and instructed the informant to contact them once Jun is spotted in the area.<sup>17</sup>

At around 6:00 p.m. the following day, February 25, 2015, the informant called PO2 Limbauan and informed him that Jun was again seen in Barangay East Rembo. PO2 Limbauan and the rest of the buy-bust team then proceeded to 27<sup>th</sup> Avenue, Barangay East Rembo to meet with the informant. From there, PO2 Limbauan and the informant walked to the

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<sup>11</sup> Id. at 19.

<sup>12</sup> Id. at 15.

<sup>13</sup> Id. at 17.

<sup>14</sup> Id. at 44. The Regional Trial Court and Court of Appeals Decisions as well as plaintiff-appellee’s brief do not indicate that the bill given to PO2 Limbauan was marked. Accused-appellant’s brief, however, states in the portion containing the prosecution’s evidence that the one thousand peso bill was “previously marked.”

<sup>15</sup> Id. at 17.

<sup>16</sup> *Rollo*, p. 5.

<sup>17</sup> *CA rollo*, p. 43, Brief for the Accused-Appellant.

target area at 24<sup>th</sup> Avenue, Barangay East Rembo while the rest of the team formed a perimeter around the area.<sup>18</sup>

Upon reaching the area, PO2 Limbauan and the informant saw two (2) men standing together at a sidewalk. The informant identified the taller of the two (2) as Jun. When the informant and PO2 Limbauan approached the two (2) men, the informant introduced PO2 Limbauan as a friend looking to purchase shabu.<sup>19</sup>

Jun asked PO2 Limbauan on how much shabu he intended to buy to which PO2 Limbauan answered ₱1,000.00 worth. Jun then instructed his companion, alias "Ato," to receive the payment. PO2 Limbauan proceeded to hand Ato the marked ₱1,000.00 bill, while Jun gave PO2 Limbauan one (1) plastic sachet which appeared to contain shabu. Soon after, PO2 Limbauan pocketed the sachet and executed the pre-arranged signal by scratching his ear.<sup>20</sup>

At that moment, PO2 Limbauan grabbed both Jun and Ato, introduced himself as a police officer, and frisked Jun. He recovered the marked ₱1,000.00 bill along with two (2) other sachets of suspected shabu. Meanwhile, nothing was recovered from Ato.<sup>21</sup>

Jun was identified as Martin H. Asaytuno, Jr., while Ato was identified as Renato H. Asaytuno, the accused-appellants. PO2 Limbauan called for an elected barangay official for the conduct of inventory, but no one immediately came. When people began to gather around the area, the operatives decided to bring Martin and Renato, as well as the seized evidence, to the East Rembo Barangay Hall.<sup>22</sup>

At the barangay hall, an inventory was conducted in the presence of Kagawad Awit. The plastic sachet handed by Martin to PO2 Limbauan was marked "SCL." The sachets retrieved by PO1 Pagulayan while frisking Martin were marked "SCL-1" and "SCL-2." Photographs were then taken during the inventory.<sup>23</sup>

The Inventory Receipt was received by PO3 Voltaire Esguerra (PO3 Esguerra), who then prepared the Letter Requests for a Laboratory Examination and Drug Test.<sup>24</sup> PO3 Esguerra delivered the sachets to the

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<sup>18</sup> Id.

<sup>19</sup> Id. at 18.

<sup>20</sup> Id. at 44.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id. at 18.

Southern Police District for a chemical analysis which was conducted by PCI Bonifacio.<sup>25</sup>

The chemistry report prepared by PCI Bonifacio indicated that the contents of all three sachets tested positive for shabu.<sup>26</sup>

Renato, Martin, and Martin's daughter, Meg Maxeem T. Asaytuno (Maxeem), testified for the defense.<sup>27</sup>

Testifying in his defense, Martin recalled that sometime between 12:00 and 12:30 a.m. on February 26, 2015, he was inside his room with his fifteen-year-old daughter, Maxeem, in their house at 179-B 24<sup>th</sup> Avenue, East Rembo, Makati City. He was then folding newly washed clothes while his brother, Renato, was asleep in another room.<sup>28</sup>

