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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 241091**
	Present:
- versus -	CARPIO, *J.*, Chairperson, PERLAS-BERNABE, CAGUIOA, J. REYES, JR., and HERNANDO,* *JJ.*
LITO PAMING *y* JAVIER, Accused-Appellant.	
	Promulgated:
	14 JAN 2019

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated January 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07676, which affirmed the Joint Decision[3] dated August 26, 2014 of the Regional Trial Court of Daet, Camarines Norte, Branch 39 (RTC) in Criminal Case Nos. 14502 and 14503 finding accused-appellant Lito Paming *y* Javier (Paming) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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* Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

1 See Notice of Appeal dated January 29, 2018; *rollo*, pp. 19-21.

2 Id. at 2-18. Penned by Associate Justice Renato C. Francisco with Associate Justices Japar B. Dimaampao and Rodil V. Zalameda, concurring.

3 CA *rollo*, pp. 103-111. Penned by Judge Winston S. Racoma.

4 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) Informations[5] filed before the RTC accusing Paming of 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 12:30 in the morning of September 14, 2010, members of the Paracale Municipal Police Station, with a civilian informant, successfully implemented a buy-bust operation against Paming, during which one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance was recovered from him. When Paming was searched after his arrest, the police officers were able to seize a matchbox holding twenty-eight (28) more heat-sealed transparent plastic sachets containing a combined weight of 0.85 gram of white crystalline substance from his possession. The police officers then took Paming to a nearby billiard hall for marking of the confiscated drugs, but due to the increasing number of people, they transferred to the police station to continue the marking. At the police station, the seized items were turned over to the Desk Officer and the Investigator, who instructed the poseur-buyer to put markings on the items. Thereafter, the seized items were brought to the crime laboratory where, after examination, the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[6]

In defense, Paming denied the charges against him, claiming instead, that he was having a drinking spree with friends when he was approached by one Gil alias "Tatong" who told him that he wanted to "score." When he replied that he did not know what that meant, five men suddenly ganged up on him and dragged him to a nearby billiard hall where they took from his possession ₱5,000.00, one-half (½) *bahay* of gold and two (2) ₱20.00 bills. Tatong then shouted: "*Sir, nandito po sa posporo*," and handed a matchbox to Police Officer 2 Jason R. Poot (PO2 Poot), who pocketed it. Paming was then brought to the police station where he was detained for two days, and was later made to sign a piece of paper purportedly containing an inventory of the seized items.[7]

In a Joint Decision[8] dated August 26, 2014, the RTC found Paming guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Criminal Case No. 14502, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, and to pay a fine in the amount of ₱400,000.00; and (*b*) in Criminal Case No. 14503, to suffer the penalty of life imprisonment and to pay a fine in the amount of

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5 Both dated October 29, 2010. Criminal Case No. 14503 is for violation of Section 5, Article II of RA 9165 (records [Crim. Case No. 14503], pp. 1-2), while Criminal Case No. 14502 is for violation of Section 11, Article II of RA 9165 (records [Crim. Case No. 14502], pp. 1-2)

6 See *rollo*, pp. 4-6; and CA *rollo*, pp. 103-106. See also Chemistry Report No. D-50-2010 dated September 14, 2010; records, p. 15.

7 See *rollo*, p. 6. See also CA *Rollo*, p. 107.

8 CA *rollo*, pp. 103-111.

₱500,000.00.[9] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Paming indeed sold one (1) heat-sealed transparent plastic sachet containing dangerous drugs to the poseur-buyer, resulting in his arrest, and that during the search incidental thereto, he was discovered to be in possession of a matchbox holding twenty-eight (28) more heat-sealed transparent plastic sachets of dangerous drugs. It likewise held that, notwithstanding the procedural lapses of the buy-bust team in complying with Section 21, Article II of RA 9165, the integrity and evidentiary value of the illegal drugs were duly preserved under the chain of custody rule. On the other hand, the RTC found untenable Paming's defense of a self-serving unsubstantiated denial or claim of frame-up due to his failure to allege, much less prove, any ill motive on the part of the buy-bust team.[10] Aggrieved, Paming appealed[11] to the CA.

