



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

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THIRD DIVISION

JOHNNY PAGAL y LAVARIAS, G.R. No. 251894
Petitioner,

Present:

-versus-

LEONEN, *J.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
March 2, 2022

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DECISION

LEONEN, J.:

This Court resolves a Petition for Review on Certiorari¹ assailing the Decision² and Resolution³ of the Court of Appeals, which affirmed the Regional Trial Court's Joint Decision⁴ convicting Johnny Pagal y Lavarias (Pagal) for the crime of illegal possession of dangerous drugs.

In two separate Informations, Pagal was charged with violating *[Signature]*

¹ *Rollo*, pp. 12-37.

² *Id.* at 39-60. The August 19, 2019 Decision in CA G.R. CR No. 40744 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Maria Filomena D. Singh and Louis P. Acosta of the Fifteenth Division, Court of Appeals, Manila.

³ *Id.* at 62-63. The February 10, 2020 Resolution in CA G.R. CR No. 40744 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Maria Filomena D. Singh and Louis P. Acosta of the Former Fifteenth Division, Court of Appeals, Manila.

⁴ *Id.* at 97-106. The September 20, 2017 Decision in Criminal Case Nos. L-11269 and L-11270 was penned by Presiding Judge Loreto S. Alog, Jr. of the Regional Trial Court of Lingayen, Pangasinan, Branch 69.

Sections 11⁵ and 12⁶ of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. These Informations read:

Crim. Case No. L-11269

(For: Violation of Section 11, Article II of R.A. No. 9165)

That sometime in the afternoon of October 17, 2016 in Basing, Lingayen, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, who is without authority, did, then and there, willfully and unlawfully have in his possession control and custody *0.02 gram, 0.02 gram, 0.03 gram and 0.03 gram respectively of Methamphetamine Hydrochloride or Shabu, a dangerous drug* which were seized from his residence during a search and seizure conducted by the authorities on the strength of a Search Warrant issued by a competent Court against him for keeping dangerous drugs and paraphernalia in his aforesaid residence without authority.

Contrary to Article [II], Section [11] of R.A. 9165, The Comprehensive Dangerous Drugs Act of 2002.⁷

⁵ Republic Act No. 9165 (2002), sec. 11 states in part:

Section 11. *Possession of Dangerous Drugs.* — 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

....

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), 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 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; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) 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 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 less than three hundred (300) grams of marijuana.

⁶ Republic Act No. 9165 (2002), sec. 12 states:

Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

⁷ *Rollo*, pp. 13-14.

Crim. Case No. L-11270

(For: Violation of Section 12, Article II of R.A. No. 9165)

That sometime in the afternoon of October 17, 2016 in Basing, Lingayen, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, who is without authority, did, then and there, willfully and unlawfully have in his possession, control and custody one (1) open small transparent sachet containing Shabu residue; improvised lamp; two (2) improvised scoopers; and two (2) improvised tooters, which are paraphernalia fit for the introduction of Shabu, a dangerous drug into the human body system which were seized from his residence during a search and seizure undertaken by the authorities on the strength of a Search Warrant issued by a competent Court against him for keeping dangerous drugs and paraphernalia in his aforesaid residence without authority.⁸

Pagal pleaded not guilty to the crime during his arraignment. Trial on the merits then ensued.⁹

The prosecution presented three witnesses: (1) Police Officer 1 Emmanuel A. Saringan (PO1 Saringan); (2) Barangay Kagawad Manolo Manuel (Kagawad Manuel); and (3) Police Chief Inspector Myrna Malojo Todeño (Chief Inspector Todeño).¹⁰

The prosecution alleged that on October 14, 2016, Executive Judge Maria Laarni Parayno issued Search Warrant No. 33-2016-L.¹¹ At 4:00 a.m. on October 17, 2016, the team implementing the search warrant conducted a briefing at the Lingayen Police Station.¹² Chief Inspector Pagaduan was the team leader, Police Officer 2 Eusebio G. Soriano, Jr. and PO1 Saringan were assigned as searchers, Police Officer 3 Rodolfo Naungayan (PO3 Naungayan) as investigating officer, Police Officer 1 Jonalyn Rosario (PO1 Rosario) as photographer, and the rest were tasked to be perimeter security.¹³

Later, at around 5:00 a.m., the team arrived at Pagal's house.¹⁴ When Chief Inspector Pagaduan announced their presence, Pagal came out of the house.¹⁵ PO3 Naungayan showed him the Search Warrant and explained its contents to him.¹⁶ Upon Kagawad Manuel's arrival, the search of the house commenced.¹⁷ In the living room, PO1 Saringan found atop the television a Marlboro cigarette pack containing four small heat-sealed transparent plastic sachets with white crystalline substances.¹⁸ He also found an improvised lamp, two lighters, a rectangular plastic box containing a small open

⁸ Id. at 14.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 15.

¹³ Id. at 98.

¹⁴ Id. at 42.

¹⁵ Id. at 98.

¹⁶ Id. at 42.

¹⁷ Id. at 99.

¹⁸ Id. at 42.

transparent plastic sachet with white crystalline residue, 15 aluminum foil strips, two improvised scoops, and two improvised tooters on top of a small table inside the room of Pagal's nephew.¹⁹

As the search was ongoing, Police Officer 1 Oliver Sinaban contacted Emil Toledo (Toledo) of Northwest Sun News and a representative from the Department of Justice. Only Toledo arrived.²⁰

PO1 Saringan then marked the items seized in the presence of Pagal, Kagawad Manuel, and Toledo.²¹ The four plastic sachets were marked as "JLP1" to "JLP4," while the drug paraphernalia seized were marked as "JLP5" to "JLP27."²² Still in the presence of the witnesses, PO1 Saringan proceeded to conduct the inventory. Pagal was then brought to the police station.²³

PO1 Saringan later presented the seized items before the court that issued the Search Warrant, before bringing them to the Pangasinan Provincial Crime Laboratory Office in Lingayen for chemical analysis.²⁴ Upon examination by Chief Inspector Todeño,²⁵ the specimens marked "JPL1" to "JP4," as well as those found on the drug paraphernalia marked as "JLP5," "JLP24," and "JLP25," all tested positive for shabu.²⁶ She placed the items in a brown envelope, signed the envelope, and turned it over to the evidence custodian for safekeeping.²⁷

Pagal denied the charges against him. As the lone witness for the defense, he denied owning the seized items.²⁸ He said that at around 5:00 a.m. on October 17, 2016, he was sleeping on the first floor of the house when three police officers came knocking on the door of his nephew's room on the second floor. At gunpoint, Pagal, along with his nephew and niece, was ordered to go out of the house. Pagal was handcuffed and asked to sign a paper. The police officers remained in the house until Kagawad Manuel arrived, at which point they searched the house. In a cabinet in the living room, PO1 Saringan and two other police officers found a Marlboro cigarette case containing shabu, which Pagal denied was his. Though he admitted to smoking, he said that he was using a different cigarette brand.²⁹

¹⁹ Id. at 99.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id.

²⁴ Id. at 100.

²⁵ Id.

²⁶ Id. at 43.

²⁷ Id. at 100.

²⁸ Id. at 43.

²⁹ Id. at 43-44.

Pagal was made to sit in the living room while the search team went to check the other rooms³⁰ and eventually discovered drug paraphernalia in his nephew's room. The officers asked Pagal to go inside and witness the taking of photographs of the seized items.³¹ He was subsequently brought and detained at the police station.³²

In a Joint Decision,³³ the Regional Trial Court convicted Pagal only of illegal possession of dangerous drugs. The dispositive portion reads:

WHEREFORE, his guilt for violation of Section 11, Article II of Republic Act No. 9165 having been established beyond reasonable doubt, the accused is hereby sentenced, in Criminal Case No. L-11269, to suffer pursuant to Section 11, paragraph 3 of said law, a penalty of imprisonment ranging from twelve (12) years and one (1) day to seventeen (17) years and to pay a fine of P300,000.00.

The accused is acquitted in Criminal Case No. L-11270.

The sachets of methamphetamine hydrochloride and drug paraphernalia presented as evidence in these cases are confiscated in favor of the government for disposal in the manner set forth in the law.

SO ORDERED.³⁴

The Regional Trial Court held that the prosecution established all the elements of illegal possession of dangerous drugs.³⁵ Since Pagal did not deny ownership and dominion of the house where the illegal drugs were found, the trial court applied the doctrine of constructive possession and held that exclusive possession or control was not necessary.³⁶ It also did not give credence to Pagal's unsubstantiated defense of denial, planting of evidence, and frame-up, and instead lent greater weight to the prosecution's evidence and the presumption of regularity in the performance of official duties.³⁷ It was also satisfied with the search team's substantial compliance with the chain of custody requirements under Section 21 of Republic Act No. 9165, and held that the integrity of the confiscated illegal drugs was preserved.³⁸

However, the Regional Trial Court invalidated the search of the nephew's room and the seizure of the drug paraphernalia for the officers' failure to comply with the two-witness requirement in executing a search warrant under Rule 126, Section 8 of the Rules of Court.³⁹ Applying the

³⁰ Id. at 44.

³¹ Id.

³² Id.

³³ Id. at 97-106.

³⁴ Id. at 106.

³⁵ Id. at 101.

³⁶ Id. at 102.

³⁷ Id. at 103.

³⁸ Id. at 104.

³⁹ Id. at 105-106.

exclusionary rule, Pagal was acquitted of illegal possession of drug paraphernalia.⁴⁰

Pagal appealed his conviction, but the Court of Appeals only affirmed the Regional Trial Court's ruling. The dispositive portion of its August 19, 2019 Decision⁴¹ reads:

WHEREFORE, the appeal is DENIED. The assailed Decision dated 20 September 2017 of the Regional Trial Court, Branch 69 of Lingayen, Pangasinan convicting appellant for violation of Section 11, Article II of Republic Act No. 9165 in Criminal Case No. L-11269 is AFFIRMED.

SO ORDERED.⁴²

The Court of Appeals ruled that without contrary evidence, Pagal was presumed to have knowledge and "full control and dominion over the seized items retrieved from his house."⁴³ It also dismissed the defense of denial and frame-up, there being no clear and convincing evidence to rebut the presumption of regularity in the police officers' performance of duties.⁴⁴

The Court of Appeals disagreed with Pagal that his acquittal due to the illegal search of his nephew's room tainted the search in the living room where the illegal drugs were found, as Pagal himself was in the living room when the police found the four sachets of shabu.⁴⁵ It also held that Pagal waived his objections to the validity of the Search Warrant since he did not question the same before the trial court.⁴⁶

The Court of Appeals also affirmed the trial court's finding that there was no significant break in the chain of custody.⁴⁷ It did not deem fatal the marking of the seized drugs outside the house, together with the failure to indicate the date, time, and place. It also dispensed with the testimony showing the fourth link in the chain of custody, from the chemical analysis of the drugs to their presentation in court. It found the Chain of Custody Form sufficient since it recorded the movement of the drugs.⁴⁸ While the inventory was inadmissible for being signed without Pagal's counsel, the Court of Appeals said that this did not affect the integrity and identity of the *corpus delicti*.⁴⁹

⁴⁰ Id. at 106.

⁴¹ Id. at 33-60.

⁴² Id. at 59-60.

⁴³ Id. at 50.

⁴⁴ Id. at 51.

⁴⁵ Id. at 52-53.

⁴⁶ Id. at 53-54.

⁴⁷ Id. at 54-58.

⁴⁸ Id. at 55-57.

⁴⁹ Id. at 58.

Pagal sought reconsideration,⁵⁰ but the Court of Appeals denied this in a February 10, 2020 Resolution.⁵¹ Hence, Pagal, who is out on bail, filed a Petition for Review on Certiorari.⁵²

Petitioner argues that the Court of Appeals gravely erred in affirming his conviction despite the prosecution's failure to establish his guilt beyond reasonable doubt.⁵³ He alleges that the Search Warrant is invalid as it lacked particularity of the area to be searched.⁵⁴ It stated "house located at Barangay Basing Lingayen, Pangasinan"⁵⁵—a place with an estimated population of 2,770 as of 2015, says petitioner. He also claims that the executive judge was not shown to have personally examined the applicant or his witnesses.⁵⁶ Yet, he points out, the Court of Appeals simply dismissed his allegations, ruling that he waived such defense in failing to assail the validity of the Search Warrant before the trial court.⁵⁷

Petitioner adds that the prosecution failed to prove that he knew of the dangerous drugs in his place where he exercises control and dominion. He notes that the illegal drugs were found inside a pack of cigarettes that he did not smoke, and that the pack was found in the common area to which other people, including guests, had access.⁵⁸ He adds that the improper search of his nephew's room negated the presumption of regularity as it showed the police officers' blatant disregard of rules and his constitutional rights.⁵⁹

Petitioner maintains that the chain of custody was broken. He says that the first link is defective since the marking was done outside his house, and the manner of marking was noncompliant with police protocol.⁶⁰ As to the second and third links, he notes the lack of an investigating officer, as it was PO1 Saringan, the seizing officer, who turned over the illegal drugs to the crime laboratory.⁶¹ There was also a significant unaccounted time between the seizure at around 5:40 a.m. and the turnover to the laboratory at 1:25 p.m.⁶² Moreover, the Custodial Receipt of Confiscated Items shows that the executive judge turned over the items to PSI Franco T. Catalan. However, his name does not appear in the Chain of Custody Form, nor was he presented as a witness.⁶³ Finally, the fourth link was also not established, as it was not

⁵⁰ Id. at 64–72.

⁵¹ Id. at 62–63.

⁵² Id. at 12–37.

⁵³ Id. at 19.

⁵⁴ Id. at 21.

⁵⁵ Id. at 21.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id. at 23.

⁵⁹ Id. at 25.

⁶⁰ Id. Petitioner cites the Revised Philippine National Police Manual on Anti-Illegal Drugs Operations and Investigation (2014), sec. 2-6, par. (2.35).

⁶¹ Id. at 27.

⁶² Id. at 28.

⁶³ Id. at 28.

shown how the evidence custodian preserved the integrity of the *corpus delicti* before being presented in court.⁶⁴

In its Comment,⁶⁵ respondent People of the Philippines, through the Office of the Solicitor General, asserts that the Court of Appeals correctly convicted petitioner. Illegal drugs were found inside his residence, and he allegedly did not refute ownership of the house searched. He also categorically stated that his daughter and nephew did not own the cigarette pack containing the illegal drugs. He also failed to present authority to possess the same. Thus, says respondent, he is deemed to have constructive possession of the illegal drugs.⁶⁶ It also contends that petitioner waived his objections to the supposed illegality of the search and seizure for failing to raise them before the trial court.⁶⁷

Moreover, respondent maintains that the deviations from Section 21's requirements were not fatal, since the integrity and evidentiary value of the *corpus delicti* had been preserved.⁶⁸ It claims that the Court of Appeals correctly dismissed petitioner's defense and upheld the presumption of regularity in the performance of the police officers' duty.⁶⁹

The main issue for this Court's resolution is whether or not petitioner Johnny Pagal y Lavarias' guilt for illegal possession of dangerous drugs has been established beyond reasonable doubt.

The prosecution failed to discharge this burden. Petitioner is acquitted.

I

We resolve first a preliminary issue raised in the Petition. Rule 126, Section 4 of the Rules of Criminal Procedure prescribes the requirements to issue a search warrant:

SECTION 4. Requisites for issuing search warrant. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

⁶⁴ Id. at 29.

⁶⁵ Id. at 166–180.

⁶⁶ Id. at 172–174.

⁶⁷ Id. at 175.

⁶⁸ Id. at 175–176.

⁶⁹ Id. at 171.

Petitioner assails the validity of Search Warrant No. 33-2016-L because allegedly, there was no evidence that the executive judge who issued the warrant examined the applicant.⁷⁰ We are not convinced. Petitioner raised this for the first time before this Court, so he is deemed to have waived his objection when he failed to raise it before the trial court.⁷¹

Going into the substance of his contention, he assails the Search Warrant due to the supposed lack of specific details on the particular area to be searched. On this matter, *Worldwide Web Corporation v. People*⁷² is instructive:

Within the context of the above legal requirements for valid search warrants, the Court has been mindful of the difficulty faced by law enforcement officers in describing the items to be searched, especially when these items are technical in nature, and when the extent of the illegal operation is largely unknown to them. *Vallejo v. Court of Appeals* ruled as follows:

The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for. *Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient.*

Furthermore, the Court also had occasion to rule that the particularity of the description of the place to be searched and the things to be seized is required “wherever and whenever it is feasible.” A search warrant need not describe the items to be seized in precise and minute detail.⁷³ (Emphasis in the original)

Here, the Search Warrant specifically refers to petitioner, “Johnny Pagal y Lavarias,” as a resident of Barangay Basing, Lingayen, Pangasinan.⁷⁴ It also qualifies his ownership of the house to be searched.⁷⁵ The language of the Search Warrant points to petitioner’s house in Barangay Basing, Lingayen, Pangasinan, excluding all others. Petitioner did not deny that the house

⁷⁰ Id. at 21.

