

FIRST DIVISION

G.R. No. 238873 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
versus SUNDARAM MAGAYON y FRANCISCO, *defendant-appellant*.

Promulgated:

SEP 16 2020



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DISSENTING OPINION

CAGUIOA, J.:

The *ponencia* denies the appeal of Sundaram Magayon y Francisco (Sundaram) for the crime of illegal possession of dangerous drugs, punishable under Section 11 of Republic Act (R.A.) No. 9165. The denial is primarily premised on the statements in Sundaram's Counter-Affidavits, which were considered as a voluntary confession of the crime charged against him.¹ Furthermore, despite the deviations from the chain of custody rule, the *ponencia* ruled that the integrity and identity of the seized dangerous drugs were sufficiently established.²

I dissent.

The statements attributed to the appellant in this case do not amount to a confession for the possession of the entire volume of drugs stated in the Information. They are likewise not tantamount to an admission that the apprehending team sufficiently preserved the integrity and identity of the seized drug evidence.

From the records it appears that a buy-bust operation was conducted on August 3, 2004, in front of the residence of Sundaram. After the poseur buyer, PO2 Jaime delos Santos, exchanged his marked ₱100.00 for a tea-bag sized packet of suspected marijuana from Sundaram, the police officers moved in to arrest the appellant. His common-law wife, Syntyche Litera (Syntyche), was likewise arrested.³

The police officers thereafter informed Sundaram that they had a search warrant covering his residence.⁴ Before proceeding with the search, the police officers waited for the arrival of barangay officials and media representatives to witness the search. The search yielded numerous small sachets of marijuana found inside the house and the adjacent store.⁵ According to the prosecution, PO2 Rey Gabrielle Maderal (PO2 Maderal) marked the seized items with his

¹ *Ponencia*, p. 17.

² *Id.* at 18.

³ Records, p. 8.

⁴ *Id.* at 4; TSN, August 10, 2006, p. 6.

⁵ TSN, August 10, 2006, pp. 13-14.



initials. He also prepared the Certificate of Inventory to document the following items taken during the implementation of the search warrant: (a) a total of 74 tea-bag sized sachets of marijuana; (b) dried crushed leaves of marijuana inside a plastic container; and (c) one (1) white cellophane containing marijuana. The marked money used for the buy-bust operation, together with its serial number, was also recorded in the inventory. The barangay officials and the media personnel from ABS-CBN Butuan and DXBC all signed the Certificate of Inventory, including the appellant.⁶

When the police officers returned to their office, PO2 Maderal took custody of the confiscated items from the buy-bust and search warrant operations. He prepared several more documents upon their arrival, including the return on the Search Warrant, the Affidavit of Apprehension, and the indorsement to the Philippine National Police (PNP) Crime Laboratory.⁷

Thereafter, PO2 Maderal delivered the request and the specimen to the PNP Crime Laboratory.⁸ The examination of the drug evidence yielded a positive result for marijuana, a dangerous drug.⁹

Sundaram was charged in two (2) separate Informations for the illegal sale and illegal possession of dangerous drugs, in violation of Sections 5 and 11, Article II, of R.A. No. 9165, respectively. The trial court acquitted Sundaram of the charge of illegal sale of dangerous drugs for insufficiency of evidence, there being no markings or inventory on the packet of marijuana supposedly taken pursuant to the buy-bust operation. However, Sundaram was found guilty for the charge of illegal possession of 381.3065 grams of marijuana.¹⁰

The Court of Appeals (CA) affirmed the trial court's decision, which constrained Sundaram to file the present appeal before the Court.

I.

In the Decision, the *ponencia* affirmed the conviction of Sundaram on the basis of his supposed confession in his counter-affidavits during the preliminary investigation. In particular, the following statements in Sundaram's August 14, 2004 Counter-Affidavit were deemed relevant:

I, SUNDARAM MAGAYON y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:

x x x x

⁶ Exhibit "D," index of exhibits, p. 9; id. at 13-15.

⁷ TSN, August 10, 2006, pp. 21-22.

