



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 233750

Present:

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

- versus -

ROMEL MARTIN y PEÑA,
 Accused-Appellant.

Promulgated:

June 10, 2019

Victor Legita

X-----X

DECISION

REYES, A., JR., *J.*:

This is an appeal¹ from the Decision² of the Court of Appeals (CA) in CA-GR. CR-HC No. 07385 promulgated on May 18, 2017, which affirmed the Decision³ dated February 11, 2015 of the Regional Trial Court (RTC) of Tanauan City, Batangas, Branch 83, in Criminal Case No. CR-11-08-5719, finding accused-appellant Romel Martin y Peña (Martin) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In Criminal Case No. 11-08-5719, Martin was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

¹ CA rollo, pp. 299-300.

² Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, concurring; id. at 277-291.

³ Rendered by Presiding Judge Marjorie T. Uyengco-Nolasco; id. at 55-63.

Reyes

The Facts

In an Information⁴ dated August 26, 2011, Martin was charged with violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 3rd day of August, 2011, at about 4:30 o'clock in the afternoon, at Barangay 2, Poblacion, City of Tanauan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away one (1) small heat-sealed transparent plastic sachet with [marking] "HAS-1" containing methamphetamine hydrochloride, commonly known as "shabu," with an aggregate weight of 0.04 gram, a dangerous drug.

Contrary to law.⁵

Version of the Prosecution

On August 3, 2011, the Tanauan Police received a call from an anonymous resident who reported about the rampant trading, buying and selling, and usage of prohibited drugs in the area. There was an alleged report about a pot session that was happening on Collantes Street, Barangay 2 in Tanauan City which is part of the vicinity where roving operations were being conducted.⁶

Police Officer 2 Mafriel Magpantay (PO2 Magpantay) and PO1 Harold Suriaga (PO1 Suriaga) were recalled from their current field posts to join the operations team as they were briefed by Police Senior Inspector John Ganit Rellian (PS/Insp. Rellian) where they proceeded to their target operation.⁷

At about 4:30 p.m., when they reached the subject area, the police operative team, comprised of 10 personnel including PO2 Magpantay and PO1 Suriaga, alighted from the mobile patrol car, and started walking with caution to the inner alleys.⁸

When they reached the interior of the location, they saw an elevated nipa hut where Martin, Sheryl Pelago (Pelago) and Bernardo Malocloc (Malocloc) were standing. Upon seeing them, the entrapment team

⁴ Id. at 21.

⁵ Id. at 21-22.

⁶ Id. at 22.

⁷ Id. at 56.

⁸ Id. at 23.

Reyes

positioned themselves at a distance of 1½ to 2 meters below the floor of the nipa hut. They were about 9 m away from the subject persons.⁹

From this vantage point, they witnessed the three who gave the impression of conducting an ongoing transaction where Martin handed over a plastic sachet containing *shabu* to Malocloc who received the plastic pack and for which the latter handed over bills which were eventually pocketed by the former.¹⁰

Upon seeing this, the police officers effected the arrest. Malocloc was apprehended from where one plastic sachet containing methamphetamine hydrochloride was marked with the initials "HAS-1."¹¹

Martin and Pelago fled crossing the other house in front of the hut, with the entrapment team pursuing them. PS/Insp. Rellian commanded them to come out of their hiding for which they finally surrendered. PO1 Suriaga frisked Martin, yielding two more small, elongated plastic sachets with white crystalline content and six 100-peso bills which were eventually marked with "HAS-2" and "HAS-3." The money bills obtained from the body search were then marked with "HAS-5" to "HAS-10."¹²

Photographs of the marked items were taken and inventory was conducted by PO2 Magpantay in the presence of Barangay Captain Lourdes R. Ramirez (Ramirez) who thereafter signed the same. There were no representatives from the media and the Department of Justice (DOJ) during the inventory.¹³

After the inventory, Martin, Pelago and Malocloc were transferred to the Tanauan Police Station.¹⁴

PO2 Ana Violeta G. Jaime (PO2 Jaime) served as custodian of the confiscated items for purposes of processing and transmitting to the crime laboratory. It was PO3 Rowell M. Maala, another investigator along with PO2 Magpantay, who had arranged for the requests for the laboratory examinations of the marked confiscated items, as well as the tests for the prohibited drugs. These were, in turn, transmitted to the Philippine National Police (PNP) Regional Crime Laboratory Service Office 4, in Camp Vicente Lim, Calamba City, Laguna. The seized items were then received by the PNP Crime Laboratory at 12:30 a.m. on August 4, 2011.¹⁵

⁹ Id. at 278-279.

¹⁰ Id. at 23-24.

¹¹ Id. at 24.

¹² Id.

¹³ Id. at 58.

¹⁴ Id.

¹⁵ Id. at 279-280.

Meyer

Forensic Chemist Police Chief Inspector Donna Villa Huelgas examined the said items and prepared Chemistry Report No. D-420-11, yielding positive results for methamphetamine hydrochloride, *viz.*:

Qualitative examination conducted on specimens A1, B1, C1 and D1 to D9 gave POSITIVE result from the tests for the presence of Methamphetamine hydrochloride, a dangerous drug.¹⁶

Version of the Defense

Martin denied the accusations against him.

He alleged that he was in his residence on Collantes Street when Pelago arrived with her ill daughter, Rio Shane (Rio). After having lunch, he left to go to the market.¹⁷

On or about 3:30 p.m., Martin went home to sleep. Pelago and Rio were watching television when police officers arrived and arrested six persons including a certain August Punzalan who lived at the adjacent house of Martin's. When they saw Pelago by the window, police officers approached the neighboring house and asked for the whereabouts of Martin. Pelago replied that Martin was asleep and that she would wake him up.¹⁸

Pelago then woke up Martin who curiously asked her why police officers were looking for him. Martin opened the door and immediately saw two police officers in uniform.¹⁹

During trial, Martin testified that the two police officers he saw that day were not the same ones who testified against him, namely, PO1 Suriaga and PO2 Magpantay. According to Martin, the two unidentified police officers brought him to the terrace of the house and thereafter frisked him. He claimed that during the search, nothing illegal was taken from him and that Pelago and Rio were even ordered by the police officers to leave the house so the latter could search its interiors, which likewise yielded negative results.²⁰

On February 11, 2015, the RTC rendered a Decision²¹ finding Martin guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165. The RTC gave full credence to the testimonies of PO2 Magpantay and PO1 Suriaga who conducted the buy-bust operation

¹⁶ Id. at 280.

¹⁷ Id. at 24.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 25.

²¹ Id. at 55-63.

Meyer

against Martin and rejected Martin's defense of denial. The RTC reiterated the oft-stated rule that a defense of denial, which is unsupported and unsubstantiated by clear and convincing evidence, becomes negative and self-serving, deserving no weight in law and cannot be given evidentiary value over convincing, straightforward and probable testimony on affirmative matters.

The trial court, likewise, held that there was substantial compliance with the requirements set forth in Section 21 of R.A. No. 9165. Hence, it ruled that the integrity and evidentiary value of the dangerous drugs were preserved. The dispositive portion of the RTC decision reads:

WHEREFORE, in light of the foregoing, the court finds the accused, **ROMEL MARTIN y PE[Ñ]A, GUILTY** beyond reasonable doubt of the crime of **VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165**, in Criminal Case No. 11-08-5719.

Hence, the accused is sentenced to LIFE IMPRISONMENT and to pay a FINE OF FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

Further, let the shabu marked as Exhibit "J", with submarkings, subject of this case be immediately transmitted to the Philippine Drug Enforcement Agency (PDEA) for the latter's appropriate disposition.

No pronouncement as to the costs.

SO ORDERED.²² (Emphases in the original)

Dissatisfied with the RTC's ruling, Martin appealed to the CA, but in its Decision²³ on May 18, 2017, the CA affirmed the RTC's judgment of conviction. The CA held that the prosecution successfully discharged its burden of establishing the elements of Illegal Sale of Dangerous Drugs. It, likewise, held that while there may have been procedural lapses in handling the seized items, the same would not *ipso facto* result in the unlawful arrest of Martin nor render inadmissible in evidence the said items as long as the integrity and evidentiary value of the seized items are properly preserved and the chain of custody is established. The CA disposed as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision dated 11 February 2015 is hereby **AFFIRMED**.

SO ORDERED.²⁴ (Emphases in the original)

²² Id. at 63.

²³ Id. at 277-291.

²⁴ Id. at 291.

Meyer

The Issue

The pivotal issue to be resolved is whether or not the CA committed a reversible error in affirming Martin's conviction for violation of Section 5, Article II of R.A. No. 9165.

Ruling of the Court

After a careful perusal of the records, the Court is convinced that there is merit to the appeal and deems it proper to acquit Martin for violation of Section 5, Article II of R.A. No. 9165.

At the outset, the Court draws attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.²⁵ Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed on appeal.²⁶ However, this rule admits of exceptions and does not apply where facts of weight and substance, with direct and material bearing on the final outcome of the case, have been overlooked, misapprehended or misapplied.²⁷

Here, Martin was charged with and convicted of the crime of illegal sale of dangerous drugs as defined and penalized under R.A. No. 9165, which demands the establishment of the following elements for a conviction: (1) the identity of the buyer and the seller; (2) the object of the sale and its consideration; and (3) the delivery of the thing sold and the payment therefor. What 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.²⁸

To determine whether there was a valid buy-bust operation and whether proper procedures were undertaken by the police officers in the conduct thereof, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence.

²⁵ *People v. Kamad*, 624 Phil. 289, 310 (2010).

²⁶ *People v. Milan*, 370 Phil. 493, 499 (1999).

²⁷ *People v. Robles*, 604 Phil. 536, 543 (2009).

²⁸ *People v. Ismael*, 806 Phil. 21, 29 (2017).



The prosecution, on the other hand, must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, “planting,” or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.²⁹

The Rule on Chain of Custody was not observed; substantial gaps in the chain

A perusal of the records shows that the prosecution witnesses had conflicting statements as to who had possession of the seized items after they were seized and marked - a crucial link in the chain of custody.

PO1 Suriaga testified that after affixing his initials on the plastic sachets which had *shabu* content, he was able to transfer possession to PO2 Magpantay. On the contrary, PO2 Magpantay never mentioned in his testimony or even in his Sworn Statement that after the arrest, there was an instance that he received from PO1 Suriaga the plastic sachets seized from Martin and Malocloc.

On direct examination, PO1 Suriaga testified as follows:

Pros. Torrecampo

Q: After he was arrested, what did he do?

PO1 Suriaga

A: We searched Romel Martin.

Q: Who conducted the search?

A: I myself, ma'am.

Q: What part of the body did you [search]?

A: His waistline and the shorts he was wearing at that time.

Q: What was he wearing on top?

A: T-shirt, ma'am.

Q: What was the result of the search?

A: I was able to confiscate two (2) plastic sachets.

Q: Where?

A: From his pocket.

²⁹ *People of the Philippines v. Ronaldo Paz y Dionisio @ "Jeff,"* G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

Mejia

- Q: What pocket?
A: His left front pocket, ma'am.
- Q: What did you find?
A: [T]he money was handed to him by Mr. [Malocloc].
- Q: What denomination of money did you find?
A: Six (6) pieces of One Hundred (Php100.00) Peso hundred bill[s] with a total amount of Php600.00.
- Q: Where did you find?
A: At the right front pocket.
- Q: What else did you find?
A: None, ma'am.
- Q: What did you do with the two pieces (2) plastic sachets?
A: I also placed my markings.
- Q: What markings?
A: My initials "HAS", ma'am. The two (2) pieces which I got from Romel Martin, I placed the markings "HAS-2" and "HAS-3".
- Q: What happened to the money that you found in the right pocket?
A: I also placed my markings, ma'am.
- Q: What markings did you place?
A: "HAS-5" to "HAS-10", ma'am.
- Q: Which part of the money did you [place] the initials? Back portion or front portion?
A: I could no longer recall, ma'am.
- Q: Now, those items that you found, will you be able to identify if that will be shown to you?
A: Yes, ma'am.
- Q: Now, you said earlier that you were able to find one transparent plastic sachet from Mr. [Malocloc] and you conducted the search in the person of the accused, Romel Martin?**
A: Yes, ma'am.
- Q: Where was the item that you found from Mr. [Malocloc] while you were conducting the search?**
A: With PO2 Magpantay, ma'am.
- Q: In what point in time did you hand-over the plastic sachet you confiscated from [Malocloc] while you were conducting the search?**
A: When I conducted the body search on Romel Martin, that was also the time I handed it to PO2 Magpantay.



Court:

Q: So, that was before the body search you conducted to Romel Martin?

A: Yes, Ma'am.

Q: It was already marked when it was given?

A: Yes, ma'am.³⁰ (Emphasis in the original)

However, PO2 Magpantay provided contrasting testimonies from those made by PO1 Suriaga:

Pros. Torrecampo

Q: And when you arrived at the house across the nipa hut, what did you do next, if any?

PO2 Magpantay

A: Sir Rellian, because the door was already locked, talked to the person inside and ordered him to go out, ma'am.

Q: And Officer Rellian told the persons inside to go out, what happened next, if any?

A: After few minutes, the two persons, the man and the woman, came out of the house, ma'am.

Q: Who are these persons who went out of the house?

A: The man along with the woman, who handed the plastic sachet to another man, ma'am.

Q: What happened next after they came out of the house?

A: PO1 Suriaga immediately frisked the man who handed the plastic sachet to another man, ma'am.

Court:

Q: And this you are referring to is Romel Martin?

A: Yes, your Honor.

Court:

Proceed Fiscal.

Pros. Torrecampo

Q: Where were you, Mr. Witness, when Police Officer Suriaga was frisking him?

PO2 Magpantay

A: I was beside him, ma'am.

Q: So what was the result of the search, Mr. Witness?

A: PO1 Suriaga recovered two (2) plastic sachets and money, but I don't know in what part of his body were those items recovered, ma'am.

Q: How about the plastic sachets? Where did he recover it, Mr. Witness?

A: Also from Romel Martin, because we are not allowed to frisk a woman.

³⁰

CA rollo, pp. 45-46.

Meyer

Court:

Q: Did you see from what particular part of the body of Romel Martin were the two plastic sachets recovered by Suriaga?

A: It was in the pocket of Romel Martin but I don't know from which pocket, your Honor.

Q: You are not sure whether it is in the front, back, left or right side pocket?

A: I am not sure your Honor, because while PO1 Suriaga was frisking him, I was with the man who was earlier arrested.

Q: How about the money?

A: He also recovered money but I am not sure from where it was recovered.

Q: But it is also from the pocket?

A: Yes, your Honor.

Court:

Proceed.

Pros. Torrecampo

Q: After the said plastic sachets and money were confiscated from this accused, what happened next, if any?

PO2 Magpantay

A: It was marked by PO1 Suriaga, ma'am.

x x x x

Q: Where did he mark the confiscated items?

A: In the area, ma'am.

Q: Was it outside or inside the house where these two persons went earlier?

A: Outside the house, ma'am.

Q: Where were you while Suriaga was marking these items?

A: I was beside him, ma'am.

Q: Did you see him actually marked the confiscated items?

A: Yes, ma'am.

x x x x

Q: And what markings did he place, if you know?

A: His initials "HAS", ma'am.

Q: How about your other companion police officers, Rellian and Salayo while Suriaga was marking the confiscated items?

A: They were also there, ma'am.

Q: So what happened, Mr. Witness, to the person to whom the plastic sachet was given earlier in the nipa hut?

A: He was beside us. We did not leave him because he might leave, ma'am.

Meyer

Q: What did you do with the man, Mr. Witness, the one to whom the plastic sachet was given earlier?

A: Iyon pong plastic sachet na nakuha sa kanya at iyong plastic sachets na nakuha kay Martin ay sabay na minarkahan ni PO1 Suriaga.

Court:

Q: Were you able to find out the identity of the other man and the woman so that it will be easier for us which one to tell by name?

A: Ang babae po ay si Sheryl.

Pros. Torrecampo

Q: And do you know her last name?

A: I am not sure if Pelayo or Pelagio, and the other man we arrested in the kubo is Bernardo [Malocloc], ma'am.

Q: Again, Mr. Witness, who marked the subject items confiscated from Bernardo [Malocloc]?

A: PO1 Suriaga, ma'am.

Q: Do you know the markings placed by the said officer on the said item?

A: He placed his initials "HAS", but I can't remember what is the number, ma'am.

Q: How about the items confiscated from Romel Martin?

A: Aside from the money, we were able to confiscate two (2) plastic sachets, ma'am.

Q: What is the description again of the two (2) plastic sachets recovered from Romel Martin?

A: Two (2) heat-sealed plastic sachets containing [white] crystalline [substance], your Honor.

Pros. Torrecampo

Q: So what happened next, if any, Mr. Witness, after the marking of these two confiscated items outside the house?

A: We brought the three (3) arrested persons back to the "kubo" and Sir [Rellian] texted the other members of the team who served as security to proceed to the "kubo", ma'am.

x x x x

x x x According to PO1 Suriaga, the said plastic sachet was marked after he confiscated the same and that he handed the marked plastic sachet to PO2 Magpantay before he frisked appellant Romel Martin. PO2 Magpantay, aside from not mentioning that he came into the possession of the plastic sachets, testified that all three (3) plastic sachets were marked simultaneously by PO1 Suriaga after the latter police officer was done frisking Romel Martin and had allegedly recovered the other two (2) plastic sachets of shabu.³¹

³¹ Id. at 47-50.

