



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **19 February 2020** which reads as follows:*

“**G.R. No. 242979 (Anthony Gajo y Bernal @ Aga vs. People of the Philippines)**. — In this petition for review on *certiorari*¹ Anthony Gajo y Bernal (petitioner), seeks to overturn the Court of Appeals (CA) Decision² dated May 11, 2018 and the Resolution³ dated October 24, 2018 in CA-G.R. CR No. 39401, which affirmed the Decision⁴ dated October 12, 2015 of the Regional Trial Court (RTC) of Valenzuela City, Branch 171, in Criminal Case No. 171 V-13, finding petitioner guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.

The Antecedent Facts

In an Information dated February 5, 2013, petitioner was charged with illegal possession of dried marijuana leaves (marijuana). The accusatory portion of the Information reads:

That on or about February 3, 2013 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) tape-sealed folded newspaper containing zero point forty-two (0.42) gram of dried marijuana leaves, knowing the same to be a dangerous drug.

CONTRARY TO LAW.⁵

¹ *Rollo*, pp. 11-27.

² Penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), with Associate Justices Elihu A. Ybañez and Pedro B. Corales, concurring; *id.* at 33-46.

³ *Id.* at 49-50.

⁴ *Id.* at 74-82-A.

⁵ *Id.* at 74; records, p. 1.

Arraigned thereon, petitioner entered a negative plea.⁶

Version of the Prosecution

The prosecution presented four witnesses, namely: Kagawad Marvin Bolero Marcelo (Kgwd. Marcelo), Forensic Chemical Officer Richard B. Mangalip (FC Engr. Mangalip), Police Officer 3 Roberto Santillan (PO3 Santillan) and PO1 Albert Gayob (PO1 Gayob), as well as various object and documentary evidence,⁷ all of which tend to establish the following:

On February 3, 2013, at around 2:40 a.m., PO3 Santillan and PO1 Maximo Pokling (PO1 Pokling) of the Police Community Precinct (PCP) of the Valenzuela City Police were carrying out their routine patrol duty along McArthur Highway, Dalandanan, Valenzuela City, when they chanced upon a man who was standing about 10 to 15 meters from the Dalandanan Barangay Hall. They noticed that this man was trying to light an improvised foil cigarette, prompting them to alight from their motorcycle and approach him. As PO3 Santillan approached, he caught the distinct smell of marijuana emanating from the improvised tooter. He introduced himself as a police officer, arrested the man and recovered from him one improvised tooter, one red lighter, one Nokia cellular phone, and a green coin purse. PO3 Santillan opened the green coin purse and discovered a folded page of newspaper which, upon further inspection, contained marijuana fruiting tops. The officers arrested the man on the spot and read to him his constitutional rights. The man was later on identified as the petitioner herein.⁸

PO3 Santillan and PO1 Pokling then brought petitioner to the Dalandanan Barangay Hall, but as this was still closed at the time, the police officers brought petitioner to the PCP 6, where the incident was blotted.⁹ At the behest of their PCP Commander, they then brought petitioner to the Valenzuela General Hospital for medical examination. From this hospital, petitioner was brought to the Station Anti-Illegal Drugs (SAID), Valenzuela City Headquarters for further investigation.¹⁰

Later, petitioner was brought back to the Dalandanan Barangay Hall for inventory of the seized items.¹¹ During the inventory, PO3 Santillan marked the seized items in the presence of a barangay official, Kgwd. Marcelo, the petitioner himself, PO2 Lester Antonio Aguado (PO2 Aguado), the duty investigator assigned to the case, and PO1 Pokling. Photographs of the inventorying were likewise taken.¹²

⁶ Id. at 75.

⁷ Id. at 38.

⁸ Id. at 77.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 81.

¹² Prosecution's Exhibits, Inventory of Seized Properties or Items, Exhibit L, p. 16-18.

After this, petitioner and the seized items were brought to the Crime Laboratory Satellite office in Valenzuela City for drug testing.¹³ Here, PO1 Gayob received the seized items from PO2 Aguado, who then delivered the same to FC Engr. Mangalip. FC Engr. Mangalip then subjected the seized items to qualitative examinations and personally prepared Chemistry Report Nos. D-064-13¹⁴ and DT-052-13.¹⁵ The first report revealed that the specimens taken from petitioner's green coin purse tested positive for marijuana, while the second report found that petitioner's urine sample tested positive for THC-metabolites and methamphetamine hydrochloride.¹⁶

Version of the Defense

The defense presented the petitioner as its lone witness.

Petitioner claimed that on February 3, 2013, at around 2:00 a.m., he was on his way home from the Bernabe Sumilang Subdivision, Dalandanan, Valenzuela City after a drinking spree in his friend's house near Fatima University. After alighting from the jeep at the corner of the Bernabe Sumilang Subdivision, he passed by a store, where he bought a stick of Marlboro cigarette and lighted the same. While walking towards his house, he was stopped by men in police uniforms, whom he later identified as PO3 Santillan and PO1 Pokling. These two asked him where he came from, and he replied that he came from a drinking session. On hearing this reply, PO3 Santillan told him to go with them to the police station to answer some questions.¹⁷

Petitioner further testified that he was made to ride a motorcycle where he sat between PO3 Santillan and PO1 Pokling. He was then transferred to the barangay patrol vehicle, which they chanced upon at the corner of David Motors in Dalandanan, Valenzuela. On board this vehicle, PO3 Santillan told him, "*Sige tumalon ka para barilin kita.*" Fearing for his life, he told the officers that he would not attempt to flee and would go with them peacefully.¹⁸

Once they got to the police station, PO3 Santillan escorted him inside the kitchen and left him there. Three policemen entered the kitchen and forced him to admit that PO3 Santillan had caught him smoking marijuana in front of the Dalandanan Barangay Hall. They asked him to close his eyes and then he felt a hard object strike his chest, causing him to lose consciousness. He woke up at the Valenzuela General Hospital, from where he was brought back to the police station.¹⁹

¹³ *Rollo*, pp. 77-78.

¹⁴ Prosecution's Exhibits, Chemistry Report No. D-064-13, Exhibit G, p. 5.

¹⁵ *Id.* at 7.

¹⁶ *Rollo*, pp. 34-36.

¹⁷ *Id.* at 79.

¹⁸ *Id.*

¹⁹ *Id.*

After this, he was brought back anew to the barangay hall at 9:30 a.m. Here, he was subjected to a drug test, but did not learn of its results. When shown Chemistry Report No. DT-052-13, he admitted the result, but denied that he had been in possession of marijuana. He recalled that when he arrived at the police station, there were already sachets on the table and he was told that the sachets came from him; he was also told that he was caught lighting marijuana in front of the Dalandanan Barangay Hall.²⁰

On October 12, 2015, the RTC gave judgment finding petitioner guilty of the crime charged. The dispositive part of the RTC decision²¹ reads:

WHEREFORE, the Court finds the [petitioner] ANTHONY GAJO **GUILTY** beyond reasonable doubt of the offense of Violation of Section 11, Art. II, R.A. 9165 and he is hereby sentenced to suffer the penalty of **Twelve (12) years and One (1) day as minimum to Fourteen (14) years and Eight (8) months as maximum**. In addition, the [petitioner] is ordered to pay a fine of **Three Hundred Thousand Pesos (P300,000.00)**.

The period of preventive imprisonment served by the [petitioner] shall be credited in his favor.

The bonding company Plaridel Surety and Insurance Co. which undertook the provisional liberty of the [petitioner] is now released from liability.

The Branch Clerk of Court is hereby directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.

SO ORDERED.²² (Emphasis in the original)

On appeal, the CA affirmed the RTC. According to the CA, the prosecution was able to establish that petitioner was caught in possession of marijuana, a dangerous drug, and that this possession was deliberate, voluntary, and unauthorized by law.²³ The CA likewise agreed with the RTC that petitioner's arrest was a valid arrest, as he was caught *in flagrante delicto* using or smoking marijuana,²⁴ in consequence of which the subsequent warrantless bodily search on him was likewise valid.²⁵

The CA also found there was sufficient compliance with the Chain of Custody Rule under Section 21(1) of R.A. No. 9165 in relation to Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165.²⁶ The dispositive portion of the CA decision reads:

²⁰ Id.
²¹ Id. at 74-82A.
²² Id. at 83.
²³ Id. at 41.
²⁴ Id.
²⁵ Id. at 41-42.
²⁶ Id. at 41-45.

