



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 205821
Plaintiff-appellee,

Present:

CARPIO, *Chairperson*,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

GARRY DELA CRUZ y DE Promulgated:
GUZMAN,
Accused-appellant.

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DECISION

LEONEN, *J.*:

“Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.”¹

This resolves an appeal from a conviction for violation of Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ *People v. Holgado*, G.R. No. 207992, August 11, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>> [Per J. Leonen, Third Division].

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On September 15, 2004, accused-appellant Garry dela Cruz (dela Cruz) was charged with illegal sale and illegal possession of dangerous drugs in two separate informations,² as follows:

Criminal Case No. 5450 (20920)
VIOLATION OF SECTION 5, A[R]TICLE (sic) II K OF THE
COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002
(REPUBLIC ACT NO. 9165)

That on or about September 14, 2004, 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 drugs, did then and there wilfully, unlawfully and feloniously, SELL AND DELIVER to PO1 WILFREDO BOBON y TARROZA, a member of the PNP, who acted as buyer, one (1) small heat-sealed transparent plastic pack containing white crystalline substance having a total weight of 0.0120 gram which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*) knowing the same to be a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 5451 (20921)
VIOLATION OF SECTION 11, ARTICLE II OF THE
COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002
(REPUBLIC ACT NO. 9165)

That on or about September 14, 2004, 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 wilfully, unlawfully and feloniously, have in his possession and under his custody and control six (6) pieces heat-sealed transparent plastic sachets each containing white crystalline substance, each weighing as follows: 1) 0.0135 gram; 2) 0.0183 gram; 3) 0.0542 gram; 4) 0.0197 gram; 5) 0.0100 [gram]; and 6) 0.0128 gram or a total of 0.1285 gram; which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride (*shabu*) knowing same to be a dangerous drug.

CONTRARY TO LAW.³ (Citations omitted)

As alleged by the prosecution, dela Cruz was arrested in a buy-bust operation. The buy-bust operation was allegedly conducted after a civilian informant (the informant) tipped the Zamboanga City Police Office that a certain “Gary” was selling illegal drugs at the parking area for buses behind Food Mart, Governor Lim Street, Sangali, Bunguioa, Zamboanga City (the target area).⁴

² *Rollo*, p. 3.

³ *Id.* at 4.

⁴ *Id.* at 6.

The buy-bust operation team included PO1 Wilfredo Bobon (PO1 Bobon), as poseur-buyer, and SPO1 Roberto Roca (SPO1 Roca), as back-up arresting officer. It was agreed that “PO1 Bobon would remove his bull cap once the sale of illegal drugs was [consummated].” The buy-bust team prepared a ₱100.00 bill with serial number KM 776896 as marked money.⁵

At around 11:00 a.m. of September 14, 2004, the buy-bust operation team, accompanied by the informant, went to the target area. The informant initially brokered the sale of shabu. It was PO1 Bobon who handed the marked money to dela Cruz in exchange for one (1) heat-sealed plastic sachet of suspected shabu. After which, he removed his bull cap. SPO1 Roca then arrested dela Cruz.⁶

Upon frisking dela Cruz, PO1 Bobon supposedly recovered six (6) more heat-sealed sachets of suspected shabu. PO1 Bobon placed the sachet he purchased from dela Cruz in his right pocket and the six (6) other sachets in his left pocket. SPO1 Roca recovered the marked ₱100.00 bill.⁷

Dela Cruz and the seven (7) sachets seized from him were then brought to the Zamboanga City Police Station.⁸ There, PO1 Bobon taped the sachets. He then marked the sachet from his right pocket with his initials, “WB.”⁹ He marked the sachets from his left pocket as “WB-1,” “WB-2,” “WB-3,” “WB-4,” “WB-5,” and “WB-6.”¹⁰

On the same day, the seven (7) sachets were turned over to SPO1 Federico Lindo, Jr., the investigating officer, who prepared the request for laboratory examination. Subsequently, the tests yielded positive results for *shabu*.¹¹

During trial, the prosecution presented as witnesses PO1 Bobon, SPO1 Roca, and forensic chemist Police Inspector Melvin L. Manuel. The sole witness presented for the defense was dela Cruz himself.¹²

For his part, dela Cruz acknowledged that on the morning of September 14, 2004, he was in the target area. As he was leaving the comfort room, someone embraced him from behind, while another poked a gun at him. He was then handcuffed and brought to an L-300 van which was parked in front of Food Mart. Inside the van, he was asked if he was

⁵ Id.

⁶ Id.

⁷ Id. at 7.

⁸ Id.

⁹ CA *rollo*, p. 41.

¹⁰ Id.

¹¹ *Rollo*, p. 7.

¹² Id. at 5.

Jing-Jong, alias Jong-Jong. Despite his denials, he was brought to the police station. It was when he was already detained that he learned that he was charged for violation of the Comprehensive Dangerous Drugs Act of 2002.¹³

On August 19, 2010, the Regional Trial Court, Branch 13, Zamboanga City, convicted dela Cruz for violating Article II, Section 5 of the Comprehensive Dangerous Drugs Act of 2002 and sentenced him to life imprisonment and a fine of ₱500,000.00. He was also convicted for violating Article II, Section 11 of the Comprehensive Dangerous Drugs Act of 2002 and sentenced to 12 years and one day up to 14 years imprisonment and a fine of ₱300,000.00. The dispositive portion of this decision reads:

WHEREFORE, this Court finds:

1. In Criminal Case No. 5450 (20920), accused GARRY DELA CRUZ y DE GUZMAN guilty beyond reasonable doubt for violating Section 5, Article II of R.A. 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000) without subsidiary imprisonment in case of insolvency;

2. In Criminal Case No. 5451 (20921), accused GARRY DELA CRUZ y DE GUZMAN guilty beyond reasonable doubt for violating Section 11, Article II of R.A. 9165 and sentences him to suffer the penalty of TWELVE YEARS AND ONE DAY to FOURTEEN YEARS of imprisonment and pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000) without subsidiary imprisonment in case of insolvency.

The methamphetamine hydrochloride used as evidence in these cases are hereby ordered confiscated to be turned over to the proper authorities for disposition.

SO ORDERED.¹⁴

On appeal to the Court of Appeals, dela Cruz assailed the prosecution's failure to establish the chain of custody of the seized sachets of *shabu*. He also assailed the validity of the buy-bust operation and the prosecution's failure to present the informant in court.¹⁵

On May 31, 2012, the Court of Appeals rendered a decision¹⁶ affirming dela Cruz' conviction *in toto*. Thereafter, dela Cruz filed his

¹³ Id. at 7–8.

¹⁴ Id. at 8.

¹⁵ Id. at 9.

¹⁶ Id. at 3–18.

notice of appeal.¹⁷

In the resolution¹⁸ dated April 15, 2013, this court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

On June 6, 2013, the Office of the Solicitor General filed a manifestation and motion,¹⁹ on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief as the brief it filed with the Court of Appeals had adequately addressed the arguments and issues raised by dela Cruz.

On August 7, 2013, dela Cruz filed a manifestation²⁰ indicating that he, too, would no longer file a supplemental brief and that he was instead re-pleading, adopting, and reiterating the defenses and arguments in the brief he filed before the Court of Appeals.

For resolution is the issue of whether dela Cruz's guilt beyond reasonable doubt for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002 was established. Subsumed in the resolution of this issue are the issues raised by dela Cruz in the brief he filed with the Court of Appeals, foremost of which is whether the prosecution was able to establish compliance with the chain of custody requirements under Section 21 of the Comprehensive Dangerous Drugs Act of 2002.

The elements that must be established to sustain convictions for illegal sale and illegal possession of dangerous drugs are settled:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.²¹

¹⁷ Id. at 19–20.

¹⁸ Id. at 25.

¹⁹ Id. at 27–28.

²⁰ Id. at 30–31.

²¹ *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 235 [Per J. Del Castillo, Second Division], citing *People v. Darisan et al.*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

With respect to the element of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Particularly on the matter of custody before a criminal case is filed, Section 21, as amended, 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 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 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.**
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of

dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification;

....

The significance of complying with Section 21's requirements cannot be overemphasized. Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.

We reiterate the extensive discussion on this matter from our recent decision in *People v. Holgado*:²²

As this court declared in *People v. Morales*, "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the corpus delicti."²³ It "produce[s] doubts as to the origins of the [seized paraphernalia]."²⁴

The significance of ensuring the integrity of drugs and drug paraphernalia in prosecutions under Republic Act No. 9165 is discussed in *People v. Belocura*:²⁵

Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the corpus delicti itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.

In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto.* This is the reason why authentication

²² G.R. No. 207992, August 11, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>> [Per J. Leonen, Third Division].

²³ *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 236 [Per J. Del Castillo, Second Division].

²⁴ *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division], as cited in *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758 [Per J. Tinga, Second Division].

²⁵ G.R. No. 173474, August 29, 2012, 679 SCRA 318 [Per J. Bersamin, First Division].

and laying a foundation for the introduction of evidence are important.²⁶ (Emphasis supplied)

In *Malilin v. People*,²⁷ this court explained that the exactitude required by Section 21 goes into the very nature of narcotics as the subject of prosecutions under Republic Act No. 9165:

Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.²⁸ (Emphasis supplied)

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement

²⁶ Id. at 337–338.

²⁷ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

²⁸ Id. at 588–589.

forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.

By failing to establish identity of corpus delicti, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal. As this court stated in *People v. Lorenzo*:²⁹

In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug*. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict*.³⁰ (Emphasis supplied)

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained custody of the seized items is "negated."³¹ Republic Act No. 9165 requires compliance with Section 21.

Even the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice. In *People v. Magat*,³² for instance, this court had occasion to emphasize the inadequacy of merely marking the items supposedly seized: "Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165."³³

The exactitude which the state requires in handling seized narcotics and drug paraphernalia is bolstered by the amendments made to Section 21 by Republic Act No. 10640. Section 21(1), as amended, now includes the following proviso, thereby making it even more stringent than as originally worded:

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:

²⁹ G.R. No. 184760, April 23, 2010, 619 SCRA 389 [Per J. Perez, Second Division].

³⁰ *Id.* at 401.

³¹ *People v. Navarrete*, G.R. No. 185211, June 6, 2011, 650 SCRA 609, 618 [Per J. Carpio-Morales, Third Division]. *See also People v. Ulat*, G.R. No. 180504, October 5, 2011, 650 SCRA 607 [Per J. Leonardo-De Castro, First Division].

³² 588 Phil. 395 (2008) [Per J. Tinga, Second Division].

³³ *Id.* at 97.

In *People v. Nandi*,³⁴ this court explained that four (4) links “should be established in the chain of custody of the confiscated item: *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.”³⁵

In *Nandi*, where the prosecution failed to show how the seized items were handled following the actual seizure and, thereafter, turned over for examination, this court held that the accused must be acquitted:

After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject shabu was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.

There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory. It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case.

Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the

³⁴ G.R. No. 188905, July 13, 2010, 625 SCRA 123 [Per J. Mendoza, Second Division].

³⁵ Id. at 133, citing *People v. Zaida Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295 [Per J. Brion, Second Division].

performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it is brought to the crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.³⁶ (Citations omitted)

As *Holgado* emphasized, “[e]ven the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice.”³⁷ In *People v. Garcia*,³⁸ this court noted that the mere marking of seized paraphernalia, unsupported by a physical inventory and taking of photographs, and in the absence of the persons required by Section 21 to be present, does not suffice:

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.³⁹ (Citations omitted)

In this case, the Regional Trial Court acknowledged that no physical inventory of the seized items was conducted.⁴⁰ Similarly, there is nothing in the records to show that the seized items were photographed in the manner required by Section 21. Likewise, none of the persons required by Section 21 to be present (or their possible substitutes) have been shown to be present.

³⁶ Id. at 133–134.

³⁷ *People v. Holgado*, G.R. No. 207992, August 11, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>> [Per J. Leonen, Third Division].

³⁸ 599 Phil. 416 (2009) [Per J. Brion, Second Division].

³⁹ Id. at 429.

⁴⁰ *CA rollo*, p. 41.

The Regional Trial Court and the Court of Appeals assert that dela Cruz must nevertheless be convicted as “it had been clearly established that the identity of the items were [sic] properly preserved.”⁴¹ They anchor this conclusion on PO1 Bobon’s having supposedly kept the seized sachets in his own pockets: one (1) sachet in his right pocket and six (6) sachets in his left pocket.

The Court of Appeals reasons:

We found no gap in the prosecution’s presentation of the chain of custody. There was a seizure of seven (7) heat-sealed sachets of *shabu* as a result of a valid buy-bust operation. PO1 Bobon and SPO1 Roca testified how the seizure was conducted. PO1 Bobon was able to identify the *shabu* which were involved in the illegal sale vis-a-vis the one involved in illegal possession because he knowingly put them in different pockets. The seized drugs were marked at the police station which was only 200 meters away from the area where the arrest was made. The identity of these seized items were secured as PO1 Bobon placed tapes on the respective heat-sealed sachets of *shabu* and marked them with his initials which he later identified in court.⁴² (Citation omitted)

The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items’ turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals’ finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer’s act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the

⁴¹ Id.

⁴² *Rollo*, p. 14.

requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that “noncompliance of (sic) 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.” Plainly, the prosecution has not shown that — on September 14, 2004, when dela Cruz was arrested and the sachets supposedly seized and marked — there were “justifiable grounds” for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving assertion that the integrity of the seized sachets has, *despite all its lapses*, nevertheless been preserved.

Apart from the blatantly irregular handling by PO1 Bobon of the seven (7) sachets, it is also admitted that no physical inventory and taking of photographs in the presence of dela Cruz or of any of the other persons specified by Section 21 were conducted.⁴³

As in *People v. Garcia*, the mere marking of seized paraphernalia, will not suffice to sustain a conviction in this case.

The miniscule amount of narcotics supposedly seized from dela Cruz amplifies the doubts on their integrity. In total, the seven (7) sachets supposedly contained all of 0.1405 gram of shabu. This quantity is so miniscule it amounts to little more than 7% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams).

As we have discussed in *People v. Holgado*:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”

....

⁴³ CA rollo, p. 41.

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered. . . .⁴⁴ (Citations omitted)

As the integrity of the corpus delicti of the crimes for which dela Cruz is charged has not been established, it follows that there is no basis for finding him guilty beyond reasonable doubt. It is proper that dela Cruz be acquitted.

We close by hearkening to the same words with which we ended in *Holgado*:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁴⁵

WHEREFORE, premises considered, the decision dated May 31, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 00869-MIN is **REVERSED and SET ASIDE**. Accused-appellant Garry dela Cruz y de Guzman is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court within five days from receipt of this decision the action he has taken. Copies shall also be furnished the Director General of the Philippine National Police and the

⁴⁴ G.R. No. 207992, August 11, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>> [Per J. Leonen, Third Division].

⁴⁵ Id.

Director General of the Philippine Drugs Enforcement Agency for their information.

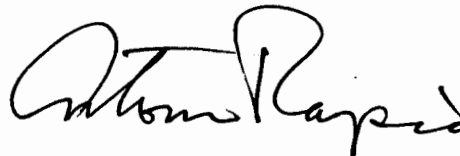
The Regional Trial Court is directed to turn over the seized sachets of shabu to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



JOSE C. MENDOZA
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.



ANTONIO T. CARPIO
Acting Chief Justice