Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

ENRICO BRIONES BADILLA,
Accused-Appellant.

G.R. No. 218578

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
PEREZ,
REYES, and
PERLAS-BERNABE,* *JJ.*

Promulgated:
August 31, 2016

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DECISION

PERALTA, *J.*:

This is an appeal from the Decision[1] dated March 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06354 affirming the Decision[2] dated September 9, 2013 of the Regional Trial Court (*RTC*) of Caloocan City, Branch 127, in Criminal Case No. C-84868, finding herein appellant Enrico Briones Badilla guilty beyond reasonable doubt of Violation of Section 11, Article II of Republic Act No. (R.A. No.) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.[3]

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated July 15, 2015.

1 Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Romeo F. Barza and Melchor Q. C. Sadang, concurring; *rollo*, pp. 2-21.

2 CA *rollo*, pp. 29-41-a.

3 *Id.* at 41-a.

In an Information[4] dated September 9, 2010, appellant was charged with violation of Section 11, Article II of R.A. No. 9165 which reads as follows:

> That on or about the 6th day of September 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control One (1) small heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE *(Shabu)* weighing 7.75 grams, which when subjected for laboratory examination gave POSITIVE result to the test of Methylamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.

Upon arraignment, accused pleaded not guilty[5] to the offense charged. After pre-trial, trial on the merits ensued.

The prosecution's evidence consists of the testimonies of (1) PO2 Borban Paras, the one who arrested appellant and seized the illegal drug from him; (2) PO2 Rafael Espadero, the one who received the marked specimen from PO2 Paras; (3) PO2 Eduardo Ronquillo, one of PO2 Paras' companions during the arrest of accused; and (4) P/Sr. Insp. Margarita Mamotos-Libres, the forensic chemist who examined the specimen seized from the appellant. The testimonies of PO2 Espadero, PO2 Ronquillo and P/Sr. Insp. Libres were abbreviated due to the stipulations entered into by the prosecution and the defense.[6] The evidence of the prosecution may be summed up as follows: On September 6, 2010, around 10:15 p.m., PO2 Paras received a phone call from a concerned citizen informing him that someone was indiscriminately firing a gun at BMBA Compound, 4th Avenue, Caloocan City. PO2 Paras and his companions, PO2 Ronquillo, PO3 Baldomero and PO2 Woo, responded to the call and reached the target area around 10:25 p.m.[7] There they saw a male person, later identified as appellant Enrico Briones Badilla, standing along the alley. Appellant was suspiciously in the act of pulling or drawing something from his pocket; thus, as a precautionary measure, and thinking that a concealed weapon was inside his pocket, PO2 Paras immediately introduced himself as a police officer, held appellant's arm, and asked the latter to bring out his hand from his pocket.[8] It turned out that appellant was holding a plastic sachet with white crystalline substance. PO2 Paras confiscated the plastic sachet from appellant, informed him of his constitutional rights, and arrested him. Appellant and the confiscated plastic sachet were brought to the Station

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4 *Id.* at 3.
5 *Id.*
6 CA *rollo*, pp. 30-32.
7 *Id.* at 33.
8 *Id.*

Anti-Illegal Drugs-Special Operation Task Group (SAID-SOTG) Office where PO2 Paras marked the plastic sachet with *"BP/EBB 07 Sept 2010."*[9]

Thereafter, PO2 Paras turned-over appellant and the seized item to PO2 Espadero who placed the seized item in a much bigger plastic sachet which the latter marked with *"SAID-SOTG EVIDENCE 07-Sept 2010."*[10] PO2 Espadero then prepared a Request for Laboratory Examination[11] of the seized item, dated September 7, 2010, and another request for drug test on the urine sample taken from appellant. These requests were both signed by P/Chief Insp. Bartolome Tarnate. PO2 Espadero transmitted the requests and the specimen to the Northern Police District Crime Laboratory Office, where duty desk officer PO1 Pataweg received and recorded the same in his logbook. PO1 Pataweg, in the presence of PO2 Espadero, turned-over the requests and the specimen to P/Sr. Insp. Libres for laboratory examination.[12]

The white crystalline substance was found positive for methylamphetamine hydrochloride, a dangerous drug, per Physical Science Report No. D-246-10,[13] while the urine sample taken from appellant was found positive for methylamphetamine, per Physical Evidence Report No. DT-250-10. Upon completion of the laboratory examination on the seized item, P/Sr. Insp. Libres marked the plastic sachet with *"A" MML*, countersigned it, and placed it in a brown envelope where she also wrote her initials *"MML"* and placed the markings "D-246-10,"[14] then she deposited the envelope containing the seized item to the evidence custodian of their office and later retrieved the same for presentation in court.

