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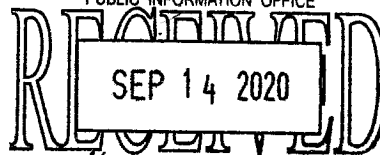


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Third Division

SEP 10 2020

**Republic of the Philippines
Supreme Court
Manila**

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



THIRD DIVISION

BY: Henry
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ROMEO TUMABINI,
Petitioner,

G.R. No. 224495

Present:

LEONEN, J., Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
February 19, 2020

X ----- X

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* seeking to reverse and set aside the January 28, 2016 Decision¹ and the April 7, 2016 Resolution² of the Court of Appeals (*CA*) in CA-G.R. CR No. 02289. The CA affirmed the October 15, 2012 Joint Judgment³ of the Regional Trial Court of Mandaue City, Branch 28 (*RTC*) in Crim. Case Nos. DU-10273-74 which found Romeo Tumabini (*petitioner*) guilty beyond reasonable doubt of violations of Sections 11 and 12, Article II, of Republic Act (*R.A.*) No. 9165.

¹ *Rollo*, pp. 88-99; penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Edgardo L. Delos Santos (now Member of this Court) and Edward B. Contreras, concurring.

² *Id.* at 113-114.

³ *Id.* at 45-52; penned by Acting Presiding Judge Raphael B. Yrastorza, Sr.

The Antecedents

In two (2) Informations⁴ dated July 3, 2003, petitioner was charged with violations of Sections 11 and 12 of R.A. No. 9165, the accusatory portions of which read:

Criminal Case No. DU-10273
(Illegal Possession of Dangerous Drugs)

That on or about the 19th day of June, 2003 at 5:00 o'clock in the morning, more or less, at Sitio Tuburan, Brgy[.] Jubay, Municipality of Lilo-an, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic packet[s] of white crystalline substance weighing 0.07 gram, and one (1) heat-sealed transparent plastic packet containing [w]hite crystalline substance weighing 0.01 gram which when subjected to laboratory examination gave positive results for the presence of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

Criminal Case No. DU-10274
(Illegal Possession of Drug Paraphernalia)

That on [or about] the 19th day of June, 2003, at about 5:00 in the morning [at] Sitio Tuburan, Barangay Jubay, Municipality of Lilo-an, Province of Cebu, Philippines, and within the jurisdiction of this Honorable [C]ourt, the above-named accused, without authority of law[,] did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) roll of tin foil, two (2) pcs. lighters intended to be used in heating, burning and/or sniffing *shabu*.

CONTRARY TO LAW.⁶

On August 12, 2003, petitioner was released on bail pending trial.⁷ On October 29, 2003, petitioner was arraigned and pleaded not guilty. After pre-trial, trial on the merits ensued.

⁴ Records (Criminal Case No. DU-10273), p. 1; and Records (Criminal Case No. DU-10274), p. 1.

⁵ Records (Criminal Case No. DU-10273), p. 1.

⁶ Records (Criminal Case No. DU-10274), p. 1.

⁷ Records (Criminal Case No. DU-10273), p. 12.

Evidence of the Prosecution

The prosecution presented SPO2 Reynaldo Alcala Matillano (*SPO2 Matillano*) and SPO1 Edwin Tesoro (*SPO1 Tesoro*) as its witnesses. Their testimonies tended to establish the following:

Pursuant to a prior surveillance and test buy, a Search Warrant⁸ dated June 18, 2003, was issued by Judge Ireneo Lee Gako of the Regional Trial Court of Cebu City, Branch 5 (*RTC Cebu City*) against petitioner and his wife, Ivy Tumabini (*Ivy*).

On June 19, 2003, the team led by Police Senior Inspector (*PSI*) Ricardo Flores, SPO2 Matillano, SPO1 Tesoro, and PO3 Jesus Manulat implemented the search warrant. SPO2 Matillano was designated as the searcher; while SPO1 Tesoro was the recorder. According to SPO2 Matillano, they were accompanied by *Barangay* Councilor Silvestre Pepito (*Councilor Pepito*) and *Barangay Tanod* Antonio Ayuda, Jr. (*Tanod Ayuda*). Upon arriving at petitioner's residence, the team called out petitioner but nobody answered. SPO2 Matillano forced open the door of the house but found another locked door leading to the second level where petitioner and his children were staying. Petitioner eventually opened the door and was given a copy of the search warrant. The team informed petitioner that they would search the house in the presence of the *barangay* councilor and *tanod*.⁹

After searching the house, SPO2 Matillano found three (3) heat-sealed packs and one (1) heat-sealed plastic sachet containing white crystalline substance. The team further found one (1) tin foil, two (2) lighters, a camera, seven (7) watches, a cellphone, five (5) ₱100.00 bills, two (2) handguns, and three (3) live ammunitions. The three (3) packs weighing 0.07 gram were marked with "RT," the initials of petitioner; while the one (1) sachet weighing 0.01 gram was marked with "IT," the initials of Ivy. SPO1 Tesoro prepared an inventory of the items seized. The seized items were subsequently brought to the PNP Crime Laboratory for examination. Chemistry Report No. D-1010-2003,¹⁰ dated June 19, 2003, indicated that the specimens yielded a positive result for Methylamphetamine Hydrochloride or *shabu*.¹¹

⁸ Records (Criminal Case No. DU-10273), p. 33.

⁹ *Rollo*, p. 89.

¹⁰ Records (Criminal Case No. DU-10273), p. 47.

¹¹ *Rollo*, pp. 89-90.

Evidence of the Defense

The defense presented petitioner as its witness. Petitioner denied the allegations against him. He averred that on the morning of June 19, 2003, he was home together with his family when he heard the sound of people running outside and someone looking for their house. Then, police officers suddenly barged in through their kitchen door. Petitioner asserted that he went to the living room and found armed persons in civilian clothing. He was ordered to sit down and sign a piece of paper at gunpoint, and the police proceeded to search their house while he and his family remained on the first level. SPO2 Matillano came back with *shabu*, and accused petitioner as its owner.¹²

The RTC Ruling

In its October 15, 2012 Joint Judgment, the RTC found petitioner guilty of illegal possession of dangerous drugs and sentenced him to suffer imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00). It also found petitioner guilty of illegal possession of drug paraphernalia and sentenced him to suffer imprisonment of six (6) months and one (1) day to four (4) years and to pay a fine of Ten Thousand Pesos (₱10,000.00). The RTC held that the search of petitioner's house was validly conducted through a search warrant; and that it was sufficiently proven by the prosecution that petitioner had possession, custody and control of the three (3) packets, one (1) sachet of *shabu*, and several drug paraphernalia.¹³

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In its January 28, 2016 Decision, the CA affirmed with modification the RTC ruling. It agreed with the RTC that all the elements of the crime of illegal possession of dangerous drugs were duly established because the packets of *shabu* were recovered from petitioner's house when the search warrant was enforced. The CA also stated that the prosecution substantially complied with the law and the integrity of the items seized was preserved because SPO1 Tesoro immediately marked the seized items, prepared an inventory, and the petitioner and witnesses signed the said inventory. It underscored that there was minor inconsistency as to who accompanied the police officers during the

¹² Id.

¹³ Id. at 51-52.

implementation of the search warrant. The CA further ruled that petitioner failed to prove any ill motive on the part of the police officers.

However, the CA acquitted petitioner of the crime of illegal possession of drug paraphernalia because the items presented in court were ordinary household items and it was not proven by evidence that said items were actually used in connection with the confiscated drugs.¹⁴

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its April 7, 2016 Resolution.¹⁵

Hence, this petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING CONVICTION OF SECTION 11, ARTICLE 2 OF [R.A. NO.] 9165 DESPITE THE BLATANT VIOLATION OF BOTH THE CONSTITUTIONAL RIGHT TO PRIVACY AND RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE OF THE PETITIONER, BECAUSE OF THE UNDUE AND UNNECESSARY [FORCIBLE OPENING] OF HIS HOUSE EMPLOYED BY THE POLICE OFFICERS, DURING [THE UNREASONABLE HOUR ABOUT 5 O'CLOCK IN THE MORNING]; ANY EVIDENCE OBTAINED IS THUS INADMISSIBLE.

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE [WAS] SUBSTANTIAL COMPLIANCE WITH THE CHAIN OF CUSTODY MANDATED UNDER SECTION 12 OF R.A. [NO.] 9165, DESPITE THE EXISTENCE OF FLAGRANT LAPSES THEREOF, THEREBY CASTING SERIOUS DOUBT AS TO THE INTEGRITY AND PRESERVATION OF THE ALLEGED ILLEGAL DRUGS SEIZED.¹⁶

Petitioner argues that the search conducted in his house was unreasonable because it was implemented at 5:00 a.m. while the residents were still asleep; that the prosecution failed to prove compliance with the chain of custody rule; that the required witnesses under R.A. No. 9165 were not present during the inventory; that no photographs of the seized items were

¹⁴ Id. at 93-96.

¹⁵ Supra note 2.

¹⁶ Id. at 24.

taken; that it was not disclosed as to who delivered the items to the crime laboratory; and that there was no evidence on how the seized items were stored, preserved, labeled, and recorded.

In its Comment,¹⁷ the People of the Philippines (*respondent*), through the Office of the Solicitor General (*OSG*), counters that the prosecution sufficiently proved all the elements of the crime of illegal possession of dangerous drugs; that it was reasonable for the police to forcibly enter petitioner's house because they were not allowed entry even though they called out petitioner's name; and that it was not shown that the seized drugs were contaminated in any manner.

The Court's Ruling

The petition is impressed with merit.

A search warrant may be served at dawn

One of the arguments of petitioner is that it was unreasonable for the police officers to enforce the search warrant at dawn because it violates his right against unreasonable searches and seizures.

The argument fails.

Section 9, Rule 126 of the Rules of Court states:

Section 9. Time of making search. — The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the **day or night**.

In *People v. Court of Appeals*,¹⁸ the Court explained that a search warrant, as an exception, may be enforced at any reasonable hour of the day or night, to wit:

The general rule is that search warrants must be served during the daytime. **However, the rule allows an exception, namely, a search at any**

¹⁷ Id. at 128-137.

¹⁸ 400 Phil. 1247 (2000).

reasonable hour of the day or night, when the application asserts that the property is on the person or place ordered to be searched. In the instant case, the judge issuing the warrant relied on the positive assertion of the applicant and his witnesses that the firearms and ammunition were kept at private respondent's residence. Evidently, the court issuing the warrant was satisfied that the affidavits of the applicants clearly satisfied the requirements of Section 8, Rule 126 of the Rules of Court. The rule on issuance of a search warrant allows for the exercise of judicial discretion in fixing the time within which the warrant may be served, subject to the statutory requirement fixing the maximum time for the execution of a warrant. We have examined the application for search warrant, and the deposition of the witnesses supporting said application, and find that both satisfactorily comply with the requirements of Section 8, Rule 126. The inescapable conclusion is that the judge who issued the questioned warrant did not abuse his discretion in allowing a search "at any reasonable hour of the day or night." Absent such abuse of discretion, a search conducted at night where so allowed, is not improper.¹⁹ (emphasis supplied; citations omitted).

In this case, the search warrant stated that the search shall be made at "ANY TIME OF THE DAY OR NIGHT."²⁰ Notably, the RTC Cebu City issued the search warrant based on the deposition of PO3 Arturo C. Enriquez and PO3 Jesus Manulat,²¹ which stated that they allegedly bought *shabu* from petitioner at about 9:00 in the evening. Thus, the RTC Cebu City had basis to state that the search warrant may also be implemented at dawn or early morning.

Further, petitioner failed to prove that the entry of police officers in his house was unreasonable. Section 7, Rule 126 of the Rules of Court states:

Section 7. Right to break door or window to effect search. — The Officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

As testified by SPO2 Matillano, when they went to the house of petitioner, they knocked on the door and called out petitioner's name but nobody answered.²² Thus, they bumped the door open on the ground floor to be able to enter petitioner's house. However, the second floor, where petitioner and his children were staying, also had a locked door. At that moment, they tried to convince petitioner to open the door, to which he obliged. Verily, the police officers followed Sec. 7, Rule 126 when they

¹⁹ Id. at 1256-1257.

²⁰ Supra note 8.

²¹ Id. at 36.

²² TSN, October 20, 2004, p. 5.

forcibly opened the door of the first floor because they were refused admittance despite giving notice to petitioner.

Chain of Custody Rule

Section 21 of R.A. No. 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.²³ To ensure the establishment of the chain of custody, Sec. 21(1) of R.A. No. 9165 specifies that:

(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.

Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media and (3) the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation. Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant.

²³ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

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A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or "speech is the index of intention." Furthermore, there is the maxim *verba legis non est recedendum*, or "from the words of a statute there should be no departure."²⁴

Based on *verba legis*, Sec. 21 of R.A. No. 9165, as amended, operates as long as there is seizure and confiscation of drugs. It does not distinguish between warrantless seizure of the drugs in a buy-bust operation and in the implementation of a search warrant. Accordingly, in every situation where there is a seizure and confiscation of drugs, the presence of the accused, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official, is required during the physical inventory and taking of photographs of the seized drugs, because they shall be required to sign the copies of the inventory and be given a copy thereof.

The Court is aware that Section 8, Rule 126 of the Revised Rules of Criminal Procedure provides that only two (2) witnesses are required to be present during the implementation of a search warrant:

Section 8. Search of house, room, or premise to be made in presence of two witnesses. — No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Nevertheless, Sec. 8 of Rule 126 is a general provision with respect to the implementation of search warrants in all kinds of cases, such as for illegal firearms, infringing goods, or incriminating documents. On the other hand, Sec. 21 of R.A. No. 9165, as amended, and as implemented by its Implementing Rules and Regulations (*IRR*), is a special provision that applies specifically to the seizure and confiscation of dangerous drugs. In case of conflict between a general law and a special law, the latter must prevail regardless of the dates of their enactment. Thus, it has been held that — [t]he fact that one law is special and the other general creates a presumption that the special act is to be considered as remaining an exception of the general

²⁴ *Bolos v. Bolos*, 648 Phil. 630, 637 (2010).

act, one as a general law of the land and the other as the law of the particular case.²⁵

Further, Sec. 8, Rule 126 of the Revised Rules of Criminal Procedure is not even a substantive law; rather, it is a mere remedial provision. In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.²⁶

Here, Congress enacted Sec. 21 of R.A. No. 9165 to ensure the identity and integrity of the seized drugs and to prevent tampering thereof. As stated in *People v. Acub*,²⁷ in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.²⁸

Verily, in the special cases of seizure of drugs, the statutory provision of Sec. 21 of R.A. No. 9165 should apply and must take precedence in contrast to the general remedial provision of Sec. 8, Rule 126 of the Revised Rules of Criminal Procedure.

On the other hand, Sec. 21(a) of the IRR of R.A. No. 9165 supplements Sec. 21(1) of the said law, viz.:

(a) The apprehending officer/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

²⁵ *Solid Homes, Inc. v. Payawal*, 257 Phil. 914, 919 (1989).

²⁶ *Bernabe v. Alejo*, 424 Phil. 933, 941 (2002).

²⁷ G.R. No. 220456, June 10, 2019, citing *People v. Jaafar*, 803 Phil. 582, 591 (2017); citations omitted.

²⁸ *Id.*

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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 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.

From the foregoing, **the only recognizable difference between seizure and confiscation of drugs pursuant to a search warrant and a buy-bust operation is the venue of the physical inventory and taking of photographs of the said drugs.** In *People v. Lazaro*,²⁹ the Court explained that the venue of physical inventory is not limited to the place of apprehension. The venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.

When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served. In contrast, when the drugs are seized pursuant to a buy-bust operation or a warrantless seizure, then these can be conducted at the nearest police station or at the nearest office of the apprehending team. Other than that, there is no other difference between seizure and confiscation of drugs with a search warrant and without it (such as a buy-bust operation). **Consistent with Sec. 21 of R.A. No. 9165, its IRR does not suspend the application of the chain of custody rule simply because the drugs were seized pursuant to a search warrant.** Thus, the witnesses under the law are required to be present. Again, the only difference is with respect to the venue of the inventory and taking of photographs.

Notably, Sec. 21 of R.A. No. 9165 was recently amended by R.A. No. 10640, which became effective on July 15, 2014. In the amendment, the apprehending team is now required to conduct a physical inventory of the seized items and to photograph the same **(1) in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy

²⁹ G.R. No. 229219, November 21, 2018.

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thereof.³⁰ In this case, as the alleged crime was committed on June 19, 2003, the provisions of Sec. 21 of R.A. No. 9165, prior to its amendment, and its IRR shall apply.

Further, Sec. 21 and its IRR provide for a saving clause in case of noncompliance with the chain of custody rule. This saving clause applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.** The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – with moral certainty – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.³¹ **Again, this saving clause does not distinguish between cases with a search warrant and a buy-bust operation.** Whether drugs were seized in a buy-bust operation or in the implementation of the search warrant, the prosecution can invoke the saving clause provided that there is justifiable reason for noncompliance with the procedural lapses and the integrity and evidentiary value of the seized drugs are established.

Jurisprudence has consistently applied Sec. 21 of R.A. No. 9165 in the implementation of a search warrant

A review of the jurisprudence shows that even when the drugs are seized and confiscated pursuant to a search warrant, the Court still applies Sec. 21 of R.A. No. 9165 to determine whether the *corpus delicti* was properly established.

In *People v. Gayoso*,³² the police officers therein secured a search warrant to search the house of the accused. Upon implementing the search warrant, they saw a tin foil containing several sachets of suspected *shabu*. However, the apprehending team never conducted a physical inventory of the seized items at the place where the warrant was served in the presence of a representative of the DOJ, nor did it photograph the same in the presence of accused after their initial custody and control of the said drug, and after immediately seizing and confiscating the same, violating Sec. 21 of R.A. No. 9165. The saving clause under the IRR was not applied because the prosecution did not offer any explanation for noncompliance and the integrity and evidentiary value of the seized items were not preserved. Thus, the

³⁰ *People v. dela Rosa*, 822 Phil. 885, 899 (2017).

³¹ *People v. Carlit*, 816 Phil. 940, 951-952 (2017).

³² 808 Phil. 19 (2017).

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accused therein was acquitted. Verily, even if the drugs are seized pursuant to a search warrant, the Court dutifully applies Sec. 21 of R.A. No. 9165 to determine compliance with the chain of custody rule.

In *Cunanan v. People*,³³ a search warrant was secured by the police operatives in searching the bedroom and vehicle of the accused therein. They found several sachets of suspected *shabu*. However, the apprehending team did not comply with the provisions of Sec. 21 of R.A. No. 9165 because there was no representative of the DOJ present during the physical inventory and taking of photographs of the seized items. Further, there were several unexplained discrepancies in the marking and the numbering of the confiscated items, which resulted in failure to comply with the chain of custody rule. As a result, the Court acquitted the accused. Again, Sec. 21 of R.A. No. 9165 was observed in the confiscation of the seized drugs in the implementation of the search warrant.

Similarly, in *Dizon v. People*,³⁴ the Court acquitted the accused therein of the drug charges because of the police operatives' failure to comply with Sec. 21 of R.A. No. 9165 in the implementation of a search warrant. In said case, the police officers implemented a warrant in the house of the accused. Several sachets of suspected *shabu* were confiscated but the inventory and taking of photographs were only conducted in the presence of the accused and two (2) *barangay kagawads*. The Court ruled that there was noncompliance with Sec. 21 because there were no media and DOJ representatives present during the inventory. Likewise, the saving clause did not apply because they failed to provide justifiable reason for their failure to secure the attendance of these witnesses. The Court underscored that lapses in the procedure under Sec. 21 of R.A. No. 9165, when left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* have been compromised.

On the other hand, in *Derilo v. People*,³⁵ a search warrant was also implemented in the residence of the accused therein. However, the police operatives failed to follow the chain of custody rule under Sec. 21 of R.A. No. 9165. They failed to immediately and consistently mark the seized items and there was doubt as to who actually handled the said drugs when these were confiscated. Due to the noncompliance with the chain of custody rule under Sec. 21 of R.A. No. 9165, the accused was acquitted.

³³ G.R. No. 237116, November 12, 2018.

³⁴ G.R. No. 239399, March 25, 2019.

³⁵ 784 Phil. 679 (2016).

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In the same manner, in *People v. Dumaplin*,³⁶ the police officers secured a search warrant against the accused therein. They first conducted a buy-bust operation and then implemented the search warrant in the accused's residence. The Court ruled that the police officers utterly failed to comply with the chain of custody rule under Sec. 21 of R.A. No. 9165. It was underscored that the prosecution failed to explain how the purported seized drugs were transferred from one person to another until these were presented in court. The handling of the seized drugs was also unexplained. For failure to comply with Sec. 21, the accused was acquitted.

Verily, jurisprudence has consistently held that in the seizure and confiscation of seized drugs in the implementation of a search warrant, the Court religiously applies Sec. 21 of R.A. No. 9165, as amended, including the mandatory presence of the required witnesses during the physical inventory and taking of photographs of the seized drugs, and the preservation of the integrity and evidentiary value of the same in applying the saving clause under the IRR. Notably, these cases **never** stated that Sec. 8, Rule 126 of the Revised Rules of Criminal Procedure on the implementation of search warrants prevails over Sec. 21 of R.A. No. 9165. As a result, Sec. 21 must always be complied with regardless of whether the seizure and confiscation of the seized drugs are a result of a buy-bust operation or during the implementation of a search warrant.

*Rationale for Sec. 21 of
R.A. No. 9165*

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. 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. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails.³⁷

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. Congress deemed it wise to

³⁶ 700 Phil. 737 (2012).

³⁷ *Valencia v. People*, 725 Phil. 268, 277 (2014); emphasis supplied.

incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable.³⁸ R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the *corpus delicti*. [Through] proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.³⁹

Sec. 21 of R.A. No. 9165 was originally envisioned by the legislature to serve as a **protection for the accused from malicious imputations of guilt by abusive police officers**. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to [it] as evidence of the crime are indeed the illegal drugs seized from the accused.⁴⁰ By its very nature, Sec. 21 demands strict compliance. Compliance cannot give way to a facsimile; otherwise, the purpose of guarding against tampering, substitution, and planting of evidence is defeated. Proof that strict compliance is imperative is how jurisprudence disapproves of the approximation of compliance.⁴¹

Even the saving clause under the IRR of Sec. 21, “as an exception to the rule of strict compliance, is not a talisman that the prosecution may invoke at will. Instead, it may only be appreciated in the prosecution's favor if the latter shows a valid reason for not observing the procedure laid out in Section 21.”⁴²

The ultimate purpose of Sec. 21 of R.A. No. 9165 is to prevent the tampering, alteration, and substitution of the seized drugs, which are not readily identifiable, and to serve as a protection against abusive police officers. **The evil sought to be prevented by Sec. 21 of R.A. No. 9165 exists both in the implementation of a search warrant and in the conduct of a buy-bust operation.** In both cases, the law requires that the identity and integrity of the confiscated items be maintained so as to prevent the malicious practice of police officers in tampering, altering, and substituting the said items. Thus, the chain of custody rule under Sec. 21 of R.A. No. 9165, including the mandatory witnesses during the physical inventory and taking

³⁸ *People v. Magat*, 588 Phil. 395, 405-406 (2008).

³⁹ *Id.* at 406.

⁴⁰ *People v. Sultan*, 637 Phil. 528, 537 (2010); emphasis supplied

⁴¹ *People v. Royol*, G.R. No. 224297, February 13, 2019.

⁴² *People v. Acub*, supra note 27.

of photographs of the seized drugs, must be applied when there is a confiscation of purported drugs in the implementation of a search warrant.

Again, under the IRR of R.A. No. 9165, the only difference between a search warrant and a warrantless search with regard a buy-bust operation is the venue of the conduct of the physical inventory and taking of photographs. The venue of physical inventory is not limited to the place of apprehension. The venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.⁴³

However, other than the venue of the conduct of the physical inventory and taking of photographs, the law, its IRR, and jurisprudence consistently require that Sec. 21 of R.A. No. 9165 be applied uniformly, whether the confiscation of the drugs was pursuant to an implementation of a search warrant or through a warrantless search in a buy-bust operation, to give life to the purpose of the law.

Even the DOJ and the Philippine National Police (*PNP*) recognize that Sec. 21 of R.A. No. 9165 must be applied in both confiscation of seized drugs in the implementation of a search warrant or a buy-bust operation. The 2011 *PNP Criminal Investigation Manual* states:

5.2.3. INVESTIGATION OF CASES INVOLVING PLANNED
[OPERATIONS]

a. Buy-Bust Operation

1. All warrantless arrest, search, and seizures to be undertaken by PNP member/anti-drug units shall be in accordance with Section 5, paragraphs (a) and (b), Rule 113, Section 13, Rule 126 of the Rules of Court, respectively and relevant Supreme Court Decisions.
2. The Team Leader shall see to it that prior reports have been submitted which may include but not limited to the following classified reports:
 - a) Summary of Information of the Target/s
 - b) Special Reports
 - c) Surveillance Report
 - d) Contact Meeting Report

⁴³ *People v. Bombio*, G.R. No. 234291, October 3, 2018.

- e) Development Report
3. The following shall be strictly observed by the Arresting Officers/Investigator-on-Case during the conduct of Buy-Bust Operations:
- a) Arrested person shall be informed of the nature of his arrest and be apprised of his constitutional rights (Miranda Doctrine);
 - b) The dangerous drugs, CPECs, paraphernalia and equipment as the case may be, shall be immediately seized and taken into custody of the apprehending team;
 - c) The seizing officer shall, as far as practicable, conduct the actual physical inventory, take photographs and properly mark the items or articles seized or confiscated in the place of seizure and in the presence of the arrested person/or his counsel or representative and representatives from the Department of Justice, MEDIA and any elected government officials who shall be required to sign on the inventory and given each a copy thereof. (Observed the rule on chain of custody and DOJ Department Circular No. 3 in compliance with Prescribed Procedures on the Seizure and Custody of Dangerous Drugs.)

NOTE: DOJ Department Circular No. 3 para 2 and 3 stated that:

Paragraph 2. All anti-drug operations require physical inventory and photography of seized and confiscated drugs. – **The mandatory nature of the requirements under Section 21 (1), Article II of RA 9165 and its IRR does not distinguish between warrantless seizures and those made by virtue of a warrant. The difference merely lies in the venues of the physical inventory and photography of the seized items.** Thus:

1. In seizures covered by search warrants, the physical inventory and photography must be conducted in the place where the search warrant was served;
2. In case of warrantless seizures such as a buy-bust operation, the physical inventory and photography shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and

photography of the items at the place where they were seized.

Paragraph 3. In case of non-observance of the prescribed procedure, the apprehending law enforcement officers must present an explanation to justify the same, and must prove that the integrity and evidentiary value of the seized items are not tainted. – While lapses in the handling of confiscated evidence in anti-drug operations may be countenanced, these lapses must be duly recognized and explained in terms of their justifiable grounds. The integrity and evidentiary value of the evidence seized must also be shown to have been preserved.⁴⁴

X X X X

k) Search and Seizure by Virtue of Warrant

The following rules and procedures shall govern the responsibility of anti-drug units in the application and implementation of a **Search Warrant (SW)**.

- 1) All applications for a Search Warrant before the Local Courts shall be approved by the Regional, Provincial, District, City Directors, Chief of Police and NOSU Directors as the case maybe, or their duly designated authority. However, if there is reasonable ground to believe that the application in the local Courts shall compromise the operation, the applications for SW for violation of RA 9165 may also be filed before the Executive Judges of Manila and Quezon City as the case maybe with the personal endorsement of the C, PNP or TDIDM as provided for under Supreme Court A.M. No 08-4-4-SC, dated July 7, 2009.
- 2) Upon approval by the Chief of Office concerned, the application shall be filed to the Court of jurisdiction during office hours. However, the application may be filed after office hours, during Saturdays and Sundays and Holidays provided, the applicant shall certify and state the facts under oath, to the satisfaction of the Judge, that its issuance is urgent as provided under Supreme Court Administrative Circular No 19 dated August 4, 1987. In view of this, concerned units are encouraged to coordinate with and acquire

⁴⁴ 2011 PNP Criminal Investigation Manual, pp. 54-55.

the addresses and contact numbers of the Judges in their respective jurisdictions.

- 3) Pursuant to DOJ Department Circular No. 3 para 1 (Compliance with Prescribed Procedures on the Seizure and Custody of Dangerous Drugs) the following shall be observed:

Paragraph 1. Physical inventory and photography of seized and confiscated drugs are required in anti-drug operations. – Section 21 (1), Article II of Republic Act (RA) 9165 entitled “Comprehensive Dangerous Drugs Act of 2002” and its Implementing Rules and Regulation (IRR) require that after seizure and confiscation of drugs, police officers shall immediately physically inventory and photograph the same in the presence of the following persons:

- (a) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel;
- (b) a representative from the media;
- (c) a representative from the Department of Justice (must be Prosecutor); and
- (d) any elected public official who shall sign, and shall be given copies of the inventory.⁴⁵ (emphases and underscoring supplied)

Based on the foregoing, the law, its IRR, jurisprudence, and even the law enforcement agencies equally apply Sec. 21 of R.A. No. 9165 in seizures of dangerous drugs both in pursuant to a search warrant and in a warrantless search like a buy-bust operation.

Improper inventory; no photographs of the seized drugs; no justifiable reason provided

The Court finds that the police officers in this case committed several violations of Sec. 21 of R.A. No. 9165. *First*, the required witnesses under Sec. 21 of R.A. No. 9165 were not present. Manifestly, when the police officers conducted the inventory of the items seized from the house of petitioner, no media and DOJ representatives were present. Only petitioner,

⁴⁵ Id. at 56-57.

the *barangay* councilor and *tanod* were present during the inventory. Under the law, the presence of the accused, a representative from the media and the DOJ, **and** any elected public official is mandatory because the law requires them to sign the copies of the inventory and to be given a copy thereof.

Second, the seized items were not photographed by the police officers. The records are bereft of any photographs of the said items. Sec. 21 of R.A. No. 9165 is very clear that the apprehending officers should immediately photograph the seized items in the presence of the required witnesses.

Third, neither can the prosecution apply the saving clause under Sec. 21 of R.A. No. 9165. To reiterate, the saving clause applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.**⁴⁶

In this case, the prosecution failed to give any justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165. SPO1 Tesoro testified that:

Defense Counsel
[Atty. Serbise]

Q : You are charging the accused based on [R.A. No.] 9165, the Comprehensive Dangerous Drugs Act. My question now is when you made the inventory in this case, did you photograph the accused?

[SPO1 Tesoro]

A : No.

Q : When you made the inventory, was there media, DOJ personnel, the lawyer of the accused or his representative?

A : No.

Q : **Are you trying to impress upon us that you did not follow faithfully the procedures in [R.A. No.] 9165?**

A : **That's our practice.**⁴⁷ (emphasis supplied)

It must be emphasized that the duty imposed by the law regarding the inventory of the seized items and taking of photographs of the same is

⁴⁶ *People v. Carlit*, supra note 31.

⁴⁷ TSN, November 9, 2005, pp. 18-19.

mandatory. It cannot simply be set aside by the traditional practice of the law enforcers.

Further, a surveillance operation was conducted prior to the enforcement of the search warrant for the alleged drugs; it was not conducted at the spur of the moment. Thus, the police officers had sufficient opportunity to secure the mandatory witnesses for the inventory and photography of the seized drugs. They, however, could not offer any valid excuse for the noncompliance with Sec. 21 of R.A. No. 9165.

The integrity and evidentiary value of the seized items were not preserved

Aside from recognizing the procedural lapses and providing a justifiable ground for the noncompliance, it is also required that the prosecution establish that the integrity and evidentiary value of the seized items were preserved in order to substantially comply with Sec. 21 of R.A. No. 9165.⁴⁸ In *People v. Salvador*,⁴⁹ the Court explained how the integrity and evidentiary value of the confiscated items are preserved, to wit:

The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. x x x

There are links that must be established in the chain of custody in a buy-bust situation, namely: "*first*, 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."⁵⁰

In this case, it is evident that the integrity and evidentiary value of the seized items were not preserved for the following reasons:

First, the markings on the seized items are marred by dubious circumstances. Marking of the seized items is crucial in proving the chain of custody because it serves to separate the marked evidence from the *corpus* of all other similarly related evidence from the time they are seized until they are

⁴⁸ *Ramos v. People*, G.R. No. 227336, February 26, 2018, 856 SCRA 459, 478-479.

⁴⁹ 726 Phil. 389 (2014).

⁵⁰ *Id.* at 405.

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disposed of at the end of the proceedings, thus, preventing switching, planting or contamination of evidence.⁵¹

According to SPO2 Matillano, they marked the three (3) packets with "RT," initials of petitioner. However, he could not explain why the other sachet of *shabu* was marked "IT," which were the initials of Ivy, petitioner's wife, even though she was not present at that time, to wit:

[Pros. Carisma:]

Q : Who else was inside this closed room at the second level, if any, when [petitioner] opened the door?

[SPO2 Matillano]

A : His children.

Q : How many?

A : One or two children. I could not ascertain the number.

Q : What about the wife, was she around?

A : No, sir.

x x x x⁵²

Q : On Exh. C, there is a marking of capital letters IT, whose markings are these?

A: Ivy Tumabini.

Q : Who is Ivy Tumabini?

A : The wife of [petitioner].

Q : I thought you said the wife was not around when you began implementing the search warrant. How is it that her initials appear on Exh. C?

A : I don't know because it was Tesoro who marked that.⁵³
(emphasis supplied)

However, when SPO1 Tesoro testified, he never explained why he marked the one (1) sachet of *shabu* with "IT" even though Ivy was not present at the time of the search of petitioner's house.

Second, aside from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or

⁵¹ *People v. Dahil*, 750 Phil. 212, 232 (2015).

⁵² TSN, October 20, 2004, p. 7.

⁵³ *Id.* at 10-11.

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container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.⁵⁴ The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage.⁵⁵

Here, there was no evidence presented on how the seized items were secured upon confiscation. It is not even clear who safeguarded the seized items from the time of confiscation up to its transfer to the investigating officer and until it reached the laboratory for examination.

Further, the second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it is the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.⁵⁶ Noticeably, the investigating officer who handled the seized items was not identified. Thus, there exists a missing link in the chain.

Third, from the investigating officer, the illegal drug is delivered to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.⁵⁷

In this case, the forensic chemist was Insp. David Alexander Tan Patriana (*Insp. Patriana*). However, he did not testify in court. Instead, there was merely a stipulation that SPO1 Tesoro delivered the request for laboratory examination with the specimen to the PNP Crime Laboratory.⁵⁸ Notably, it was not established as to who received the seized items from SPO1 Tesoro at the laboratory. In addition, it was also not stated whom Insp. Patriana received the seized items from or how the seized drugs were stored until presented before the RTC.

⁵⁴ *People v. Martinez*, 652 Phil. 347, 377 (2010), citing *People v. Sanchez*, 590 Phil. 214, 242 (2008).

⁵⁵ *Ramos v. People*, supra note 48, at 481-482.

⁵⁶ *People v. Dahil*, supra note 51, at 235.

⁵⁷ *Id.* at 236.

⁵⁸ Records, (Criminal Case No. DU-10273), p. 49.

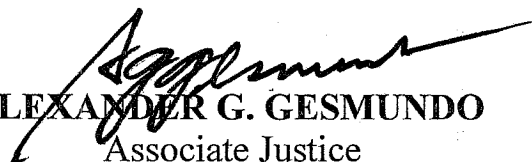
In *People v. Gutierrez*,⁵⁹ there were also inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized *shabu* between the turnover by the investigator to the chemist and before its presentation in court. Thus, since there was no showing that precautions were taken to ensure that there was no change in the condition of the drugs and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted.

Due to the prosecution's failure to prove that the integrity and evidentiary value of the *corpus delicti* were preserved, petitioner cannot be convicted of the crime of illegal possession of dangerous drugs.

WHEREFORE, the petition is **GRANTED**. The January 28, 2016 Decision and the April 7, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 02289 are hereby **REVERSED** and **SET ASIDE**. Romeo Tumabini is **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and to inform this Court of the date of the actual release from confinement of Romeo Tumabini within five (5) days from receipt hereof.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

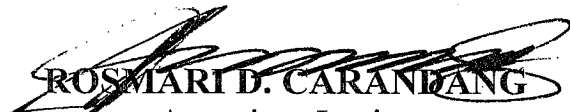
⁵⁹ 614 Phil. 285 (2009).

WE CONCUR:

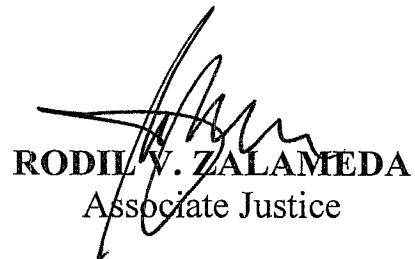


MARVIC M.V.F. LEONEN


Associate Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



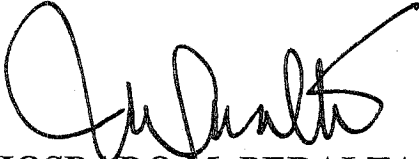
MARVIC M.V.F. LEONEN

Associate Justice
Chairperson, Third Division

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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.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY


RUMAR D. PASION
Deputy Division Clerk of Court
Third Division

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