



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **December 2, 2019**, which reads as follows:

“G.R. No. 238907 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. MICHELLE LACANDULA y ESPANYAR @ “MARICEL”, *accused-appellants*). — The presumption of regularity accorded to public officers does not operate as an escape device. Strict compliance with the chain of custody rule is still necessary, especially when what is involved is a minuscule amount of drugs. Failure to comply without any justifiable reason casts reasonable doubt over the identity of the *corpus delicti*, warranting the accused’s acquittal.

This Court resolves an appeal from the Decision¹ of the Court of Appeals, which affirmed the Regional Trial Court’s Judgment² finding Michelle Lacandula y Espanyar @ “Maricel” (Lacandula) guilty beyond reasonable doubt of the illegal sale of dangerous drugs, in violation of Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.³

On June 3, 2009, an Information⁴ was filed against Lacandula, the accusatory portion of which read:

¹ *Rollo*, pp. 2–14. The Decision dated December 7, 2017 was penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan of the Tenth Division, Court of Appeals, Manila.

² *CA rollo*, pp. 41–50. The Judgment dated September 8, 2016 was penned by Presiding Judge Tita S. Obinario of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45.

³ Republic Act No. 9165 (2002), sec. 5 provides in part:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

⁴ *Rollo*, p. 3.

That on or about 1:30 o'clock (*sic*) in the morning of June 2, 2009 at Brgy. Nancayasan, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed plastic sachet containing Methamphetamine Hydrochloride (SHABU), weighing 0.10 gram, a dangerous drug.

CONTRARY to Sec. 5, Art. II of R.A. 9165.⁵

Upon arraignment, Lacandula pleaded not guilty to the offense charged.⁶ Thereafter, trial on the merits ensued.⁷

The prosecution presented as witnesses: (1) Senior Police Officer 1 Eligio Aspiras; (2) Police Chief Inspector Emelda Roderos (Chief Inspector Roderos); (3) Senior Police Officer 2 George D. Banayos, Jr. (SPO2 Banayos); (4) Police Officer 2 Jeffrey Tajon; (5) Police Officer 2 Edwin de Ocampo (PO2 de Ocampo); and (5) Mercedita C. Velasco (Velasco), the evidence custodian.⁸

According to the prosecution, a confidential informant arrived at the Urdaneta City Police Station at around 1:00 p.m. on May 28, 2009, reporting that one "Maricel" was selling shabu at the Muslim Compound in Dona Loleng Subdivision, Barangay Nancayasan, Urdaneta City, Pangasinan. Police Superintendent Rodolfo Castil, Jr. shortly formed a buy-bust team in which SPO2 Banayos was designated as poseur-buyer, with PO2 de Ocampo and PO2 Rex Lapena (PO2 Lapena) as his back-up.⁹

SPO2 Banayos was given a ₱1,000.00 bill and five (5) ₱100.00 bills as buy-bust money. SPO1 Ramil Llarenas (SPO1 Llarenas) recorded their serial numbers in the police blotter. SPO2 Banayos then coordinated with the Philippine Drug Enforcement Agency, after which they proceeded to Dona Loleng Subdivision at around 5:00 p.m.¹⁰

While the others positioned themselves 10 meters away, SPO2 Banayos and the informant waited by the road until their target, "Maricel," approached them. The informant introduced SPO2 Banayos as someone looking to buy shabu. However, "Maricel" told them that she did not have any at the moment, and that she would just contact them when she had some available. Thus, the operation was called off.¹¹

⁵ CA rollo, p. 41.

⁶ Id.

⁷ Id. at 42.

⁸ Rollo, p. 3.

⁹ CA rollo, pp. 42-43.

¹⁰ Id. at 43. The Regional Trial Court at times referred to SPO1 Llarenas as PO2 Llarenas.

¹¹ Id.

On June 1, 2009, SPO2 Banayos received a text message from the confidential informant stating that “Maricel” already had shabu available. At this, SPO2 Banayos gathered the buy-bust team at the police station and, by 12:30 a.m. on June 2, 2009, met for the briefing. An hour later, they went to Dona Loleng Subdivision for another buy-bust operation.¹²

Similar to their first attempt, the back-up team stood by 10 meters away while SPO2 Banayos and the informant waited by the road, near the shanties. When “Maricel” arrived, she asked SPO2 Banayos how much of the shabu he would purchase, to which he replied ₱1,500.00 worth.¹³

“Maricel” walked away and returned moments later, asking for payment. SPO2 Banayos handed her the buy-bust money, with which she exchanged a plastic sachet containing suspected shabu. Afterward, SPO2 Banayos took off his cap, signaling to PO2 de Campo and PO2 Lapena to rush to the area to arrest “Maricel.” She was brought to the police station, and was later identified as Lacandula.¹⁴

Also at the police station, SPO2 Banayos marked the seized item and buy-bust money with his initials, “GDB,” while SPO1 Llarenas took photos of them. He also prepared a confiscation receipt¹⁵ and a letter-request for the examination of the plastic sachet’s contents.¹⁶ The prosecution made no mention of any elected public official, media, or Department of Justice representative witnessing the marking, inventory, and photographing of the seized items.

SPO2 Banayos later brought the seized item and the letter-request to the crime laboratory, where PO2 Jeffrey Tajon received and handed them to the forensic chemist, Chief Inspector Roderos. Upon laboratory examination, the sachet’s contents were found to have tested positive for the presence of methamphetamine hydrochloride, commonly known as shabu.¹⁷

Chief Inspector Roderos then turned the specimen and examination results over to the evidence custodian, Velasco, who kept the seized item in their evidence room until Chief Inspector Roderos retrieved it for presentation in court.¹⁸

The defense presented Lacandula as its sole witness.¹⁹

¹² Id.

¹³ Id. at 44.

¹⁴ Id.

¹⁵ This was considered as an inventory by the Court of Appeals (*rollo*, p. 11).

¹⁶ *CA rollo*, p. 44.

¹⁷ Id.

¹⁸ Id. at 45.

¹⁹ Id.

Lacandula testified that on the afternoon of June 2, 2009, her friend and co-employee Susan Mungcal (Mungcal) invited her to a birthday celebration. When they arrived at Mungcal's house, there were already four (4) people drinking. Although they spent the entire drinking session together, Lacandula never learned what her other companions' names were.²⁰

After five (5) shots of GSM Blue gin, Lacandula started feeling dizzy and eventually fell asleep on Mungcal's bed. She had only woken up when she suddenly felt herself being carried by a man to a tricycle. At this point, Mungcal and their drinking companions were gone. There were, however, four (4) armed men waiting by the tricycle.²¹

One (1) of the men frisked Lacandula. He then showed her a sachet of shabu that he had allegedly retrieved from her pocket. Though she knew it was not hers, she could do nothing but cry as the men brought her to the police station. Later, at the prosecutor's office, Lacandula learned that she was being charged with the illegal sale of shabu.²²

After trial, the Regional Trial Court rendered its September 8, 2016 Decision²³ convicting Lacandula. The dispositive portion read:

WHEREFORE, judgment is hereby rendered finding the accused Michelle Lacandula y Espanyar @ "Maricel" GUILTY BEYOND REASONABLE DOUBT of the crime of illegal sale of shabu defined and penalized under Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT, and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00).

The shabu subject matter of the present case is ordered turned-over to the PDEA for proper disposition.

SO ORDERED.²⁴

The Regional Trial Court lent credence to the prosecution's version of events, finding that Lacandula's defense was not credible and was riddled with loopholes. It ruled that the buy-bust team's lapses in following the chain of custody was not enough to cast doubt over the identity and integrity of the *corpus delicti*. Hence, it held that the prosecution proved all the elements of the illegal sale of dangerous drugs.²⁵

²⁰ Id.

²¹ Id.

²² Id.

²³ Id. at 41-50.

²⁴ Id. at 49-50.

²⁵ Id. at 46-49.

On appeal, the Court of Appeals affirmed Lacandula's conviction in its December 7, 2017 Decision.²⁶ Ruling similarly with the Regional Trial Court, it sustained the finding that the prosecution proved all the elements of the illegal sale of dangerous drugs.²⁷ It also held that despite procedural lapses, the seized drug's integrity was preserved since there were no gaps in its handling.²⁸ Lastly, it found Lacandula's denial to be an inherently weak defense that could not overcome the presumption of regularity accorded to police officers.²⁹

The dispositive portion of the Decision read:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Judgment dated September 8, 2016 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 45 in Criminal Case No. U-16132 is **AFFIRMED**.

