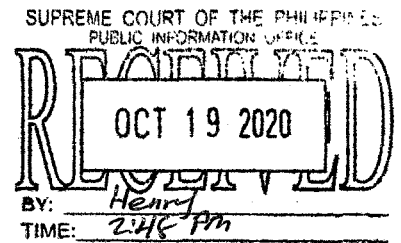




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **June 17, 2020**, which reads as follows:

**“G.R. No. 247506 — (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. ARTURO M. RECUSTODIO, *accused-appellant*)** — This resolves an appeal from the Court of Appeals Decision,<sup>1</sup> which affirmed the Regional Trial Court’s conviction<sup>2</sup> of accused-appellant Arturo M. Recustodio for illegal sale of drugs, illegal possession of drugs, and illegal possession of equipment and other paraphernalia for drugs, penalized under Sections 5,<sup>3</sup> 11,<sup>4</sup> and 12,<sup>5</sup> respectively, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

<sup>1</sup> Id. at 5–17. The Decision dated March 15, 2019 in CA-G.R. CR-HC-01799-MIN was penned by Associate Justice Florencio M. Mamaug, Jr., and was concurred in by Associate Justices Edgardo T. Lloren (Chairperson) and Walter S. Ong of the Twenty-Second Division of the Court of Appeals in Cagayan de Oro City.

<sup>2</sup> CA Rollo. p. 31–39. The Decision dated September 11, 2017 was penned by Presiding Judge Dax Gonzaga Xenos of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 34, Panabo City.

<sup>3</sup> Republic Act No. 9165 (2002), sec. 5 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions[.]

<sup>4</sup> Republic Act No. 9165, sec. 11 provides:

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:

.....

(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[.]

<sup>5</sup> Republic Act No. 9165, sec. 12 provides:

In three (3) separate Informations, Arturo M. Recustodio (Recustodio) was charged with violating Article II, Sections 5, 11, and 12 of the Comprehensive Dangerous Drugs Act for illegal sale of dangerous drugs, illegal possession of dangerous drugs, and illegal possession of equipment and other paraphernalia for dangerous drugs. The accusatory portions of which provide:

CRIMINAL CASE No. CrC 67-2014

That on or about February 4, 2015 in the City of Panabo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and knowingly sold, traded[,] and delivered one (1) sachet of transparent cellophane containing methamphetamine hydrochloride or “shabu” weighing 0.8038 grams, a dangerous drug, to PO2 RYAN B. MALIBAGO, who was acting as a poseur-buyer in a legitimate buy-bust operation, receiving two (2) marked money of One Thousand peso bill (Php 1,000.00) with Serial No. VC534846 and XV664564, respectively or a Total of Two Thousand pesos (Php 2,000.00)

Contrary to law.

CRIMINAL CASE No. CrC 68-2014

That on or about February 4, 2015 in the City of Panabo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully, and knowingly had in his possession, control[,] and custody three (3) sachets of transparent cellophane, containing methamphetamine hydrochloride or “shabu” weighing:

- RBM-P1 - 2.3410 grams
- RBM-P2 - 2.5000 grams
- RBM-P3 - 4.1670 grams

with [sic] pertinent marking, respectively, a dangerous drug.

Contrary to law.

CRIMINAL CASE No. CrC 69-2014

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.

That on or about February 4, 2015 in the City of Panabo, Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully, and knowingly had in his possession, control[,] and custody one (1) improvised tooter and one (1) digital scale, drug paraphernalia used to consume, administer[,] and introduce methamphetamine hydrochloride or “shabu” into the body, a dangerous drug, and to weigh the same.

