



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 252029**
 Plaintiff-Appellee,

Present:

-versus-

LEONEN, *J.*, Chairperson,
 CARANDANG,
 LAZARO-JAVIER,*
 ROSARIO, and
 DIMAAMPAO,** *JJ.*

PABLITO PAGASPAS y
ALCANTARA AND JOEY DE
LEON y VALERIANO,
 Accused-Appellants.

Promulgated:
November 15, 2021

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DECISION

LEONEN, J.:

Convictions cannot be sustained in the face of unjustified deviations from the strict requirements of Section 21 of Republic Act No. 9165.

This Court resolves the appeal¹ from the Decision² of the Court of Appeals, which affirmed the Regional Trial Court Judgment³ convicting Pablito Pagaspas y Alcantara (Pagaspas) and Joey De Leon y Valeriano (De Leon) of the illegal sale of dangerous drugs, and Pagaspas of the illegal possession of dangerous drugs.

* Designated additional Member per Raffle dated July 8, 2020.

** Designated additional Member per Special Order No. 2839.

¹ *Rollo*, pp. 20–22.

² *Id.* at 3–19. The June 21, 2019 Decision was penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Fernanda Lampas Peralta and Jhosep Y. Lopez (now a member of this Court) of the Special Third Division, Court of Appeals, Manila.

³ *CA rollo*, pp. 56–73. The May 3, 2018 Judgment was penned by Judge Caesar C. Buenagua of the Regional Trial Court of Calamba City, Branch 37.

J

An Information was filed against De Leon and Pagaspas, charging them with violating Section 5,⁴ in relation to Section 26,⁵ of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. It reads:

Criminal Case No. 30080-2017-C

That on or about 3:20 o'clock [sic] in the afternoon of 19 July 2017, at Sitio Palao, Kapayapaan Village, Brgy. Canlubang, City of Calamba, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused conspiring and confederating without any authority of law, did then and there willfully, unlawfully and feloniously sell to a poseur bu[y]er a quantity of methamphetamine hydrochloride otherwise known as shabu, a dangerous drug, having a total weight of 0.06 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.⁶

In a separate Information, Pagaspas was further charged with violation of Section 11⁷ of the same law. It reads:

Criminal Case No. 30079-2017-C

⁴ Republic Act No. 9165 (2002), sec. 5 states:

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.

⁵ Republic Act No. 9165 (2002), sec. 26 states:

SECTION 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

....
(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical[.]

⁶ *Rollo*, p. 5.

⁷ Republic Act No. 9165 (2002), sec. 11 states:

SECTION 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

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

....
(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements: or three hundred (300) grams or more but less than five hundred (500) grams of marijuana[.]

That on or about 3:20 o'clock [sic] in the afternoon of 19 July 2017, at Sitio Palao, Kapayapaan Village, Brgy. Canlubang, City of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused without any authority of law, did then and there willfully, unlawfully and feloniously possess four (4) heat[-]sealed transparent plastic sachets of methamphetamine hydrochloride otherwise known as shabu, a dangerous drug, having a total weight of 0.22 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.⁸ (Emphasis in the original)

On arraignment, De Leon and Pagaspas pleaded not guilty to the charges filed against them. Trial on the merits then ensued.⁹

According to the prosecution, at around 3:20 p.m. on July 19, 2017,¹⁰ a buy-bust team went to Sitio Palao, Kapayapaan, Barangay Canlubang in Calamba City, Laguna, for a buy-bust operation against one "Joma,"¹¹ later identified as Pagaspas. This team included Police Officer 1 France Yve¹² P. Male (PO1 Male), PO1 Kevin B. Agudo (PO1 Agudo), and a confidential informant, among others. When the team reached his house, the informant knocked on the door and asked if Joma was around. A man later identified as De Leon asked, "Kukuha ba kayo?" to which PO1 Male replied, "Limang piso lang[.]" After receiving a marked ₱500.00 bill handed by PO1 Male, De Leon shouted, "Joma, Joma, may kukuha!" and directed PO1 Male to wait at the corner of an alley.¹³

Pagaspas later arrived with a black coin purse and approached PO1 Male. From his purse, he took out a plastic sachet and gave it to the officer.¹⁴

At this, PO1 Male introduced himself as a police officer and arrested Pagaspas. De Leon, who was then standing next to Pagaspas, was apprehended by PO1 Agudo.¹⁵

After a minute or two,¹⁶ the other members of the buy-bust team, along with media representative Zen Trinidad (Trinidad) and barangay councilor Mario D. Legaspi, arrived at the scene and witnessed the marking and conduct of the inventory.¹⁷

⁸ *Rollo*, p. 6.

⁹ *CA rollo*, p. 57.

¹⁰ *Id.* at 58.

¹¹ *Rollo*, p. 7.

¹² *CA rollo*, p. 59. In other parts of the *rollo*, Yve is written as Yvve.

¹³ *Id.*

¹⁴ *Rollo*, p. 7.

¹⁵ *CA rollo*, p. 59.

¹⁶ *Id.*

¹⁷ *Rollo*, p. 7.

Once PO1 Male marked the sold shabu with “7/19/17 BB FYM,”¹⁸ he conducted a body search on Pagaspas, from which he recovered the coin purse. It contained four more plastic sachets of suspected shabu, which the police officer marked accordingly with “FYM-1,” “FYM-2,” “FYM-3,” and “FYM-4.”¹⁹ PO1 Male kept all five sachets in his custody, with the sold sachet kept in his right pocket, until they reached the police station. PO1 Male then turned over these sachets to the Regional Crime Laboratory Office for examination. The specimens tested positive for shabu.²⁰

For the defense, De Leon and Pagaspas denied the accusations against them. They narrated that they were at a store in Sitio Palao when several men alighted from two vehicles. Introducing themselves as police officers, the men allegedly instructed De Leon and Pagaspas to lie on the ground before frisking the two.²¹ When they found nothing, the officers ordered De Leon and Pagaspas to board a car where they were tortured into admitting that they had shabu with them. The two claimed that it was only upon their arrival at the city hall when they learned of the charges against them.²²

In its May 3, 2018 Judgment,²³ the Regional Trial Court found both Pagaspas and De Leon guilty beyond reasonable doubt of the charges filed against them. The dispositive portion reads:

IN VIEW OF THE FOREGOING, [i]n Criminal Case No. 30079-2017-C, the Court finds the accused, PABLITO PAGASPAS y ALCANTARA, GUILTY BEYOND REASONABLE DOUBT of violation of Section 11, paragraph 2(3), Article II of Republic Act [No.] 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to PAY A FINE OF THREE HUNDRED THOUSAND (P300,000.00) PESOS.

In Criminal Case No. 30080-2017-C, the [C]ourt finds the accused **PABLITO PAGASPAS y ALCANTARA and JOEL DE LEON y VALERIANO, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, in relation to 26, Article II of Republic Act [No.] 9165. Both accused are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and TO PAY A FINE OF FIVE HUNDRED THOUSAND (PHP500,000.00) PESOS each.**

The Branch Clerk of Court is hereby ordered to turn-over [sic] the illegal drugs subject of this case to PDEA for proper disposition and destruction.

¹⁸ Id. at 7. The CA Decision cited the RTC records, p. 3. or the Buong Loob na Salaysay of PO1 Agudo. As for the RTC, it stated that PO1 Male “likewise placed the markings ‘7-19-17 BB-FYM’ on the purchased item.” In the Letter-Request for Laboratory Examination, the marking was “7/19/17 BB-FYM.”

¹⁹ Id. at 7–8.

²⁰ Id. at 8.

²¹ Id.

²² CA *rollo*, p. 37.

²³ Id. at 56–73.

SO ORDERED.²⁴ (Emphasis in the original)

Brushing aside the defense of frame-up, the trial court gave more weight to the prosecution witnesses' testimonies, saying that the arresting officers had no ill motive and were presumed to have regularly performed their official functions.²⁵ It further held that all the elements of illegal sale and illegal possession of dangerous drugs were sufficiently established, and that the chain of custody was properly accounted for.²⁶ Finally, it ruled that while there was no strict compliance with Section 21 of Republic Act No. 9165, the lapses were not fatal since the seized items' integrity and evidentiary value have been preserved.²⁷

On appeal, De Leon and Pagaspas argued that the Regional Trial Court erred in convicting them, since the arresting officers failed to comply with Section 21 and to establish every link in the chain of custody.²⁸ They further claimed that it was ambiguous whether PO1 Male solely delivered the seized items to the Crime Laboratory for examination or if he was accompanied by PO1 Agudo.²⁹ Finally, they contended that the prosecution failed to establish the second link, as the seized items were not transferred to an investigating officer and went straight to the Crime Laboratory.³⁰

The Office of the Solicitor General, for the People of the Philippines, countered that the prosecution was able to establish the guilt of Pagaspas and De Leon by proof beyond reasonable doubt.³¹ It argued that the prosecution was able to demonstrate an unbroken chain of custody.³²

In its June 21, 2019 Decision,³³ the Court of Appeals affirmed the Regional Trial Court's ruling:

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED**. Accordingly, the Decision dated 03 May 2018, issued by Branch 37, Regional Trial Court of Calamba City, Laguna, is **AFFIRMED in toto**.

SO ORDERED.³⁴ (Emphasis in the original)

The Court of Appeals sustained the convictions of De Leon and Pagaspas. It held that there was an unbroken chain of custody of the five

²⁴ Id. at 73.

²⁵ Id. at 61.

²⁶ Id. at 62–67.

²⁷ Id. at 69–73.

²⁸ Id. at 38, Accused-Appellants' Brief.

²⁹ Id. at 46.

³⁰ Id. at 48–49.

³¹ Id. at 104, Plaintiff-Appellee's Brief.

³² Id. at 110–111.

³³ *Rollo*, pp. 3–19.

³⁴ Id. at 18.

sachets.³⁵ It further held that the arresting officers had no ill motive to falsely accuse the two of the crime.³⁶ It also found all the elements of the crimes sufficiently established.³⁷

De Leon and Pagaspas then filed their Notice of Appeal,³⁸ which the Court of Appeals gave due course³⁹ to, ordering that the case records be forwarded to this Court.

On July 13, 2020, this Court noted the case records forwarded by the Court of Appeals and notified the parties that they may submit their respective supplemental briefs.⁴⁰ Both parties manifested that they would no longer do so, their respective Briefs before the Court of Appeals being sufficient.⁴¹

For this Court's resolution are the following issues:

First, whether or not accused-appellants Pablito Pagaspas y Alcantara and Joey De Leon y Valeriano are guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5 in relation to Section 26 of Republic Act No. 9165; and

Second, whether or not Pablito Pagaspas is guilty of illegal possession of dangerous drugs under Section 11 of the same law.

Accused-appellants must be acquitted. The arresting officers' unjustified failure to comply with the strict requirements of the Comprehensive Dangerous Drugs Act casts reasonable doubt on the *corpus delicti*—the drugs themselves—an essential element in establishing the offenses of illegal sale and illegal possession of dangerous drugs.

I

The elements of illegal sale and illegal possession of dangerous drugs are settled. *People v. Morales*⁴² teaches:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

³⁵ Id. at 14.

³⁶ Id. at 15.

³⁷ Id. at 17.

³⁸ Id. at 20–23.

³⁹ Id. at 24.

⁴⁰ Id. at 26–27.

⁴¹ Id. at 42–43.

⁴² 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.⁴³

Essential to a conviction for either offense is the proof that the integrity and identity of the dangerous drug—the *corpus delicti* for both offenses—have been preserved.⁴⁴

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides the rules governing the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. It states in part:

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 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 persons 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.
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled

⁴³ Id. at 228 citing *People v. Darisan*, 597 Phil. 479 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per J. Tinga, Second Division].

⁴⁴ *People v. Saunar*, 816 Phil. 482 (2017) [Per J. Leonen, Second Division].

precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination[.]

In *People v. Castillo*,⁴⁵ this Court enumerated the four links in the chain of custody that the prosecution must establish:

There are four (4) links in the chain of custody of the confiscated item that need to be established:

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁴⁶ (Citation omitted)

Marking is the “starting point in the custodial link[.]”⁴⁷ In *People v. Dahil*,⁴⁸ this Court explained the significance of marking in safeguarding the *corpus delicti*’s integrity and identity. It held:

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. “*Marking*” means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. *Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.* The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

It must be noted that *marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.*⁴⁹ (Emphasis supplied, citations omitted)

⁴⁵ G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division].

⁴⁶ Id.

⁴⁷ *People v. Ameril*, 799 Phil. 484, 492 (2016) [Per J. Brion, Second Division].

⁴⁸ 750 Phil. 212 (2015) [Per J. Mendoza, Second Division].

⁴⁹ Id. at 232.

