



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 247974

- versus -

Present:
PERALTA, J., Chairperson,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

PETER LOPEZ y CANLAS,
Accused-Appellant.

Promulgated:

JUL 13 2020

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DECISION

CAGUIOA, J.:

This is an appeal¹ from the Decision² dated March 29, 2019 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09769, which affirmed the Judgment³ dated July 27, 2017 rendered by the Regional Trial Court (RTC), Fifth Judicial Region, Branch 34 of Iriga City, in Criminal Cases Nos. IR-10559 and IR-10614 titled "*People of the Philippines v. Peter Lopez y Canlas*" finding the accused-appellant Peter Lopez y Canlas (Lopez) guilty beyond reasonable doubt for violations of Sections 5 and 15, Article II of Republic Act (R.A.) No. 9165, otherwise known as *The Comprehensive Dangerous Drugs Act of 2002*.

Facts

Lopez was charged with the crimes of **illegal sale and use of dangerous drugs** defined under Sections 5 and 15, respectively, of Article II, R.A. No. 9165, under two separate *Informations* in Criminal Cases Nos. IR-10559 and IR-10614, the accusatory portions of which read:

¹ Notice of Appeal dated May 2, 2019, *Rollo*, p. 16.

² Id. at 3-15; penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justice Marlene Gonzales-Sison and Associate Justice Victoria Isabel A. Paredes concurring.

³ Records (Criminal Case No. IR-10559), pp. 159-164; penned by Presiding Judge Manuel M. Rosales.

Criminal Case No. IR-10559:

X X X X

That on or about March 30, 2014, in the evening at Barangay San Francisco, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did, then and there unlawfully and feloniously sell/deliver one (1) medium size (*sic*) heat sealed transparent plastic sachet containing methamphetamine hydrochloride or “shabu” weighing 0.193 gram, a dangerous drug, to PO1 Jonard B. Buenaflor who acted as poseur-buyer and who was with a police asset in a buy-bust operation with the use of four (4) pieces 500 peso bill with serial nos. TC170638, TJ333021, RG551486 and VG967118, to the damage and prejudice of the public interest.

ACTS CONTRARY TO LAW.⁴Criminal Case No. IR-10614:

X X X X

That in the evening of March 30, 2014, or prior thereto, at San Francisco, Iriga City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and knowingly use methamphetamine hydrochloride or “shabu,” as he was found positive for use of ‘methamphetamine’, a dangerous drug, after he was arrested after a buy-bust operation conducted against him by the members of the Philippine National Police assigned at the Intel Drug Enforcement of the Iriga City Police Station as his urine sample was submitted for laboratory examination per Chemistry Report No. DTC-081-2014 signed by Police Senior Inspector and Forensic Chemist Jun Fernandez Malong of the Camarines Sur Crime Laboratory Office, Naga City, to the damage and prejudice of the public interest,

ACTS CONTRARY TO LAW.⁵

When arraigned, Lopez pleaded not guilty to both charges. Trial on the merits ensued.⁶

Version of the Prosecution

As narrated in the Assailed Decision, the prosecution presented the following version of the facts:

On [March 20, 2014], the intelligence operatives of the Philippine National Police (PNP) Iriga City held a briefing in preparation for a buy-bust operation against [Lopez]. His identity was confirmed by a confidential asset. PO1 Jonard Buenaflor was designated to act as a poseur-buyer and tasked to use [PhP]2,000.00 as marked money consisting of four five hundred peso bills during the operation.

⁴ *Rollo*, pp. 3-4.

⁵ *Id.* at 4.

⁶ *Id.*



The police asset informed PO1 Buenaflor that [Lopez] would meet them in front of Trinidad Building, Tantiado Hardware at San Francisco, Iriga City. As they waited for [Lopez], the back-up operatives positioned themselves in the area. [Lopez] arrived on a motorcycle and proceeded to ask the informant how much they would be buying. PO1 Buenaflor then handed P2,000.00 to [Lopez]. In turn, the latter gave him a small heat-sealed transparent sachet containing crystalline substance which the poseur-buyer suspected as shabu.

