



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 233697

Present:

PERALTA, *J.*,
Chairperson,
 LEONEN,
 REYES, A., JR.,
 HERNANDO, and
 INTING, *JJ.*

- versus -

ARNELLO REFE y GONZALES,
 Accused-Appellant.

Promulgated:

July 10, 2019

Richard J. Gutierrez

X-----X

DECISION

REYES, A., JR., *J.*:

On appeal¹ is the Decision² dated March 16, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08102, which denied the appeal of accused-appellant Arnello Refe y Gonzales (Arnello) from the judgment of conviction of the Regional Trial Court (RTC) of Bangui, Ilocos Norte. The trial court found him guilty of illegal sale of dangerous drugs, punishable under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

On October 27, 2014, Arnello was charged with the illegal sale of dangerous drugs, in violation of Section 5, Article II of R.A. No. 9165. The Information against him reads as follows:

¹ *Rollo*, pp. 17-18.

² Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda concurring: *id.* at 2-16.

Reyes

Criminal Case No. 2229-19

That on or about 7:30 o'clock in the morning of August 31, 2014 at Brgy. Nagsanga, in the municipality of Pasuquin, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and knowingly sell one small heat-sealed transparent plastic sachet of white crystalline substance weighing 0.0488 gram containing methamphetamine hydrochloride commonly known as "shabu", a dangerous drug, worth [P]500.00 to PO1 Rolly Llama acting as a poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.³

In an Order dated November 3, 2014, the trial court set the arraignment of Arnello on November 17, 2014.⁴ During his arraignment, Arnello, with the assistance of his counsel from the Public Attorney's Office, pleaded not guilty to the charge.⁵ The parties stipulated in pre-trial that at the time of his arrest, Arnello was at Barangay Nagsanga, Pasuquin, Ilocos Norte.⁶

According to the prosecution, on August 31, 2014, at around 6:00 a.m., Police Officer 1 Rolly Llama (PO1 Llama) was at the police station of Pasuquin, Ilocos Norte, together with Senior Police Officer 1 Jonathan Caldito (SPO1 Caldito), and SPO1 Frederick Bulosan (SPO1 Bulosan). Their Chief of Police, Police Senior Inspector Rommel Ramos (PSI Ramos), was also at the station at that time. An informant then came to the station, and reported to PSI Ramos that Arnello was selling *shabu* in Barangay Nagsanga.⁷

After receiving this information, the police officers supposedly validated the report. They likewise coordinated with the Provincial Anti-Illegal Drugs Special Operations Task Group and the Philippine Drug Enforcement Agency (PDEA). PSI Ramos then conducted a briefing for a planned buy-bust operation to arrest Arnello.⁸

SPO1 Caldito, SPO1 Bulosan, and PO1 Llama were selected as members of the buy-bust team. PO1 Llama, in particular, was designated as the poseur-buyer. He was given a ₱500.00 bill, marked with his initials (*i.e.*,

³ Records, p. 1.

⁴ Id. at 31.

⁵ Id. at 33.

⁶ Id. at 38.

⁷ TSN, June 29, 2015, pp. 3-4.

⁸ Id. at 4-5.

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“RUL”), for the purchase of *shabu*. The remaining members of the buy-bust team were designated as back-up security.⁹

The briefing concluded. At around 7:30 a.m. of the same day, PO1 Llama and the informant boarded a motorcycle and proceeded to Barangay Nagsanga. They stopped near Nagsanga Elementary School, which was supposedly the agreed location for the transaction between the informant and Arnello. The rest of the team followed, aboard a Hilux vehicle.¹⁰

Arnello was already waiting in the area when PO1 Llama and the informant arrived at the meeting place. The informant introduced Arnello to PO1 Llama as the buyer, and thereafter, Arnello asked him how much would he purchase. PO1 Llama responded that he intends to buy *shabu* “worth ₱500.00.” Arnello then handed him a plastic sachet containing a white crystalline substance, and in turn, PO1 Llama gave him the marked ₱500.00 bill. Arnello placed the money in his right-hand pocket, prompting PO1 Llama to send a missed call to SPO1 Bulosan. This was the pre-arranged signal of the buy-bust team, indicating that the transaction was consummated.¹¹

After executing the pre-arranged signal, PO1 Llama grabbed Arnello’s arm, who allegedly struggled against the arrest. PO1 Llama then introduced himself as a police officer and handcuffed Arnello. Soon after, SPO1 Bulosan and SPO1 Caldito arrived at the scene and assisted PO1 Llama in the arrest of the accused. SPO1 Caldito frisked Arnello, which resulted in the recovery of the marked money. PO1 Llama then apprised Arnello of his constitutional rights.¹²

PO1 Llama proceeded to mark the plastic sachet containing a white crystalline substance, with the initials of the accused: “AGR.” Present during the marking were the barangay officials of Nagsanga, specifically: Barangay Captain Rogelio Menor (Barangay Captain Menor), Barangay *Kagawad* Claridel Q. Bulosan, and Barangay *Tanod* Pablo B. Garaza, Jr.¹³

Upon finishing the marking, the police officers took Arnello to the police station where they conducted the inventory. The inventory, or the Acknowledgment Receipt of Property/Articles Seized, was prepared in the presence of Arnello and the barangay officials. It stated that the following items were seized from Arnello: (a) one (1) transparent heat-sealed plastic sachet containing a white crystalline substance believed to be *shabu*, marked as “AGR”; (b) one (1) ₱500.00 bill, with serial number LG73546, marked as “RUL”; (c) one (1) white Samsung cellular phone, with a white and yellow

⁹ Id. at 5-6.

¹⁰ Id. at 6-7.

¹¹ Id. at 8-9.

¹² Id. at 10-11.

¹³ Id. at 11-12; records, p. 56.

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case; and (d) one (1) yellow Cricket lighter. Arnello and the witnesses to the inventory, except for Barangay Kagawad Bulosan, signed the document.¹⁴ PO1 Llama likewise took a photograph of the marked money, together with the plastic sachet marked with “AGR.”¹⁵

Following the completion of the documents, PO1 Llama went to the Philippine National Police Crime Laboratory in Laoag City to submit the evidence for analysis and examination. The plastic sachet containing a white crystalline substance, marked as “AGR,” was received by PO1 Julius Surell (PO1 Surell) at around 8:50 p.m.¹⁶ PO1 Surell then turned over the specimen to P/Insp. Amiely Ann L. Navarro (P/Insp. Navarro) for the conduct of the necessary laboratory examination.¹⁷

The examination of the specimen yielded a positive result for methamphetamine hydrochloride, a dangerous drug.¹⁸ A sample of Arnello’s urine was also submitted to P/Insp. Navarro for examination. The screening test on the urine sample yielded a negative result for methamphetamine and THC-metabolites.¹⁹ Following the conduct of the examination, P/Insp. Navarro turned over the specimen sample to the evidence custodian, SPO4 Nilo Domingo.²⁰

Arnello, for his part, denied the accusations against him. According to him, at around 10:00 p.m., on August 30, 2014, he had just put his child to sleep. Afterwards, he walked from his house towards the east of Nagsanga Elementary School, where his live-in partner was selling barbecue. As he was making his way there, he was suddenly picked-up by police officers, one of whom he was able to recognize as his neighbor, SPO1 Bulosan.²¹

The police officers forcibly boarded Arnello inside a Hilux vehicle and took him to his house. They went inside and searched the place, while Arnello was outside, with his wrists handcuffed. The police did not find anything, so they took Arnello to the police station where they beat him, and put him in jail. Arnello was detained for five days.²²

Arnello denied that a buy-bust operation took place. According to Arnello, he filed administrative complaints against PO1 Llama, SPO1 Bulosan, and SPO1 Caldito, which resulted in their suspension.²³

¹⁴ Records, p. 56.

¹⁵ TSN, June 29, 2015, pp. 13-14.

¹⁶ Id. at 14-15; records, pp. 41-42, and 44.

¹⁷ TSN, February 9, 2015, p. 4.

¹⁸ Records, p. 26.

¹⁹ Id. at 27.

²⁰ Id. at 42; TSN, February 9, 2015, p. 5.

²¹ TSN, December 7, 2015, pp. 3-4.

²² Id. at 4-7.

²³ Id. at 7-8.

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Claire Dela Cruz (Claire), Arnello's live-in partner, also testified for the defense. She claimed that on the night of August 30, 2014, she texted Arnello to fetch her from the area where she was selling barbecue, as it was already getting late. Claire then saw Arnello from a distance, as he was making his way towards her. However, she later observed Arnello being forcibly placed inside a Hilux vehicle, which immediately left, heading towards the direction of their house. Claire followed the vehicle to their house, but she was unable to get near Arnello because of the crowd gathering nearby. She subsequently found out that Arnello was being charged for illegally selling *shabu*.²⁴

Before the defense rested its case, the parties entered into stipulations with respect to the testimonies of Arnello's neighbors, particularly, Jefferson Miranda, Ryan Lagundino, and Jacqueline Cabingas. The prosecution agreed that the testimonies of these witnesses involved attesting to the arrest of Arnello on August 30, 2014, at 10:00 p.m.²⁵

The prosecution also admitted the genuineness and due execution of the Medical Certificate dated September 3, 2014,²⁶ which observed the following findings on the body of Arnello: (a) healing vertical abrasion, one (1) inch, back, thoracic left; (b) healing vertical superficial abrasion three and a half (3½) inches by one-fourth (¼) inch, back, left; (c) healing vertical superficial abrasion two (2) inches by one-half (½) inch below scapula, left; (d) hematoma one (1) inch, distal end, right forearm; (e) pain on deep palpation, right hypochondrium area; and (f) healing horizontal abrasion, one (1) inch lateral aspect, upper portion, left leg.

Ruling of the RTC

In a Decision²⁷ dated January 7, 2016, the trial court found Arnello guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, thus:

WHEREFORE, the court finds the accused [Arnello] GUILTY beyond reasonable doubt of Violation of Section 5, [R.A.] No. 9165 or the Comprehensive Dangerous Drugs Act of 2002, and hereby imposes upon him the penalty of life imprisonment plus a fine of Five Hundred Thousand pesos (P500,000.00), and to pay the costs.

²⁴ Id. at 14-15.

²⁵ Id. at 16-17.

²⁶ Records, p. 11.

²⁷ Rendered by Presiding Judge Rosemarie V. Ramos; id. at 92-118.



The methamphetamine hydrochloride subject of this case is hereby declared forfeited in favor of the government, to be destroyed in accordance with the aforesaid law. The clerk of court is directed to coordinate with the [PDEA] for this purpose.

SO ORDERED.²⁸

In its decision, the RTC gave more credence to the prosecution witnesses, who testified as to the conduct of the buy-bust operation. The trial court held that allegations of frame-up and extortion are common defenses, which are easily concocted and fabricated.²⁹ Furthermore, the RTC found that the integrity and evidentiary value of the seized evidence were preserved. Arnello purportedly failed to overcome the presumption of regularity on the part of the police officers who handled the seized evidence.³⁰

Aggrieved, Arnello filed a Notice of Appeal³¹ on January 19, 2016. In the Order dated January 21, 2016, the trial court gave due course to the appeal, and directed the elevation of the records to the CA.³²

Ruling of the CA

On August 9, 2016, the counsel for Arnello filed his appellant's brief with the CA.³³ In his brief, it was argued that the police officers failed to comply with several statutory requirements in the conduct of the buy-bust operation. The police officers also did not proffer a reasonable explanation to justify their non-compliance with the requirements under Section 21 of R.A. No. 9165.³⁴ For this reason, the integrity and evidentiary value of the seized evidence were not properly preserved.

The People of the Philippines, as represented by the Office of the Solicitor General (OSG), filed its brief on December 6, 2016.³⁵ Relying on the presumption of regularity in the performance of their duty, the OSG argued that the evidence was properly handled by the police officers, in accordance with Section 21 of R.A. No. 9165. The OSG also claimed that the trial court correctly gave more credence to the testimony of the prosecution witnesses, especially since Arnello's only defense is bare denial.³⁶

²⁸ Id. at 117-118.

²⁹ Id. at 113.

³⁰ Id. at 110-111.

³¹ Id. at 121.

³² Id. at 122.

³³ CA *rollo*, pp. 25-52.

³⁴ Id. at 34-42.

³⁵ Id. at 94-107.

³⁶ Id. at 103-105.

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In a Decision³⁷ dated March 16, 2017, the CA affirmed Arnello's conviction:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated January 7, 2016 of the [RTC], Branch 19, Bangui, Ilocos Norte, convicting accused-appellant [Arnello] of violation of Section 5, Article II of [R.A.] No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.³⁸

The CA found that the prosecution was able to satisfactorily establish all the elements of illegal sale of dangerous drugs, *to wit*: (a) proof that the transaction or sale took place; and (b) the presentation of the *corpus delicti* or the illicit drug as evidence.³⁹ Consistent with the ruling of the trial court, the CA likewise considered the defenses of denial and frame-up as unconvincing, especially since Arnello was caught *in flagrante delicto*.⁴⁰

The CA also held that there was sufficient compliance with the chain of custody rule. Moreover, the integrity of the evidence is presumably preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered, which was not present in this case. Since Arnello was unable to discharge the burden of overcoming this presumption, the CA ruled that there was enough proof establishing his guilt beyond reasonable doubt.⁴¹

Unsatisfied with the decision of the CA, Arnello appealed his conviction to this Court.⁴²

Ruling of the Court

The Court now resolves whether the guilt of Arnello was proven beyond reasonable doubt. Central to this issue is the Court's determination of whether the integrity and evidentiary value of the evidence were duly preserved.

The records of the case reveal substantial inadequacies in the police officers' compliance with the requirements on the chain of custody, pursuant to Section 21 of R.A. No. 9165. The prosecution was also unable to provide a justifiable ground for this non-compliance.

³⁷ *Rollo*, pp. 2-16.

³⁸ *Id.* at 16.

³⁹ *Id.* at 7-10.

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 10-15.

⁴² *Id.* at 17.



In these lights, the Court is constrained to grant the present appeal.

The prosecution failed to establish the identity and integrity of the corpus delicti.

In proving the guilt of the accused charged with illegal sale of dangerous drugs, the following elements must be established:

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that **the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.**

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In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. “The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”⁴³ (Emphases Ours)

The prosecution has the burden of proving that the dangerous drugs presented before the trial court are the same items confiscated from the accused. In this regard, Section 21, paragraph 1 of R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, or surrendered dangerous drugs:⁴⁴

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom

⁴³ *People v. Ismael*, 806 Phil. 21, 29 (2017).

⁴⁴ See Implementing Rules and Regulations of R.A. No. 9165, Section 21(a); see also the PDEA Guidelines on the Implementing Rules and Regulations of Section 21 of R.A. No. 9165 As Amended by R.A. No. 10640 (May 28, 2015).

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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[.]⁴⁵

This provision was further expounded in the Implementing Rules and Regulations of R.A. No. 9165, the pertinent portion of which reads as follows:

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:

(a) 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: **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, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]** (Emphases Ours)

⁴⁵ This has been amended by R.A. No. 10640, An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of R.A. No. 9165, Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002,” to read:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided*, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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Thus, the statutory requirements are clear. The apprehending officers must *immediately* conduct a physical inventory and photograph the seized items in the presence of the following: (a) the accused or the person from whom the items were confiscated, or his representative or counsel; (b) a representative from the media; (c) a representative from the Department of Justice (DOJ); and (d) any elected public official. They must also sign the inventory and be furnished with their own copy thereof.

The Court has consistently recognized the policy behind requiring the presence of these persons during the inventory. The presence of the witnesses prevents switching, planting, or contaminating the seized evidence, which taints the integrity and evidentiary value of the confiscated dangerous drugs.⁴⁶ In line with this, jurisprudence requires the apprehending officers to immediately mark the seized items upon their confiscation, or at the “earliest reasonably available opportunity,”⁴⁷ because this serves as the primary reference point in establishing the chain of custody.⁴⁸ As this Court judiciously explained in *People v. Mendoza*:⁴⁹

Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. **This stricture is essential because the succeeding handlers of the contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings.** The deliberate taking of these identifying steps is statutorily aimed at obviating switching, “planting” or contamination of the evidence. Indeed, the preservation of the chain of custody vis-à-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.⁵⁰ (Emphasis Ours)

While noncompliance with these requirements is excusable, this only applies when the integrity and the evidentiary value of the seized items were properly preserved. The prosecution must also provide a credible justification for the arresting officers’ failure to comply with the procedure under Section 21 of R.A. No. 9165.⁵¹

In this case, it is evident that the arresting officers did not strictly observe the statutory requirements for the chain of custody.

⁴⁶ *People v. Mendoza*, 736 Phil. 749, 764 (2014).

⁴⁷ *People v. Sabdula*, 733 Phil. 85, 96 (2014).

⁴⁸ *People v. Dahil, et al.*, 750 Phil. 212, 232 (2015).

⁴⁹ 736 Phil. 749 (2014).

⁵⁰ *Id.* at 761.

⁵¹ *People v. Barte*, 806 Phil. 533, 544 (2017).

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First, the inventory and taking of photographs were not immediately conducted at the place of arrest. Only the marking of the plastic sachet allegedly taken from Arnello was performed right after the arrest, while the inventory and photograph were taken in the police station. This was clear from the direct testimony of PO1 Llama, the poseur-buyer:

[Prosecutor Rommel Calupig:]

So, after the recovery of the Php500 peso [*sic*] bill, what happened next, Mr. Witness?

[PO1 Llama:]

I apprised him of his constitutional right, sir.

[Prosecutor Calupig:]

After that, what happened next, Mr. Witness?

[PO1 Llama:]

We marked the items recovered from him, sir.

[Prosecutor Calupig:]

Who made the markings, all of you?

[PO1 Llama:]

I did, sir.

[Prosecutor Calupig:]

What item did you mark?

[PO1 Llama:]

The plastic sachet containing white crystalline substance, sir.

[Prosecutor Calupig:]

What markings did you put on that plastic sachet?

[PO1 Llama:]

The initial AGR, the initial [*sic*] of the accused, sir.

[Prosecutor Calupig:]

Where did that plastic sachet come from?

[PO1 Llama:]

From me, sir.

[Prosecutor Calupig:]

And where did you get that plastic sachet?

[PO1 Llama:]

It was handed to me by the accused, sir.

[Prosecutor Calupig:]

Who were present when you made the marking?

[PO1 Llama:]

The barangay officials of Nagsanga, Brgy. Captain Rogelio Roger Menor and a kagawad and one tanod, sir.

[Prosecutor Calupig:]

Where did you make the markings?

[PO1 Llama:]

In Nagsanga, sir.

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[Prosecutor Calupig:]

After the markings, where did you proceed, Mr. Witness?

[PO1 Llama:]

We went back to the police station, sir.

[Prosecutor Calupig:]

And what did you do in the police station?

[PO1 Llama:]

We prepared the pertinent documents, sir.

[Prosecutor Calupig:]

Do you have any proof that indeed you conducted an inventory of the items mentioned?

[PO1 Llama:]

Yes, sir.

[Prosecutor Calupig:]

What are those proofs?

[PO1 Llama:]

The receipt of inventory and the pictures, sir.

x x x x

[Prosecutor Calupig:]

How about the accused, where was he when you made the markings?

[PO1 Llama:]

He was beside me, sir.

x x x x

[Prosecutor Calupig:]

How about this photograph, will you go over the same and tell this Honorable Court, what is this in connection with the photograph you mentioned?

[PO1 Llama:]

Yes, sir this is the same.⁵² (Emphases Ours)

Clearly, the inventory and taking of photographs were not immediately conducted at the place of arrest. PO1 Llama testified that the apprehending team went back to the police station for this purpose. While Section 21 of R.A. No. 9165 allows the inventory to be done at the nearest police station, or at the nearest office of the arresting team, whichever is practicable, there was no showing that the Pasuquin Police Station was the nearest office from the place of Arnello's arrest in Barangay Nagsanga.

⁵² TSN, June 29, 2015, pp. 11-14.

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Second, the arresting officers did not conduct the inventory and take photographs of the seized items in the presence of a DOJ representative⁵³ and a media representative. Those present during the marking and inventory were all representatives of the barangay, which only complied with the required presence of an elective official as witness. Worse, Barangay Captain Menor testified that he did not observe the actual marking of the seized plastic sachet, and the preparation of the inventory:

[Atty. Christine Joy Bosi (*counsel for Arnello*):]

You also affixed your signature in the acknowledgment receipt of property or articles seized from the accused, do you understand what inventory means or this one, acknowledgment receipt of property or article seized, do you understand that?

[The Court:]

What is your understanding on that?

[Barangay Captain Menor:]

(No answer)

[Atty. Bosi:]

Let us make it simple, Mr. Witness. Did you understand the contents of that?

May we just place it on record, your Honor that there is no answer from the witness.

[The Court:]

You cannot understand or what? What is your understanding on that?

[Barangay Captain Menor:]

They just let me signed (sic) this document, your Honor. I do not know what it contains.

[The Court:]

This document would show that you were present and you saw a one (1) (*sic*) transparent heat-sealed plastic sachet on August 31, 2014 when [Arnello] was arrested. So when you were at the police station did you actually see these items?

[Barangay Captain Menor:]

Yes, your Honor.

[The Court:]

Now, if you did not see these items[,] would you sign this document?

[Barangay Captain Menor:]

No I would not, your Honor.

[The Court:]

So you signed the document because you saw those items listed therein?

[Barangay Captain Menor:]

Yes, your Honor.

⁵³ As amended, R.A. No. 10640 now requires the presence of a representative from the National Prosecution Service (R.A. No. 10640, Section 1).



[Atty. Bosi:]

You saw the items, Mr. Witness together with the markings already on it?

[Barangay Captain Menor:]

Yes, ma'am.

[Atty. Bosi:]

Not during when the markings were made on these items?

[Barangay Captain Menor:]

When the items were displayed they just told me, ma'am, "You come and see these items."

[Atty. Bosi:]

You signed this document inside the police station of Pasuquin, Ilocos Norte, correct, Mr. Witness?

[Barangay Captain Menor:]

Yes, sir (*sic*).

[Atty. Bosi:]

Which was already prepared by the police officers together with the markings, what you did only was to sign or affix your signature?

[Barangay Captain Menor:]

Yes, when I saw the items, ma'am[,] that was when I signed the document.⁵⁴ (Emphases Ours)

Evidently, Barangay Captain Menor merely relied on the representations of the police officers that the evidence marked was the same item seized from Arnello. The seized evidence was already marked when Barangay Captain Menor was asked to sign the inventory at the police station. Hence, his presence, or that of the other barangay officials, could not have prevented the planting, tampering, or contamination of evidence.

Finally, the prosecution did not present any justification for these procedural lapses on the part of the police officers. There was also no showing that earnest efforts were made to comply with the mandated procedure under Section 21 of R.A. No. 9165. Noncompliance, or even approximated compliance in certain instances, is inexcusable, especially when there is no adequate explanation on the part of the prosecution. As this Court held in *People of the Philippines v. Pastorlito V. Dela Victoria*:⁵⁵

The mere marking of the seized drugs, as well as the conduct of an inventory, in violation of the strict procedure requiring the presence of the accused, the media, and responsible government functionaries, fails to approximate compliance with Section 21, Article II of RA 9165. The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality. **While non-compliance is**

⁵⁴ TSN, September 10, 2015, pp. 6-8.

⁵⁵ G.R. No. 233325, April 16, 2018.

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allowed, the same ought to be justified. Case law states that the prosecution must show that earnest efforts were exerted by the PDEA operatives to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised. Consequently, Dela Victoria's acquittal is in order.⁵⁶ (Emphases Ours and citations omitted)

Failure to fully comply with the statutory requirement on the chain of custody of the seized evidence taints the integrity and evidentiary value of the *corpus delicti*. This holds especially true **“when the amount of the dangerous drug is minute due to the possibility that the seized item was tampered.”**⁵⁷ Here, the quantity of the seized illegal drugs was 0.0488 gram, which exposes it to more risk of evidence planting and contamination. Despite the miniscule quantity of the seized illegal drugs, the arresting team in this case took several liberties in the application of Section 21 of R.A. No. 9165 with no explanation at all as to why they failed to observe the requirements of the law. This reckless regard of the rules cannot be sanctioned by the Court.

Neither can the Court simply disregard Arnello's defense of frame-up. The medical certificate⁵⁸ supports his allegation that the police officers attacked and beat him, resulting in his injuries. His claim of having been arrested on the night of August 30, 2014—not in the morning of August 31, 2014—was also corroborated by other defense witnesses.⁵⁹

In these lights, the trial court and the CA erred in relying on the presumption of regularity in the performance of the police officers' duty. It should be borne in mind that the presumption only applies when there is nothing to suggest that the police officers deviated from the standard conduct of official duty required by law.⁶⁰ It does not apply when the arresting officers failed to comply with the mandatory language of Section 21 of R.A. No. 9165, as in this case. “[T]he lack of conclusive identification of the illegal drugs allegedly seized x x x coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.”⁶¹

In other words, the presumption of regularity—gratuitously invoked in instances such as this—does not serve to cure the lapses and deficiencies on the part of the arresting officers. The presumption of regularity in the performance of official duty cannot prevail over the presumption of

⁵⁶ Id.

⁵⁷ *People v. Caiz*, 790 Phil. 183, 209-210 (2016).

⁵⁸ Records, p. 11.

⁵⁹ TSN, December 7, 2015, pp. 16-17.

⁶⁰ *People v. Dela Cruz*, 744 Phil. 816, 830 (2014).

⁶¹ *Mallillin v. People*, 576 Phil. 576, 593 (2008).

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innocence. Part of the prosecution's duty in overturning this presumption of innocence is to establish that the requirements under Section 21 of R.A. No. 9165 were strictly observed. The rule on the chain of custody is a matter of substantive law, which should not be simply ignored as a procedural technicality.⁶² For these reasons, the Court finds the acquittal of Arnello warranted under the circumstances.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated March 16, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08102, which in turn affirmed the Decision dated January 7, 2016 of the Regional Trial Court of Bangui, Ilocos Norte in Criminal Case No. 2229-19, is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Arnello Refe y Gonzales is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to: (a) cause the immediate release of Arnello Refe y Gonzales, unless he is being lawfully held for another cause; and (b) inform this Court of the date of his release, or the reason for his continued confinement as the case may be, within five (5) days from notice.

Copies of this Decision must be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

SO ORDERED.


ANDRES B. REYES, JR.
Associate Justice

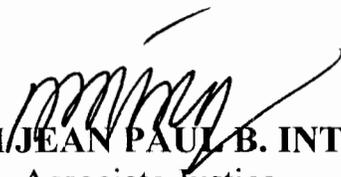
WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson

⁶² *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 352-353; *see also* *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-625.


MARVIC M.V.F. LEONEN
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRIJEAN PAUL B. INTING
Associate Justice

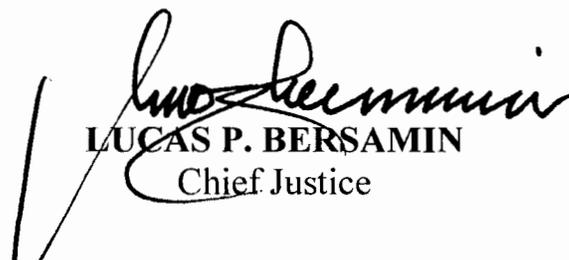
A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice