

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUNDIO M. SARAGENA, ACCUSED-APPELLANT.

G.R. No. 210677. August 23, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

When the quantity of the confiscated substance is miniscule, the requirements of Section 21 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, must be strictly complied with.[1]

The prosecution's failure to present the police officer who acted as the poseur-buyer in the buy-bust operation, which allegedly involved 0.03 grams of shabu, coupled with the improbability that the two (2) apprehending police officers witnessed the transaction at night time, engenders reasonable doubt on the guilt of the accused. The prosecution's failure to sufficiently establish the chain of custody in accordance with the law further amplifies the doubt on accused's guilt.

In its April 2, 2013 Decision,[2] the Court of Appeals upheld Abundio Mamolo Saragena's[3] (Saragena) conviction in the Regional Trial Court Judgment dated August 21, 2008.[4]

This Court reverses his conviction and acquits him of the sale of dangerous drugs under Section 5 of Republic Act No. 9165.

On September 23, 2005,[5] SPO1 Roldan Paller (SPO1 Paller) received information that a certain "Tatay"[6] was selling illegal drugs at Sitio Sindulan, Brgy. Mabolo, Cebu City.[7] "Tatay's" exact address was unknown.[8]

A buy-bust team was formed, composed of SPO3 Raul Magdadaro (SPO3 Magdadaro) as team leader, PO1 Roy Misa (PO1 Misa)[9] as poseur-buyer, and SPO1 Paller as back-up.[10] SPO1 Paller called the Philippine Drug Enforcement Agency for coordination on the buy-bust operation.[11] SPO1 Paller, SPO3 Magdadaro, and PO1 Misa held a briefing before jump-off. A buy-bust money of P100.00, bearing the serial no. VT129780, was handed to PO1 Misa.[12]

On June 23, 2005, at about 7:00 p.m., the buy-bust team headed to Sitio Sindulan in their service vehicle.[13] An informant helped them locate the house of accused-appellant,[14] Saragena, alias "Tatay." [15] The police officers parked three (3) comers away from accused-appellant's house.[16]

As the designated poseur-buyer, PO1 Misa walked towards accused-appellant's house.[17] SPO1 Paller and SPO3 Magdadaro trailed behind him.[18] Accused-appellant's house was located at the back of a stage.[19] As PO1 Misa drew closer to the target site, SPO1 Paller and SPO3 Magdadaro hid themselves at the side of the stages[20] beside the basketball court.[21] The distance between the designated poseur-buyer and the two (2) back-up officers were about five (5) to eight (8) meters.[22]

Outside accused-appellant's house,[23] PO1 Misa convinced the suspect to sell him shabu.[24] PO1 Misa handed the P100.00 bill as payment, for which he received a "pack of white crystalline substance." [25] SPO1 Paller and

SPO3 Magdadaro then rushed to the scene[26] and introduced themselves as police officers.[27] SPO1 Paller conducted a body search on accused-appellant and recovered the buy-bust money. Accused-appellant was brought to the police station.[28]

PO1 Misa retained custody of the plastic pack, while SPO1 Paller took the buy-bust money from accused-appellant.[29] At the police station,[30] PO1 Misa turned over the plastic pack to their team leader, SPO3 Magdadaro,[31] who then marked it with the letters "AS."[32] The incident was logged in the police blotter.[33]

SPO3 Magdadaro wrote a letter-request for laboratory examination of the seized and marked plastic pack, signed by Chief Police Superintendent Armando Macolbacol Radoc.[34] PO1 Misa, accompanied by SPO1 Paller,[35] delivered SPO3 Magdadaro's letter-request and the seized plastic pack to the Philippine National Police Crime Laboratory in Cebu City.[36] A certain PO2 Roma received the letter-request and the specimen from PO1 Misa and then delivered these items to P/S Insp. Pinky Sayson-Acog (P/S Insp. Acog),[37] a forensic chemist.[38]

On June 23, 2005,[39] P/S Insp. Acog found the plastic pack marked as "AS" to be positive for methamphetamine hydrochloride.[40] She entered her findings in her Chemistry Report No. D-89G-2005,[41] marked the specimen as "D-890-05," and put her initials, "PSA."[42]

