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SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOSEPH VILLASANA y G.R. No. 209078
CABAHUG,

Petitioner, Present:

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

-versus-

PEOPLE OF THE PHILIPPINES, Promulgated:
Respondent. September 4, 2019

Mis. D.C. Batt

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DECISION

LEONEN, J.:

Evidence seized as a result of an illegal warrantless arrest cannot be used against an accused pursuant to Article III, Section 3(2) of the Constitution. Even if the seizure was reasonable, the arresting officers' unjustified noncompliance with the legal safeguards under Section 21 of Republic Act No. 9165 compromises the integrity of the confiscated drug. This creates reasonable doubt on the conviction of the accused for illegal possession of dangerous drugs.

This Court resolves a Petition for Review on Certiorari¹ assailing the Decision² of the Court of Appeals, which affirmed the Regional Trial Court

¹ Filed under Rule 45.

² Rollo, pp. 34-48. The Decision dated March 11, 2013 in CA-G.R. CR. No. 34596 was penned by

Decision³ convicting Joseph Villasana y Cabahug (Villasana) of illegal possession of dangerous drugs. The Court of Appeals, in a subsequent Resolution,⁴ denied his Motion for Reconsideration.

In an Information filed on January 6, 2005, Villasana was charged with violation of Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for illegal possession of “one (1) self-sealing transparent plastic bag containing 0.15 gram of white crystalline substance Methamphetamine Hydrochloride (Shabu)[.]”⁵

On arraignment, Villasana pleaded not guilty to the crime charged.⁶

During pre-trial, the prosecution and defense stipulated on the following:

1. The jurisdiction of the court over the person of the accused and the offense;
2. The identity of the accused;
3. That Police Officer 2 Ronald Sanchez (PO2 Sanchez) is the officer-on-case who received the evidence from PO3 Louie Martinez (PO3 Martinez), the arresting officer;
4. That PO2 Sanchez prepared the letter-request for laboratory examination;
5. That the letter-request, along with the evidence, was turned over to PO3 Martinez for delivery to the Philippine National Police Crime Laboratory;
6. That PO3 Martinez delivered the specimen together with the letter-request for laboratory examination to the Crime Laboratory, Sangandaan, Caloocan City;

Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela of the Thirteenth Division of the Court of Appeals, Manila.

³ Id. at 73–83. The Decision dated October 28, 2010 in Criminal Case No. 16-V-05 was penned by Presiding Judge Maria Neña J. Santos of Branch 171, Regional Trial Court, Valenzuela City.

⁴ Id. at 50–51. The Resolution dated August 28, 2013 was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela of the Thirteenth Division, Court of Appeals, Manila.

⁵ Id. at 35.

⁶ Id.

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7. That the January 5, 2005 letter-request for laboratory examination was received by the office of Police Inspector Alberto Arturo (Inspector Arturo) from the Station Anti-Illegal Drugs Special Operation Unit, Valenzuela City Police Station, along with a small plastic evidence bag marked as SAID-SOU/VCPS 04-12-05 containing one (1) piece of small plastic sachet containing white crystalline substance marked as "JCV";
8. That after the qualitative examination, Inspector Arturo found that the contents of the plastic sachet yielded positive results for methamphetamine hydrochloride, as stated in Physical Sciences Report No. D-006-05;
9. That Inspector Arturo is a duly qualified forensic chemist of the Northern Police District Crime Laboratory Office, Caloocan City Police Station; and
10. That Inspector Arturo has no personal knowledge of the source of the evidence and the circumstances surrounding the confiscation/custody and safekeeping of the subject evidence.⁷

The prosecution presented PO3 Martinez as its first witness. He alleged the following:

At around 7:00 p.m. on January 4, 2005, while PO3 Martinez was on duty at the Station Anti-Illegal Drugs Special Operation Unit of the Valenzuela City Police Station, a confidential informant arrived and reported that Jojo Villasana and Nida Villasana were rampantly selling drugs along Hustisya Street, Marulas, Valenzuela City. Thus, a team headed by Police Inspector Muammar A. Mukaram (Inspector Mukaram) with SPO1 Arquillo, PO3 Soriano, PO3 Britañia, PO2 Sanchez, PO3 Martinez, PO2 Magno, PO2 Malinao, PO2 Salvidar, and PO1 Pajares as members, was at once formed to conduct surveillance operations.⁸

At about 11:30 p.m. that day, the team proceeded to the target area on board three (3) vehicles: a car, a Revo van, and a motorcycle.⁹ PO3 Martinez, PO3 Soriano, and PO2 Magno parked on Hustisya Street and waited inside the van. Around 10 to 15 minutes later, they saw, through the van's tinted front windshield,¹⁰ Villasana coming out of an alley around five (5) to six (6)

⁷ Id. at 73-74, RTC Decision. The *rollo* at other times indicated that Sanchez was designated as PO3. The cited page mistakenly stated "JVC."

⁸ Id. at 74-75.

⁹ TSN dated August 13, 2007, pp. 5-6.

¹⁰ Id. at 7 and 22-23. On direct examination, PO3 Martinez testified that PO3 Soriano and PO2 Magno was with him. However, when he was asked on cross-examination who his companions were, he said PO2 Magno and PO2 Sanchez.

meters away.¹¹ He was holding a plastic sachet while talking to a woman.¹² The police officers approached him discreetly.¹³

As he reached Villasana, PO3 Martinez held his hand and introduced himself as a police officer.¹⁴ He told Villasana not to throw the plastic sachet, to which the latter replied, "*panggamit ko lang to.*"¹⁵ After verifying that Villasana was indeed holding shabu, PO3 Martinez arrested him and confiscated the sachet.¹⁶ The woman, however, was able to escape.¹⁷

Villasana and the seized drug were brought to the Marulas Barangay Hall, where an inventory was made.¹⁸ The inventory was signed by Kagawad Jose Mendez (Kagawad Mendez) and a certain Artemus Latoc (Latoc),¹⁹ a former official.²⁰ PO3 Martinez marked the confiscated item with Villasana's initials, "JCV," in the "office."²¹ Then, he brought Villasana and the seized specimen to the Philippine National Police Crime Laboratory in Caloocan City for drug testing and laboratory examination.²²

After PO3 Martinez's testimony, the prosecution and defense agreed to dispense with the testimonies of prosecution witnesses PO2 Sanchez, Inspector Mukaram, and Police Superintendent Caday.²³

For the defense,²⁴ Villasana testified that at around 8:00 p.m. on January 4, 2005, Villasana was having a conversation with Sabel and Diane inside a jeepney, which was then parked in front of his house in Karuhatan, Valenzuela City.²⁵ Not far from them, a group of police officers arrived and accosted several persons that were playing *cara y cruz*.²⁶ One (1) of the police officers, PO2 Sanchez, called Villasana to come out.²⁷ He did as asked, but as he alighted from the jeepney, PO2 Magno grabbed him by the waist and forced him to board a car parked behind the jeepney.²⁸ He tried to resist, but the arresting officers overpowered him.²⁹

¹¹ Id. at 6-7.

¹² *Rollo*, p. 37.

¹³ TSN dated August 13, 2007, p. 8.

¹⁴ Id.

¹⁵ Id. at 8-9.

¹⁶ Id. at 9.

¹⁷ Id. at 25.

¹⁸ Id. at 11-12.

¹⁹ RTC records, p. 10, Drug Inventory Form.

²⁰ TSN dated August 13, 2007, p. 13.

²¹ Id. at 11.

²² Id. at 13-14.

²³ *Rollo*, p. 38.

²⁴ Id. at 39. The testimony of Villasana was corroborated by Diana Rose Latiza, one (1) of the two (2) girls he was with inside the jeepney, regarding the circumstances surrounding his arrest.

²⁵ TSN dated August 4, 2008, pp. 4-5.

²⁶ Id. at 6.

²⁷ Id. at 8 and *rollo*, p. 39.

²⁸ Id. at 8-9.

²⁹ Id. at 9.

Villasana was brought to the Narcotics Office on the second floor of the Valenzuela City Hall,³⁰ where they waited for his brother and sister who were supposed to bring ₱50,000.00 as “*areglo*.”³¹ His siblings, however, did not show up.³² At around 10:00 p.m., Villasana was brought to the Marulas Barangay Hall, where he was asked to sign a document.³³ The police officers showed him the alleged evidence against him and told him that he would be charged with a drug-related offense.³⁴

On October 28, 2010, the Regional Trial Court rendered a Decision³⁵ convicting Villasana. The dispositive portion of the Decision read:

WHEREFORE, accused JOSEPH VILLASANA y CABAUG is hereby found GUILTY beyond reasonable doubt of the crime of violation of Section 11 of Article 2 of R.A. 9165 in Criminal Case No. 16-V-05. Accordingly, the said accused is hereby ordered to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum. Further, the said accused is ordered to pay a FINE in the amount of Three Hundred Thousand Pesos (Php) 300,000.00.

The Branch Clerk of Court of this Court is directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.

SO ORDERED.³⁶

Villasana appealed before the Court of Appeals. He argued that the trial court gravely erred: (1) in finding the evidence admissible despite the illegality of his arrest; (2) in finding him guilty despite the police officers’ failure to comply with Article II, Section 21 of Republic Act No. 9165; (3) in giving full credence to the prosecution witness’ testimony; and (4) in convicting him despite the prosecution’s failure to prove his guilt beyond reasonable doubt.³⁷

In its March 11, 2013 Decision,³⁸ the Court of Appeals affirmed the Regional Trial Court Decision *in toto*:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **DENIED** and the October 28, 2010 Decision of the Regional Trial Court, Branch 171 in Valenzuela City in Criminal Case No.

³⁰ Id. at 15.

³¹ Id. at 16–17.

³² Id. at 17.

³³ Id. at 18–19.

³⁴ Id. at 21.

³⁵ *Rollo*, pp. 73–83.

³⁶ Id. at 82–83.

³⁷ Id. at 40–41.

³⁸ Id. at 34–48.

[F]or a warrantless arrest of in flagrante delicto to be affected, “two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.”⁷⁴ (Citation omitted)

Section 5(b), on the other hand, requires that at the time of the arrest, an offense had just been committed and the arresting officer had personal knowledge of the facts indicating that the accused had committed it.

In both instances, the police officer must have personal knowledge of the commission of an offense. Under Section 5(a), the officer himself or herself witnesses the crime; in Section 5(b), the officer knows that a crime has just been committed⁷⁵ and had witnessed some facts that led him or her to believe that the person about to be arrested committed the offense.⁷⁶

On several occasions, this Court has invalidated⁷⁷ warrantless arrests and ensuing searches and seizures for the arresting officers’ failure to comply with the overt act test, or for their lack of personal knowledge that a crime has just been committed by the accused.

In *Comerciante v. People*,⁷⁸ this Court ruled that the warrantless arrest was not lawful because the arresting officers failed to determine beforehand that a criminal activity was ongoing. It remarked that it was highly implausible that the police officer would be able to identify—especially around 10 meters away and while aboard a motorcycle cruising at a speed of 30 kilometers per hour—minuscule amounts (0.15 gram and 0.28 gram) of white crystalline substance inside two (2) very small plastic sachets held by the accused. This Court further held that merely “*standing around with a companion and handing over something to the latter cannot in any way be considered criminal acts.*”⁷⁹

Similarly, in *Sindac v. People*,⁸⁰ this Court held that considering that the arresting officer was five (5) to ten (10) meters away from when a man allegedly handed the accused a plastic sachet containing suspected shabu, it

⁷⁴ Id. at 238.

⁷⁵ *Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350 [Per J. Perlas-Bernabe, Second Division].

