



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 212196

Present:

- versus -

CARPIO, J., Chairperson,
VELASCO, JR.,*
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

RAMIL DORIA DAHIL and
ROMMEL CASTRO y CARLOS,
Accused-Appellants.

Promulgated:

JAN 12 2015

X ----- X

DECISION

MENDOZA, J.:

This is an appeal from the September 27, 2013 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05707, which affirmed the July 17, 2012 Decision² of the Regional Trial Court, Branch 57, Angeles City (RTC) in Criminal Case Nos. DC 02-376, DC 02-377 and DC 02-378, finding accused Ramil Doria Dahil (*Dahil*) and Rommel Castro (*Castro*) guilty beyond reasonable doubt for violating Sections 5 and 11 of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On October 1, 2002, Dahil and Castro were charged in three (3) separate Informations before the RTC. In Criminal Case No. DC 02-376,

* Designated Acting member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1910, dated January 12, 2015.

¹ Penned by Associate Justice Isaias P. Dicedican with Associate Justice Michael P. Elbinias and Associate Justice Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 1-19.

² Penned by Judge Omar T. Viola; CA *rollo*, pp. 45-56.

Dahil and Castro were charged with violation of Section 5, Article II of R.A. No. 9165 for the sale of 26.8098 grams of marijuana in the Information which reads:

That on or about the 29th day of September, 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually helping one another, did, then and there, willfully, unlawfully and feloniously sell and/or deliver to a poseur buyer six (6) tea bags of dried marijuana fruiting tops weighing TWENTY SIX GRAMS AND EIGHT THOUSAND NINETY EIGHT TEN THOUSANDTHS OF A GRAM (26.8098), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.³

In Criminal Case No. DC 02-377, Dahil was charged with possession of 20.6642 grams of marijuana in violation of Section 11, Article II of R.A. No. 9165, in the Information which reads:

That on or about the 29th day of September, 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession and custody and control Five (5) tea bags of dried marijuana fruiting tops weighing TWENTY GRAMS AND SIX THOUSAND SIX HUNDRED FORTY TWO TEN THOUSANDTHS OF A GRAM (20.6642), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.⁴

In Criminal Case No. DC 02-378, Castro was charged with possession of 130.8286 grams of marijuana in violation of Section 11, Article II of R.A. No. 9165, in the Information which reads:

That on or about the 29th day of September, 2002, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously have in his possession and custody and control One (1) brick in form wrapped in masking tape of dried marijuana fruiting tops weighing ONE HUNDRED THIRTY GRAMS and EIGHT THOUSAND TWO HUNDRED EIGHTY SIX TEN THOUSANDTHS OF A GRAM (130.8286), which is a dangerous drug, without authority whatsoever.

CONTRARY TO LAW.⁵

³ Records, p. 1.

⁴ Id. at 17.

⁵ Id. at 30.

On November 14, 2002, Castro was arraigned and he pleaded not guilty. Dahil, on the other hand, filed a motion for reinvestigation and his arraignment was deferred. Trial ensued and the prosecution presented PO2 Arieltino Corpuz (*PO2 Corpuz*) and SPO1 Eliseo Licu (*SPO1 Licu*), as witnesses.

On August 6, 2009, the RTC discovered that Dahil was never arraigned through inadvertence.⁶ The RTC informed the parties of the situation and the defense counsel did not interpose any objection to the reopening of the case and the arraignment of Dahil. The latter was then arraigned and he pleaded not guilty. Thereafter, the public prosecutor manifested that he was adopting all the evidence already adduced.

Version of the Prosecution

Evidence of the prosecution tended to show that, for a couple of weeks, the agents of the Philippine Drug Enforcement Agency (*PDEA*), Region 3, conducted surveillance and casing operations relative to the information they received that a certain alias “Buddy” and alias “Mel” were trafficking dried marijuana in TB Pavilion, Marisol Subdivision, Barangay Ninoy Aquino, Angeles City. On September 29, 2002, the Chief of PDEA formed a team to conduct a buy-bust operation. The team was composed of four (4) police officers, namely, Sergeant Juanito dela Cruz (*Sergeant dela Cruz*), as team leader; and PO2 Corpuz, SPO1 Licu and PO2 Javiar, as members. PO2 Corpuz was designated as the poseur-buyer while SPO1 Licu was assigned as his back-up.

The team proceeded to the target place at around 8:00 o’clock in the evening. Upon arriving, PO2 Corpuz together with the informant went to the house of Dahil which was within the TB Pavillon compound. When PO2 Corpuz and the informant were in front of the house, they met Dahil and Castro. The informant then introduced PO2 Corpuz as the buyer of marijuana. Dahil asked PO2 Corpuz how much would he be buying and the latter answered that he would buy ₱200.00 worth of marijuana. At this juncture, Dahil took out from his pocket six (6) plastic sachets of marijuana and handed them to PO2 Corpuz. After checking the items, PO2 Corpuz handed two (2) ₱100.00 marked bills to Castro.

⁶ Id. at 219.

Immediately thereafter, PO2 Cruz took off his cap to signal that the sale had been consummated. The rest of the buy-bust team then rushed to their location and arrested Castro and Dahil. PO2 Corpuz frisked Dahil and recovered from his possession another five (5) plastic sachets containing marijuana while SPO1 Licu searched the person of Castro and confiscated from him one (1) brick of suspected marijuana.

Both Castro and Dahil, together with the confiscated drugs, were then brought by the buy-bust team to the PDEA office. There, the seized items were marked by PO2 Corpuz and SPO1 Licu. First, the six (6) plastic sachets of marijuana which were sold by Dahil to PO2 Corpuz were marked with “A-1” to “A-6” and with letters “RDRC,” “ADGC” and “EML.” Second, the five (5) plastic sachets recovered from Dahil were marked with “B-1” to “B-5” and with letters “RDRC,” “ADGC” and “EML.” Finally, the marijuana brick confiscated from Castro was marked “C-RDRC.” Sergeant dela Cruz then prepared the request for laboratory examination, affidavits of arrest and other pertinent documents. An inventory of the seized items⁷ was also prepared which was signed by Kagawad Pamintuan. Thereafter, PO2 Corpuz brought the confiscated drugs to the Philippine National Police (*PNP*) Crime Laboratory for examination, which subsequently yielded positive results for marijuana.

The prosecution and defense entered into stipulation as to the essential contents of the prospective testimony of the forensic chemist, to wit:

1. That a laboratory examination request was prepared by PO3 Dela Cruz;
2. That said letter request for laboratory examination was sent to the PNP Crime Laboratory, Camp Olivas, San Fernando, Pampanga;
3. That Engr. Ma. Luisa Gundran David is a forensic chemist;
4. That said forensic chemist conducted an examination on the substance subject of the letter request with qualification that said request was not subscribed or under oath and that the forensic chemist has no personal knowledge as from whom and where said substance was taken;
5. That the result of the laboratory examination is embodied in Chemistry Report No. D-0518-2002; and
6. The findings and conclusion thereof.⁸

⁷ Id. at 16.

⁸ CA *rollo*, p. 49.

The prosecution was ordered to formally offer its evidence on March 7, 2007.⁹ After much delay, the public prosecutor was finally able to orally submit his formal offer of exhibits *after almost two years*, or on January 6, 2009.¹⁰ He offered the following documentary evidence: (1) Joint Affidavit of Arrest, (2) Custodial Investigation Report, (3) Photocopy of the marked money, (4) Brown envelope containing the subject illegal drugs, (5) Inventory of Property Seized, (6) Laboratory Examination Request, and (7) Chemistry Report No. D-0518-2002.

Version of the Defense

In his defense, Dahil claimed that on September 29, 2002, a tricycle driver came looking for him after he had arrived home. He saw the tricycle driver with another man already waiting for him. He was then asked by the unknown man whether he knew a certain Buddy in their place. He answered that there were many persons named Buddy. Suddenly, persons alighted from the vehicles parked in front of his house and dragged him into one of the vehicles. He was brought to Clark Air Base and was charged with illegal selling and possession of marijuana.

