



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 3, 2021, which reads as follows:

“G.R. No. 248056 (*People of the Philippines v. Noel Cariño y Martin*). — This Appeal assails the Decision¹ dated April 15, 2019 of the Court of Appeals (CA) in CA-G.R. CR HC No. 10540 affirming the conviction of Noel Cariño y Martin (appellant) for violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165 involving the alleged sale and possession of Methamphetamine Hydrochloride, also known as “shabu,” a dangerous drug.

The Proceedings Before the Trial Court

The Charges

Two separate Informations for violation of RA 9165 were filed against appellant, *viz.*:

CRIM. CASE NO. 14887

That in the afternoon of July 09, 2012 in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused NOEL CARILÑO y MARTIN, without authority of law and without any permit to sell, transport, deliver, and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell and distribute one (1) piece heat-sealed transparent plastic sachet containing 0.10 gram of METHAMPHETAMINE HYDROCHLORIDE, commonly known as “shabu,” a dangerous drug, to PO1 ALBERTO T. DARILAG, who acted as a poseur buyer; that when the accused handed to the poseur buyer the dangerous drug, the poseur buyer in turn handed to the accused the agreed purchase price of the dangerous drug in the amount of P1,000.00 which was previously marked and used as buy-bust money consisting of one (1) piece genuine P1,000.00 peso-bill bearing Serial No. QR464613, and this led to the immediate apprehension and arrest of the accused and the recovery of the buy bust money from his possession, control, and custody along the LDS Alley at Aulayan Norte, this city, by

¹ Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court), with Associate Justices Fernanda Lampas Peralta and Rodil V. Zalameda (now a Member of the Court), concurring; *rolla*, pp. 3-17.

members of the PNP assigned at the Provincial Intelligence Section, Cagayan, Police Provincial Office (CPPO), Camp Tirso II. Gador, Tuguegarao City, who formed the buy bust team, and who acted in coordination with the members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, this city; that the buy-bust operation led to the confiscation of the dangerous drug.

CONTRARY TO LAW.² (Citation omitted)

CRIM. CASE NO. 14888

That in the afternoon of July 09, 2012 in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused NOEL CARIÑO y MARTIN, without any authority of law and without the necessary documents or permit from lawful authorities, did then and there willfully, unlawfully, and feloniously have in his possession one (1) piece heat-sealed transparent plastic sachet containing 1.13 gram of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "Shabu", a dangerous drug; that the said dangerous drug was seized and confiscated from the possession, control and custody of the accused along the LDS Alley at Atulayan Norte, this city, and this led to his immediate apprehension and arrest by members of the PNP, assigned at the Provincial Intelligence Section, Cagayan, Police Provincial Office (CPPO), Camp Tirso II. Gador, Tuguegarao City, who acted in coordination with the members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City.

CONTRARY TO LAW.³

On arraignment, appellant pleaded not guilty to both charges.⁴

During the trial, SPO1 Gador Fernandez (SPO1 Fernandez), PO3 Benjamin Tungcul (PO3 Tungcul), PO1 Alberto Darilag (PO1 Darilag), SPO3 Joaquin Accad (SPO3 Accad), and PCI Harvey Pajarillo (PCI Pajarillo) testified for the prosecution.⁵ On the other hand, appellant testified for the defense.⁶

The testimony of Forensic Chemist PSI Glenn Ly Tuazon (PSI Tuazon) was dispensed with after the parties stipulated on the following main points:

1. On July 9, 2012, at 5:15 in the afternoon, PSI Tuazon received from SPO3 Accad a Memorandum Request for Laboratory Examination of the two (2) heat-sealed transparent plastic

² Id. at 4-5.

³ Id. at 5-6.

⁴ Id. at 6.

⁵ CA rollo, p. 51.

