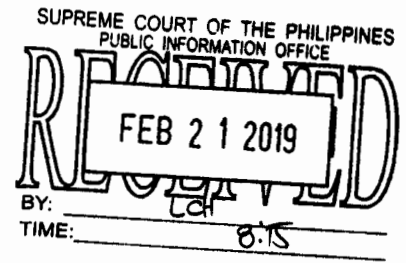




Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 228953

Present:

- versus -

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

JOSH JOE T. SAHIBIL,  
*Accused-Appellant.*

Promulgated:  
JAN 28 2019

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DECISION

DEL CASTILLO, J.:

This is an appeal from the September 16, 2016 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR HC No. 01409-MIN, which affirmed *in toto* the April 1, 2015 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Panabo City in Criminal Case No. Crc 52-2012 finding accused-appellant Josh Joe T. Sahibil (appellant) guilty of illegal sale of dangerous drugs (*shabu*), as defined and penalized under Section 5, Article II of Republic Act (RA) No. 9165.<sup>3</sup>

*Factual Antecedents*

In an Information dated February 1, 2012, appellant was charged with illegal sale of dangerous drugs, reading as follows:

That on or about January 31, 2012 in the City of Panabo, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered two (2) sachets of methamphetamine hydrochloride commonly known as 'shabu', a dangerous drug,

<sup>1</sup> CA *rollo*, pp. 78-100; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas.

<sup>2</sup> Records, pp. 152-165; penned by Presiding Judge Dax Gonzaga Xenos.

<sup>3</sup> The Comprehensive Dangerous Drugs Act of 2002.

approximately weighing 0.2977 [gram] and 0.2379 [gram], to SPO1 ROSIL ELLEVERA who was then acting as poseur-buyer in a legitimate buy-bust operation after receiving from the said poseur-buyer an envelope containing marked money consisting of ten pieces of ONE HUNDRED PESO bills.

CONTRARY TO LAW.<sup>4</sup>

Upon arraignment, appellant pleaded “Not Guilty”<sup>5</sup> to this charge. Trial thereafter ensued.

### ***Version of the Prosecution***

In the third week of January 2012, the CIDG<sup>6</sup> Provincial Office in Tagum City (CIDG-Tagum) received information from a confidential informant (CI) that a group of gay men was selling illegal drugs in the Panabo Overland Transport Terminal (Terminal). Thus, for a week, Police Chief Inspector (PCI) Darwin S. Rafer, the Provincial Officer of the CIDG-Tagum, instructed his team to conduct surveillance on those persons mentioned by the CI. After confirming that drug sales were being held at the Terminal, the CIDG-Tagum formed a buy-bust team designating SPO3 Joseph<sup>7</sup> Gaco, SPO1 Rosil A. Ellevera (SPO1 Ellevera), and PO3 Johnny Collado (PO3 Collado) as team leader, poseur-buyer, and back-up/arresting officer respectively. The CI was directed to accompany the buy-bust team in the operation. During the briefing, SPO1 Ellevera placed his initials and the date of the buy-bust on 10 pieces of ₱100.00 bills to be used as marked money for the operation.<sup>8</sup>

At about 7:15 p.m. on January 31, 2012, and with prior coordination with the PDEA<sup>9</sup> and the Panabo City Police Station,<sup>10</sup> the buy-bust team arrived at the Terminal. SPO1 Ellevera was with the CI while the other members of the buy-bust team stayed in the vicinity. Later, the CI found alias “Wally” (later identified as appellant) at the exit of the Terminal, and introduced SPO1 Ellevera to him. Specifically, the CI told appellant that SPO1 Ellevera was a drug user who was interested in buying drugs from him (appellant). Appellant then asked SPO1 Ellevera if the latter could afford worth ₱12,000.00 of his stocks. In reply, SPO1 Ellevera told appellant that he only had ₱2,000.00 but if appellant could wait, he would withdraw money and be back with ₱12,000.00.<sup>11</sup>

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<sup>4</sup> Records, p. 1.

<sup>5</sup> Id. at 29-30.

<sup>6</sup> Criminal Investigation and Detection Group.

<sup>7</sup> TSN, November 20, 2013, p. 4.

<sup>8</sup> TSN, September 11, 2013, pp. 2-7, 29.

<sup>9</sup> Philippine Drug Enforcement Agency.

<sup>10</sup> Records, pp. 9, 17.

<sup>11</sup> TSN, September 11, 2013, pp. 8-11.

