

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMMY UMIPANG Y ABDUL, ACCUSED-APPELLANT.

G.R. No. 190321. April 25, 2012

Ponente: SERENO, J.

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SERENO, J.:

Before the Court is an appeal from the 21 May 2009 Decision of the Court of Appeals (CA)[1] affirming the 24 July 2007 Joint Decision of the Pasig City Regional Trial Court (RTC) in Criminal Cases No. 14935-D-TG and No. 14936-D-TG.[2] The RTC Decision convicted Sammy Umipang y Abdul (Umipang) for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts

The pertinent facts, as determined by the CA, are quoted as follows:

Acting on a tip from a confidential informant that a person named Sam was selling drugs along Cagayan de Oro Street in Maharlika Village, Taguig City, a buy-bust team from the [Station Anti-Illegal Drugs – Special Operation Task Force (SAID-SOTF)] of the Taguig City Police was dispatched on April 1, 2006 at around 6:00 in the evening. [Police Officer (PO) 2] Gasid was assigned to act as poseur buyer and he was given a ₱500.00 marked money. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).

Upon arrival at the area, PO2 Gasid and the confidential informant sauntered the length of the street while the other members of the team strategically positioned themselves. The confidential informant saw the man called Sam standing near a store. The confidential informant and PO2 Gasid then approached Sam. Straight off, the confidential informant said “Sam, pa-iskor kami.” Sam replied “Magkano ang iiskorin nyo?” The confidential informant said “Five hundred pesos.” Sam took out three (3) plastic sachets containing white crystalline substance with various price tags—500, 300, and 100. After making a choice, PO2 Gasid handed the marked ₱500.00 to Sam who received the same.

Upon receipt by Sam of the marked money, PO2 Gasid took off his cap as the pre-arranged signal that the sale had been consummated. Sensing danger, Sam attempted to flee but PO2 Gasid immediately grabbed and arrested Sam. In a few seconds, the rest of the buy-bust team [comprised of their team leader, Police Senior Inspector (PS/INSP.) Obong, Senior Police Officer (SPO) 1 Mendiola, PO3 Hajan, PO3 Maglana, PO3 Salem, and PO1 Ragos] joined them. PO1 Ragos handcuffed Sam. Five (5) more plastic sachets containing the same white crystalline substance were recovered from Sam. PO2 Gasid marked the items with the initials “SAU” [which stood for Sammy A. Umipang, the complete name, including the middle initial, of accused-appellant]. Sam was forthwith brought to the police station where he was booked, investigated and identified as accused-appellant Sammy Umipang y Abdul. PO2 Gasid then brought the confiscated items to the crime laboratory for testing. The specimens all tested positive for Methamphetamine Hydrochloride, popularly known as “shabu,” a dangerous drug.

On the other hand, the defense presented accused-appellant himself and his brother Nash Rudin Umipang. According to them:

In the evening of April 1, 2006, while they were sleeping, accused-appellant and his family were awakened by loud knocking on the door. The persons outside shouted “Mga pulis kami. Buksan mo ang pinto kung hindi gigibain namin ito.” Accused-appellant obliged and opened the door. Five (5) policemen barged into his house and pointed a gun at him. Against his will and amid the screams of his wife, accused-appellant was brought to a waiting vehicle and brought to the police headquarters. At the Taguig Police station, PO2 Gasid tried to extort from him P100,000.00 for his release. He denied the charges and that the alleged evidence were all “planted” by the police.[3]

Consequently, the following charges were brought against Umipang:

That on or about the 1[st] day of April 2006, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there, willfully, unlawfully and knowingly sell deliver and give away to poseur buyer PO2 Ruchyl Gasid, one heat sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, which substance was found positive to the test for Methylamphetamine Hydrochloride also known as “shabu” a dangerous drug, in consideration of the amount of P500.00, in violation of the above-cited law.

That on or about the 1[st] day of April 2006, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there, willfully, unlawfully and knowingly possess and have in his custody and control five (5) heat sealed transparent plastic sachets, each containing 0.05 gram, 0.05 gram, 0.05 gram, 0.04 gram and 0.04 gram with a total weight of 0.23 gram of white crystalline substance, which substances were found positive to the tests for Methylamphetamine Hydrochloride also known as “shabu” a dangerous drug, in violation of the above-cited law.

