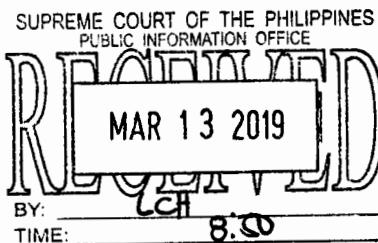




**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION



PEOPLE OF THE G.R. No. 239471
PHILIPPINES,

Plaintiff-Appellee, Present:

- versus -

**JOSEPH CINCO ARCIAGA
a.k.a. "JOSEPHUS CINCO
ARCIAGA,"**

Accused-Appellant. Promulgated:

14 JAN 2019

X-----x

DECISION

PERLAS-BERNABE, J.:

This is an ordinary appeal¹ from the Decision² dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02215, which affirmed the Omnibus Decision³ dated August 10, 2015 of the Regional Trial Court of Cebu City, Branch 57 (RTC) in Criminal Case Nos. CBU-96423 and CBU-96424, finding accused-appellant Joseph Cinco Arciaga a.k.a. "Josephus Cinco Arciaga" (Arciaga) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165,⁴ otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

¹ Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

² See Entry of Appearance with Notice of Appeal dated March 2, 2018; *rollo*, p. 28-30.

³ Id. at 4-27. Penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

⁴ CA *rollo*, pp. 12-22. Penned by Acting Presiding Judge James Stewart Ramon E. Himalaloan.

Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

This case stemmed from two (2) Informations⁵ filed before the RTC charging Arciaga with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around four (4) o'clock in the afternoon of June 26, 2012, a team of officers from the Philippine Drug Enforcement Agency Regional Office 7 (PDEA-RO 7) conducted a buy-bust operation against Arciaga at his house, during which one (1) heat-sealed plastic sachet containing suspected *shabu* weighing 0.03 gram was recovered from him. Consequently, a search incidental to his arrest yielded three (3) more heat-sealed plastic sachets containing suspected *shabu* weighing 0.04 gram each. As the team noticed that a crowd was already forming outside Arciaga's house, they, together with Arciaga, proceeded to the PDEA-RO 7 Office where the seized items were marked, photographed, and inventoried⁶ in the presence of Barangay Captain Jerome B. Lim and media personnel Virgilio T. Salde, Jr. of DYMF Bombo Radyo. Thereafter, the seized items were brought to the crime laboratory for examination and tested positive⁷ for Methamphetamine Hydrochloride or *shabu*, a dangerous drug.⁸

For his part, Arciaga denied the charges against him and claimed that on the said date, he was taking a nap at the second floor of his house when suddenly, several armed men barged inside. Upon seeing him, the armed men ordered him to lie face down on the floor, handcuffed him, and searched his body, as well as his house. When the armed men did not find anything, he was then taken to the PDEA-RO 7 Office.⁹

In an Omnibus Decision¹⁰ dated August 10, 2015, the RTC found Arciaga guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) In Criminal Case No. CBU-96423, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (b) in Criminal Case No. CBU-96424, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to twelve (12) years and one (1) month, and to pay a fine of ₱300,000.00.¹¹ The RTC found that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (a) Arciaga indeed sold a plastic sachet containing *shabu* to the poseur-buyer during a legitimate buy-bust operation; and (b) subsequent to his arrest, more plastic sachets containing *shabu* were recovered from him. The RTC

⁵ The Information in Criminal Case No. CBU-96423 was for Section 5, Article II of RA 9165 (see *rollo*, p. 5 and records, p. 1); while the Information in Criminal Case No. CBU-96424 was for Section 11, Article II of RA 9165 (see *rollo*, pp. 5-6).

⁶ See Certificate of Inventory dated June 26, 2012; records, p. 13.

⁷ See Chemistry Report No. D-624-2012 dated June 27, 2012; id. at 12.

⁸ See *rollo*, pp. 6-9. See also CA *rollo*, pp. 12-15.

⁹ See id. at 9-10.

¹⁰ CA *rollo*, pp. 12-22.

¹¹ Id. at 21-22.

further observed that the integrity and evidentiary value of the seized items had been preserved, considering that the buy-bust team sufficiently complied with the chain of custody rule.¹²

In a Decision¹³ dated January 29, 2018, the CA affirmed the RTC ruling, holding that all the elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drug were present and that the chain of custody rule was duly complied with.¹⁴

Hence, this appeal seeking that Arciaga's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,¹⁵ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.¹⁶ Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.¹⁷

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.¹⁸ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of

¹² See id. at 18-21.

¹³ *Rollo*, pp. 4-27.

¹⁴ See id. at 16-27.