Resultantly, SPO1 Ellevera went out of the Terminal and pretended to withdraw money. After 15 to 20 minutes, and still at the Exit area of the Terminal, SPO1 Ellevera met with appellant. He told the latter that the money was complete giving appellant a brown envelope containing the marked money while the rest was just boodle money. Immediately, appellant gave SPO1 Ellevera two sachets containing white crystallized substances. After examining them, SPO1 Ellevera scratched his head, the buy-bust team's pre-arranged signal that the sale transaction had been completed. Upon seeing the signal, the rest of the buy-bust team approached appellant and announced his arrest.<sup>12</sup>

Later, the team leader (SPO3 Gaco) directed the police operatives to proceed to the Panabo Police Station, which was just a kilometer way from the Terminal because: (1) of security reasons as there were many people in the Terminal and the police operatives were unaware if appellant had companions; (2) a commotion transpired since appellant was resisting arrest and people in the vicinity were asking what happened; and (3) the Terminal was busy and there was no place to do the markings of the seized items considering that buses were exiting the Terminal where the buy-bust transpired.<sup>13</sup>

While in transit to the police station, SPO1 Ellevera kept custody of the two sachets he bought from appellant. At around 8:00 p.m. of the same day at the police station, SPO1 Ellevera marked the sachets with his initials ("ERA") and signatures as well as the date and time of the operation. On the other hand, PO3 Collado conducted an inventory of the seized items in the presence of appellant, including an elective official (*Barangay Kagawad* Joselito Ohaylan), and representatives from the media (Gilbert P. Bacarro), and the DOJ<sup>14</sup> (Ian R. Dionola). Pictures were also taken during the conduct of the inventory.<sup>15</sup>

At about 10:00 p.m. of even date, the police operatives brought appellant and the seized items to their office in Tagum City. Afterwards, they brought the evidence to the PNP<sup>16</sup> Provincial Crime Laboratory but the same was closed. As such, they returned to their office, and SPO1 Ellevera placed the subject items in his evidence locker to which he had sole access. The following day, SPO1 Ellevera delivered to the Crime Laboratory the recovered sachets and the request for their laboratory examination. In turn, PO1 Jeffrey Cambalon (PO1 Cambalon) received, weighed, and labelled them with their weights and his signatures. PO1 Cambalon also asked SPO1

<sup>12</sup> TSN, September 11, 2013, pp. 12-14.

<sup>13</sup> TSN, September 11, 2013, pp. 15-19; November 20, 2013, pp. 12-13.

<sup>14</sup> Department of Justice.

<sup>15</sup> TSN, September 11, 2013, pp. 16-17, 20-21; November 20, 2013, pp. 14-16.

<sup>16</sup> Philippine National Police.



Ellevera to affix his signature on each specimen.<sup>17</sup> Per the examination of PCI Virginia Sison Gucor (PCI Gucor), the Forensic Chemist at the Crime Laboratory, these specimens gave positive results for methamphetamine hydrochloride, a dangerous drug.<sup>18</sup>

Later, the counsels of both parties stipulated on the Chain of Custody document which detailed the transfer of custody of the subject *shabu* from PO1 Cambalon to PCI Gucor on February 1, 2012 at 7:30 a.m., and from PCI Gucor to Officer Maricar Villano on the same day at 2:00 p.m. Consequently, their testimonies for the purpose of establishing their participation in the Chain of Custody document were already dispensed with.<sup>19</sup> And since the parties had already stipulated on the due execution and contents of the chain of custody and turnover of the drug evidence, the testimony PO1 Ruffy<sup>20</sup> D. Federe (PO1 Federe), also from the Crime Laboratory and the one who submitted the drug evidence to the court, was likewise dispensed with.<sup>21</sup>

### *Version of the Defense*

Appellant denied the accusations against him and instead narrated on these events:

x x x [O]n January 31, 2012, at around 5:30 x x x in the evening, and while at their house, [appellant] received a text message from his gay friend, Socrates Rosario, inviting him to a fiesta celebration in Panabo City.

[Appellant] acceded to the invitation and travelled to Panabo City. When he arrived at Panabo City at around 7:00 o'clock in the evening, a motorcycle went near him and offered to transport him to his destination which was Gredu, Everlasting, Panabo City.

While on board the motorcycle and five (5) minutes had passed, the motorcycle was still not running. Subsequently, a man came near him and choked him by the neck. Surprised by the turn of events, the appellant was able to act on impulse and hit the man by the body using his elbow.

However, the man was able to subdue [appellant] and arrested him. He was made to board a car and was brought to the CIDG Office, near the Shell Station in Panabo City – they arrived at around 10:00 o'clock in the evening.



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<sup>17</sup> TSN, September 11, 2013, pp. 23-26, 43.

<sup>18</sup> Records, p. 16.

<sup>19</sup> Id. at 90.

<sup>20</sup> Also spelled as Rhuffy in some parts of the records.

<sup>21</sup> Id. at 49, 95.

