

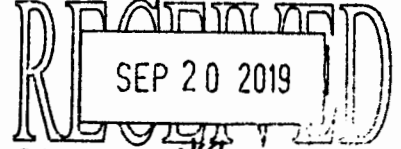
Mis D C Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division



Republic of the Philippines
Supreme Court
Manila

SEP 18 2019

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



BY: *JG*
TIME: *1:40*

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 237977

Present:

PERALTA, J., *Chairperson,*
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

- versus -

Promulgated:

NOMER WISCO Y FAILANO,
Accused-Appellant.

August 19, 2019

x----- *Mis D C Batt* ----- x

DECISION

INTING, J.:

This is an appeal from the Decision¹ dated November 29, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07468 which affirmed the Decision dated March 23, 2015 of the Regional Trial Court (RTC), Branch 19, Bangui, Ilocos Norte, in Criminal Case No. 2154-19. The RTC found accused-appellant Nomer Wisco y Failano (Wisco) guilty beyond reasonable doubt of illegal sale of dangerous drugs in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

¹ *Rollo*, pp. 2-14. Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes.

Antecedents

On November 5, 2013, Wisco was charged with the crime of violation of Section 5, Article II of R.A. No. 9165 for selling methamphetamine hydrochloride (shabu). The Information alleged:

That on or about 10:00 o'clock in the evening of November 2, 2013 at Brgy. 4, Poblacion, municipality of Pasuquin, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wil[l]fully, unlawfully, feloniously and knowingly sell two (2) heat-sealed transparent plastic sachets containing 0.0619 gram and 0.1080 gram of methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, in the amount of One Thousand Pesos (P1,000.00) to an agent of the PNP Pasuquin, Ilocos Norte acting as poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.²

On November 18, 2013, Wisco, assisted by counsel *de officio*, was arraigned and pleaded not guilty to the charge.³

Version of the Prosecution

The facts according to the prosecution are as follows:

At 10:00 P.M. [o]f November 2, 2013, a confidential informant went to Pasuquin Municipal Police Station and reported the rampant selling of shabu by Nomer Wisco in Barangay 4, Poblacion, Pasuquin, Ilocos Norte. SPOI Caldito verified this through text message and confirmed that Wisco was indeed involved in the sale of illegal drugs.

A briefing was then conducted by Police Chief Lauro Milan for a buy bust operation against Wisco. POI Rosal was designated as the poseur-buyer to be accompanied by the informant during the transaction. A one thousand peso bill was marked with "AR" to serve as the buy bust money. It was agreed that the pre-arranged signal was the removal of the cap by POI Rosal to signify the consummation of the transaction. SPOI Caldito and PO3 Bulosan were designated as the back-up.

² Id.

³ *Rollo*, p. 6.

Upon proceeding to the target area, particularly along the barangay road I (sic) front of Guanzon Building, PO1 Rosal and the informant went ahead of the team. At the area, Wisco was already waiting and asked what PO1 Rosal and the informant needed. The informant replied that they will buy and PO1 Rosal handed the marked money. Wisco in turn brought out two (2) plastic sachets containing white crystalline substance and handed one sachet to PO1 Rosal. After examining it, PO1 Rosal then removed his bullcap, signifying the completion of the transaction. Wisco, then recognizing him to be a police officer, immediately ran away towards the direction where SPO1 Caldito was positioned. SPO1 Caldito was able to intercept him after a brief chase wherein they fell into a canal.

Immediately after his apprehension, Wisco was frisked and the police officers were able to recover one (1) cellphone, a lighter and another plastic sachet with white crystalline substance. PO1 Rosal then marked the plastic sachet containing suspected shabu bought from Wisco as "AR" and the second plastic sachet seized as "AR1" at the place of the arrest and in the presence of Barangay Chairman Armando Aguinaldo and two (2) Barangay Kagawads.

Once the inventory was concluded, PO3 Bulosan, together with PO1 Rosal, PO2 Jully Bacud and PO1 Kingsley Luna proceeded to the PNP Crime Laboratory in Camp Valentine Juan, Laoag City for submission of the seized item for laboratory analysis.