The importance of marking was emphasized in *People v. Ameril*,⁵⁰ where this Court acquitted the accused due to the discrepancies in the seized items' markings. We held that these inconsistencies compromised the integrity of the seized drugs and raised doubts on whether the items presented in court were the exact ones seized from the accused.⁵¹

As in *Ameril*, there is a discrepancy in the markings of the shabu sold in this case, casting doubt on its identity and integrity. Both the prosecution and the defense stipulated that one of the items attached to the Letter-Request for Laboratory Examination was a plastic sachet with markings "7/19/17 BB-FYM."⁵² Yet, in the Regional Trial Court's narration of the prosecution's version of the events,⁵³ in PO1 Male's Sinumpaang Salaysay,⁵⁴ and in his own testimony during trial as cited in the Judgment,⁵⁵ he attested to a different marking. He said:

Q: What was the markings [sic] that you placed on the sachet that you purchased?

A: "7-19-17 BB-FYM", ma'am.⁵⁶ (Emphasis in the original)

The differences are various and varied. One source says that slashes were written for the dates; another says that hyphens were used. Even the Court of Appeals, which cited PO1 Agudo's Kusang Loob na Salaysay, wrote, "7/19/17 BB FYM."⁵⁷ A hyphen went missing between "BB" and "FYM."

These discrepancies are crucial. They leave this Court guessing as to whether the markings were indeed properly made, one that the prosecution should have made clear from the start. The seized illegal drug constitutes the *corpus delicti* in cases of illegal drug sale. When there is doubt as to its integrity and identity brought about by discrepancies in markings, acquittal must ensue—as it should for accused-appellants here.

II

In addition to the discrepancy in the markings, PO1 Male failed to narrate the exact manner by which he handled the seized plastic sachets.

⁵⁰ G.R. No. 222192, March 13, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65008>> [Per J. Leonen, Third Division].

⁵¹ Id.

⁵² *CA rollo*, pp. 57–58.

⁵³ Id. at 60. The notable portion of the RTC Judgment reads: "He likewise placed the markings '7-19-17 BB-FYM' on the purchased item."

⁵⁴ Id. at 46, cited in Plaintiff-Appellee's Brief.

⁵⁵ Id. at 68. Citing TSN, January 31, 2018, pp. 8–9.

⁵⁶ Id.

⁵⁷ Id. at 7. The CA Decision cited the RTC Records, p. 3, or the Buong Loob na Salaysay of PO1 Agudo.

As narrated by the Court of Appeals, the prosecution's version of the events is as follows:

PO1 Male marked the plastic sachet he purchased with "7/19/17 BB FYM," placed it in his right pocket, then frisked accused-appellant Pagaspas. In the course thereof, he retrieved from accused-appellant Pagaspas the buy-bust money and a black coin purse, containing four (4) more plastic sachets, containing suspected shabu. He marked the four (4) sachets with "FYM-1," "FYM-2," "FYM-3" and "FYM-4." Later on, he prepared the Receipt/Inventory For Property Seized. He did the marking and the inventory in the presence of accused-appellants, as well as Konsehal Mario D. Legaspi and Trinidad.

PO1 Male took custody of the five (5) plastic sachets and brought them to the police station. He subsequently delivered the said items to the Crime Laboratory[.]⁵⁸ (Citations omitted)

The prosecution's narrative leaves a significant gap as to how exactly PO1 Male maintained custody of the allegedly seized items. It leaves no guarantee of the items' identity and integrity other than PO1 Male's own assertions. Such self-serving guarantees do not impress this Court that the seized items' integrity was indeed preserved.

In *People v. Dela Cruz*,⁵⁹ we deemed the police officer's act of keeping the allegedly seized items in his pockets inadequate. *Dela Cruz* was reiterated in *People v. Sultan*,⁶⁰ where this Court discussed the insufficiency of these self-serving testimonies:

Here, the prosecution established that from the place of seizure to the barangay hall, PO2 Hechanova had sole custody of the supposedly confiscated items. But this alone cannot be taken as a guarantee of the items' integrity. On the contrary, an officer's act of personally and bodily keeping allegedly seized items, without any clear indication of safeguards other than his or her mere possession, has been viewed as prejudicial to the integrity of the items.

In *People v. Dela Cruz*, this Court reprehended the act of a police officer who, having custody of the sachets seized from a buy-bust operation, recklessly kept them in his pockets until they were supposedly turned over for examination:

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.

⁵⁸ *Rollo*, pp. 7–8.

⁵⁹ 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

⁶⁰ G.R. No. 225210, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65518>> [Per J. Leonen, Third Division].

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.

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.