Suddenly, several persons who Martin later learned were police officers, entered the house. They were accompanied by an alias "Boteng." Martin was instantly grabbed, handcuffed, and frisked, after which his identification card and money worth ₱20,000.00 (given to him by another sibling) were taken from his wallet. The police officers demanded that Martin bring out shabu, but Martin denied having any.<sup>29</sup> After the police failed to locate any shabu inside Martin's room, they brought Martin outside where he saw Renato also handcuffed.<sup>30</sup>

Renato testified that on the same date and time, he was suddenly woken up by someone and found a gun pointed to his face. He was handcuffed by the same person while another searched his room. They later identified themselves as police officers from the Station Anti-Illegal Drugs Special Operation Task Group of Makati City. When the police officers found nothing illegal among his belongings, he was brought out of his room and saw his brother, Martin, also handcuffed.<sup>31</sup>

Martin and Renato were brought out of their house and were forced to board a vehicle parked along 24<sup>th</sup> Avenue, East Rembo. They were then taken to the office of the Station Anti-Illegal Drugs Special Operation Task Group where they were detained.<sup>32</sup>

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<sup>25</sup> Id. at 44-45.

<sup>26</sup> Id. at 45.

<sup>27</sup> Id. at 19.

<sup>28</sup> Id. at 19.

<sup>29</sup> Id.

<sup>30</sup> Id. at 45.

<sup>31</sup> Id.

<sup>32</sup> Id. at 19.

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After trial, the Regional Trial Court rendered its Decision<sup>33</sup> convicting Martin and Renato. The dispositive portion of the Decision read:

WHEREFORE, judgment is hereby rendered:

1. In Criminal Case No. 15-547, finding accused MARTIN ASAYTUNO y HALILI @ "Jun" and RENATO ASAYTUNO y HALILI @ "Ato" GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 5 of R.A. 9165, judgment is hereby rendered sentencing them to suffer life imprisonment and to pay a fine of P500,000 pesos; and
2. In Criminal Case No. 15-548, finding the accused MARTIN ASAYTUNO y HALILI @ "Jun" GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11 Article II of R.A. 9165, judgment is hereby rendered sentencing said accused to suffer imprisonment for an indeterminate term of twelve (12) years and one (1) day as minimum, to fourteen (14) years as maximum, to pay a fine of Php300,000.00 pesos (sic) and to pay the costs.

Let the zero point forty three (0.43) gram and zero point twenty nine (0.29) gram of methamphetamine hydrochloride (shabu) be turned over to PDEA for proper disposition.

SO ORDERED.<sup>34</sup>

In its assailed Decision,<sup>35</sup> the Court of Appeals sustained the Regional Trial Court in holding that all the elements of the offenses charged were proven beyond reasonable doubt.<sup>36</sup> It noted that even though the chain of custody requirements were not strictly complied with, deviations were founded on justifiable reasons. In any case, the seized items' integrity was maintained.<sup>37</sup> The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Consolidated Decision dated October 19, 2015 of the Regional Trial Court, Branch 135, Makati City in Criminal Cases No. 15-547 and 15-548 is **AFFIRMED** *in toto*.

SO ORDERED.<sup>38</sup> (Emphasis in the original)

Aggrieved, accused-appellants filed their Notice of Appeal,<sup>39</sup> which was given due course by the Court of Appeals.<sup>40</sup> In this Court's June 3, 2019 Resolution,<sup>41</sup> the parties were allowed to file supplemental briefs.

<sup>33</sup> Id. at 14–21.

<sup>34</sup> Id. at 21.

<sup>35</sup> *Rollo*, p. 3–16.

<sup>36</sup> Id. at 10.

<sup>37</sup> Id. at 11.

<sup>38</sup> Id. at 15.

<sup>39</sup> Id. at 17–18.

<sup>40</sup> Id. at 20.

<sup>41</sup> Id. at 22–23.

Both the Office of the Solicitor General<sup>42</sup> and accused-appellants<sup>43</sup> manifested that they were no longer intending to file Supplemental Briefs.

For this Court's resolution are the issues of: (1) whether or not accused-appellants Martin H. Asaytuno, Jr. and Renato H. Asaytuno are guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs; and (2) whether or not accused-appellant Martin H. Asaytuno, Jr. is guilty beyond reasonable doubt of the offense of illegal possession of dangerous drugs.