For his part, Castro testified that on September 29, 2002, he was on 4th Street of Marisol, Barangay Ninoy Aquino, Angeles City, watching a game of chess when he was approached by some men who asked if he knew a certain Boy residing at Hardian Extension. He then replied that he did not know the said person and then the men ordered him to board a vehicle and brought him to Clark Air Base where he was charged with illegal possession of marijuana.

RTC Ruling

In its Decision,¹¹ dated July 17, 2012, the RTC found both accused liable for violating Sections 5 and 11 of R.A. No. 9165, and imposed upon them the penalty of life imprisonment and a fine of ₱500,000.00 each for the crime of illegal sale of marijuana; Twelve (12) Years and One (1) Day, as minimum, to Fourteen (14) Years of Reclusion Temporal, as maximum, and a fine of ₱300,000.00 each for the crime of illegal possession of marijuana.

⁹ Records, p. 176.

¹⁰ Id. at 208.

¹¹ CA *rollo*, pp. 45-56.

The RTC was convinced that the prosecution was able to prove the case of selling and possession of illegal drugs against the accused. All the elements of the crimes were established. To the trial court, the evidence proved that PO2 Corpuz bought marijuana from Dahil. The latter examined the marijuana purchased and then handed the marked money to Castro.

The marked money was lost in the custody of the police officers, but the RTC ruled that the same was not fatal considering that a photocopy of the marked money was presented and identified by the arresting officers.¹² It did not give credence to the defense of frame-up by Dahil and Castro explaining that it could easily be concocted with no supporting proof.

CA Ruling

The accused then appealed to the CA. In their Brief for the Accused-Appellants,¹³ they argued that there were irregularities on the preservation of the integrity and evidentiary value of the illegal items seized from them. The prosecution witnesses exhibited gross disregard of the procedural safeguards which generated clouds of doubts as to the identity of the seized items presented in evidence.¹⁴

In its Brief for the Appellee,¹⁵ the OSG contended that the prosecution was able to prove all the elements of the crime of illegal sale and possession of marijuana. As to the chain of custody procedure, it insists that the prosecution witnesses were able to account for the series of events that transpired, from the time the buy-bust operation was conducted until the time the items were presented in court.

The CA denied the appeal in its Decision, dated September 27, 2013. In its view, the prosecution was able to establish that the illegal sale of marijuana actually took place. As could be gleaned from the testimony of PO2 Corpuz, there was an actual exchange as Dahil took out from his pocket six (6) sachets containing marijuana, while PO2 Corpuz handed out the two (2) ₱100.00 marked bills, after they agreed to transact ₱200.00 worth of the

¹² Id. at 54.

¹³ Id. at 25-43.

¹⁴ Id. at 41.

¹⁵ Id. at 75-87.

illegal drug.¹⁶ The charge of illegal possession of marijuana, was also thus established by the prosecution.¹⁷ Another five (5) plastic sachets of marijuana were recovered from Dahil's possession while one (1) brick of marijuana from Castro's possession.¹⁸

It was likewise proven that the illicit drugs confiscated from the accused during the buy-bust operation were the same drugs presented before the RTC. As testified to by PO2 Corpuz, the six (6) plastic sachets of marijuana, which were sold by Dahil to PO2 Corpuz were marked "A-1" to "A-6" and with letters "RDRC," "ADGC" and "EML," the five (5) plastic sachets recovered in the possession of Dahil were marked "B-1" to "B-5" and with the initials "ADGC" and "EML," while the marijuana brick confiscated from Castro was marked "C-RDRC."¹⁹

It was also held that the prosecution was able to establish the chain of custody. PO2 Corpuz and SPO1 Licu testified that the said drugs were marked at the police station. An inventory of the seized items was made as shown by the Inventory Report of Property Seized, duly signed by Kagawad Pamintuan. The Request for Laboratory Examination revealed that the confiscated drugs were the same items submitted to the PNP crime laboratory for examination. On the other hand, Chemistry Report No. D-0518-2002 showed that the specimen gave positive results to the test of marijuana. The accused failed to show that the confiscated marijuana items were tampered with, or switched, before they were delivered to the crime laboratory for examination.²⁰

Hence, this appeal.

This appeal involves the sole issue of whether or not the law enforcement officers substantially complied with the chain of custody procedure required by R.A. No. 9165.

The Court's Ruling

Let it be underscored that 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

¹⁶ *Rollo*, p. 10.

¹⁷ *Id.* at 9-11.

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 12.

²⁰ *Id.* at 15-16.

unassigned.²¹ Considering that what is at stake here is no less than the liberty of the accused, this Court has meticulously and thoroughly reviewed and examined the records of the case and finds that there is merit in the appeal. The Court holds that there was no unbroken chain of custody and that the prosecution failed to establish the very *corpus delicti* of the crime charged.

A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion.²²

The presentation of the dangerous drugs as evidence in court is material if not indispensable in every prosecution for the illegal sale and possession of dangerous drugs. As such, the identity of the dangerous drugs should be established beyond doubt by showing that the items offered in court were the same substances bought during the buy-bust operation. This rigorous requirement, known under R.A. No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.²³ In *People v. Catalan*,²⁴ the Court said:

To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the *corpus delicti*. That proof is vital to a judgment of conviction. On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.

Although R.A. No. 9165 does not define the meaning of chain of custody, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, explains the said term as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each

²¹ *People v. Balagat*, 604 Phil. 529, 534 (2009).

²² *People v. Garcia*, 599 Phil. 416, 426-427 (2009).

²³ *People v. Mendoza*, G.R. No. 192432, June 23, 2014.

²⁴ G.R. No. 189330, November 28, 2012, 686 SCRA 631, 644.

stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

As a means of ensuring the establishment of the chain of custody, Section 21 (1) of R.A. No. 9165 specifies that:

(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.

Specifically, Article II, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 enumerates the procedures to be observed by the apprehending officers to confirm the chain of custody, to wit:

x x x

(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;

x x x

The strict procedure under Section 21 of R.A. No. 9165 was not complied with.

Although the prosecution offered in evidence the Inventory of the Property Seized signed by the arresting officers and Kagawad Pamintuan, the procedures provided in Section 21 of R.A. No. 9165 were not observed. The said provision requires the apprehending team, after seizure and confiscation, to immediately (1) conduct a physically inventory; and (2) 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 DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

First, the inventory of the property was not immediately conducted after seizure and confiscation as it was only done at the police station. Notably, Article II, Section 21(a) of the IRR allows the inventory to be done at the nearest police station or at the nearest office of the apprehending team whichever is practicable, in case of warrantless seizures. In this case, however, the prosecution did not even claim that the PDEA Office Region 3 was the nearest office from TB Pavilion where the drugs were seized. The prosecution also failed to give sufficient justification for the delayed conduct of the inventory. PO2 Corpuz testified, to wit:

Q: What documents did you ask Kgd. Abel Pamintuan to sign?

A: The inventory of the property seized, sir.

Q: And did he sign that?

A: Yes, sir.

Q: Where was he when he signed that?

A: In our office, sir.

Q: Already in your office?

A: Yes, sir.

Q: Who prepared the inventory of the property seized?

A: Our investigator, sir.

Q: And that was prepared while you were already at your office?

A: Yes, sir, because we did not bring with us the material or equipment for the preparation of the documents so, we invited him to our office.²⁵

²⁵ TSN, April 29, 2004, pp. 8-9.

PO2 Corpuz gave the flimsy excuse that they failed to immediately conduct an inventory because they did not bring with them the material or equipment for the preparation of the documents. Such explanation is unacceptable considering that they conducted a surveillance on the target for a couple of weeks.²⁶ They should have been prepared with their equipment even before the buy-bust operation took place.

Second, there is doubt as to the identity of the person who prepared the Inventory of Property Seized. According to the CA decision, it was *Sergeant dela Cruz* who prepared the said document.²⁷ PO2 Cruz on the other hand, testified that it was *their investigator* who prepared the document while SPO1 Licu's testimony was that a certain *SPO4 Jamisolamin* was *their investigator*.²⁸

Third, there were conflicting claims on whether the seized items were photographed in the presence of the accused or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official. During the cross-examination, PO2 Corpuz testified:

Q: After you arrested Ramil Dahil, did you conduct the inventory of the alleged seized items?