⁶ Id. at 54.

sachets containing white crystalline substance. One was with the marking EXH A-1, ATP, JGA, with signatures and date 02-09-12, while the other one was with the marking EXH A-2, BMT, JGA with signature and date 07-09-12;⁷ and

2. PSI Tuazon conducted the examination on both specimens which were later found positive for Methamphetamine Hydrochloride as evidenced by Chemistry Report No. D-62-2012.⁸

The Prosecution's Version

The prosecution's version of the incident, as summarized by the Office of the Solicitor General (OSG) and adopted by the CA, is as follows:

At 10:00 am on July 9, 2012, members of the Provincial Intelligence Section of the Philippine National Police-Cagayan Police Provincial Office (PNP-CPPO) held a meeting at their headquarters in Camp Tirso II. Gador in Tuguegarao City. Police Senior Inspector (PSI) (sic) Harvey Pajarillo presided over the meeting, with Senior Police Officer 3 (SPO3) Fernando Pagulayan, PO2 (sic) Benjamin Tungcul, PO2 Robert Rivera, PO1 Alberto Darilag, PO1 (sic) Gador P. Fernandez, one PO2 Guzman, and one PO1 Biraquit in attendance.

A confidential informant (CI) known to PSI (sic) Pajarillo since 2010 was also present. Based on the CI's tip, a plan was hatched to entrap appellant in LDS Alley in Barangay Atulayan Norte. PSI Pajarillo named himself as team leader of the buy-bust team, while he spelled out the roles of the following: PO1 Darilag as the poseur-buyer; and PO1 (sic) Tungcul and PO1 (sic) Fernandez as backups/arresting officers.

PSI (sic) Pajarillo handed a P1,000 bill with serial number QR464613 to PO1 Darilag as the buy-bust money. PO1 Darilag etched a check mark on the upper right side of the bill. The team also agreed that once PO1 Darilag flicks his thumb up, that would be the signal that the transaction is successful and PO1 (sic) Tungcul and PO1 (sic) Fernandez may already arrest appellant.

As the transaction was scheduled to happen between 1 to 2 pm, the team left the Camp Gador at about 12:30 pm on different vehicles for LDS alley. Once they arrived on the scene, the police officers took up their designated positions. PO1 Darilag and the CI went to a nearby house whose owner was known to the CI, and the two stood by the gate to wait for appellant.

Appellant arrived at 1:30 pm, prompting the CI to remark, "Pre bat ang tagal mo?" (Man, what took you so long?) Appellant told him that he had to pass by somewhere else first. Before that exchange, the CI had

⁷ TSN, March 12, 2013, p. 3; *id.* at 51.

⁸ *Id.* at 52.

already apprised PO1 Darilag that the man approaching their position was appellant.

Appellant then asked if they brought the money, to which the CI assented. Appellant then drew a purse from his pocket, pulled out a plastic sachet containing a (sic) white crystalline substance and showed it to PO1 Darilag.

Convinced that it was shabu, the police officer handed the marked money to appellant while the latter gave the plastic sachet to PO1 Darilag.

At that moment, PO1 Darilag flicked his thumb up, the signal known to the buy-bust team for appellant's arrest. PO1 (sic) Tungcul and PO1 (sic) Fernandez approached the trio and introduced themselves as police officers. PO1 (sic) Tungcul seized the following items from appellant: (1) the buy-bust money; (2) another plastic sachet with white crystalline substance inside the purse in appellant's pocket; and (3) a Nokia 5130c-2 cellular phone.

The buy-bust team arrested appellant and brought him and the seized items to Camp Gador. The police officers turned over the evidence to investigating officer SPO3 Joaquin G. Accad. The inventory went underway, and markings were made on the seized items. It was done in front of appellant, Barangay Atulayan Norte Chairman Jacinto G. Meman Jr., Barangay Atulayan Norte Kagawad Tecla C. Carbajosa, Ferdinand A. Gangan of the Tuguegarao City Prosecution Office and Augie J. Garma of Bombo Radyo-Tuguegarao City.