PO3 Mervin Reyes received the items from PO2 Bacud. He turned the items over to Forensic Chemist Police Inspector Amiely Ann Navarro for examination. It was determined that the two (2) plastic sachets containing white crystalline substance tested positive for methamphetamine hydrochloride, a dangerous drug. After examining them, she placed the two (2) transparent plastic sachets in a transparent plastic sachet or ice bag and sealed it with masking tape with markings written on it. She then prepared the Final Chemistry Report No. D-138-2013-IN and turned over the specimens to the evidence custodian, PO3 John Edwin Padayao, for safekeeping.

Per Chemistry Report Number D-138-2013-IN, the two (2) transparent plastic sachets each containing white crystalline substance with markings (1) A1 (AR) = 0.0619 gram, and (2) A2 (AR1) = 0.1080 gram, gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.⁴ (Citations omitted.)

Version of the Defense

Wisco interposed the defense of denial in this wise:

⁴ Id. at 3-5.

For his part, accused Nomer Wisco interposed the defense of denial. He alleged that in the evening on 2 November 2013, he went outside his house to buy “empanada” for his daughter. He was riding his bicycle at the vicinity of Guanzon Store, Barangay 4, Poblacion, Pasuquin, Ilocos Norte, when someone aboard a motorcycle went beside him and held the handle of his bicycle. He knew them to be Police officers (sic) Jonathan Caldito, Frederick Bulosan and Mario Corcoro. The bicycle fell and they immediately held him. He asked them, “Why, Sir?” He was wearing basketball short pants when they frisked him and he only had his cellphone and money to buy “empanada.” He was then handcuffed and brought to the Police Station. When they could not get anything from him, he was brought (sic) back to the vicinity of Guanzon Store and he was placed in front of the patrol car. Police Officer Caldito placed (sic) two (2) plastic sachets in front of the patrol car and talked to Brgy. Chairman Armando Aguinaldo and took photographs. Thereafter, he was brought back to the Police Station and locked up.⁵

Ruling of the Regional Trial Court

In its Decision⁶ dated March 23, 2015, the RTC found Wisco guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

The RTC ruled that: (1) the buy-bust operation was valid;⁷ (2) the prosecution was able to establish the elements for the prosecution of illegal sale of dangerous drugs;⁸ (3) Wisco’s arrest was valid and his plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, was unavailing in the light of the fact that Wisco was caught *in flagrante delicto* selling shabu to the poseur-buyer;⁹ (4) the chain of custody was clearly established;¹⁰ and (5) no other evidence was offered by the defense to overcome the evidence presented by the prosecution.¹¹

The dispositive portion provides:

⁵ Id. at 5.

⁶ *CA rollo*, pp. 47-68.

⁷ Id. at 60.

⁸ Id.

⁹ Id. at 64, 66.

¹⁰ Id. at 60-63.

¹¹ Id. at 65-67.

WHEREFORE, the court finds the accused Nomer F. Wisco GUILTY beyond reasonable doubt of Violation of Section 5, Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five hundred thousand pesos (P500,000.00), and to pay the costs.

The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favour of the government, to be destroyed in accordance with the aforesaid law. The Clerk of Court is directed to coordinate with the Philippine Drug Enforcement Agency for this purpose.

SO ORDERED.¹²

Dissatisfied with the RTC's verdict, Wisco appealed to the CA.¹³

Ruling of the Court of Appeals

In its Decision¹⁴ dated November 29, 2016, the CA affirmed the RTC's judgment. The CA did not give credence to Wisco's defense anchored mainly on denial and frame-up considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation.¹⁵ Moreover, the CA ruled that Wisco's denial cannot prevail over the positive and categorical identification and declarations of the police officers.¹⁶ The CA also ruled that the chain of custody of the seized drugs was not broken.¹⁷

The CA disposed as follows:

FOR THESE REASONS, the Decision dated 23 March 2015, of the Regional Trial Court, Branch 19, Bangui, Ilocos Norte, in Criminal Case No. 2154-19, finding the accused-appellant guilty beyond reasonable doubt for the crime of violation of Sections 5, Article II, of Republic Act No. 9165, is AFFIRMED.

SO ORDERED.¹⁸

¹² Id. at 68.

¹³ *Rollo*, pp. 15-17.

¹⁴ *Supra* note 1.

¹⁵ *Rollo*, pp. 7-8.

¹⁶ Id. at 8.

¹⁷ Id. at 9-12.

¹⁸ Id. at 13.

Hence, the appeal.¹⁹

The parties adopted their respective Appellant's and Appellee's Briefs filed before the CA as their Supplemental Briefs before the Court.²⁰

Our Ruling

The appeal is meritorious.

Section 5, Article II of R.A. No. 9165, which penalizes illegal sale of dangerous drugs, provides in part:

Section 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.

In *People vs. Ismael*,²¹ the Court ruled that “[t]o secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.”²² Moreover, “[w]hat is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.”²³

¹⁹ Id. at 15-16.

²⁰ Id. at 22-27, 28-32.

²¹ 806 Phil. 21 (2017).

²² Id. at 29, citing *People vs. Alberto*, 625 Phil. 545, 554 (2010).

²³ Supra note 22, at 29.

At the outset, while the penalty to be imposed under Section 5, Article II of R.A. No. 9165 does not depend on the quantity of dangerous drugs sold, the Court rules that without prejudice to the Court's determination as to whether the chain of custody requirement was satisfied, Wisco, *at the most*, can only be convicted for selling 0.0619 gram of shabu as contained in the transparent plastic sachet marked as "AR." This finding is based on the testimonies of PO1 Alexon Rosal (PO1 Rosal) and SPO1 Jonathan Caldito (SPO1 Caldito).

In PO1 Rosal's testimony, he described the alleged shabu sold to him as contained in a small plastic sachet which he subsequently marked as "AR." On the other hand, the other sachet of alleged shabu which was subsequently marked as "AR1" was recovered by SPO1 Caldito from Wisco following the latter's arrest and upon frisking him. PO1 Rosal's testimony during direct examination is quoted as follows:

Q By the way, what was that he sold to you?

A The alleged shabu, sir.

Q *Can you describe the thing that he sold to you, what was that?*

A *White Crystalline Substance placed in a small plastic sachet. sir.*

Q And when he handed that plastic sachet to you, what happened next?

A I looked at the item he gave me, sir when I saw that it was a crystalline substance and I put [it] in my pocket and then removed my bull cap, sir.

Q And after you executed the signal it was the removal of your cap, what happened next?

A Perhaps Wisco recognized me as a Police Officer, so he ran away, sir.

Q And what did you do when you noticed that he run (sic) away?

A I ran after him, sir but he was met by SPO1 Caldito.

Q After SPO1 Caldito met the accused, what did Caldito do, if any?

A He apprehended him, sir he handcuffed him and he informed him (sic) his constitutional right.

Q From the place where you transacted with the accused to the place where the accused was caught by Police Officer Caldito, how far was that?

A Ten (10) meters, sir.

Q At what place in that vicinity did Police Officer Caldito catch the accused?

A I think right in front (sic) of Guanzon's building where there is a canal, sir.

Q *After you mentioned that the accused was eventually caught and handcuffed and he was apprised of his constitutional rights, what happened next, Mr. Witness?*

A *They frisked him and they were even able to recover one (1) plastic sachet, sir.*

Q Do you know who personally searched the body of the accused?

A SPO1 Caldito, sir.

Q Where were you in relation to Caldito when he bodily frisked the accused?

A I was beside them, sir.

Q *So, you mentioned that Police Officer Caldito likewise recovered a plastic sachet?*

A *Yes, sir.*

Q Do you know at what part of the body of the accused did Police Officer Caldito recover (sic) the same?

A [In his] right pocket, sir.

Q Pocket of what?

A Short pants, sir.

Q So, after Police Officer Caldito recovered the sachet, what did he do with the sachet that he recovered?

A He handed it to me, sir.

Q So, at that time how many plastic sachets were you possessing or keeping?

A The one handed to me by SPO1 Caldito is the second plastic sachet, sir.

Q Now, after the plastic sachet was handed to you by Police Officer Caldito, what did you do with them in the said plastic sachets?

A I marked them right at the place where the accused was arrested, sir.

Q What markings did you put on the said plastic sachet?

A *For the plastic sachet he sold me, I marked it "AR" and the plastic sachet that was taken from him I marked it "AR1".*

x x x x

Q *And will you still be able to identify the one which was handed to you and the one recovered during the body frisking?*

A *Yes, sir.*

Q Why were you able to identify the same as such?

A Because aside from the marking I placed on the item sold to me, the plastic sachet is smaller, sir.²⁴ (Emphasis supplied.)

SPO1 Caldito corroborated PO1 Rosal's testimony that there were two plastic sachets of alleged shabu and that one of the sachets was recovered by him after frisking Wisco.²⁵

Following PO1 Rosal's and SPO1 Caldito's testimonies, the sachet marked as "AR1" was merely in the possession of Wisco when it was seized from him by SPO1 Caldito. Thus, as to the sachet marked as "AR1," Wisco should have been charged with illegal possession under

²⁴ TSN, July 21, 2014, pp. 12-20.

²⁵ TSN, July 7, 2014, pp. 11-14.

Section 11,²⁶ Article II of R.A. No. 9165. However, the prosecution failed to charge Wisco for the said offense.

Moreover, since Wisco sold only one sachet of shabu marked as "AR" to PO1 Rosal, his conviction, if ever, for the crime of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 should only be for selling 0.0619 gram of shabu.

Now, as to the chain of custody.

In *Mallillin vs. People*,²⁷ the Court ruled that the dangerous drug seized from the accused constitutes the very corpus delicti of the offense.²⁸ Thus, its existence is vital to a judgment of conviction.²⁹ The Court explained:

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. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. 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**

²⁶ Section 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) xxx

xxxx

(2) 50 grams or more of methamphetamine hydrochloride or "shabu";

xxxx

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

xxxx

(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.

²⁷ 576 Phil. 576 (2008).

²⁸ Id. at 586: see also *People vs. Ismael*, supra note 21 at 29.

²⁹ Id.

exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.³⁰
(Emphasis supplied; citations omitted.)

The chain of custody requirement in drugs cases ensures that doubts concerning the identity of the seized drug are removed.³¹

Chain of custody is defined under Section 1 (b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction."³² Further, "[s]uch record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."³³

The Court, in *People vs. Macmac Bangcola y Maki*,³⁴ reiterated the Court's previous pronouncement in *Mallillin vs. People*³⁵ as to how the chain of custody over the seized evidence should be maintained, and the testimony needed to establish the chain of custody, thus:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered 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.³⁶ (Emphasis supplied.)

³⁰ Id. at 586-587 as cited in *People vs. Moner*, G.R. No. 202206, March 5, 2018.

³¹ Id.

³² *People vs. Quesido*, 708 Phil. 549, 558 (2013); see also *People vs. Havana*, 556 Phil. 462 (2016).

³³ Id.

³⁴ G.R. No. 237802, March 18, 2019.

³⁵ *Supra* note 27.

³⁶ *People vs. Bangcola*, *supra* note 32 citing *Mallillin vs. People*, *supra* note 27.

Admittedly, a testimony about a perfect chain is not always possible to obtain.³⁷ However, in cases involving drugs, jurisprudence specifically requires the prosecution to establish an unbroken chain of custody.³⁸ The Court has previously explained the reason for this rule:

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. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange.** In other words, the exhibits 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.³⁹ (Emphasis supplied; citation omitted.)

As the Court has previously recognized, “[n]arcotic substances are not readily identifiable, as xxx they are subject to scientific analysis to determine their composition and nature, and are prone to tampering, alteration, or substitution either by accident or otherwise.”⁴⁰ Thus, the Court is justified in imposing a more exacting standard before narcotic substances are accepted as evidence.⁴¹

Thus, to establish the chain of custody of the seized drugs, the following links should be established: *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.⁴²

³⁷ *People vs. Lina Achieng Noah*, G.R. No. 228880, March 6, 2019, citing *Mallillin vs. People*, supra note 27 at 587.