WHEREFORE, the appeal is **DENIED**. The assailed Decision dated October 12, 2015 of the Regional Trial Court of Valenzuela City, Branch 171 convicting [petitioner] ANTHONY GAJO y BERNAL @ AGA of illegal possession of marijuana in violation of Section 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.²⁷ (Emphasis in the original)

Petitioner moved for reconsideration of the CA's decision, but his motion was denied by the CA in its Resolution²⁸ of October 24, 2018.

Hence, the present appeal.

The Issues

The petitioner anchors his plea for the reversal of the assailed judgments upon the following arguments:

- I. [THAT] THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION DESPITE THE ILLEGALITY OF HIS WARRANTLESS ARREST AND SEARCH.
- II. [THAT] THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS WERE NOT COMPROMISED DESPITE THE FLAGRANT NON-COMPLIANCE BY THE POLICE OFFICERS x x x WITH SECTION 21 OF REPUBLIC ACT NO. 9165.²⁹

The Court's Ruling

The Petition is impressed with merit.

Anent the first issue (covering the legality of petitioner's arrest), the Court agrees with the CA that said arrest was validly carried out. The records seem to bear out the fact that PO3 Santillan caught petitioner *in flagrante delicto* when the former chanced upon the latter smoking marijuana.³⁰

Conformably to Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure, an individual may be arrested, even without a warrant of arrest, as long as the arrest was effected during the commission of a

²⁷ Id. at 46.

²⁸ Id. at 49-50.

²⁹ Id. at 18.

³⁰ Id. at 40-41.

crime.³¹ For such an arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and, (2) such overt act is done in the presence or within the view of the arresting officer.³²

In the instant case, PO3 Santillan narrated the series of events which established the aforementioned requisites. He related how on his way back from a routine patrol with PO1 Pokling, somewhere along McArthur highway in the vicinity of Dalandanan Barangay Hall, he saw petitioner lighting up a makeshift cigarette. PO3 Santillan could tell that the cigarette was makeshift because it was constituted of rolled up foil. This aroused his suspicions and when he approached petitioner, he caught the distinct smell of marijuana.³³ At this point, PO3 Santillan introduced himself to petitioner, arrested him, and confiscated a number of items, one of which was a green coin purse containing the subject marijuana.³⁴

It thus appears that petitioner was caught red-handed by PO3 Santillan and PO1 Pokling during a routine patrol. Thus, as correctly pointed out by the RTC and by the CA, the two officers were not only authorized, but duty bound to arrest petitioner.³⁵

Having settled the legality of petitioner's arrest, the Court now turns its attention to another fundamental question raised in this Petition, namely, whether there was sufficient compliance with the Chain of Custody Rule.

After a careful examination of the records of the case, the Court is convinced that the prosecution failed to establish an unbroken chain of custody of the seized drugs, in violation of Section 21(1), Article II of R.A. No. 9165.

Well-settled is the rule that to sustain a conviction for illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the following elements must be proven beyond reasonable doubt: (a) the accused is in possession of an item or object which is identified to be a

³¹ Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- b) When an offense has just been committed, and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it; and
- c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment, or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

³² *People v. Pavia*, 750 Phil. 871, 876 (2015).

³³ TSN of PO3 Santillan, March 3, 2014, pp. 26-29.

³⁴ Id.

³⁵ *Rollo*, p. 41.

prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.³⁶

No less important, the prosecution must likewise prove that the identity and integrity of the seized drugs, the very *corpus delicti* of the crime, had been duly preserved.³⁷ The prosecution must show that what was offered in evidence as proof of the crime is the very same prohibited drug that was seized from the accused. To comply with this very stringent requirement of the law, there must be an accurate and faithful account of the individuals who exercised custody over the seized items, the manner in which the seized items were handled, as well as their condition during each phase or movement. Otherwise stated, there must be an unbroken chain of custody.³⁸

In *Mallillin v. People*,³⁹ the Court expounded on this extremely stringent custodial procedure. Thus —

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 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.**

x x x x

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. **The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.** Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original

³⁶ *People v. Pantallano*, G.R. No. 233800, March 6, 2019; *People v. Lim*, G.R. No. 231989, September 4, 2018; *People v. Ismael*, 806 Phil. 21, 38 (2017); *People v. Bio*, 753 Phil. 730, 736 (2015).

³⁷ *People v. Ismael*, id. at 39.

³⁸ See *People of the Philippines v. Romy Lim y Miranda*, supra note 36.