The PNP-CPPO subsequently prepared a request for laboratory examination of the plastic sachets in the PNP Crime Laboratory, in Camp Marcelo Adduru, Tuguegarao City. Together with appellant, PO1 Darilag and PO2 (sic) Tungcul, SPO2 (sic) Accad brought the evidence to Camp Adduru. Eventually, the crime laboratory determined that the plastic sachets indeed contain methamphetamine hydrochloride.⁹

The Defense's Version

Appellant denied the charges. He claimed that on July 9, 2012, at around 11:30 in the morning, he was at the Lallo Bus Line at Don Domingo, Tuguegarao City waiting for the arrival of the fish he ordered from Cagayan. He later received a call from his friend Roberto Cusipag (Cusipag), who invited him to a drinking spree. Subsequently, he was fetched by Cusipag, and together, they proceeded to the house of Cusipag's friend.¹⁰

When they arrived at the house of Cusipag's friend, there already was a group of seven (7) persons drinking.¹¹

Suddenly, two (2) police officers approached appellant and handcuffed him. Thereafter, he was brought to the nearest police station.¹²

⁹ *Rollo*, pp. 6-8.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.*

The Trial Court's Ruling

As borne by its Joint Decision¹³ dated November 3, 2017, the trial court rendered a verdict of conviction, viz.:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 14887, the Court finds accused NOEL CARIÑO y MARTIN, GUILTY beyond reasonable doubt of the charge for violation of Sec. 5, Art. II, RA 9165, and sentences him to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (P500,000.00) pesos; and

2. In Criminal Case No. 14888, the Court finds accused NOEL CARIÑO y MARTIN, GUILTY beyond reasonable doubt of the charge for violation of Sec. 11, Art. II, RA 9165 and sentences him to suffer the penalty of imprisonment of Twelve (12) years and one (1) day as minimum to Twenty (20) years as maximum and to pay a fine of Three Hundred Thousand (P300,000.00).

The dangerous drug presented before the Court is hereby forfeited and confiscated in favor of the government and the Branch Clerk of Court is hereby directed to immediately deliver the said items to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.¹⁴

The trial court found that the prosecution was able to establish the elements of illegal sale and possession of dangerous drugs. It held that the testimonies of the prosecution witnesses coupled with the documentary evidence left no doubt on the culpability of appellant.¹⁵

The CA's Ruling

The CA affirmed, through its assailed Decision dated April 15, 2019, the Joint Decision of the trial court. It found that the buy-bust operation was legitimately conducted against appellant and the prosecution had clearly established the elements of both illegal sale and illegal possession of dangerous drugs against him.¹⁶

Moreover, the prosecution had established a justifiable reason for the non-observance of the procedure on the conduct of inventory. Thus, there was an unbroken chain of custody of the seized items.¹⁷

¹³ Penned by Presiding Judge Vilma T. Panig; CA *rollo*, pp. 50-57.

¹⁴ *Id.* at 57.

¹⁵ *Rollo*, p. 9.

¹⁶ *Id.* at 11 and 15.

¹⁷ *Id.* at 15.

The Present Appeal

Appellant now seeks affirmative relief from this Court and prays anew for his acquittal.

In compliance with the Resolution dated August 19, 2019,¹⁸ both parties submitted their respective Manifestations (in lieu of a Supplemental Brief), having fully discussed their points of arguments in their respective Briefs submitted with the CA.¹⁹

Issue

Did the CA err in affirming the verdict of conviction?

Our Ruling

The appeal is meritorious.

At the outset, We emphasize that an appeal in a criminal case throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment, assigned or unassigned.²⁰

Appellant is charged with illegal sale and possession of dangerous drugs allegedly committed on July 9, 2012. The governing law, therefore, is RA 9165 before its amendment in 2014.²¹

For a successful prosecution of offenses involving the illegal sale of dangerous drugs, the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.²²

Appellant argues that the purported *poseur*-buyer, PO1 Darilag, was a mere spectator to the alleged illegal sale transaction because, assuming there really was a sale transaction, the contract of sale was negotiated and formed between appellant and the confidential informant, not with PO1 Darilag. PO1 Darilag's participation was limited to exchanging the buy-bust money for the illegal drugs.

¹⁸ Id. at 23-24.

¹⁹ Id. at 25-28 and 37-39.

²⁰ See *San Juan v. People*, 664 Phil. 547, 559 (2011).

²¹ *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

²² *People v. Enad*, 780 Phil. 346, 357 (2016).

We disagree with appellant.

In *People v. Meneses*,²³ with facts closely similar to the present case, the prosecution therein alleged:

Upon arrival, the CI went towards the Elf Truck and spoke with three (3) male persons beside it. Meanwhile, PO2 Dela Cruz stood around ten (10) steps away, until he was introduced as the buyer of the marijuana to the truck driver who was subsequently identified as Meneses. Meneses asked PO2 Dela Cruz to give the money to his companion as the other male person served as a lookout. Right after, Meneses brought out one (1) pack of tape-sealed suspected marijuana from his shirt and handed the same to PO2 Dela Cruz.

The appellant in that case argued that he and the *poseur*-buyer did not agree on any amount and consideration for the sale of the subject marijuana and “shabu.” In ruling that there was an illegal sale transaction in that case, the Court held:

To be clear, in this kind of situation, the Civil Code will not apply. Technically, the sale was really null and void as the object of the sale is expressly prohibited by law. **To emphasize, what only needs to be proven is that there should be a transaction or sale that had taken place. Sale means an actual exchange of the buy-bust money and the illegal drugs.** Here, the punishable act was the act of selling the illegal drugs which cannot be negated by mere technicalities of a contract of sale. The fact that there was an agreement between the buyer and the seller to exchange money and drugs, there was already a meeting of the minds between the parties. **As long as the seller accepted the consideration, followed by the delivery of the illegal drugs to the buyer, the crime is already consummated.**²⁴ (Emphasis added)

In the present case, PO1 Darilag alleged in his judicial affidavit – the contents of which he affirmed in court – that at the place of transaction, the confidential informant introduced him to appellant as the buyer of ₱1,000.00 worth of shabu. Appellant asked if they brought with them the money, to which the confidential informant answered in the affirmative. Thereafter, the exchange of the illegal drug and the buy-bust money took place between him (PO1 Darilag) and appellant.

Thus, We hold that it is not fatal that PO1 Darilag did not directly converse with appellant after being introduced to the latter as the buyer of the illegal drug. His identity as the buyer was established when the exchange of the alleged illegal drug and the money took place between him and the seller appellant.

Nonetheless, the Court is still confronted with the question, “Did the prosecution establish the *corpus delicti* of the crimes charged against

²³ G.R. No. 233533, June 30, 2020.

²⁴ *Id.*

appellant?"

We find in the negative.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed and sold by the accused is the same substance presented in court.²⁵

Section 21, Article II of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:²⁶

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (Emphasis added)

The Implementing Rules and Regulations (IRR) of RA 9165 further commands:²⁷

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

²⁵ See *People v. Nazareno*, G.R. No. 231875, July 29, 2019.

²⁶ *People v. Dela Torre*, *supra* note 21.

²⁷ *Id.*

of and custody over said items. (Emphases added)

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure, marking, and inventory 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.²⁸

This is the chain of custody rule which guards against tampering, alteration, or substitution of the seized illegal drugs.²⁹

While the prosecution was able to establish the identity of PO1 Darilag as the *poseur*-buyer and appellant as the seller of the plastic sachet, it failed to establish that the substance allegedly illegally possessed and sold by the accused was the same substance presented in court.

Records reveal the lapses and gaps in the chain of custody of the seized illegal drugs. We found here procedural lapses in the first, second, and fourth links.

First link

Marking and inventory.

The seized items were marked and inventoried at the office of the buy-bust team rather than at the place of arrest. The Court is not oblivious that marking and inventory of the seized items may be made at the nearest police station or office of the arresting officers. But this is acceptable only when there is a valid justification for such deviation.

Here, seizing officers PO3 Tungcul and PO1 Darilag claimed that the team agreed to just bring the seized items to their office. From the testimony of PO3 Tungcul, it appears that such agreement was reached with the intention of avoiding the possible occurrence of trouble in the place of arrest. PO3 Tungcul testified:

PROS DERAY:

Now, you also mentioned Mr. Witness, that no inventory and markings of evidence were done at the place of the transaction took (sic) place. Can you please explain to us if you know why the inventory and markings of evidence were not done there?

A It might create trouble so we just agreed to bring it to our office.³⁰

²⁸ Id.

²⁹ See id.

³⁰ TSN, September 6, 2013, p. 22.

On the other hand, PCI Pajarillo testified:

- Q Likewise with respect to the inventory, Mr. Witness, can you please tell us why you did not conduct an inventory at the place of transaction?
- A We decided no to conduct an inventory at the place to avoid our operatives to compromise in the area considering that we have (sic) still have other pending targets in that area, ma'am.³¹

The Court finds the excuse of avoidance of trouble or commotion not sufficient to justify the deviation. Any commotion or untoward incident is, at best, speculative.³²

In *People v. Cornel*,³³ the Court rejected the buy-bust team's excuse of a commotion considering that the armed police officers could have easily contained such commotion and proceeded with the immediate inventory of the seized items at the place of seizure.³⁴

In the present case, there were at least six (6) police officers who went to the area of the buy-bust operation (PO1 Darilag, PO3 Tungcul, SPO1 Fernandez, one PO2 Guzman, one PO1 Biraquit and PCI Pajarillo). PCI Pajarillo was left in the starex van. The Court also notes that the crowd in the area at the time of the arrest and seizure was not described.

For lack of allegation and proof that police officers were then unarmed, all of them are presumed to have carried with them their respective guns as police officers normally would. And considering that they are all armed, they could have contained any untoward incident and proceed with the marking and inventory at the place of arrest. Thus, the Court cannot accept the buy-bust team's excuse of avoidance of trouble or commotion

The Court cannot likewise accept PCI Pajarillo's excuse of avoiding their future operations from being compromised. As buy-bust operations are planned,³⁵ the buy-bust team could have easily ensured that its entire operation, including compliance with the requirements laid down by Section 21, Article II of RA 9165 and its IRR, would be conducted in a way that would not compromise their future operations.

Three-witness rule.

The buy-bust team likewise failed to comply with the requirement of bringing along the required three witnesses – representatives from the media and DOJ and an elected public official. The presence of the three witnesses required by Section 21 is precisely to protect and guard against the

³¹ TSN, August 3, 2015, p. 12.

³² *People v. Dela Torre*, supra note 21.

³³ 829 Phil. 645 (2018).

³⁴ Id. at 657.

³⁵ *People v. Sood*, G.R. No. 227394, June 6, 2018.

pernicious practice of police officers in planting evidence.³⁶ These witnesses must be present not only at the time of the marking and inventory, but more importantly, at the place and time of arrest and seizure of the illegal drugs.³⁷

Likewise, in *People v. Tomawis*,³⁸ the Court held that 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 conducted — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

In *People v. Crispo*,³⁹ the Court emphasized that police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.⁴⁰

Here, the buy-bust team only called for witnesses after the arrest and seizure. They did not at all plan to secure the presence of these three insulating witnesses during the arrest of appellant and seizure of the illegal drugs despite having sufficient time to do so. The buy-bust team did not even acknowledge their failure to comply with this requirement.

The unjustified absence here of the required insulating witnesses during the buy-bust operation and lack of earnest efforts to secure their presence during such operation put into question the identity and integrity of the seized illegal drugs.⁴¹

In sum, the first link here had been breached.

Second link

Turnover from the seizing officers to the investigating officer.

