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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

Republic of the Philippines FEB 02 2018
 Supreme Court
 Manila

PEOPLE OF THE PHILIPPINES, G.R. No. 223142

Plaintiff-Appellee, Present:

VELASCO, JR., J.,
Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

- versus -

ROLANDO SANTOS y Promulgated:
 ZARAGOZA,

Accused-Appellant. January 17, 2018

X-----*Wilfredo V. Lapitan*-----X

DECISION

MARTIRES, J.:

This resolves the appeal of accused-appellant Rolando Santos y Zaragoza (*Santos*) seeking the reversal and setting aside of the 6 August 2014 Decision¹ and 2 March 2015 Resolution² of the Court of Appeals, Fourth Division (CA) in C.A.-G.R. CR-HC No. 05851, affirming the Decision³ of the Regional Trial Court (RTC), Branch 120, Caloocan City, in Criminal Case Nos. C-82010 and C-82011 finding him guilty of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia under Republic Act (R.A.) No. 9165, respectively.

THE FACTS

Accused-appellant Santos was charged before the RTC of Caloocan City with three (3) counts of violation of certain provisions of R.A. No. 9165, viz:

[Signature]

¹ Rollo, pp. 2-21.
² CA rollo, pp. 189-190.
³ Records, pp. 408-422.

Crim. Case No. C-82009
(Violation of Sec. 6, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully, and feloniously maintain in his house at 21 Tagaytay St., Caloocan City, a drug den, dive or resort where dangerous drugs are habitually dispensed for use by the customers and addicts.⁴

Crim. Case No. C-82010
(Violation of Sec. 11, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody, and control dried crushed leaves and seeds wrapped in a newsprint and contained in transparent plastic "tea bag" marked "ELS-21-8-09-06" weighing 1.0022 grams, when subjected for laboratory examination gave positive result to the tests for Marijuana, a dangerous drug.⁵

Crim. Case No. C-82011
(Violation of Sec. 12, Art. II of R.A. No. 9165)

That on or about the 21st day of August, 2009 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously have in his possession, custody, and control several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent "tea bag," and a plastic tube intended for sniffing Methamphetamine Hydrochloride, a dangerous drug.⁶

In relation to Criminal Case No. C-82009 where Santos was charged for maintaining a drug den, Imee Baltazar Loquinario-Flores (*Loquinario-Flores*) who was found inside the house of Santos during the service of the search warrant, was charged with violation of Sec. 7, Art. II of R.A. No. 9165.⁷

When arraigned, both Santos and Loquinario-Flores pleaded not guilty.⁸ Joint trial of the cases thereafter ensued.



⁴ Id. at 277.

⁵ Id. at 25.

⁶ Id. at 48.

⁷ Id. at 269, docketed as Crim. Case No. C-82012.

⁸ Id. at 174.

Version of the Prosecution

The prosecution tried to prove its cases against Santos through the testimony of Special Investigator Elson Saul (*Saul*), Agents Jerome Bomediano (*Bomediano*), Henry Kanapi (*Kanapi*) and Atty. Fatima Liwalug (*Atty. Liwalug*), all from the Reaction, Arrest and Interdiction Division (*RAID*) of the National Bureau of Investigation (*NBI*), and Nicanor Cruz, Jr. (*Cruz*), of the NBI Forensic Chemistry Division (*FCD*).

Prior to the application on 20 August 2009 by Atty. Liwalug for a search warrant before the RTC, Manila, the RAID-NBI received information from their confidential informant that there was a group of individuals at Tagaytay St., Caloocan City, selling drugs and using minors as runners. After Atty. Liwalug interviewed the informant, she, along with an NBI team and the technical staff of *Imbestigador*, a GMA Channel 7 investigative program, went to the reported area to conduct surveillance. The actual surveillance, where videos were taken of the buying, selling, and use of drugs in the different houses on Tagaytay St., lasted for two weeks. During the first test-buy, Bomediano was able to buy shabu from Santos alias "Rolando Tabo." Two informants were used by the NBI for the surveillance but the spy camera was attached to only one of them. The informants were able to buy drugs from Santos and to use them inside his house.⁹

The first video,¹⁰ taken by the staff of *Imbestigador*, showed the informants going inside a makeshift house on Tagaytay St. which, according to one of the informants, was owned by Santos. He was shown standing in front of a table while preparing the paraphernalia to sniff shabu. Also shown in the video was Jenny Coyocot, the adopted daughter of Santos, who, according to the informant, sold foil for the price of P2.00 per strip. The second video¹¹ depicted Erwin Ganata Ayon telling Jack, one of the occupants in Santos' house, "pasok kami sa bahay ni Tabo."¹² The videos were turned over by Mean de Chavez of *Imbestigador* to Atty. Liwalug.¹³

On 21 August 2009, Kanapi, Saul, Bomediano, and SI Junnel Malaluan, armed with a search warrant,¹⁴ proceeded to the house of Santos on Tagaytay St. Kanapi and Malaluan guarded the perimeter of Santos' house to ensure that no one could exit from or enter the house during the service of the search warrant. Previous to the service of the warrant, the NBI

⁹ TSN, 29 March 2011, pp.10-12; TSN, 4 October 2011, pp. 15-17.

¹⁰ Records, p. 336, Exh. "O."

¹¹ Id.; Exh. "O-1."

¹² TSN, 4 October 2011, p. 18; TSN, 8 November 2011, pp. 4-6.

¹³ TSN, 8 November 2011, p. 8.

¹⁴ Records, p. 343-344; Exh. "G."



RAID coordinated¹⁵ with the Department of Justice (*DOJ*), the officials of the barangay, and the media.¹⁶

Saul knocked on the door of Santos' house. When nobody answered despite several minutes of waiting, the NBI team broke open the door. Saul, Bomediano, Malaluan, and the *Imbestigator* team proceeded to the second floor where they found a person who identified himself as Rolando Santos. Saul told Santos that the team was from the NBI and that they were to serve a search warrant on him, which copy was actually shown to Santos. The team waited for the representatives from the DOJ and the barangay before conducting the search.¹⁷

During the conduct of the search at the living room on the second floor of the house, Saul found inside the bedroom and beside the bed of Santos several used and unused foil strips either crumpled or rolled, the size of a cigarette stick. The foil strips,¹⁸ numbering fourteen, were found inside a baby powder container.¹⁹ He also found unused small plastic sachets.²⁰ Saul placed the foil and plastic sachets on the center table in the living room. When Saul frisked Santos, he found marijuana leaves wrapped in paper on the right pocket of his pants. Saul informed Santos of his constitutional rights and placed the marijuana leaves on top of the center table. Saul searched the rooms on the second floor but found nothing. From a trash can in the kitchen, Saul found used small transparent sachets which he also placed on the center table. Loquinario-Flores, who was caught on video selling to the informant aluminum foil to be used with drugs, and two minor children were found on the first floor of the house. The children admitted that they were part of a gang in the area.²¹

Santos, Assistant City Prosecutor Darwin Cañete, Kagawad Magno Flores, and media representative Eugene Lalaan of *Imbestigador* witnessed the inventory²² of the seized items by Saul and when he marked them. Santos, Loquinario-Flores, and the two minors were brought to the NBI office. When Saul returned to the NBI office after the operation, he submitted the seized items to the NBI forensic chemist. A joint affidavit of arrest²³ was thereafter executed by Saul, Malaluan, Bomediano, and Kanapi.²⁴

¹⁵ Records, pp. 347-348; Exhs. "N" and "N-1."

¹⁶ TSN, 4 October 2011, pp. 4-6; TSN, 29 September 2010, p. 10; TSN, 9 March 2011, p. 5.

¹⁷ TSN, 29 September 2010, pp. 7-10.

¹⁸ Exh. "K."

¹⁹ Exh. "L."

²⁰ Exh. "M."

²¹ TSN, 29 September 2010, pp. 10-14, 24; TSN, 10 November 2010, pp. 4-6; TSN, 29 March 2011, pp. 15-16; TSN, 4 October 2011, p. 10.

²² Records, p. 345, Exh. "H."

²³ Id. at 330-332, Exhs. "I", "I-1", and "I-2."

²⁴ TSN, 29 September 2010, pp. 14-17, 20 and 25-26.

The testimony of Cruz, the forensic chemist, was dispensed with after the parties agreed to stipulate on the matters he would testify and after a short cross-examination by the defense.

Version of the Defense

The version of the defense was established through the testimony of Loquinario-Flores, Santos, and Renamel Destriza (*Destriza*).

On 21 August 2009 at about 3:00 p.m., while Santos was alone at home playing his guitar, the NBI team armed with long firearms suddenly arrived looking for a certain Roland Tabo. Santos was made to lie face down and thereafter was frisked. The team took Santos' money amounting to P140.00 and his house was searched in the presence of a kagawad from Quezon City but the search team found nothing. As a result, the team brought out foil, lighters, and marijuana and took pictures. Loquinario-Flores was inside the house that time as she was called by Destriza to help bring down from the second floor an elderly who was hit by the door when the NBI team forcibly opened it. Loquinario-Flores was no longer allowed to leave while Destriza, who was carrying a child that time, was allowed to go out of the house. Santos, Loquinario-Flores, and the other persons arrested were brought to the NBI office. It was only during the inquest held the following day that Santos was informed that he was being charged of violating the provisions of R.A. No. 9165 and allowed to see the items allegedly seized from him.²⁵

The Ruling of the RTC

The RTC²⁶ ruled that the entry in the house of Santos by the NBI team and the subsequent confiscation of the paraphernalia and marijuana were valid and legal since the team had a search warrant. Moreover, it held that the search was conducted following proper procedure. Thus, the RTC resolved the cases as follows:

Premises considered, this court finds and so holds the accused **Rolando Santos y Zaragoza GUILTY** beyond reasonable doubt for violation of Sections 6, 11 and 12, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

- (1) In **Crim. Case No. C-82009**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00);



²⁵ TSN, 22 May 2012, pp. 3-4; TSN, 26 June 2012, pp. 3-7; TSN, 31 July 2012, pp. 4-5.

²⁶ Records, pp. 408-422; penned by Judge Aurelio R. Ralar, Jr.

(2) In **Crim. Case No. C-82010**, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00); and

(3) In **Crim. Case No. C-82011**, the penalty of Imprisonment of six (6) months and one (1) day to four (4) years and a fine of Ten Thousand Pesos (₱10,000.00).

Further, in **Crim. Case No. C-82012**, accused **Imee Baltazar Loquinario-Flores** was likewise found **GUILTY** beyond reasonable doubt for violation of Section 7 of the above-cited law and imposes upon her the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and a fine of Three Hundred Thousand Pesos (₱300,000.00).

The drugs and drug paraphernalia subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.

The Ruling of the CA

Feeling aggrieved with the decision of the RTC, Santos appealed before the Court of Appeals.

In Criminal Case No. C-82009, the CA, Fourth Division²⁷ ruled that the RTC should not have given much weight to the video footages because these were not identified and authenticated by the confidential informant who took them. It held that the prosecution failed to present any witness who had personal knowledge and who could have testified that Santos' house was a drug den. The team, on the other hand, failed to show that Santos or any other person was committing illegal activities inside the house. It found that the testimony of the confidential informant was essential and indispensable for the conviction of Santos because the NBI agents did not have any personal knowledge as to the alleged illegal activities in the house that would characterize it as a drug den.²⁸

In Criminal Case No. C-82012, because of its ruling that the prosecution failed to establish that Santos was maintaining a drug den, the CA held that it necessarily followed that Loquinario-Flores, pursuant to Sec. 11 (a), Rule 122²⁹ of the Rules of Court, must be exonerated of the charge

²⁷ CA *rollo*, pp. 189-190; penned by Associate justice Rosmari D. Carandang and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon.

²⁸ *Rollo*, pp. 18-19.

²⁹ Section 11. Effect of appeal by any of several accused. —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

against her for violating Sec. 7, Art. II of R.A. 9165. Despite the fact that Loquinario-Flores did not appeal, the CA relied on the dictum that everything in an appealed case is open for review by the appellate court.³⁰

In Criminal Case Nos. C-82010 and C-82011, the CA held that the prosecution was able to show the guilt of Santos beyond reasonable doubt. It held that the testimony of Saul was straightforward and that there was no proof that he had ill motive to testify against Santos. On the other hand, it found the defense of frame-up put up by Santos was self-serving which failed to rebut the overwhelming evidence presented by the prosecution; and that the alleged inconsistencies in the testimonies of Kanapi and Bomediano were on trivial and immaterial details that do not affect their credibility.³¹ Hence, the appeal of Santos was decided as follows:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The Decision dated 26 September 2012 of the lower court is **MODIFIED** as follows:

1. The judgment in **Criminal Case No. C-82010** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 is hereby **AFFIRMED**;
2. The judgment in **Criminal Case No. C-82011** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of Illegal Possession of Drug Paraphernalia under Section 12, Article II of RA 9165 is hereby **AFFIRMED**;
3. The judgment in **Criminal Case No. C-82009** finding the appellant **Rolando Santos y Zaragoza** guilty beyond reasonable doubt of the crime of maintaining a Drug Den under Section 6, Article II of RA 9165 is **REVERSED** and **SET ASIDE**. Appellant Rolando Santos y Zaragoza is hereby **ACQUITTED** in Criminal Case No. C-82009 for insufficiency of evidence.
4. The judgment in **Criminal Case No. C-82012** finding the accused **Imee Baltazar Lquinario-Flores** guilty beyond reasonable doubt of the crime of Visiting a Drug Den under Section 7, Article II of RA 9165 is likewise **REVERSED** and **SET ASIDE**. She is hereby **ACQUITTED** in Criminal Case No. C-82012 for insufficiency of evidence.

SO ORDERED.

Santos sought for a partial reconsideration³² of the decision of the CA insofar as it affirmed his conviction in Crim. Case Nos. C-82010 and C-82011. Finding no persuasive grounds or substantial bases to reconsider, however, the CA denied the motion.³³

³⁰ *Rollo*, p. 19.

³¹ *Id.* at 18-19.

³² *CA rollo*, pp. 173-179.

³³ *Id.* at 189-190.

ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE ALLEGED CONFISCATED DRUGS.

OUR RULING

The appeal is without merit.

It bears to stress that while an accused in a criminal case is presumed innocent until proven guilty, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.³⁴ The Court firmly holds that the prosecution was able to successfully discharge its burden of overcoming the constitutional presumption of innocence of Santos and in proving his guilt beyond reasonable doubt in Crim. Case Nos. C-82010 and C-82011.

The findings of the trial court and the appellate court as to the credibility of the prosecution witnesses are binding and conclusive upon the Court.

Santos claimed that the testimonies of the prosecution witnesses were indecisive, conflicting, and contradictory; as opposed to the version of the defense which was consistent, straightforward, and complementary with each other.³⁵



³⁴ *People v. Calantiao*, 736 Phil. 661, 674-675 (2014).

³⁵ CA rollo, p. 58.

To justify his claim, Santos averred that when Saul first testified he stated that the second floor of the house had a living room, kitchen, and two rooms. It was when Saul allegedly frisked Santos that he found several used and unused aluminum foil and a sachet of marijuana, but nothing was found inside the two rooms. When Saul was again put on the witness stand, he allegedly admitted that the five disposable lighters and the strips of aluminum foil were found inside Santos' bedroom.³⁶

Contrary to the claim of Santos, the testimonies of Saul were not inconsistent with each other. When first put on the stand, Saul admitted that he found the strips of aluminum foil in the living room; and that when he frisked Santos he found in the right pocket of his pants the marijuana leaves wrapped in paper.³⁷ Clearly, Saul was forthright in stating where he found the used and unused aluminum foil and the marijuana. Saul never claimed that the strips of aluminum foil were found on the body of Santos.

When Saul testified again, he described in detail that the strips of aluminum foil were found inside a plastic baby powder container.³⁸ Although Saul claimed that he found these in the bedroom of Santos, the Court took note of the fact that in most houses in urban areas, the living room is also used as the bedroom. What is important is that Saul was consistent that he found the strips of aluminum foil on the second floor of the house where the living room and bedroom were located.

It must be emphasized that the finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.³⁹ The truth that the strips of aluminum foil were found in the house of Santos and the marijuana in his body, had not been successfully controverted by him. In fact, there was but the lame defense of frame-up offered by Santos to overcome the presumption. Enlightening at this point is the jurisprudence in *People v. Lagman*,⁴⁰ viz:

It held that illegal possession of regulated drugs is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive

³⁶ Id.

³⁷ TSN, 29 September 2010, pp. 10-12.

³⁸ TSN, 10 November 2010, pp. 4-5.

³⁹ *People v. Dela Trinidad*, 742 Phil. 347, 358 (2014).

⁴⁰ 593 Phil. 617, 625 (2008), citing *People v. Tira*, 474 Phil. 152, 173-174 (2004).

possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.⁴¹

The contention of Santos that the members of the raiding team gave an altogether different account as to who actually witnessed the implementation of the search warrant,⁴² is a trivial and inconsequential matter that does not affect the credibility of the prosecution witnesses. These matters do not deal with the central fact of the crime. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.⁴³

In stark contrast, the defense of denial proffered by Santos cannot prevail over the positive identification by the prosecution witnesses. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.⁴⁴ Courts generally view the defense of denial with disfavor due to the facility with which an accused can concoct it to suit his or her defense.⁴⁵

Equally important is that it is the general rule that “the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions on the credibility of the witnesses on which said findings were anchored are accorded great respect. This great respect rests in the trial court's first-hand access to the evidence presented during the trial, and in its direct observation of the witnesses and their demeanor while they testify on the occurrences and events attested to.”⁴⁶ Settled also is the rule that factual findings of the appellate court affirming those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness, or palpable error.⁴⁷ Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.⁴⁸ The Court

⁴¹ *People v. Dela Trinidad*, supra note 39 at p. 348.

⁴² CA rollo, pp. 58-59.

⁴³ *People v. Rebotazo*, 711 Phil. 150, 172-173 (2013).

⁴⁴ *People v. Salvador*, 726 Phil. 389, 402 (2014).

⁴⁵ *Zalameda v. People*, 614 Phil. 710, 733 (2009).

⁴⁶ *Luy v. People of the Philippines*, G.R. No. 200087, 12 October 2016, 805 SCRA 710, 718-719; citing *Gulmatico v. People*, 562 Phil. 78,87 (2007); *People v. De Guzman*, 564 Phil. 282, 290 (2007); *People v. Cabugatan*, 544 Phil. 468, 479 (2007); *People v. Taan*, 536 Phil. 943, 954 (2006); *Perez v. People*, 515 Phil. 195, 203-204 (2006); *People v. Tonog, Jr.*, 477 Phil. 161, 177 (2004); *People v. Genita, Jr.*, 469 Phil. 334, 341-342 (2004); *People v. Pacheco*, 468 Phil. 289, 299 (2004); *People v. Abolidor*, 467 Phil. 709, 716 (2004); *People v. Santiago*, 465 Phil. 151, 162 (2004).

⁴⁷ *People v. Bontuyan*, 742 Phil. 788, 798 (2014).

⁴⁸ *People v. Dahil*, 750 Phil. 212, 225 (2015).

had assiduously reviewed the records but found nothing to qualify these cases as falling within the exception to the general rule.

Santos asserted that the search warrant was only for an undetermined amount of shabu; thus, the discovery of the incriminating items other than that described in the warrant must result from bodily search or seized in plain view to be admissible in evidence.⁴⁹

The assertion of Santos has no merit considering that he did not question the admissibility of the seized items as evidence against him during the trial of these cases. It was only when he appealed the decision of the RTC before the CA that he raised the issue as to the admissibility of the seized items. Well-entrenched in our jurisprudence is that no question will be entertained on appeal unless it has been raised in the lower court.⁵⁰

There was an unbroken chain in the custody of the seized drugs and paraphernalia.

It was the position of Santos that there was doubt as to the whether the marijuana and paraphernalia seized from him were the very same objects offered in court as *corpus delicti*. He claimed that there was no explanation given regarding the items confiscated from Santos from the time these were seized until their turnover for laboratory examination.⁵¹

“*Corpus delicti* is the ‘actual commission by someone of the particular crime charged.’ In illegal drug cases, it refers to the illegal drug item itself.”⁵²

The Dangerous Drugs Board (DDB) – the policy making and strategy formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified, and balanced national drug abuse prevention and control strategy⁵³ – has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Sec. 1(b) of DDB Regulation No. 1, Series of 2002,⁵⁴ to wit:



⁴⁹ CA rollo, p. 60

⁵⁰ *Tionco v. People*, 755 Phil. 646, 654 (2015).

⁵¹ CA rollo, p. 62.

⁵² *Rontos v. People*, 710 Phil. 328, 336-337 (2013).

⁵³ Sec. 77, R.A. No. 9165.

⁵⁴ Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of RA No. 9165 in relation to Section 81(b), Article IX of R.A. No. 9165.

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.⁵⁵

The exacting requirement as to the chain of custody of seized drugs and paraphernalia is highlighted in R.A. No. 9165 as follows:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

On the one hand, the Implementing Rules and Regulations (IRR) settles the proper procedure to be followed in Sec. 21(a) of R.A. No. 9165, viz:

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirement" 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.



⁵⁵ *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

The Court has explained in a catena of cases the four (4) links that 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.⁵⁶

On the first link, jurisprudence dictates that "'(M)arking' is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the 'chain of custody' rule requires that the 'marking' of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation."⁵⁷

Saul testified that after he gathered the drug paraphernalia and the marijuana which he confiscated from Santos, he prepared the inventory of seized items/property⁵⁸ in the presence of Santos, and the respective representatives of the DOJ, media, and the barangay. In addition to the inventory, he marked the confiscated items as follows:

1. five (5) pieces of disposable lighters "ELS-21-8-09"
2. several pieces or strips of unused aluminum foil "ELS-21-8-09-01"
3. several pieces/strips of used aluminum foil "ELS-21-8-09-02"
4. several pieces unused small plastic sachet "ELS-21-8-09-03"
5. several pieces used small plastic sachet "ELS-21-8-09-04"
6. one (1) improvised plastic pipe "ELS-21-8-09-05"
7. undetermined amount of marijuana leaves and seed wrapped in newspaper "ELS-21-8-09-06"

Anent the second and third links, on the same day that Saul arrived at the NBI RAID office after the service of the search warrant, he forthwith prepared the disposition form⁵⁹ for the turnover of the seized items to the FCD. The seized items were received by the FCD on 21 August 2009 at

⁵⁶ *People v. Holgado*, 741 Phil. 78, 94-95 (2014); citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

⁵⁷ *People v. Somoza*, 714 Phil. 368, 387-388 (2013).

⁵⁸ Records, p. 345, Exh. "H."

⁵⁹ Id. at p. 201, Exh. "A."

11:05 p.m. A certification⁶⁰ dated 21 August 2009 was likewise issued by the FCD confirming that the confiscated items marked as “ELS-21-8-09-02”, “ELS-21-8-09-04”, and “ELS-21-8-09-05” yielded positive results for the presence of methamphetamine hydrochloride, and positive results for marijuana for “ELS-21-8-09-06”. On 25 August 2009, the FCD released its Dangerous Drugs Report Nos. DDM-09-08⁶¹ and DD-09-47.⁶²

On the fourth link, the testimony of Cruz was dispensed with after the parties had agreed to stipulate on the following facts:

That he is an expert witness, and as such is of the receipt of a letter request dated 21 August 2009;

That attached to the letter request were several pieces/strips of used aluminum foil marked as ELS-21-8-09-02; several pieces of used small plastic sachet marked as ELS-21-8-09-04; one (1) improvised plastic pipe marked as ELS-21-8-09-05, and undetermined amount of marijuana leaves and seed wrapped in a newspaper marked as ELS-21-8-09-06;

That he conducted laboratory examination on the specimen submitted to their office, the result of which he reduced into writing as evidenced by Dangerous Drugs Report No. DDM-09-08, stating that upon examination conducted on the dried crushed leaves and seeds wrapped in a newsprint gave positive results for “marijuana” and by Dangerous Drugs Report No. DDM-09-47, stating that upon examinations conducted on the several strips of used aluminum foil in a transparent plastic bag; several pieces of used plastic sachets in a transparent “tea bag” and a plastic sachet tube gave positive results for the presence of Methamphetamine Hydrochloride, respectively;

That he issued a Certification dated 21 August 2009 to the effect that he conducted examination upon the above-mentioned specimen submitted to their office.⁶³

As opposed therefore, to the claim of Santos, there was no significant gap in the chain of custody of the seized items. Moreover, the assertion of Santos that the forensic chemist did not testify to explain the measures undertaken to preserve the integrity and identity of the substance examined until their presentation in court,⁶⁴ has no merit. As earlier mentioned, both the prosecution and the defense had agreed to dispense with the testimony of the forensic chemist upon stipulation on certain facts. Moreover, the defense counsel had the opportunity to cross-examine the forensic chemist but, as revealed by the records, his cross-examination never dealt on matters pertaining to the measures carried out by the NBI team to maintain the integrity of the confiscated items.



⁶⁰ Id. at 204, Exh. “D.”

⁶¹ Id. at 202, Exh. “E.”

⁶² Id. at 203, Exh. “F.”

⁶³ TSN, 11 November 2009, pp. 9-10.

⁶⁴ CA *rollo*, p. 62.

In the same vein, it needs to be stressed that Cruz is a public officer; thus, his reports carried the presumption of regularity. Besides, Sec. 44, Rule 130 of the Revised Rules of Court provides that entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specifically enjoined by law, are prima facie evidence of the facts therein stated.⁶⁵ It necessarily follows that the findings of Cruz as contained in Dangerous Drugs Report Nos. DDM-09-08 and DDM-09-47 were conclusive in view of the failure of the defense to present evidence showing the contrary.

Noteworthy, the legal teaching in our jurisprudence is that “the integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.”⁶⁶ Santos had miserably failed in presenting any evidence that would justify a finding that the NBI team had ill motive in tampering with the evidence in order to hold him liable for these grave offenses.

The prosecution was able to fully discharge its burden of proving beyond reasonable doubt its charges against Santos.

In Crim. Case No. C-82010, Santos was charged with and convicted of violation of Sec. 11, Art. II of R.A. No. 9165,⁶⁷ the elements of which are

⁶⁵ *Zalameda v. People*, supra note 45 at p. 740.

⁶⁶ *People v. Dela Trinidad*, supra note 39 at p. 360.

⁶⁷ Section 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

as follows: (1) the accused is in possession of an item or object, which is identified to be prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.⁶⁸

Saul testified that when he frisked Santos, he found marijuana in the right pocket of his pants. Santos did not offer any explanation on why he was in possession of the marijuana or if he was authorized by law to possess the dangerous drug. Based on the Dangerous Drugs Report No. DDM-09-08, the dried crushed leaves and seeds wrapped in newspaper and contained in the transparent plastic tea bag marked as "ELS-21-8-09-06" and which gave a positive result for marijuana, had a net weight of 1.0022 grams.

Pursuant to Sec. 11, Art. II of R.A. No. 9165, the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine ranging from Three Hundred Thousand Pesos (P300,000.00) to Four Hundred Thousand Pesos (P400,000.00), shall be imposed if the quantity of marijuana is less than three hundred (300) grams. Thus, the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years, and a fine of Three Hundred Thousand Pesos (P300,000.00) as imposed by the RTC and affirmed by the CA, is hereby sustained.

In Crim. Case No. C-82011, Santos was convicted of violation of Sec. 12, Art. II of R.A. No. 9165,⁶⁹ its elements being as follows: (1) possession

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

⁶⁸ *People v. Dela Trinidad*, supra note 39 at p. 357.

⁶⁹ Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to

or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.⁷⁰

Saul testified that when he served the search warrant on Santos at his house on 21 August 2009, he found thereat several strips of used aluminum foil in a transparent plastic bag, several pieces of used plastic sachet in a transparent tea bag, and a plastic tube intended for sniffing shabu, which he respectively marked “ELS-21-8-09-01,” “ELS-21-8-09-04,” and “ELS-21-8-09-05.” Similar to the marijuana, Santos failed to justify his possession of these items. Significantly, Dangerous Drugs Report No. DD-09-47 showed that the examination made on the washings of these confiscated items yielded positive results for the presence of methamphetamine hydrochloride.

Pursuant to Sec. 12, Art. 11 of R.A. No. 9165, the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years, and a fine ranging from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00) shall be imposed for violation of this provision of the Act. Finding no error in the penalty of imprisonment of six (6) months and one (1) day to four (4) years, and a fine of Ten Thousand Pesos (₱10,000.00) imposed by the RTC, which was affirmed by the CA, the Court hereby maintains the same.

WHEREFORE, the appeal is **DENIED**. The 6 August 2014 Decision and 2 March 2015 Resolution of the Court of Appeals, Fourth Division in C.A.-G.R. CR-HC No. 05851 are hereby **AFFIRMED**.

SO ORDERED.

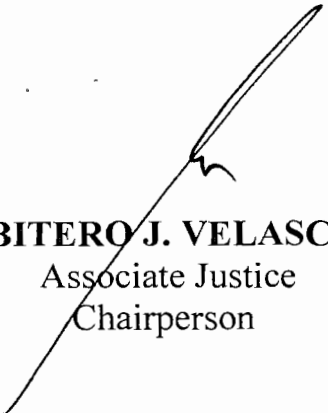

SAMUEL R. MARTIRES
Associate Justice

carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

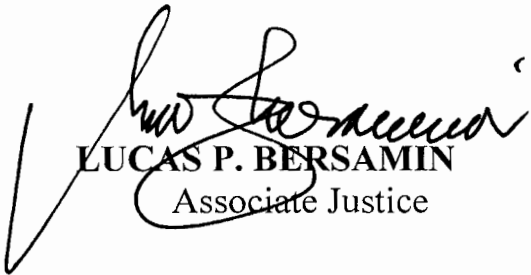
The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

⁷⁰ *Zalameda v. People*, supra note 45 at p. 727.


WE CONCUR:



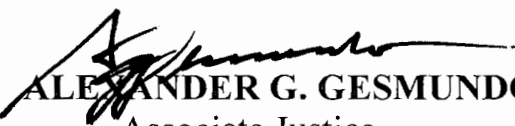
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

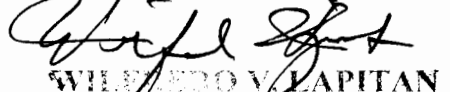
Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
TRIC Division

FEB 02 2018