



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-appellee,

G.R. No. 258873

Members:

-versus-

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

ABDUL AZIS *y* SAMPACO a.k.a.  
“MOHAMMAD MACAPUNDAG  
GUIMBOR” @ “MAJOR” and  
ALIBAIR MACADATO *y*  
MACADATO @ “ONGKAY,”  
Accused-appellants.

Promulgated:

AUG 30 2023

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This appeal<sup>1</sup> assails the Decision<sup>2</sup> dated August 24, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 12604, affirming the conviction of accused-appellants Abdul S. Azis a.k.a. Mohammad Macapundag Guimbor *alias* “Major” and Alibair M. Macadato *alias* “Ongkay” (accused-appellants) for violation of Article II, Section 11 of Republic Act No. 9165.<sup>3</sup>

\* Associate Justice Mario V. Lopez on official leave.

<sup>1</sup> *Rollo*, p. 3.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justices Pedro B. Corales and Alfredo D. Ampuan of the Fifth Division, Court of Appeals, Manila, *id.* at 8–26.

<sup>3</sup> Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

In two separate Informations<sup>4</sup> dated June 16, 2016, accused-appellants were charged with violation of Section 11 of Republic Act No. 9165, viz.:

**Criminal Case No. C-97030**

“That on or about the 15th day of June, 2016, 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 Five (5) knot-tied transparent plastic bag each containing METHAMPHETAMINE HYDROCHLORIDE (*shabu*) with the following markings and net weights:

“AZIS/JA-1 6/15/16 with signature” - 98.40 grams

“AZIS/JA-2 6/15/16 with signature” - 98.51 grams

“AZIS/JA-3 6/15/16 with signature” - 97.98 grams

“AZIS/JA-4 6/15/16 with signature” - 98.19 grams

“AZIS/JA-5 6/15/16 with signature” - 98.61 grams

with a total net weights (sic) of 491.69 grams, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.

CONTRARY TO LAW.

**Criminal Case No. C-97031**

“That on or about the 15th day of June, 2016, 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 Six (6) heat-sealed transparent plastic sachets each containing METHAMPHETAMINE HYDROCHLORIDE (*shabu*) with the following markings and net weights:

“MACADATO/CDL/-1 6/15/16 with signature” = 24.18 grams

“MACADATO/CDL/-2 6/15/16 with signature” = 17.17 grams

“MACADATO/CDL/-3 6/15/16 with signature” = 4.22 grams

“MACADATO/CDL/-4 6/15/16 with signature” = 24.35 grams

“MACADATO/CDL/-5 6/15/16 with signature” = 11.99 grams

“MACADATO/CDL/-6 6/15/16 with signature” = 49.18 grams

with a total net weights (sic) of 131.09 grams which when subjected for laboratory examination [g]ave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in gross violation of the above-cited law.

<sup>4</sup> *Id.* at 9–10.

## CONTRARY TO LAW.

By Order dated July 8, 2016, the Regional Trial Court, Branch 127, Caloocan City granted accused-appellants' Motion for Consolidation. On arraignment, accused-appellants pleaded not guilty to both charges.<sup>5</sup>

During the trial, the prosecution presented the testimonies of Police Officer 1 Jordan A. Alcova (PO1 Alcova), PO1 Carlon Dave Lacson (PO1 Lacson), and Police Officer 2 Jerome Pascual (PO2 Pascual). As for the testimony of Forensic Chemist Lourdeliza G. Cejes (Forensic Chemist Cejes), the parties stipulated thereon.<sup>6</sup>

The defense, on the other hand, presented the testimonies of Azis, Imam Jamal M. Sharief (Imam Sharief), and Macadato's sister, Monacaya M. Macadato (Monacaya).<sup>7</sup>

