



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **14 February 2022** which reads as follows:*

“G.R. No. 256324 (*People of the Philippines v. Jason Wy y Herres @ “Komanak”*). — On appeal is the August 28, 2020 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR. HC. No. 11248 affirming the April 4, 2018 Decision² of Branch 52 of the Regional Trial Court (RTC) of Guagua, Pampanga, in Criminal Case No. G-18-12758 and Criminal Case No. G-18-12759, finding accused-appellant Jason Wy y Herres @ “Komanak” (accused-appellant), guilty beyond reasonable doubt of Illegal Sale (Section 5) and Illegal Possession (Section 11), Article II of Republic Act No. (RA) 9165,³ or the “Comprehensive Dangerous Drugs Act of 2002,” respectively.

The Antecedents:

In Criminal Case No. G-18-12758, accused-appellant was charged with violation of Section 5, Article II of RA 9165 in an Information⁴ that reads:

That on or about the 19th day of January 2018, in the Municipality of Sta. Rita, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized to sell any dangerous drug, did then and there willfully, unlawfully and knowingly, sell, in exchange of a 500 peso bill with Serial Nos. (sic) RP995770, to poseur buyer cop PO3 Jeffrey B. Mallari, one (1) small heat sealed transparent plastic sachet containing shabu weighing 0.036 grams (sic) marked as JM1, a dangerous drug.

¹ *Rollo*, pp. 4-15. Penned by Associate Justice Ricardo R. Rosario (now a Member of the Court), and concurred by Associate Justices Maria Filomena D. Singh and Florencio Mallanao Mamauag, Jr.

² Records, (Criminal Case No. G-18-12758), pp. 205-218; records. (Criminal Case No. G-18-12759), pp. 82-95. Penned by Judge Jonel S. Mercado.

³ Entitled “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as The Dangerous Drugs Act of 1972, As Amended, Providing Funds Therefor, and for Other Purposes.” Approved: June 7, 2002.

⁴ Records (Criminal Case No. G-18-12758), p. 4.

Contrary to law.⁵

In Criminal Case No. G-18-12759, accused-appellant was charged with violation of Section 11, Article II of RA 9165 in an Information⁶ that reads:

That on or about the 19th day of January 2018, in the Municipality of Sta. Rita, Pampanga, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, not being authorized to possess any dangerous drug did then and there willfully, unlawfully and feloniously have in his possession and control one (1) small heat sealed transparent sachets (sic) containing shabu weighing 0.040 grams (sic) marked as JM2, a dangerous drug.

Contrary to law.⁷

During his arraignment, accused-appellant entered a plea of “not guilty” for both charges.⁸ After the pre-trial conference held on February 7, 2018, trial on the merits ensued. The prosecution presented the following witnesses: Police Officer (PO) 3 Jeffrey B. Mallari (PO3 Mallari), PO2 Joseph M. De Jesus (PO2 De Jesus), and PO2 Carlo Rey A. Reyes (PO2 Reyes). The parties also entered into stipulations on matters regarding the testimony to be given by Forensic Chemist Police Superintendent Daisy P. Babor (Forensic Chemist Babor). The defense presented accused-appellant himself, Ronnie C. Pangilinan (Pangilinan), and Jonalyn Dagal Tungul (Tungul).

Version of the Prosecution:

At around 1:00 a.m. of January 19, 2018, PO3 Mallari and PO2 De Jesus were on duty at the Drug Enforcement Unit (DEU) of the Sta. Rita Municipal Police Station when they were summoned by Acting Chief of Police, Police Senior Inspector (PSINSP.) Leonardo M. Lacambra (PSINSP. Lacambra) to the latter’s office.⁹ PSINSP. Lacambra, acting on information received from a confidential informant (CI), conducted a meeting regarding a buy-bust operation targeting accused-appellant to be led by team leader, Deputy Chief of Police PSINSP. Rolando L. Ver (PSINSP. Ver).¹⁰ PO3 Mallari was designated as the poseur buyer and was given a ₱500.00-bill with Serial No. RP 995770 to be used as buy-bust money.¹¹ PO3 Mallari thereafter marked the buy-bust money with his initials, “JM.”¹² PO2 Reyes coordinated with Philippine Drug Enforcement Agency (PDEA) regarding the buy-bust operation and was given PDEA Control No. 10004-01208-0346.¹³

⁵ Id.

⁶ Records, (Criminal Case No. G-18-12759), p. 4.

⁷ Id.

⁸ Records (Criminal Case No. G-18-12758), pp. 43 and 46; records, (Criminal Case No. G-18-12759), p. 37.

⁹ Records (Criminal Case No. G-18-12758), p. 12; records, (Criminal Case No. G-18-12759), p. 12.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Records (Criminal Case No. G-18-12758), pp. 12 and 15; records, (Criminal Case No. G-18-12759), pp. 12 and 15.

The CI called accused-appellant and informed the latter that two of his (CI's) friends, "Wilson" (PO3 Mallari) and "Jay" (PO2 De Jesus), will meet up with accused-appellant aboard a red Honda TMX motorcycle with no plate number.¹⁴ Accused-appellant told the CI to wait for his call as he was still waiting for supply of the items.¹⁵ Accused-appellant then set the meeting place at the end of Zone 8, Barangay San Basilio, Sta. Rita, Pampanga, and instructed the CI to tell "Wilson" and "Jay" to honk the motorcycle's horn twice to identify themselves.¹⁶ Accused-appellant will then wave his left hand as a signal to "Wilson" and "Jay" to approach him.¹⁷

At around 6:40 a.m., while at the basketball court of San Basilio in Zone 5, accused-appellant called the CI telling him that he (accused-appellant) was on his way to the agreed meeting place.¹⁸ The CI, along with operative PO2 Thomas T. Corpuz III and PO1 Aladin C. Perez, aboard a cream Optra Chevrolet driven by PO1 Jake Hersen T. Nartales, proceeded to the target area.¹⁹ The CI then confirmed that accused-appellant was standing on the bridge at Zone 8, Barangay, San Basilio, Sta. Rita, Pampanga.²⁰ PO3 Mallari and PO2 De Jesus headed to the target area aboard the Honda TMX Motorcycle. PSINSP. Ver and PO1 Genevieve A. Martin followed them in a Toyota Hi Lux Mobile Patrol car.²¹

At around 7:00 a.m. on the same day, upon spotting a man of stocky build standing on the bridge, PO3 Mallari and PO2 De Jesus honked the motorcycle's horn twice.²² Thereafter, the man responded by waving his left hand. PO3 Mallari and PO2 De Jesus approached the man on the bridge and introduced themselves as "Wilson" and "Jay". PO3 Mallari asked the man if he was "Jayson Wy" and the man confirmed the same by saying, "Oo, ako nga" ("Yes, I am"). Accused-appellant then asked, "Magkano ba bibilhin ninyo?" ("How much will you buy?") and PO3 Mallari replied, "Limang Daan Lang?" ("P500.00 only?"). PO3 Mallari then handed the marked money to accused-appellant who then inserted the same in the left side of his shorts. Accused-appellant then retrieved one small sachet of suspected *shabu* from his right side and handed the same to PO3 Mallari. PO3 Mallari and PO2 De Jesus thereafter identified themselves as police officers. PO2 De Jesus arrested the accused-appellant and informed him of the cause of the arrest and his constitutional rights in *Kapampangan/Pampango*. During the body search, PO3 Mallari recovered the marked money from accused-appellant's left side and one pack of suspected sachet on his right side.²³ PO3 Mallari put the sachet subject of the

¹⁴ Records (Criminal Case No. G-18-12758), p. 12; records, (Criminal Case No. G-18-12759), p. 12.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Records (Criminal Case No. G-18-12758), p. 12; records, (Criminal Case No. G-18-12759), p. 12; TSN, February 22, 2018, p. 2.

²⁰ Records (Criminal Case No. G-18-12758), p. 13; records, (Criminal Case No. G-18-12759), p. 13.

²¹ Id.

²² Id.

²³ Id.

buy-bust operation in his right pocket and the sachet confiscated from the possession of the accused and the buy-bust money in his left pocket.²⁴

PO2 De Jesus called PSINSP. Ver to inform him that they have arrested accused-appellant.²⁵ When PSINSP. Ver and the mobile team arrived, PSINSP. Ver instructed the team to conduct the marking of the evidence at the police station since the accused-appellant was becoming unruly and might jump into the canal.²⁶ At the police station, PO3 Mallari marked one sachet of suspected *shabu* from the buy-bust operation as “JM1” and the other sachet of suspected *shabu* recovered from the accused-appellant’s possession as “JM2”.²⁷ The inventory of the evidence was conducted before the accused-appellant, representative of the media Jimmy Hipolito, and elected official of Barangay San Basilio *Kagawad* Mario Kong.²⁸ The accused-appellant refused to sign the Inventory of Evidences (sic) Form thus “RTS” was placed above “Respondent/Counsel.”²⁹ PO2 Reyes took photographs of the marking and inventory of the evidence.³⁰ After the inventory, PO3 Mallari prepared the Chain of Custody Form³¹ and thereafter, turned over the two sachets of suspected *shabu* to the Investigator-on-Case PO2 Reyes at 7:40 a.m.³²

PO2 Reyes brought the seized items to the Regional Crime Laboratory of Region III for examination and turned over the same to PO3 Rodrigo B. Trinidad, Jr. (PO3 Trinidad) at 10:00 a.m. of the same day.³³ The accused-appellant was also subjected to a drug test. The buy-bust team prepared the Request for Laboratory Examination of the Seized Items³⁴ as well as the Request for Drugs Test/Examination on Person.³⁵ The buy-bust team also prepared the following documents: Custodial Investigation Report, Photographs of Evidence, and representative of media and barangay, Crime Lab 3 Request for Examination of the Seized Evidence, Crime Lab 3 Request for Examination of the Arrested Person, Spot Report, Investigation Data Form, and Police Investigation Report.³⁶

Upon examination, the seized item subject of the buy-bust operation weighed 0.036 gram while the item confiscated from accused-appellant weighed 0.040 gram.³⁷ In Chemistry Report No. D-047-2018 RCLO3³⁸

²⁴ TSN, February 22, 2018, pp. 5-6.

²⁵ Records (Criminal Case No. G-18-12758), p. 13; records, (Criminal Case No. G-18-12759), p. 13.

²⁶ Id.; id.

²⁷ Id.; id.

²⁸ Id.; id.

²⁹ Id. at 18; id. at 18.

³⁰ Id. at 13; id. at 13.

³¹ Id. at 19; id. at 19.

³² Id. at 13; id. at 13.

³³ Id.; id.

³⁴ TSN, February 22, 2018, p. 12.

³⁵ Records (Criminal Case No. G-18-12758), pp. 24-25; records, (Criminal Case No. G-18-12759), pp. 24-25.

³⁶ Id. at 15; id. at 15.

³⁷ Id. at 24; id. at 24.

³⁸ Id. at 26; id. at 26.

prepared by Forensic Chemist Babor, the qualitative examination on the subject specimens yielded positive results in the test for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.³⁹ Forensic Chemist Babor also prepared Chemistry Report No. DT-051-2018 RCLO3⁴⁰ which indicated that the urine sample obtained from accused-appellant yielded a positive result to the test for methamphetamine hydrochloride.⁴¹

Version of the Defense:

Accused-appellant testified that at around 1:00 a.m. on January 19, 2018, he was walking from a gambling area to his house near Zone 6 of Barangay San Basilio with his friend Pangilinan, when he noticed a parked white car.⁴² Thereafter, a man ran towards them and obstructed their path.⁴³ Two other men then alighted from the parked white car.⁴⁴ All three individuals pointed guns towards accused-appellant and Pangilinan and ordered them to lie face down on the ground.⁴⁵ One of the armed individual searched the person of accused-appellant and retrieved his Samsung mobile phone and money amounting ₱2,300.00. Accused-appellant and Pangilinan were forced to board the white car and were then brought to Community Police Assistance Center (COMPAC) of Barangay Dila-Dila.⁴⁶ Thereafter, accused-appellant and Pangilinan were brought to the municipal office but Pangilinan was allowed to go home while accused-appellant was detained in a jail cell.⁴⁷ The following day, a man identified by accused-appellant as PO2 Reyes released him from the jail cell and brought him to the police office.⁴⁸ Accused-appellant was photographed beside a table with two sachets and ₱500.00-bill.⁴⁹ Accused-appellant also claimed that he signed a certain document without understanding its contents out of fear of the police.⁵⁰ Accused-appellant was then brought to Camp Olivas by PO2 Reyes and PO2 De Jesus and was subjected to a urine test.⁵¹

Defense witness Pangilinan corroborated accused-appellant's testimony and further claimed that accused-appellant was set up because when he and accused-appellant were on the ground, Pangilinan heard one of the men talking to someone on a mobile phone saying, "*Alin dito? Yun bang Malaki o yung maliit?*" ("Which one? The big one or the small one?").⁵² Pangilinan then heard one of the men say "*Hindi 'yan, Hindi 'yan*" ("Not that one, not that one").⁵³

³⁹ Id. at 26; id. at 26.

⁴⁰ Id. at 27; id. at 27.

⁴¹ Id.; id.

⁴² Id. at 152-153; id. at 60-61.

⁴³ Id. at 152; id. at 60.

⁴⁴ Id. at 152-153; id. at 60-61.

⁴⁵ Id.; id.

⁴⁶ Id. at 153; id. at 61.

⁴⁷ Id. at 154; id. at 62.

⁴⁸ Id.; id.

⁴⁹ Id.; id.

⁵⁰ Id.; id.

⁵¹ Id.; id.

⁵² Id. at 148; id. at 56.; TSN, March 15, 2018, pp. 4-6.

⁵³ Id.; id.; id.

Defense witness Tungul, partner of accused-appellant, testified that she was notified of accused-appellant's arrest around 9:00 a.m. of January 19, 2018.⁵⁴ Tungul claimed that a certain PO June Faith Nicdao connived with a person misrepresenting himself as the judge allegedly handling accused-appellant's case to extort money from her in exchange for accused-appellant's release.⁵⁵ Tungul later discovered that the person she dealt with was actually an impostor.⁵⁶

Ruling of the Regional Trial Court:

In a Decision⁵⁷ dated April 4, 2018, the RTC convicted accused-appellant of Illegal Sale and Illegal Possession of Dangerous Drugs under Section 5 and Section 11, Article II of RA 9165 respectively. The RTC found that the prosecution, through testimonial and documentary evidence, was able to sufficiently prove the existence of all the essential elements of the crimes charged, as well as establish that there were no substantial gaps in the chain of custody of the seized drugs which may raise doubts on the authenticity of the evidence presented before the court. The dispositive portion of the RTC judgment reads:

WHEREFORE, (a) in Criminal Case No. G-12758, this court hereby (1) finds accused Jason Wy y Herres GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165; and (2) imposes upon accused the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00); and (b) in Criminal Case No. G-12759, this court hereby (1) finds said accused GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165; and (2) imposes upon accused the penalty of TWELVE (12) YEARS AND ONE (1) DAY TO TWENTY (20) YEARS AND ONE (1) DAY and a fine of THREE HUNDRED THOUSAND PESOS (Php300,000).

SO ORDERED.⁵⁸

Accused-appellant appealed his conviction to the CA on December 27, 2018.⁵⁹ In his brief,⁶⁰ accused-appellant assailed the credibility of the testimonies of the witnesses of the prosecution and averred that the prosecution failed to establish an unbroken chain of custody of the seized dangerous drugs.

Ruling of the Court of Appeals:

In its August 28, 2020 Decision, the CA affirmed the RTC's judgment of conviction. The CA found that all the essential elements of Illegal Sale and

⁵⁴ Records (Criminal Case No. G-18-12758), p.187; records, (Criminal Case No. G-18-12759), p. 69.

⁵⁵ Id. at 187-188; id. at 69-71.

⁵⁶ Id. at 188-189; id. at 70-71.

⁵⁷ Id. at 205-218; id. at 82-95.

⁵⁸ Id. at 218; id. at 95.

⁵⁹ CA *rollo*, pp. 15-16.

⁶⁰ Id. at 36-51.

Illegal Possession of Dangerous Drugs under Section 5 (Illegal Sale) and Section 11 (Illegal Possession), Article II of RA 9165, respectively, were convincingly established by the prosecution and that the integrity and evidentiary value of the seized drugs were preserved beyond reasonable doubt.

The *fallo* of the CA's August 28, 2020 Decision reads:

WHEREFORE, the appeal is **DENIED**. The April 4, 2018 Decision of Branch 52 of the Regional Trial Court of Guagua, Pampanga in **Criminal Case No. G-18-12758** and **Criminal Case No. G-18-12759**, is **AFFIRMED**, with a **MODIFICATION** in **Criminal Case No. G-18-12759**, in that the accused-appellant is sentenced to twelve (12) years and one (1) day to fifteen (15) years of imprisonment and a fine of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED.⁶¹

In view of the CA's adverse Decision, accused-appellant filed a Notice of Appeal on October 14, 2020.⁶²

Issues:

1. Whether or not accused-appellant is guilty of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA No. 9165; and
2. Whether or not accused-appellant is guilty of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA No. 9165.

Our Ruling

The appeal is meritorious. The Court agrees that the marking, inventory, and photograph of the sachets of illegal drugs in this case were regularly done in sufficient compliance with the requirements under Section 21 of RA No. 9165, as amended. However, the prosecution failed to present sufficient evidence establishing the links of the chain of custody and the preservation of the integrity of the seized items.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are the following: "(a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment"⁶³ while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are as follows: "(a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug."⁶⁴

⁶¹ *Rollo*, p. 14.

⁶² *Id.* at 16.

⁶³ *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

⁶⁴ *People v. Rivera*, G.R. No. 252886, March 15, 2021.

In cases of Illegal Sale and Illegal Possession of Dangerous Drugs, the identity of the object or the seized dangerous drug is the *corpus delicti* of the crime and thus must be established with moral certainty.⁶⁵ Indeed, in the case of *Fuentes v. People*,⁶⁶ the Court declared:

Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.⁶⁷

“Chain of Custody” pertains to the “duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.”⁶⁸ The Court has consistently recognized the following links that must be established in the chain of custody in a buy-bust situation: *first*, 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.⁶⁹

Although the Court has recognized that strict compliance with the chain of custody rule is not always possible, deviations from the procedure may be allowed only when the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁷⁰ The Court, once again in *Fuentes v. People*,⁷¹ clarified that the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax but is an administrative protocol, embodied in law, that law enforcement officers and operatives are enjoined to implement as part of their police functions:

At this juncture, the Court takes this opportunity to clarify that compliance with the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. In the first place, the chain of custody procedure is embodied in statutory provisions which were ‘crafted by Congress as safety precautions to address potential police abuses [in drugs cases], especially considering that the penalty imposed may be life imprisonment.’ It is not a Supreme Court-issued rule of procedure created under

⁶⁵ See *Fuentes v. People*, G.R. No. 228718, January 7, 2019.

⁶⁶ Id. Citations omitted.

⁶⁷ Id.

⁶⁸ *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

⁶⁹ *People v. Kamad*, 624 Phil. 289, 304 (2010); *People v. Villalon*, G.R. No. 249412, March 15, 2021.

⁷⁰ Supra note 65.

⁷¹ See id.

its constitutional authority to '[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts.' Rather, it is an administrative protocol that law enforcement officers and operatives are enjoined to implement as part of their police functions. Indeed, while the chain of custody rule is 'procedural' in the sense that it sets a step-by-step process that must be followed, it is *by no means remedial in nature* since it is not, properly speaking, a requirement or process that pertains to court litigation.

At most, insofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the *procedure of proving the same* which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In so doing, the court only applies the saving-clause found in the law.⁷²

After a careful review of the records of the case, We find that the prosecution failed to clearly establish all the links in the chain of custody and such failure raises doubts as to the preservation of the integrity and evidentiary value of the seized items.

With regard to the *first* link requiring the seizure and marking of the illegal drug recovered from the accused-appellant by the apprehending officer, the Court agrees with the finding of the CA that the marking of the seized items may be done at the nearest police station.

In the case of *People vs. Quirimit*,⁷³ citing *People v. Resurreccion*⁷⁴ and *People v. Gum-Oyen*,⁷⁵ the Court held that the marking of the seized items must be done (1) in the presence of the apprehended violator (2) immediately upon confiscation and that "marking upon immediate confiscation" contemplates even marking at the nearest police station or office of the apprehending team, *to wit*:

As for PO2 Velasquez's failure to specify where he had marked the items seized, it has long been held that failure of the arresting officers to mark the illegal drugs at the place of arrest does not render the confiscated items inadmissible in evidence. In *People v. Resurreccion*, the Court stated:

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police

⁷² Id.

⁷³ *People v. Quirimit*, G.R. No. 193246 (Notice), June 5, 2013.

⁷⁴ *People v. Resurreccion*, 618 Phil. 520 (2009).

⁷⁵ *People v. Gum-Oyen*, 603 Phil. 665 (2009).

station rather than at the place of arrest. Consistency with the “chain of custody” rule requires that the “marking” of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation.

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. “Immediate Confiscation” has no exact definition. Thus, in *People v. Gum-Oyen*, **testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.**⁷⁶ (Emphasis supplied; citations omitted)

Moreover, the Court also affirms the CA’s finding that the requirement to conduct the physical inventory and photograph of the seized items before the accused-appellant and the required witnesses at the nearest police station was also sufficiently complied with by the buy-bust operation team. The applicable law, RA 10640,⁷⁷ amended Section 21 (1) of the RA 9165, 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:

(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

⁷⁶ *People v. Quirimit*, G.R. No. 193246 (Notice), June 5, 2013.

⁷⁷ 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.” Approved: July 15, 2014.

officer/team, shall not render void and invalid such seizures and custody over said items.⁷⁸ (Emphasis supplied)

PO3 Mallari testified that he marked the seized items before the accused-appellant⁷⁹ at the nearest police station or office of the apprehending officer/team pursuant to the above-stated pronouncement and Section 21 of RA 9165, as amended by RA 10640.⁸⁰ The prosecution also presented evidence showing that the physical inventory and taking of photograph were conducted at the nearest police station or at the nearest office of the apprehending officer in the presence of the accused-appellant⁸¹ and the required witnesses namely: representative of the media Jimmy Hipolito of Flagship News, and elected official of *Barangay San Basilio Kagawad* Mario Kong.⁸²

However, the Court notes that there are minor inconsistencies in the testimonies of PO3 Mallari and PO2 De Jesus as to when the seized items were marked. PO3 Mallari claimed that it took “more or less fifteen (15) minutes” from the seizure at the selling place to the marking at the police station⁸³ while PO2 De Jesus claimed that the arrest of the accused-appellant up to the marking of the seized items took “about forty (40) minutes”.⁸⁴

As to the *second* link pertaining to the turnover of the seized items by the apprehending officer to the investigating officer, there are apparent inconsistencies in the testimonies of PO3 Mallari, PO2 Reyes, and PO2 De Jesus with regard to the turn over and custody of the seized items.

PO3 Mallari claimed that the seized items were turned over to PO2 Reyes, the investigator-on-case. This testimony was also supported by the chain of custody form⁸⁵ executed by PO3 Mallari and PO2 Reyes. However, PO2 De Jesus testified that the seized items, in fact, remained in the possession and custody of PO3 Mallari:

[ATTY. MANDAP]: Who delivered the sachets to the crime laboratory?

[PO2 De Jesus]: When we went to the Crime Laboratory, your honor, I was then the driver. The items were in the custody of PO3 Mallari, but it was PO2 Reyes who had them received by the Crime Laboratory, your honor.

x x x x

Q: So, on board going to the Crime Laboratory, it was actually PO3 Mallari who was handling those confiscated items, Mr. Witness?

⁷⁸ Id.

⁷⁹ TSN, March 8, 2018, p. 19.

⁸⁰ TSN, February 22, 2018, pp. 6-8.

⁸¹ Records (Criminal Case No. G-18-12758), pp. 18 and 23; records, (Criminal Case No. G-18-12759), pp. 18 and 23. The Accused-Appellant refused to sign the Inventory of Evidences (sic) Form.

⁸² Id. at 13; id. at 13.

⁸³ TSN, March 8, 2018, p. 18.

⁸⁴ Id. at 25.

⁸⁵ Records (Criminal Case No. G-18-12758), p. 19.

A: Yes, ma'am.⁸⁶

The CA disregarded accused-appellant's arguments calling attention to the inconsistencies in the testimonies of PO3 Mallari, PO2 De Jesus, and PO2 Reyes citing the principle that "for a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction."⁸⁷

Since the turnover of the seized items from the apprehending officer to the investigating officer is the second link that must be established in the chain of custody to establish the identity of the seized items with moral certainty, such discrepancies in the pieces of evidence pertaining thereto are thus vital in determining the guilt or innocence of the accused-appellant.

Although the Court finds no issue as to the marking and inventory of the seized items, the evidence of the prosecution is marred with inconsistencies and lacked of evidence as to the proper custody, turnover, handling, and safekeeping of the seized items. Thus, there is doubt as to the preservation of the integrity of the same.

In the recent case of *People v. Lopez*,⁸⁸ citing the cases of *People v. Asaytuno, Jr.*⁸⁹ and *People v. Dela Cruz*,⁹⁰ the Court found that "keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items:"

The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

⁸⁶ TSN, March 8, 2018, p. 30

⁸⁷ *Abalos v. People*, G.R. No. 221836, August 14, 2019.

⁸⁸ *People v. Lopez*, G.R. No. 250902 (Notice), June 21, 2021.

⁸⁹ *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019.

⁹⁰ *People v. Dela Cruz*, 744 Phil. 816, 834-835 (2014).

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.

Other than the standalone assurances of police officers who laid them out for inventory, there is, in this case, no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. Right at the onset, the chain of custody was jeopardized. From the beginning, there was doubt on the origin and identity of the items that would later be inventoried, photographed, examined, and presented as evidence. No amount of subsequent safety measures can cure this germinal defect.⁹¹ (Emphasis supplied; citations omitted)

In the present case, PO3 Mallari testified that he placed the sachet subject of the buy-bust operation in his right pocket and then put the sachet confiscated from the possession of the accused-appellant and the buy-bust money in his left pocket.⁹² Following the testimony of PO2 De Jesus, it would appear that PO3 Mallari was in possession and custody of the seized items from seizure up to the turnover of the same to the forensic chemist for examination. Nonetheless, even without considering PO2 De Jesus' testimony, as held in the pronouncement above, PO3 Mallari's very act of bodily keeping or placing the seized items in his pocket upon recovery of the same from the accused-appellant is a doubtful and suspicious way of ensuring the integrity of the items.

As to the *third* link pertaining to the turnover by the investigating officer of the seized items to the forensic chemist for laboratory examination, PO2 Reyes testified that he brought the seized items to the Regional Crime Laboratory of Region III for examination and turned over the same to PO3 Trinidad at 10:00 a.m. of the same day.⁹³ The buy-bust team prepared the Request for Laboratory Examination of the Seized Items⁹⁴ as well as the Request for Drugs Test/Examination on Person.⁹⁵ However, as earlier noted, PO2 De Jesus testified that the seized items remained in the possession and custody of PO3 Mallari up to their turnover for examination to the forensic chemist, contrary to the other evidence presented by the prosecution.⁹⁶

⁹¹ Supra note 88.

⁹² TSN, February 22, 2018, pp. 5-6.

⁹³ Id.

⁹⁴ Id. at 12.

⁹⁵ Records (Criminal Case No. G-18-12758), pp. 24-25; records, (Criminal Case No. G-18-12759), pp. 24-25.

⁹⁶ TSN, March 8, 2018, p. 30

As to the *fourth* link pertaining to the turnover and submission of the marked seized items from the forensic chemist to the court, the prosecution failed to present evidence showing how the seized items were handled while kept in the custody of the forensic chemist until the same were transferred to the court.

The parties in the instant case entered into stipulations with respect to the testimony of Forensic Chemist Babor. The defense admitted the following stipulations: (1) Forensic Chemist Babor is an expert witness; (2) Forensic Chemist Babor turned over the specimen subject matter of the cases, Chemistry Report No. D-0-047-2018, and the Request for Laboratory Examination dated January 18, 2018; (3) Forensic Chemist Babor retrieved the specimen from the evidence custodian of their office before presenting the same in court; (4) The result of the specimen in Chemistry Report No. D-0-047-2018 (but not the source of the specimen); (5) Existence and due execution of Request for Laboratory Examination dated January 18, 2018; (6) The specimens stated in Chemistry Report No. D-0-047-2018 (but not the source of the specimen); (7) Existence (but not the due execution) of the Chain of Custody Form; (8) The stamp mark on Request for Laboratory Examination dated January 18, 2018; (9) Existence of Chemistry Report No. D-0-047-2018 (but not the source of the specimen); (10) Existence of the specimen but not as to quantity stated in the caption; and (11) The existence of masking tapes attached to the two (2) plastic sachets containing *shabu* but not as to who put the initials of the Forensic Chemist on the said sachets.⁹⁷

In the recent case of *People v. Legarde*⁹⁸ (*Legarde*), the accused therein was acquitted because the Court found that the stipulations of the forensic chemist failed to state the precautionary measures in place to ensure the safekeeping of the seized drugs and to preserve the integrity and evidentiary value of the same which thus left a huge gap in the chain of custody. Moreover, *Legarde* case also cited *People v. Cabuhay*⁹⁹ wherein the Court emphasized that should the parties agree to dispense with testimony of the forensic chemist, “the stipulation on what the latter would have testified should include that he/she had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial.”¹⁰⁰

In the present case, Forensic Chemist Babor did not personally testify on any of the following matters: the receipt or turnover of the seized items from the investigating officer as marked, properly sealed, and intact; the handling,

⁹⁷ TSN, February 24, 2018, pp. 2-6.

⁹⁸ G.R. No. 241259 (Notice), May 5, 2021.

⁹⁹ *People v. Cabuhay*, 836 Phil. 903, 918 (2018), citing *People v. Pajarin*, 654 Phil. 461, 466 (2011).

¹⁰⁰ *Supra* note 98.

marking, and resealing of the seized items during and after examination of the content of the seized items; and the safekeeping of the seized items pending trial.

Indeed, as held by the Court in the case of *People v. Dahil*,¹⁰¹ the accused should be acquitted if there is “no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof”.¹⁰²

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. **The forensic chemist should have personally testified on the safekeeping of the drugs[,] but the parties resorted to a general stipulation of her testimony.** Although several subpoenae[s] were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

The case of *People v. Gutierrez* also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim — from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized *shabu* between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was **no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted.**¹⁰³ (Emphasis supplied; citations omitted)

The recent case of *People v. Catipan*,¹⁰⁴ citing *Malilin v. People*,¹⁰⁵ and *People v. Año*,¹⁰⁶ affirmed the foregoing rulings and emphasized that it is the prosecution’s duty to present evidence establishing **each** link of the chain of custody presenting how every person who touched the exhibit should “describe how and from whom it was received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain,”¹⁰⁷ as well as the “precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same,”¹⁰⁸ to wit:

¹⁰¹ *People v. Dahil*, 750 Phil. 212 (2015).

¹⁰² *Id.* at 238.

¹⁰³ *Id.* at 237-238.

¹⁰⁴ *People v. Catipan*, G.R. No. 252691 (Notice), June 14, 2021.

¹⁰⁵ *Mallillin v. People*, 576 Phil. 576, 587 (2008).

¹⁰⁶ *People v. Año*, 828 Phil. 439 (2018)

¹⁰⁷ *Supra* note 104.

¹⁰⁸ *Id.*

In *Malillin v. People*, the Court explained that the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **Ideally, the evidence presented by the prosecution should include testimony about every link in the chain, from the moment the item was picked up to the time it was offered into evidence. The prosecution should present evidence establishing the chain of custody in such a way that "every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain." In addition, these witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and that there had been no opportunity for someone not in the chain to have possession of the same.**

The utter lack of proof on how the seized shabu was handled after PSI Llacuna examined the same until it reached the court for presentation undeniably opened the seized item to possible tampering and switching. The integrity and identity of these item, therefore, cannot be deemed to have been preserved.

Absent any testimony on the management, storage, and preservation of the illegal drug allegedly seized here after its qualitative examination, the fourth link in the chain of custody could not be reasonably established. This casts serious doubts on the identity and the integrity of the corpus delicti.

In *People v. Año*, the Court decreed that **if the chain of custody procedure had not been complied with, or no justifiable reason exists for its non-compliance, then it is the Court's duty to overturn the verdict of conviction.**¹⁰⁹ (Emphasis supplied; citations omitted)

In view of such lapses in the chain of custody of the seized items, particularly with regard to the fourth link, and without any justifiable reason for non-compliance with the chain of custody procedure, the prosecution thus failed to prove accused-appellant's guilt beyond reasonable doubt. The presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence in favor of the accused.¹¹⁰

Hence, the Court is constrained to acquit the accused-appellant.

WHEREFORE, the appeal is hereby **GRANTED**. The August 28, 2020 Decision of the Court of Appeals in CA-G.R. CR. HC. No. 11248 is **REVERSED and SET ASIDE**. Accused-appellant **JAYSON WY y HERRES @ "Komanak"** is **ACQUITTED** for failure of the prosecution 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 the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation.

¹⁰⁹ Id.

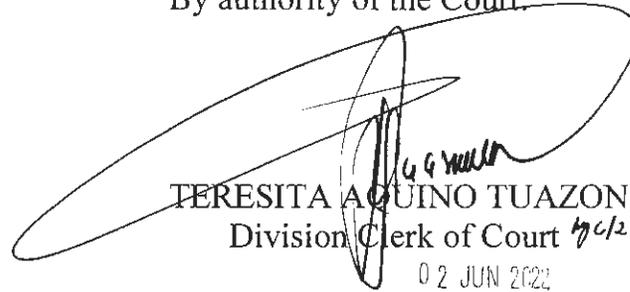
¹¹⁰ *People v. Catalan*, 699 Phil. 603, 621 (2012).

Furthermore, the Director General is **DIRECTED** to report to this Court the action he has taken within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *7/6/22*
02 JUN 2022

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THE DIRECTOR (x)
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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 52
Guagua, Pampanga
(Crim. Case Nos. G-18-12758 to 59)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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