Contrary to law.<sup>6</sup>

During arraignment, Recustodio pleaded not guilty to the charges. Trial then ensued after pre-trial.<sup>7</sup>

The prosecution presented the sole testimony of PO2 Ryan B. Malibago (PO2 Malibago).<sup>8</sup> The prosecution also presented the seized four (4) sachets of shabu, tooter, and digital weighing scale, as well as the marked money, inventory of seized property, chain of custody documents, police blotter, and the pictures taken.<sup>9</sup> Together with the other evidence, PO2 Malibago’s testimony tended to prove the following version of facts:

On February 4, 2014, at around 10:00 p.m., Police Inspector Plaza (Inspector Plaza) contacted PO2 Malibago and instructed him to go to the police station for a briefing on a buy-bust operation. A confidential informant had reported that a certain Arturo “Don-don” Recustodio was selling shabu.<sup>10</sup>

The briefing was attended by PO2 Malibago, Police Officers Sayre, Calamba, Malinao, Reyes, Vildozola, and the confidential informant. The buy-bust operation was to be conducted at J Night Club, Barangay Gredu. PO2 Malibago was designated as the poseur-buyer, and the other officers were assigned as back-up. Two (2) ₱1,000.00 bills were prepared and marked. The buy-bust team also coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>11</sup>

At midnight, the confidential informant arranged for PO2 Malibago to meet with Recustodio between 1:00 a.m. to 2:00 a.m. for the sale of shabu.<sup>12</sup>

At 12:30 a.m. of February 4, 2014, PO2 Malibago proceeded to J Night Club, with the confidential informant and Inspector Plaza, on board a motorcycle. Upon their arrival, they sat at a table near the cashier and ordered beer. Recustodio arrived about an hour later and sat at a table near them.

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<sup>6</sup> *Rollo*, pp. 6-7.

<sup>7</sup> *Id.* at 8.

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

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

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

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

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

After a few minutes, the confidential informant introduced PO2 Malibago as the friend who wanted to buy shabu.<sup>13</sup>

PO2 Malibago asked Recustodio if he brought the “thing” with him, referring to the shabu. Recustodio replied that he had ₱2,000.00 worth. PO2 Malibago thus gave the marked money to Recustodio and the latter retrieved one (1) sachet of shabu from his pocket.<sup>14</sup>

PO2 Malibago then performed the pre-arranged signal by removing his cap. Recustodio then realized it was a buy-bust operation and immediately tried to escape by running toward the doors. However, he was blocked by the back-up team and was arrested on the spot. After being informed of his rights, they frisked him and found in his possession three (3) more sachets of shabu inside a plastic box, the marked bills, a tooter, and a digital weighing scale.<sup>15</sup>

The police officers marked the confiscated items at the crime scene in Recustodio’s presence. At 3:00 a.m., they brought him and the seized items to the police station. There, they inventoried the seized items in the presence of Recustodio, Ian Dionola from the Department of Justice, Barangay Captain Rey Gensola, and Media Representative Jun Gumban. Pictures were taken of the marking and the inventory.<sup>16</sup>

At around 10:30am, PO2 Malibago delivered the drugs and the paraphernalia to the crime laboratory for examination. In the chemistry report,<sup>17</sup> Forensic Chemical Officer Virginia Sison Gucor found Recustodio and the seized sachets to be positive for shabu.<sup>18</sup>

In his defense, Recustodio denied that he sold shabu to PO2 Malibago, and claimed he was framed. The following is his version of the facts:

On February 3, 2014, Recustodio ferried passengers to Tagum City on his motorcycle. A bit before midnight of February 4, 2014, he stopped along the road near J Night Club and Imperial Appliance Store to check his phone for messages from his wife. Suddenly, two (2) unidentified men pointed a gun at him and demanded that he open his u-box and unload it. Out of fear, he followed their command.<sup>19</sup>

However, when they asked him to step farther away, he locked his u-box and kept the key since he suspected that they would plant evidence against

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id. at 9. *CA Rollo*, p. 34.

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

<sup>17</sup> Per Chemistry Report No. D-033-2014. *CA Rollo*, p. 34.

<sup>18</sup> Id. *CA Rollo*, p. 34.

<sup>19</sup> Id. *CA Rollo*, p. 35.

him or steal his motorcycle. Due to this, one of the men tried to hit him with a gun, and so he ran away and entered the premises of J Night Club, with the thought that it would be safer amongst the crowd. He tried to ask for help from people, but they refused to give him aid out of fear.<sup>20</sup>

The unidentified men did not follow him to the club. After about an hour, he climbed to the ceiling and hid there. He came down when he saw a police car. Once he was back on the ground, he was handcuffed and frisked by policemen. They also took his earnings worth ₱200.00. Recustodio denied the alleged sale but admitted that he usually buys ₱100.00 worth of shabu for personal consumption.<sup>21</sup>

In a September 11, 2017 Decision,<sup>22</sup> the Regional Trial Court found Recustodio guilty beyond reasonable doubt of violating Article II, Sections 5 (illegal sale of dangerous drugs), 11 (illegal possession of dangerous drugs), and 12 (illegal possession of equipment and other paraphernalia for dangerous drugs) of the Comprehensive Dangerous Drugs Act of 2002.

