



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 227700

Present:

CARPIO, J., *Chairperson*,  
CAGUIOA,  
REYES, J. JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, JJ.

- versus -

REYNALDO LOZANO y LEANADO,  
Accused-Appellant.

Promulgated:

28 AUG 2019

*[Handwritten Signature]*

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DECISION

REYES, JR. J., J.:

Before this Court is an ordinary appeal,<sup>1</sup> assailing the Decision<sup>2</sup> dated February 11, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07106, which affirmed the Consolidated Decision<sup>3</sup> dated September 22, 2014 of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Criminal Case Nos. C-86771, C-86772, and C-86773, finding accused-appellant Reynaldo Lozano y Leanado (Lozano) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

<sup>1</sup> Rollo, p. 20.

<sup>2</sup> Penned by Associate Justice Renato C. Francisco, with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser, concurring; id. at 2-19.

<sup>3</sup> CA rollo, pp. 48-59.

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### The Facts

In three separate Informations, Lozano was charged with the crimes of Illegal Sale, Illegal Possession, and Illegal Use of Dangerous Drugs, respectively, the accusatory portions read:

#### **Criminal Case No. C-86771**

That on or about the 22<sup>nd</sup> day of August[,] 2011[,] in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, x x x [accused-appellant], without being authorized by law and without corresponding license or prescription therfor, did then and there, willfully, unlawfully and feloniously **sell and deliver** to SPO1 ALLAN LLANTINO, who posed as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.04 gram & 0.03 gram, which when subjected for (sic) laboratory examination gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such. (Emphasis and underscoring supplied)

Contrary to Law.<sup>4</sup>

#### **Criminal Case No. C-86772**

That on or about the 22<sup>nd</sup> day of August, 2011[,] in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, x x x [accused-appellant], without authority of law, did then and there, willfully, unlawfully and feloniously have in his **possession**, custody and control Eight (8) heat-sealed transparent plastic sachets each containing 0.02 gram, 0.02 gram, 0.02 gram, 0.03 gram, 0.02 gram, 0.02 gram, 0.03 gram, & 0.02 gram, which when subjected for (sic) laboratory examination gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, a dangerous drug, x x x. (Emphasis and underscoring supplied)

Contrary to Law.<sup>5</sup>

#### **Criminal Case No. C-86773**

That on or about the 22<sup>nd</sup> day of August 2011[,] in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, x x x [accused-appellant], without being authorized by law, did then and there, willfully, unlawfully and feloniously **use** METHYLAMPHETAMINE HYDROCHLORIDE (Shabu), knowing the same to be such, and when subjected to confirmatory examination gave positive results for the presence of Methylamphetamine Hydrochloride, a dangerous drug. (Emphasis and underscoring supplied)

Contrary to Law.<sup>6</sup>

The prosecution alleged that pursuant to the report of a confidential informant about Lozano's drug activities at Bisig ng Nayon, Caloocan City, Police Chief Inspector Romeo Ricalde instructed his men to conduct a buy

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<sup>4</sup> Id. at 48-49.

<sup>5</sup> Id. at 49.

<sup>6</sup> Id. at 49.

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bust operation against the suspect, identified as Lozano. PO1 John Rey Catinan (PO1 Catinan) was designated as immediate back-up of the poseur-buyer, SPO1 Allan Llantino (SPO1 Llantino), and P/Insp. Milan Naz (Insp. Naz) as Team Leader. Prior to their dispatch, a short briefing was conducted. They also coordinated with the Philippine Drug Enforcement Agency. SPO1 Llantino was provided with a ₱500-bill where he placed his initials "AL" as markings. Thereafter, they proceeded to the target area.<sup>7</sup>

Thereat, SPO1 Llantino and the informant walked along an alley where they met with Lozano, while the rest of the group stayed in a private vehicle and a motorcycle about 10 meters away from where SPO1 Llantino, the informant, and Lozano met. Upon seeing SPO1 Llantino and the informant, Lozano said, "*pare ang tagal niyo naman, may lakad pa ako,*" to which the informant responded, "*itong kaibigan ko naman ang kukuha, halagang five hundred lang pare.*" SPO1 Llantino then handed the ₱500-bill to Lozano, which the latter took and placed in his right pocket. In exchange, Lozano handed SPO1 Llantino two plastic sachets from his left pocket allegedly containing *shabu*. SPO1 Llantino then raised his right hand as the pre-arranged signal for his team and introduced himself as a police officer to Lozano. Prompted by the hand signal, PO1 Catinan came to assist with the arrest. SPO1 Llantino frisked Lozano. He recovered the buy bust money and eight more plastic sachets from Lozano's left pocket.<sup>8</sup>

SPO1 Llantino averred that they were supposed to conduct a drug inventory at the place of the arrest but the relatives of Lozano arrived, which resulted to a commotion, preventing their group to proceed with the inventory. Hence, the team brought Lozano and the confiscated items to their station, wherein the seized items were marked in the presence of a media representative, a certain Ka Maeng Santos. Thereafter, Lozano and the seized items were turned over to PO3 Alexander Arguelles (PO3 Arguelles), the case investigator.<sup>9</sup>

PO3 Arguelles testified that he prepared the Request for Laboratory Examination of the Evidence, Request for Drug Test, Sworn Statement of the Arresting Officers, and Booking Sheet/Arrest Report. He also said that he signed the Turn-over of Arrested Suspect, Turn-over of Seized Evidence, and Chain of Custody Form.<sup>10</sup>

For its part, the defense presented Lozano's testimony, who vehemently denied all the allegations against him and narrated an entirely different set of facts. Lozano alleged that on August 20, 2011, at around 1:00 in the afternoon, he was buying rice at a store near his house when six persons, one of them in police uniform, suddenly grabbed and frisked him. After taking his money, amounting to ₱83.00, he was brought to the far end of Bisig ng Nayon, where they entered a house and arrested two females allegedly for possession of *shabu*. He and the two females were then

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<sup>7</sup> Id. at 51.

<sup>8</sup> Id. at 52.

<sup>9</sup> Id.

<sup>10</sup> Id. at 52-53.

boarded in a van and brought to the police station. At the police station, he was brought inside a detention cell and was asked to prepare money in the amount of ₱200,000.00 to settle his case. He concluded his testimony by claiming that he was surprised when he was shown the plastic sachets allegedly confiscated from him.<sup>11</sup>

### The RTC Ruling

In a Consolidated Decision dated September 22, 2014, the RTC dismissed Criminal Case No. C-86773 for illegal use of prohibited drug as he was also found in possession of *shabu* and as such prosecuted under Section 11 of R.A. No. 9165, instead of Section 15 thereof. In Criminal Case Nos. C-86771 and C-86772, the RTC heavily relying upon the presumption of regularity in the performance of the police officers' duty, found Lozano guilty beyond reasonable doubt of illegal sale and illegal possession of prohibited drug, respectively. Thus:

Premises considered, this Court finds and so holds the accused **REYNALDO LOZANO [Y] LEANADO GUILTY** beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

(1) In **Crim. Case No. C-86771**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Ph[P] 500,000.00); and

(2) In **Crim. Case No. C-86772**, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos ([PhP] 300,000.00).

The case against herein accused for violation of Section 15 of the above-cited law under *Crim. Case No. C-86773* is hereby ordered **DISMISSED**.

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

SO ORDERED.<sup>12</sup>

Aggrieved, Lozano appealed to the CA.

### The CA Ruling

In a Decision dated February 11, 2016, the CA affirmed the RTC ruling in its entirety. It held that the prosecution was able to establish all the elements of the offenses charged. Anent Lozano's argument that there were procedural flaws committed by the police officers in the custody and

<sup>11</sup> Id. at 53-54.

<sup>12</sup> Id. at 59.

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handling of the alleged seized prohibited drug, *i.e.*, (1) the marking was not done at the crime scene but at the police station; (2) no photographs were taken on the alleged seized drugs; (3) there was no representative from the Department of Justice (DOJ), and no elective public official was present during the conduct of the physical inventory of the alleged seized evidence,<sup>13</sup> the CA ruled that the same are not fatal to the prosecution's case as long as there was substantial compliance with the rules, and the integrity and evidentiary value of the seized items were properly preserved by the apprehending officers.

The dispositive of the said Decision reads:

**WHEREFORE**, premises considered, the appealed 22 September 2014 Consolidated Decision of the Regional Trial Court of Gapan City, Nueva Ecija, 3<sup>rd</sup> Judicial Region, Branch 34 (sic) in Criminal Case [Nos.] [sic] C-86771 and C-86772 for *Violation of Sections 5 and 11, Article II of Republic Act No. 9165* is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>14</sup>

Hence, this appeal.

### The Issue

Ultimately, the issue for our resolution is whether or not the courts *a quo* correctly convicted Lozano of the charges.

### The Court's Ruling

We find the appeal meritorious.

Lozano was charged with selling 0.04 and 0.03 gram sachets of *shabu*, and possession of six 0.02 gram sachets and two 0.03 gram sachets of *shabu*. For the prosecution of illegal sale of prohibited drugs to prosper, the following elements must be established beyond reasonable doubt, to wit: (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. On the other hand, conviction for a charge of illegal possession of prohibited drugs may prosper if the following elements are proven, to wit: (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 drug.<sup>15</sup>

In both instances, jurisprudence states that it is essential that the State establish with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of said offenses. The prosecution has the burden to show beyond reasonable

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<sup>13</sup> *Rollo*, p. 13.

<sup>14</sup> *Id.* at 19.

<sup>15</sup> *People v. Crispo and Herrera*, G.R. No. 230065, March 14, 2018.

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doubt an unbroken chain of custody over the seized items and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>16</sup>

Certainly, this requirement is not a mere procedural matter which can be simply brushed aside by simple allegation of substantial compliance or presumption of regularity in the conduct of an official duty. As we have held in *People v. Alcuizar*,<sup>17</sup> this requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>18</sup> As early as in the case of *People v. Cruz*,<sup>19</sup> this Court has taken judicial notice of the rather pervasive practice of planting evidence and extortion, as well as the great possibility of abuse in anti-narcotics operations as by the very nature of drug deals, these are normally done clandestinely, without any witness but the operatives.

Thus, over time, our legislation has developed certain measures to ensure that unnecessary doubts concerning the identity of such evidence are removed. Section 21 of R.A. No. 9165, provides for this critical and rigorous requirement known as the chain of custody, which the police officers must follow in handling the seized drugs, to ensure that their integrity and evidentiary value are preserved. Prior to its amendment by R.A. No. 10640, said provision requires, among others, that the apprehending team immediately after seizure and confiscation, conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, together with a representative from the media and the DOJ, and any elected public official, who shall sign the copies of the inventory and be given a copy of the same.

To emphasize the importance of this procedure, in *People v. Adobar*,<sup>20</sup> we elucidated that compliance with the same ensures the integrity of confiscated drugs and related paraphernalia in four important respects: *first*, the nature of the substances or items seized; *second*, the quantity and/or weight of the substances or items seized; *third*, the relation of the substances or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the substances or items seized to the persons alleged to have been in possession of or peddling them. Thus, compliance with these requirements under Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations (IRR) forecloses the opportunities for planting, contaminating, or tampering of evidence in any manner. Conversely, non-compliance therewith makes it impossible for the prosecution to establish

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<sup>16</sup> Id.

<sup>17</sup> 662 Phil. 794 (2011).

<sup>18</sup> Id. at 801.

<sup>19</sup> 301 Phil. 770, 774-775 (1994).

<sup>20</sup> G.R. No. 222559, June 6, 2018, citing *People v. Dela Cruz*, 744 Phil. 816, 829-830 (2014).

the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, engendering the acquittal of an accused.<sup>21</sup>

In this case, we find certain unjustified deviations from the mandatory procedure laid down in the chain of custody rule, which create clouds of doubt with regard to the integrity and evidentiary value of the seized items presented in court.

While the apprehending officers were able to give an explanation as to their failure to conduct the inventory and photographing immediately in the place of arrest, the records, including the courts *a quo*'s assailed decisions, are strikingly silent as to the presence of two of the three mandatory witnesses during the inventory of the seized items. Here, the prosecution submitted that the inventory at the police station was conducted in the presence of a certain Ka Maeng Santos, a media representative. It is undisputed that no DOJ representative and elective public official were present. Neither was there an explanation offered for such non-compliance nor an allegation that earnest efforts were done to prevent such critical procedural lapse. In *People v. De Vera*,<sup>22</sup> the Court emphatically explained that the chain of custody rule requires **no less than** three witnesses – a representative from the media **and** the DOJ, **and** any elected public official – during the conduct of the inventory and photographing of the seized drugs.

Moreover, none of these three mandatory witnesses were present during the time of apprehension and seizure. The alleged media representative was present only during the inventory at the police station. In *Adobar*,<sup>23</sup> the Court also explained that '[b]y the same intent of the law behind the mandate that the initial custody requirements be done 'immediately after seizure and confiscation,' the aforesaid witnesses must already be physically present at the time of apprehension and seizure – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity."<sup>24</sup>

In ruling for Lozano's conviction, the RTC and the CA heavily relied upon the disputable presumption of regularity in the performance of an official duty, to which the police officers are entitled under the law, as well as to the allegation of substantial compliance with the rules pursuant to Section 21(a), Article II of the IRR of R.A. No. 9165 or the saving clause in case of non-compliance with the requirements of Section 21 of R.A. No. 9165 and its IRR. These, to be sure, do not suffice to warrant conviction.

Foremost, as correctly cited by the RTC in its Consolidated Decision but not properly applied, it may be true that absent clear and convincing evidence of ill-motive on the part of the police officers, the presumption of

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<sup>21</sup> Id.

<sup>22</sup> G.R. No. 218914, July 30, 2018 (emphasis supplied).

<sup>23</sup> *People v. Adobar*, G.R. No. 222559, June 6, 2018.

<sup>24</sup> Id.

regularity in the performance of official duty prevails. However, such presumption obtains only where there is no clear deviation from the regular performance of duty. The presumption arises only when nothing in the record suggests that the police officers deviated from the standard conduct of official duty required by the applicable law.<sup>25</sup> Here, as stated above, the police officers committed unjustified deviations from the clear and simple requirements of R.A. No. 9165 and its IRR. Hence, such presumption cannot be applied.

More importantly, the Court has, time and again, explained that for the saving clause under Section 21(a), Article II of R.A. No. 9165's IRR to apply, the prosecution is burdened to give a justifiable reason behind the procedural lapses, and an explanation that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.<sup>26</sup> Also, the prosecution must show that earnest efforts were employed in obtaining the presence of the mandatory witnesses, otherwise, any explanation given is to be regarded as an unacceptable flimsy excuse.<sup>27</sup> In *People v. De Guzman*,<sup>28</sup> the Court even emphasized 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.<sup>29</sup> Here, as above-stated, the prosecution was silent as to this matter.

The importance of the presence of these required witnesses cannot be overemphasized. The oft-cited pronouncement of this Court in *People v. Mendoza*<sup>30</sup> states that:

[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody.<sup>31</sup>

From the foregoing, the Court is constrained to rule for the reversal of Lozano's conviction on the ground of reasonable doubt. The unexplained procedural lapses committed by the apprehending officers militate against the integrity and evidentiary value of the *corpus delicti* of the offenses charged against him.

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<sup>25</sup> *People v. Siaton*, 789 Phil. 87, 107 (2016).

<sup>26</sup> *People v. Año*, G.R. No. 230070, March 14, 2018.

<sup>27</sup> *People v. Umipang*, 686 Phil 1024, 1052, 1053 (2012).

<sup>28</sup> 630 Phil. 637 (2010).

<sup>29</sup> *Id.* at 649.

<sup>30</sup> 736 Phil. 749 (2014).

<sup>31</sup> *Id.* at 764.




One final note. We reiterate our consistent support to the government's advocacy against drug addiction and its related crimes. However, as it is this Court's primary duty to render and dispense justice through application of the law, we cannot disregard the protection given by our laws, especially our Constitution, to each and every individual alike. No matter how noble and passionate our intentions are to eradicate this illness that has been plaguing our society, certain parameters rooted from no less than our Constitution, must still guide our actions.


Hence, as we have stated in our previous decisions, law enforcers and prosecutors are strongly reminded that they have the **positive duty** to comply and prove compliance with the procedure set forth in Section 21, Article II of R.A. No. 9165 and its IRR, as amended. As such, they must have the initiative to acknowledge and justify any perceived deviations from the said procedure during the proceedings before the trial court. Otherwise, the constitutional presumption of innocence tilts the scales in favor of the accused.

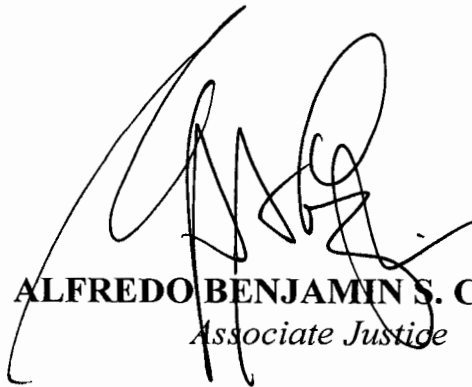
**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated February 11, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07106 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Reynaldo Lozano y Leanado is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is **ORDERED** to cause his immediate release, unless he is being lawfully held in custody for any other reason.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**


  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*




**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**RODIL N. ZALAMEDA**  
*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*