



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

JAN 04 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 223526

Present:

VELASCO, JR., J.,  
*Chairperson,*  
BERSAMIN,\*  
LEONEN,  
MARTIRES, and  
GESMUNDO,\*\* JJ.

- versus -

ARIEL CALVELO y CONSADA,  
*Accused-Appellant.*

Promulgated:

December 6, 2017

*Wilfredo V. Lapitan*

X-----X

DECISION

**MARTIRES, J.:**

This resolves the appeal of Ariel Calvelo y Consada (*Ariel*) from the 9 March 2015 Decision<sup>1</sup> of the Court of Appeals (*CA*), First Division, in CA-G.R. CR-HC No. 06190 which affirmed the 26 April 2013 judgment<sup>2</sup> of the Regional Trial Court (*RTC*), Branch 28, Santa Cruz, Laguna, in Criminal Case No. SC-11953 finding him guilty beyond reasonable doubt of Violation of Section (*Sec.*) 5, Article (*Art.*) II, of Republic Act (*R.A.*) No. 9165.<sup>3</sup>

THE FACTS

Ariel was charged before the RTC of Santa Cruz, Laguna, with violation of Sec. 5, Art. II of R.A. No. 9165 committed as follows:

\* On Official Leave

\*\* On Leave

<sup>1</sup> *Rollo*, pp. 2-12, penned by Associate Justice Ricardo R. Rosario and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Edwin D. Sorongon.

<sup>2</sup> Records, pp. 169-173. Penned by Presiding Judge Iluminado M. Dela Peña.

<sup>3</sup> 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*" dated 7 June 2002.

*[Signature]*

That on November 26, 2005 at about 11:00 o'clock in the evening at Traveller's Inn, Barangay Pagsawitan, Municipality of Santa Cruz, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized and/or permitted by law, did then and there wilfully, unlawfully, and feloniously sell and deliver to a poseur buyer three (3) heat sealed transparent plastic sachets containing a total weight of 14.07 grams of METHAMPHETAMINE HYDROCHLORIDE (shabu), a dangerous drug, in consideration of two (2) Five Hundred Peso bills marked money with Serial Numbers SU132935 and FK512868, in violation of the aforementioned law.

CONTRARY TO LAW.<sup>4</sup>

When arraigned, Ariel pleaded not guilty to the charge against him, thus, trial on the merits ensued.

### ***The Version of the Prosecution***

To prove its case, the prosecution presented Police Officer 2 (PO2) Marites T. Villanueva (*Villanueva*) and SPO2 Gerry Abalos (*Abalos*). The testimony of the forensic chemist, Police Senior Inspector Donna Villa P. Huelgas (*Huelgas*), was dispensed with upon the defense's admission that the prosecution's purpose in presenting her was to identify Chemistry Report No. D-1246-05 (*report*) and the shabu subject of her report.<sup>5</sup>

On 25 November 2005, at about 9:00 a.m., a confidential informant (*informant*) came to the Philippine Drug Enforcement Agency (*PDEA*) at Camp Vicente Lim, Canlubang, Laguna, to inform them that he was able to make a drug deal for fifteen (15) grams of shabu worth P60,000.00 with a certain Ariel and Diosa.<sup>6</sup> Regional Director Abe Lemos (*Lemos*) referred the matter to team leader Police Chief Inspector Julius Ceasar Ablang (*Ablang*) who held a briefing on the role of each team member and on the conduct of the surveillance on Ariel at the Travelers' Inn located at Barangay Pagsawitan, Sta. Cruz, Laguna, to determine whether the place is fit for the proposed buy-bust operation. Present during the briefing were Police Chief Inspector Raul Bergamento, Ablang, Villanueva, SPO2 Marcelino Male, Abalos (*Abalos*), SPO1 Jesus P. Platon, SPO1 Miguel Lapitan, Jr., PO3 Andres Ilagan, and PO3 Sherwin G. Bulan. Villanueva, who would act as poseur-buyer, was given two (2) five-hundred-peso bills<sup>7</sup> and the boodle money which she all marked "MTV"<sup>8</sup> representing her initials, while Abalos was assigned as the back-up arresting officer. On that same day, Villanueva,

<sup>4</sup> Records, p. 1.

<sup>5</sup> Records, pp. 67-68.