**The Prosecution's Version**

On June 15, 2016, around 5:00 p.m., PO1 Alcova, PO1 Lacson, Chief Police Senior Inspector Bernard Pagaduan, Police Inspector Pauline Taule, and other operatives were conducting "Oplan Galugad" within the area of Phase 12, Barangay 188, Tala, Caloocan City. As they alighted from their vehicle, from around 15 meters away, they noticed two men walking, each carrying a sling bag. When PO1 Alcova had drawn closer by only 1.5 meters away from the two men, he heard one of them say to the other "*eto pa yung tamok galing kay Patak.*" Thereafter, one of the men, later identified as Azis, brought out a plastic bag of suspected *shabu* and handed it to his companion, later identified as Macadato. The latter then immediately secured the plastic bag in his own sling bag.<sup>8</sup>

Upon seeing this, PO1 Alcova apprehended both Azis and Macadato and called for his companions. PO1 Alcova seized the sling bag of Azis and saw inside a bundle of suspected *shabu*, and a firearm. PO1 Lacson seized Macadato's sling bag which also contained plastic sachets of suspected *shabu*. PO1 Alcova marked the sling bag recovered from Azis and the five plastic sachets of suspected *shabu* contained therein ("AZIS/JA 6/15/16-1" – "AZIS/JA 6/15/16-5"), while PO1 Lacson marked the sling bag recovered from Macadato and the six plastic sachets of suspected *shabu* contained therein ("MACADATO/CDL-1 6/15/16" - "MACADATO/CDL-6 6/15/16").<sup>9</sup>

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<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.* at 10–12.

<sup>7</sup> *Id.* at 13.

<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.*

After marking the seized items, the people around the barangay started mobbing the officers and had blocked their way. The officers found it wise to immediately leave the area together with accused-appellants and the seized items and proceed to their office. There, accused-appellants and the seized drugs were turned over to the investigator on duty, PO2 Pascual. For the inventory and photographing, only media representative Bernard Ariate was present.<sup>10</sup> For the elective official, they called the barangay office in the area but no one was responding since it was already past office hours. The same thing happened when they called the Department of Justice (DOJ). Hence, they proceeded with the inventory and photography in the presence of accused-appellants and media representative Ariate.<sup>11</sup>

After signing the Evidence Acknowledgement Receipt, Receipt of Physical Inventory, and Chain of Custody Form, PO2 Pascual submitted the same together with the seized items to the Northern Police District, Crime Laboratory Valenzuela Satellite Office (NPD Crime Laboratory). Forensic Chemist Cejes did a qualitative examination of the transmitted specimens and the same tested positive for methamphetamine hydrochloride. She deposited the same with the Evidence Custodian, who thereafter presented them in court.<sup>12</sup>

### **The Defense's Version**

Accused-appellants interposed frame-up. Azis testified that on June 15, 2016, around 11:00 a.m., he was at home, cooking food for his children when police officers entered his house by destroying the gate with a cutter and a long hammer. He was then told to lie down on the floor while they brought out a black sling bag. In searching the house, they destroyed several appliances and chairs and even took with them a television set. He and his companions were brought to the plaza first, and afterwards, to the police station. His companions, however, were released. It was in the police station that he first saw Macadato.<sup>13</sup>

Because Macadato had no formal education and could not understand Filipino, he was not presented as a defense witness. In his stead, Imam Jamal Sharief, an appointed Imam from the Imam Council of the Philippines, and Monacaya testified on his behalf.<sup>14</sup>

Imam Sharief testified that Macadato was a resident under the jurisdiction of his Mosque and had known him for two years. On June 15, 2016, around 8:00 a.m., he witnessed Macadato's arrest from approximately a distance of 100 meters. There were numerous police officers who entered

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<sup>10</sup> *Id.* at 37.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* at 10-11.

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

<sup>14</sup> *Id.*

Macadato's house and brought him outside. He admitted, however, that he did not know why Macadato was arrested.<sup>15</sup>

Monacaya, on the other hand, testified that on June 15, 2016, she was in her travel agency at Phase 15, Barangay 188, Caloocan City when she heard shouts which prompted her to go out. She saw police officers conducting a raid in front of her office and arresting a certain couple who was the target of the raid. She then saw the police officers going towards the direction of her brother's house. She followed and saw Macadato being arrested and brought outside his house. She sought help from the people around, but no one helped. Like Imam Sharief, she did not know the reason behind her brother's arrest.<sup>16</sup>

### **Ruling of the Regional Trial Court**

By Joint Decision<sup>17</sup> dated February 22, 2019, the trial court rendered a verdict of conviction, *viz.*:

WHEREFORE, based from the foregoing, this Court renders judgment in this wise:

In Criminal Case No. C-97030 for Violation of Section 11, Art. II, R.A. 9165, this Court finds the Accused ABDUL AZIS y SAMPACO a.k.a. MOHAMMAD MACAPUNDAG GUIMBOR @ Major guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and fine of Five Hundred Thousand Pesos [P500,000.00].