While at the CIDG Office, the arresting officers were able to seize from the appellant Php40.00 and a Nokia Cellphone. According to [appellant], he was subjected to a police interrogation and/or torture when the police officers recorded a video of him without pants and underwear.

The appellant narrated that the police officers wanted him to admit possession and ownership of the purported shabu but he vehemently denied it for he had no shabu with him.

While being subjected to severe interrogation and/or torture, out of desperation, the appellant demanded for the shabu so that he could admit ownership thereof. This angered the police officers.

During his testimony, appellant denied selling dangerous drugs to SPO1 Ellevera. According to him, he was just a back rider of a motorcycle when he was arrested near the exit of the Panabo Transport Terminal.<sup>22</sup>

### ***Ruling of the Regional Trial Court***

In its April 1, 2015 Decision, the RTC found appellant guilty as charged imposing upon him the penalty of life imprisonment, and ordering him to pay ₱500,000.00 as fine. It decreed that the prosecution had sufficiently shown that appellant was found to have been engaged in the illegal sale of prohibited drugs.

Moreover, in concluding that the existence of the *corpus delicti* or the subject drugs was established, the RTC highlighted that the two sachets of *shabu* bought from appellant remained in the custody of SPO1 Ellevera from the time he bought them from appellant until they were marked in the police station; and later, SPO1 Ellevera was also the one who delivered them to the Crime Laboratory. It held that the same items were thereafter turned over to the court by PO1 Federe. The police (SPO1 Ellevera and PO3 Collado) confirmed that the items presented in court were the same ones subject of the buy-bust transaction.

### ***Ruling of the Court of Appeals***

The CA affirmed *in toto* the RTC Decision.

Undaunted, appellant appealed before the Court reiterating his contentions before the CA. He insisted that he must be acquitted as the chain of custody rule was not observed faulting the police for its failure to immediately mark the subject items after confiscation. He also ascribed irregularity in the fact that the necessary witnesses – an elective official, and

<sup>22</sup> As culled from the Brief of Accused-Appellant (with the CA); CA *rollo*, pp. 26-27.

representatives from the media and the DOJ – were not present during the sale (made by appellant) and seizure of the subject illegal drugs.

### Issue

Whether appellant is guilty beyond reasonable doubt of illegal sale of *shabu*.

### Our Ruling

This appeal is patently without merit.

The Court has repeatedly elucidated that, in order for the accused to be convicted of illegal sale of dangerous drugs, the prosecution must establish the elements of the crime as well as the *corpus delicti* or the drug/s subject of the case.<sup>23</sup> These primordial requirements were duly proved here leaving no doubt that appellant was guilty beyond reasonable doubt of the illegal sale of dangerous drugs.

Under Section 5, Article II of RA 9165, any person, who, without lawful authority, shall sell any dangerous drug, regardless of quantity and purity, shall be guilty of illegal sale of dangerous drugs. More particularly, to be convicted of this charge, the prosecution must prove with moral certainty: (1) the identity of the seller and the buyer; (2) the object and consideration of the sale; and, (3) the delivery of the thing sold and the payment therefor.<sup>24</sup>

All these elements were present here.

As uniformly found by the RTC and the CA, on January 31, 2012, the operatives of the CIDG-Tagum conducted a buy-bust operation on the appellant; during the transaction, appellant sold to SPO1 Ellevera two sachets of *shabu* in exchange for money placed in an envelope, which appellant believed to be worth ₱12,000.00 but which in fact comprised of ₱1,000.00 marked money, the rest being just boodle money. This being so, the identity of the seller (appellant) and the buyer (SPO1 Ellevera); the object (two sachets of *shabu*) and their consideration (marked money), as well as the delivery of the illegal drugs and payment for the same, were established.

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<sup>23</sup> *People v. De Asis*, G.R. No. 225219, June 11, 2018.

<sup>24</sup> *People v. Taboy*, G.R. No. 223515, June 25, 2018.

Appellant nonetheless insists that he must be acquitted on the ground that the police operatives failed to comply with the Chain of Custody Rule which governs the handling of the drug evidence from its confiscation until its presentation in court as evidence.

We disagree.

Section 21, Article II of RA 9165 provides for the Chain of Custody Rule or the procedure on how seized drug/s and/or related items must be handled until they are presented in court as evidence, to wit:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs* x x x. — The PDEA shall take charge and have custody of all dangerous drugs x x x 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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s x x x.

There are generally four links that must be proved to comply with the Chain of Custody Rule. “[F]irst, 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.”<sup>25</sup>

Contrary to the contentions of appellant, the prosecution had established that the buy-bust team fully complied with the required chain of

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<sup>25</sup> *People v. Calvelo*, G.R. No. 223526, December 6, 2017.

custody of the seized drug such that there is no basis to depart from the lower courts' ruling that he was guilty of the illegal sale of dangerous drugs.

