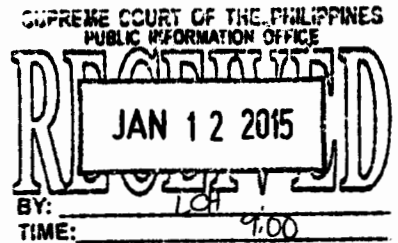




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 12 November 2014 which reads as follows:

G.R. No. 209596: FEBIE ABUNYAWAN v. PEOPLE OF THE PHILIPPINES

X-----X

This resolves the petition for review on certiorari assailing the Court of Appeals' decision promulgated on September 20, 2012¹ and resolution promulgated on September 20, 2013,² affirming petitioner Febie Abunyan's conviction under Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 for the sale and possession of methamphetamine hydrochloride or shabu.

Separate informations were filed against petitioner Febie Abunyan (Abunyan) for violating provisions of Republic Act No. 9165.³ The information dated March 20, 2009 in Criminal Case No. 09-66986 reads:

That on or about the 24th day of February 2009 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, knowingly, unlawfully and criminally sell/distribute and deliver to poseur buyer PO1 Vladimer Andaluz one (1) piece of plastic sachet containing 0.01 gram of methamphetamine hydrochloride (shabu), a dangerous drug, for Php 500.00, consisting of two (2) pieces of fifty bills with Serial Nos. KQ393881 and DB947403 and four (4) pieces of one hundred pesos bills with Serial Numbers FJ411217, NC216853, XD863428 and XZ556051 used as part of the buy-bust money among others were recovered from the possession of the said accused, without authority to sell the same.

CONTRARY TO LAW.⁴

The information dated March 19, 2009 against Abunyan in Criminal Case No. 09-669987 reads:

That on or about the 24th day of February 2009, in the City of

¹ Rollo, pp. 95-107. The decision, docketed as CA-G.R. CR-HC. No. 01255, was penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Melchor Q. C. Sadang, of the Eighteenth (18th) Division, Court of Appeals Cebu City.

² Id. at 109-110.

³ Id. at 96. As per the Court of Appeals decision, a separate information for violation of Art. II, Sec. 12 of Rep. Act No. 9165 was filed against petitioner. This was docketed as Criminal Case No. 09-66988, but the trial court acquitted petitioner.

⁴ Rollo, pp. 95-96.

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Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, knowingly, unlawfully and criminally have in his possession and control three (3) elongated heat-sealed plastic sachets containing a total weight of 0.03 gram of methamphetamine hydrochloride (shabu) a dangerous drug, without authority to possess or carry the same.

CONTRARY TO LAW.⁵

On April 16, 2009, Abunyawon was arraigned for the offenses charged where she pleaded not guilty.⁶ Trial on the merits then ensued.⁷

The prosecution and defense provided different versions of the facts.

According to prosecution witness, PO1 Vladimer Andaluz (PO1 Andaluz), he and some members of the Regional Anti-Illegal Drug Special Operations Group (RAIDSOG) conducted a briefing for a buy-bust operation in the morning of February 24, 2009.⁸

Together with PO1 Carlos Villanueva (PO1 Villanueva) as back-up security, PO1 Andaluz was assigned as poseur-buyer for the operation.⁹ They were given buy-bust money consisting of “four pieces (4) of One Hundred Pesos (P100.00) bills and two (2) pieces of Fifty Pesos (P50.00) bills.”¹⁰ The bills were marked with PO1 Andaluz’s initials.¹¹ It was agreed that upon PO1 Andaluz’s signal, “*Okay na ni. Pwede na,*” PO1 Andaluz would call P/Insp. Ramir Gallardo (P/Insp. Gallardo).¹²

PO1 Andaluz, PO1 Villanueva, and their asset left the office in a jeep at 11:30 a.m.¹³ They arrived at Abunyawon’s house in Barangay Malipayon in Tanza at past 12:00 noon.¹⁴ Abunyawon, who was at the door, greeted them. PO1 Andaluz, PO1 Villanueva, and the asset went inside the house.¹⁵

PO1 Andaluz told Abunyawon that he wanted to score “*Quinen lang.*”¹⁶ PO1 Andaluz then gave Abunyawon the buy-bust money that she counted.¹⁷ Afterwards, she went inside the living room and retrieved a

⁵ Id. at 96.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 96–97.

¹⁵ Id. at 97.

¹⁶ Id.

¹⁷ Id.

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brown purse.¹⁸ She got a sachet from inside the purse and gave it to PO1 Andaluz.¹⁹

After examining the sachet, PO1 Andaluz gave the signal. PO1 Villanueva called P/Insp. Gallardo.²⁰ The police officers then introduced themselves and arrested Abunyawon.²¹ She resisted and tried to escape.²² She was informed of her constitutional rights and “handcuffed to the sala set.”²³ Shortly, P/Insp. Gallardo’s team arrived at the house.²⁴

Upon PO1 Andaluz’s limited search of the area, he found three (3) more sachets suspected to contain shabu and two (2) disposable lighters inside the brown purse.²⁵ He marked these and the sachet he bought as follows:²⁶

“FGA-BB-1”	Sachet bought from Abunyawon
“FGA-2”	Sachet in brown purse
“FGA-3”	Sachet in brown purse
“FGA-4”	Sachet in brown purse
“FGA-5”	Brown purse
“FGA-6”	Disposable lighter
“FGA-7”	Disposable lighter

Barangay officials were called to the house to witness the inventory of the seized items.²⁷ Another inventory was made in the Prosecutor’s Office where pictures were taken.²⁸ PO1 Andaluz submitted the request for laboratory examination at 4:00 p.m. and turned over the seized items to PO2 Gary Lero (PO2 Lero), the Exhibit Custodian.²⁹

PO2 Lero testified that he received the following items from PO1 Andaluz on February 24, 2009:

- a) Brown pouch Lacoste marked “FGA-5”, inside the pouch were two (2) disposable lighters marked “FGA-6” and “FGA-7”;
- b) Yellow plastic pouch with rolled aluminum foil placed in a plastic;
- c) One (1) blade;

¹⁸ Id.
¹⁹ Id.
²⁰ Id.
²¹ Id.
²² Id.
²³ Id.
²⁴ Id.
²⁵ Id.
²⁶ Id.
²⁷ Id.
²⁸ Id.
²⁹ Id.

- d) Six (6) disposable lighters;
- e) Straw;
- f) Several plastic sachets;
- g) Buy-bust money of Php500.00 consisting of two (2) pieces of fifty peso bills with Serial Nos. KQ393881 and DB947403 and four (4) pieces of one hundred peso bills with Serial Numbers FJ411217, NC216853, XD863428 and XZ556051.³⁰

PNP Crime Laboratory Forensic Chemist P/Insp. Rea Villavicencio testified that on February 24, 2009, she received a request for laboratory examination signed by P/Insp. Gallardo of RAIDSOG.³¹ The plastic sachets marked "FGA-BB-1," "FGA-2," "FGA-3," and "FGA-4" were submitted for laboratory examination and were found positive for shabu.³²

The defense's version of the facts is as follows:

On February 24, 2009 at 12:00 noon, while the Abunyawon family was preparing for lunch, two (2) men in civilian clothes entered their house, rushed upstairs, and grabbed Abunyawon.³³ The men tried to put something inside her pocket.³⁴ One of the men then placed something inside the brown purse.³⁵ Later, Abunyawon's daughter would identify PO1 Andaluz as the man who tried to place something inside Abunyawon's pocket.³⁶

Defense claims that the brown pouch belonged to Abunyawon's mother.³⁷ The body search made on Abunyawon did not yield anything.³⁸ A barangay kagawad testified that when barangay officials were called to witness the inventory of items, they did not "see the marking of exhibits but [only saw] that the pouch was poured out and sachets were placed on the table."³⁹ Abunyawon asserted that she was not informed of her rights, no inventory was made in her house, and she saw the seized items for the first time in the Prosecutor's Office.⁴⁰

The trial court found Abunyawon guilty beyond reasonable doubt of violating Republic Act No. 9165 in Criminal Case Nos. 09-66986 and 09-66987. It upheld the credibility of the prosecution witnesses.⁴¹ It also held that Abunyawon's arrest was proper as it was done during the course of a valid buy-bust operation. What was material was that the police officers saw

³⁰ Id. at 97-98.

³¹ Id. at 98.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id. at 98-99.

³⁸ Id.

³⁹ Id. at 99.

⁴⁰ Id.

⁴¹ Id. at 100.

Abunyawawan retrieving a sachet of white crystalline substance, suspected to be shabu, from the brown purse. She, therefore, had the presence of drugs under her control.

However, other seized items were held inadmissible.⁴² The police officers had no authority to open the cabinets absent a search warrant. The trial court, thus, held:

WHEREFORE, the prosecution having proved beyond reasonable doubt that the accused Febie Abunyawawan is guilty of Violation of Sec. 5 in Crim. Case No. 09-66986, the accused is sentenced to a life imprisonment.

The prosecution having proved beyond reasonable doubt that the accused Febie Abunyawawan is guilty of Violation of Sec. 11 par. 2 of R.A. 9165 in Crim. Case No. 09-66987, she is hereby sentenced to fourteen (14) years of imprisonment.

The prosecution having failed to prove that the accused is guilty of Violation of Sec. 12 of R.A. 9165 in Crim. Case No. 09-66988, she is hereby acquitted of this case.

The four (4) plastic sachets of dangerous drugs and drug paraphernalia which are exhibits in this case are hereby ordered turned over to the PDEA for destruction. The other exhibits are confiscated in favor of the government.

SO ORDERED.⁴³

On appeal, the Court of Appeals affirmed with modification Abunyawawan's conviction. It ruled that PO1 Andaluz's testimony is clear and categorical as to the buy-bust operation on February 24, 2009.⁴⁴ The uncorroborated testimony of PO1 Andaluz is not fatal to the prosecution's case.⁴⁵

Abunyawawan's defense of denial cannot stand against the positive testimony of PO1 Andaluz.⁴⁶ No ill motive was attributed to the police officers who conducted the operation.⁴⁷

The prosecution was able to prove an unbroken chain of custody.⁴⁸ The Court of Appeals said on this matter that "[a]t no point during the chain were the items unaccounted for nor were their locations vague and their safekeeping unclear. The integrity and evidentiary value of the *corpus*

⁴² Id. at 99-100.

⁴³ Id. at 100.

⁴⁴ Id. at 102.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. at 104.

delicti was properly established.”⁴⁹

However, the penalty in Criminal Case No. 66987 was modified from the straight penalty of fourteen (14) years, to the indeterminate sentence of twelve (12) years and one (1) day to fourteen (14) years and one (1) day.⁵⁰

The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated 8 July 2010 of Branch 22 of the Regional Trial Court of Iloilo City finding the accused-appellant Febie Abunyawon guilty beyond reasonable doubt in (1) Criminal Case No. 09-66986 for Violation of Section 5, Article II of R.A. No. 9165 with the corresponding sentence of life imprisonment; and (2) Criminal Case No. 09-66987 for Violation of Section 11, Paragraph 2, Article II of R.A. 9165 is **AFFIRMED** with the **MODIFICATION** that the penalty for Violation of Section 11, Paragraph 2, Article II of R.A. 9165 shall be for twelve (12) years and one (1) day to fourteen (14) years and one (1) day.

SO ORDERED.⁵¹

Abunyawon’s motion for reconsideration was denied in the Court of Appeals’ resolution dated September 20, 2013.⁵²

In her petition for review, petitioner argues that the buy-bust operation was invalid.⁵³ Petitioner attacks the credibility of PO1 Andaluz, especially with regard to a prior test buy conducted on February 20, 2009.⁵⁴

In addition, petitioner argues that the identity of the *corpus delicti* was not established in accordance with Section 21 of Republic Act No. 9165.⁵⁵ There was no physical inventory and photographs taken immediately after the seizure.⁵⁶ There was a break in the chain of custody in that it was never clearly established to whom the dangerous drugs were turned over.⁵⁷ The forensic laboratory did not conduct a quantitative examination on the specimen.⁵⁸

Petitioner also assails the search made on the brown pouch as illegal.⁵⁹

⁴⁹ Id. at 105.

⁵⁰ Id. at 106.

⁵¹ Id.

⁵² Id. at 109–110.

⁵³ Id. at 12.

⁵⁴ Id. at 12–14.

⁵⁵ Id. at 17–25.

⁵⁶ Id. at 20.

⁵⁷ Id. at 21–22.

⁵⁸ Id. at 23–25.

⁵⁹ Id. at 25.

Lastly, both the trial court and Court of Appeals did not give credence to the testimonies of petitioner's daughter and mother.⁶⁰

On January 22, 2014, this court required respondent to submit its comment on the petition.⁶¹

Respondent, through the Office of the Solicitor General in its comment dated May 5, 2014, argued that: (1) the errors raised by petitioner are essentially factual in nature, hence, not proper in this petition;⁶² (2) the Court of Appeals did not commit reversible error when it affirmed the Regional Trial Court's ruling that a valid buy-bust operation was conducted;⁶³ and (3) the prosecution duly established the identity of the *corpus delicti*.⁶⁴

Verily, the main issues to be resolved in this case are: (1) whether there was a valid buy-bust operation; and (2) whether the chain of custody of the prohibited drugs seized from petitioner was broken.

We deny the petition.

At the outset, we note that what was filed was a petition for review on certiorari assailing the decision of the Court of Appeals and not a notice of appeal with the Court of Appeals.⁶⁵

It is settled that in petitions for review on certiorari, only questions of law are reviewed by this court.⁶⁶ Concomitantly, factual findings of the lower courts as affirmed by the Court of Appeals are binding on this court.⁶⁷

Petitioner admitted that the petition raises both questions of fact and of law.⁶⁸ She, however, failed to convince this court that the trial court and the Court of Appeals "overlooked, misapprehended, or misapplied any act or

⁶⁰ Id. at 15-16.

⁶¹ Id. at 112-112-A.

⁶² Id. at 129-130.

⁶³ Id. at 130-132.

⁶⁴ Id. at 132-133.

⁶⁵ RULES OF COURT, Rule 122, sec. 3(c) provides that where the penalty of life imprisonment was imposed, appeal to the Supreme Court shall be done by filing a notice of appeal with the Court of Appeals; As amended by A.M. No. 00-5-3-SC dated September 28, 2004. *See People v. Rocha*, 558 Phil. 521 (2007) [Per J. Chico-Nazario, Third Division] for the discussion on the difference between appeal for cases involving imposition of life imprisonment and *reclusion perpetua*, and automatic review for cases involving imposition of death penalty; *See also People v. Mateo*, 477 Phil. 752 (2004) [Per J. Vitug, En Banc].

⁶⁶ *See Claravall v. Lim*, G.R. No. 152695, July 25, 2011, 654 SCRA 301, 306-307 [Per J. Peralta, Third Division].

⁶⁷ *See People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 844-845 [Per J. Sereno (now C.J.), Second Division].

⁶⁸ *Rollo*, p. 10.

circumstance of weight and substance.”⁶⁹ Nothing in the assailed decision warrants a review or modification of the established facts. In addition, the issues involved in this case are not novel.

On the procedural lapse alone, the petition should be denied. However, we set aside the procedural infirmities to thresh out the substantive issues in this case.

The lower courts found petitioner guilty beyond reasonable doubt of violating Article II, Sections 5 and 11, of Republic Act No. 9165, which state:

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.

....

Section 11. Possession of Dangerous Drugs. - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

....

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

....

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity

⁶⁹ Id.

possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Buy-bust operations have been described as:

... legally sanctioned procedures for apprehending drug peddlers and distributors: These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense, and must be undertaken with due regard for constitutional and legal safeguards.⁷⁰ (Citations omitted)

In *People of the Philippines v. Unisa*⁷¹ involving drugs seized during a buy-bust operation, this court laid down the requisites for violations of Article II, Sections 5 and 11, of Republic Act No. 9165:

We rely on the trial court's assessment of the credibility of witnesses, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended, or misapplied.

For a successful prosecution of the offense of illegal sale of dangerous drugs, like shabu, the *following elements must first be established: (1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.* What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. Clearly, the commission of the offense of illegal sale of dangerous drugs, like shabu, *merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.* As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, the crime is already consummated. In this case, the prosecution has amply proven all the elements of the drugs sale beyond moral certainty.

Without a doubt, the prosecution, thus, established with the required quantum of proof, i.e., proof beyond reasonable doubt, appellant's guilt for the offense of illegal sale of shabu, a dangerous drug, in blatant violation of Section 5, Article II of Republic Act No. 9165.

As to the offense of illegal possession of shabu, a dangerous drug, it must be shown that: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession of shabu are

⁷⁰ *People v. Rebotazo*, G.R. No. 192913, June 13, 2013, 698 SCRA 452, 465 [Per C.J. Sereno, First Division].

⁷¹ G.R. No. 185721, September 28, 2011, 658 SCRA 305 [Per J. Perez, Second Division].

obtaining in the present case.

.....