Another lapse in the chain of custody here was the incomplete account of the circumstances under which the seized illegal drugs were turned over to the investigating officer.

³⁶ *Id.*

³⁷ See *People v. Tomawis*, 830 Phil. 385, 409 (2018).

³⁸ *Id.*

³⁹ 828 Phil. 416 (2018).

⁴⁰ See *id.* at 436.

⁴¹ See *People v. Tayan*, G.R. No. 242160, July 8, 2019.

PO3 Tungcul testified that at the time the seized items were turned over to investigating officer SPO3 Accad, the required insulating witnesses were not yet present, and the seized items were not yet marked, *viz.*:

- Q At what time again did you go back to your office?
A Between 2 to 3, ma'am.
- Q Did you immediately proceed to the office from the place of the transaction?
A Yes, ma'am.
- Q When you arrived thereat you stated in your Judicial Affidavit that you gave the seized items to Joaquin Accad. My question is from the time that you arrived immediately after you arrived (sic) at your office you turned over the said items that you seized to Joaquin Accad, is that what you are telling me?
A We put all the items that we confiscate (sic) on the table and then we turned it over to Joaquin Accad, ma'am.
- Q When you turned over the said items to Joaquin Accad were the witnesses in the names of the Barangay Officials, the DOJ representative and the Radio Announcer already present at that time when you turned over the said items to Joaquin Accad?
A They were not present yet, ma'am.
- Q So you mean to say there were no markings made yet on those items when you turned over the seized items to Joaquin Accad?
A Yes, ma'am.⁴² (Emphasis supplied)

PCI Pajarillo likewise testified:

- Q But would you agree with me Mr. witness that when the witnesses arrived, all the alleged items which was confiscated from the accused is already on top of the table?
A Yes, ma'am.
- Q And you recall who placed the said items on top of the table?
A The confiscating officers put the items on top of the table?
- Q You said that the confiscating officer put the items on top of the table, correct?
A Yes, ma'am.⁴³ (Emphasis supplied)

From the above testimonies of the buy-bust team, it is clear that there had been improper handling, safekeeping, and turnover of the seized illegal drugs from the seizing officers to the investigating officer.

The seizing officers claimed to have placed the unmarked seized items on a table inside their office. It was not mentioned, however, on what or on whose table the seized items were placed. The circumstances under which

⁴² TSN, September 6, 2013, pp. 17-18.

⁴³ TSN, August 3, 2015, p. 10.

the seized items were placed on the table were likewise not explained *i.e.*, how many people (police officers and/or civilians) were present in the office at the time and in what manner and how soon SPO3 Accad took over the seized items for inventory.

When placed on the table still unmarked, and under unexplained circumstances, the seized illegal drugs had been laid open to switching and even tampering. The proper accounting of these circumstances is necessary to dismiss any doubt that switching and tampering of the transparent sachets occurred at this stage. The buy-bust team's failure to account for such circumstances all the more made it uncertain whether the two (2) transparent sachets which SPO3 Accad got hold of were still the same two (2) transparent sachets PO1 Darilag and PO3 Tungcul allegedly seized from appellant.

In fine, the second link was breached, too.

Fourth link

Stipulations on the testimony of forensic chemist.

Here, the judicial affidavit purportedly executed by PSI Tuazon described the procedures of both the qualitative and chemical examinations conducted on the specimen he received from SPO3 Accad. But while said affidavit was made part of the records of this case, PSI Tuazon failed to identify the same in court as his very own. More, said affidavit was not even formally offered as evidence for the prosecution. Thus, the contents of PSI Tuazon's judicial affidavit, except those stipulated upon by the parties, will not be taken into consideration by this Court.

In *People v. Omamos*,⁴⁴ the Court emphasized that the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.

Further, in *People v. Ubungen*,⁴⁵ the Court emphasized that absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination, the fourth link in the chain of custody of the illegal drug could not be reasonably established.⁴⁶

Here, while PSI Tuazon took the witness stand, his testimony or statement was limited to his personal circumstances *i.e.*, name, age, civil status, office position, and residential address. Right after that, the prosecution and the defense proceeded to stipulate. Unfortunately, the parties' stipulations did not include the required description of the method

⁴⁴ G.R. No. 223036, July 10, 2019.

⁴⁵ 836 Phil. 888 (2018).

⁴⁶ See *id.* at 902.

PSI Tuazon utilized in analyzing the chemical composition of the submitted specimens. Likewise, there was also no stipulation regarding the management, storage, and preservation of the seized illegal drug after its qualitative examination. Thus, the fourth link here in the chain of custody of the seized illegal drugs could not be established.

In fine, the fourth link was just as breached as the first and second links.

Indeed, the unjustified repeated breach of the chain of custody here had cast serious doubts on the identity and integrity of the *corpus delicti*.⁴⁷ Breaches of the procedure outlined in Section 21, Article II of RA 9165 and its IRR committed by the police officers, left unjustified, or unacknowledged and unexplained by the State, as in this case, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁴⁸

The presumption of regularity in the performance of official duties in favor of the police officers will not save the prosecution's case, given the foregoing procedural lapses. The presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance, the presumption of regularity will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused.⁴⁹

It is well settled that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting proof beyond reasonable doubt. The prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not even need to present evidence in its own behalf; the presumption prevails and the accused should be acquitted.⁵⁰

Considering that the prosecution failed to prove appellant's guilt beyond reasonable doubt, his acquittal is perforce in order.

WHEREFORE, the Appeal is **GRANTED**. The Decision dated April 15, 2019 of the Court of Appeals in CA-G.R. CR HC No. 10540 is hereby **REVERSED** and **SET ASIDE**. Accordingly, appellant Noel Carriño y Martin is **ACQUITTED** of the offenses charged.

⁴⁷ *Jacson v. People*, G.R. No. 199644, June 19, 2019.

⁴⁸ See *People v. Cabezudo*, G.R. No. 232357, November 28, 2018.

⁴⁹ *People v. Diputado*, 813 Phil. 160 (2017).

⁵⁰ See *id.*

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Noel Cariño y Martin, 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.

SO ORDERED." (*Inting, J., no part; Gesmundo, J., additional member per Raffle dated November 18, 2020*).

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

2/9/21

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

COURT OF APPEALS
CA G.R. CR-HC No. 10540
1000 Manila

The Presiding Judge
REGIONAL TRIAL COURT
Branch 2, 3500 Tuguegarao City
(Crim. Case No. 14887)

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr, Noel Cariño y Martin
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

PGEN. Guillermo Lorenzo T. Eleazar
CHIEF, 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

The Chairman
DANGEROUS DRUGS BOARD
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G.R. No. 248056

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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 248056

-versus-

NOEL CARIÑO y MARTIN,
Accused-Appellant.

x-----/

ORDER OF RELEASE

TO: The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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

GREETINGS:

WHEREAS, the Supreme Court on **February 3, 2021** promulgated a **Resolution** in the above-entitled case, the dispositive portion of which reads:

“WHEREFORE, the Appeal is GRANTED. The Decision dated April 15, 2019 of the Court of Appeals in CA-G.R. CR HC No. 10540 is hereby REVERSED and SET ASIDE.

-over -

Accordingly, appellant Noel Cariño y Martin is **ACQUITTED** of the offenses charged.

The Director General of the Bureau of Corrections, Muntinlupa City is **ORDERED** to: (a) cause the immediate release of Noel Cariño y Martin, 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.

SO ORDERED." (*Inting, J., no part; Gesmundo, J., additional member per Raffle dated November 18, 2020*).


NOW, THEREFORE, you are hereby ordered to immediately release **Noel Cariño y Martin**, 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 **3rd** day of **February 2021**.

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court

29/2/21

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The Presiding Judge
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Mr. Noel Cariño y Martin
c/o The Superintendent
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