



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **December 2, 2019**, which reads as follows:

“G.R. No. 238523 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. JAY LEON, JR. y CAPILI, *accused-appellant*). — This Court resolves the appeal¹ of the Decision of the Court of Appeals,² which affirmed the Regional Trial Court’s Joint Judgment³ convicting Jay Leon, Jr. y Capili (Leon) of illegal sale and possession of dangerous drugs under Article II, Sections 5 and 11 of Republic Act No. 9165.

On May 9, 2012, Leon and Enrique Ramos y Joaquin (Ramos) were charged, in three (3) separate Informations, with violating Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002:

CRIM. CASE NO. 1520-M-2012
(Jay Leon Jr.)

That on or about the 8th day of May 2012, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell, trade, dispense, and deliver, one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (shabu), a dangerous drug, with a net weight of 0.476 gram, without authority of law and legal justification.

Contrary to law.

¹ *Rollo*, pp 23–25. Filed pursuant to RULES OF COURT, Rule 124, sec. 13(c), as amended by A.M. No. 00-5-03-SC (2004).

² Id. at. 2–22. The Decision dated November 7, 2017 in CA-G.R. CR. HC No. 08686 was penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Japar B. Dimaampao and Pedro B. Corales of the Sixth Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 62–73. The Joint Judgment dated September 16, 2016 in Crim. Case Nos. 1520-M-2012, 1521-M-2012, and 1522-M-2012 was penned by Presiding Judge Albert R. Fonacier of Branch 76, Regional Trial Court, Malolos City, Bulacan.

CRIM. CASE NO. 1521-M-2012
(Jay Leon Jr.)

That on or about the 8th day of May 2012, in the municipality of Plaridel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, dominion and control, six (6) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride (shabu), a dangerous drug, each weighing 0.107 gram, 0.112 gram, 0.083 gram, 0.055 gram and 0.070 gram, with a total net weight of 0.539 gram, without authority of law and legal justification.

Contrary to law.

CRIM. CASE NO. 1522-M-2012
(Enrique Ramos)

That on or about the 8th day of May 2012, in the municipality of Plaridel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, dominion and control, one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (shabu), a dangerous drug, with a total weight of 0.793 gram, without authority of law and legal justification.

Contrary to law.⁴ (Citations omitted)

Leon and Ramos pleaded not guilty to the charges against them.⁵

During pre-trial, the parties stipulated, among others, on the qualification and competency of the forensic chemist, Police Senior Inspector Gina Camposano-Ledesma, as an expert witness, and the validity of the laboratory examination.⁶ Thus, the forensic chemist's testimony was dispensed with.⁷

Trial on the merits then ensued.

The prosecution presented Police Officer 2 Bembol Quiambao (PO2 Quiambao) and Police Officer 1 Edwin Cipriano Preligera (PO1 Preligera)

⁴ *Rollo*, pp. 3-4.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *CA rollo*, p. 64.

as its witnesses.⁸ Their testimonies established the following facts:

On May 8, 2012,⁹ at about 9:00 a.m., the police officers at the Plaridel, Bulacan Police Station received a report from a confidential informant that an alias "Jay," later identified as Leon, was selling illegal drugs in Banga 1st, Plaridel, Bulacan.¹⁰ Police officers surveilled the area and observed Leon selling a plastic sachet to two (2) men.¹¹

Two (2) hours later, the station's police chief formed a team led by a certain Senior Inspector Ramos, with PO1 Preligera as poseur-buyer and PO2 Quiambao as back-up.¹² PO1 Preligera was given three (3) ₱1,000.00 bills as buy-bust money, which he marked as "ECP1" to "ECP3."¹³ Afterward, he coordinated their operation with the Philippine Drug Enforcement Agency.¹⁴

A few hours later, at around 4:00 p.m.,¹⁵ the team headed to Sitio Dapdap in Banga 1st.¹⁶ From their vehicle, PO1 Preligera and the informant walked toward the target area.¹⁷

The informant introduced PO1 Preligera to Leon and said, "*Boss kaibigan ko iiscore ng panggamit[.]*"¹⁸ Leon asked how much they wanted to buy, to which PO1 Preligera answered that he wanted ₱3,000.00 worth and handed Leon the marked money. Leon then took out a plastic sachet from his belt bag and gave it to PO1 Preligera.¹⁹

Then, PO1 Preligera lit a cigarette to notify the other team members that the sale had been consummated. As the other officers closed in, PO1 Preligera introduced himself as a police officer and arrested Leon.²⁰ He then instructed Leon to empty his belt bag, which yielded six (6) more plastic sachets, the marked money, and other items.²¹

PO1 Preligera marked the plastic sachet purchased from Leon as "ECP-B," and the sachets found in the belt bag as "ECP1" to "ECP6."²²

⁸ Id.