In Criminal Case No. C-97031 for Violation of Section 11, Art. II, R.A. 9165, this Court find Accused ALIBAIR MACADATO y MACADATO @ Ongkay guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos [P500,000.00]. *Dura lex Sed lex.*

The drugs subject matter of these cases are ordered forfeited in favor of the government to be dealt with in accordance with law. In this regard, the Branch Clerk of this Court is hereby ordered to turn over the same to the Philippine Drug Enforcement Agency for immediate destruction in accordance with the provision of R.A. 9165.

SO ORDERED.<sup>18</sup>

The trial court found that the seized items were marked at the very place of arrest. Thus, the integrity and evidentiary value thereof were preserved. It did not give credence to accused-appellants' defense of frame-up. Notably, the two witnesses for Macadato did not know the reason why the latter was

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<sup>15</sup> *Id.* at 13–14.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> Penned by Judge Victoriano B. Cabanos, Branch 127, Regional Trial Court, Caloocan City, *id.* at 28–39.

<sup>18</sup> *Id.* at 38–39.

arrested. No other credible witness stepped in to corroborate their claims of denial and alibi. The averments of the arresting officer were credible for being well-defined and spontaneous.<sup>19</sup>

The chain of custody remained intact and unbroken. Although the requirements of Section 21 of Republic Act No. 9165 were not fully complied with, it found that there were justifiable grounds therefor and that the integrity and evidentiary value of the seized items were properly preserved. After marking the evidence at the place of arrest, the police officers decided to conduct the inventory at the South Station Anti-Illegal Drugs Office, as people were mobbing and converging on them. Lastly, it found that since there was no showing of ill motive on the part of the apprehending team who testified on the matter, the categorical and positive identification of the accused-appellants prevailed over their alibi and denial.<sup>20</sup>

### Ruling of the Court of Appeals

On appeal, the Court of Appeals affirmed.<sup>21</sup> It denied accused-appellants' argument that the seized items were inadmissible for having been obtained after an illegal arrest. It held that the warrantless arrests of both were lawful for being *in flagrante delicto* arrests. Utterance of the word "*tamok*," coupled with his act of handing Macadato a plastic bag containing white crystalline substances were overt acts sufficient to warrant suspicion in the mind of PO1 Alcova that accused-appellants were in possession of dangerous drugs. PO1 Alcova testified that he knew from experience that "*tamok*" referred to *shabu* and had heard and seen these acts of accused-appellants from a mere 1.5 meters away, which prompted him to arrest them. Having been caught *in flagrante delicto*, the subsequent search of accused-appellants was incidental to a lawful warrantless arrest and the dangerous drugs seized are therefore admissible in evidence.<sup>22</sup>

It also held that the officers' failure to secure the presence of an elected public official and/or a representative from the National Prosecution Service was justified. The investigator on duty, PO2 Pascual, tried to call for the presence of the required witnesses but only the media representative had arrived. The apprehending officers were in a hurry to conduct the inventory and photographing because they were still in the process of completing their operations for *Oplan Galugad*. In any case, the presence of the lone media representative is already sufficient to ensure the integrity and evidentiary value of the seized drugs as the amount of dangerous drugs involved is not minuscule, and therefore, could not have been easily planted especially in broad daylight with witnesses surrounding them.<sup>23</sup>

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<sup>19</sup> *Id.* at 15–16.

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *Id.* at 20.

<sup>22</sup> *Id.* at 21–26.

<sup>23</sup> *Id.*



### The Present Petition

Accused-appellants now seek affirmative relief from the Court and plead anew for their acquittal. For the purpose of this appeal, both accused-appellants<sup>24</sup> and the People<sup>25</sup> manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### Our Ruling

We affirm.

*The prosecution sufficiently established all the elements of illegal possession of dangerous drugs*

Appellants were charged with violation of Republic Act No. 9165<sup>26</sup> allegedly committed on June 15, 2016. The governing law, therefore, is Republic Act No. 9165 as amended by Republic Act No. 10640<sup>27</sup> on August 7, 2014.

To sustain a verdict of conviction for *illegal possession of dangerous drugs*, the prosecution must establish the following elements: (a) the accused was in possession of an item or object identified as prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed said drug.<sup>28</sup>

Here, the apprehending officers seized from accused-appellants a total of 11 sachets of *shabu* weighing 622.78 grams after PO1 Alcova had arrested them *in flagrante delicto* for being in possession of dangerous drugs. There is no showing that accused-appellants were duly authorized to possess these drugs. They, however, argue that their warrantless arrest, and the search conducted incidental thereto, were illegal.

We do not agree.

*Valid warrantless arrest and warrantless search*

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<sup>24</sup> *Id.* at 51–52.

<sup>25</sup> *Id.* at 57–59.

<sup>26</sup> Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002.

<sup>27</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; Republic Act No. 10640, July 15, 2014.

<sup>28</sup> *People v. Sanchez*, 827 Phil. 457, 465 (2018), [Per *J. Perlas-Bernabe*, Second Division].

A warrantless arrest may be justified under any of the following circumstances provided in Rule 113, Section 5 of the Revised Rules of Criminal Procedure, *viz.*:

Section 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.

Accused-appellants' arrest falls under Rule 113, Section 5(a), i.e., they were caught *in flagrante delicto* of illegally possessing dangerous drugs.

Both the trial court and the Court of Appeals gave credence to PO1 Alcova's testimony that while he and the apprehending team were conducting *Oplan Galugad* within Phase 12, Barangay 188, Tala, Caloocan City, he heard Azis saying to Macadato "*eto pa yung tamok galing kay Patak*" and thereafter saw Azis bring out a plastic bag of *shabu* from his sling bag and hand it to Macadato, who then immediately slid it inside his own sling bag. The fact that PO1 Alcova was only 1.5 meters away from accused-appellants at that time allowed him to hear and see clearly their illegal acts.

In *People v. Pavia*,<sup>29</sup> police officers who were responding to a tip that there was a "pot session" in progress at a certain house in San Pedro, Laguna, saw accused-appellants through a small opening of the house's window in the act of using *shabu*. The Court held that there was sufficient probable cause for the police officers to believe that the accused-appellants therein were then and there committing a crime. As it turned out, the accused-appellants indeed possessed and were even using a dangerous drug, contrary to law. For having been caught *in flagrante delicto*, the police officers were duty bound to arrest accused-appellants, even without a warrant. The search which yielded dangerous drugs in their possession was held to be valid for having been conducted after a lawful arrest.

Where the *in flagrante delicto* arrest of the accused was lawful, there is no need for a warrant for the seizure of the fruit of the crime as well as for the body search upon him, the same being incidental to a lawful arrest and the

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<sup>29</sup> 750 Phil. 871, 876 (2015) [Per J. Perez, First Division].



search may extend beyond the person of the one arrested to include the premises or surroundings under his immediate control.<sup>30</sup>

Here, PO1 Alcova hearing the word “*tamok*,” and almost simultaneously, from a close distance of 1.5 meters, saw Azis handing a plastic bag containing *shabu* to Macadato. Together, these circumstances sufficiently constituted probable cause for him to believe that they were then and there committing a crime. True enough, accused-appellants were indeed in the possession of a substantial quantity of dangerous drugs, a total of 622.78 grams of *shabu*. Their challenge against the admissibility of these seized items, being allegedly fruits of a poisonous tree, utterly lacks merit. For these dangerous drugs were seized during a lawful search incidental to a valid warrantless arrest, and thus, admissible in evidence against them.

In any case, accused-appellants can no longer object to the validity of their arrest and the incidental search thereto. It is settled that any objection by the accused to an arrest without a warrant must be made before they enter their plea, otherwise the objection is deemed waived.<sup>31</sup> Here, not only did accused-appellants fail to question their arrest and incidental search before they entered their plea,<sup>32</sup> they also did not question the same during trial<sup>33</sup> and was only brought up as a defense for the first time before the Court of Appeals.<sup>34</sup> Therefore, the legality of their arrest and the incidental search must stand.

*The apprehending officers substantially complied with the chain of custody rule*

Apart from the elements of possession, the identity of the substance illegally possessed, on one hand, and of the substance offered in court as exhibit, on the other, must likewise be established with the same degree of certitude.<sup>35</sup> Hence, the chain of custody rule comes to the fore to ensure that unnecessary doubts concerning the identity of the evidence are removed.<sup>36</sup>

*Mallillin v. People*<sup>37</sup> expounded on the rationale for the chain of custody rule:

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

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<sup>30</sup> *Id.*

<sup>31</sup> *People v. Galon*, G.R. No. 257969, July 27, 2022 [Notice, First Division] citing *People v. Vallejo*, 461 Phil. 672 (2003) [Per J. Sandoval-Gutierrez, *En Banc*].

<sup>32</sup> *CA rollo*, p. 72.

<sup>33</sup> *Id.* at 73.

<sup>34</sup> *Rollo*, p. 16.

<sup>35</sup> *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].

<sup>36</sup> *Catuiran v. People*, 605 Phil. 646, 655 (2009) [Per J. Tinga, Second Division].

<sup>37</sup> 576 Phil. 576, 587-588 (2008) [Per J. Tinga, Second Division].

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.<sup>38</sup>

The chain of custody rule reckons with the four links beginning from the moment the item was confiscated up to the time it is offered in evidence, thus:

**[F]irst**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

**[S]econd**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

**[T]hird**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

**[F]ourth**, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>39</sup>

Here, the Court finds that the prosecution substantially complied with the chain of custody.

The **first link** includes the marking, inventory, and photographing of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.<sup>40</sup> The requirement is embodied in Section 21 of Republic Act No. 9165, *viz.*:

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<sup>38</sup> *Id.*

<sup>39</sup> *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

<sup>40</sup> *People v. Bolivar*, G.R. No. 225626, December 5, 2019 [Notice, First Division].

**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 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;

The Implementing Rules and Regulations of Republic Act No. 9165 further commands:

**Section 21. (a)** The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Marking means affixing the initials or signature or other identifying signs by the apprehending officer to the dangerous drugs or related items in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking sets apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until their disposal at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.<sup>41</sup>

Here, although the marking was done immediately after the arrest and at the place of apprehension, accused-appellants argue that the apprehending officers failed to comply with Section 21 of Republic Act No. 9165 since the

<sup>41</sup> See *People v. Gonzales*, 708 Phil. 121, 130-131 (2013) [Per J. Bersamin, First Division].

seized items were inventoried and photographed only at the police station. On this score, we note that the volume of the seized items and place of arrest necessitated the inventory and photographing at the police station.

In *People v. Tagluop*,<sup>42</sup> there was a warrantless search conducted pursuant to a buy-bust operation. The inventory and taking of photographs were conducted at the nearest police station instead of the place of seizure. The Court ruled that it was practicable for the apprehending officers to do so because of the gathering of a crowd, it was raining, and the place was unsafe. These justifications were consistently included in their judicial affidavits immediately executed after the buy-bust operation.

In *People v. Casa*,<sup>43</sup> the Court made clear that in buy-bust situations, or warrantless arrests, the physical inventory and photographing may be done at the nearest police station or at the office of the apprehending team, whichever is practicable. But even in these alternative places, such inventory and photographing must be done in the presence of the accused and the insulating witnesses.

Here, it is undisputed that accused-appellants were apprehended in the streets of Phase 12, Barangay 188, Tala, Caloocan City. PO1 Alcova and PO1 Lacson both testified that after they had marked the seized items, people started mobbing and converging on them, even blocking their way, by which time, they had to immediately leave the place and proceed instead to their office. They were of the firm belief that it would have been dangerous for them if they had stayed and continued with the inventory and photographing there.

The place of arrest is an open area and the people who started to gather and block their way could have caused a disruption of the procedure, especially since a huge quantity of illegal drugs was involved - **a total volume of 622.78 grams of shabu**. Further, the Court finds it reasonable and natural for the apprehending officers to be seriously concerned about their own safety considering the possibility that there could be some other person or group of persons who may just be observing them from a distance and would be ready to pounce on them at any minute at the place of arrest. Even then, the marking of the seized drugs was conducted immediately after arrest and at the place of apprehension. In view of these attendant circumstances, the possibility of tampering the 622.78 grams of *shabu* would be farfetched, *if not nil*.

As for the absence of a representative from the DOJ and a local elective official during the inventory and photographing, the same should not result in a verdict of acquittal.

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<sup>42</sup> G.R. No. 243577, March 15, 2022 [Per C.J. Gesmundo, First Division].

<sup>43</sup> G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, *En Banc*], citing *People v. Pacnisen*, 842 Phil. 1185 (2018) [Per J. Caguioa, Second Division].

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, now only requires two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; and (2) either a representative from the National Prosecution Service or the media.<sup>44</sup>

Here, only a media representative, Bernard Ariate, was present during the inventory and photographing of the seized items at the police station. As a rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because the law had been crafted by Congress as a safety precaution to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. The Court, nonetheless, has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the seized items invalid, provided that the prosecution satisfactorily proves:

- (a) there is a justifiable ground for non-compliance; and
- (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>45</sup>

Here, PO2 Pascual, the investigator on duty, testified how they seriously exerted efforts to secure the presence of a local elective official and a representative from the National Prosecution Service to no avail. They tried to call the DOJ and barangay officials, but no one was available to witness the procedure because obviously, the time when appellants were brought to the police station was already after office hours – 10:30 p.m. But the inventory and photographing of the seized items ought not to be delayed. The apprehending officers were in a hurry because an illegal firearm was also recovered from Azis, which had to be the subject of an investigation by another office. They also had to conduct other operations within the night for *Oplan Galugad*. Thus, they decided to push through with the procedure and compensated the absence of the other insulating witnesses with the presence of a media representative. This is substantial compliance with the chain of custody rule as the situation in this case calls for immediate and decisive action.

In *People v. Estabillo*,<sup>46</sup> the seized items were marked, inventoried, and photographed in front of an elected official and two media representatives. There was simply no prosecutor from the DOJ who was available to witness the inventory at that very late hour – 12 o'clock midnight. The Court, however, clarified that an extra media representative was no substitute for a

<sup>44</sup> *People v. Lim*, 839 Phil. 598, 617-618 (2018) [Per J. Peralta, *En Banc*].

<sup>45</sup> See *People v. Bangalan*, 839 Phil. 455, 462-463 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>46</sup> G.R. No. 252902, June 16, 2021 [Per J. Lazaro-Javier, Second Division].



DOJ representative under Republic Act No. 9165 prior to its amendment. The Court nonetheless considered the arresting officers' decision to invite additional witnesses than required as cogent proof of their good faith, if not, earnest effort to comply with the witness requirement under Section 21 of Republic Act No. 9165, and more important, to ensure transparency and dispel any kind of suspicion on the legitimacy of the operation.

Even with the above deviations, the prosecution witnesses sufficiently established who were in possession of the seized items from confiscation at the place of arrest until the turnover thereof at the NPD Crime Laboratory. During the trial, PO1 Alcova identified in open court the pictures of the transparent plastic bags of *shabu* subject of the illegal possession charge. The integrity and evidentiary value of the seized items, therefore, remained intact.

The Court, in *Ramos v. People*,<sup>47</sup> upheld the conviction of petitioner Roselyn Ramos for violation of Section 11, Republic Act No. 9165 despite the fact that only Barangay Captain Cajes witnessed the inventory of the seized item. According to the Court, the chain of custody remained unbroken as the police officers substantially complied with the requirements under Section 21 of Republic Act No. 9165. The trial court correctly gave more credence and weight to the testimony of SPO2 Monette Q. Whiteside as against petitioner's unsubstantiated allegations.

Having sufficiently explained the deviations from the chain of custody rule, said deviations cannot be said to have diminished the integrity and evidentiary value of the seized items.

The **second link** in the chain of custody is the turnover of the seized *shabu* from the apprehending officers to the investigating officer at the police station.<sup>48</sup> It was PO2 Pascual who conducted the inventory and photographing of the items seized by PO1 Alcova and PO1 Lacson. Thereafter, PO2 Pascual prepared the request for laboratory examination of the seized items.

The **third link** in the chain of custody refers to the delivery by the investigating officer of the illegal drug to the forensic chemist. Here, after the inventory and photographing of the seized items at the police station, PO2 Pascual personally brought these together with the request for laboratory examination to the NPD Crime Laboratory at around 2:30 a.m. on June 16, 2016. The seized items and letter request were personally received by Forensic Chemist Cejes.

The **fourth link** in the chain of custody refers to the turnover and submission of the marked illegal drugs from the forensic chemist to the court.<sup>49</sup>

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<sup>47</sup> G.R. No. 244576, June 10, 2019 [Notice, First Division].

<sup>48</sup> *People v. Gayoso*, 808 Phil. 19, 31 (2017) [Per J. Del Castillo, First Division].

<sup>49</sup> *People v. Quijano*, 871 Phil.547 (2020) [Per J. Lazaro-Javier, First Division].



The parties stipulated that Forensic Chemist Cejes personally received the request from PO2 Pascual and after conducting a qualitative examination on the contents of the plastic bags, she found the same to be positive for the presence of methamphetamine hydrochloride, a dangerous drug, and executed Chemistry Report No. D-0444-16. Upon completion of the examination, she sealed the specimen and deposited the same with the evidence custodian, who brought the same to the trial court. In fine, there is no doubt that the drugs seized from accused-appellants and tested by Forensic Chemist Cejes were the same drugs delivered to the trial court.

*The substantial volume of seized items negates the possibility of planting, tampering, or alteration*

An unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive, 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 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.<sup>50</sup>

Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering, or alteration of evidence.<sup>51</sup> *Mallillin v. People*<sup>52</sup> is in point:

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

<sup>50</sup> *Mallillin v. People*, supra note 36.

<sup>51</sup> *People v. Estabillo*, G.R. No. 252902, June 16, 2021 [Per J. Lazaro-Javier, Second Division].

<sup>52</sup> Supra note 36 at 588.

*People v. Holgado*,<sup>53</sup> however, clarified that the minuscule amount of the seized items involved is not *per se* a ground for acquittal but only operates to remind the courts of stricter adherence to the chain of custody, thus:

While the minuscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Mallillin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”

....

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. **Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered.** Also, doubt normally follows in cases where an accused has been discharged from other simultaneous offenses due to mishandling of evidence. Had the Regional Trial Court and the Court of Appeals been so judicious in this case, a speedier resolution would have been handed to Holgado and Misarez whose guilt beyond reasonable doubt was not established.

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for minuscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels. (Emphasis supplied)

Accused-appellants here were caught in the possession of 622.78 grams of *shabu*. This substantial volume of seized items far outweighed the possibility of planting, tampering, or alteration.

At any rate, despite the supposed deviations from the procedure by the apprehending officers, the integrity and evidentiary value of the seized items were duly preserved. The description, weight, and quality of the drugs

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<sup>53</sup> 741 Phil. 78, 99 (2014) [Per J. Leonen, Third Division].

remained substantially the same from their inventory to the request for examination, their turnover to the laboratory for examination, the results of the laboratory examination, up to their presentation in court.

***Accused-appellants' claim  
of frame-up remains  
unsubstantiated***

Accused-appellants further claim that they were the victims of frame-up by the apprehending officers. The burden to prove their guilt beyond reasonable doubt is on the prosecution. They do not have the burden of proving their innocence. The apprehending team was ill-motivated to devise the alleged warrantless arrests to show accomplishment in participating in the drug war campaign of the administration during their arrest.

We are not convinced.

An allegation of frame-up by police officers is a common and standard defense in dangerous drugs cases viewed by this Court with disfavor for it can easily be concocted. To substantiate such defense, the evidence must be clear and convincing<sup>54</sup> and should show that the apprehending team was motivated by indecent objective or was not properly performing their duty.<sup>55</sup>

Aside from Azis's self-serving account and Imam Sharief and Monacaya's testimonies of frame-up, no substantiating evidence was adduced by the defense. In fact, the defense witnesses for Macadato categorically testified that they did not know the reason for the latter's arrest. Neither was it shown that the apprehending officers were impelled by improper motive in effecting the buy-bust operation. **The volume of the seized items alone stands against the veracity of the alleged extortion. Where would the apprehending officers get a total of 622.78 grams of *shabu* and the huge equivalent amount just so they could plant it on accused-appellants?**

In any event, against the denial and allegations of frame-up by accused-appellants, the positive and consistent testimonies of **PO1 Alcova, PO1 Lacson, and PO2 Pascual**, together with the *corpus delicti*, deserve greater weight and merit.

All told, the Court of Appeals did not err in affirming the conviction of accused-appellants for violation of Section 11 of Republic Act No. 9165.

<sup>54</sup> *People v. Boco*, 368 Phil. 340, 366-367 (1999) [Per J. Panganiban, *En Banc*].

<sup>55</sup> *People v. Fernandez*, G.R. No. 198875, June 4, 2014 [Notice, Second Division].

**ACCORDINGLY**, the appeal is **DISMISSED**. The Decision dated August 24, 2020 of the Court of Appeals in CA-G.R. CR-HC No. 12604 is **AFFIRMED**.

In Criminal Case No. C-97030, **ABDUL AZIS y SAMPACO** a.k.a. **MOHAMMAD MACAPUNDAG GUIMBOR** *alias* **Major** is found **GUILTY** of **illegal possession of dangerous drugs** in violation of Section 11 of Republic Act No. 9165, as amended by Republic Act No. 10640. He is sentenced to **LIFE IMPRISONMENT** and a **FINE** of **PHP 500,000.00**

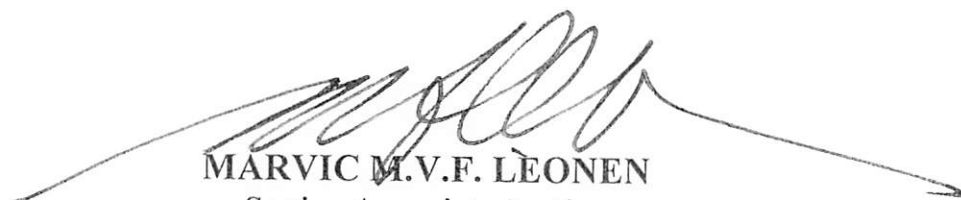
In Criminal Case No. C-97031, **ALIBAIR MACADATO y MACADATO** *alias* **Ongkay** is found **GUILTY** of **illegal possession of dangerous drugs** in violation of Section 11 of Republic Act No. 9165, as amended by Republic Act No. 10640. He is sentenced to **LIFE IMPRISONMENT** and a **FINE** of **PHP 500,000.00**

**SO ORDERED.**




**AMY C. LAZARO-JAVIER**  
*Associate Justice*

**WE CONCUR:**




**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

(ON OFFICIAL LEAVE)  
**MARIO V. LOPEZ**  
Associate Justice




**JHOSEP Y. LOPEZ**  
Associate Justice



**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

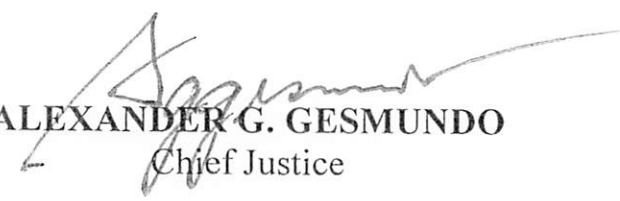
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC M. V. F. LEONEN**  
Senior 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