



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,    G.R. No. 259381  
Plaintiff-appellee,

Present:

-versus-

CAGUIOA, J., Chairperson,  
INTING,  
GAERLAN,  
DIMAAMPAO, and  
SINGH, JJ.

JONEL F. GEPITULAN,  
Accused-appellant.

Promulgated:

February 26, 2024

Mic De Beff

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D E C I S I O N

INTING, J.:

Before the Court is an appeal<sup>1</sup> under Rule 122 of the Rules of Court which assails the Decision<sup>2</sup> dated November 26, 2020, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02223. The CA affirmed the Decision<sup>3</sup> dated December 18, 2018, of Branch 56, Regional Trial Court (RTC), Compostela, Compostela Valley in Criminal Case No. 100-2018-MNK that found accused-appellant Jonel F. Gepitulan<sup>4</sup> (Jonel) guilty beyond reasonable doubt of violating Section 16,<sup>5</sup> Article II of Republic

<sup>1</sup> Rollo, pp. 4–5, Notice of Appeal.

<sup>2</sup> *Id.* at 9–19. Penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Loida S. Posadas-Kahulugan and Richard D. Mordeno of the 22<sup>nd</sup> Division of the Court of Appeals, Cagayan De Oro City.

<sup>3</sup> *Id.* at 22–32. Penned by Presiding Judge Carmel Gil Grado.

<sup>4</sup> Referred to as “Gipitulan” in some parts of the records. [Records, pp. 15–19]

<sup>5</sup> SECTION 16. *Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who shall plant, cultivate or culture marijuana, opium poppy or any other plant regardless

Act No. (RA) 9165.<sup>6</sup>

*The Antecedents*

In the Information<sup>7</sup> dated July 3, 2018, filed with the RTC and docketed as Criminal Case No. 100-2018-MNK, Jonel was charged with the offense of Illegal Planting and Cultivation of Marijuana Plant, defined and penalized under Section 16, Article II of RA 9165. The accusatory portion of the Information states:

That on or about July 2, 2018, in the Municipality of Monkayo, Province of Compostela Valley, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any legal cause and without being authorized by law, did then and there willfully, unlawfully and knowingly cultivate One (1) marijuana plant a dangerous drug weighing 15.9758 grams when weighed by the PNP Provincial Crime Laboratory Office, Tagum City, Davao del Norte.

CONTRARY TO LAW.<sup>8</sup>

Upon arraignment, Jonel entered a plea of “Not Guilty” to the charge.<sup>9</sup>

Trial followed.<sup>10</sup>

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of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived: *Provided*, That in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.

The land or portions thereof and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated in favor of the State, unless the owner thereof can prove lack of knowledge of such cultivation or culture despite the exercise of due diligence on his/her part. If the land involved is part of the public domain, the maximum penalty provided for under this Section shall be imposed upon the offender.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a “financier” of any of the illegal activities prescribed in this Section. The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section.

<sup>6</sup> “Comprehensive Dangerous Drugs Act of 2002,” approved on June 7, 2002.

<sup>7</sup> Records, pp. 1–2.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 31, Certificate of Arraignment.

<sup>10</sup> *Id.* at 34–38, Pre-Trial Order.

*Version of the Prosecution*

On July 2, 2018, at around 7:30 a.m., the Monkayo Police Station, Monkayo, Comval Province, received a phone call from a confidential informant (CI) that a certain “Islao” was seen cultivating a marijuana plant on a parcel of land owned by Leonilla Fabillar (Fabillar) at Purok 3, Barangay Poblacion, Monkayo, Compostela Valley (the site).<sup>11</sup> In response, the Deputy Chief of Police instructed Police Officer 1 Armando B. Calamba, Jr. (PO1 Calamba) and PO1 Danny T. Daquibig (PO1 Daquibig) to investigate.<sup>12</sup> Meanwhile, PO3 Jonel B. Campomanes (PO3 Campomanes), the Monkayo Police duty investigator, coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>13</sup>

Soon after, PO1 Calamba and PO1 Daquibig left the police station in civilian clothing and proceeded to the site, a cacao farm, which was around 600 to 700 meters away from the police station.<sup>14</sup> At a corner around 100 meters away from the site, PO1 Calamba and PO1 Daquibig met the CI.<sup>15</sup> The three proceeded to walk on foot towards the site.<sup>16</sup> At around 8:00 a.m., PO1 Calamba, PO1 Daquibig, and the CI arrived at the site. Thereat, they saw a man about five to six meters away from them, crouching down, and with his back facing them.<sup>17</sup> The CI identified the man as Jonel, also known as alias “Islao.”<sup>18</sup>

When PO1 Calamba and PO1 Daquibig walked towards Jonel, they saw him clearing some grasses and leaves around a marijuana plant.<sup>19</sup> At that point, they arrested Jonel.<sup>20</sup> Upon Jonel’s arrest, PO1 Calamba and PO1 Daquibig seized the following items: one hill of fully grown marijuana plant; one white plastic container; and one digging tool (the seized items).<sup>21</sup>

PO1 Daquibig then contacted the Monkayo Police Station to inform it that Jonel had been arrested.<sup>22</sup> Hence, PO3 Campomanes proceeded to

<sup>11</sup> *Id.* at 11, Exhibit “A”; TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 5–6.

<sup>12</sup> *Id.*; Records, p. 11, Exhibit “A”; TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 6.

<sup>13</sup> *Id.*

<sup>14</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 21 and 28–29.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Id.* at 7–8 and 21.

<sup>17</sup> *Id.* at 8 and 22–23; Records, p. 11, Exhibit “A”.

<sup>18</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 8, 19, and 21–22.

<sup>19</sup> *Id.* at 8; Records, p. 11, Exhibit “A”.

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

<sup>21</sup> Records, p. 12, Exhibit “A”.

<sup>22</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 8.

the site.<sup>23</sup> When PO3 Campomanes arrived, the police officers contacted Barangay Kagawad Ruel Quilang (Brgy. Kgwd. Quilang) to witness the inventory and photographing of the seized items.<sup>24</sup> The police officers proceeded to conduct the inventory and photographing<sup>25</sup> of the seized items at the area of apprehension in the presence of Brgy. Kgwd. Quilang and Jonel.<sup>26</sup>

According to PO1 Calamba, they exerted efforts to find a representative from the media or the Department of Justice (DOJ) to witness the inventory of the seized items.<sup>27</sup> However, no such representative arrived because the area was out of the way.<sup>28</sup>

From the site, the police officers travelled back to the Monkayo Police Station, taking with them the seized items and Jonel.<sup>29</sup> In the meantime, PO1 Calamba took custody of the seized items.<sup>30</sup> They arrived at the police station at around 8:50 a.m., where they met media representative, Oscar Lito O. Arabyo, who witnessed the second inventory at the police station.<sup>31</sup> The Certificate of Inventory<sup>32</sup> issued for the seized items stated:

#### CERTIFICATE OF INVENTORY

THIS IS TO CERTIFY that an inventory was conducted with the following operation for violation of RA 9165, to wit:

NAME OF APPREHENDED SUBJECT:

JONEL GEPITULAN AKA ISLAO

PLACE WHERE THE EVIDENCE WAS TAKEN: PUROK 3A  
BARANGAY POB

DATE/TIME OF EVIDENCE RECOVERED: JULY 2, 2018

THIS IS TO CERTIFY further that the following items were seized from the apprehended suspects [sic] during Police Operation, to wit:

ONE (1) HILLS OF FULLY GROWN BELIEVED TO BE

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 9.

<sup>25</sup> Records, pp. 21–23, Exhibit “I” series.

<sup>26</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 9.

<sup>27</sup> Records, p. 12, Exhibit “A”.

<sup>28</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, 26–27 and 36–37.

<sup>29</sup> *Id.* at 10 and 26–27.

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 10 and 30; Records, p. 20, Exhibit “C”.

<sup>32</sup> Records, p. 20, Exhibit “C”.



MARIJUANA

ONE (1) PLASTIC CONTAINER COLOR WHITE

ONE (1) DIGGING TOOLS "GUNA"

....

(signed)	(signed)
PO1 ARMANDO B. CALAMBA, JR.	PO1 DANNY T. DAQUIBIG
Apprehending Officer	Apprehending Officer

WITNESSES:

DOJ/PPO	(blank)
	(signed)
MEDIA	Oscar Lito O. Arabyo DXPA FM

BRGY/LOCAL OFFICIALS: HON. RUEL Y. QUILANG (signed)

SUSPECTS REPRESENTATIVE: (blank)<sup>33</sup>

From the Monkayo Police Station, PO1 Calamba transported Jonel and the seized items to the Davao del Norte Crime Laboratory for testing.<sup>34</sup> The typewritten letter-request<sup>35</sup> for examination of the confiscated marijuana plant identified the specimen as: "*One (1) fully grown of believed to be Marijuana with masking tape marking with 'JG1' and signature*"<sup>36</sup> and bore a handwritten annotation of, "*15.9758g.*"<sup>37</sup>

PO1 Calamba and Jonel arrived at the Davao del Norte Crime Laboratory at around 10:00 a.m.<sup>38</sup> At the crime laboratory, PO1 Calamba turned over the marijuana plant to Senior Police Officer 1 Leonides T. Bualan (SPO1 Bualan).<sup>39</sup> The Chain of Custody of Evidence,<sup>40</sup> which documented the endorsement of the marijuana plant, stated that PO1 Calamba turned-over the marijuana plant to SPO1 Bualan at 12:35 p.m., July 2, 2018. It identified the specimen endorsed as "*One (1) fully grown of believed to be Marijuana with masking tape marking with 'JG1' and signature.*"<sup>41</sup>

<sup>33</sup> *Id.*

<sup>34</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 11.

<sup>35</sup> Records, p. 15, Exhibit "G".

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 11-12.

<sup>39</sup> *Id.* at 12; Records, p. 19, Exhibit "J".

<sup>40</sup> Records, p. 19, Exhibit "J".

<sup>41</sup> *Id.*

At around 3:30 p.m., SPO1 Bualan turned over the specimen to Police Inspector Jade Ryan P. Bajade (PINSP Bajade),<sup>42</sup> a forensic chemist.<sup>43</sup> The specimen tested positive for marijuana<sup>44</sup> as stated in Chemistry Report No. D-123-2018DN<sup>45</sup> (Chemistry Report):

CASE: Alleged Violation of RA 9165 SUSPECT/S: Jonel F. Gipitulan  
/x/x/x/

TIME AND DATE RECEIVED: 12:35PM July 2, 2018

REQUESTING PARTY/UNIT: Deputy Chief of Police  
Monkayo MPS, CVPPO

SPECIMEN SUBMITTED:

A – One (1) transparent plastic bag containing one (1) uprooted suspected Marijuana plant (height: 3'6") marked and weighed as A {JG1} 15.9758 grams.  
/x/x/x/ /x/x/x/ /x/x/x/

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of any dangerous drug(s). /x/x/x/

FINDINGS:

Qualitative examination conducted on the above stated specimens gave POSITIVE result to the test for Marijuana. /x/x/x/

CONCLUSION:

Specimens A contains Marijuana, a dangerous drug. /x/x/x/

REMARKS:

The original copy of this report is retained in this office for future reference. /x/x/x/

TIME AND DATE COMPLETED: 5:00PM July 2, 2018<sup>46</sup>

The next day, on July 3, 2018, PO1 Calamba turned over the other items seized to PO2 Ronelo H. Almadin.<sup>47</sup> The Acknowledgment Receipt<sup>48</sup> indicated that the digging tool or “guna” was marked with “JG2,” while the white plastic container was marked with “JG3.”<sup>49</sup>

<sup>42</sup> TSN, PINSP Jade Ryan P. Bajade, October 1, 2018, pp. 4–6; Records, p. 43, Exhibit “L”.

<sup>43</sup> *Id.* at 8–9; *id.* at 16, Exhibit “H”.

<sup>44</sup> *Id.*

<sup>45</sup> Records, p. 16, Exhibit “H”.

<sup>46</sup> *Id.*

<sup>47</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 15–16; Records, p. 25, Exhibit “K”.

<sup>48</sup> Records, p. 25, Exhibit “K”.

<sup>49</sup> *Id.*

On July 6, 2018, PINSP Bajade turned over the specimen to PO2 Rhuffy D. Federe (PO2 Federe).<sup>50</sup> It was then PO2 Federe who brought the specimen to the RTC for presentation.<sup>51</sup>

### *Version of the Defense*

Jonel denied the allegations against him. According to Jonel, he was just out of his house and walking towards a store to buy a coffee when the police suddenly apprehended him on July 2, 2018.<sup>52</sup>

Jonel averred that on June 28, 2018, a few days before his arrest, the Monkayo Police already invited him to the police station and asked if he was selling marijuana.<sup>53</sup> Jonel responded by stating that it was Dondon Fabillar (Dondon), his cousin, who was selling drugs and cultivating marijuana.<sup>54</sup> When the police arrived at the site on July 2, 2018, Dondon noticed the police officers and ran away.<sup>55</sup>

Jonel insisted that he was not cultivating marijuana and that it was PO1 Calamba who uprooted the hill of marijuana plant that he was allegedly clearing.<sup>56</sup> Further, he could not think of any reason why he was being framed by the Monkayo Police for purportedly cultivating marijuana plant.<sup>57</sup>

### *The Ruling of the RTC*

In the Decision<sup>58</sup> dated December 18, 2018, the RTC found Jonel guilty beyond reasonable doubt of the charge. It determined that all the elements of the offense have been sufficiently proven by the prosecution. It emphasized that Jonel was caught cultivating a marijuana plant by clearing the area of leaves and grass. The RTC further ruled that the testimonies of the police officers on the seized items at the time of Jonel's arrest deserve full faith and credence because it is presumed that they performed their official functions in a regular manner.

<sup>50</sup> *Id.* at 16, Exhibit "H"; TSN, PO3 Rhuffy D. Federe, October 1, 2018, pp. 22-23.

<sup>51</sup> *Rollo*, p. 12.

<sup>52</sup> TSN, Jonel F. Gepitulan, October 2, 2018, pp. 4-6.

<sup>53</sup> *Id.* at 8-9.

<sup>54</sup> *Id.* at 10 and 19-21.

<sup>55</sup> *Id.* at 12-13.

<sup>56</sup> *Id.* at 17.

<sup>57</sup> *Id.* at 18.

<sup>58</sup> *Rollo*, pp. 22-32.

As to the chain of custody rule embodied in Section 21(1),<sup>59</sup> Article II of RA 9165, as amended by RA 10640,<sup>60</sup> the RTC found that the integrity and the evidentiary value of the seized items were properly preserved. It held that the prosecution provided sufficient justification for the absence of a witness from the DOJ or the media during the inventory, i.e., the area where Jonel was apprehended was out of the way. It highlighted that the requirements of the law have been sufficiently complied with because a second inventory of the seized items was performed at the Monkayo Police Station, where a representative from the media was present. While a second inventory was irregular, the RTC did not find fault in the apprehending police officers because under varied field conditions, strict compliance with the law is not always possible. The *fallo* of the RTC Decision reads:

WHEREFORE, in view of the foregoing, accused JONEL F. GEPITULAN is found GUILTY of violating Sec. 16, Article II of Republic Act No. 9165. He is hereby sentenced by this court to suffer the penalty of Life Imprisonment and fine in the amount of Five Hundred Thousand (P500,000.00) Pesos.

The marijuana subject matter of this case is hereby ordered confiscated and forfeited in favor of the State to be disposed of in accordance with existing rules and regulation.

In the service of his sentence, accused is entitled to the full time he has undergone preventive imprisonment, if any, pursuant to Article 29 of the Revised Penal Code.

<sup>59</sup> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:  
(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

<sup>60</sup> . . . .  
Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," approved on July 15, 2014.

Accused shall serve his sentence at Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

SO ORDERED.<sup>61</sup> (Emphasis omitted)

Aggrieved, Jonel appealed<sup>62</sup> to the CA.

*The Ruling of the CA*

In its Decision<sup>63</sup> dated November 26, 2020, the CA denied Jonel's appeal and affirmed the RTC Decision. It stressed that Jonel was prosecuted for "cultivating" a marijuana plant. According to the CA, the term "cultivating" was broad enough to include the act of "clearing" the land for the marijuana plant to grow.<sup>64</sup> Thus, it concluded that Jonel was properly found guilty of violating Section 16, Article II of RA 9165.

The CA also found no merit in Jonel's argument that his arrest and the confiscation of the marijuana plant were illegal. It explained that Jonel's arrest and the search incidental thereto were valid under the plain view doctrine, given that the apprehending police officers caught Jonel cultivating a marijuana plant *in flagrante delicto*.<sup>65</sup>

Lastly, the CA held that the chain of custody was unbroken. It agreed with the RTC that Section 21, Article II of RA 9165 was substantially complied with and any failure to strictly comply therewith has been sufficiently justified by the prosecution.<sup>66</sup> The CA decreed as follows:

WHEREFORE, premises considered, the Appeal is hereby DENIED for lack of merit and the Decision dated December 18, 2018 of the Regional Trial Court of Compostela, Compostela Valley, 11<sup>th</sup> Judicial Region, Branch 56, in Criminal Case No. 100-2018 MNK is AFFIRMED *in toto*.

SO ORDERED.<sup>67</sup> (Emphasis omitted)

Thus, the present appeal.<sup>68</sup>

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<sup>61</sup> *Rollo*, pp. 29–31.

<sup>62</sup> Records, pp. 79–81, Notice of Appeal.

<sup>63</sup> *Rollo*, pp. 9–19.

<sup>64</sup> *Id.* at 14–15.

<sup>65</sup> *Id.* at 14–16.

<sup>66</sup> *Id.* at 16–19.

<sup>67</sup> *Id.* at 19.

<sup>68</sup> *Id.* at 4–5, Notice of Appeal.

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The Issue

The core issue to be resolved is whether the CA erred in affirming Jonel's conviction for Illegal Planting and Cultivation of Marijuana Plant.

The Court's Ruling

In criminal cases, an appeal opens the entire case for review because it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, though unassigned, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.<sup>69</sup> Simply put, the appeal confers upon the appellate court full jurisdiction over the case and renders it competent to examine records, revise the judgment appealed from, and even increase the penalty.<sup>70</sup>

Essentially, Jonel seeks his acquittal because the *corpus delicti* of the offense charged was supposedly *not* proven by the prosecution beyond reasonable doubt. His argument is hinged on two grounds: *First*, he argues that the marijuana plant is inadmissible in evidence because it was confiscated on private land without a search warrant and not during a lawful warrantless arrest. And *second*, the marijuana plant presented in evidence was not properly authenticated due to the police officers' failure to comply with the chain of custody rule under Section 21, Article II of RA 9165.

*Jonel's arrest and the search conducted incidental thereto were valid because he was seen violating RA 9165 in flagrante delicto.*

Section 2,<sup>71</sup> Article III of the 1987 Constitution provides that every person has a right to be secure in his or her persons. As a rule, therefore,

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<sup>69</sup> *Arambulo v. People*, 857 Phil. 828, 836 (2019).

<sup>70</sup> *Id.*

<sup>71</sup> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

law enforcers must first secure a warrant before they may lawfully arrest a person.<sup>72</sup> Nevertheless, there are several recognized exceptions to the rule, including the situation contemplated in Section 5(a),<sup>73</sup> Rule 113 of the Rules of Criminal Procedure, i.e., the *in flagrante delicto* exception or when, in the presence of the law enforcers, the person to be arrested executes an *overt* act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime.<sup>74</sup>

When a person is lawfully arrested without a warrant, the apprehending officer has both the *duty* and the *right* to conduct a *warrantless search* not only on the person of the suspect, but also in the permissible area within the latter's reach.<sup>75</sup> In such a case, the arresting officer may validly confiscate evidence either on the person of the arrestee *or the area of his or her immediate control* within which the arrestee might gain possession of a weapon or destructible evidence.<sup>76</sup> Items which may be seized as an incident to a lawful arrest include any money or property found upon the suspect's person that was *used in the commission of the crime or was the fruit of the crime*, or which may provide the suspect with the means of committing violence or escaping, or *which may be used in evidence in the trial of the case*.<sup>77</sup> The rationale for the rule is to prevent the suspect from obtaining a weapon to commit violence or to reach for incriminatory evidence and destroy it.<sup>78</sup>

In the case, the records show that the police officers saw Jonel executing the *overt act* of clearing the land within the area surrounding the marijuana plant. PO1 Calamba testified as follows:

Q - When you proceeded to the said place, what happened next, if any?

A - I saw one (1) man sitting and the confidential informant told us that the man is alias Islao.

Q - After he informed you that the person seated was one (1) alias Islao, what transpired next, if any?

<sup>72</sup> *Porteria v. People*, 850 Phil. 259, 271 (2019).

<sup>73</sup> Section 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

<sup>74</sup> *Porteria v. People*, *supra*.

<sup>75</sup> *Sr. Insp. Valeroso v. Court of Appeals*, 614 Phil. 236, 251 (2009).

<sup>76</sup> *Id.*

<sup>77</sup> *People v. Estella*, 443 Phil. 669, 684–685 (2003).

<sup>78</sup> *People v. Salanguit*, 408 Phil. 817, 835 (2001).



A - We saw a person clearing the marijuana plant.

Q - When you saw a person clearing the marijuana plant, what transpired next, if any?

A - When he saw us, he was shocked and we, as police officers, know what a marijuana plant is. So, we apprehended him.

Q - Why do you know a marijuana plant?

A - As police officers, we attended trainings conducted by the [Philippine National Police] to know about drugs.<sup>79</sup>

On cross-examination, PO1 Calamba stated that he saw the marijuana plant being cultivated by Jonel,<sup>80</sup> and it was only after seeing the plant that he arrested Jonel.<sup>81</sup> According to PO1 Calamba, he could clearly see Jonel cultivating the marijuana plant because the site was not fenced, the grass surrounding the plant was short, and it was daylight at that time.<sup>82</sup> Further, he explained that he was near enough to see what Jonel was doing, being at a distance of only about five to six meters away from Jonel at that time.<sup>83</sup>

Evidently, Jonel was caught *in flagrante delicto* or in the act of cultivating marijuana, in violation of Section 16, Article II of RA 9165. Given the situation, Jonel was lawfully arrested without a warrant. In the same manner, as an incident to Jonel's arrest, the apprehending police officers validly confiscated the marijuana plant because it was the evidence of the offense committed and was within the area of Jonel's immediate control. Undoubtedly, it was necessary for the police officers to seize the marijuana plant to prevent Jonel from destroying it.

However, Jonel seeks exoneration because he was merely seen *clearing* the land but not in the act of *planting* marijuana. He argues that the act of clearing a parcel of land is not an act prohibited by Section 16, Article II of RA 9165.

Jonel's argument lacks support in the law.

Section 16, Article II of RA 9165 penalizes those persons who "shall plant, cultivate or culture marijuana[.]" In turn, Section 3(i) of RA

<sup>79</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 8.

<sup>80</sup> *Id.* at 24-25.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 24.

<sup>83</sup> *Id.* at 8 and 22-24.

9165 defines “cultivate or culture” as “[a]ny act of knowingly planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug.” The definition of “cultivation” under the law is broad enough to include the act of clearing the land of grass and leaves to raise or permit marijuana to grow. Indeed, the Court has held that “cultivation” includes the act of clearing the land of underbrush and weeding, so that the plants or trees being raised may thrive.<sup>84</sup>

In support of his acquittal, Jonel also cites *People v. Valdez*,<sup>85</sup> where the Court held that the marijuana seized from a private land was inadmissible in evidence because it was improperly confiscated without a search warrant.

*Valdez* is inapplicable to the present case.

In *Valdez*, the confiscation of marijuana without a prior search warrant was unlawful because therein accused was not caught *in flagrante delicto*. The accused in *Valdez* was merely sitting at his nipa hut when the police officers saw him. While the police in *Valdez* saw several marijuana plants on a parcel of land, the accused therein was *not* seen on the land and in the act of cultivating the marijuana plants.

In contrast to *Valdez*, Jonel was seen by the police officers clearing the land and cultivating the marijuana plant. To repeat, he was caught *in flagrante delicto*.

*The right against unreasonable searches and seizure is a personal right invocable only by a person who has established a requisite connection to the property searched.*

Jonel nonetheless argues that the confiscation of the seized items cannot be valid because they were located on a private lot and the police did not obtain any warrant for the seizure of the items. He invokes the

<sup>84</sup> *Hernandez v. Intermediate Appellate Court*, 267 Phil. 806, 814 (1990), citing *Guerrero v. CA*, 226 Phil. 62, 71–72 (1986), further citing *De los Reyes v. Espineli*, 141 Phil. 247, 259 (1969); See also *Molina v. Rafferty*, 37 Phil. 545, 259 (1918).

<sup>85</sup> 395 Phil. 206 (2000).

application of the exclusionary rule in Section 3(2),<sup>86</sup> Article III of the 1987 Constitution.

The Court is not persuaded. ..

The 1987 Constitution recognizes the right of the people “to be secure in *their* persons, houses, papers, and effects against unreasonable searches and seizures[.]”<sup>87</sup> From the wording of the Constitution, it is obvious that the legality of a seizure can be contested *only* by the party whose rights have been impaired thereby and *not* by third parties.<sup>88</sup> Simply put, the right is *purely personal* and may be invoked only by a person who has a *requisite connection* to the place,<sup>89</sup> or by one who has asserted *ownership or a possessory interest* over the property searched.<sup>90</sup>

As such, if the property is owned by a third party and *not* by the person asserting the exclusionary rule, the claimant must demonstrate that he or she, personally, has an expectation of privacy in the place searched and that this expectation is reasonable, i.e., an expectation of privacy outside of ownership of the property, either by reference to concepts of real or personal property law *or* to understandings that are recognized and permitted by society.<sup>91</sup>

In the case at bar, the police officers allegedly trespassed a private land owned by Fabillar. Hence, even granting that arrest and search warrants were necessary, Jonel has no standing to invoke the right against unreasonable search and seizure because he has not asserted ownership of the land, a possessory interest over it, or any legitimate expectation of

<sup>86</sup> Under Section 3(2), Article III of the 1987 Constitution, any evidence obtained in violation of the right against unreasonable searches and seizure shall be inadmissible for any purpose in any proceeding.

<sup>87</sup> CONST., Art. III, Sec. 2.

<sup>88</sup> *Nasiad v. CTA*, 158 Phil. 888, 894–895 (1974). See also *Stonehill v. Diokno*, 126 Phil. 738, 745–746 (1967).

<sup>89</sup> *Id.* See also *Minnesota v. Carter*, 525 U.S. 83, 99 (1998) [Concurring Opinion (J. Kennedy)].

<sup>90</sup> *Rakas v. Illinois*, 439 U.S. 128, 148 (1978); *Simmons v. United States*, 390 U.S. 377, 389–390 (1968); *Jones v. United States*, 362 U.S. 257, 261–262 (1960).

<sup>91</sup> *Minnesota v. Carter*, *supra*, at 88. See also *Carpenter v. United States*, 585 U.S. 296, 304 (2018). For instance, in *Minnesota v. Olson*, 495 U.S. 91 (1990), a house guest invited by the owner was held to have a legitimate expectation of privacy while inside the house of the owner. In *Jones v. United States*, 362 U.S. 257 (1960), a person staying at another person’s apartment with the latter’s permission was held to have a legitimate expectation of privacy inside the apartment. In *Stoner v. California*, 376 U.S. 483 (1969), it was held that a hotel guest had a right against the unreasonable search of the room he was staying in. In *O’Connor v. Ortega*, 480 U.S. 709 (1987), it was held that a worker had a reasonable expectation of privacy in his office desk and file cabinets, which were not shared with other employees. In *Pollo v. Chairperson Constantino-David*, 675 Phil. 225 (2011), the Court identified indicators as to when an employee may have a reasonable expectation of privacy in his or her office-issued computer, as follows: (1) the employee had a separate enclosed office that was not shared with anyone; (2) the employee used passwords or adopted means to prevent other employees from accessing his or her computer files; and (3) the absence of company policy regulating the use of office computers, which would have placed the employee on notice that anything created, stored, or received on the office computer may be monitored by the company at any time.

privacy while on the lot owned by Fabillar. Plainly, without showing a requisite connection to the private land where the seized items were confiscated, Jonel's bare invocation of the exclusionary rule necessarily fails.

Assuming *arguendo* that Jonel had the requisite connection to the land where the seized items were located, the Court has long recognized that a violation of the statute *in flagrante delicto* permits law enforcers to enter the domicile of another without a warrant.<sup>92</sup> In *Ambre v. People*,<sup>93</sup> the Court held that therein accused's warrantless arrest *while inside his dwelling*, as well as the search conducted incidental thereto, was valid because the arrest was made only after the police officers, through an open window of the house, saw the accused sniffing *shabu*. Likewise, in *Miclat, Jr. v. People*,<sup>94</sup> the Court applied the *in flagrante delicto* exception in holding that therein accused's arrest and seizure of *shabu* at his house were held valid because the police, while conducting surveillance operations, passed by the dwelling and through an open window, saw the accused arranging plastic sachets of *shabu*.

As in the cases of *Ambre* and *Miclat*, Jonel was seen violating Section 16, Article II of RA 9165 *in flagrante delicto*. Given the situation, even if Jonel was seen on a private land, the arresting police officers had valid reasons to effect not only his arrest but also the search of his person and the immediate area within his control.

The foregoing notwithstanding, the Court finds that the prosecution failed to establish beyond reasonable doubt Jonel's guilt of the offense charged. His acquittal, therefore, is in order.

*The evidentiary value of the specimen presented before the RTC was not preserved, thereby warranting Jonel's acquittal.*

In cases involving dangerous drugs, the identity of the prohibited drugs is essential to prove the *corpus delicti* or the *actual commission by the accused of the particular offense charged*.<sup>95</sup> As the very *corpus delicti* of the offense, the dangerous drug and the fact of its

<sup>92</sup> *United States v. De los Reyes and Esguerra*, 20 Phil. 467, 475 (1911).

<sup>93</sup> 692 Phil. 681 (2012).

<sup>94</sup> 672 Phil. 191 (2011).

<sup>95</sup> *People v. Gonzales*, 708 Phil. 121, 127 (2013). See also *People v. Gatlabayan*, 669 Phil. 240, 251-252 (2011).

existence are vital to sustain a judgment of conviction.<sup>96</sup> It is therefore imperative that the prosecution prove with exactitude that the substance confiscated from the accused during the police operation is the same substance offered in evidence before the courts.<sup>97</sup>

Considering that the warrantless arrest and incidental search against Jonel took place in 2018, the applicable chain of custody procedure in the case is provided under Section 21, Article II of RA 9165, as amended by RA 10640.

Section 21, Article II of RA 9165, as implemented through the *PDEA Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640 (Guidelines)*,<sup>98</sup> was issued precisely as a method of authenticating the dangerous drugs forming part of the *corpus delicti*.<sup>99</sup> Strict compliance therewith is necessary to ensure that the exhibit being offered in evidence by the prosecution is what it purports to be, i.e., the illegal and dangerous drug seized from the accused.<sup>100</sup>

In the case, both the RTC and CA found that Section 21, Article II of RA 9165 was *not* strictly observed. As admitted by the Monkayo police officers, there was no representative from the media or the DOJ who was present during the marking and inventory of the items seized at the place of arrest. Yet, both courts determined that the non-observance of the procedural rules was sufficiently justified by the apprehending officers, given that the area where Jonel was arrested was secluded and out of the way. Both courts further concluded that there was substantial compliance with Section 21, Article II of RA 9165 as a second inventory was conducted at the Monkayo Police Station, where a media representative was present.

The Court agrees with the courts *a quo* that under the “saving clause” of Section 21, Article II of RA 9165, as amended, the failure to strictly observe the law does not *ipso facto* render the seizure and custody over the items as void.<sup>101</sup> Still, the failure to comply with the mandatory procedure is *not fatal* only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly

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<sup>96</sup> *People v. Bartolini*, 791 Phil. 626, 637 (2016).

<sup>97</sup> *Id.*

<sup>98</sup> Issued on May 28, 2015.

<sup>99</sup> *People v. Ismael*, 806 Phil. 21, 30–31 (2017), citing *Mallillin v. People*, 576 Phil. 576 (2008).

<sup>100</sup> *People v. Ismael*, *id.*

<sup>101</sup> *People v. Ramos*, 826 Phil. 981, 993 (2018). ”

preserved.<sup>102</sup> Absent these circumstances, the wording of Section 21 dictates that the seizure and custody of the confiscated items shall be rendered void and invalid.

Upon review of the records, the Court concludes that the foregoing exception under Section 21, Article II of RA 9165 does *not* apply to the present case because of the absence of justifiable reasons for non-compliance with the law.

A. *The identity of the marijuana plant presented in evidence has not been sufficiently established as the very same plant that was allegedly confiscated at the time of Jonel's arrest.*

Under Section 21, Article II of RA 9165, as amended, and the *Guidelines*, marking is the first stage in the chain of custody and 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.<sup>103</sup> The rule also applies to plant substances or sources of dangerous drugs.<sup>104</sup>

Marking bears relevance in criminal cases involving the alleged violations of RA 9165, where it is the prosecution's duty to ensure that the

<sup>102</sup> *People v. Bartolini*, *supra* note 96.

<sup>103</sup> *Nisperos v. People*, G.R. No. 250927, November 29, 2022.

<sup>104</sup> See Section 1(A.1.3) and (A.1.8) of the *Guidelines*, which states:

SECTION 1. *Implementing Guidelines.* — 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:

....  
A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

....  
A.1.8. *In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site.* Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/confiscated plant sources following the chain of custody of evidence. (Italics supplied)



illegal drugs tested in the laboratory and offered in court as evidence are the very same objects seized from the accused.<sup>105</sup> It is also crucial for the prosecution to *consistently describe* the very *corpus delicti* of the offense.<sup>106</sup>

In the case, the identity of the marijuana plant tested by PINSP Bajade, the forensic chemist, and presented in evidence before the RTC has not been adequately established as the very same plant that was supposedly confiscated from Jonel at the time of his arrest. Simply put, the evidence was *not properly identified* by the apprehending police officers in accordance with prevailing law and regulation.

In the letter-request<sup>107</sup> for laboratory examination of the marijuana plant, the specimen was allegedly tagged as “JG1” with signature. The Chain of Custody Evidence<sup>108</sup> documenting the turn-over of the specimen from PO1 Calamba to SPO1 Bualan identified the specimen in a similar manner.

However, in the Chemistry Report,<sup>109</sup> the specimen was described as “One (1) *transparent plastic bag* containing one (1) uprooted suspected Marijuana plant (height: 3’6”) marked and weighed as A {JG1} 15.9758 grams.” The records do not show how the marijuana plant allegedly confiscated at the crime scene was placed inside a plastic bag. Notably, the letter-request, Chain of Custody Evidence, and the Certificate of Inventory<sup>110</sup> uniformly do *not* refer to a marijuana plant inside a plastic container. Neither PO1 Calamba nor SPO1 Bualan testify in open court that they placed the marijuana plant confiscated at the site inside a plastic container. Even the photographs of the marijuana plant taken after its confiscation from the site do not show it inside a plastic bag.<sup>111</sup>

Further, to identify the marijuana plant tested by the forensic chemist as the *same* marijuana plant allegedly seized from the plant site, the weight “15.9758g” was intercalated by hand onto the *typewritten* letter-request for forensic examination of the specimen. Strikingly, the records do not show who made this handwritten intercalation, when it was made, and why it was not indicated at the time that the letter-request was typewritten and prepared. Worse, the police officers did not testify to

<sup>105</sup> *People v. Jaafar*, 803 Phil. 582, 591 (2017); *Nisperos v. People*, *supra* note 103.

<sup>106</sup> *People v. Abetong*, 735 Phil. 476, 490 (2014).

<sup>107</sup> Records, p. 15, Exhibit “G”.

<sup>108</sup> *Id.* at 19, Exhibit “J”.

<sup>109</sup> *Id.* at 16, Exhibit “H”.

<sup>110</sup> *Id.* at 20, Exhibit “C”.

<sup>111</sup> *Id.* at 21–23, Exhibit “I” series.



explain this handwritten annotation.

Moreover, the Court observes that the Certificate of Inventory failed to indicate the weight of the marijuana plant; likewise, PO1 Calamba did not mention that he weighed the plant or even estimated its weight. Yet the letter-request surprisingly bore a handwritten annotation on the *exact* weight of the plant which, incidentally, *matched* the weight of the marijuana specimen indicated in the Chemistry Report, i.e., 15.9758 grams. It thus appears that the intercalation in the letter-request was a mere afterthought and effected as an attempt to identify the marijuana plant seized from the crime scene as the very same specimen tested by the forensic chemist. This is a clear deviation from the mandatory procedure outlined in RA 9165, as amended by RA 10640, and the *Guidelines*.

Besides, PO1 Calamba's sworn statement<sup>112</sup> is manifestly *bereft* of any indication on the marking that he placed on the marijuana plant immediately after its confiscation.<sup>113</sup> The Certificate of Inventory<sup>114</sup> was also devoid of any indication of the marking placed on the marijuana plant allegedly seized from Jonel.

Strictly speaking, the *Guidelines* does not require that the marking made on the items seized be indicated in the Certificate of Inventory.<sup>115</sup> Still, given that the marking made on the marijuana plant *immediately after Jonel's arrest* does not appear in the sworn statement<sup>116</sup> of PO1 Calamba and PO1 Daquibig nor categorically testified on by PO1 Calamba, the Certificate of Inventory could have served as evidence on the marking of the seized items. The resounding silence of the Certificate of Inventory on the marking made on the confiscated items only bolsters the conclusion that there is a dearth of evidence on the police officers' compliance with the law.

In the end, what appears from the records is that the prosecution

<sup>112</sup> *Id.* at 11–12, Exhibit “A”.

<sup>113</sup> *Nisperos v. People*, *supra* note 103.

<sup>114</sup> Records, p. 20, Exhibit “C”.

<sup>115</sup> *People v. De la Trinidad*, 742 Phil. 347, 358–360 (2014).

<sup>116</sup> See *People v. Lim*, 839 Phil. 598 (2018), where the Court laid down mandatory policies on the observance of Section 21, RA 9165, as amended. Among the mandated policy is for the sworn statements/affidavits of the apprehending/seizing officers *to state their compliance with the requirements* of Section 21(1) of RA 9165, as amended, and its IRR, including the directive on marking of drugs seized during a lawful warrantless arrest under Items A.1.3 and A.1.8 of the *Guidelines*.

In *People v. Lim*, G.R. No. 231989 (Notice), November 13, 2018, the Court decreed that the mandatory policy in *Lim* only applies to cases filed *after* its promulgation. For cases which are already pending before *Lim* was issued, such as the present case, the justifiable reasons for non-compliance with the rule may still be established during trial.

failed to *consistently* describe the very *corpus delicti* of the offense charged.<sup>117</sup> Without it, the Court cannot determine with moral certitude that the plant specimen, which tested positive as marijuana and presented before the RTC, is the very same plant confiscated from the crime scene.

B. *There were unexplained irregularities in securing the attendance of the insulating witnesses required by law.*

Section 21(1), Article II of RA 9165, as amended, further requires that, *immediately after* seizure<sup>118</sup> and confiscation, the conduct of the physical inventory and photographing of the seized items be done “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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof[.]” The law further requires 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[.]”

Relevantly, in *Nisperos v. People*,<sup>118</sup> the Court explained that under Section 21(1), Article II of RA 9165, as amended, the mandatory insulating witnesses must already<sup>117</sup> be present at or near the place of apprehension in order for the immediate conduct of the inventory and photographing of the seized items to proceed, with the following guidelines:

1. The marking of the seized dangerous drugs must be done:
  - a. Immediately *upon* confiscation;
  - b. At the place of confiscation; and
  - c. In the presence of the offender (unless the offender eluded the arrest).
2. The conduct of inventory and taking of photographs of the seized dangerous drugs must be done:
  - a. Immediately *after* seizure and confiscation;

<sup>117</sup> *People v. Abetong*, *supra* note 106.

<sup>118</sup> *Supra* note 103.

- b. 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; and
- c. Also in the presence of the insulating witnesses, as follows:
  - i. if the seizure occurred during the effectivity of R.A. No. 9165, or from July 4, 2002 until August 6, 2014, the presence of three (3) witnesses, namely, an elected public official; a Department of Justice (DOJ) representative; *and* a media representative;
  - ii. if the seizure occurred after the effectivity of R.A. No. 10640, or from August 7, 2014 onward, the presence of two (2) witnesses, namely, an elected public official; and a National Prosecution Service representative *or* a media representative.
- 3. In case of any deviation from the foregoing, the prosecution must positively acknowledge the same and prove (1) justifiable ground/s for non-compliance and (2) the proper preservation of the integrity and evidentiary value of the seized item/s.<sup>119</sup>

Upon a careful review of the records, the Court finds that the foregoing rule was not observed, thereby warranting Jonel's acquittal.

*First*, as uniformly determined by both the RTC and CA, Section 21(1), Article II of RA 9165, as amended, was not strictly observed in the case at hand because there was *no representative from the media or the DOJ* who could have witnessed the physical inventory and photographing of the seized items at the site, or the place where Jonel was apprehended.

Perforce, it was incumbent upon the prosecution to prove justifiable grounds for non-observance of the law, which it failed to do.

It must be stressed that the attendance of the insulating witnesses during the inventory and taking of photographs is indispensable because it is "their presence at that point that would insulate against the police practices of planting evidence."<sup>120</sup> Hence, in case of non-compliance with the law, the prosecution must prove that *earnest efforts* were employed in contacting the DOJ or media representative.<sup>121</sup> A general averment that the representatives were unavailable, "without so much as an explanation on whether serious attempts were employed to look for other

<sup>119</sup> *Id.*

<sup>120</sup> *People v. Galisim*, 862 Phil. 703, 724 (2019), citing *People v. Adobar*, 832 Phil. 731, 754 (2018).

<sup>121</sup> *People v. Ramos*, *supra* note 101, at 996, citing *People v. Unipang*, 686 Phil. 1024, 1052-1053 (2012).

representatives, given the circumstances is to be regarded as a flimsy excuse.”<sup>122</sup>

Here, to justify the absence of a representative from the media or DOJ during the inventory and photographing of the seized items, PO1 Calamba mentioned that the plantation site was “out of the way.”<sup>123</sup> He stated that he exerted efforts to find a representative from the media or the DOJ to witness the inventory of the items seized.<sup>124</sup> Significantly, however, these “efforts” consisted of no more than bare allegations that were left unsubstantiated by any other evidence appearing on record.

A closer scrutiny of PO1 Calamba’s testimony also reveals that, in truth, the police officers exerted *no* earnest efforts to secure the attendance of a DOJ or media representative to witness the inventory and photographing of the seized items. On recross-examination, PO1 Calamba admitted that the apprehending police officers failed to contact any media before leaving the police station to travel to the site:

Q - Mr. Witness, with regards to the media representative, you said that the place was a “tuyuonon” or out of the way. Was that the reason why the media representative was not with you at that time?

A - Yes, Ma’am.

Q - But before going to the place, you were informed that they will be going to the area?

A - No, Ma’am.

Q - What I mean is, before leaving the police station, you formed the team and you were organized. Correct?

A - Yes, Ma’am.

Q - So at that time, you had that enough time to contact a media representative. Correct?

A - Yes, Ma’am.

Q - But you did not do so. Correct?

A - Yes, Ma’am.<sup>125</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 36.

<sup>124</sup> Records, p. 12, Exhibit “A”.

<sup>125</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, pp. 36–37.

It must be noted that the prosecution did not provide any *sufficient* justification on why a media representative was not contacted earlier to ensure compliance with RA 9165, as amended, and the *Guidelines*. The Court stresses that after receiving a tip from the CI, the police officers had ample time to form a team; PO1 Calamba and PO1 Daquibig even managed to switch to civilian clothing to avoid detection.<sup>126</sup> If the police officers had the time to do so before acting on the CI's tip, then there is simply no satisfactory reason why they neglected to contact the required insulating witnesses within the same timeframe.

Neither may the "second inventory" of the seized items be taken as substantial compliance with the law. While a media representative met the apprehending police officers at the Monkayo Police Station and signed the Certificate of Inventory during the so-called second inventory, this fact cannot be taken as substantial compliance. The law requires the insulating witness to be *present* and to *observe* the inventory and photographing of the seized items, not merely to sign the Certificate of Inventory.<sup>127</sup>

*Second*, there are irregularities in the presence of Brgy. Kwgd. Quilang, the insulating witness who was supposedly present during the inventory and photographing of the seized items immediately after seizure and confiscation.

Pursuant to *Nisperos*, the insulating witnesses under Section 21(1), Article II of RA 9165, as amended, must already be *at or near* the place of apprehension so that the inventory and photographing may be conducted *immediately after* seizure and confiscation. While the insulating witnesses under the law "are not required to witness the arrest and the seizure or confiscation of the drugs or drug paraphernalia," they need to be "*readily available* to witness the immediately ensuing inventory." Thus, in *People v. Tomawis*,<sup>128</sup> the Court rejected the pernicious practice of merely "calling-in" the insulating witnesses *only after the buy-bust operation's completion* because it "does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs."<sup>129</sup>

<sup>126</sup> *Id.* at 7; Records, p. 11, Exhibit "A".

<sup>127</sup> *People v. Dizon*, 861 Phil. 886, 903–904 (2019), citing *People v. Acabo*, 846 Phil. 705 (2019).

<sup>128</sup> 830 Phil. 385, 409 (2018), where the Court held that "[t]he practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and 'calling them in' to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs."

<sup>129</sup> *Id.*

Here, the testimony of PO1 Calamba on direct examination reveals that Brgy. Kgwd. Quilang was *not* readily available to witness the inventory. Instead, Quilang was “called-in” and contacted by the police to go to the place of apprehension only *after* Jonel was arrested:

Q - You also mentioned before this Honorable Court that you apprised [Jonel] of his rights. What do you mean by that?

A - We arrested him at around 8:00 A.M. and we read to him the Miranda Doctrine and all his rights.

....

Q - After you informed him of about his constitutional rights, what transpired next, if any?

A - PO1 Daquibig called the police station and informed [sic] that we successfully apprehended the accused and right after, *PO1 Campomanes went to the area to conduct the mandatory inventory.*

....

Q - If you know, where was the accused at the time of inventory?

A - He was in the area, Sir. *When our duty investigator [Campomanes] arrived, we called the assistance of Brgy. Kagawad Ruel Quilang.*

Q - You said that the accused was at the area. What do you mean by that, if you know?

A - He was at the area where we conducted the tagging of evidence and taking pictures.<sup>130</sup> (Italics supplied)

Hence, the evidence demonstrates that similar to *Tomawis*, Brgy. Kgwd. Quilang was merely “called-in” to sign the Certificate of Inventory and he was not *at or near* the place of apprehension at the time of Jonel’s arrest. This warrants the conclusion that the inventory and photographing of the seized items were not done *immediately after* seizure thereof, contrary to the requirements of RA 9165, as amended, and the *Guidelines*.

<sup>130</sup> TSN, PO1 Armand B. Calamba, Jr., September 17, 2018, pp. 8-9.

- C. *The Certificate of Inventory was not signed by Jonel, but the prosecution did not provide any justification for the absence of his signature on the said document.*

Finally, Section 1(A.1.5) of the *Guidelines* requires that the physical inventory and photographing of the confiscated items be done *in the presence of the accused*, who must *sign* the certificate of inventory or receipt. In case of refusal to sign, the phrase, “refused to sign” must be indicated above the accused’s name in the certificate or receipt.

In *People v. Manabat*,<sup>131</sup> the Court held that the absence of the accused’s signature in the Certificate of Inventory is a defect and deviation from the *Guidelines*, which must be acknowledged and adequately explained by the prosecution. As earlier discussed, Section 21, Article II of RA 9165, as amended, provides that non-compliance therewith shall not *ipso facto* render void and invalid the seizure of the dangerous drugs; however, the saving clause requires the prosecution to first (1) recognize any lapse on the part of the police officers and (2) be able to justify it.<sup>132</sup>

In the case, although PO1 Calamba mentioned that Jonel was present during the inventory and marking,<sup>133</sup> Jonel’s signature on the Certificate of Inventory is conspicuously absent. Neither did it bear any statement that Jonel refused to sign the Certificate, contrary to the *Guidelines*.

Similar to *Manabat*, the prosecution in the case at bar did not even acknowledge that the Certificate of Inventory was defective for not bearing the signature of Jonel or, in case of refusal, an annotation above his name that he refused to sign the Certificate. Neither did it provide any reason as to why the Certificate of Inventory was not signed by Jonel even though he was supposedly present during the inventory and marking. Indubitably, the requirements of Section 21(1), Article II of RA 9165, as amended, and the *Guidelines* were not met, yet the prosecution failed to provide any adequate explanation for their non-observance.

All told, there is no satisfactory reason for the Court to relax the

<sup>131</sup> 857 Phil. 250 (2019).

<sup>132</sup> *Id.* at 270–271.

<sup>133</sup> TSN, PO1 Armando B. Calamba, Jr., September 17, 2018, p. 9.



requirements of Section 21, Article II of RA 9165, as amended, because non-compliance therewith was not sufficiently justified by the police and the prosecution. Accordingly, there is no reason to discuss anymore the other links in the chain of custody. The aforementioned lapses are already sufficient to create reasonable doubt on the integrity and the evidentiary value of the seized items.

**ACCORDINGLY**, the appeal is hereby **GRANTED**. The Decision dated November 26, 2020, of the Court of Appeals in CA-G.R. CR-HC No. 02223 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **JONEL F. GEPITULAN** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. 100-2018-MNK filed with Branch 56, Regional Trial Court, Compostela, Compostela Valley. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Penal Superintendent of Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte for immediate implementation. Furthermore, the Penal Superintendent is **DIRECTED** to report to this Court the action he/she has taken within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.


**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*



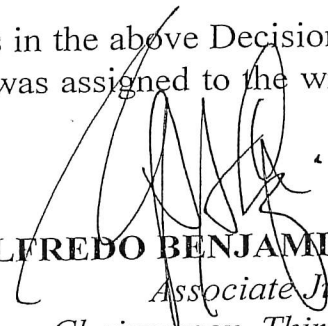
**JAPAR B. DIMAAMPAO**  
*Associate Justice*



**MARIA FILOMENA D. SINGH**  
*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.



**ALFREDO BENJAMIN S. CAGUIOA**  
*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.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*