⁷¹ *Pastrano v. Court of Appeals*, 346 Phil. 277, 287 (1997) [Per J. Mendoza, Second Division] citing *Demaisip v. Court of Appeals*, 271 Phil. 392 (1991) [Per J. Sarmiento, Second Division].

⁷² 724 Phil. 18 (2014) [Per Sereno, First Division].

⁷³ Id. at 44–45 citing *Vallejo v. Court of Appeals*, 471 Phil. 670 (2004) [Per J. Callejo, Sr., Second Division]; citing *People v. Veloso*, 48 Phil. 169 (1925) [Per J. Malcolm, En Banc].

⁷⁴ *Rollo*, p. 129.

⁷⁵ Id.

searched by the authorities was his house.⁷⁶ He merely denied that the confiscated drugs found inside his house was his.⁷⁷

The validity of the Search Warrant is, therefore, upheld.

II

Conviction for illegal possession of dangerous drugs requires that the following be established: “(1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused freely and consciously possessed the drug.”⁷⁸ Possession contemplates actual and constructive possession:

This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.⁷⁹ (Citations omitted)

The Court of Appeals correctly stated that all the elements are present.⁸⁰ The confiscated drugs were found inside petitioner’s house, as specified in the Search Warrant. Absent evidence to the contrary, mere finding of illicit drugs in petitioner’s house raises the presumption of constructive possession.⁸¹ Here, apart from alleging non-exclusive possession of the house, Pagal merely

⁷⁶ Id. at 43.

⁷⁷ Id.

⁷⁸ *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division].

⁷⁹ *People v. Tira*, 474 Phil. 152, 173–174 (2004) [Per J. Callejo, En Banc].

⁸⁰ *Rollo*, p. 50.

⁸¹ *People v. Torres*, 533 Phil. 227 (2006) [Per J. Callejo, Sr., First Division] citing *People v. Tira*, 474 Phil. 152 (2004) [Per J. Callejo, En Banc].

denied having smoked Marlboro cigarettes. Pagal also failed to present any authority to possess the illegal drugs confiscated from his house. His only defenses were denial and frame-up. Without clear and persuasive proof, these are inherently weak and deserve no credence.⁸²

Despite the presence of all the elements of illegal possession of dangerous drugs, we cannot sustain petitioner's conviction.

III

Aside from establishing the elements of illegal possession, the prosecution must prove that the identity and integrity of the *corpus delicti* have been preserved and established beyond reasonable doubt.⁸³ The existence of dangerous drugs as the *corpus delicti* of the crime is a condition *sine qua non* for a conviction under Republic Act No. 9165.⁸⁴ This is because illegal drugs are not readily identifiable and are easily open to tampering, alteration, or substitution either by accident or otherwise.⁸⁵ Accordingly, it must be proven beyond reasonable doubt that the items offered in court are the same items seized from the accused.⁸⁶

To do so, the requirements of Section 21 of Republic Act No. 9165 must be strictly complied with.⁸⁷ The law, as amended, provides the procedure for the handling of the confiscation and disposition of the confiscated items:

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

⁸² *People v. Pangan*, 840 Phil. 940, 958 (2017) [Per J. Leonen, Third Division].

⁸³ *Valencia v. People*, 725 Phil. 268 (2014). [Per J. Reyes, First Division].

⁸⁴ *People v. Simbahon*, 449 Phil. 74 (2003) [Per J. Ynares-Santiago, First Division] citing *People v. Mendiola*, G.R. No. 110778, August 4, 1994 [Per J. Melo, Third Division].

⁸⁵ *Tumabini v. People*, G.R. No. 224495, February 19, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66221>> [Per J. Gesmundo, Third Division] citing *Valencia v. People* 725 Phil. 286 (2014) [Per J. Reyes, First Division]

⁸⁶ *People v. Saunar*, 816 Phil. 482, 491 (2017) [Per J. Leonen, Second Division] citing *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Second Division]

⁸⁷ *People v. Manabat*, G.R. No. 242947, July 17, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65603>> [Per J. Caguioa, Second Division].

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 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;

- (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 by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of 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 immediately upon completion of the said examination and certification[.]⁸⁸

Republic Act No. 10640 amended the witness requirement under Section 21, which now only requires an elected public official and either a representative of the National Prosecution Service or of the media. These witnesses must be present not only during inventory, but more important, during the seizure and confiscation of the illegal drugs:

The phrase "*immediately after seizure and confiscation*" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. *By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension*—a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

⁸⁸ Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

.....

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”⁸⁹ (Emphasis supplied, citations omitted)

The prosecution argues that the police officers’ noncompliance with the requirements of Section 21 was not fatal since it was able to duly establish the integrity and evidentiary value of the illegal drugs seized from petitioner’s residence. We disagree.

To invoke the saving clause under Section 21, the prosecution bears the burden of explaining the deviations from the chain of custody requirements. Not only must it acknowledge procedural lapses, but it must also plead justifiable grounds for these lapses and specify the safety measures undertaken in ensuring the integrity of the seized items. Otherwise, the accused must be acquitted because such deviation “constitutes a substantial gap in the chain of

⁸⁹ *People v. Tomawis*, 830 Phil. 385, 405–409 (2018) [Per J. Caguioa, Second Division].

custody and raises doubts on the integrity and evidentiary value of the items that were allegedly seized[.]”⁹⁰

In addition, the prosecution must establish every link in the chain of custody:

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. *People v. Gayoso* enumerates the links in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, i.e. first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁹¹ (Emphasis in the original, citation omitted)

Here, the prosecution failed on both counts. Only a general acknowledgement of noncompliance with Section 21 was made, without identifying the specific measures undertaken to ensure the integrity and evidentiary value of the *corpus delicti*. Worse, the prosecution attempted to shift the burden to accused-appellant to allege or prove contamination of the seized illegal drugs.⁹² We cannot allow this.

To begin with, the significant lapses in the chain of custody create reasonable doubt as to the integrity of the *corpus delicti*.

First, the two required witnesses were not present during the confiscation of the illegal drugs, tainting both the seizure and marking of the illegal drugs. The Search Warrant was implemented after the arrival of Kagawad Manuel at around 5:40 a.m.⁹³ Media representative Toledo was not present when the search began and arrived only “when the search was about to finish[.]”⁹⁴ The Search Warrant was issued on October 14, 2016⁹⁵ but was implemented three days later.⁹⁶ Thus, the police officers had sufficient time to ensure that both witnesses would be present during the search. The prosecution did not attempt to explain why the search was commenced without waiting for Toledo. It also appears that Toledo was only contacted

⁹⁰ *Tolentino v. People*, G.R. No. 227217, February 12, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66108>> [Per J. A.B. Reyes, Jr., Second Division].

⁹¹ *People v. Baltazar*, G.R. No. 229037, July 29, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65489>> [Per J. Lazaro-Javier, Second Division] citing *People v. Gayoso*, 808 Phil. 19, 31 (2017). [Per J. Del Castillo, First Division].

⁹² *Rollo*, p. 173.

⁹³ *Id.* at 126.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Rollo*, p. 42.

while the search was already ongoing.⁹⁷ This taints the credibility of the *corpus delicti* at the time of seizure.

Second, the law and jurisprudence are clear that the marking, inventory, and photographing of the seized drugs “shall be conducted at the place where the search warrant is served.”⁹⁸ The prosecution failed to explain why the marking of seized items was done “outside the house[.]”⁹⁹ It is also unclear where exactly the seized drugs and paraphernalia were marked and photographed.

The rule on immediate inventory and photographing of seized items has only been excused when “the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.”¹⁰⁰ Here, the marking and inventory were not done at the same place where the Search Warrant was implemented—a clear deviation which the prosecution did not acknowledge. There was no explanation as to the safeguards undertaken to ensure the integrity and evidentiary value of the illegal drugs. Thus, the first link in the chain of custody has already been tarnished.

Third, there is a glaring gap in the second and third links in the chain of custody. It appears that the designated investigating officer was not involved in the handling of the illegal drugs. To recall, PO3 Naungayan was assigned as the investigator while PO1 Saringan was the seizing officer.¹⁰¹ However, records consistently state that it was PO1 Saringan who seized and marked the illegal drugs, and delivered the same for laboratory examination.¹⁰² PO3 Naungayan had no participation in the chain of custody despite being designated as the investigating officer.

Finally, the fourth link in the chain of custody was also not established beyond reasonable doubt. We agree with petitioner that there is no testimony as to how the interim records custodian preserved the integrity of the *corpus delicti* prior to its presentation in Court.¹⁰³ The Court of Appeals erroneously relied on the Chain of Custody Form which supposedly duly recorded the movement of the seized drugs.¹⁰⁴ Its reliance on the *prima facie* rule on

⁹⁷ Id. at 99.

⁹⁸ Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014). See also *People v. Sebilleno*, G.R. No. 221457, January 13, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66092>> [Per J. Leonen, Third Division] citing *Lescano v. People*, 778 Phil. 460 (2016) [Per J. Leonen, Third Division]

⁹⁹ *Rollo*, p. 54.

¹⁰⁰ *People v. Lim*, G.R. No. 231989, September 4, 2018, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>> [Per J. Peralta, En Banc] citing *People v. Mola*, 830 Phil. 364 (2018) [J. Peralta, Second Division].

¹⁰¹ *Rollo*, p. 125.

¹⁰² Id. at 43.

¹⁰³ Id. at 29.

¹⁰⁴ Id. at 55.

evidence on entries on official records is wrong.¹⁰⁵ In *Mallillin v. People*,¹⁰⁶ this Court required the testimony regarding every link in the chain of custody of dangerous drugs:

[T]he 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.

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. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.¹⁰⁷ (Citations omitted)

The burden of establishing the unbroken chain of custody is with the prosecution. This is a positive duty which the prosecution must discharge. In *People v. Sagana*,¹⁰⁸ the prosecution's failure "to offer the testimonies of the persons who had direct contact with the confiscated items without ample explanation casts doubt on whether the allegedly seized shabu were the very same ones presented in court."¹⁰⁹ Here, the testimony of Chief Inspector Todeño was insufficient to establish the fourth link. There was no testimony as to how the integrity and identity of the illegal drugs had been preserved when they were turned over to PO3 Manuel, the officer for safekeeping the evidence before being presented in court.¹¹⁰ There was no explanation why evidence custodian PO3 Manuel was not presented to testify on these matters. Thus, the fourth link in the chain of custody was not established.

There is no saving the prosecution's lapses in establishing all the links in the chain of custody. Too many intervening events may have already compromised the *corpus delicti* by the time the required witnesses arrived at the scene. It also does not help the prosecution's case that the confiscated

¹⁰⁵ Id. at 57.

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

¹⁰⁷ Id. at 587–588.

¹⁰⁸ 815 Phil. 356 (2017) [Per J. Leonen, Second Division].

¹⁰⁹ Id. at 375.

¹¹⁰ *Rollo*, p. 55.

items being dealt with here only amount to a meager 0.1 gram of shabu.¹¹¹ When only a minuscule amount of narcotics is involved, the requirements of Section 21 of Republic Act No. 9165 require a more exacting compliance.¹¹²


The police officers' procedural lapses in handling the custody of the seized drugs compromised the integrity and identity of the *corpus delicti*. Ultimately, the prosecution failed to establish guilt beyond reasonable doubt, for which petitioner must be acquitted.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The August 19, 2019 Decision of the Court of Appeals in CA-G.R. CR No. 40744 is **REVERSED** and **SET ASIDE**. Petitioner Johnny Pagal y Lavarias is **ACQUITTED**. For their information, copies shall be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.


SO ORDERED.

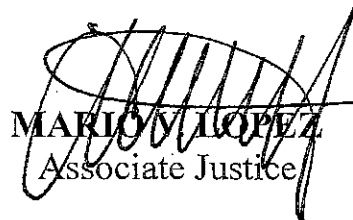

MARVIC M.V.F. LEONEN
Associate Justice

¹¹¹ Id.


¹¹² *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
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.


MARVIC M. V. LEONEN
Associate Justice
Chairperson

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.


ALEXANDER G. GESMUNDO
Chief Justice