A: Yes, sir (*sic*).

Q: Where did you conduct the inventory?

A: In our office, ma'am

Q: Were pictures taken on the alleged seized items together with Ramil Dahil?

A: No, ma'am.²⁹

[Emphases supplied]

SPO1 Licu when cross-examined on the same point, testified this was:

Q: After you conducted the alleged buy-bust operation, did you conduct an inventory of the alleged seized items?

A: Yes, ma'am.

Q: Were the accused assisted by counsel at the time you conduct the inventory?

A: No, ma'am.

Q: Were pictures taken on them including the alleged seized items?

²⁶ Records, p. 10.

²⁷ *Rollo*, p. 6.

²⁸ TSN, August 17, 2006, p. 25.

²⁹ TSN, May 5, 2006, p. 20.

A: Pictures were taken on the accused, ma'am.

[Emphasis supplied]

In other words, when questioned on the conduct of the inventory, PO2 Corpuz testified that no pictures of the seized items were taken while SPO1 Licu said that pictures of the accused were taken. From the vague statements of the police officers, the Court doubts that photographs of the alleged drugs were indeed taken. The records are bereft of any document showing the photos of the seized items. The Court notes that SPO1 Licu could have misunderstood the question because he answered that "pictures were taken on the accused" when the question referred to photographs of the drugs and not of the accused.

The prosecution failed to establish that the integrity and evidentiary value of the seized items were preserved.

Notwithstanding the failure of the prosecution to establish the rigorous requirements of Section 21 of R.A. No. 9165, jurisprudence dictates that substantial compliance is sufficient. Failure to strictly comply with the law does not necessarily render the arrest of the accused illegal or the items seized or confiscated from him inadmissible.³⁰ The issue of non-compliance with the said section is not of admissibility, but of weight to be given on the evidence.³¹ Moreover, Section 21 of the IRR requires "substantial" and not necessarily "perfect adherence," as long as it can be proven that the integrity and the evidentiary value of the seized items are preserved as the same would be utilized in the determination of the guilt or innocence of the accused.³²

To ensure that the integrity and the evidentiary value of the seized items are preserved, the proper chain of custody of the seized items must be shown. The Court explained in *People v. Malillin*³³ how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, viz:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question

³⁰ *People v. Resurreccion*, 618 Phil. 520, 530 (2009).

³¹ *People v. Domado*, 635 Phil. 78, 93 (2010).

³² *People v. Salvador*, G.R. No. 207664, June 5, 2014.

³³ *Malillin v. People*, 576 Phil. 576, 587 (2008).

is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

In *People v. Kamad*,³⁴ the Court identified the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

*First link: Marking of the
Drugs Recovered from the
Accused by the Apprehending
Officer*

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.³⁵

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the

³⁴ 624 Phil. 289, 304-306 (2010).

³⁵ *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*.³⁶

In the present case, PO2 Corpuz and SPO1 Licu claimed that they had placed their initials on the seized items. They, however, gave little information on how they actually did the marking. It is clear, nonetheless, that the marking was not immediately done at the place of seizure, and the markings were only placed at the police station based on the testimony of PO2 Corpuz, to wit:

Q: So, after recovering all those marijuana bricks and plastic sachets of marijuana and the marked money from the accused, what else did you do?

A: We brought the two (2) suspects and the evidence and marked money to our office, sir.

Q: So, in your office, what happened there?

A: Our investigator prepared the necessary documents, sir, the request for crime lab examination, joint affidavit of arrest, booking sheet, and all other documents necessary for the filing of the case against the two (2), sir.

X X X

Q: What about the marijuana, subject of the deal, and the one which you confiscated from the accused, what did you do with those?

A: Before sending them to Olivas, we placed our markings, sir.³⁷

Hence, from the place of the seizure to the PDEA Office Region 3, the seized items were not marked. It could not, therefore, be determined how the unmarked drugs were handled. The Court must conduct guesswork on how the seized drugs were transported and who took custody of them while in transit. Evidently, the alteration of the seized items was a possibility absent their immediate marking thereof.