The Regional Trial Court ruled that the elements of the crimes charged were sufficiently established by the prosecution. It lent more credence to the testimony of PO2 Malibago than the denial and charge of frameup by Recustodio.<sup>23</sup> It also held that the integrity and the evidentiary value of the shabu sold and found in his possession were preserved.<sup>24</sup> The dispositive portion of the Regional Trial Court's Decision read:

**WHEREFORE**, judgment is hereby as follows:

- a. Finding accused Arturo M. Recustodio guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165 in Criminal Case No. 67-2014 and is accordingly sentenced to suffer the penalty of life imprisonment and fine in the amount of Php 500,000.00; and
- b. Finding accused Arturo M. Recustodio guilty beyond reasonable doubt of violating Section 11 of Republic Act No. 9165 in Criminal Case No. 68-2014 and is accordingly sentenced to suffer the penalty of imprisonment of twenty (20) years and one (1) day as minimum period to twenty-one (21) years as maximum period and fine in the amount of Php 400,000.00 [; and]
- c. Finding accused Arturo M. Recustodio guilty beyond reasonable doubt of violating Section 12 of Republic Act No. 9165 in Criminal Case No. 69-2014 and is accordingly sentenced to suffer the penalty of imprisonment of one (1) year as minimum

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<sup>20</sup> Id. CA Rollo, p. 35.

<sup>21</sup> CA Rollo, p. 35-36.

<sup>22</sup> Id. at 31-39.

<sup>23</sup> Id. at 36-37.

<sup>24</sup> Id. at 38.

period to one (1) year and six (6) months as maximum period and fine in the amount of *Php 10,000.00*

In the service of his sentence, accused is entitled to full credit of his preventive imprisonment pursuant to the provisions of Article 29 of the Revised Penal Code. Accused shall serve his sentences successively at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.

The four (4) sachets of shabu, tooter[,] and digital weighing scale mentioned in the informations are hereby ordered confiscated and forfeited in favor of the government through the PDEA to be disposed of and destroyed by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City[,] is directed to assume custody of the subject drug for its proper disposition within ten (10) days from notice.

SO ORDERED.<sup>25</sup> (Emphasis in the original)

In its March 15, 2019 Decision,<sup>26</sup> the Court of Appeals affirmed the findings of the Regional Trial Court.

The Court of Appeals discussed that the prosecution sufficiently complied with the chain of custody requirements.<sup>27</sup> It noted that the seized items were immediately marked, and were inventoried and photographed in the presence of the accused, a barangay captain, and representatives from the media and the Department of Justice.<sup>28</sup> It found that while the investigating officer and forensic chemist were not presented in court, they were identified through PO2 Malibago's testimony. Furthermore, it ruled that the documentary evidence sufficiently established that the seized items were turned over to them for weighing and examination.<sup>29</sup> It also held that the inconsistencies in PO2 Malibago's testimony pertain only to minor details which do not affect his credibility.<sup>30</sup> The dispositive portion of the March 15, 2019 Decision of the Court of Appeals read:

**WHEREFORE**, the appeal is **DENIED**. The Decision of the Regional Trial Court (RTC), 11<sup>th</sup> Judicial Region, Branch 34, Panabo City, in Criminal Case No. CrC 67-2014, Criminal Case No. CrC 68-2014[,] and Criminal Case No. CrC 69-2014, finding appellant Arturo M. Recustodio guilty beyond reasonable doubt of violation of Section 5, Section 11[,] and Section 12, Article II of Republic Act No. 9165 is **AFFIRMED** *in toto*.

SO ORDERED.<sup>31</sup>

<sup>25</sup> Id at. 38-39.

