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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 242831

Present:

- versus -

LEONEN, *Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., *and*
KHO, Jr. *JJ.*

VICTOR ALCIRA y MADRIAGA
also known as [a.k.a.] Buddha,
Accused-appellant,

Promulgated:

MERLEN CABEROS y GERONIMO
and VICTOR ALCIRA y
MADRIAGA, also known as [a.k.a.]
Buddha,
Accused.

JUN 22 2022

X-----X

DECISION

LOPEZ, J., *J.:*

Before this Court is an appeal assailing the Decision¹ dated May 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 09161. The CA affirmed the Judgment² dated February 16, 2017 of the Regional Trial Court, Branch 37, Calamba City (RTC) finding Victor Alcira y Madriaga (*Alcira*) guilty of illegal sale and possession of dangerous drugs, as defined under Sections 5 and 11, respectively, of Article II of Republic Act (R.A.) No. 9165 and illegal possession of firearms, as defined under Section 28(a) in relation to par. (e) of R.A. No. 10591.

¹ Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court), with Associate Justices Marlene B. Gonzales-Sison and Rafael Antonio M. Santos, concurring; *rollo*, pp. 2-23.

² Penned by Presiding Judge Caesar C. Buenagua; records (Criminal Case No. 24917-2015-C), pp. 92-113.

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Facts

On June 17, 2015, a buy-bust operation was conducted against Alcira. The operation was triggered by an information received by Senior Police Officer 1 Emil Norella Janairo (*SPO1 Janairo*) from a civilian informant that Alcira and his cohorts were allegedly engaged in using and selling illegal drugs, and that they possessed unlicensed firearm. In turn, SPO1 Janairo relayed the said information to Police Intel Police Senior Inspector Marlon Calonge (*PSI Calonge*).³

Thereafter, PSI Calonge formed a team for the conduct of a buy-bust operation. During the briefing, it was agreed that SPO1 Janairo would act as the poseur-buyer while PSI Calonge, Police Officer 2 (*PO2*) Renato Cuevas, Police Officer 1 (*PO1*) Alfredo Requito, and PO2 Ronald Suelto would act as back-up officers. Before leaving the police station, the team prepared the Pre-Operation Report and Coordination Report with the Philippine Drug Enforcement Agency (*PDEA*). The serial numbers of the three pieces of ₱100.00 bill that would be used in the buy-bust operation were likewise recorded in the blotter book. Thereafter, the confidential informant accompanied the team in going to the house of Alcira located in *Purok 4*, Barangay Turbina, Calamba City, Laguna.⁴

When the buy-bust team reached the target area, SPO1 Janairo and the confidential informant saw Alcira about to enter the house of a certain Merlen Caberos (*Caberos*), which was just a few meters away from Alcira's house. The informant then called Alcira and introduced him to SPO1 Janairo. The informant told Alcira, "*Huwag kang magalala dito[,]*" to which SPO1 Janairo added that he was interested in purchasing ₱300.00 worth of *shabu*. Alcira handed to SPO1 Janairo a plastic sachet with white crystalline substance in exchange for the money he received from the latter. Immediately thereafter, SPO1 Janairo introduced himself as a police officer and ordered Alcira to lie face down on the ground. While lying face down, SPO1 Janairo noticed a gun protruding at the back of Alcira. He then handcuffed Alcira before retrieving the gun tucked at the back of his waist. The other police officers who were positioned nearby approached them for assistance. This allowed SPO1 Janairo to search Alcira for other contraband items, which led to the recovery of two plastic sachets that also contained white crystalline substance.⁵

In the midst of the commotion, SPO1 Janairo noticed Caberos standing nearby holding a small plastic sachet with white crystalline substance. This prompted him to confiscate the same and search her for other contraband

³ *Id.* at 94.

⁴ *Id.* at 94-95.

⁵ *Id.* at 95.

items. SPO1 Janairo was then able to recover two plastic sachets with white crystalline substance from her pocket.⁶

While they were still in the place of arrest, SPO1 Janairo marked all the items that he seized from Alcira and Caberos as follows:

SEIZED ITEM	MARKING
Caliber .38 revolver, without serial number, and the five (5) pieces of live ammunition that he recovered from Alcira	"VA-3"
One plastic sachet that he purchased from Alcira	"PNP-BB"
Two plastic sachets that he found in Alcira's pocket	"VA-1" and "VA-2"
Three plastic sachets that were found in Merlen Caberos' possession	"MC-1", "MC-2" and "MC-3" ⁷

SPO1 Janairo also conducted an inventory of the seized items at the place of arrest.⁸ The arrest, marking, and inventory were all witnessed by Alcira, Ronald de Leon, a member of the Calamba City Press Corps, and Danilo Gelacio, a barangay official. It was also SPO1 Janairo who prepared the requests for drug test and the laboratory examination to the crime laboratory, and entered the same in the police blotter. During his testimony, SPO1 Janairo claimed that he likewise took photographs of the seized items. Thereafter, he personally delivered the request and the seized items to the crime laboratory for examination.

