EN BANC

G.R. No. 250307 – *People of the Philippines,* *Paintiff-appellee* ***v. Robert Uy y Ting,*** *Accused-appellant.*

Promulgated:

February 21, 2023

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CONCURRENCE and DISSENT

LAZARO-JAVIER, *J.*:

The *ponencia* acquits appellant Robert Uy *y* Ting for failure of the prosecution to establish the elements of illegal possession of dangerous drugs,[1] and due to various lapses in the chain of custody.[2] According to the *ponencia*, the law makes no distinction between large or small amounts of seized drugs in applying the procedural safeguards in Section 21 of Republic Act No. 9165.[3]

I concur in the result, and in the finding that the elements of Section 11 charge were not established as regards appellant.

As it does, the *ponencia* aptly rules that appellant must be acquitted of the Section 11 charge due to the prosecution's failure to establish the elements of the offense.[4] As appellant correctly points out, it was impossible for him to possess—either actually or constructively—the drugs seized from the Mapulang Lupa warehouse leased by his employer, Willie Gan. He emphasizes that when the drugs were seized, he was already in the custody of law enforcement operatives.[5]

Actual possession entails immediate possession and control.[6] On the other hand, there is constructive possession when the drug is under the dominion and control of the accused or when he has the right to exercise

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1 *Ponencia*, pp. 16-17.
2 *Id.* at 18-32.
3 *Id.* at 19.
4 *Id.* at 17.
5 *People v. Trinidad*, 742 Phil. 347 (2014) [Per *J.* Perez, First Division].
6 *Id.* at 357.

dominion and control over the place where it is found.[7] Exclusive possession or control is not necessary. An accused cannot avoid conviction even if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[8]

Control is defined as the power or authority "to manage, direct, superintend, restrict, regulate, govern, administer, or oversee"[9] while **dominion** pertains to "the right [to] property and the right of possession or use."[10] Certainly, appellant who was employed as Willie Gan's driver, had no such control or dominion over the warehouse. Hence, possession of the drugs in the warehouse can be ascribed only to Willie Gan, the lessee of the property, and not to appellant.

With due respect, however, I have reservations on the *ponencia*'s general declaration that "[the] significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the *corpus delicti*, operationalized through strict compliance with the requirements of Section 21 of Republic Act No. 9165."[11]

For me, this pronouncement would set back the drug campaign of the government and detract from the call made by this Court[12] to prosecute the proverbial big fish, instead of the small fry. Drug syndicates, cartels, smugglers, and other big-time drug players would indubitably be emboldened by a pronouncement that regardless of the quantity of drugs seized, law enforcement officers would still have to strictly comply with chain of custody requirements.

This means that regardless of the amount of drugs involved, the rules of the game would remain unchanged. The requirement of strict compliance with the chain custody rule generally observed in the case of "small fry" would also be accorded to the "big fish." Thus, even if drug suppliers choose to deal with one kilogram or one ton or ten tons, every small slip-up on the part of law enforcement would certainly inure to their benefit. In such a scenario, the reward (i.e., the potential profit from drug-dealing) would definitely outweigh the risks (i.e., imprisonment and fine).

While the Court should not, in any way, condone poorly or irregularly conducted drug operations, it is equally true that the Court should not, through its dispositions, create an environment conducive to the proliferation of large-scale drug players.

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7 *Id.*
8 *Id.* at 357-358.
9 Black's Law Dictionary, p. 399 (4th Ed).
10 *Id.* at 574 (4th Ed).
11 *Ponencia*, p. 16.
12 *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

It bears stress that the purpose of Section 21 of Republic Act No. 9165, as amended, is **to protect an accused from malicious imputation of guilt by abusive police officers,**[13] through substitution, planting, tampering, and switching of drug evidence.[14] More, the Court expounded that Section 21 must be strictly complied with in cases involving miniscule amounts of drugs since they are, by their fungible nature, susceptible to substitution, planting, tampering, and switching.[15]

Therefore, every application of Section 21 must proceed from a **two-tiered analysis**. The first tier concerns itself with the *applicability* of the chain of custody rule. Has the accused put forth a **substantiated claim** that his or her prosecution was precipitated by a malicious imputation of guilt by abusive police officers? The second tier then determines the *degree* of application. Are the drugs involved of such a **miniscule or negligible quantity** such that they are easily substituted, planted, switched, or tampered and hence would require a strict application of Section 21?

On the first tier, *People v. O'Cochlain*[16] is in point:

> Where a defendant identifies a defect in the chain of custody, the prosecution must introduce sufficient proof so that the judge could find that the item is in substantially the same condition as when it was seized, and may admit the item if there is a reasonable probability that it has not been changed in important respects. **However, there is a presumption of integrity of physical evidence absent a showing of bad faith, ill will, or tampering with the evidence. Merely raising the possibility of tampering or misidentification is insufficient to render evidence inadmissible. Absent some showing by the defendant that the evidence has been tampered with, it will not be presumed that those who had custody of it would do so**. Where there is no evidence indicating that tampering with the exhibits occurred, the courts presume that the public officers have discharged their duties properly.
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> In this jurisdiction, it has been consistently held that considering that the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with, **the defendant bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by the public officers and a presumption that the public officers properly discharge their duties**. *People v. Agulay* in fact ruled that failure to comply with the procedure in Section 21 (a), Article II of the IRR of R.A. No. 9165 does not bar the application of presumption of regularity in the performance of official duties. x x x (Emphasis and underscoring supplied)

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13 See *People v. Jimenez*, G.R. No. 251576 (Notice), June 21, 2021; *People v. Lorenzo*, G.R. No. 233108 (Notice), May 12, 2021; *People v. Dimaano*, 780 Phil. 586, 605 (2016).

14 See *People v. Gonzales*. 708 Phil. 121 (2013) [Per *J.* Bersamin, First Division].

15 See *Mallillin v. People*, 576 Phil. 576, 587-588 (2008) [Per *J.* Tinga, Second Division]; See also *People v. Holgado*, supra.

16 845 Phil. 150, 201-202 (2018) [Per *J.* Peralta, Third Division].

As regards the second tier, we ruled in *Mallillin v. People*:[17]

> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. **In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule.**
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> **Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.** *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible. (Emphases supplied)

Too, Senior Associate Justice Marvic MVF Leonen astutely remarked in *Palencia v. People*[18] that there is an inversely proportional relationship between the quantity of illegal drugs involved and the possibility of tampering or switching—the smaller the amounts of narcotics seized, the higher the probability of tampering and switching will be.[19]

Based on the two-tiered analysis, it is submitted that Section 21 is *inapplicable* to this case. Further, even if Section 21 were to be applied, it need not be applied in the same *degree* reserved for cases involving miniscule amounts of drugs.

First. There is no clear and convincing proof that law enforcement operatives had reason to **falsely charge** appellant or **plant large quantities of illegal drugs** against him. As ordained in *O'Cochlain,* the law enforcement operatives who conducted the operation against appellant are **presumed to**

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17 Supra note 15; See *also People v. Holgado,* supra, at 92.

18 940 Phil. 525 (2020) [Per *J.* Leonen, Third Division].

19 *Id.* at 560.

have conducted said operation regularly. In the homonymous *People v. Uy*,[20] which involved 250.36 grams of *shabu*, the Court stressed, *viz.*:

> No arresting officer would plant such huge quantity of shabu mentioned in the information if only [to] incriminate an individual who was not shown to be of good financial standing and business importance.
>
> If only to show and serve that purpose, a small quantity would be more than sufficient enough and the victim goes to jail just the same. In this case the approximate street value of the shabu confiscated is more or less Two Hundred Thousand (₱200,000.00) Pesos. The possibility of the arresting officer to raise-up that much amount if only to frame-up is quite a remote probability, lest the difficulty and enormous risk of obtaining such kind and quantity of a regulated drug. Furthermore, there was no showing that the arresting officers attempted to extort money or anything of value.

Suppose that the street value of *shabu* had remained unchanged from the year 2000. This means that one gram would approximately be worth PHP798.84[21] and that the 9.38 kilograms seized from appellant in this case had a street value of PHP7,493,119.20.[22]

It is highly incredible that law enforcement operatives would have invested a princely sum to procure several kilograms of *shabu*, when a smaller quantity would suffice to convict appellant.[23] Further, it would have been riskier and more difficult to transport and plant blocks of drugs, compared to small sachets thereof. Thus, Section 21 **need not be applied** in this case, since **the evil sought to be avoided** by the chain of custody rule (i.e., **malicious imputation of guilt through substitution, planting, tampering, and switching of drug evidence), has not been shown to exist.** To stress, when several kilograms of illegal drug are involved, as here, the volume of seized drugs far outweighs, if not totally negates, the possibility for planting, switching, tampering by law enforcement operatives.

Second. Certainly, 9.38 kilograms of *shabu* cannot be considered miniscule by any stretch of the imagination. Hence, Section 21 need not be stringently complied with. The *ponencia*, however, rules otherwise[24] and acquits appellant due to the law enforcement operatives' "complete ignorance" of the requirements of Section 21.[25] The *ponencia* adds that although non-compliance with Section 21 may be justified under the Implementing Rules and Regulations (IRR) of Republic Act No. 9165[26] the prosecution failed to justify said non-compliance.[27]

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20 392 Phil. 773, 795 (2000) [Per *J.* Kapunan, First Division].
21 PHP200,000 ÷ 250.36grams = PHP798.84/gram.
22 9,380grams x PHP798.84 = PHP7,493,119.2
23 *People v. Uy*, supra.
24 *Ponencia*, pp.19-20.
25 *Id.* at 29.
26 IRR of Republic Act No. 9165, Section 21(a).
27 *Ponencia*, pp. 24-26.

Indeed, the IRR of Republic Act No. 9165[28] contains a saving clause, which may be availed of when the prosecution is able to show that: (a) the noncompliance was justifiable, and (b) that the integrity and evidentiary value of the seized drugs was preserved.[29] The **prosecution must explain** why the requirements of Section 21 were not strictly complied with, and prove the justifiable grounds for noncompliance during trial.[30]

Aside from explanation offered for the absence of the necessary witnesses during the November 10, 2003 incident,[31] it does not appear from the *ponencia* that the prosecution attempted to justify the other alleged lapses in the chain of custody. To my mind, however, **the large quantity of illegal drugs seized from appellant constitutes the explanation itself.** To reiterate, **the sheer volume of drugs seized speaks heavily against any allegation of planting, tampering, substitution or switching**. Large quantities of illegal drugs, as discussed above, cannot be presumed to have been planted, substituted, or altered in the absence of any clear and convincing evidence. Stated differently, when large quantities of drugs are discovered, the only logical conclusion is that they are where they are not by any fault or machination attributable to our law enforcement operatives, but because some other person or persons (*i.e.,* the accused) caused them to be there.

Appellant must be acquitted of the Section 5 charge

Even if the discussion in the *ponencia* regarding strict compliance with the chain of custody rule is omitted, the appellant may still be acquitted of violation of Section 5, in relation to Section 26(b) of Republic Act No. 9165. Section 5 of said law provides:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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28 IRR of Republic Act No. 9165, Section 21(a), xxx *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

29 See *People v. Acub*, 853 Phil. 171, 185 (2019) [Per *J.* Leonen, Third Division].

30 *Id.* citing *People v. Almorfe*, 631 Phil. 51 (2010) [Per *J.* Carpio Morales, First Division] and *People v. De Guzman*, 630 Phil. 637 (2010) [Per *J.* Nachura, Third Division].

31 *Ponencia*, pp. 25-26.

In turn, Section 26(b) states:

> Section 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:
>
> x x x x
>
> (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
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> x x x x

The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery.[32] The offense may be committed even without consideration.[33]

Here, the first and third elements are absent because appellant was unable to pass possession of the dangerous drug to another. As found by the Court of Appeals:

> PSI De Chavez testified that they followed the car until it entered a warehouse in Mapulang Lupa, Valenzuela City. According to PSI De Chavez, he parked his vehicle 15 meters away from said warehouse then waited for the car to come out. PSI De Chavez stated that the car proceeded to the pick-up area and PSI De Chavez approached the car because it did not park on the agreed upon spot. PSI De Chavez averred that he saw a box inside the car when its driver was about to get out. PSI De Chavez alleged that he instructed PO1 Richel Creer to get the box and when they opened it, five (5) plastic bags of white crystalline substance were inside the box. PSI De Chavez claimed that they arrested the driver of the car who later identified himself as Robert Uy.

Thus, before any delivery could be made—if such delivery was indeed the intent of appellant—the apprehending officers already intercepted him. Without the overt act of delivery or any other evidence showing his state of mind (i.e., his alleged intent to deliver the drugs), the Court cannot simply presume that he had intended to deliver the seized drugs to the law enforcement operatives. More, whether he delivered the drugs knowingly could not be resolved because no such delivery was made.

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32 *People v. Romero* G.R. No. 248785 (Notice), October 7, 2020 citing *People v. Maongco*, 720 Phil. 488, 502 (2013) [Per *J.* Leonardo-De Castro, First Division].

33 *Id.*

Implications

If we are to unreservedly accept the rule espoused by the *majority*, it is highly probable that the trend observed in *O'Cochlain* would continue, *viz.*:

> It is unfortunate that rigid obedience to procedure on the chain of custody creates a scenario wherein the safeguards supposedly set to shield the innocent are more often than not exploited by the guilty to escape rightful punishment.

Big-time drug players would be able to weaponize Section 21 to defeat prosecutions under Republic Act No. 9165. Instead of being brought to justice, they would be allowed to roam free. Untethered. Without fear.

Worse, requiring strict compliance with Section 21 despite the large quantities of drugs involved would probably result in acquittals at the first instance. Trial judges may be tempted to invoke this case as precedent and acquit persons caught with large quantities of drugs solely based on the **blanket declaration** that **Section 21 should be strictly applied to all cases**, and nothing else. And since a judgment of acquittal is immediately final and executory, the prosecution would be barred from appealing lest the constitutional prohibition against double jeopardy be violated.[34] At that point, the only remedy would be a petition for *certiorari* under Rule 65, but only on extremely limited grounds, namely: (a) whenever there is a violation of the prosecution's right to due process, such as when it is denied the opportunity to present evidence; (b) where the trial is a sham; or (c) when there is a mistrial, rendering the judgment of acquittal void.[35] In effect, drug convictions, which have not been the easiest to secure, would be placed even further away from the grasp of the prosecution.

Further, we might be opening the doors to drug syndicates, and cartels conniving with members of the criminal justice system, (e.g., the prosecution, and law enforcement operatives, among others) to ensure that every case involving their nefarious business interests is tainted with slight violations of the chain of custody rule. As a safeguard though, the *ponencia* harks back to *People v. Lim*[36] which empowers an investigating fiscal to conduct further preliminary investigation to elicit the reasons and justifications for the noncompliance of law enforcement with Section 21. This would supposedly "weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases." As such, failure to provide a justification for noncompliance with Section 21 will **not** immediately result in an acquittal.

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34 *Garcia v. Garcia*, G.R. No. 223426 (Notice), June 14, 2021 citing *Gomez v. People*, G.R. No. 216824, November 10, 2020 [Per *J.* Gesmundo, *En Banc*].

35 *Id.*

36 839 Phil. 598 (2018) [Per *J.* Peralta, *En Banc*].

In my view, *Lim* does not directly address the issue that requiring strict compliance with Section 21, regardless of the amount of drugs involved, would lead to acquittals. Indeed, **it is not guaranteed** that all investigating fiscals would avail of the power granted to them under *Lim*. Whether they advertently or inadvertently fail to do so, then the drug case would be doomed at the outset, and the large-scale purveyor of drugs would go scot-free. This is a stark example of how the criminal justice system can be abused. Investigating fiscals could be manipulated by big-time drug dealers to ignore *Lim* and proceed with a weak case.

In all, we cannot breed an environment which allows every small misstep on the part of law enforcement and members of the criminal justice system to be overblown and ultimately result in acquittals. The chances of catching the big fish, slim as they already are, would further be reduced or even eliminated.

A final word

Surely, at some point, persons in possession of enormous quantities of illegal drugs must be held to account for they are differently situated than those who are accosted with only miniscule amounts of illegal drugs.

The rule is that like cases must be decided alike.[37] Conversely, when cases exhibit different circumstances and factual *milieus*, they need not be decided in the same way. **In drug cases, when there is a substantial discrepancy between the amounts of drugs involved, the Court is not obligated to employ the chain of custody rule with the same stringency as in cases of minuscule amounts**. After all, the difference between 0.015 grams of illegal drugs and 100 kilograms, is like night and day. Although they may share the same molecular composition, the similarity ends there as **the evils which Section 21 of Republic Act No. 9165 seeks to guard against, become more and more negligible once the quantity of drugs involved increases.** Therefore, substantial compliance must be deemed sufficient, as long as the elements of the drug offense charged are proven beyond reasonable doubt.

Too, it should be stressed that the chain of custody is an evidentiary rule that chiefly pertains to the weight of evidence—a matter which the courts have exclusive prerogative to decide.[38]

> **x x x Any missing link, gap, doubt, challenge, brcak, problem, defect or deficiency in the chain of custody goes to the weight of the evidence, not its admissibility**. Once admitted, the court evaluates it and, based thereon, may accept or disregard the evidence.

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37 *Villena v. Spouses Chavez*, 460 Phil. 818, 820 (2003) [Per *J.* Panganiban, Third Division].

38 See *People v. O'Cochlain*, supra, at 205.

x x x x

> Strict compliance with the requirements of Section 21 (1) of R.A. No. 9165 may not always be possible under field conditions; the police operate under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. Like what have been done in past cases, we must not look for the stringent step-by-step adherence to the procedural requirements; **what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused.** The identity of the confiscated drugs is preserved when the drug presented and offered as evidence in court is the exact same item seized from the accused at the time of his arrest, while the preservation of the drug's integrity means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.[39] (Emphases supplied; citations omitted)

As such, law enforcement operatives should be given sufficient leeway in the conduct of operations involving large quantities of illegal drugs. **In this light, the Court must desist from issuing a general declaration that in all drug cases, even those which involve large amounts of illegal drugs, the chain of custody rule must be strictly complied with.** Our courts should instead be directed to calibrate the degree of compliance with the chain of custody rule on a case-by-case basis, taking into consideration the quantity of the drugs involved and the unique circumstances faced by law enforcement operatives.

All told, I vote to **ACQUIT** appellant not on the basis of noncompliance with the chain of custody rule, but **only because of the prosecution's failure to establish the elements of the offenses charged.**

AMY C. LAZARO-JAVIER
Associate Justice

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MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court

[39] *Id.* at 205, 207-208.