## I

To warrant a conviction, the offense charged against an accused must be proven beyond reasonable doubt.<sup>44</sup> An accused enjoys the constitutionally protected right to be presumed innocent, and cannot be convicted without the moral certainty occasioning proof beyond reasonable doubt.<sup>45</sup>

To convict accused-appellants, the prosecution must establish beyond reasonable doubt the following elements of the offense of illegal sale of dangerous drugs: "(1) the identity of the buyer and the seller, [identity of] the object, and consideration [of the sale]; and (2) the delivery of the thing sold and the payment therefor[.]"<sup>46</sup> As for the charge against Martin of illegal possession of dangerous drugs, the prosecution must establish beyond reasonable doubt: (1) the possession by the accused of an item or object identified to be a prohibited drug; (2) that the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.<sup>47</sup>

In drug-related cases, the *corpus delicti* – the body of the offense – is the seized drugs themselves.<sup>48</sup> Specifically concerning illegal sale of dangerous drugs, *People v. Ameril* explained:<sup>49</sup>

<sup>42</sup> Id. at 32–36.

<sup>43</sup> Id. at 37–40.

<sup>44</sup> RULES OF COURT, Rule 133, sec. 2 provides:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

<sup>45</sup> *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division] citing CONST., art. III, sec. 1; CONST., art. III, sec. 14 (2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac, et al. v. People*, 591 Phil. 508, 521–522 (2008) [Per J. Velasco, Jr., Second Division].

<sup>46</sup> *People v. Dumalo*, 584 Phil. 732, 738 (2008) [Per J. Ynares-Santiago, Third Division].

<sup>47</sup> *People v. Dela Cruz*, 744 Phil. 816, 825–826 (2014) [Per J. Leonen, Second Division] citing *People v. Morales*, 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

<sup>48</sup> See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>, citing *People v. Suan*, 627 Phil. 174, 188 (2010) [Per J. Caguioa, Second Division].

<sup>49</sup> G.R. No. 222192, March 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65008>> [Per J. Leonen, Third Division].



*The illegal drug itself constitutes the corpus delicti of the offense. Its existence must be proved beyond reasonable doubt. “Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”*<sup>50</sup> (Emphasis supplied)

The prosecution must establish that the drugs presented in court as evidence are the exact same drugs seized from the accused and examined by the crime laboratory.<sup>51</sup> This is not merely a matter of procedural formalities, but is a matter rooted in the very core of the crime’s commission.<sup>52</sup> As this Court emphasized in *People v. Holgado*,<sup>53</sup> the failure of the prosecution to establish the identity and integrity of the drugs presented as evidence “naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.”<sup>54</sup>

Particularity with respect to *corpus delicti* in drug-related cases proceeds from the peculiar nature of narcotic substances. In *Mallillin v. People*:<sup>55</sup>

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. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory’s findings is inadmissible.

*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.*<sup>56</sup> (Citations omitted; emphasis supplied)

<sup>50</sup> Id. citing *Fajardo v. People*, 691 Phil. 752, 758–759 (2012) [Per J. Perez, Second Division].

<sup>51</sup> Id. citing *People v. Ismael*, 806 Phil. 29 (2017) [Per J. Del Castillo, First Division].

<sup>52</sup> *People v. Royol*, G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

<sup>53</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>54</sup> Id. at 91 citing *People v. Belocura*, 693 Phil. 476 (2012) [Per J. Bersamin, First Division].

<sup>55</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>56</sup> Id. at 588–589.

When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims that they did. Thus, no conviction can ensue.

Given the risks peculiar to narcotics, standards for their handling – which are stricter, than those pertaining to other materials – are apropos:

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>57</sup> (Emphasis supplied)

Standards on chain of custody establish a sequential mechanism of authentication to ensure that the evidence presented in court is what it is claimed to be.<sup>58</sup> Under Dangerous Drugs Board Regulation No. 1, Series of 2002, chain of custody is the “duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants [sic] sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction.”<sup>59</sup>

Section 21 of Republic Act No. 9165, outlines imperative procedures for the handling of seized drugs and related items:

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 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

<sup>57</sup> Id. at 589.

<sup>58</sup> Id. at 588.