<sup>6</sup> Variably referred to as Dosa and Dosiang in the TSNs.

<sup>7</sup> Exhs. "F-1" and "G-1."

<sup>8</sup> Exhs. "F-2" and "G-2."

Abalos, and the informant proceeded to the Travellers' Inn to survey the place. After the survey, Villanueva and Abalos reported to their office that the place would be suitable for a buy bust operation. Thereafter, the pre-operation report<sup>9</sup> was prepared.<sup>10</sup>

The following day, at about 5:00 p.m., the informant called Ariel to tell him he already had a buyer of the shabu; Ariel replied that he was already preparing the items. The team, consisting of those who attended the earlier briefing, and PO1 Carla Mayo, proceeded to Barangay Pagsawitan and arrived thereat at about 8:00 p.m. Villanueva and the informant parked their vehicle in front of the Travelers' Inn while the other vehicle carrying the rest of the team was strategically parked fifteen (15) meters away from them.<sup>11</sup>

Immediately, the informant called Ariel to inform that he and the would-be buyer of the shabu were already at the vicinity of the Travelers' Inn. Ariel replied that they were already preparing the shabu. At about 9:00 p.m., Ariel arrived on his red tricycle with plate number WJ 7610. The informant told Ariel to board the vehicle that he and Villanueva rode in and introduced Ariel to Villanueva who, in turn, introduced herself as the buyer and was interested in buying 15 grams of shabu for ₱60,000.00. When Ariel asked Villanueva if she had the money, she showed him a maroon pouch supposedly containing the payment but which were actually only two marked ₱500.00 bills and the boodle money. When asked about the shabu, Ariel said he did not bring it as he needed to confirm whether they had the money, as instructed by Diosa. Thereafter, Ariel got off the vehicle.<sup>12</sup>

After an hour, Ariel returned to the Travelers' Inn on board the same tricycle. He got on the same vehicle that Villanueva and the informant were in. Once inside, Ariel took from the right front pocket of his short pants three (3) transparent plastic sachets filled with white crystalline substance which he handed to Villanueva. When Ariel demanded the payment, Villanueva handed the boodle money; but before Ariel could realize it was boodle money, Villanueva turned on the hazard lights of the vehicle, the pre-arranged signal that the transaction had been consummated. Abalos and the rest of the team rushed to the vehicle and assisted Villanueva in arresting Ariel. Abalos recovered the buy-bust money from Ariel and informed him of his constitutional rights. On the way to the PDEA office, Villanueva personally placed the markings Exh. "A" MTV 26/11/05, Exh. "B" MTV 26/11/05, and Exh. "C" MTV 26/11/05 on each of the three transparent plastic sachets.<sup>13</sup>



<sup>9</sup> Records p. 16; Exh. "1."

<sup>10</sup> TSN, 28 November 2006, pp. 2-8, 11-12; 9 March 2011, pp. 5-8.

<sup>11</sup> TSN, 9 March 2011, pp. 8-10.

<sup>12</sup> TSN, 9 March 2011, pp. 10-12; Exh. "A."

<sup>13</sup> TSN, 18 February 2010, pp. 20, 23; 1 December 2010, p. 6; Exh. "A."

Ariel was brought to the PDEA office for proper disposition and was photographed with the confiscated drugs. The booking sheet and arrest report<sup>14</sup> were likewise prepared. His true name was later identified as Ariel Calvelo y Consada.<sup>15</sup> Villanueva, as the poseur-buyer, and Abalos, as the arresting officer, executed their respective affidavits.<sup>16</sup>

On 27 November 2005, at 1:40 a.m., the three marked heated transparent sachets containing the substance suspected as shabu, with the signature of Villanueva, were submitted by her and Abalos to the Chief, PNP Regional Crime Laboratory Office 4 (*laboratory*) for examination.<sup>17</sup>

On the same day, the laboratory, through Huelgas, released the report<sup>18</sup> on the confiscated items. The pertinent portion of the report reads:

#### **SPECIMEN SUBMITTED**

Three (3) heat-sealed transparent plastic sachets, each containing moist/white crystalline substance of the following markings (with signature) and net weights:

A (EXH A MTV 26/11/06) – 4.71 grams

B (EXH B MTV 26/11/06) – 4.72 grams

C (EXH C MTV 26/11/06) – 4.64 grams

x – x – x

x – x – x

#### **PURPOSE OF LABORATORY EXAMINATION**

To determine the presence of *dangerous drugs* in the above-mentioned specimen.

x – x – x

x – x – x

#### **FINDINGS**

Qualitative examination conducted on specimen A through C gave POSITIVE result to the tests for the presence of **Methamphetamine hydrochloride**, a dangerous drug.