⁹ Rollo, p. 5. In the Joint Judgment (CA rollo, p. 64), the date written was May 8, 2011.

¹⁰ CA rollo, p. 64.

¹¹ Id. at 65.

¹² Id. at 64.

¹³ Id.

¹⁴ Id. at 64 and rollo, p. 6.

¹⁵ Rollo, p. 6.

¹⁶ CA rollo, p. 64.

¹⁷ Rollo, p. 6.

¹⁸ CA rollo, p. 65.

¹⁹ Id.

²⁰ Rollo, p. 6.

²¹ CA rollo, p. 65.

²² Rollo, p. 6.

PO1 Preligera then heard Ramos, who was standing nearby,²³ questioning PO2 Quiambao on Leon's arrest and the officers' identities.²⁴ He tried to run when the team members introduced themselves as police officers, only to be restrained by PO2 Quiambao. Upon frisking Ramos, PO2 Quiambao found one (1) plastic sachet containing white crystalline substance, and marked it as "BDQ."²⁵

PO1 Preligera inventoried the seized items at the place of arrest, as witnessed by Leon,²⁶ Marcelino Gabe (Gabe), the media representative, and Ernesto De Dios (De Dios), a barangay official. Meanwhile, Senior Inspector Ramos took photographs during the inventory.²⁷

The buy-bust team then returned to the Plaridel Police Station where the Department of Justice representative, Fiscal Jowell Jose, signed the inventory. Afterward, a request for laboratory examination of the seized items was executed.²⁸

In Chemistry Report No. D-136-2012 dated May 9, 2012, all the seized plastic sachets tested positive for shabu.²⁹

Leon and Ramos testified for the defense. Leon testified that at around 3:00 p.m.³⁰ on May 8, 2012, he was riding his motorcycle along McArthur Highway, Plaridel, Bulacan when PO1 Preligera and PO2 Quiambao flagged him down at a checkpoint, asking to see his motorcycle's documents.³¹ Leon opened his belt bag³² and showed its contents, which included the motorcycle's papers, a small weighing scale, and money worth ₱90,000.00. After the inspection, the police officers allowed him to leave.³³

However, to his surprise, the police officers tailed him, accosted him, and took away his belt bag. They then brought him to a nearby house owned by Ramos and ordered him to point to the shabu on the table. He did as commanded, "out of fear."³⁴

Ramos, on the other hand, testified that he was jolted awake by people running outside his house.³⁵ As he stepped out and asked what was happening,

²³ CA rollo, p. 64.

²⁴ Rollo, p. 6.

²⁵ Id. at 7.

²⁶ Id. at 14.

²⁷ Id. at 6-7. Marcelino Gabe was sometimes referred to as Ato Gabe in the rollo.

²⁸ Id. at 7.

²⁹ Id.

³⁰ Id.

³¹ CA rollo, p. 66.

³² Rollo, p. 8.

³³ CA rollo, p. 66.

³⁴ Rollo, p. 8.

³⁵ Id. at 8 and CA rollo, p. 66.

the men running introduced themselves as police officers and frisked him. Then, they showed him a plastic sachet and claimed that the sachet belonged to him. The officers also entered and searched his house.³⁶

In a September 16, 2016 Joint Judgment,³⁷ the Regional Trial Court found Leon guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act No. 9165, but acquitted Ramos for lack of evidence.³⁸

The Regional Trial Court found that the elements of the crimes charged against Leon were sufficiently established.³⁹ It found that the integrity of the evidence was established from the time they were seized until they were presented in court. Based on the case records, the trial court held that the apprehending team faithfully complied with the requirements under Section 21 of Republic Act No. 9165.⁴⁰ It considered the presence of the Department of Justice representative only at the police station as a minor deviation that did not affect the legality of the accused's arrest.⁴¹

As for Ramos, the Regional Trial Court found that the prosecution failed to show that at the time of his arrest, he had just committed, was actually committing, or was attempting to commit an offense in the presence of the police officers. As a result, it found the shabu allegedly recovered from Ramos to be inadmissible in evidence.⁴²

The dispositive portion of the Regional Trial Court's Joint Judgment read:

WHEREFORE, JOINT JUDGMENT is hereby rendered as follows:

(1) In **CRIMINAL CASE NO. 1520-M-2012**, for having established the guilt of the accused beyond reasonable doubt, accused **JAY C. LEON, JR.**, is hereby **CONVICTED** for his act of selling one (1) plastic sachet containing methamphetamine hydrochloride weighing 0.476 gram which is a regulated drug, and is hereby sentenced to **LIFE IMPRISONMENT** and to pay a **fine of ONE MILLION PESOS (Php1,000,000.00)**;

(2) In **CRIMINAL CASE NO. 1521-M-2012**, the prosecution has established the guilt of the accused beyond reasonable doubt and, thus said accused **JAY C. LEON, JR.**, is hereby **CONVICTED** for his act of possession and control of dangerous drugs and is hereby sentenced to **TWELVE (12) YEARS AND ONE (1) DAY, as the MINIMUM, TO**

³⁶ Id. at 8.

³⁷ CA *rollo*, pp. 62-73.

³⁸ Id. at 72-73.

³⁹ Id. at 66 and 69.

⁴⁰ Id. at 68.

⁴¹ Id. at 69.

⁴² Id. at 69-72.

FOURTEEN (14) YEARS, as the MAXIMUM, and to pay a FINE of THREE HUNDRED FIFTY THOUSAND PESOS (Php350,000.00).

(3) In **Criminal Case No. 1522-M-2012**, however, since the prosecution failed to establish the guilt of the accused beyond reasonable doubt, herein accused **ENRIQUE RAMOS y JOAQUIN**, is hereby **ACQUITTED** with the offense of possession and control of dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165.

As to the specimens subject matter of these cases which are listed in Chemistry Report No. D-136-2012, the same are hereby confiscated in favor of the government. The Branch Clerk of Court is directed to dispose the said specimens in accordance with the existing rules and regulations.

(4) Inasmuch as accused **ENRIQUE RAMOS y JOAQUIN** is acquitted in Criminal Case No. 1522-M-2012, the said accused, who is currently detained at the Provincial Jail of Pampanga based in San Fernando City, should immediately [be] released from detention[.] [T]he Provincial Jail Warder[n] is hereby ordered to immediately release the said accused from his detention unless said accused is further held for some other lawful cause or causes.

Furnish copies of this joint judgment to the public prosecutor, defense counsel, both accused, both Provincial Jail Wardens of Bulacan and Pampanga.

SO ORDERED.⁴³ (Emphasis in the original)

Leon filed a Notice of Appeal⁴⁴ before the Regional Trial Court, which then directed⁴⁵ the case records' transmittal to the Court of Appeals.

On November 7, 2017, the Court of Appeals rendered a Decision⁴⁶ affirming the Regional Trial Court's findings. It held that the prosecution has duly proven the elements of the crime of illegal sale and illegal possession of dangerous drugs,⁴⁷ and that the buy-bust team substantially complied with Section 21 of Republic Act No. 9165.⁴⁸ It also confirmed that all the links in the chain of custody were duly established by the prosecution.⁴⁹

For the Court of Appeals, the alleged inconsistency in the testimonies of the prosecution's witnesses as to where the seized evidence were marked—whether at the place of arrest or in Ramos' house—was a minor detail that did not alter the outcome of the case.⁵⁰

⁴³ Id. at 72–73.

⁴⁴ Id. at 13–14.

⁴⁵ Id. at 15, Order dated October 5, 2016.

⁴⁶ *Rollo*, pp. 2–22.

⁴⁷ Id. at 11–12.

⁴⁸ Id. at 14.

⁴⁹ Id. at 15.

⁵⁰ Id. at 16.

