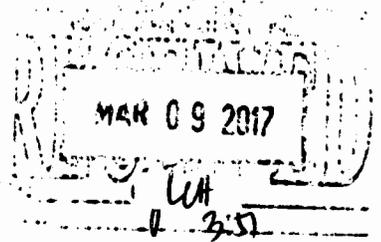




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 208093**

Present:

- versus -

SERENO, C.J., *Chairperson,*  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, *and*  
 CAGUIOA, JJ.

**SALIM ISMAEL y RADANG,**  
*Accused-Appellant.*

Promulgated:  
**FEB 20 2017**

X ----- X

**DECISION**

**DEL CASTILLO, J.:**

This is an appeal from the June 14, 2013 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-GR. CR H.C. No. 00902, which affirmed the August 31, 2010 Judgment<sup>2</sup> of Branch 12, Regional Trial Court (RTC) of Zamboanga City in Criminal Case Nos. 5021 (19952) and 5022 (19953), finding appellant Salim Ismael y Radang (Salim) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In Criminal Case No. 5021 (19952), Salim was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for illegal sale of *shabu* under Section 5, Article II of RA 9165; and in Criminal Case No. 5022 (19953), he was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fifteen (15) years and pay a fine of ₱300,000.00 for illegal possession of *shabu* under Section 11 of the said law.

***Factual Antecedents***

Salim was charged with violation of Sections 5 and 11, Article II of RA 

<sup>1</sup> CA rollo, pp. 101-109; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras.

<sup>2</sup> Records, pp. 88-101; penned by Presiding Judge Gregorio V. De La Pena, III.

9165 for selling and possessing methamphetamine hydrochloride (*shabu*). The twin Informations<sup>3</sup> instituted therefor alleged:

In Criminal Case No. 5021 (19952)

That on or about August 25, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and feloniously, sell and deliver to SPO1 Roberto Alberto Santiago, PNP, Culianan Police Station, who acted as poseur buyer, one (1) small size transparent plastic pack containing white crystalline substance as certified to by PO1 Rodolfo Dagalea Tan as METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.

In Criminal Case No. 5022 (19953)

That on or about August 25, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, two (2) small size heat-sealed transparent plastic packs each containing white crystalline substance as certified to by PO1 Rodolfo Dagalea Tan as METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.

Arraigned on July 6, 2004, Salim, assisted by counsel, pleaded not guilty to both charges. Upon termination of the joint pre-trial conference, trial on the merits followed.

***Version of the Prosecution***

Culled from the records<sup>4</sup> were the following operative facts:

On August 25, 2003, at around 1:00 o'clock in the afternoon, a confidential informant reported to SPO4 Menardo Araneta [SPO4 Araneta], Chief of the Intelligence Division of the Culianan Police Station 4 [at Zamboanga City], that a certain "Ismael Salim" was engaged in selling *shabu* at *Barangay Talabaan* near the Muslim [c]emetery [in that city].

<sup>3</sup> Id. at 1-2.

<sup>4</sup> CA *rollo*, pp. 103-104.

To verify the report, SPO4 Araneta instructed the said informant to [monitor] the area. After the informant confirmed that the said Ismael Salim was indeed selling illegal drugs in the reported area, SPO4 Araneta formed a buy-bust team composed of SPO1 Enriquez, SPO1 Eduardo N. Rodriguez (SPO1 Rodriguez), SPO1 Roberto A. Santiago (SPO1 Santiago) and PO2 Rodolfo Dagalea Tan (PO2 Tan). It was then agreed that SPO1 Santiago would act as poseur buyer with SPO1 Rodriguez as back-up. For the purpose, SPO4 Araneta gave SPO1 Santiago a [₱100] bill bearing Serial No. M419145 as marked money [to be used] in the buy-bust operation.

Upon arrival at *Barangay* Talabaan, the team parked their service vehicle along the road. SPO1 Santiago, the confidential informant and SPO1 Rodriguez alighted from the vehicle and walked towards the [area fronting] the Muslim cemetery. As they approached the area, the informant pointed to a man wearing a brown T-shirt and black short pants with white towel around his neck [whom he identified] as appellant Ismael Salim, the target of the operation.

SPO1 Santiago then [walked] towards appellant and [told] the latter that he [wanted] to buy *shabu*; to this appellant replied "how much?" SPO1 Santiago answered that he [wanted to buy ₱100.00 worth of the *shabu*, and gave appellant] the ₱100.00 marked money; [whereupon appellant] took from his left pocket one plastic sachet containing a white crystalline substance [which he] handed over to SPO1 Santiago.

Upon seeing the exchange, SPO1 Rodriguez, who was positioned [some 10] meters away, rushed in and arrested appellant[.] SPO1 Rodriguez made a precautionary search of appellant's body for any concealed weapon[, and found none]. Instead, SPO1 Rodriguez found, tucked inside [appellant's left front pocket the ₱100.00] marked money and two (2) more plastic sachets containing white crystalline substance wrapped in a golden cigarette paper.

The police officers then brought appellant to the Culianan Police Station [in Zamboanga City] with SPO1 Santiago keeping personal custody of the items confiscated from [him]. At the [police] station, the plastic sachet containing white crystalline substance subject of the buy-bust operation, the two (2) plastic sachets also containing white crystalline substance[, and the ₱100.00] marked money bearing Serial No. M419145 recovered from appellant's left pocket, were respectively turned over by SPO1 Santiago and SPO1 Rodriguez to the Desk Officer, PO3 Floro Napalcruz [PO3 Napalcruz], who likewise turned [these over] to the Duty Investigator, [PO2 Tan]. PO2 Tan then placed his initial "RDT" on the items recovered from appellant.

PO2 Tan also prepared a request to the PNP Regional Crime Laboratory 9, [at] Zamboanga City for laboratory examination of the plastic sachet containing the white crystalline substance subject of the sale between appellant and SPO1 Santiago, and the other two (2) plastic sachet[s] found inside appellant's pocket by SPO1 Rodriguez.

After conducting qualitative examination on the said specimens, Police Chief Inspector [PCI] Mercedes D. Diestro, Forensic Chemist [Forensic Chemist Diestro], issued Chemistry Report No. D-367-2003 dated August 25, 2003, finding [the above-mentioned] plastic sachets positive for Methamphetamine Hydrochloride (*shabu*), a dangerous drug.



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

The defense presented appellant as its lone witness. Appellant denied both charges; he denied selling *shabu* to SPO1 Santiago, just as he denied having *shabu* in his possession when he was arrested on August 25, 2003.

According to appellant, on August 25, 2003, he went to a store to buy cellphone load so that he could call his wife. After buying the cellphone load, he went back to his house on board a *sikad-sikad*, a bicycle-driven vehicle with a sidecar. When he was about 160 meters away from the Muslim cemetery in *Barangay* Talabaan, he was arrested by five persons in civilian attire who introduced themselves as police officers. The police officers conducted a search on his person but did not find any dangerous drugs. Thereafter, he was brought to Culianan Police Station where he was detained for two days. Appellant insisted that he never sold *shabu* to the police officers who arrested him. He said that the first time he saw the alleged *shabu* was when it was presented before the trial court. He denied that the police officers had confiscated a cellular phone from him. He also asserted that all these police officers took away from him was his money and that he had never met the said police officers prior to his arrest.

### ***Ruling of the Regional Trial Court***

On August 31, 2010, the RTC of Zamboanga City, Branch 12 rendered its Judgment finding appellant guilty beyond reasonable doubt of having violated Sections 5 and 11, Article II of RA 9165.

The RTC gave full credence to the testimonies of SPO1 Santiago and SPO1 Rodriguez who conducted the buy-bust operation against appellant; it rejected appellant's defense of denial and frame-up. The RTC noted that the defense of frame-up is easily concocted and is commonly used as a standard line of defense in most prosecutions arising from violations of the comprehensive dangerous drugs act.<sup>5</sup> Moreover, other than the self-serving statements of appellant, no clear and convincing exculpatory evidence was presented in the present case.

The dispositive part of the Judgment of the RTC reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, this Court hereby finds the accused herein, SALIM ISMAEL y RADANG, guilty beyond reasonable doubt in both cases, for violation of Sections 5 and 11, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences the said accused, in Criminal Case No. 5021 (19952) for Violation of Section 5, Article II of Republic Act No. 9165, to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred

<sup>5</sup> Records, p. 98.



Thousand Pesos (₱500,000.00), and in Criminal Case No. 5022 (19953) for Violation of Section 11, Article II of Republic Act No. 9165, to suffer the penalty of Imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

The dangerous drugs seized and recovered from the accused in these cases are hereby ordered confiscated and forfeited in favor of the government to be disposed in accordance with the pertinent provisions of Republic Act No. 9165 and its implementing rules and guidelines.

Cost against the accused.

SO ORDERED<sup>6</sup>

### ***Ruling of the Court of Appeals***

Dissatisfied with the RTC's verdict, appellant appealed to the CA, but on June 14, 2013, the CA affirmed *in toto* the RTC's Judgment. The CA held that the elements of both illegal sale and illegal possession of dangerous drugs had been duly proven in the instant case. The CA joined the RTC in giving full credence to the testimonies of the aforementioned police officers, as they are presumed to have performed their duties in a regular manner, no evidence to the contrary having been adduced in the twin cases. Moreover, the CA found that in these cases, the integrity and evidentiary value of the seized drugs had not at all been compromised, but were in fact duly preserved.

The CA disposed as follows:

WHEREFORE, the assailed Judgment of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 12, Zamboanga City finding accused-appellant Salim Ismael y Radang guilty beyond reasonable doubt of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 is AFFIRMED *in toto*.

SO ORDERED.<sup>7</sup>

Taking exception to the CA's Decision, appellant instituted the present appeal before this Court and in his Appellant's Brief<sup>8</sup> argues that:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN [HIS] GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>9</sup>

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<sup>6</sup> Id. at 100.

<sup>7</sup> CA *rollo*, p. 108.

<sup>8</sup> Id. at 14-34.

<sup>9</sup> Id. at 16.

It is appellant's contention that his guilt had not been proven beyond reasonable doubt because the prosecution: (1) failed to establish the identity of the prohibited drugs allegedly seized from him and; (2) likewise failed to comply with the strict requirements of Section 21 of RA 9165.

### Our Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>10</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.

On the other hand, for illegal possession of dangerous drugs, the following elements must be established: "[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs."<sup>11</sup>

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."<sup>12</sup>

After a careful examination of the records of the case, we find that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of RA 9165.

The pertinent provisions of Section 21 state:

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

<sup>10</sup> *People v. Alberto*, 625 Phil. 545, 554 (2010) citing *People v. Dumlao*, 584 Phil. 732, 739 (2009).

<sup>11</sup> *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012) citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

<sup>12</sup> *Fajardo v. People*, 691 Phil. 752, 758-759 (2012) citing *People v. Cutierrez*, 614 Phil. 285, 293 (2009).



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;

Similarly, the Implementing Rules and Regulations (IRR) further elaborate on the proper procedure to be followed in Section 21(a) of RA 9165. It states:

(a) 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 requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In *Mallillin v. People*,<sup>13</sup> the Court explained the chain of custody rule as follows:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Emphasis supplied)

The first link in the chain is the marking of the seized drug. We have previously held that:



<sup>13</sup> 576 Phil. 576, 587 (2008).

x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen 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, obviating switching, 'planting,' or contamination of evidence.<sup>14</sup>

It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

Furthermore, in *People v. Gonzales*,<sup>15</sup> the Court explained that:

The first stage in the chain of custody rule 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 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.** (Emphasis supplied)

In this case, SPO1 Rodriguez testified on the seizure of the sachets of *shabu* he found in appellant's possession after the latter was arrested. SPO1 Rodriguez shared the details of how the seized drugs were handled following its confiscation as follows:

RSP II Ivan C. Mendoza, Jr.:

Q: You are telling the Honorable Court that instead of finding concealed weapon, you x x x found two small sized heat-sealed transparent plastic bag[s]?

A: Yes, sir.

Q: Where [were] these two small[-]sized heat-sealed transparent plastic [packs] found?

A: [In] his left-front pocket.

Q: Were they wrapped further in another piece of paper or were they just found in that pocket?

A: [They were] wrapped in a [golden-colored] cigarette paper.

<sup>14</sup> *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

<sup>15</sup> 708 Phil. 121, 130-131 (2013).

- Q: Would you x x x be able to remember that [golden- colored] cigarette paper? The wrapper of plastic pack?
- A: Yes, sir.
- Q: Why will you be able to remember it?
- A: **Because I turned it over to the desk officer and the desk officer turned it over to the investigator, the investigator marked it.**
- Q: Who is the investigator?
- A: PO2 Rodolfo Tan.
- Q: So did you see anything that the investigator Rodolfo Tan do in that golden paper?
- A: He marked his initial [sic].
- Q: Ah, you saw him [mark] an initial?
- A: Yes, sir.
- Q: What did you see him [mark] on the paper?
- A: RDT.
- Q: And do you know the meaning of RDT?
- A: Yes, Rodolfo Dagalea Tan.<sup>16</sup>

The testimony of SPO1 Rodriguez on the chain of custody of the seized drugs leaves much to be desired. It is evident that there was a break in the very first link of the chain when he failed to mark the sachets of *shabu* immediately upon seizing them from the appellant. According to SPO1 Rodriguez, after finding sachets of *shabu* in appellant's possession, he turned the drugs over to the desk officer. SPO1 Rodriguez did not even explain why he failed to mark or why he could not have marked the seized items immediately upon confiscation. Allegedly, the desk officer, after receiving the seized items from SPO1 Rodriguez, in turn handed them over to PO2 Tan. Notably, this desk officer was not presented in court thereby creating another break in the chain of custody. Again, no explanation was offered for the non-presentation of the desk officer or why he himself did not mark the seized items. It was only upon receipt by PO2 Tan, allegedly from the desk officer, of the seized drugs that the same were marked at the police station. This means that from the time the drugs were seized from appellant until the time PO2 Tan marked the same, there was already a significant gap in the chain of custody. Because of this gap, there is no certainty that the sachets of drugs presented as evidence in the trial court were the same drugs found in appellant's possession.

SPO1 Santiago, the poseur-buyer in the buy-bust operation, was presented to corroborate the testimony of SPO1 Rodriguez. However, his testimony likewise showed that the arresting officers did not mark the seized drugs immediately after the arrest and in the presence of the appellant. Similarly, no

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<sup>16</sup> TSN, December 8, 2006, pp. 7-8.

explanation was given for the lapse. SPO1 Santiago testified as follows:

Q: So what did you do with the small transparent sachet after police officer Rodriguez came to assist you?

A: **After the arrest of a certain Ismael we proceeded to our police station when we arrived there I turnover [sic] the transparent sachet to our desk officer.**

Q: Who was the desk officer?

A: At that time it was PO3 Floro Napalcruz.

Q: Did you notice anything that he did with the specimen that you turnover [sic] to him, if any?

COURT: You are referring to the desk officer?

RSP II IVAN C. MENDOZA, JR.: Yes, Your Honor.

A: During that time, Your Honor, I gave to him the, [sic] which I buy from him [sic] the one (1) piece of transparent small sachet of *shabu* then after that I get [sic] out from the office.<sup>17</sup>

During cross-examination, SPO1 Santiago reiterated that he did not mark the seized drugs. The sachets were marked after they were received by PO2 Tan.

Q: Now, you said that this plastic sachet taken from the suspect, you turned it over to the desk officer of the police station?

A: Yes, sir.

Q: After turning it over, you left?

A: Yes, sir.

Q: You do not know what happened to the sachet?

A: Yes, sir.

Q: You did not place your markings there?

A: **None, sir.**<sup>18</sup>

It is clear from the above that SPO1 Rodriguez and SPO1 Santiago did not mark the seized drugs immediately after they were confiscated from appellant. No explanations were given why markings were not immediately made. At this stage in the chain, there was already a significant break such that there can be no assurance against switching, planting, or contamination. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt."<sup>19</sup>

<sup>17</sup> TSN, March 8, 2007, pp. 23-24.

<sup>18</sup> TSN, March 9, 2007, p. 27.

<sup>19</sup> *People v. Umipang*, 686 Phil. 1024, 1050 (2012), citing *People v. Coreche*, supra note 14; *People v. Laxa*, 414 Phil. 156 (2001); *People v. Casimiro*, 432 Phil. 966 (2002).

Both arresting officers testified that they turned over the sachets of *shabu* to a desk officer in the person of PO3 Napalcruz at the police station. Notably, PO3 Napalcruz was not presented in court to testify on the circumstances surrounding the alleged receipt of the seized drugs. This failure to present PO3 Napalcruz is another fatal defect in an already broken chain of custody. Every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement.

After PO3 Napalcruz, the seized drugs were then turned over to PO2 Tan. It was only at this point that marking was done on the seized drugs. He revealed in his testimony the following:

4<sup>th</sup> ACP RAY Z. BONGABONG:

Q: [After the apprehension] of the accused in this case, what happened?  
A: SPO1 Roberto Santiago turned over to the Desk Officer one (1) small size heat-sealed transparent plastic pack containing *shabu*, allegedly a buy[-]bust stuff confiscated from the subject person and marked money while SPO1 Eduardo Rodriguez turned over two (2) small size heat[-]sealed transparent plastic packs allegedly confiscated from the possession of the subject person during a body search conducted and one (1) Nokia cellphone 3310 and cash money of ₱710.00.

x x x x

Q: You as investigator of the case what did you do, if any, upon the turn over of those items?

A: I prepared a request for laboratory examination addressed to the Chief PNP Crime Laboratory 9, R. T. Lim Boulevard, this City.

Q: This small heat[-]sealed transparent plastic sachet if you can see this again, will you be able to identify the same?

A: Yes, Sir.

Q: How?

A: Through my initial, Sir.

Q: What initial?

A: RDT

Q: What does RDT stands [sic] for?

A: It stands for my name Rodolfo Dagalea Tan.<sup>20</sup>

In fine, PO2 Tan claimed during his direct examination that he received the seized items from the desk officer.

During cross-examination, however, PO2 Tan contradicted his previous

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<sup>20</sup> TSN, July 13, 2007, pp. 14-17.



statement on who turned over the sachets of *shabu* to him, viz.:

ATTY. EDGARDO D. GONZALES:

Q: Santiago told you that he was the poseur buyer?

A: Yes, Sir.

Q: He turned over to you, what?

A: **He turned over to me small size heat[-]sealed transparent plastic pack containing white crystalline substance, containing *shabu*.**

x x x x

Q: You also identified two other pieces of sachet, correct, Sir?

A: Yes, Sir.

Q: Who turned over to you?

A: **SPO1 Eduardo Rodriguez.**<sup>21</sup>

Due to the apparent breaks in the chain of custody, it was possible that the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug.

Aside from the failure to mark the seized drugs immediately upon arrest, the arresting officers also failed to show that the marking of the seized drugs was done in the presence of the appellant. This requirement must not be brushed aside as a mere technicality. It must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case.

The requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its non-compliance. This break in the chain tainted the integrity of the seized drugs presented in court; the very identity of the seized drugs became highly questionable.

To recap, based on the evidence of the prosecution, it is clear that no markings were made immediately after the arrest of the appellant. The seized drugs were allegedly turned over to desk officer PO3 Napalcruz but the prosecution did not bother to present him to testify on the identity of the items he received from SPO1 Rodriguez and SPO1 Santiago. PO3 Napalcruz supposedly turned over the drugs to PO2 Tan who marked the same at the police station.

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<sup>21</sup> Id. at 42-48.



During his direct testimony, PO2 Tan claimed that he received the drugs from PO3 Napalcruz. However, during his cross-examination, PO2 Tan contradicted himself when he admitted receipt of the seized drugs from SPO1 Santiago and SPO1 Rodriguez. Aside from these glaring infirmities, there was no inventory made, or photographs taken, of the seized drugs in the presence of the accused or his representative, or in the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory as required by RA 9165 and its IRR.

Lastly, we note that the trial court, in its November 12, 2007 Order, already denied the admission of Exhibits "B-1" and "B-2" or the drugs subject of the illegal possession case. The relevant portions of the Order are as follows:

Plaintiff's Exhibits "B-1" and "B-2" however are DENIED admission on the grounds that Exhibit "B-1" submitted by the prosecution in evidence is merely a cigarette foil, whereas Exhibit "B-2" is a heat sealed transparent plastic sachet containing 0.0135 gram of methamphetamine hydrochloride which are inconsistent with its offer that Exhibits "B-1" and "B-2" are two (2) plastic heat sealed transparent plastic sachets containing *shabu* with a total weight of 0.0310 gram.<sup>22</sup>

Surprisingly, however, the trial court rendered a verdict convicting the appellant of violating Section 11, RA 9165 on illegal possession of dangerous drugs based on the same pieces of evidence it previously denied.

In sum, we find that the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. This Court is thus constrained to acquit the appellant based on reasonable doubt.

**WHEREFORE**, the appeal is **GRANTED**. The assailed June 14, 2013 Decision of the Court of Appeals in CA-GR. CR HC No. 00902, which affirmed the August 31, 2010 Judgment of Branch 12, Regional Trial Court of Zamboanga City in Criminal Case Nos. 5021 (19952) and 5022 (19953) is **REVERSED** and **SET ASIDE**.

Accordingly, appellant Salim R. Ismael is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another

<sup>22</sup> Records, p. 68.



cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

**SO ORDERED.**

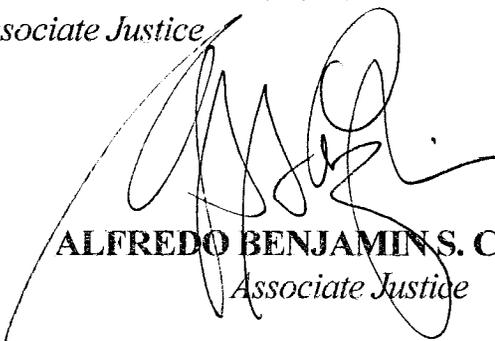
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

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

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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*