

THIRD DIVISION

[G.R. No. 235467, August 20, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. CELSO PLAZA Y CAENGLISH ALIAS JOBOY PLAZA, JOSEPH GUIBAO BALINTON ALIAS JOABS, ACCUSED-APPELLANTS.

D E C I S I O N

GESMUNDO, J.:

This resolves the appeal from the Decision^[1] of the Court of Appeals Cagayan De Oro City (CA) dated August 25, 2017 docketed as CA-G.R. CR HC No. 01534-MIN affirming the Decision^[2] of the Regional Trial Court, Butuan City, Branch 4 (RTC) dated February 2, 2016 in Criminal Case No. 14839. Herein accused-appellants Celso Plaza y Caenglish alias Joboy Plaza and Joseph Guibao Balinton alias Joabs (*accused-appellants*) were found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

The information against accused-appellants reads:

That at more or less 7:05 o'clock in the evening of March 28, 2011 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero five two four (0.0524) gram, a dangerous drug to a poseur buyer for a consideration of five hundred ([P]500.00) pesos.

CONTRARY TO LAW: (Violation of Section 5, Article II of R.A. 9165)[.]^[3]

Upon arraignment, with the assistance of counsel, accused-appellants pleaded not guilty to the charge.^[4]

The prosecution presented four (4) witnesses: Philippine Drug Enforcement Agency (PDEA) Agent Alex B. Subang (*PDEA Agent Subang*), Police Senior Inspector Joel P. Signar (*PSInsp. Signar*), Barangay Captain Ramonita M. Boholano (*Boholano*), and PDEA Agent Simplicio Cubero Bautista (*PDEA Agent Bautista*). For the defense, accused-appellants testified for themselves.

The testimonies of the prosecution witnesses are condensed as follows:

1. PDEA Agent Subang

A walk-in police asset relayed information about the illegal drug trafficking of accused-appellants. Upon further investigation, it also appeared that accused-appellant Plaza was listed in PDEA's target drug personalities. A buy-bust operation was planned, with PDEA Agent Subang assigned as the poseur-buyer and PDEA Agent Bautista as the arresting officer. When PDEA Agent Subang and the police asset arrived along the highway in front of the Iglesia Ni

Cristo church, accused-appellant Plaza asked PDEA Agent Subang how much the latter intended to buy, to which he replied "P500.00". Accused-appellant Plaza opened his belt bag and took out one (1) sachet of *shabu*, gave the same to accused-appellant Balinton with instruction for the latter to give an aluminum foil, which PDEA Agent Subang received. In exchange, PDEA Agent Subang gave the marked money to accused-appellant Plaza. After the signal, PDEA Agent Bautista rushed in to arrest both accused-appellants, who resisted. Accused-appellant Balinton shouted for help and caught the attention of several persons in the neighborhood. Several persons then arrived, forcing the team to withdraw from the area to conduct further investigation and did their documentation elsewhere. PDEA Agent Subang marked the purchased sachet of *shabu* in transit to the office. The documentation and actual body search was likewise conducted at the PDEA office.

2. PSInsp. Signar

His testimony was the subject of stipulation. Among the stipulations was that the PNP Crime Laboratory received a request for laboratory examination involving a sachet of *shabu* with corresponding markings from PDEA Agent Subang; that he conducted laboratory examination on the items, which yielded a positive result for the presence of methamphetamine hydrochloride; that the two accused-appellants likewise submitted their urine samples, and the examination thereon also yielded a positive result for the presence of methamphetamine hydrochloride for accused-appellant Plaza and TLC metabolites for marijuana for accused-appellant Balinton.

3. Barangay Captain Boholano

Her testimony was likewise subject to stipulation by the prosecutor and defense counsel. Said stipulations were: that she was the barangay captain of Brgy. Bading, where accused-appellants were arrested; that she was present during the conduct of inventory of the drug and non-drug items in the presence of both accused and other witnesses; and that she signed the Certificate of Inventory.

4. PDEA Agent Bautista

The witness testified that he was a member of the buy-bust team which conducted an operation against accused-appellants acting as arresting officer. After completion of the sale, PDEA Agent Bautista received a missed call from PDEA Agent Subang, which was the pre-arranged signal, he and the rest of the team rushed to arrest both accused who attempted to run. A scuffle followed. Despite the ensuing commotion, accused-appellants were neutralized. Considering the precarious and dangerous situation, after the arrest of both accused-appellants, the team withdrew to conduct further investigation and documentation at the PDEA office.

Accused-appellants, on the other hand, essentially testified as follows:

Accused-appellant Plaza sent a text message to accused-appellant Balinton to drink liquor and the latter agreed. They consumed two (2) bottles of Red Horse Grande and decided to go home. It took some time for them to get a tricycle ride home, so they decided to walk. A tricycle full of passengers blocked their path. A person, who identified himself as a PDEA agent, then disembarked and threatened them with a drawn gun. The other passengers (around seven) surrounded them. The first person tried to handcuff accused-appellant Plaza, and he resisted, which resulted to a brawl. He was still eventually handcuffed, forced to board a vehicle, and brought to the PDEA office. At the PDEA office, they were shown an alleged sachet of *shabu*. They both vehemently denied the allegations of selling *shabu*.

Accused-appellants filed a Demurrer to Evidence with Leave of Court. The same was denied through a Resolution^[5] dated July 10, 2015.

The RTC Ruling

The RTC found that the elements for proving violation of Section 5, Article II of R.A. No.

9165 - (1) identity of the buyer and seller and actual exchange of the prohibited drug and consideration; and (2) compliance with Section 21 of R.A. No. 9165 and presentation of the *corpus delicti* in court – were sufficiently shown.

As to the first element, the same was duly established by the testimony of poseur-buyer PDEA Agent Subang. As the second element, the trial court found substantial compliance with Sec. 21 of R.A. No. 9165. Since both prosecution and defense were in agreement that: (1) the place of incident in front of Iglesia Ni Cristo church was unlighted; (2) both accused tried to evade arrest and force had to be applied to subdue accused appellants; and (3) the ensuing scuffle and noise invited the attention of people in the neighborhood, the Court was persuaded that justifying circumstances were present to apply the exception to the rule of strict compliance with Sec. 21.

The conspiracy between accused-appellants was also sufficiently proven. On the other hand, the defense of general denial and planting of evidence, common defenses in these cases, were not given credence.

Thus, the RTC ruled against accused-appellants, the dispositive portion of the decision stated:

WHEREFORE, premises considered, accused Celso Caenglish Plaza, Jr. alias "Joboy Plaza" and Joseph Guibao Balinton alias "Joabs" having acted in conspiracy, the Court finds both accused guilty beyond reasonable doubt of violation of Section 5 of Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentence both accused Plaza and Balinton to suffer the extreme penalty of Life [I]mprisonment and each to pay a fine of [P]500,000.00, without subsidiary imprisonment in case of insolvency.

Both accused shall serve this penalty at the Davao Prison and Penal Farm at Braulio Dujali, Davao del Norte and shall be entitled to the benefits of their preventive detention in accordance with Article 29 of the Revised Penal Code, as amended.

The sachet of shabu is ordered confiscated in favor of the government to be dealt with as the law provides.

SO ORDERED.^[6]

Accused-appellants interposed an appeal from the adverse decision.

The CA Ruling

In its decision, the CA found no merit in the appeal of accused appellants. PDEA Agent Subang duly established the existence of the elements of an illegal sale of dangerous drugs. His testimony was replete with details surrounding the consummation of the sale. As to the failure of the buy-bust team to mark and inventory the *shabu* at the crime scene, the CA found the omission adequately explained by PDEA Agent Subang that they had to hastily leave the crime scene as they feared for their safety and decided to do the marking, photographing and inventory at the PDEA office. Thus, the failure to strictly comply with Sec. 21 of R.A. No. 9165 was due to security and logistical considerations, and fully justified owing to these exigent circumstances. On the other hand, the defense of frame-up must be proved with strong and convincing evidence, this was not done in this case.

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The 2 February 2016 Decision rendered by the Regional Trial Court, Branch 4, Butuan City in *Criminal Case No. 14839* is **AFFIRMED**.

SO ORDERED.^[7]

Hence, this appeal.

In compliance with this Court's resolution dated December 13, 2017, accused-appellants filed a Manifestation in Lieu of a Supplemental Brief dated February 20, 2018,^[8] stating that they had sufficiently articulated their claims and arguments in their appellants' brief submitted to the CA. The Office of the Solicitor General representing the People of the Philippines filed a Manifestation and Motion^[9] on February 26, 2018, stating that all matters and issues raised in the appellants' brief had been extensively discussed, thus praying that it be excused from filing a supplemental brief.

Issues

Appellants submit to this Court the following issues for resolution:

1. Whether there was a legitimate buy-bust operation; and
2. Whether there was compliance with the requirements under Section 21 of R.A. No. 9165.

Arguments for accused-appellants

Accused-appellants contend that: there was no legitimate buy-bust operation as PDEA Agent Subang's testimony was inconsistent and unbelievable; since it was a dark place, it would have been impossible for the accused-appellants to know the amount of money allegedly handed to them, and it was impossible for PDEA Agent Subang to physically examine the alleged sachet of *shabu*; other parts of PDEA Agent Subang's testimony were improbable, *i.e.* initially not testifying that he received aluminum foil, that accused-appellant Plaza had to hand the *shabu* to accused-appellant Balinton before reaching PDEA Agent Subang, and that the belt bag was not presented; PDEA Agent Subang's testimony was uncorroborated; there was non-compliance with Sec. 21 of R.A. No. 9165 as PDEA Agent Subang admitted that he failed to mark, inventory, and photograph the sachet of *shabu* immediately after its seizure; there was no showing that necessary steps were taken to ensure that the sachet was the same that was allegedly marked; there was no testimony that the alleged sachet was handled and stored to preserve its integrity from the time it came into PDEA's custody up to the time it was presented in court; and PSInsp. Signar failed to show that he took the necessary steps to ensure the preservation of the integrity of the sachet of *shabu*.

Arguments for the People

In the appellee's brief, the prosecution maintains that: the objective test in establishing the credibility of an eyewitness in a buy-bust operation was satisfied; the accused-appellants were positively identified; the inconsistencies in the testimony of PDEA Agent Subang were minor and do not affect his credibility as an eyewitness; accused-appellants can still identify the P500.00 bill despite the poor lighting in the area; what was essential in this case was the exchange of money for illegal drugs between PDEA Agent Subang and accused-appellants; the belt-bag confiscated from accused-appellants not being part of the certificate of inventory was inconsequential as it was not the *corpus delicti*; Sec. 21 of R.A. No. 9165 allows for substantial adherence to the rule provided that the prosecution gives justifiable grounds for the procedural lapses and it can be proven that the integrity and evidentiary value of the items were preserved; it was shown that PDEA Agent Subang had exclusive possession of the sachet of illegal substance; that the PDEA agents were justified in their actions because of the commotion as well as the aggression from bystanders; the continuous whereabouts of the subject sachet of *shabu* were accounted for with moral certainty; and there were no gaps in the crucial links in the chain of custody.

The Court's Ruling

After a careful review of the records, the Court finds the appeal impressed with merit.

Accused-appellants were charged with violation of Sec. 5, Art. II of R.A. No. 9165, which

pertinently 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.

For the successful conviction of an accused under Sec. 5, Art. II of R.A. No. 9165, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.^[10]

Accused-appellants' arguments can be classified into two: (1) questioning the existence of a valid buy-bust operation, and (2) the law enforcement agents' compliance with the chain of custody rule laid down in Sec. 21 of R.A. No. 9165. It is on the latter ground that the Court finds basis for accused-appellants' acquittal.

There was a valid buy-bust operation

Accused-appellants zero in on the seeming inconsistencies of PDEA Agent Subang's account, thus impugning the buy-bust operation on the basis of these inconsistencies. The Court is not persuaded.

It should be remembered that in the absence of glaring errors or gross misapprehension of facts on the part of the CA, the Court accords respect to the findings of the trial court on the credibility of witnesses because of the trial court's unique advantage of directly observing the demeanor of the witnesses as they testified. There is even more reason for the Court to accord respect when the CA affirmed the factual findings as the appellate court. In the absence of allegation and proof about the law enforcement officers harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of a witness should prevail.^[11]

An analysis of PDEA Agent Subang's testimony reflects truthfulness and the lack of reason for the Court to doubt the factual findings of the courts *a quo* on this matter. The court observes that PDEA Agent Subang's declarations were clear, categorical, and unwavering, and were substantially corroborated by PDEA Agent Bautista. The positive identification of accused-appellants by the poseur-buyer as those who peddled the *shabu* unequivocally establish the illicit sale as he is the best witness to the transaction. Moreover, his testimony was substantiated in every material detail by the other operatives who participated in the buy-bust operation.^[12] From this discussion, the Court rules that the operation conducted by the PDEA was legitimate.

The chain of custody rule was not strictly followed

The foregoing finding notwithstanding, the Court is constrained to grant the instant appeal for failure of the prosecution to establish that there is an unbroken chain of custody.

The showing of the continuous chain of custody fulfills the function of ensuring that
[13]

unnecessary doubts concerning the identity of the evidence are removed. The same requirement on the custody of confiscated, seized and/or surrendered dangerous drugs is embodied in Sec. 21, R.A. No. 9165, to wit:

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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled 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;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;
- (4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provide[d]*, *further*, That a representative sample, duly weighed and recorded is retained;
- (5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;
- (6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails

to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same[.]

This provision was amended in 2014 by R.A. No. 10640 as to paragraphs (1) and (3). The difference between the requirements in R.A. No. 9165 and R.A. No. 10640 is the requirement of having representatives of the media *or* National Prosecution Service instead of previously requiring the presence of both to witness the inventory process; and the relaxation of the rule regarding the certification of the forensic laboratory examiner.

As to the chain of custody, the Court has consistently ruled that the following links must be established:

First, 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.^[14]

In this case, accused-appellants question the inability of PDEA Agent Subang to mark, inventory, and photograph the sachet of *shabu* immediately after its seizure, and the lack of proof on the necessary steps taken to ensure that the sachet presented to the RTC was the same that was allegedly marked. Accused-appellants also raise the point that there was no testimony as to how the alleged sachet was handled and stored to preserve its integrity. These arguments are well-taken.

As to the failure of PDEA Agent Subang to mark the sachet of *shabu* immediately after seizure, it should be emphasized that the Implementing Rules and Regulations of R.A. No. 9165 (*IRR*) provides for an exception to the requirement of the evidence being marked and photographed soon after the confiscation of the items. Sec. 21 of the IRR states:

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

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

conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; xxx (underscoring supplied)

The law itself has provided a possibility of non-compliance due to the impracticability of the requirement. However, there should be *justifiable grounds* and such should be detailed by the prosecution for the Court to consider the exceptional circumstances to the chain of custody rule.

Here, the prosecution managed to demonstrate the necessity of doing the marking, inventory and photography-taking belatedly and not at the scene of the crime. As remarked by the CA:

In this instance, Agent Subang testified that they had to hastily leave the crime scene as Plaza was able to call his brother through his cellphone. At the moment when Plaza's brother arrived along with several individuals, the buy-bust team feared for their safety and thus decided to do the marking, photographing and inventory at the police station to prevent any untoward incident. [15]

xxxx

As revealed in the above-testimony, the failure of the buy-bust team to immediately comply with the guidelines in Section 21, IRR of R.A. No. 9165 was due to security and logistical considerations, considering that a mob had began to gather putting the police operatives[,] lives at risk. [16]

There is no reason for the Court to reverse these observations as these are supported by the testimonies of PDEA Agent Subang and PDEA Agent Bautista. The evidence offered also show that there were some PDEA agents who suffered hematoma and contusion[17] due to the scuffle between the law enforcement agents and accused-appellants. Thus, PDEA Agent Subang's actions were warranted since their safety was compromised and they had to suppress the struggle put up by accused-appellants. Accordingly, the first link in the chain was supported by convincing proof and testimony.

The second and third links were also adequately demonstrated. PDEA Agent Subang's statements showed that he was the arresting and investigating officer, and he had exclusive custody of the drug subject of the buy-bust operation which he personally brought to the PNP Crime Laboratory.

However, even if the first three (3) links may have been substantially complied with, the fourth link is where the Court takes issue.

The forensic chemical officer of the Provincial Crime Laboratory Office PSInsp. Signar was presented by the prosecution but his testimony was the subject of stipulation. The complete stipulation of his testimony is as follows:

PROS. Your Honor, may we stipulate with the defense the testimony of the GO: witness?

COURT: Atty. Plaza?

ATTY. PLAZA: Yes, Your Honor.

COURT: Okay, continue.

PROS.

GO:

- 1) That the witness is a licensed Chemical Engineer and an expert witness;
- 2) That he has been testifying before this Honorable Court on illegal drug examination in numerous cases;
- 3) That on March 29, 2011, their office, the PNP Crime Laboratory received a Request for Laboratory Examination involving a one (1) sachet of shabu with corresponding markings from Agent Alex B. Subang, Jr. of the PDEA;
- 4) That, thereafter, he conducted laboratory examination on the items submitted;
- 5) That he reduced his findings in writing showing that the specimen yielded a positive result for the presence of methamphetamine hydrochloride;
- 6) That on the same occasion, their office received a Request for Drug Test involving the two (2) accused in this case from Agent Subang; and
- 7) That the two (2) accused submitted their urine sample for laboratory examination and that the urine sample yielded positive result for the presence of methamphetamine hydrochloride for accused Celso Plaza and TLC metabolites for marijuana for accused Joseph Balinton y Guibao.

For this purpose, we would like to adopt the Request for Laboratory Examination, found in page 10 of the records of the case and already marked as Exh. "C", with some sub-markings, to form part of the evidence of the prosecution.

We likewise adopt the result of examination under Chemistry Report No. D-040-2011 already marked as Exh. "D" and found in page 12 of the records.

Additionally, Your Honor, we pray that the specimen submitted, be marked as Exh. "D-1"; the purpose of examination Exh. "D-2"; the Findings and Conclusion as Exh. "D-3"; the signature of the witness as Exh. "D-4"; and the Jurat portion as Exh. "D-5".

COURT: Okay, mark it.

PROS. We also adopt the Request for Drug Test Examination presented by the
GO: prosecution during the testimony of Agent Subang which was already
marked as Exh. "J" for the prosecution, and the stamped portion Exh. "J-
1".

We likewise adopt, Your Honor, the result of the drug test examination under Chemistry Report No. DT-037-2011 thru DT-038-2011 already marked as Exh. "K" for the prosecution, and found in page 14 of the records.

For this purpose, Your Honor, we pray that the specimen submitted, be marked as Exh. "K-1"; the purpose of examination as Exh. "K-2"; the Findings and Conclusion as Exh. "K-3"; the signature of the witness as Exh. "K-4"; and the Jurat portion as Exh. "K-5".

COURT: Mark it.

PROS. May we ask the witness, Your Honor, to produce the shabu, subject of
GO: the Request for Laboratory Examination submitted by Agent Subang to
the PNP Crime Laboratory?

COURT (to the witness): You produce the *shabu* Mr. Witness?

WITNESS: Here, Your Honor.

(Witness at this juncture, handed to the City Prosecutor a brown envelope)

PROS. We request the interpreter to open the envelope and describe the same,
GO: Your Honor.

COURT: (To Court Interpreter) Okay, you open the brown envelope?

COURT INTERPRETER: (Open[s] the envelope and describe the same)

(The said envelope contained markings D-040-2011 0730H 29 March 2011 initials JPS. Contained in said brown envelope is a one (1) small sachet with markings JBP-1 sealed with a masking tape with markings D-040-2011 A, initials JPS, 0730H 29 March 2011 0.0524 gram and a signature).

PROS. We pray, Your Honor, that the brown envelope containing the item, be marked as Exh. "G" for the prosecution; and the sachet, be marked as Exh. "G-1".

COURT: Mark it.

PROS. At this point, Your Honor, we are depositing the *shabu* submitted by
GO: Forensic Chemical Officer Joel P. Signar to the Court for safekeeping.
We have no more proposal, Your Honor.

COURT: Do you have additional proposal defense counsel?

Atty. No additional proposal, Your Honor.

Plaza:

PROS. May we ask that the Chain of Custody document, be marked as our Exh.
GO: "L"; the items submitted as Exh. "L-1"; the signature of the receiving officer PO1 Dispo as Exh. "L-2"; the signature of the witness as Exh. "L-3"; and the signature of the evidence custodian PO1 Migullas as Exh. "L-4".

COURT: Mark it.

PROS. We are through, Your Honor.^[18]
GO:

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and there was no opportunity for someone not in the chain to have possession of the same.^[19]

It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized *shabu* was handled, stored, and safeguarded pending its presentation in court.^[20] In some instances, when the stipulation failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody.^[21] The instant case has stark similarities with the case of *People v. Prudencio*, where the Court noted:

As mentioned previously, PO1 Magora's testimony never touched upon the details on how the seized drugs were turned over to the investigating officer, nor on how it was turned over to the forensic chemist, P/Sr. Insp. Sta. Maria, for laboratory examination. The only pieces of evidence representing the third link in the chain consisted of the letter-requests for laboratory examination and for drug test, and the corresponding chemistry reports issued by P/Sr. Insp. Sta. Maria.

As to the fourth link, when P/Sr. Insp. Sta. Maria was called to the witness stand, the prosecution and the defense decided to enter into a stipulation regarding what P/Sr. Insp. Sta. Maria would be testifying on if he were presented. Yet, all they stipulated was that he would identify the request for laboratory examination, request for drug test, the subject sachets of shabu, and the chemistry reports.

These pieces of evidence failed to identify the person who personally brought the seized shabu to the Bulacan Provincial Crime Laboratory Office. It also failed to identify who received the shabu at the crime laboratory and who exercised custody and possession before and after it was examined. Neither was there evidence to show how the seized shabu were handled, stored, and safeguarded pending its presentation in court.

Notably, Section 6, Paragraph 8 of Dangerous Drugs Board Regulation No. 2, Series of 2003 requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed; it also requires the identification of the individuals participating in the chain. The records are silent regarding compliance with this regulation.

Simply put, serious lapses in the handling of the seized *shabu* as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.^[22] (citations omitted, underscoring supplied)

More recently, in *People of the Philippines v. Mola*, the Court was also dissatisfied with the mere stipulation of the forensic chemist which lacked in details as to the chain of custody, *viz*:

Moreover, in dispensing with the testimony of the forensic chemist, it is evident that the prosecution failed to show another link in the chain of custody. Since her testimony was limited to the result of the examination she conducted and not on the source of the substance, PS/Insp. Malojo Todeño failed to certify that the chemical substance presented for laboratory examination and tested positive for *shabu* was the very same substance recovered from Mola. The turnover and submission of the marked illegal drugs seized from the forensic chemist to the court was also not established. Neither was there any evidence to indicate how the sachet of *shabu* was handled during and after the laboratory examination and on the identity of the person/s who had custody of the item before it was presented to the court as evidence. Without the testimonies or stipulations stating the details on when and how the seized sachet of shabu was brought from the crime laboratory to the court, as well as the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from Mola upon his arrest. This gap in the

chain of custody creates doubt as to whether the *corpus delicti* of the crime had been properly preserved.^[23] (citations omitted, underscoring supplied)

Even a painstaking review of the records and transcripts yields no results as to information on the chain of custody between the time PDEA Agent Subang confiscated the subject sachet of drugs up to the time it was presented in court. Though the Chain of Custody Document^[24] was presented during PSInsp. Signar's testimony, the same was not identified by any witness. While the document contains the signatures of a certain PO1 Randy Dispo and another recipient of the sachet for "safekeeping," the Court is left to surmise on whether the proper procedure was followed during this intervening period. Clearly, there was no identification of all persons who handled the sachet nor was there testimony as to every relevant link in the chain, nor a showing that all possible safeguards were done by the law enforcement agents to protect the integrity of the evidence, as mandated by law and jurisprudence. This goes against the settled doctrines of this Court requiring these pieces of evidence in the prosecution of drug cases.

Though the presumption of regularity in the performance of duty is of course available, it has to be remembered that the presumption of innocence of a person accused of committing a crime prevails over the presumption of regularity of the performance of official duty. The presumption of regularity cannot by itself support a judgment of conviction.^[25] Further, the Court reiterates its previous rulings that buy-bust teams should be more meticulous in complying with Sec. 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a minuscule amount that can be easily planted and tampered with.^[26]

It appears from the way the prosecution presented its case that it took liberties to show that there was an unbroken chain of custody. However, much as the Court searched to complete the link of custody of the confiscated dangerous drug, there is a serious gap in showing how the sachet of *shabu* transferred hands. The Court must be convinced that there was no room for the dangerous drug to be replaced by or contaminated with other pieces of evidence for other cases. The prosecutors in drug cases have to be reminded that in order to successfully convict these alleged sellers of illegal drugs, they must show *beyond reasonable doubt* not only the fact of sale, but that the evidence presented to the Court is untainted by uncertainty that it is indeed the confiscated item from the accused. This was unsatisfactorily done by the prosecution. It is the State's duty to prove, beyond any suspicion, that all elements of the crime are shown, especially in instances such as this where the dangerous drug involved is extremely small.^[27] Such duty the prosecutors cannot simply shirk by inattentive presentation of evidence.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 25, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 01534-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Celso Plaza y Caenglish alias Joboy Plaza and Joseph Guibao Balinton alias Joabs are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Leonardo-De Castro (Chairperson), Bersamin, Leonen, and A. Reyes, Jr., JJ., concur.

October 25, 2018

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on **August 20, 2018** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 25, 2018 at 3:14 p.m.

Very truly yours,

**(SGD.) WILFREDO V.
LAPITAN**
Division Clerk of Court

ORDER OF RELEASE

TO: Director General Nicanor Faeldon
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Thru: **CSupt. Rufino A. Martin**
Officer-in-Charge
DAVAO PRISON & PENAL
FARM
B.E. Dujali, 8105 Davao del Norte

G R E E T I N G S:

WHEREAS, the Supreme Court on **August 20, 2018** promulgated a **Decision** in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, the appeal is **GRANTED**. The Decision dated August 25, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 01534-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Celso Plaza y Caenglish alias Joboy Plaza and Joseph Guibao Balinton alias Joabs are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drug Enforcement Agency for their information.

SO ORDERED."

NOW, THEREFORE, You are hereby ordered to immediately release **CELSO PLAZA y CAENGLISH alias "Joboy Plaza" and JOSEPH GUIBAO BALINTON alias "Joabs"** unless there are other lawful causes for which they should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable **TERESITA J. LEONARDO-DE CASTRO**, Chairperson of the Third Division of the Supreme Court of the Philippines, this **20th** day of **August 2018**.

Very truly yours,

**(SGD.) WILFREDO V.
LAPITAN**
Division Clerk of Court

[1] *Rollo*, pp. 3-14; penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

[2] CA *rollo*, pp. 38-54; penned by Judge Godofredo B. Abul, Jr.

[3] Records, p. 1.

[4] Id. at 35.

[5] Id. at 125-128.

[6] CA *rollo*, pp. 50-51.

[7] *Rollo*, p. 13.

[8] Id. at 29-30.

[9] Id. at 24-26.

[10] *People v. Año*, G.R. No. 230070, March 14, 2018.

[11] *People v. Lamama*, G.R. No. 188313, August 23, 2017.

[12] *People v. Chua Tan Lee*, 457 Phil. 443, 450 (2003).

[13] *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 532.

[14] *People v. Guillergan*, G.R. No. 218952, October 19, 2016, 806 SCRA 631, 642-643.

[15] *Rollo*, p. 11.

[16] Id. at 13.

[17] See Exhibits "Q" and "S" offered by the prosecution; records, pp. 23-24.

[18] TSN, April 16, 2014, pp. 2-6.

[19] *Valencia v. People*, 725 Phil. 268, 279 (2014).

[20] *People v. Villarta*, G.R. No. 217887, March 14, 2018.

[21] *People v. Prudencio*, 800 Phil. 128 (2016).

[22] Id. at 141-142.

[23] G.R. No. 226481, April 18, 2018.

[24] Exhibit "L."

[25] *People v. Briones*, 334 Phil. 227, 234 (1997).

[26] *People v. Alvarado, et al.*, G.R. No. 234048, April 23, 2018.

[27] See *Lescano v. People*, 778 Phil. 460, 479 (2016).