⁷⁶ J. Leonen, Concurring Opinion in *Macad v. People*, G.R. No. 227366, August 1, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64433>> [Per J. Gesmundo, Third Division].

⁷⁷ *People v. Edaño*, 738 Phil. 463 (2014) [Per J. Brion, Second Division]; *Antiquera v. People*, 723 Phil. 425 (2013) [Per J. Abad, Third Division]; and *People v. Villareal*, 706 Phil. 511 (2013) [Per J. Perlas-Bernabe, Second Division].

⁷⁸ 764 Phil. 627 (2015) [Per J. Perlas-Bernabe, First Division].

⁷⁹ Id. at 640–641.

⁸⁰ 794 Phil. 421 (2016) [Per J. Perlas-Bernabe, First Division].

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was highly doubtful that the officer was able to reasonably ascertain that a crime was being committed. It held:

Considering that PO3 Peñamora was at a considerable distance away from the alleged criminal transaction (five [5] to ten [10] meters), not to mention the atomity of the object thereof (0.04 gram of white crystalline substance contained in a plastic sachet), the Court finds it highly doubtful that said arresting officer was able to reasonably ascertain that any criminal activity was afoot so as to prompt him to conduct a lawful *in flagrante delicto* arrest and, thereupon, a warrantless search. These similar circumstances were availing in the cases of *Comerciante v. People* and *People v. Villareal* where the Court likewise invalidated the *in flagrante delicto (sic)* arrest and ensuing warrantless search. In this relation, it should also be pointed out that no criminal overt act could be properly attributed to Sindac so as to rouse any reasonable suspicion in the mind of either PO3 Peñamora or PO1 Asis that Sindac had just committed, was committing, or was about to commit a crime. *Sindac's* actuations of talking to and later on, receiving an unidentified object from Cañon, without more, should not be considered as ongoing criminal activity that would render proper an *in flagrante delicto* arrest under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure.⁸¹ (Emphasis supplied, citations omitted)

In this case, PO3 Martinez was about six (6) to ten (10) meters away when he saw petitioner emerge from an alley, talking to a woman while holding a plastic sachet. His testimony fails to state that he had personal knowledge that the sachet contained shabu, or that he saw the sachet containing white crystalline substance, to create a reasonable suspicion that the sachet did indeed contain shabu. From all indications—the time of the arrest being 11:30 p.m., PO3 Martinez's location, and the tinted front windshield of the van through which he was looking—it was highly doubtful that PO3 Martinez saw, let alone deciphered, the contents of the sachet.⁸² For sure, it was only when he held petitioner's hand⁸³ and confiscated the plastic sachet that he was able to verify its contents.⁸⁴

What appears from PO3 Martinez's narration of facts is that petitioner was arrested: (1) because of the informant's tip that he was selling drugs;⁸⁵ and (2) because he was known to PO2 Magno and PO2 Sanchez.⁸⁶

It is settled that "reliable information" provided by police assets alone is not sufficient to justify a warrantless arrest.⁸⁷ There must be independent circumstances perceivable by the arresting officers suggesting that a criminal offense is being committed to comply with the exacting requirements of Rule

⁸¹ Id. at 433.

⁸² TSN dated August 13, 2007, pp. 23 and 26.

⁸³ Id. at 8.

⁸⁴ Id. at 9.

⁸⁵ Id. at 19.

⁸⁶ Id. at 24.

⁸⁷ *Sindac v. People*, 794 Phil. 421 (2016) [Per J. Perlas-Bernabe, First Division] and *People v. Tudtud*, 458 Phil. 752 (2003) [Per J. Tinga, Second Division].

113, Section 5 of the Rules of Court. An accused must perform some overt act within plain view of the police officers indicating that she or “he has just committed, is actually committing, or is attempting to commit a crime.”⁸⁸ None was present in this case.

With petitioner’s arrest being illegal, the subsequent seizure of the shabu allegedly in his possession becomes “unreasonable.” At this point, it must be emphasized that petitioner’s failure to question his arrest before he made his plea only affects the jurisdiction of the court over his person⁸⁹ and does not bar him from raising the inadmissibility of the illegally seized shabu. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of the evidence obtained during the illegal arrest.⁹⁰

Because the dangerous drug was unlawfully seized, it cannot be used as evidence against petitioner. Without the dangerous drug, petitioner’s acquittal based on reasonable doubt is inevitable.

III

Likewise, petitioner’s imputation of irregularities in the custody and the police officers’ handling of the seized shabu is well taken. From the facts on record, the police officers had compromised the integrity of the shabu purportedly seized from him.

The *corpus delicti* in the prosecution for illegal possession of dangerous drugs consists in the dangerous drug itself, without which no conviction of the accused can be obtained.⁹¹ It is indispensable for the State to establish the identity of the dangerous drugs, the integrity of which must have been preserved.⁹² This requires proof beyond reasonable doubt that the drugs seized from the accused and subsequently examined in the laboratory are the same drugs presented in court as evidence.⁹³

Toward this end, each link in the chain of custody of the seized drug must be accounted for⁹⁴ to show that there was no “tampering, alteration[,] or

⁸⁸ *People v. Tudtud*, 458 Phil. 752, 775 (2003) [Per J. Tinga, Second Division].

⁸⁹ *Dominguez v. People*, G.R. No. 235898, March 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65275>> [Per J. Caguioa, Second Division].

⁹⁰ *Antiquera v. People*, 723 Phil. 425 (2013) [Per J. Abad, Third Division]; and *People v. Racho*, 640 Phil. 669 (2010) [Per J. Nachura, Second Division].

⁹¹ *People v. Jaafar*, 803 Phil. 582 (2017) [Per J. Leonen, Third Division]; *People v. Edaño*, 738 Phil. 463 (2014) [Per J. Brion, Second Division]; and *Valencia v. People*, 725 Phil. 268 (2014) [Per J. Reyes, First Division].

⁹² *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 539 [Per J. Leonen, Third Division].

⁹³ *People v. Sipin*, G.R. No. 224290, June 11, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>> [Per J. Peralta, Second Division]; and *People v. Gonzales*, 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

⁹⁴ *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 539 [Per J. Leonen, Third Division].

substitution either by accident or otherwise.”⁹⁵

In *Mallillin, Jr. v. People*,⁹⁶ this Court expounded on the rationale behind the exacting requirements of Republic Act No. 9165 in prosecutions for illegal possession of dangerous drugs:

Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.* *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory’s findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.⁹⁷ (Emphasis supplied, citations omitted)

The first and crucial stage in the chain of custody is the marking of the seized drugs and other related items immediately upon confiscation from the accused.⁹⁸ In *People v. Gonzales*,⁹⁹ this Court explained:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. *Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.* The

⁹⁵ *Valencia v. People*, 725 Phil. 268, 277 (2014) [Per J. Reyes, First Division].

⁹⁶ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

⁹⁷ Id. at 588–589.

⁹⁸ *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per J. Leonen, Third Division].

⁹⁹ 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. *In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.*¹⁰⁰ (Emphasis supplied, citation omitted)

Here, PO3 Martinez stated during trial that he marked the seized sachet with accused-appellant's initials "JCV" in the "office." But the office—whether in the Marulas Barangay Hall where Villasana was supposedly first brought, or in the Station Anti-Illegal Drugs Special Operation Unit—remained unclear from his testimony. In any case, it is manifest that the seized drugs were not immediately marked upon seizure, and the records do not show why it was not done at the earliest possible opportunity.

More importantly, there is no clear showing that the marking had been done in the presence of petitioner or his representative. This can be gleaned from PO3 Martinez's testimony both on direct and cross-examination:

Q You said you were able to confiscate from the accused a plastic sachet containing shabu, if that small plastic sachet will be shown to you, will you be able to identify the same?

A Yes, sir.

Q Why would you be able to identify that piece of sachet which you were able to recover from the accused?

A I put the initial of the suspect.

Q I am showing to you a small piece of plastic sachet with marking JCV . . . will you please take a look at this and tell us what is the relation of this piece of small plastic sachet with that small plastic sachet which you said you were able to recover from the accused?

A This is the one I recovered from the accused.

Q Now there is a marking here JCV, who put this marking?

A I, sir.

Q Where were you at that time when you put this marking JCV?

A In the office.¹⁰¹

.....

Q So where did you bring Jojo Villasana after his apprehension?

A After his arrest, we made an inventory report and requested for drug

¹⁰⁰ Id. at 130–131.

¹⁰¹ TSN dated August 13, 2007, pp. 10–11.

test and brought him to the barangay.

- Q So you brought Jojo Villasana first to your office to prepare the documents for drug test and for the marking of evidence after his arrest?
- A We brought him directly to the barangay because the entries were only handwritten.¹⁰²

Moreover, while it was stipulated that PO3 Martinez delivered the specimen together with the letter-request for laboratory examination to the Crime Laboratory in Sangandaan, Caloocan City, it is unclear who actually received the confiscated plastic sachets and had their custody and possession before they were examined by Inspector Arturo.

The identity of the person who received the sachet, the condition in which it was received from PO3 Martinez, and the condition in which it was delivered to Inspector Arturo for analysis are all important. This is due to the variance in what was stated in these documents—the Request for Laboratory Examination referred to “*One small plastic evidence bag marked as SAID-SOU/VCPS 04-12-05 containing one (1) pc small plastic sachet . . . marked as ‘JCV’*”;¹⁰³ Physical Science Report No. D-006-05 referred to “*One (1) self-sealing transparent plastic bag with markings ‘SAID-SOU/VCPS 04-01-05’ containing 0.15 gram of white crystalline substance and marked as A-1.*”¹⁰⁴ The discrepancies in the markings create doubt as to whether the specimen allegedly seized from petitioner and submitted to the Crime Laboratory was the same one examined by Inspector Arturo, and subsequently presented in court.

Furthermore, there was noncompliance with the legal requirements under Section 21 of Republic Act No. 9165. Section 21 defines the procedure to be followed by the apprehending officers to ensure the integrity of the seized dangerous drugs and drug paraphernalia.¹⁰⁵

Section 21 relevantly provides:

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||| (Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, [June 7, 2002]) — . . .

¹⁰² Id. at 25.

¹⁰³ RTC records, p. 3.

¹⁰⁴ Id. at 4.

¹⁰⁵ *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per J. Leonen, Third Division].

- (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)

Conformably, Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 states:

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. —*

- (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[.] (Emphasis supplied)

This Court mandated a strict adherence to the requirements of Section 21 considering the indistinct nature of illegal drugs that makes it easily susceptible to tampering, alteration, or substitution.¹⁰⁶ The minuscule amount involved here—0.15 gram—makes it even more imperative for the police officers to follow the prescribed procedure.¹⁰⁷ Consequently, noncompliance

¹⁰⁵ *People v. Acub*, G.R. No. 220456, June 10, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65228>> [Per J. Leonen, Third Division] and *Valencia v. People*, 725 Phil. 268 (2014) [Per J. Reyes, First Division].

¹⁰⁷ *People v. Bayang*, G.R. No. 234038, March 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65011>> [Per J. Peralta, Third Division]; *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per J. Leonen, Third Division]; *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division]; and *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Second Division].

produces doubt on the origins of the seized items.¹⁰⁸

Here, the inventory sheet was not signed by representatives from the media and the Department of Justice, and there were no photographs taken. These procedural lapses happened despite the conduct of a briefing¹⁰⁹ prior to the operation and PO3 Martinez's supposed experience in the conduct of drug-related operations.¹¹⁰ PO3 Martinez neither tendered any justification in court, nor was there any explanation or justification by the apprehending officers in the case records.

In *People v. Jaafar*,¹¹¹ this Court held that the exception under Section 21(a) of the Implementing Rules and Regulations of Republic Act No. 9165 "will only be triggered by the existence of a ground that justifies departure from the general rule."¹¹² For the proviso to apply, the prosecution must prove that: (a) there is a justifiable ground for the noncompliance; and (2) the integrity and evidentiary value of the seized items were properly preserved.¹¹³

In *People v. Battung*,¹¹⁴ this Court stressed:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.¹¹⁵ (Emphasis supplied, citations omitted)

The Regional Trial Court and the Court of Appeals, therefore, gravely erred in ruling that there was an unbroken chain of custody despite the arresting officers' failure: (1) to mark the confiscated plastic sachets

¹⁰⁸ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division]; and *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Second Division].

¹⁰⁹ TSN dated August 13, 2007, p. 20.

¹¹⁰ Id. at 17.

¹¹¹ 803 Phil. 582 (2017) [Per J. Leonen, Third Division].

¹¹² Id. at 593 citing *People v. Pringas*, 558 Phil. 579 (2007) [Per J. Chico-Nazario, Third Division].

¹¹³ *People v. Acub*, G.R. No. 220456, June 10, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65228>> [Per J. Leonen, Third Division]; and *People v. Pagaduan*, 641 Phil. 432 (2010) [Per J. Brion, Third Division].

¹¹⁴ G.R. No. 230717, June 20, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64220>> [Per J. Peralta, Second Division].

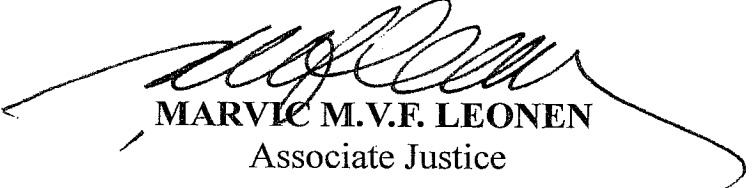
¹¹⁵ Id.

immediately upon seizure and in the presence of petitioner or his representative; (2) to comply with the inventory and photographing requirements; (3) to identify the individual who received the specimen from PO3 Martinez and took its custody before being given to Inspector Arturo for examination; and (4) to explain the discrepancies in the identification of the specimen as indicated in the Request for Laboratory Examination and Physical Science Report No. D-006-05.

The police officers' unjustified noncompliance with the requirements for the marking and inventory of the seized drugs overthrows the presumption of regularity in the performance of their official duty.¹¹⁶ Their "ostensibly approximate compliance"¹¹⁷ is not enough, and therefore, tantamount to a failure to establish the *corpus delicti*. This raises reasonable doubt in petitioner's favor.

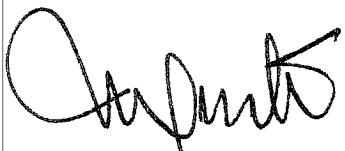
WHEREFORE, the Petition is **GRANTED**. The March 11, 2013 Decision and August 28, 2013 Resolution of the Court of Appeals in CA-G.R. CR. No. 34596, which affirmed *in toto* the October 28, 2010 Decision of the Regional Trial Court of Valenzuela City, Branch 171, are **REVERSED AND SET ASIDE**. Petitioner Joseph Villasana y Cabahug is **ACQUITTED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

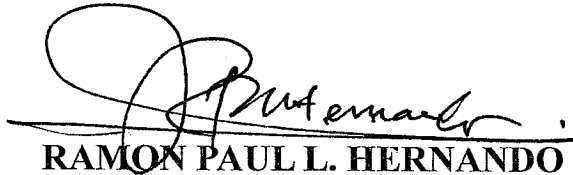
WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

¹¹⁶ See *People v. Sipin*, G.R. No. 224290, June 11, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>> [Per J. Peralta, Second Division].

¹¹⁷ *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529 [Per J. Leonen, Third Division].

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

CERTIFIED TRUE COPY

Misael DC Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

NOV 13 2019