³⁸ *Id.* citing *Mallillin vs. People*, supra note 27 at 587-589.

³⁹ *Id.* citing *Mallillin vs. People*, supra note 27 at 587-588.

⁴⁰ *People vs. Roberto Andrada y Caompued*, G.R. No. 232299, June 20, 2018, citing *People vs. Alcuizar*, 662 Phil. 794, 801 (2011).

⁴¹ *Id.*

⁴² *People vs. Marciano Ubungen*, G.R. No. 225497, July 23, 2018, citing *People vs. Nandi*, 639 Phil. 134, 144-145 (2010).

Moreover, as part of the chain of custody procedure, Section 21, Article II of R.A. No. 9165 provides the procedure relating to the seizure and custody of illegal drugs, as follows:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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[.]** (Emphasis supplied)

While R.A. No. 9165 has been amended by R.A. No. 10640 which modified Section 21 (1), among others, to require the presence of "[a]n elected public official and a representative of the National Prosecution Service *or* the media" during the physical inventory and photographing of the seized drugs,⁴³ Section 21(1) of R.A. No. 9165, prior to its amendment, applies in this case since the incidents occurred prior to July 15, 2014, the date of effectivity of R.A. No. 10640.⁴⁴

Under Section 21 (1) of R.A. No. 9165, the physical inventory and photographing shall be done in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media *and* the Department of Justice (DOJ), and any elected public official.

However, the Court recognizes that strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible under varied field conditions.⁴⁵ Thus, the Implementing

⁴³ *Edwin Fuentes y Garcia vs. People*, G.R. No. 228718, January 7, 2019.

⁴⁴ See *People vs. Restbei B. Tampus*, G.R. No. 221434, February 6, 2019.

⁴⁵ *People vs. Marceiino Crispo y Descalso, et al.*, G.R. No. 230065, March 14, 2018 citing *People vs. Sanchez*, 590 Phil. 214, 234 (2008).

Rule and Regulations of R.A. No. 9165 provides for a saving clause so that noncompliance with Section 21, Article II of R.A. No. 9165 will not automatically render void and invalid the seizure and custody over the seized items, to wit:

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

Applying the above-stated rules, the Court finds that the prosecution failed to establish all of the links in the chain of custody.

As to the first link, records show that not all of the witnesses required under Section 21(1) of R.A. No. 9165 were present during the physical inventory and photographing of the seized drugs. As admitted by PO1 Rosal in his testimony, the only witnesses who arrived and allegedly witnessed the marking were Barangay Chairman Armando Aguinaldo (Barangay Chairman Aguinaldo) and two (2) Barangay Kagawads whom PO1 Rosal failed to name.⁴⁶ Moreover, records show that it was only Barangay Chairman Aguinaldo who signed the Receipt/Inventory of Properties Seized.⁴⁷ However, in his testimony, Barangay Chairman Aguinaldo denied witnessing the marking and the taking of photographs of the seized drugs.⁴⁸ He also testified that there were no representatives from the DOJ and from the media. Barangay Chairman Aguinaldo testified on cross-examination in the following manner:

⁴⁶ TSN, July 21, 2014, pp. 16-17.

⁴⁷ Records, p. 6. Exhibit "B."

⁴⁸ TSN, January 19, 2015, pp. 6-7.

ATTY. ORATE:

With the permission of the Honorable Court?

Q Mr. Witness, you said during the direct examination that when the police officer came to your house they already informed you that the accused was already arrested, am I right?

A Yes, sir.

Q And you further stated that the reason why the accused was arrested is that, they allegedly seized illegal drugs from him, correct?

A That was what they told me, ma'am.

Q And you said that upon arriving at the place they instructed you to sign a document?

A Yes, ma'am.

Q So it is clear, Mr. Witness, that you were not present during the seizure and taking of the items listed in the inventory particularly the seized illegal drugs, the cellphone and the lighter, am I right.

A I was not present.

Q So precisely you have not seen and never witnessed the taking of the photographs of the seized items, am I right?

A Yes, ma'am.

Q And you will likewise agree with me that when you affixed your signature (sic) the items allegedly seized were already marked, am I right?

A I only saw the plastic sachets, ma'am.

Q So you saw the plastic sachets, and did you see if the markings were made at that time, Mr. Witness?

A No, sir.

Q So you never witnessed the markings?

A I did not, ma'am.

Q By the way, Mr. Witness, aside from you (sic) who were then present at the place where you signed the document?

A Only the police officers and members of PAIDSOTG, ma'am.

Q So there were no members of the media or the Department of Justice?

A None, ma'am.⁴⁹

The absence of the required witnesses does not per se render the confiscated items inadmissible.⁵⁰ However, “[t]he presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality.”⁵¹ Thus, the prosecution must adduce a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of R.A. No. 9165.⁵²

Here, the prosecution could have alleged and proved any of the following justifiable reasons: “(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of [the required witnesses under Section 21(1) of R.A. No. 9165] within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.”⁵³

⁴⁹ Id.

⁵⁰ *People vs. Marcelino Crispo y Descalzo, et al.*, supra note 45 citing *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

⁵¹ *People vs. Partolito dela Victoria*, G.R. No. 233325, April 16, 2018.

⁵² *People vs. Marcelino Crispo y Descalzo, et al.*, supra note 45, citing *People v. Umipang*, supra note 50, at 1052-1053.

⁵³ S. *People vs. Vicente Sipin y de Castro*, G.R. No. 224290, June 11, 2018.

However, the prosecution did not bother to explain the absence of representatives from the DOJ and the media during the physical inventory and the taking of photographs of the seized drugs. Thus, for failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under Section 21, Article II of R.A. No. 9165, the Court is constrained to rule that the integrity and the evidentiary value of the seized drugs have been compromised.

As to the second link, PO1 Rosal testified that he handed over the seized drugs to PO3 Lumiowel Bulosan (PO3 Bulosan).⁵⁴ On the other hand, PO3 Bulosan alleged that he was one of the operating investigators as the Chief Investigator, and that he received the seized drugs from PO1 Rosal.⁵⁵ The Court, however, notes the discrepancy that PO3 Bulosan's name and signature do not appear in the Chain of Custody Form as the immediate recipient of the seized drugs after PO1 Rosal.⁵⁶

Further, PO3 Bulosan's testimonies given during direct examination and during cross-examination, in relation to his custody and turnover of the seized drugs, are conflicting.

In his direct examination, PO3 Bulosan testified that after receiving the seized items from PO1 Rosal, he took custody of them until he, together with PO1 Rosal and PO1 Kingslay Luna (PO1 Luna), went to the crime laboratory to have the seized drugs examined. He further testified that it was PO1 Luna, who was in front of him at the crime laboratory, who handed the seized drugs to PO3 Mervin Reyes (PO3 Reyes). He testified:

Q Who made the inventory?

A PO1 Rosal, sir.

Q So, after that inventory they turned the items over to you, that is what you want to say?

A Yes, sir

X X X X

⁵⁴ TSN, July 21, 2014, p. 21.

⁵⁵ TSN, October 20, 2014, pp. 22, 28.

⁵⁶ Records, p. 42, Exhibit "C-2."

Q You took custody of the same?

A Yes, sir.

Q *Until when were those items under your custody?*

A *After we reached the police station, sir, we immediately proceeded at the crime lab for laboratory examination.*

Q *You mentioned "we", who was or who were with you when you proceeded to the crime laboratory for laboratory examination?*

A *PO1 Rosal and PO1 Kingslay Luna, sir.*

Q *And who actually submitted the said items to the crime laboratory?*

A *PO1 Kingslay Luna, sir.*

Q Are you sure of that?

A Yes, sir.

Q Where were you when the same were actually turned over by Luna to the crime laboratory?

A I was then in front of PO1 Luna, sir.

Q And do you recognize the person who received the same at the crime laboratory?

A Yes, sir.

Q Who was that person who received that at the crime laboratory?

A PO3 Reyes, sir.⁵⁷ (Italics supplied)

On the other hand, during cross-examination and upon being confronted with the Chain of Custody Form, PO3 Bulosan changed his version of facts and testified that he delivered the seized drugs to PO2 Jully Bacud (PO2 Bacud), the investigator on duty, and that it was PO2 Bacud, whom he accompanied to the crime laboratory, who delivered the seized drugs to PO3 Reyes. Notably, in his direct examination, PO3 Bulosan did not identify PO2 Bacud as one of the police officers who

⁵⁷ TSN, October 20, 2014, pp. 13-15.

went with him to the crime laboratory to deliver the seized drugs. He testified in this manner:

ATTY. BOSI:

Q *But in this Chain of Custody Form, it was only turned over by PO2 Jully Bacud. May I confront you with this Chain of Custody Form Mr. Witness and please kindly read who turned over these items to the crime laboratory?*

A This only came from the station, ma'am.

Q Are you sure of that, Mr. Witness?

A Yes, ma'am.

Q But the heading of this form comes from Camp Valentin S Juan, Laoag City, how come that you said that it came from your office?

THE COURT:

Q You were with Bacud when you submitted the same?

A No, your Honor.

Q You were not with Bacud?

A No, your Honor.

Q So, who were with you?

A PO1 Rosal and PO1 Luna, your Honor.

Q Then why is it that it is Bacud now based on that piece of evidence who turned it over to the crime lab?

PROS. CALUPIG:

That is misleading, your Honor, that document will now show that Bacud was the one who turned the same over, your Honor.

ATTY. BOSI:

No.



PROS. CALUPIG:

There is a document showing that...

ATTY. BOSI:

May I...

PROS. CALUPIG:

It's only up to the police station.

THE COURT:

Up to the police station?

PROS. CALUPIG:

Yes.

ATTY. BOSI:

As per record, your Honor.

THE COURT:

It was received...

ATTY. BOSI:

That is from the Municipal Police Station, your Honor.

THE COURT:

Delivered by one PO2 Bacud and received by PO3 Reyes.

ATTY. BOSI:

Yes. And in the form coming from the Camp Valentin S Juan, it was still Bacud who turned over, your Honor.


THE COURT:

Can you explain this now, this apparent discrepancy with this document which is found on page 10 and your testimony?

THE COURT:

Q So, you are the Investigator?

A Yes, your Honor.

- Q So, all the [pieces of evidence] were delivered to you?
A During the operation, ma'am the duty investigator was then PO2 Bacud, your Honor.
- Q He was the duty investigator?
A Yes, your Honor.
- Q So, how come that it was delivered to you?
A I was one of the operating investigators as the Chief Investigator, your Honor.
- Q Why, in your police station, how many investigators?
A Aside from me, your Honor, there was a duty investigator.
- Q You are the investigator of the PNP-Pasuquin but at that time you are not the duty investigator?
A Yes, your Honor.
- Q The duty investigator is PO2 Bacud?
A Yes, your Honor.
- Q So, it was delivered to you being the Chief Investigator?
A Yes, your Honor.
- Q *And then, you turned it over to PO2 Bacud because he is the investigator assigned on that case?*
A *Yes, your Honor.*
- Q *And then PO2 Bacud was the one who submitted into (sic) the crime lab?*
A *I went with him, ma'am.*
- Q You were there?
A Yes, your Honor.
- Q So, those persons who went there is (sic) you, Luna and Rosal?
- 

A Yes, your Honor.

Q Including Bacud?

A Yes, your Honor.

Q *And Bacud was the crime (sic) mover now in the delivery of this to the crime lab, is that what you mean?*

A *Yes, your Honor.*

ATTY. BOSI:

Q But you will still agree with me Mr. Witness that there will be no other showing that you took possession of these confiscated items?

THE COURT:

Already answered.

ATTY. BOSI:

Q Just a confirmation, your Honor, and then we will be through with the witness.

THE COURT:

Q It was not on a written document?

A No, your Honor.

Q But you affirm that you take hold of the subject specimen?

A Yes, your Honor.⁵⁸ (Italics supplied)

Admittedly, the parties agreed to stipulate upon the testimony of PO3 Reyes that he received the seized drugs from PO2 Bacud.⁵⁹ However, considering the conflicting testimonies of PO3 Bulosan which he failed to explain, the Court is still in doubt as to whether PO3 Bulosan in fact delivered the seized drugs to PO2 Bacud, and whether the seized drugs delivered by PO2 Bacud to the crime laboratory were the same as the seized drugs handed by PO1 Rosal to PO3 Bulosan.

⁵⁸ TSN, October 20, 2014, pp. 25-30.

⁵⁹ Records, p. 99; TSN, February 23, 2015, pp. 2-3.

The Court cannot consider PO3 Bulosan's conflicting statements as minor inconsistencies as they touch upon substantial and significant matters, *i.e.*, they involve the very integrity and identity of the *corpus delicti* in this case.

Further, the prosecution failed to present PO2 Bacud in court to testify on the following matters: 1) whether PO3 Bulosan in fact turned over the seized drugs to PO2 Bacud; and (2) assuming that PO3 Bulosan in fact turned over the seized drugs to PO2 Bacud, in what condition were the seized drugs received by PO2 Bacud from PO3 Bulosan. The prosecution could have resolved the inconsistencies in PO3 Bulosan's testimony by presenting PO2 Bacud in court. Unfortunately for the prosecution, it failed to do so.

Consequently, these inconsistencies, doubts, and lack of details on the custody of the seized drugs created a gap in the second link in the chain of custody.

As to the third link, the prosecution failed to present PO2 Bacud in court to testify on how he handled the seized drugs in his custody prior to turning them over to the crime laboratory. Further, while the parties agreed to stipulate on the testimony of PO3 Reyes that he received the seized drugs from PO2 Bacud at the crime laboratory, there was no stipulation as to how he handled the seized drugs in his custody before turning them over to the forensic chemist. Thus, the absence of testimony or stipulation as to how PO3 Reyes handled the seized drugs in his custody resulted in a gap in the third link in the chain of custody.

As to the fourth link, Forensic Chemist Police Inspector Amiely Ann Navarro testified that after she examined the seized drugs, she delivered them to PO3 John Edwin Padayao (PO3 Padayao) for safekeeping and retrieved them from PO3 Padayao thereafter for delivery to the court.⁶⁰

Thus, there was a change of custody of the seized drugs which necessitated PO3 Padayao's testimony as to how he handled the drugs to preserve their identity and integrity of the seized drugs. However, PO3 Padayao did not testify in court. Consequently, absent PO3 Padayao's testimony, the Court is in serious doubt as to whether the drugs seized by PO1 Rosal from the accused are the same as those brought in court.

⁶⁰ TSN, February 3, 2014, pp. 7-10.

Thus, in view of the gaps in the chain of custody and the resulting doubt as to the identity of the drugs allegedly seized from Wisco, the Court is constrained to acquit Wisco of the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

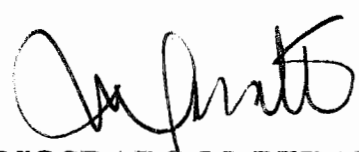
WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07468 is hereby **REVERSED** and **SET ASIDE**. Appellant Nomer Wisco y Failano is hereby **ACQUITTED** of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt. 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 Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Corrections is **DIRECTED** to **REPORT** the action he has taken to this Court within five (5) days from receipt of this Decision.


SO ORDERED.

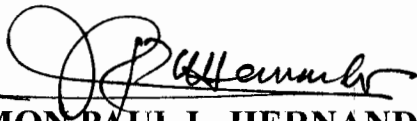

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice

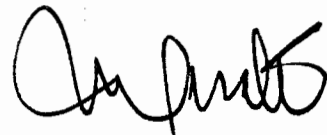

MARVIC M.V.F. LEONEN
 Associate Justice

Reyes

ANDRES B. REYES, JR.
 Associate Justice


RAMON PAUL L. HERNANDO
 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.


DIOSDADO M. PERALTA
 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.

CERTIFIED TRUE COPY

Mis R DC Batt
MISAEAL DOMINGO C. BATTUNG III
 Deputy Division Clerk of Court
 Third Division

SEP 18 2019


ANTONIO T. CARPIO*
 Acting Chief Justice

* Designated as Acting Chief Justice per Special Order No. 2699 dated August 15, 2019.

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