PO1 Buenaflor performed the pre-arranged signal by removing his cap to indicate a positive buy-bust operation. He arrested [Lopez], while the back-up operatives rushed to the scene. Representatives from the Department of Justice (DOJ), the media, and a Barangay Councilor were also called to serve as witnesses to the body search, marking and photographing of seized items. When they arrived, PO1 Buenaflor marked the plastic sachet "JBB 22 3-30-14." Meanwhile, PO3 Ric Reginales [(PO3 Reginales)] searched the person of [Lopez] and recovered from him the following items: (1) buy-bust money, (2) cellphone, (3) lighter, (4) twenty-peso bill, and (5) coins.

Thereafter, the operatives headed to the police station with [Lopez]. The Inventory/Confiscation Receipt was prepared by PO2 Joel Tabangan and signed by the DOJ representative Doris Viñas (Viñas), media representative Gloria Bongais (Bongais), and *Barangay Kagawad* Ramer Samantela (Samantela). On the other hand, PO2 Roger Tuyay drafted the requests for laboratory examination and drug test.

PO1 Buenaflor delivered the seized plastic sachet and [Lopez] to the provincial crime laboratory for examination. Based on the Chemistry Report No. D-109-2014 and Chemistry Report No. DTC-081-2014 prepared by the forensic chemist Police Senior Inspector (PSI) Jun Malong, the contents of the plastic sachet and [Lopez's] urine tested positive for methamphetamine hydrochloride, a dangerous drug.⁷

Version of the Defense

The defense's version of the facts, as culled from the Assailed Decision, is as follows:

On [March 30, 2014], [Lopez] just came from a gas station where he met a certain Rico Murillo who gave him P2,000.00. He was instructed by the latter to give the same to a person who he knew went by the name Engineer Tubig. He then rode his motorcycle and went on his way only to be flagged down by PO1 Buenaflor upon reaching Tantiado Hardware. When he inquired what his violation was, the police officer told him to hold the money, but ordered him to stay put. In addition to that, PO1 Buenaflor collected the keys of his motorcycle. After some time, about five to six policemen arrived at the scene.

When Viñas and Bongais showed up, the police officers took photographs of [Lopez], whereas, the money he was holding was placed on the road. He was also frisked, but the police officers found nothing in his person. However, he saw one police officer in civilian clothes take a plastic sachet from his own pocket which he revealed to Viñas and Bongais.

⁷ Id. at 5-6.

After [Lopez's] arrest, he was taken to the police station where he was photographed with the plastic sachet and the money. Later, he was brought to the crime laboratory. He was provided with water to drink which tasted unpleasant. Nevertheless, he still drank it since the police officers needed his urine sample.⁸

The Ruling of the RTC

In its Judgment, the RTC found Lopez guilty beyond reasonable doubt of the crimes charged. The RTC gave full credence to the testimony of the apprehending officers considering that their testimonies were corroborated on material matters by documentary proof.⁹

The dispositive portion of the Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. In Criminal Case No. IR-10559 accused is found GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 5 Art. II of Republic Act No. 9165 or the (*sic*) "The Comprehensive Dangerous Drugs Act of 2002" and accordingly sentencing him to suffer the penalty of life imprisonment and a fine of Php500,000.00.
2. In Criminal Case No. IR-10614 accused is found GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 15 Art II of Republic Act No. 9165 or the (*sic*) "The Comprehensive Dangerous Drugs Act of 2002" and accordingly sentencing him to suffer the penalty of a minimum of six (6) months rehabilitation in a government center.

SO ORDERED.¹⁰

From the Judgment, Lopez filed a Notice of Appeal dated August 23, 2017.¹¹

The Ruling of the CA

In the Assailed Decision, the CA affirmed the RTC's Judgment and sustained the conviction of Lopez. The dispositive portion of the Assailed Decision reads:

WHEREFORE, premises considered, the Judgment dated [July 27, 2017] rendered by the Regional Trial Court, Fifth Judicial Region, Branch 34, Iriga City in Criminal Case Nos. IR-10559 and IR-10164 is AFFIRMED.

⁸ Id. at 6.

⁹ Records (Criminal Case No. IR-10559), p. 163.

¹⁰ Id. at 164.

¹¹ Id. at 156.



SO ORDERED.¹²

Responding to the arguments raised by Lopez in his appeal, the CA ruled that the prosecution need not have conducted surveillance prior to the buy-bust operation.¹³ Furthermore, the failure of the prosecution to present the informant in court was not fatal to its case.¹⁴

In any case, the CA found that the prosecution successfully proved the identity and integrity of the *corpus delicti*¹⁵ since all links in the chain of custody were proven.¹⁶ The CA did not give due credence to the defenses of denial and frame-up as these were not substantiated by clear and convincing evidence.¹⁷

From the Assailed Decision, Lopez filed his Notice of Appeal dated May 2, 2019.¹⁸

Issue

The issue for resolution before the Court is whether the CA erred in affirming the RTC's Judgment finding Lopez guilty beyond reasonable doubt for violations of Sections 5 and 15, Article II of R.A. No. 9165.

The Court's Ruling

After a careful review of the records, the Court partly grants the appeal.

Insofar as the charge for violation of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 is concerned, the Court finds no compelling reason to deviate from the lower courts' findings that, indeed, the guilt of Lopez was sufficiently proven by the prosecution beyond reasonable doubt.

However, with respect to the charge for violation of Section 15, Article II of R.A. No. 9165 on illegal use of dangerous drugs, the Court finds that the prosecution failed to prove the conduct of a confirmatory test subsequent to the screening test as required by law. Hence, to this charge, Lopez should be acquitted.

In so disposing, the Court considers, as is true in all appeals from conviction of crimes, any fact or circumstance in the accused-appellant's favor regardless of whether such fact or circumstance was raised as a defense or assigned as an error and despite the similar pronouncement of guilt by both

¹² *Rollo*, p. 14.

¹³ *Id.* at 8.

¹⁴ *Id.* at 8-9.

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 10-13.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 16.

the trial court and the appellate court. Every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether the findings adverse to the accused should be upheld or struck down in his favor.

The criminal liability of the accused-appellant under both charges are discussed separately.

I.

In Criminal Case No. IR-10559, Lopez stood charged, tried, and was found guilty by the lower courts of the crime of illegal sale of dangerous drugs defined and punished under the first paragraph of Section 5, Article II of R.A. No. 9165 which provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – **The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.** (Emphasis supplied)

In prosecuting this charge, the State bears the burden of proving the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor.¹⁹ What is material is proof that the transaction or sale took place as a matter of fact, coupled with the presentation in court of the dangerous drug seized as evidence.

The commission of the offense of illegal sale of dangerous drugs requires the consummation of the illegal sale which is statutorily defined as “[a]ny act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration”.²⁰ In apprehensions pursuant to a buy-bust operation, delivery of the illegal drug to the poseur-buyer and the receipt by the seller of the marked money completes the illegal transaction.²¹ Stated otherwise, as long as the police officer went through the operation as a buyer and his offer was accepted by the accused-appellant who delivers the dangerous drugs to the former, the crime is consummated.²² Conviction follows as a matter of due course barring any irregularities in the handling of the seized dangerous drug and its presentation was accounted for, photographed before the trial court.

¹⁹ *People v. Villarta*, 740 Phil. 279 (2014).

²⁰ R.A. No. 9165, Art. I, Sec. 3 (ii).

²¹ *People v. Asislo*, 778 Phil. 509 (2016); *People v. Reyes*, 797 Phil. 671 (2016).

²² *People v. Dela Rosa*, 655 Phil. 630 (2011).



In the present case, the Court agrees with the lower courts that the elements of illegal sale of dangerous drugs were adequately and satisfactorily established by the prosecution.

A perusal of the proceedings before the trial court shows that in the afternoon of March 30, 2014 the police operatives of PNP Iriga City held a briefing for the conduct of a buy-bust operation against Lopez,²³ the details of which are reduced in the Pre-Operation Report dated March 30, 2014.²⁴ PO1 Buenaflor, together with their confidential informant, acted as the poseur-buyer of the operation²⁵ and took custody of the marked money to be used.²⁶ The marked money used in this operation was accounted, photographed, photocopied, and positively identified²⁷ before the trial court.