On the other hand, according to the defense, accused-appellant was at home when three (3) armed police officers kicked the door of his house.[43] He recognized PO1 Misa, SPO1 Palter, and SPO3 Magdadaro as they frequented illegal cockfights[44] and would take turns asking for the defeated fighting cock.[45] The police officers held accused-appellant.[46] One (1) of them searched his pockets but found nothing. They also searched his house.[47]

Despite the lack of contraband found, accused-appellant was sent to the Mabolo Police Station. He inquired why he was being arrested. The buy-bust team told him that they were able to buy shabu from him.[48] Denying this accusation, accused-appellant asserted that they planted the evidence.[49]

An Information was filed against accused-appellant for the illegal sale of a dangerous drug under Section 5 of Republic Act No. 9165, as follows:

That on or about the 23[rd] day of June, 2005, at about 7:00 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to a poseur buyer:
one (1) heat[-]sealed transparent plastic pocket containing 0.03 gram[s] of white crystalline substance locally known as "SHABU" containing methylamphetamine (sic) hydrochloride, a dangerous drug.

CONTRARY TO LAW.[50]

On August 21, 2008, the Regional Trial Court convicted[51] accused-appellant of the crime charged. The dispositive portion of the Decision read:

In fine, the prosecution has successfully discharged its task to adduce evidence to obtain a conviction.

For all the foregoing, accused is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of one million pesos.

The plastic pack of shabu is order[ed] forfeited in favor of the government.

SO ORDERED.[52]

Accused-appellant appealed[53] before the Court of Appeals.

The Court of Appeals found that the police officers failed to comply with the compulsory procedure on the seizure and custody of dangerous drugs under Section 21 of Republic Act No. 9165 or the chain of custody rule. Nevertheless, it justified the noncompliance by applying the exception in the same provision.[54]

On April 2, 2013, the Court of Appeals convicted[55] accused-appellant. The dispositive portion of the Decision read:

After due consideration, We resolve that accused-appellant has not overcome the evidence presented by the prosecution against him. This Court finds accused-appellant GUILTY beyond reasonable doubt of violation of Section 5, Article II, Republic Act No. 9165.

WHEREFORE, the instant appeal is DENIED. The RTC's judgment dated August 21, 2008 is AFFIRMED.

SO ORDERED.[56] (Emphasis in the original)

For resolution of this Court is the sole issue of whether or not accused-appellant Abundio Mamolo Saragena is guilty beyond reasonable doubt of violation of Section 5 of Republic Act No. 9165. Subsumed in this issue is the matter of whether or not the law enforcement officers substantially complied with the chain of custody rule.

This Court rules in favor of accused-appellant.

I

Absent proof beyond reasonable doubt, accused-appellant is presumed innocent of the crime charged.

Section 14(2) of Article III of the Constitution provides that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved[.]" To overcome this constitutional presumption, prosecution must establish accused's guilt beyond reasonable doubt.[57]

Proof beyond reasonable doubt does not require absolute certainty; it only requires moral certainty or the "degree of proof which produces conviction in an unprejudiced mind,"[58] Thus:

Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest ea[sy] upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.[59]

The legal presumption of innocence prevails if the judge's mind cannot rest easy on the certainty that the accused committed the crime. In *People v. Santos*: [60]

The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Corollarily, 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 quantum of evidence [of proof beyond reasonable doubt], the defense may logically not even present evidence on its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted.[61]

This rule is borne by the need to evenly balance the State's encompassing powers to prosecute and the defense's arduous struggle for liberty.[62] It addresses the inherent inequality in resources, command, capacity, and authority between the State and an accused.[63] In *People v. Berroya*: [64]

[P]roof beyond reasonable doubt lies in the fact that "(i)n a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant

engaged in a perturbed and distracting struggle for liberty[,] if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt."[65] (Emphasis supplied, citation omitted)

II

There is great possibility of abuse in drug cases, especially those involving miniscule amounts. This Court has recognized that buy-bust operations could be initiated based on dubious claims of shady persons, or that small amounts of illicit drugs could be planted as evidence on innocent individuals, in view of the secrecy surrounding drug deals in general. Thus:

"[B]y 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 or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the 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[.][66] (Emphasis supplied)

Therefore, courts must subject "the prosecution evidence through the crucible of a severe testing . . . [T]he presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused."[67] In deliberating the accused's guilt, courts must exercise "utmost diligence and prudence."[68] More importantly, they must be on their guard in trying drug cases; otherwise, they risk meting severe penalties to innocent persons.[69]

Here, there is reasonable doubt that the sale of shabu took place.

Section 5 of Republic Act No. 9165 penalizes any person who sells a dangerous drug, regardless of quantity. To successfully convict an accused under this provision, the prosecution must establish the identities of the buyer and the seller, the item sold, and the consideration given for it. There must be an actual sale, consummated through delivery and payment. Finally, the corpus delicti must be presented in court as evidence.[70]

According to accused-appellant, SPO3 Magdadaro's allegation of having "clearly" seen the exchange of money and the pack of shabu between accused-appellant and PO1 Misa is "quite disturbing."

It is unclear how SPO1 Paller and SPO3 Magdadaro allegedly witnessed the purported sale. The alleged illegal drug was of very small quantity, It weighed only 0.03 grams,[71] approximately as light as a grain of rice[72] or an ant.[73] The alleged transaction between PO1 Misa and accused-appellant happened five (5) to eight (8) meters away from SPO3 Magdadaro.[74] While PO1 Misa was allegedly buying shabu from accused-appellant, SPO1 Paller and SPO3 Magdadaro were hiding at the side of the stage. Accused-appellant's house was at the back of this stage where they hid.[75] Likewise, it was already 7:00 p.m. and the night time would have impaired their vision.

PO1 Misa, the only person who could attest to the commission of the crime, was not presented in court.[76] The poseur-buyer "had personal knowledge of the transaction since he conducted the actual transaction." [77] His testimony is crucial in establishing the alleged facts and circumstances surrounding the purported sale.[78]

The failure to present the poseur-buyer casts doubt on the charge that an illegal sale of drugs took place. SPO1 Paller and SPO3 Magdadaro's location, the nightfall, and the miniscule amount of the alleged illegal drug further call into question prosecution's claim that SPO1 Paller and SPO3 Magdadaro witnessed the scene.

Even if there was a sale, the corpus delicti was not proven as the chain of custody was defective.

The corpus delicti is the body of the crime that would establish that a crime was committed.[79] In cases

involving the sale of drugs, the corpus delicti is the confiscated illicit drug itself,[80] the integrity of which must be preserved.[81]

Accused-appellant argues that the conduct of the post-seizure custody of the shabu allegedly recovered from him violated the chain of custody rule.[82] His contention is meritorious. The police officers' lapses are numerous and unjustified that there are serious grounds to doubt the preservation of the integrity of the corpus delicti.

To begin with, no evidence was adduced to show specifically how the police officers handled, stored, and safeguarded the seized shabu pending its offer as evidence. The records merely state:

- PO1 Misa, as the poseur-buyer, transacted with accused-appellant with the buy-bust money. Upon receipt of the buy-bust money, accused-appellant gave PO1 Misa a plastic pack of white crystalline substance.
- PO1 Misa turned over the specimen drug to SPO3 Magdadaro at the police station.
- SPO3 Magdadaro marked the plastic pack of white crystalline substance as "AS."
- SPO3 Magdadaro then drafted a letter-request for laboratory examination of the specimen drug signed by Chief Police Superintendent Armando Macolbacol Radoc.
- PO1 Misa then delivered the letter-request for laboratory examination of the specimen drug, and the actual specimen drug marked as "AS" to the crime laboratory.
- SPO2 Roma received the letter-request and the specimen drug.
- SPO2 Roma immediately delivered the letter-request and the specimen drug to [PS]Insp. Acog, the forensic chemist of the PNP Crime Laboratory.
- [PS]Insp. Acog made the chemical analysis and concluded that the specimen white crystalline substance tested positive for methylamphetamine hydrochloride.
- [PS]Insp. Acog was presented before the court a quo for identification of the subject specimen marked as "AS." [83]