<sup>26</sup> *Rollo*, pp. 5-17.

<sup>27</sup> Id. at 14.

<sup>28</sup> Id. at 12-13.

<sup>29</sup> Id. at 14.

<sup>30</sup> Id. at 16.

<sup>31</sup> Id.

Accused-appellant filed his Notice of Appeal,<sup>32</sup> which was given due course in the May 9, 2019 Resolution<sup>33</sup> of the Court of Appeals.

In its July 10, 2019 Resolution,<sup>34</sup> this Court acknowledged the receipt of the records forwarded by the Court of Appeals. The parties were also ordered to file their supplemental briefs, if they so desired, within 30 days from notice.

Accused-appellant manifested to this Court that he would no longer file a supplemental brief.<sup>35</sup> The Office of the Solicitor General likewise manifested that it would be dispensing with the filing of a supplemental brief.<sup>36</sup>

The issue in this case is whether or not the prosecution proved beyond reasonable doubt that accused-appellant Arturo M. Recustodio is guilty of illegal sale of drugs, and illegal possession of drugs and of equipment and other paraphernalia for dangerous drugs, penalized under Article II, Sections 5, 11, and 12 of the Comprehensive Dangerous Drugs Act of 2002.

We reverse the conviction of the accused.

The sale of dangerous drugs is punished under Section 5 of the Comprehensive Dangerous Drugs Act, thus:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis in the original)

The elements of the crime of selling dangerous drugs are: first, “the identities of the buyer and the seller, the object, and consideration; and [second,] the delivery of the thing sold and the payment therefor.”<sup>37</sup>

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<sup>32</sup> CA *rollo*, pp. 96–97.

<sup>33</sup> *Id.* at 105.

<sup>34</sup> *Rollo*, p. 24–25.

<sup>35</sup> CA *Rollo*, pp. 17–18.

<sup>36</sup> *Rollo*, pp. 26–28.

<sup>37</sup> *People v. Mariano y Feliciano*, 698 Phil. 772, 780 (2012) [Per J. Perez, Second Division].

On the other hand, illegal possession of dangerous drugs is punished under Section 11 of the law, to wit:

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:

....

(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. (Emphasis in the original)

For a conviction of the crime of possession of dangerous drugs under Section 11, it must be shown that: “[first], the accused was in possession of an item or object, which was identified to be a prohibited or regulated drug; [second], such possession was not authorized by law; and [third], the accused freely and consciously possessed the drug.”<sup>38</sup>

Lastly, illegal possession of equipment and other paraphernalia for dangerous drugs is penalized under Section 12 of the law, to wit:

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

<sup>38</sup> *Dacanay y Lacaste v. People*, G.R. No. 199018, September 27, 2017, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63500>> [Per C. J. Leonardo-De Castro, First Division]. Citing *People v. De Jesus*, 703 Phil. 169, 189 (2013) [Per C.J. Leonardo-De Castro].



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. (Emphasis in the original)

For a conviction of the crime of possession of equipment for dangerous drugs under Section 12, it must be shown that there is: “(1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.”<sup>39</sup>

This Court finds that the prosecution failed to establish all the elements for illegal sale, illegal possession of dangerous drugs, and illegal possession of equipment and other paraphernalia for dangerous drugs. While the prosecution testified as to how the sale took place and how items were found in the possession of the accused, it failed to establish the integrity and identity of the *corpus delicti* or the seized items as the circumstances of the case do not show an unbroken chain of custody over them.

To sustain convictions for crimes relating to the sale and possession of illegal drugs and the possession of equipment for illegal drugs, it is necessary that the *corpus delicti* is presented in court as evidence. Necessarily, the chain of custody rule must have been strictly followed:

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. “The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>40</sup> (Citation omitted)

The strict requirements on the chain of custody rule are provided in Section 21 of Republic Act No. 9165, as amended by Republic Act No.10640:<sup>41</sup>

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

<sup>39</sup> *People v. Mariano y Feliciano*, 698 Phil. 772, 785 (2012) [Per J. Perez, Second Division].

<sup>40</sup> *People v. Ismael y Radang*, 806 Phil. 21, 29 (2017) [Per J. Del Castillo, First Division].