⁸ Id. at 23-25.

⁹ Exhibits "I," "J," index of exhibits, pp. 15-16.

¹⁰ *Ponencia*, pp. 9-10.

My live[-]in partner, [Syntyche], alias Cheche, has nothing to do with the activities that transpired in our residence;

The marked money that was found in her possession came from me because I handed it to her because I was about to take a bath[.]¹¹

The following statement in his February 2, 2005 Counter-Affidavit was likewise considered as a voluntary confession: “[t]he alleged prohibited drugs found in my possession were for my personal use and not for sale or distribution to buyers.”¹² For the *ponencia*, these were sufficient to support a verdict of conviction as Sundaram “**knowingly took full responsibility for the seized drugs.**”¹³

In my view, however, these statements do not constitute a confession of Sundaram’s guilt to the charge of illegal possession of 381.3065 grams of marijuana.

Preliminarily, the quoted statements in the August 14, 2004 Counter-Affidavit of Sundaram relate to the marked money that he purportedly received as a result of the buy-bust operation. These statements, therefore, are relevant only as to the charge of illegal sale of dangerous drugs, for which he was already acquitted. Stated simply, they cannot be relied upon to sustain a conviction for possession.

More importantly, the language of Sundaram’s sworn statements lacks a categorical acknowledgment of guilt, particularly with respect to his ownership and possession of the entire volume of drugs found in his residence. In this regard, the Court has always made a distinction between a confession and an admission. A confession refers to the express acknowledgment of guilt of the crime charged, while an admission “is an acknowledgment of some facts or circumstances which, in itself, is insufficient to authorize a conviction and which tends only to establish the ultimate facts of guilt.”¹⁴ An admission is deemed less than a confession as it acknowledges only factual circumstances that tend to prove the guilt of the accused when connected with proof of other facts.¹⁵

A careful examination of the statements in Sundaram’s Counter-Affidavits would reveal that these were mistakenly characterized as a confession. In his August 14, 2004 Counter-Affidavit, Sundaram stated that the marijuana leaves were left in his residence, presumably by someone else, and that he was about to report this to the authorities.¹⁶ The appellant’s passive reference to these drugs indicates an intention to distance himself therefrom. Rather than establishing a categorical admission of ownership on the part of

¹¹ CA rollo, p. 26; id. at 17.

¹² CA rollo, p. 25; *ponencia*, id.

¹³ *Ponencia*, id.; emphasis in the original.

¹⁴ *People v. Buntag*, G.R. No. 123070, April 14, 2004, 427 SCRA 180, 190-191.

¹⁵ *Samvicente v. People*, G.R. No. 132081, November 26, 2002, 392 SCRA 610, 618-619, citing *People v. Licayan*, G.R. No. 144422, February 28, 2002, 378 SCRA 281, 292.

¹⁶ CA rollo, p. 26.

the appellant, there is no discernible awareness in this statement that he freely and consciously possessed them.

Meanwhile, in his February 2, 2005 Counter-Affidavit, Sundaram stated that “[t]he **alleged** prohibited drugs found in [his] possession”¹⁷ were only for his own personal use. He also concluded his sworn statement with the admission that he is a drug user but not a seller of prohibited drugs.¹⁸

The equivocalness in these statements is readily apparent. Aside from using the word “alleged” to refer to the prohibited drugs, the February 2, 2005 Counter-Affidavit does not specify the drugs involved or the amount purportedly found in his possession. The glaring absence of these details fail to lend credence to the *ponencia*’s ruling that Sundaram “**knowingly took full responsibility for the seized drugs.**”¹⁹ This holds especially true in this case where Sundaram maintained that his acknowledgement of guilt only refers to his drug use. During his cross-examination, he denied the rest of the statements in his February 2, 2005 Counter-Affidavit, *viz.*:

[Prosecutor Aljay O. Go]

Q I’m showing you a Counter-Affidavit of Sundaram Magayon, of legal age, single, and a resident of 6th St., Guingona Subd., Purok 4, Brgy. 25, JP Rizal, Butuan City, subscribed before the City Prosecutor Felixberto L. Guiratan on February 21, 2005, are you referring to this counter-affidavit?

[Sundaram]

A Yes, Sir, this is the one that I was able to sign.

Q Is this your signature appearing above the name of Sundaram F. Magayon?

A Yes, Sir.

Q For emphasis, it was your lawyer, Atty. Poculan, who prepared this affidavit at that time?

A Yes, Sir.

x x x x

Q You mentioned in the second paragraph of your counter-affidavit, to quote:

“I asked for the reinvestigation of said case because the truth of the matter, is that I am not a pusher or peddler of prohibited drugs but only a USER of the same[.]”

Do you affirm the truthfulness of this statement?

¹⁷ Id. at 25; emphasis supplied.

¹⁸ Id.

¹⁹ *Ponencia*, p. 17; emphasis in the original.

A Yes, Sir.

x x x x

Q You said earlier that you attest [to] the veracity of the rest of your statement in this counter-affidavit, is it not?

A The one stated in the second paragraph is true.

Q I'm showing you your Counter-Affidavit and I will give you time to read the matter aside from the fourth paragraph of your statement, which you said, is not correct or true statement Mr. Witness (*sic*).

(Witness, at this juncture, is reading his sworn statement)

So, what are not the correct statements here?

A The second paragraph of the statement portion is the correct statement, and the rest were not my idea, Sir.²⁰ (Emphasis in the original)

Sundaram also denied the statements in the August 14, 2004 Counter-Affidavit. In his cross-examination, he testified that he was only made to sign the document:

Q The first counter-affidavit which I presented to you was executed on February 21, 2005. I'm showing you now another Counter-Affidavit of Sundaram Magayon y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, please go over this whether you executed this Counter-Affidavit with the assistance of Atty. Nelbert T. Poculan, who apparently notarized this counter-affidavit?

A I don't have any idea about this counter-affidavit.

Q By the way, please take a look at the signature of the affiant above the name Sundaram F. Magayon, is it not that this is your signature?

A Yes, Sir, but I was only made to sign this document.²¹

At most, the statements in Sundaram's Counter-Affidavits should be considered as mere admissions as they are not tantamount to a categorical acknowledgment of guilt.

While Sundaram's admissions may be taken as evidence against him, his statements are not an unequivocal declaration that he possessed "a large

²⁰ TSN, January 15, 2015, pp. 14-15

²¹ *Id.* at 20.



quantity of marijuana.”²² Neither are these an admission that “**the seized drugs were marked and inventoried at the time and place of the search.**”²³ Since both of his Counter-Affidavits are ambiguous as to the amount of drugs involved, his statements do not contemplate that the drugs presented in court were the same ones taken from him.

For the *ponencia*, however, the appellant’s failure to specify the volume of drugs he possessed should be considered as an unqualified admission for the entire drug evidence. Either the appellant owned the entire quantity or none at all.²⁴ This conveniently disregards the fact that according to the prosecution, two (2) operations were conducted prior to the arrest of the appellant: the buy-bust operation and the implementation of the search warrant. In both instances, the prosecution averred that the police officers were able to recover marijuana from the appellant. Without specific details as to the confiscated drugs referred to in the sworn statements of Sundaram, his admission that “[t]he alleged prohibited drugs found in [his] possession were for [his] own personal use and not for sale or distribution”²⁵ could easily refer to the drugs recovered from either operation. The *ponencia*’s reliance on this statement to affirm the conviction of the appellant is therefore unwarranted.

It must be emphasized that in cases involving illegal possession of dangerous drugs, the volume of drugs involved is significant to the charge against the accused. The range of the imposable penalty depends on the quantity of drugs — the larger the amount, the more severe the penalty.²⁶ By conclusively holding that the identity and integrity of the drug evidence were preserved, the admissions of the appellant were dangerously interpreted beyond their actual meaning. In my view, the Court should exercise prudence and judiciousness in assigning weight to these extrajudicial statements of the appellant.

II.

Even if the *ponencia* correctly considered the sworn statements as an extrajudicial confession, this only forms a *prima facie* case against the appellant.²⁷ As well, Section 3, Rule 133 of the Rules of Court provides that the extra-judicial confession of an accused shall not be sufficient ground for conviction **unless corroborated by evidence of *corpus delicti*.**

The *corpus delicti* in drugs cases is the confiscated drug itself, and the manner through which its identity is preserved with moral certainty is through compliance with Section 21,²⁸ Article II of R.A. No. 9165. This section lays

²² *Ponencia*, p. 18; emphasis in the original.

²³ *Id.*

²⁴ *Id.* at 20.

²⁵ *CA rollo*, p. 25.

²⁶ R.A. No. 9165, Art. II, Sec. 11.

²⁷ *People v. Satorre*, G.R. No. 133858, August 12, 2003, 408 SCRA 642, 648.

²⁸ The relevant paragraph of this section reads:

down the chain of custody rule, the primary purpose of which is to ensure that the dangerous drugs presented before the trial court are the same items confiscated from the accused.

The *ponencia* ruled that the testimonies of the arresting officer and the forensic chemist sufficiently established every link in the chain of custody.²⁹ With due respect, I again disagree.

As a mode of authenticating evidence, the Court requires the prosecution to establish the following links in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drugs recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drugs seized from the forensic chemist to the court.³⁰

The marking of the drug evidence, as the initial step in the chain of custody, is essential because it is the primary reference point for the succeeding custodians of the confiscated drugs.³¹ The apprehending officers are required to immediately mark the seized items upon their confiscation, or at the “earliest reasonably available opportunity,”³² in order to separate the marked items from all other similar or related evidence.

After the marking, the arresting officers must immediately conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They should also sign the inventory and be given a copy thereof. **If the drugs were confiscated pursuant to a search warrant, the Implementing Rules and Regulations of R.A. No. 9165 explicitly state that the physical inventory and photographing should be conducted at the place where the warrant is served.**³³

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[.]

²⁹ *Ponencia*, p. 18.

³⁰ *People v. Nandi*, G.R. No. 188905, July 13, 2010, 625 SCRA 123, 133.

³¹ *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289.

³² *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 100.

³³ Sec. 21(a).



In the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),³⁴ the operating manual in place at the time of this case, the police officers serving a search warrant were **also** directed to perform the following:

CHAPTER V

X X X X

ANTI-DRUG OPERATIONAL PROCEDURES

X X X X

V. SPECIFIC RULES

X X X X

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

X X X X

2. Service of Search Warrant – the following are the procedures in effecting the service of search warrant:

X X X X

h. Before entry, the Search Warrant shall be served by having a copy received by the respondent or any responsible occupant of the place to be searched;

1) In all cases, the search must be witnessed by the owner/occupant and in the presence of at least two (2) responsible persons in the vicinity, preferably two (2) barangay/town officials;

2) Only those personal property particularly described in the search warrant shall be seized to wit:

- a. subject matter of the offense;
- b. stolen or embezzled and other proceeds (*sic*) of fruits of the offense;
- c. used or intended to be used in the commission of an offense;
- d. objects which are illegal per se, e.g. F/As and explosives; and
- e. those that may be used as proof of the commission of the offense.

i. If the house or building to be searched has two or more rooms or enclosures, each rooms or enclosures must be searched one at a time in the presence of the occupants and two (2) witnesses;

j. The search group and evidence custodian, supervised by the team leader, shall take actual physical inventory of the evidence seized by weighing or counting, as the case may be, in the presence of the

³⁴ PNPM-D-0-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

witnesses to include the suspect who must be placed under arrest upon discovery of any of the items described in the search warrant.

k. **The duly designated searching element who found and seized the evidence must mark the same with his initials and also indicate the time, date and place where said evidence was found and seized and thereafter turn it over to the duly designated evidence custodian who shall also mark the evidence and indicate the time, date and place he received such evidence;**

l. **Take photographs of the evidence upon discovery without moving or altering its position in the place where it is placed, kept or hidden;**

m. **Weigh the evidence seized in the presence of the occupants and witnesses and prepare the drug weighing report to be signed by the arresting officers, evidence custodian, occupants and witnesses. Again, take photographs of the evidence while in the process of inventory and weighing with the registered weight in the weighing scale focused by the camera;**

n. Prepare a receipt and drug weighing report based on the actual physical inventory and weighing of the evidence found and seized and furnished the owner/possessor copies thereof or in his absence the occupant the premises and to the two (2) other witnesses in the conduct of search;

o. Require the owner or occupant of the premises and the two (2) witnesses to execute and sign a certification that the search was conducted in an orderly manner in their presence and that nothing was lost or destroyed during the search and nothing was taken except those mentioned in the search warrant;

p. Only the duly designated evidence custodian shall secure and preserve the evidence in an evidence bag or appropriate container and thereafter ensure its immediate presentation before the court that issued the search warrant;

q. The applicant shall cause the return of the search warrant (inc) together with the receipt of the seized evidence immediately after service of the warrant with p[r]ayer to the court that the evidence would be forwarded to PNP CLG for laboratory examination;

r. Upon completion of search, seizure and arrest and unless the tactical interrogation of the suspect on the scene shall lead to a follow-up operation, the team leader shall consolidate his forces to see to it that no ransacking or looting or destruction of property is committed;

s. Thereafter, the team shall immediately return to unit headquarters with the suspect and evidence for documentation. (Emphasis and underscoring supplied)

Here, it does not appear from the *ponencia* that the packets of marijuana, which were confiscated by virtue of the implementation of the search warrant, were immediately marked in Sundaram's residence. Neither do the records reflect this.



In his testimony, PO2 Maderal, one of the arresting officers, narrated that he placed markings on the seized items:

[(*Direct Examination of PO2 Maderal*)]

[Prosecutor Felixberto L. Guiratan]

Q By the way, if you recall, were there markings on the specimen *marijuana*?

[PO2 Maderal]

A Yes, Sir, my initial[s].

Q Who did the markings?

A I was the one.

Q If you recall also what were the markings you did on the one (1) sachet of *marijuana* recovered during the buy-bust?

A RBMA for the one (1) tea bag during the buy-bust. For the nineteen (19) tea bags it is marked RBMA1 to RBMA 19; for the twenty-six (26) tea bags it is marked RBMB 1 to RBMB 26; for the twenty-nine (29) tea bags the markings were RBMC 1 to RBMC29; and the other one RBMD to RBMD 1.³⁵

PO2 Maderal, however, did not specify that these markings were immediately made at the place of the search. His testimony is also incongruous with the documentary evidence of the prosecution, particularly with the Certificate of Inventory and the Request for Laboratory Examination. While PO2 Maderal stated that he supposedly placed markings on the 74 individual bags of marijuana and on the other separate containers of marijuana, **these markings were not reflected in the Certificate of Inventory.** The pertinent portion of the inventory reads:

This is to certify further that the item was recovered and confiscated from the suspect's possession and control, during the said operation.

- 1) ONE HUNDRED PESO BILL, SN: EG768699, MARKED MONEY WITH P600.00 ALL PLACE[D] INSIDE A BLACK WALLET.
- 2) NINETEEN (19) TEA BAGS OF MARIJUANA DRIED LEAVES CRUSHED ALL PLACE[D] INSIDE COLOR BLACK BAG.
- 3) TWENTY[-]SIX (26) TEA BAGS OF MARIJUANA DRIED CRUSHED LEAVES WITH SEEDS
- 4) TWENTY[-]NINE (29) TEA BAGS OF MARIJUANA DRIED CRUSHED LEAVES WITH SEEDS ALL PLACE[D] IN SEPARATE CELLOPHANES
- 5) DRIED [CRUSHED] LEAVES OF MARIJUANA PLACE[D] INSIDE GOLDEN YELLOW PLASTIC ICE CREAM CONTAINER.

³⁵ TSN, August 10, 2006, pp. 26-27.