There was no showing that accused-appellant signed a receipt of the inventory of the pack of shabu, that it was marked in his presence, that photographs were taken, or that he was made to sign a confiscation receipt relating to the seized pack of shabu.[84]

This Court emphasizes that "ostensibly approximate compliance" does not suffice; rather, there must be actual compliance with Section 21 of Republic Act No. 9165.[85] Not doing so is tantamount to a failure to establish the corpus delicti, a crucial element of the crime charged.[86]

This case arose from a buy-bust operation. While a buy-bust operation can indeed enable authorities to uncover illicit transactions otherwise kept under wraps, this Court has recognized that such an operation poses a significant drawback—that is, "[i]t is susceptible to police abuse, the most notorious of which is its use as a tool for extortion." [87]

To avert such possibility, the prosecution must establish beyond reasonable doubt that the dangerous drug offered during trial was the same that was bought during the buy-bust operation.[88] The chain of custody rule under Republic Act No. 9165 fulfills this rigorous requirement.[89]

Section 1(b) of the Dangerous Drugs Board Regulation No. 01-02, which implements Republic Act No. 9165, explains chain of custody rule as follows:

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled

chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

This Court agrees with the Court of Appeals that the prosecution failed to follow the chain of custody rule under Section 21 of Republic Act No. 9165.

Paragraph 1 of Section 21 of the original Republic Act No. 9165 (2002) provides the requirements for ensuring the integrity and evidentiary value of the seized item:

(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 [a] the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, [b] a representative from the media and the Department of Justice (DOJ), and [c] any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

This is reiterated in paragraph 1 of Section 21 of the amended[90] Republic Act No. 9165 (2013):

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of [a] the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, [b] with an elected public official and [c] a representative of the National Prosecution Service or the media[,] who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

The chain of custody rule is further clarified by Section 1(A) of the Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended (Chain of Custody Implementing Rules and Regulations).[91]

The Chain of Custody Implementing Rules and Regulations require the apprehending team to mark, inventory, and photograph the evidence in the following manner:

First, the apprehending officer or the poseur-buyer must place his or her initials and signature on the seized item.[92] Here, PO1 Misa did not place his initials "RM" on the confiscated pack; rather, it was SPO3 Magdadaro who wrote "AS" on it,[93] presumably standing for accused-appellant's initials for Abundio Saragena, instead of the police officer's initials. It was also not shown whether PO1 Misa or SPO3 Magdadaro signed the plastic pack.

Second, in a warrantless search as in this case, the marking of the drug must be done in the presence of the accused-appellant[94] and at the earliest possible opportunity.[95] The earliest possible opportunity to mark the evidence is immediately at the place where it was seized, if practicable,[96] to avoid the risk that the seized item might be altered while in transit.[97] In *People v. Sabdula*: [98]

[C]rucial 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" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Long before Congress passed R.A. No. 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs casts reasonable doubt on the authenticity of the corpus delicti.

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be 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 the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.[99] (Emphasis supplied, citation omitted)

Here, the records do not show why the officers had to wait to arrive at the police station[100] before marking the seized plastic pack. The earliest available opportunity to mark it was in accused-appellant's house. Likewise, there is no showing that the seized item was marked in the presence of accused-appellant. All that the prosecution established was that, while at the police station, PO1 Misa turned over the plastic pack to SPO3 Magdadaro, who marked it with the letters "AS." [101] Other details are left out for this Court to guess.

