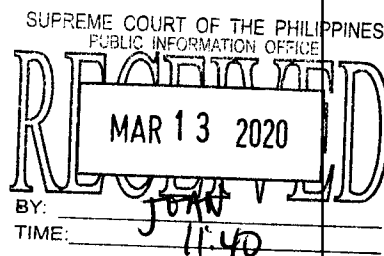




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated December 5, 2019 which reads as follows:*

**“G.R. No. 225127 (Ricardo Peñaranda, Jr. y Aragonés v. People of the Philippines)**

**The Case**

This appeal<sup>1</sup> assails the Decision of the Court of Appeals in CA-G.R. CR No. 35721 dated September 18, 2015<sup>2</sup> affirming petitioner’s conviction for violation of Section 11, Article II of Republic Act (RA) 9165.<sup>3</sup>

**The Proceedings Before the Trial Court**

**The Charge**

By Information dated October 12, 2011, petitioner Ricardo Peñaranda, Jr. y Aragonés was charged with violation of Section 11, Article II of RA 9165, thus:

That, on or about the 11<sup>th</sup> day of October 2011, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.02 gram and 0.03 gram or in a total weight of 0.05 gram of white crystalline substance contained in two (2) heat-sealed transparent plastic sachets, which was found positive to

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<sup>1</sup> Filed under Rule 45 of the Rules of Court.

<sup>2</sup> Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam (formerly a member of the Supreme Court) and Eduardo B. Peralta, Jr.; *Rollo*, pp. 35-47.

<sup>3</sup> Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

the test for Methamphetamine Hydrochloride, also known as “shabu”, a dangerous drug, in violation of [RA 9165].

CONTRARY TO LAW. (words in brackets added)

The case was raffled to the Regional Trial Court (RTC) – Branch 67, Binangonan, Rizal.

On arraignment, petitioner pleaded *not guilty*.

During the trial, Noel Salazar and P/Sr. Insp. Beaune Villaraza testified for the prosecution, while petitioner testified as the lone witness for the defense.<sup>4</sup>

### **The Prosecution’s Version**

**PO2 Salazar** testified that on October 11, 2011, a confidential informant went to the police station in Binangonan, Rizal to report that a certain alias “Junior” was selling *shabu* at the parking lot of tricycles in Barangay Sto. Niño, Bilibiran, Binangonan, Rizal. Acting thereon, PCI Wilson Madrid Magpili dispatched his subordinates to verify the information. Thereafter, he (PO2 Salazar), PO2 Remson Colacion and the confidential informant proceeded to the parking lot to conduct surveillance.<sup>5</sup>

There, they saw three (3) men acting suspiciously, one of whom the informant identified as alias “Junior.” He approached the men but they scampered away. Further suspecting the three (3) men were up to something, the police officers gave chase. The police officers eventually caught up with alias “Junior” who was later identified as petitioner Ricardo Peñaranda, Jr. y Aragoes. He frisked petitioner and asked him to open his hands, yielding two (2) transparent plastic sachets of suspected *shabu*.<sup>6</sup>

He seized the two (2) plastic sachets and marked them “RIC-1” and “RIC-2.” To avoid any untoward incident or commotion, the police officers decided to bring petitioner to the police station for investigation. At the police station, he blotted petitioner’s arrest and prepared an inventory of the seized items. On the other hand, PCI Magpili prepared the request for laboratory examination. He, thereafter, delivered the seized items to forensic chemist P/Sr. Inspector Villaraza for examination.

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<sup>4</sup> *Rollo*, pp. 35-36.

<sup>5</sup> *Id.* at 36.

<sup>6</sup> *Id.* at 36-37.

On the other hand, **P/Sr. Inspector Villaraza** testified that he received the seized items and conducted the qualitative examination thereon. Per his Chemistry Report No. D-339-11 the seized items tested positive for methamphetamine hydrochloride, locally known as *shabu*.<sup>7</sup>

The prosecution offered the following documentary evidence: Blotter of petitioner's arrest; Joint Affidavit of Arrest of PO2 Salazar and PO2 Colacion; Inventory; Chemistry Report No. D-339-11; Request for Laboratory Examination; brown envelope containing the specimens; and the sachets kept inside the brown envelope.<sup>8</sup>

### **The Defense's Evidence**

On October 11, 2011, around 3:30 in the afternoon, he was on his way to Barangay Sto. Niño, Bilibiran, Binangonan, Rizal to have his haircut. Suddenly, four (4) men approached and asked him to produce illegal drugs. When he said he did not have any, they forced him to board a tricycle and brought him to the police station. There, they took his cellphone, necklace, ring, and sixty pesos (Php60.00) he had in his pocket. They also tried to extort from him ten thousand pesos (Php10,000.00) for his liberty but he refused since he was innocent. Subsequently, they filed a case against him for illegal possession of dangerous drugs.<sup>9</sup>

### **The Trial Court's Ruling**

As borne by its Decision dated March 28, 2013,<sup>10</sup> the trial court rendered a verdict of conviction, *viz.*:

In light of the above, we find accused Ricardo Peñaranda Jr., GUILTY beyond reasonable doubt of violating Section 11, Article II, R.A. No. 9165 and illegally possessing a total of 0.05 grams of Methamphetamine Hydrochloride or *shabu* and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of P300,000.00. Bond posted for his provisional liberty is REVOKED. Issue a warrant for his immediate arrest.

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<sup>7</sup> *Id.* at 37.

<sup>8</sup> *Id.* at 85-86, 92.

<sup>9</sup> *Id.* at 37-38.

<sup>10</sup> Penned by Presiding Judge Dennis Patrick Z. Perez.

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.<sup>11</sup>

It ruled that all the elements of the crime were sufficiently established, the seized items and their evidentiary value were properly preserved, and the *corpus delicti* was positively identified.<sup>12</sup>

### **The Proceedings Before the Court of Appeals**

On appeal, petitioner faulted the trial court for rendering the verdict of conviction despite the prosecution's purported failure to establish the integrity and identity of the seized item beyond reasonable doubt, and to observe the chain of custody rule, *viz.*:

**First**, PO2 Salazar did not testify on how he handled the *shabu* allegedly confiscated from petitioner. He did not elaborate on the measures he undertook to preserve the integrity and evidentiary value of the seized items.<sup>13</sup>

**Second**, PO2 Salazar failed to accomplish the inventory immediately after the arrest. He did the inventory at the police station and, worse, admitted he forgot to sign it.<sup>14</sup>

**Third**, the inventory and photograph of the seized items were not done in the presence of petitioner, his representative or counsel, a representative from the media, the Department of Justice (DOJ) and any elected public official, as required under Section 21, RA 9165.<sup>15</sup>

**Finally**, the forensic chemist failed to account for the manner by which he preserved the specimens from their examination up until they were delivered to the court.<sup>16</sup>

The Office of the Solicitor General (OSG), through Assistant Solicitor General Anna Esperanza R. Solomon and Associate Solicitor Emmeree C. Sison-Atanis defended the verdict of conviction.<sup>17</sup> It argued that all the elements of illegal sale of dangerous drugs were

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<sup>11</sup> *Rollo*, p. 78.

<sup>12</sup> *Id.* at 77-78.

<sup>13</sup> *Id.* at 72.

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

<sup>15</sup> *Id.* at 72-73.

<sup>16</sup> *Id.* at 70-72.

<sup>17</sup> *Id.* at 79-97.

established; the integrity and evidentiary value of the seized items were preserved despite non-compliance with Section 21, RA 9165; and the *corpus delicti* was identified during trial.

### **The Court of Appeals' Ruling**

By Decision dated September 18, 2015, the Court of Appeals affirmed.<sup>18</sup> It found that all the elements of the crime were present and petitioner was positively identified in open court as the subject of the surveillance operation. More, non-compliance with the procedural safeguards prescribed under Section 21, RA 9165 and its Implementing Rules and Regulations (IRR) was not fatal to the prosecution's case since the integrity of the seized items was preserved from the time they were confiscated up until they were presented in court. Finally, it held that the search and seizure were validly effected as an incident to petitioner's arrest *in flagrante delicto*.

It denied petitioner's subsequent motion for reconsideration.

### **The Present Appeal**

Petitioner now seeks a verdict of acquittal through the present petition for review on *certiorari*.<sup>19</sup>

Petitioner argues that the prosecution failed to strictly observe the procedural requirements for preserving the *corpus delicti* under Section 21, RA 9165: **First**, the arresting officers failed to immediately mark the two (2) plastic sachets at the place of seizure; **Second**, PO2 Salazar did not mark the seized items in petitioner's presence and even admitted that he marked them in only the presence of PO2 Colacion; and **Finally**, neither petitioner nor any of the insulating witnesses was present during the inventory.

In its Comment,<sup>20</sup> the OSG counters: the prosecution has duly proven that petitioner possessed two (2) plastic sachets containing 0.02 and 0.03 gram of *shabu*, respectively; all elements of illegal possession of dangerous drugs are present; perfect adherence to the chain of custody rule is not mandatory and the arresting officers in this case more than substantially complied with the requirements; the

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<sup>18</sup> *Id.* at 35-47.

<sup>19</sup> *Id.* at 12-30.

<sup>20</sup> *Id.* at 127-155.

prosecution's witnesses, being police officers, enjoy the presumption of regularity in the performance of their official duty; finally, findings of fact of the courts below are given great weight.

In his Manifestation (In Lieu of Reply), petitioner manifests that he adopts the arguments in his brief before the Court of Appeals.<sup>21</sup> In a handwritten letter dated August 21, 2019 addressed to the Court, however, petitioner requests that his appeal be withdrawn since the maximum period of his sentence "is soon to be served."<sup>22</sup> It does not appear that petitioner was assisted by counsel when he wrote this letter.

### Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the chain of custody over the *corpus delicti*?

### Ruling

We acquit.

Petitioner was charged with unauthorized possession of dangerous drug allegedly committed on October 11, 2011. The governing law, therefore, is RA 9165. Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drug cases, viz.:

**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),**

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<sup>21</sup> *Id.* at 157-159.

<sup>22</sup> *Id.* at 176.

**and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; (emphasis added)**

XXXX

The IRR of RA 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. (emphasis added)

To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody:<sup>23</sup> *first*, the seizure and marking 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 by the forensic chemist to the court.<sup>24</sup>

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct,

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<sup>23</sup> As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002: xxxx  
b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] xxxx

<sup>24</sup> *Jacson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.<sup>25</sup>

Records show that the arresting officers here had repeatedly breached the chain of custody rule.

Prosecution witness PO2 Salazar testified:

xxxx

Q Who prepared the Inventory?

A I ma'am.

Q I'm showing you an Inventory kindly tells us if that is the one you are referring to?

A Yes ma'am.

Q Who placed that name PO2 Salazar?

A I did ma'am.

Q Considering that you prepared that kindly affix your signature.

ATTY. IREMEDIO:

**Your Honor we would like to manifest that its only PO2 Salazar its (sic) not the actual signature of PO2 Salazar.**

COURT:

**What do you mean? Walang pirma?**

ATTY. IREMEDIO:

**Wala po your Honor.**

PROS. ARAGONES:

Q **Why did you not sign the Inventory?**

A **I forgot to sign it ma'am.**

Q **Aside from you who else signed the inventory?**

A **Just myself ma'am.**

Q **There was no elected official?**

A **None ma'am because when we arrested him it created a commotion that's why we brought him immediately at the police station.<sup>26</sup>**

(Emphases supplied)

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<sup>25</sup> *Jacson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

<sup>26</sup> TSN dated February 9, 2012, pp. 7-9; *Rollo*, pp. 108-110.



xxxx

## CROSS EXAMINATION BY ATTY. IREMEDIO:

Q Who marked it?  
A I did ma'am.

Q **Nobody witnessed it?**  
A **Only PO2 Colacion ma'am.**

Q **Just the two of you?**  
A **Yes ma'am.**  
(Emphases supplied)

xxxx

Q Mister Witness you said that there were no other signatories in the inventory?  
A Yes ma'am.<sup>27</sup>

xxxx

## QUESTIONS FROM THE COURT

xxxx

Q Tapos nilapitan niyo?  
A Opo.

Q Tapos me sumigaw ng "Pulis!"?  
A Opo.

Q Sinong tumakbo?  
A Yung tatlong lalaki po.

Q Pwera sa kanila may tumakbo pa?  
A Opo.

Q So maraming tumakbo don?  
A Opo.

xxxx

Q So nung me sumigaw ng "Pulis!" maraming taong nagtakbuhan don?  
A Marami po gawa po paradahan po ng tricycle yun eh.

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<sup>27</sup> *Id.* at 111-115.

- Q**            **Bakit takot sa pulis mga tao don?**  
**A**            **Marami po kasing report sa amin yung area maraming nagbebenta ng drugs, kaya pag kilalang pulis nilalayuan nila agad.<sup>28</sup>**

XXXX

*First*, the Inventory itself contradicts PO2 Salazar's testimony pertaining to the place where the two (2) plastic sachets were marked. It did not take place at the place of arrest, but at at the Bingangonan Police Station:

NOTE: The marking/s of the exhibit/s is/are made at the place of arrest and confiscation at Binangonan Police Station. (Emphasis supplied, underscoring in the original)<sup>29</sup>

The Court held in *People v. Ramirez*<sup>30</sup> that marking of the seized item immediately after seizure is vital to ensure its integrity and veracity by preventing switching, planting, or contamination of evidence.<sup>31</sup> Here, PO2 Salazar claimed that he immediately marked the seized items after confiscation at the tricycle station where the surveillance operation took place, but records show otherwise. This casts serious doubt on the identity of the item that was later inventoried. For we cannot foreclose the possibility that what PO2 Salazar marked at the police station might not be the same item allegedly sold by petitioner at the parking lot.

*Second*, PO2 Salazar admitted to marking the seized items in the presence of PO2 Colacion only, sans petitioner himself. In *People v. Ismael*,<sup>32</sup> the Court required that the marking be done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply was fatal to the prosecution's case.

*Third*, the inventory was done at the police station and the only explanation given was to avoid any commotion in the area. But this hardly justifies the police officers' deviation from the prescribed procedure. In *People v. Sood*,<sup>33</sup> the Court ruled that the police officers could have planned the operation in such a way that any possible commotion could be contained. More, the arresting officers could

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<sup>28</sup> *Id.* at 116-117.

<sup>29</sup> *Rollo*, p. 101; Annex "H" of Petition for Review on *Certiorari*.

<sup>30</sup> G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

<sup>31</sup> *Sanchez*, citing *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

Phil. 21, 31 (2017).

<sup>32</sup> 806 Phil. 21, 31 (2017).

<sup>33</sup> G.R. No. 227394, June 6, 2018.

have easily contained the situation not only because they were armed, but especially since PO2 Salazar recognized that the crowd was wary of police officers.<sup>34</sup> Besides, the reason “to avoid confusion or commotion” without any explanation or details about it is hardly convincing.

**Fourth**, none of the three (3) insulating witnesses required under Section 21, RA 9165 actually saw the physical inventory and photograph of the seized items. Again, no valid reason was offered for this omission.

In *People v. Mendoza*,<sup>35</sup> the Court emphasized that the presence of these insulating witnesses guards against the evils of switching, planting, or contamination of evidence. In *People v. Macud*,<sup>36</sup> the Court acquitted appellant therein because the prosecution failed to secure the presence of any of the required insulating witnesses. It also reiterated the rule that inexcusable non-compliance effectively invalidates the seizure and subsequent custody of the seized item, compromising its identity and integrity.

While non-compliance may be allowed under justifiable circumstances, jurisprudence dictates that the prosecution must show that the police officers exerted earnest efforts to comply with the procedure.<sup>37</sup> Here, the police officers failed to show genuine and sufficient effort to secure the presence of the insulating witnesses to the inventory and photograph requirements. PO2 Salazar testified that they simply did not coordinate with the required witnesses, purportedly having no chance to do so.

**Finally**, respondent failed to refute petitioner’s claim that the forensic chemist did not account for the manner by which he preserved the specimens from their examination up to their delivery to the trial court. In *People v. Ubungen*,<sup>38</sup> the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established as in this case.

Indeed, the chain of custody here had been broken from its incipience up until its final stages. Although a saving clause in the

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<sup>34</sup> *People v. Sood*, citing *People v. Cornel*, G.R. 229047, April 16, 2018.

<sup>35</sup> 736 Phil. 749, 761 (2014).

<sup>36</sup> G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

<sup>37</sup> *Dela Victoria*, citing *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 54-55.

<sup>38</sup> G.R. No. 225497, July 23, 2018.

IRR of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and “so long as the integrity and evidentiary value of the seized items are properly preserved.”<sup>39</sup> Here, since the arresting officers offered no valid explanation for the procedural deficiencies, the saving clause cannot be validly invoked.

Suffice it to state that the presumption of regularity in the performance of official functions<sup>40</sup> is not a substitute for strict compliance with the chain of custody rule. It is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.<sup>41</sup> And here, the presumption was amply overturned by compelling evidence on record of the repeated breach of the chain of custody rule. Verily, a verdict of acquittal is in order.

**WHEREFORE**, the appeal is **GRANTED**, and petitioner’s handwritten letter dated August 21, 2018 is **NOTED**. The Decision dated September 18, 2015 the Court of Appeals in CA-G.R. CR No. 35721 is **REVERSED** and **SET ASIDE**.

**RICARDO PEÑARANDA, JR. y ARAGONES** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release him from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

The letter dated October 1, 2019 of Ms. Jane G. Sabido, Chief, Archives Section, Judicial Records Division, Court of Appeals, Manila, transmitting the rollo of CA G.R. CR No. 35721 with 156 pages, one (1) folder of original records and one (1) folder with duplicate copy of transcript of stenographic notes, is **NOTED**.

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<sup>39</sup> See Section 21 (a), Article II, of the IRR of RA 9165.

<sup>40</sup> RULES OF COURT, Rule 131, Section 3(m).

<sup>41</sup> *People v. Cabiles*, June 7, 2017, G.R. No. 220758, 827 SCRA 89, 98.

**SO ORDERED.”** *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,

**LIBRADA C. BUENA**  
Division Clerk of Court <sup>pk 214</sup>  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 35721)

The Solicitor General  
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The Hon. Presiding Judge  
Regional Trial Court, Branch 67  
Binangonan, 1940 Rizal  
(Crim. Case No. 11-718)

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