..... The rule is settled that possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi, which is sufficient to convict an accused in the absence of a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to the accused to explain the absence of knowledge or animus possidendi. Unfortunately, the appellant in the present case miserably failed to discharge that burden. Appellant was not able to satisfactorily explain his absence of knowledge or animus possidendi of the shabu recovered in his possession.⁷² (Emphasis supplied)

Petitioner ascribes irregularity on the conduct of the buy-bust operation by casting doubt on the credibility of prosecution witness PO1 Andaluz, the poseur-buyer during the operation. Petitioner argues that irregularities as to a previous test buy and a police blotter result in doubts on PO1 Andaluz's testimony in favor of petitioner.

On the credibility of the witness and the inconsistencies of his or her testimony, this court has held that:

The credibility of witnesses is a matter best examined by, and left to, the trial courts. The time-tested doctrine is that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge. Unlike appellate magistrates, it is the judge who can weigh such testimonies in light of the witnesses' demeanor and manner of testifying, and who is in a unique position to discern between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses. This is especially true when the trial court's findings have been affirmed by the appellate court. For them the said findings are considered generally conclusive and binding upon this Court, unless it be manifestly shown that the trial court had overlooked or arbitrarily disregarded facts and circumstances of significance.⁷³

We find no reason to doubt the appreciation of the facts of both the trial court and Court of Appeals, particularly with PO1 Andaluz's straightforward recount of the events during the buy-bust operation.⁷⁴ As pointed out by the Court of Appeals, petitioner failed to ascribe any ill motive on the part of the police officers.⁷⁵ The rule is that presumption of regularity in the performance of official duties will apply when no improper

⁷² Id. at 324-327. See *People v. Manlangit*, G.R. No. 189806, January 12, 2010, 639 SCRA 455 [Per J. Velasco, Jr., First Division]; *People v. Gaspar*, G.R. No. 192816, July 6, 2011, 653 SCRA 673 [Per J. Carpio, Second Division].

⁷³ *People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 844-845 [Per J. Sereno (now C.J.), Second Division].

⁷⁴ *Rollo*, p. 102.

⁷⁵ Id.

motive was alleged.⁷⁶

We quote with approval the Court of Appeals' findings on the matter:

. . . . The testimony of PO1 Andaluz is clear and categorical in stating that on 24 February 2009, at about 12:00 noon, acting on the information gathered from their previous surveillance and a prior test-buy, he as poseur buyer, PO1 Villanueva as back-up and a confidential asset were in the [petitioner's] house, where the latter sold to them a sachet of white crystalline substance suspected to be *shabu*. That his testimony on the buy-bust operation was uncorroborated is not fatal to the prosecution's case. . . .

The only defense against the positive testimony of PO1 Andaluz that [petitioner] has presented was in the form of denials, and there is no ill-motive is [sic] attributed to the police authorities who conducted the operation. While her denials were echoed by the testimonies of her daughter and mother, the same could be said to be self-serving. . . . The trial court, after an exhaustive trial on the merits, has found PO1 Andaluz's testimony to be credible; We find no reason to deviate from the same.⁷⁷

With regard to the alleged broken chain of custody of the seized items, petitioner argues that the police officers failed to make a proper inventory, immediately take a photograph, and conduct a quantitative examination as required by Section 21 of Republic Act No. 9165.⁷⁸

⁷⁶ See *People v. Concepcion*, 578 Phil. 957, 978 (2008) [Per J. Chico-Nazario, Third Division].

⁷⁷ *Rollo*, p. 77.

⁷⁸ See Rep. Act No. 9165 (2002), sec. 21:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Rep. Act No. 9165 (2002), sec. 21 was amended by Rep. Act No. 10640 (2014), entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" which was approved on July 15, 2014, to wit:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

Petitioner's arguments fail to sway this court.

Chain of custody pertains to "the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction."⁷⁹

The records of this case are clear that there was no break in the chain of custody. Petitioner failed to point to a substantial gap during the movement of the seized drugs. The prosecution sufficiently established each part of the process to safeguard the integrity and evidentiary value of the *corpus delicti* as discussed by the Court of Appeals:

Upon the arrest of the accused-appellant and the seizure of the plastic sachets filled with white crystalline substance on her person at about 12:50 p.m. of 24 February 2009, the items were immediately marked and inventoried in the presence of the other RAIDSOG members and two (2) barangay kagawad, Ronald Cape and Helen Villanueva. Another inventory, this time in the presence of not only the RAIDSOG member and two (2) barangay kagawad, but also media representatives, Richard Bertuso of RMN and Mark Villaruz of OMA-RATSADA. Thereafter PO1 Andaluz submitted the items for testing with the Crime Laboratory Office 6, where it was received by PO2 Cachila, as per signature in the Request for Laboratory Examination. According to Chemistry report No. D-063-09 issued by the Regional Chief Forensic Chemist, P/Insp. Rea Villavicencio, she received the same from PO2 Cachila on "241605H February 2009" or 4:05 p.m. of the same day. The items were subjected for testing and at "241710H February 2009" or 5:10 p.m. of the same day, the results yielded positive for shabu. The other items were turned over by PO[1] Andaluz to PO2 Lero, the Exhibit Custodian, for safekeeping. At no point were their locations vague and their safekeeping unclear. The integrity and evidentiary value of the *corpus delicti* was properly established.⁸⁰

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and 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 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, finally, That noncompliance of 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 and custody over said items.

See also implementing rules and regulations of Rep. Act No. 9165, sec. 21(a).

⁷⁹ *People v. Guzon*, G.R. No. 199901, October 9, 2013, 707 SCRA 384, 396 [Per J. Reyes, First Division]; *See* Sec. 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002.

⁸⁰ *Rollo*, pp. 104-105.

Nevertheless, this court has consistently ruled that:

... non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.⁸¹

Lastly, as to petitioner's argument that the search of the brown purse was illegal, it has been held that "seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Section 13 of the Rules of Court. Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was not needed to conduct it."⁸²

We do not see any reason to overturn the findings of the Court of Appeals as to petitioner's guilt.

However, we modify the penalty imposed by the trial court as to the imposition of fines provided under Republic Act No. 9165, to wit:

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.

.....
Section 11. Possession of Dangerous Drugs. -

.....
Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

.....

⁸¹ *People of the Philippines v. Lazaro, Jr.*, 619 Phil. 235, 259 (2009) [Per J. Chico-Nazario, Third Division]; See implementing rules and regulations of Rep. Act No. 9165, sec. 21(a).

⁸² *People v. Rebotazo*, G.R. No. 192913, June 13, 2013, 698 SCRA 452, 484 [Per C.J. Sereno, First Division].


(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Emphasis supplied)

Accordingly, we impose the following amounts in addition to the penalty of imprisonment, as follows: (1) ₱500,000.00 for sale of one (1) piece of plastic sachet containing 0.01 gram of methamphetamine hydrochloride or shabu, a dangerous drug, in Criminal Case No. 09-66986;⁸³ and (2) ₱300,000.00 for possession and control of three (3) elongated heat-sealed plastic sachets containing a total weight of 0.03 gram of methamphetamine hydrochloride or shabu, a dangerous drug, without authority to possess or carry the same, in Criminal Case No. 09-66987.⁸⁴

WHEREFORE, the petition is **DENIED**. The Court of Appeals' decision dated September 20, 2012 and resolution dated September 20, 2013 in CA-G.R. CR-HC. No. 01255 are **AFFIRMED with MODIFICATIONS**. Petitioner Febie Abunyawan is fined in the amounts of: ₱500,000.00 in addition to the sentence of life imprisonment for violating Article II, Section 5, of Republic Act No. 9165 in Criminal Case No. 09-66986 without eligibility for parole under Section. 2, Act No. 4103 (Indeterminate Sentence Law) in accordance with Section 3 of Republic Act No. 9346; and ₱300,000.00 in addition to the penalty of life imprisonment for twelve (12) years and one (1) day to fourteen (14) years and one (1) day for violating Article II, Section 11, Paragraph 2, of Republic Act No. 9165.

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court *by 11/2*

⁸³ For violations of Rep. Act No. 9165, Sec. 5, the quantity is immaterial to the impossible penalty. See *People v. Concepcion*, 578 Phil. 957, 979-980 (2008) [Per J. Chico-Nazario, Third Division].

⁸⁴ See *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505 [Per J. Leonardo-De Castro, First Division]; *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697 [Per J. Velasco, Jr., First Division]; *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305 [Per J. Perez, Second Division].

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THE SUPERINTENDENT (reg)
Correctional Institution for Women
1550 Mandaluyong City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 25
Iloilo City
RTC Case No. 09-66986 to 09-66988

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