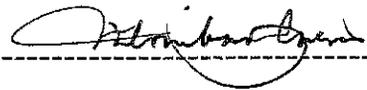


*EN BANC*

**G.R. No. 250307 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. ROBERT UY y TING, ONG CHI SENG @ JACKIE ONG or ARCHIE, CO CHING KI @ CHAI ONG, TAN TY SIAO, GO SIAK PING, and JAMES GO ONG @ WILLIAM GAN or WILLIE GAN, Accused, ROBERT UY y TING, Accused-Appellant.**

Promulgated:

February 21, 2023



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**SEPARATE CONCURRING OPINION**

**LOPEZ, M., J.:**

The application and legal consequences of the exacting requirements of the chain of custody rule are not dependent on the quantity and quality of the confiscated dangerous drugs but are contingent on the nature and gravity of the procedural lapses on the part of the law enforcement agencies. The courts must sift through between minor deviations and gross disregard of the rule.

The *ponencia* reversed the conviction of accused-appellant Robert Uy y Ting (accused-appellant) for the crimes of illegal delivery and illegal possession of dangerous drugs for failure of the prosecution to prove the identity of the *corpus delicti* consisting of 128.4647 kilograms aggregate weight of methamphetamine hydrochloride and 111.200 kilograms of chloromethamphetamine hydrochloride. Specifically, the *ponencia* pointed out that “[t]he seizure of a significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the *corpus delicti*, operationalized through strict compliance with the requirements of Sec. 21 of R.A. No. 9165.”<sup>1</sup> Here, there is no evidence that the law enforcers complied with the mandatory requirements of law. There are material gaps in all links of the chain of custody. Moreover, the prosecution failed to present justifiable reasons for non-compliance and to preserve the integrity and evidentiary value of the seized items.

I concur with these findings.

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<sup>1</sup> *Ponencia*, p. 16.

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Section 21 of Republic Act (RA) No. 9165<sup>2</sup> outlined the rule on chain of custody which refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The record of movements and custody of the seized items shall include the identity and signature of the person who held temporary custody of the seized items, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. The purpose is to authenticate the evidence as exactly the evidence confiscated from the accused that has not been substituted or altered up to its appearance in court.<sup>3</sup> The chain of custody rule applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant, thus:

A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. **There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation.** Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant.

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**Based on *verba legis*, [Section] 21 of [RA] No. 9165, as amended, operates as long as there is seizure and confiscation of drugs. It does not distinguish between warrantless seizure of the drugs in a buy-bust operation and in the implementation of a search warrant.** Accordingly, in every situation where there is a seizure and confiscation of drugs, the presence of the accused, or his/her representative or counsel, a representative from the media and the [Department of Justice (DOJ)], and any elected public official, is required during the physical inventory and taking of photographs of the seized drugs, because they shall be required to sign the copies of the inventory and be given a copy thereof.<sup>4</sup> (Emphasis supplied)

Corollarily, an unbroken chain of custody of the illegal drugs must be established through the following linkages: *first*, the seizure and immediate marking of the illegal drugs recovered from the accused by the apprehending officer; *second*, the turnover of the seized items by the apprehending officer to the investigating officer; *third*, the investigating officer's transmittal of the illegal drugs to the forensic chemist for laboratory examination; and *fourth*, the submission of the marked illegal drugs from the forensic chemist to the

<sup>2</sup> Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

<sup>3</sup> See Philippine National Police Standard Operating Procedure No. 2012-004, entitled "STANDARD OPERATING PROCEDURE ON RECOVERED PERSONAL EFFECTS OF VICTIMS," approved on December 6, 2012.

<sup>4</sup> *Tumabini v. People*, G.R. No. 224495, February 19, 2020, 933 SCRA 60, 77-78 [Per J. Gesmundo, Third Division].

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court.<sup>5</sup> The prosecution bears the burden of showing that the dangerous drugs seized from the accused are uncompromised as several officers directly handled or had temporary custody of the items. The Implementing Rules and Regulations (IRR) of Section 21(a) of RA No. 9165 offers flexibility in the chain of custody rule such “*that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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[.]*” Later, RA No. 10640<sup>6</sup> amended Section 21 of RA No. 9165 and expressly incorporated the saving clause as part of the law which ensures that not every case of non-compliance with the chain of custody rule will permanently prejudice the prosecution of drug offenses. Yet, the prosecution must recognize the procedural lapses and establish as facts the justifiable ground for non-compliance and proof of preservation of the integrity and evidentiary value of the seized items. The courts cannot presume what these grounds are or that they even exist.<sup>7</sup>

On this point, the Court reiterates that the stringent application of Section 21 of RA No. 9165 was not meant to thwart the legitimate efforts of the law enforcers. The procedural lapses in the chain of custody rules are not *ipso facto* fatal to the prosecution’s case so long as the integrity and evidentiary value of the seized items have been preserved. The courts must thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law,<sup>8</sup> viz.:

**Though we have recognized that “[m]inor deviations from the procedures under [RA No.] 9165 would not automatically exonerate an accused,” we have also declared that “when there is gross disregard of the procedural safeguards prescribed in the substantive law ([RA No.] 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.”** We then ruled that such doubt “cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.” Accordingly, “the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.”

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<sup>5</sup> *People v. Bugtong*, 826 Phil. 628, 638-639 (2018) [Per J. Del Castillo, First Division]; and *People v. Enad*, 780 Phil. 346, 358-359 (2016) [Per J. Peralta, Third Division].

<sup>6</sup> Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002’,” approved on July 15, 2014.

<sup>7</sup> *People v. Sitco*, 634 Phil. 627, 642-643 (2010) [Per J. Velasco, Jr., Third Division]; *People v. De Guzman*, 630 Phil. 637, 648-649 (2010) [Per J. Nachura, Third Division]; and *People v. Denoman*, 612 Phil. 1165, 1175-1176 (2009) [Per J. Brion, Second Division].

<sup>8</sup> *People v. Umipang*, 686 Phil. 1024, 1037 (2012); and *People v. Ulama*, 678 Phil. 861, 876-877 (2011) [Per J. Leonardo-De Castro, First Division].

We reiterate that [RA No.] 9165 has a strict mandate for the arresting officers to comply with the afore-quoted procedural safeguards. **We further note that, before the saving clause provided under it can be invoked, Section 21 (a) of the IRR requires the prosecution to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the seized items.**<sup>9</sup> (Emphasis supplied)

Indeed, a survey of jurisprudence reveals that the Court did not hesitate to acquit the accused given the gravity of the procedural lapses on the part of the law enforcement agencies regardless of the large quantity of the confiscated dangerous drugs. In *Amida v. People*,<sup>10</sup> petitioner was charged with illegal sale of **4.00 kilograms** of cocaine but was acquitted because the marking and inventory of the seized items were conducted in a resort which was not the nearest police station or the nearest office of the apprehending officer or team contemplated by the law. The Court likewise rejected the explanation of the law enforcers that they were unfamiliar with the place of arrest and that it was a rebel-infested area. The numerical superiority of the buy-bust team negates the unfounded fear of rebel attack. Furthermore, the prosecution did not offer in evidence the chain of custody report and the turnover of the confiscated evidence report which are essential to confirm how the seized items passed from one person to another. In *People v. Enad*,<sup>11</sup> the accused was charged with illegal sale of **2,722.00 grams** of dried *marijuana*. The Court acquitted the accused because the prosecution utterly failed to prove the identity of the person who actually marked the seized drugs. There was also no evidence that the marking happened in the presence of the accused. The prosecution was even unsure who between the two police officers turned over the items to the investigating officer. The identities of the desk officer and investigator who allegedly delivered the items to the forensic chemist remained unknown. The seized drugs were not photographed and the law enforcers failed to secure the attendance of a representative from the DOJ during the inventory. In *People v. Yusop*,<sup>12</sup> the accused was charged with illegal transportation of **1,481.46 grams** of *shabu* but was likewise acquitted due to the absence of a DOJ representative during the inventory and photography of the seized drugs. There was no effort at all on the part of the prosecution to explain the non-compliance or to show that earnest efforts were in fact exerted to secure the presence of the insulating witness. In *People v. Sitco*,<sup>13</sup> the accused was charged with illegal possession of **887.01 grams** of *marijuana* and **235.84 grams** of *shabu* but was acquitted because of a number of disturbing questions as to the identity and custody of the confiscated drugs. It was unclear who conducted the inventory of the seized items. There were no details as to who received the specimens and brought them to the forensic chemist. Likewise, there is uncertainty as to who took custody of the specimens before they were presented in court. The missing links in the chain

<sup>9</sup> *People v. Ancheta*, 687 Phil. 569, 580–581 (2012); [Per J. Sereno, Second Division]; citations omitted.

<sup>10</sup> G.R. No. 254489, January 11, 2021 [Notice, Second Division].

<sup>11</sup> *Supra* note 5.

<sup>12</sup> G.R. No. 224587, July 28, 2020, 945 SCRA 346 [Per J. Reyes, Jr., First Division].

<sup>13</sup> *Supra* note 7.

of custody raised doubt as to the identity and evidentiary value of the dangerous drugs.

In *People v. Ramos*,<sup>14</sup> the accused was charged with illegal sale of **47.3752 grams** of *shabu*. The Court acquitted the accused because the physical inventory and photograph of the seized items were conducted in the regional office and not at the place of the buy-bust operation. The alleged commotion at the crime scene was insufficient justification for non-compliance given the failure of the prosecution to expound how the incident threatened the safety of the operatives. The prosecution likewise did not explain the absence of the DOJ representative as one of the insulating witnesses. In *People v. De Guzman*,<sup>15</sup> the accused was charged with illegal possession of **41.47 grams** of *marijuana* but was acquitted because the testimonies of the law enforcers were silent on the details regarding the handling and disposition of the seized items. The police officers failed to disclose the identity of the person/s who had custody and possession of the confiscated items after their seizure, or that they themselves had retained custody of the drugs from the place of arrest until they reached the police station. Moreover, the identities of the persons who turned over the items to the forensic chemist and who had custody of the specimens after examination and before presentation in court were unknown. Lastly, the crime laboratory turned over the custody of the seized items to an unnamed person at the prosecutor's office before they were submitted in evidence to the trial court. The Court noted that prosecutor's office is not a part of the chain of custody and has no business in the handling of dangerous drugs. In *People v. Lumaya*,<sup>16</sup> the accused was charged with illegal possession of **20.44 grams** of *shabu* but was acquitted because of the inconsistency in the number of confiscated sachets. The Information and inventory report indicated 11 sachets which is less than the 18 sachets shown in the photographs. However, the prosecution did not explain the disparity. The Court cautioned that the discrepancy, if left unaccounted for, clearly renders suspect the integrity and evidentiary value of the seized drugs. It would not only be difficult to determine the actual identity of the drugs for which the accused was charged but the numerical variance would also arouse suspicions of planting and/or switching the evidence. Also, the police officers did not mark the sachets at the place of confiscation and offered no justification for the deviation.

On the other hand, in *People v. Vastine*,<sup>17</sup> the Court convicted the accused regardless of the large quantity of the confiscated dangerous drugs. The Court noted the minor deviation and held that the prosecution offered a justifiable ground for non-compliance and proof of preservation of the integrity and evidentiary value of the seized items. In that case, the accused was charged with illegal sale of **2,000.71 grams** of cocaine. The police

<sup>14</sup> G.R. No. 236455, February 19, 2020, 933 SCRA 291 [Per C.J. Peralta, First Division].

<sup>15</sup> 825 Phil. 43 (2018) [Per J. Del Castillo, First Division].

<sup>16</sup> 827 Phil. 473 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>17</sup> G.R. No. 258328, November 29, 2022, <<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/>> [Per J. Zalameda, First Division].

officers recognized the procedural lapse and explained that they could not secure the attendance of the DOJ representative despite earnest efforts due to the time-sensitive nature of the buy-bust operation. The authorities immediately conducted the entrapment after the illegal transaction was reported to their office. More importantly, the prosecution established all the links in the chain of custody with the presence of the other two insulating witnesses, thus:

In this case, the police officers recognized the absence of a representative from the DOJ, and provided the explanation that despite earnest efforts, they failed to secure the latter's presence. Moreover, this Court recognizes the time-sensitive nature of the buy-bust operation in this case. The information about the transaction was known on 31 July 2011, and the buy-bust operation was conducted on 01 August 2011.

In this line, it should be considered that the presence of the witnesses from the DOJ, media, and from public elective office was intended to protect against the possibility of planting, contamination, or loss of the seized drug. Apart from the absence of a witness from the DOJ, the prosecution established the requirements of the chain of custody rule with the presence of the other two insulating witnesses required under Sec. 21.<sup>18</sup>

In *People v. Lacson*,<sup>19</sup> the Court convicted the accused of illegal transportation of **4,540.1 grams** of *shabu* and ruled that the law enforcers exemplarily showed how strict compliance with the requirements of Section 21 of RA No. 9165 could easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other. In that case, the law enforcers ensured that the marking, inventory, and photography took place immediately after the arrest of the accused and seizure of the dangerous drugs. The items were then turned over to the forensic chemist who issued the report within 24 hours after receipt of the request. Thereafter, the illegal drugs were presented before the trial court. Inarguably, all the links in the chain of custody were duly established which left no doubt as to the integrity and evidentiary value of the seized dangerous drugs, to wit:

**The apprehending team in this case, through ample preparation, was able to comply with the requirements of Section 21, Article II of [RA No.] 9165, which, to stress, ensures that the *corpus delicti* remains untampered. x x x**

x x x x

As exemplified in this case, which is decided prior to [RA No.] 10640, the apprehending officers were able to meet the requirements mandated by law in spite of them having barely 24 hours to plan the entrapment operation. **Particularly commendable is the fact that they ensured the presence of the three insulating witnesses who witnessed**

<sup>18</sup> *Id.*

<sup>19</sup> G.R. No. 229055, July 15, 2020, 943 SCRA 195 [Per J. Caguioa, First Division].

