

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231838

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, JR.,
HERNANDO, ^{ad}
CARANDANG, * JJ.

- versus -

FRANKIE MAGALONG y
MARAMBA** @ ANGKIE,
Accused-Appellant.

Promulgated:

March 4, 2019

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DECISION

PERALTA, J.:

On appeal is the October 21, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07499, which sustained the February 11, 2015 Decision² of the Regional Trial Court (RTC), Branch 41, Dagupan City, Pangasinan, convicting appellant Frankie Magalong y Maramba @ Angkie (Magalong) of illegal sale of Methamphetamine Hydrochloride (Shabu), in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

On July 11, 2013, an Information was filed against Magalong, which alleged:

* Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

** Also spelled "Magamba" in some parts of the rollos and records.

¹ Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting concurring; *rollo*, pp. 2-13; CA *rollo*, pp. 137-148.

² Penned by Presiding Judge Emma M. Torio; records, pp. 113-125; CA *rollo*, pp. 76-88.

That on or about the 10th day of July 2013, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **FRANKIE MAGALONG Y MARAMBA @ ANGKIE**, did then and there, willfully, unlawfully and [feloniously], sell and deliver to a poseur-buyer Methamphetamine Hydrochloride (Shabu), contained in one (1) heat-sealed plastic sachet, weighing more or less 4.031 grams, in exchange of P20,000.00, without authority to do so.³

In his arraignment, Magalong pleaded “not guilty.”⁴ Trial ensued while he was detained in the city jail.⁵

Version of the Prosecution:

On or about 2:00 p.m. of July 10, 2013, Intelligence Officer 1 (IO1) Raymund Tabuyo and Agent Jerico Jorge Inocencio of the Philippine Drug Enforcement Agency (PDEA) Regional Office 1, Pangasinan Sector Special Enforcement Team (PSSET) were told by a confidential informant (CI) that Magalong was selling illegal drugs in Sitio Tondaligan, Bonuan Gueset, Dagupan, Pangasinan. The report was relayed to their team leader, Agent Rogelito Daculla. Upon verification, it was found that Magalong was in their target list, *i.e.*, listed in the order of battle, for his involvement in illegal drugs in Pangasinan. A buy-bust operation was planned. The CI was instructed to call Magalong via cellphone and relay to him that he had a potential buyer. Magalong agreed to sell five (5) grams of shabu worth ₱20,000.00 and to meet in front of the Japanese Garden in Sitio Tondaligan by 6:00 p.m.

At 4:00 p.m., the PDEA operatives conducted a briefing. IO1 Tabuyo and Inocencio were designated as the poseur-buyer and back-up/arresting officer, respectively. IO1 Tabuyo prepared a genuine ₱500.00 bill as buy-bust money and boodle money consisting of newspaper cutouts, with his markings placed thereon. It was also agreed that the pre-arranged signal would be the lighting of a cigarette after the sale. By 5:00 p.m., the PDEA team, composed of more or less 10 members including the CI, proceeded to the meeting place with the use of their service vehicle and another car.

When they were already near the transaction area, IO1 Tabuyo and the CI alighted from the PDEA service vehicle and boarded a jeepney going to the Tondaligan beach cottages. The other group members followed and strategically positioned themselves within the vicinity. Upon reaching the agreed place, IO1 Tabuyo and the CI stood by in a *sari-sari* store located beside the PJ cottage and right across the Japanese Garden. A few minutes

³ Records, p. 1.

⁴ *Id.* at 25-28.

⁵ *Id.* at 21.

later, a man that fit the description of Magalong arrived and went near them. The CI introduced IO1 Tabuyo as the friend interested to buy the merchandise. Magalong invited them to rent a room in PJ cottage to taste the illegal drugs, but IO1 Tabuyo declined reasoning that they have to leave the area at once as they have to attend a birthday party. Eventually, Magalong handed a plastic sachet containing what appeared to be a shabu and, in return, IO1 Tabuyo gave the payment. When Magalong noticed the boodle money, IO1 Tabuyo grabbed him and introduced himself as a PDEA agent. Inocencio and the other team members immediately rushed to the area. Magalong was frisked and apprised of his constitutional rights.

IO1 Tabuyo seized and marked the illegal drug, buy-bust money, and boodle money. In the presence of Magalong, he also conducted an inventory of confiscated items at the place of arrest and, thereafter, prepared the Certificate of Inventory of Drug Evidence.⁶ Ricardo C. Mejia (*Barangay* Chairman of Bonuan Gueset), Robert R. Ramirez (representative of the Department of Justice), and John Germono and Charisse Victorio (representatives of the media), affixed their signatures on the certificate. The representatives of the DOJ and media signed the certificate at the PDEA office in Astrodome, Tapuac District, while the *barangay* chairman did the same at the *barangay* hall of Bonuan Gueset.⁷

IO1 Tabuyo was in possession of the plastic sachet of shabu, buy-bust money, and boodle money as the team proceeded to the PDEA office. There he prepared the requests for laboratory examination of the drug evidence and medical examination of Magalong.⁸ During the preparation of the letter requests, the plastic sachet of shabu was in his custody as it was placed in the buy-bust kit he was holding.⁹ Together with Magalong and Inocencio, he delivered the request for laboratory examination and the specimen to the Pangasinan Provincial Crime Laboratory Office.¹⁰ In the PDEA office, the Booking Sheet and Arrest Report¹¹ of Magalong was prepared by Inocencio and the Joint Affidavit of Arrest¹² was executed by him and IO1 Tabuyo. Pictures of the proceedings made after the arrest of Magalong were also taken.¹³

On July 11, 2013, Police Senior Inspector (*PSI*) Myrna Malojo-Todeño, who was a Forensic Chemical Officer of the crime laboratory, and a certain SPO1 Verceles personally received the request for laboratory examination¹⁴ of the seized evidence, particularly described as: “One (1)

⁶ Records, p. 14.

⁷ TSN, November 27, 2013, pp. 14-15; TSN, April 14, 2014, pp. 14, 17-18; May 19, 2014, pp. 4-5.

⁸ TSN, November 27, 2013, pp. 15-16; TSN, April 14, 2014, p. 14.

⁹ TSN, February 12, 2014, pp. 4-5.

¹⁰ TSN, November 27, 2013, p. 16; TSN, February 12, 2014, pp. 5-6; TSN, April 14, 2014, pp. 14-

15.

¹¹ Records, p. 9.

¹² *Id.* at 7-8.

¹³ *Id.* at 18-19.

¹⁴ *Id.* at 12.

small heat-sealed transparent plastic sachet containing white crystalline substance suspected to be shabu with an approximate weight of 5 grams with markings Exh. A, 07-10-13, RAT and signature.”¹⁵ Upon receiving the specimen, PSI Todeño conducted a qualitative examination, which, as evidenced by the initial and final laboratory reports (Chemistry Report No. D-129-2013L),¹⁶ gave positive result to the test for the presence of Methamphetamine Hydrochloride.¹⁷ Based on the logbook of incoming and outgoing specimen,¹⁸ the plastic sachet of shabu was turned over by PSI Todeño to Police Officer 3 (PO3) Elmer Manuel, who was the Evidence Custodian, but was later on retrieved from the latter by the former pursuant to a subpoena issued by the trial court.¹⁹

Version of the Defense:

Only Magalong testified for the defense. He denied that he was one of the drug personalities in Pangasinan being monitored by the police. He recalled that on July 1, 2013 he was in the Town Proper of Dagupan waiting for a jeep bound for Bonuan Boquig (as he was from Bonuan Boquig-Longos) when two men approached and talked to him. They tapped his left shoulder and said, “*kumusta pare, balato.*” Surprised as they were unknown to him, he replied that he does not have money. The men retorted that they do not believe him as he earns so much because he is one of the targets in their office. When he asked what office they belong, the men claimed that they were from PDEA. He then told them to go back to their office since they were just extorting money. In response, the unidentified men looked daggers at him and uttered something which he could not understand. So he went away from them. He neither went to the PDEA office to complain about his alleged listing nor reported to the police what happened.

On July 10, 2013, Magalong was at the Japanese Garden in Bonuan Tondaligan. He was with his cousin, Ferdinand Reyes, drinking liquor at the seashore. As he was going out of the Japanese Garden, somebody asked him if he is Frankie Magalong. When he replied in the affirmative, he was instantly grasped and boarded in a red car. He was brought to the Dagupan City Astrodome and to another place unknown to him since it was already late at night and he was a little bit drunk.

After trial, the RTC convicted Magalong of the crime charged. The dispositive portion of the February 11, 2015 Decision states:

¹⁵ *Id.* at 12.

¹⁶ Records (Evidence for the Prosecution), pp. 8-9.

¹⁷ *Id.*, September 11, 2013, pp. 6-8.

¹⁸ Records (Evidence for the Prosecution), pp. 18, 20.

¹⁹ TSN, September 11, 2013, pp. 8-9; TSN, March 19, 2014, pp. 4-10.

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Frankie Magalong y Maramba @ Angkie **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act 9165, and pursuant thereto, he is sentenced to suffer the penalty of life imprisonment and fine in the amount of Five Hundred Thousand Pesos (Php500,000.00).

The shabu subject of this case weighing 4.031 grams and the buy[-]bust money of P20,000.00 as well as the boodle money are hereby forfeited in favor of the government and to be disposed in accordance with the law.

The period during which the accused has undergone preventive imprisonment shall be credited to him in full in the service of his sentence if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted persons.

SO ORDERED.²⁰

Magalong moved for a reconsideration of the Decision, but it was denied.²¹ Subsequently, the case was elevated to the CA *via* notice of appeal.²² However, the appellate court affirmed the RTC Decision.

Now before Us, both Magalong and the People manifested that they would no longer file a Supplemental Brief, taking into account the exhaustive arguments and discussions in their respective Briefs before the CA.²³

The appeal is unmeritorious.

For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.²⁴ In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.²⁵ What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.²⁶ In this case, the Court finds that all the requisites for the sale of an illegal drug were met. Based on

²⁰ Records, p. 125; CA *rollo*, p. 88.

²¹ *Id.* at 148.

²² *Id.* at 151.

²³ *Rollo*, pp. 21-23 and 26-28.

²⁴ *People v. Sic-Open*, 795 Phil. 859, 869-870 (2016); *People v. Eda*, 793 Phil. 885, 896 (2016); *People v. Amaro*, 786 Phil. 139, 146-147 (2016); and *People v. Ros, et al.*, 758 Phil. 142, 159 (2015).

²⁵ *People v. Sic-Open, supra*, at 870; *People v. Eda, supra*, at 896-897; and *People v. Amaro, supra*, at 147.

²⁶ *People v. Eda, supra* note 24, at 897; *People v. Amaro, supra* note 24, at 147; and *People v. Ros, et al., supra* note 24.

the testimonies of IO1 Tabuyo and Inocencio, which were supported by the documentary evidence offered by the prosecution and admitted by the trial court, the identities of IO1 Tabuyo as the buyer,²⁷ Magalong as the seller, the *shabu* as the dangerous drug, and the ₱500.00 bill as the marked money, as well as the fact that the sale actually took place, have all been proven beyond reasonable doubt.

Contrary to the position of Magalong, the confidential informant need not be presented in order to successfully hold him criminally liable. Confidential informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police.²⁸ Where the sale was actually witnessed and adequately proved by prosecution witnesses, like in this case, the non-presentation of the confidential informant is not fatal since the latter's testimony will merely be corroborative of the apprehending officers' eyewitness testimonies.²⁹ Presentation of confidential informant is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the accused, or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction.³⁰ These exceptional circumstances are not present here.

Further, the chain of custody does not suffer from any fatal flaw. At the time of the commission of the crime on July 10, 2013, the applicable law was R.A. No. 9165.³¹ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, has defined chain of custody 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. Such 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.³²

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.³³ To establish a chain of custody sufficient to make evidence admissible, the

²⁷ TSN, November 27, 2013, p. 15; TSN, April 14, 2014, p. 7.

²⁸ *People v. Otico*, G.R. No. 231133, June 6, 2018 and *People v. Amin*, 803 Phil. 557, 565 (2017).

²⁹ *People v. Otico*, *supra*.

³⁰ *Id.*

³¹ R.A. No. 9165 took effect on July 7, 2002 (See *People v. De la Cruz*, 591 Phil. 259, 272 [2008]).

³² See *People v. Badilla*, 794 Phil. 263, 278 (2016); *People v. Arenas*, 791 Phil. 601, 610 (2016); and *Saraum v. People*, 779 Phil. 122, 132 (2016).

³³ *United States v. Rawlins*, 606 F.3d 73 (2010).

proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be.³⁴ In other words, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item is still what the government claims it to be.³⁵ In the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.³⁶ The Court has adopted this rule in *Mallillin v. People*,³⁷ where it was discussed how, ideally, the chain of custody should be established:

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.³⁸

Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.³⁹

³⁴ *Id.*, as cited in *United States v. Mehmood*, 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion*, 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark*, 2012 U.S. Dist. LEXIS 95130 (2012).

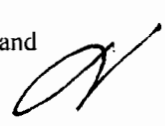
³⁵ See *United States v. Rawlins*, *supra* note 33, as cited in *United States v. Mark*, *supra*.

³⁶ See *United States v. Cardenas*, 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis*, 632 F.3d 673 (2011); *United States v. Solis*, 55 F. Supp. 2d 1182 (1999); *United States v. Anderson*, 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg*, 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia*, 983 F.2d 1563 (1993); *United States v. Johnson*, 977 F.2d 1360 (1992); and *United States v. Clonts*, 966 F.2d 1366 (1992).

³⁷ 576 Phil. 576 (2008).

³⁸ *Id.* at 587, as cited in *People v. Tamaño*, 801 Phil. 981, 1001 (2016); *People v. Badilla*, *supra* note 32, at 280; *Saraum v. People*, *supra* note 32, at 132-133; *People v. Dalawis*, 772 Phil. 406, 417-418 (2015); and *People v. Flores*, 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as "*Lopez v. People*" in *People v. Dela Cruz*, 589 Phil. 259 (2008), *People v. Sanchez*, 590 Phil. 214 (2008), *People v. Garcia*, 599 Phil. 416 (2009), *People v. Denoman*, 612 Phil. 1165 (2009), and *People v. Abelarde*, G.R. No. 215713, January 22, 2018.

³⁹ *People v. Sipin*, G.R. No. 224290, June 11, 2018; *People v. Amaro*, *supra* note 24, at 148; and *People v. Enad*, 780 Phil. 346, 358 (2016).



In this case, Magalong did not present any evidence to substantiate his allegation that the integrity and evidentiary value of the *shabu* presented as evidence at the trial have been compromised at some point. Instead, the body of evidence adduced by the prosecution supports the conclusion that the integrity and evidentiary value of the seized illegal drug were preserved and safeguarded through an unbroken chain of custody – from the arresting officers, to the investigating officer, then to the forensic chemist, and until the dangerous drug was presented in court. Certainly, the evidence submitted by the prosecution proved beyond reasonable doubt the crucial links in the chain, starting from its seizure and confiscation from Magalong until its presentation as proof of the *corpus delicti* before the RTC.

Seizure and marking of the illegal drug recovered from the accused by the apprehending officer

Here, IO1 Tabuyo marked the plastic sachet containing shabu, the buy-bust money, and the boodle money immediately upon their confiscation. In the presence of Magalong and the rest of the PDEA team members, he also conducted an inventory of confiscated items at the place of arrest and, thereafter, prepared the Certificate of Inventory of Drug Evidence that was signed by the *barangay* chairman at the *barangay* hall of Bonuan Gueset, as well as by the representatives of the DOJ and the media, at the PDEA office in Astrodome, Tapuac District.⁴⁰ All these are in substantial compliance of the requirements of Section 21(1) Article II of R.A. No. 9165, which states:

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[.]

and the mandate of Section 21(a) of the Implementing Rules and Regulations (*IRR*), which supplements the above-quoted provision:

⁴⁰ TSN, February 12, 2014, pp. 4, 9.