¹⁵ The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

¹⁶ See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id.; *People v. Miranda*, id.; and *People v. Mamangon*, id. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

¹⁷ See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012). See also *People v. Manansala*, id.

¹⁸ See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, supra note 15; *People v. Sanchez*, supra note 15; *People v. Magsano*, supra note 15; *People v. Manansala*, id.; *People v. Miranda*, supra note 15; and *People v. Mamangon*, supra note 15. See also *People v. Viterbo*, supra note 16.

the same. It is well to clarify, however, that under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640,¹⁹ the foregoing procedures may instead be conducted at the place where the arrest or seizure occurred, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in instances of warrantless seizures – such as in buy-bust operations. In fact, case law recognizes that “marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.”²⁰ Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.²¹

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,²² “a representative from the media AND the Department of Justice (DOJ), and any elected public official”;²³ or (b) if **after** the amendment of RA 9165 by RA 10640, “[a]n elected public official and a representative of the National Prosecution Service (NPS) OR the media.”²⁴ The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”²⁵

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”²⁶ This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”²⁷

¹⁹ Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” approved on July 15, 2014.

²⁰ *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

²¹ See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

²² Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,’” approved on July 15, 2014.”

²³ Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

²⁴ Section 21, Article II of RA 9165, as amended by RA 10640.

²⁵ See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

²⁶ See *People v. Miranda*, supra note 15. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, supra note 17, at 1038.

²⁷ See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, id.

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.²⁸ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.²⁹ The foregoing is based on the saving clause found in Section 21 (a),³⁰ Article II of the IRR of RA 9165, which was adopted into the text of RA 10640.³¹ It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,³² and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.³³

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.³⁴ Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.³⁵ These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.³⁶

Notably, the Court, in *People v. Miranda*,³⁷ issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that “[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or

²⁸ See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

²⁹ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁰ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**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.”

³¹ Section 1 of RA 10640 pertinently states: “**Provided, finally,** That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.”

³² *People v. Almorfe*, supra note 29.

³³ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁴ See *People v. Manansala*, supra note 15.

³⁵ See *People v. Gamboa*, supra note 17, citing *People v. Umipang*, supra note 17, at 1053.

³⁶ See *People v. Crispo*, supra note 15.

³⁷ Supra note 15.

not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.”³⁸

In this case, while the Court agrees with the courts *a quo* that the buy-bust team was justified in conducting the marking, inventory, and photography at the PDEA-RO 7 Office due to security reasons, *i.e.*, a crowd was already forming at the place of Arciaga’s arrest, it is nevertheless apparent that, as seen in the Certificate of Inventory³⁹ dated June 26, 2012, the inventory of the seized items was not conducted in the presence of a DOJ representative, contrary to the afore-described procedure.⁴⁰ This was confirmed by no less than the poseur-buyer, Intelligence Officer I Edd Ryan Dayuha (IO1 Dayuha), in his testimony during cross-examination, to wit:

[Atty. Ungab]: Who were the witnesses when you conducted the inventory and the markings, Mr. Witness?

[IO1 Dayuha]: There was one from the media DYMFR Bombo Radyo Virgilio Salde. The barangay captain was there also but I forgot his name sir.⁴¹

Neither do the records reflect that such witness was present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof. As earlier stated, it is incumbent upon the prosecution to account for the absence of any of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. While IO1 Dayuha implicitly acknowledged the absence of a DOJ representative during the conduct of inventory and photography, records are bereft of any reason and/or justification therefor. Thus, in view of these unjustified deviations from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Arciaga had been compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02215 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joseph Cinco Arciaga a.k.a. “Josephus Cinco Arciaga” is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to

³⁸ See id.

³⁹ Records, p. 13.

⁴⁰ To note, the buy-bust operation against Arciaga was done on June 26, 2012, or before the passage of RA 10640. As such, the inventory and photography must be witnessed by an elected public official, a media representative, AND a DOJ representative.

⁴¹ TSN, April 22, 2013, p. 14.

cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

M. M. H.
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

Antonio Carpio
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

J. C. Reyes Jr.
JOSE C. REYES, JR.
Associate Justice

Ramon Paul L. Hernando
RAMON PAUL L. HERNANDO
Associate Justice

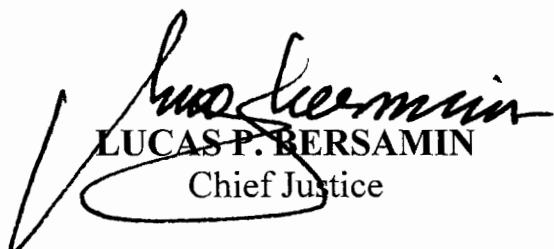
ATTESTATION

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.

Antonio Carpio
ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

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.



LUCAS P. BERSAMIN
Chief Justice