<sup>41</sup> Republic Act No. 9165 has been amended by Republic Act No. 10640 in 2014. However, since the incident occurred in 2011, the applicable law is still Republic Act No. 9165.

*Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

.....

From the moment of confiscation, the seized items pass through four (4) stages linked together. These links were enumerated in *People v. Nandi*.<sup>42</sup>

[T]he following links should be established in the chain of custody of the confiscated item: **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

<sup>42</sup> 639 Phil. 134 (2010). [Per J. Mendoza, Second Division].

**fourth**, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>43</sup> (Citation omitted, emphasis supplied)

Thus, the seized items pass through the following persons: (i) the apprehending officer; (ii) the investigating officer; (iii) the forensic chemist; and (iv) the court. The prosecution is mandated to establish how the seized items were handled in each of the stages and links. This process is meant to ensure that the items presented in court are the same items seized from the accused. It protects against any doubt on the integrity of the seized items and forecloses the possibility that it was planted, tampered or substituted.<sup>44</sup>

It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. *The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto.* This is the reason why authentication and laying a foundation for the introduction of evidence are important.<sup>45</sup> (Emphasis supplied, citation omitted)

Thus, failure to establish how the seized items were handled from the moment they were seized until its presentation in court results in the failure to prove the integrity and identity of the *corpus delicti*.<sup>46</sup>

In this case, the prosecution failed to comply with the witness requirements under Section 21(a) of Republic Act No. 9165.<sup>47</sup> This provision requires that immediately after seizure and confiscation, the apprehending officer must conduct a physical inventory of the seized items and photograph it in the presence of the accused, an elected public official and either a representative of the National Prosecution Service or the media.

In *People v. Tomawis*,<sup>48</sup> this Court explained that it is not enough that the required representatives are present to witness the inventory of the seized items at the police station. They must be physically present at the time of the arrest of the accused and confiscation of the illegal drugs. This can be deduced from the wording of Section 21 which mandates that the inventory and photographing of the seized drugs in the presence of witnesses be done *immediately after confiscation*:

<sup>43</sup> Id. at 144–145. citing *People v. Kamad*, 624 Phil. 289 [Per J. Brion, Second Division].

<sup>44</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 509 [Per J. Leonen, Third Division].

<sup>45</sup> *People v. Belocura*, 693 Phil. 476, 495–496 (2012) [Per J. Bersamin, First Division].

<sup>46</sup> *People v. Dizon*, G.R. No. 223562, September 4, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65729>> [Per J. Lazaro-Javier, Second Division].

<sup>47</sup> Republic Act No. 9165 has been amended by Republic Act No. 10640 in 2014. However, since the incident occurred in 2011, the applicable law is still Republic Act No. 9165.

<sup>48</sup> G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

From the above testimonies, it can be gleaned that *barangay* councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan *barangay* hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

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 frameup [sic] 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.”*<sup>49</sup> (Citations omitted, emphasis supplied)

This was reiterated in *People v. Reyes*,<sup>50</sup> where this Court discussed that the required witnesses must be present in the area of the buy-bust operation, and must witness the actual confiscation of the seized items:

<sup>49</sup> Id. at 149–150. citing *People v. Mendoza*, 736 Phil. 749, 764 (2014) [Per J. Bersamin, First Division].

<sup>50</sup> *People v. Reyes*, 797 Phil. 671 (2016) [Per J. Bersamin, First Division].

Thirdly, another substantial gap in the chain of custody concerned the absence of any representative of the media or of the Department of Justice (DOJ), and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation. The Prosecution did not attempt to explain why such presence of the media or DOJ representatives, and of the elected public official had not been procured despite the buy-bust operation being mounted in the afternoon of November 27, 2002 following two weeks of surveillance to confirm the veracity of the report on the illegal trading in drugs by the accused. *The objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation.* Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not have tolerated the buy-bust team's lack of prudence in not complying with the procedures outlined in Section 21(1), *supra*, in light of the sufficient time for them to comply.<sup>51</sup> (Citation omitted, emphasis supplied)

In *People v. Castillo y Maranan*,<sup>52</sup> this Court explained that the required representatives must have personal knowledge of the arrest and search of the accused, as well as the seizure and marking of the seized items:

It was also only at the police station that Limbo, the Department of Justice representative, and Barangay Chair Latayan were called in to witness the inventory and photographing. It is clear that the required witnesses themselves had no personal knowledge of the supposed sale and subsequent apprehension, search, seizure, and marking.

Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. Having their presence only at a very late stage reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite lacking authentic knowledge on the items confronting them. They are then reduced to rubberstamps, oblivious to how the dangers sought to be avoided by their presence may have already transpired.<sup>53</sup>

Here, there is no showing that the required witnesses were present at the accused was apprehended, or at the time the seized items were confiscated. While the seized items were inventoried and photographed in the presence of the accused, a representative from the Department of Justice, an elected public official, and a media representative, these witnesses seemed to have been present only at the police station, after the buy-bust operation, and after the

<sup>51</sup> Id. at 689-690.

<sup>52</sup> *People v. Castillo y Maranan*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division].

<sup>53</sup> Id.

confiscation and marking of the seized items. There was no showing they had any personal knowledge of the alleged buy-bust operation or of the confiscation of the seized items.

The absence of the required witnesses during the apprehension of the accused is not helped by the fact that the prosecution only presented PO2 Malibago as its sole witness, despite having several police officers acting as back-up. This Court notes that no other testimony corroborates or supports the testimony of PO2 Malibago. Thus, the prosecution did not take the necessary precautions and measures to assure this Court that no intentional or unintentional planting, altering, or tampering of evidence took place.

This circumstance is likewise notable in establishing the succeeding links in the chain of custody. Under the chain of custody rule, the prosecution is still obliged to clearly demonstrate how the seized items were handled and transferred by the apprehending officer to the investigating officer, and then later to the forensic chemist, and finally, to the court. In *People v. Galisim y Garcia*:<sup>54</sup>

*Finally*, the fourth link was likewise not sufficiently established. Absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs could not be reasonably established. In this case, both the prosecution and defense dispensed with forensic chemist PCI Cariño's testimony during the hearing on September 15, 2011.

In *People v. Ubungen y Pulido* citing *People v. Pajarin*, the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, the prosecution and defense dispensed with PCI Cariño's testimony and stipulated that **"he had received and examined the specimens and issued the findings in his report."** Albeit Physical Science Report No. D-54-11E was offered as evidence, nothing therein showed, however, the manner of handling the specimens before PCI Cariño received them, how he examined the items, and how these items left his possession to ensure they will not be substituted or tampered during trial.<sup>55</sup> (Emphasis in the original)

<sup>54</sup> G.R. No. 231305, September 11, 2019 <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65739>> [Per J. Lazaro-Javier, Second Division].

<sup>55</sup> *Id.* citing *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018 [Per J. Martires, Third Division]; RTC Judgment dated December 12, 2013, CA Rollo, pp. 8-15; *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018 [Per J. Martires, Third Division].

*People v. Bangcola y Maki*<sup>56</sup> supports this conclusion:

In this case, there was no testimonial or documentary evidence on how PCI Libres kept the seized items while it was in her custody until it was presented in court. PCI Libres did not testify in court but the parties entered into general stipulations of her testimony. The stipulations are replete of information regarding the condition of the seized item while in her custody or that there was no opportunity for someone not in the chain to have possession thereof. The prosecution could have presented the forensic chemist in order to testify on the safekeeping of the drugs but, again, failed to do so.

Similarly, in *People v. Gutierrez*, there were also inadequate stipulations as to the testimony of the forensic chemist. In said case, no explanation was given regarding the chemist's custody in the interim — from the time it was turned over by the investigator for laboratory examination. The records also failed to show what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court. Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.<sup>57</sup> (Citations omitted, emphasis in the original)

In this case, PO2 Malibago testified that he personally prepared and brought the request for laboratory examination to the PNP Crime Laboratory. He explained that he submitted the seized items to SPO2 Obero for weighing, and after this was done, the pieces of evidence were turned over to forensic chemist PCI Gucor. Later, in open court, the four (4) plastic sachets were positively identified by PO2 Malibago.