PO1 Buenaflor positively identified²⁸ Lopez during trial as the same person who approached them after being contacted by their confidential informant²⁹ for a possible sale. Upon meeting PO1 Buenaflor and the confidential informant, it was Lopez who asked them how much they would be buying.³⁰ Lopez made the offer and PO1 Buenaflor, as poseur-buyer, accepted. It was Lopez as well who received the marked money from PO1 Buenaflor, and who handed over a heat-sealed transparent sachet containing a crystalline substance.³¹

Considering that there is positive testimony, corroborated in its material points, and supporting documentary evidence identifying Lopez as the one who offered to sell, and in fact sold, the dangerous drug in exchange for P2,000.00 and who, upon receipt of the consideration, delivered the dangerous drug to the poseur-buyer, it is clear that all elements of the crime of illegal sale of dangerous drugs had been proven.

In his defense, Lopez ascribed irregularity in the conduct of the buy-bust operation because no surveillance was done nor was a sketch-plan made prior to the conduct of the buy-bust operation, and that the operation proceeded merely on the information given by the confidential informant.³² Relying on *People v. Rojo*,³³ Lopez argued that the trial court should have been circumspect in its appreciation of the testimonies surrounding the operation.

The challenge fails. The Court has ruled that the absence of a prior surveillance does not affect the validity of an entrapment operation, much less

²³ TSN dated October 20, 2014, p. 3.

²⁴ RTC Records in Criminal Case No. IR-10559, p. 10; TSN dated October 20, 2014, p. 6.

²⁵ TSN dated October 20, 2014, p. 4.

²⁶ TSN dated October 20, 2014, pp. 5-6.

²⁷ TSN dated October 20, 2014, pp. 4-5.

²⁸ TSN dated October 20, 2014, p. 9.

²⁹ TSN dated October 20, 2014, p. 8.

³⁰ TSN dated October 20, 2014, p. 8.

³¹ TSN dated October 20, 2014, p. 9.

³² CA *rollo*, p. 46.

³³ 256 Phil. 571 (1989).



result in the exoneration of the accused, especially in light of evidence establishing the elements of the crime. In *People v. Manlangit*,³⁴ citing *Quinicot v. People*,³⁵ the Court pronounced:

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Flexibility is a trait of good police work. We have held that when time is of the essence, the police may dispense with the need for prior surveillance. In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.³⁶

Lopez's reliance on *Rojo* is likewise misplaced. The Court in *Rojo* appreciated in favor of the accused the fact that none of the prosecution witnesses saw the accused therein deliver the dangerous drugs to the informant since the police operatives were meters away from the alleged illegal transaction. When the confidential informant in *Rojo* was not presented in court, the Court found that there was no direct evidence in *Rojo* to establish the alleged illegal sale:

In this particular case, the witnesses for the prosecution who were members of the police team at the time of the alleged "buy-bust operation," particularly Sgt. Carbonel and Pat. Balatbat, were in their jeep parked at Beata street, some 100 meters away from the scene. Pat. Alferos was 10 meters away from the informant and the appellant while Pat. Maniquez was about seven (7) meters away and the others stayed at a far distance so as not to arouse suspicion. It was only after the informant gave the signal by scratching the left side of his head with his left hand to indicate that the marijuana was already handed to him and that he in turn gave the money to the appellant that the said police officers converged and arrested the appellant.

These are the facts as found by the trial court which show that none of the prosecution witnesses actually saw the appellant deliver the alleged bag of flowering tops of marijuana which was allegedly sold to the informant. It also indicates that they did not see the informant pay the alleged consideration of the sale with a 10-peso bill. They just assumed that the transaction was consummated upon a signal from the informant. There is, therefore, no direct evidence, much less conclusive proof, to establish the alleged unlawful sale of marijuana being pinned on the appellant.

If truly there was such an entrapment that was undertaken in this case, the informant would be the best witness for the prosecution.³⁷

³⁴ 654 Phil. 427 (2011).

³⁵ 608 Phil. 259 (2009).

³⁶ Citations omitted.

³⁷ *People v. Rojo*, supra note 33.



The prosecution in this case presented the testimony of PO1 Buenaflor who acted as the poseur-buyer. In *Rojo*, the illegal sale transpired between the accused and the informant alone. Hence, it was necessary for the prosecution therein to present the informant as the police officers were stationed meters away from the alleged illegal sale and could not have seen the transaction from that far a distance. In contrast, the illegal drug and the marked money in this case exchanged hands between Lopez and PO1 Buenaflor. Unlike in *Rojo*, the prosecution presented direct evidence of the illegal sale in the form of PO1 Buenaflor's testimony.

Clearly, while the prosecution in *Rojo* grappled with a paucity of evidence, the same cannot be said for the prosecution in the case at bar. Moreover, the prosecution's case is supported by positive and corroborative testimony as well as documentary evidence sufficient to negate any reasonable doubt as to the occurrence of the buy-bust operation.

The analysis does not end here. The Court must still determine whether the dangerous drug, the *corpus delicti* of the crime,³⁸ reached the court with its identity and integrity preserved. This must be established with moral certainty.³⁹ In arriving at this certainty, the very nature of prohibited drugs, they being susceptible to tampering and error, circumscribes the burden of the State in prosecuting the crime.

To establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link of the chain of custody from the moment the drug is seized up to its presentation in court as evidence.⁴⁰ Section 21 of R.A. No. 9165 describes the following procedure:⁴¹

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

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

³⁸ *People v. Crispo*, 828 Phil. 416, 429 (2018); *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, 826 Phil. 947, 959 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018).

³⁹ *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548, 563, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

⁴⁰ *People v. Año*, 828 Phil. 439, 447-448 (2018).

⁴¹ The criminal acts subject of this case occurred prior to the effectivity of Republic Act No. 10640 which took effect on July 23, 2014.



The events of this case occurred prior to the effectivity date of Republic Act No. 10640⁴² which amended Section 21 of R.A. No. 9165. Parsing the provision, the law requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

Thereafter, the law requires that “within twenty-four (24) hours [after seizure of the prohibited drug], the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.”⁴³ The forensic laboratory examiner shall then issue a certification of the forensic laboratory examination results, which shall be done under oath, within 24 hours after receipt of the seized items.⁴⁴

A careful perusal of the testimonies of the apprehending officers as well as the documentary exhibits presented by the prosecution show a buy-bust operation the custodial links of which remained unbroken.

To recall, after the exchange of the prohibited drug and marked money, PO1 Buenaflor performed the pre-arranged signal indicating a positive operation and then proceeded to arrest Lopez.⁴⁵ While PO1 Buenaflor was reading to Lopez his constitutional rights, the operation’s team leader, PO3 Kerwin Awa called the witnesses.⁴⁶ All three insulating witnesses were thus present at the place of arrest: Viñas from the DOJ, Bongais from the media, and an elected public official in the person of *Barangay Kagawad* Samantela.

In the presence of the three insulating witnesses,⁴⁷ PO1 Buenaflor marked the seized dangerous drug with the marking “JBB 22 3-30-14”,⁴⁸ and a body search of Lopez was conducted by PO1 Reginales.⁴⁹ All of the items seized from Lopez, which included the marked money and the dangerous drugs, were photographed at the scene of the operation.⁵⁰ The marked money recovered from Lopez was compared with the photocopies by the police operatives.⁵¹ The photographs taken and presented before the trial court show that the entire procedure was witnessed by the three required witnesses.

⁴² 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"

⁴³ R.A. No. 9165, Section 21 (2).

⁴⁴ R.A. No. 9165, Section 21 (3).

⁴⁵ TSN dated October 20, 2014, p. 9.

⁴⁶ TSN dated December 9, 2014, p. 6.

⁴⁷ TSN dated December 9, 2014, p. 13.

⁴⁸ TSN dated October 20, 2014, p. 13.

⁴⁹ TSN dated December 9, 2014, p. 7.

⁵⁰ TSN dated October 20, 2014, p. 11.

⁵¹ TSN dated October 20, 2014, p. 12; TSN dated December 9, 2014, p. 7.



