

Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

SALIC MAPANDI y DIMAAMPAO,
Petitioner,

G.R. No. 200075

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

April 4, 2018

X

[Signature]

X

DECISION

MARTIRES, J.:

Before us is an appeal by way of petition for review on certiorari from the 20 December 2011 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 04535. The instant petition was reinstated after we granted Salic Mapandi y Dimaampao's (*Mapandi*) motion for reconsideration and set aside our earlier Resolution dated 25 April 2012.² After the Office of the Solicitor General filed its comment to the petition, we now resolve the petition at hand.

THE FACTS

Mapandi was charged before the Regional Trial Court, Branch 75, Olongapo City (RTC), in Criminal Case No. 512-07 for violating Article II, Section 5 of Republic Act (R.A.) No. 9165. The information against him reads:

[Signature]

¹ *Rollo*, pp. 26-36. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr.

² *Id.* at 127.

That on or about the Tenth (10th) day of November 2007, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully, and knowingly sell, deliver, and give away to another person ₱500.00 (SN CV441949) worth of Methamphetamine Hydrochloride, otherwise known as “shabu” which is a dangerous drug, in one (1) heat sealed transparent plastic sachet weighing sixteen grams and one-tenth of a gram (16.1).

CONTRARY TO LAW.³


On 21 February 2008, Mapandi, with the assistance of counsel, was arraigned and entered a plea of not guilty. Pre-trial and trial on the merits followed.

The Prosecution's Evidence

On 9 November 2007, a civilian asset reported to P/Insp. Julius Javier (*PI Javier*) that Mapandi was a Pasig City-based drug dealer whose deals extended to Olongapo City. After the civilian asset arranged a meeting with Mapandi, PI Javier formed a buy-bust team wherein PO2 Hortencio Javier (*PO2 Javier*) would act as poseur-buyer, and PO1 David Sergius Domingo (*PO1 Domingo*) and PO2 Rene Pundavela (*PO2 Pundavela*) were his immediate backup. PI Javier gave PO2 Javier the ₱500.00 pre-marked money which was photocopied repeatedly then bundled to make it appear it was worth ₱50,000.00.

The following day, or on 10 November 2007, the buy-bust team proceeded to the second floor of a KFC restaurant and waited for Mapandi. Two hours later, at about 5:20 P.M., Mapandi arrived and was introduced by the civilian asset to PO2 Javier. Mapandi then took out a white envelope, suspected to contain shabu, and handed it to PO2 Javier who, in turn, handed him the boodle money and placed the envelope in his pocket. PO2 Javier then gave the pre-arranged signal to alert his backup who would aid in the arrest.

Thereafter, Mapandi and the suspected envelope containing drugs, which was in PO2 Javier's possession, were brought to the police station. It was in the police station where PO2 Javier allegedly marked the suspected drugs with his initials “HJ.” After the request for laboratory examination and other documents were prepared by PO2 Pundavela, the drugs were then brought to the laboratory. The chemistry report showed that the specimen tested positive for 16.1 grams of methamphetamine hydrochloride.



³ Id. at 45.

The Version of the Defense.

On his part, Mapandi raised the defense of denial and instigation. He said that he was in Olongapo City, on 10 November 2007, because he was trading cellphone merchandise with Arnel Pangkatan (*Pangkatan*). After he dropped off his supplies at Pangkatan's store, Mapandi decided to eat at the local Jollibee. However, since there were no seats available, he proceeded to the nearby KFC.

While having his meal, Mapandi claimed that several men approached and arrested him. These men told him that he had shabu in his possession, then boarded him in a vehicle and brought him to the police station. Mapandi insists that the drugs were planted.

Pangkatan corroborated Mapandi's testimony saying that the latter was indeed engaged in the business of trading cellphone merchandise.

The Ruling of the Trial Court

In its 4 May 2010 Judgment,⁴ finding all the essential elements of illegal sale of shabu to be proven, the RTC found Mapandi guilty as charged. Hence, the RTC ruled:

WHEREFORE, the Court finds the accused **SALIC MAPANDI y DIMAAMPAO GUILTY** beyond reasonable doubt of Violation of Section 5, R.A. No. 9165 and hereby sentences him to suffer the penalty of **life imprisonment** and to **pay a fine of ₱500,000.00 plus costs**, and to suffer the accessory penalties under Section 35 thereof.

Accused Salic Mapandi being under detention shall be credited in the service of his sentence with the full time during which he had undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code, as amended.

The one (1) heat-sealed transparent plastic sachet of "shabu" weighing 16.1 grams is forfeited in favor of the government and to be disposed of in accordance with law.

SO DECIDED.⁵



⁴ Records, pp. 292-298.

⁵ Id. at 298.

The Assailed CA Decision

In its assailed decision, the CA affirmed *in toto* the RTC's decision that Mapandi's arrest was the result of a valid buy-bust operation.

In addressing the issue on the chain of custody of the seized drugs, the CA said:

Finally, it has been shown that the chain of custody of the seized shabu was continuous and unbroken. The evidence has shown that the "shabu" sold by accused-appellant remained in the possession of PO2 Javier from the moment of delivery and when markings were made at the crime scene and at the police station where it was turned over to PO2 Pundavela. PO2 Pundavela then prepared the evidence custodian report and receipt of property seized affirming that he received the same from both PO2 Javier and PO1 Domingo, and which was promptly delivered to the PNP Crime Laboratory for examination. PO2 Javier identified before the court the drug sachet submitted at the PNP crime laboratory as the same drug he received from the accused-appellant during the buy-bust operation. Here, the key persons who came in direct contact with the shabu were presented in court and corroborated each other's testimony on how the seized drugs changed hands establishing an unbroken chain of custody.


Be that as it may, from the language of Section 21, the failure to observe strict compliance under justifiable grounds does not *ipso facto* render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. Here, while the police officers may not have strictly followed to the letter the prescribed procedure, it was sufficiently shown that the substances seized were the same substances which were taken from the accused-appellant and subjected to forensic examination. The integrity and evidentiary value of the seized items have been properly preserved.

WHEREFORE, the appeal is **DENIED**. The Decision dated 04 May 2010 of the Regional Trial Court, Branch 75, Olongapo City is hereby **AFFIRMED**.

SO ORDERED.⁶

From this CA decision, the case is now before us for final review.

OUR RULING

We find merit in the appeal. 

⁶ Rollo, pp. 34-35.

Procedural Matters

At the outset, we note that the mode of appeal taken to challenge the assailed CA decision is wrong. Rule 56 of the Rules of Court is explicit:

SEC. 3. Mode of appeal. An appeal to the Supreme Court may be taken only by a petition for review on *certiorari*, **except** in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment.

Mapandi clearly availed of the wrong mode of appeal by filing a petition for review on *certiorari*, despite having been sentenced by the lower court to life imprisonment. The reason for this exception is obvious: an appeal in criminal cases throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment; or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.⁷ The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.⁸

In this case, however, we take exception to the rule. We can brush aside this procedural mistake because, as much as possible, we refrain from disposing criminal cases out of sheer technicality. This notion becomes more relevant when the circumstances suggest we should not do so.

Substantive Matters: The Identity and Integrity of the Seized Drugs

The importance of compliance with the procedure laid out in Section 21 of R.A. No. 9165 and properly proving the chain of custody over seized drugs is echoed and imbedded in our jurisprudence. Although both law and jurisprudence have already set a precedent on how seized drugs should be handled, lower courts are still confused on when to excuse strict compliance from Section 21 of R.A. No. 9165. Finding this case to be one where the lower courts have overlooked the prosecution's evidence, we find it proper to correct them and order Mapandi's acquittal.



⁷ *Ramos v. People*, G.R. No. 218466, 23 January 2017.

⁸ *People v. Bagamano*, G.R. No. 222658, 17 August 2016, 801 SCRA 209, 214, citing *People v. Comboy*, G.R. No. 218399, 2 March 2016, 785 SCRA 512, 521.


To prove the existence of the *corpus delicti* in drug cases, the prosecution must establish that the identity and the integrity of the dangerous drug itself were preserved.⁹ Thus, to remove any doubt and uncertainty, Section 21 of R.A. No. 9165 proscribes:

Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject items: *Provided*, that when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of the testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the qualities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; [x x x]

The provision dictates that the apprehending team shall, **immediately after confiscation**, conduct a physical inventory and photograph the seized items ***in the presence of*** the accused or the person from whom the items were seized, his representative or counsel, a representative from the media and the Department of Justice, and any elected public official. 

⁹ The identity of the confiscated drugs is preserved when we can say that drugs presented offered as evidence in court is the exact same item that was seized or confiscated from the accused at the time of his arrest. The preservation of the drugs' integrity, on the other hand, means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that cast doubt as to its existence.

To reinforce these guidelines set by law, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 (*IRR*) filled-in the details as to where the inventory and photographing of seized items had to be done, and even *added a saving clause* in case the procedure is not followed, to wit:

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 the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.¹⁰ [underscoring ours]

While in certain cases the last *proviso* in the *IRR* was used to justify the procedural lapses of the apprehending team, we have to be mindful that the *proviso* operates only when there was noncompliance with the procedure found in Section 21 of R.A. No. 9165. Before going into the links of the chain of custody, we have to first check if the statutory safeguards have been complied with.

Based on the evidence presented by the prosecution, the requirement for the insulating witnesses to be present was not complied with at all. The members of the apprehending team never mentioned the presence of any media representative, DOJ representative, or elected official during the physical inventory. Worse, they also failed to show that the inventory was done before Mapandi or his representative. For all we know, the apprehending team could have done all this behind closed doors. Although we cannot assume this was what happened, due to the lack of any testimony or proof suggesting otherwise, serious or reasonable doubt sets in.



¹⁰ In R.A. No. 106640, the amendment to Section 21 of R.A. No. 9165 was introduced where the last *proviso* in the *IRR* was incorporated in the law itself.

Since there had been non-compliance with Section 21 of R.A. No. 9165, the saving clause in the IRR (now incorporated as an amendment into R.A. No. 9165) operates. However, we have to be careful in using this as its language requires closer inspection. As a general rule, strict compliance with Section 21 of R.A. No. 9165 is mandatory.¹¹ The Court only excuses non-compliance when: (1) there exist justifiable grounds to allow departure from the rule, **and** (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team.¹² If these two (2) elements are present, the seizures and custody over the confiscated items shall not be doubted.

In *People v. Kamad*,¹³ the Court held that the following links must be established in the chain of custody:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.¹⁴

Without having to consider the other three (3) links, we can already conclude that the chain of custody was not preserved in this case because the prosecution failed to prove the most important and crucial link — marking the seized drug.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.¹⁵ In *People v. Gonzales*,¹⁶ we explained that:



¹¹ *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475-476 (2016).

¹² *People v. Viterbo*, 739 Phil. 593, 603 (2014); *People v. Umpiang*, 686 Phil. 1024, 1038 (2012); *People v. Alagarme*, 754 Phil. 449, 458 (2012).

¹³ 624 Phil. 289 (2010).

¹⁴ *Id* at 304.

¹⁵ *Valencia v. People*, 725 Phil. 268, 280 (2014), citing *People v. Coreche*, 612 Phil. 1238, 1245 (2009).

¹⁶ *People v. Gonzales*, 708 Phil. 121 (2013).

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.¹⁷

With this in mind, we note that PO2 Javier testified that he marked the drugs when he returned to the police station after the buy-bust operation:

Q: And you said Salic Mapandi was arrested, where was he brought?