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**the marking of the seized prohibited drugs and other seized items, the preparation of the corresponding inventories, and the taking of the photographs. Noteworthy also is the fact that the marking, preparation of the inventory, and taking of the photographs of the seized drugs and items took place immediately after the arrest and seizure.** Thereafter, the seized prohibited drugs were turned over by [Intelligence Officer 2] Alarde to Chemist Arcos within 24 hours, and the latter came up with her report within 24 hours after receipt of the request. Without question, therefore, *all the links in the chain of custody in this case were duly established which leaves no doubt as to the integrity and evidentiary value of the seized prohibited drugs which were later on presented before the trial court.*

This case is therefore an exemplar of how strict compliance with the requirements of Section 21, Article II of [RA No.] 9165 can easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other.<sup>20</sup> (Emphasis and italics supplied)

In this case, the law enforcers exhibited gross lapses in the chain of custody despite large quantities of confiscated drugs involved. Notably, accused-appellant was charged with illegal delivery of **128.4647 kilograms** of *shabu* and illegal possession of **111.200 kilograms** of chloromethamphetamine hydrochloride. As regards the alleged illegal delivery of dangerous drugs, it was uncertain when the law officers marked the seized items and if the marking was done in the presence of accused-appellant and the three insulating witnesses. There was also no inventory receipt and the photographs were unclear if they were taken at the place of seizure, or if not practicable, at the nearest police station or the nearest office of the apprehending team. Anent the alleged illegal possession of dangerous drugs, the prosecution did not explain the absence of the DOJ representative as one of the insulating witnesses. The inventory receipt and photographs of the seized items were not submitted in evidence. More telling are the material gaps in the chain of custody rule in both cases. As discussed above, there are serious irregularities in the first link concerning the marking, inventory, and photography of the seized items. With respect to the second link, the investigating officer was unidentified and there was no available testimony as to the turnover of the seized items from the apprehending officer to the investigating officer. The prosecution also did not present details of the third link as to how the investigating officer delivered the specimens to the forensic chemist. Lastly, there is a gap in the fourth link absent any account how the specimens were kept until they were presented to the trial court. Worse, the prosecution miserably failed to establish the presence of justifiable grounds and prove that the integrity and evidentiary value of the seized items were preserved. Taken together, the errors of the law enforcers and the prosecution can hardly be considered as simple procedural lapses as they amounted to a systematic and deliberate disregard of the safeguards drawn by law. Hence, accused-appellant must be acquitted of the charges against him given the

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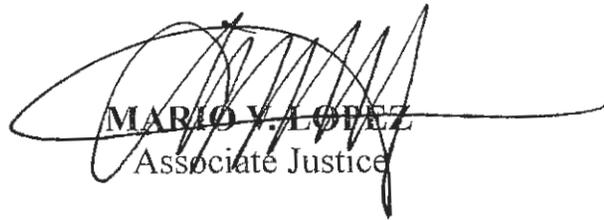
<sup>20</sup> *Id.* at 212-216.

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prosecution's failure to prove an unbroken chain of custody which in turn gave reasonable doubt on the authenticity of the evidence presented in court.<sup>21</sup>

To end, let this case be a powerful constant reminder that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. The history of liberty has largely been the history of the observance of procedural safeguards.<sup>22</sup> The Judiciary as stalwart protector of the Constitution must ensure that these safeguards are strictly carried out.

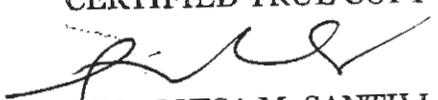
**FOR THESE REASONS, I vote to GRANT the appeal.**

  
MARIO Y. LOPEZ  
Associate Justice

<sup>21</sup> *People v. Bautista*, 82 Phil. 487, 499–500 (2012) [Per J. Bersamin, First Division].

<sup>22</sup> *McNabb v. United States*, 318 U.S. 332 (1943) [Per J. Frankfurter].

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MARIA LUISA M. SANTILLANA  
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Executive Officer  
OCC-En Banc, Supreme Court