SO ORDERED.³⁰ (Emphasis in the original)

Lacandula filed her Notice of Appeal.³¹ The Court of Appeals gave it due course and later elevated the case records to this Court.³²

In a June 11, 2018 Resolution,³³ this Court noted the case records and ordered the parties to file their supplemental briefs. However, accused-appellant³⁴ and the Office of the Solicitor General,³⁵ on behalf of plaintiff-appellee People of the Philippines, both manifested that they would no longer do so.

The sole issue in this case is whether or not accused-appellant Michelle Lacandula y Espanyar @ "Maricel" is guilty beyond reasonable doubt of the illegal sale of dangerous drugs, in violation of Section 5 of Republic Act No. 9165.

This Court reverses accused-appellant's conviction. The prosecution failed to prove her guilt beyond reasonable doubt.

The Rules on Evidence provides that a conviction requires nothing less than proof beyond reasonable doubt of the accused's guilt.³⁶ Proof beyond

²⁶ *Rollo*, pp. 2-14.

²⁷ *Id.* at 7.

²⁸ *Id.* at 10.

²⁹ *Id.* at 12-13.

³⁰ *Id.* at 13.

³¹ *Id.* at 15-17.

³² *Id.* at 1 and 18.

³³ *Id.* at 19-20.

³⁴ *Id.* at 26-30.

³⁵ *Id.* at 22-25.

³⁶ RULES OF COURT, Rule 133, sec. 2 provides:

reasonable doubt, in turn, requires moral certainty, or “that degree of proof which produces conviction in an unprejudiced mind.”³⁷ Following the accused’s constitutional right to the presumption of innocence,³⁸ the prosecution bears the burden of proving guilt by the strength of its evidence, not by the weakness of the accused’s defense.

In *People v. Que*:³⁹

*This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be “presumed innocent until the contrary is proved.” “Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.” Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:*

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or

SECTION 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

³⁷ RULES OF COURT, Rule 133, sec. 2.

³⁸ CONST., art. III, sec. 14(2) provides:

(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.

³⁹ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

*Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.*⁴⁰
(Emphasis supplied)

To convict the accused of the illegal sale of dangerous drugs, the prosecution must prove the following elements: “(1) the identity of the buyer and the seller, the [identity of the] object, and consideration [of the sale]; and (2) the delivery of the thing sold and the payment of therefor[.]”⁴¹ Stated simply, the crux of the prosecution’s case ultimately relies on its ability to prove that the sale of dangerous drugs actually took place and to present the *corpus delicti* as evidence in court.⁴²

The *corpus delicti*, or the “body of the crime,” must likewise be proved beyond reasonable doubt. For the illegal sale of drugs, the *corpus delicti* is the seized drug itself. As categorically declared in *People v. Ameril*:⁴³

*The illegal drug itself constitutes the corpus delicti of the offense. Its existence must be proved beyond reasonable doubt. “Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the corpus delicti.”*⁴⁴ (Emphasis supplied)

To establish the existence and identity of the *corpus delicti*, the prosecution must prove that the drugs seized by the police officers during the buy-bust operation and examined in the crime laboratory are the same drugs formally offered in court as evidence.⁴⁵

Nonetheless, this Court has time and again recognized the difficulty of establishing the *corpus delicti* in drug-related cases. The peculiar nature of narcotic substances not only runs the risk of the drugs being tampered with, but it makes them hard to be identified as a narcotic substance in the first place. In *Mallillin v. People*:⁴⁶

⁴⁰ Id. at 499–500 citing *Macayan v. People*, 756 Phil 202, 213–241 (2015) [Per J. Leonen, Second Division].

⁴¹ *People v. Dumlao*, 584 Phil. 732, 739 (2008) [Per J. Ynares-Santiago, Third Division].

⁴² *People v. Dilao*, 555 Phil. 394, 409 (2007) [Per J. Garcia, First Division].

⁴³ *People v. Ameril*, G.R. No. 222192, March 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65008>> [Per J. Leonen, Third Division].

⁴⁴ Id. citing *Fajardo v. People*, 691 Phil. 752, 758–759 (2012) [Per J. Perez, Second Division].

⁴⁵ *People v. Hilario*, G.R. No. 210610, January 11, 2018, 851 SCRA 1, 17–18 [Per J. Leonardo-De Castro, First Division] citing *People v. Ismael*, 806 Phil. 29 (2017) [Per J. Del Castillo, First Division].

