

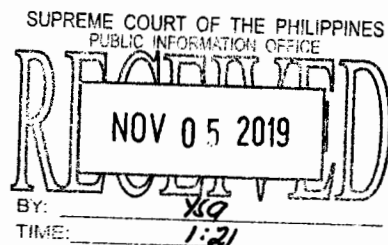


Republic of the Philippines
Supreme Court
Manila

***CORRECTED COPY**

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 7, 2019**, which reads as follows:*

“G.R. No. 233548 (*People of the Philippines v. Benedicto Macaspac y Curamin, Ferdinand Madriaga y Belen, and Aldrin Andor Y Magdaet*). - Assailed in this appeal is the Decision¹ dated February 22, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07416, which affirmed the Joint Decision² dated November 3, 2014 of the Regional Trial Court of San Pablo City (RTC), Branch 32, finding accused-appellant Aldrin Andor guilty beyond reasonable doubt of violation of Sections 5 and 11, respectively, of Article II of Republic Act No. (R.A.) 9165, otherwise known as the “*Comprehensive Dangerous Drugs Act of 2002*,” and co-accused Benedicto Macaspac and Ferdinand Madriaga of the crime of violation of Section 11 of the same law.

On March 15, 2010, four (4) separate Informations were filed with the RTC of San Pablo City, charging Macaspac, Madriaga and Andor with violation of Section 11, Article II of R.A. 9165 and Andor with violation of Section 5, Article II of R.A. 9165, the accusatory portions of which respectively state:

Criminal Case No. 17609-SP (10) filed against Macaspac.

That on or about February 25, 2010, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) heat-sealed transparent plastic sachet containing 0.01 gram Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law.

CONTRARY TO LAW.³

Criminal Case No. 17610-SP (10) filed against Madriaga.

¹ Penned by Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a member of the Court) concurring, *rollo*, pp. 2-17.

² Per Judge Agripino G. Morga; CA *rollo*, pp. 63-74.

³ Records, Vol. I [Criminal Case No. 17609-SP (10)], p. 1.

That on or about February 25, 2010, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) heat-sealed transparent plastic sachet containing 0.01 gram Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law

CONTRARY TO LAW.⁴

Criminal Case No. 17611-SP (10) filed against Andor.

That on or about February 25, 2010, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously have in his possession and control two (2) heat-sealed transparent plastic sachets containing 0.01 gram and 0.01 gram, or a total of 0.02 gram Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law.

CONTRARY TO LAW.⁵

Criminal Case No. 17612-SP(10) filed against Andor.

That on or about February 25, 2010, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously distribute and sell one (1) small heat-sealed transparent plastic sachet containing 0.02 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug, without being authorized by law.

CONTRARY TO LAW.⁶

All the cases were consolidated. When arraigned, the three accused pleaded not guilty⁷ to the offenses charged in the Informations.

The prosecution presented PO1 Alvin M. Santos (*PO1 Santos*) and SPO1 Ramil Suministrado (*SPO1 Suministrado*) as its witnesses and their testimonies tended to establish the following:

At 1:30 in the afternoon of February 25, 2010, a police confidential agent went to the San Pablo Station and informed PO1 Santos about the illegal drugs activities of three (3) male persons known by their aliases as "Tots,"⁸ "Benny," and "Ferdie,"⁹ at Barangay San Juan, San Pablo City. PO1 Santos then relayed the information to their Chief of Police, Superintendent Raul Bargamento, and recorded the information in their police blotter.¹⁰ Superintendent Bargamento

⁴ Records, Vol. II [Criminal Case No. 17610-SP (10)], p. 1.

⁵ Records, Vol. III [Criminal Case No. 179611-SP (10)], p. 1

⁶ Records, Vol. IV [Criminal Case No. 17612-SP(10)], p. 1.

⁷ Records, Vol. I [Criminal Case No. 17609-SP (10)], p. 33.

⁸ Spelled as "Tooths" in the Informations.

⁹ TSN, May 26, 2011, p. 2.