Before the trial court, PO1 Buenaflor testified and identified the plastic sachet seized from Lopez.⁵² The Inventory/Confiscation Receipt⁵³ dated March 30, 2014 was prepared by PO2 Joel T. Tabagan in the presence of Lopez and the three insulating witnesses who all signed the same.⁵⁴ Apart from the Inventory/Confiscation Receipt, photographs of the preparation and signing of the witnesses were likewise presented.⁵⁵ These photographs were taken by PO2 Tuyay who identified all the photographs taken during the operation before the trial court.⁵⁶

Requests for Laboratory Examination were then prepared for both the item seized and the urine sample.⁵⁷ Around 11:14 p.m. of the day of the buy-bust operation, the seized item was delivered to the Provincial Crime Laboratory Office at Concepcion Grande, Naga City.⁵⁸ PO1 Buenaflor testified that he was in possession of the seized item from the time of its apprehension, post-marking, until he surrendered possession thereof to PO2 Dela Cruz, the receiving clerk of the Crime Laboratory.⁵⁹ The prosecution likewise drew out the fact that the seized item was heat-sealed when it was received by PO1 Buenaflor from Lopez during the buy-bust operation and it remained in the same condition when he turned it over to the Crime Laboratory Office.⁶⁰ PO1 Buenaflor identified before the court the Chain of Custody Form⁶¹ for "Case No. D-109-2014 [One (1) piece medium heat sealed transparent plastic sachet containing white crystalline substance suspected to be shabu marked as JBB22 3-30-14]." Upon presentation of PO2 Dela Cruz, the parties stipulated on the authenticity of his signature appearing in the Chain of Custody Form and Request for Laboratory Examination.⁶²

PSI Malong, the forensic chemist who examined the specimens, testified that the heat-sealed plastic was surrendered by PO1 Buenaflor, together with the letter-request for laboratory examination,⁶³ to the crime laboratory and was received by PO2 Dela Cruz.⁶⁴ The specimens were turned over by PO2 Dela Cruz to PSI Malong on the same day they were received.⁶⁵ PSI Malong conducted the qualitative examination, physical examination, and chemical test which all yielded a positive result of methamphetamine hydrochloride, or "*shabu*", a dangerous drug.⁶⁶ PSI Malong positively identified the specimen presented in court as the same one from which he

⁵² TSN dated October 20, 2014, p. 13.

⁵³ Records (Criminal Case No. IR-10559), p. 12.

⁵⁴ TSN dated October 20, 2014, p. 14.

⁵⁵ TSN dated October 20, 2014, p. 14; Records (Criminal Case No. IR-10559), pp. 124-125.

⁵⁶ TSN dated February 17, 2015.

⁵⁷ TSN dated October 20, 2014, p. 15.

⁵⁸ TSN dated October 20, 2014, p. 16.

⁵⁹ TSN dated October 20, 2014, p. 16.

⁶⁰ TSN dated October 20, 2014, p. 17.

⁶¹ Records (Criminal Case No. IR-10559), p. 17.

⁶² TSN dated January 19, 2015.

⁶³ TSN dated August 22, 2014, p. 4.

⁶⁴ TSN dated August 22, 2014, p. 5.

⁶⁵ TSN dated August 22, 2014, p. 5.

⁶⁶ TSN dated August 22, 2014, pp. 5-6.

extracted a representative sample for his tests.⁶⁷ These findings were reduced into Chemistry Report No. D-109-2014.⁶⁸

In his assignment of errors, Lopez does not contest the existence of the unbroken custodial links but argues that there is conflicting identification as to the size of the alleged seized item.⁶⁹ On the one hand, PO1 Buenaflor testified that what he allegedly brought from Lopez was a “small-sized” heat-sealed transparent sachet.⁷⁰ However, in the Inventory/Confiscation Receipt, Chain of Custody Form, and Request for Laboratory Examination, it was indicated that the seized item was “medium” in size.⁷¹

The alleged inconsistency is more apparent than real. The characterization of the size of the seized item was obviously qualitative and necessarily subjective. It does not negate the established fact that the item seized from the accused-appellant was identified as the exact same item that was marked, inventoried, photographed, tested, and finally presented in court.

Much has been said about the conduct of buy-bust operations as a tool in flushing out illegal transactions that are otherwise conducted covertly and in secrecy.⁷² While the Court has refrained from imposing a certain method to be followed in the conduct of buy-bust operations⁷³ and has generally left to the discretion of police authorities the selection of effective means to apprehend drug dealers,⁷⁴ the buy-bust operation’s peculiar characteristics of having the benefit of planning, preparation, and foresight⁷⁵ impels the Court to adopt an exacting approach in scrutinizing compliance with statutory law and jurisprudential safeguards.⁷⁶ On this note, law enforcement agencies should continually be reminded of the purpose and importance of the chain of custody rule in Section 21, Article II of R.A. No. 9165:

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.**⁷⁷ (Emphasis supplied)

⁶⁷ TSN dated August 22, 2014, pp. 3, 7.

⁶⁸ TSN dated August 22, 2014, p. 8.

⁶⁹ Brief for the Accused-Appellant, p. 12; CA rollo, p. 49.

⁷⁰ Id., citing TSN dated October 20, 2014, p. 9.

⁷¹ Id.

⁷² *People v. Garcia*, 599 Phil. 416 (2009).

⁷³ *Castro v. People*, 597 Phil. 722 (2009).

⁷⁴ *Quinicot v. People*, supra note 35.

⁷⁵ *People v. Luna*, 828 Phil. 671, 688 (2018).

⁷⁶ *People v. Umipang*, 686 Phil. 1024 (2012).

⁷⁷ *People v. Holgado*, 741 Phil. 78, 93 (2014).

To be clear, strict adherence with Section 21 remains to be the rule. This is a singular and rigid standard. Anything less than strict adherence would automatically be a deviation from the chain of custody rule that would only pass judicial muster in the most exacting of standards following the twin-requirements of: (1) existence of justifiable reasons, and (2) preservation of the integrity and evidentiary value of the seized items.⁷⁸ In these cases, the point of contention should not revolve around the amount of illegal drugs seized, but on whether the constitutional and statutory rights of an accused are protected in the prosecution of the crime he or she stands accused.

The Court notes in this case the meticulousness of the apprehending officers in their compliance with the chain of custody rule and in documenting their movements. Additional safeguards employed by the police operatives in this case such as the taking of photographs in every step of the operation, though not legally required, are commendable practices in law enforcement. Equal note should also be made on the prosecution's efforts in drawing out the details in establishing the crucial custodial links to secure the identity and integrity of the dangerous drug seized from the accused. **This shows that the requirements imposed by Section 21, while exacting considering the liberties at stake, are logical and susceptible to strict and full compliance.**

II.

In Criminal Case No. IR-10614, Lopez stood charged for illegal use of dangerous drugs, defined and penalized under Section 15, Article II of R.A. No. 9165, which provides:

Section 15. *Use of Dangerous Drugs.* – **A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense,** subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (PhP50,000.00) to Two hundred thousand pesos (PhP200,000.00); *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (Emphasis supplied)

While Section 15 penalizes a person apprehended or arrested for unlawful acts listed under Article II of R.A. No. 9165 and who is found to be positive for use of any dangerous drug,⁷⁹ a conviction presupposes the prior conduct of an initial screening test and a subsequent confirmatory test both yielding positive results for illegal drug use. In this regard, Section 36 of R.A. No. 9165 provides, in part:

⁷⁸ Implementing Rules and Regulations of R.A. No. 9165, Sec. 21 (a).

⁷⁹ See *Dela Cruz v. People*, 739 Phil. 578 (2014).



Section 36. *Authorized Drug Testing.* – Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the DOH to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. **The drug testing shall employ, among others, two (2) testing methods, the screening test which will determine the positive result as well as the type of the drug used and the confirmatory test which will confirm a positive screening test.** Drug test certificates issued by accredited drug testing centers shall be valid for a one-year period from the date of issue which may be used for other purposes. The following shall be subjected to undergo drug testing: x x x. (Emphasis supplied)

Meanwhile, Section 38 of R.A. No. 9165 provides:

Section 38. *Laboratory Examination or Test on Apprehended/Arrested Offenders.* – **Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be *prima facie* evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: *Provided, That a positive screening laboratory test must be confirmed for it to be valid in a court of law.*** (Emphasis and underscoring supplied)

From the foregoing, two distinct drug tests are required: a screening test and a confirmatory test. A positive screening test must be confirmed for it to be valid in a court of law. The evidence for the prosecution, however, shows the conduct of only one test.

PSI Malong conducted the examination on the urine sample taken from Lopez after his apprehension.⁸⁰ His testimony in this regard is reproduced below in full:

PROS. JOCOM:

Q: In the urine sample that you examined, you indicated in your report that the same gave positive result to the presence of methamphetamine hydrochloride, and negative for THC metabolites. [N]ow, tell us, how did you arrive at such conclusion or findings that the result was positive for the presence of methamphetamine hydrochloride?

