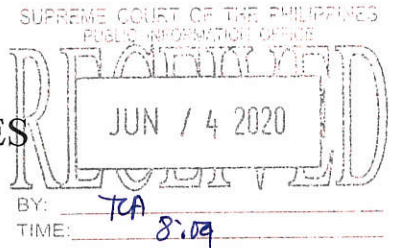




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila



SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 March 2020** which reads as follows:*

“**G.R. No. 239479 (People of the Philippines v. Albert Bugarin y Raquion)**. – This is an appeal filed by accused-appellant Albert Bugarin y Raquion from the Decision¹ dated 29 March 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07743, affirming the Decision² dated 09 July 2015 of the Regional Trial Court (RTC), Branch 71, Iba, Zambales in Crim. Case No. RTC-6629-I, finding accused-appellant guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Appellant Albert Bugarin was charged with violation of Section 5, Article II of RA No. 9165,³ otherwise known as the “Dangerous Drugs Act of 2002”, under an Information⁴ dated 06 December 2011.

Upon arraignment, appellant pleaded not guilty to the charge. Thereafter, pre-trial conference and trial on the merits ensued.

The prosecution presented that sometime in December 2011, the Zambales Police Team⁵ received a report from a confidential informant (CI)

¹ *Rollo*, pp. 2-12. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Maria Filomena D. Singh, concurring.

² *CA rollo*, pp. 54-63. Penned by Judge Consuelo Amog-Bocar.

³ Article II, Section 5 of Republic Act No. 9165 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.

⁴ Records, pp. 2-3.

⁵ Police Provincial Office-Provincial Anti-Illegal Drugs Special Operation Task Group/Emergency Response Team stationed at Camp Conrado Yap, Iba, Zambales.

that appellant was engaged in the sale of illegal drugs in Iba and Botolan, Zambales. Acting on the information, the team led by Police Chief Inspector Preston Bagangan (PCI Bagangan) conducted a briefing to set up a buy-bust operation. PO1 Michael Oasnon (PO1 Oasnon) was designated as the poseur-buyer, while PO1 Paul Christian Baluyot (PO1 Baluyot) and other police officers were designated as the arresting officers.⁶

On 05 December 2011, the operation ensued. At about 12:05 in the afternoon, PO1 Oasnon and the CI, on board a tricycle, arrived at the target area in Barangay Lipay-Dingin, Iba, Zambales. PO1 Baluyot and the other police officers strategically positioned themselves in the area. Thereafter, appellant arrived and sat beside the CI inside the side car of the tricycle.⁷

Upon being introduced to PO1 Oasnon as the buyer, appellant handed one (1) heat-sealed small transparent plastic sachet containing white crystalline substance to the CI, who, in turn, gave it to PO1 Oasnon. The CI, then, handed to appellant two marked five hundred-peso bills. After PO1 Oasnon confirmed that the plastic sachet contained *shabu*, he executed the pre-arranged signal by removing his bull cap.⁸ PO1 Oasnon, then, took custody of the one plastic sachet subject of the buy-bust and returned to Camp Conrado Yap (police headquarters).⁹ On the other hand, the rest of the team arrived and arrested appellant. Thereafter, the team brought appellant to the police headquarters.¹⁰ In his testimony, PO1 Oasnon declared that he had no participation in appellant's arrest as he went ahead of the team to the police headquarters.¹¹

At the police headquarters, an inventory of the seized items was conducted which was witnessed by DOJ Representative Balangco, Barangay Chairperson Cortes and Media Representative Villa,¹² as indicated in the Inventory Receipt¹³ signed by appellant. Thereafter, PO1 Oasnon turned over the plastic sachet to PO1 Amata.¹⁴

Armed with a request for laboratory examination, PO1 Amata, accompanied by PO1 Oasnon, brought the seized plastic sachet bearing the mark "MCO" to the Philippine National Police Zambales Provincial Crime Laboratory Office for examination.¹⁵ The item, as well as the request, was received SPO1 Jessu Rendon, who, in turn, turned over the same to Forensic Chemist PCI Cañete.¹⁶ After examination, PCI Cañete issued *Chemistry Report No. D-054-2011ZPCLO*¹⁷ dated 05 December 2011, which indicated

⁶ TSN, 26 February 2013, pp. 4-6.