¹⁰ *Id.*

ordered a surveillance to verify the information. At 1:40 p.m., PO1 Santos and the confidential agent proceeded to the target area at Brgy. San Juan, San Pablo City, to conduct a surveillance operation¹¹ on the persons with aliases as “Tots,” “Benny,” and “Ferdie,” who were later identified as Aldrin Andor, Benedicto Macaspac and Ferdinand Madriaga, respectively. As the information was confirmed and the suspects were identified, as well as the location where the illegal trade was being conducted, PO1 Santos and the confidential agent returned to the police station at 2:40 in the afternoon, and the buy-bust money consisting of two pieces of one hundred peso bills was prepared.¹² A briefing was held for the conduct of a buy-bust operation where PO1 Santos was designated as a poseur-buyer, while SPO1 Suministrado was assigned as the back-up security, and the rest of the team led by SPO1 Norman Jesus Platon as perimeter security.¹³ SPO1 Norman Jesus Platon, the team leader, coordinated with the Philippine Drug Enforcement Agency (*PDEA*) on the conduct of the buy-bust operation. At 3:40 in the afternoon of the same day, the team proceeded to the target area at Brgy. San Juan, San Pablo City and reached the place at 4:30 p.m.

Upon reaching the target place, the members of the buy-bust team positioned themselves nearby. PO1 Santos and the confidential agent approached the three accused and the confidential agent introduced to them PO1 Santos as a buyer of shabu.¹⁴ Thereafter, the confidential agent left PO1 Santos with Andor who asked PO1 Santos “*Magkano*,” to which the latter replied “*Dalawang daan*.”¹⁵ Andor took out a small box from his pocket and got one sachet containing white crystalline substance therefrom which he gave to PO1 Santos who, in turn, gave the former the marked money.¹⁶ PO1 Santos gave the pre-arranged signal by making a missed call to SPO1 Platon’s cellphone number. Macaspac and Madriaga were just looking while the transaction was on-going. When PO1 Santos saw the team members coming to where they were, he grabbed the hand of Andor and introduced himself as a police officer.¹⁷ PO1 Santos then told SPO1 Suministrado that Macaspac and Madriaga were with Andor, so SPO1 Suministrado immediately grabbed them as they tried to run away. PO1 Santos marked the sachet which he bought from accused Andor with his initials “AMS-BB” and the two plastic sachets containing white crystalline substances in the metal box possessed by Andor with “AMS-1” and “AMS-2.”¹⁸ SPO1 Suministrado asked Macaspac and Madriaga to show the contents of their pockets and when they did, each possessed one small plastic sachet containing white crystalline substance. SPO1 Suministrado placed his initials “RES 1” and “RES 2” on the sachets that he seized from Madriaga and Macaspac, respectively, and turned them over to PO1 Santos.¹⁹ PO1 Santos was in

¹¹ *Id.* at 3.
¹² *Id.* at 4-7.
¹³ *Id.* at 8.
¹⁴ *Id.*
¹⁵ *Id.* at 9.
¹⁶ *Id.* at 9-10.
¹⁷ *Id.*
¹⁸ *Id.* at 14.
¹⁹ *Id.* at 15-16.

possession of the items bought and recovered from the three suspects up to the police station.²⁰ The police operatives brought the three suspects to the police station where they were presented together with the items seized from them to SPO1 De Mata for blotter.²¹

After blotter, PO1 Santos brought the specimen to the Intelligence Section.²² It was at this time that PO1 Santos called for the DOJ personnel, elected barangay official and media representative to sign the physical inventory form which they did.²³ The photos of the representatives signing in the presence of the accused with the seized items on the table were taken. PO1 Santos requested for laboratory examination of the seized items and urine samples of the three accused and the form was prepared by PO2 Sacdalan.²⁴ PO1 Santos brought the items seized and the request for laboratory examination to the crime laboratory and received by a certain SPO2 Macabasco who placed the items in a cabinet.²⁵ The results of the examination revealed that the specimens submitted are positive for the presence of methamphetamine hydrochloride or shabu.²⁶

The defense presented the testimonies of the three accused.

Macaspac claimed that at 1 o'clock in the afternoon of February 25, 2010, he boarded a tricycle at Brgy. Sta. Monica, San Pablo City, bound for Brgy. San Juan, San Pablo City, to visit his friend Bayani Sta. Rita. Upon reaching Brgy. San Juan, he saw a male person being chased by three armed men. When he alighted from the tricycle, one of the armed men passed him by and they stared at each other and he was told, "*bata, ang dami mong tattoo,*" and grabbed the back of his short pants, telling him "*sumama ka sa akin.*" He tried to remove the hands of the armed man whom he came to know later as PO1 Santos, but the latter told him "*huwag kang magpumiglas at baka me mangyari sa iyo.*" PO1 Santos then brought him to the green-colored van where he saw two other persons inside the van which included the tricycle driver, Madriaga. They were all brought to the police station. Later, he was shown plastic sachets on top of a table and was asked to point at them and pictures were taken.²⁷

Madriaga, on the other hand, claimed that he is a tricycle driver plying the route city proper –Sta Monica, San Pablo City. On February 25, 2010, while at the tricycle terminal, a passenger, whom he came to know later as Macaspac, asked that he be brought to Brgy. San Juan, Pablo City for a fee of ₱70.00. Upon arrival at the said barangay, he saw armed men chasing male persons. One of the armed men stopped where the tricycle was and arrested Macaspac, and then another armed man arrested him and they were brought to the green-colored van.

²⁰ *Id.* at 17.

²¹ *Id.* at 17-18.

²² *Id.* at 18.

²³ *Id.* at 19.

²⁴ *Id.* at 22.

²⁵ *Id.* at 23-24.

²⁶ *Id.* at 24; Folder of Exhibits, Chemistry Report No. LD -043-10, p. 10 and LD-044-10, p. 12.

²⁷ TSN, March 14, 2013, pp. 2-4.

Later, Andor was also loaded to the van. They were all brought to the police station.

Andor claimed that on February 25, 2010, he was waiting at the terminal for passengers for his tricycle at the corner of San Juan and Sta Filomena, when several armed men alighted from a van and chased the players of cara cruz in the area, but they were not able to catch them. He saw a policeman talking to Macaspac, a passenger in one of the tricycles, who was dragged to the van. The police also arrested Madriaga and him and boarded them to the van.

In a Joint Decision²⁸ dated November 3, 2014, the RTC convicted the three accused of the crimes charged, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- a. FINDING accused ALDRIN ANDOR y MAGDAET guilty beyond reasonable doubt of the offense of violation of Section 5, Article II of Republic Act No. 9165, and hereby sentences him to life imprisonment and a fine of P500,000.00 in Criminal Case No. 17612-SP;
- b. FINDING accused ALDRIN ANDOR y MAGDAET guilty beyond reasonable doubt of the offense of violation of Section 11, Article II of Republic Act No. 9165, and hereby sentences him with an imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of P300,000.00 in Criminal Case No. 17611-SP;
- c. FINDING accused BENEDICTO MACASPAC y CURAMIN guilty beyond reasonable doubt of the offense of violation of Section 11, Article II of Republic Act No. 9165, and hereby sentences him with an imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of P300,000.00 in Criminal Case No.17609-SP; and
- d. FINDING accused FERDINAND MADRIAGA y BELEN guilty beyond reasonable doubt of the offense of violation of Section 11, Article II of Republic Act No. 9165, and hereby sentences him with an imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of P300,000.00 in Criminal Case No. 17610-SP.

No costs.

SO ORDERED.²⁹

The RTC found that all the elements of illegal sale and illegal possession of shabu had been sufficiently established by the police officers. PO1 Santos positively identified Andor as the person from whom he bought the shabu and

²⁸ *Supra* note 2.

²⁹ *Rollo*, pp. 73-74.

paid the amount of ₱200.00; that also recovered from his possession were two more plastic sachets of shabu with a total weight of 0.02 gram. On the other hand, SPO2 Suministrado also positively identified Macaspac and Madriaga from whom he recovered one plastic sachet of shabu each. All the confiscated items from the accused were presented and duly identified in court by the markings made by the police officers on the plastic sachets. The testimonies of police officers were given credence as they are presumed to have acted regularly in the performance of their official functions in the absence of convincing proof to the contrary. The denial of the accused cannot be given weight and could not prevail over the positive testimonies of the prosecution witnesses.

The accused filed their Notice of Appeal with the CA. After the parties had submitted their respective briefs, the case was submitted for decision.

On February 22, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the assailed Joint Decision dated November 3, 2014 of the RTC, Fourth Judicial Region, Branch 32, San Pablo City in Criminal Case Nos. 17609-SP (10), 17610-SP (10), 17611-SP (10), and 17612-SP (10) is AFFIRMED.³⁰

The CA found that the prosecution had sufficiently discharged the burden of establishing the elements of illegal sale and illegal possession of dangerous drugs. It also ruled that the chain of custody was established. It found that while PO1 Santos did not conduct the physical inventory and photographing of the seized items immediately after the apprehension, it was established that the integrity of the prohibited drugs was preserved. PO1 Santos was in custody of all the heat-sealed transparent plastic sachets of shabu from the place of the incident up to the police station until its submission to the crime laboratory; that at the police station, an inventory was made in the presence of the accused, media representative, elected barangay official, and DOJ personnel and photos were taken. The CA also found that credence should be given to the testimonies of police officers who are presumed to have performed their duties in a regular manner.

The three accused filed their Notice of Appeal with us. We required the parties to simultaneously file their respective supplemental briefs if they so desire.³¹ Both parties filed their Manifestations that they are adopting their respective briefs filed before the CA as their supplemental briefs.³²

On February 7, 2018, Madriaga filed a Withdrawal of Appeal.³³ In a Resolution³⁴ dated April 11, 2018, we granted Madriaga's withdrawal of appeal

³⁰ *Id.* at 16.

³¹ *Id.* at 24.

³² *Id.* at 26-27; 33-A-34.

³³ *Id.* at 31-32.

³⁴ *Id.* at 38-39.

and declared his case closed and terminated and directed the entry of judgment as to him.

In a Resolution dated March 4, 2019, We took note of the Manifestation and Compliance dated June 18, 2018 filed by the Public Attorney's Office (PAO), counsel for accused-appellants, with the Resolution dated April 11, 2018, explaining to the Court that it was of utmost belief that the certificate of death of Macaspac was properly filed on July 19, 2017 in a Manifestation filed before the CA, yet it was not, and intended to rectify the same by submitting the said certificate upon receipt of a new copy from the New Bilibid Prison (NBP); and the PAO compliance submitting the certified true copy of the death certificate of Macaspac showing that he died on October 15, 2016 of bronchial asthma in acute exacerbation. In the same Resolution, We made the following disposition, thus:

Accordingly, the Court resolves to SET ASIDE the Court of Appeals Decision dated February 22, 2017 in CA-G.R. CR HC No. 07416 affirming the Joint Decision dated November 3, 2014 in Criminal Case No. 17609-SP (10) of the RTC of San Pablo City, Branch 32, which convicted accused-appellant Benedicto Macaspac y Curamin for violation of Section 11 of Article II of R.A. No. 9165; and DISMISS the said criminal case against said accused-appellant by reason of his death.³⁵

Hence, Andor is the sole appellant in the instant case.

The issue for resolution is whether Appellant Andor's guilt had been proved beyond reasonable doubt. He seeks his acquittal for failure of the prosecution to comply with Section 21 of R.A. 9165.

To begin with, an appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.³⁶ We have carefully examined the records of the case and finds the appeal meritorious.

Appellant Andor was charged with illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of R.A. 9165. To secure a conviction for a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.³⁷ And to sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (a) the accused was in possession of an item or an object identified to be prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.³⁸

³⁵ *Id.* at 67.

³⁶ *People v. Dahil, et al.*, 750 Phil. 212, 225 (2015).

³⁷ *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

³⁸ *People v. Que*, G.R. No. 212994, January 31, 2018.

In cases of illegal sale and illegal possession of dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.³⁹ The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime.⁴⁰ Thus, the chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”⁴¹

To guarantee an unbroken chain of custody, Section 21(1), Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crimes, provides:

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* – x x x.

(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.

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(a) The apprehending officer/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: 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, further, that 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.

Thus, the apprehending team should conduct a physical inventory of the seized items and photographing of the same immediately after seizure and confiscation; and that the inventory must be done in the presence of the accused,

³⁹ *People v. De Leon*, G.R. No. 214472, November 28, 2018.

⁴⁰ *Id.*

⁴¹ *People v. Reyes*, G.R. No. 219953, April 23, 2018.

his counsel or representative, and the representatives from the DOJ and the media, and an elected public official, who should 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.⁴² And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.⁴³

Although the IRR allows the nearest police station or the nearest office of the apprehending team where the inventory and photographing of the seized drugs can be done, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.⁴⁴ The reason is simple, it is at the time of arrest - or at the time of the drugs’ “seizure and confiscation” - that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.⁴⁵

Here, the testimony of PO1 Santos in his direct examination showed non-compliance thereof, to wit:

Q. When you arrived there at the police station together with the specimen and the three (3) accused, you mentioned you placed them, you have it placed in the blotter, the incident and the specimen recovered, when you say you bring them, what did you mean by that, did you surrender, did you present the specimen and the accused, what do you mean by that?

A. I showed that to our Desk Officer.

Q. So after having placed the specimen, the accused, the incident in the blotter, what did you do next?

A. During the blotter, we were being photographed by Police Officer Sacdalan.

Q. I am showing to you [a] photograph attached from the record marked as Exhibit “Q”, could you please tell us what is the picture about Exhibit “Q”, what [was] depicted here at the photograph taken?

A. This picture shows that I am showing the item to our Desk Officer and the accused were by my side.

Q. After placing them to the blotter, what[,] if anything[,] did you do next?

A. I brought those things to the Intelligence Section, Sir.

⁴² *People v. De Leon*, *supra* note 39.

⁴³ *Id.*

⁴⁴ *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

⁴⁵ *Id.*

Q. How about the specimen, where [were] they when you brought it at the Intelligence Section?

A. In my possession, sir.

Q. After arriving there at the Intelligence Section, what happened there?

A. We call[ed] for the DOJ personnel, the elected barangay official and media representative, sir.

Q. For what purpose [did] you call?

A. For them to sign the physical inventory.

Q. Physical inventory. You have any proof of this that they signed the physical inventory.?

A. Yes, sir.

Q. What is the proof that you have?

A. The document, the physical inventory, sir.

Q. Aside from that document do you have any proof?

A. The chain of custody of evidence.

Q. [Were] there any photographs taken during the time these representatives were present at the police station?

A. Yes Sir, there was.

Q. I am showing to you photographs previously marked as Exhibit "Q-1" and series, please tell us are they the same photographs taken?

A. Yes, Sir.

Q. How sure are you that they are the same photographs taken?

A. Because I was there, sir when it was taken.

Q. Do you know who took these photographs?

A. Our investigator, Police Officer Sacdalan, Sir.

PROS. CO: Your Honor, the pictures identified by the witness [show] the representatives of media, elected barangay official and DOJ.

COURT. Noted.

PROS. CO: And together with the pictures appear to be plastic sachet while the representatives appear signing the document.

COURT. Noted.

PROS CO:

Q. What [are] the representatives, who appear in the pictures, doing that they are signing something, what is the document?

A. The physical inventory, sir.

Q. Who are these representatives, do you know their names?

A. Mediaman Dan Bicomong, Joey Flores from DOJ, and the elected official from the Barangay.

Q. You mentioned a chain of custody of evidence, as part of your group, could you please look over to this Exhibit "M," what is this connection with the chain of custody of evidence you are referring to?

A. This is the chain of custody of evidence, Sir.

COURT: There are two (2) chain of custody of evidence, "M" & "N."

Q. How about the other chain of custody of evidence?

A. Also a chain of custody of evidence, sir.

COURT Exhibit "M" refers to the chain of custody of the shabu subject of the buy bust and those found from the metal box, "N" refers to those taken from accused Benny and Ferdie. Proceed.

x x x x

PROS. CO: Q. You mentioned documents which were signed by the representatives as appearing on the photographs, could you please go over this Exhibit "K."

COURT: Yes "K", the inventory of the seized items seized from accused alias Tots and then "L" from the other accused.

A. These are the items found from "Tots" and also it contained the signatures of the three (3) representatives.

PROS CO: How about this Exhibit "L?"

A. The certificate of inventory from the two (2) other persons taken from them.

Q. How sure [are you that] these are the same documents you mentioned signed by the representatives as appearing on the photographs a while ago?

A. Because I was there when they were signing those documents.⁴⁶

Clearly, the inventory was not done at the place of apprehension and the three required witnesses under Section 21 of R.A. 9165, *i.e.*, the elected public official, representatives from the media and the DOJ, were not present at the time the alleged plastic sachets containing white crystalline substances were seized from appellant Andor and his co-accused during the buy bust operation. In fact, the witnesses were only called to sign the certificate of inventory of the seized items and their photos were taken. These witnesses were not at all aware of the buy bust operation and did not see whether the seized items were actually recovered from the accused. It bears emphasis that the required witnesses should 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."⁴⁷ 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.⁴⁸

⁴⁶ TSN, May 26, 2011, pp. 18-21.

⁴⁷ *People v. Luna*, G.R. No. 219164, March 21, 2018.

⁴⁸ *People v. Juliet Rivera*, G.R. No. 225786, November 14, 2018.

We have ruled that strict compliance with the requirements of Section 21 of RA 9165 may not always be possible due to varied field conditions. In fact, the IRR of R.A. 9165, which is now incorporated into statutory law with the passage of R.A. 10640, provides that non-compliance with the requirements of Section 21, Article II of R.A. 9165 - under justifiable grounds - will not automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. It is the duty of the prosecution to satisfactorily prove the existence of justifiable ground for non-compliance with the rule and that the integrity and evidentiary value of the seized items are properly preserved.

In this case, the prosecution did not provide any explanation on why the inventory was not done at the place of apprehension and whether it was the nearest police station from where the apprehension took place. Notably, the San Pablo City Station was about an hour away from the place of apprehension. There was also no explanation as to why the required witnesses were not present at the time and place of the seizure and confiscation of the subject illegal drugs which could have secured the unbroken chain of custody.

In addition, we entertain serious doubt on whether the inventory and photographing of the seized items indeed happened immediately after apprehension.

A careful look at the photos of the alleged inventory would reveal that the inventory was not accomplished in one occasion. We take note that the shirts worn by the three accused in the photo where a certain Joey Flores of the DOJ was signing⁴⁹ were different from the shirts they were wearing in the photo where a certain Dante Bicomong, a media representative, was signing.⁵⁰ Noticeable also is the fact that in another photo where it was shown that a certain Oscar Almazan, a barangay representative, was signing the certificate of inventory, the three accused were no longer in the photo and the table where he was signing the certificate looked very much different from the table which the other two witnesses had used.⁵¹

The prosecution offered no explanation on such disparity of time and place. Consequently, the authenticity of the certificate of inventory is put in serious doubt, and the inventory itself. Thus, without the inventory done immediately after apprehension, the prosecution actually failed to establish the unbroken chain of custody which puts into question the integrity and evidentiary value of the dangerous drugs allegedly seized from appellant Andor and his co-accused.

It is well settled that the procedure under Section 21, Article II of R.A. 9165

⁴⁹ Exhibit "R-1," Folder of Exhibits, pp. 28, 38. (Clear copy seen on Records of Crim. Case No. 17610, p. 21 and Crim. Case No. 17611-SP-10, p. 22.)

⁵⁰ *Id.*, Exhibit "R-2."

⁵¹ *Id.*, Exhibit "R-3."

is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse ignored as an impediment to the conviction of illegal drug suspects.⁵² For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.⁵³

We do not agree with the RTC and the CA that the police officers regularly performed their official duty. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.⁵⁴ The presumption may only arise if it has been shown that the apprehending officer/team complied with the requirements of Section 21 or the IRR. In this case, the presumption of regularity had been negated by the officers unjustified non-compliance of Section 21 of R.A. No. 9165 and the IRR which resulted in a substantial gap in the chain of custody of the seized items, hence, the integrity and evidentiary value of the seized items is put in question. Therefore, appellant Andor must be acquitted of the crimes charged.

Finally, although Madriga, appellant Andor's co-accused, had already withdrawn his appeal which was granted in our Resolution dated April 11, 2018, We find it proper to also acquit him of the crime of illegal possession of drugs. Section 11(a), Rule 122 of the Revised Rules on Criminal Procedure provides that "An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." Considering our finding that the identity of the seized item from the accused had not been established beyond reasonable doubt, appellant Andor's acquittal should also benefit Madriaga.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07416 is hereby **REVERSED** and **SET ASIDE**. Appellant Aldrin Andor is, accordingly, **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. Pursuant to Rule 122 of the Rules of Court, his co-accused Ferdinand Madriaga, is proclaimed to be entitled to an **ACQUITTAL**. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of Appellant Andor and co-accused Madriaga from detention, unless they are being held for some other lawful cause, and to inform this Court their action hereon within five (5) days from receipt of this Resolution.

⁵² *People v. Baptista*, G.R. No. 225783 August 20, 2018.

⁵³ *Id.*

⁵⁴ *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

SO ORDERED.” (*Hernando, J., on wellness leave; Inting, J., no part; Reyes, J., J., additional member per Raffle dated October 7, 2019*)

Very truly yours,

MisDc Batt
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The Presiding Judge
REGIONAL TRIAL COURT
Branch 32, San Pablo City, Laguna
(Criminal Case Nos. 17609-SP (10), 17610-SP (10),
17611-SP (10) and 17612-SP (10))

The Director General
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Mr. Aldrin Andor y Magdaet
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