As in *People v. Dahil*, [102] this Court cannot determine "how the unmarked drugs were handled," making it possible for the seized item to have been altered, thus:

The Court must conduct guesswork on how the seized drugs were transported and who took custody of them while in transit. Evidently, the alteration of the seized items was a possibility absent their immediate marking thereof.[103] (Emphasis supplied)

Third, the physical inventory and photograph of the seized item must be done in the presence of (a) the accused, the accused's representative, or the accused's counsel; (b) any elected public official; and (c) a representative of the Department of Justice's National Prosecution Service or a media practitioner. These three (3) persons required by law should sign the copies of the inventory of the seized item and be given a copy of the certificate of inventory.[104] This insulates the buy-bust operation "from any taint of illegitimacy or irregularity." [105]

Here, it was not shown that the buy-bust team conducted a physical inventory or took photographs of the contraband after its confiscation. Moreover, none of the witnesses testified that (a) accused-appellant, his representative or counsel, (b) any elected official, and (c) a representative from the media or from the National Prosecution Service signed a confiscation receipt.

Section 1(A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the National Prosecution Service is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected."

The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation. Here, the buy-bust operation was arranged and scheduled in advance: the police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency,[106] prepared the buy-bust money, and held a briefing.[107] Yet, they failed to ensure that a National Prosecution Office representative, or if unavailable, any media practitioner, would be present during the seizure of shabu. They also failed to ensure that any incumbent public official such as a barangay captain or kagawad would be there at the same time.

Securing the presence of these persons is not impossible. *Lescano v. People* [108] affirmed that it is not enough for the apprehending officers to merely mark the seized pack of shabu; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by

law.[109]

Finally, the apprehending team shall "document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal, and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form." [110]

People v. Kamad [111] stated that the prosecution must prove four (4) links in the chain of custody of evidence. Read with the Chain of Custody Implementing Rules and Regulations, Kamad provided for the following steps to establish the links necessary for a chain of custody of the specimen seized from the accused:

First, the apprehending officer seizes and then marks the dangerous drug taken from the accused. [112] The chain of custody of evidence must show the time and place that the seized item is marked and the names of the officers who marked it. [113]

Second, the apprehending officer turns over the seized dangerous drug to the investigating officer. [114] The chain of custody of evidence must establish the names of officers who inventoried, photographed, and/or sealed the seized item. [115]

Third, the investigating officer turns over the seized dangerous drug to the forensic chemist for laboratory examination. [116] The chain of custody of evidence must show the names of officers who had custody and received the evidence from one officer to another within the chain. [117]

Fourth, the forensic chemist turns over and submits the marked confiscated dangerous drug to the court. [118] Similarly, the chain of custody of evidence must show the names of officers who had custody and received the evidence from one officer to another within the chain. [119]

"[E]ach and every link in the custody must be accounted for" until the seized item is presented before the court. [120] In this case, there are gaps in the linkages in the chain of custody. Some key witnesses were absent during trial.

PO1 Misa, the poseur-buyer, was not presented in court. [121] As a result, prosecution has not established how the purported transaction with accused-appellant occurred.

PO1 Misa also delivered the drug specimen to the Philippine National Police Crime Laboratory for examination. [122] During the post-seizure custody and handling of the dangerous drug, a certain PO2 Roma received the specimen from PO1 Misa before delivering it to P/S Insp. Acog. [123] However, the prosecution failed to present the testimony of PO2 Roma, who was also part of the chain of custody. In People v. Salcena: [124]

[A]n unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Accordingly, each and every link in the custody must be accounted for, from the time the shabu was retrieved from [accused-appellant] during the buy-bust operation to its submission to the forensic chemist until its presentation before the R[egional] T[rial] C[ourt]. In the case at bench, the prosecution failed to do so. [125] (Emphasis supplied, citation omitted)

III

The chain of custody rule must be strictly complied with. Mallillin v. People [126] explained that strict compliance goes into the nature of the dangerous drug itself, this being the subject of prosecution under Republic Act No. 9165. Thus:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that[,] at any of the links in the chain of custody over the [narcotic substances,] there could have been tampering, alteration, or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[127] (Emphasis supplied)

People v. Casacop[128] held that the buy-bust team "should have been more meticulous in complying with Section 21 of Republic Act No. 9165 to preserve the integrity of the seized shabu." [129] This is especially true where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.[130]

The Court of Appeals correctly found that the police officers failed to comply with the chain of custody rule under Section 21 of Republic Act No. 9165.[131] However, this Court reverses the Court of Appeals judgment for erroneously applying the exception here.[132]

A proviso in the old Section 21 (a) of Republic Act No. 9165 Implementing Rules and Regulations states that the failure to comply with the chain of custody rule may be excused in exceptional circumstances, provided that (a) there are justifiable grounds for it, and (b) the integrity and evidentiary value of the seized items were properly preserved:

[N]on-compliance with these requirements [a] under justifiable grounds, [b] 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.[133]

The Court of Appeals disregarded the operative phrase—that the prosecution must provide "justifiable grounds" for noncompliance, in addition to showing that the prosecution maintained the integrity of the seized item.

In *People v. Jafaar*,[134] this Court held that the exception under then Section 21 (a) of Republic Act No. 9165 Implementing Rules and Regulations "will only be triggered by the existence of a ground that justifies departure from the general rule." [135]

The Court of Appeals' ruling falls further in the face of Sections 1(A.1.9) and 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations, which provide:

A.1.9.

Noncompliance, [a] under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items [b] provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

A.1.10.

Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented. (Emphasis supplied)

The Chain of Custody Implementing Rules and Regulations require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement

on the steps they took to preserve the integrity of the seized item.[136]

Here, the prosecution has not given a justifiable ground for applying the exception. All it has done is to assert a self-serving claim that the integrity of the seized pack has been preserved[137] despite the numerous procedural lapses it has committed. The fatal errors of the apprehending team can only lead this Court to seriously doubt the integrity of the corpus delicti.

Law enforcers "cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165. [They] are presumed and are required to know the laws they are charged with executing." [138]

The prosecution's procedural shortcut finds no basis in fact or law. Its failure to comply with the chain of custody rule is equivalent to its failure to establish the corpus delicti, and therefore, its failure to prove that the crime was indeed committed.[139] In *People v. Dela Cruz*: [140]

Non-compliance [with the chain of custody rule] is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.[141]

Accused-appellant is presumed innocent until the contrary is proved beyond reasonable doubt. The prosecution had the burden of overcoming such presumption, which it miserably failed to do so.

In closing, this Court reiterates its ruling in *People v. Holgado*: [142]

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[143]

WHEREFORE, premises considered, the Court of Appeals April 2, 2013 Decision in CA-G.R. CEB-CR-HC No. 00939 is REVERSED and SET ASIDE. Accused-appellant Abundio Mamolo Saragena is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention unless he is confined for any other lawful cause.

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

The Regional Trial Court is directed to turn over the seized sachet of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Martires, and Gesmundo, JJ., concur.

November 27, 2017

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 23, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 2017 at 1:30 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

ORDER OF RELEASE

TO: The Director
Bureau of Corrections
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on August 23, 2017 promulgated a Decision in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court of Appeals April 2, 2013 Decision in CA-G.R. CEB-CR-HC No. 00939 is REVERSED and SET ASIDE. Accused-appellant Abundio Mamolo Saragena is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention unless he is confined for any other lawful cause.

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

The Regional Trial Court is directed to turn over the seized sachet of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release ABUNDIO M. SARAGENA 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 PRESBITERO J. VELASCO, JR., Chairperson of the Third Division of the Supreme Court of the Philippines, this 23[rd] day of August 2017.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per J. Leonen, Third Division].

[2] *Rollo*, pp. 3-11. The Decision, docketed as CA-G.R. CEB-CR-HC No. 00939, was penned by-Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Edgardo L. Delos Santos and Pamela Ann Abelia Maxino of the Nineteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 20.

[4] *CA rollo*, pp. 40-43. The Judgment, docketed as Crim. Case No. CBU-73766, was penned by Presiding Judge Enriqueta Loquillano-Belarmino of Branch 57, Regional Trial Court, Cebu City.

[5] The records state that it was only on September 23, 2005 when SPO1 Paller received a tip about "Tatay's" alleged sale of dangerous drugs (*Rollo*, p. 4), Curiously, the buy-bust operation that supposedly resulted from this tip happened three months earlier, on June 23, 2005 (*CA rollo*, p. 40).

[6] *CA rollo*, pp. 29-30.

[7] *Rollo*, p. 4,

[8] *CA rollo*, p. 30.