Meyer

Contrary to the ruling of the trial court, the Court cannot categorize these discrepancies as merely trivial. The testimonies of PO1 Suriaga and PO2 Magpantay are material to the determination of custody of the marked confiscated dangerous drugs after they were marked. PO1 Suriaga testified that after affixing his signature on the sachet, he handed it to PO2 Magpantay but the latter did not confirm this on direct examination. There being confusion as to who had possession of the seized items after they were marked, it constitutes a break in the first link of the chain.

As held in *People v. Martinez, et al.*,³² the first stage in the chain of custody rule is “for greater specificity, marking means the placing by the apprehending officer or the poseur buyer of his/her initials and signature on the items seized.”³³ Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. “Marking” of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. The testimony of the witness, testifying on the first link in the chain of custody of marking to the next custodian, is now suspect.³⁴

The Court, likewise, explained in *People v. Gonzales*³⁵ that:

The importance of x x x 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.³⁶ (Citation omitted)

The prosecution, likewise, failed to present PO2 Jaime, who allegedly stood as custodian of the items for processing and their subsequent transmittal to the crime laboratory.

³² 652 Phil. 347 (2010).

³³ Id. at 377.

³⁴ Id. at 368.

³⁵ 708 Phil. 121 (2013).

³⁶ Id. at 131.

Meyer

As to the second link in the chain of custody, there was no credible prosecution witness who testified as to whether or not there was compliance with the chain of custody rule. *First*, the police investigator to whom the seized items were handed to was not clearly identified, as admitted by PO1 Suriaga himself on direct examination, *viz.*:

Q: Who was the duty investigator at that time?

A: I could not recall, ma'am.

Court: Let us clarify, you have possession of the items seized before you reached the police station and you turning it over to the investigator?

Witness: Yes, ma'am.

Court: But you cannot remember who is the duty investigator at that time?

Witness: As far as I remember it is PO3 Maala, your honor.³⁷

It can only be surmised from the Request for laboratory examination submitted to the crime laboratory that the document was signed by Chitadel Carandang Gaoiran (Gaoiran) in behalf of Police Superintendent Manuel Yson Manalo. The pertinent portion of the transcript on PO1 Suriaga's testimony reads:

Q: There are signatures on the lower left hand corner on the above-printed name, P/Supt[.] Manuel Yson Manalo and P[O]3 Rowell Maala both on Exhibits "C" and "D". Whose signatures are that? (sic)

A: Those are the signatures of PO3 Maala, and in behalf of P/Supt[.] Manuel Yson Manalo it was signed by our Deputy, Chitadel Carandang Gaoiran.

Q: Why do you know that these are their signatures?

A: I was just beside them when they affixed their signatures.³⁸

Interestingly, Gaoiran's testimony was never presented as evidence for the prosecution.

Since the identity of the investigating officer was not clearly established, it constitutes as a gap in the second link – *the turnover of the seized shabu by the apprehending officer to the investigating officer*. This procedural lapse or defect cannot be overlooked lest the Court blatantly disregard the very safeguards enshrined in R.A. No. 9165.

³⁷ CA rollo, pp. 106-107.

³⁸ Id. at 114.

Meyer

The testimony of the Forensic Chemist, likewise, did not prove who received the confiscated *shabu* when these were transmitted to the crime laboratory. It was not clear who the custodian of the specimen *shabu* was and who possessed the seized items after chemical tests were made which yielded positive for dangerous drugs and the manner by which these were safeguarded and stored before they were offered in evidence.

The rule on chain of custody expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, 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 in 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.³⁹ Indeed, it is from the testimony of every witness, who handled the evidence from which a reliable assurance can be derived, that the evidence presented in court is one and the same as that seized from the accused.⁴⁰

Here, the Court finds that the apprehending officers failed to properly preserve the integrity and evidentiary value of the confiscated *shabu*. There are just too many breaks and gaps to the effect that a chain of custody could not be established at all. Failure of the prosecution to offer testimony to establish a substantially complete chain of custody of the *shabu* and the inappropriate manner of handling the evidence prior to its offer in court diminishes the government's chance of successfully prosecuting a drug case.

Unjustified non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 is fatal to the prosecution's case

Apart from the missing links, there was also failure to comply with the required number of witnesses who must be present during the conduct of the inventory.

³⁹ *People v. Enad*, 780 Phil. 346, 358 (2016).

⁴⁰ *Lopez v. People*, 617 Phil. 109, 120 (2009).

Meyer

Time and again, it has been laid down as doctrinal that non-compliance with Section 21 of R.A. No. 9165 shall not render void and invalid the seizure and custody of the drugs when: (a) such non-compliance is attended by justifiable grounds; and (b) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two requirements were met before such non-compliance may be said to fall within the scope of the proviso.⁴¹

In *People v. Relato*,⁴² the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.⁴³

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

SEC. 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 and underscoring Ours)

⁴¹ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

⁴² 679 Phil. 268 (2012).

⁴³ *Id.* at 277-278.

Meyer

In 2014, R.A. No. 10640⁴⁴ amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under **justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions shows that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are, likewise, required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. It is, likewise, worthy to note that failure of the arresting officers to justify the absence of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

⁴⁴ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on July 15, 2014.

Meyer

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations should apply. Section 21 requires the presence of three witnesses during the physical inventory of the seized items, *i.e.*, **(1) an elected public official, (2) a representative from the DOJ, and (3) a representative from the media.** The Court, in *People v. Mendoza*,⁴⁵ explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or “planting” of evidence, *viz.*:

Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.⁴⁶

From the records, it is clear that only Ramirez was present to witness the conduct of the inventory. There were no representatives from the DOJ and the media. The photographs of the seized item allegedly taken during the inventory were likewise not presented in evidence. In addition, the prosecution did not offer any justifiable ground to explain its noncompliance with the requirements set forth in Section 21. These glaring procedural lapses militate against its claim that the integrity and evidentiary value of the seized item had been preserved.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody may be condoned provided that the arresting or apprehending officers are able to justify their failure to comply with the same. It must be **alleged** that they put in their best effort to ensure compliance but were prevented from doing so by circumstances beyond their control. The justifiable ground for noncompliance **must be proven as a fact.** The prosecution cannot simply invoke the saving clause found in Section 21 - that the integrity and evidentiary value of the seized items have been preserved - without justifying its failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves.

⁴⁵ 736 Phil. 749 (2014).

⁴⁶ *Id.* at 764.

Meyer

The Court's ruling in *People v. Umipang*⁴⁷ is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of x x x justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. **This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.**

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution - especially when the pieces of evidence were derived from a buy-bust operation - "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."⁴⁸ (Citations omitted and emphasis supplied)

The prosecution's failure to justify the arresting officers' noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. The unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause.

⁴⁷ 686 Phil. 1024 (2012).

⁴⁸ Id. at 1053-1054.

Meyer

The Court, on various occasions, has reversed judgments rendered by lower courts and set an accused free on the basis of unexplained gaps and lapses in the chain of custody, primarily those pertaining or related to the handling of the seized drugs. Any indicium of doubt in the evidence of the prosecution that outs into question the fundamental principle of credibility and integrity of the *corpus delicti* makes an acquittal a matter of course.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution⁴⁹ that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Lalaine Guadayo y Royo*,⁵⁰ the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated May 18, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07385, which affirmed the judgment of the Regional Trial Court of Tanauan City, Batangas, Branch 83, in Criminal Case No. CR-11-08-5719, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romel Martin y Peña is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has undertaken.

SO ORDERED.

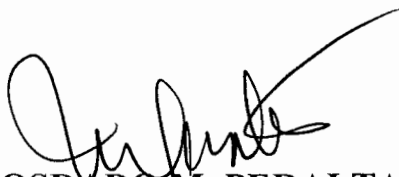
Reyes
ANDRES B. REYES, JR.
Associate Justice

⁴⁹ Article III, Section 14(2) of the Constitution mandates:
Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁵⁰ G.R. No. 210610, January 11, 2018.

WE CONCUR:



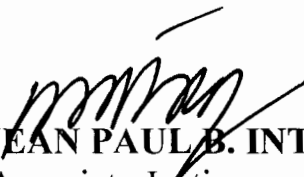
DIOSDADO M. PERALTA
Associate Justice
Chairperson



MARVIC M.V.F. LEONEN
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

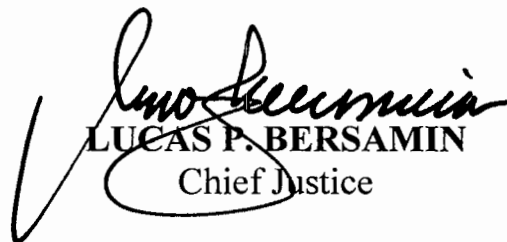
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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.



LUCAS P. BERSAMIN
Chief Justice