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

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, *an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. . . .*

. . . .

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.⁴⁷ (Emphasis supplied, citations omitted)

Given this inherent risk in drug-related cases, the strictest of standards are imposed on officials who come into contact with the seized items, beginning from its initial seizure up to its eventual disposition or destruction:

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.⁴⁸

These standards are met by complying with the chain of custody requirements found in Section 21 of Republic Act No. 9165,⁴⁹ which outlines the procedure to be followed by police officers when handling obtained evidence. The provision 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.* — 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:

⁴⁷ Id. at 588–589.

⁴⁸ Id. at 589.

⁴⁹ The applicable provision is Section 21 of Republic Act No. 9165 (2002) since the arrest was made in 2009, before the amendment of Section 21 by Republic Act No. 10640 (2014).

- (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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;
- (4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provider, further, That a representative sample, duly weighed and recorded is retained;
- (5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;
- (6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and

his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

- (7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same[.]

The chain of custody rule under Section 21 has been defined 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.”⁵⁰ It is a method of authentication designed to ensure that the evidence presented in court is actually what the proponent claims it to be.⁵¹

Compliance with Section 21 is necessary in protecting the integrity and identity of the *corpus delicti*, without which the crime of the illegal sale of dangerous drugs cannot be proved beyond reasonable doubt. It protects the *corpus delicti* in four (4) aspects:

. . . first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.⁵²

Whether Section 21 has been complied with is a question of whether a violation of Republic Act No. 9165 has been committed at all. In *People v. Que*,⁵³ this Court stated:

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. *Non-compliance with them tarnishes the credibility of the corpus delicti around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also*

⁵⁰ *People v. Gayoso*, 808 Phil. 19, 30 (2017) [Per J. Del Castillo, First Division] citing *People v. Havana*, 776 Phil. 462 (2016) [Per J. Del Castillo, Second Division].

⁵¹ *Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].

⁵² *People v. Holgado*, 741 Phil. 78, 93 (2014) [Per J. Leonen, Third Division].

⁵³ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per J. Leonen, Third Division].

*tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.*⁵⁴ (Emphasis supplied)

Likewise, in *People v. Holgado*,⁵⁵ this Court held that noncompliance meant that the prosecution failed to establish the *corpus delicti*, an element of the crime:

By failing to establish identity of corpus delicti, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal. As this court stated in People v. Lorenzo:

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.⁵⁶ (Emphasis supplied)

This was reiterated in *People v. Dela Cruz*,⁵⁷ where this Court ruled that the failure to establish the *corpus delicti* warrants the accused's acquittal:

Non-compliance is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. *By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.*⁵⁸ (Emphasis supplied)

More recent, in *People v. Royol*:⁵⁹

In *Morales*, this Court categorically declared that *failing to comply with Article II, Section 21(1) of Comprehensive Dangerous Drugs Act implies "a concomitant failure on the part of the prosecution to establish the identity of the corpus delicti[.]"* It "produce[s] doubts as to the origins of the [seized paraphernalia]." This is in keeping with the basic standard for establishing guilt in criminal proceedings: proof beyond reasonable doubt.⁶⁰ (Emphasis supplied)

⁵⁴ Id. at 503–504.

⁵⁵ 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

⁵⁶ Id. at 93 citing *People v. Lorenzo*, 633 Phil. 393 (2010) [Per J. Perez, Second Division].

⁵⁷ 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

⁵⁸ Id. at 827.

⁵⁹ G.R. No. 224297, February 13, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005>> [Per J. Leonen, Third Division].

⁶⁰ Id. citing *People v. Morales*, 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

In this case, the prosecution failed to prove compliance with all the requirements of Section 21(a).

First, the buy-bust operatives failed to immediately mark the allegedly seized item at the place of arrest, and instead did so at the police station.⁶¹ To justify this, the prosecution argued that Section 21(a) of Republic Act No. 9165's Implementing Rules and Regulations provides that the marking of seized items may be done at the nearest police station in case of warrantless arrests, as in buy-bust operations.⁶² However, the cited provision states that what may be conducted at the nearest police station is the *physical inventory* and *photographing* of the seized items:

SECTION 21. . . .

(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)

While Section 21 of the law and its implementing rules do not explicitly cover the step of marking the seized evidence, this Court clarified in *People v. Sanchez*⁶³ its necessity and its distinction from the inventory and photographing:

[T]he venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.