On accused-appellant's claim that the markings on the buy-bust money and confiscated items were confusingly similar, the Court of Appeals held that: (1) there is no likelihood of confusion because the marked money could not be interchanged with the sachets of shabu,⁵¹ and (2) "there is no hard and fast rule on what 'markings' should be placed on the confiscated drugs so long as they are readily identifiable to prevent tampering."⁵²

As to the argument that the apprehending team should have procured a search warrant, the Court of Appeals stated that since an arrest made after an entrapment operation, such as a buy-bust operation, is a valid warrantless arrest, the warrantless seizure of the drugs in this case was also valid.⁵³

Aggrieved, Leon filed his Notice of Appeal,⁵⁴ which was given due course by the Court of Appeals on December 14, 2017.⁵⁵

On June 4, 2018,⁵⁶ this Court ordered the parties to file their supplemental briefs. Both the Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines,⁵⁷ and accused-appellant Leon⁵⁸ manifested that they would no longer file supplemental briefs.

In his Brief,⁵⁹ accused-appellant assails the legality of the buy-bust operation.⁶⁰ He points out how the officers, despite supposedly confirming his illegal activity during the initial surveillance, curiously did not arrest him for being caught *in flagrante delicto* or secure a warrant of arrest.⁶¹

Accused-appellant also points out that it was never mentioned that he resided in the area where the surveillance and buy-bust operation were conducted, or that the police had confirmed his presence, or agreed to meet in the area on any particular time of day.⁶²

Moreover, accused-appellant avers that only PO1 Preligera testified that the sale actually happened. The other officers who testified did not, and PO2 Preligera particularly denied having witnessed it.⁶³

⁵¹ Id. at 16 and 18.

⁵² Id. at 18.

⁵³ Id. at 18-20.

⁵⁴ Id. at 23-25.

⁵⁵ Id. at 26.

⁵⁶ Id. at 28-29.

⁵⁷ Id. at 30-35, plaintiff-appellee's Manifestation.

⁵⁸ Id. at 38-42, accused-appellant's Manifestation.

⁵⁹ CA *rollo*, pp. 34-61.

⁶⁰ Id. at 44.

⁶¹ Id. at 44-45.

⁶² Id. at 45.

⁶³ Id.

Accused-appellant maintains that his arrest does not fall under a valid warrantless arrest because he was only on board his motorcycle running personal errands when he was pulled over.⁶⁴

Moreover, accused-appellant argues that his conviction was erroneous because the prosecution failed to establish every link in the chain of custody.⁶⁵

On the first link, seizure and marking, accused-appellant points to the inconsistencies in PO1 Preligera's testimony as to where the seized items were marked: at the place of arrest or in Ramos' house near the alley.⁶⁶ Moreover, three (3) of the confiscated shabu bore the same markings as those of the three ₱1,000.00 marked bills.⁶⁷ As to the other links, accused-appellant adds that no evidence was presented to show how the seized items were preserved and transferred from the apprehending officer to the investigating officer, to the forensic chemist, and finally to the court.⁶⁸

Accused-appellant argues that such failure not only creates confusion but casts serious doubts on the integrity and evidentiary value of the evidence presented. He maintains that the prosecution was not able to establish the integrity of the *corpus delicti*.⁶⁹

Accordingly, accused-appellant argues that since the prosecution failed to overcome the constitutional right to be presumed innocent, he must be acquitted.⁷⁰

On the other hand, the Office of the Solicitor General argues in its Brief⁷¹ that accused-appellant's guilt was proven beyond reasonable doubt.⁷² It reasons that the inconsistencies in the witnesses' testimonies did not touch upon a central fact of the crime charged.⁷³ It maintains that the elements of the crimes charged were duly established.⁷⁴

On the issue of the integrity of the *corpus delicti*, the Office of the Solicitor General points out that PO1 Preligera's testimony established that he was in possession of the items from the time of seizure to the inventory, to the preparation of the request for laboratory examination, until its turnover to the

⁶⁴ Id. at 47.

⁶⁵ Id. at 52.

⁶⁶ Id. at 53.

⁶⁷ Id. at 54.

⁶⁸ Id. at 55.

⁶⁹ Id. at 57.

⁷⁰ Id. at 58-59.

⁷¹ Id. at 95-112.

⁷² Id. at 103.

⁷³ Id. at 105.

⁷⁴ Id. at 104-108.

Crime Laboratory.⁷⁵ The Office of the Solicitor General maintains that even if there was only substantial compliance with Section 21 of Republic Act No. 9165, the seized items will not be rendered inadmissible, as long as the identity and evidentiary value of the seized evidence were preserved.⁷⁶

The sole issue for this Court's resolution is whether or not the prosecution proved beyond reasonable doubt the guilt of accused-appellant Jay Leon, Jr. y Capili for violations of Article II, Sections 5 and 11 of Republic Act No. 9165.

The appeal is dismissed.

I

To secure a conviction in cases involving the crime of illegal sale of dangerous drugs under Article II, Section 5⁷⁷ of Republic Act No. 9165, the following elements must be duly established: "(1) [T]he identity of the buyer and the seller, the object [of the sale], and the consideration; and . . . (2) [T]he delivery of the thing sold and the payment therefor."⁷⁸

In *People v. Torres*,⁷⁹ this Court emphasized that what is important in

⁷⁵ Id. at 109–110.

⁷⁶ Id. at 110.

⁷⁷ Republic Act No. 9165 (2002), sec. 5 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.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

⁷⁸ *People v. Manalao*, 703 Phil. 101, 109 (2013) [Per J. Leonardo-De Castro, First Division].

⁷⁹ 710 Phil. 398 (2013) [Per J. Perez, Second Division].

such cases “is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.”⁸⁰ In cases prosecuted under Republic Act No. 9165, the *corpus delicti* is the seized drug itself.⁸¹

Here, the prosecution successfully established both elements for the charge of illegal sale of dangerous drugs beyond moral certainty.

PO1 Preligera, as both the poseur-buyer and the apprehending officer, was able to describe in detail the conduct of the buy-bust operation. He testified that as he and the confidential informant were walking to the target area, they spotted accused-appellant walking in an alley sloping down the river. During trial, he positively identified accused-appellant as the person he transacted with before the apprehension. According to PO1 Preligera, he was introduced to the accused-appellant by a confidential informant as an interested shabu buyer.⁸² In turn, accused-appellant asked him how much he intended to buy, to which he answered that he was going to purchase shabu worth ₱3,000.00.⁸³

Then, PO1 Preligera handed the marked money to accused-appellant, who in turn gave him a sachet of shabu that would later be seized.⁸⁴ The same dangerous drug seized from the sale, weighing 0.476 grams⁸⁵ and marked as “ECP-B,”⁸⁶ was subjected to laboratory examination and found positive for methamphetamine hydrochloride, per Chemistry Report No. D-136-2012.⁸⁷

Upon presentation in court, PO1 Preligera positively identified that the object presented is the same object he purchased from accused-appellant during the buy-bust operation.⁸⁸

The prosecution has satisfactorily proved accused-appellant’s guilt beyond reasonable doubt for the offense of illegal sale of dangerous drugs.

II

For cases involving the crime of illegal possession of dangerous drugs under Article II, Section 11⁸⁹ of Republic Act No. 9165, the following

⁸⁰ Id. at 407.

⁸¹ *People v. Ismael*, 806 Phil. 23, 29 (2017) [Per J. Del Castillo, First Division].

⁸² *CA rollo*, p. 67.

⁸³ Id. at 68.

⁸⁴ Id.

⁸⁵ Id. at 67.

⁸⁶ Id. at 68.

⁸⁷ *Rollo*, p. 7.

⁸⁸ *CA rollo*, p. 67.

⁸⁹ Republic Act No. 9165 (2002), sec. 11 provides:

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)

requisites must be duly established for a successful conviction: "(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 drug."⁹⁰

Akin to cases involving the illegal sale of dangerous drugs, prosecutions for illegal possession places great importance on the integrity and identity of the seized drug as the *corpus delicti*.

Rule 126, Section 13 of the Revised Rules on Criminal Procedure provides:

SECTION 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

As an incident to the lawful arrest of accused-appellant during the buy-bust operation, PO1 Prelinger confiscated from him six (6) more plastic

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:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
- (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.

⁹⁰ *People v. Manalao*, 703 Phil. 101, 114 (2013) [Per J. Leonardo-De Castro, Second Division].

sachets of shabu, with an aggregate weight of 0.539 gram.⁹¹

Nothing in the records shows that accused-appellant has the legal authority to possess six (6) plastic sachets of shabu. *People v. Unisa*⁹² is instructive:

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*.⁹³ (Citation omitted)

For accused-appellant's failure to discharge the burden of explaining why he was in possession of the dangerous drug, he is deemed to have knowledge of the possession.

Thus, all the elements for Article II, Section 11 of Republic Act No. 9165 were established by the prosecution beyond reasonable doubt.

III

Nonetheless, accused-appellant questions his conviction by alleging that the prosecution failed to establish an unbroken chain of custody of the seized drugs. He argues that the prosecution did not prove that the items allegedly confiscated from him were the same ones subjected to laboratory examination.

In prosecutions for illegal sale and possession of drugs, it is necessary to prove not only "the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized."⁹⁴ To achieve this, each link in the chain of custody of the seized drug must be accounted for⁹⁵ to show that there was no "tampering, alteration[,] or substitution either by accident or otherwise."⁹⁶

Chain of custody is defined in Section 1(b) of the Dangerous Drugs Board Regulation No. 1, series of 2002,⁹⁷ as:

⁹¹ CA *rollo*, pp. 65–66.

⁹² 674 Phil. 89 (2011) [Per J. Perez, Second Division].

⁹³ Id. at 110.

⁹⁴ *People v. Nandi*, 639 Phil. 134, 142 (2010) [Per J. Mendoza, Second Division].

⁹⁵ *People v. Saragena*, 817 Phil. 117, 141 (2017) [Per J. Leonen, Third Division].

⁹⁶ *Valencia v. People*, 725 Phil. 268, 277 (2014) [Per J. Reyes, First Division].

⁹⁷ Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment (October 18, 2002), issued pursuant to Article II, Section 21 of the IRR of RA 9165 in relation to Article IX, Section 81(b) of RA 9165.

... 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 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[.]⁹⁸

In *People v. Nandi*,⁹⁹ this Court expounds on the definition of the chain of custody and explains the links that must be established:

[F]irst, 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.¹⁰⁰ (Emphasis in the original)

The first and crucial stage in the chain of custody is the marking of the seized drugs and other related items immediately upon confiscation from the accused.¹⁰¹ In *People v. Gonzales*,¹⁰² this Court explained:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. *Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.* The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. *In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.*¹⁰³ (Emphasis supplied, citation omitted)

Here, the prosecution has proven, by record and testimony, that at the place of arrest, PO1 Preligera marked the item bought from accused-appellant

⁹⁸ DDB Board Regulation No. 1 (2002), sec. 1(b). Available at <https://www.ddb.gov.ph/images/Board_Regulation/2002/Bd.%20Reg.%201%2002.pdf> (last accessed on December 2, 2019).

⁹⁹ 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

¹⁰⁰ Id. at 144–145 citing *People v. Kamad*, 624 Phil. 289, 312 (2010) [Per J. Brion, Second Division].

¹⁰¹ *People v. Saragena*, 817 Phil. 117, 140 (2017) [Per J. Leonen, Third Division].

¹⁰² 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

¹⁰³ Id. at 130–131.

as “ECP-B,” and each of the six (6) plastic sachets of shabu subsequently recovered from him as “ECP1” to “ECP6.”¹⁰⁴ Immediately, he prepared an inventory in the presence of accused-appellant, the buy-bust team, media representative Gabe, and barangay official De Dios. Meanwhile, Senior Inspector Ramos, the team leader, took photographs during the inventory.¹⁰⁵

PO1 Preligera kept the seized items in his custody after inventory all the way to the police station. There, he prepared a request for laboratory examination.¹⁰⁶ PO1 Preligera categorically stated that, while at the police station, there was never an instance when he transferred the evidence to any of his co-police officers.¹⁰⁷

PO1 Preligera further testified that after the preparation of the request, it was also he who delivered the specimens to the crime laboratory for testing, which yielded a positive result for shabu, as evidenced by Chemistry Report D-136-2012.¹⁰⁸ When the same seized drugs were presented in court, they were positively identified by PO1 Preligera.¹⁰⁹

This Court concludes with moral certainty that the shabu confiscated from accused-appellant were the same as those presented for laboratory examination and presented in court.

IV

Yet, accused-appellant still insists that the inconsistent testimony of PO1 Preligera regarding the place of marking is fatal to his conviction, and that the markings on the seized items and the marked money were confusingly similar.

In *People v. Hementiza*,¹¹⁰ this Court explained the purpose of marking:

The marking of the evidence 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 the criminal proceedings, thus, preventing switching, planting[,] or contamination of evidence.¹¹¹ (Citation omitted)

As the Court of Appeals correctly pointed out, the allegedly confusing

¹⁰⁴ *Rollo*, p. 6.

¹⁰⁵ *Id.* at 6–7 and 14.

¹⁰⁶ *Id.* at 14 and *CA rollo*, pp. 109–110.

¹⁰⁷ *CA rollo*, p. 110.

¹⁰⁸ *Rollo*, pp. 14–15.

¹⁰⁹ *CA rollo*, pp. 68–69.

¹¹⁰ *People v. Hementiza*, 807 Phil. 1017 (2017) [Per J. Del Castillo, First Division].

¹¹¹ *Id.* at 1030–1031.

similarity is “more apparent than real.”¹¹² It is beyond the realm of possibility that a person would confuse the buy-bust money with the plastic sachets of shabu. True, the markings of the buy-bust money and seized items are similar; however, the objects on which the markings were placed have an apparent difference in size and make that confusion would have been impossible. There is not even the slightest possibility of confusion, planting, contamination, or interchanging of evidence, which marking seeks to curtail.

As to the place of marking, PO1 Preligera’s testimony had no glaring inconsistency. On direct examination, he stated that the marking was made “[a]t the place of the incident[.]”¹¹³ It was accused-appellant’s lawyer who interpreted “at the place of the incident” to refer specifically to the “alley” where the transaction took place. Upon this lawyer’s prodding during cross-examination, PO1 Preligera clarified that the markings were done “in a house near that alley”:

Q: In what place did you do the marking, Mr. witness?

A: **At the place of the incident, Sir. . . .**

....

Q: And you likewise claim that you placed markings on the said specimen on the place of the incident, correct?

A: Yes, ma’am.

Q: **And so you marked them on the alley?**

A: **The markings were done in a house near that alley owned by that person who was arrested by my fellow officer, PO2 Quiambao, ma’am.**¹¹⁴ (Emphasis in the original, citations omitted)

In *Torres*, this Court emphasized the fundamental principle that the Regional Trial Court’s factual findings are accorded respect and given great weight especially when sustained by the Court of Appeals:

To begin with, it is a fundamental principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. This is so because the trial court is in a unique position to observe the witnesses’ demeanor on the witness stand. The above rule finds an even more stringent application where said findings are sustained by the Court of Appeals, like in the case under consideration.¹¹⁵ (Citations omitted)

¹¹² *Rollo*, p. 18.

¹¹³ *CA rollo*, p. 53.

¹¹⁴ *Id.*

¹¹⁵ *People v. Torres*, 710 Phil. 398, 407 (2013) [Per J. Perez, Second Division].

There is nothing on record that shows “glaring errors; gross misapprehension of facts; and speculative, arbitrary[,] and unsupported conclusions[.]”¹¹⁶ Neither the Regional Trial Court nor the Court of Appeals committed errors that warrant a reversal of their findings. Thus, the appeal must be dismissed.

Against the overwhelming evidence of the prosecution, accused-appellant merely interposed an alibi and denied the accusations against him. In prosecutions for violations of Republic Act No. 9165, credence is given to the testimonies of the prosecution witnesses, especially when they are police officers presumed to have properly performed their official duties. In the absence of an adequate showing of bad faith, the presumption of regularity in the performance of official duty prevails over an accused’s self-serving and uncorroborated denial and alibi.¹¹⁷

The prosecution has sufficiently established every single element of both offenses under Article II, Sections 5 and 11 of Republic Act No. 9165 and proved that the police officers preserved the integrity and identity of the seized items beyond reasonable doubt. Thus, accused-appellant’s conviction must be affirmed.

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals’ November 7, 2017 Decision in CA-G.R. CR. HC No. 08686, which affirmed the September 16, 2016 Joint Judgment of the Regional Trial Court, Branch 76, Malolos City, Bulacan, finding accused-appellant Jay Leon, Jr. y Capili guilty beyond reasonable doubt for violations of Article II, Sections 5 and 11 of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.” (Gesmundo, J., *on official business*.)

Very truly yours,

Mis PDC Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court *11/22/2020*

¹¹⁶ Id.

¹¹⁷ *People v. Arago*, G.R. No. 233833, February 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64977>> [Per J. Peralta, Third Division].

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