

Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

The present case stemmed from two (2) separate Informations⁵ filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, otherwise known as “Comprehensive Dangerous Drugs Act of 2002,” the accusatory portions of which read:

Criminal Case No. 2016-996 (Illegal Sale of Dangerous Drugs)

That on or about the fourteenth (14th) day of June 2016, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized[,] did then and there[,] willfully, unlawfully, and feloniously deliver and sell to PO3 Sherwin G. Tan P300.00 (SN-DE994536, WA251104 and KN886910) worth of Methamphetamine Hydrochloride[,] otherwise known as “*shabu*,” a dangerous drug weighing One Hundred Six Thousandths (0.106) of a gram placed in one (1) heat-sealed transparent plastic sachet, with marking “Exh A ST BCS.”

CONTRARY TO LAW.⁶

Criminal Case No. 2016-997 (Illegal Possession of Dangerous Drugs)

That on or about the fourteenth (14th) day of June 2016, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized[,] did then and there[,] willfully, unlawfully, and feloniously have in his effective possession and control four (4) heat-sealed transparent plastic sachets, each containing Methamphetamine Hydrochloride[,] otherwise known as “*shabu*,” a dangerous drug, with following markings and weight:

B1 (Exh B ROJ BCS) = 0.108 gram
B2 (Exh B-1 ROJ BCS) = 0.175 gram
B3 (Exh B-2 ROJ BCS) = 0.143 gram
B4 (Exh B-3 ROJ BCS) = 0.093 gram
Total = 0.519 gram

⁴ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

⁵ Criminal Case No. 2016-996 is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (see *id.* at 46); while Criminal Case No. 2016-997 is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165 (see *id.*).

⁶ *Rollo*, p. 46.

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said accused not having the corresponding license or prescription to possess said dangerous drug.

CONTRARY TO LAW.⁷

The prosecution alleged that at around 2:30 in the morning of June 14, 2016, officers of the City Anti-Illegal Drug Special Operations Team (CAIDSOT) successfully conducted a buy-bust operation against Pulgado at the Caltex Station in front of a 7/11 Convenience Store along Arthur Street, West Bajac-Bajac, Olongapo City, during which, one (1) heat-sealed transparent plastic sachet containing 0.108 gram of white crystalline substance was recovered from him by Police Officer 3 Sherwin Tan (PO3 Tan). After Pulgado's arrest, Police Officer 2 Rexyboy Jugatan (PO2 Jugatan) frisked him and recovered four (4) more heat-sealed transparent plastic sachets containing a combined weight of 0.519 gram of the same substance from his possession. The police officers then brought Pulgado to the police station in Brgy. Barretto, Olongapo City, and thereat, PO3 Tan and PO2 Jugatan placed their initials on the seized items and turned them over to Police Officer 2 Benedick C. Sarmiento (PO2 Sarmiento) for marking, inventory, and photography in the presence of Pulgado, members of the CAIDSOT, Barangay Kagawad Dave Antonio (Brgy. Kgd. Antonio), and media representative Jeffrey B. Valdez of *Brigada Siete*. Thereafter, the seized items were taken to the Philippine National Police Crime Laboratory where, after examination by Police Senior Inspector Maria Cecilia G. Tang (PSI Tang), their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.⁸ Thereafter, PSI Tang turned over the specimens to the prosecution office for safekeeping until their presentation during trial.⁹

In defense, Pulgado denied the charges against him, as well as the ownership of the items purportedly seized from him. He claimed that on the day of the alleged incident, at around 7:00 in the evening, he was on his way home from the public market when he was arrested for allegedly stealing at the Caltex Station.¹⁰

In a Decision¹¹ dated October 25, 2017, the RTC found Pulgado **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced him to suffer the following penalties: (a) in Criminal Case No. 2016-996, for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of P500,000.00 plus costs without subsidiary imprisonment in case of insolvency; and (b) in Criminal Case No. 2016-997, for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for the indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum,

⁷ Id.

⁸ See id. at 4-6; 46-47.

⁹ See CA *rollo*, p. 48.

¹⁰ See id. at 51.

¹¹ Id. at 46-52.

and to pay a fine in the amount of ₱300,000.00 plus costs, without subsidiary imprisonment in case of insolvency.¹² Giving credence to the testimony of PO3 Tan, the RTC held that the prosecution successfully established the elements of the crimes charged, and that the apprehending team adequately preserved the chain of custody over the dangerous drugs from the moment of seizure up to their presentation in court as evidence.¹³ Meanwhile, the RTC found Pulgado's defense of denial untenable for lack of clear and convincing evidence showing that the CAIDSOT did not regularly perform their duties.¹⁴

Aggrieved, Pulgado appealed¹⁵ to the CA, arguing, among others, that he should be acquitted on account of the apprehending team's failure to comply with the chain of custody rule considering that the police officers failed to immediately mark the drug evidence at the place of arrest.¹⁶ However, in a Decision¹⁷ dated June 16, 2020, the CA **affirmed** the RTC ruling with modification, sentencing Pulgado to suffer the following penalties: (a) for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment without eligibility for parole and to pay a fine in the amount of ₱500,000.00; and (b) for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00.¹⁸ Echoing the trial court's findings, it ruled that the prosecution successfully established the elements of the crimes charged.¹⁹ Moreover, it held that the chain of custody rule was duly complied with, and thus, the integrity and evidentiary value of the seized items had been properly preserved.²⁰

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

The Issue Before the Court

The essential issue for the Court's resolution is whether or not Pulgado is guilty beyond reasonable doubt of the crimes charged.