In seizures covered by search warrants, the physical inventory and photograph must be conducted in the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a buy-bust operation, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the

⁶¹ CA *rollo*, pp. 44 and 48.

⁶² Id. at 87.

⁶³ 590 Phil. 214 (2008) [Per J. Brion, Second Division].

items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.

For greater specificity, "marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.⁶⁴ (Emphasis supplied, citations omitted)

There is a clear difference between the conduct of marking and the conduct of inventory and photographing. While Section 21(a) allows for the inventory and photographing to be done at the nearest police station in warrantless arrests, the marking of seized items must still be conducted *immediately after* the accused's arrest. Evidently, the most logical place where this step should happen is at the place of arrest.

Failure to mark the seized items at the place of the arrest has its consequences, as discussed in *People v. Coreche*:⁶⁵

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v.*

⁶⁴ Id. at 240–241.

⁶⁵ 612 Phil. 1238 (2009) [Per J. Carpio, First Division].

Dismuke that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.⁶⁶ (Emphasis supplied, citations omitted)

Thus, in failing to mark the seized items immediately after the arrest of accused-appellant, reasonable doubt is cast unto the identity and integrity of the *corpus delicti*. As explained in *Coreche*, the failure to mark the drugs constitutes the first gap in the chain of custody rule, which on its own is enough to warrant accused-appellant's acquittal on the basis of the prosecution failing to establish an element of the crime.

Yet, worse is the absence of all the third-party witnesses required under Section 21 of Republic Act No. 9165. In addition to the accused, the law requires that three (3) individuals—an elected official, a media representative, and a Department of Justice representative—be present during the conduct of marking, inventory, and photographing.⁶⁷ In *People v. Mendoza*,⁶⁸ this Court explained the purpose of such requirement:

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 sachets of shabu that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.⁶⁹

Securing the presence of these three (3) witnesses is a statutory safeguard that must be complied with to establish the *corpus delicti* beyond reasonable doubt.⁷⁰

Yet, here, the Regional Trial Court⁷¹ and the Court of Appeals,⁷² as well as the prosecution,⁷³ made no mention of any third-party witness being present during the marking, inventorying, and photographing of the seized items.

⁶⁶ Id. at 1245–1246.

⁶⁷ Republic Act No. 9165 (2002), sec. 21(1).

⁶⁸ 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

⁶⁹ Id. at 764.

⁷⁰ This rule has been relaxed in the amendment made by Republic Act No. 10640 (2014), making it so only: (1) an elected official; and (2) either a media representative *or* National Prosecution Service representative are required.

⁷¹ CA rollo, p. 44.

⁷² Rollo, p. 4.

⁷³ CA rollo, p. 82.

On this ground, the prosecution again failed to prove compliance with Section 21.

The Implementing Rules and Regulations does allow for circumstances when noncompliance with Section 21 is justified. However, the exception is subject to certain requirements:

- (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[.]*⁷⁴ (Emphasis supplied)

In *Que*, this Court further explained how the exception works:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: *first, the prosecution must specifically allege, identify, and prove “justifiable grounds”*; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.⁷⁵ (Emphasis supplied)

Thus, for noncompliance with Section 21 to be excused, there must be: (1) justifiable reasons that are alleged and proved; and (2) proof that the integrity and evidentiary value of the evidence were maintained.

These requisites are absent in this case. The prosecution failed to explain why the arresting officers marked the evidence at a venue completely different from where the seizure occurred. It also did not provide a reason for their failure to have the required witnesses present during the inventory and photographing of the seized item.

⁷⁴ Republic Act No. 9165 Implementing Rules and Regulation (2002), sec. 21(a).

⁷⁵ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 523 [Per J. Leonen, Third Division].

The prosecution attempted to excuse the absence of an elected official by saying that the barangay captain they invited refused to sign the confiscation receipt.⁷⁶ Assuming the barangay captain were really present, this excuse would only explain why the official's signature does not appear in the inventory. The prosecution took no pains in addressing the absences of the media or the Department of Justice representative.

In any case, the standards for compliance must be raised higher when dealing with a small amount of drugs:

Although strict compliance with the chain of custody rule may be excused provided that the integrity and evidentiary value of the seized items are preserved, *a more exacting standard is required of law enforcers when only a miniscule amount of dangerous drugs are alleged to have been seized from the accused.*⁷⁷ (Emphasis supplied)

Likewise, in *Holgado*:

Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. *This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.*⁷⁸ (Emphasis supplied)

As for the courts, this Court also reminds that:

*... trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs.*⁷⁹ (Emphasis supplied)

In this case, since only 0.10 gram of drugs is involved, a stricter standard of compliance with Section 21 applies.

Lower courts should not be so quick to rely on the presumption of regularity accorded to public officers in weighing the evidentiary value of the *corpus delicti* offered by the prosecution. In prosecutions under Republic Act No. 9165, the presumption of regularity does not operate to exempt officers from having to comply with Section 21. Moreover, the privilege of this

⁷⁶ *Rollo*, p. 48.

⁷⁷ *People v. Saunar*, 816 Phil. 482, 493–494 (2017) [Per J. Leonen, Second Division] citing *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division].

⁷⁸ *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per J. Leonen, Third Division].

⁷⁹ *Id.* at 100.

presumption cannot be availed to excuse an officer's flagrant noncompliance. In *People v. Kamad*.⁸⁰

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

....

From the constitutional law point of view, *the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.*⁸¹ (Emphasis supplied)

This Court finds no reason to depart from this well-entrenched doctrine. Following the stark deviations made by the police officers in handling the evidence, as well as the prosecution's failure to establish any justifiable reason for doing so, the presumption of regularity cannot apply. The *corpus delicti* not having been established, accused-appellant's acquittal is therefore fully warranted.

Today, this Court finds its dockets overrun by drug cases with nearly identical factual circumstances. The continuous reiteration of well-established doctrines notwithstanding, we find ourselves having to reverse convictions made in failed buy-bust operations. It cannot be gainsaid that even the most basic principles of justice and due process should require faithful compliance with Section 21. Accused-appellant in this case was arrested in 2009. More than 10 years have passed since then. This was over 10 years of her life spent behind bars for an issue that this Court has long put to rest. We will not turn a blind eye to this clear injustice.

WHEREFORE, the Court of Appeals' December 7, 2017 Decision in CA-G.R. CR-HC No. 08866 is **REVERSED AND SET ASIDE**. Accused-appellant Michelle Lacandula y Espanyar @ "Maricel" is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is

⁸⁰ 624 Phil. 289 (2010) [Per J. Brion, Second Division].

⁸¹ Id. at 311 citing *People v. Obmiranis*, 594 Phil. 561 (2008) [Per J. Tinga, Second Division].

ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Officer-in-Charge at the Correctional Institution for Women for immediate implementation. She is directed to report to this Court the action she has taken within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED. (*Gesmundo, J., on official business.*)

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

Atty. Grace Carmela B. Montero
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The Presiding Judge
REGIONAL TRIAL COURT
Branch 45, Urdaneta City
2428 Pangasinan
(Crim. Case No. U-16132)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

Michelle Lacandula y Espanyar
Accused-Appellant
c/o The Superintendent
New Bilibid Prison
1770 Muntinlupa City

The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
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G.R. No. 238907

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 238907

-versus-

MICHELLE LACANDULA y
ESPANYAR @ "MARICEL,"
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **The Superintendent**
CORRECTIONAL INSTITUTION FOR WOMEN
1550 Mandaluyong City

GREETINGS:

WHEREAS, the Supreme Court on December 2, 2019 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, the Court of Appeals' December 7, 2017 Decision in CA-G.R. CR-HC No. 08866 is **REVERSED AND SET ASIDE.** Accused-appellant Michelle Lacandula y Espanyar @ "Maricel" is **ACQUITTED** for the prosecution's failure to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause. *MA*

Let a copy of this Resolution be furnished to the Officer-in-Charge at the Correctional Institution for Women for immediate implementation. She is directed to report to this Court the action she has taken within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED. (*Gesmundo, J., on official business.*)

NOW, THEREFORE, You are hereby ordered to immediately release **MICHELLE LACANDULA y ESPANYAR @ "MARICEL"** unless there are other lawful causes for which she should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **MARVIC MARIO VICTOR F. LEONEN**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **2nd** day of **December 2019**.

Very truly yours,

Mis-DCB-H
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

Atty. Grace Carmela B. Montero
Special & Appealed Cases Service
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