[9] The Regional Trial Court spells his first name as "Roy" (*CA rollo*, p. 40), while the Court of Appeals spells it as "Rey." (*rollo*, p. 4).

[10] *Rollo*, pp. 4-5.

[11] *Id.* at 5.

[12] *CA rollo*, p. 40.

[13] *Id.*

[14] *Id.* at 5.

[15] *Id.* at 40.

[16] *Id.* at 40-41.

- [17] Id. at 41.
- [18] Id.
- [19] Id.
- [20] Rollo, p. 5.
- [21] CA rollo, p. 30.
- [22] Id.
- [23] Id. at 61.
- [24] Id. at 41.
- [25] Id. at 61.
- [26] Id. at 41.
- [27] Rollo, p. 5.
- [28] Id.
- [29] CA rollo, p. 41.
- [30] Id. at 67.
- [31] Rollo, p. 5.
- [32] CA rollo, p. 41.
- [33] Id.
- [34] Rollo, p. 5.
- [35] CA rollo, pp. 68-69.
- [36] Rollo, p. 5.
- [37] CA rollo, p. 41.
- [38] Rollo, p. 5.
- [39] CA rollo, p. 69.
- [40] Rollo, pp. 5-6. The CA Decision referred to the substance as "methamphetamine hydrochloride."
- [41] CA rollo, p. 41.
- [42] Id. at 70.
- [43] Id. at 41.
- [44] Rollo, p. 6.
- [45] CA rollo, p. 28.
- [46] Id. at 41.
- [47] Id.

[48] Id.

[49] Id. at 42.

[50] Id. at 40.

[51] Id. at 40-43. The Decision was penned by Presiding Judge Enriqueta Loquillano-Belarmino of Branch 57 of the Regional Trial Court of Cebu City.

[52] Id. at 43.

[53] Id. at 24-39.

[54] Rollo, p. 8.

[55] Id. at 3-11.

[56] Id. at 10-11.

[57] *People v. Santos Jr.*, 562 Phil. 45S, 467 (2007) [Per J. Tinga, Second Division].

[58] *People v. Berroya*, 347 Phil 410, 423 (1997) [Per J. Romero, Third Division].

[59] *People v. Santos, Jr.*, 562 Phil, 458, 467 (2007) [Per J. Tinga, Second Division].

[60] 562 Phil. 458 (2007) [Per J. Tinga, Second Division].

[61] Id. at 467-468.

[62] *People v. Berroya*, 347 Phil. 410, 423 (1997) [Per J. Romero, Third Division].

[63] Id.

[64] 347 Phil. 410 (1997) [Per J. Romero, Third Division].

[65] Id. at 423.

[66] *People v. Tan*, 401 Phil. 259,273 (2000) [Per J. Melo, Third Division].

[67] *People v. Santos, Jr.*, 562 Phil. 458, 472 (2007) [Per J. Tinga, Second Division].

[68] *People v. Tan*, 401 Phil. 259,273 [Per J. Melo, Third Division].

[69] Id.

[70] *People v. Pagaduan*, 641 Phil. 432, 448 (2010) [Per J. Brion, Third Division].

[71] Id. at 40.

[72] A grain of rice has a mass of roughly 0.2 to 0.3 grams. See Tho Lai Hoong, Tho Mun Yi, and Josephine Fong, *Interactive Science for Inquiring Minds*, Vol. A (2009), at 36. A weight of 0.03 grams is equivalent to 0.003058219 ounces. 0.001058219 ounces is "about as heavy as a [g]rain of [r]ice." See *The Measure of Things*, available at <http://www.bluebulbprojects.com/MeasureOfThings/results.php?comp=weight&unit=oz&amt=0.001058219>.

[73] Vosniadou, Stella, ed., *International Handbook of Research on Conceptual Change*, 2nd edition (2013), at 160.

[74] CA rollo, p. 30.

[75] CA rollo, p. 41.

[76] Rollo, p. 4.

[77] *People v. Casacop*, 755 Phil. 265, 274 (2015) [Per J. Leonen, Second Division].

[78] *Id.*

[79] *People v. Pagaduan*, 641 Phil. 432, 447 (2010) [Per J. Brion, Third Division].

[80] *Id.*

[81] *People v. Caiz*, G.R. No. 215340, July 13, 2016 1 [Per J. Leonen, Second Division].

[82] Rollo, p. 7.

[83] *Id.* at 9-10.

[84] CA rollo, pp. 31-32.

[85] *People v. Holgado*, 741 Phil. 78, 94 (2014) [Per J. Leonen, Third Division].

[86] *Lescano v. People*, G.R. No. 214490, January 13, 2016 <<http://scjudiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf>> 7 [Per J. Leonen, Second Division].

[87] *People v. Dahil*, 750 Phil. 212, 226 (2015) [Per J. Mendoza, Second Division].

[88] *People v. De Leon*, 624 Phil. 786, 800 (2010) [Per J. Velasco Jr., Third Division].

[89] *Id.*

[90] Amended by Rep. Act No. 10640.

[91] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1 provides:

Section 1. Implementing Guidelines. — 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:

A. Marking, Inventory and Photograph; Chain of Custody implementing Paragraph "a " of the IRR

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the

apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.

A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the corpus delicti of the seized/confiscated plant sources following the chain of custody of evidence.

[92] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.2.

[93] CA rollo, p.41.

[94] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9365 as Amended by Republic Act No. 10640, sec. 1.A.1.3.

[95] *People v. Dahil*, 750 Phil. 212, 233-234 (2015) [Per J. Mendoza, Second Division].

[96] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.3.

[97] *People v. Dahil*, 750 Phil. 212, 233 (2015) [Per J. Mendoza, Second Division].

[98] 733 Phil. 85 (2014) [Per J. Brion, First Division].

[99] *Id.* at 95.

[100] Rollo, p.5.

[101] *Id.*

[102] 750 Phil. 212 (2015) [Per J. Mendoza, Second Division].

[103] Id. at 233.

[104] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.5.

[105] *People v. Mendoza*, 736 Phil. 749, 762 (2014) [Per J. Bersamin, First Division].

[106] Rollo, pp. 4-5.

[107] CA rollo, p. 40.

[108] *Lescano v. People*, G.R. No. 214490, January 13, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf>> [Per J. Leonen, Second Division].

[109] Id. at 11.

[110] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.B.5.

[111] *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[112] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

[113] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.11 provides:

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

[114] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

[115] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.11.

[116] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

[117] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.11.

[118] *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

[119] See Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.11.

[120] *People v. Salcena*, 676 Phil. 357, 381 (2011) [Per J. Mendoza, Third Division].

[121] PO1 Misa allegedly "died months after the incident," but no proof of his death is attached to the petition. Prosecution also did not mention the date of his alleged death. See CA rollo, p. 41.

[122] Rollo, p. 5.

[123] Id.

[124] *People v. Salcena*, 676 Phil. 357 (2011) [Per J. Mendoza, Third Division].

[125] *Id.* at 381.

[126] *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

[127] *Id.* at 588-589.

[128] *People v. Casacop*, 755 Phil. 265 (2015) [Per J. Leonen, Second Division].

[129] *Id.* at 283.

[130] *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

[131] *Rollo*, p. 7.

[132] *Id.* at 8.

[133] Then Implementing Rules and Regulations of R.A. No. 9165, art. II, sec. 21 (a).

[134] *People v. Jaafar*, G.R. No. 219829, January 18, 2017
<<http://scjudiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf>> [Per J. Leonen, Second Division].

[135] *Id.* at 8.

[136] Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of Republic Act No. 9165 as Amended by Republic Act No. 10640, sec. 1.A.1.10.

[137] CA rollo, pp. 64-71.

[138] *People v. Jaafar*, G.R. No. 219829, January 18, 2017
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/219829.pdf>> 10 [Per J. Leonen, Second Division].

[139] *People v. Pagaduan*, 641 Phil. 432, 449-450 (2010) [Per J. Brion, Third Division].

[140] 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

[141] *Id.* at 827.

[142] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[143] *Id.* at 100.

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