<sup>59</sup> As quoted in *People v. Havana*, 776 Phil. 462, 471 (2016) [Per J. Del Castillo, Second Division].

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.

(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 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[.]

## II

In this case, the prosecution claims that after the initial sale, PO2 Limbauan pocketed the sachet handed to him.<sup>60</sup> Following this, the buy-bust team and accused-appellants transferred to the East Rembo Barangay Hall. Only then was marking done.<sup>61</sup> These actions are replete with fatal violations of chain of custody requirements.

*People v. Sanchez*<sup>62</sup> emphasized that marking is a separate and distinct step from inventory and photographing. It also emphasized that marking must be done “immediately upon confiscation”:

[T]he venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.

In **seizures covered by search warrants**, the physical inventory and photograph must be conducted in the place where the search warrant was served. On the other hand, in case of **warrantless seizures such as a**

<sup>60</sup> CA *rollo*, p. 44.

<sup>61</sup> Id. at 46–47; and *rollo*, p. 12.

<sup>62</sup> 590 Phil. 214 (2008) [Per J. Brion, Second Division].

**buy-bust operation**, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

*What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.*

For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized.<sup>63</sup> (Citations omitted; emphasis supplied)

*People v. Coreche*<sup>64</sup> explained that failure to immediately mark seized drugs engenders an initial, fatal gap in chain of custody:

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. *Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are 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 criminal proceedings, obviating switching, "planting", or contamination of evidence.*

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable

<sup>63</sup> Id. at 240–241 citing CLARENCE PAUL OAMINAL, TEXTBOOK ON THE COMPREHENSIVE DANGEROUS ACT OF 2002 (REPUBLIC ACT NO. 9165) 65 (2005). See: *People v. Laxa*, 414 Phil. 156 (2001) [Per J. Mendoza, Second Division]; *People v. Kimura*, 471 Phil. 895 (2004) [Per J. Austria-Martinez, Second Division]; *People v. Nazareno*, 559 Phil. 387 (2007) [Per J. Tinga, Second Division]; and *People v. Santos, Jr.*, 562 Phil. 458 (2007) [Per J. Tinga, Second Division].

<sup>64</sup> 612 Phil. 1238 (2009) [Per J. Carpio, First Division].

doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.<sup>65</sup> (Citations omitted; emphasis supplied)

The drugs allegedly obtained from accused-appellants should have been immediately marked at the moment of arrest and seizure. This is despite the police officers' claim that they needed to transfer because people had begun to gather. The buy-bust operation was a pre-planned activity. The police officers are rightly presumed to be aware that they were conducting an operation in a public place, and that their actions would rouse people's curiosity. They should have been prepared for and not have been rattled by the foreseeable contingencies. Even granting that there was a valid need to transfer, their failure to mark before departure, along with unclear precautionary measures taken while en route to the barangay hall, means that there was an intervening period during which the sachets remained unaccounted.

The prosecution's recollection of how PO2 Limbauan "pocketed"<sup>66</sup> the sachet supposedly sold to him fails to assuage doubts. *People v. Dela Cruz*<sup>67</sup> concerned a similar situation where, after sachets were supposedly taken from the accused, a police officer claimed to have kept those sachets in his pockets. *Dela Cruz* decried such a manner of handling as "fraught with dangers[,] "reckless, if not dubious[,] and "a doubtful and suspicious way of ensuring the integrity of the items":

The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

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

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<sup>65</sup> Id. at 1245–1246.

<sup>66</sup> CA rollo, p. 44.

<sup>67</sup> *People v. Dela Cruz*, 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

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

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.<sup>68</sup> (Emphasis supplied)

Other than the standalone assurances of police officers who laid them out for inventory, there is, in this case, no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. Right at the onset, the chain of custody was jeopardized. From the beginning, there was doubt on the origin and identity of the items that would later be inventoried, photographed, examined, and presented as evidence. No amount of subsequent safety measures can cure this germinal defect.

Another fatal defect is the absence of required third-party witnesses during apprehension. Even during the subsequent inventory and taking of photographs, not all the required witnesses were present.

Considering that the incidents of this case transpired in 2015, after Republic Act No. 10640's amendments took effect in 2014, the presence of two (2) third-party witnesses was imperative: first, that of an elective official; and second, that of a media *or* National Prosecution Service representative.

*People v. Tomawis*<sup>69</sup> explained that the third-party witnesses required by Section 21 must be present even at 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**

<sup>68</sup> Id. at 834–835.

<sup>69</sup> G.R. No. 228890, April 18, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>> [Per J. Caguioa, Second Division].

**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 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>70</sup>  
(Emphasis supplied; citations omitted)

The prosecution here admits that the police officers did not bother to secure the presence of any of the required third-party witness during the actual buy-bust and apprehension. It acknowledged that the police officers only subsequently called for an elected barangay official for the conduct of inventory, but no one immediately came.<sup>71</sup> Even as Kagawad Awit later arrived at the barangay hall, his singular presence was insufficient. A media or National Prosecution Service representative needed to be with him to witness the inventory and taking of photographs.

The total absence of mandatory witnesses during apprehension, and those same witnesses' inadequacy during inventory and photographing, reveal a sorely lacking attempt at complying with statutory requirements. These only serve to compound the incipient flaws on marking and transit from the place of arrest to the barangay hall. They only amplify the need to acquit accused-appellants.

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<sup>70</sup> Id.

<sup>71</sup> Id.

### III

Non-compliance with Section 21 (1)'s requirements may be excused, provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.<sup>72</sup> *People v. Que*<sup>73</sup> explained:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: *first, the prosecution must specifically allege, identify, and prove "justifiable grounds"*; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.<sup>74</sup> (Emphasis supplied)

The prosecution failed to satisfy these requirements.

It claimed that the buy-bust team was unable to immediately do the marking at the place of the arrest because an elective official did not immediately come to the site of arrest.<sup>75</sup> Far from justifying the buy-bust team's deviation, this only underscores their dereliction. The preceding discussions noted that the third-party witnesses needed to be present during the actual apprehension. Had this requirement been met, there would not have been a need to wait, and therefore no pretense of a justification for failing to immediately conduct marking. The prosecution cannot use the police officers' dereliction as its own justification.

Moreover, when PO2 Limbuan was asked on cross examination about how long they waited for an elective official to arrive after calling for one, he stated that they had only waited one (1) minute before going to the barangay hall.<sup>76</sup> Waiting for just a minute is perfunctory at best. It hardly indicates an earnest attempt at conducting the marking right at the place of arrest in the presence of a mandatory witness.

The prosecution also claimed that the police officers had to leave the arrest site before marking because people began to gather around the area.<sup>77</sup>

<sup>72</sup> Republic Act No. 9165 (2002), as amended by Republic Act No. 10640 (2014), sec. 21(1) provides: . . . *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.

<sup>73</sup> G.R. No. 212994, January 31, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900>> [Per J. Leonen, Third Division].

<sup>74</sup> Id.

<sup>75</sup> CA rollo, p. 49.

<sup>76</sup> Id. at 50.

<sup>77</sup> Rollo, p. 12.



The mere assembling of people does not equate to danger that compromises the activities of law enforcers. It does not mean that the arrest site is no longer a viable place for completing necessary procedures. To reiterate, the buy-bust operation was a prearranged activity. The buy-bust team was supposed to have been prepared for the very likely eventuality that their actions in a public place would invite curiosity. It does not speak well of police officers to claim to feel insecure in performing their functions under benign and calculable conditions.

Also, the prosecution claimed that the police officers had to conduct the marking, inventory, and photographing at the barangay hall instead of the police station due to the station's distance from the arrest site.<sup>78</sup> This seems to be more of an afterthought of a justification. On cross-examination, PO2 Limbauan admitted to not even being aware of the rule that the conduct of inventory and photographing must either be at the operatives' office or the nearest police station.<sup>79</sup> This admitted lack of knowledge betrays why there was a propensity to deviate from legal requirement. It is an obliviousness that this Court cannot reward by a favorable judgment.

#### IV

This prosecution's case is not only compromised by non-compliance with statutory requirements. It is also tainted by dubious circumstances, as well as damaging counter-allegations which the prosecution failed to adequately address.

It is particularly notable that great care was supposed to have attended the preparations for buy-bust operations. For one, police officers hatched an operation a day before it was actually effected. Moreover, there was coordination with the Philippine Drug Enforcement Agency. The targets of the operation were supposedly knowing and much engaged drug traffickers. Despite this, the prosecution claims that not even one (1) gram of shabu was recovered from them.

The results of the buy bust operation are grossly disproportionate to the supposed profile of its targets and the alleged nature of their activities. The prosecution's own avowals on the planning and preparation made by police officers implies—as a logical consequence—that there should have been a proportionately substantial yield. The miniscule amount allegedly obtained hearkens to the dangers attendant to the seizure of narcotics, chiefly, the risk of planting and tampering. The non-compliant manner of conducting the buy bust operation, coupled with its dubious yield, only

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<sup>78</sup> Id.

<sup>79</sup> CA rollo, pp. 54–55.

enforces reasonable doubt on the propriety of police operations and ultimately, on accused-appellants' guilt.

It does not escape this Court's attention that, apart from maintaining their innocence, accused-appellants charged the police officers who apprehended them with larceny. Specifically, Martin recalled being grabbed, handcuffed, and frisked, after which ₱20,000.00 was forcibly taken from him.<sup>80</sup>

Proof beyond reasonable doubt requires moral certainty. Moral certainty cannot proceed from the assertions of persons who cannot themselves be relied upon to give credible accounts not only because they take liberties with legal requirements, but worse, because they are potential authors of criminal acts themselves.

For miniscule amounts of drugs seized, on the basis of testimonies of law enforcers who are potentially illicit themselves, and without the assuring presence and testimonies of third-party witnesses, the Regional Trial Court and the Court of Appeals were quick to convict accused-appellants. The Regional Trial Court even referenced the supposed presumption of regularity in the performance of official duties.<sup>81</sup> This presumption of regularity cannot avail here. To begin with, with the police officer's manifest noncompliance, there is nothing "regular" to even consider. Worse, there are allegations of wrongdoing and countervailing indicators of irregularity. The Regional Trial Court was quick to dismiss the defense's claims as independently not credible with hardly an explanation, other than a quick and sweeping reference to a presumption of regularity. This is a betrayal of the standard of proof beyond reasonable doubt. It failed to consider that it was the prosecution's duty to prove its own case on its own merits, and not merely on the basis of imputed weaknesses of the defense. Ultimately, the prosecution remained grossly wanting in establishing accused-appellants' guilt with moral certainty.

**WHEREFORE**, the Court of Appeals' March 22, 2018 Decision in CA-G.R. CR-H.C. NO. 08002 is **REVERSED AND SET ASIDE**. Accused-appellants MARTIN H. ASAYTUNO, JR. and RENATO H. ASAYTUNO are **ACQUITTED** for the prosecution's failure to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. He or she is directed to report to this Court, within five (5) days from receipt of this Decision, the action he or she has taken. Copies shall also be furnished to the Director General of

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<sup>80</sup> Id.

<sup>81</sup> Id. at 21.


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the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

In view of the questionable circumstances attendant to this case, let copies of this Decision also be furnished to the Office of the Ombudsman, the National Police Commission, and the Secretary of the Interior and Local Government, for their proper evaluation in relation to the law enforcers involved.

Let entry of final judgement be issued immediately.

**SO ORDERED.**



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

WE CONCUR:

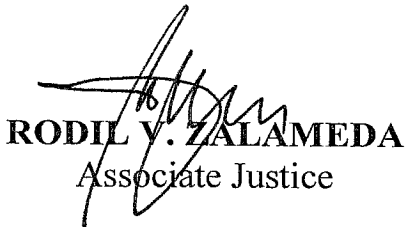
On official business  
**ALEXANDER G. GESMUNDO**  
Associate Justice



**ROSMARI D. CARANDANG**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**RODIL Y. ZALAMEDA**  
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.



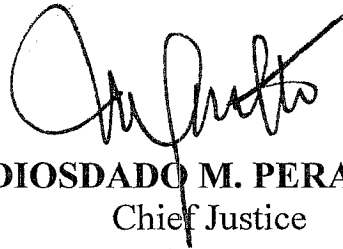
**MARVIC M.V.F. LEONEN**

Associate Justice

Chairperson, Third Division

**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.



**DIOSDADO M. PERALTA**

Chief Justice

**CERTIFIED TRUE COPY**

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

FEB 20 2020