(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.

In this case, there appears to be a doubt on where the marking and physically inventory of the seized items actually happened. In his direct examination, IO1 Tabuyo declared that these were done at the place of arrest.⁴¹ In his cross-examination, however, he stated that after the apprehension of Magalong, the arresting team immediately proceeded to the PDEA office where he prepared the inventory receipt.⁴² Despite this seeming inconsistency, the prosecution was able to prove that the arresting team made an initial inventory at the place of arrest. IO1 Tabuyo clarified, thus:

ATTY. TIONG:

In your direct examination, you stated that the inventory receipt was prepared on July 10, 2013 in the area of transaction contrary to your statement that you prepared the inventory receipt in your office?

A: We had initial inventory in the place of transaction, sir.

Q: What made you have an initial inventory there?

A: For marking on the items confiscated and I put in the inventory, sir.

Q: I again invite your attention to your Affidavit, paragraph 8, you stated that "to avoid commotion and for the security of the team[,] we immediately withdrew from the vicinity and proceeded to our office to conduct an inventory of the confiscated pieces of evidence," what can you say to this?

A: (No answer)

COURT:

The court will just make the proper evaluation of the testimony of this witness.⁴³

The foregoing testimony was corroborated by Inocencio. In his direct examination, he maintained that IO1 Tabuyo marked the confiscated shabu at the transaction area, but they conducted the inventory at the PDEA office

⁴¹ TSN, November 27, 2013, pp. 11-12.

⁴² TSN, February 12, 2014, p. 3.

⁴³ *Id.* at 9.

because the crowd was already building up and for security reason.⁴⁴ His cross-examination disclosed the following details:

Q: Where was the inventory of the items confiscated done?

A: The inventory of the items was partially done inside the vehicle, sir.

Q: What do you mean by partially?

A: After the [marking], Agent Tabuyo also prepared the inventory but because the people [were] already crowded and building up the area, so to avoid commotion and for the security of the team, we immediately proceeded to our office to continue with the conduct of inventory of the confiscated items.

Q: What do you mean by crowded?

A: There [were] many persons who [were] looking on what [was] happening in the area.

Q: How far have you conducted inventory when you said partial of the extent of the inventory conducted?

A: As far as I remember (*sic*) I saw Agent Tabuyo put a marking on the confiscated items and wrote in the inventory.

Q: When you said that place [was] crowded you mean to say you [feared] that something [would] happen?

A: Yes sir because the area [was] just a few meters away from [the] Muslim area, so for security reason, our team leader instructed us to move out from the place and [proceed] [to] our office.

Q: If I tell you that there is a Police Precinct at the western part of the Japanese Garden, do you agree with me?

A: Yes, sir.

Q: [Had] it been better if you conducted the inventory at the Police Station [substation] rather than conducting partial inventory and going to your office?

PROS. NACHOR:

Objection, your Honor. Argumentative.

COURT:

[Sustained].

ATTY. TIONG:

Q: Are you aware of the provisions of conducting the chain custody (*sic*)?

A: Yes, sir.

Q: So that you know that under that law the inventory must be conducted at the place where the incident happened or to the nearest Police Station?

A: Yes, sir.

Q: Why then you do not have the inventory conducted (*sic*) here in the Police Station or nearest to the scene of the incident?

⁴⁴

TSN, April 14, 2014, pp. 7-8.

A: The provision is written also instead of the Police Station or at the nearest office of the arresting officer, that's why we brought the suspect at our nearest office which [was] in Tapuac District, Dagupan City.⁴⁵

X X X X

ATTY. TIONG:

Q: So after the arrest of the accused and the partial inventory, you proceeded to the Police Station directly?

A: Yes, sir.⁴⁶

In *People v. Sic-Open*,⁴⁷ the Court sustained the conviction of the accused-appellant despite the fact that the physical inventory and photograph of the illegal drug were not immediately done at the place where it was confiscated. In that case, the apprehending team similarly justified that they conducted a preliminary inventory of the seized items inside the car because it was too dark at the time and they were being cautious of their own safety as they were not sure if there were other persons within the vicinity aside from the accused-appellant.

As regards the requirement of the law that three witnesses⁴⁸ should be present during the physical inventory and photograph of the confiscated items, this Court has recently held in *People v. Lim*.⁴⁹

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

- (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 themselves were involved in the punishable acts sought to be**

⁴⁵ *Id.* at 10-12.

⁴⁶ *Id.* at 13.

⁴⁷ *Supra* note 24, at 873, citing *People v. Asislo* (778 Phil. 509 [2016]); *People v. Mammad, et al.* (769 Phil. 782 [2015]); *Miclat, Jr. v. People* (672 Phil. 191 [2011]); and *People v. Felipe*, (663 Phil. 132 [2011]).

⁴⁸ Under Section 21(1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. This provision was amended by R.A. No. 10640, which was approved on July 15, 2014. It is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ocampo*, G.R. No. 232300, August 1, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Sipin*, *supra* note 39; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, G.R. No. 226481, April 18, 2018).

⁴⁹ *Supra*.

apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official 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.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁵⁰

Here, We are convinced that the arresting team exerted earnest efforts to comply with the mandated procedure, and that under the circumstances present in this particular case, the actions of the PDEA operatives were reasonable. Based on the testimonies of IO1 Tabuyo, Inocencio, and Ramirez, the arresting team had tried to secure the attendance of the necessary witnesses during the conduct of the buy-bust operation, but only the representatives of the media and the DOJ responded, albeit belatedly, and the members of the arresting team had to make a judgment call of immediately leaving the place of arrest in order to avoid commotion and ensure their own safety.⁵¹

⁵⁰ *People v. Lim*, *supra* note 48. (Emphasis ours; citations omitted)

⁵¹ See TSN, November 27, 2013, p. 14; TSN, April 14, 2014, pp. 17-18; and TSN, June 11, 2014, pp. 4-5.

Indeed, as long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with R.A. No. 9165 and its IRR may be excused. We have stressed this in *People v. Eda*:⁵²

Notably, Section 21 of R.A. No. 9165 serves as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused. In particular, Section 21, paragraph no. 1, Article II of the law prescribes the *method* by which law enforcement agents/personnel are to go about in handling the *corpus delicti* at the time of seizure and confiscation of dangerous drugs in order to ensure full protection to the accused. x x x

Section 21, however, was not meant to thwart the legitimate efforts of law enforcement agents. The Implementing Rules and Regulations of the law clearly expresses that “non-compliance with [the] 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.”

We likewise recognize that while the chain of custody should ideally be perfect and unbroken, it is not in reality “as it is almost always impossible to obtain an unbroken chain.” Thus, non-compliance with Section 21 does not automatically render illegal the arrest of an accused or inadmissible the items seized/confiscated. As the law mandates, what is vital is the preservation of the integrity and the evidentiary value of the seized/confiscated illegal drugs since they will be used to determine the guilt or innocence of the accused.⁵³

Turnover of the illegal drug by the apprehending officer to the investigating officer

In this case, it appears that IO1 Tabuyo acted as the apprehending officer and the investigating officer. He was in possession of the plastic sachet of shabu, buy-bust money, and boodle money when the arresting team proceeded to the PDEA office. There, he prepared the requests for laboratory examination of the drug evidence and medical examination of Magalong. All the while, the plastic sachet of shabu was in his custody as it was placed in the buy-bust kit he was holding.

⁵² *Supra* note 24.

⁵³ *People v. Eda*, *supra* note 24, at 901, citing *People v. Ros, et al.*, *supra* note 24, at 160-161.

Turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination

Together with Magalong and Inocencio, IO1 Tabuyo delivered the request for laboratory examination and the suspected illegal drug to the Pangasinan Provincial Crime Laboratory Office on July 11, 2013. PSI Todeño and a certain SPO1 Verceles personally received the letter-request and the specimen. PSI Todeño immediately conducted a qualitative examination, which gave positive result to the test for the presence of Methamphetamine Hydrochloride.⁵⁴ Thereafter, she turned over the plastic sachet of shabu to PO3 Manuel, who immediately proceeded to the evidence room for its safekeeping.⁵⁵ Aside from PO3 Manuel, the Provincial Chief and the Forensic Chemist have access to the evidence room.⁵⁶ Nonetheless, it was impossible for anyone to take out evidence without the knowledge of the others.⁵⁷ This is so because the room had five padlocks: two padlocks were in the possession of the Provincial Chief and the Forensic Chemist while the three padlocks were in the possession of the Evidence Custodian.⁵⁸

Turnover and submission of the illegal drug from the forensic chemist to the court

The plastic sachet of shabu was later on retrieved by PSI Todeño from PO3 Manuel pursuant to a subpoena issued by the trial court. When PO3 Manuel delivered the specimen to PSI Todeño, it was the first time that it was taken out from the evidence room.⁵⁹ In open court, PSI Todeño presented an improvised sealed envelope, with her signature as tamper seal, holding the subject sachet of shabu.⁶⁰ As proven by the marking she personally placed, she identified the transparent plastic sachet containing white crystalline substance as the same item that was submitted to their office and attested that it was in the same condition as of the time she turned it over to PO3 Manuel.⁶¹

Verily, the prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there is an unbroken chain of custody over the confiscated illegal drug, from the time it was lawfully seized and came into the possession of the apprehending officers up to the

⁵⁴ TSN, September 11, 2013, pp. 6-8.

⁵⁵ TSN, March 19, 2014, p. 6.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 9.

⁵⁹ *Id.* at 10.

⁶⁰ TSN, September 11, 2013, p. 9.

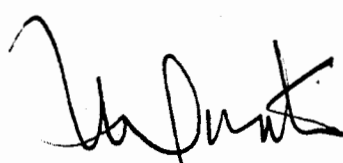
⁶¹ *Id.* at 9-11.

time it was presented and offered in evidence before the trial court. The prosecution presented every person who touched the exhibit. They described how and from whom the seized shabu was received, where it was and what happened to it while in their possession, the condition in which it was received, the condition it was delivered to the next link in the chain, and 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.⁶²

Against the overwhelming evidence for the prosecution, Magalong merely denied the accusations against him. We have invariably viewed with disfavor the defense of denial and frame-up because it can easily be concocted and it is a common and standard defense ploy in prosecutions for violation of R.A. No. 9165.⁶³ In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence.⁶⁴ The burden of proof is on Magalong to defeat the presumption that the police officers properly performed their official duties.⁶⁵ He failed. No bad faith was actually shown. He did not substantiate any illicit motive on the part of the police officers as to why they would choose to falsely implicate him in a very serious crime that would cause his imprisonment for life. For this failure, the testimonies of the prosecution witnesses deserve full faith and credit.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The October 21, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07499, which sustained the February 11, 2015 Decision of the Regional Trial Court, Branch 41, Dagupan City, Pangasinan, convicting appellant Frankie Magalong y Maramba @ Angkie of illegal sale of Methamphetamine Hydrochloride (Shabu), in violation of Section 5, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, is **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

⁶² *People v. Sic-Open*, *supra* note 24, at 876-877, and *People v. Eda*, *supra* note 24, at 903.


⁶³ *Id.* at 871; *Id.* at 899.

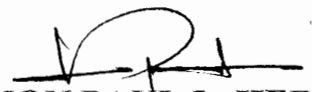
⁶⁴ *Id.*

⁶⁵ *Id.*

WE CONCUR:


MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMAR D. CARANDANG
Associate Justice

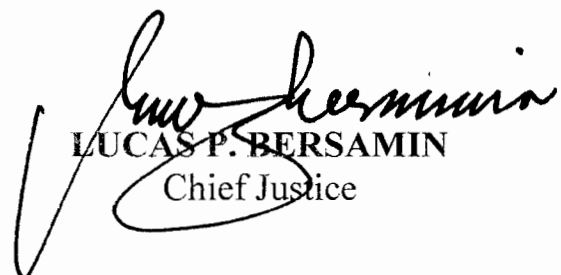
ATTESTATION

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