

**DAMACEN GABRIEL CUNANAN A.K.A. “RYAN,”
PETITIONER, VS. PEOPLE OF PHILIPPINES, RESPONDENT.***G.R. No. 237116. November 12, 2018*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for review on certiorari[1] are the Decision[2] dated June 28, 2017 and the Resolution[3] dated January 22, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 07257, which affirmed the Decision[4] dated December 8, 2014 of the Regional Trial Court of Laoag City, Branch 13 (RTC) in Crim. Case Nos. 15243 and 15244 finding petitioner Damacen Gabriel Cunanan a.k.a. "Ryan" (petitioner) guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The prosecution alleged that on May 22, 2012, at around 6:30 in the morning, several members of the Laoag City Police Station led by Senior Police Officer (SPO) 4 Rovimmanuel Balolong (SPO4 Balolong) conducted a search on the residence of petitioner at Barangay 14, Fonacier St., Laoag City. The search was by virtue of Search Warrant No. 05-2012[6] (search warrant) issued by the RTC for an alleged violation of RA 9165, which directed the police officers to make a search of petitioner's bedroom and vehicle, a Mitsubishi Pajero with plate number RDM 429, and to seize and confiscate an "undetermined volume of shabu." [7]

Upon arrival at petitioner's residence, SPO4 Balolong introduced himself and his companions to an unidentified female, who was standing by the gate inside the premises, and announced their purpose. When they entered the house, SPO4 Balolong and SPO1 Ferdinand Santos (SPO1 Santos) knocked on petitioner's bedroom at the ground floor. When petitioner himself opened the door, SPO1 Santos read and explained to him the contents of the search warrant. Petitioner asked that he be allowed to put on his pants, after which, he and his common-law wife, Justin Cyril Cunanan (Justin), went out of the bedroom and proceeded to the living room while the door to the bedroom was secured. Together with SPO4 Balolong, they waited for Barangay Chairman Felix Ayson (Chairman Ayson) and several members of the media[8] to arrive, who were invited to witness the search. Upon arrival and prior to conducting the search, Chairman Ayson frisked the searching team members, Police Officer (PO) 1 Engelbert Ventura (PO1 Ventura) and PO3 Arnel Saclayan (PO3 Saclayan) and declared them "clean" of any contraband.[9]

During the height of activity in the living room, Gwendolyn Cunanan (Gwendolyn), petitioner's mother, surreptitiously slipped into petitioner's bedroom and came out holding something wrapped in a piece of white cloth, which she claimed SPO4 Balolong threw under the bed of her son. SPO4 Balolong took the bundle from Gwendolyn and extracted therefrom ten (10) pieces of small plastic sachets containing white crystalline substance. The items were photographed and thereafter, SPO4 Balolong marked the same with his initials and handed them over to SPO1 Santos.[10]

Meanwhile, PO1 Ventura and PO3 Saclayan continued to search petitioner's bedroom, accompanied by Justin and

Gwendolyn. Inside the dresser, PO1 Ventura found a black box labeled "safety can be fun"[11] containing six (6) small pieces of cut aluminum foil and two (2) disposable lighters. The search of the room having yielded nothing else, PO1 Ventura turned over the aforesaid items to the evidence custodian, SPO4 Loreto Ancheta (SPO4 Ancheta), for inventory.[12]

Thereafter, PO1 Ventura and PO3 Saclayan searched petitioner's Mitsubishi Pajero, which was parked at the garage. Under the floor matting on the passenger side of the vehicle directly below the glove compartment, PO3 Saclayan found a white carton box containing two (2) pieces of cut aluminum foil, four (4) empty plastic sachets, and one (1) big heat-sealed plastic sachet containing white crystalline substance suspected to be shabu.[13] PO3 Saclayan marked the seized items with his initials, "AMS," and likewise turned them over to SPO4 Ancheta for inventory.[14]

All of the seized items were placed on a small table inside the premises where they were collated and inventoried by SPO1 Santos and SPO4 Ancheta.[15] The latter placed his markings on each item,[16] i.e., "LCPS" which stands for "Laoag City Police Station," the initials of petitioner, and his own signature.[17] He had possession of all the confiscated items from petitioner's residence and brought them first to the RTC, which were received by Atty. Bernadette Espejo (Atty. Espejo), the Branch Clerk of Court.[18] Thereafter, he went back to the police station to prepare the Return of Search Warrant and the Motion to Withdraw Confiscated Items (Motion to Withdraw). The Motion to Withdraw was granted on the same day upon order of the RTC.

After receiving the seized items, SPO4 Ancheta prepared the request for laboratory examination, and then brought the items, as well as the request to the Ilocos Norte Crime Laboratory for examination, where they were received by Police Inspector Amiely Ann Luis Navarro (P/Insp. Navarro), the forensic chemist.[19] After a qualitative examination, the ten (10) small heat-sealed transparent sachets containing an aggregate amount of 0.6006 gram of white crystalline substance and the one (1) big heat-sealed transparent plastic sachet containing 14.7717 grams of the same substance tested positive for methamphetamine hydrochloride, a dangerous drug. The rest of the seized items, meanwhile, tested negative.[20] Thereafter, the confiscated items were turned over to PO1 Erlanger Aguinaldo (PO1 Aguinaldo), the Property Custodian of the Ilocos Norte Crime Laboratory.

Consequently, separate Informations[21] for violation of Sections 11 and 12, Article II of RA 9165 for Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, respectively, were filed against petitioner on July 25, 2012. However, the Information for Crim. Case No. 15244 was amended to correct discrepancies in the weight and contents of the confiscated items. Thus, the amended Information[22] reads:

That on or about the [sic] 6:30 in the morning of May 22, 2012 in the City of Laoag and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control, one (1) big heat sealed plastic sachet containing white crystalline substance otherwise known as shabu, with an aggregate weight of more or less 14.7717 grams and ten (10) small heat sealed plastic sachet with an arrogate [sic] weight of more or less .6006 grams containing Methamphetamine Hydrochloride locally known as "shabu", with a grand total weight of 15.3723 grams a [sic] dangerous drug, without any license or authority, in Violation of the aforesaid law.

CONTRARY TO LAW.[23]

By way of defense, petitioner disavowed the charges and claimed that the confiscated items were planted evidence. He averred that SPO4 Balolong threw something under their bed, which turned out to be a folded newspaper containing nine (9) small plastic sachets, further containing suspected shabu.[24] His mother, Gwendolyn, and common-law wife, Justin, corroborated this statement.[25] Petitioner likewise disclaimed ownership of the Mitsubishi Pajero where the police officers found several drug paraphernalia, claiming that Gwendolyn owned the vehicle. Finally, he challenged the legality of the issuance of the search warrant, averring

that Antonio Buted, Jr. (Buted), the purported deponent/asset therein, had ill motives against him because of parking issues.[26]

The RTC Ruling

In a Decision[27] dated December 8, 2014, the RTC found petitioner guilty of violation of Sections 11 and 12, Article II of RA 9165, as charged. For Illegal Possession of Dangerous Drugs under Section 11, he was sentenced to life imprisonment and ordered to pay a fine of P300,000.00. On the other hand, for Illegal Possession of Drug Paraphernalia under Section 12, he was sentenced to the indeterminate penalty of six (6) months and one (1) day to two (2) years and ordered to pay a fine of P10,000.00.[28]

The RTC held that by agreeing to be arraigned and tried, petitioner was deemed to have waived his right to question the legality of the issuance of the search warrant. In any case, it found the search warrant to have been duly issued after searching questions had been conducted both on the applicant and the deponent, in accordance with the Constitution and the Rules of Court, and that the police officers properly implemented the same. Likewise, the RTC held that all the elements of the crimes charged were duly established and that the procedural safeguards under Section 21, Article II of RA 9165 on the preservation of the chain of custody of the seized items had been complied with. On the other hand, it rejected petitioner's defenses of denial and frame-up, finding the same to have no concrete and convincing basis. Dissatisfied, petitioner appealed his conviction.

