

## SECOND DIVISION

[ G.R. No. 247522, February 28, 2022 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ZORAIDA MARIANO A.K.A. NORA, ACCUSED-APPELLANT.**

### DECISION

**HERNANDO, J.:**

On appeal<sup>[1]</sup> is the August 16, 2018 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01746-MIN, affirming the March 21, 2017 Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Davao City, Branch 13, in Criminal Case Nos. 70,389-11 and 70,390-11 which found accused-appellant Zoraida Mariano a.k.a. Nora (Nora) guilty beyond reasonable doubt of violation of Sections 5 (Illegal Sale) and 11 (Illegal Possession) of Article II, Republic Act No. (RA) 9165,<sup>[4]</sup> or the "Comprehensive Dangerous Drugs Act of 2002."

#### **Version of the Prosecution:**

On August 6, 2011, at about 11:30 a.m., a confidential informant (CI) notified Police Officer (PO) 3 Lendro Tutor (PO3 Tutor) about the illegal drug activities of Nora and her co-accused in front of NCCC Supermarket in Magsaysay Avenue, Davao City.<sup>[5]</sup> A buy bust team was thus formed with PO3 Tutor as the designated poseur buyer, and PO2 Virgilio Arubio (PO2 Arubio) and PO1 Junila Acierto (PO1 Acierto) as immediate back up.<sup>[6]</sup> PO3 Tutor was given a P1,000.00 bill with serial number PS746307, marked with his initials "LBT," as buy-bust money.<sup>[7]</sup> Prior to dispatch to the target area, the Certificate of Coordination<sup>[8]</sup> was prepared.

At around past 12:00 noon, the team proceeded to the area in front of the NCCC Supermarket.<sup>[9]</sup> As they passed by the supermarket, the CI identified Nora and her co-accused who were then standing beside an electrical post outside a Banco de Oro (BDO) bank.<sup>[10]</sup> Thereafter, PO3 Tutor and the CI alighted from the vehicle and walked towards Nora and her co-accused, while the backup team positioned themselves outside the supermarket and across the BDO bank.<sup>[11]</sup> The CI approached Nora and talked to her while PO3 Tutor stayed three meters away from them.<sup>[12]</sup> When the CI signaled PO3 Tutor to walk towards them, the latter was introduced to Nora as the buyer of *shabu*.<sup>[13]</sup>

After the introduction, Nora glanced at PO3 Tutor and made an eye gesture towards her co-accused.<sup>[14]</sup> Afterwards, the co-accused walked towards PO3 Tutor and asked how much he was going to buy, to which the latter answered "*bulig*," which means P1,000.<sup>[15]</sup> PO3 Tutor gave the marked money to the co-accused, who handed it over to Nora.<sup>[16]</sup> Nora took out one elongated transparent plastic sachet from her shoulder bag and discreetly gave it to PO3 Tutor.<sup>[17]</sup> After examining the contents of the sachet containing what appeared to be *shabu*, PO3 Tutor gave the pre-arranged signal by removing the towel from his shoulder to alert the backup team.<sup>[18]</sup>

When the backup team arrived, they introduced themselves as police officers and arrested Nora and her co-accused.<sup>[19]</sup> PO3 Tutor also conducted a body search on Nora and recovered one big plastic sachet containing *shabu* weighing 1.0923 grams; forty (40) pieces of elongated<sup>[20]</sup>

sachets containing *shabu* weighing 3.5437 grams; and cash in the amount of P10,150.00. Thereafter, PO3 Tutor placed the seized items in separate evidence pouches and kept them in his custody.<sup>[21]</sup> In order not to compromise the security of the police officers and the accused due to the crowding of people in the area, they immediately brought Nora and her co-accused to the police station.<sup>[22]</sup>