³⁹ 576 Phil. 576 (2008).

item has either been exchanged with another or been contaminated or tampered with.⁴⁰ (Citations omitted, emphasis and underscoring supplied)

Consequently, the Court has time and again reiterated that the *links* which must be clearly established in the chain of custody are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.⁴¹

Pursuant thereto, Section 21(1), Article II of R.A. No. 9165 mandates that police officers during the seizure and subsequent handling of confiscated dangerous drugs must dutifully pay close attention to the following provision —

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

(1) The apprehending team having initial custody and control of the 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. (Emphasis supplied)

In implementing of the above-quoted provision, Section 21(a) of the IRR of R.A. No. 9165 spelled out a more detailed procedure in which deviations from the chain of custody, while allowable, nevertheless still mandates that the integrity of the seized items must be properly preserved. Thus —

Section 21. 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

⁴⁰ Id. at 587-589.

⁴¹ See *People v. Lim*, supra note 36; *People v. Gayoso*, 808 Phil. 19, 31 (2017); *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

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.** (Emphasis and underscoring supplied)

On July 15, 2014, R.A. No. 10640⁴² was approved to amend R.A. No. 9165 and effectively reduced the number of witnesses required to be present during the inventory and taking of photographs. While R.A. No. 9165 mandated the presence of at least three witnesses – *i.e.*, a representative from the media, the Department of Justice, and any elected public official – R.A. No. 10640 required the presence of only two – *i.e.*, an elected public official to be accompanied by either a representative from the National Prosecution Service or from the media. Moreover, the amending law further clarified that non-compliance with the chain of custody should not automatically operate to invalidate a case, as long as justifiable grounds for non-compliance therewith are sufficiently established. The relevant provisions of R.A. No. 10640 states:

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

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the

⁴² AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved on July 15, 2014.

accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official AND a representative of the National Prosecution Service OR the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That **noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (Emphasis supplied)

Given the fact that the alleged offense in this case was committed on February 3, 2013, well before the passage of R.A. No. 10640, it stands to reason that the requisites provided for under Section 21(1), Article II of R.A. No. 9165, prior to its amendment, shall control.⁴³

In the instant case, a review of the records cannot fail to disclose certain palpable irregularities that were committed by the police officers relative to the marking and physical inventory of the seized drugs. These palpable irregularities cast serious doubt upon the seized items' identity and integrity as the *corpus delicti* of the instant criminal case.

First off, significant time had elapsed between the seizure of the drugs and their subsequent marking and physical inventory. According to the evidence of the prosecution, PO3 Santillan and PO1 Pokling apprehended petitioner at around 2:40 a.m. in front of the Dalandanan Barangay Hall. From there, petitioner was brought to the nearby Barangay Hall, but this was closed at the time. This prompted these police officers to proceed to the PCP 6 where the incident was blotted. The two then went to the Valenzuela General Hospital where petitioner was medically examined. From there, petitioner was brought to the police headquarters for further investigation. After this, the police officers finally returned petitioner to Dalandanan Barangay Hall, where the physical inventory was eventually conducted.⁴⁴ Thus, PO3 Santillan testified, to wit:

Q So the place where you went is from the place of arrest you already seized the objects, subject of this case, to PCP 6 to Valenzuela Emergency Hospital to SAID office and to the Barangay hall where you conducted the inventory?

A Yes, Ma'am.

⁴³ *People v. Pantallano*, supra note 36.

⁴⁴ *Rollo*, p. 77.

- Q And **ONLY** at the Barangay hall where you marked those evidence you seized.
- A Yes, Ma'am. ⁴⁵ (Emphasis supplied)

In *People v. Dahil*,⁴⁶ the Court differentiated the act of *marking* from the act of *physical inventory* while underscoring the importance of both in ensuring the identity and integrity of the seized drugs, to wit:

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.**

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 seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*.**⁴⁷ (Citations omitted and emphasis supplied)

Notably, in case of warrantless seizures, Section 21(1), Article II of R.A. No. 9165 mandates that the inventory to be carried out immediately at the nearest police station or at the nearest office of the apprehending team, whichever is practicable.

In this case, however, the marking and the physical inventory were done after the passage of more than six hours from the time of apprehension or seizure.⁴⁸ Worse, the prosecution's evidence shows that the apprehending officers likewise had ample time and opportunity to immediately conduct the marking and physical inventory in the very place where the drugs were seized, or at the nearest police stations, or at the nearest office of the apprehending team, had these apprehending officers been minded to. Indeed PO3 Santillan categorically testified that petitioner was brought not only to a community police precinct, but also to the Valenzuela police station itself.⁴⁹ These suspicious acts or actuations by the aforementioned police officers engender serious, lingering doubts as to what really happened in this case.

⁴⁵ TSN of PO3 Santillan, March 3, 2014, p. 32-33.

⁴⁶ 750 Phil. 212 (2015).

⁴⁷ Id. at 232.

⁴⁸ *Rollo*, p. 77.

⁴⁹ See TSN of PO3 Santillan, March 3, 2014, pp. 31-32.

The Court has consistently set its face against some such breaches and derelictions. Thus, in *People v. Garcia*,⁵⁰ the Court ruled that failure on the part of apprehending officer to observe the categorical mandate of Section 21-A of R.A. No. 9165 could be the undoing of the prosecution's case.⁵¹

Corollary to the foregoing, another reversible error that can be laid against the prosecution is its failure to summon the witnesses required to be present during the physical inventory stage. The records show that only one out of the required three witnesses was present when the physical inventory was allegedly carried out at Dalandanan Barangay Hall, namely, Kgw. Marcelo, a *barangay* elected public official. It bears notice that neither a DOJ personnel nor a media representative was present during the physical inventory of the seized items.⁵² In addition, it was never alleged, much less proved by the arresting officers that earnest efforts were ever exerted to secure the attendance of the witnesses required by law to be present during the critical events.

The claim that in the present case the stringent requirements of Sections 20 and 21 of R.A. No. 9165 had been met, thus produces a hollow ring. While it may be true that law enforcement agents enjoy the presumption of regularity in the performance of their duties, it must be borne in mind that this is simply a presumption of law which must fly in the face of incontrovertible evidence to the contrary, as in this case.⁵³

Needless to say, the Court is not unmindful of the fact that perfect adherence to the chain of custody is difficult to achieve.⁵⁴ Nevertheless, it is still incumbent upon the prosecution to prove: (a) justifiable ground for non-compliance with the provisions under Section 21; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁵⁵ The Court cannot presume what these grounds are in the absence of some credible explanation.⁵⁶ Once again, the Court finds it apt to cite the instructive ruling in *People v. Umipang*.⁵⁷

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when

⁵⁰ 599 Phil. 416 (2009).

⁵¹ Id. at 426-427.

⁵² See TSN of PO3 Santillan, March 3, 2014.

⁵³ See *People v. Hementiza*, 807 Phil. 1017, 1033-1034 (2017).

⁵⁴ *People v. Lim*, supra note 36.

⁵⁵ *People v. Ching*, 819 Phil. 565, 578 (2017), citing REPUBLIC ACT No. 9165, as amended by REPUBLIC ACT No. 10640, Section 21.

⁵⁶ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁵⁷ 686 Phil. 1024 (2012).

there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution — especially when the pieces of evidence were derived from a buy-bust operation — "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."⁵⁸ (Citations omitted)

In this case, an examination of the records will reveal that the prosecution has not come up with a plausible or credible explanation or justification for non-compliance with the chain of custody rule embodied in Section 21, Article II of R.A. No. 9165, specifically the: (1) unjustified delay in immediately marking and physical inventory of the seized drugs, and (2) unexplained absence of two required witnesses during the physical inventory.

WHEREFORE, premises considered, the petition for review is **GRANTED**. The Decision dated May 11, 2018 and the Resolution dated October 24, 2018 of the Court of Appeals in CA-G.R. CR No. 39401, convicting petitioner for violation of Section 11, Article II of Republic Act No. 9165 are hereby **REVOKED** and **SET ASIDE**.

Accordingly, petitioner Anthony Gajo y Bernal is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of Anthony Gajo y Bernal, unless he is being lawfully held for another cause, and (b) inform this court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from receipt of this Resolution.

⁵⁸ Id. at 1053-1054.

Let entry of judgment be issued.

Copies of this Resolution must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.”

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Urb. 6/25*

26 JUN 2020

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
5th Floor, PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

ANTHONY GAJO @ "AGA" (x)
Petitioner
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

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

THE DIRECTOR GENERAL (reg)
Philippine Drugs Enforcement Agency
National Government Center
NIA Northside Road, Brgy. Pinyahan
Quezon City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 171
1445 Valenzuela City
(Case No. 171 V-13)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 39401

Please notify the Court of any change in your address.
GR242979. 2/19/2020(98)URES(a)