

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 248418

Present:

- versus -

GESMUNDO, J., Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

GABRIEL CAMPUGAN CABRIOLE,  
Accused-Appellant.

Promulgated:

MAY 05 2021

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DECISION

CAGUIOA, J.:

This is an appeal filed under Section 2, Rule 125 in relation to Section 3, Rule 56 of the Revised Rules of Court from the Decision<sup>1</sup> dated May 23, 2019 of the Court of Appeals – Cagayan De Oro City, Special Twenty-Third Division (CA) in CA-G.R. CR-HC No. 01947-MIN, which affirmed the Joint Judgment<sup>2</sup> dated March 7, 2018 of Branch 43, Regional Trial Court of Gingoog City (RTC) in Criminal Cases Nos. 2016-6622 and 2016-6623, finding accused-appellant Gabriel Campugan Cabriole (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11 of Republic Act (R.A.) No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”<sup>3</sup>

<sup>1</sup> Rollo, pp. 4-12. Penned by Associate Justice Oscar V. Badelles with Associate Justices Loida S. Posadas-Kahulugan and Florencio M. Mamauag, Jr. concurring.

<sup>2</sup> CA rollo, pp. 53-67. Penned by Presiding Judge Mirabeaus A. Undalok.

<sup>3</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved June 7, 2002.

### The Facts

Accused-appellant Gabriel Campugan Cabriole and accused Daniel Gumanit Abad *alias Timoy* were charged with violation of Sections 5 and 11, Article II of R.A. No. 9165, under the following Informations:

Criminal Case No. 2016-6622

That on October 16, 2016, at more or less 1:57 o'clock in the afternoon in Purok 4, Barangay 18-A, Gingoog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, with deliberate intent and without lawful authority, did then and there [willfully], unlawfully and feloniously sell, deliver and give away to a police poseur-buyer PO1 ARMAN LENARD LATAYADA DOÑO in a buy-bust operation one (1) small heat-sealed transparent plastic sachet containing of white crystalline substance known as SHABU, having a weight of 0.0686 gram in exchange for a price of P500.00 peso bill bearing Serial No. EX265351.

Contrary to and in violation of Section 5, Article II of Republic Act No. 9165.<sup>4</sup>

Criminal Case No. 2016-6623

That on October 16, 2016, at more or less 1:57 o'clock in the afternoon in Purok 4, Barangay 18-A, Gingoog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without lawful authority, did then and there [willfully], unlawfully and feloniously possess and under his control, the following:

- Three (3) small heat-sealed transparent plastic sachets containing of white crystalline substance known as SHABU, having a total net weight of 0.1523 gram

a dangerous drug

Contrary to law and in Violation of Section 11, Article II of Republic Act No. 9165 Comprehensive Dangerous Drugs Act of 2002.<sup>5</sup>

When arraigned, accused-appellant pleaded "not guilty" to both charges.<sup>6</sup> Afterwards, trial ensued.

#### *Version of the Prosecution*

The prosecution presented as witnesses PCI Joseph T. Esber (PCI Esber), PO1 Armand Lenard L. Doño (PO1 Doño), PO3 Keith Lester Javier (PO3 Javier), Rita D. Endrina (media representative), and Barangay Kagawad Judith Q. Ratilla. In an Order<sup>7</sup> dated October 25, 2017, the RTC dispensed with the oral testimony of SPO1 Sofia Pensinabes (SPO1 Pensinabes) in view of the stipulation between the prosecution and the defense that SPO1

<sup>4</sup> Records, p. 5.

<sup>5</sup> *Rollo*, p. 5.

<sup>6</sup> Id. at 5-6.

<sup>7</sup> Records, pp. 79-80.

Pensinabes took the photographs during the conduct of the search, marking, and inventory.

