



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

LEONIDES QUIAP y G.R. No. 229183
EVANGELISTA,
 Petitioner,

Present:

– versus –

PERLAS-BERNABE, S.A.J.,
Chairperson
 GISMUNDO,
 INTING,*
 LOPEZ, and
 ROSARIO, JJ.

PEOPLE OF THE
PHILIPPINES,
 Respondent.

Promulgated:

FEB 17 2021

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R E S O L U T I O N

M. LOPEZ, J.:

The validity of search and compliance with the chain of custody of dangerous drug are the core issues in this Petition for Review on *Certiorari*¹ assailing the Court of Appeals’ (CA) Decision dated September 1, 2016 in CA-G.R. CR No. 37675, which affirmed the Regional Trial Court’s (RTC) judgment of conviction.

ANTECEDENTS

On March 4, 2011, at around 10:30 a.m., Police Officer (PO) 2 Jerome Garcia (PO2 Garcia) received a phone call from a confidential asset, who was following one *alias* “Kacho.” The asset told PO2 Garcia that Kacho was on his way to Sta. Cruz, Laguna to obtain *shabu* (methamphetamine

* Designated as additional Member per Raffle dated February 3, 2020.

¹ *Rollo*, pp. 11-31.

hydrochloride).² Later, the asset called PO2 Garcia again and said that he and Kacho were on board a passenger jeepney with “Touch Mobile” signage going to Calamba Crossing. The asset described that Kacho was the small and slightly bald man seated in front of him.³ Immediately, the authorities organized an entrapment team composed of Police Senior Inspector Jefferson Parra-Ison, SPO1 Efren Sales (SPO1 Sales), PO1 Ryan Virtrudes, and PO2 Garcia.⁴ At 10:55 a.m., the entrapment team proceeded to a gasoline station along the National Highway of Barangay (Brgy.) Labuin, Pila, Laguna and waited for the target jeepney.⁵

After five minutes, the identified passenger jeepney arrived and was flagged down.⁶ PO2 Garcia boarded the jeepney and directed his attention to the man seated in front of the confidential asset.⁷ At that time, Kacho was about to throw out of the window a small object wrapped with electrical tape but PO2 Garcia held his hand.⁸ Thereafter, PO2 Garcia asked Kacho to unwrap the object which yielded a small plastic sachet containing white crystalline substance. PO2 Garcia confiscated the sachet and brought Kacho to the police station.⁹ Thereat, Kacho was identified as petitioner Leonides Quiap y Evangelista (Leonides). PO2 Garcia marked the sachet with “LQE-1” and gave it to SPO1 Sales who prepared a request for laboratory examination.¹⁰ PO2 Garcia and SPO1 Sales delivered the seized item to the crime laboratory. SPO2 Macabajon received the item and the request.¹¹ Afterward, PSI Grace Bombasi (PSI Bombasi) conducted qualitative examination on the specimen which tested positive for methamphetamine hydrochloride.¹² Thus, Leonides was charged with violation of Section 11, Article II of Republic Act (RA) No. 9165 before the RTC, docketed as Criminal Case No. SC-14520,¹³ to wit:

That on or about March 4, 2011, in the Municipality of Pila, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized or permitted by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) heat-sealed transparent plastic sachet containing **0.18** gram of Methamphetamine Hydrochloride otherwise known as shabu[,] a dangerous drug.

CONTRARY TO LAW.¹⁴ (Emphasis supplied.)

Leonides denied the accusation and claimed that on March 4, 2011, at

² Records, pp. 6-7. See also TSN, August 16, 2013, p. 3.

³ TSN, August 16, 2013, pp. 5 and 14.

⁴ *Id.* at 3-4. See also TSN, November 7, 2014, pp. 3-6.

⁵ *Supra* note 1.

⁶ TSN, August 16, 2013, pp. 4-5.

⁷ *Id.* at 5 and 14.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

¹⁰ *Id.* at 9-10. See also TSN November 7, 2014, pp. 3-4; and records, p. 9.

¹¹ SPO2 Macabajon's name was not indicated; records, p. 9. See also TSN, August 16, 2013, pp. 9-10; November 7, 2014, p. 4.

¹² *Id.* at 41-42; and 66.

¹³ *Rollo*, p. 12.

¹⁴ *Id.*



about 11:00 a.m., he was on board a jeepney going home after visiting his cousin's house in Brgy. Labuin, Pila, Laguna.¹⁵ The jeepney was flagged down, and about two to three men instructed him to alight from the vehicle. The men handcuffed, frisked, and brought him to the police station where he was left incarcerated.

On May 28, 2015, the RTC convicted Leonides of Illegal Possession of Dangerous Drugs and ruled that his denial cannot prevail over the presumption of regularity in the performance of police duties. Moreover, the integrity and evidentiary value of the confiscated item had been preserved,¹⁶ viz.:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused **LEONIDES QUIAP [p] EVANGELISTA GUILTY BEYOND REASONABLE DOUBT** of Violation of Section 11, Article II, R.A. [No.] 9165 and sentencing h[im] to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos ([P]300,000.00).

The specimen of shabu subject of this case with a weight of 0.18 gram is ordered confiscated in favor of the government and the Branch Clerk of Court is hereby ordered to transmit the same to the appropriate government agency for proper disposition.

SO ORDERED.¹⁷ (Emphasis in the original.)

Leonides elevated the case to the CA docketed as CA-G.R. CR No. 37675. Leonides questioned the validity of his arrest and raised the failure of the police officers to comply with the proper handling and custody of dangerous drug, *i.e.* the marking was not made at the place of seizure, the insulating witnesses were absent during the physical inventory, and no photograph of the confiscated item was taken.

On September 1, 2016, the CA affirmed Leonides' conviction. The CA explained that the supposed defect in Leonides' arrest is deemed waived absent any objection before his arraignment. At any rate, Leonides was validly arrested without a warrant because he was committing a crime when the *shabu* was found in his possession. The CA likewise held that sufficient probable cause exists to effect a warrantless arrest. Aside from the tipped information, Leonides exhibited suspicious behavior when he attempted to throw the plastic sachet. The CA gave credence to PO2 Garcia's testimony that Leonides panicked (*nataranta*) when asked to unwrap object in his hand. Also, the *shabu* was confiscated pursuant to a valid search of a moving vehicle where the police officers had to act fast as time is of the essence. Lastly, the CA held that Leonides cannot invoke for the first time on appeal the alleged non-compliance with the rule on chain of custody.¹⁸

¹⁵ TSN, October 9, 2014, p. 2.

¹⁶ *Rollo*, pp. 75-79; penned by Presiding Judge Iluminado M. Dela Peña.

¹⁷ *Id.* at 79.

¹⁸ *Id.* at 35-53; penned by Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Carmelita Salandanan Manahan.



WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated 28 May 2015 of the Regional Trial Court of Santa Cruz, Laguna, Branch 28 in *Criminal Case No. SC-14520*, finding accused-appellant Leonides Quiap y Evangelista guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 and sentencing him to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Php300,000.00 is **AFFIRMED**.

SO ORDERED.¹⁹ (Emphases in the original.)

Leonides sought reconsideration but was denied.²⁰ Hence, this recourse. Leonides insists on the illegality of his warrantless arrest and the inadmissibility of the confiscated item as evidence. Likewise, Leonides reiterates the lapses in the handling of dangerous drug that compromised the identity and integrity of the *corpus delicti*. On the other hand, the Office of the Solicitor General (OSG) argues that the instant case involves a valid stop and frisk. Leonides was “*nataranta*” when PO2 Garcia flagged down and boarded the jeepney. This is enough reason to raise suspicion that Leonides is hiding a wrongdoing. Further, the prosecution proved each and every link in the chain of custody, and established that the integrity and evidentiary value of the confiscated item were preserved.

RULING

Prefatorily, we find that it is too late for Leonides to question the legality of his warrantless arrest in view of his arraignment²¹ and active participation at the trial. Neither did he move to quash the information, hence, any supposed defect in his arrest was deemed waived.²² Even assuming that Leonides can still impugn the legality of his arrest, the circumstances of this case are akin to a “stop and frisk” situation. Here, Leonides’ unusual and suspicious conduct, and the fact that the police officers were on an intelligence mission to verify the report of illegal drug activity, created a sufficient probable cause where search and seizure may be effected without first making an arrest.²³ Differently stated, the apprehending team had a reasonable suspicion, based on the police officers’ experience and the surrounding conditions, that the person to be held had contraband concealed about him.²⁴ This suspicion was fortified when Leonides attempted to throw out of the window an object wrapped with electrical tape after PO2 Garcia boarded the jeepney. Leonides even panicked when asked to unwrap the object which revealed a plastic sachet containing the *shabu*. Having established the validity of warrantless arrest and seizure, we now examine Leonides’ attack on the identity and credibility of the confiscated evidence.

¹⁹ *Id.* at 50.

²⁰ *Rollo*, pp. 55-56.

²¹ See *People v. Tumaneng*, 347 Phil. 56, 74-75 (1997); and *People vs. Mahusay*, 346 Phil. 762, 769 (1997).

²² See *Dolera v. People*, 614 Phil. 655, 666 (2009), citing *People v. Timon*, 346 Phil. 572, 593 (1997); and *People v. Nazareno*, 329 Phil. 16, 22 (1996).

²³ See *People v. Solayao*, 330 Phil. 811, 818-819 (1996), citing *Posadas v. CA*, 266 Phil. 306, 310 (1990).

²⁴ *People v. Chua*, 444 Phil. 757, 768 (2003), citing *Mulacat v. CA*, 347 Phil. 462, 379-382 (1997).



In Illegal Possession of Dangerous Drugs, the contraband itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction.²⁵ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.²⁶ The prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.²⁷ Here, the records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640²⁸ amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations shall apply, to wit:

[Section 21, paragraph 1, Article II of RA 9165]

- (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.

[Section 21(a), Article II of the IRR of RA 9165]

- (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph** the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served;** or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these**

²⁵ *People v. Partoza*, 605 Phil. 883, 891 (2009). See also *People v. Cariño*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, 828 Phil. 416, 436-437 (2018); See *People v. Sanchez*, 827 Phil. 457, 472-473 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1053-1054 (2018); and *People v. Mamangon*, 824 Phil. 728, 741 (2018).

²⁶ *People v. Ismael*, 806 Phil. 21, 30-31 (2017).

²⁷ *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

²⁸ RA No. 10640 took effect on August 7, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphases supplied.)

In earlier cases, this Court ruled that the deviation from the standard procedure in Section 21 dismally compromises the evidence, unless (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.²⁹ Later, we emphasized the importance of the presence of the three (3) insulating witnesses during the physical inventory and the photograph of the seized items.³⁰ In *People v. Lim*,³¹ it was explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 [Article II] of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis, underscoring, and italics in the original.)

Undeniably, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.³² In *People v. Caray*,³³ we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule.

²⁹ *People v. De la Cruz*, 591 Phil. 259, 271-272 (2008), citing Dissenting Opinion of Justice Arturo D. Brion in *People v. Agulay*, 588 Phil. 247, 286; See *People v. Nazareno*, 559 Phil. 387, 393 (2007); See *People v. Santos, Jr.*, 562 Phil. 458, 472-473 (2007).

³⁰ *People v. Rodriguez*, G.R. No. 233535, July 1, 2019.

³¹ G.R. No. 231989, September 4, 2018.

³² *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit y Casilang*, G.R. No. 232381, August 1, 2018.

³³ G.R. No. 245391, September 11, 2019.

Similarly, in *Matabilas v. People*.³⁴ sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, the absence of the required insulating witnesses during the inventory and photograph of the seized item puts serious doubt as to the integrity of the chain of custody. Admittedly, there was no representative from the media and the Department of Justice, and any elected public official. Worse, there was no attempt on the part of the buy-bust team to comply with the law and its implementing rules. The operatives failed to provide any justification showing that the integrity of the evidence had all along been preserved. Apropos is the testimony of PO2 Garcia which is silent about the presence of the insulating witnesses, to wit:

PROSECUTOR:

Q: You said that you brought [Leonides] to the police station and you were the one who was in the custody of the plastic sachet when you arrived at the police station. What did you do with the plastic sachet when you arrived at the police station?

A: I marked it with the initials of the suspect, sir.

x x x x

Q: After you have made the markings on the plastic sachet which you found from the accused, what did you do next?

A: I gave it to SPO1 Sales, the investigator of this case, sir.

x x x x

Q: What did SPO1 Sales do with the plastic sachet of shabu which you have marked?

A: He made a request for laboratory examination, sir.

x x x x

Q: What happened after the request for laboratory examination was prepared by officer Sales with respect to the said plastic sachet of shabu?

A: He brought the plastic sachet to the crime lab, sir.³⁵

x x x x

COURT: x x x

Q: Where did you ask the accused to unwrap [the plastic sachet]?

A: Inside the jeepney, [Ma'am].

³⁴ G.R. No. 243615, November 11, 2019.

³⁵ TSN, August 16, 2013, pp. 8-10.

Q: Where did you mark the specimen?

A: At the police station, mam.

Q: **Have you prepared any inventory of seized evidence?**

A: **No, [Ma'am].**

X X X X

Q: Did you issue any receipt evidencing that you have the specimen which you forwarded to [SPO1 Sales] is the one and the same specimen allegedly confiscated from the accused?

A: No, [Ma'am].

Q: Was it ever reported in any record book that the specimen which you allegedly confiscated from the accused which you marked at the police station was the same specimen which you have forwarded in the absence of any receipt, was it ever reported?

A: We have it blotted after we apprehend [*sic*] alias Kacho.

Q: You mean to say that what you have blotted is the fact of his arrest?

A: Yes, [Ma'am].

Q: And the fact of confiscation?

A: Yes, [Ma'am].

Q: But never the fact of turning it over to the evidence custodian? Not that fact, correct?

A: Yes, [Ma'am].³⁶

Moreover, the link between the investigating officer and the forensic chemist was not established with certainty. The police officers did not describe the precautions taken to ensure that there had been no change in the condition of the seized item and no opportunity for someone not in the chain to have possession of the dangerous drug. The records show that SPO2 Macabajon received the specimen from PO3 Sales. Yet, SPO2 Macabajon did not testify on how the seized item fell into the hands of the forensic chemist PSI Bombasi. The stipulated testimony of PSI Bombasi is insufficient to explain this gap.³⁷

³⁶ *Id.* at 16-18.

³⁷ Records, pp. 40-41. The contents of PSI Bombasi's stipulated testimony are: (1) she is an expert in forensic chemistry; (2) her office received a request for laboratory examination from MPS, Pila, Laguna for the examination of the specimen alleged to have been found in possession of [Leonides]; (3) upon receipt of the letter request, she conducted examination on the said specimen, and after conducting laboratory examination, the same gave positive result for the presence of methamphetamine hydrochloride; (4) she reduced her findings into writing as embodied in Chemistry Report No. LD-005-11; (5) that [she] has no knowledge as to the source of the specimen; (6) [she] was not the one who received the specimen from the person who brought it to the crime laboratory; (7) that [Leonides] was not present during the examination; (8) that [Leonides] was not furnished with a copy of the result of the examination; (9) that there are other substance which when treated with the same reagent will react the same way as if they

In *People v. Pajarin*,³⁸ this Court identified the following matters which are ordinarily covered by the testimony of the forensic chemist who examines the seized items: (1) that he received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.³⁹ Should the parties decide to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. Nonetheless, these circumstances were not stipulated by the parties.

Finally, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable, and cannot be regarded as binding truth.⁴⁰ Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.⁴¹

In sum, the utter disregard of the required procedures created a huge gap in the chain of custody. We reiterate that the provisions of Section 21, Article II 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. Hence, Leonides must be acquitted of the charge against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision dated September 1, 2016 in CA-G.R. CR No. 37675 is **REVERSED** and **SET ASIDE**. Leonides Quiap y Evangelista is **ACQUITTED** in Criminal Case No. SC-14520 and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

contain illegal drugs although those substance do not contain illegal drugs; and (10) that there were no photographs of the specimen attached to the laboratory examination.

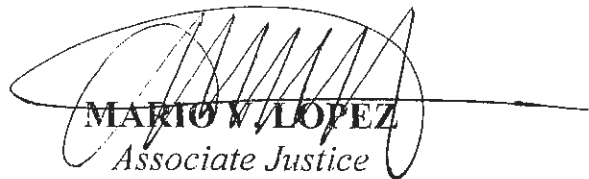
³⁸ 654 Phil. 461 (2011).

³⁹ *Id.* at 466.

⁴⁰ *People v. Cañete*, 433 Phil. 781, 794 (2002); and *Mullillin v. People*, 576 Phil. 576, 593 (2008).

⁴¹ *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).





MARIO V. LOPEZ
Associate Justice

WE CONCUR:



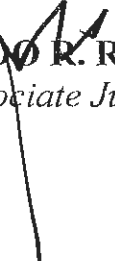
ESTELA M. PERLAS-BERNABE
Senior Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

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



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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