The CA Ruling

In a Decision[29] dated June 28, 2017, the CA affirmed with modification petitioner's conviction with respect to the charge of Illegal Possession of Dangerous Drugs by increasing the fine imposed to P500,000.00.[30] The CA held that the RTC complied with the requirements for the determination of the existence of probable cause in the issuance of the search warrant. Likewise, having found that the police officers' entry into petitioner's house was valid, it upheld the manner of its implementation. It also sustained the RTC's finding that the chain of custody of the seized items had been preserved, positing that the discrepancies in their weight as it appeared first, on the original information for Crim. Case No. 15244 and later, in the amended information, can be explained by the fact that the police officers belatedly obtained a copy of the laboratory report. Finally, it rejected petitioner's defense that the seized items were planted evidence, finding the same self-serving and not worthy of credence.

Petitioner's motion for reconsideration was denied in a Resolution[31] dated January 22, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding petitioner's conviction for the crimes charged.

The Court's Ruling

The petition is meritorious.

At the outset, it must be emphasized that an appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned.[32] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[33]

The rule that a trial court's findings are accorded the highest degree of respect, it being in a position to observe the demeanor and manner of testifying of the witnesses, is not absolute and does not apply when a careful review of

the records and a meticulous evaluation of the evidence reveal vital facts and circumstances which the trial court overlooked or misapprehended and which if taken into account would alter the result of the case.[34]

Probable cause in the issuance of
the search warrant

Petitioner first challenges the validity of the search warrant, insisting that it was defective as the testimony of the applicant, SPO4 Balolong, relied on hearsay evidence. As such, there can be no probable cause to issue the search warrant for lack of personal knowledge on his part.

Under Section 2,[35] Article III of the Constitution, the existence of probable cause for the issuance of a search warrant is crucial to the right against unreasonable searches and seizures, and its existence largely depends on the finding of the judge conducting the examination.[36] To substantiate a finding of probable cause, Section 5, Rule 126 of the Rules of Court specifically requires:

Section 5. Examination of complainant; record. – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

"The 'probable cause' for a valid search warrant has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay." [37] Relative thereto, the Court held in *People v. Tee* [38] that "[l]aw enforcers cannot themselves be eyewitnesses to every crime; they are allowed to present witnesses before an examining judge" [39] for the purpose of determining probable cause in the issuance of a search warrant.

In this case, the judge issued the search warrant not merely on the basis of SPO4 Balolong's testimony but further, based on the first-hand information proffered by the confidential asset who testified that after the surveillance conducted by the police officers, he personally bought shabu from petitioner in the course of a "test buy" arranged with SPO4 Balolong, to wit:

COURT – So afterwards, what happened after the surveillance?

ASSET – Sir Balolong told me to try to conduct a test buy against Ryan,[40] your Honor.

Q – When was that?

A – Only this morning, your Honor.

x x x x

Q – So, you complied with the request of Officer Balolong this morning?

A – Yes, your Honor.

Q – As you have stated in your Sworn Statement, the test buy was positive?

A – Yes, your Honor.

Q – And you were able to buy this one?

A – Yes, your Honor. (Witness being referred to the plastic sachet with white crystalline substance attached to the folder of the case)

x x x x[41]

The asset's testimony therefore corroborates SPO4 Balolong's statement, viz.:

COURT – So, what time did you eventually conduct the test buy?

SPO4 BALOLONG – This morning, your Honor, I told (name of asset) early this morning, your Honor, and instructed him to conduct a test buy against Damacen Gabriel Cunanan and he told me that he could try and he did, your Honor.

Q – Alright, were you present or were you with him during the test buy?

A – No, your Honor.

Q – Did you... Were you just near during the test buy?

A – No, your Honor.

Q – So, you just sent (name of asset)?

A – Yes, your Honor.

Q – Since you were not present during the test buy, you relied on what (name of asset) reported to you afterwards?

A – Yes, your Honor.

Q – Now, the report of (name of asset) is that he was able to buy shabu?

A – Yes, your Honor.

Q - So, why would you trust (name of asset) so much?

A – (name of asset) has been helping me for a long time, your Honor. I have confidence in him.

x x x x[42]

In *People v. Zen Hua*,^[43] it was held that information from a reliable informant, corroborated by the police officer's observations through a surveillance, which was also conducted in this case, is sufficient to establish probable cause. It bears stressing at this point that a magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court as long as there was substantial basis for that determination. Moreover, it is presumed that a judicial function has been regularly performed, absent a showing to the contrary,^[44] as in this case.

Implementation of the search warrant

Next, petitioner contends that the implementation of the search warrant was irregular. While he admits^[45] that the police officers were not denied entry into the premises, he, however, decries the alleged show of force of the police officers and that SPO4 Balolong failed to introduce himself and the police officers, show the search warrant, ask for the identity of the person who answered them outside the house, or explain the contents of the search warrant in a language or dialect known to and understood by the said person.^[46]

"Generally, officers implementing a search warrant must announce their presence, identify themselves to the accused and to the persons who rightfully have possession of the premises to be searched, and show to them the search warrant to be implemented by them and explain to them said warrant in a language or dialect known to and understood by them. The requirement is not a mere procedural formality but is of the essence of the substantial

provision which safeguards individual liberty. No precise form of words is required. It is sufficient that the accused has notice of the officers, their authority and the purpose of the search and the object to be seized." [47] However, although a search and seizure of a dwelling might be constitutionally defective, if the police officers' entry was without prior announcement, law enforcement interest may also establish the reasonableness of an unannounced entry. Indeed, there is no formula for the determination of reasonableness; each case is to be decided on its own facts and circumstances. [48]

In this case, petitioner admitted [49] that the police officers were not prevented from going inside the house. Thus, the only issue that remains to be resolved is the point when the police officers were already directly outside the bedroom of petitioner. Relative thereto, SPO4 Balolong testified [50] that they knocked on the bedroom door, which petitioner himself opened, and proceeded to announce their identities and purpose of serving the search warrant. Further, petitioner's claim that the police officers failed to read the search warrant or inform him of its contents is belied by the testimony of Chairman Ayson, who affirmed thus:

PROSECUTOR FAJARDO – So, when you arrived there, what happened next?

CHAIRMAN AYSON – When I entered the house, a search warrant copy [was] read by me, sir.

Q – And who presented to you that search warrant?

A – A member of the police, sir.

Q – You said that you read the search warrant?

A – Yes, sir.

Q – And after reading that search warrant, what happened next?

A – After that we informed the subject that there is such a thing[,] a search warrant at that time, sir.

Q – And who informed the subject about the search warrant?

A – The police officer, sir.

Q – And who witnessed the same, Mr. Witness, that they are there to implement the search warrant?

A – Before implementing the search warrant we called up the barangay officials and other media personalities, sir.

x x x x [51]

Likewise, the mere fact that the police officers were carrying firearms did not negate or had no actual bearing on the validity of the implementation of the search warrant, the same being neither a requirement nor a prohibition under the law. As regards petitioner's insistence that the police officers pointed their firearms at him and his household, which constituted show of force, the Court finds the records devoid of evidence to prove the same except for the claims of the defense witnesses. The Court accords more probative weight and credence to the testimonies of the police officers who caught petitioner in flagrante delicto in possession of illegal drugs and paraphernalia during the conduct of a valid search, in the absence of evidence that they have been inspired by an improper or ill motive, [52] as in this case.

Chain of custody of the seized items

Be that as it may, however, the Court finds certain irregularities with respect to the integrity and probative value of the corpus delicti.

The duty of the prosecution is not merely to present in evidence the seized illegal drugs; rather, it is also essential that the dangerous drugs seized from the accused – petitioner in this case – be the very same substance offered in evidence in court, as the identity of the drugs must be established with the same unwavering exactitude as that required to make a finding of guilt,[53] that is, proof beyond reasonable doubt. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on its identity on account of switching, "planting," or contamination of evidence[54] arising from its unique characteristic that renders it indistinct, not readily identifiable, and easily tampered with.[55]

"Chain of custody" is the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and destruction.[56] Accordingly, the prosecution is put to task to account for each link of the chain from the moment the drugs are seized up to their presentation in court as evidence of the crime.

For the purpose of establishing the chain of custody in cases involving dangerous drugs, Section 21, Article II of RA 9165 sets certain parameters in place, which police officers are mandated to follow. Under said section, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. In *People v. Mendoza*,[57] the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody." [58]

After a punctilious evaluation of the records of this case, the Court finds that the integrity and credibility of the seized items had been compromised. To recapitulate, the following sets of items were recovered during the search conducted on the residence of petitioner, including where and who recovered them:

Confiscated Items

Where recovered

Who recovered

Nine (9) or ten (10) plastic sachets containing white crystalline substance wrapped in a white cloth

Allegedly retrieved by petitioner's mother, Gwendolyn, from under petitioner's bed

SPO4 Balolong

Small box labelled "safety can be fun" containing six (6) small aluminum foils and two (2) disposable lighters

Inside petitioner's bedroom

PO1 Ventura

One (1) small white carton box containing two (2) pieces cut aluminum foils and four (4) pieces empty plastic

sachets, and (1) big heat-sealed plastic sachet containing shabu

Inside petitioner's Mitsubishi Pajero

PO1 Saclayan

First, the prosecution witnesses alleged that Gwendolyn, petitioner's mother, came out from petitioner's bedroom with a bundle wrapped in white cloth, which she claimed SPO4 Balolong threw under petitioner's bed. In open court, SPO4 Balolong testified that when he opened the bundle, he counted nine (9) plastic sachets containing shabu inside it, to wit:

PROSECUTOR FAJARDO – So, when you took the same from her, what did you do with that white cloth?

SPO4 BALOLONG – I searched the cloth and found at first nine (9) pieces of plastic sachets, sir, containing alleged shabu.

x x x x[59] (Emphasis supplied)

In subsequent statements, however, SPO4 Balolong contradicted himself and declared that he saw <d declared="" that="" he="" saw="" ten (10) plastic sachets instead of nine (9), viz.:

PROSECUTOR FAJARDO – When you placed your markings, by the way, how many plastic sachets are you referring to that you marked?

SPO4 BALOLONG – Ten (10), sir.

Q – Ten (10). When you marked those plastic sachets, who was present?

A – The barangay captain, sir;

x x x x

Q – And after placing your markings on the ten (10) plastic sachets, what next did you do?

A – We proceeded with the search, sir.

Q – That ten (10) plastic sachets, what did you do with that after marking the same?

A – I gave them to PO3 Santos, sir.

x x x x[60] (Emphases supplied)

The respective testimonies of Chairman Ayson[61] and SPO1 Santos,[62] as well as the Receipt of Property Seized,[63] Inventory of Seized Items,[64] Extract Copy,[65] and Initial Laboratory Report[66] all showed that there were ten (10), not nine (9), plastic sachets of shabu found in the bundle confiscated from Gwendolyn.

Unfortunately, the records are bereft of evidence to show that the prosecution witnesses endeavored to reconcile the discrepancy in the number of said plastic sachets, which failure is fatal to the cause of the prosecution. In its December 8, 2014 Decision, the RTC noted[67] both the discrepancy and the prosecution's failure to explain it but merely brushed it aside, opting to simply receive at face value the prosecution witnesses' subsequent statements that there were ten (10) plastic sachets, opining that the imposable penalty in case of conviction will be the same regardless of the actual number of sachets seized.

However, the actual number of plastic sachets found inside the bundle goes into the integrity of the corpus delicti of the crime charged, as the crux of petitioner's defense was that the seized items were planted evidence. As such, it was imperative for SPO4 Balolong to clarify his conflicting statements, especially in light of the photograph[68]

taken of the seized items showing that there were, in fact, only nine (9) plastic sachets and not ten (10). The absence of any clarification from the prosecution on this score compromised the integrity of the confiscated evidence.

Second, some of the confiscated items were not properly marked.

SPO4 Balolong also alleged<d declared="" that="" he="" saw="" [69] that he placed his initials, "RVB,"[70] as markings on ten (10) plastic sachets containing shabu. However, when presented with the plastic sachets in court for purposes of identification, he testified thus:

PROSECUTOR FAJARDO – You said that you marked the same, kindly point to us those markings that you placed in those plastic sachets?