6) ONE (1) WHITE CELLOPHANE CONTAINING MARIJUANA DRIED STALKS.³⁶

Oddly, the Request for Laboratory Examination³⁷ indicates that these marijuana packets were marked as follows:

Quantity/Description	Exhibit
1. Nineteen (19) packets/teabags of suspected dried Marijuana [crushed] leaves with seeds all placed in a color black bag.	Marked as exhibit RBM-A-08-03-04, RBM-A1-08-03-04, through RBM-A19-08-03-04.
2. Twenty[-]six (26) packets/teabags of suspected dried Marijuana [crushed] leaves with seeds placed inside plastic cellophane.	Marked as exhibit RBM-B-08-03-04 and RBM-B1-08-03-04 through RBM-B26-08-03-04.
3. Twenty[-]nine (29) packets/teabags of suspected dried Marijuana [crushed] leaves with seeds placed inside plastic cellophane.	Marked as exhibit RBM-C-08-03-04 and RBM-C1-08-03-04 through RBM-C29-08-03-04.
4. One (1) cellophane color white of suspected several dried Marijuana stalks.	Marked as exhibit RBM-D-08-03-04 and RBM-D1-08-03-04.
5. Marijuana dried [crushed] leaves with seeds placed inside [oblong] color golden yellow plastic ice cream container.	Marked as exhibit RBM-E1-08-03-04. ³⁸

PO2 Maderal testified that the Certificate of Inventory was prepared right after the search,³⁹ and the rest of the documentation was completed after the apprehending team returned to their office. This includes the Request for Laboratory Examination,⁴⁰ the first document on record that reflects the markings PO2 Maderal purportedly made. However, it should be borne in mind that the Request for Laboratory Examination signals the turnover of the drug evidence to the forensic chemist. As such, it is relevant only for purposes of documenting the status of the confiscated drugs prior to its transfer to the succeeding custodian in the chain of custody. It cannot establish that markings were immediately made thereon because at that stage, a significant amount of time had already passed from the seizure of the dangerous drugs.

Had PO2 Maderal immediately marked the seized drugs, the first record of these markings should be the Certificate of Inventory, the preparation of which follows right after making these markings. The prosecution could have also shown that the photographs of the confiscated items contain the markings that PO2 Maderal described in his testimony. And yet, the photographs taken

³⁶ Exhibit "D," index of exhibits, p. 9.

³⁷ Exhibit "O," index of exhibits, pp. 22-23.

³⁸ Id.; emphasis in the original.

³⁹ TSN, August 10, 2006, p. 14.

⁴⁰ Id. at 21-22.

at the place of the arrest do not exhibit each of the confiscated plastic sachets and containers of marijuana, or that these were marked accordingly.⁴¹ The photos of the seized drugs laid out side by side were already taken at the apprehending team's office.⁴² Again, none of the items appear to have been marked.⁴³

Given the foregoing, it is clear that there was no marking made during the inventory-taking, which is apparent from the lack of the marking details in the Certificate of Inventory and the pictures presented in evidence, and that the marking was made only prior to submission of the seized drugs to the laboratory as shown in the Request for Laboratory Examination. The Court could only suppose that the markings were made sometime between the intervening period from the confiscation of the drugs and the preparation of the Request for Laboratory Examination. This is precisely the ambiguity that the chain of custody rule seeks to prevent.

As the Court explained in *People v. Dahil*,⁴⁴ the immediate marking of the evidence is a necessary safeguard against the planting, switching, and tampering of the seized dangerous drugs — the failure to do so would cast doubts on the authenticity of the *corpus delicti*:

“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*.**⁴⁵ (Emphasis supplied)

It should be further emphasized that marking is a significant preparatory act to the inventory and photographing of dangerous drugs, as the succeeding links in the chain of custody are supposed to record the marks placed on the confiscated drug evidence.⁴⁶ A gap in these initial custodial requirements makes it difficult for the court to keep track of the evidence while it moves along the chain of custody. Notably, the police officers in this case were armed with a search warrant and yet, they failed to comply with

⁴¹ Exhibits “K-2” and “K-3,” “L-2” and “L-3,” index of exhibits, pp. 18-19.