The Court's Ruling

The appeal is meritorious.

¹² Id. at 51-52.

¹³ Id. at 49-50.

¹⁴ See id. at 49 and 51.

¹⁵ See Notice of Appeal dated November 13, 2017; id. at 10.

¹⁶ See Brief of the Accused-Appellant dated November 21, 2018; id. at 34-37.

¹⁷ *Rollo*, pp. 4-23.

¹⁸ Id. at 22.

¹⁹ Id. at 11-16.

²⁰ Id. at 18-21.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,²¹ it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.²² Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.²³

To establish the identity of the dangerous drugs with moral certainty, the prosecution must be able to 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.²⁴ As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.

In *People v. Beran*,²⁵ the Court clarified when the physical inventory and photography shall be conducted. In seizures covered by search warrants, the physical inventory and photography must be conducted at the place where the search warrant was served. On the other hand, in case of warrantless seizures such as a buy-bust operation, the same may be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable.²⁶ Notably, however, RA 9165, as amended by RA 10640, and its Implementing Rules and Regulations (IRR), are silent as to the procedure of marking.

Marking is the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence. This is when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized.²⁷

²¹ The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, 828 Phil. 416, 429 [2018]; *People v. Sanchez*, 827 Phil. 457, 465 [2018]; *People v. Magsano*, 826 Phil. 947, 958 [2018]; *People v. Manansala*, 826 Phil. 578, 586 [2018]; *People v. Miranda*, 824 Phil. 1042, 1050 [2018]; and *People v. Mamangon*, 824 Phil. 728, 735-736 [2018]; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

²² See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*; *People v. Manansala*, *id.*; *People v. Miranda*, *id.*; and *People v. Mamangon*, *id.* at 736. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

²³ See *People v. Gamboa*, 867 Phil. 548, 570 (2018), citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

²⁴ See *People v. Año*, 828 Phil. 439, 448 (2018); *People v. Crispo*, *supra*; *People v. Sanchez*, *supra*; *People v. Magsano*, *supra* at 959; *People v. Manansala*, *supra*; *People v. Miranda*, *supra* at 1051; and *People v. Mamangon*, *supra* at 736. See also *People v. Viterbo*, *supra*.

²⁵ 724 Phil. 788 (2014).

²⁶ *Id.* at 818. See also *People v. Ramirez*, 823 Phil. 1215, 1225 (2018).

²⁷ *People v. Ramirez*, *id.*

Thus, in *People v. Sanchez*,²⁸ the Court ruled that marking should be done in the presence of the apprehended violator **immediately upon confiscation** to truly ensure that they are the same items that enter the chain of custody. This is considering that marking after seizure is the starting point in the custodial link and is vital to be immediately undertaken because succeeding handlers of the specimens will use the markings as reference. Marking serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, planting, or contamination of evidence.²⁹

On this note, it must be emphasized that compliance with the chain of custody procedure is strictly enjoined as the same has been regarded “not merely as a procedural technicality but as a matter of substantive law.”³⁰ This is because “[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.”³¹ Thus, in the case of *People v. Lim*³² (*Lim*), the Court *En Banc* definitively held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 of RA 9165, as amended, in such a way that it must acknowledge and justify any perceived deviations therefrom. This is especially true in cases where the quantity of the seized drugs is miniscule, since it is highly susceptible to planting, tampering, or alteration of evidence,³³ as in this case.³⁴

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.³⁵ As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁶ The foregoing is based on the saving clause found in Section 21 (a),³⁷ Article II of the IRR of RA 9165, which was adopted into the text of RA 10640.³⁸ It

²⁸ 590 Phil. 214 (2008).

²⁹ See *id.*

³⁰ See *People v. Miranda*, *supra* note 21. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, *supra* at 1038.

³¹ See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, *id.*

³² G.R. No. 231989, September 4, 2018.

³³ See *id.*

³⁴ In Criminal Case No. 10-274933, the suspected *shabu* seized from accused-appellant was 0.022 gram, while in Criminal Case No. 10-274934, the suspected *shabu* seized from accused-appellant was 0.020 gram (See *rollo*, p. 2-3).

³⁵ See *People v. Sanchez*, *supra* note 28.

³⁶ See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁷ Section 21 (a), Article II of the IRR of RA 9165 pertinently states: “**Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**”

³⁸ Section 1 of RA 10640 pertinently states: “**Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the**

should, however, be emphasized that for the saving clause to apply, the **prosecution must duly explain the reasons behind the procedural lapses,³⁹ and that the justifiable ground for non-compliance must be proven as a fact,** because the Court cannot presume what these grounds are or that they even exist.⁴⁰

Thus, when it comes to the marking requirement, the standard rule is that it should be done ***immediately after confiscation*** of the seized item from the accused. Nonetheless, marking said item/s at any other point in time may be allowed, but only if there are justifiable reasons therefor.

In this case, there appears to be a deviation from the chain of custody rule as records show that the marking of the items purportedly seized from Pulgado was performed only at the police station. Notably, while the failure of the apprehending team to strictly comply with the immediate marking requirement would not *ipso facto* render the seizure and custody over the items as void, it is nevertheless incumbent upon the prosecution to account for such deviation by presenting a justifiable reason therefor. Here, the prosecution did not duly explain such deviation, and merely insisted that the apprehending team complied with the marking requirement by conducting the same at the police station. This may be gleaned from the testimony of PO3 Tan, to wit:

[Prosecutor Melani Fay V. Tadili]: After you gave the money to the accused, what happened next?

[PO3 Tan]: I executed the pre-arranged signal by removing my bull (*sic*) cap, ma'm (*sic*).

Q: What happened next?

A: And when I felt that somebody from our team was approaching and I saw PO2 Jugatan frisking Alias "Maco", we introduced ourselves as police officers, ma'm (*sic*).

Q: Who frisked the accused?

A: PO2 Jugatan, ma'm (*sic*).

x x x x

Q: And what happened next?

A: We introduced ourselves as police officers after PO2 Jugatan informed him of the Miranda doctrine, we brought him to the Police Station, ma'm (*sic*).

Q: Where is the police station?

A: At our Office at Police Station 1, ma'm (*sic*).

Q: Who was in possession of the sachets of shabu sold to you by the accused from the place of your operation to the Station?

seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

³⁹ *People v. Almorfe*, supra note 36.

⁴⁰ *People v. De Guzman*, 630 Phil. 637, 649 (2010).

A: I was holding it, ma'm (*sic*).

Q: How about the other sachets of shabu recovered by Police Officer Jugatan, who was in possession of the same?

A: In his possession, ma'm (*sic*).⁴¹

x x x x

Q: Do you know what PO2 Sarmiento do (*sic*) with the sachets of shabu during your inventory?

A: Yes, ma'm (*sic*).

Q: What?

A: We put markings, ma'm (*sic*).

Q: After the inventory?

A: Before he prepared the inventory we put our initials, ma'm (*sic*).

Q: How were you able to put your initials on the sachets of shabu sold to you when you said that the sachets of shabu were already in the possession of PO2 Sarmiento?

A: Before I turn[ed] over to him, I already put my initials, ma'm (*sic*).

Q: What initials did you place?

A: ST, ma'm (*sic*).

Q: After marking the sachets of shabu with your initials, what did you do with it?

A: I hand[ed] it over to PO2 Sarmiento, ma'm (*sic*).

Q: And do you know what PO2 Sarmiento do with it?

A: He also put his initials, ma'm (*sic*).⁴²

In view of the aforementioned unjustified non-compliance with the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the drugs purportedly seized from Pulgado were compromised, thereby warranting his acquittal.

As a final word, the Court, in *People v. Miranda*,⁴³ issued a definitive reminder to prosecutors when dealing with drugs cases. It declared that “[since] the [procedural] requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence’s integrity and evidentiary value, albeit the same are raised only for

⁴¹ *Rollo*, p. 14.

⁴² *Id.* at 19-20.

⁴³ *Supra* note 21.

the first time on appeal, or even not raised, become apparent upon further review.”⁴⁴

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 16, 2020 of the Court of Appeals in CA-G.R. CR HC No. 11074 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marko Pulgado y Magno a.k.a. “Mako” is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections, Muntinlupa City is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General is **DIRECTED** to inform this Court the action he/she has taken within five days from receipt of this Decision.


Let entry of judgment be issued immediately.


SO ORDERED.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

⁴⁴ See id. at 1059.

WE CONCUR:


RAMON PAUL L. HERNANDO
 Associate Justice



HENRI JEAN PAUL B. INTING
 Associate Justice


SAMUEL H. GAERLAN
 Associate Justice


JAPAR B. DIMAAMPAO
 Associate Justice

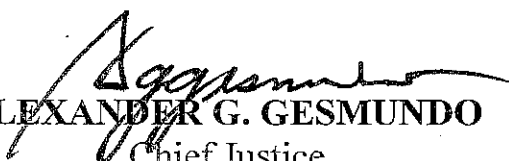
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
 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.


ALEXANDER G. GESMUNDO
 Chief Justice