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that “noncompliance of (sic) 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.” Plainly, the prosecution has not shown that — on September 14, 2004, when dela Cruz was arrested and the sachets supposedly seized and marked — there were “justifiable grounds” for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving assertion that the integrity of the seized sachets has, despite all its lapses, nevertheless been preserved.

In *Dela Cruz*, this Court did not approve of the incautious keeping of allegedly seized narcotics even as the prosecution averred separating them in different pockets as a supposed measure to preserve integrity. With greater reason should this Court, in this case, reject PO2 Hechanova's claim. The bare assertion that PO2 Hechanova had possession of the items, without so much as a simulation of safekeeping measures such as the segregation in *Dela Cruz*, is a blatant gap in the chain of custody. The dearth of specific and detailed descriptions of how the allegedly seized items had been preserved while in transit amounts to a broken, unreliable chain of custody. This is fatal to the prosecution's case.⁶¹ (Citation omitted)

It does not escape this Court's attention how no investigating officer who received the items from PO1 Male was ever mentioned. *Dahil* explained the importance of the second link in the chain of custody:

⁶¹ Id.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who will then send it by courier to the police crime laboratory for testing. This is a necessary step in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents.

The investigator in this case was a certain SPO4 Jamisolamin. Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Licu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items.

In *People v. Remigio*, the Court noted *the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.*⁶² (Emphasis supplied, citations omitted)

In this case, the prosecution offered no justification as to why the seized items seemingly went straight from the apprehending officer to the forensic chemist, completely bypassing an investigating officer.

The lower courts should not have turned a blind eye to these glaring lapses. This is especially since narcotics are small and fungible, identical to substances common to people's daily lives, increasing the chances that these would be lost or tampered with.⁶³ The shabu seized from the sale here weighed 0.05 gram, an amount as small as the shabu seized in *People v. Holgado*,⁶⁴ where this Court described such quantity as something so minuscule that "it amounts to only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams)."⁶⁵

Noncompliance with the chain of custody requirements may be excused in appropriate cases, but only when the prosecution first acknowledged these procedural lapses and justified their deviation. It must describe in detail the

⁶² *People v. Dahil*, 750 Phil. 212, 235 (2015) [Per J. Mendoza, Second Division].

⁶³ *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

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

⁶⁵ *Id.* at 99.

measures taken by the arresting officers to ensure that the items' identity and integrity have been preserved.⁶⁶

The prosecution offered no such justification here.

III

Neither can the presumption of regularity in the performance of official duty justify the police officers' noncompliance with the chain of custody requirements.

In *People v. Kamad*,⁶⁷ this Court explained the circumstances that must exist before this presumption may apply:

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.⁶⁸ (Citation omitted)

As stressed in *Kamad*, the presumption shall only apply when the police officers complied with the required "standard conduct of official duty required by law";⁶⁹ it cannot stand when there are irregularities in the law enforcers' conduct of their operations.

For the police officers' unjustified departure from the procedures outlined in Section 21 of Republic Act No. 9165 and the broken links in the chain of custody, reasonable doubt exists on the identity and integrity of the *corpus delicti*. Accused-appellants, then, must be acquitted.

To end, the final words in *People v. Holgado*⁷⁰ bear emphasis:

⁶⁶ *People v. Castillo*, G.R. No. 238339, August 7, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610>> [Per J. Leonen, Third Division] citing *People v. Sanchez*, 590 Phil. 214, 234 (2008) [Per J. Brion, Second Division].

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

⁶⁸ Id. at 311.

⁶⁹ Id.

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

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.⁷¹

WHEREFORE, the Court of Appeals’ June 21, 2019 Decision in CA-G.R. CR-HC No. 11161 is **REVERSED** and **SET ASIDE**. Accused-appellants Pablito Pagaspas y Alcantara and Joey De Leon y Valeriano are **ACQUITTED** of the crimes charged. They are ordered **RELEASED** from confinement unless they are being held for some other legal grounds.

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

The Regional Trial Court is directed to turn over the sachets of shabu subject of this case to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

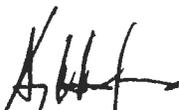
SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

⁷¹ Id. at 100.

WE CONCUR:


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


RICARDO B. ROSARIO
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

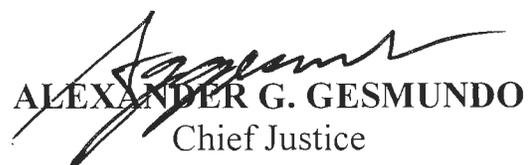
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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.


ALEXANDER G. GESMUNDO
Chief Justice