⁴² TSN, August 10, 2006, pp. 18-19.

⁴³ Exhibits “K-1” and “L-1,” index of exhibits, pp. 18-19.

⁴⁴ G.R. No. 212196, January 12, 2015, 745 SCRA 221.

⁴⁵ Id. at 240-241.

⁴⁶ See *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 131-132.

these requirements. The Court's observations in *People v. Gayoso*⁴⁷ is instructive on this matter:

While marking of the evidence is allowed in the nearest police station, this contemplates a case of warrantless searches and seizures. **Here, the police officers secured a search warrant prior to their operation. They therefore had sufficient time and opportunity to prepare for its implementation. However, the police officers failed to mark immediately the plastic sachets of *shabu* seized inside appellant's house in spite of an Inventory of Property Seized that they prepared while still inside the said house.** The failure of the arresting officers to comply with the marking of evidence immediately after confiscation constitutes the first gap in the chain of custody.⁴⁸ (Emphasis supplied)

Under the 1999 PNPDEM, the police officers implementing a search warrant were even required to mark the evidence twice: after it was found by the searching element, and upon turn-over to the duly designated evidence custodian. The apprehending team did not comply with either of these requirements. They likewise failed to indicate the weight of each packet of marijuana in either the inventory or the Request for Laboratory Examination, further engendering doubts in my mind that the drugs presented in court were indeed the same ones taken from the appellant.

III.

Another glaring lapse on the part of the apprehending team is the absence of a DOJ representative during the inventory and photographing of the seized items. The mandatory presence of the witnesses to the inventory and photographing is required in all instances of seizure and confiscation of dangerous drugs. More so when the drug evidence was seized by virtue of a search warrant, which, like a buy-bust operation, requires advance planning and preparation.

The police officers in this case had time to obtain a search warrant, prepare for the buy-bust operation that preceded the service of the warrant, and to make the necessary arrangements for the subsequent enforcement of the search warrant. Clearly, during the planning stage for the operation, the police officers likewise had ample time to secure the presence of the required witnesses. However, the only witnesses at the time of the inventory and photographing were the barangay officials and the representatives from the media.⁴⁹ They did not obtain the presence of a DOJ representative.

The Court held in *People v. Ramos*⁵⁰ that when there are lapses in the chain of custody rule, particularly when not all of the mandatory witnesses are present, there must be a "justifiable reason for such failure [to secure the attendance of these witnesses] or a showing of any genuine and sufficient

⁴⁷ G.R. No. 206590, March 27, 2017, 821 SCRA 516.

⁴⁸ Id. at 530.

⁴⁹ Exhibit "D," index of exhibits, p. 9.

⁵⁰ G.R. No. 233744, February 28, 2018, 857 SCRA 175.

effort to secure the required witnesses.”⁵¹ None was provided in the decision to justify the absence of the DOJ representative. There is also no indication in the records that the prosecution explained this lapse, or at the very least, that the apprehending team exerted earnest efforts to secure the attendance of the absent witness.

In *Dizon v. People*,⁵² the Court held that the deviation from the requirements of Section 21, coupled by the absence of a justifiable ground therefor, compromised the integrity and evidentiary value of the *corpus delicti*:

In this case, the apprehending team plainly failed to comply with the witness requirements under the law, *i.e.*, that the photographing and inventory of the seized items be witnessed by a representative from the media, the Department of Justice (DOJ), and any elected public official. The records are clear: only two (2) barangay officials were present to witness the operation, as observed by the RTC:

x x x x

Worse, there was no indication whatsoever that the apprehending team attempted, at the very least, to secure the presence of the other required witnesses.