⁷ TSN, 25 March 2014, pp. 6-8.

⁸ TSN, 26 February 2013, pp. 8-9.

⁹ Id. at 10.

¹⁰ Id.

¹¹ TSN, 19 September 2013, p. 7.

¹² TSN, 26 February 2013, pp. 11-12.

¹³ Records, p. 18.

¹⁴ TSN, 26 February 2013, p. 13.

¹⁵ Records, pp. 180-181; TSN, 3 March 2010, pp. 22-24.

¹⁶ Id. at 168; RTC Order dated 10 February 2015.

¹⁷ Id. at 9.

that the contents of the plastic sachet were positive for methylamphetamine hydrochloride, otherwise known as *shabu*, a dangerous drug.

For his part, appellant interposed denial. He claimed that at around 9:00 o'clock in the morning of 05 December 2011, he went outside his house and waited for a tricycle. Suddenly, passengers from a white pick-up truck, which stopped nearby, alighted and approached him. He was, then, forcibly boarded inside the truck and brought to the police headquarters. Thereat, he was shown a small plastic sachet containing white stones and was forced to admit that he was selling illegal drugs. The police officers further forced him to sign a document without explaining to him its contents.¹⁸

The Regional Trial Court Decision

In a Decision¹⁹ dated 09 July 2015, the Regional Trial Court (RTC) found appellant guilty beyond reasonable doubt of the crime charged and imposed upon him the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

Finding the testimonies of the police witnesses credible, the RTC upheld the presumption of regularity of the buy-bust operation and debunked the appellant's denial.²⁰ It was convinced of the integrity and the preservation of the one (1) plastic sachet containing *shabu* subject of the buy-bust operation.²¹

Aggrieved, appellant filed with the Court of Appeals (CA) an appeal, maintaining that the prosecution failed to adequately establish the chain of custody of the seized plastic sachet of *shabu*, *i.e.*, the marking of the plastic sachet of *shabu* was not accounted for.²²

The Court of Appeals Decision

In a Decision²³ dated 29 March 2017, the CA affirmed appellant's conviction *in toto*.

As did the RTC, the CA found the testimonies of the police witnesses credible over that of appellant's denial. It held that there was substantial compliance with the requirements under Section 21 of RA No. 9165 on the custody of the seized drugs.

Hence, this appeal.

¹⁸ Id. at 206; Appellant's *Sinumpaang Kontra-Salaysay* dated 16 April 2015, which was adopted as his direct testimony.

¹⁹ Id. at 208-217.

²⁰ Id. at 213-214; RTC Decision dated 09 July 2015, pp. 6-7.

²¹ Id. at 214-217; RTC Decision dated 09 July 2015, pp. 7-10.

²² CA *rollo*, pp. 44-45.

²³ Id. at 108-118.

For purposes of this appeal, the Public Attorney's Office²⁴ and the Office of the Solicitor General (OSG)²⁵ manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

The appeal hinges on the procedural flaws purportedly committed by the police officers in the proper handling of the seized drugs as embodied in Section 21, Article II of RA No. 9165.

Appellant underscores on the failure of seizing officer PO1 Oasnon to establish where and when he marked the seized drugs. Appellant invites the attention of the Court to the testimony of PO1 Oasnon, declaring that after taking possession of the plastic sachet from appellant and executing the pre-arranged signal, he (PO1 Oasnon) returned to the police headquarters ahead of the arresting officers, who were yet to arrest appellant.²⁶ Appellant points out that it was only when PO1 Oasnon was asked to identify the seized plastic sachet in court that the marking "MCO" was mentioned.²⁷

On the other hand, the OSG maintains the marking and inventory of the seized drugs "*were done twenty five minutes after their confiscation in the presence of appellant, DOJ representative Balangco, media representative Villa, and Barangay Captain Cortes, who all signed the Inventory Receipt.*"²⁸ To the OSG, there was substantial compliance with the procedure laid down in Section 21 of RA No. 9165.²⁹

Issue

The core issue for resolution is, whether the RTC and the CA erred in finding appellant guilty beyond reasonable doubt of the offense charged despite the alleged non-compliance with the mandatory requirements laid down under Section 21, Article II of RA No. 9165.

Our Ruling

The appeal is impressed with merit.