At the crime laboratory, forensic chemist Police Chief Inspector Donna Villa P. Huelgas (*PCI Huelgas*) personally received the request and the six heat-sealed transparent plastic sachets, each containing white crystalline substance marked as: "PNP-BB, MC-1, MC-2, MC-3, VA-1, and VA-2." After conducting a qualitative examination, PCI Huelgas made the following findings in her Chemistry Report No. D-1543-15,⁹ to wit:

SPECIMEN SUBMITTED:

A (PNP-BB)	0.03 gram	D (MC-3)	0.05 gram
B (MC-1)	0.14 gram	E (VA-1)	0.04 gram
C (MC-2)	0.04 gram	F (VA-2)	0.06 gram

FINDINGS:

Qualitative examination conducted on specimens A to F gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride (*Shabu*), a dangerous drug.

⁶ *Id.*

⁷ Formal Offer of Evidence; records (Criminal Case No. 24917-2015-C), p. 73.

⁸ Receipt of Physical Inventory dated June 17, 2015; records (Criminal Case No. 24915-2015-C),

p. 9.

⁹ Records (Criminal Case No. 24917-2015-C), p. 11.

CONCLUSION:

Specimens A to F contain Methamphetamine Hydrochloride (*Shabu*), a dangerous drug.¹⁰

Accordingly, Alcira was charged with violation of Sections 5 and 11, of Article II of R.A. No. 9165 and Section 28(a) in relation to paragraph (e) of R.A. No. 10591, under the following Informations, the accusatory portions of which read:

Criminal Case No. 24915-15-C

That on June 17, 2015 at Brgy. Turbina, Calamba City, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there willfully, unlawfully and feloniously sell to a poseur buyer a quantity of methamphetamine hydrochloride otherwise known as "*shabu*", a dangerous drug, having a total weight of 0.03 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.¹¹

Criminal Case No. 24916-15-C

That on June 17, 2015 at Brgy. Turbina, Calamba City, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused[,] without any authority of law, did then and there willfully, unlawfully and feloniously possess two (2) plastic sachets of methamphetamine hydrochloride, otherwise known as "*shabu*", a dangerous drug, having a total weight of 0.10 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.¹²

Criminal Case No. 24917-15-C

That on June 17, 2015, at Brgy. Turbina, Calamba City, Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control unlicensed firearms, one (1) Caliber .38 revolver loaded with five (5) live ammunitions of the same caliber, in violation of law.

CONTRARY TO LAW.¹³

¹⁰ As regards the portions of the case record that pertain to Merlen Caberos, the RTC no longer elevated the same to the CA and to this Court because she was acquitted of the charges filed against her.

¹¹ Records (Criminal Case No. 24915-2015-C), p. 1.

¹² Records (Criminal Case No. 24916-2015-C), p. 1.

¹³ Records (Criminal Case No. 24917-2015-C), p. 1.

On the other hand, Caberos was charged with violation of Section 11, Article II of R.A. No. 9165, in an Information, the accusatory portion of which reads:

Criminal Case No. 24914-15-C
(For violation of Section 11, Article II of R.A. No. 9165)

That on 17 June 2015 at Brgy. Turbina, Calamba City, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously possess three (3) plastic sachets of methamphetamine hydrochloride, otherwise known as "*shabu*", a dangerous drug, having a total weight of 0.23 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.¹⁴

In his defense, Alcira testified that he was inside his house putting cement on the floor in the morning of June 17, 2015. At around 1:00 p.m., three police officers knocked on his door. Alcira recognized Amador, whom he knew was a police officer, so he opened his door and let Amador and his two companions, who were also police officers, inside his house. Alcira explained that he knew Amador because he used to report for duty at the terminal. Upon entering his house, the three walked around until they found his wallet. They then asked him to step outside his house. They brought him to the house of his neighbor Caberos, whom he noticed was already arrested by the police officers. It was during this time that the police officers arrested him. After his arrest, the police officers brought him to the barangay hall. Alcira claimed that it was the first time that he saw SPO1 Janairo. He denied all the charges imputed against him.¹⁵

On February 16, 2017, the RTC rendered a Judgment¹⁶ finding Alcira guilty of illegal sale and possession of dangerous drugs, as defined under Sections 5 and 11, respectively, of Article II of R.A. No. 9165, as amended by R.A. No. 10640. The RTC held that the prosecution was able to prove all the elements for the two crimes by proof beyond reasonable doubt. The RTC brushed aside the prosecution's partial compliance with the chain of custody requirements under Section 21, Article II of R.A. No. 9165, as the integrity and evidentiary value of the seized items were preserved anyway.

The RTC also found Alcira guilty of committing illegal possession of firearms, as defined under Section 28(a) in relation to par. (e) of R.A. No. 10591. It held that the prosecution was able to prove beyond reasonable doubt that Alcira was in possession of a .38 caliber revolver with five live

¹⁴ Records (Criminal Case No. 24917-2015-C), p. 97.

¹⁵ *Id.* at 41.

¹⁶ Records (Criminal Case No. 24916-2015-C), pp. 92-113.

ammunitions of the same caliber, without the authority to possess or carry the same. The said firearm was confiscated, properly marked, inventoried, and later identified in court.¹⁷

As regards accused Caberos, the RTC held that the prosecution failed to prove beyond reasonable doubt that she was guilty of the crime charged. On the contrary, the RTC found that Caberos was merely a bystander when the police officers arrested Alcira. They had no cause to conduct a warrantless search on her as she was merely standing on the side. There was no showing that she was committing any crime at that time. Thus, the RTC disposed the case as follows:

IN VIEW OF THE FOREGOING, in Criminal Case No. 24914-2015-C, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, accused **MERLEN CABEROS y GERONIMO** is **ACQUITTED** of the offense charged.

In Criminal Case No. 24915-2015-C, the Court finds the accused, **VICTOR ALCIRA y MADRIAGA**, **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act 9165. The accused is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and **TO PAY A FINE OF FIVE HUNDRED THOUSAND (500,000.00) PESOS**.

In Criminal Case No. 24916-2015-C, the Court finds the accused, **VICTOR ALCIRA y MADRIAGA**, **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11, paragraph 2(3), Article II of Republic Act 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS** and **ONE (1) DAY**, as minimum, to **FOURTEEN (14) YEARS**, as maximum, and to **PAY A FINE OF THREE HUNDRED THOUSAND (P300,000.00) PESOS**.

In Criminal Case No. 24915(sic)-2015-C, the Court finds the accused, **VICTOR ALCIRA y MADRIAGA**, **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 28(a) of Republic Act 10591. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **SIX (6) YEARS** and **EIGHT (8) MONTHS**, as minimum, to **SEVEN (7) YEARS AND FOUR (4) MONTHS**, as maximum.

The Branch Clerk of Court is hereby ordered to turn-over the illegal subject of this case to PDEA for proper disposition and destruction and the firearms subject of this case to the Firearms and Explosive Office of the PNP for the proper disposition.

SO ORDERED.¹⁸

Alcira appealed to the CA, which affirmed the Judgment rendered by the RTC in its Decision¹⁹ dated May 23, 2018. The CA concurred with the findings of the RTC that the prosecution was able to prove all the elements of

¹⁷ Records (Criminal Case No. 24917-2015-C), p. 108-110.

¹⁸ CA rollo, p. 113.

¹⁹ Rollo, pp. 2-23.

the crimes charged against Alcira. Also, there was substantial compliance with the chain of custody rule under Section 21, Article II of R.A. No. 9165. As regards the conduct of the buy-bust operation, the CA ruled that it was regularly performed. The purported irregularities were held to be trivial, minor, and immaterial. Thus, the CA disposed as follows:

WHEREFORE, the instant appeal is **DENIED**. The assailed Decision dated February 16, 2017 of the Regional Trial Court, Branch 37 of Calamba City in Criminal Cases Nos. 24914-2015-C, 24915-2015-C, 24916-2015-C and 24917-2014-C is hereby **AFFIRMED**.

SO ORDERED.²⁰

Hence, the instant appeal.

Issues

I.

Whether the courts *a quo* gravely erred in convicting accused-appellant of the crimes charged despite the fact that the buy-bust operation was fabricated;

II.

Whether the courts *a quo* gravely erred in convicting accused-appellant despite the profuse material irregularities in the buy-bust operation and the patent inconsistencies and incredibility of the uncorroborated testimony of SPO1 Janairo;

III.

Whether the courts *a quo* gravely erred in convicting accused-appellant of the crimes charged despite the illegality of the search made by SPO1 Janairo on his person and property;

IV.

Whether the courts *a quo* gravely erred in not considering the allegedly seized items as fruits of the poisonous tree;

V.

Whether the courts *a quo* gravely erred in convicting accused-appellant despite the prosecution's failure to establish the chain of custody of the allegedly seized items;

²⁰ *Id.* at 22.

VI.

Whether the courts *a quo* gravely erred in convicting accused-appellant of the crimes charged despite the prosecution's failure to establish the elements and thereof;

VII.

Whether the courts *a quo* gravely erred in not giving weight and credence to accused-appellant's defense of denial and frame-up.

Our Ruling

Upon a careful review of the records of this case, this Court finds the appeal to be meritorious insofar as accused-appellant's conviction of Sections 5 and 11 of Article II of R.A. No. 9165, as amended, is concerned. His conviction for illegal possession of firearms under R.A. No. 10591, nonetheless, stands.

On accused-appellant's liability for violation of R.A. No. 9165, as amended

Accused-appellant is charged with unauthorized sale and possession of dangerous drugs, as defined and penalized under Sections 5 and 11, respectively, of Article II of R.A. No. 9165, allegedly committed on June 17, 2015. Accordingly, the applicable law is R.A. No. 10640, which amended R.A. No. 9165 in 2014.

Jurisprudence has provided that in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must: (1) prove that the transaction or sale took place; (2) present in evidence the *corpus delicti* or the illicit drug; and (3) identify the buyer and the seller.²¹ In instances wherein an accused is charged with illegal possession of dangerous drugs, on the other hand, the prosecution bears the burden of establishing the following elements: (a) the accused was in possession of an item or object identified to be a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.²²

²¹ *People v. Dadang*, G.R. No. 242880, January 22, 2020, citing *People v. Mendoza*, G.R. No. 225064, January 19, 2018.

²² *Id.*

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Furthermore, it has been consistently held that in both cases of illegal possession and illegal sale of dangerous drugs, the dangerous drug that was confiscated from the accused-appellant comprises the *corpus delicti* of the said charges.²³ Thus, it is imperative for the prosecution to establish in court that the dangerous drugs that are presented in court are the same as the ones that were seized from the accused-appellant.²⁴

Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640, details the procedure that must be observed in handling the seized dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia and laboratory equipment from the time these were confiscated, seized, or surrendered until they are presented as evidence in court. This procedure, known as the chain of custody rule, has been summarized as follows:

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.²⁵

The procedure must be strictly observed to ensure that the identity and integrity of these seized dangerous drugs, controlled precursors and essential chemicals, instruments, paraphernalia, and laboratory equipment would be preserved.²⁶ Any flagrant lapses in the handling of the *corpus delicti* would be a sufficient ground to dismiss the criminal charges. This is because the dangerous drugs that are prohibited under R.A. No. 9165, as amended by R.A. No. 10640, are not readily identifiable by sight or touch. Also, these drugs can easily be tampered with or substituted.²⁷

R.A. No. 10640, which took effect on August 7, 2014, requires the conduct of physical inventory and photograph of the seized items immediately after seizure and confiscation in the presence of the following: (1) accused or the person from whom the items were seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.²⁸ The said witnesses would then be required to sign the copies of the inventory and be given a copy of the same. Thereafter,

²³ *People v. Oliva*, 890 Phil. 106, 124-125 (2019).

²⁴ *Id.*, citing *People v. Gatlabayan*, 699 Phil. 240, 252 (2011).

²⁵ *People v. Gayoso*, 808 Phil. 19, 31 (2017), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

²⁶ *People v. Asislo*, 778 Phil. 509, 517 (2016), citing *People v. Cayas*, 766 Phil. 534, 547-548 (2015).

²⁷ *People v. Guzon*, 719 Phil. 441, 459-460 (2013), citing *People v. Peralta*, 627 Phil. 570, 576-577 (2010) and *People v. Nandi*, *supra* note 25.

²⁸ Section 1, R.A. No. 10640.

the seized drugs must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.²⁹

Verily, it has been acknowledged in several cases that strict observance of the procedure under Section 21, Article II of R.A. No. 9165, as amended, is not always possible.³⁰ Hence, noncompliance with the said provision is not necessarily fatal and will not automatically make the seized items inadmissible in evidence against the accused. Nevertheless, for the exception to apply, the prosecution bears the burden of proving (1) its justifiable ground for the noncompliance; and (2) that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.³¹

Here, the prosecution failed to account for the links in the chain of custody. First, it is evident from a perusal of the records of this case that the police officers failed to take photographs of the seized items. While SPO1 Janairo claimed that he took photographs of the seized items, the records are wanting as to the presence of these alleged photographs. The importance of taking photographs, as discussed by this Court in *People v. Placiente*,³² is worthy to reiterate:

PO2 Reas justified the lack of the photographs by merely asserting that the station had not been issued any camera. In our view, such justification for the failure to take photographs was ridiculous because the statutory requirement like the photographing of the seized articles, being very crucial to the preservation of the chain of custody, was of substantive significance and should not be so slightly or lightly regarded by every worthy anti-drug law enforcer. We take this view with grave concern for in this time of technological advances practically all cellular phones, which we presume the officers themselves were carrying, were already equipped with cameras.³³

Verily, taking photographs is one of the requirements³⁴ imposed by the law when it comes to prosecutions for violation of R.A. No. 9165, as amended.

²⁹ See Section 21 (1) and (2), Article II of R.A. No. 9165.

³⁰ *People v. Gamboa*, 833 Phil. 1055, 1067 (2018), citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

³¹ *People v. Año*, 828 Phil. 439, 450 (2018), citing *People v. Almorfe*, 631 Phil. 51 (2010); *People v. De Guzman y Danzil*, 630 Phil. 637, 647-648 (2010); *People v. Goco*, 797 Phil. 433 (2016).

³² G.R. No. 213389, August 14, 2019.

³³ *Id.*

³⁴ 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 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items **and photograph the same** in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and

Noncompliance therewith requires justifiable reasons that would show that the integrity and evidentiary value of the seized items were preserved. Absent justifiable cause, such deviation from the mandated procedure would create doubts on the integrity of the *corpus delicti*, as in this case where SPO1 Janairo failed to provide any explanation on the absence of photographs. Moreover, it is not amiss to point out that the police officers went the extra mile to pick up Ronald de Leon, a member of the Calamba City Press Corps, and Danilo Gelacio, a barangay official, before they went to the place where the buy-bust operation was to be conducted. With the preparations they had undergone, it is unworthy of belief that all the police officers forgot to bring a camera with them during the buy-bust operation.

Second, there was no showing of a proper turnover from the apprehending officer to the investigating officer. This constitutes the second link in the chain of custody which was elaborated by this Court in *People v. Cupcupin*,³⁵ to wit:

At this stage, the seized substance is prepared for submission to the crime laboratory to confirm whether it is indeed a prohibited drug. As the one in charge of preparing the necessary documents therefor, the investigating officer must have necessarily come in contact with the seized substance. The investigating officer must, thus, fully account for the manner in which he or she handled the evidence and the measures he or she employed while the same was in his or her custody to ensure that it was not tampered with, switched, contaminated, or substituted.³⁶

In this case, SPO1 Janairo testified³⁷ that he was in possession of the seized items from the place of arrest until he delivered the same to the police crime laboratory for testing. However, the Request for Laboratory Examination dated June 17, 2015 bore the signature of the Chief of Police of the Calamba City Police Station, Police Superintendent Fernando Reyes Ortega (*P/Supt. Ortega*).³⁸ Hence, this Court cannot ascertain if there was an actual turnover of the seized items by SPO1 Janairo to P/Supt. Ortega to enable the latter to prepare the said request.³⁹ Moreover, even if this Court were to believe SPO1 Janairo's testimony that he had custody of the seized items until they were turned over to the forensic chemist, the absence of a

a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x (Emphasis supplied).

³⁵ *People v. Cupcupin*, G.R. No. 236454, December 5, 2019.

³⁶ *Id.* See also *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

³⁷ TSN, August 11, 2016, p. 23.

³⁸ Records, p. 10.

³⁹ See *People v. Bangcola*, 897 Phil. 330, 351-356 (2019).

document or testimony as to the role of P/Supt. Ortega, who signed the Request for Laboratory Examination, consistent with *People v. Remigio*,⁴⁰ already constitutes a break in the chain of custody. Clearly, the second link, which is the turnover by the apprehending officer of the illegal drugs to the investigating officer, was lacking and the prosecution failed to provide any explanation on this deficiency.

Third, it was not clear as to what happened to the seized drugs after the conduct of the laboratory examination. It would appear from the records of this case that the prosecution did not present in court the testimony of the forensic chemist, PCI Huelgas. Instead, the parties stipulated that “the specimens examined by the Forensic Chemist were the same specimens transported to the prosecution, presented in court and marked as prosecution’s evidence as stated below.”⁴¹ However, it is not clear from such stipulation as to how PCI Huelgas ensured the integrity and evidentiary value of the seized items while these were in her custody until these were presented in court or if these were turned over to another individual for safekeeping. In *People v. Gutierrez*,⁴² this Court absolved the accused-appellant therein of the charges when the stipulations as regards the testimony of the forensic chemist failed to provide the condition of the seized item while it was in her custody or show that there was no opportunity to identify the individual in possession thereof.

Settled is the rule that the procedure under Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640, cannot be brushed aside as a simple procedural technicality because it is a matter of substantive law.⁴³ All the more in cases where the quantity of illegal drugs seized is minuscule, such as in this case where the police officers were able to seize 0.13 gram of *shabu* from the accused-appellant. While a minuscule amount of dangerous drug is not *per se* a badge of innocence or would automatically entitle the accused-appellant to an acquittal, it has been recognized that such amount is highly susceptible to planting, tampering, or alteration. Hence, a stricter adherence to the rule on chain of custody must be observed.⁴⁴

Thus, the failure of the police officers to adopt appropriate safeguards to preserve the integrity of the *corpus delicti* places the credibility of the evidence presented by the prosecution in serious doubt. With the doubts engendered by the paucity of the prosecution's evidence, this Court has no recourse but to give accused-appellant the benefit of the doubt under the law and acquit him of the drug charges imputed against him.

⁴⁰ 700 Phil. 452, 469-470 (2012).

⁴¹ RTC Order dated December 10, 2015, records, p. 40.

⁴² 614 Phil. 285 (2009).

⁴³ *People v. Año*, *supra* note 31 at 452, citing *People v. Macapundag*, 807 Phil. 234, 244 (2017).

⁴⁴ *People v. Oliva*, *supra* note 23, citing *People v. Abelarde*, 824 Phil. 122 (2018).

On accused-appellant's liability for violation of R.A. No. 10591

With respect to accused-appellant's violation of R.A. No. 10591, this Court finds that said crime is separate and distinct from the violation of R.A. No. 9165, as amended, which can still proceed separately.

The instant case must be distinguished from *Trinidad v. People*.⁴⁵ In the said case, this Court held that when the basis for the charge of the illegal possession of firearm goes into the very transaction for which it was discovered, and this transaction was proved to be illegal, then acquittal for illegal possession of firearms must likewise follow, thus:

However, a more circumspect review of the decision absolving Trinidad of criminal liability in the drugs cases reveals that he was acquitted therein not only due to unjustified deviations from the chain of custody rule, but also on the ground that **the prosecution failed to prove the existence of a valid buy-bust operation, thereby rendering Trinidad's in flagrante delicto warrantless arrest illegal and the subsequent search on him unreasonable.** Thus, contrary to the courts a quo's opinions, Trinidad's acquittal in the drugs cases, more particularly on the latter ground, is material to this case because the subject firearms and ammunition were simultaneously recovered from him when he was searched subsequent to his arrest on account of the buy-bust operation.

The Court is aware that the findings on the illegality of Trinidad's warrantless arrest were made in the drugs cases, which are separate and distinct from the present illegal possession of firearms and ammunition case. Nevertheless, the Court is not precluded from taking judicial notice of such findings as evidence, and apply them altogether for the judicious resolution of the same issue which was duly raised herein. To be sure, the general rule is that the courts are not authorized to take judicial notice of the contents of the records of other cases. However, this rule admits of exceptions, such as when the other case has a close connection with the matter in controversy in the case at hand. In *Bongato v. Spouses Malvar*, the Court held:

[A]s a general rule, courts do not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court or before the same judge. There are exceptions to this rule. Ordinarily, an appellate court cannot refer to the record in another case to ascertain a fact not shown in the record of the case before it, yet, it has been held that it may consult decisions in other proceedings, in order to look for the law that is determinative of or applicable to the case under review. **In some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases "may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice."** (Emphasis and underscoring supplied)

⁴⁵ G.R. No. 239957, February 18, 2019, 893 SCRA 228. (Citation omitted)

Here, an examination of the ruling in the drugs cases (which Trinidad offered as evidence and the RTC admitted as part of his testimony) confirms that the drugs cases and this case are so interwoven and interdependent of each other since, as mentioned, the drugs, as well as the subject firearms and ammunition, were illegally seized in a singular instance, *i.e.*, the buy-bust operation. Hence, the Court may take judicial notice of the circumstances attendant to the buy-bust operation as found by the court which resolved the drugs cases. To recall, in the drugs cases, the finding of unreasonableness of search and seizure of the drugs was mainly based on the failure of PO1 Sanoy's testimony to establish the legitimacy of the buy-bust operation against Trinidad as said testimony was found to be highly doubtful and incredible. This circumstance similarly obtains here as in fact, the testimonies of both PO1 Nido and PO1 Sanoy in this case essentially just mirror on all material points the latter's implausible narration in the drugs cases. In view of the foregoing, the Court concludes that the subject firearms and ammunition are also inadmissible in evidence for being recovered from the same unreasonable search and seizure as in the drugs cases.⁴⁶

Notably, the acquittal of Trinidad in the above-mentioned case stemmed from the RTC's findings in the case for illegal sale of dangerous drugs that the prosecution failed to prove the existence of a valid buy-bust operation. It was not simply a case of unjustified deviations from the chain of custody rule.

In contrast, the instant case presents a situation where the integrity of the *corpus delicti* was affected because of the failure of the police officers to follow the chain of custody, which prescribes the manner of authentication of the seized drugs.

We uphold the uniform findings of the RTC and the CA about the absence of any irregularity in the conduct of the buy-bust operation which led to the seizure of the dangerous drugs and the unlicensed firearm. Hence, it cannot be said that the seized drugs and unlicensed firearm were the result of an unreasonable search. Considering that these are separate crimes committed by accused-appellant, these should be separately examined based on the respective elements needed to be proven by the prosecution in order to overcome the presumption of innocence.

While accused-appellant raised that the buy-bust operation was irregular due to the absence of a prior surveillance,⁴⁷ this Court has long held that the absence of a prior surveillance is neither a necessary requirement for the validity of a drug-related entrapment or buy-bust operation nor detrimental to the People's case.⁴⁸ There is no textbook method of conducting buy-bust operations. This Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.⁴⁹ In this case, the

⁴⁶ *Id.* at 238-240.

⁴⁷ CA *rollo*, p. 44.

⁴⁸ *People v. Adrid*, 705 Phil. 654, 668 (2013).

⁴⁹ *People v. Li Yin Chu*, 467 Phil. 582, 597 (2004).

police officers were accompanied by an informant who, in turn, positively identified accused-appellant as the target of the operation. The presence of the informant and his positive identification of accused-appellant, more so, his participation as the one who introduced SPO1 Janairo to accused-appellant, renders unnecessary the conduct of a prior surveillance.

The same must also be said as to the allegation of accused-appellant that the buy-bust money was not allegedly marked or initialed and that no pre-arranged signal⁵⁰ was agreed upon. To be sure, the conduct of a buy-bust operation requires the police officers to act with flexibility and leeway to ensure that the drug suspect is apprehended.

Moreover, the alleged inconsistencies in the testimony of SPO1 Janairo on whether the target of the operation is Caberos and not accused-appellant;⁵¹ on whether accused-appellant was about to enter the house of Caberos or that he was already inside the house when SPO1 Janairo arrived;⁵² and on whether the sale was consummated inside the house or at the doorstep,⁵³ are minor matters that do not affect the existence of the buy-bust operation.

The test in determining the existence of a valid buy-bust operation was laid down in *People v. Doria*,⁵⁴ 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 cost. 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.⁵⁵

In this case, the prosecution was able to establish the conduct of the buy-bust operation with the initial contact of the confidential informant with

⁵⁰ CA rollo, p. 45.

⁵¹ *Id.*

⁵² CA rollo, p. 46.

⁵³ *Id.*

⁵⁴ 361 Phil. 595 (1999).

⁵⁵ *Id.* at 621.

the poseur-buyer. This was later followed by the sale transaction between accused-appellant and SPO1 Janairo with the exchange of the drugs and the buy-bust money. In the course of this buy-bust operation, SPO1 Janairo discovered the firearm tucked on the back of the waist of accused-appellant.

To reiterate, accused-appellant's acquittal for the charge of illegal sale and illegal possession of dangerous drugs is based on the failure of the police officers to prove that they were able to preserve the integrity and evidentiary value of the drugs they seized from accused-appellant. As explained in *People v. Tripoli, et al.*:⁵⁶

As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution, either by accident or otherwise.

This means that on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, is the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."⁵⁷

Moreover, as explained in *People v. Del Monte*,⁵⁸ noncompliance with the chain of custody rule under Section 21 of R.A. No. 9165 affects the weight of evidence, and not its admissibility, to wit:

We would like to add that non-compliance 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 non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of

⁵⁶ 810 Phil. 788 (2017).

⁵⁷ *id.* at 797.

⁵⁸ 575 Phil. 576 (2008).

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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.⁵⁹

Significantly, there could be a situation where despite the existence of a valid buy-bust operation, an accused may still be acquitted on account of the failure of the police officers to account the *corpus delicti* of the crime charged. As a method of authenticating evidence in cases involving dangerous drugs, the chain of custody must be followed, lest it affect the weight of evidence presented by the prosecution.

In this case, the credibility of the seized drugs was put in doubt because of the unjustified deviations committed by the police officers in the chain of custody. As the issue does not revolve around admissibility, the items seized during the buy-bust operation cannot be said to be inadmissible. The weight of evidence to be accorded to the unlicensed firearm recovered during the buy-bust operation must thus be separately examined. Furthermore, while the failure of the prosecution to show that the seized evidence is what the proponent claims it to be may serve as a ground for acquittal, this is pertinent only to that particular charge where the *corpus delicti* was in issue. Simply put, each crime has its respective *corpus delicti*, which is inherent in the crime itself.

In the instant case, the failure of the prosecution to prove the integrity of the dangerous drugs does not amount to a failure to prove the crime of illegal possession of firearm of accused-appellant. As the source by which the items were recovered is not irregular, the acquittal for one charge based on a defect in an inherent characteristic of a crime cannot serve as a bar to the prosecution of another crime. The crime of illegal possession of firearms can thus proceed independently of the crime of illegal sale and possession of dangerous drugs.

The crime of illegal possession of firearm is punishable under Section 28 of R.A. No. 10591, the pertinent portion of which reads:

Section 28. Unlawful Acquisition, or Possession of Firearms and Ammunition. — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

X X X X

⁵⁹

Id. at 587.

(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

- (1) Loaded with ammunition or inserted with a loaded magazine;
- (2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;
- (3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;
- (4) Accompanied with an extra barrel; and
- (5) Converted to be capable of firing full automatic bursts.

The *corpus delicti* in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law.⁶⁰ To establish the *corpus delicti*, the prosecution has the burden of proving that the firearm exists and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.⁶¹

In this case, accused-appellant was found in possession of a .38 revolver with five live ammunitions when he was arrested after the conduct of the buy-bust operation. However, accused-appellant had neither license nor authority to possess or own them, as evidenced by the Certification issued by the Firearms and Explosives Office of the Philippine National Police in Camp Crame, Quezon City on September 10, 2015.⁶²

On this point, it is inconsequential that said firearm was not subjected to a ballistics examination as it is not an element of the crime. It has been held that a ballistics exam is usually conducted to establish the "likelihood that a bullet was fired from a specific weapon."⁶³ Such fact is not relevant to the instant case. Accused-appellant was charged with possessing a .38 revolver despite the lack of authority to do so. It was not alleged that he used said firearm to either injure or kill anyone. Thus, no reason exists for the police officers to conduct a ballistics examination on the .38 revolver that was confiscated from the accused-appellant.

The penalty imposed by the RTC, as affirmed by the CA, must nonetheless be modified. Under Article 28(a) of R.A. No. 10591, the penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small firearm. In relation thereto, Article 28(e) prescribes a penalty higher by one degree if the firearm is loaded with ammunition.

⁶⁰ *Peralta v. People*, 817 Phil. 554, 562 (2017).

⁶¹ *Sayco v. People*, 571 Phil. 73, 82-83 (2008).

⁶² Records, p. 30.

⁶³ *People v. Pitulan*, G.R. No. 226486, January 22, 2020, citing *Lumanog v. People*, 644 Phil. 296 (2010).

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In this case, it was established that SPO1 Janairo recovered a caliber .38 revolver loaded with five ammunitions from accused-appellant. The maximum of the penalty to be imposed against accused-appellant must thus be taken from *prision mayor* in its maximum period, which is the penalty higher by one degree than the penalty of *prision mayor* in its medium period. There being no aggravating or mitigating circumstance, the maximum penalty should be taken from the medium period of *prision mayor* maximum while the minimum penalty shall be taken within the range of the penalty next lower in degree. Applying the Indeterminate Sentence Law, this Court finds it appropriate to impose the penalty of imprisonment of eight (8) years, eight (8) months and one (1) day, as minimum, to ten (10) years, eight (8) months, and one (1) day, as maximum.

ACCORDINGLY, the appeal is **PARTIALLY GRANTED**. The Decision dated May 23, 2018 rendered by the Court of Appeals in CA-G.R. CR-HC No. 09161 is hereby **MODIFIED**. Accused-appellant Victor Alcira y Madriaga is hereby **ACQUITTED** of the charge of illegal sale and possession of dangerous drugs, as defined and penalized under Sections 5 and 11, respectively, of Article II of R.A. No. 9165, as amended by R.A. No. 10640.


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

For violation of Section 28(a) in relation to par. (e) of R.A. No. 10591, accused-appellant Victor Alcira y Madriaga is hereby found **GUILTY** and is sentenced to suffer the penalty of imprisonment of eight (8) years, eight (8) months, and one (1) day, as minimum, to ten (10) years, eight (8) months, and one (1) day, as maximum.

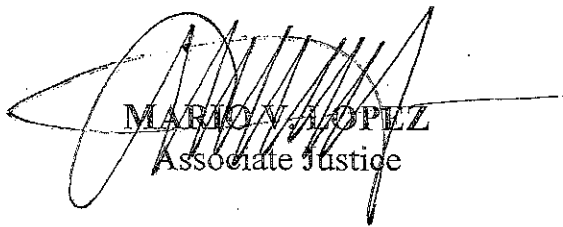
SO ORDERED.


JHOSEP Y. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice


MARION V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

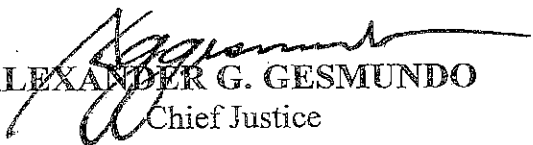
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Second 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.


ALEXANDER G. GESMUNDO
Chief Justice