Thus, as a result of the foregoing irregularities committed by the government authorities, the conviction of Dizon now hangs in the balance. In this respect, in order not to render void the seizure and custody over the evidence obtained from the latter, the prosecution is thus required, as a matter of law, to establish the following: (i) that such non-compliance was based on justifiable grounds, and (ii) that the integrity and evidentiary value of the seized items were properly preserved.

x x x x

At the outset, the Court finds it brazen of the police officers to recognize their fatal error in procedure and yet at the same time offer no explanation or justification for doing so, which, as stated above, is required by the law. **What further catches the attention of the Court is the fact that Dizon was apprehended pursuant to a search warrant and therefore with more reason, the police officers could have secured the presence of the other witnesses, *i.e.*, the DOJ representative and media representative.**

However, despite the advantage of planning the operation ahead, the apprehending team nonetheless inexplicably failed to comply with the basic requirements of Section 21 of R.A No. 9165. x x x⁵³ (Emphasis supplied; emphasis in the original omitted)

Here, the apprehending team committed grave procedural lapses not only in the initial custody and handling of the seized marijuana, but with the

⁵¹ Id. at 190; emphasis and underscoring omitted.

⁵² G.R. No. 239399, March 25, 2019.

⁵³ Id. at 8-9.

witness requirements of Section 21, Article II of R.A. No. 9165. No explanation was alleged or proven to justify these deviations from these statutory requirements. Instead, the *ponencia* relied heavily on the vague statements in the appellant's Counter-Affidavits to prove that the identity and integrity of the drug evidence were preserved.

To be sure, the Court has not veered away from affirming the conviction of an accused when the requirements of Section 21 are duly observed. In particular, *Santos v. People*⁵⁴ and *Concepcion v. People*⁵⁵ involve the implementation of a search warrant, and in both instances, the arresting officers were easily able to comply with all the requirements of Section 21. These cases exhibit the reasonableness of the custodial requirements in R.A. No. 9165, and that it is entirely within the realm of possibility for law enforcement to perform their duties accordingly.

The Court would be remiss in its duty to faithfully apply the law if, despite the inattentive and careless manner by which police officers performed their functions, the conviction of the accused would nonetheless be affirmed. The gaps in the chain of custody cannot be justified by the ambiguous admissions of the appellant in this case. The arresting officers were duty-bound to observe the chain of custody rule from the moment that dangerous drugs were supposedly confiscated from the possession of the appellant — regardless of any subsequent admission or confession on his part. **Failing this, the Court should not substitute the appellant's sworn statements for the required proof of the integrity and evidentiary value of the drug evidence, especially where, as here, the imprecise language of these statements being extant.**

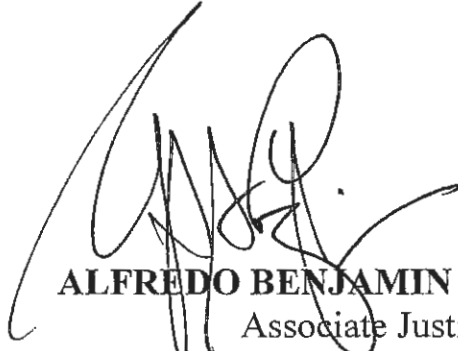
I also respectfully disagree with the *ponencia*'s conclusion that since the present case involves a large volume of dangerous drugs, this “[goes] against the possibility of planting or substitution by the police.”⁵⁶ The amount of drugs involved should not dictate the manner by which the Court must evaluate the guilt of the accused. **Section 21, Article II of R.A. No. 9165 does not qualify its application depending on the volume of drugs involved.** The only matter under R.A. No. 9165, on which the quantity of drugs depends, is the severity of the imposable penalty for the offense of illegal possession of dangerous drugs. This underscores the necessity for the Court's adherence to the chain of custody rule — to ensure that the accused is charged accurately to the last gram and found guilty only when the identity and integrity of the drug evidence are duly preserved. Considering the police officers' blatant disregard of this rule in this case, I disagree with the finding of the *ponencia* to affirm the conviction of the appellant.

⁵⁴ G.R. No. 242656, August 14, 2019.

⁵⁵ G.R. No. 243345, March 11, 2019.

⁵⁶ *Ponencia*, p. 20.

Based on the foregoing, I vote to **GRANT** the present appeal and **ACQUIT** the appellant Sundaram Magayon y Francisco on the basis of reasonable doubt.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice