



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 216725**
 Plaintiff-Appellee,

Present:

- versus -

BERSAMIN, C.J.,
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

Promulgated:

ROGELIO YAGAO y LLABAN,
 Accused-Appellant.

FEB 18 2019

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DECISION

BERSAMIN, C.J.:

The delivery of the dangerous drug to the poseur-buyer by the accused as the seller, and the receipt by the latter of the marked money during the buy-bust transaction are the acts that consummate the crime of illegal sale of the dangerous drug. Considering that there can be no sale without the delivery, the act of delivery must be proved in order to hold the accused guilty of the crime of illegal sale of the dangerous drug.

The observance of the chain of custody, being necessary to preserve the integrity of the drug presented as evidence, must be clearly established. Otherwise, the accused must be acquitted on the ground of reasonable doubt of his guilt.

The Case

This appeal seeks the reversal of the decision promulgated on September 18, 2014,¹ whereby the Court of Appeals (CA) affirmed the

¹ *Rollo*, pp. 3-15; penned by Associate Justice Pablito A. Perez, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Henri Jean Paul B. Inting.

judgment rendered on February 11, 2011 by the Regional Trial Court (RTC), Branch 25, in Cagayan de Oro City finding the accused-appellant guilty of a violation of Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), and accordingly penalizing him.²

Antecedents

The CA narrated the following procedural and factual antecedents:

On 14 August 2006, appellant was charged in an *Information* for violating *Section 5, Article II of R.A. 9165*, as follows:

That on August 1, 2006 at more or less 5:00 pm at Zone 4, Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without lawful authority, did then and there, wilfully, unlawfully, and feloniously sell, trade, and dispense, deliver, distribute and/or give away one (1) transparent plastic bag containing 7.40 grams of dried marijuana fruiting tops to the arresting officers, acting as poseur-buyer, in consideration of One Hundred Pesos (Php100.00) consisting of Five (5) ₱20 Pesos (*sic*) bills bearing Serial No. PR493431, PQ027408, GH421506, GB417672, and SC496802, which upon qualitative examinations conducted thereon, give positive result to the test for the presence of MARIJUANA, a dangerous drug.

The Prosecution's evidence.

On 1 August 2006, PO2 Fred Yasay (PO2 Yasay) received a tip from their confidential informant that a certain Rogelio Yagao was selling illegal drugs in Zone 4, Bugo, Cagayan de Oro City. Upon the order of their superior SPO3 Rico Justalero, a buy-bust team was organized composed of PO2 Yasay, PO2 Joel Deloso, PO2 Edzel Nacaya, PO1 Leonard Comilang, PO2 George Tabian, Jr., PO2 Bangcola Manangcawal, PO2 Ariel Lig-Ang and PO2 Frederick Yamis.

Around 5 p.m. in the afternoon of the same day, PO2 Yasay and the buy-bust team proceeded to Zone 4, Bugo, Cagayan de Oro to conduct the buy-bust operation. It was agreed that the confidential informant, PO2 Joel Deloso (PO2 Deloso) and PO2 Yasay would act as the *poseurs-buyers*.

Upon their arrival at appellant's residence, the confidential informant called upon the former who was at the terrace of his house and asked "Kuha mi bai" (We will get).

Appellant came down from the terrace and approached the buy-bust team. The confidential informant then handed Five (5) Twenty (20) Peso bills to appellant. Upon receiving the money, appellant then got from his right front pocket a cellophane containing dried marijuana leaves.

² CA rollo, pp. 41-54; penned by Presiding Judge Arthur L. Abundiente.

At this juncture, PO2 Yasay and PO2 Deloso proceeded to grab appellant and told him he was under arrest. PO2 Deloso then informed appellant of his constitutional rights. Thereafter, appellant was brought to the Maharlika police station in Carmen.

PO2 Deloso corroborated PO2 Yasay's testimony and narrated that at the Maharlika police station, PO2 Sagun marked the sachet which he then signed and initialled. After the marking, appellant was brought to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City, where the sachet and marked money were presented for laboratory examination. Appellant's hands were likewise subjected to an ultra-violet examination. The request for laboratory examination was issued by P/SINSP Efren Miole Camaro at 19:45 in the evening.

On the same evening, the following Chemistry Reports were issued by Forensic Chemist Erma Condino Salvacion, as follows:

1. *Chemistry Report No. D-173-2006* – finding the specimen contained inside the transparent sachet as positive for the presence of marijuana issued at 2330H on August 1, 2006,
2. *Chemistry Report No. DTCRIM-134-2006* – a urine test conducted on appellant yielding a NEGATIVE result for the presence of Methamphetamine Hydrochloride and THC-metabolites, issued at 2050H, August 1, 2006;
3. *Chemistry Report No. C-42-2006* – which reported the presence of bright yellow ultraviolet fluorescent powder on the dorsal and palmar portion of appellant's hand and on the marked money presented for examination, issued at 2020H in the evening, August 1, 2006.

The testimony of Forensic Chemist Erma Condino Salvacion was dispensed with following the stipulation of the parties admitting her testimony.

Evidence for the defense

Appellant for his part interposed the defense of denial and frame-up. Appellant alleged that at the time of his "illegal arrest," he was at the porch of his house talking to Brenda Villacorta (the cousin of his wife), waiting for the birthday celebration of his grandchild to start. Appellant averred that he was abruptly approached by a man who asked him if he had jumped bail for violating *R.A. 6425* before the Regional Trial Court, Branch 40. The person then allegedly asked him to go by the roadside. Appellant acceded and as he was about to get a shirt inside his house, he suddenly noticed several men rushing towards him. Appellant was then brought outside by these men and forced to board a van.

Appellant stated that he was initially brought to the Puerto Police Station and then to the Maharlika Police Station in Carmen, wherein he saw for the first time Two (2) packets of marijuana and Two (2) pieces of ₱20.00 Peso bills. He was then made to sign a piece of paper and was brought to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City, where he was made to give a urine sample and then subjected to an ultra-violet examination.

Appellant's defense of denial and frame-up were corroborated by Brenda Yagao and Art Manticahon.³

Judgment of the RTC

On February 11, 2011, the RTC convicted the accused-appellant of the crime of illegal sale of dangerous drug, disposing as follows:

WHEREFORE, premises considered, this Court hereby finds the accused **ROGELIO YAGAO Y LLABAN GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT**, and to pay the fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** without subsidiary imprisonment in case of non-payment of Fine.

Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that crime does not pay, and that the pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.

SO ORDERED.⁴

Decision of the CA

On appeal, the accused-appellant insisted that he had been framed up; and that the Prosecution did not establish the elements of illegal sale of dangerous drug, as well as the compliance with the procedure set forth in Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations, thereby failing to show an unbroken chain of custody.⁵

On September 18, 2014, however, the CA affirmed the conviction of the accused-appellant, finding and ruling thusly:

In the instant case, while an extensive review of the records reveal that PO2 Yasay and PO2 Deloso failed to mark, photograph and inventory the seized marijuana at the crime scene, PO2 Deloso, however, offered justifiable grounds for their non-compliance due to the hostile crowd that amassed right after the buy-bust operations.

³ Id. at 93-96.

⁴ Id. at 54.

⁵ Id. at 21-22.

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In this case, it readily appears that due to the exigency of the situation, the members of the buy-bust team had to leave the area immediately right after the arrest of appellant in order to avert a confrontation with the latter's family and relatives.

Therefore, the buy-bust team's failure to faithfully comply with the procedures as enshrined in *R.A. No. 9165* were more than adequately justified by PO2 Deloso's testimony.

Thus, appellant's contention that the marking of the seized marijuana should have been made in his presence at the crime scene instead of in the police station, deserves scant consideration, as the failure to do the same did not affect the evidentiary value or integrity of the seized prohibited drugs.

In fact, it is fairly apparent in Sec. 21(a) of the Implementing Rules and Regulations of RA 9165 that in a buy-bust situation, the marking of the dangerous drug may be done in the presence of the suspect in the nearest police station or the nearest office of the apprehending team.

The buy-bust approach in the instant case should not be confused from a search and seizure conducted by virtue of a court-issued warrant. In the latter case, the *Implementing Rules of RA No. 9165* mandates that the physical inventory and marking of the drugs should be made at the place where the search warrant is served and implemented.

The element for the prosecution of illegal sale of marijuana were sufficiently established in this case

For a successful prosecution for illegal sale of dangerous drugs, the following elements must be established:

- (1) The identity of the buyer and the seller, the object, and the consideration; and
- (2) the delivery of the thing sold and the payment therefor.

Material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug in evidence. The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.

In the case at bar, the prosecution, through the testimonies of PO2 Yasay and PO2 Deloso were able to prove the consummation of the sale when the confidential informant handed over the five (5) marked 20 Peso bills to appellant, who in turn gave the informant marijuana in exchange, in their presence.

***Appellant's defense of denial and frame-up
are self-serving and unavailing***

It is a prevailing doctrine that a defense of denial or frame-up cannot prevail against the positive testimony of a prosecution witness.

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 the convincing and straightforward testimonies of PO2 Deloso and PO2 Yasay.

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In this case, bereft from the records is anything to suggest that there was ill-motive on the part of the buy-bust team or hat the arresting officers improperly performed their duty.

***Integrity and evidentiary value of the
seized marijuana were properly
preserved through the chain of custody***

Chain of [c]ustody is defined as “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.” The chain of custody rule demands that the record of movements and custody of the seized item shall include the “identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.”

In this case, the prosecution clearly established the integrity and evidentiary value of the seized marijuana considering that after the same was marked by PO2 Deloso at the Police Station, the same was immediately transmitted, on the very same evening, to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City. In fact, in a matter of less than 4 hours from the time the request for laboratory examination was made, three *Chemistry Reports* were already issued by Forensic Chemist Erma Condino Salvacion finding, among others, that the specimen recovered from appellant tested positive as marijuana.

More importantly, appellant's own testimony corroborated these chain of events as he himself testified to having been brought to Camp Alagar where he was made to give a urine sample, and subjected to an ultra-violet examination on that very same evening.

All told, this Court finds no reason to disturb the assailed decision of the RTC finding appellant guilty beyond reasonable doubt for the illegal sale of marijuana, a prohibited substance, as defined and penalized under *Section 5, Article II of RA 9165*.

WHEREFORE, premises considered, the Appeal is hereby **DENIED**.

Accordingly, the *11 February 2011 Decision* rendered by the *Regional Trial Court, Branch 25, Cagayan de Oro City*, in *Criminal Case No.[2006-484]* finding *accused-appellant Rogelio Yagao y Llaban* (appellant) guilty of violating *Section 5, Article II of Republic Act No. 9165* is hereby **AFFIRMED**.

SO ORDERED.⁶

Hence, this appeal, in which the parties have respectively manifested their desire to re-submit the arguments they had made in the CA.

Issue

In his appellant's brief, the accused-appellant has assigned the lone error that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.⁷

The accused-appellant contended in his appellant's brief that the Prosecution did not prove the fact of his delivery of the dangerous drug considering that PO2 Deloso and PO2 Yasay did not testify on his having delivered the confiscated drug either to them or to the confidential informant;⁸ and that the integrity of the confiscated drug had also been put in serious doubt not only by their non-compliance with the safeguards laid down in Section 21 of R.A. No. 9165 but also by the variance between the weight of the drugs averred in the information and the weight stated in the chemistry report.⁹

The OSG countered that the testimony of PO2 Deloso proved the consummation of the illegal sale; that the lapses of the police officers were not fatal to the Prosecution's case because the lapses, being belatedly raised, were effectively waived by the accused-appellant; that the non-compliance with the safeguards set in Section 21 of R.A. No. 9165 did not negate the fact that he had committed the offense charged; and that the Prosecution further showed that the police officers had fully preserved the integrity of the confiscated drug as evidence.¹⁰

⁶ *Rollo*, p. 15.

⁷ *CA rollo*, p. 15.

⁸ *Id.* at 20-21.

⁹ *Rollo*, pp. 25-26.

¹⁰ *Id.* at 85-86.

Ruling of the Court

The appeal has merit.

I

The Prosecution did not establish the essential element of delivery of the dangerous drug by the accused-appellant to the poseur buyer

The crime that the accused-appellant was charged with and tried, and for which he was found guilty of, was the crime of illegal sale of dangerous drug defined and punished under the first paragraph of Section 5 of R.A. No. 9165, which pertinently provides:

Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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In prosecuting the charge, the State bore the burden to prove the following elements of the violation, namely: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and its payment. The delivery to the poseur-buyer of the dangerous drug by the accused as the seller, and the receipt by the latter of the marked money consummated the illegal sale of the dangerous drug during the buy-bust transaction.¹¹ Without showing that the delivery of the dangerous drug took place, the State's evidence would not amount to proof of guilt beyond reasonable doubt, for it was the delivery of the drug by the accused-appellant, coupled with the presentation in court of the confiscated drug itself, or the *corpus delicti*, that would establish to a moral certainty the commission of the violation.¹²

For purposes of this appeal, two principles should be our guides. The first is that we should still carefully review the evidence adduced at the trial despite both the trial and the appellate courts having already pronounced the accused-appellant guilty. Indeed, nothing prevents or forbids us from such

¹¹ *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 526.

¹² See, e.g., *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529-530.

factual review, for we as a reviewing tribunal remain committed to ensuring that his conviction rest on the strength of the Prosecution's evidence, not on the weakness of his defense.¹³ We are wholly free to ascertain whether or not the lower courts judiciously and correctly examined the evidence against him before they concluded that the evidence supported their ultimate finding of his guilt. The second is that we may consider in this appeal any fact or circumstance in his favor although he has not assigned or raised it. For, indeed, every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether or not the findings adverse to the accused should be upheld against him or struck down in his favor.¹⁴ The burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.

To accord with these guides, we proceed to carefully and thoroughly scrutinize the evidence of guilt to ascertain if the proof adduced against the accused-appellant was sufficient to engender a conviction in the neutral and reasonable mind on the moral certainty of his guilt. To be scrutinized and considered for this purpose are the following relevant recollections of the transaction given by poseur buyers PO2 Deloso and PO2 Yasay, who were also the arresting and seizing officers, thus:

PO2 Deloso

Q: And what happened when you were already on that place?

A: When we were already in the place Sir, I, together with PO2 Yasay and our confidential informant went to the house of Rogelio Yagao and our confidential informant call the attention of Rogelio Yagao.

Q: Where was Rogelio Yagao at that time?

A: At that time Rogelio Yagao was inside his house and the confidential informant called him, he went outside from his house.

Q: How did he call?

A: He approached him Sir.

Q: Where was Rogelio Yagao at that time when the confidential Informant called him?

A: In the terrace of his house, Sir.

Q: What happened after your confidential informant called Rogelio Yagao at the terrace of his house?

A; Rogelio Yagao went out from his house.

¹³ *People v. Maraorao*, G.R. No. 174369, June 20, 2012, 674 SCRA 151, 160.

¹⁴ *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 526.

Q: Then what happened?

A: And talked with us.

Q: What happened after?

A: After a short conversation our confidential informant handed to him.

Q: What was the conversation?

A: That we want to buy marijuana, Sir.

Q: Who told Rogelio Yagao that you want to buy marijuana?

A: Our confidential informant, Sir.

Q: What was the reply of Rogelio Yagao?

A: He answered Sir, yes he has stocks of marijuana.

Q: What happened after that?

A: Our confidential informant handed him our marked money.

Q: What does that marked money consisting of?

A: It consists of five (5) pieces ₱20.00 bills.

Q: And then after the confidential informant gave the money to Rogelio Yagao, what happened?

A: Right after receiving the money given by our confidential informant, he pull[ed] ou[t] from his trouser...

Q: From what part of his trouser?

A: Right pocket.

Q: What was [sic] he pulled out?

A: He pulled out from the right pocket of his trouser a one sachet containing dried marijuana leaves inside.

Q: What did you do to that one sachet that he pulled out from his trouser.

A: Upon seeing him that he pulled out from his trouser the one sachet of marijuana, immediately we took hold of him. Right after he received the money he pulled out the marijuana, right after we saw the marijuana immediately we took hold of him.

Q: Who took hold of him?

A: I and PO2 Yasay, Sir.

Q: How about you, where did you hold Yagao?

A: I just put my right arm around his neck and shoulder, Sir.

Q: And then how about your companion, what did they do?

A: PO2 Yasay helped me to hold Rogelio Yagao by the hands of Rogelio Yagao.¹⁵

PO2 Yasay

Q: What happened after the CI bought the marijuana worth ₱100.00?

A: The CI handed to Rogelio Yagao the money and in returned Rogelio pulled out the pack of marijuana from his right front pocket.

Q: You said your CI gave money to the accused in exchanged [sic] of the marijuana, how much and what is the denomination?

A: Five pi[e]ces for [sic] ₱20.00 bill.

Q: Then what happened after the accused gave to your CI the marijuana?

Atty. Lopena:

We object Your Honor. No basis. There is no testimony of the accused that the accused gave a pack of marijuana to the CI. He said, he pulled out a pack of marijuana from his right front pocket.

Pros. Borja:

Q: What happened after the accused pulled out from his right fron[t] pocket a marijuana?

A: When we saw the accused pulling out the pack of marijuana, we immediately held him sir.

Q: Who arrested the accused?

A: PO2 Deloso Sir.¹⁶

The foregoing recollections reveal that PO2 Deloso and PO2 Yasay quickly effected the arrest of the accused-appellant just as soon as he had pulled out the marijuana from his pocket. Necessarily, the seizure happened *before* he could hand the marijuana over to PO2 Deloso as the poseur buyer. Under such circumstance, *there was no sale* because the delivery of the dangerous drug to the poseur buyer had not yet transpired. Delivery as one of the essential elements of illegal sale of dangerous drug under Section 5 of

¹⁵ TSN, February 9, 2007, pp. 5-9.

¹⁶ TSN, February 6, 2007, pp. 5-6.

R.A. No. 9165 is defined as the act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.¹⁷ Consequently, the finding against the accused-appellant could not be upheld.

Despite the claim by the arresting officers that their arrest of the accused-appellant had resulted from the conduct of the buy-bust operation mounted against him, we ineluctably conclude that the confiscation did not take place *following* a sale. Indeed, in order to be successful, the buy-bust operation – albeit necessary to catch the offender in the campaign against the drug menace – must still involve the offender in a transaction in which the poseur buyer offered to buy the drug, and the offender accepted the offer and delivered the drug in exchange for the price agreed upon. This is precisely why the operation is aptly denominated as a “buy-bust.” In this case, however, the operation was merely a “bust” in view of the absence of a sale.

II

The chain of custody of the confiscated drug, not being unbroken, raised grave doubts about the integrity of the drug as evidence of the *corpus delicti*

Despite its necessity in the success of the campaign against the drug menace, the buy-bust operation has been susceptible to abuse by mulcting law enforcers who have frequently used it as a tool for extortion through planting or substitution of evidence.¹⁸ To eliminate or minimize the potential for abuse, Congress has engrafted in the law procedural safeguards designed to prevent or eliminate the evils that the buy-bust operation could be used for. Congress intended to thereby ensure that the agents of the State faithfully comply with the procedural safeguards in every drug-related prosecution.¹⁹

The procedural safeguards are now embodied in Section 21 of R.A. No. 9165, to wit:

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:

¹⁷ Section 3(k), R.A. No. 9165.

¹⁸ *E.g., People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266-267.

¹⁹ *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 158.

(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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The Implementing Rules and Regulations (IRR) of Section 21(a), adopted to implement Section 21 of R.A. No. 9165, mirrors the procedural requirements, thus:

(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 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; (Emphasis supplied)

Conformably with the safeguards, we have frequently held that the observance of the chain of custody was essential in the preservation of the identity of the confiscated drug. This is because the drug, being itself the *corpus delicti* of the crime of illegal sale charged, will be the factual basis for holding the accused criminally liable under Section 5 of R.A. No. 9165.

We have frequently stated the justification for observing the chain of custody. We particularly pronounced in *People v. Reyes*:²⁰

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*. In *People v. Alcuizar*, the Court has underscored the importance of ensuring the chain of custody in drug-related prosecutions, to wit:

²⁰ G.R. No. 199271, October 19, 2016, 806 SCRA 513.

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. 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.

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

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.²¹

For sure, the chain of custody is ultimately about the proper handling of the confiscated drug. The law has characterized the chain of custody in drug enforcement as nothing less than the duly recorded authorized movements and custody of the seized drugs or controlled chemicals or plant

²¹ Id. at 531-534.

sources of dangerous drugs or laboratory equipment from the time of seizure/confiscation to the moment of receipt in the forensic laboratory to the safekeeping until their presentation in court as evidence, and for eventual destruction. The faithful written record of the movement and custody of the seized items – including the identities and signatures of *all* the persons who may have temporary custody thereof, the dates and times when the transfers of the custody are made *in the course of* the safekeeping, and when the articles are used in court as evidence, until their final disposition²² – is the requirement that actually highlights the absolute need of establishing the identity of the seized drug with the drug presented as evidence in court. The procedural safeguards of marking, inventory and picture taking are decisive in proving that the dangerous drug confiscated from the accused was the very same substance delivered to and presented in the trial court. Given the significance of the chain of custody, any deviations must not be lightly dismissed as inconsequential, but must be fully explained by the State during the trial.

Contrary to the findings of the CA and the RTC, serious and unjustifiable gaps broke the chain of custody of the confiscated marijuana.

To begin with, irreconcilable inconsistencies tainted the arresting and seizing officers' recollections about the links in the chain of custody.

Although PO2 Yasay testified that PO2 Deloso had taken possession of the marijuana following the arrest,²³ the latter did not actually mark the marijuana at the place of the arrest; instead, he immediately brought the accused-appellant and the confiscated drug to the police station, justifying such move with the supposed growing hostility of the crowd that had gathered at the crime scene. What is puzzling, however, is that PO2 Deloso did not mark the marijuana even after getting to the police station. Instead, PO2 Deloso declared during his direct examination that PO2 Yasay was the one who had marked the seized drug.²⁴ Such a declaration soon became the source of more confusion, however, after PO2 Deloso completely reversed himself on cross-examination to state that it had been PO2 Sagun who marked the seized drug and the latter just let him sign the same.²⁵

The inconsistencies between the police officers' testimonies, because they were irreconcilable, diminished the credibility of their supposed observance of the chain of custody. Hence, their incrimination of the accused-appellant was fully discredited and should not be allowed to stand. As a result, we should doubt the stated reason for the arrest.

²² Section 1(b), Dangerous Drugs Board Regulation No. 1, Series of 2002.

²³ TSN, November 6, 2007, pp. 8-9.

²⁴ TSN, February 9, 2007, p. 13.

²⁵ TSN, March 16, 2007, pp. 6-7.

Secondly, the State presented no witness to testify on the circumstances surrounding the marking of the confiscated drug, and on whether or not the marking had been made in the presence of the accused-appellant. The omission further discredited the evidence of guilt. Likewise, we cannot avoid observing that the fact that the marking on the marijuana (Exhibit A) appeared to be too generic defeated the objective for requiring the marking, which was to segregate the seized drug from other similar substances to avoid tainting the proof or compromising the integrity of the evidence against any particular suspect. In short, all the notable weaknesses placed the integrity of the marijuana ultimately presented as evidence against the accused-appellant into serious doubt, with the effect that there remained no dependable assurance that Exhibit A was the same substance seized from him at the time of the arrest.

In this connection, we reiterate what we emphatically observed in *People v. Angngao*:²⁶

The manner and timing of the marking of the seized drugs or related items in accordance with the foregoing statutory rules are crucial in proving the chain of custody. The marking by the arresting officer of the drugs, 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 immediate marking is essential because the succeeding handlers of the drugs would use the markings as their reference to the seizure, and because it further serves to segregate the marked seized drugs from all other evidence from the time and point of seizure until the drugs are disposed of at the end of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence.** Verily, the preservation of the chain of custody *vis-à-vis* the drugs ensures the integrity of the evidence incriminating the accused, and fulfills the element of relevancy as a requisite for the admissibility of the evidence. [Emphasis Supplied]

And, thirdly, PO2 Deloso disclosed that no inventory or pictures had been taken during the arrest of the accused-appellant and seizure of the dangerous drug,²⁷ and in the aftermath. The disclosure further severely discredited the incrimination of the accused-appellant. We have not lacked in stressing the importance of the requirements of inventory and picture-taking, which, while not indispensable, might be foregone only when there were justifiable grounds for doing so, and such grounds must be made known by the State, at the latest, during the ensuing trial. As we pointed out in *People v. Pagaduan*:²⁸

²⁶ G.R. No. 189296, March 11, 2015, 752 SCRA 531, 543.

²⁷ TSN, March 16, 2007, p. 16.

²⁸ G.R. No. 179029, August 9, 2010, 627 SCRA 308, 320-322.

In several cases, we have emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. **We have repeatedly declared that the deviation from the standard procedure dismally compromises the integrity of the evidence.** In *People v. Morales*, we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items, without giving any justifiable ground for the non-observance of the required procedures. *People v. Garcia* likewise resulted in an acquittal because 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. In *Bondad, Jr. v. People*, we also acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized items, without justifiable grounds.

We had the same rulings in *People v. Gutierrez*, *People v. Denoman*, *People v. Partoza*, *People v. Robles*, and *People v. dela Cruz*, where we emphasized the importance of complying with the required mandatory procedures under Section 21 of R.A. No. 9165.

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. **For this reason, the last sentence of the implementing rules provides 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[.]"** Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.**

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.** [Emphasis Supplied]

That the arresting officers made no attempt to justify their deviation from the procedures and safeguards set by Section 21 of R.A. No. 9165 was indicative of the absence of any justification. Indeed, our review of the records leads us to find and declare that none existed.

In fine, the State did not establish the guilt of the accused-appellant for the crime with which he was charged. He is, therefore, entitled to acquittal on the ground of reasonable doubt of his guilt. The *Rules of Court* particularly instructs that:

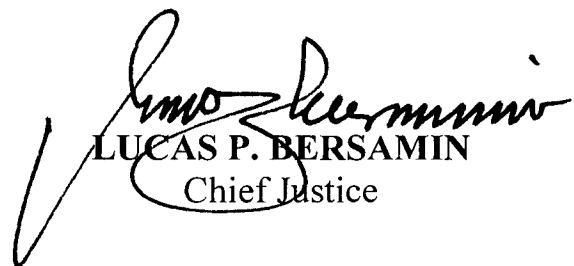
In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. **Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**²⁹

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on September 18, 2014 by the Court of Appeals in CA-G.R. CR-HC No. 00899-MIN; **ACQUITS** accused-appellant **ROGELIO YAGAO y LLABAN** for failure to prove his guilt beyond reasonable doubt for the violation of Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*); and **ORDERS** his immediate release from detention unless he is legally confined for another lawful cause.

Let a copy of this decision be forthwith transmitted to the Penal Superintendent of the Davao Prison and Penal Farm in B.E. Dujali, Davao del Norte for immediate implementation.

The Penal Superintendent of the Davao Prison and Penal Farm is directed to report to this Court the action taken within five (5) days from receipt of this decision.

SO ORDERED.



LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:


MARIANO C. DEL CASTILLO
Associate Justice

²⁹ Section 2, Rule 133, *Rules of Court*.


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARID. CARANDANG
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.


LUCAS P. BERSAMIN
Chief Justice