⁸⁰ TSN dated August 22, 2014, p. 8.



- A: I arrive to this finding, sir, because I conducted the screening test and confirmatory test of the urine specimen, sir.
- Q: Okay, when you said you conducted confirmatory test, what did you mean by that?
- A: The urine sample was subjected to TLC, sir, wherein the urine sample was extracted and then, compared with the standard methamphetamine hydrochloride, sir.
- Q: And what was the result or the color if there was any change in the color that you subject that for test (*sic*) that you could say that there was the presence of methamphetamine?
- A: On the TLC plate, sir, we would be able to see that the spot develop of (*sic*) the same location, sir, meaning they have the same chemical characteristics with the standard methamphetamine hydrochloride, sir.
- Q: After conducting the confirmatory test, what did you do with the sample, the urine?
- A: It was placed on (*sic*) the refrigerator, sir. I sealed it and placed on the refrigerator.
- Q: Until now, it is with your office?
- A: It was already discarded, sir.⁸¹

While PSI Malong mentions the conduct of a “screening test and a confirmatory test” on the urine sample, his testimony on the actual test conducted on the sample as well as the chemical laboratory report presented in court show otherwise.

The test conducted on the urine specimen of the accused-appellant was a Thin Layer Chromatography or TLC — a screening test. A screening test is statutorily defined as “[a] rapid test performed to establish potential/presumptive positive result”.⁸² It refers to the immunoassay test to eliminate a “negative” specimen, *i.e.*, one without the presence of dangerous drugs, from further consideration and to identify the presumptively positive specimen that requires confirmatory test.⁸³ Under existing regulations of the Dangerous Drugs Board, the TLC is a screening test that is subject to further confirmatory examinations if it yields a positive result.⁸⁴

When the urine sample recovered from Lopez yielded a positive result, the specimen should have been subjected to a second test — the confirmatory

⁸¹ TSN dated August 22, 2014, pp. 12-13.

⁸² R.A. No. 9165, Art. I, Sec. 3 (hh).

⁸³ Implementing Rules and Regulations of R.A. No. 9165, Art. I, Sec. 3 (pp).

⁸⁴ See Dangerous Drugs Board, Board Regulation No. 2, series of 2003, “Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines.”



test. R.A. No. 9165 describes the confirmatory test as “[a]n analytical test using a device, tool or equipment with a different chemical or physical principle that is more specific which will validate and confirm the result of the screening test.”⁸⁵ It is the second or further analytical procedure to more accurately determine the presence of dangerous drugs in the specimen.⁸⁶ The records are silent on any reference to a second, more specific, examination on the urine sample.

Considering that Chemistry Report No. DTC-081-2014⁸⁷ merely contains the results of the screening test conducted, the same cannot be valid before any court of law absent the required confirmatory test report.⁸⁸ Without the requisite confirmatory test, the accused-appellant cannot be held criminally liable for illegal use of dangerous drugs under Section 15, R.A. No. 9165. An acquittal for this charge follows as a necessary consequence.

WHEREFORE, in view of the foregoing, the appeal is **PARTLY GRANTED**. The Decision dated March 29, 2019 of the Court of Appeals, Twelfth Division in CA-G.R. CR-HC No. 09769 is hereby **MODIFIED** as follows:

In Criminal Case No. IR-10614 for violation of Section 15, Article II of R.A. No. 9165, accused-appellant PETER LOPEZ Y CANLAS is **ACQUITTED** for failure of the prosecution to prove the elements thereof.


In Criminal Case No. IR-10559, the conviction of accused-appellant PETER LOPEZ Y CANLAS for violation of Section 5, Article II of R.A. No. 9165 is **AFFIRMED**.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:




DIOSDADO M. PERALTA
Chief Justice
Chairperson

⁸⁵ R.A. No. 9165, Art. I, Sec. 3 (f)


⁸⁶ Implementing Rules and Regulations of R.A. No. 9165, Art. I, Sec. 3 (i).

⁸⁷ Records (Criminal Case No. IR-10614), p. 8.

⁸⁸ R.A. No. 9165, Sec. 38.



JOSE C. REYES, JR.
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


DIOSDADO M. PERALTA
Chief Justice