#### ***The Version of the Defense***

Ariel tried to prove his defense through his testimony and that of his elder brother, Jimmy Calvelo (*Jimmy*).

Ariel testified that on 26 November 2005, at around 11:00 p.m., he was about to close the billiard hall located at Barangay Biñan, Pagsanjan,

<sup>14</sup> Records, p.10; Exh. "C."

<sup>15</sup> TSN, 7 March 2007, pp.13-14; Exh. "A."

<sup>16</sup> Records, pp. 6-9; Exhs. "A" and "B."

<sup>17</sup> Records, p.12.

<sup>18</sup> Recods, p.12; Exh. "D."

Laguna, where he works as a spotter, when Jimmy arrived requesting that he buy him noodles from the Travelers' Inn. He complied and rode a pedicab to the Travelers' Inn. While waiting for his order, he got bored and went to the back portion of the establishment when, suddenly, five armed men came shouting at him "dapa, dapa, dapa." While lying down with his face on the floor, somebody stepped on his back while another was saying "handcuff, handcuff." Because there were no handcuffs, somebody tied him up using a belt and then he was carried to a tinted vehicle. He was told "nahuli ka na din namin"; but when he asked why he was being held, they asked for his name instead. When he told them that his name was Ariel, they got mad at him and asked him again for his name. He told them that his name was Ariel Calvelo. When the vehicle arrived at the Santa Cruz municipal building, he was transferred to another vehicle together with Abalos, who pulled his hair and later got a key from his (*Abalos*) pocket and scratched this on Ariel's head.<sup>19</sup>

The vehicle he was made to board together with five other persons proceeded to the PDEA office in Canlubang, Laguna. While inside the vehicle, he was punched and hit on the head. His hands were untied and later handcuffed. He was brought inside the PDEA office where they asked his name and told him to cooperate. When he told them that he did not know anything, his handcuffs were removed and he was incarcerated. It was only at the Fiscal's office that he knew he was being charged with violation of Sec. 5, R.A. No. 9165. He saw Villanueva only at the PDEA office.<sup>20</sup>

He came to know of Diosa when the latter was detained at the Laguna provincial jail. When he asked Diosa why he (Ariel) was being implicated in the case, Diosa informed him that the place his (Ariel's) brother was renting was very near the place where he (Diosa) was staying. He also learned that Diosa's house was located on the same street as the billiard hall where he worked. He was incarcerated in 2005; Diosa in 2009.<sup>21</sup>

Jimmy testified that on 26 November 2005, at around 11:00 a.m., he was at his house located at Barangay Biñan, Pagsanjan, Laguna, doing overtime work when he got hungry. He went to the billiard hall where Ariel was working and asked its owner, Melissa Maceda (*Maceda*) to allow Ariel to buy noodles for him at the Travelers' Inn. Maceda allowed Ariel to buy the noodles after he closed down the billiard hall. Ariel took a pedicab to the Travelers' Inn.<sup>22</sup>

When Ariel failed to return after an hour, Jimmy went to the Travelers' Inn and asked the people around whether they had seen Ariel. He was told by Junior, a tricycle driver, that Ariel was picked up by police officers. He went to the Santa Cruz precinct but did not find Ariel there.

<sup>19</sup> TSN, 4 August 2011, pp. 1-7, 10.

<sup>20</sup> Id. at 7-10.

<sup>21</sup> Id. at 11-13.

<sup>22</sup> TSN, 24 November 2011, pp. 3-5.

After three days, upon being informed that Ariel had been apprehended by PDEA members, he went to the PDEA office.<sup>23</sup>

### ***The Ruling of the RTC***

**WHEREFORE**, premises considered, this court finds the accused **ARIEL CALVELO y CONSADA GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 5, Article II, R.A. 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of One Million Pesos (P1,000,000.00)

The specimens of shabu subjects of this case with a total weight of 14.07 grams are ordered confiscated in favour of the government and the Branch Clerk of Court is hereby ordered to transmit the same to the appropriate government agency for proper disposition.

