



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*[Signature]*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

FEB 19 2016

### THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 205764

Present:

- versus -

SERENO,\* C.J.,  
VELASCO, JR., J., Chairperson,  
PERALTA,  
PEREZ, and  
REYES, JJ.

Promulgated:

LEE QUIJANO ENAD,  
Accused-Appellant.

February 3, 2016  
*[Signature]*

X-----X

### DECISION

PERALTA, J.:

This is an appeal from the Decision<sup>1</sup> dated February 28, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 01109, which affirmed the judgment<sup>2</sup> of the Regional Trial Court (RTC) of Toledo City, Cebu, Branch 29, finding accused-appellant Lee Quijano Enad guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, in Criminal Case No. TCS-5357.

On August 16, 2005, an Information was filed charging appellant with violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

\* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

<sup>1</sup> Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta, concurring; CA, *rollo*, pp. 81-98.

<sup>2</sup> Penned by Executive Judge Cesar O. Estrera; *id.* at 34-45.

*N*

That on the 14<sup>th</sup> day of August 2005 at around 11:45 o'clock in the morning, at Barangay Bayong, Municipality of Balamban, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER to one of the poseur-buyers of the PNP in the amount of ₱200.00 with Serial Nos. SN DQ547867 and GM030950 one (1) plastic bag containing 2,722.00 grams of dried suspected marijuana wrapped in a newspaper which when subjected for laboratory examination gave positive results for the presence of Marijuana, a dangerous drug.

CONTRARY TO LAW.<sup>3</sup>

Upon his arraignment on June 30, 2006, appellant, assisted by counsel, pleaded not guilty to the charge.

On September 1, 2006, the pre-trial was terminated. Thereafter, trial on the merits ensued.

For the prosecution, three (3) witnesses testified, namely: Police Inspector (P/Insp.) Leoncio G. Demauro, a member of the Philippine Drug Enforcement Agency (PDEA), Region VII, Cebu City, who was designated as back-up and arresting officer; P/Insp. Arceliano A. Bañares, also a member of the PDEA who was designated as poseur-buyer; and Jude Daniel Mendoza, the Forensic Chemical Officer/Medical Technologist of the Philippine National Police (PNP) Crime Laboratory Region 7, Cebu City.

According to the prosecution, in the first week of August 2005, Police Superintendent (P/Supt.) Amado Marquez ordered Police Chief Inspector (PCI) Carmelo Dayon to verify the report of an informant anent the rampant sale of illegal drugs by appellant in Balamban, Cebu. PCI Dayon then instructed P/Insp. Demauro and Bañares to conduct a surveillance operation against appellant, which they conducted for a week in coordination with the Balamban Police Station.

On August 14, 2005, upon being directed by PCI Dayon and armed with a pre-operation report, P/Insp. Demauro and Bañares conducted a buy-bust operation against appellant in Barangay Bayong, at the junction road going to Barangay Magsaysay in Balamban, Cebu. P/Insp. Bañares acted as the poseur-buyer, while P/Insp. Demauro acted as the back-up and arresting officer. During the operation, they were also assisted by SPO2 Jude Dennis Aguanta of the Balamban Police Station, three (3) barangay tanods and an informant. Upon reaching Barangay Bayong, they first staked out along the highway in front of a store. Thereafter, they saw appellant.



The informant then told P/Insp. Demauro through radio that appellant was on his way to their position on board a motorcycle or *habal-habal*. P/Insp. Bañares quickly positioned himself on the side of the road which was twenty (20) meters away from the store where P/Insp. Demauro was standing in a discreet position. P/Insp. Bañares then approached and held the motorcycle being boarded by appellant. P/Insp. Bañares introduced himself as a band member and told the *habal-habal* driver that he needs illegal drugs for their performance. Upon hearing the conversation of P/Insp. Bañares and the driver, appellant butted in and asked how much is needed. Appellant said that the marijuana costs ₱1,500.00 per kilo and asked P/Insp. Bañares if he had the money. P/Insp. Bañares pulled out from his right pocket the boodle money which was sandwiched between two (2) One Hundred Peso bills ₱100.00 and gave it to appellant. In turn, appellant opened the bag with suspected dried marijuana. After seeing the contents, P/Insp. Bañares took the bag and made the pre-arranged signal that the transaction was already consummated. P/Insp. Bañares immediately introduced himself as a police officer and recovered the money from appellant. P/Insp. Demauro also rushed in and arrested the appellant who offered no resistance.

P/Insp. Bañares and Demauro brought the appellant to a nearby store and presented him before barangay tanods, then proceeded to the office. P/Insp. Demauro prepared the booking sheet, the arrest report, as well as the requests for laboratory examination of the suspected dried marijuana marked as "LQE" and dated 08-14-2005, and for medical examination of appellant. The letter requests were forwarded to Jude Mendoza of the PNP Crime Laboratory Region 7. As shown by Chemistry Report No. D-1192-2005, the specimen was found positive for marijuana.

On the other hand, appellant was the sole witness for the defense. According to the defense, on August 14, 2005 at around 11o'clock in the morning, appellant was riding a motorcycle (*habal-habal*), together with its driver, on his way to Barangay Cambuhawe, Sitio Lacdon, Balamban, to visit his cousin, Lito Lapnid. When they reached the Mount Manunggal area, their motorcycle was flagged down by two (2) unknown men. Once the motorcycle stopped, the driver was asked if he had a driver's license and where they were going. The driver showed his license and replied that appellant was going to Balamban. Appellant was also asked for his identification card and community tax certificate, but he failed to show them as he left them at home. Upon being asked where he was residing, appellant replied that he was a resident of San Fernando. Thereafter, the two men, who turned out to be police officers, frisked him and the driver but found nothing. When the two men requested appellant to come with them to the police station to verify his residence, he hesitated and protested, but was nonetheless forced to go.



Once at the police station, appellant saw one of the two men bring a black bag and was told to admit that he owned it. Appellant vehemently refused to admit its ownership as the bag contained marijuana. One of the police officers also told him that if he will admit ownership of the bag, they will charge him with violation of Section 11 of R.A. 9165, and he would be able to post bail; otherwise, he would be charged with violation of Section 5 and would not be able to post bail. When appellant still refused to admit ownership of the bag, one of the police officers boxed him once on the right side of his body. Appellant was then forced to sign the booking sheet and arrest report. When informed that he was being charged with selling of illegal drugs, appellant told the police that they broke his heart and that they had no pity on him despite the fact that he has a family.

On August 10, 2009, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court hereby renders judgment finding the accused, Lee Quijano Enad, **GUILTY** beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 2,722 grams of marijuana and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and [to pay] a fine of Five Hundred Thousand Pesos (₱500,000.00).

The confiscated dried marijuana leaves are hereby ordered confiscated in favor of the government, to be turned over to the Office of the Provincial Prosecutor of Cebu, which, in turn, shall coordinate with the proper government agency for the proper and immediate disposition and destruction of the same.

SO ORDERED.<sup>4</sup>

The trial court found that the testimonial and documentary evidence presented by the prosecution, all tending to prove that appellant was arrested in the course of a buy-bust operation, deserves more credence than his self-serving and bare defense of denial. Having caught appellant *in flagrante delicto* selling dangerous drugs to the police officers themselves, his warrantless arrest by the PDEA agents and the incidental search and seizure of the buy-bust money from him, are both valid.

The trial court ruled that the prosecution has adequately shown that an illegal sale of drugs took place between the PDEA agents and appellant. It pointed out that the identities of the poseur-buyer (P/Insp. Bañares), the seller (appellant), the object (2,722 grams of marijuana), and the consideration (buy-bust money), the delivery or receipt of the thing sold and payment therefor are likewise established through the credible testimonies of

<sup>4</sup> CA *rollo*, p. 45.



P/Insps. Bañares and Demauro, who were the main members of the buy-bust team, and the presentation of the said marijuana and buy-bust money during the trial of the case.

The trial court added that without proof of motive to falsely impute a serious crime against appellant, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over his defenses of denial and frame-up.

The trial court likewise ruled that the police officers have substantially complied with the requirement of Section 21 of R.A. 9165, as indicated by the following circumstances: (a) immediately after appellant's arrest, the marking and physical inventory of the confiscated marijuana and black bag were immediately conducted by the arresting officers in the presence of Barangay Captain Clemente Rosales and mediaman Edgar Escalante as shown by the Certificate of Inventory; (b) the confiscated items were immediately turned over to the PNP Regional Crime Laboratory for quantitative and qualitative examination on the same day of confiscation; and (c) the forensic laboratory examination results was also issued within 24 hours from receipt of the subject specimen.

The trial court further noted that the fact that the specimen was not photographed is a minor lapse which does not affect the integrity of the confiscated items, and that the failure to immediately mark and inventory the drugs in the very place where they were confiscated is also justifiable because the arrest and seizure of the illegal drugs were made in the course of a buy-bust operation which was conducted in the middle of a national highway. Hence, the immediate marking and inventory of the items in the PDEA Office is justifiable and reliable in view of the presence of a public official and a member of the media.

Aggrieved by the RTC decision, appellant filed an appeal before the CA, raising the sole issue:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>5</sup>

In his Brief, appellant argued that the testimonies of the prosecution witnesses are bereft of anything to show who had custody of the seized marijuana from the crime scene to the police station, until it reached the crime laboratory for examination, and who made the marking "LQE" on the

<sup>5</sup> *Id.* at 25.



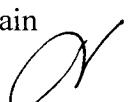
seized item at the police station. He also faulted the police officers for failing to mark the marijuana immediately after they were seized from him. He contended that these gaps in the chain of custody of the marijuana allegedly seized from him created doubt as to the integrity of the evidence – the *corpus delicti* itself. He added that no justifiable reason was offered as to the arresting officer's non-compliance with the procedural requirements of Section 21, Article II of R.A. 9165, and its implementing rules and regulations on the custody and disposition of seized dangerous drugs, and that the prosecution failed to prove that the integrity and evidentiary value of the seized drugs have been preserved.

Appellant further pointed out the following inconsistencies in the testimonies of the prosecution witnesses: (a) P/Insp. Demauro testified that the first surveillance operation was done in San Fernando where appellant was residing, but later stated that they went instead to Carcar to confirm appellant's illicit trade, and avoided San Fernando; (b) As to time when the alleged buy-bust operation was conducted, P/Insp. Demauro testified that it happened at around 11:45 o'clock in the morning, while P/Insp. Bañares stated that it was held at around 7 o'clock in the morning; and (c) P/Insp. Demauro stated that during the buy-bust operation, he was hiding but peeped out so he had a clear view of the suspect and the poseur-buyer, contrary to P/Insp. Bañares' claim that P/Insp. Demauro was in front of the store.

In its Appellee's Brief, the Office of the Solicitor General (OSG) insisted that all the elements for the successful prosecution of illegal sale have been proven, to wit: (1) the buyer was clearly identified as P/Insp. Bañares and the seller as appellant; (2) the object of the sale was established to be marijuana, weighing 2,722 grams; (3) the marijuana was, in fact, delivered by appellant to the poseur-buyer; and (4) payment was made using the marked money, which was given to appellant during the buy-bust operation. It also asserted that there was substantial compliance with the procedural requirements on the custody and disposition of seized dangerous drugs, and that the integrity of the drugs seized from appellant was preserved.

The OSG claimed that the chain of custody of the seized drugs was not shown to have been broken, thus:

x x x The factual milieu of the case reveals that after P/Insp. Arceliano Bañares seized and confiscated the dangerous drugs, as well as the marked money, accused-appellant was immediately arrested and brought to the police station where the plastic bag of suspected dried marijuana was marked with "LQE." Immediately thereafter, the confiscated substance, [together] with a letter of request for examination, was submitted to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. The specimen submitted was positive for marijuana, a dangerous drug. Thus, it is without doubt that there was an unbroken chain



of custody of the illicit drug purchased from accused-appellant. Notably, after the arrest of the accused-appellant, inventory and marking were made in the presence of the Barangay Captain and mediamen as evidenced by the Certificate of Inventory. Furthermore, P/Insp. Arceliano Bañares and Leoncio Demauro, and the accused-appellant himself, were together when the confiscated plastic bag were delivered x x x for investigation and laboratory examination.<sup>6</sup>

In the Decision dated February 28, 2012, the CA dismissed the appeal and affirmed the RTC decision.

The CA agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. The CA noted that P/Insp. Bañares, who acted as poseur-buyer, positively identified appellant as the person who sold marijuana to him. It added that the testimony of P/Insp. Bañares was corroborated by P/Insp. Demauro who testified that he witnessed the sale of illegal drugs, *i.e.*, the actual exchange of the marijuana and buy-bust money (consisting of the boodle money with the two (2) ₱100.00 bills with serial nos. DQ547867 and GM030950 placed on its top and bottom), because he was about 20 meters away from where the transaction took place. It also pointed out that the object of the sale, one plastic bag of dried marijuana with the weight of 2,722 grams, and the marked money, were presented and identified at the trial.

The CA also rejected appellant's argument that the prosecution was unable to establish the chain of custody and the integrity of the drugs seized from appellant, as the testimonies of the prosecution witnesses failed to show who had custody of the seized marijuana from the crime scene to the police station, until it reached the crime laboratory for examination, and who made the marking thereon at the police station.

The CA held that there was substantial compliance with Section 21 of the Implementing Rules and Regulations of R.A. 9165 on the custody and disposition of the seized dangerous drugs, because (a) the inventory and the markings were made in the presence of the Barangay Captain and a mediaman; (b) thereafter, the seized item with marking "LQE" and the request for laboratory examination were submitted to the PNP Crime Laboratory Region 7; and (c) the tests yielded positive results.

The CA stressed that the testimonies of P/Insp. Bañares and Demauro sufficiently established that the integrity and evidentiary value of the confiscated illegal substance were properly preserved. It observed that no proof was adduced to support the claim that the integrity and evidentiary value of the seized drugs were compromised; hence, they are presumed to be preserved, there being no showing of bad faith, ill will or proof that the

<sup>6</sup> *Id.* at 73.



evidence was tampered with. It likewise gave weight to the presumption of regularity in the handling of exhibits by public officers in view of the presumption that they properly discharged their duties.

The CA further rejected appellant's defenses of denial and frame-up for being self-serving and uncorroborated, and for his failure to overcome the presumption that the police officers performed their duties in a regular and proper manner. As to the inconsistencies between the testimonies of P/Insp. Bañares and P/Insp. Demauro, it found that they relate only to minor matters which do not affect the credibility of said witnesses, since their testimonies clearly established the sale of marijuana.

Dissatisfied with the CA decision, appellant filed a Notice of Appeal. In his Supplemental Brief, appellant reiterated (a) that the testimonies of the prosecution witnesses are bereft of anything to show who had custody of the allegedly seized marijuana from the scene of the incident to the police station until it reached the Crime Laboratory for examination, and (b) there is nothing to show who made the markings on the said items at the police station.<sup>7</sup> For its part, the OSG manifested and moved that it be excused from filing a supplemental brief, as its appellee's brief had extensively discussed all the matters and issues raised in the appellant's brief.<sup>8</sup>

The appeal is impressed with merit.

For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, all the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>9</sup> The delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.<sup>10</sup>

Moreover, since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself,<sup>11</sup> proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. 9165. Because the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of the

<sup>7</sup> *Rollo*, p. 37.

<sup>8</sup> *Id.* at 27.

<sup>9</sup> *People of the Philippines v. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015.

<sup>10</sup> *Id.* citing *People of the Philippines v. Eric Rosario y Bongcawil*, G.R. No. 209588, February 18, 2015, and *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 462-463.

<sup>11</sup> *People v. Quebral*, 621 Phil. 226, 233 (2009).



prohibited drug be established with the same unwavering exactitude as that requisite to make a finding of guilt to ensure that unnecessary doubts concerning the identity of the evidence are removed.<sup>12</sup> To this end, the prosecution must establish the unbroken chain of custody of the seized item. As held in *People of the Philippines v. Edwin Dalawis y Hidalgo*:<sup>13</sup>

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, 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 in 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.<sup>14</sup>

The links that must be established in the chain of custody in a buy-bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.<sup>15</sup> Here, the prosecution failed to establish beyond reasonable doubt the first three links in the chain of custody.

As the first step in the chain of custody, "marking" means the placing by the apprehending officer or the police poseur-buyer of his/her initials and signature on the dangerous drug seized. It is meant to ensure that the objects seized are the same items that enter the chain and are eventually offered in evidence, as well as to protect innocent persons from dubious and concocted searches, and the apprehending officers from harassment suits based on planting of evidence.<sup>16</sup> While Section 21 of R.A. 9165 and its implementing rule do not expressly specify a time frame for marking or the place where said marking should be done, the chain of custody rule requires that the

<sup>12</sup> *Sales v. People*, 602 Phil. 1047, 1056 (2009).

<sup>13</sup> *Supra* note 9.

<sup>14</sup> Citing *People of the Philippines v. Manuel Flores y Salazar @ Wella*, G.R. No. 201365, August 3, 2015 and *Valencia v. People*, G.R. No. 198804, January 22, 2014, 714 SCRA 492, 504.

<sup>15</sup> *People of the Philippines v. Abdul Mamad y Macdirol, Ladger Tamayoy y Bagayad and Hata Sariol y Madas*, G.R. No. 198796, September 16, 2015.

<sup>16</sup> *People v. Sanchez*, 590 Phil. 214, 241 (2008).



marking should be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation.<sup>17</sup> Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.<sup>18</sup> In this case, the prosecution evidence failed to convincingly show who between P/Insp. Bañares, as poseur-buyer, and P/Insp. Demauro, as back-up and arresting officer, marked the bag of marijuana seized from appellant with the initials "LQE" dated "08-14-2005" at the PDEA Office.

Despite a careful review of the sworn statements and testimonies of both P/Insp. Bañares and Demauro, the Court cannot determine who actually placed the markings "LQE" and "08-14-2005" on the drugs seized from appellant, and whether it was marked in the presence of the latter.

Notably absent in the Affidavit of the Arresting Officer dated August 16, 2005 of P/Insp. Demauro are the details as to who placed the said markings on the drugs seized from appellant, and whether they were marked in the latter's presence. Pertinent portions of P/Insp. Demauro's affidavit read:

That, after I saw PI ARCELIANO A. BAÑARES handled (sic) the money and at the same time receiving the plastic bag (as our pre-arranged signal) signifying that the transaction was already consummated. I drove the vehicle nearer blocking the road to enable the motorcycle to escape and get out of the vehicle and approached them introducing myself as PDEA Operative and arrested the suspect. Likewise, we also informed the suspect of the nature of his offense and constitutional rights as mandated by our constitution. Then and there I was able to recover from the possession and control of the suspect the buy-bust money, the two (2) pieces of one hundred peso bills with SN GM030950 and DQ547867 placed on top and bottom of wad of papers used as our boodle money;

That, after the inventory of evidences in front of the barangay tanods, and the owner, we brought the suspect to PDEA Regional Office 7, Camp Gen. Arcadio E. Maxilom, Salinas Drive, Cebu City for proper disposition and made a Certificate of Inventory of the confiscated pieces of evidence in compliance to (sic) Sec. 21, Art II, RA 9165;

That, we then make (sic) a request for Laboratory Examination on the seized dried Marijuana and submitted it to PNP Crime Laboratory Office 7 now described as One (1) pc. Black bag (east sport basic gear brand) containing suspected dried Marijuana wrapped by a newspaper and a clear plastic further placed in a colonnade plastic bag all marked "LQE" dated 08-14-2005 and further subjected the above named suspect for drug/urine test;

That, the result of the Laboratory Examination when examined by Jude Daniel Mendoza, RMT, DIAP, Forensic Chemical Officer/Medical

<sup>17</sup> *Id.*

<sup>18</sup> *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

Technologist, PNPCLO7, yielded positive result for the presence of Marijuana, a dangerous drug weighing 2,722 grams;<sup>19</sup>

There is likewise no indication in the Affidavit of the Poseur Buyer dated August 16, 2005 of P/Insp. Bañares as to who placed the said markings on the drugs seized from appellant and whether it was marked in the latter's presence. Relevant parts of P/Insp. Bañares' affidavit state:

That, after which the suspect then showed to me the content of the black bag and open (sic) it and then there I saw the dried Marijuana placed inside a plastic bag. In return, the suspect asked for the money, I pulled out from my right pocket the two (2) pieces one hundred peso bills marked by money with SN GM030950 and DQ547867 placed on top and bottom of wad of papers used as the boodle money and handed it to the suspect. After handling the money, I pick-up the bag (as our pre-arranged signal) signifying that the transaction was already consummated and told the suspect to count the money later since their (sic) are people coming. At this juncture, I immediately introduce myself as PDEA Operative while PI LEONCIO G DEMAURO rushed up and arrested the suspect and informed him of the nature of his offense and his constitutional rights as mandated by law and likewise recovered the buy-bust money from the possession and control of the above named suspect;

That, subsequently we brought the suspect to PDEA Regional Office 7, Camp Gen. Arcadio E. Maxilom, Salinas Drive, Cebu City for proper disposition and made a Certificate of Inventory of the confiscated pieces of evidence in compliance to (sic) Sec. 21, Art II, RA 9165;

That, We then make (sic) a request for Laboratory Examination on the seized dried Marijuana and submitted it to PNP Crime Laboratory Office 7 now described as One (1) pc. Black bag (east sport basic gear brand) containing suspected dried Marijuana wrapped by a newspaper and a clear plastic further placed in a colonnade plastic bag all marked "LQE" dated 08-14-2005 and further subjected the above named suspect for drug/urine test;

That, the result of the Laboratory Examination when examined by Jude Daniel Mendoza, RMT, DIAP, Forensic Chemical Officer/Medical Technologist, PNPCLO7, yielded positive result for the presence of Marijuana, a dangerous drug weighing 2,722 grams;<sup>20</sup>

P/Insp. Demauro's direct examination also failed to reveal who marked the seized drugs and whether it was marked in the presence of appellant. Pertinent portions of his testimony read:

[Prosecutor Jasmin N. Despi]

<sup>19</sup> Records, p. 10.

<sup>20</sup> *Id.* at 16.

Q: After the pre-arranged signal immediately you rushed up the accused. You introduced yourselves after that what happened next?

A: Bañares opened the bag and telling him that I am also a police. We told him that he was under surveillance and then we brought him to the office.

Q: What was inside the black bag?

A: It contained dried marijuana leaves wrapped by a newspaper and plastic bag.

Q: How big is the bag?

A: Ten (10) inches by twelve (12) inches.

Q: After both of you and Bañares informed the accused Lee Q. Enad that you are police officers what did he do, if any?

A: He did not resist the arrest. We brought him to the nearby store and in the presence of those Barangay Tanods presenting them suspect (sic).

x x x x

Q: What else did you do in the store where you brought the suspect, if any?

A: We told those Barangay Tanods that if we need their help we'll call them and we (Bañares and me) proceeded to the office.

Q: When you arrived in your office what did you do to Lee Enad?

A: We prepared a booking sheet and [arrest] report.

x x x x

Q: After the booking of the arrest of the accused what happened next, if any?

A: We prepared the Certificate of Inventory of Evidence and the affidavit of Bañares and also my affidavit preparing for the filing of the case.

x x x x

Q: You mentioned earlier that you go to your office for the purpose of booking the accused and the military (sic) men why is it that they were summoned to your office?

A: It is the requirements in the preparation of the Certificate of Inventory of the Evidence and preparing the case. It must be completed in the presence of barangay official and media men and the parties or suspect and the arresting personnel.

x x x x

Q: What happened to the black bag and its content?

A: It is in the possession of the PNP Crime Laboratory, containing the dried marijuana leaves.



- Q: If you can still recall, when was that submitted and its content at the PNP Crime Laboratory?
- A: August 18, 2005 because it was not Monday. We filed that case on August 16, 2005.

x x x x

- Q: When you mentioned August 16, 2005 you are referring at the Fiscal's Office?
- A: Yes, ma'am.

- Q: If you know, after the submission of the black bag was the examination done to the content which you said earlier marijuana?

A: Yes, ma'am.

- Q: How did you know it is marijuana?

A: We requested the crime laboratory to conduct tests on the marijuana whether it contained drugs or not.

x x x x

- Q: Also attached to the record is the Certificate of Inventory I would like you to look at it and tell the Honorable Court if you had prepared the said document?

A: Yes, ma'am, this is the one.

- Q: Please tell us what is the significant (sic) of the Certificate of Inventory when you first file (sic) before the Fiscal's Office?

A: It is a mandatory requirement in filing the case.

- Q: Tell us what are the contents of the Certificate of Inventory?

A: These are the items that contained in the Inventory the 2,722 grams of dried marijuana; black bag; the boodle money; two (2) pieces One Hundred Peso bills. I think that is all.

x x x x

- Q: You mentioned earlier of a request for laboratory examination in this case in the record there are two (2) request for laboratory examination there is a request for laboratory examination and there is a request for medical examination, tell us what these examinations are?

A: Laboratory examination [for] the marijuana and the other request for medical examination for the accused.

- Q: Tell us why did you subject the accused for (sic) medical examination?

A: Because it is also one of the procedure an arrested person must undergo a medical examination before bringing him to the CPDRC.



Q: Take a look on both request and tell us if these are the same document which you submitted in compliance with the rules of RA 9165?

A: Yes, ma'am, these are the ones.

x x x x

Q: Do you know where the accused now?

A: Yes, ma'am, inside the Courtroom.

Q: Please point him out?

A: Witness pointing to the accused Lee Enad.

PROS. DESPI:

That would be all for the witness, Your Honor.<sup>21</sup>

Similarly, P/Insp. Bañares' direct examination was unable to establish who marked the seized drugs and whether it was marked in the presence of appellant. Relevant parts of his testimony provide:

[Prosecutor Despi]

Q: Earlier you said that the accused told you that the marijuana cost you One Thousand Five Hundred (₱1,500.00) Pesos per kilo. Did he accept your two (2) one hundred peso bills for several kilos of marijuana?

A: Yes ma'am, because he saw the money at the bottom of the paper as our boodle money for buy-bust.

Q: You mean to say that you showed him the boodle of money but only two (2) are real and the others are faked money?

A: Yes, ma'am.

Q: After you showed him the boodle money, what happened next, if any?

A: He opened the bag and I saw the dried marijuana inside the plastic bag, then I pulled out money and he said, "ah, your money is too many, what will you do with this." Because marijuana is very cheap compared to shabu.

Q: After you took out the money and showed to the accused, what happened next?

A: I saw the marijuana inside the plastic bag and I picked up the bag and as our pre-arranged signal signifying that the transaction was already consummated. And since there are people coming so I immediately introduced myself that I am a PDEA operatives and P/Insp. Demauro rushed up and arrested the accused.

Q: You said that you took the marijuana from the accused. The money that you are holding, where did it go?

A: To the suspect.

<sup>21</sup>

TSN, December 14, 2006, pp. 8-16.

- Q: There was an actual exchange of money and marijuana?  
A: Yes, ma'am.
- Q: After P/Insp. Demauro rushed up and arrested the accused, what happened next?  
A: Then I arrested the suspect and recovered the marked money for buy-bust operation, recovered from the [possession] and control of the suspect.

PROS. DESPI:

Your Honor please, I would like to ask a resetting of this case. I will ask the witness to identify the two (2) one hundred peso bills and the boodle money used in buying the marijuana.<sup>22</sup>

x x x x

- Q: During the last hearing you told the Honorable Court that you conducted a buy bust operation you used One Hundred Peso bill and boodle money. I am showing to you this (2) One Hundred Peso Bills please tell the Honorable Court if you recognize these items?  
A: This is the buy bust-operation money.
- Q: How do you know the two (2) ₱100 bills are the ones used in the buy bust operation?  
A: The serial numbers of the money SN: DQ547867 and GM030950.
- Q: Aside from taking notes of the serial numbers of the buy-bust money, do you have any other identification which confirm that indeed that these were the very items used?  
A: No, sir.
- Q: You can say the two ₱100.00 bills are marked money?  
A: Yes, sir.
- Q: Please explain to us how come that these two ₱100.00 bills are marked money when there are no markings?  
A: It is our procedure of taking the serial numbers.
- Q: As personnel of PDEA the use of money with no marking as marked money as (sic)  
A: Yes, sir because the number is correct.
- Q: Now, aside from the two ₱100.00 bills there are also pieces of paper same as the two (2) ₱100.00 bills, please what is the reference?  
A: These pieces of papers are used as boodle money.

<sup>22</sup> TSN, May 31, 2007, pp. 10-11.



Q: You told us you utilized that you will give the impression that you have several bills for payment. Please demonstrate how did you hand it in a way the accused was not able to detect the alleged money below?

A: Like this.

x x x x

PROS. DESPI:

That would be all, Your Honor. No more question.<sup>23</sup>

As can be gleaned from the testimonies of the arresting officers, P/Insp. Bañares and Demauro, the prosecution utterly failed to prove the identity of the one who actually marked the drugs seized from appellant with the initials "LQE" and the date "08-14-2005," and whether it was marked in the latter's presence. Hence, the first link in the chain of custody of the drugs seized from appellant was broken.

Anent the second link in the chain of custody, there is no showing who between P/Insp. Bañares and Demauro turned over to the investigating officer the drugs seized from appellant. As can be gathered from their above-quoted testimonies and sworn statements, they also failed to disclose the identities of the desk officer and the investigator to whom custody of the same drugs was turned over.

In *People v. Capuno*,<sup>24</sup> the Court ruled that when the police officers who confiscated the dangerous drugs testified only that they brought the accused and the seized item to the police station without identifying the police officer to whose custody the seized item was actually given, the second link in the chain of custody is not established. This ruling holds true in this case because the prosecution's evidence failed to identify who between P/Insp. Bañares and Demauro was in custody of the bag of marijuana seized from appellant from the crime scene to the PDEA office.

With respect to the third link in the chain of custody, there is likewise no indication as to the identity of the investigating officer who then turned over the drugs to the forensic chemist for laboratory examination. While the Booking Sheet and Arrest Report<sup>25</sup> and the Request for Laboratory Examination<sup>26</sup> indicate that a certain PO2 Inocentes L. Amistad was the one who booked appellant's arrest and delivered the said request to the forensic chemist, there is no evidence on record that he was the investigating officer assigned to the case of appellant. No evidence was also proffered on how the bag of marijuana ended up in the possession of PO2 Amistad. Nowhere in the testimonies and affidavits of P/Insp. Bañares and Demauro was it stated

<sup>23</sup> TSN, August 9, 2007, pp. 2-4.

<sup>24</sup> 655 Phil. 226, 242 (2011).

<sup>25</sup> Records, p. 33.

<sup>26</sup> *Id.* at 27.



who between them turned over custody of the bag of marijuana to him. Thus, the prosecution's failure to explain how PO2 Amistad got hold of the marijuana casts doubt on the identity of the *corpus delicti*.

Moreover, the failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165 provides:

*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;

Failure to strictly comply with the above provision will not render an accused's arrest illegal or the seized items inadmissible in evidence.<sup>27</sup> Under Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165, substantial compliance is recognized, thus:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

<sup>27</sup> *People v. Lazaro, Jr.*, 619 Phil. 235, 259 (2009).

A reading of the *proviso* embodied in the above provision clearly states that non-compliance by the apprehending team with Section 21 of R.A. 9165 is not fatal as long as (1) there is justifiable ground therefor and (2) the integrity and evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.<sup>28</sup> In this case, although a physical inventory of the bag of marijuana seized from appellant was made in the presence of a representative from the media and an elective public official at the PDEA Office, the prosecution offered no justification why a DOJ representative was not present and why the same item was not photographed. Significantly, the integrity and evidentiary value of the drugs seized from appellant was not preserved by the apprehending team because the prosecution failed (a) to identify who actually placed the marking "LQE" thereon, (b) to show that it was marked in the presence of the appellant, and (c) to prove the chain of custody of the said item from the crime scene until it reached the crime laboratory.

Reliance on the legal presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved will be inadequate to uphold appellant's conviction. After all, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.<sup>29</sup> When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.<sup>30</sup>

All told, the Court finds that the prosecution failed (a) to establish an unbroken chain of custody of the bag of marijuana seized from appellant, (b) to prove that the specimen found to be positive for marijuana upon laboratory examination, was the same dangerous drugs seized from him, and (c) to proffer any justifiable ground for the non-compliance with Section 21 of R.A. 9165. These flaws cast serious doubt on whether the specimen found to be positive of marijuana upon laboratory examination was the same drugs seized from appellant and offered in evidence before the trial court. With the failure of the prosecution to prove with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from him, appellant deserves exoneration from the crime charged.

In light of the foregoing discussion, the Court finds no further necessity to delve into the other contentions raised by the parties.



<sup>28</sup> *People v. Sanchez*, *supra* note 16, at 234.

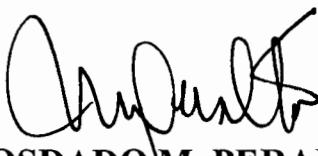
<sup>29</sup> *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 566 (2010).

<sup>30</sup> *Zafra, et al. v. People*, 686 Phil. 1095, 1109 (2012).

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated February 28, 2012 of the Court of Appeals in CA-G.R. CEB CR HC No. 01109, which affirmed the judgment of the Regional Trial Court of Toledo City, Cebu, Branch 29, in Criminal Case No. TCS-5357, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Lee Quijano Enad is **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the release of accused-appellant, unless he is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement, within five (5) days from notice.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



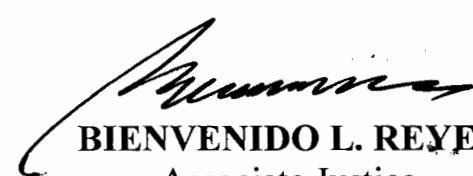
**MARIA LOURDES P. A. SERENO**  
Chief Justice



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**JOSE PORTUGAL PEREZ**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

**CERTIFIED TRUE COPY**

**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

FEB 19 2016