Still, there are cases when the chain of a custody rule is relaxed such as when the marking of the seized items is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of the accused in illegal drugs cases.³⁸ Even a less stringent application of the requirement, however, will not suffice to sustain the conviction of the accused in this case. Aside from the fact that the police officers did not immediately place their markings on the seized marijuana

³⁶ *People v. Sabdula*, G.R. No. 184758, April 21, 2014.

³⁷ TSN, April 29, 2004, pp. 9-10.

³⁸ *People v. Resurrecion*, supra note 30, at 531.

upon their arrival at the PDEA Office, there was also no showing that the markings were made in the presence of the accused.

PO2 Corpuz testified that they only placed their markings on the drugs when they were about to send them to Camp Olivas for forensic examination. This damaging testimony was corroborated by the documentary evidence offered by the prosecution. The following documents were made at the PDEA Office: (1) Joint Affidavit of Arrest, (2) Custodial Investigation Report, (3) Inventory of Property Seized, and (4) Laboratory Examination Request. Glaringly, only the Laboratory Examination Request cited the markings on the seized drugs. Thus, it could only mean that when the other documents were being prepared, the seized drugs had not been marked and the police officers did not have basis for identifying them. Considering that the seized drugs were to be used for different criminal charges, it was imperative for the police officers to properly mark them at the earliest possible opportunity. Here, they failed in such a simple and critical task. The seized drugs were prone to mix-up at the PDEA Office itself because of the delayed markings.

Worse, not all of the seized drugs were properly marked. As noted by the RTC, Exhibit B-3 RC RD,³⁹ Exhibit A-5 RC RD and Exhibit A-6 RD RC⁴⁰ did not have the initials of the apprehending officers on the back. Bearing in mind the importance of marking the seized items, these lapses in the procedure are too conspicuous and cannot be ignored. They placed uncertainty as to the identity of the *corpus delicti* from the moment of seizure until it was belatedly marked at the PDEA Office.

Similarly, in *People v. Garcia*,⁴¹ the Court considered the belated marking of the seized drug by the apprehending officer in acquitting the accused in the case. The officer testified that he marked the confiscated items only after he had returned to the police station. Such admission showed that the marking was not done immediately after the seizure of the items, but after the lapse of a significant intervening time.

*Second Link: Turnover of the
Seized Drugs by the
Apprehending Officer to the
Investigating Officer*

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the

³⁹ TSN, August 17, 2006, p. 18.

⁴⁰ Id. at 22.

⁴¹ Supra note 22.

police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing.⁴² This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.

The investigator in this case was a certain SPO4 Jamisolamin.⁴³ Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Licu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items.

In *People v. Remigio*,⁴⁴ the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.

*Third Link: Turnover by the
Investigating Officer of the
Illegal Drugs to the Forensic
Chemist*

From the investigating officer, the illegal drug is delivered to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance. In this case, it was only during his cross-examination that PO2 Corpuz provided some information on the delivery of the seized drugs to Camp Olivas, to wit:

⁴² *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 812.

⁴³ Records, p. 11.

⁴⁴ *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 353.

Q: How about the alleged marijuana, you stated that the same was brought to the crime laboratory, who brought the same to the crime lab?

A: Me and my back-up, ma'am.

Q: When did you bring the marijuana to the crime lab for examination?

A: I think it was the following day, ma'am.⁴⁵

As can be gleaned from the testimony of PO2 Corpuz, very little detail was offered on how the seized marijuana was handled and transferred from the PDEA Office in Angeles City to the crime laboratory in Camp Olivas, San Fernando, Pampanga. PO2 Corpuz kept possession of the seized drugs overnight without giving details on the safekeeping of the items. The most palpable deficiency of the testimony would be the lack of information as to who received the subject drugs in Camp Olivas.

Engr. Ma. Luisa Gundran, the forensic chemist who conducted the tests on the subject drugs, did not appear in court despite the numerous subpoenas sent to her.⁴⁶ Instead, the prosecution and the defense agreed to stipulate on the essential points of her proffered testimony. Regrettably, the stipulated testimony of the forensic chemist failed to shed light as to who received the subject drugs in Camp Olivas. One of the stipulations was "that said forensic chemist conducted an examination on the substance of the letter-request with qualification that said request was not subscribed or under oath and that *forensic chemist has no personal knowledge as from whom and where said substance was taken.*"⁴⁷ This bolsters the fact that the forensic chemist had no knowledge as to who received the seized marijuana at the crime laboratory.

The recent case of *People v. Beran*⁴⁸ involved irregularities in the third link. The police officer, who both served as apprehending and investigating officer, claimed that he personally took the drug to the laboratory for testing, but there was no showing who received the drug from him. The records also showed that he submitted the sachet to the laboratory only on the next day, without explaining how he preserved his exclusive custody thereof overnight. All those facts raised serious doubt that the integrity and evidentiary value of the seized item have not been fatally compromised. Hence, the accused in the said case was also acquitted.

⁴⁵ TSN, May 25, 2006, p. 22.

⁴⁶ Records, pp. 90, 102, 105, 110, 112, 115.

⁴⁷ CA rollo, p. 49.

⁴⁸ *People v. Beran*, G.R. No. 203028, January 15, 2014.

Fourth Link: Turnover of the Marked Illegal Drug Seized by the Forensic Chemist to the Court.

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoenae were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court.⁴⁹ Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

The case of *People v. Gutierrez*⁵⁰ also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim - from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized shabu between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted.

In view of all the foregoing, the Court can only conclude that, indeed, there was no compliance with the procedural requirements of Section 21 of R.A. No. 9165 because of the inadequate physical inventory and the lack of photography of the marijuana allegedly confiscated from Dahil and Castro. No explanation was offered for the non-observance of the rule. The prosecution cannot apply the saving mechanism of Section 21 of the IRR of R.A. No. 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. The four links required to establish the proper chain of custody were breached with irregularity and lapses.

⁴⁹ *Rollo*, p. 6.

⁵⁰ 614 Phil. 285 (2009).

The Court cannot either agree with the CA that the evidentiary rule involving the presumption of regularity of the performance of official duties could apply in favor of the police officers. The regularity of the performance of duty could not be properly presumed in favor of the police officers because the records were replete with indicia of their serious lapses.⁵¹ The presumption stands when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent.⁵²

Given the procedural lapses, serious uncertainty hangs over the identity of the seized marijuana that the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.⁵³

For said reason, there is no need to discuss the specific defenses raised by the accused.

WHEREFORE, the appeal is **GRANTED**. The September 27, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05707 is **REVERSED** and **SET ASIDE**. The accused-appellants, Ramil Doria Dahil and Rommel Castro y Carlos, are **ACQUITTED** of the crime charged against them and ordered immediately **RELEASED** from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this decision and to inform this Court of the date of the actual release from confinement of the accused within five (5) days from receipt of copy.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁵¹ *People v. Catalan*, supra note 24, at 647.

⁵² *People v. Mendoza*, supra note 23.

⁵³ *People v. Garcia*, supra note 22, at 436.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



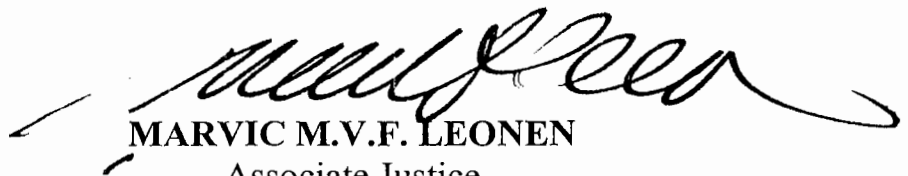
PRESBITERO J. VELASCO, JR.

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice




MARVIC M.V.F. LEONEN

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.

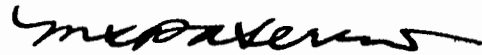


ANTONIO T. CARPIO

Associate Justice
Chairperson, Second 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.



MARIA LOURDES P. A. SERENO
Chief Justice