The CA summarized their testimonies as follows:

On 16 October 2016 at 12:10 o'clock in the afternoon, PO1 Doño was at the Intelligence Section of Gingoog City Police Station attending a briefing regarding the buy-bust operation to be conducted against Daniel and [accused-appellant]. The briefing was attended by [the operatives of the Gingoog City Police Station]. At the said briefing, PO1 Doño was designated as poseur[-]buyer, P/Supt. Lami-ing gave him a 500-peso bill with serial number EX265351 as buy[-]bust money which was photocopied. PO3 Pontillas recorded in the police blotter the buy-bust money. A confidential agent would accompany PO1 Doño. It was agreed that the pre-arranged signal would be the removal of his sunglasses.

The place of the buy-bust was Purok 4, Barangay 18-A, Gingoog City, which is near the water tub locally known as the "flowing". There, PO1 Doño gave the 500-peso bill to Daniel who in turn gave it to [accused-appellant] as payment for one sachet of *shabu*. [Accused-appellant] handed over the *shabu* to Daniel who in turn handed it over to PO1 Doño. Upon receiving the *shabu*, PO1 Doño removed the sunglasses, the pre-arranged signal for consummation of the sale of drugs. Immediately, the other police officers came in and pursued Daniel and [accused-appellant]. [Accused-appellant] was arrested but Daniel got away. PO3 Javier searched [accused-appellant] and found in his lower middle pocket three (3) plastic sachets believed to contain *shabu*, a 500-peso bill with Serial Number EX265351, and aluminum foil strips.

PO3 Javier conducted the inventory in the presence of [accused-appellant], Rita Endrina of *Monitor Today*, and Barangay Kagawad Judith Ratilla. PO3 Pensinabes took the pictures. Thereafter, the witnesses signed the inventory, and [accused-appellant] was placed under arrest and informed of his constitutional rights.

After the inventory, PO3 Javier took custody of the seized plastic sachets and went back to the Gingoog City Police Station with the rest of the team. There, PO3 Javier prepared a Memorandum dated October 16, 2016 requesting for a laboratory examination of the seized plastic sachets containing suspected illegal drugs. The sachets were then transmitted to the [Philippine National Police (PNP)] Crime Laboratory at ASL Gym, Gingoog City which was received by PCI Esber.

The laboratory examination on the contents of the four (4) plastic sachets was conducted by PCI Esber. PCI Esber's findings in Chemistry Report No. D-98-2016 MIS OR revealed that the said plastic sachets seized from the accused-appellant all yielded positive for the presence of Methamphetamine Hydrochloride, locally known as *shabu*.<sup>8</sup>

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<sup>8</sup> Id. at 6-7.

*Version of the Defense*

On the other hand, the defense presented accused-appellant and his grandmother, Adelaida Luna Campugan, as witnesses. The CA summarized their testimony as follows:

The accused-appellant denied both charges; he denied selling *shabu* to PO1 Doño, just as he denied having *shabu* in his possession when he was arrested on 16 October 2016.

According to accused-appellant, on 16 October 2016 at about 1:00 o'clock in the afternoon, his grandmother sent him to buy Coke at *Maguba* Store, located some 80 meters from his grandmother's house. On his way, he saw a man wearing a mask. Then, he noticed his neighbors running towards the water pump. Sensing danger, the accused-appellant followed suit. Apparently, there were three (3) armed men wearing masks, chasing them and instructing them to drop to the ground. When the accused-appellant asked the men what crime he committed, the latter fired a warning shot, prompting the [accused-]appellant to drop to the ground. PO3 Pontillas straddled on his back and inserted something in his right pocket. When accused-appellant asked what PO3 Pontillas was doing, the latter pressed his head on the ground. He was then dragged from the dike to the waiting shed of Ado Gumanit's store. PO3 Javier searched the [accused-]appellant and recovered the alleged planted items.<sup>9</sup>

**Ruling of the RTC**

In its Joint Judgment<sup>10</sup> dated March 7, 2018, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of violation of Sections 5 and 11, Article II of R.A. No. 9165 as follows:

WHEREFORE, premises considered, the Court finds GABRIEL C. CABRIOLE guilty beyond reasonable doubt in Criminal Case No. 2016-6622 for violation of Section 5, Article II, RA No. 9165 and sentences him to life imprisonment and to pay a fine of Five hundred thousand pesos (Php500,000.00).

The Court likewise finds GABRIEL C. CABRIOLE guilty beyond reasonable doubt in Criminal Case No. 2016-6623 for violation of Section 11, Article II, RA No. 9165 and sentences him to an indeterminate penalty of twelve (12) years and one (1) day to sixteen (16) years and a fine of Three hundred thousand pesos (Php300,000.00).

The *shabu* consisting of four (4) sachets are confiscated in favor of the government and disposed of in accordance with laws and regulations on the matter.

GABRIEL C. CABRIOLE shall serve his two (2) sentences at Davao Penal Colony, Dujali, Davao del Norte. His preventive detention at BJMP-Gingoog City is fully credited in the service of his sentence.

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<sup>9</sup> Id. at 7.

<sup>10</sup> Supra note 2.



The case against DANIEL GUMANIT ABAD ALIAS TIMOY docketed as Criminal Case No. 2016-6622 is hereby archived. Let alias warrant of arrest issue against him.

SO ORDERED.<sup>11</sup>

The RTC ruled that the prosecution established with certainty all the elements of illegal sale of *shabu* and illegal possession thereof.<sup>12</sup> Further, the RTC held that the prosecution clearly established the chain of custody.<sup>13</sup> The pieces of drug evidence were marked and subjected to inventory in the presence of accused-appellant, a barangay kagawad, and a media representative.<sup>14</sup>

On accused-appellant's assertion that PO3 Pontillas planted evidence on him, the RTC said that no convincing evidence was presented that PO1 Doño and PO3 Pontillas had planted evidence on accused-appellant.<sup>15</sup> The RTC added that with a total of four sachets of *shabu* recovered from accused-appellant, the claim of planting of evidence is not believable.<sup>16</sup>

### **Ruling of the CA**

On appeal, the CA affirmed accused-appellant's conviction in its Decision<sup>17</sup> dated May 23, 2019:

WHEREFORE, the instant appeal is DENIED. The assailed Regional Trial Court Joint Judgment in Criminal [Cases] Nos. 2016-6622 and 2016-6623 is AFFIRMED in *toto*.

SO ORDERED.<sup>18</sup>

The CA found that all the elements for the crimes charged were present.<sup>19</sup> The CA further held that there was no break in the chain of custody of the dangerous drugs taken from accused-appellant. The prosecution has shown that the illicit drugs seized from accused-appellant are the same illicit drugs marked, subjected to physical inventory, and submitted to the PNP crime laboratory by PO3 Javier, received and subjected to laboratory examination by PCI Esber and presented by the prosecution to the RTC as evidence against accused-appellant.

Moreover, the CA pointed out that the prosecution has satisfied the requirement that the testimonies of all persons who handled the specimen are important to establish the chain of custody.<sup>20</sup>

Hence, the instant appeal.

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<sup>11</sup> CA rollo, pp. 66-67.

<sup>12</sup> Id. at 63-64.

<sup>13</sup> Id. at 65.

<sup>14</sup> Id.

<sup>15</sup> Id. at 66.

<sup>16</sup> Id.

<sup>17</sup> Supra note 1.

<sup>18</sup> Rollo, p. 11.

<sup>19</sup> Id. at 9-10.

<sup>20</sup> Id. at 11.



### Issues

Accused-appellant raises two issues before this Court:

- 1) Whether the removal of the poseur-buyer's sunglasses is a reasonable ground to make a valid warrantless arrest.
- 2) Whether the CA erred in affirming accused-appellant's conviction for violation of Sections 5 and 11, Article II of R.A. No. 9165.

### The Court's Ruling

The appeal is partly meritorious.

#### ***The warrantless arrest and the warrantless search and seizure are valid***

Accused-appellant claims that the removal of the poseur-buyer's sunglasses, which was the pre-arranged signal, is not a reasonable ground for making a valid warrantless arrest.

The argument has no merit. To underscore, this Court has already recognized the validity of pre-arranged signals as a method of communicating the completion of a buy-bust transaction between the poseur-buyer and the seller.<sup>21</sup> Simply put, the giving of a pre-arranged signal is a form of communication that the operation was successful, necessitating accused-appellant's subsequent arrest. This Court acknowledges that in most buy-bust operations, only the poseur-buyer and the confidential informant would be able to witness the actual sale of dangerous drugs. As a result, even if the back-up law enforcement officers did not have a full ocular view of the exchange, they could still make an arrest once the pre-arranged signal has been communicated to them.

Significantly, in the recent case of *People v. Siu Ming Tat*<sup>22</sup> (*Siu Ming Tat*), only the poseur-buyer and the confidential informant entered the room of the hotel where the sale transpired (Room 315), while the back-up officer remained on standby in another room (Room 316). To signify that the deal had already been consummated, the poseur-buyer executed the pre-arranged signal by dialing the backup officer's phone number. It must be emphasized that in *Siu Ming Tat*, the back-up officer did not witness the actual sale of the illicit drug because he was in another room of the hotel, but the Court still found that the elements of illegal sale of dangerous drugs were proven beyond reasonable doubt.

<sup>21</sup> *People v. Bautista*, 682 Phil. 487, 505 (2012).

<sup>22</sup> G.R. No. 246577, July 13, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66353>>.

At any rate, a buy-bust operation is a form of entrapment employed by law enforcement officers to apprehend criminals in the act of committing an offense.<sup>23</sup> This entrapment operation paved the way for the valid warrantless arrest of accused-appellant. Section 5(a) of Rule 113 of the Rules of Court, as amended<sup>24</sup> provides that:

Section 5. *Arrest without warrant; when lawful.* — A peace officer or a private person, without a warrant, may 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[.]

Consequently, any search resulting from a lawful warrantless arrest is also valid because an accused committed a crime *in flagrante delicto*, that is, the person to be arrested committed a crime in the presence of the arresting officers or the poseur-buyer.<sup>25</sup>

As culled from the prosecution witnesses' testimonies,<sup>26</sup> accused-appellant sold *shabu* in the presence of PO1 Doño and the confidential informant in exchange for the marked money. The RTC correctly found that accused-appellant's warrantless arrest was valid and legal. After accused-appellant was arrested, PO3 Javier searched him as an incident to a lawful arrest. A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense.<sup>27</sup> Upon the subsequent search on accused-appellant, PO3 Javier retrieved three additional plastic sachets of suspected drugs and recovered the buy-bust money from him.

## I.

The elements of Illegal Sale of Dangerous Drugs under Section 5 of R.A. No. 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11 of R.A. No. 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>28</sup>

In both offenses, the prosecution must prove beyond reasonable doubt not only every element of the crime or offense charged but must also establish the identity of the *corpus delicti*, *i.e.*, the seized drugs.<sup>29</sup> It is, therefore, the duty of the prosecution to prove that the drugs seized from accused-appellant

<sup>23</sup> *People v. Uzman*, G.R. No. 229715, November 20, 2017 (Unsigned Resolution), citing *People v. Jocson*, 565 Phil. 303, 309 (2007).

<sup>24</sup> Dated December 1, 2000.

<sup>25</sup> *People v. De Leon*, G.R. Nos. 132484-85, November 15, 2002, 391 SCRA 682, 694-695.

<sup>26</sup> TSN dated April 24, 2017, pp. 2-5; TSN dated May 17, 2017, pp. 3-5.

<sup>27</sup> RULES OF CRIMINAL PROCEDURE (1985), Rule 126, Sec. 12.

<sup>28</sup> *People v. Cuevas*, G.R. No. 238906, November 5, 2018, 884 SCRA 308, 313-314.

<sup>29</sup> *People v. Arbuis*, 836 Phil. 1210, 1215 (2018).

were the same items presented in court.<sup>30</sup> The chain of custody requirement performs this function by ensuring that unnecessary doubts as to the identity of the drugs seized are removed,<sup>31</sup> 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.<sup>32</sup>

Section 21(1) of R.A. No. 9165, as amended by R.A. No. 10640,<sup>33</sup> the applicable law at the time of the commission of the alleged crimes in this case,<sup>34</sup> lays down the procedure to be followed in the seizure and custody of the dangerous drugs, to wit:

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:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under

<sup>30</sup> *People v. Burdeos*, G.R. No. 218434, July 17, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65487>>.

<sup>31</sup> *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

<sup>32</sup> *Id.* at 632-633.

<sup>33</sup> AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved, July 15, 2014.

<sup>34</sup> The offenses subject of this appeal were allegedly committed on October 16, 2016.





justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>35</sup> The law further requires that the said inventory and photography be done in the presence of witnesses aside from the accused or the persons from whom such items were confiscated and seized or his/her counsel, particularly: (1) an elected public official; and (2) a representative of the National Prosecution Service or the media. Thereafter, all of them should sign copies of the inventory and be given a copy thereof.<sup>36</sup> It is to be noted that R.A. No. 10640 simplified the number of witnesses in anti-drug operations.

After a thorough review of the records of this case, the Court affirms accused-appellant's conviction in Criminal Case No. 2016-6623 for the crime of Illegal Possession of Dangerous Drugs. The Court finds that the prosecution was able to prove, beyond reasonable doubt, all the elements of the crime charged as well as the identity and integrity of the three sachets of drugs seized from accused-appellant.

However, with respect to Criminal Case No. 2016-6622 for the crime of Illegal Sale of Dangerous Drugs, the Court acquits accused-appellant because the prosecution failed to establish an unbroken chain of custody of the drug allegedly bought from accused-appellant.

## II.

### ***The Court acquits accused-appellant for violation of Section 5 of R.A. No. 9165, as amended***

Marking of the seized dangerous drugs is the first and most crucial step in proving an unbroken chain of custody in drug-related prosecutions.<sup>37</sup> While marking is not mentioned in Section 21 of R.A. No. 9165, as amended, the importance of immediate and proper marking of the confiscated items has been affirmed in a string of cases, namely, *People v. Alejandro*,<sup>38</sup> *People v.*

<sup>35</sup> *People v. Esguerra*, G.R. No. 243986, January 22, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65904>>.

<sup>36</sup> *People v. Rendon*, G.R. No. 227873, November 14, 2018, 885 SCRA 566, 573-574.

<sup>37</sup> *People v. Balles*, G.R. No. 226143, November 21, 2018, 886 SCRA 467, 477.

<sup>38</sup> 671 Phil. 33 (2011).

*Caranto*,<sup>39</sup> *People v. Sabdula*,<sup>40</sup> *People v. Dahil*,<sup>41</sup> and *People v. Bartolini*.<sup>42</sup> In these cases, the Court determined that the law enforcement officers' failure to immediately mark the seized drugs or other related items would cast reasonable doubt on the authenticity of the *corpus delicti* which calls for the acquittal of the accused.

In the present case, PO1 Doño had failed to immediately mark the plastic sachet allegedly bought from accused-appellant. The flaw is patent from the following exchanges at the trial:

Q - **After receiving this shabu you just identified, what did you do then?**

A - **I walked away with my confidential informant.**

Q - Where did you proceed?

A - **We proceeded to the road. We went towards the road.**

Q - What did you do when you reached the road?

A - About twenty meters away, the group saw my pre-arranged signal. I removed my worn [sunglasses]. When they saw the pre-arranged signal, they walked away (*sic*) to the target.

Q - After you pursued the accused, after you executed the pre-arranged signal, what did you do?

A - **We walked away with the confidential informant. After that, I blended in with the crowd.**

Q - How far were you blending the crowd (*sic*) to the area where the buy-bust operation was conducted?

A - About fifteen or twenty meters.

x x x x

Q - **After you executed the pre-arranged signal, you then left the area. Am I correct?**

A - **Yes, Ma'am, but I turned around to join the crowd.**

Q - **But, you also drove the confidential informant to a safe place?**

A - **Yes, Ma'am.**

x x x x

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<sup>39</sup> 728 Phil. 507 (2014).

<sup>40</sup> 733 Phil. 85 (2014).

<sup>41</sup> 750 Phil. 212 (2015).

<sup>42</sup> 791 Phil. 626 (2016).



- Q - So, you just immediately put the drugs in your right pocket?
- A - Yes, Ma'am.
- Q - After you dropped the confidential informant to a safe place you immediately returned to the area and blended with the crowd.
- A - Yes, Ma'am.
- Q - **You did not mark the sachet of drug that was inside your pocket?**
- A - **No, Ma'am.**
- Q - It took you a few minutes before you turn over (*sic*) the drug to PO3 Javier.
- A - Yes, Ma'am.
- x x x x
- Q - **So, the buy-bust item was with you for at least ten to twenty minutes. Am I correct?**
- A - I cannot ascertain the time.
- Q - But several minutes?
- A - **Yes, Ma'am.**<sup>43</sup> (Emphasis supplied)

From the above testimony, it can be gleaned that the confiscated item subject of the sale was not immediately marked upon seizure. Worse, PO1 Doño failed to ventilate the precautionary measures taken in preserving the identity of the seized item given that he did not mark it when he left the area where the buy-bust operation took place, to the area where he dropped the confidential informant in a safe location, to the time when he blended in with the crowd, until he finally delivered the seized item to PO3 Javier. In other words, the confiscated item remained unmarked while in the custody of PO1 Doño. Clearly, the probability that the integrity and evidentiary value of the *corpus delicti* being compromised existed, as it was easily susceptible to tampering, alteration, or substitution.

PO1 Doño admitted that he placed the plastic sachet seized from accused-appellant inside his right pocket before handing it over to PO1 Javier for marking and inventory. This calls into question the identity of the item that was later marked and inventoried, for the third-party witnesses would not have known whether the seized item delivered by PO1 Doño being marked and inventoried in their presence was actually confiscated from accused-appellant. The belated marking adversely affected the integrity and evidentiary value of the seized drug subject of the sale. As stated above, PO1 Doño even brought

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<sup>43</sup> TSN dated April 24, 2017, pp. 6-12.



the confiscated item to a different location before proceeding to deliver it to PO3 Javier.

The circumstance of PO1 Doño putting the drugs inside his right pocket and keeping it for an indefinite period of time and bringing it to the place where he dropped the confidential informant is an odd and irregular way of handling the confiscated item. This Court cannot foreclose the possibility that the seized item had been tampered with, altered, or substituted before it was marked and inventoried. In this regard, the case of *People v. Dela Cruz*<sup>44</sup> is instructive, thus:

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.

**Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items.** Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.<sup>45</sup> (Emphasis supplied)

There are instances wherein strict compliance with the requirements of Section 21 is not observed, but the Court nonetheless gave a verdict of conviction because the integrity and evidentiary value of the seized drugs were well-preserved. This is supported under the Implementing Rules and Regulations of R.A. No. 9165 and now made part of R.A. No. 10640 which provides that “noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.” For this to apply, however, the prosecution must prove that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>46</sup>

Notably, the prosecution offered no reasonable explanation as to why the seized item allegedly sold to PO1 Doño was not immediately marked

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<sup>44</sup> 744 Phil. 816 (2014).

<sup>45</sup> Id. at 834-835.

<sup>46</sup> *People v. Ceralde*, 815 Phil. 711, 721 (2017).



following its seizure. PO1 Doño even admitted that he did not know he needed to mark the item he bought from accused-appellant.<sup>47</sup>

Thus, for the reasons mentioned above and with the integrity and evidentiary value of the *corpus delicti* of the crime subject of the sale having been rendered compromised, it necessarily follows that accused-appellant must be acquitted on the ground of reasonable doubt for violation of Section 5 of R.A. No. 9165, as amended.

### III.

***The Court affirms the conviction of the accused-appellant for violation of Section 11 of R.A. No. 9165, as amended***

As discussed, the police officers were justified in arresting accused-appellant as he had just committed a crime when he sold *shabu* to PO1 Doño and the confidential informant. Given the legality of accused-appellant's warrantless arrest, the subsequent warrantless search that resulted in the recovery of three plastic sachets of *shabu* found in his right lower middle pocket is also valid.

Moreover, as shown by the prosecution, the police officers sufficiently complied with the chain of custody rule, and they were able to preserve the identity, integrity, and evidentiary value of the seized items subject of Criminal Case No. 2016-6623 for violation of Section 11 of R.A. No. 9165, as amended.

*First*, when accused-appellant attempted to elude arrest, he was apprehended by the arresting team and brought back to the place where the buy-bust operation took place. Thereat, PO3 Javier asked the witnesses to search him before he proceeded to search accused-appellant. PO3 Javier eventually found three plastic sachets in the right lower middle pocket of accused-appellant. Immediately after the seizure of the suspected packs of illicit drugs, PO3 Javier marked and inventoried the items. Also, SPO1 Pensinabes took photographs<sup>48</sup> in the presence of accused-appellant and the two required witnesses — the representative from the media and the barangay kagawad — in conformity with the amended witness requirement under R.A. No. 10640.

*Second*, it was PO3 Javier who held custody of the seized items after the operation. At the police station, PO3 Javier then personally delivered all the seized items to PCI Esber for laboratory examination.

<sup>47</sup> TSN dated April 24, 2017, p. 12.

<sup>48</sup> Records, pp. 104-109.



*Third*, PCI Esber personally received the suspected sachets of *shabu* at the Crime Laboratory, and he confirmed that the items yielded a positive result of the dangerous drug *shabu* as embodied in Chemistry Report No. D-98-2016 MIS OR. PCI Esber, in turn, brought the specimens to evidence custodian PO3 Dagatan for safekeeping.

In an attempt to absolve himself of violation of R.A. No. 9165, accused-appellant posits that the prosecution did not adduce evidence as to how the alleged seized drugs were handled, stored, and safeguarded pending their offer in court.

The evidence on record belies this argument. The Court notes that there was no break in the last link of the chain of custody. PCI Esber has sufficiently demonstrated how the items were handled pending their presentation in court. After his examination, PCI Esber tape-sealed the three plastic sachets and labeled them with his markings.<sup>49</sup> PCI Esber further testified that PO3 Dagatan's role was simply to place the confiscated *shabu* inside a steel cabinet for safekeeping, of which only PO3 Dagatan had sole custody of the keys.<sup>50</sup> While PCI Esber had access to the steel cabinet and the evidence room, he could only access the same together with the evidence custodian.<sup>51</sup> PCI Esber even saw PO3 Dagatan keep the specimens inside the steel cabinet, and he also saw him retrieve them from the steel cabinet on the day of his testimony in court.<sup>52</sup> More importantly, on the day of his testimony, PCI Esber confirmed that the items were in the same condition when he handed them over to PO3 Dagatan after the laboratory examination as when he retrieved them from PO3 Dagatan for presentation in court.<sup>53</sup> With this, the evidentiary value and integrity of the seized sachets containing *shabu* found in accused-appellant's possession were thus proven to have been properly preserved.

Accused-appellant adds that the last link in the chain of custody is broken because PO3 Dagatan, to whom PCI Esber turned over the seized items after the laboratory examination, was not presented in court.<sup>54</sup>

This argument does not persuade the Court.

Time and again, it is not necessary to present all persons who came into contact with the seized drug to testify in court. As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.<sup>55</sup> The non-presentation as witness of the evidence custodian is not a crucial point against the prosecution since it has

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<sup>49</sup> TSN dated March 14, 2017, p. 6.

<sup>50</sup> Id. at 8.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id. at 9.

<sup>54</sup> *Rollo*, p. 48.

<sup>55</sup> *People v. Araza*, 747 Phil. 20, 38 (2014), citing *People v. Amansec*, 678 Phil. 831, 857 (2011).



the discretion as to how to present its case and the right to choose whom it wishes to present as witnesses.<sup>56</sup>

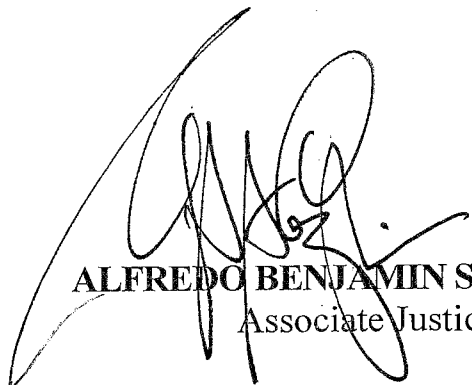
In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule and, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, accused-appellant's conviction for violation of Section 11 of R.A. No. 9165 must stand.

As for the penalty, a violation of Section 11 of R.A. No. 9165 carries with it a penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00), if the quantity of *shabu* is less than five (5) grams, as in this case. Hence, the penalty and fine imposed on accused-appellant by the RTC and the CA are in accordance with R.A. No. 9165.

**WHEREFORE**, the instant appeal is **PARTIALLY GRANTED**. The Decision dated May 23, 2019 of the Court of Appeals – Cagayan De Oro City, Special Twenty-Third Division (CA) in CA-G.R. CR-HC No. 01947-MIN, is **MODIFIED** in that accused-appellant Gabriel Campugan Cabriole is hereby **ACQUITTED** for failure of the prosecution to establish his guilt beyond reasonable doubt for violation of Section 5 of Republic Act No. 9165, as amended, in Criminal Case No. 2016-6622.

Other aspects of the Decision are hereby **AFFIRMED**. Accordingly, in Criminal Case No. 2016-6623, accused-appellant Gabriel Campugan Cabriole is found **GUILTY** beyond reasonable doubt for violation of Section 11 of Republic Act No. 9165, as amended.

**SO ORDERED.**

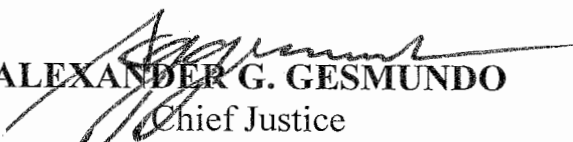


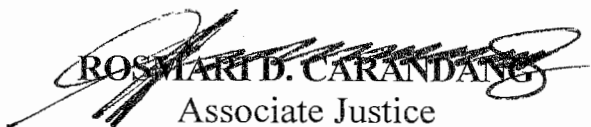
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

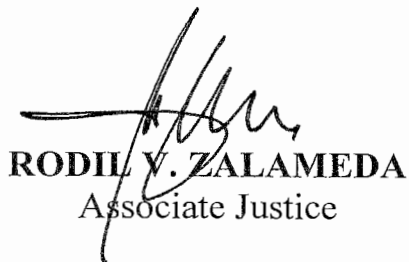
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<sup>56</sup> Id., citing *People v. Hernandez*, 607 Phil. 617, 640 (2009).

WE CONCUR:

  
**ALEXANDER G. GESMUNDO**  
Chief Justice  
Chairperson

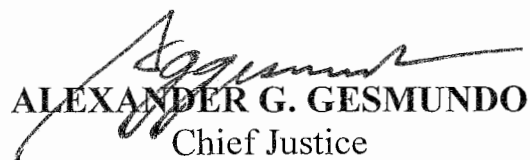
  
**ROSMAR D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