A: At our office, sir, at Camp Cabal.

Q: And what about the shabu that you bought, who brought that to your office?

A: I [did], sir.

Q: And at the office, what happened?

A: I put my marking on the confiscated suspected shabu, sir.

Q: What marking [did] you place?

A: The initials of my name, sir. "HJ," sir.

Q: After you placed the markings, what happened next?

A: I turned it over to our Desk Officer, sir. PO2 Puntavera, sir.

Q: What was turned over to [PO2] Puntavera?

A: The confiscated shabu, sir.¹⁸

From his testimony, we gather that he had marked the seized item with his initials "HJ." However, upon closer examination of the documents prepared after the buy-bust operation, i.e., the affidavit of apprehension, the receipt of property/evidence seized, and the request for laboratory examination, show that the markings on the supposed confiscated drug was "DEG-SDM-01-11-10-07."¹⁹ Even the chemistry report indicates that the specimen that was examined was "one (1) heat-sealed transparent plastic sachet with markings "DEG-SDM-01-11-10-07 containing 16.1 grams of alleged Methamphetamine Hydrochloride" and not an item that was marked

¹⁷ Id. at 130-131.

¹⁸ TSN, July 1, 2008, pp. 20-21.

¹⁹ Records, pp. 5-10.

with “HJ.”²⁰ On this discrepancy alone, the prosecution’s evidence establishing the chain of custody shatters because we are uncertain if what was examined in the laboratory was the same item that was confiscated from Mapandi. If the point of marking is to set it apart from other pieces of evidence of similar nature or to ensure that there was no planting or switching evidence, we cannot say those objectives were met under these circumstances.

Given the procedural lapses pointed out above, serious uncertainty hangs over the identification of the shabu that the prosecution introduced in evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.

All said, after due consideration, we resolve to acquit Mapandi, as the prosecution’s evidence failed to prove his guilt beyond reasonable doubt. Specifically, the prosecution failed to show that the police complied with Section 21 of R.A. No. 9165 and with the chain of custody requirement, in order to prove the identity and integrity of the subject drugs in this case.

WHEREFORE, premises considered, the 20 December 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 04535 is **REVERSED** and **SET ASIDE**. Salic Mapandi y Dimaampao is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is detained for any other lawful cause.


Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

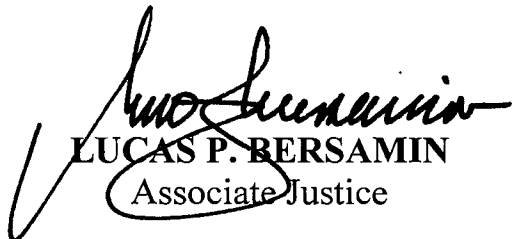

SAMUEL R. MARTIRES
Associate Justice

²⁰ Id. at 12.

WE CONCUR:



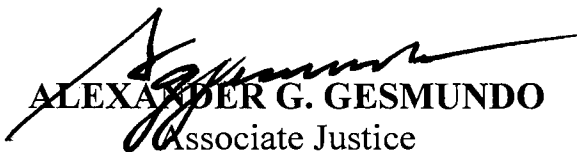
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



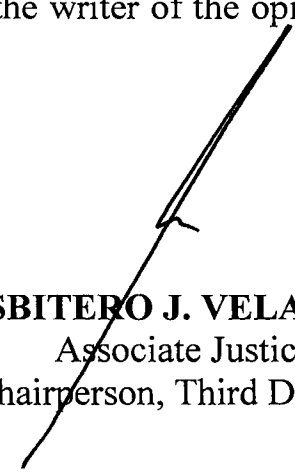
MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

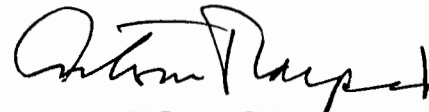
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

CERTIFICATION

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



ANTONIO T. CARPIO
Acting Chief Justice