However, there was no showing as to how SPO2 Obero and PCI Gucor examined, treated, and kept the seized items. PO2 Malibago's sole testimony as the apprehending officer is not sufficient to assure that the chain of custody rule has been complied with.

Clearly, the prosecution failed to show how it complied with the law's safeguards to ensure that no planting, tampering, or alteration of the evidence took place. To reiterate, this failure to strictly adhere to the chain of custody rule casts serious doubt on the identity and integrity of the *corpus delicti*. Hence, this Court cannot reasonably conclude with moral certainty that the prosecution established beyond reasonable doubt the guilt of accused-appellant of the crimes of illegal sale of dangerous drugs, illegal possession of dangerous drugs, and illegal possession of equipment and other paraphernalia for dangerous drugs.

<sup>56</sup> G.R. No. 237802, March 18, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65196>> [Per J. Gesmundo, First Division].

<sup>57</sup> Id. citing 614 Phil. 285 (2009) [Per J. Carpio-Morales, Second Division].

June 17, 2020

**WHEREFORE**, premises considered, the Court of Appeals Decision dated March 15, 2019 in CA-G.R. CR-HC-01799-MIN is **REVERSED**. Accused-appellant Arturo M. Recustudio is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of the Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

**SO ORDERED.”**

Very truly yours,

*Misa DC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *10/17/2020*

OFFICE OF THE SOLICITOR GENERAL  
 134 Amorsolo Street  
 1229 Legaspi Village, Makati City

COURT OF APPEALS  
 CA G.R. CR HC No. 01799-MIN  
 9000 Cagayan de Oro City

The Presiding Judge  
 REGIONAL TRIAL COURT  
 Branch 34, 8105 Panabo City

CSupt. Rufino A. Martin  
 Officer-in-Charge  
 DAVAO PRISON & PENAL FARM  
 8105 B.E. Dujali, Davao del Norte

Mr. Arturo M. Recustudio  
 c/o The Officer in Charge  
 DAVAO PRISON & PENAL FARM  
 B.E. Dujali, 8105 Davao del Norte

Atty. Oliver E. Villa  
 Regional Special & Appealed Cases Unit  
 PUBLIC ATTORNEY'S OFFICE  
 2/F BJS Building  
 Tiano Brothers cor. San Agustin Sts.  
 9000 Cagayan de Oro City

The Director General  
 BUREAU OF CORRECTIONS  
 1770 Muntinlupa City



The Superintendent  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

The Director General  
PHILIPPINE NATIONAL POLICE  
National Headquarters  
Camp Crame, Quezon City

The Director General  
PHILIPPINE DRUG ENFORCEMENT AGENCY  
PDEA Bldg., NIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

DANGEROUS DRUGS BOARD  
3<sup>rd</sup> Floor DDB-PDEA Bldg.,  
BIA Northside Road  
National Government Center  
Brgy. Pinyahan, Quezon City

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G.R. No. 247506/foy

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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

**G.R. No. 247506**

-versus-

ARTURO M. RECUSTODIO,  
Accused-Appellant.

x-----/

**ORDER OF RELEASE**

**TO: The Director General**  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

Thru: **The Superintendent**  
New Bilibid Prison North  
BUREAU OF CORRECTIONS  
1770 Muntinlupa City

**GREETINGS:**

WHEREAS, the Supreme Court on June 17, 2020 promulgated a Resolution in the above-entitled case, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the Court of Appeals Decision dated March 15, 2019 in CA-G.R. CR-HC-01799-MIN is **REVERSED**. Accused-appellant Arturo M. Recustodio is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. *ca*

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of the Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

**SO ORDERED.”**

**NOW, THEREFORE,** you are hereby ordered to immediately release **ARTURO M. RECUSTODIO**, unless there are other lawful causes for which he should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

**GIVEN** by the Honorable **MARVIC MARIO VICTOR F. LEONEN**,  
Chairperson of the Third Division of the Supreme Court of the Philippines,  
this **17<sup>th</sup>** day of **June 2020**.

Very truly yours,

*Misael DC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
Division Clerk of Court / *sep*  
10/13/2020

OFFICE OF THE SOLICITOR GENERAL  
134 Amorsolo Street  
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G.R. No. 247506/*aw CA*