The defense, on the other hand, presented appellant as its sole witness and offered a different version of what transpired on the day of the arrest. Appellant narrated that on September 6, 2010, around 10:30 in the evening, he was walking along 4th Avenue, Caloocan City when a male person called him. Recognizing the man as a police officer who frequented their place, he approached the man. When he got near the man, the latter's companion poked a gun at him. By instinct, he shoved the gun away and it fell on the ground.[15]

According to appellant, the police officer then arrested him, shoved him aboard the police vehicle, and brought him to 3rd Avenue, Caloocan City. When the police officers failed to see their target person at the said place, they left and went to the police station where he was told that he would be charged with a non-bailable offense. He only saw the plastic sachet

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9 Exhibit "C-2," *id.* at 35.
10 Exhibit "C-1," *id.*
11 Exhibit "A," *id.*
12 CA *rollo*, p. 32.
13 Exhibit "B," *id.* at 35.
14 Exhibit "C," *id.*
15 CA *rollo*, pp. 36-37.

containing *shabu* in court. He denied the accusations against him and stated that he was arrested because the police officers thought he would fight back when he shoved the police officer's gun. The police officers asked ₱20,000.00 from him allegedly because they knew that his father had a junk shop business, but he refused to give them money. He questioned the positive result of the drug test because allegedly no examination was conducted on his person.[16]

In its Decision dated September 9, 2013, the RTC held appellant guilty beyond reasonable doubt of the offense charged. The dispositive portion of which reads:

> WHEREFORE, premises considered, the prosecution having proved the guilt of the accused Enrico Briones Padilla beyond reasonable doubt, he is hereby sentenced to suffer the penalty of imprisonment of Twenty (20) years and one (1) day to life imprisonment and a fine of Four Hundred Thousand Pesos (₱400,000.00) in accordance with Section 11 sub-section 2 of Art. II, R.A. 9165, otherwise known as the "Dangerous Drugs Act of 2002".
>
> The drugs subject of this case is hereby ordered confiscated in favor of the government to be dealt with in accordance with law.[17]

Aggrieved, appellant appealed the aforesaid Decision to the Court of Appeals via a Notice of Appeal.

On March 27, 2015, the CA affirmed the appellant's conviction but with modification as to the penalty imposed. The decretal portion of the Decision reads, thus:

> **ACCORDINGLY,** the appeal is **DENIED** and the Decision dated September 9, 2013 is **AFFIRMED with MODIFICATION** of the prison term which is hereby fixed at 20 years and 1 day.[18]

Still unsatisfied, appellant elevated the aforesaid Decision of the CA to this Court via a Notice of Appeal.

In a Resolution[19] dated July 22, 2015, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire, but both parties manifested that they are no longer filing a supplemental brief.

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16 *Id.*
17 *Id.* at 41-a.
18 *Rollo,* p. 21. (Emphasis in the original)
19 *Id.* at 26-27.

In his Brief,[20] appellant raised the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE EXISTING DOUBT AND PATENT ILLEGALITY WHICH ATTENDED HIS ARREST.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTHWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGED SEIZED SHABU.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

On the first error, appellant argues that there was no basis for his apprehension because there was no prior knowledge that he was the suspect in the alleged indiscriminate firing incident and that there was no mention that he executed an overt act reflecting any intention to commit a crime. Also, there was no testimony that he had just committed an offense, such that, it cannot be said that PO2 Paras had any immediate justification for subjecting him to any search. Thus, the *shabu* may not be utilized as evidence to sustain his conviction.

On the second error, appellant submits that the failure to mark the seized item right away is a violation of the chain of custody rule as mandated by Section 21 of the Implementing Rules and Regulations of RA 9165. There was no immediate conduct of a physical inventory and the seized item was not photographed in the presence of appellant or counsel, or of a representative from the media, and the Department of Justice, and any elected public official who shall be required to sign copies of the inventory. Appellant avers that there is no absolute certainty that it was the same drug item that was allegedly recovered from him, and there was also no justifiable ground warranting the exception to the chain of custody rule.

On the third error, appellant contends that failure to comply with the chain of custody rule negates the presumption that official duties had been regularly performed by the police officers.

We dismiss the appeal.

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20 CA *rollo*, pp. 14-16.

First Issue: Legality of Arrest

We stress, at the outset, that appellant failed to question the legality of his arrest before he entered his plea. The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise, the objection is deemed waived.[21] Thus, appellant is deemed to have waived any objection thereto since he voluntarily submitted himself to the jurisdiction of the court when he entered a plea of not guilty during the arraignment, and thereafter actively participated in the trial. He even entered into a stipulation, during the pre-trial of the case, admitting the jurisdiction of the trial court over his person.[22]

In any event, appellant was arrested during the commission of a crime, which instance does not require a warrant in accordance with Section 5(a) of Rule 113 of the Revised Rules on Criminal Procedure.[23] Such arrest is commonly known as *in flagrante delicto.* For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he 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.[24]

We emphasize that the series of events that led the police officers to the place where appellant was when he was arrested was triggered by a phone call from a concerned citizen that someone was indiscriminately firing a gun in the said place. Under the circumstances, the police officers did not have enough time to secure a warrant considering the "time element" involved in the process. To obtain a warrant would be impossible to contain the crime. In view of the urgency of the matter, the police officers proceeded to the place. There, PO2 Paras saw appellant, alone in an alley which used to be a busy place,[25] suspiciously in the act of pulling something from his pocket. Appellant's act of pulling something from his pocket constituted an

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21 *Zalameda v. People,* 614 Phil. 710, 741 (2009).

22 CA *rollo,* p. 68.

23 Sec. 5. *Arrest without warrant; when lawful.* - A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed, and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment, or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

24 *People v. Pavia,* G.R. No. 202687, January 14, 2015, 746 SCRA 216, 221.

25 CA *rollo,* p. 39, referring to the TSN dated December 3, 2012, p. 7.

overt manifestation in the mind of PO2 Paras that appellant has just committed or is attempting to commit a crime. There was, therefore, sufficient probable cause for PO2 Paras to believe that appellant was, then and there, about to draw a gun from his pocket considering the report he received about an indiscriminate firing in the said place. Probable cause means an actual belief or reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or about to be committed.[26]

Thus, thinking there was a concealed weapon inside appellant's pocket and as precautionary measure, PO2 Paras (who was three or four meters away from appellant)[27] immediately introduced himself as a police officer, held appellant's arm, and asked the latter to pull his hand out. Incidentally, appellant was holding a plastic sachet containing white crystalline substance. PO2 Paras then confiscated the plastic sachet from appellant, informed him of his constitutional rights, and arrested him. When an accused is caught *in flagrante delicto*, the police officers are not only authorized, but are duty-bound, to arrest him even without a warrant.[28] And considering that appellant's arrest was legal, the search and seizure that resulted from it were likewise lawful.[29]

Therefore, We agree with the CA when it adopted the People's disquisition:

> The police officers are completely justified for being at the BMBA compound when appellant was arrested, since they were merely performing their regular duty of responding to a reported crime. When **appellant was found alone, acting suspiciously in the reported area, PO2 Paras instinctively thought that appellant was about to pull out a gun or a weapon from his pocket due to a previous report of indiscriminate firing**, that he approached him as a precautionary measure.
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> x x x x
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> In the course of the performance of their official duties, the police officers inadvertently recovered from appellant a plastic sachet of shabu which was **voluntarily given** by appellant himself. Clearly, the item recovered from appellant was not a product of illegal search and seizure, because appellant voluntarily surrendered the drugs in his possession. In short, appellant was not forced or coerced to bring out the contents of his pocket, thus, the recovery of evidence was appellant's own volition.
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> Accordingly, appellant was arrested because **he was caught *in flagrante delicto*** of the crime of illegal possession of dangerous drugs,

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26 *People v. Aruta,* G.R. No. 120915, April 3, 1998, 288 SCRA 626; *People v. Tangliben,* G.R. No. 63630, April 6, 1990, 184 SCRA 220; *People v. Claudio,* G.R. No. 72664, April 15, 1998, 160 SCRA 646.

27 CA *rollo,* p. 33.

28 *People v. Pavia, supra* note 24, at 222.

29 *People v. Hindoy,* 410 Phil. 6, 21 (2001); *Dr. De Jesus v. Guerrero III, et al.,* 614 Phil. 520 (2009).

given that mere possession of a prohibited drug already constitutes a criminal offense.

Appellant's arrest, therefore, was completely justified pursuant to Section 5 (a) of Rule 113 of the Revised Rules on Criminal Procedure which provides that a person may be arrested without a warrant when in a presence of the arresting officer, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.[30]

Second Issue: Compliance with the Chain of Custody Rule

We likewise find untenable the contention of appellant that since the provision of Section 21, Article II of Republic Act No. 9165 was not strictly complied with, the prosecution failed to prove the identity and integrity of the seized prohibited drug.

Section 21, paragraph 1, of Article II of Republic Act No. 9165 reads:

Section 21. Custody and disposition of Confiscated, Seized and/or Surrendered Drugs, Plant Sources of Dangerous Drugs, controlled precursors and Essentials 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 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.

Further, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 similarly provides that:

(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: xxx Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the

30 *Rollo*, pp. 9-10. (Emphasis supplied)

> 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 the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails.[31] In this regard, the aforesaid provisions outline the procedure to be observed by the apprehending officers in the seizure and custody of dangerous drugs.

Under the same proviso, however, non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[32] While nowhere in the prosecution's evidence would show the "justifiable ground" which may excuse the police operatives involved from making the physical inventory and taking of photograph of the drug confiscated and/or seized, such omission shall not render appellant's arrest illegal or the items seized/confiscated from him as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of appellant to specifically challenge the custody and safekeeping or the issue of disposition and preservation of the subject drug before the trial court. He cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.[33]

Moreover, the rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs from the time they are seized from the accused until the time they are presented in court.[34] The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that

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31 *Fajardo, et al. v. People*, 691 Phil. 752, 758-759 (2012); *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

32 *People v. Ventura*, 619 Phil. 536, 552 (2009).

33 *Amado I. Saraum v. People*, G.R. No. 205472, January 25, 2016, citing *People v. Campomanes, et al.*, 641 Phil. 610, 623 (2010).

34 *People v. Bautista*, 682 Phil. 487, 501 (2012).

unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[35]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing R.A. No. 9165, defines chain of custody as follows:

> Chain of Custody means 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.

In the case at bench, after PO2 Paras confiscated the plastic sachet with white crystalline substance from appellant, the same remained in PO2 Paras' possession until appellant and the seized item were brought to the SAID-SOTG office. Upon reaching the office, PO2 Paras marked the plastic sachet with his initials *"BP/EBB 07 Sept 2010"* and turned it over to police investigator PO2 Espadero who, in turn, placed it in a much bigger plastic sachet and marked the bigger plastic sachet with *"SAID-SOTG EVIDENCE 07 Sept 2010"*. Then, PO2 Espadero prepared a Request for Laboratory Examination dated September 7, 2010.[36] Later, PO2 Espadero brought the plastic sachet and the request to the PNP Northern Police District Crime Laboratory Office where PO1 Pataweg, the duty desk officer, received the same. Thereafter, PO1 Pataweg, in the presence of PO2 Espadero, turned over the requests and specimen for laboratory examination to P/Sr. Insp. Libres, a forensic chemist. Per Physical Science Report No. D-246-10, the white crystalline substance was found positive for methylamphetamine hydrochloride, a dangerous drug, while, per Physical Evidence Report No. DT-250-10, the urine sample taken from appellant was found positive for methylamphetamine. Upon completion of the laboratory examination on the seized item, P/Sr. Insp. Libres marked the plastic sachet with *"A" MML*, countersigned it, and placed it in a brown envelope where she also wrote her initials "*MML*" and marked the envelope with "D-246-10". She then deposited the envelope containing the seized item to the evidence custodian of their office. She later retrieved the same from the evidence custodian for presentation in court. The Chemistry Report and the subject specimen were presented in court as evidence, and were properly identified by prosecution witnesses.

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35 *People v. Dela Rosa*, 655 Phil. 630, 650 (2011).

36 PO2 Espadero also prepared a request for a drug test on the urine sample taken from appellant.

Hence, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drug had not been compromised because it established the crucial link in the chain of custody of the seized item from the time it was first discovered until it was brought to the court for examination.[37] The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.[38]

In this case, the facts persuasively proved that the sachet of *shabu* presented in court was the same item seized from appellant. The integrity and evidentiary value thereof were duly preserved. The marking and the handling of the specimen were testified to by PO2 Paras and PO2 Espadero.[39] During the trial, the prosecution and the defense entered into a stipulation that witnesses PO2 Espadero and P/Sr. Insp. Libres (the forensic chemist) could identify the subject specimen as well as the documents they prepared.[40] The aforesaid witnesses testified about every link in the chain, from the moment the seized item was picked up to the time it was offered into evidence in court.

To reiterate, We discussed in the case of *Mallillin v. People*[41] how the chain of custody of seized items should be established, thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[42]

However, while the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain.[43] Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or

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37 *People v. Pavia, supra* note 24, at 224.
38 *People v. Alivio, et al.*, 664 Phil. 565, 577-578 (2011).
39 CA *rollo*, p. 70.
40 *Id.* at 69-70.
41 576 Phil. 576 (2008).
42 *Mallillin v. People, supra,* at 587. (Citations omitted)
43 *Zalameda v. People,* 614 Phil. 710, 741 (2009).

the items seized or confiscated from him inadmissible. The most important factor is the preservation of the integrity and evidentiary value of the seized item.[44]

In a number of cases,[45] We held that with the implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officers. We ruled that the marking and inventory of the seized items at the police station immediately after the arrival thereat of the police officers, as in this case, were in accordance with the law, its implementing rules and regulations, and relevant jurisprudence. Also, the failure to photograph and conduct physical inventory of the seized items is not fatal to the case against the accused and does not *ipso facto* render inadmissible in evidence the items seized. What is important is that the seized item marked at the police station is identified as the same item produced in court.[46]

Therefore, in this case, even though the prosecution failed to submit in evidence the physical inventory and photograph of the seized drug nor mark the same immediately after seizure, these will not render appellant's arrest illegal or the items seized from him inadmissible. There is substantial compliance by the police officers as to the required procedure on the custody and control of the confiscated item. The succession of events established by evidence and the overall handling of the seized item by the prosecution witnesses all show that the item seized was the same evidence subsequently identified and testified to in open court.[47]

Specifically, in *People v. Padua*,[48] We stated that the purpose of the procedure outlined in the implementing rules is centered on the preservation of the integrity and evidentiary value of the seized items. We also reiterated in *People v. Hernandez, et al.*[49] that non-compliance with Section 21 would not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

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44 *Id.*

45 *People v. Morate*, G.R. No. 201156, January 29, 2014, 715 SCRA 115; *People v. Cerdon,* G.R. No. 201111, August 6, 2014, 732 SCRA 335.

46 *People v. Yable,* G.R. No. 200358, April 7, 2014, 721 SCRA 91, 99.

47 *Amado I. Saraum v. People of the Philippines,* G.R. No. 205472, January 25, 2016; *People v. Dela Rosa, supra* note 35, at 650.

48 639 Phil. 235, 248 (2010).

49 607 Phil. 617, 638 (2009).

Third Issue: Defense of Alibi

For the prosecution of illegal possession of dangerous drugs, the following facts must be proved: (a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and, (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[50] All these elements were adequately proven by the prosecution. Appellant was found to have in his possession 7.75 grams of *shabu*, a dangerous drug. He could not present any proof or justification that he was fully authorized by law to possess the same. The mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* (intent to possess) sufficient to convict an accused in the absence of any satisfactory explanation.[51]

Appellant's mere denial cannot prevail over the positive and categorical identification and declarations of the police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.[52] As evidence that is both negative and self-serving, this defense of *alibi* cannot attain more credibility than the testimony of the prosecution witness who testified clearly, providing thereby positive evidence on the crime committed.[53] One such positive evidence, in this case, is the result of the laboratory examination conducted on the drug recovered from the appellant which revealed that the confiscated plastic sachet tested positive for the presence of *"shabu"*.[54]

Furthermore, the defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. The presumption that official duty has been regularly performed can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[55] In the present case, appellant failed to overcome such presumption. The bare denial of the appellant cannot prevail over the positive testimony of the prosecution witnesses

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50 *Valencia v. People,* 725 Phil. 268, 277 (2014); *People v. Abedin,* 685 Phil. 552, 563 (2012); *Asiatico v. People*, 673 Phil. 74, 81 (2011).

51 *People v. Tancinco,* 736 Phil. 610, 623 (2014); *Asiatico v. People, supra,* at 451.

52 *People v. Mariano,* 698 Phil. 772, 785 (2012); *Ambre v. People,* 692 Phil. 681, 697 (2012); *People v. Villahermosa*, 665 Phil. 399, 418 (2011); *Zalameda v. People,* 614 Phil. 710, 729 and 733 (2009).

53 *People v. Nicart, et al.*, 690 Phil. 263 (2012).

54 *People v. Pavia, supra* note 24.

55 *Miclat, Jr. v. People,* 672 Phil. 191, 210 (2011); *People v. Pagkalinawan*, 628 Phil. 101, 118 (2010).

for failing to present any corroborative evidence.[56] As correctly ruled by the trial court, when accused testified that he came from a drugstore in Monumento in the evening of his arrest and allegedly bought medicine, accused should have presented to the police officers the item he bought, or any receipt, to prove that he was not at the place when the alleged indiscriminate firing occurred.[57]

Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusions of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.[58] The rule finds an even more stringent application where said findings are sustained by the CA as in this case.[59] Hence, We find no compelling reason to deviate from the CA's findings that, indeed, the appellant's guilt was sufficiently proven by the prosecution beyond reasonable doubt.

Turning now to the imposable penalty, We sustain the penalty imposed by the CA. Section 11 of Republic Act No. 9165 provides for the penalty for the illegal possession of dangerous drugs:

> Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
>
> x x x x
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> x x x x
>
> (2) **Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four Hundred Thousand Pesos (₱400,000.00) to Five Hundred Thousand Pesos (₱500,000.00),** if the quantities of dangerous drugs are **five (5) grams or more but less than ten (10) grams** of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, **methamphetamine hydrochloride or *"shabu",*** or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those

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56 *People v. Mariano, supra* note 52; *People v. Villahermosa, supra* note 52.

57 CA *rollo*, pp. 78-79.

58 *People v. Villahermosa, supra* note 52, at 420; *People v. Campomanes,* 641 Phil. 621, 622 (2010); *People v. Canaya*, G.R. No. 212173, February 25, 2015 (Third Division Resolution).

59 *People v. Villahermosa, supra* note 52, at 420.

> similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana.[60]

The aforesaid provision clearly states that the imposable penalty for illegal possession of any dangerous drug, like *shabu*, with a quantity of five (5) grams or more but less than ten (10) grams, is imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from ₱400,000.00 to ₱500,000.00.

Thus, for the illegal possession of *shabu* in the amount of 7.75 grams, as in this case, the CA correctly imposed the penalty of imprisonment of twenty (20) years and one (1) day and a fine of Four Hundred Thousand Pesos (₱400,000.00). The Indeterminate Sentence Law finds no application in this case because the penalty of imprisonment provided for illegal possession of five (5) grams or more but less than ten (10) grams of *shabu* is indivisible.[61]

All told, We find no reason to modify or set aside the Decision of the Court of Appeals.

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated March 27, 2015 in CA-G.R. CR-HC No. 06354 is **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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60 Emphasis supplied.

61 *People v. Dela Rosa, supra* note 35, at 656; *People v. Tancinco, supra* note 51, at 624.

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

PRESBITERO J. VELASCO, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
SEP 22 2016