Upon arrival at the police station, PO3 Tutor placed his markings on the seized items and indorsed<sup>[23]</sup> them, as well as the accused, to the desk officer, PO2 Adnan Ahadain (PO2 Ahadain).<sup>[24]</sup> Subsequently, PO2 Ahadain placed his own markings on the seized items and returned them to PO3 Tutor as the latter was the evidence custodian and investigating officer.<sup>[25]</sup> PO3 Tutor labeled the evidence pouches and placed them in his locker for safekeeping.<sup>[26]</sup> Thereafter, he prepared the necessary documents for inventory, drug test, and laboratory examination of the seized items.<sup>[27]</sup>

Since the buy-bust operation happened on a Saturday, the inventory of the seized items was conducted only on August 8, 2011 in the presence of Nora, Roger Abella from Brigada News, Barangay Chairman Joel Landero, and Noel Polito from the Department of Justice (DOJ).<sup>[28]</sup> The Certificate of Inventory<sup>[29]</sup> was prepared and photographs of the accused and the seized items were also taken.<sup>[30]</sup>

Afterwards, PO3 Tutor delivered the seized items, along with the Letter Request for Laboratory Examination to the PNP Crime Laboratory.<sup>[31]</sup> The said items were received by PO1 Jerry A. Marron (PO1 Marron), who placed his initials "JAM" on the drug specimens, as well as its corresponding weights.<sup>[32]</sup> Forensic Chemist Police Senior Inspector (PSI) April Dela Rosa Fabian (PSI Fabian) conducted a qualitative examination on the drug specimens, which tested positive for the presence of methamphetamine hydrochloride, as evidenced by Chemistry Report No. D-128-11.<sup>[33]</sup> Then, the drug specimens were turned over to SPO2 Antonio Alcozar (SPO2 Alcozar), the evidence custodian of the crime laboratory.

On August 11, 2011, two separate Informations were filed against Nora for violation of Sections 5 and 11 of Article II, RA No. 9165, the accusatory portions of which read:

Criminal Case No. 70,390-11 (Violation of Section 5 - Illegal Sale)

That on or about August 6, 2011, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, in conspiracy with each other and helping one another, without being authorized by law, willfully, unlawfully and consciously sold and delivered one (1) elongated transparent plastic sachet containing Methamphetamine Hydrochloride, otherwise known as Shabu, weighing 0.1569 gram, which is a dangerous drug.

CONTRARY TO LAW.<sup>[34]</sup>

Criminal Case No. 70,389-11 (Violation of Section 11 - Illegal Possession)

That on or about August 6, 2011, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, without being authorized by law, willfully, unlawfully and consciously had in her possession and control one (1) big transparent plastic sachet containing methamphetamine hydrochloride, otherwise known as Shabu, which is a dangerous drug, weighing 1.0923 grams and another forty (40) elongated transparent [plastic] sachets likewise containing the same kind of substance having a total weight of 3.5437 grams or all with a total weight of 4.6360 grams.

<sup>[35]</sup>

## CONTRARY TO LAW.

During her arraignment, Nora pleaded "not guilty" to both charges.<sup>[36]</sup> Thereafter, trial ensued.

Nora belied the charges against her. She testified that at around 11:30 a.m. of August 6, 2011, she went shopping alone at Uyanguren in Davao City before heading back to her residence in Cotabato City that afternoon.<sup>[37]</sup> After buying a few things, she decided to go to NCCC Supermarket.<sup>[38]</sup> While she was standing at the pedestrian lane near BDO, she and another woman (her co-accused) were approached by men in civilian attire. A man, later identified as PO2 Arubio, held Nora and said, "*Do not move, or else I will shoot you.*"<sup>[39]</sup> Then, she was suddenly arrested along with her co-accused.<sup>[40]</sup> PO2 Arubio took her shopping bag with the things she bought for her children.<sup>[41]</sup> Thereafter, she was instructed to board the vehicle and was brought to the Sta. Ana Police Station.<sup>[42]</sup>

At the police station, Nora claimed that PO2 Arubio asked her to undress so they could conduct a body search.<sup>[43]</sup> Because she adamantly refused and cried, PO2 Arubio called in a female officer to perform the search.<sup>[44]</sup> After she was frisked, the female officer said, "*This one is clear.*"<sup>[45]</sup> She was also asked to sit in the corner while her co-accused was searched.<sup>[46]</sup> When her co-accused came out of the room, she saw her carrying a cellophane plastic.<sup>[47]</sup> Subsequently, they were taken to the detention cell.<sup>[48]</sup> After two days, they were subjected to a drug test, which yielded negative results.<sup>[49]</sup>

### **Ruling of the Regional Trial Court:**

In its March 21, 2017 Decision,<sup>[50]</sup> the RTC found Nora guilty beyond reasonable doubt of the crimes charged. It held that all the elements of Illegal Sale and Illegal Possession of Dangerous Drugs were met. In giving credence to PO3 Tutor's testimony, the RTC found that the prosecution sufficiently established an unbroken chain of custody. While the police officers failed to conduct an inventory immediately after Nora's arrest, the RTC found it justifiable due to the unavailability of witnesses since the buy-bust operation took place on a Saturday.

The *fallo* of the RTC Decision reads:

**WHEREFORE**, based on the foregoing discussions, as the prosecution was able to prove the guilt of the accused beyond reasonable doubt, judgment is hereby rendered as follows:

- 1) In Criminal Case No. 70,389-11, accused ZORAIDA MARIANO is **CONVICTED** for violation of Section 11 of RA 9165 and is hereby sentenced to suffer the indeterminate penalty of **TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to TWENTY (20) YEARS as MAXIMUM** and to pay a fine of Three Hundred Thousand Pesos (P300,000.00);
- 2) In Criminal Case No. 70,390-11, accused ZORAIDA MARIANO is **CONVICTED** for violation of Section 5 of RA 9165 and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **Five Hundred Thousand Pesos (P500,000.00)**;

Accused is entitled to be credited in her favor the preventive imprisonment that she had undergone pursuant to Article 29 of the Revised Penal Code as amended by Republic Act No. 10592.

Pursuant to Section 21(7) of RA No. 9165, the prosecution is hereby given a period of five (5) days from receipt of the copy of the decision to manifest before this Court whether or not its office will be needing the shabu subject matter of these cases.

Otherwise, the Branch Clerk of Court is hereby directed to forward the same to the PDEA, upon proper receipt, for disposition and destruction in accordance with the law.

SO ORDERED.<sup>[51]</sup>

Aggrieved, Nora filed a notice of appeal.<sup>[52]</sup>

### **Ruling of the Court of Appeals:**

On August 16, 2018, the CA rendered its assailed Decision<sup>[53]</sup> denying the appeal and modifying the RTC ruling as to the penalty imposed in Criminal Case No. 70,389-11.

The dispositive portion of the Decision reads:

WHEREFORE, the appeal is DENIED. The assailed *Decision* dated 21 March 2017 of the Regional Trial Court, 11<sup>th</sup> Judicial Region, Branch 13, Davao City, in Criminal Cases No. 70,389-11 and No. 70,390-11, finding appellant Zoraida Mariano guilty beyond reasonable doubt of violation of Sections 11 (possession of dangerous drug) and 5 (sale of illegal drugs), respectively, of Article II of R.A. 9165 is AFFIRMED, with MODIFICATION as to the penalty imposed in Criminal Case No. 70,389-11, such that appellant is sentenced to suffer the penalty of twelve (12) years and one (1) day, as minimum, to fourteen years and eight (8) months, as maximum.

SO ORDERED.<sup>[54]</sup>

Hence, the present appeal.<sup>[55]</sup>

Nora contends that: 1) the identities of the buyer and seller, object, and consideration of the alleged sale of dangerous drugs were not sufficiently established; 2) the prosecution failed to prove that she was in possession of illegal drugs; and 3) the chain of custody was not clearly established.<sup>[56]</sup>

Conversely, the People, through the Office of the Solicitor General (OSG) maintains that the prosecution successfully established all the elements of Illegal Sale and Possession of Dangerous Drugs through testimonial and documentary evidence. Absent any ill motive to falsely testify against accused-appellant, PO3 Tutor's testimony must be respected and the presumption of regularity in the performance of the police officers' duties must be upheld. As such, the prosecution's evidence prevails over Nora's self-serving and uncorroborated denial.

The OSG also argues that the prosecution successfully proved an unbroken chain of custody. While a perfect chain was not established, it contends that the arresting officers substantially complied with the legal requirements in order to preserve the identity and integrity of the seized items. It posits that PO3 Tutor's testimony sufficiently established each link in the chain of custody: (1) that he marked the seized items after arrest and conducted an inventory thereof; (2) that he personally delivered the same to PO1 Marron of the crime laboratory for examination by PSI Fabian; and (3) that the illegal drugs were turned over to evidence custodian SPO2 Alcozar for safekeeping. Besides, it points out that Nora failed to specify which rule in the chain of custody was broken.<sup>[57]</sup>

### **Issue**

Whether or not Nora is guilty of Illegal Sale and Illegal Possession of Dangerous Drugs.

### **Our Ruling**



The appeal is meritorious.

It must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors, whether they are assigned or unassigned, in the appealed judgment.<sup>[58]</sup> Generally, findings of fact by the lower court are accorded great respect and even finality when affirmed by the CA.<sup>[59]</sup> However, if there are certain facts and circumstances of weight or substance that could have affected the result of the case that were overlooked, misunderstood, or misapplied, such factual findings may be reversed.<sup>[60]</sup> After a careful review of the records of the case, this Court holds that the prosecution failed to establish the very *corpus delicti* of the crimes charged and an unbroken chain of custody.

At inception, We find that the elements of illegal Sale of Dangerous Drugs were met, to wit: (1) identity of the buyer and seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment.<sup>[61]</sup> In buy-bust operations, the delivery of the illicit drug to the poseur-buyer and the simultaneous receipt of the marked money by the seller consummate the Illegal Sale of Dangerous Drugs.<sup>[62]</sup> In the present case, PO3 Tutor positively identified Nora as the one who sold him *shabu* in exchange for the marked money worth P1,000.00. His testimony, coupled with the other pieces of evidence offered during trial, indubitably show the consummation of the sale of illegal drugs.

Likewise, the elements of the crime of Illegal Possession of Dangerous Drugs were sufficiently established, to wit: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.<sup>[63]</sup> On this note, We also find that PO3 Tutor's testimony is sufficient to prove that he was able to further recover (1) one big plastic sachet containing what appears to be *shabu* weighing 1.0923 grams; and (2) 40 pieces of elongated sachets containing what appears to be *shabu* weighing 3.5437 grams. These were later on examined by PSI Fabian and yielded positive results for the presence of methamphetamine hydrochloride.<sup>[64]</sup>

Corollarily, the integrity and identity of the dangerous drug must be established beyond reasonable doubt considering that it constitutes the *corpus delicti* of the offense.<sup>[65]</sup> It is in this aspect that We depart from the findings of both lower courts.

To establish the identity of the seized drugs from the accused beyond reasonable doubt, the chain of custody must be proven in order to dispel any unnecessary doubts regarding the identity of the evidence.<sup>[66]</sup> The chain of custody involves the duly recorded authorized movements and custody of seized drugs from the time of seizure and confiscation to receipt in the forensic laboratory, to safekeeping, and to presentation in court for destruction.<sup>[67]</sup> In *People v. Kamad*,<sup>[68]</sup> this Court enumerated the four links in the chain of custody that the prosecution must establish: 1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.<sup>[69]</sup> In the case at bar, the prosecution failed to establish the first, third and fourth links.

A perusal of the records show that one plastic sachet containing what appears to be *shabu* was the subject of the sale transaction between Nora and PO3 Tutor and another 40 pieces of elongated plastic sachets, also believed to contain *shabu*, were recovered from the possession of Nora. PO3 Tutor admittedly did not immediately mark the said elongated plastic sachets at the place of the apprehension but only made the marking at the police station. However, the prosecution failed to provide any detail as to how these sachets were segregated or identified

from each other, aside from the fact that PO3 Tutor placed the seized items in separate evidence pouches and kept them in his custody. The sachets were mingled with each other and the lack of marking thus made it impossible for the prosecution to identify which item was subject of the sale, and which sachets were confiscated from Nora's possession. This is important since the weight of the seized contraband determines the proper penalty in the Illegal Possession of Dangerous Drugs case. Evidently, this critical lapse on the part of the apprehending officers made the initial link in the chain of custody unreliable. Consequently, the integrity and evidentiary value of the subsequent links were also tainted.

Moreover, upon arrival at the police station, PO3 Tutor placed his markings on the seized items and indorsed<sup>[70]</sup> them, as well as the accused, to the desk officer, PO2 Ahadain.<sup>[71]</sup>

PO3 Tutor testified that he personally delivered the specimen to the crime laboratory for examination, to wit:

Q: You said that there was a signing of that inventory and picture taking, after that what happened?

A: After we made the inventory and signed by the witnesses, I immediately delivered the seized suspected shabu items to the PNP Crime Lab for laboratory examination, sir.

Q: When you said you delivered those drug specimens to the PNP Crime Lab for examination, who were with you?

A: It was me along with the arrested persons.

X X X X

Q: What did you submit to that office for them to examine your drug specimens?

A: The one (1) elongated transparent plastic sachet containing white crystalline substance which is the object of sale. One (1) big transparent plastic sachet containing white crystalline substance believe[d] to be shabu, sir. And the other forty (40) pieces of elongated transparent plastic sachets containing suspected shabu, Sir.

Q: What document do you have to show that the PNP Crime Lab received those specimens?

A: There is a letter request for laboratory examination, dated August 8, 2011, Sir.

X X X X

Q: Now there is a manual signature under your printed name as the delivering officer, do you know whose signature that is?

A: This is my signature, Sir.

Q: What about the signature under the printed name of the receiving officer, POI Marron JA, whose signature is that?

A: It was POI Marron who affixed his signature, Sir.

Q: Why do you know that it is his signature?

A: Because it was signed in my presence, Sir.<sup>[72]</sup>

Based on PO3 Tutor's testimony, PO1 Marron received the seized drugs. However, there is no evidence on record indicating how he handled and preserved the identity of the seized drugs

while he was in possession thereof before handing it over to PSI Fabian. Relatedly, there are also no informative details as to how PSI Fabian handled and preserved the identity of the seized drugs before and after she conducted the qualitative examination.

In the similar case of *People v. Del Rosario*,<sup>[73]</sup> We held:

#### Third Link

The third link in the chain of custody is the delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.

Here, SPO1 Naredo testified that he was with PO1 Cruz when the latter delivered the seized items to SPO1 Agustin of the crime laboratory. Thus, there was an apparent transfer of the seized items from SPO1 Naredo to PO1 Cruz. As can be gleaned from SPO1 Naredo's testimony, however, no informative details were provided as to how, and at what point, the seized items were handed to PO1 Cruz, who was not even a member of the buy-bust team. **There was also lack of information on the condition of the seized items when SPO1 Naredo transmitted the same to PO1 Cruz and when PO1 Cruz delivered it to SPO1 Agustin.** Further, there was no documentary evidence indicating SPO1 Agustin's actual receipt of the seized items **and how the latter handled the same upon his receipt thereof before transmitting the same to FC Rodrigo for forensic examination.**

#### Fourth Link

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. In this case, there was **no testimonial or documentary evidence on how FC Rodrigo kept the seized items while it was in her custody and in what condition the items were in until it was presented in court. While the parties stipulated on FC Rodrigo's testimony, the stipulations do not provide information regarding the condition of the seized item while in her custody or if there was no opportunity for someone not in the chain to have possession thereof.**

In *People v. Gutierrez*, there were inadequate stipulations as to the testimony of the forensic chemist. In that case, no explanation was given regarding the chemist's custody in the interim — from the time it was turned over to the investigator to its turnover for laboratory examination. **The records also failed to show what happened to the allegedly seized shabu between the turnover by the chemist to the investigator and its presentation in court.** Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.<sup>[74]</sup> (Emphasis supplied; citations omitted)

Consequently, there is doubt on whether the supposed shabu seized from accused-appellant were the same ones submitted to the crime laboratory, and eventually, presented in court. The failure of the prosecution to offer details on how the seized items were handled during its movement from one person to another gives rise to the possibility of tampering, alteration, or substitution of the *corpus delicti*.

Moreover, We find that the procedural safeguards in the seizure, custody, and handling of confiscated illegal drugs and/or paraphernalia under Section 21, Article II of RA 9165 were not complied with by the police operatives.

RA 10640<sup>[75]</sup> amended Section 21 of RA 9165 on July 15, 2014. Since the alleged crime in the present case took place in 2011, or prior to its amendment, the old provisions apply. The

pertinent portion of Section 21 reads:

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. (Emphasis supplied)

Furthermore, Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

(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[.]**<sup>[76]</sup> (Emphasis supplied).

The foregoing rule mandates that the marking, photography, and inventory of the seized items be done immediately after seizure and confiscation of the items, and 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) a representative from the media; (3) a representative from the DOJ; and (4) any elected public official. The presence of these insulating witnesses negates any suspicion of the evils of switching, planting or contamination of the evidence.<sup>[77]</sup>

This Court notes that while the buy-bust operation took place on August 6, 2011, the inventory of the seized items was only conducted on August 8, 2011. While strict adherence to the rules is not always required under justifiable grounds, and as long as the identity of the seized drugs are preserved, We find that the same is wanting in this case.

In *People v. Lim*,<sup>[78]</sup> We discussed what may be considered justifiable grounds: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required



witnesses even before the offenders could escape.

Furthermore, it was emphasized in *People v. Sipin*<sup>[79]</sup> that:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. **Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.** Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.<sup>[80]</sup> (Emphasis Ours; citations Omitted)

While PO3 Tutor testified that they exerted diligent efforts in securing the presence of the witnesses,<sup>[81]</sup> sheer statements of unavailability of the witnesses given by the apprehending officers are not justifiable reasons for non-compliance with the requirement.<sup>[82]</sup> It bears stressing that the "lack of evidence of serious attempts to secure the presence of the necessary witnesses result in a substantial gap in the chain of custody of evidence that shall adversely affect the authenticity of the prohibited substance presented in court."<sup>[83]</sup>

In sum, the prosecution failed to prove Nora's guilt beyond reasonable doubt for the police officers' non-compliance with the chain of custody and Section 21 of RA 9165. Consequently, it casts serious doubt as to the identity, integrity, and evidentiary value of the seized drugs. Though successful in proving the conduct of a legitimate buy-bust operation, the prosecution failed to prove beyond reasonable doubt that the items seized from Nora were the very same items presented in court. Consequently, the prosecution failed to prove the identity of the *corpus delicti* beyond reasonable doubt and accused-appellant must be acquitted.

**WHEREFORE**, the appeal is hereby **GRANTED**. The assailed August 16, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01746-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Zoraida Mariano a.k.a. Nora is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for any other lawful cause.

Let a copy of this Decision be furnished the Superintendent of the Davao Prison and Penal Farm, Dujali, Davao del Norte, for immediate implementation. Furthermore, the Superintendent is **DIRECTED** to report to this Court the action he/she has taken within five days from receipt of this Decision.

Let entry of judgment be issued immediately.

**SO ORDERED.**

*Perlas-Bernabe, S.A.J., (Chairperson), Zalameda, Rosario, and Marquez, JJ., concur.*

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<sup>[1]</sup> *Rollo*, pp. 26-27.

<sup>[2]</sup> *Id.* at 5-25. Penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño.

[3] Records (Criminal Case No. 70, 390-11), pp. 335-347. Penned by Presiding Judge Rowena Apao-Adlawan.

[4] 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 OTHER PURPOSES." Approved: June 7, 2002.

[5] TSN, October 24, 2013, p. 5.

[6] Id.

[7] Id. at 6.

[8] Records (Criminal Case No. 70, 389-11), p. 23.

[9] TSN, October 24, 2013, p. 6.

[10] Id. at 6-7.

[11] Id. at 7.

[12] Id.

[13] Id. at 8.

[14] Id.

[15] Id. at 9.

[16] Id.

[17] Id.

[18] Id. at 10.

[19] Id.

[20] Id.

[21] Id. at 11.

[22] Id. at 10.

[23] Records (Criminal Case No. 70, 389-11), p. 16.

[24] TSN, October 24, 2013, pp. 11-12.

[25] Id. at 4, 12-13.

[26] Id. at 13.

[27] Id. at 14.

- [28] Id. at 15.
- [29] Exhibit "D," folder of exhibits, pp. 7-8.
- [30] Exhibit "D-2" to "D-3," folder of exhibits, pp. 11-12.
- [31] TSN, October 24, 2013, pp. 15-16; Exhibit "A," folder of exhibits, pp. 1-2.
- [32] Id. at 17.
- [33] Exhibit "C," folder of exhibits, p. 6.
- [34] Records, (Criminal Case No. 70, 390-11), p. 151.
- [35] Records, (Criminal Case No. 70, 390-11), p. 152.
- [36] Records, (Criminal Case No. 70,389-11), p. 32.
- [37] TSN, February 17, 2017, p. 3.
- [38] Id.
- [39] Id.
- [40] Id.
- [41] Id. at 4.
- [42] Id.
- [43] Id.
- [44] Id.
- [45] Id. at 5.
- [46] Id.
- [47] Id.
- [48] Id.
- [49] Id. at 6.
- [50] Records (Criminal Case No. 70, 390-11), pp. 335-347.
- [51] Id. at 346.
- [52] Id. at 348-349.
- [53] *Rollo*, pp. 5-25.

[54] *Id.* at 24.

[55] *Id.* at 26-27.

[56] CA *rollo*, pp. 17-20.

[57] *Id.* at 35-40.

[58] *People v. Dahil*, 750 Phil. 212, 225 (2015), citing *People v. Balagat*, 604 Phil. 529, 534 (2009).

[59] *People v. De Guzman*, 630 Phil. 637, 644 (2010), citing *Valdez v. People*, 563 Phil. 934, 945 (2007).

[60] *Id.*, citing *Zarraga v. People*, 519 Phil. 614, 620 (2006).

[61] *People v. Gayoso*, 808 Phil. 19, 29 (2017), citing *People v. Lorenzo*, 633 Phil. 393 (2010).

[62] *People v. Baticolon*, 762 Phil. 468, 475 (2015), citing *People v. Delos Santos*, 645 Phil. 587, 601 (2010).

[63] *People v. Gayoso*, *supra* at 29, citing *People v. Lorenzo*, *supra* at 403.

[64] Records (Criminal Case No. 70, 389-11), p. 22.

[65] *People v. Jaafar*, 803 Phil. 582, 591 (2017).

[66] *People v. Gayoso*, *supra* at 30, citing *People v. Havana*, 776 Phil. 462, 471 (2016).

[67] *Id.*

[68] 624 Phil. 289 (2010).

[69] *Id.* at 304-306.

[70] Records (Criminal Case No. 70, 389-11), p. 16.

[71] TSN, October 24, 2013, pp. 11-12.

[72] TSN, October 24, 2013, pp. 15-17.

[73] *People v. Del Rosario*, G.R. No. 235658, June 2, 2020.

[74] *Id.*

[75] Entitled "AN ACT TO FURTHER 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.

[76] Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the Comprehensive Dangerous Drugs Act of 2002, August 30, 2002.



[77] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[78] G.R. No. 231989, September 4, 2018, citing *People v. Sipin*, 833 Phil. 67, 93 (2018).

[79] 833 Phil. 67, 92 (2018).

[80] *Id.*

[81] TSN, October 24, 2013, pp. 14-15.

[82] *People v. Ramos*, 826 Phil. 981, 996 (2018).

[83] *People v. Vistro*, G.R. No. 225744, March 6, 2019.