

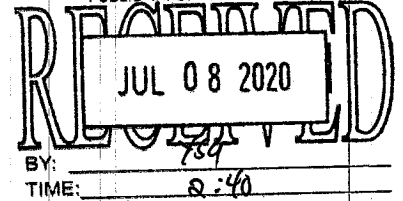


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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 15, 2020, which reads as follows:

“G.R. No. 224892 (PEOPLE OF THE PHILIPPINES, plaintiff-appellee v. PETER ROLAND ROMANO y DIAZ, accused-appellant). — In the prosecution of crimes involving dangerous drugs, the witnesses’ attendance in the seizure, marking, inventory, and photographing of the illegal drug confiscated from the accused is indispensable. Their absence creates a gap in the first link in the chain of custody, a fatal flaw to the prosecution’s cause.

This Court resolves the appeal¹ challenging the Decision² of the Court of Appeals, which affirmed the Regional Trial Court Decision³ convicting Peter Roland Romano y Diaz (Romano) of the illegal sale of dangerous drugs.

Romano was charged with the illegal sale of dangerous drugs, punished under Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information read:

That on or about June 25, 2013 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 3.99 grams of Methamphetamine Hydrochloride commonly called shabu, a dangerous drug.

Contrary to Section 5, Article II, RA 9165.⁴

¹ *Rollo*, pp. 21–23.

² *Id.* at 5–20. The Decision dated October 29, 2015 in CA-G.R. CR-HC. No. 01886 was penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a member of this Court) and Renato C. Francisco of the Nineteenth Division of the Court of Appeals, Cebu City.

³ *CA rollo*, pp. 11–17. The Judgment dated June 6, 2014 in Criminal Case No. 21769 was penned by Judge Rafael Crescencio C. Tan, Jr. of the Regional Trial Court of Dumaguete City, Branch 30.

⁴ *Id.* at 11.

Upon arraignment, Romano pleaded not guilty to the offense charged against him.⁵

During trial, the prosecution presented Police Officer 1 Ricknie Briones (PO1 Briones) as its lone witness. The parties agreed to stipulate on the testimonies of PO1 Malvin Noble (PO1 Noble), Police Chief Inspector Josephine Llana (Chief Inspector Llana), PO2 Uri Guiller Sapequena (PO2 Sapequena), local media practitioner Neil Rio (Rio), Barangay Kagawad Vic Anton Somoza (Barangay Kagawad Somoza), local Department of Justice representative Anthony Chilius Benlot (Benlot), Police Senior Inspector Ronoel Fungo (Senior Inspector Fungo), Intelligence Officer 1 Novemar Pinanonang (IO1 Pinanonang), and Senior Police Officer 4 Mariel Abiera (SPO4 Abiera).⁶

According to the prosecution, on June 24, 2013, an asset informed the Provincial Anti-Illegal Drugs Special Operations Task Group of the Negros Oriental Police Provincial Office that a certain “Roland”—later identified as Romano—was selling illegal drugs at the *ukay-ukay* stalls in Villa Amada, Daro, Dumaguete City. Senior Inspector Fungo ordered PO1 Briones and PO2 Sapequena to conduct a surveillance and casing operation to verify the tip. That same day, the officers proceeded to Villa Amada.⁷

Upon reporting their findings to Senior Inspector Fungo that “certain drug personalities”⁸ including Romano were indeed going in and out of the *ukay-ukay* stalls, the police officers were instructed to conduct a buy-bust operation.⁹

On June 25, 2013, at around 9:00 a.m., PO1 Briones, PO2 Sapequena, and the informant went to the *ukay-ukay* stalls in Villa Amada. With PO2 Sapequena as back-up, PO1 Briones and the informant met Romano, who agreed to sell one (1) “*bolto*” of shabu worth ₱25,000.00. They then agreed to meet a couple of hours later on San Jose Street in Dumaguete City to finalize the sale.¹⁰

At around 11:00 a.m., after an operational briefing, the buy-bust team proceeded to the meeting place. PO1 Briones, the designated poseur-buyer, immediately approached Romano and asked where the shabu was, but in reply, Romano asked where the money was. When PO1 Briones showed him the buy-bust money, Romano took out a heat-sealed *bolto* that supposedly

⁵ Id.

⁶ Id. at 11 and *rollo*, p. 6.

⁷ Id. at 11-A.

⁸ Id.

⁹ Id.

¹⁰ Id.

contained shabu and exchanged it for the money. At this, PO1 Briones announced that Romano was under arrest.¹¹

When the officer attempted to grab Romano's hand, however, Romano managed to flee. PO1 Briones chased after Romano for around 25 meters until he captured him with the other operatives' help. Once Romano was subdued, PO1 Briones apprised him of his constitutional rights in Visayan.¹²

PO1 Briones recovered the marked money from Romano, asked him his full name, and then marked the *bolto* of shabu with Romano's initials, the date of the incident, and the letters "BB," which referred to the buy-bust operation.¹³

By then, a crowd had already gathered and were causing a traffic jam, which prompted the team to head to the local National Bureau of Investigation office. There, the police officers took physical inventory and photographs of the seized item in the presence of Barangay Kagawad Somoza, media representative Rio, and Benlot from the Department of Justice.¹⁴

From the local National Bureau of Investigation office, the police officers went back to their office, where PO1 Briones prepared a memorandum request for a laboratory examination. He then brought Romano and a tape-sealed brown envelope containing the seized item to the crime laboratory for examination.¹⁵

PO1 Noble received the tape-sealed brown envelope from PO1 Briones. After checking the contents of the envelope, he resealed and kept it in his locked drawer, to which only he had access.¹⁶

The next day, at around 8:00 a.m., PO1 Noble submitted the envelope to Chief Inspector Llena, a forensic chemist, who then examined its contents. The seized item was found to have weighed 3.99 grams and tested positive for shabu. She then kept the specimen in the evidence vault of the crime laboratory, to which only she had access.¹⁷

Romano solely testified for the defense. He recalled that on the day of the incident, at around 11:00 a.m., he was riding his motorcycle to pick up his

¹¹ Id. at 11-A-12.

¹² Id. at 12.

¹³ Id.

¹⁴ Id. at 12 and *rollo*, p. 8. The witnesses signed the Receipt/Inventory of Property Seized, along with Senior Inspector Fungo who signed as the team leader and PO1 Briones as the seizing officer. PO2 Sapequena, who took photographs during the inventory, also signed as the photographer.

¹⁵ Id. at 12.

¹⁶ Id. at 12-13.

¹⁷ Id. at 13.

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child who would leave school at 11:30 a.m. He passed by Botica Real on his way and saw his friend and neighbor, Genis Lim (Lim), who then hitched a ride. When someone called out to Lim on their way, Lim asked Romano to stop the motorcycle so he could disembark. Later, Romano saw Lim already wrestling with the other person.¹⁸

Romano attempted to leave as he did not want to be involved in the scuffle. However, PO2 Sapequena came out of nowhere and restrained Romano before he could get away. Romano asked what he did wrong, but the police officer did not answer and handcuffed him instead.¹⁹

Romano and Lim were brought to the local National Bureau of Investigation office. There, the officers asked them who owned “the sachet of shabu that was placed”²⁰ at the office. Romano denied knowledge of it, asserting that he was on his way to pick up his child from school. He claimed that he only saw the sachet when they arrived at the office. As the shabu was not his, he did not file any case against the arresting officers.²¹

In its June 6, 2014 Judgment,²² the Regional Trial Court convicted Romano of the crime charged. It ruled that the prosecution established all the elements of the crime through the poseur-buyer, PO1 Briones, whose testimony it deemed as straightforward, consistent, and candid.²³ It also upheld the integrity and evidentiary value of the item seized.²⁴ The dispositive portion of the Judgment read:

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Peter Roland Romano y Diaz GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 3.99 grams of shabu in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings “PRDR-BB-06-25-13” containing 3.99 grams of shabu, is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Peter Roland Romano y Diaz shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

¹⁸ Id. at 13–14.

¹⁹ Id. at 14.

²⁰ Id.

²¹ Id.

²² Id. at 11–17.

²³ Id. at 14-A and 16.

²⁴ Id. at 15-A.

SO ORDERED.²⁵ (Emphasis in the original)

In its October 29, 2015 Decision,²⁶ the Court of Appeals affirmed Romano's conviction. It ruled that the totality of the evidence proved the sale of dangerous drugs,²⁷ finding no ill motive on the police officers' part to testify against Romano.²⁸ It deemed as reasonable the officers' decision to move the inventory and photographing of the seized item in view of the growing crowd in the place of arrest. It also upheld the integrity and evidentiary value of the seized drugs after all four (4) links in the chain of custody had been established.²⁹

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, the appeal is hereby DENIED. The Decision of the RTC, Branch 30, Dumaguete City, dated June 6, 2014, in Criminal Case No. 21769 is hereby AFFIRMED *in toto*.

SO ORDERED.³⁰

On December 3, 2015, Romano filed a Notice of Appeal,³¹ which the Court of Appeals gave due course to in its March 16, 2016 Resolution.³²

In its July 27, 2016 Resolution,³³ this Court noted the case records and required the parties to simultaneously file their respective supplemental briefs.

The Office of the Solicitor General, on behalf of plaintiff-appellee People of the Philippines, filed its Supplemental Brief.³⁴ It maintains that the prosecution sufficiently proved the existence of the crime's elements and the integrity of the *corpus delicti*.³⁵ It asserts that in a buy-bust operation, the inventory does not have to be conducted in the place of arrest, as long as it may be justified.³⁶ It alleges that the Court of Appeals correctly affirmed the Regional Trial Court's findings.³⁷

²⁵ Id. at 16–17.

²⁶ *Rollo*, pp. 5–20.

²⁷ Id. at 14.

²⁸ Id. at 15.

²⁹ Id. at 17–18.

³⁰ Id. at 20.

³¹ Id. at 21–23.

³² Id. at 24.

³³ Id. at 27–28.

³⁴ Id. at 33–52.

³⁵ Id. at 40.

³⁶ Id. at 46.

³⁷ Id. at 48.

Accused-appellant manifested that he would no longer file a supplemental brief, adopting the Brief he filed before the Court of Appeals instead.³⁸

Accused-appellant assails the identity and integrity of the *corpus delicti*, saying that the prosecution failed to establish who had the seized item before it was marked. He claims that since PO1 Briones chased him when he tried to flee, the prosecution failed to state the whereabouts of the confiscated item during the chase.³⁹

Accused-appellant points out that the inventory was conducted at the local National Bureau of Investigation office, even if it was not the office's operation. He notes that the Dumaguete City Police Station was less than a kilometer away from the crime scene.⁴⁰

Accused-appellant likewise contends that he did not commit any overt act warranting the police officers' surveillance, and that his warrantless arrest was illegal.⁴¹

For this Court's resolution is the lone issue of whether or not the guilt of accused-appellant Peter Roland Romano y Diaz was proven beyond reasonable doubt.

This Court grants the appeal and acquits accused-appellant of the charge.

I

Conviction for the illegal sale of drugs under Section 5 of the Comprehensive Dangerous Drugs Act hinges on the prosecution's proof beyond reasonable doubt that "the transaction or sale took place,"⁴² and that the *corpus delicti* was presented in court.⁴³ The *corpus delicti*, the illegal drug confiscated from the accused, must be presented as evidence during trial:

"[I]t is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt." Its identity and integrity must be proven to have been safeguarded. Aside from *proving the*

³⁸ Id. at 59-63.

³⁹ CA rollo, p. 34.

⁴⁰ Id. at 35.

⁴¹ Id. at 37.

⁴² *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500 [Per J. Leonen, Third Division] citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]; *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division]; and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

⁴³ Id. at 500-501.

elements of the charges, “the fact that the substance illegally possessed and sold [was] the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.” The chain of custody carries out this purpose “as it ensures that *unnecessary doubts concerning the identity of the evidence are removed*.”⁴⁴ (Emphasis supplied)

The peculiar feature of dangerous drugs and its resultant objectionable nature—especially when only a minuscule amount is involved in indicting an accused—entails a more stringent approach.⁴⁵ In *Mallillin v. People*:⁴⁶

[T]he 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. . . .

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.⁴⁷ (Emphasis supplied, citations omitted)

Accused-appellant was charged with selling 3.99 grams of shabu. As this Court explained in *Mallillin*, heightened scrutiny must be employed when courts evaluate evidence in prosecutions involving dangerous drugs.

II

Republic Act No. 9165⁴⁸ outlines the requirements for the custody and disposition of the seized drugs and paraphernalia. It partly provides:

⁴⁴ *People v. Sagana*, 815 Phil. 356, 367–368 (2017) [Per J. Leonen, Second Division] *citing Lopez v. People*, 725 Phil. 499, 507 (2014) [Per J. Perez, Second Division]; *People v. Lagahit*, 746 Phil. 896, 908 (2014) [Per J. Perez, First Division]; and *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

⁴⁵ *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

⁴⁶ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

⁴⁷ *Id.* at 588.

⁴⁸ Here, the applicable law is Republic Act No. 9165, considering that the buy-bust operation transpired on June 25, 2013, prior to the law’s amendment.

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 officer/team having initial custody and control of the drugs *shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the 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[.]*⁴⁹ (Emphasis supplied)

Jurisprudence has underscored that four (4) links are critical in establishing the chain of custody of the seized item:

[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.⁵⁰ (Citation omitted)

In *People v. Holgado*,⁵¹ this Court explained how the Comprehensive Dangerous Drugs Act aims to preserve the integrity of the confiscated items:

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. *Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.*⁵² (Emphasis supplied)

A plain reading of Section 21 of the Comprehensive Dangerous Drugs Act requires that the apprehending team take physical inventory and

⁴⁹ Republic Act No. 9165 (2002), sec. 21(1).

⁵⁰ *People v. Nandi*, 639 Phil. 134, 144–145 (2010) [Per J. Mendoza, Second Division].

⁵¹ 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

⁵² *Id.* at 93.

photographs of the seized article. This must be done in the presence of the accused⁵³ or counsel, along with the third-party witnesses: a representative from the media, from the Department of Justice, and any elected public official.

This Court in *People v. Mendoza*⁵⁴ discussed how the “insulating presence” of witnesses supports proof of an unbroken chain of custody:

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.⁵⁵

Here, the prosecution established that the three (3) witnesses were present when the supposedly confiscated item was inventoried and photographed in the local office of the National Bureau of Investigation. But this alone cannot be taken as a guarantee of the item’s integrity. Witnesses must be present as early as its seizure,⁵⁶ conversely, their absence is prejudicial to the integrity of the item seized.

In *People v. Tomawis*,⁵⁷ where the accused was acquitted, this Court reprehended the police officers for failing to secure the attendance of the third-party witnesses during the warrantless arrest, and to inform them of the buy-bust operation:

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the [Implementing Rules and Regulations] allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. *By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature,*

⁵³ It may be the person/s from whom such items were confiscated and/or seized, if he or she is not the one indicted in the same case.

⁵⁴ 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

⁵⁵ Id. at 764.

⁵⁶ *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 520–521 [Per J. Leonen, Third Division].

⁵⁷ G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

The buy-bust team in this case utterly failed to comply with these requirements. To start, the conduct of the inventory in this case was not conducted immediately at the place of arrest but at the *barangay* hall of Pinyahan, Quezon City. As explained by the buy-bust team of the PDEA, IO1 Alejandro and IO1 Lacap, they could not conduct the inventory at Starmall, Alabang, because a commotion ensued as bystanders in the food court tried to assist Tomawis who shouted for help. Evidently, this happened because the buy-bust operation was conducted in a shopping mall.

While the [Implementing Rules and Regulations] allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension, is not dispensed with. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

There are police stations closer to Starmall, Alabang, in Muntinlupa City and the office of the PDEA is also in Pinyahan, Quezon City. And yet, the inventory was conducted in the *barangay* hall of Pinyahan, Quezon City — which is not one of the allowed alternative places provided under Section 21 of the [Implementing Rules and Regulations].

More importantly, there was no compliance with the three-witness rule. There were no witnesses from the DOJ or the media. Only two witnesses who were elected barangay officials were present. It thus becomes evident that the buy-bust team did not prepare or bring with them any of the required witnesses at or near the place of the buy-bust operation and the witnesses were a mere afterthought. Based on the testimonies of barangay councilors Burce and Gaffud, they were not present during the seizure of the drugs. They were only called to go to the barangay hall of Pinyahan, Quezon City — after the arrest and seizure that had been done in Starmall, Alabang — to "witness" the inventory made by the PDEA at the barangay hall.

....

... [I]t can be gleaned that barangay councilors Burce and Gaffud were not present near to or at the place of arrest. They were merely called to witness the inventory at the Pinyahan barangay hall and then the drugs were shown to them by the PDEA agents. They did not even have prior knowledge of the buy-bust operation.

....

The presence of the three witnesses must be secured not only during the inventory but more importantly *at the time of the warrantless arrest*. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating

witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of [Republic Act No.] 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, *the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”*⁵⁸ (Emphasis supplied, citations omitted)

Here, the police officers conducted surveillance and casing operation on June 24, 2013. After reporting their findings, they were instructed to strike a drug deal with accused-appellant. This materialized the following day, at 9:00 a.m. when PO1 Briones, acting as poseur-buyer, the informant, and accused-appellant agreed to meet later that day, at 11:00 a.m., to exchange a *bolto* of shabu for ₱25,000.00.⁵⁹

However, when the alleged sale transpired and the police officers arrested accused-appellant,⁶⁰ none of the law’s required witnesses were present. Worse, PO1 Briones went on to mark the supposedly confiscated items despite the absence of any witness to confirm that the article came from accused-appellant.

It was only in the local National Bureau of Investigation office that an elected official and representatives from the Department of Justice and media came to witness the inventorying and photographing of the item.

This Court fails to see any excusable reason for the apprehending officers’ grave omission. We scoured the records and found no attempt on their part to justify their fatal deviation from the law’s simple requirement. They had an entire day to contact possible witnesses and inform them of the planned buy-bust operation the following day. Even on the day of the incident, had they intended to, the police officers could have secured the presence of the witnesses in time for the warrantless arrest, considering the ample two-hour gap between their deal at 9:00 a.m. and the supposed

⁵⁸ Id. at 146–150.

⁵⁹ CA *rollo*, p. 11-A.

⁶⁰ Id. at 12.

transaction at 11:00 a.m. Instead, they incautiously called in the three (3) witnesses⁶¹ only after accused-appellant and the article allegedly seized from him had been brought to the National Bureau of Investigation office. By then, it was too late for the witnesses to authenticate the seized item.

As stressed in *Tomawis*, the witnesses' participation in the seizure, marking, inventory, and photographing of the seized illegal drug is indispensable to establish the item's identity. Their presence is especially critical at the time that the police officer makes initial contact with the dangerous drug, the first link in the chain of custody.⁶² Without this crucial first link, the integrity and evidentiary value of the confiscated item is seriously put into question, entirely destroying the prosecution's case.

A contrary rule would render the chain of custody requirement illusory. If the law enforcer's seizure of the dangerous drug from the accused cannot be proved, it does not matter whether it was subsequently and properly turned over to the investigating officer, to the forensic chemist, and ultimately, presented in court.

Here, the witnesses the police officers needed to present⁶³ could only attest to the existence of the illegal drug. They could not have validly testified on how it was confiscated from accused-appellant. This signifies the prosecution's failure to establish the identity and integrity of the *corpus delicti*, an essential element of the illegal sale of dangerous drugs.⁶⁴ Per jurisprudence,⁶⁵ this Court is constrained to acquit accused-appellant.

III

Contrary to the Court of Appeals' ruling, there need not be ill motive on the police officer's part to successfully assail his or her testimony on the alleged sale of illegal drugs. The presumption of regularity in the conduct of official functions does not arise when there are glaring irregularities in the performance of the apprehending officers' functions. In *People v. Kamad*,⁶⁶ this Court explained:

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of

⁶¹ To reiterate, these are: Department of Justice representative Anthony Chilius Benlot, Barangay Kagawad Vic Anton Somoza, and media representative Neil Rio.

⁶² *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

⁶³ The parties stipulated on the facts that the three (3) third-party witnesses were to testify on certain matters. Thus, their testimonies were dispensed with.

⁶⁴ *People v. Morales*, 630 Phil. 215, 229 (2010) [Per J. Del Castillo, Second Division].

⁶⁵ *People v. Dela Cruz*, 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

⁶⁶ 624 Phil. 289 (2010) [Per J. Brion, Second Division].

official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. *The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origins of the *shabu* presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.⁶⁷ (Emphasis supplied, citation omitted)

This Court is not oblivious to the pernicious effects of dangerous drugs. The pursuit of our police officers to curb its illegal use and trade is commendable. However, we remind our *law enforcers* to mindfully abide by basic statutory requirements when apprehending perpetrators. A misplaced notion of vigilance does not strengthen the rule of law. It burdens the criminal justice system with mistrust.

This Court, finally, cannot turn a blind eye to the fact that the item supposedly seized only weighed 3.99 grams. It has been five (5) years since, but regrettably, we are compelled to reiterate our earlier pronouncement in *Holgado*:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁶⁸

In sum, as the prosecution failed to prove the *corpus delicti* beyond reasonable doubt, this Court acquits accused-appellant.

⁶⁷ Id. at 311.

⁶⁸ *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

WHEREFORE, the Court of Appeals' October 29, 2015 Decision in CA-G.R. CR-HC. No. 01886 is **REVERSED** and **SET ASIDE**. Accused-appellant Peter Roland Romano y Diaz is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action he has taken within five (5) days from receipt of this Resolution. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgment be issued immediately.

SO ORDERED."

Very truly yours,

Mis D C Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court / *6/17/2020*

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The Presiding Judge
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Branch 30, 6200 Dumaguete City

CSSupt. Gerardo F. Padilla
Superintendent
BUREAU OF CORRECTIONS
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The Director General
PHILIPPINE NATIONAL POLICE
National Headquarters
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The Director General
PHILIPPINE DRUG ENFORCEMENT AGENCY
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