SO ORDERED.

### ***The Ruling of the CA***

The CA ruled that the prosecution was able to establish the identity of Ariel as the drug dealer and the manner by which the illegal sale of the dangerous drug took place. It held that regardless of whether Villanueva acted as a mere bystander during the transaction, she still had the obligation to apprehend Ariel because she was a police officer in whose presence a crime was being committed. Granting that she was a bystander, Villanueva could testify as to the transaction since she was an eyewitness. On the claim of Ariel that the informant was not presented, the CA held that this was not fatal to the case of the prosecution since the informant's testimony was only corroborative, thus, it may be dispensed with.<sup>24</sup>

The CA found that the chain of custody over the seized drugs was maintained by the apprehending officers, viz: Villanueva marked and affixed her signature on the three heat-sealed transparent sachets handed to her by Ariel. After the inventory of the seized items, Villanueva and Abalos brought the items to the laboratory for examination; a report from the laboratory confirmed that the moist/white crystalline substance on the three sachets tested positive for shabu.<sup>25</sup> The dispositive portion of the CA decision reads:

**WHEREFORE**, premises considered, the appeal filed by Ariel Calvelo y Consada is **DISMISSED**. The Judgment of the Regional Trial Court of Santa Cruz, Laguna, Branch 28 in Criminal Case No. SC-11953 is **AFFIRMED**.



<sup>23</sup> Id. at 6-8.

<sup>24</sup> *Rollo*, pp. 7-8.

<sup>25</sup> Id. at 8-9.

**SO ORDERED.**

## ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE PROSECUTION'S VERSION DESPITE THE PATENT IRREGULARITIES IN THE CONDUCT OF THE BUY-BUST OPERATION

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE CORPUS DELICTI OF THE CRIME

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

## OUR RULING

The appeal is without merit.

***The elements of violation of Sec. 5, Art. II of R.A. No. 9165 had been proven beyond reasonable doubt.***

Continuing accretions of jurisprudence restate the requirements to secure a conviction for illegal sale of dangerous drugs under Sec. 5,<sup>26</sup> Art. II

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<sup>26</sup> **Section 5.** Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.  
The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.  
If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

of R.A. No. 9165, viz: (1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor.<sup>27</sup> What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.<sup>28</sup>

Ariel was positively identified by Villanueva and Abalos during the hearing as the drug seller. According to Villanueva, she had the opportunity to personally talk with Ariel when, on 26 November 2005, he boarded twice the vehicle she was riding in, viz: the first was at about 9:00 p.m. when she was introduced to him as the buyer of 15 grams of shabu priced at ₱60,000.00 and she showed him the maroon pouch containing the alleged payment for such; and the second was when he returned after an hour to deliver the shabu and to receive the payment.

Abalos, assigned as the arresting officer, was inside another vehicle that was strategically parked away from Villanueva's vehicle which he saw Ariel boarding twice. When Villanueva turned on the hazard lights, the pre-arranged signal that the transaction was already consummated, Abalos and his companions rushed to the vehicle and arrested Ariel. Abalos then recovered the buy-bust money from him.

Ariel posits that it was the informer, and not Villanueva, who had personal knowledge of the alleged drug transaction and was the poseur-buyer. He maintained that Villanueva was a mere bystander whose sole and hearsay testimony could not be made the basis of his conviction. To prove his point, Ariel cited the case of *People v. Rojo*,<sup>29</sup> where the Court found a fatal flaw in the prosecution's evidence, among others, on how the alleged entrapment proceedings took place; and in its failure to present the informant who would have been its best witness.<sup>30</sup>

We do not subscribe to Ariel's position.



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For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

<sup>27</sup> *People v. Arce*, G.R. No. 217979, 22 February 2017.

<sup>28</sup> *People v. Ismael*, G.R. No. 208093, 20 February 2017.

<sup>29</sup> 256 Phil. 571, 581 (1989).

<sup>30</sup> CA rollo, pp. 52-54.

Records show that it was Villanueva who was the buyer in the subject transaction for the sale of shabu. The informant merely acted as the middleman between Villanueva, as buyer, and Ariel, as seller. As testified to by Villanueva and Abalos, on 26 November 2005, at about 5:00 p.m. at the PDEA office, the informant called up Ariel to inform him that he (informant) already had a buyer, to which Ariel replied that he was already preparing the shabu. The following day, the informant called up Ariel again, this time to say that he and the would-be buyer were already at the Travelers' Inn. When they met, Villanueva introduced herself as the buyer of the shabu. When Ariel had made sure that Villanueva had with her the money to pay for the items, he handed her the three transparent plastic sachets containing the shabu and she, in turn, handed him the marked and boodle money.

Contrary to Ariel's claim, the factual milieu in *Rojo* is completely different from the case at bar. In *Rojo*, it was the informant who acted as the poseur-buyer of marijuana during the buy-bust operation. A member of the buy-bust team was positioned 5 to 7 meters away from the informant while the transaction was taking place, while two other members of the team were inside their vehicle parked one hundred meters away from the scene.

During the hearing in *Rojo*, the informant who acted as buyer was not put on the witness stand by the prosecution. His identity was not revealed for being confidential information. Significantly, the evidence of the prosecution as to the informant's participation as buyer during the entrapment proceeding was contradictory, viz: a patrolman testified that it was another patrolman who acted as poseur-buyer; while another patrolman testified that it was the informant who acted as such. The Court held that the fatal flaw in the prosecution's evidence was its failure to establish how the alleged entrapment proceedings took place, and to prove beyond reasonable doubt the actual participation of the informant during the buy-bust operation, thus, casting doubt on whether the entrapment proceedings even took place.

Compared with this case, Villanueva had first-hand knowledge of what transpired during the transaction with Ariel. She actually dealt with Ariel, i.e., from receiving the shabu from him to her actual payment for the delivered item. Indeed, the prosecution was correct in presenting Villanueva to fortify its case against Ariel as she personally knew the details of the transaction that took place on the night of 27 November 2005.

Case law imparts the "objective test" in a buy-bust operation as follows:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or



payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all costs. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.<sup>31</sup>

Evaluation of the records applying the "objective test" will prove that the prosecution was able to establish beyond moral certainty the details of the transaction that took place between Villanueva and Ariel from the offer to purchase shabu until the consummation of the sale. Consequently, the claim of Ariel that the poseur – buyer failed to present evidence on how the illegal drugs were recovered – raising doubts about a buy-bust having been actually conducted and warranting a suspicion that the prohibited drugs were planted<sup>32</sup> – miserably weakened in the light of the convincing and credible testimony of the prosecution witnesses.

There was apparently no need for the prosecution to present the informant if only to determine whether there was a prior drug deal between him and Ariel. The informant's testimony would only corroborate that of Villanueva and Abalos who both testified that the informant contacted Ariel on 26 and 27 November 2005 on the drug deal, and which transaction indeed took place when Ariel actually delivered the shabu to Villanueva on 27 November 2005. The sale, to stress, was between Ariel and Villanueva. We quote our ruling in *People v. Bartolome*,<sup>33</sup> viz:

Similarly, the presentation of an informant as a witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded.

It is underscored that factual findings of the trial court, including its assessment of the credibility of the witnesses and the probative weight thereof, as well as the conclusions of the trial court based on its factual

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<sup>31</sup> *People v. Doria*, 361 Phil. 595,621 (1999).

<sup>32</sup> *CA rollo*, p. 54.

<sup>33</sup> 703 Phil. 148, 164 (2013).

findings, are accorded high respect, if not conclusive effect, especially if affirmed by the CA, except when facts or circumstances of weight and influence were overlooked or the significance of which was misappreciated or misinterpreted by the lower courts.<sup>34</sup> The record is bereft of any showing that Ariel was able to persuasively bring his case within the jurisprudentially established exception to the rule; hence, we defer to the factual findings of the RTC in the absence of any compelling cause or impetus to disturb the same.

***There was an unbroken chain of custody of the seized drugs.***

In all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself.<sup>35</sup> The *corpus delicti* is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved;<sup>36</sup> hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. The prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.<sup>37</sup> In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.<sup>38</sup>

In Sec. 1(b) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002,<sup>39</sup> the DDB – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control and tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy<sup>40</sup> – has defined chain of custody involving the dangerous drugs and other substances in these following terms:

b. "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

<sup>34</sup> *People v. Dela Peña*, 754 Phil. 323, 338 (2015).

<sup>35</sup> *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

<sup>36</sup> *People v. Ameril*, G.R. No. 203293, 14 November 2016.

<sup>37</sup> *Santos v. People*, G.R. No. 220333, 14 November 2016.

<sup>38</sup> *People v. Tamaño*, G.R. No. 208643, 16 December 2016.

<sup>39</sup> Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of RA No. 9165.

<sup>40</sup> Sec. 77, R.A. No. 9165.

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.<sup>41</sup>

Sec. 21<sup>42</sup> in R.A. No. 9165 provides the specific manner on the custody and disposition of seized drugs and paraphernalia, which is further elaborated in its Implementing Rules and Regulations<sup>43</sup> (IRR). It is understandable that the legislature had taken great pains in providing for Sec. 21 in R.A. No. 9165 as to the manner by which the seized items shall be kept and disposed of as this will be the safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.<sup>44</sup>

In consonance with DDB's definition of chain of custody, judicial pronouncement<sup>45</sup> dictated its meaning as follows:

Chain of custody is defined as "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.

It must be considered that narcotic substances are not readily identifiable and are highly susceptible to alteration, tampering or

<sup>41</sup> *People v. Gonzales*, 708 Phil. 121, 132 (2013).

<sup>42</sup> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

<sup>43</sup> The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirement" under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

<sup>44</sup> *Rontos v. People*, 710 Phil. 328, 335 (2013).

<sup>45</sup> *People v. Ameril*, Supra note 36.

contamination.<sup>46</sup> Thus, there are links that must be established in the chain of custody in a buy-bust situation, viz: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>47</sup>

The legal teaching on the *first link* is as follows:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**<sup>48</sup>

Villanueva testified that immediately after the buy-bust operation and on board the vehicle on the way to the PDEA office, she placed on each of the three sachets handed to her by Ariel the markings Exh. "A" MTV 26/11/05, Exh. "B" MTV 26/11/05, and Exh. "C" MTV 26/11/05 and affixed her signature thereon. The markings were made by Villanueva in the presence of Ariel since they were on board the same vehicle. Records likewise show a certificate of inventory<sup>49</sup> signed by Ablang as team leader, and with elected public official A. Pangilinan and media representative Bell Desolo, as witnesses to the inventory. The certificate of inventory denoted the following seized items during the buy-bust operation, to wit:

THREE (3) PIECES OF HEAT-SEALED TRANSPARENT PLASTIC SACHET CONTAINING WHITE SUBSTANCE OF SUSPECTED SHABU MARKED EXH. "A," "B," AND "C" "MTV" 26/11/05 WITH THE SIGNATURE OF THE POSEUR-BUYER

ONE (1) KAWASAKI 125 c.c. (COLORED RED) WTH SIDECAR (COLORED BLUE) PLATE NO. WJ 7610



<sup>46</sup> *People v. Jaafar*, Supra note 35.

<sup>47</sup> *People v. Villar*, G.R. No. 215937, 9 November 2016.

<sup>48</sup> Id.

<sup>49</sup> Records, p. 15; Exh. "E."

TWO (2) PIECES OF FIVE HUNDRED PESO BILL (P500.00) W/ SERIAL NOS. SU132935 AND FK512868 USED AS MARKED MONEY TOGETHER WITH SEVERAL PIECES OF BOODLE MONEY IN THE CONDUCT OF BUY-BUST OPERATION.

On the second link, as the poseur-buyer and as a member of the buy-bust team, Villanueva was in possession of the drugs seized from Ariel. Villanueva marked and affixed her signature on the seized items. The seized items did not change hands, thus, there was no break in the second link.

On the third link, Villanueva and Abalos testified that they were the ones who turned over to the laboratory for examination the “three (3) heat-sealed transparent plastic sachets containing white crystalline substance suspected to be shabu with marking EXH ‘A’ to ‘C’ ‘MTV’ 26/11/05 and signature of the poseur-buyer.” The memorandum<sup>50</sup> of Lemos containing the request for examination showed that this, together with the seized drugs, was received by the laboratory on 1:40 a.m. on 27 November 2005, or about two hours from the actual buy-bust operation. The person from the laboratory who received the memorandum and the confiscated drugs affixed his signature on the memorandum and even assigned a control number for the request. On the same day, Huelgas released her report on the qualitative examination on the specimens.

On the fourth link, Huelgas was no longer put on the witness stand with the admission by the defense that her testimony would be on the identification of her report and the seized drugs.<sup>51</sup>

Irrefragably, the prosecution was able to convincingly establish an unbroken chain in the custody of the seized drugs in compliance with Sec. 21, Art. II, R.A. No. 9165 and its IRR; hence, the integrity and evidentiary value of the confiscated drugs had not been compromised.

On the one hand, there is an enlightened precedent<sup>52</sup> to serve as guide relevant to the persistent allegations of the accused-appellant on the alleged failure of the police officers to strictly comply with Sec. 21, Art. II, R.A. No. 9165, and consequently render the seized drugs as inadmissible, viz:

From the point of view of jurisprudence, we are not beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case. In *People v. Resurreccion*, we already stated that “marking upon immediate confiscation” does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana*, *People v. Hernandez*, and *People v. Gum-Oyen*, the apprehending team marked the confiscated items at the

<sup>50</sup> Id. at 9.

<sup>51</sup> Id. at 67-68.

<sup>52</sup> *People v. Alcala*, 739 Phil. 189, 202 (2014).

police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, **we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused.** We succinctly explained this in *People v. Del Monte* when we held:

**We would like to add that noncompliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence.** Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts. X x x

**We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to noncompliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is noncompliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence.** The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case. (citations omitted)

***The evidence on record heavily weighs in favour of the presumption of regularity in the performance of official duty.***

Ariel asserted that the presumption of regularity in the performance of official duty by itself cannot overcome the presumption of innocence or constitute proof beyond reasonable doubt.<sup>53</sup>

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act of 2002, as amended, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.<sup>54</sup> The presumption, rebuttable by affirmative evidence of irregularity or of any failure to perform a duty, is based on three fundamental reasons, namely: *first*, innocence, and not wrongdoing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long

<sup>53</sup> CA rollo, p. 58.

<sup>54</sup> *People v. Alcala*, supra note 52.

unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption.<sup>55</sup>

Ariel failed to show any convincing evidence to warrant a finding that the police officers had not performed their official duties in the manner prescribed by law. Indeed, there was no shred of evidence that would even remotely indicate that the police officers had ill motive to ascribe to Ariel the commission of a grave crime. Absent any clear showing that the arresting officers had ill motive to falsely testify against the appellant, their testimonies must be respected and the presumption of regularity in the performance of their duties must be upheld.<sup>56</sup>

In stark contrast to this presumption, the self-serving denial of Ariel failed to put a dent on the prosecution's evidence. Ariel, to stress, was caught *in flagrante delicto* in a legitimate buy-bust operation. His defense of denial or frame-up has been invariably viewed with disfavor for it can easily be concocted and is a common defense ploy in prosecutions for violation of R.A. No. 9165.<sup>57</sup>

WHEREFORE, all premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 06190 is hereby AFFIRMED.

**SO ORDERED.**

  
SAMUEL R. MARTIRES  
Associate Justice

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<sup>55</sup> *People v. Reyes*, G.R. No. 199271, 19 October 2016, citing *People v. Mendoza*, 736 Phil. 749, 769 (2014).

<sup>56</sup> *People v. Fundales, Jr.*, 694 Phil. 322, 337 (2012).

<sup>57</sup> *People v. Tapugay*, 753 Phil. 570, 577-578 (2015).

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

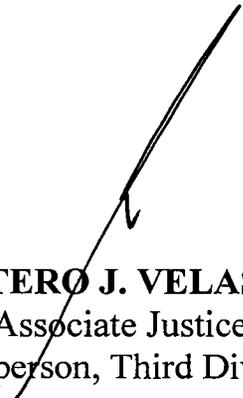
(On Official Leave)  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

(On Leave)  
**ALEXANDER G. GESMUNDO**  
Associate Justice

**A T T E S T A T I O N**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

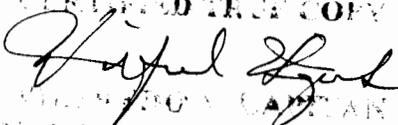
  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

CERTIFIED TRUE COPY  
  
Hazel Llanera  
Division Clerk of Court  
Third Division  
JAN 04 2018