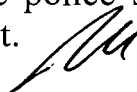
To stress, after the conclusion of the buy-bust operation, the police operatives, along with the appellant, proceeded to the nearby Panabo Police Station, where SPO1 Ellevera **marked** the sachets of *shabu* he bought from appellant with his initials (ERA), signature, and the date and time of the buy-bust.

The marking of the seized items at the police station, not at the place of incident, did not impair the chain of custody of the drug evidence. For one, the marking at the nearest police station is allowed whenever the same is availed of due to practical reason[s].<sup>26</sup> For another, the prosecution had explained the failure of the buy-bust team to immediately mark these items at the place where the buy-bust operation was conducted.

These justifications include: (i) because of security reasons – there were many people in the place of incident, which was a public transport terminal, and the buy-bust team was uncertain if appellant had any companion; (ii) after the buy-bust was concluded, appellant was resisting arrest and consequently, people were asking what had happened and a commotion transpired; and (iii) as mentioned, the buy-bust happened in a bus terminal, which was a busy place where buses were going out at the very exit where the actual buy-bust took place.<sup>27</sup>

To put it simply, as a rule, marking of the illegal drugs must be done immediately upon confiscation. “Immediate confiscation,” however, has no exact definition; and in case there is such a practical reason, the marking at the nearest police station falls within the concept of immediate marking of the seized drugs. For indeed, “[m]arking upon ‘immediate’ confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team, especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings,”<sup>28</sup> as in this case.

Clearly, there are more than sufficient justifications on why the marking (as well as the succeeding procedures incidental to establishing the chain of custody) was conducted at the police station which was a mere kilometer away from the place of incident.



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<sup>26</sup> *People v. Pundugar*, G.R. No. 214779 (Resolution), February 7, 2018.

<sup>27</sup> TSN, September 11, 2013, pp. 15-18; November 20, 2013, pp. 12-13.

<sup>28</sup> *Macad v. People*, G.R. No. 227366, August 1, 2018.




Moreover, at the Panabo Police Station, PO3 Collado conducted an **inventory** of the recovered sachets of *shabu*. The inventory of these items was done in the presence of appellant and the necessary witnesses – an elective official, Brgy. *Kagawad* Joselito Ohaylan; a media representative, Gilbert P. Bacarro; as well as a representative from the DOJ, Ian R. Dionola. At the same time, **pictures** were taken during the inventory of these items.

In addition, there was nothing irregular in the turnover of the seized illegal drugs to the Crime Laboratory. Note that it was established that, within 24 hours from the seizure of the *shabu*, SPO1 Ellevera delivered them to the Crime Laboratory. PO1 Cambalon received, weighed, and labelled them and, thereafter, turned them over to their Forensic Chemist, PCI Gucor. In turn, upon examination by the Forensic Chemist, these specimens tested positive of methamphetamine hydrochloride. In fact, the counsels of the parties stipulated on the Chain of Custody document and even dispensed with the testimonies of PO1 Cambalon and PCI Gucor as well as that of PO1 Federe, who delivered the drug evidence to the court. These matters only proved that even the defense had, early on, agreed to the full compliance with the Chain of Custody Rule by the buy-bust team.

Furthermore, SPO1 Ellevera and PO3 Collado **identified in court** that the items presented thereat were the same ones they recovered during the buy-bust operation against appellant.

Taken together, all the foregoing circumstances showed that the buy-bust team had fully observed the required chain of custody of the confiscated illegal drugs. Without doubt, the existence of the *corpus delicti* was established in this case.

Lastly, aside from properly finding that appellant was guilty of illegal sale of dangerous drugs, the penalty imposed against him by the RTC, as affirmed by the CA, is in order. Pursuant to Section 5,<sup>29</sup> Article II of RA 9165, appellant must suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

**WHEREFORE**, the appeal is **DISMISSED**. The assailed September 16, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 01409-MIN is hereby **AFFIRMED**. 


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<sup>29</sup> SECTION 5. *Sale x x x 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 x x x any dangerous drug x x x regardless of the quantity and purity involved x x x.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

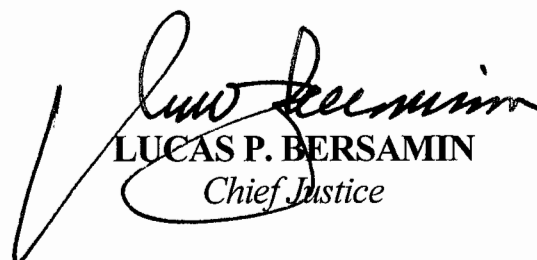
  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**ROSMARI D. 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*