SPO4 BALOLONG – Here is my marking, sir, written in blue pentel pen. (Witness pointing referring to the capital letters RB written on one side of each of the plastic sachets with blue ink.)

x x x x[71] (Emphasis supplied)

In the Initial Laboratory Report[72] of the seized items, it appears that the initials inscribed on the plastic sachets were, indeed, "RB" and not "RVB." Similar to the prosecution's failure to clarify the actual number of the plastic sachets found inside the white cloth bundle, the inconsistency in the markings purportedly placed by SPO4 Balolong thereon and the failure to explain such inconsistency militate against the integrity and probative value of the first set of seized items.

Similarly, in the case of the drug paraphernalia found by PO1 Ventura inside petitioner's bedroom, he testified that he did not place any markings thereon and merely turned them over to SPO4 Ancheta, who was the one who marked the items,[73] to wit:

PROSECUTOR FAJARDO – How about those cut aluminum foils which you found inside the small box you are referring to, how will you be able to identify the same?

PO1 Ventura – I cannot...

x x x x

COURT – Why, did you not ask what were the markings that he placed?

PROSECUTOR FAJARDO – He did not place any markings, your Honor.

COURT – He did not place any markings.

PROSECUTOR FAJARDO – He just submitted it to Officer Ancheta.

x x x x

WITNESS – I cannot recall, your Honor, if I placed my markings or not, I cannot recall, your Honor.

COURT – But you are sure that you gave them to SPO4 Ancheta?

WITNESS – Yes, your honor.

COURT – But you don't know what SPO4 Ancheta did to the foils that you submitted to him?

WITNESS – Because when I gave him the six cut aluminum foils as if he wrote something on the items and then somebody was taking pictures, your Honor.

PROSECUTOR FAJARDO – Did you come to know those writings he placed in that aluminum foil?

WITNESS – No, sir.

x x x x[74] (Emphasis supplied)

As a result, when the said items were presented to PO1 Ventura for identification in open court, he could not properly identify whether they were the same items he found inside petitioner's bedroom. In fact, he admitted that he could recognize the small box only by its label and the two (2) disposable lighters only by color, to wit:

PROSECUTOR FAJARDO – If that small box containing cut aluminum foils and lighters will be shown to you right now in Court, will you be able to identify it?

WITNESS – Yes, sir.

Q – How will you be able to identify the same, Mr. Witness?

A – Only that what was written on the box, sir.

Q – What do you mean by that thing that was written on the box?

A – Because on the box there is something written there, sir.

Q – You mean the label of the box, you are referring to that one?

A – Yes, sir.

Q – And if you could recall what was the label of the box?

A – I can recall "safety can be fun," sir.

x x x x

Q – How about the lighters that you found together with the box, if that will be shown to you will you be able to identify it?

A – Yes, sir.

Q – How will you be able to identify it?

A – The color, sir.

x x x x[75]

In *People v. Nuarin*,^[76] the Court explained that a crucial step in proving the 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; 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.^[77] As such, insofar as the small box labelled "safety can be fun" six (6) small aluminum foils, and two (2) disposable lighters are concerned, there is nothing thereon that serves to distinguish them to prove that they were the same items that PO1 Ventura found inside petitioner's bedroom during the search. At the outset, therefore, there was already a gap in the chain of custody of the said items.

Third, SPO4 Balolong testified that the search on petitioner's Mitsubishi Pajero yielded only one (1) plastic sachet of shabu and nothing else, thus:

PROSECUTOR FAJARDO – That Pajero you are referring to, where was it at that time?

WITNESS – It was parked at their garage, sir.

Q – And what was the result of that search they made on that vehicle?

A – A one (1) plastic sachet of shabu was seized inside the vehicle, sir.

Q – Aside from that, were there any item which was found inside the vehicle?

A – Nothing, sir.

Q – Where were you at that time when they were searching the vehicle?

A – I was at the back of the vehicle, sir.

x x x x[78] (Emphases supplied)

Apart from the foregoing testimony made by SPO4 Balolong, there is no other mention in the records of the aforesaid plastic sachet of shabu allegedly found in petitioner's vehicle. It does not appear in the Receipt of Property Seized prepared by SPO1 Santos, the Inventory of Seized Items prepared by both SPO1 Santos and SPO4 Ancheta, or the Extract Copy signed by SPO4 Ancheta. For whatever reason that the police officers deemed it unnecessary or irrelevant to include the said plastic sachet in the inventory of seized items – if the same had been found at all – such exclusion renders the entire corpus of evidence against petitioner highly suspect.

Fourth, the discrepancy in the combined weight of the white crystalline substance in the plastic sachets confiscated from petitioner, which weighed 16.6 grams in the original information,[79] decreased to 15.3723 grams in the amended information was not explained.<d declared="" that="" he="" saw="" [80] True, the amendment of the information is allowed before an accused enters his plea,<d declared="" that="" he="" saw="" [81] which obtains in this case. However, and although the discrepancy of 1.2277 grams may be considered a minuscule amount, the prosecution's failure to sufficiently explain such discrepancy militates against the integrity of the corpus delicti.

Finally, there was no representative from the DOJ to witness the photographing and inventory of the seized items, whose presence, together with that of an elected public official and a member of the media, is clearly required under Section 21 (a), Article II of RA 9165. Such absence is inexcusable considering that the police officers had ample time to ensure the presence of all the witnesses, in light of SPO4 Balolong's assertion that they had conducted a surveillance operation prior to the application for a search warrant. Unfortunately, they still failed to faithfully comply with the procedural safeguards, and, worse, they did not offer any explanation for their non-compliance.[82] It bears stressing that non-compliance with the required witnesses rule may be permitted if the prosecution proves that the arresting officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[83] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[84]

In fine, the regularity of the performance of official duty on the part of the arresting officers during the search and its aftermath cannot be presumed when the records do not contain any explanation why the stringent requirements of Section 21, Article II of RA 9165 were not complied with. Hence, petitioner's incrimination is doubtful and his acquittal for the charges of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia on the ground of reasonable doubt should follow.[85]

WHEREFORE, the appeal is GRANTED. The Decision dated June 28, 2017 and the Resolution dated January 22, 2018 of the Court of Appeals in CA-G.R. CR HC No. 07257 are REVERSED and SET ASIDE. Accordingly, petitioner Damacen Gabriel Cunanan a.k.a. "Ryan" is ACQUITTED of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, (Chairperson), Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018. Dated March 16, 2018.

[1] Rollo, pp. 10-34.

[2] Id. at 36-60. Penned by Associate Justice Maria Filomena D. Singh with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring.

[3] Id. at 62-65.

[4] Id. at 72-96. Penned by Presiding Judge Philip G. Salvador.

[5] Entitled "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, repealing republic act no. 6425, Otherwise Known as the dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes," approved on June 7, 2002.

[6] Dated May 21, 2012. Records (Crim. Case No. 15243), p. 6.

[7] See rollo, pp. 36-37 and 73-74.

[8] Per testimony of Brgy. Chairman Felix Ayson, present during the search were Edgar Jacinto of Bombo Radyo and Honorata Arlante of DZJC; see TSN, April 2, 2013, p. 113.

[9] See rollo, pp. 37-38.

[10] See id. at 38-39. See also TSN, June 5, 2013, pp. 217-219.

[11] See TSN, March 7, 2013, p. 74.

[12] TSN, March 7, 2013, pp. 66, 68. See also rollo, p. 39.

[13] See TSN, May 29, 2013, p. 173.

[14] See id. at 175. See also rollo, p. 39.

[15] See TSN, May 8, 2013, p. 135; TSN, June 5, 2013, p. 220; and TSN, August 1, 2013, p. 283.

[16] See TSN, August 22, 2013, pp. 299-301.

[17] See TSN, August 22, 2013, p. 305.

[18] See rollo, p. 40.

[19] See TSN, August 22, 2013, p. 302.

[20] See Initial Laboratory Report, Chemistry Report No. D-034-2012-IN dated May 22, 2012; records (Crim. Case No. 15243), p. 121.

[21] The Information in Crim. Case No. 15244 was for Section 11, Article II of RA 9165 (see records [Crim. Case No. 15244], pp. 1-2); while the Information in Crim. Case No. 15243 was for Section 12, Article II of RA 9165 (see records [Crim. Case No. 15243], pp. 1-2).

[22] Records (Crim. Case No. 15244), pp. 98-100.

[23] Id. at 98.

[24] See TSN, January 29, 2014, p. 449.

[25] See Joint Affidavit of Gwendolyn and Justin dated June 8, 2012; records (Crim. Case No. 15243), pp. 79-81.

[26] See TSN, January 29, 2014, pp. 510-512. See also rollo, pp. 76-77.

[27] Rollo, pp. 72-96.

[28] Id. at 96.

[29] Id. at 36-60.

[30] Id. at 60.

[31] Id. at 62-65.

[32] *People v. Balagat*, 604 Phil. 529, 534 (2009).

[33] See *People v. Ceralde*, G.R. No. 228894, August 7, 2017, citing *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[34] *People v. Go*, 457 Phil. 885, 906 (2003).

[35] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[36] *Ogayon v. People*, 786 Phil. 272, 283 (2015).

[37] *Nala v. Barroso, Jr.*, 455 Phil. 999, 1008-1009 (2003).

[38] 443 Phil. 521 (2003).

[39] Id. at 538.

[40] Records show that petitioner was also known by the name "Ryan Cunanan."

[41] TSN, May 21, 2012; records (Crim. Case No. 15243), pp. 44-45.

[42] Id. at 38-39.

[43] 482 Phil. 572 (2004).

[44] See *People v. Tee*, supra note 38, at 539.

[45] See rollo, p. 23.

[46] See id. at 23-24.

[47] *People v. Zhen Hua*, supra note 43, at 597-598.

[48] See *id.* at 599.

[49] See rollo, p. 23.

[50] See TSN, June 5, 2013, pp. 210-212.

[51] TSN, April 2, 2013, p. 112.

[52] *People v. Punzalan*, 113 Phil. 72, 89 (2015).

[53] See *People v. Diputado*, G.R. No. 213922, July 5, 2017.

[54] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[55] See *People v. Diputado*, supra note 53.

[56] See *id.*, citing *People v. Sabdula*, 733 Phil. 85, 94 (2014).

[57] 736 Phil. 749.

[58] See *id.* at 764; emphases supplied.

[59] TSN, June 5, 2013, p. 217.

[60] *Id.* at 219.

[61] TSN, April 2, 2013, p. 117.

[62] TSN, August 1, 2013, p. 291.

[63] Records (Crim. Case No. 15243), p. 119.

[64] *Id.* at 120.

[65] *Id.* at 118.

[66] *Id.* at 121.

[67] See rollo, p. 87.

[68] See Exhibit T-12; records (Crim. Case No. 15243), p. 126.

[69] See TSN, June 5, 2013, p. 218.

[70] Stands for "Rovimmanuel Valdez Balolong;" *id.* at 219.

[71] *Id.* at 225.

[72] Records (Crim. Case No. 15243), p. 121.

[73] SPO4 Ancheta marked them with "LCPS," which stands for "Laoag City Police Station" and his signature; see TSN, August 22, 2013, p. 305.

[74] TSN, March 7, 2013, pp. 77-79.

[75] *Id.* at 73-75.

[76] 764 Phil. 550 (2015).

[77] *People v. Prudencio*, 800 Phil. 128, 138 (2016).

[78] TSN, June 5, 2013, pp. 222-223.

[79] Records (Grim. Case No. 15244), pp. 1-2.

[80] *Id.* at 98-99.

[81] See Section 14, Rule 110 of the Rules of Court.

[82] See *People v. Velasco*, G.R. No. 219174, February 21, 2018.

[83] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[84] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1053 (2012)..

[85] See *People v. Velasco*, *supra* note 82.

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