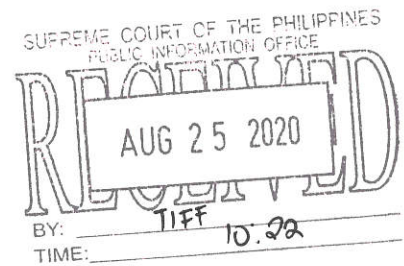




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 10, 2020** which reads as follows:*

“G.R. No. 218137 (People of the Philippines v. Efren Perez y Torres)

The Case

This appeal¹ assails the Decision of the Court of Appeals in CA-G.R. CR-HC No. 06144 dated September 1, 2014² affirming appellants’ conviction for violation of Section 5, Article II of Republic Act No. (RA) 9165.³

The Proceedings Before the Trial Court

The Charge

By Information dated September 17, 2009, appellant Efren Perez y Torres was charged with violation of Section 5, Article II of RA 9165, thus:

That on or about the 15th day of September 2009 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer PO1 Nolan Alibadbad one (1) brick of *marijuana* leaves and fruiting (sic) tops weighing 21.70 grams, which were

- over – eleven (11) pages ...
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¹ Filed under Rule 45 of the Rules of Court.

² Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (now retired Associate Justice of the Supreme Court) and Priscilla J. Baltazar-Padilla.; *rollo*, pp. 2-13.

³ Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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found positive to the tests of *Marijuana*, a dangerous drug, in consideration of the amount of [P]300.00 in violation of the above-cited law.

CONTRARY TO LAW.⁴

The case was raffled to the Regional Trial Court (RTC) – Branch 76, San Mateo, Rizal.⁵

On arraignment, appellant pleaded *not guilty*.

During the trial, PO1 Nolan Alibadbad (PO1 Alibadbad) testified for the prosecution, while appellant testified as sole witness for the defense.⁶

The Prosecution's Version

PO1 Alibadbad testified that on September 15, 2009, between 4 o'clock and 4:45 in the afternoon, he and two (2) other police officers PO1 Bonifacio dela Cruz (PO1 dela Cruz) and PO1 Wilfredo Alberto (PO1 Alberto) were directed by Chief of Police C/Supt. Rolando Mendoza (C/Supt. Mendoza) to patrol Gravel Pit, Barangay Guinayang, San Mateo, Rizal after he received information of rampant sale of *marijuana* in the area. The officers also coordinated with the Philippine Drug Enforcement Agency (PDEA) for a buy-bust operation where PO1 Alibadbad would act as poseur-buyer and the other officers as back-up.⁷

The team arrived at the area where they found appellant standing outside his house. He approached appellant and said "*pakuha ng damo*" to which the latter responded "*magkano?*" He asked for P300-worth, so appellant told him to wait as he retrieved something from inside his house. Appellant returned holding a rectangular block of what appeared to be dried *marijuana* leaves. He handed the buy-bust money to appellant who, in turn, pocketed the same and gave him, PO1 Alibadbad, the wrapped item.

He removed his cap to signal the consummation of the transaction and grabbed appellant's hands as he introduced himself as a policeman. Appellant resisted, but PO1 dela Cruz and PO1 Alberto handcuffed him. The officers frisked appellant and recovered the buy-bust money.⁸

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⁴ *Rollo*, p. 3.

⁵ *Id.* at 2.

⁶ *CA rollo*, pp. 31-43.

⁷ *Rollo*, p. 3.

⁸ *Id.* at 4.

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After the operation, PO1 Alberto went to the barangay hall to ask *Barangay Kagawad* Celso Ramirez to witness the inventory.⁹ The officers took photographs of appellant with the block of suspected *marijuana* leaves wrapped in paper marked “ETP” and prepared the inventory.¹⁰

After the inventory and photograph, the officers brought appellant to the police station for further investigation. They turned over the seized item to C/Supt. Mendoza who prepared a Request for Crime Laboratory Examination. Thereafter, PO1 Satchie Wallis (PO1 Wallis), driver of the mobile patrol, delivered the letter-request together with the seized item to the crime laboratory where P/Insp. Beaune V. Villaraza (PI Villaraza) received it for examination.¹¹

The parties dispensed with the testimony of forensic chemist PI Villaraza and stipulated on the following: he conducted a chemical examination on one (1) brick of suspected *marijuana* leaves and fruiting tops weighing 21.70 grams; he prepared Initial Laboratory Report No. D-240-09, showing the specimen tested positive for *marijuana*; he also prepared Final Chemistry Report No. D-240-09, approved and subscribed before P/Supt. Jose Arnel Marquez; he secured the specimen in an envelope, placed it inside the vault, and took it out only to comply with the subpoena to present it in court.¹²

The parties likewise stipulated on PO1 dela Cruz’s testimony: that he assisted PO1 Alibadbad in arresting appellant.

Finally, PO1 Alberto, the prosecution’s third witness, failed to testify for having been absent without official leave at the time he was subpoenaed by the trial court.¹³

The prosecution offered the following documentary evidence: *Pinagsamang Sinumpaang Salaysay* of the members of the buy-bust team; Request for Laboratory Examination dated September 15, 2009; Chemistry Report No. D-240-09; Pre-Operation Report dated September 15, 2009; Authority to Operate dated September 15, 2009, issued by the PDEA; Inventory of Seized/Confiscated Items; Photographs of the appellant, the *marijuana* brick and the buy-bust money; and the *marijuana* brick marked with appellant’s initials “ETP.”¹⁴

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⁹ CA rollo, p. 32.

¹⁰ Rollo, p. 4.

¹¹ *Id.* at 5.

¹² CA rollo, p. 33.

¹³ *Id.*

¹⁴ Rollo, p. 6.

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The Defense's Evidence

Appellant Efren Perez testified that in the afternoon of September 15, 2009, he was on his way to the hardware store to buy materials for house repair when four (4) armed men who identified themselves as policemen approached and asked if he was "Eric Sabog." He responded in the negative. As far as he knew, "Eric Sabog" was already imprisoned at the Montalban City Jail. Despite his denial, the armed men forced him to lie face down on the ground. They frisked and handcuffed him and brought him to the Municipal Hall.¹⁵

Outside the building, PO1 Alibadbad asked him to pay ₱100,000.00 for his liberty, but he answered he did not have that amount. Thus, PO1 Alibadbad brought him to the barangay hall and had a talk with a *barangay tanod*. After the conversation, PO1 Alibadbad brought him back to his house. A few minutes later, however, a certain *Kagawad* Joey arrived, took photographs of his house and brought him to jail.¹⁶

At the precinct, he was interrogated by the Chief of Police on the drug charge against him which he denied. Thereafter, he was taken to the Prosecutor's Office in Taytay for inquest. He was never assisted by counsel throughout the proceedings and he never saw the *marijuana* allegedly seized from him.¹⁷

The Trial Court's Ruling

As borne by its Decision dated January 7, 2013,¹⁸ the trial court rendered a verdict of conviction, *viz*:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Efren Perez y Torres **GUILTY** beyond reasonable doubt of the crime of SALE OF DANGEROUS DRUG (violation of Section 5, 1st paragraph Article II, RA 9165) and sentencing him to suffer the penalty of **Life Imprisonment** and a fine of **Five Hundred Thousand Pesos (₱500,000.00)**.

The brick of *marijuana* leaves and fruiting tops subject matter of this case is hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

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¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Penned by Presiding Judge Josephine Zarate Fernandez; *rollo*, pp. 54-61.

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The accused is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

Let a copy of this Decision be furnished the Director of the Philippine Drug Enforcement Agency (PDEA) and the Chief of Police of the San Mateo Police Station for their information and guidance.

SO ORDERED.¹⁹

It ruled that all the elements of the crime were sufficiently established, the seized item and its evidentiary value properly preserved, and the *corpus delicti*, positively identified.²⁰

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the prosecution's purported failure to observe the chain of custody rule and prove that he committed the crime beyond reasonable doubt, *viz*:

First, his arrest was illegal. He was merely walking to the hardware store to buy supplies when he was apprehended. At any rate, if there were indeed a buy-bust operation, what actually transpired was not an entrapment, but an instigation.²¹

Second, the prosecution failed to establish compliance with the chain of custody rule, specifically the turnover of the alleged seized item from the police station to the crime laboratory. The parties' stipulation made no mention of who received the specimen at the crime laboratory and how the recipient handled it before it was turned over to the forensic chemist for examination.²²

Finally, the prosecution not only failed to preserve the integrity and evidentiary value of the seized item, but also failed to offer acceptable justifications for the procedural lapses.²³

The Office of the Solicitor General (OSG), through Assistant Solicitor General Magtanggol M. Castro and Assistant Solicitor Krystel Jehan M. Bautista defended the verdict of conviction.²⁴ It

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¹⁹ CA rollo, p. 61.

²⁰ *Id.* at 60.

²¹ *Id.* at 38-44.

²² *Id.* at 44-45.

²³ *Id.* at 50.

²⁴ *Id.* at 67-82.

argued that all the elements of illegal sale of dangerous drugs were established; the prosecution proved appellant's guilt beyond reasonable doubt; the arrest was pursuant to a valid buy-bust operation; and denial and alibi are inherently weak defenses.

The Court of Appeals' Ruling

By Decision dated September 1, 2014, the Court of Appeals affirmed with modification. Considering appellant has been sentenced to life imprisonment, it would not be possible to credit him time spent in preventive detention thus:

WHEREFORE, in view of the foregoing, the Appeal is **DENIED**. The Decision, dated January 7, 2013, rendered by the Regional Trial Court of San Mateo, Rizal, Branch 76, in Criminal Case No. 11503 is **AFFIRMED** but **MODIFIED** to read as follows:

“**WHEREFORE**, premises considered, judgement is hereby rendered finding accused Efren Perez y Torres **GUILTY** beyond reasonable doubt of the crime of SALE OF DANGEROUS DRUG (violation of Section 5, 1st paragraph Article II, RA 9165) and sentencing him to suffer the penalty of **Life Imprisonment** and a fine of **Five Hundred Thousand Pesos (P500,000)**.”

The brick of *marijuana* leaves and fruiting tops subject matter of this case is hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Let a copy of this Decision be furnished the Director of the Philippine Drug Enforcement Agency (PDEA) and the Chief of Police of the San Mateo Police Station for their information and guidance.

SO ORDERED.”

SO ORDERED.²⁵

The Court of Appeals ruled that the buy-bust operation was lawful in view of the presumption of regularity in the arresting officers' performance of their official duty; all the elements of the crime were present; appellant was positively identified in open court; the chain of custody was not broken; and the integrity of the seized item was preserved.

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²⁵ Rollo, p. 12.

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The Present Appeal

Appellant now seeks a verdict of acquittal through the present appeal.²⁶

In compliance with Resolution dated August 17, 2015, appellant filed his Supplemental Brief.²⁷ He essentially faults the Court of Appeals for upholding the validity of his arrest based on a mere presumption and in spite of the arresting officers' failure to observe proper procedure in preserving the integrity and evidentiary value of the seized item:

First, while the marking, inventory and photographs were done at the place of arrest and in the presence of *Barangay Kagawad* Ramirez, insulating witnesses from the Department of Justice (DOJ) and the media were absent.²⁸

Second, both C/Supt. Mendoza and PO1 Wallis failed to testify on their custody of the seized item, its condition, and turnover from one link to the other, thereby creating a gap in the chain of custody.²⁹

Finally, the prosecution did not offer any justifiable reason to depart from the chain of custody rule.

The OSG, on the other hand, manifested that in lieu of a supplemental brief, it was adopting its arguments before the Court of Appeals.³⁰

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the chain of custody over the *corpus delicti*?

Ruling

We acquit.

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²⁶ *Id.* at 14-16.

²⁷ *Id.* at 33-39.

²⁸ *Id.* at 34.

²⁹ *Id.* at 35.

³⁰ *Id.* at 22-24.

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To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:³¹ *first*, the seizure and marking 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.³²

Records show that the arresting officers here had breached the aforesaid rules.

In their *Pinagsamang Sinumpaang Salaysay*, the arresting officers effectively admitted the absence of insulating witnesses from the DOJ and the media, *viz*:

NA, ng (sic) ako ay malapit na sa bahay nitong si Efren Perez ay nakita ko itong nakatayo sa harap ng kanilang bahay at siya ay aking nilapitan at sinabihan ko siya ng PAKUHA DAMO at walang alinlangan sinabi niya sa akin na MAGKANO KUKUNIN MO at SINABI KO NA TATLONG DAAN PARE at sabay abot ko ng markadong pera xxx at ilang minuto ang lumipas ay lumabas ito at may dalang bagay na nakabalot sa papel at sinabi sa akin na PARE TIGNAN MO BLOKE na aking nakita ang pinatuyong dahon na sa aking pagkakaalam ay marijuana sabay abot sa akin.

*xxx at siya aming isinailalim sa pag-aresto at siya ay akin (sic) (POI Alibadbad) sinabihan ng kanyang mga karapatan alinsunod sa ating Saligang Batas at ako POI Alberto ay agad nagpunta sa Brgy. Hall ng Guinayang na malapit lang din sa lugar at ang aking nakasama ay si Kagawad Celso S. Ramirez na siya ang nakalagang (sic) duty ng araw na iyon sa Brgy. Guinayang upang saksihan at kunan ng litrato ang aming isasagawang imbentaryo at **pagmamarka** ng aming nakumpiskang marijuana matapos nuon ay agad namin siyang dinala sa aming himpilan ng Pulisya upang ganap na maimbistigahan.³³*

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³¹ As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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b. "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 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[.]

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³² *Jocson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

³³ Original Record, pp. 7-8.

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First, as admitted by the arresting officers themselves, the seized item was not immediately marked upon appellant's arrest sans any explanation, nay recognition of such deviation. The Court held in *People v. Garcia*³⁴ that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence.³⁵

Here, PO1 Alberto immediately headed to the barangay hall instead of marking the seized item first, which they only did when *Kagawad* Ramirez arrived. We cannot therefore foreclose the possibility that what the officers marked at the barangay hall might not be the same items allegedly found in appellant's possession.

Second, there was no compliance with the three-witness rule. Worse, the presence of *Kagawad* Ramirez was merely an afterthought. The Court held in *People v. Tomawis*³⁶ that the three (3) required witnesses should already be physically present at the time of the apprehension. This requirement should easily be complied with, considering that a buy-bust operation, by its nature, is a planned activity.

Here, the arresting officers did not coordinate with the insulating witnesses for them to be present at the time of the arrest. *Kagawad* Ramirez's presence appears to be based on mere convenience because the barangay hall was nearby. Notably, only PO1 dela Cruz and *Kagawad* Ramirez signed the Inventory.³⁷

Finally, the prosecution did not account for the manner by which they handled and preserved the specimen from the investigating officer at the police station up to delivery to the crime laboratory. This breached the third link of the chain of custody requiring the turnover by the investigating officer of the illegal drug to the forensic chemist.

It was the driver PO1 Wallis who delivered the seized item to the crime laboratory. But he was neither presented nor did the parties stipulate on his testimony. In *People v. Ubungen*,³⁸ the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the chain of custody could not be reasonably established.

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³⁴ G.R. No. 230983, September 4, 2019, citing *People v. Ramirez*, G.R. No. 225690, January 17, 2018, and *People v. Sanchez*, 590 Phil. 214, 241 (2008).

³⁵ *People v. Sanchez, Id.*, citing *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

³⁶ G.R. No. 228890, April 18, 2018.

³⁷ Original Record p. 23.

³⁸ G.R. No. 225497, July 23, 2018.

Indeed, the chain of custody here had been broken from its incipience up until its final stages. Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and “so long as the integrity and evidentiary value of the seized items are properly preserved.”³⁹ Since the arresting officers offered no valid explanation for the procedural lapses, the saving clause cannot be validly invoked.

Verily, a verdict of acquittal is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated September 1, 2014 in CA-G.R. CR-HC No. 06144 is **REVERSED** and **SET ASIDE**.

EFREN PEREZ y TORRES is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

SO ORDERED.”

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court

by:


MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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³⁹ See Section 21 (a), Article II, of the IRR of RA 9165.

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 06144)

The Hon. Presiding Judge
Regional Trial Court, Branch 76
San Mateo, 1850 Rizal
(Crim. Case No. 11503)

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