In prosecutions for *illegal sale* of dangerous drugs under Section 5 of RA No. 9165, conviction is proper if the following essential elements are established: "(1) the identity of the buyer and the seller, the object, and the consideration; and, (2) the delivery of the thing sold and the payment thereto."³⁰

²⁴ Id. at 20-23.

²⁵ Id. at 24-29.

²⁶ Id. at 44-45.

²⁷ Id. at 45.

²⁸ Id. at 98.

²⁹ Id. at 98-99.

³⁰ *People v. Sembrano*, 642 Phil. 476, 487 (2010).

Jurisprudence instructs that it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.³¹ To obviate any unnecessary doubt on the identity of the seized dangerous drugs, the prosecution has to show an unbroken chain of custody over the same, and account for each link in the chain of custody from the moment the drugs are seized until their presentation in court as evidence of the crime.³²

The required procedure on the seizure of drugs is embodied in Section 21, paragraph 1, Article II of RA No. 9165, which states:

- 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[.]

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations (IRR)* of RA No. 9165, which reads:

- (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:
x x x *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 supplied)

Consistency with the “chain of custody” rule requires that the marking, “which is the affixing on the dangerous drugs or [substance] by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.”³³ This first stage in the chain of custody is crucial as it operates to set apart as evidence the dangerous drugs from other material, from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby preventing switching, planting or contamination of evidence.³⁴ Such step initiates the process of protecting innocent persons from dubious and concocted searches.³⁵

³¹ *People v. Crispo*, G.R. No. 230065, 14 March 2018, 859 SCRA 356.

³² *People v. Viterbo*, 739 Phil. 593, 601 (2014).

³³ *People v. Gonzales*, 708 Phil. 121, 130-131 (2013).

³⁴ *People v. Ismael*, 806 Phil. 21, 31-32 (2017).

³⁵ *People v. Sanchez*, 590 Phil. 214, 241 (2008).

In this case, the police officers committed fatal procedural lapses when they deviated from the outlined procedure for the marking and physical inventory of the seized drugs.

First – The prosecution failed to establish the surrounding circumstances as regards the marking of the seized plastic sachet of *shabu*. In his testimony, seizing officer PO1 Oasnon, who purportedly marked the seized plastic sachet of *shabu*, declared, *viz*:

Q And after you were able to successfully bu[y] a sachet of shabu from the accused[,] what happen[ed] next?

A I examined first the item if it is positive as shabu.

x x x x

Q After you examined the same that the sachet contains white crystalline substance, what was your conclusion?

A I executed that pre-arrange[d] signal by removing my bull cap, ma'am.

x x x x

Q And what happen[ed] after you executed the pre-arrange[d] signal?

A The arresting officers arrested him, ma'am.

Q What did you do since you [we]re nearer to the accused?

A No more, ma'am.

x x x x

Q **After the accused was arrested, what next happen[ed]?**

A **He was brought to the headquarters ma'am.**

Q And you said that the confidential agent turned over to you that sachet of shabu, so, who was holding that sachet of shabu on your way to the headquarters?

A I was the one, ma'am.

Q **And where were you when the accused was arrested?**

A **I have returned to the station, ma'am.**

Q **So, you ha[d] no participation in the arrest of the accused?**

A **None, ma'am.**

x x x x³⁶

Q x x x Albert Bugarin was already outside of the tricycle and walking (*sic*) when the other police officers arrested him?

A He was outside of the side car standing, ma'am.

Q **You ha[d] no participation in his arrest?**

A **None, ma'am.**

³⁶ TSN, 26 February 2013, pp. 9-11.

Asa

Q **And when he was being arrested[,] you already went ahead [to] the police station?**

A Yes, ma'am.³⁷ (Emphases supplied)

PROS. CATOLICO TO WITNESS:

You testified last time Officer that you had custody of the sachet of shabu on your way to the police station and turned it over to Police Officer Amata[,] who brought it to the crime laboratory. If that sachet of shabu will be shown to you, will you be able to identify the same?

A Yes, ma'am.

Q And what marking w[as] placed on the sachet of shabu?

A MCO, ma'am.

Q And MCO signifies what?

A Michael C. Oasnon, ma'am.

Q Who placed the MCO on the sachet of shabu?

A I was the one, ma'am.