RTC Ruling

In its 24 July 2007 Joint Decision, the Pasig City RTC found accused-appellant guilty of violating Section 5 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals) and Section 11 (Possession of Dangerous Drugs), Article II of R.A. 9165. The RTC gave more weight to the testimonies of the arresting officers on how they conducted the buy-bust operation than to accused-appellant’s claim of frame-up by the police. Thus, for violating Section 5 (Criminal Case No. 14935-D-TG), Umipang was sentenced to suffer life imprisonment and to pay a fine of P500,000. For violating Section 11 (Criminal Case No. 14936-D-TG), he was sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years one (1) day as maximum and to pay a fine of P300,000.

CA Ruling

In its 21 May 2009 Decision, the CA affirmed in toto the 24 July 2007 Joint Decision of the RTC. According to the appellate court, the elements necessary for the prosecution of the illegal possession and sale of dangerous drugs were present and established. Thus, it no longer disturbed the RTC’s assessment of the credibility of the prosecution witnesses. Furthermore, the CA found that there was no showing of improper motive on the part of the police officers. With the presumption of regularity in the performance of official duties, it ruled against the denials of accused-appellant, and his defense of frame-up.

We have consistently declared that a review of the factual findings of the lower courts is not a function that is normally undertaken in appeals before this Court. However, after a careful scrutiny of the CA Decision, we find it proper to reevaluate the factual issues surrounding the present case, especially since it is not clear from the Decision whether the proper implementation of the strict procedural safeguards laid down in R.A. 9165 was

established.

Issue

Whether or not the RTC and the CA erred in finding that the testimonial evidence of the prosecution witnesses were sufficient to convict accused-appellant of the alleged sale and possession of methylamphetamine hydrochloride, which are violations under Sections 5 and 11, respectively, of R.A. 9165.

Discussion

Accused-appellant argues[4] that since there were two versions presented during trial – one, that of the prosecution; and the other, that of the accused – the latter version must be adopted, because the presumption of regularity in the performance of official duties should not take precedence over the presumption of innocence of the accused. He also contends that a surveillance of just 30 minutes was insufficient to establish that Umipang was engaged in the sale of illegal drugs. Lastly, accused-appellant claims that the fact of possession of the confiscated plastic sachets was not clearly established, and that the evidence allegedly confiscated from him was merely planted.[5] Alluding to the testimony of PO1 Ragos, he points out that the former did not see him holding the drugs, and that the sachet was shown only to PO1 Ragos by PO2 Gasid.

On the other hand, the Office of the Solicitor General (OSG) prays for the affirmation of the RTC Joint Decision in all respects, as it was decided in accord with law and evidence.[6] The OSG argues[7] that the necessary elements to convict a person under Sections 5 and 11 were proven beyond reasonable doubt. It then contends that, absent independent proof and substantiated evidence to the contrary, accused-appellant's bare-faced denial should be deemed merely as a self-serving statement that does not hold merit. Finally, the OSG asserts that, where there is no evidence of improper motive on the part of the prosecution witness to testify falsely against accused-appellant, the testimony must be given full faith and credence.

Substantive law requires strict observance
of the procedural safeguards outlined in
R.A. 9165

At the outset, we take note that the present case stemmed from a buy-bust operation conducted by the SAID-SOTF. We thus recall our pronouncement in *People v. Garcia*:

A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People v. Tan*, this Court itself recognized that “by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.” Accordingly, specific procedures relating to the seizure and custody of drugs have been laid down in the law (R.A. No. 9165) for the police to strictly follow. The prosecution must adduce evidence that these procedures have been followed in proving the elements of the defined offense.[8] (Emphasis supplied and citations omitted.)

Section 21 of R.A. 9165 delineates the mandatory procedural safeguards[9] that are applicable in cases of buy-bust operations:

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;

(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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4)

After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5)

The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6)

The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or

accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former; x x x. (Emphasis supplied.)

Congress introduced another complementing safeguard through Section 86 of R.A. 9165, which requires the National Bureau of Investigation (NBI), Philippine National Police (PNP), and Bureau of Customs (BOC) to maintain close coordination with PDEA in matters of illegal drug-related operations:

Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. — x x x.

x x x x x x x x

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Emphasis supplied.)

Thus, the 2002 Implementing Rules and Regulations of R.A. 9165 (IRR) set the following procedure for maintaining close coordination:

SECTION 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. — x x x.

x x x x x x x x

(a) Relationship/Coordination between PDEA and Other Agencies — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided, furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis supplied.)

Given the nature of buy-bust operations and the resulting preventive procedural safeguards crafted in R.A. 9165, courts must tread carefully before giving full credit to the testimonies of those who conducted the operations. Although we have ruled in the past that mere procedural lapses in the conduct of a buy-bust operation are not ipso facto fatal to the prosecution's cause, so long as the integrity and the evidentiary value of the seized items have been preserved,[10] courts must still thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law. Consequently, Section 21(a) of the IRR provides for a saving clause in the procedures outlined under Section 21(1) of R.A. 9165, which serves as a guide in ascertaining those procedural aspects that may be relaxed under justifiable grounds, viz:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant

Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — x x x:

(a)

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

We have reiterated that “this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds” after which, “the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved.”[11] To repeat, noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the noncompliance is on justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[12]

Accordingly, despite the presumption of regularity in the performance of the official duties of law enforcers,[13] we stress that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. In *People v. Coreche*,[14] we explained thus:

The concern with narrowing the window of opportunity for tampering with evidence found legislative expression in Section 21 (1) of RA 9165 on the inventory of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the time, witnesses, and proof of inventory by imposing on the apprehending team having initial custody and control of the drugs the duty to “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 supplied.)

Consequently, in a line of cases,[15] we have laid emphasis on the importance of complying with the prescribed procedure. Stringent compliance is justified under the rule that penal laws shall be construed strictly against the government and liberally in favor of the accused.[16] Otherwise, “the procedure set out in the law will be mere lip service.”[17]

Material irregularities in the conduct
of the buy-bust operations

In the recent case of *People v. Relato*, we reiterated the following:

In a prosecution of the sale and possession of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the corpus delicti, failing in which the State will not discharge its basic duty of proving

the guilt of the accused beyond reasonable doubt. It is settled that the State does not establish the corpus delicti when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt. Thus, Relato deserves exculpation, especially as we recall that his defense of frame-up became plausible in the face of the weakness of the Prosecution's evidence of guilt.[18] (Emphasis supplied and citations omitted.)

The conduct of the buy-bust operations was peppered with defects, which raises doubts on the preservation of the integrity and evidentiary value of the seized items from accused-appellant.

First, there were material inconsistencies in the marking of the seized items. According to his testimony, PO2 Gasid used the initials of the complete name, including the middle initial, of accused-appellant in order to mark the confiscated sachets. The marking was done immediately after Umipang was handcuffed. However, a careful perusal of the testimony of PO2 Gasid would reveal that his prior knowledge of the complete initials of accused-appellant, standing for the latter's full name, was not clearly established. Thus, doubt arises as to when the plastic sachets were actually marked, as shown by PO2 Gasid's testimony:

A [PO2 Gasid]:

We conducted a buy-bust operation on April 1, 2006.

PROSEC. SANTOS:

Against whom did you conduct this buy-bust operation?

A:

Against alias Sam, sir.

PROSEC. SANTOS:

What prompted you to conduct this operation against this alias Sam?

A:

We received information from our confidential informant that one alias Sam is selling shabu at Cagayan De Oro Street, Maharlika Village, Taguig.

PROSEC. SANTOS:

Aside from this information that you received from your informant, was there anything more that your informant told you about the real identity of this alias Sam?

A:

Nothing more, sir, he gave us only his alias, sir.[19]

x x x x x x x x

PROSEC. SANTOS:

So, after you have taken the item and paid alias Sam and then you executed the pre-arranged signal that you have already purchased from him, what happened then?

A:

After I made the pre-arranged signal, mabilis po yung mata ni alias Sam, para ho bang balisa, siguro napansin nya na hindi lang kami dalawa (2), aakma syang tatakbo, sinunggaban ko na po sya.

PROSEC. SANTOS:

So, you held Sam already during that time?

A:

Yes, sir.

PROSEC. SANTOS:

What happened after that?

A:

I introduced myself as police officer and at that time I arrested him.

PROSEC. SANTOS:

What about your companions who serves [sic] as your immediate back up, what happened to them when you were already hold and arrested [sic] this alias Sam?

A:

I noticed my companions approaching us.

x x x x x x x x

PROSEC. SANTOS:

And what did your colleague Ragos do when he arrived at your place?

A:

When he arrived at the place, after arresting alias Sam, he was the one who handcuffed him.

PROSEC. SANTOS:

Was there anything more that was done in that place of occurrence during that time, Officer?

A:

Yes, sir.

PROSEC. SANTOS:

Tell us please?

A:

After arresting alias Sam, I frisk [sic] him for the remaining items he showed me and the buy-bust money I gave him.

x x x x x x x x

PROSEC. SANTOS:

Was there anything that you and your team did in the items that you confiscated from the possession of the accused during that time and the shabu that you bought from him?

A:

I marked the items I confiscated at the place of incident.

PROSEC. SANTOS:

How did you marked [sic] the item that you bought from this alias Sam?

A:

SAU, sir.

PROSEC. SANTOS:

And what does that stand for? That SAU?

A:

Stands for the initials of alias Sam.

PROSEC. SANTOS:

Is that the only thing that you placed on the plastic sachet containing the shabu that you bought from this alias Sam during that time?

A:

I marked the shabu I bought as SAU-1.

PROSEC. SANTOS:

How about the other five (5) plastic sachets containing the suspected shabu, what happened to that?

A:

I marked them as SAU-2, SAU-3, SAU-4, SAU-5 and SAU-6.[20]

x x x x x x x x

PROSEC. SANTOS:

Now, after you have marked and inventoried the items that you bought and confiscated from this alias Sam during that time, what else happened?

A:

After the inventory of the evidences, I turn [sic] them over to the investigator.

PROSEC. SANTOS:

Where did you turn these items to your investigator?

A:

At the office, sir.

PROSEC. SANTOS:

Who was your investigator during that time?

A:

PO1 Alexander Saez, sir.

PROSEC. SANTOS:

When you turn these items to your investigator, where were you?

A:

At the office, sir.

PROSEC. SANTOS:

What happened to these items that you turn it over [sic] to your investigator?

A:

He made a request for laboratory examination of the items confiscated.[21]

x x x x x x x x

PROSEC. SANTOS:

Now, Officer, this Sam when you have already arrested him, were you able to know his real name?

A:

Yes, sir.

PROSEC. SANTOS:

What was his real name?

A:

Sammy Umipang, sir.

PROSEC. SANTOS:

Is he present here in Court?

A:

Yes, sir.[22]

x x x x x x x x

ATTY. HERNANDEZ:

When you arrived at the place, by the way, where was your target area, Mr. Witness?

A:

Cagayan De Oro Street, Barangay Maharlika, Taguig City.

ATTY. HERNANDEZ:

When you were there, you did not buy [sic] anybody to buy shabu from the accused?

A:

No, sir.

ATTY. HERNANDEZ:

So, you did not conduct any test buy?

A:

No, sir.

ATTY. HERNANDEZ:

Nor did you make any inquiry with Cagayan De Oro Street regarding the accused?

A:

Not anymore, sir.

ATTY. HERNANDEZ:

At that moment, you don't have any idea regarding the identity of the accused and also whether he was engaged in illegal activity?

A:

Regarding the identity, he was described by the informant.

ATTY. HERNANDEZ:

It was only the informant who knows the accused?

A:

Yes, sir.

ATTY. HERNANDEZ:

And also your other members, they did not know the accused?

A:

Yes, sir.[23] (Emphasis supplied.)

A clearer picture of what transpired during the buy-bust operation, from the marking of the confiscated items to the arrest of accused-appellant, is provided by the testimony of PO1 Ragos:

PROSEC. SANTOS:

And what is the effect to you of the act of Gasid taking off his cap?

A:

That is the sign that he already bought the shabu.

PROSEC. SANTOS:

When you saw Gasid acting that way, being the back up of him during that time, what did you do?

A:

I run [sic] towards them.

PROSEC. SANTOS:

Were you able to go near him when you run [sic] towards him?

A:

Yes, sir.

PROSEC. SANTOS:

What happened?

A:

I saw him holding Sam.

PROSEC. SANTOS:

When you saw Gasid already holding Sam, what did you do?

A:

I handcuffed Sam.

PROSEC. SANTOS:

After that, what happened?

A:

The items confiscated by Gasid were marked with his initials.

PROSEC. SANTOS:

Did you see Gasid marking those things that he took from this Sam during that time?

A:

Yes, sir.

x x x x x x x x

PROSEC. SANTOS:

What marked [sic] did he put on these plastic sachets?

A:

SAU, sir.

PROSEC. SANTOS:

Do you know what SAU connotes?

A:

Yes, sir.

PROSEC. SANTOS:

Tell us?

A:

Sammy Abdul Umipang.

PROSEC. SANTOS:

After that, what happened?

A:

He was apprising [sic] of his constitutional rights.

PROSEC. SANTOS:

After this person was apprised of his rights, was there anything more that was done?

A:

We went back to the office.

PROSEC. SANTOS:

All the members of the team went back to the office?

A:

Yes, sir.

PROSEC. SANTOS:

And together with this alias Sam?

A:

Yes, sir.

PROSEC. SANTOS:

What happened in your office?

A:

We turn [sic] over the evidence to the investigator.

PROSEC. SANTOS:

Who was your investigator during that time?

A:

PO1 Saez.

x x x x x x x x

PROSEC. SANTOS:

So, after the team has turn [sic] over the evidences to your investigator in the person of Officer Saez, was there anything more that transpired in relation to this event, this incident?

A:

We prepared an affidavit of arrest.[24]

x x x x x x x x

ATTY. HERNANDEZ:

And this information regarding the accused was relayed to you by your immediate superior?

A:

Yes, sir.

ATTY. HERNANDEZ:

And this information was the first information regarding the accused, is that correct?

A:

Yes, sir.

ATTY. HERNANDEZ:

What was told you was that your target person was alias Sam?

A:

Yes, sir.

ATTY. HERNANDEZ:

No photographs of alias Sam was shown to you?

A:

None, sir.

ATTY. HERNANDEZ:

You have no derogatory records of this alias Sam in your office?

A:

None, sir.

ATTY. HERNANDEZ:

You have no warrant of arrest?

A:

None, sir.

ATTY. HERNANDEZ:

This alias Sam was not included in your watch list?

A:

No, sir.[25]

x x x x x x x x

ATTY. HERNANDEZ:

So, the markings were placed on the plastic sachets?

A:

Yes, sir.

ATTY. HERNANDEZ:

After that Mr. Witness, you brought the accused together with the items to your office?

PROSEC. SANTOS:

Already answered, Your Honor. We are just repeating the same pattern, Your Honor.

x x x x x x x x

ATTY. HERNANDEZ:

Mr. Witness, you investigated the accused?

A:

No more, it was PO1 Saez who investigated the accused.

ATTY. HERNANDEZ:

So, you did not ask the full name of the accused?

A:

It was PO1 Saez who investigated him, sir.

ATTY. HERNANDEZ:

It was PO1 Saez who got his full name and on you [sic] part, that was the first time that you were able to learned [sic] the full name of the accused?

A:

Yes, sir.

ATTY. HERNANDEZ:

Because you knew him only as alias Sam?

A:

Yes, sir.

ATTY. HERNANDEZ:

How about Officer Gasid, it was also the first time that he learned the full name of the accused?

A:

Maybe not, sir.

ATTY. HERNANDEZ:

Mr. Witness, you mentioned that it was Officer Saez who delivered the items to the crime lab?

A:

No sir, it was Gasid.

ATTY. HERNANDEZ:

But you were not with him when he delivered the specimen to the crime laboratory?

A:

Yes, sir.

ATTY. HERNANDEZ:

No further question, Your Honor.

PROSEC. SANTOS:

No re-direct, Your Honor. x x x[26] (Emphasis supplied.)

The circumstances surrounding the marking of the seized items are suspect. From their testimonies during the trial, PO2 Gasid and PO1 Ragos both admitted that they only knew their target by the name “Sam.” They both testified that, after accused-appellant was handcuffed, frisked, and read his rights, they immediately brought him to the police precinct. They then said that it was a certain PO1 Saez who investigated him. In fact, in their joint affidavit, PO2 Gasid and PO1 Ragos stated thus:

Na dinala namin siya [accused] sa aming opisina para sa pagsisiyasat at pagtatanong tungkol sa detalye ng kaniyang pagkatao at sa layuning masampahan ng kaukulang reklamo sa paglabag ng Section 5 and 11 of RA 9165.[27] (Emphasis supplied.)

Evidence on record does not establish that PO2 Gasid had prior knowledge of the complete name of accused-appellant, including the middle initial, which enabled the former to mark the seized items with the latter’s complete initials. This suspicious, material inconsistency in the marking of the items raises questions as to how PO2 Gasid came to know about the initials of Umipang prior to the latter’s statements at the police precinct, thereby creating a cloud of doubt on the issues of where the marking really took place and whether the integrity and evidentiary value of the seized items were preserved. All that was established was that it was PO1 Saez who asked accused-appellant about the latter’s personal circumstances, including his true identity, and that the questioning happened when accused-appellant was already at the police station. We thus reiterate:

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband[s] are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, “planting”, or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution’s failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[28] (Emphasis supplied and citations omitted.)

It is true that the failure of the arresting officers to mark the seized items at the place of arrest does not by itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.[29] We

have already clarified that the marking upon “immediate” confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team.[30] We will analyze this possible seed of doubt that has been planted by the unexplained marking of the shabu with the complete initials of Umipang, together with the other alleged irregularities.

Second, the SAID-SOTF failed to show genuine and sufficient effort to seek the third-party representatives enumerated under Section 21(1) of R.A. 9165. Under the law, the inventory and photographing of seized items must be conducted in the presence of a representative from the media, from the Department of Justice (DOJ), and from any elected public official. The testimony of PO2 Gasid, as quoted below, is enlightening:

ATTY. HERNANDEZ:

Mr. Witness, you also made the certificate of inventory, is that correct?

A:

Yes, sir.

ATTY. HERNANDEZ:

And since this is a drug operation, you are required by law to make a certificate of inventory?

A:

Yes, sir.

ATTY. HERNANDEZ:

And that inventory, you are required by law that there should be a signature of any representative from the media, is that correct?

A:

Yes, sir.

ATTY. HERNANDEZ:

And also representative from the Department of Justice, is that correct?

A:

Yes, sir.

ATTY. HERNANDEZ:

And also elected official, Mr. Witness?

A:

Yes, sir.

ATTY. HERNANDEZ:

I’m showing to you Mr. Witness your certificate of inventory, do you confirm that there are no signatures placed by any member of the media, representative from the Department of Justice and any elected official?

A:

Yes, sir, there is none, sir.

ATTY. HERNANDEZ:

And there appears to be an initial of RS above the type written name Sammy Umipang, who wrote this initial RS?

A:

That stands for refuse [sic] to sign, sir.

ATTY. HERNANDEZ:

Who refuse [sic] to sign?

A:

Sammy Umipang, sir.[31]

x x x x x x x x

PROSEC. SANTOS:

Why was the certificate of inventory not witnessed [sic] and signed by any members of the media, the DOJ and elected officials, Officer?

A:

That time there is no available representative, sir.

COURT:

How did you exert effort to locate available representative of those officers or persons in the certificate of inventory?

A:

The investigator contacted representative from the media, Your Honor.

COURT:

What barangay this incident happened?

A:

Barangay Maharlika, Your Honor.

COURT:

Did you talk to the barangay captain?

A:

No, Your Honor.

COURT:

What about the barangay councilman?

A:

No, Your Honor.[32] (Emphasis supplied.)

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not per se render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the barangay chairperson or any member of the barangay council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so – especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. A sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165,[33] or that there was a justifiable ground for failing to do so.[34]

Third, the SAID-SOTF failed to duly accomplish the Certificate of Inventory and to take photos of the seized items pursuant to Section 21(1) of R.A. 9165. As pointed out by the defense during trial,[35] the Certificate of Inventory did not contain any signature, including that of PO2 Gasid – the arresting officer who prepared the certificate[36] – thus making the certificate defective. Also, the prosecution neither submitted any photograph of the seized items nor offered any reason for failing to do so. We reiterate that these requirements are specifically outlined in and required to be implemented by Section 21(1) of R.A. 9165.[37]

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted.[38] This is especially true when the lapses in procedure were “recognized and explained in terms of [] justifiable grounds.”[39] There must also be a showing “that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason.”[40] However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.[41] This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.[42] As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[43]

For the arresting officers’ failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the corpus delicti, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, “as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.”[44]

As a final note, we reiterate our past rulings calling upon the authorities “to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society.”[45] The need to employ a more stringent approach to scrutinizing the evidence of the prosecution – especially when the pieces of evidence were derived from a buy-bust operation – “redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.”[46]

WHEREFORE, the appealed 21 May 2009 CA Decision affirming the 24 July 2007 RTC Joint Decision is SET ASIDE. Accused-appellant Sammy Umipang y Abdul is hereby ACQUITTED of the charges in Criminal Cases No. 14935-D-TG and No. 14936-D-TG on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby ORDERED to immediately RELEASE accused-appellant from custody, unless he is detained for some other lawful cause.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] The Decision in CA-G.R. CR-H.C. No. 02898 was penned by CA Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Arturo G. Tayag.

[2] The Joint Decision in Criminal Cases Nos. 14935-D-TG and 14936-D-TG was penned by Judge Florito S. Macalino.

[3] CA Decision at 4-5, rollo, pp. 5-6.

[4] Brief for the Accused-Appellant at 9-12 (People v. Umipang, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA rollo, pp. 47-50. In our 5 April 2010 Resolution, this Court noted the Manifestation of accused-appellant that he is adopting his 13 December 2007 Brief for the Accused-Appellant filed with the CA as his supplemental brief (rollo, p. 51).

[5] Brief for the Accused-Appellant at 11 (People v. Umipang, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA rollo, p. 49.

[6] Brief for the Appellee at 19 (People v. Umipang, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA rollo, p. 97. In our 5 April 2010 Resolution, this Court noted the Manifestation of the Office of the Solicitor General that it is no longer filing a supplemental brief, as it has already exhaustively discussed all the issues in its 22 April 2008 Brief for the Appellee (rollo, p. 51).

[7] Brief for the Appellee at 8-19 (People v. Umipang, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA rollo, pp. 86-97.

[8] G.R. No. 173480, 25 February 2009, 580 SCRA 259, 266-267.

[9] Id.

[10] *Imson v. People*, G.R. 193003, 13 July 2011, 653 SCRA 826.

[11] *People v. Garcia*, supra note 8, at 272-273.

[12] *People v. De la Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA 273.

[13] *Imson v. People*, supra note 10.

[14] G.R. No. 182528, 14 August 2009, 596 SCRA 350, fn. 16 at 358-359.

[15] *People v. Garcia*, supra note 8 (citing *People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630; *People v. Santos*, G.R. No. 175593, 17 October 2007, 536 SCRA 489; *People v. Dela Cruz*, G.R. No. 181545, 8 October 2008, 568 SCRA 273; and *People v. De la Cruz*, supra note 12).

[16] *People v. Garcia*, supra note 8 (citing *People v. De la Cruz*, supra note 12).

- [17] *People v. Martin*, G.R. No. 193234, 19 October 2011.
- [18] G.R. No. 173794, 18 January 2012.
- [19] Direct examination of Witness PO2 Gasid, TSN, 22 November 2006, p. 4, RTC records, p. 90.
- [20] *Id.* at 16-19, RTC records, pp. 102-105.
- [21] *Id.* at 20, RTC records, p. 106.
- [22] *Id.* at 25, RTC records, p. 111.
- [23] Cross-examination of Witness PO2 Gasid, *id.* at 32-33, RTC records, pp. 118-119.
- [24] Direct examination of Witness PO1 Ragos, TSN, 6 December 2006, pp. 15-17, RTC records, pp. 151-153.
- [25] Cross-examination of Witness PO1 Ragos, *id.* at 21-22, RTC records, pp. 157-158.
- [26] *Id.* at 30-32, RTC records, pp. 166-168.
- [27] Pinagsamang Salaysay ng Pag-Aresto at Paghaharap ng Reklamo o Demanda, RTC records, p. 69.
- [28] *Supra* note 14, at 357-358.
- [29] *Imson v. People*, *supra* note 10.
- [30] *Id.*
- [31] Cross-examination of Witness PO2 Gasid, *supra* note 19 at 47-48, RTC records, pp. 133-134.
- [32] Re-direct examination of Witness PO2 Gasid, *id.* at 49, RTC records, pp. 135.
- [33] See *People v. Garcia*, *supra* note 8.
- [34] See *People v. De la Cruz*, *supra* note 12.
- [35] Cross-examination of Witness PO2 Gasid, *supra* note 19 at 47, RTC records, p. 133.
- [36] RTC records, p. 73.
- [37] *People v. Garcia*, *supra* note 8; *People v. De la Cruz*, *supra* note 12.
- [38] *People v. Ulama*, G.R. No. 186530, 14 December 2011.
- [39] *People v. Martin*, *supra* note 17.
- [40] *Id.*
- [41] See *People v. Garcia*, *supra* note 8.
- [42] See *id.*
- [43] *Id.*
- [44] *People v. De la Cruz*, *supra* note 12, at 286.
- [45] *People v. Garcia*, *supra* note 8, at 278.
- [46] *People v. Coreche*, *supra* note 14, at 365.

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