



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division  
 AUG 17 2018

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. NO. 224588**  
 Present:

-versus-

VELASCO, JR., *J., Chairperson*  
 BERSAMIN,  
 LEONEN,  
 MARTIRES and  
 GESMUNDO, *JJ.*

**RODEL BELMONTE y SAA,**  
*Accused-Appellant.*

Promulgated:

July 4, 2018

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**DECISION**

**MARTIRES, J.:**

For resolution is the appeal of accused-appellant Rodel Belmonte y Saa assailing the 21 January 2016 Decision<sup>1</sup> of the Court of Appeals (CA), Twenty-First Division, in CA-G.R. CR HC No. 01147-MIN which affirmed, with modification as to imposable penalty in Criminal (Crim.) Case Nos. 2010-713 and 2010-714, the 18 February 2013 Judgment<sup>2</sup> of the Regional Trial Court, (RTC) Branch 25, Misamis Oriental, finding him guilty beyond reasonable doubt of Violation of Sections (Sec.) 11 and 5, Article (Art.) II of Republic Act (R.A.) No. 9165.<sup>3</sup>

<sup>1</sup> CA rollo, pp. 118-131. Penned by Associate Justice Ronaldo B. Martin and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

<sup>2</sup> Records, pp. 84-93. Penned by Judge Arthur L. Abundiente.

<sup>3</sup> Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as amended, Providing Funds Therefor, and for Other Purposes" dated 7 June 2002.

### THE FACTS

The accused-appellant was charged before the RTC of Misamis Oriental with violation of R.A. No. 9165, viz:

#### CRIM. CASE NO. 2010-713

That on or about 12:50 p.m. of July 3, 2010 at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drug, did then and there wilfully, unlawfully, criminally, and knowingly have in his possession, custody, and control, two heat-sealed transparent plastic sachets containing methamphetamine hydrochloride weighing 0.05 gram and 0.05 gram, respectively, accused well knowing that the substances recovered from his possession were dangerous drugs.

Contrary to Sec. 11, paragraph 2(3), Art. II of R.A. No. 9165.<sup>4</sup>

#### CRIM. CASE NO. 2010-714

That on or about 12:50 p.m. of July 3, 2010 at Barra, Macabalan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drugs, did then and there wilfully, unlawfully, criminally, and knowingly sell and/or offer for sale, and give away to a poseur-buyer one small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram, accused knowing the same to be a dangerous drug, in consideration of P500.00.

Contrary to Sec. 5, Art. II of R.A. No. 9165.<sup>5</sup>

When arraigned, the accused-appellant pleaded not guilty<sup>6</sup> on both charges hence, joint trial proceeded.

To prove the charges against the accused-appellant, the prosecution called to the witness stand SPO1 Gilbert Sabellina (*Sabellina*), PO1 Linard Carna (*Carna*), and PO2 Jonrey Satur (*Satur*).

The accused-appellant testified in his own defense.



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<sup>4</sup> Records, Crim. Case No. 2010-713, p.3.

<sup>5</sup> Records, Crim. Case No. 2010-714, p.3.

<sup>6</sup> Id. at 14.

### ***The Version of the Prosecution***

On 3 July 2010, a confidential informant (*informant*) came to the Philippine National Police (*PNP*), Station 5, Macabalan, Cagayan de Oro City, to inform precinct commander Gilbert Mejares Rollen (*Rollen*) that the accused-appellant was engaged in the selling of drugs in Barra, Macabalan. Upon receipt of the information, Rollen instructed the above police officers to conduct a buy-bust operation. In preparation for the operation, Sabellina affixed his signature on the ₱500.00<sup>7</sup> bill with serial number ZG385391 to be used as buy-bust money, while Carna recorded<sup>8</sup> in the police blotter the use of the said marked money for the buy-bust. The pre-operation report<sup>9</sup> was also prepared and submitted to the Philippine Drug Enforcement Agency (*PDEA*).<sup>10</sup>