Q I am showing to you officer a sachet of shabu which was brought before this Court by the forensic chemist, will you tell us if your initial MCO appears thereon?

A This is the one, ma'am.³⁸

Nothing can be gained from the testimony of PO1 Oasnon to establish the first stage in the chain of custody. His accounts on the supposed marking of the seized evidence was limited to his mere identification in court of the plastic sachet bearing the mark "MCO," nothing more. The question persistently nags, when, where and how the said mark was affixed on the sachet, in the first place. Even a painstaking review of the records and transcripts yields no results to supplant by way of corroboration PO1 Oasnon's palpably deficient testimony.

Second – The physical inventory of the seized plastic sachet of *shabu* was not conducted immediately at the crime scene, but only at the police station.

True, Section 21(a) of Article II of the *IRR* offers some flexibility and sustains minor deviation in complying with the express requirements; hence, the saving proviso, that non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over the seized items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.³⁹ Accordingly, in instances of warrantless seizures, inventory and photography may be conducted at the nearest police station.⁴⁰ In *People v.*

³⁷ TSN, 19 September 2013, pp. 6-7.

³⁸ TSN, 09 July 2013, pp. 2-3.

³⁹ See *Marquez v. People*, 706 Phil. 453 (2013).

⁴⁰ Article II, Section 21 (a) of the Implementing Rules and Regulations of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002".

Almorfe,⁴¹ the Court emphasized, however, that the saving clause under the IRR, presupposes the mandatory twin-requirements, viz: (a) the prosecution must explain the reasons behind the procedural lapses, and (b) that the integrity and evidentiary value of the seized drugs had nonetheless been preserved.⁴² Justifiable grounds for non-compliance must be proven as a fact, as the trial court cannot presume what these grounds are or that they even exist.⁴³

In this case, the prosecution failed to hurdle the contemplated twin-requirements. The records are bereft of any justifiable grounds or plausible explanation as to why the physical inventory of the seized drugs was made by the police officers only at the police station. Taken, thus, in light of the broken/loose crucial first link in the chain of custody, as discussed earlier, it cannot be said that seized evidence had been preserved. Necessarily, the case is taken out from the applicability of the saving proviso.

The procedural lapses committed by the apprehending officers underscored the uncertainty about the identity and integrity of the seized sachet of *shabu* admitted as evidence against the appellant.⁴⁴ These lapses not only cast doubt on the identity of the *corpus delicti* but also tends to negate, if not totally discredit, the claim of regularity in the performance of official duties by the police officers.⁴⁵ Contrary, thus, to the opinion of the RTC and CA, the presumption of regularity in the performance of official duties cannot supplant the palpably insufficient and uncertain testimonies of the police witnesses, as regards compliance with the mandatory requirements. "As every fact necessary to constitute the crime must be established by proof beyond reasonable doubt,"⁴⁶ the doubts established in this case must be resolved in favor of appellant. His acquittal is in place.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 29 March 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07743, is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellant Albert Bugarin y Raquion is **ACQUITTED** of the crime charged.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Albert Bugarin y Raquion, unless he is being held in custody for any other lawful reason; and (b) inform the Court of the action taken within five (5) days from receipt of this Resolution.

Let entry of judgment be issued.

⁴¹ See 631 Phil. 51 (2010).

⁴² See *People v. Goco*, 797 Phil. 433 (2016).

⁴³ *People v. De Guzman*, 630 Phil. 637, 647 (2010).

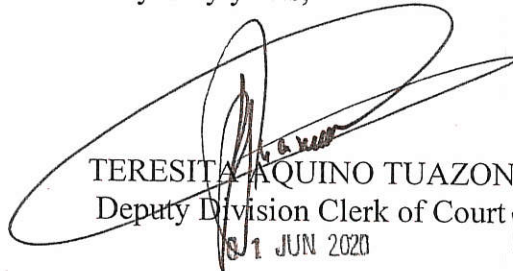
⁴⁴ See *People v. Sanchez*, 590 Phil. 214 (2008).

⁴⁵ See *Dela Cruz v. People*, 617 Phil. 109 (2009).

⁴⁶ *People v. De la Cruz*, 591 Phil. 259, 271 (2008).

SO ORDERED.”

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court
31 JUN 2020

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. RTC-6629-I)

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Accused-Appellant
c/o The Director
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