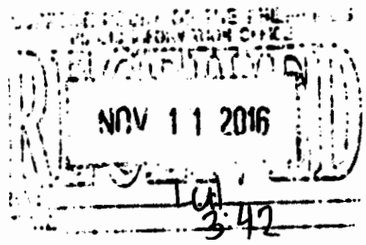
Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

JEHAR REYES,
Accused-Appellant.

G.R. No. 199271

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

OCT 19 2016

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DECISION

BERSAMIN, *J.*:

Compliance with the guidelines on the preservation of the chain of custody of the dangerous drugs subject of a prosecution for the illegal sale of dangerous drugs must be clearly and convincingly established by the State. Any lapse in the chain of custody must be affirmatively explained by the Prosecution; otherwise, the chain of custody will be held to be broken and insufficient to support a conviction of the accused. The presumption of regularity of the performance of official duty in favor of the arresting officers cannot prevail over the presumption of innocence in favor of the accused.

The Case

This appeal focuses on the decision promulgated on June 13, 2011 in CA-G.R. CEB CR-H.C. No. 00792 entitled *People v. Jehar Reyes*,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on March 9,

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Myra V. Garcia-Fernandez concurring.

2007 by the Regional Trial Court (RTC), Branch 10, in Cebu City finding accused Jehar Reyes guilty as charged of a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).[2]

Antecedents

The accusatory portion of the information charging the violation of Section 5 of R.A. No. 9165 reads:

> That on or about the 27th day of November, 2002 at 2:00 o'clock in the afternoon, more or less, at the Municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without proper authority or permit, did then and there wilfully, unlawfully and feloniously SELL, DELIVER and GIVE away to a poseur buyer for the sum of ONE THOUSAND PESOS (₱1,000.00), Philippine Currency, bill marked money with Serial Nos. HN019541, EX212112, ZW886460, FQ954616, DA723857, QO[0]6140, DE709987, SY315980, FQ950975, BB341926 three (3) silver paper packets of white crystalline substance weighing 1.44 grams, which when subjected to laboratory examination gave positive results for the presence of Methamphetamine Hydrochloride, a regulated drug.
>
> CONTRARY TO LAW.[3]

After the accused pleaded *not guilty* to the information, the State presented as witnesses PO2 Jesus Rudson Villahermosa, PO1 Januario Miro, PSINSP Arnel Banzon, PO2 Marlon Lumayag and Jude Daniel Mendoza,[4] while the Defense had the accused and Cesar Cañada as its own witnesses.[5]

The CA summarized the respective versions of the parties in the assailed decision as follows:

> x x x [O]n 27 November 2002, at around 2:00 p.m., a buy-bust operation was conducted at accused-appellant's residence in Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The team was composed of Senior Police Inspector Arnel Banzon (hereafter, "Banzon"), PO2 Jesus Rodson Villahermosa (hereafter, "PO2 Villahermosa") and PO1 Januario Miro (hereafter, "PO1 Miro") (both poseur-buyers). The backup team was composed of Senior Police Inspector Glenn Mayan, SPO2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Marlon Lumayag (hereafter P[O]3 Lumayag), and P[O]2 Aristocles.

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2 CA *rollo*, pp. 15-23; penned by Presiding Judge Soliver C. Peras.
3 Id. at 9.
4 *Rollo*, p. 5.
5 Id. at 7.

The following items were recovered from accused-appellant: three plastic packs (including the plastic pack bought by the poseur-buyers from accused-appellant), containing a (sic) white crystalline substance; and the buy-bust money of ten ₱100.00 bills with serial numbers HN[0]19541, EX212112, ZW886460, FQ954616, DA723857, QO[0]6140, DE709987, SY315980, [F]Q950975, BB341926. The total weight of the contents of the three plastic packs was 1.44 grams. When subjected to laboratory examination, the contents tested positive for methamphetamine hydrochloride, otherwise known as "shabu". Accused-appellant was thereafter charged with the crime of Illegal Sale of Shabu under Article 2, Section 5, R.A. 9165.

P[O]2 Villahermosa, P[O]1 Miro, Banzon, P[O]3 Lumayag, and Jude Daniel Mendoza, testified for the Prosecution. The evidence of the Prosecution is summarized thus: Several weeks before 27 November 2002, P[O]2 Villahermosa and P[O]1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A team to conduct a buy-bust operation was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn Mayan, SP[O]2 Jesus Rojas, SP[O]1 Eduardito Brigoli, PO3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles, were designated as back-up. The buy-bust money consisting of ten ₱100.00 bills, was marked with the initials "J.C.R." of SP[O]2 Rojas.

PO2 Villahermosa and PO1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the back-up team members positioned themselves about 5 meters away to observe the transaction.

P[O]2 Villahermosa approached the front of accused-appellant's house and called out the latter's name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy ₱1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed the ten pieces of ₱100.00 bills to accused-appellant. Upon receipt of the ₱1000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. P[O]2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant, and recovered the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten ₱100.00 bills.

Accused-appellant was brought to the police office, and PO1 Miro marked the items seized, as follows: "JR-B" (for the plastic pack of shabu subject of the buy-bust); "JR-1" and "JR-2" (for the 2 plastic packs of shabu recovered from the frisking). PO1 Miro prepared the letter-request for laboratory examination.

On 27 November 2002, at 5:20 p.m., PO1 Miro delivered the letter-request for laboratory examination, and the plastic packs marked "JR-B", "JR-1" and "JR-2", to PO1 Fiel, the clerk on duty at the PNP Crime Laboratory. P[O]1 Fiel turned over the letter-request, and the three plastic packs, to the Chemistry Branch for examination.

On 28 November 2002, Jude Daniel Mendoza, the forensic analyst, conducted the laboratory examination on the contents of the three plastic packs. Per Chemistry Report No. D-2390-2002, the contents of the three packets tested positive for Methamphetamine Hydrochloride.

Accused-appellant was thereafter charged with violating Article 2, Section 5 of R.A. 9165, or the crime of illegal sale of drugs.

Cesar Cañada (hereafter, "Cañada"), and accused-appellant himself, testified for the Defense. The evidence of the Defense is summarized thus: at around 2:00 p.m. of 27 November 2002, accused-appellant was sleeping at his elder sister's house, when several men suddenly barged in, and searched the premises. The men did not have any search warrant. They did not find contraband, nor did they receive money from accused-appellant.

Cañada is a neighbor of the accused-appellant. At around 2:00 p.m., of 27 November 2002, he was at a chapel about 10 meters from accused-appellant's house. He heard a loud bang on the door of accused-appellant's house, and saw five men enter it. The five men later left the house with the accused-appellant, on board a police vehicle.[6]

Ruling of the RTC

On March 9, 2007, the RTC convicted the accused of the crime charged, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds the accused **JEHAR REYES Y PREMACIO, GUILTY** of violating Section 5, Article II of Republic Act No. 9165. He is sentenced to suffer in prison the penalty of life imprisonment and to pay a fine of ₱500,000.00

The three plastic packs containing methamphetamine hydrochloride are ordered confiscated and shall be destroyed in accordance with law.

SO ORDERED.[7]

Judgment of the CA

The accused appealed,[8] contending that the illegal sale of *shabu* had not been established beyond reasonable doubt; that the buy-bust operation had not been carried out in accordance with law; that the presumption of regularity in the performance of official duty did not apply because the law enforcers had deviated from the standard conduct of official duty as provided for in the law; that the arresting police officers had failed to make

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6 Id. at 5-7.
7 CA *rollo*, p. 23.
8 Id. at 40-50.

an inventory report of the confiscated items; that the markings on the confiscated items were not clearly established; that the procedural lapses of the police officers created doubt as to the identity of the confiscated items; and that, consequently, the Prosecution did not establish the elements of the crime charged.

On June 13, 2011, the CA affirmed the conviction of the accused, holding and ruling thusly:

> In a Prosecution for illegal sale of dangerous drugs, the following elements must be duly 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.
>
> The first element is present. There was evidence that the sale of drugs between accused-appellant, and the poseur-buyers PO2 Villahermosa and PO1 Miro, took place. PO2 Villahermosa testified that several weeks before the actual buy-bust operation on 27 November 2002, he and PO1 Miro conducted a 2-week surveillance on accused-appellant, a reported drug pusher, residing at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu. The surveillance confirmed accused-appellant was engaged in the sale of illegal drugs. A buy-bust team was formed. P[O]2 Villahermosa and P[O]1 Miro were designated as the poseur-buyers, while Banzon, Senior Police Inspector Glenn Mayan, SPO2 Jesus Rojas, SP[O]1 Eduardito Brigoli, P[O]3 Danilo Lopez, P[O]2 Percival Charles, P[O]3 Lumayag, and P[O]2 Aristocles were designated as back-up. P[O]2 Villahermosa and P[O]1 Miro proceeded on foot to the target site, the house of the accused-appellant, while the backup team members positioned themselves about five meters away to observe the transaction. P[O]2 Villahermosa approached the front of accused-appellant's house and called out his name. Accused-appellant went out of his house. P[O]2 Villahermosa told accused-appellant he wanted to buy ₱1,000.00 worth of shabu. Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed to accused-appellant the ten pieces of ₱100.00 bills. Upon receipt of the ₱1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. PO2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. He frisked accused-appellant. PO2 Villahermosa and (sic) recovered from accused appellant the following: two more plastic packs that contained a white crystalline substance; and the buy-bust money of ten ₱100.00 bills.
>
> The second element is present. The *corpus delicti,* or the illicit drug subject of the sale, was presented in Court.
>
> x x x x
>
> In the case at bar, the identity of the plastic pack of shabu subject of the buy-bust operation was sufficiently established by the Prosecution. PO1 Miro marked the plastic packs of shabu seized from the accused-appellant at the office. The plastic pack of shabu subject of the buy-bust

operation was marked "JR-B", while the two plastic packs of shabu recovered from accused-appellant after he was frisked by P[O]2 Villahermosa were marked "JR-1" and "JR-2". Clearly, the identity of the *corpus delicti* was duly preserved and established by the Prosecution, hence there is no doubt as to whether what was presented in Court, was the same plastic pack of shabu purchased from the accused-appellant at the buy-bust operation.

In addition, the evidence the Prosecution presented, is complete to establish the necessary links in the handling of the shabu subject of the buy-bust operation, from the time of its seizure, until its presentation in Court. In other words, the Prosecution was able to comply with the chain of custody rule.

x x x x

It is clear that the integrity and the evidentiary value of the seized drugs were preserved. No convincing proof was shown that the evidence submitted by the Prosecution had been tampered, from the time they were recovered from accused-appellant, until they were turned over for examination. This Court, therefore, finds no reason to overturn the findings of the court *a quo* that the drugs seized from accused-appellant, were the same ones presented during trial. The chain of custody of the drugs seized from accused-appellant was unbroken, contrary to the assertion of accused-appellant.

Accused-appellant argues: since the police officers who arrested him did not make an inventory report of the items they confiscated from him, and that the markings on said items were not clearly established, the presumption of regularity in the performance of official duty no longer applies; the conduct of the police officers in the case at bar grossly violated Section 21(1), Article 2 of R.A. 9165; these omissions on the part of the police officers indicate that the operation they conducted was a sham, therefore illegal.

We do not agree.

x x x x

x x x [I]t has been ruled time and again that non-compliance with Sec. 21 of the IRR does not make the items seized inadmissible. What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt of innocence of the accused." Given the Prosecution's evidence, We rule that the presumption of regularity in the performance of official duties has not been overturned. The presumption remains because the Defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.

x x x x

WHEREFORE, the appeal is **DENIED.** The court *a quo's* **DECISION** dated 9 March 2007 is **AFFIRMED in toto.**

SO ORDERED.[9]

Issue

Did the CA err in affirming the conviction of the accused for the violation of Section 5, Article II of R.A. No. 9165?

Ruling of the Court

This appeal opens the entire record to enable the Court to determine whether or not the findings against the accused should be upheld or struck down in his favor.[10]

After careful examination and review of the record, we find merit in the appeal, and, accordingly, acquit the accused on the ground that the Prosecution did not establish his guilt beyond reasonable doubt.

1.
The State erred in charging the accused with illegal sale of 1.44 grams of *shabu*

In order to charge a person with and convict him for the illegal sale of dangerous drugs under Section 5 of R.A. No. 9165, the State must allege and establish the concurrence of the following essential elements, namely: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. The delivery of the illicit drugs to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal sale of dangerous drugs during the buy-bust transaction.[11]

Were the elements of the offense charged competently and clearly established by the Prosecution?

On direct examination, PO2 Villahermosa, who was the poseur buyer during the buy-bust operation, testified as follows:

> Q When you arrived at Sitio Cayam, where was your target Jehar Reyes?

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9 *Rollo,* pp. 10-18.
10 *People v. Oandasan,* G.R. No. 194605, June 14, 2016.
11 *People v. Pascua,* G.R. No. 194580, August 31, 2011, 656 SCRA 629, 636-637.

A They were in the house sir.

Q Was he inside or outside his house?
A He was sitting inside and came out when he saw us.

x x x x

Q You said that Jehar Reyes, when he saw you came out, after that what happened?
A Immediately I asked Jehar Reyes if we can buy shabu in the amount of ₱1,000.00.

Q What was the answer of Jehar Reyes?
A He nodded, meaning yes.

Q After Jehar Reyes nodded, indicating that he was amenable, what did he do next?
A He took one pack of shabu from his packet (sic) worth ₱1,000.00

Q How about you, what did you do with the money in your possession?
A I received the pack of shabu and in return I give (sic) to him the ₱1,000.00.

Q You mean to say that the one pack of shabu was first given to you before you give (sic) the ₱1,000.00?
A Yes.

Q What else happened?
A Police Officer Miro who was standing beside me executed the pre-arranged signal.

Q What was that signal about?
A He removed his bull cap after the transaction.

Q After that what happened next?
A Immediately my companions rushed up to the buy bust area.

Q What did your companions do?
A They came to assist me in the arrest of the accused.

x x x x

Q When the other members of the team rushed up to your position, what did you do to Jehar Reyes?
A When I held him, I informed him of his violation.

Q What did you inform him?
A I informed him that he has committed, he has violated Section 5, Article II of RA 9165.

Q What was the answer of Jehar Reyes?
A There was no reaction sir.

Q After that since you held Jehar Reyes, what did you do?
A Immediately I frisked him.

Q When you frisked him, what happened?
A I was able to recover One thousand Pesos which was the buy bust money I give (sic) to him and another 2 packets of shabu in his other pocket.[12]

PO1 Villahermosa further testified:

Q Upon handing to the accused this money worth one thousand pesos, what did the accused do after receiving the said amount?
A She (sic) got one pack of shabu from her (sic) pocket.

Q If shown to you this one pack of shabu, will you be able to identify it before this Honorable Court?
A Yes, Sir.

Q I'm showing to you three (3) heat-sealed transparent plastic packets of white crystalline substance, is this the specimen that you were able to recover and buy from the accused?
A (Witness is pointing to a pack marked .28 gram with letters JR-B which was the one given to me by the accused.)

Q What (sic) you mean by being the one given to me by the accused?
A In exchange of one thousand pesos.

Q I have here another two (2) packets marked JR-1 and another JR-2. Will you be able to identify these two packets of shabu?
A Yes.

Q What are these two specimens?
A These were the items confiscated from the accused after his arrest.[13]

In this regard, the CA, affirming the findings of the RTC, observed:

x x x Accused-appellant took one plastic pack from his pocket, and gave it to P[O]2 Villahermosa. P[O]2 Villahermosa in turn, handed the ten pieces of ₱100.00 bills to accused-appellant. Upon receipt of the ₱1,000.00 buy-bust money, P[O]2 Villahermosa immediately accosted accused-appellant. P[O]1 Miro removed his cap, the pre-arranged signal to the backup team, that the transaction had been completed. PO2 Villahermosa informed the accused-appellant he was under arrest, and informed him of his constitutional rights. **He frisked accused-appellant, and recovered the following: two more plastic packs that contained a white crystalline substance**; and the buy-bust money of ten ₱100.00 bills.[14] (Bold emphasis supplied.)

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12 TSN of March 12, 2004, records, pp. 124-125.
13 TSN of October 28, 2004, records, pp. 129-130.
14 *Rollo*, p. 6.

The lower courts came up with common findings to the effect that three plastic packs of *shabu* weighing a total of 1.44 grams had been confiscated from the accused by the buy-bust team, the first pack being marked *JR-B*, and the second and third packs being marked *JR-1* and *JR-2*. Based on the aforequoted testimony of the poseur buyer, however, the essential elements of the offense of illegal sale of dangerous drugs charged against him were only with regard to the transaction directly involving the *shabu* contained in the pack marked *JR-B*. This is because there was no delivery of the *shabu* contained in the packs marked *JR-1* and *JR-2* and, necessarily, there was no corresponding payment to speak of. In short, no transaction occurred as to the latter dangerous drugs. He should consequently be separately charged with illegal possession of dangerous drugs as defined and penalized under Section 11 of R.A. No. 9165 in respect of the *shabu* contained in the packs marked *JR-1* and *JR-2* that were seized from him after he had received the buy-bust money for the *shabu* contained in the pack marked *JR-B*. Indeed, the seizure was the actual result of the body frisking by PO2 Villahermosa right after his being informed of his constitutional rights, not of the buy-bust transaction. We stress that the elements of this offense of illegal possession of *shabu*, a dangerous drug, are that: (1) the accused was in possession of the dangerous drug; (2) his possession was not authorized by law; and (3) he freely and consciously possessed the drug.[15]

Even if illegal sale of dangerous drugs punished under Section 5 of R.A. No. 9165 – the offense charged – might necessarily include the illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the accused could only be found guilty of the first offense vis-à-vis the *shabu* contained in the pack marked *JR-B*. He could not be held guilty of the illegal possession of dangerous drugs in violation of Section 11 of R.A. No. 9165 because no information had been filed to charge such offense. It is fundamental that a person is to be tried and found guilty only of the offense charged in the information, or of the offense proved that is necessarily included in the offense charged, conformably with Section 4, Rule 120 of the *Rules of Court*, which states:

> Section 4. *Judgment in case of variance between allegation and proof.* – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

2.

The guilt of the accused was not established beyond reasonable doubt because the State did not satisfactorily

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[15] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 450.

explain the substantial lapses committed by the buy-bust team in preserving the chain of custody

The foregoing notwithstanding, the Court resolves to acquit the accused of the crime of violation of Section 5 of R.A. No. 9165 charged.

To convict the accused for the illegal sale or the illegal possession of dangerous drugs, the chain of custody of the dangerous drugs must be clearly and competently shown because such degree of proof is what was necessary to establish the *corpus delicti*.[16] In *People v. Alcuizar*,[17] the Court has underscored the importance of ensuring the chain of custody in drug-related prosecutions, to wit:

> The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.

The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[18] The Prosecution does not comply with the requirement of proving the *corpus delicti* not only when the dangerous drugs involved are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence presented in court.[19]

To ensure the chain of custody, Section 21 (1), Article II, of RA No. 9165 demands that:

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

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16 *People v. Climaco*, G.R. No. 199403, June 13, 2012, 672 SCRA 631, 641.
17 G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.
18 *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.
19 *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

The Implementing Rules and Regulations (IRR) of RA No. 9165 complement the statutory definition of the chain of custody thusly:

> (a) 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 shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

The importance of the chain of custody cannot be understated. As we have indicated in *People v. Mendoza*:[20]

> Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.

Was the chain of custody preserved in this case?

It appears clear to us as a reviewing court that the chain of custody was not preserved in the manner required by the aforementioned guidelines fixed by law. The arresting officers committed serious lapses that put into grave doubt the integrity of the evidence presented against the accused.

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[20] G.R. No. 192432, June 23, 2014, 727 SCRA 113, 125.

First of all, the confiscated items were not marked immediately after the seizure. In that regard, PO1 Miro recalled that he was the one who had placed the markings *JR-B*, *JR-1* and *JR-2* on the packs of *shabu* that were brought to the PNP Crime Laboratory,[21] and clarified on cross-examination that he had himself placed the markings at the police station.[22] Yet, his credibility suffered because of the inconsistency of his recollection of this crucial part of the chain of custody with those of poseur buyer PO2 Villahermosa and P/Chief Inspector Banzon, who declared that it was SPO4 Jake Rojas who had placed the markings on the packs.[23] The inconsistency among the witnesses of the State could not be dismissed as trivial or inconsequential in view of the defining role of the initial marking of the confiscated items.

Secondly, the law specifically required that the marking must be witnessed by the accused, but there was no credible showing by the State that the accused had actually witnessed the process of marking. This meant that the confiscation of the *shabu* was not properly insulated from doubt.

Thirdly, another substantial gap in the chain of custody concerned the absence of any representative of the media or of the Department of Justice (DOJ), and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation. The Prosecution did not attempt to explain why such presence of the media or DOJ representatives, and of the elected public official had not been procured despite the buy-bust operation being mounted in the afternoon of November 27, 2002 following two weeks of surveillance to confirm the veracity of the report on the illegal trading in drugs by the accused.[24] The objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame up. It was clear that ignoring such objective was not an option for the buy-bust team if its members genuinely desired to protect the integrity of their operation. Their omission attached suspicion to the incrimination of the accused. The trial and appellate courts should not

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21 TSN of January 13, 2005, records pp. 143-144.

22 TSN of February 3, 2005, records p. 149.

23 TSN of January 6, 2005, records p. 135; TSN of February 10, 2005, p. 153.

24 This was based on the joint affidavit of the members of the buy-bust team found in the records, pp. 5-6, where they pertinently averred:

> x x x x
>
> That on the **2nd week of November 2002,** we received a report from our confidential agent that illegal drug trade is rampant at Barangay Ward I, Tiber, Minglanilla, Cebu. Upon receiving report, PO1 Januario Miro and PO2 Jesus Rudson Villahermosa accompanied by our confidential agent went to the aforementioned place to confirm the veracity of the report. **After two weeks of surveillance, they confirmed veracity of the said report.**
>
> That on the afternoon of **November 27, 2002, we planned for a buy bust operation against the drug pusher at Sitio Cayam, Barangay Ward I, Tiber, Minglanilla, Cebu x x x.**
>
> x x x x (Bold emphasis supplied.)

have tolerated the buy-bust team's lack of prudence in not complying with the procedures outlined in Section 21(1), *supra*, in light of the sufficient time for them to comply.

And, lastly, the arresting officers did not prepare any inventory of the confiscated items, and did not take photographs of the items. Had there been an inventory prepared or photographs taken, the Prosecution would have surely formally offered them as evidence.[25] But no such offer was made. As such, the omissions were another serious gap in the chain of custody.

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them.[26] Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.[27] With the chain of custody having been compromised, the accused deserves acquittal. In other words, his defenses of denial and frame up defenses of the accused, the unexplained procedural lapses committed by the buy-bust team, on its own, created a reasonable doubt about the guilt of accused given the uncertainty over the identity and integrity of the seized *shabu* that the State presented as evidence of his guilt.[28]

3.

The presumption of regularity in the performance of duty in favor of the arresting officers did not prevail over the presumption of innocence in favor of the accused

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[25] CA *rollo*, p. 8; see Index of Exhibits showing that the State only formally offered as documentary and object evidence: (1) Chemistry Report No. D-2390-2002; (2) the certification issued by the forensic chemist, Jude Daniel Mendoza, (3) the three plastic packs of *shabu;* (4) letter-request for laboratory examination; (5) joint affidavit of the arresting officers; and (6) photocopy of the buy-bust money, respectively marked Exhibits A to F (with sub-markings).

[26] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 270.

[27] *People v. Mendoza,* supra, note 20, at 130-132.

[28] According to *United States v. Youtsey*, 91 Fed. Rep. 864, 868:

> A reasonable doubt of guilt is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

The CA observed that the presumption of regularity in the performance of duty in favor of the arresting officers was not overturned by the proof adduced by the Defense clearly and convincingly showing improper motive on their part to falsely incriminate the accused.

The accused charged with a violation of the *Comprehensive Drugs Act of 2002* is always presumed innocent of the crime charged against him. This presumption of his innocence, which has been enshrined in Section 14, Article III (*The Bill of Rights*) of the Constitution, ensures that: "*In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.*" It underlies our system of criminal justice, and far outweighs any other presumption, particularly one that is essentially a rule of evidence. In *People v. Mendoza*,[29] we have fittingly explained the superiority of the presumption of innocence over the lesser presumption of regularity of performance of official duty, as follows:

> We have usually presumed the regularity of performance of their official duties in favor of the members of buy-bust teams enforcing our laws against the illegal sale of dangerous drugs. Such presumption is based on three fundamental reasons, namely: *first*, innocence, and not wrong-doing, is to be presumed; *second*, an official oath will not be violated; and, *third*, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. But the presumption is rebuttable by affirmative evidence of irregularity or of any failure to perform a duty. Judicial reliance on the presumption despite any hint of irregularity in the procedures undertaken by the agents of the law will thus be fundamentally unsound because such hint is itself affirmative proof of irregularity.
>
> The presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts are instructed to apply this differentiation, and to always bear in mind the following reminder issued in *People v. Catalan*:
>
> > x x x We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

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[29] Supra, note 20.

> Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with *indicia* of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[30]

In view of the many notable serious procedural lapses committed by the buy-bust team, the benefit of the presumption of the regularity of the performance of duty by the arresting officers is indubitably unwarranted.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on June 13, 2011 by the Court of Appeals in CA-G.R. CEB CR-H.C. No. 00792 entitled *People v. Jehar Reyes;* **ACQUITS** accused-appellant **JEHAR REYES** of the offense charged on the ground of reasonable doubt; and **ORDERS** his immediate release from detention at the National Penitentiary, unless there are other lawful causes warranting his continued detention.

The Court **DIRECTS** the Director of the Bureau of Corrections to forthwith implement this decision, and to report his action hereon to this Court within ten (10) days from receipt.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[30] Id. at 134-136.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice