

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 233200

Present:

- versus -

BERSAMIN, C.J.,  
PERLAS-BERNABE,  
JARDELEZA,  
GESMUNDO, and  
CARANDANG, JJ.

CARMELO CARPIO y  
TARROZA,  
Accused-Appellant.

Promulgated:

SEP 09 2019

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DECISION

**BERSAMIN, C.J.:**

The requirements for the preservation of the chain of custody in drug-related prosecutions are to be dispensed with upon justifiable reasons, and only if the integrity and evidentiary value of the confiscated dangerous drugs are properly preserved by the apprehending officers.

**The Case**

By this appeal, the accused-appellant seeks the review and reversal of the decision promulgated on April 7, 2017,<sup>1</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on May 28, 2014 by the Regional Trial Court (RTC), Branch 13, in Zamboanga City finding him guilty of the crimes of illegal sale and illegal possession of *shabu*, a dangerous drug, as respectively defined and punished by Section 5 and Section 11 of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*).<sup>2</sup>

<sup>1</sup> *Rollo*, pp. 3-17; penned by Associate Justice Perpetua T. Atal-Pano, concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Oscar V. Badelles.

<sup>2</sup> *CA rollo*, pp. 32-46; penned by Judge Eric D. Elumba.

### Antecedents

The accusatory portions of the informations filed against the accused-appellant read as follows:

For violation of Section 5, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to SPO1 SERGIO M. RIVERA, a bona fide member of the PNP assigned with the ZCPO Anti-Illegal Drug Special Operation Task Force, who acted as a poseur-buyer, one (1) medium heat-sealed transparent plastic pack containing 0.0568 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

• CONTRARY TO LAW.<sup>3</sup>

For violation of Section 11, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession and under his custody and control, two (2) small heat-sealed transparent plastic packs each containing white crystalline substance having a total weight of 0.0317 gram both of which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

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

The accused-appellant pleaded *not guilty* to the charges at his arraignment on September 15, 2005.<sup>5</sup>

The CA summarized the facts and the evidence as follows:

#### Version of the Prosecution

SPO1 Amado Mirasol, Jr. testified that on August 20, 2004, at about 10:00 o'clock in the morning, a male civilian informant arrived at the office of the Anti-Illegal Drugs Operation Task Force Police Office,

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<sup>3</sup> *Rollo*, p. 4.

<sup>4</sup> *Id.*

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

Zamboanga City, to report about a certain Carmelo (herein accused-appellant) who was a drug pusher and was engaged in selling shabu at his rented house at San Roque, Zamboanga City. After studying the sketch provided by the asset on the area of the residence of Carmelo, he called the members of his group for the mobilization of a possible buy-bust operation. The buy-bust group, composed of him as the team leader and the following police offices: SPO1 Sergio Rivera, SPO1 Roberto Roca, PO2 Ronald Cordero, PO1 Wilfredo Bobon, and PO1 Hilda Montuno.

To start the operation PO1 Montuno prepared five pieces of ₱100.00 bills which he registered with the Public Prosecutors Office, to be used to buy the illegal drugs. He then conducted a briefing wherein he designated SPO1 Rivera as poseur-buyer and gave him one marked ₱100.00 bill, while PO2 Cordero acted as back-up and the rest of the group as perimeter security.

At around 2:00 o'clock in the afternoon, on August 20, 2004 the group proceeded to the target area in [an] L-300 van and parked near the gate of the Chinese Cemetery. As he and the rest of the team followed from a distance, SPO1 Rivera and the confidential informant approached a man standing outside a house at San Roque, near the Chinese Cemetery, and they started talking to him. When the conversation stopped, he saw SPO1 Rivera grabbed the man and called out to PO2 Cordero for assistance. Responding to SPO1 Rivera's call for assistance, he and the rest of the team converged to assist in subduing the suspect. Afterwards, SPO1 Rivera showed him the one (1) heat-sealed plastic sachet that the former bought from Carmelo. SPO1 Rivera frisked Carmelo, and saw the marked money used and two (2) more heat-sealed plastic sachet were recovered from Carmelo's right pocket.

The second witness SPO1 Sergio M. Rivera testified that upon arriving in the area, the rest of the group proceeded to their designated post while he and the confidential informant casually walked towards the house of Carmelo. At about 10 meters away, the informant whispered to him that the person standing near the door was the suspected drug pusher named Carmelo. They continued to walk toward the suspect's house. Their informant approached Carmelo first and asked "do we have now?" to which Carmelo replied "the money?". SPO1 Rivera got one (1) piece of ₱100.00 bill from the left pocket of his polo and handed it to Carmelo. After receiving the money, Carmelo in return handed one-heat sealed plastic sachet to SPO1 Rivera. Sensing that it contains shabu, SPO1 Rivera informed Carmelo in Visayan dialect that he was a police officer and that Carmelo's selling of shabu is contrary to law.

He then effected the arrest to which Carmelo resisted, but was subdued by him and PO2 Cordero until a handcuff was placed around Carmelo's wrist. He informed Carmelo of his rights and proceeded to search the latter's person, wherein he found two (2) heat-sealed plastic sachet containing white crystalline powder and the marked money in the right pocket of Carmelo's pants. He placed the confiscated sachets in his own pocket until they arrived at their office. In the presence of the Investigator, SPO1 Delumpines, he marked the three (3) sachets with his initials "SMR" before he turned it over to the former.

When SPO1 Rivera was asked by the trial court how he can identify which among the three sachets confiscated is the sachet he bought

from Carmelo, SPO1 testified that the sachet he brought from Carmelo is bigger in size than the two sachets he recovered from the latter's pocket.<sup>6</sup>

### Version of the Defense

Accused appellant Carmelo testified that on August 20, 2004, at about 2:00 o'clock in the afternoon, he was resting together with his two (2) children inside the house he was renting while his wife was doing laundry outside. He suddenly noticed several armed men in civilian clothes enter the house and started looking for a certain gun. He was familiar with the faces of the men and one of them, SPO1 Mirasol, whom he knew as "Popoy" from his visits in the cockpit in San Roque. He inquired as to what wrong did he commit but he was only handcuffed and told to accompany them to the police station. The men also searched his house but they did not recover anything, and so they proceeded to the police station.

At the police station, he was once again asked where his gun was, to which he answered that he had no gun. Policeman Popoy then demanded from him ₱30,000.00 in exchange for his release but he did not have any money. A neighbor later arrived at the police station known to him as "Langgay" and to whom he had a fight concerning a cockfighting bet amounting to ₱5,000.00 that he owed Langgay. He overheard Popoy and Langgay conversing, with Langgay telling Popoy not to release him until he (Langgay) was paid the amount of ₱5,000.00. As he was not able to pay the demanded amount, he was told that a case for illegal drugs will be filed against him. He was subsequently asked to sign a document, the contents of which he had no knowledge.<sup>7</sup>

Said accused's testimony was corroborated by his witness Miguela De Leon.<sup>8</sup> x x x

### Judgment of the RTC

On May 28, 2004, the RTC rendered judgment finding the accused-appellant guilty as charged,<sup>9</sup> disposing thusly:

**WHEREFORE**, all the foregoing considered, this Court hereby finds that accused in:

1. CRIMINAL CASE NO. 20837 GUILTY beyond reasonable for violating Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (PHP 500,000.00) without subsidiary penalty in case of insolvency.

<sup>6</sup> Id. at 5-6.

<sup>7</sup> Id. at 10-11.

<sup>8</sup> Id. at 7-8.

<sup>9</sup> CA rollo, pp. 32-46.

2. CRIMINAL CASE NO. 20838 GUILTY beyond reasonable doubt for violating Section 11, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of 12 YEARS AND 1 DAY to 14 YEARS OF IMPRISONMENTS and pay a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00) without subsidiary imprisonment in case of insolvency.

**SO ORDERED.**<sup>10</sup>

The RTC observed that the testimony of SPO1 Rivera established the elements of the crimes of illegal sale and illegal possession of dangerous drugs; and that the accused-appellant's defense of denial did not overcome the positive testimonies of the Prosecution's witnesses and other evidence like the marked money and the two sachets of *shabu* seized from him.<sup>11</sup>

### Decision of the CA

On appeal, the accused-appellant contended that the police officers had blatantly disregarded the mandatory requirements of Section 21 of R.A. No. 9165; that the Prosecution did not establish the identity of the sachets of *shabu* with moral certainty considering that SPO1 Rivera had immediately pocketed the sachets of *shabu* even without marking them; that the marking had been done only at the police station; and that the presumption of regularity in the performance of duty did not apply because the officers had not observed the statutory safeguards under Section 21 of R.A. No. 9165.

On April 7, 2017, the CA promulgated the assailed decision affirming the convictions.<sup>12</sup> It ruled that the testimony of SPO1 Rivera narrating in detail the entrapment operation had demonstrated that the integrity and evidentiary value of the evidence seized were preserved; that marking at the nearest police station or office of the apprehending team had substantially complied with Section 21 of R.A. No. 9165; that the Prosecution's witnesses deserved full faith and credit in the absence of proof of their ill-motive and bad faith; and that the accused belatedly raised the issue surrounding the chain of custody.

### Issue

The accused-appellant presents the following grounds in support of his appeal,<sup>13</sup> to wit:

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<sup>10</sup> Id. at 46.

<sup>11</sup> Id. at 45.

<sup>12</sup> Supra, note 1.

<sup>13</sup> *Rollo*, pp. 35-43.

## I

Section 21 of R.A. 9165 was blatantly disregarded. There was failure of the arresting team to establish the very first link in the chain of custody and there was failure to preserve the integrity of the alleged items seized.

## II

The *corpus delicti* was not established with moral certainty.<sup>14</sup>

The accused-appellant argues that the apprehending officers did not preserve the integrity of the seized contraband; that SPO1 Rivera did not testify that the seized items had been properly marked immediately after having received them; that the marking had not been made in presence of the accused-appellant; that the apprehending officers had not explained why they did not comply with the procedural requirements under Section 21 of the law; and that the CA erred in presuming regularity in the performance of the duty in favor of the apprehending officers.<sup>15</sup>

In short, did the CA correctly affirm the convictions of the accused-appellant for the violations of Section 5 and Section 11 of R.A. No. 9165?

### Ruling of the Court

We find merit in the appeal.

The State bears the burden of proving the elements of the crimes of illegal sale and illegal possession of dangerous drugs by establishing the *corpus delicti*.<sup>16</sup> This requires that the State must present the seized drugs themselves, along with proof of the relevant transaction. The State must further show that there were no substantial gaps in the chain of custody vis-a-vis the drugs as to raise doubts about their integrity as evidence of guilt. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and the ensuing criminal prosecution.<sup>17</sup> The Prosecution must account for every link in the chain of custody; otherwise, the crime is not established beyond reasonable doubt.<sup>18</sup>

Section 21(1) of R.A. No. 9165 sets the procedural safeguards to be followed in the seizure, custody and disposition of the dangerous drugs, viz.:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals,*

<sup>14</sup> Id. at 35.

<sup>15</sup> Id. at 36-40.

<sup>16</sup> *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

<sup>17</sup> *People v. Peromingan*, G.R. No. 21840, September 24, 2018.

<sup>18</sup> *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328.

*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:

(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;

X X X X

The *Implementing Rules and Regulations of R.A. No. 9165 (IRR)* echoes the foregoing statutory requirements, to wit:

X X X X

(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;

X X X X

The aforestated procedure is vital to ensure the preservation of the chain of custody and to guarantee that the integrity of the seized drugs is duly preserved.

A perusal of the records shows that the police officers did not observe the procedural requirements and left substantial gaps in the chain of custody of the seized drugs.

It appears that SPO1 Rivera instantly confiscated the three sachets of *shabu* following the supposed sale but marked the same with his initials in

the presence of investigator SPO1 Dalumpines only upon arrival at the police station instead of at the crime scene itself.<sup>19</sup> The delay in marking the confiscated items was already irregular without SPO1 Rivera rendering an explanation of why he did so. We have emphasized that the immediate marking of the seized drugs at the crime scene is crucial in proving the chain of custody because it is the starting point in the custodial link. *People v. Alagarme*<sup>20</sup> instructs that the marking upon seizure serves a two-fold function: the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, planting, or contamination of evidence.<sup>21</sup>

The records further showed that the police officers dispensed with the other safeguard set in Section 21 of R.A. No. 9165, specifically the taking of the inventory and photographs of the seized items, and ensuring the presence of the representative of the media or of the Department of Justice, and the elective official. SPO1 Rivera admitted so on cross-examination, *viz.*:

Q: So, Mr. Witness, right after the arrest of the accused, did you conduct an inventory?

A: No, Sir.

Q: Did you photograph him with the shabu?

A: Yes, sir.

Q: Did you, before the arrest, before this buy-bust operation, did you ask the guidance of any elective official in that area?

A: No, sir.

Q: In other words, during the arrest of the accused, there was no elective official there?

A: Yes, Sir.

Q: How about media?

A: No, Sir.

Q: How about any representative from the DOJ?

A: No, sir.<sup>22</sup>

Although the taking of photographs was supposedly made, such circumstance does not appear now to be probable considering that the Prosecution did not formally offer any photographs as evidence.

Without doubt, the strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers. Yet, the law recognizes that a departure from the safeguards may become necessary, and has incorporated a saving clause (*“Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity*

<sup>19</sup> TSN, August 7, 2009, pp. 33-34.

<sup>20</sup> G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328-329.

<sup>21</sup> Id.

<sup>22</sup> TSN, August 7, 2009, p. 32.



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”). To rely on the saving clause, the Prosecution should prove the concurrence of the twin conditions, namely: (a) the existence of justifiable grounds for the departure, and (b) the preservation of the integrity and the evidentiary value of the seized items.<sup>23</sup>

We have consistently reminded law enforcement officers to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely imperative, could be dispensed with only upon justifiable grounds,<sup>24</sup> and when the integrity of the evidence of the *corpus delicti* was preserved. But the non-compliance with the procedures, to be excusable, must be justified by the State’s agents<sup>25</sup> in such a way that during the proceedings before the trial court, they must acknowledge and justify any perceived deviations from the requirements of the law.<sup>26</sup> If the Prosecution fails to tender any justification for the non-compliance with the procedure prescribed, the Court cannot allow the exception to apply. That is what the Court must do in this case.

Lastly, the CA noted that the accused-appellant was raising the issue against the preservation of the chain of custody for the first time only on appeal; and held him estopped from adverting to the arresting officers’ procedural lapses.

We disagree.

There is to be no question that every appeal of a criminal conviction always opens the entire case for review. The appeal before the CA should be no different. It became incumbent upon the CA to leave no stone unturned during its review of the convictions because the accused-appellant did not waive any errors committed by the trial court. Indeed, the CA, as a reviewing tribunal, had the duty to correct the errors,<sup>27</sup> and could *motu proprio* correct errors of appreciation of the facts and of law committed by the trial court.<sup>28</sup> A criminal appeal is so different from a civil appeal, for the former preserves the right of the accused not to be punished for crime except upon his guilt being established beyond reasonable doubt but the latter is not concerned with the proof beyond reasonable doubt. For sure, the lower courts were shown to have committed grave errors, and it fully became incumbent upon the CA and the Court itself to undo the injustice that prejudiced the accused-appellant. We should acquit him.

<sup>23</sup> *People v. Ancheta*, G.R. No. 197371, June 13, 2012, 672 SCRA 604, 618.

<sup>24</sup> *People v. Calates*, G.R. No. 214759, April 4, 2018.

<sup>25</sup> *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 136.

<sup>26</sup> *People v. Oliva*, G.R. No. 234156, January 7, 2019.

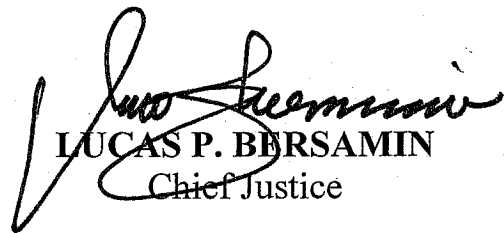
<sup>27</sup> *Bongalon v. People*, G.R. No. 169533, March 20, 2013, 604 SCRA 12, 21.

<sup>28</sup> *People v. Miranda*, G.R. No. 229671, January 31, 2018.


**WHEREFORE**, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 7, 2017; **ACQUITS** accused-appellant **CARMELO CARPIO y TARROZA**; and **ORDERS** his **IMMEDIATE RELEASE** from confinement at the San Ramon Prison and Penal Farm, Zamboanga City unless there are other lawful causes warranting his continued confinement thereat.

Let a copy of this decision be sent to the Superintendent of the San Ramon Prison and Penal Farm in Zamboanga City for immediate implementation. The Superintendent is directed to report the action taken to this Court within five days from receipt of this decision.


**SO ORDERED.**

  
**LUCAS P. BERSAMIN**  
Chief Justice

**WE CONCUR:**

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

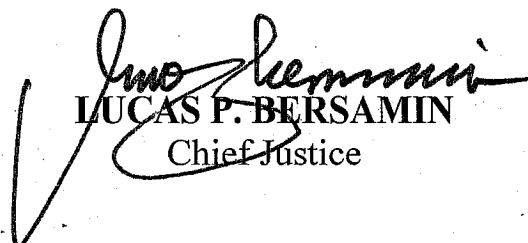
  
**FRANCIS H. JARDELETA**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARIE 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