At about 1:30 p.m. of that same day, the police officers and the informant proceeded to Barra. When they arrived there, Sabellina positioned himself about ten meters away from Carna and the informant while Satur, who would act as backup, stayed at a distance. When the informant saw the accused-appellant, he approached him and asked if he would buy ₱500.00 worth of shabu. After receiving the ₱500.00 buy-bust money from the informant, the accused-appellant got a sachet containing a white crystalline substance from his right pocket and gave it to the informant. At that instance, Carna, who was beside the informant, introduced himself as a police officer to the accused-appellant while Sabellina and Satur advanced toward them. The accused-appellant was handcuffed and bodily frisked by Carna who found the following: from his right pocket, two sachets containing a white crystalline substance and the ₱500.00 buy-bust money; and from his left pocket, another four sachets containing traces of a white crystalline substance. The accused-appellant sat between Carna and Sabellina on the latter's motorcycle going back to the police station; the informant rode on Carna's motorcycle. Carna was in possession of the confiscated items from the scene of the crime until they reached the police station.<sup>11</sup>

At the police station, Carna, in the presence of Sabellina, Rollen, and the accused-appellant, placed the markings "A LBC"<sup>12</sup> on the sachet handed by the accused-appellant to the informant; "B LBC"<sup>13</sup> and "B1 LBC"<sup>14</sup> on the two sachets found in the accused-appellant's right pocket; and "C LBC," "C1 LBC," "C2 LBC," and "C3 LBC" on the four sachets found in his left pocket. The letters "LBC" stood for Carna's initials, i.e., "Linard Bahian Carna."

<sup>7</sup> Id. at 71; Exh. "F."

<sup>8</sup> Id. at 72; Exh. "G."

<sup>9</sup> Id. at 74; Exh. "H."

<sup>10</sup> TSN, 1 July 2011, pp. 2-6.

<sup>11</sup> Id. at 7-10.

<sup>12</sup> Records, p. 21; Documentary Exhibits, Exh. "B."

<sup>13</sup> Id. Exh. "B-1."

<sup>14</sup> Id. Exh. "B-2."

Instead of the inventory and the taking of pictures of the confiscated items, Carna recorded in the police blotter the buy-bust operation report.<sup>15</sup> Thereafter, Rollen signed the requests<sup>16</sup> for the laboratory examination of the seven confiscated sachets and the urine test of the accused-appellant. The requests and the confiscated items were delivered by Carna and Satur to the crime laboratory (*laboratory*) at Camp Evangelista, Patag, Cagayan de Oro. Carna was in possession of the confiscated items from the police station to the laboratory. However, because Carna was not in uniform that time, Satur<sup>17</sup> had the items received by the laboratory. At the police station, Carna and Sabellina executed their joint affidavit<sup>18</sup> pertinent to the buy-bust operation.<sup>19</sup>

On that same day, Police Senior Inspector Emma C. Salvacion completed her examination on the confiscated items. Her findings, contained in Chemistry Report No. D-139-2010,<sup>20</sup> are:

A- Three heat-sealed transparent sachets with markings "A LBC," "B LBC," and "B1 LBC" all with signatures and each contains white crystalline substance with the following corresponding net weights"

A-1 (A LBC) = 0.04 gram    A-2 (B-LBC) = 0.05 gram    A-3 (B1 LBC) = 0.05 gram

B – Four unsealed transparent plastic sachets with markings "C LBC," "C1 LBC," "C2 LBC," and "C3 LBC" all with signatures and each contains traces of white crystalline substance further marked as B-1 to B-4, respectively. x x x

x x x

#### FINDINGS:

Qualitative examination conducted on the above-stated specimens all gave POSITIVE results to the presence of Methamphetamine Hydrochloride (Shabu), a dangerous drug.

### *The Version of the Defense*

At about 11:30 a.m. on 3 July 2010, the accused-appellant was at his mother's house at Barra to pawn his live-in partner's cellphone. When his mother declined as she did not have any money, the accused-appellant proceeded to his cousin's house which was adjacent to his mother's house. While the accused-appellant was waiting inside his cousin's house, Sabellina started kicking the door from the outside and thereafter entered the house with

<sup>15</sup> Records, p. 73; Exh. "G-1."

<sup>16</sup> Id. at 65-66; Exh. "A" and "A-2."

<sup>17</sup> Id.; Exh. "A-1" and "A-3."

<sup>18</sup> Id. at 69-70; Exh. "E."

<sup>19</sup> TSN, 1 July 2011, pp. 11-13.

<sup>20</sup> Records, p. 67; Exh. "C."

Carna and Satur. Carna hit the accused-appellant in his stomach and asked him, "Where is the *shabu*?" The accused-appellant was frisked but when the three police officers did not find anything on him, they proceeded to his cousin's bedroom and upon coming out therefrom showed him three empty sachets. The police officers asked the accused-appellant about the contents of the sachets. When he answered that he did not know anything about it, he was handcuffed and brought to the police station where he was questioned as to his personal circumstances. As the accused-appellant was stating his full name, Sabellina inquired how he was related to Barangay Kagawad Ruben Saa (*Ruben*) of Macabalan. When he informed them that Ruben was his mother's cousin, he was forced to contact Ruben; when he refused, the police officers left him at the station.<sup>21</sup>

After a few minutes, Sabellina came back to the police station; later, Carna and Satur arrived informing him that they found three sachets of *shabu* in the accused-appellant's house. The sachets, which were wrapped in cellophane, had markings on them. The police officers asked ₱30,000.00 from him for his release; when he refused to give in to their demand, he was brought to the crime laboratory.<sup>22</sup>

### ***The Ruling of the RTC***

The RTC held that the prosecution was able to prove the elements of the charges against the accused-appellant. It ruled that the testimony of Carna and Sabellina deserved full faith and credence. Moreover, in view of the conflicting versions between the police officers and that of the accused-appellant, the RTC gave credence to the former who were presumed to have regularly performed their duties, especially in the absence of any evidence that they were inspired by improper motive or were not properly performing their duties.<sup>23</sup>

On the one hand, the RTC found that the accused-appellant's denial was not credible. The RTC noted that he did not even attempt to present a character witness to prove that he was a good person and was not engaged in any wrongdoing.<sup>24</sup>

In view of these findings, the RTC resolved the cases against the accused-appellant as follows:

WHEREFORE, premises considered, this Court hereby finds:



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<sup>21</sup> TSN, 13 March 2012, pp. 5-9.

<sup>22</sup> Id. at 9-10.

<sup>23</sup> Records, pp. 90-91.

<sup>24</sup> Id.

In Criminal Case No. 2010-713, accused **RODEL BELMONTE y SAA GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. No. 9165, and hereby sentences him to an imprisonment ranging from twelve (12) years and one (1) day to thirteen (13) years, and to pay a fine in the amount of P300,000.00 without subsidiary imprisonment in case of non-payment of fine.

In Criminal Case No. 2010-714, accused **RODEL BELMONTE y SAA GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under Section 5, Article II of R.A. No. 9165 as charged in the information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of P500,000.00 without subsidiary imprisonment in case of non-payment of fine. The period of his detention shall be credited in full for the purpose of service of his sentence.

Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act that no man is above the law, and that crime does not pay. The pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act No. 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.<sup>25</sup>

Not satisfied with the decision of the RTC, the accused-appellant appealed before the CA.

### ***The Ruling of the CA***

The CA did not find the accused-appellant's appeal meritorious. It ruled that, despite the fact that Sec. 21, Art. II of R.A. No. 9165 was not strictly followed, the police officers substantially complied with the requirements under the said Act and sufficiently established the crucial links in the chain of custody. Furthermore, the noncompliance with some of the requirements did not affect the evidentiary weight of the drugs seized as the chain of custody of the evidence was shown and proven to be unbroken. The CA held that the prosecution had proven that a valid and legitimate buy-bust operation was conducted and that the sachets confiscated were confirmed to contain *shabu* which, when presented before the trial court, were positively identified by the prosecution witnesses. Thus, the CA ruled that the integrity and evidentiary value of the seized illegal drugs were properly preserved and remained unimpaired.<sup>26</sup>



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<sup>25</sup> Records, p. 92.

<sup>26</sup> CA *rollo*, pp. 125-126.

The decretal portion of the CA decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed Decision dated February 8, 2013 of the Regional Trial Court, Branch 25 of Cagayan de Oro City finding accused-appellant Rodel Belmonte y Saa guilty beyond reasonable doubt for violation of Sections 11 and 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, Republic act No. 9165 in Criminal Case Nos. 2010-713 and 2010-714 is **AFFIRMED with MODIFICATION** with respect to Criminal Case No. 2010-714 wherein appellant is sentenced to serve the penalty of reclusion perpetua in its entire duration and full extent.  
SO ORDERED.<sup>27</sup>

### ISSUE

WHETHER THE GUILT OF THE ACCUSED-APPELLANT WAS ESTABLISHED BEYOND REASONABLE DOUBT.<sup>28</sup>

### OUR RULING

The appeal is impressed with merit.

*An accused is presumed innocent until his guilt is proven beyond reasonable doubt.*

Basic in all criminal prosecutions is the presumption that the accused is innocent until the contrary is proved.<sup>29</sup> Thus, the well-established jurisprudence is that the prosecution bears the burden to overcome such presumption; otherwise, the accused deserves a judgment of acquittal.<sup>30</sup> Concomitant thereto, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.<sup>31</sup> Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. To stress, "(W)hile not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense

<sup>27</sup> Id. at 130.

<sup>28</sup> Id. at 38.

<sup>29</sup> Sec. 14(2), Art. III of the 1987 Constitution.

<sup>30</sup> *People v. Hilario*, G.R. No. 210610, 11 January 2018.

<sup>31</sup> *People v. Santos*, G.R. No. 223142, 17 January 2018.



responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience."<sup>32</sup>

The Court is aware that the teaching well-established in our jurisprudence is that unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.<sup>33</sup> It is noteworthy, however, that this teaching admits of jurisprudentially recognized exceptions considering that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>34</sup> 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.<sup>35</sup> It is pursuant to this Court's full jurisdiction that it scrupulously reviewed the records of these appealed cases and arrived at the conclusion that it cannot agree with the findings of the RTC and the CA.

***The identity of the corpus delicti was not clearly established; there was a broken chain in the custody of the confiscated items.***

In Crim. Case No. 2010-713, the accused-appellant was charged and convicted with violation of Sec. 11,<sup>36</sup> Art. II of R.A. No. 9165, the elements of which are as follows: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>37</sup>

<sup>32</sup> *Daayata v. People*, G.R. No. 205745, 8 March 2017.

<sup>33</sup> *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

<sup>34</sup> *Peple v. Crispo*, G.R. No. 230065, 14 March 2018.

<sup>35</sup> *People v. Lumaya*, G.R. No. 231983, 7 March 2018.

<sup>36</sup> Sec. 11. *Possession of Dangerous Drugs*. – x x x

(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.

<sup>37</sup> *People v. Lumaya*, supra note 35.



In Crim. Case No. 2010-714, in which the accused-appellant was convicted for violation of Sec. 5,<sup>38</sup> Art. II of R.A. No. 9165, both the RTC and the CA found that the elements of the crime had been established, viz: (a) the identity of the buyer and the seller, the object of the sale and its consideration; and (b) the delivery of the thing sold and the payment therefor.<sup>39</sup>

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established.<sup>40</sup> The strict requirement in clearly establishing the identity of the *corpus delicti* was explained as follows:

Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.<sup>41</sup>

Jurisprudence identified four critical links in the chain of custody of the dangerous drugs, to wit: "*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."<sup>42</sup>

In relation to the first two links, the stringent requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, viz:

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



<sup>38</sup> Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - 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 sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x

<sup>39</sup> *People v. Lumaya*, supra note 35.

<sup>40</sup> *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

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

<sup>42</sup> *People v. Macua*, G.R. No. 219175, 14 December 2017.

and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides the proper procedure to be followed in Sec. 21(a) of the Act, viz:

a. The apprehending office/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 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.

Unmistakably, Sec. 21 of the Act firmly requires that the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the confiscated items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative each 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 of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>43</sup>

While strict compliance with this requirement has been recognized to be not plausible in all instances, Sec. 21(a) of the *IRR* of R.A. No. 9165 clearly provides that noncompliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 – under justifiable grounds – will not render void the confiscation of the items provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.

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<sup>43</sup> *People v. Crispo*, supra note 34.

“In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.”<sup>44</sup>

Of importance is that “(M)arking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence 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, obviating switching, 'planting,' or contamination of evidence.”<sup>45</sup> Even granting that there was truth that Carna marked the confiscated items at the police station in the presence of the accused-appellant, Sabellina, and the station commander, jurisprudence however dictates that marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.”<sup>46</sup>

Carna claimed that it was at the police station that the inventory and the taking of pictures of the confiscated items took place.<sup>47</sup> Records, however, do not show any inventory or pictures of the seized items. In fact, the prosecution did not offer any physical evidence to justify Carna’s claim that there were an inventory and photographs of the seized items.

On the one hand, Sabellina admitted that, instead of an inventory and pictures taken of the seized items, the fact that there were items confiscated from the accused-appellant during the buy-bust operation was entered in the blotter.<sup>48</sup> It must be noted however, that Sec. 21(a) of the IRR of R.A. No. 9165 does not provide that the entry in the blotter relative to a buy-bust operation is a valid substitute for the requirement of an inventory and taking of photographs of the seized items.

Considering that the police officers in these cases had obviously failed to comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR, the burden is with the prosecution to prove that there was justifiable ground for the noncompliance by the police officers, and that the integrity and evidentiary value of the confiscated items were properly preserved.



<sup>44</sup> *People v. Ceralde*, G.R. No. 228894, 7 August 2017.

<sup>45</sup> *People v. Ismael*, G.R. No. 208093, 20 February 2017.

<sup>46</sup> *People v. Holgado*, 741 Phil. 78, 94 (2014).

<sup>47</sup> TSN, 1 July 2011, pp. 20-21.


<sup>48</sup> TSN, 24 January 2011, pp. 18-19.

A review of the records will show that the prosecution was unsuccessful in eliciting from its witnesses the justification for their apparent failure to comply with Sec. 21 of the Act and its IRR. It must be emphasized that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>49</sup>

On the one hand, the testimony of the prosecution witnesses undoubtedly buttresses the fact that the integrity and evidentiary value of the seized items were compromised. It will be noted that the prosecution witnesses were unanimous in their claim that it was Carna who was in possession of the confiscated items from the time these were seized at the crime scene to the police station. At the police station, Carna placed the markings on the seized items but, noteworthy, he could no longer distinguish the sealed sachet handed by the accused-appellant as a result of the sale transaction with the informant, with the two other sealed sachets found in the accused-appellant's right pocket, especially that the three sachets contain almost the same weight of shabu, i.e., A-1 (A LBC) = 0.04 gram,<sup>50</sup> A-2 (B LBC) = 0.05 gram,<sup>51</sup> and A-3 (B1 LBC) = 0.05 gram.<sup>52</sup>

An established fact that casts doubt on the integrity of the seized items was that the buy-bust operation report entered in the blotter, which the apprehending team intended as substitute for the inventory required and photographs of the sachets, never mentioned whether the items were actually marked and what were the corresponding markings. The report plainly reads:

X X X A CERTAIN RODEL BELMONTE Y SAA X X X WAS CAUGHT IN THE ACT OF SELLING SHABU FOR AND IN CONSIDERATION OF P500.00 (MARKED MONEY) X X X. BOUGHT FROM THE SUSPECT ONE (1) HEAT SEALED TRANSPARENT SACHET CONTAINING WHITE CRYSTALLINE SUBSTANCE BELIEVED TO BE SHABU, AND CONFISCATED FROM HIS POSSESSION, CUSTODY, AND CONTROL TWO (2) HEAT-SEALED SACHETS OF ALLEGED SHABU, FOUR (4) OPENED TRANSPARENT SACHETS WITH TRACES OF ALLEGED SHABU, AND THE MARKED MONEY OF ONE (1) P500.00 BILL X X X. SPECIMENS CONFISCATED SUBMITTED FOR LABORATORY EXAMINATION AT PNP CRIME LAB OFFICE WHILE SUSPECT ALSO SUBMITTED FOR URINE TEST.<sup>53</sup>

On the third link, Carna firmly stated that he was in possession of the confiscated items when he and Satur went to the laboratory to submit these for examination. Carna further claimed that because he was not in uniform, it was Satur who surrendered the items to the laboratory,<sup>54</sup> as confirmed by the 

<sup>49</sup> *People v. Macapundag*, G.R. No. 225965, 13 March 2017.

<sup>50</sup> Records, p. 67; enumerated in the Chemistry Report; Exh. "C."

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Records, p. 73; Exh. "G-1."

<sup>54</sup> TSN, 1 July 2011, pp. 12-13.

receiving stamps<sup>55</sup> on each of the requests, i.e., “Delivered by PO2 Satur.” Carna’s testimony however, contradicts that of Satur’s who stated that he was the one who was in possession of the seized items when these were delivered to the laboratory from the police station, *viz*:

ACP LALIA

Q. I am showing you a copy of the request for laboratory examination. Please tell the Honorable Court if this is the same copy of the request?

A. Yes, sir.

Q. And I am inviting your attention to the upper portion of this request which bears a rubber stamp, tell us what is this rubber stamp?

A. I was one of those who brought this to the PNP crime lab.

Q. But my question is, who was in actual possession of the specimen mentioned in the request at the time that it was brought to the PNP crime lab?

A. Maybe, I was the one, sir.

Q. You mean you are sure whether you were the one who was in actual possession?

COURT (to the witness)

Q. PO2 Satur, that is a very light object, the paper and the object, right?

A. Yes, your Honor.

Q. **Now, who brought that or who actually carried it from your office to the crime laboratory, you or any other person?**

A. **I was the one your Honor.**

Q. **Are you sure?**

A. **Yes, your Honor.**<sup>56</sup> (emphasis supplied)

Satur’s admission that he was in possession of the seized items when these were brought to the laboratory from the police station finds support in the testimony of Sabellina who stated that Satur was instructed by the station commander to bring the suspect and the items to the laboratory while he and Carna stayed behind at the police station. His testimony reads:

ACP VICENTE

Q. At the upper portion of this exhibit, there is a rubber stamp here delivered by PO2 Satur and received by PCI Salvacion/PI Gamaya, where was this stamped?

A. At the crime lab.

Q. Who is this PO2 Satur?



<sup>55</sup> Records, pp. 65-66; Exhs. “A-1” and “A-3.”

<sup>56</sup> TSN, 27 October 2011, pp. 8-9.

- A. Our companion.
- Q. **Why was he the one who filed this?**
- A. **Because he was the one assigned to bring it there including the suspect.**
- Q. **Who brought the sachets of shabu from the table of your office to the PNP crime lab?**
- A. **PO2 Satur.**
- Q. **Who was with him when he delivered it?**
- A. **The driver.**
- Q. **How about Carna?**
- A. **Both of us did not go with them, sir.**
- Q. **How did you know that it was Satur who got it from the table and brought to the crime lab?**
- A. **I was present when our station commander instructed him to bring the specimen to the crime lab.<sup>57</sup> (emphasis supplied)**

It must be stressed that the “chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt by the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized items shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.”<sup>58</sup>

The conflicting testimonies of the apprehending team as to who had custody of the confiscated items from the police station to the laboratory generate uncertainty as to the whereabouts of these items that corollary thereto create doubt on whether the evidence presented before the RTC were exactly the same items seized from the accused-appellant.

On the fourth link, the obvious failure of the prosecution to establish through its witnesses the manner by which the confiscated items were delivered by the forensic chemist to the RTC for presentation during the trial, reinforces the conclusion that the integrity and evidentiary value of the seized items had been compromised. To emphasize, in order that the seized items may be admissible, the prosecution must show by records or testimony the continuous whereabouts of the exhibit at least between the times it came into possession of the police officers until it was tested in the laboratory to

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<sup>57</sup> TSN, 24 January 2011, pp. 20-21.

<sup>58</sup> Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.




determine its composition up to the time it was offered in evidence.<sup>59</sup> Such showing, however, was conspicuously absent in these cases.

Significantly, in *Mallillin v. People*,<sup>60</sup> the Court was more definite in qualifying the method of authenticating evidence through marking, *viz*: "(I)t 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."<sup>61</sup> The only logical conclusion that can be arrived at after a review of the records was that the prosecution miserably failed in establishing with firm accuracy that the dangerous drugs presented in court as evidence against the accused were the same as those seized from him in the first place.<sup>62</sup>

Contrary to the findings of the CA, the deviations by the police officers from the guidelines in R.A. No. 9165 do not relate to minor procedural matters that would not result to the nullification of the arrest of the accused-appellant and the seizure of the *shabu*. It is well-settled that the procedure under Sec. 21, Art. II of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>63</sup> Additionally, the blunders committed by the police officers relative to these guidelines cannot qualify as mere insignificant departure from the law but rather were gross disregard of the procedural safeguards prescribed in the substantive law, thus, "serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence."<sup>64</sup>

***The presumption of regularity in the performance of duty by the police officers cannot prevail over the accused-appellant's constitutional right to be presumed innocent.***

Despite the blatant and serious noncompliance by the apprehending team with Sec. 21 of R.A. No. 9165, both the RTC and the CA gave weight to the presumption that the police officers had regularly discharged their duties. 

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<sup>59</sup> *People v. Arposeple*, supra note 33.

<sup>60</sup> 576 Phil. 576-594 (2008); cited in *People v. Ismael*, supra note 45.

<sup>61</sup> Id. at 587.

<sup>62</sup> *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

<sup>63</sup> *People v. Añño*, G.R. No. 230070, 14 March 2018.

<sup>64</sup> *People v. Segundo*, G.R. No. 205614, 26 July 2017.

The Court cannot agree to uphold the presumption of regularity in the performance of official duties by the police officers in these cases. The conclusion that can only be arrived at from a reading of the records was that the police officers who entrapped the accused-appellant and confiscated the dangerous drug from him failed to offer any justifiable ground for their patent failure to establish each of the required links in the chain of custody; thus, compromising the integrity and evidentiary value of the confiscated items. Simply put, the regularity in the performance of duty could not be properly presumed in favor of the police officers because the records were replete with indicia of their serious lapses.<sup>65</sup> "Serious uncertainty is generated on the identity of the *shabu* in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise."<sup>66</sup>

To stress, the legal teaching consistently upheld in our jurisprudence is that "proof of the *corpus delicti* in a buy-bust situation requires evidence, not only that the transacted drugs actually exist, but evidence as well that the drugs seized and examined are the same drugs presented in court. This is a pre-condition for conviction as the drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."<sup>67</sup> Let it be underscored that the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption: and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence.<sup>68</sup>

It would not be tiresome for the Court to reiterate its declaration in *People v. Pagaduan*<sup>69</sup> if only to show that it will unceasingly uphold the right of the accused to be presumed innocent in the absence of proof beyond reasonable doubt to convict him, viz:

We are not unmindful of the pernicious effects of drugs in our society; they are lingering maladies that destroy families and relationships, and engender crimes. The Court is one with all the agencies concerned in pursuing an intensive and unrelenting campaign against this social dilemma. Regardless of how much we want to curb this menace, we cannot disregard the protection provided by the Constitution, most particularly the presumption of innocence bestowed on the appellant. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome this constitutional presumption. If the prosecution has not proved, in the first place, all the elements of the crime



<sup>65</sup> *People v. Arposeple*, supra note 33.

<sup>66</sup> *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

<sup>67</sup> *People v. Holgado*, supra note 46 at 93.

<sup>68</sup> *People v. Mirondo*, 771 Phil. 345, 362 (2015).

<sup>69</sup> 641 Phil. 432, 450-451 (2010).




charged, which in this case is the *corpus delicti*, then the appellant deserves no less than an acquittal.<sup>70</sup>


**WHEREFORE**, the appeal is **GRANTED**. The Decision dated 21 January 2016, of the Court of Appeals in CA-G.R. CR HC No. 01147-MIN, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rodel Belmonte y Saa is **ACQUITTED** of the crimes charged. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Penal Superintendent of the Davao Prison and Penal Farm, Davao del Norte, for immediate implementation. The Penal Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

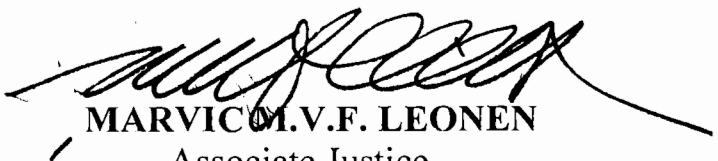
**SO ORDERED.**

  
SAMUEL R. MARTIRES  
Associate Justice


**WE CONCUR:**

  
PRESBITERO J. VELASCO, JR.  
Associate Justice

  
LUCAS P. BERSAMIN  
Associate Justice


  
MARVIC M.V.F. LEONEN  
Associate Justice

<sup>70</sup> *People v. Hilario*, supra note 30.

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


**ATTESTATION**

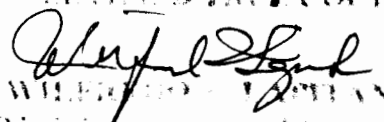
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**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 Courts Division.

  
**ANTONIO T. CARPIO**  
 Senior Associate Justice  
 (Per Section 12, R.A. 296,  
 The Judiciary Act of 1948, as amended)

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AUG 11 2014