

JUNIE MALLILLIN Y. LOPEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 172953. April 30, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-172953/>**TINGA, J.:**

The presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.

In this Petition for Review[1] under Rule 45 of the Rules of Court, Junie Malillin y Lopez (petitioner) assails the Decision[2] of the Court of Appeals dated 27 January 2006 as well as its Resolution[3] dated 30 May 2006 denying his motion for reconsideration. The challenged decision has affirmed the Decision[4] of the Regional Trial Court (RTC) of Sorsogon City, Branch 52[5] which found petitioner guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, locally known as shabu, a prohibited drug.

The antecedent facts follow.

On the strength of a warrant[6] of search and seizure issued by the RTC of Sorsogon City, Branch 52, a team of five police officers raided the residence of petitioner in Barangay Tugos, Sorsogon City on 4 February 2003. The team was headed by P/Insp. Catalino Bolanos (Bolanos), with PO3 Roberto Esternon (Esternon), SPO1 Pedro Docot, SPO1 Danilo Lasala and SPO2 Romeo Gallinera (Gallinera) as members. The search--conducted in the presence of barangay kagawad

Delfin Licup as well as petitioner himself, his wife Sheila and his mother, Norma--allegedly yielded two (2) plastic sachets of shabu and five (5) empty plastic sachets containing residual morsels of the said substance.

Accordingly, petitioner was charged with violation of Section 11,[7] Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, in a criminal information whose inculpatory portion reads:

That on or about the 4[th] day of February 2003, at about 8:45 in the morning in Barangay Tugos, Sorsogon City, Philippines, the said accused did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of methamphetamine hydrochloride [or] "shabu" with an aggregate weight of 0.0743 gram, and four empty sachets containing "shabu" residue, without having been previously authorized by law to possess the same.

CONTRARY TO LAW.[8]

Petitioner entered a negative plea.[9] At the ensuing trial, the prosecution presented Bolanos, Arroyo and Esternon as witnesses.

Taking the witness stand, Bolanos, the leader of the raiding team, testified on the circumstances surrounding the search as follows: that he and his men were allowed entry into the house by petitioner after the latter was shown

the search warrant; that upon entering the premises, he ordered Esternon and barangay kagawad Licup, whose assistance had previously been requested in executing the warrant, to conduct the search; that the rest of the police team positioned themselves outside the house to make sure that nobody flees; that he was observing the conduct of the search from about a meter away; that the search conducted inside the bedroom of petitioner yielded five empty plastic sachets with suspected shabu residue contained in a denim bag and kept in one of the cabinets, and two plastic sachets containing shabu which fell off from one of the pillows searched by Esternon--a discovery that was made in the presence of petitioner.[10] On cross examination, Bolanos admitted that during the search, he was explaining its progress to petitioner's mother, Norma, but that at the same time his eyes were fixed on the search being conducted by Esternon.[11]

Esternon testified that the denim bag containing the empty plastic sachets was found "behind" the door of the bedroom and not inside the cabinet; that he then found the two filled sachets under a pillow on the bed and forthwith called on Gallinera to have the items recorded and marked.[12] On cross, he admitted that it was he alone who conducted the search because Bolanos was standing behind him in the living room portion of the house and that petitioner handed to him the things to be searched, which included the pillow in which the two sachets of shabu were kept;[13] that he brought the seized items to the Balogo Police Station for a "true inventory," then to the trial court[14] and thereafter to the laboratory.[15]

Supt. Lorlie Arroyo (Arroyo), the forensic chemist who administered the examination on the seized items, was presented as an expert witness to identify the items submitted to the laboratory. She revealed that the two filled sachets were positive of shabu and that of the five empty sachets, four were positive of containing residue of the same substance.[16] She further admitted that all seven sachets were delivered to the laboratory by Esternon in the afternoon of the same day that the warrant was executed except that it was not she but rather a certain Mrs. Ofelia Garcia who received the items from Esternon at the laboratory.[17]

The evidence for the defense focused on the irregularity of the search and seizure conducted by the police operatives. Petitioner testified that Esternon began the search of the bedroom with Licup and petitioner himself inside. However, it was momentarily interrupted when one of the police officers declared to Bolanos that petitioner's wife, Sheila, was tucking something inside her underwear. Forthwith, a lady officer arrived to conduct the search of Sheila's body inside the same bedroom. At that point, everyone except Esternon was asked to step out of the room. So, it was in his presence that Sheila was searched by the lady officer. Petitioner was then asked by a police officer to buy cigarettes at a nearby store and when he returned from the errand, he was told that nothing was found on Sheila's body.[18] Sheila was ordered to transfer to the other bedroom together with her children.[19]

Petitioner asserted that on his return from the errand, he was summoned by Esternon to the bedroom and once inside, the officer closed the door and asked him to lift the mattress on the bed. And as he was doing as told, Esternon stopped him and ordered him to lift the portion of the headboard. In that instant, Esternon showed him "sachet of shabu" which according to him came from a pillow on the bed.[20] Petitioner's account in its entirety was corroborated in its material respects by Norma, barangay kagawad Licup and Sheila in their testimonies. Norma and Sheila positively declared that petitioner was not in the house for the entire duration of the search because at one point he was sent by Esternon to the store to buy cigarettes while Sheila was being searched by the lady officer.[21] Licup for his part testified on the circumstances surrounding the discovery of the plastic sachets. He recounted that after the five empty sachets were found, he went out of the bedroom and into the living room and after about three minutes, Esternon, who was left inside the bedroom, exclaimed that he had just found two filled sachets.[22]

On 20 June 2004 the trial court rendered its Decision declaring petitioner guilty beyond reasonable doubt of the

offense charged. Petitioner was condemned to prison for twelve years (12) and one (1) day to twenty (20) years and to pay a fine of P300,000.00.[23] The trial court reasoned that the fact that shabu was found in the house of petitioner was prima facie evidence of petitioner's animus possidendi sufficient to convict him of the charge inasmuch as things which a person possesses or over which he exercises acts of ownership are presumptively owned by him. It also noted petitioner's failure to ascribe ill motives to the police officers to fabricate charges against him.[24]

Aggrieved, petitioner filed a Notice of Appeal.[25] In his Appeal Brief[26] filed with the Court of Appeals, petitioner called the attention of the court to certain irregularities in the manner by which the search of his house was conducted. For its part, the Office of the Solicitor General (OSG) advanced that on the contrary, the prosecution evidence sufficed for petitioner's conviction and that the defense never advanced any proof to show that the members of the raiding team was improperly motivated to hurl false charges against him and hence the presumption that they had regularly performed their duties should prevail.[27]

On 27 January 2006, the Court of Appeals rendered the assailed decision affirming the judgment of the trial court but modifying the prison sentence to an indeterminate term of twelve (12) years as minimum to seventeen (17) years as maximum.[28] Petitioner moved for reconsideration but the same was denied by the appellate court.[29] Hence, the instant petition which raises substantially the same issues.

In its Comment,[30] the OSG bids to establish that the raiding team had regularly performed its duties in the conduct of the search.[31] It points to petitioner's incredulous claim that he was framed up by Esternon on the ground that the discovery of the two filled sachets was made in his and Licup's presence. It likewise notes that petitioner's bare denial cannot defeat the positive assertions of the prosecution and that the same does not suffice to overcome the prima facie existence of animus possidendi.

This argument, however, hardly holds up to what is revealed by the records.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[32] In the case at bar, several circumstances obtain which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction.[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[35]

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.[36] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses

would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[37]

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness.[38] The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination[39] and even substitution and exchange.[40] In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering--without regard to whether the same is advertent or otherwise not--dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.[41] *Graham vs. State*[42] positively acknowledged this danger. In that case where a substance later analyzed as heroin--was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession--was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.[43]

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

A mere fleeting glance at the records readily raises significant doubts as to the identity of the sachets of shabu allegedly seized from petitioner. Of the people who came into direct contact with the seized objects, only Esternon and Arroyo testified for the specific purpose of establishing the identity of the evidence. Gallinera, to whom Esternon supposedly handed over the confiscated sachets for recording and marking, as well as Garcia, the person to whom Esternon directly handed over the seized items for chemical analysis at the crime laboratory, were not presented in court to establish the circumstances under which they handled the subject items. Any reasonable mind might then ask the question: Are the sachets of shabu allegedly seized from petitioner the very same objects laboratory tested and offered in court as evidence?

The prosecution's evidence is incomplete to provide an affirmative answer. Considering that it was Gallinera who recorded and marked the seized items, his testimony in court is crucial to affirm whether the exhibits were the same items handed over to him by Esternon at the place of seizure and acknowledge the initials marked thereon as his own. The same is true of Garcia who could have, but nevertheless failed, to testify on the circumstances under which she received the items from Esternon, what she did with them during the time they were in her possession until before she delivered the same to Arroyo for analysis.

The prosecution was thus unsuccessful in discharging its burden of establishing the identity of the seized items because it failed to offer not only the testimony of Gallinera and Garcia but also any sufficient explanation for such failure. In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment. This holds true not only with respect to the two filled sachets but also to the five sachets allegedly containing morsels of shabu.

Also, contrary to what has been consistently claimed by the prosecution that the search and seizure was conducted in a regular manner and must be presumed to be so, the records disclose a series of irregularities committed by the police officers from the commencement of the search of petitioner's house until the submission of the seized items to the laboratory for analysis. The Court takes note of the un rebutted testimony of petitioner, corroborated by that of his wife, that prior to the discovery of the two filled sachets petitioner was sent out of his house to buy cigarettes at a nearby store. Equally telling is the testimony of Bolanos that he posted some of the members of the raiding team at the door of petitioner's house in order to forestall the likelihood of petitioner fleeing the scene. By no stretch of logic can it be conclusively explained why petitioner was sent out of his house on an errand when in the first place the police officers were in fact apprehensive that he would flee to evade arrest. This fact assumes prime importance because the two filled sachets were allegedly discovered by Esternon immediately after petitioner returned to his house from the errand, such that he was not able to witness the conduct of the search during the brief but crucial interlude that he was away.

It is also strange that, as claimed by Esternon, it was petitioner himself who handed to him the items to be searched including the pillow from which the two filled sachets allegedly fell. Indeed, it is contrary to ordinary human behavior that petitioner would hand over the said pillow to Esternon knowing fully well that illegal drugs are concealed therein. In the same breath, the manner by which the search of Sheila's body was brought up by a member of the raiding team also raises serious doubts as to the necessity thereof. The declaration of one of the police officers that he saw Sheila tuck something in her underwear certainly diverted the attention of the members of petitioner's household away from the search being conducted by Esternon prior to the discovery of the two filled sachets. Lest it be omitted, the Court likewise takes note of Esternon's suspicious presence in the bedroom while Sheila was being searched by a lady officer. The confluence of these circumstances by any objective standard of behavior contradicts the prosecution's claim of regularity in the exercise of duty.

Moreover, Section 21[44] of the Implementing Rules and Regulations of R.A. No. 9165 clearly outlines the post-seizure procedure in taking custody of seized drugs. In a language too plain to require a different construction, it mandates that the officer acquiring initial custody of drugs under a search warrant must conduct the photographing and the physical inventory of the item at the place where the warrant has been served. Esternon deviated from this procedure. It was elicited from him that at the close of the search of petitioner's house, he brought the seized items immediately to the police station for the alleged purpose of making a "true inventory" thereof, but there appears to be no reason why a true inventory could not be made in petitioner's house when in fact the apprehending team was able to record and mark the seized items and there and then prepare a seizure receipt therefor. Lest it be forgotten, the raiding team has had enough opportunity to cause the issuance of the warrant which means that it has had as much time to prepare for its implementation. While the final proviso in Section 21 of the rules would appear to excuse non-compliance therewith, the same cannot benefit the prosecution as it failed to offer any acceptable justification for Esternon's course of action.

Likewise, Esternon's failure to deliver the seized items to the court demonstrates a departure from the directive in the search warrant that the items seized be immediately delivered to the trial court with a true and verified inventory of the same,[45] as required by Rule 126, Section 12[46] of the Rules of Court. *People v. Go*[47] characterized this requirement as mandatory in order to preclude the substitution of or tampering with said items

by interested parties.[48] Thus, as a reasonable safeguard, *People vs. Del Castillo*[49] declared that the approval by the court which issued the search warrant is necessary before police officers can retain the property seized and without it, they would have no authority to retain possession thereof and more so to deliver the same to another agency.[50] Mere tolerance by the trial court of a contrary practice does not make the practice right because it is violative of the mandatory requirements of the law and it thereby defeats the very purpose for the enactment.[51]

Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the Court of Appeals on the presumption of regularity in the conduct of police duty is manifestly misplaced. The presumption of regularity is merely just that--a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[52] Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.[53] In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.[54] In *dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.

WHEREFORE, the assailed Decision of the Court of Appeals dated 27 January 2006 affirming with modification the judgment of conviction of the Regional Trial Court of Sorsogon City, Branch 52, and its Resolution dated 30 May 2006 denying reconsideration thereof, are REVERSED and SET ASIDE. Petitioner Junie Malillin y Lopez is ACQUITTED on reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

CONCHITA CARPIO MORALES

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ARTURO D. BRION

Associate Justice

[1] Rollo, pp. 8-22.

[2] In CA-G.R. No. 28915. Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo. CA rollo, pp. 81-90.

[3] Id. at 109.

[4] In Criminal Case No. 2003-5844. Records, pp. 114-119.

[5] Presided by Judge Honesto A. Villamor.

[6] Records, pp. 11-12.

[7] Sec. 11. Possession of Dangerous Drugs.--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, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof;

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[8] Records, p. 2.

[9] Id. at 41, 43.

[10] TSN, 22 April 2003, pp. 6-9.

[11] Id. at 15-16.

[12] TSN, 23 July 2003, pp. 6-7, 10.

[13] Id. at 16-17.

[14] TSN, 23 July 2003, pp. 13-15.

[15] Id. at 9.

[16] TSN, 28 May 2003, p. 14. The results of the chemical analysis are embodied in Chemistry Report No. D-037-03. See records, p. 18.

[17] Id. at 3.

[18] TSN, 2 December 2003, pp. 6-10.

[19] Id. at 13.

[20] Id. at 11-12.

[21] TSN, 11 November 2003, p. 3; TSN, 23 March 2004, p. 4.

[22] TSN, 4 February 2004, pp. 4-5, 9.

[23] Records, p. 119. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court finds accused Junie Malillin y Lopez guilty beyond reasonable doubt of the crime of Violation of Sec. 11, Article II of R.A. No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentence[d] to suffer the penalty of Twelve (12) years and one (1) day to Twenty (20) years and fine of P300,000.00.

The shabu recovered is hereby ordered forfeited in favor of the government and the same shall be turned over to the Board for proper disposal without delay.

SO ORDERED.

[24] Id. at 117-118.

[25] Id. at 121.

[26] CA rollo, pp. 35-47.

[27] Id. at 65-73.

[28] Id. at 89. The Court of Appeals disposed of the appeal as follows:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal is DISMISSED for lack of merit, and the judgment appealed from is hereby AFFIRMED with MODIFICATION in the sense that the accused-appellant is hereby sentenced to suffer an indeterminate prison term ranging from twelve (12) years, as minimum, to seventeen (17) years as maximum. In all other respects, the judgment appealed from is hereby MAINTAINED. Costs against accused-appellant.

SO ORDERED.

[29] Id. at 109.

[30] Rollo, pp. 102-112.

[31] Id. at 107.

[32] People v. Pedronan, G.R. No. 148668, 17 June 2003, 404 SCRA 183, 188; People v. Casimiro, G.R. No. 146277, 20 June 2002, 383 SCRA 390, 398; People v. Laxa, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 627.

[33] People v. Simbahon, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100; People v. Laxa, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 634; People v. Dismuke; People v. Mapa;

[34] People v. Simbahon, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100; People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70.

[35] An Analytical Approach to Evidence, Ronald J. Allen, Richard B. Kuhns, by Little Brown & Co., USA, 1989, p. 174.

[36] United States v. Howard-Arias, 679 F.2d 363, 366; United States v. Ricco, 52 F.3d 58.

[37] Evidence Law, Roger C. Park, David P. Leonard, Steven H. Goldberg, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507.

[38] Evidence Law, Roger C. Park, David P. Leonard, Steven H. Goldberg, 1998, 610 Opperman Drive, St. Paul Minnesota, p. 507; 29A Am. Jur. 2d Evidence § 946.

[39] 29A Am. Jur. 2d Evidence § 946.

[40] See Graham v. State, 255 N.E.2d 652, 655.

[41] Graham v. State, 255 N.E.2d 652, 655.

[42] Graham v. State, 255 N.E.2d 652.

[43] Graham v. State, 255 N.E.2d 652, 655.

[44] 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.-- x x x

(a)

The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her 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 the said items; x x x (emphasis ours).

[45] Records, p. 12.

[46] SEC. 12. Delivery of property and inventory thereof to court.-- The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

[47] G.R. No. 144639, 12 September 2003, 411 SCRA 81.

[48] Id. at 101.

[49] G.R. No. 153254, 20 September 2004, 439 SCRA 601, citing *People v. Gesmundo*, 219 SCRA 743 (1993).

[50] Id. at 619.

[51] *People v. Gesmundo*, G.R. No. 89373, 9 March 1993, 219 SCRA 743, 753.

[52] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[53] *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[54] *People v. Laxa*, id. at 627; *People v. Diopita*, 4 December 2000; *People v. Malbog*, 12 October 2000; *People v. Ferras*, 289 SCRA 94.

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