In a Decision[12] dated January 16, 2018, the CA affirmed the RTC ruling.[13] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Paming, and that the integrity and evidentiary value of the seized items have been preserved due to the arresting officers' substantial compliance with the chain of custody rule.[14]

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal 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

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9 Id. at 111.

10 See id. at 107-111.

11 See Notice of Appeal dated October 21, 2014; records (Crim. Case. No. 14503), p. 110.

12 *Rollo*, pp. 2-18.

13 Id. at 17.

14 See id. at 12-15.

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).

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 the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[19] 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.[20]

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,[21] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[22] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.[23] 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."[24]

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."[25] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police

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

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*, supra note 15; *People v. Miranda*, supra note 15; and *People v. Mamangon* , supra note 15. See also *People v. Viterbo*, supra note 16.

19 *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).

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

21 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.

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

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

24 See *People v. Miranda*, supra note 15. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

25 See *People v. Miranda*, id. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, supra note 17, at 1038.

abuses, especially considering that the penalty imposed may be life imprisonment.'"[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27] 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.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] 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.[32]

Anent the witness requirement, 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.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] 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.[35]

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26 See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, id.

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

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

29 Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that noncompliance 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."**

30 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.**"

31 *People v. Almorfe*, supra note 28.

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

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

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

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

Notably, the Court, in *People v. Miranda*,[36] 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 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."[37]

In this case, there appears to be an absence of the required inventory-taking in the presence of the accused, or his representative, and the required witnesses, *i.e.*, the elected public official and representatives from the media and the DOJ. A thorough examination of the records of this case reveals that no physical inventory report was submitted as evidence before the lower court. Although photographs were offered, there was no proof that these were done in the presence of the accused, or the required witnesses. This was also confirmed by the testimony of the arresting officer, PO2 Poot on cross-examination, to wit:

Cross-Examination

[Atty. Fernando F. Dialogo]: And when you arrived at the Police Station, what happened to the shabu?
[PO2 Poot]: It was marked in the investigation room, sir.

x x x x

Q: When the markings were made, was there any local officials at your station during that time?
A: None, sir.

Q: How about any representative from the media, Mr. Witness?
A: None, sir.

Q: How about the PDEA representative, Mr. Witness?
A: None, sir.

x x x x

Q: Mr. Witness, was there an inventory made on this item that was allegedly recovered from the accused?
A: Yes, sir.

Q: Were you present when the inventory was made, Mr. Witness?
A: Yes, sir.

Q: Where was the accused when the inventory was made?
A: In the investigation room, sir.

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[36] Supra note 15.
[37] See id.

Q: And where was the exact place when the inventory was made?
A: At the Police Station because during that time the place of operation was dark. So we brought it to the Police Station.

x x x x

Q: You said there was an inventory report made?
A: Yes, sir.

Q: Who signed the inventory report?
A: The Investigation, sir.

Q: Are you referring to the Investigator?
A: Yes, sir.

Q: He was the only person who signed that inventory report?
A: Yes, sir.

Q: Where were you when the inventory was conducted by the Investigator?
A: I was inside the Police Station, sir.

Q: You were not at the investigation room, Witness?
A: Yes, sir.[38]

As earlier stated, it is incumbent upon the prosecution to prove that there was an actual inventory and photography done, and that it was conducted in the presence of the accused **and** the required witnesses. While PO2 Poot claimed that there was a purported inventory report, none was offered in evidence. This raises serious doubts as to its existence. Even assuming that there was such a report, PO2 Poot likewise confirmed that only the Investigator signed the same. In fact, the accused was in the investigation room while the alleged inventory was conducted. Furthermore, none of the required witnesses were present, and no justifiable reason was offered nor was there a showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. In view of these unjustified deviations from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Paming were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 16, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 07676 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Lito Paming *y* Javier is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

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38 TSN, October 23, 2012, pp. 18-26.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

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 T. CARPIO
Senior Associate Justice
Chairperson, Second 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.

LUCAS P. BERSAMIN
Chief Justice