



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Wilfredo L. Cruz
 WILFREDO M. L. CRUZ
 Secretary of the Court

FEB 6 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 225690

Present:

VELASCO, JR., J.,
Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES,
 GISMUNDO, JJ.

-versus-

**GERALD ARVIN ELINTO
 RAMIREZ AND BELINDA
 GALIENBA LACHICA,**
 Accused-Appellants.

Promulgated:

January 17, 2018

Wilfredo L. Cruz

X ----- X

DECISION

MARTIRES, J.:

We resolve the petition for review assailing the 23 September 2015 Decision¹ and the 9 June 2016 Resolution² of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06602 affirming the conviction of Belinda Galienba Lachica (*Lachica*) and Gerald Arvin Elinto Ramirez (*Ramirez*) for illegal sale of shabu.

THE FACTS

Lachica and Ramirez were charged before the Regional Trial Court, Branch 259, Parañaque City (*RTC*), in Criminal Case No. 08-1386 for violation of Section 5, in relation to Section 26, Article II of Republic Act (*R.A.*) No. 9165. The Information dated 3 November 2008 reads:

Pray

¹ *Rollo*, pp. 39-57.

² *Id.* at 35-37.

That on or about the 31st day of October 2008, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport two (2) heat-sealed transparent plastic sachets of methylamphetamine hydrochloride (shabu), respectively, weighing 3.9632 grams and 4.4596 grams in the total of 8.4228 grams, a dangerous drug.³

During arraignment, Lachica and Ramirez, assisted by counsel, pleaded not guilty. Pre-trial and trial on the merits followed.

The prosecution's evidence can be summarized as follows:

On 30 October 2008, at around 3:00 P.M., a confidential informant went to the Philippine Drug Enforcement Agency (*PDEA*) Metro Manila Regional Office and reported that a certain "Linda" was engaged in illegal drug activity in Parañaque City and in Pasay City.⁴ Acting on this information, Intelligence Officer 1 Johnrico Magdurulang (*IO1 Magdurulang*), the leader of Team Delta, instructed the informant to call this person so that they could meet.⁵ The informant then called Linda and made arrangements for them to meet in the afternoon of the following day at SM Bicutan in Parañaque City.⁶

Immediately thereafter, IO1 Magdurulang organized his team composed of seven (7) members, among whom was IO1 Marjuvel Bautista (*IO1 Bautista*) to act as the poseur-buyer.⁷ IO1 Bautista was given the boodle money consisting of two (2) genuine pre-dusted ₱500.00 bills placed inside a white envelope.⁸ The necessary buy-bust documents were likewise prepared before the operation.⁹

The following day or on 31 October 2008, the buy-bust team, along with the confidential informant, proceeded to the target area. IO1 Bautista and the informant waited inside a green Mitsubishi Adventure vehicle, while the rest of the team were strategically positioned around the parking lot. At about 5:00 P.M., the informant called Linda who replied that she was on her way. Almost half an hour later, two (2) persons started to approach their vehicle. IO1 Bautista verified with the confidential informant who these people were; the latter confirmed that one of them was Linda. 

³ Records, p. 1.

⁴ Id. at 46-47; TSN, 4 March 2009.

⁵ Id. at 48-49.

⁶ Id. at 49-51.

⁷ Id. at 52-53.

⁸ Id. at 54-55.

⁹ Id. at 55-56.

After a brief chat with the confidential informant, Linda was introduced to IO1 Bautista, the prospective buyer. Linda then asked for the payment but IO1 Bautista told her that he needed to see the items first. Linda complied and went inside the vehicle together with her male companion. IO1 Bautista then showed Linda the buy-bust money, so Linda instructed her male companion to hand the shabu to IO1 Bautista. Linda's companion gave IO1 Bautista a cigarette pack which, when examined by IO1 Bautista, contained two (2) heat-sealed transparent plastic sachets containing crystalline substances. Suspecting that the sachets contained shabu, IO1 Bautista gave the buy-bust money to Linda to consummate the transaction, while he tapped the confidential informant to give the pre-arranged signal. The informant then turned on the hazard lights as signal to their backup.

The rest of the buy-bust team quickly arrived and arrested Linda and her male companion. They identified themselves as PDEA agents and apprised them of their constitutional rights. After the arrest, they all proceeded to Barangay Pinyahan in Quezon City, where the physical inventory and the taking of photographs of the seized items were done before Barangay Kagawad Melinda Z. Gaffud (*Gaffud*). At the barangay hall, the buy-bust team learned that Linda's last name was Lachica and that her male companion was Ramirez.

Lachica and Ramirez were then brought to the PDEA along with the seized drugs and the inventory documents. After IO1 Magdurulang prepared the request for laboratory examination, IO1 Bautista brought the seized drugs to the PDEA laboratory. The chemistry report shows that the two (2) heat-sealed transparent plastic sachets contained 3.9632 grams and 4.4596 grams of methamphetamine hydrochloride or shabu.¹⁰

The version of the defense

Lachica and Ramirez denied the prosecution's version and claimed that the PDEA operatives made a mistake in arresting them. In his judicial-affidavit, Ramirez alleged that they were going to the parking lot coming from the mall when one of the operatives asked them if Lachica was one Linda from Taguig City. He replied that Lachica's name was actually Belinda and that they were from Laguna. This PDEA agent then walked away toward his companions but returned to ask for "the keys of a Mitsubishi Pajero." Ramirez said, "*Boss, mali po kayo ng taong kinakausap. Hindi ko po alam kung ano yung sinasabi ninyo.*" This did not sit well with the PDEA operatives so they forced Lachica and Ramirez to enter the car.¹¹

¹⁰ Id. at 17.

¹¹ Id. at 492-494; Judicial Affidavit of Ramirez.

While inside the car, the PDEA operatives asked Lachica and Ramirez about a certain “*Bakla*” who was a known drug dealer in Parañaque City. Ramirez pleaded that they be set free because they did not know this person. Nevertheless, they were brought to Quezon City and there detained.¹²

The RTC Ruling

In its 30 October 2013 decision,¹³ the RTC found Lachica and Ramirez guilty as charged. It rejected their defense of denial and frame-up because it was self-serving, uncorroborated, and inherently weak. Meanwhile, the trial court said that the prosecution was able to prove a valid entrapment operation. Moreover, it held that the PDEA agents’ failure to strictly comply with Section 21 of R.A. No. 9165 was excusable since there was substantial compliance in preserving the identity and integrity of the drugs seized. Thus, the RTC ruled:

WHEREFORE, premises considered, the Court finds accused **GERALD ARVIN ELINTO RAMIREZ and BELINDA GALIENBA LACHICA** in Criminal Case No. 08-1386 for Violation of Sec. 5 in rel. to Sec. 26, Art. II of R.A. No. 9165, **GUILTY** beyond reasonable doubt and are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00 each.¹⁴

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The CA Ruling

On appeal, Lachica and Ramirez pointed out that (1) the physical inventory and the taking of photographs were not done at the place of arrest, and that (2) there were no media or DOJ representative present at the time the confiscated items were inventoried in Quezon City.

The CA affirmed *in toto* the trial court’s decision. It held that the failure of the PDEA operatives to mark the seized items at the place of arrest would not impair the chain of custody as marking could be done at the nearest police station or office of the apprehending team. Furthermore, the CA said that the absence of the representatives from the media and the DOJ would not automatically render the confiscated items inadmissible provided that the integrity and evidentiary value of the seized drugs are preserved.

The CA’s disposition reads:



¹² Id. at 494-495.

¹³ Id. at 602-613.

¹⁴ Id. at 612-613.

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated 30 October 2013 of the [RTC] in Criminal Case No. 08-1386 is hereby **AFFIRMED**.¹⁵

The case is now before us for final review.

OUR RULING

This would not be the first instance when the Court would reverse a conviction for these reasons: (1) there was a patent disregard of the procedure laid out in Section 21 of R.A. No. 9165; (2) there were gaps in the chain of custody over the seized drugs; and (3) the lack of a valid excuse for noncompliance with Section 21 of R.A. No. 9165. The presence of these circumstances quantify as reasonable doubt involving the most important element in drug – related cases—the existence of the dangerous drug itself.

It is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt, and that it must be proven that the item seized during the buy-bust operation is the same item offered in evidence.¹⁶ As the drug itself constitutes the *very corpus delicti* of the offense, its preservation is essential to sustain a conviction for illegal sale of dangerous drugs.¹⁷ Thus, like any other element of a crime or offense, the *corpus delicti* must be proven beyond reasonable doubt.

Section 21 of R.A. No. 9165, prior to the amendment introduced by R.A. No. 10640,¹⁸ provides:

SEC. 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 source of dangerous drugs, controlled precursors and essential chemicals, as well as instrument/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

¹⁵ *Rollo*, p. 57.

¹⁶ *People v. Gatlabayan*, 669 Phil. 240, 252 (2011).

¹⁷ *People v. Frondoza*, 609 Phil. 188, 198 (2009); *People v. Bartolini*, G.R. No. 215192, 27 July 2016, 798 SCRA 711, 719 citing *People v. Dela Cruz*, 591 Phil. 259, 269 (2008); *People v. Jaafar*, G.R. No. 219829, 18 January 2017 citing *People v. Simbahon*, 449 Phil. 74, 81 (2003).

¹⁸ An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; (emphasis ours)

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed, to *wit*:

The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph at the place where the search warrant was 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 noncompliance 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 and custody over said items.

These rules have been laid down as a safety precaution to address potential police abuses by narrowing the window of opportunity for tampering with evidence.¹⁹ We recognized that by the very nature of anti-narcotics operations and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.²⁰ Although an effective way to flush out illegal drug transactions, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law – it is susceptible to police abuse, the most notorious of which is its use as a tool for extortion.²¹ Accordingly, the police officers must comply with these specific procedures and the prosecution must adduce evidence that these procedures have been followed.

In *People v. Beran*,²² we made a distinction based on R.A. No. 9165 and its IRR as to when the physical inventory and photography shall be conducted. In seizures covered by search warrants, the physical inventory and photograph must be conducted at the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a

¹⁹ *People v. Ancheta*, 687 Phil. 569, 577-579 citing *People v. Umipang*, 686 Phil. 1025, 1033-1038 (2012).

²⁰ *People v. Tan*, 401 Phil. 259, 273 (2000) citing *People v. Gireng*, 311 Phil. 12, 23 (1995) and *People v. Pagaura*, 334 Phil. 683, 689-690 (1997).

²¹ *People v. Garcia*, 599 Phil. 416, 427 (2009).

²² 724 Phil. 788 (2014)



buy-bust operation, the physical inventory and photography shall be done at the nearest police station or office of the apprehending officer/team, whichever is practicable.²³

However, R.A. No. 9165 is silent on when and where marking should be done. Marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence. This is when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized.

Thus, in *People v. Sanchez*,²⁴ we ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody. We must remember that marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference.²⁵ Marking serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, planting, or contamination of evidence.²⁶

In the instant case, IO1 Bautista was in possession of the two (2) heat-sealed transparent plastic sachets from the time Ramirez handed him the cigarette pack containing these until the time it was marked at the barangay hall. During his cross-examination, IO1 Bautista said:

Q: Were there any threat to your life during the arrest?

A: We were tipped off that this certain Linda had connections with policemen and barangay [officials] that is why we were in a hurry to go out of the target area.

Q: What time did you leave the target area?

A: Before 7:00 in the evening, around 6:30, like that.

Q: After leaving the target area, where did you go next?

A: We went to Barangay Pinyahan, the barangay which has jurisdiction of the PDEA office.

x x x x

Q: How many hours did it take you from SM Bicutan to Barangay Pinyahan?



²³ Id. at 818.

²⁴ 590 Phil. 214, 241 (2008) cited in *People v. Ameril*, 14 November 2016.

²⁵ *People v. Nuarin*, 764 Phil. 550, 557-558 (2015).

²⁶ Id. at 558.

A: More or less one (1) hour or more than one (1) hour because it was traffic, October 31 and November 1 [were] holiday[s].

Q: How about the items seized, who kept those items?

A: I took custody of the items.

Q: You took custody of the items?

A: Yes, sir.²⁷

From his testimony, we gather that IO1 Bautista claims that it was not safe that the marking, physical inventory, and photography be done at the parking lot of SM Bicutan. Contrary to the position taken by the lower courts, we cannot say that IO1 Bautista's failure to mark the two (2) heat-sealed transparent plastic sachet immediately after confiscation was excusable. We take note of the fact that there were more than enough PDEA agents at that moment to ensure that the area was secure for IO1 Bautista to mark the confiscated items. We do not think it would take more than five (5) to ten (10) minutes for IO1 Bautista to do this.

Instead, IO1 Bautista admits that he marked the confiscated items in Quezon City, almost one (1) hour away from the crime scene. Considering that PO1 Bautista was the only PDEA agent who was there at the time of seizure, none of the other PDEA operatives could attest that they saw him take custody of the confiscated items. Also, they rode in separate vehicles going to Quezon City. Even granting that IO1 Bautista did mark the sachets, breaks in the chain of custody had already taken place: (1) when he confiscated the sachets without marking them at the place of apprehension; and (2) as he was transporting them to Quezon City, thus casting serious doubt upon the value of the said links to prove the *corpus delicti*.

Under these circumstances, we cannot apply the presumption of regularity of performance of official duty. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.²⁸

More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and it cannot by itself constitute proof of guilt beyond reasonable doubt.²⁹ The presumption of regularity is just a mere presumption disputable by contrary proof.³⁰ Without the

²⁷ Records, pp. 362-366; TSN, 21 February 2011.

²⁸ *People v. Mendoza*, 736 Phil. 749, 770 (2014).

²⁹ *People v. Cantalejo*, 604 Phil. 658, 668-669 (2009).

³⁰ *Id.* at 669.

presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be hurdled having to dispute these testimonies.³¹

Hence, it was wrong for the CA to even say or consider this:

It is a well-entrenched rule that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witness 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*. Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.³² (italics supplied)

Here, the time and distance from the scene of the arrest before the drugs were marked are too substantial that we cannot but think that the alleged evidence could have been tampered with.

Although we cannot help but note that the evidence for the defense is far from strong, if the prosecution cannot establish Lachica and Ramirez's guilt beyond reasonable doubt, the need for them to adduce evidence on their behalf never arises. Therefore, however weak the defense evidence may be, the prosecution's case still falls.

In sum, the gaps in the prosecution's evidence create reasonable doubt as to the existence of the *corpus delicti* for the illegal sale of shabu.

WHEREFORE, in the light of the foregoing, we **REVERSE** and **SET ASIDE** the 23 September 2015 Decision and the 9 June 2016 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 06602. Belinda Galienba Lachica and Gerald Arvin Elinto Ramirez are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are legally confined for another cause.

Let a copy of this Decision be sent to the officer-in-charge of their place of detention for immediate implementation. Such person is directed to report to this Court the action taken within five (5) days from receipt of this Decision.



³¹ *People v. Sanchez*, supra note 24 at 243. See also *Dissenting Opinion* of J. Brion in *People v. Agulay*, 588 Phil. 247, 293-294 (2008).

³² *Rollo*, p. 56.

SO ORDERED.



SAMUEL R. MARTIRES
Associate Justice

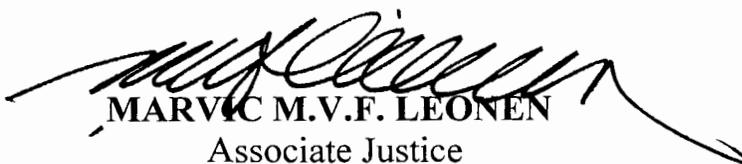
WE CONCUR:



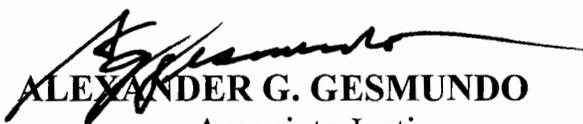
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

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

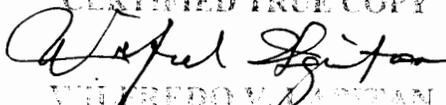
CERTIFICATION

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

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WILFREDO V. MASIGAN
Division Chief of Court
Third Division

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