

## FIRST DIVISION

[ G.R. No. 205227, April 07, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCO P. ALEJANDRO, ACCUSED-APPELLANT.**

### DECISION

**VILLARAMA, JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated November 11, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03483 which affirmed the judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 convicting appellant of illegal sale of methamphetamine hydrochloride (*shabu*) under Section 5, Article II of Republic Act (R.A.) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002). In its Resolution<sup>[3]</sup> dated March 14, 2012, the CA denied the motion for reconsideration filed by appellant.

#### The Facts

Marco P. Alejandro (appellant), along with Imelda G. Solema and Jenny V. del Rosario, were charged with violation of Section 5, Article II of R.A. No. 9165 under the following Information:

That on or about the 12<sup>th</sup> day of July, 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, not being authorized by law did then and there willfully, unlawfully and feloniously sell, trade deliver and give away to another, Methamphetamine Hydrochloride, a dangerous drug weighing 98.51 grams contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.<sup>[4]</sup>

When arraigned, all three accused pleaded not guilty. Upon demurrer to evidence filed by accused Jenny del Rosario, the trial court rendered judgment acquitting her of the crime charged considering that her mere presence in the car used by appellant is not indicative of conspiracy in the sale of illegal drugs.<sup>[5]</sup>

At the pre-trial, the parties stipulated on the following:

1. The identity of the accused as the persons charged;
2. The jurisdiction of this Court over the persons of the accused;
3. Police Inspector Ruben Mamaril Apostol Jr. is a member of a PNP Crime Laboratory Office as of July 12, 2006 and he is an expert in Forensic Chemistry;
4. That a request for laboratory examination was made for the specimens allegedly confiscated from the accused;

5. The existence and authenticity of the request for examination of the seized items and Request for a drug test on the persons of the accused;
6. That pursuant to the requests for the drug test and examination of the specimens, the corresponding Regional Crime Laboratory Office, Calabarzon issued two (2) chemistry reports, D-267-06 and CRIM[D]T-286-06 that subject specimens submitted are positive for methamphetamine hydrochloride; and
7. That only a representative sample of the specimens submitted were examined by the Forensic Chemist which consist of one (1) transparent sachet containing white crystalline substance in black and red markings.<sup>[6]</sup>

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

The prosecution presented the following factual milieu based on the testimonies of SPO1 Jaime A. Cariaso (*poseur-buyer*), SPO1 Norman Jesus P. Platon and Police Inspector Ruben M. Apostol, Jr. (Forensic Chemical Officer):

In the morning of July 11, 2006, a Confidential Informant (CI) went to the Philippine Drug Enforcement Agency (PDEA) Regional Office 4-A (CALABARZON) at Camp Vicente Lim in Calamba City, Laguna. The CI informed Regional Director P/Supt. Raul L. Bargamento that he was able to set up a deal with a certain “Aida” who directed him to look for a buyer of 100 grams of *shabu* for the price of P360,000.00.<sup>[7]</sup>

Immediately, P/Supt. Bargamento instructed Police Chief Inspector Julius Ceasar V. Ablang to form a team who will conduct a buy-bust operation. PCI Ablang organized the team composed of eleven police officers and made the proper coordination with PDEA. Since the target area is situated in Barangay Bayanan, Muntinlupa City, Metro Manila, the team likewise obtained the requisite “Authority to Operate Outside AOR”.<sup>[8]</sup> During the briefing, SPO1 Cariaso was designated as poseur-buyer while SPO1 Platon will be his back-up arresting officer. Four pieces of five hundred peso (P500) bills were then prepared and marked by SPO1 Cariaso. The said bills stacked on the boodle money were placed inside SPO1 Cariaso’s belt bag. On the same day, SPO1 Cariaso and SPO1 Platon, along with the CI, conducted a surveillance of the house of “Aida” and vicinity. Prior to these preparations, the CI had contacted “Aida” through her cellphone and arranged the 2:00 p.m. meeting/sale transaction the following day.<sup>[9]</sup>

The next day, July 12, 2006, at around 12:00 noon, the team accompanied by the CI boarded two service vehicles and proceeded to the target area. They arrived at Barangay Bayanan at 1:45 p.m. SPO1 Cariaso and the CI parked the Toyota Revo in front of the house of “Aida” while SPO1 Platon and the rest of the team, who rode on another vehicle (Isuzu Crosswind), waited at a distance. As agreed during the briefing, SPO1 Platon positioned himself in a spot where he could see SPO1 Cariaso. The other police officers posted themselves where they could see SPO1 Platon as the latter will wait for a “missed call” from SPO1 Cariaso.<sup>[10]</sup>

SPO1 Cariaso and the CI alighted from the Revo and went to the gate of the house of “Aida”. They called the attention of a woman whom the CI identified as “Aida”. The woman came out of the house and the CI introduced SPO1 Cariaso to her as the buyer of *shabu*. After the introduction, the CI left. The woman asked SPO1 Cariaso where the money is and he opened his belt bag to show her the money. SPO1 Cariaso in turn asked her where the *shabu* is and she replied that he should wait for Marco (appellant). SPO1 Cariaso and the woman then went inside the Revo and waited for appellant. After about five minutes, a Toyota Vios arrived and parked in front of the Revo. The woman told SPO1 Cariaso that the driver of the Vios was appellant.<sup>[11]</sup>

Appellant alighted from the Vios and went inside the Revo. The woman introduced appellant to SPO1 Cariaso as the buyer. After appellant ascertained that SPO1 Cariaso had the money with him, he went down and got something from the Vios. When appellant returned, he was

carrying an item wrapped in newspaper. Inside the Revo, appellant uncovered the item and SPO1 Cariaso saw a transparent plastic sachet containing white crystalline substance which appellant handed to him. Appellant then demanded for the money. SPO1 Cariaso gave appellant the belt bag containing the marked bills and boodle money and quickly pressed the call key of his cellphone, the pre-arranged signal for the team that the sale had been consummated.<sup>[12]</sup>

Within fifteen seconds, SPO1 Platon rushed towards the Revo and the rest of the team followed. The team introduced themselves as PDEA agents. SPO1 Cariaso arrested appellant and the woman (“Aida”) who was later identified as Imelda G. Solema. Meanwhile, SPO1 Platon arrested the woman passenger in the Vios who was later identified as Jenny del Rosario. The seized plastic sachet containing white crystalline substance was marked by SPO1 Cariaso with his initials “EXH. A J.A.C. July 12, 2006” and signed it at the bottom. SPO1 Cariaso also recovered the marked P500 bills and boodle money from appellant. The three accused and the confiscated items were brought to the PDEA Regional Office in Camp Vicente Lim.<sup>[13]</sup>

At the PDEA regional office, appellant and his co-accused were booked and the confiscated items were inventoried by the investigator in the presence of SPO1 Cariaso, a media representative and a barangay councilor. A request for laboratory examination of the seized transparent plastic sachet containing white crystalline substance, weighing 98.51 grams, was prepared and signed by P/Supt. Bargamento. There were also requests made for the physical examination and drug test of the arrested persons. The request for laboratory examination and the specimen marked “EXH. A J.A.C. July 12, 2006” were brought by SPO1 Cariaso to the Philippine National Police (PNP) Regional Crime Laboratory Office 4A. Result of the chemical analysis performed by Pol. Insp. Apostol, Jr. showed that the said specimen is positive for methamphetamine hydrochloride or *shabu*. Appellant and his co-accused likewise were found positive for methamphetamine based on screening and confirmatory test done on their urine samples.<sup>[14]</sup>

The prosecution presented and offered the following evidence: (1) Pre-Operation Report dated July 12, 2006 submitted by PCI Ablang (Team Leader) and noted by P/Supt. Bargamento; (2) Authority to Operate Outside AOR dated July 12, 2006 granted by PDEA Police Chief Inspector Emmanuel Salvador L. Enriquez; (3) Certificate of Coordination dated July 12, 2006 from PDEA; (4) Request for Laboratory Examination dated July 12, 2006 of specimen marked “EXH A J.A.C. July 12, 2006” with signature of poseur-buyer; (5) Request for Drug Test of arrested persons dated July 12, 2006 signed by P/Supt. Bargamento; (6) Request for Physical/Medical Examination of arrested persons signed by P/Supt. Bargamento; (7) Chemistry Report No. D-267-06 dated July 13, 2006 submitted by Pol. Insp. Apostol, Jr. showing positive findings on specimen marked “EXH A J.A.C. July 12, 2006”; (8) Chemistry Report No. CRIMDT-268-06 to 270-06 submitted by Pol. Insp. Apostol, Jr. showing positive findings on the urine samples taken from appellant and his co-accused; (9) Certification dated July 12, 2006 issued by Medico-Legal Officer Dr. Roy A. Camarillo of the PNP Regional Crime Laboratory 4A stating that “there are no external signs of recent application of any form of trauma noted during the time of examination” on the persons of appellant and his co-accused; (10) Certificate of Inventory prepared by PCI Ablang and signed/witnessed by a media representative (Lyka Manalo) and Barangay Councilor (Jerusalem Jordan); (11) One transparent plastic sachet containing white crystalline substance with markings “EXH A J.A.C. July 12, 2006” and signed by poseur-buyer SPO1 Cariaso; (12) Affidavit of Poseur-Buyer dated July 13, 2006 executed by SPO1 Cariaso; (13) Affidavit of Back-Up/Arresting Officer dated July 13, 2006 executed by SPO1 Platon; (14) Booking Sheet and Arrest Reports of appellant and his co-accused containing their fingerprints, but which only Imelda Solema signed while appellant and Jenny del Rosario refused to sign; and (15) four pieces P500 bills marked money with serial numbers CM180235, YA867249, ZS853938 and ZW337843.<sup>[15]</sup>

### ***Version of the Defense***

Appellant’s defense is anchored on the claim that no buy-bust took place. He testified that on

July 12, 2006, at around 1:30 p.m., he went to the house of his co-accused Imelda Solema whom he knows is called “Im”. The purpose of his visit to Im was to rent her apartment because his girlfriend is arriving from Japan. Along the way, he saw Jenny del Rosario with her baby and let them ride on his car (Vios) as they were going the same way. Upon reaching Im’s house at 1:45 p.m., he parked his vehicle in front of said house but a barangay *tanod* told him not to park there as it was a towing area. And so he parked his Vios inside the garage of Im’s house which has a steel gate and knocked at its door. Meanwhile, Jenny del Rosario was left inside the Vios.<sup>[16]</sup>

Upon entering the house of Im, appellant claimed he was immediately grabbed by a man who made him lie down. He would later learn at PDEA that the man’s name is “Toto” and his female companion is Ma’am Carla. These PDEA agents took his belt bag containing cash (P48,000) and his jewelry. He was also handcuffed and brought inside his car where Toto, Ablang and a driver also boarded. He saw SPO1 Cariaso for the first time at the PDEA office. He likewise does not know SPO1 Platon. At the PDEA office, appellant and his co-accused were photographed after they were made to change clothes. Appellant further claimed that PCI Ablang demanded money (P1 million) from him in exchange for his release. When he was unable to give such amount, they just detained him and his co-accused. Their urine samples were taken and submitted for drug testing.<sup>[17]</sup>

As to the *shabu* allegedly seized from him in a buy-bust operation, appellant vehemently denied having such drug in his possession at the time. They have already been detained for two days when they were photographed with the said item. The taking of photographs was done in the presence of PDEA personnel, barangay officials from Canlubang and the media.<sup>[18]</sup>

On cross-examination, appellant explained that he had talked to his lawyer regarding the filing of a case against the PDEA officers who tried to extort money from him but his lawyer suggested they should first do something about this case. He added that he does not know of any reason why SPO1 Cariaso is accusing him of selling an illegal drug.<sup>[19]</sup>

Imelda G. Solema testified that on July 12, 2006 between 1:00 to 2:00 in the afternoon, she was inside her house watching TV together with her seven-year-old son when some persons carrying long firearms arrived asking if she is “Aida”. She shouted to them that she is not “Aida” but “Im.” These armed persons searched her house for *shabu* and when she shouted she was pushed into a chair. After ten minutes of searching, nothing was found in her house. When somebody knocked on the door, one of the armed men opened it and they saw appellant. They pulled appellant inside, poked a gun at him, made him lie down and handcuffed him. She and appellant were brought outside the house and boarded into the Revo. They waited for the other car for the armed men to board appellant there. Thereafter, they were brought to the PDEA office in Canlubang where they were detained.<sup>[20]</sup>

On cross-examination, Imelda Solema admitted that appellant was her friend even prior to their arrest because he was the “*kumpare*” of her sister. Appellant went to her house at the time as they had an agreement that he will rent one of the units of her apartment.<sup>[21]</sup>

The defense presented another witness, Rowena S. Gutierrez, a *siomai/sago* vendor who allegedly saw what transpired at the house of Imelda Solema from a distance of 6-8 meters. She testified that on July 12, 2006 at past 2:00 p.m., a red car immediately parked in front of the house of Imelda Solema, whom they call “Im.” A man and a woman (whom she later learned were police officers) alighted from said car and entered the house of Im. Not too long after, a silver car also arrived which was supposed to park in the area but there were barangay tanods and so it parked instead in the garage of the mother of Im. She later learned that the driver of the silver car was appellant. Appellant went out of his car and proceeded to Im’s house. When appellant was already inside Im’s house, two vehicles (Revo and Crosswind) suddenly arrived and there were armed men who alighted from said vehicles and entered Im’s house. Thereafter, she heard Im crying as she was being held by a woman and a man. The armed men forced Im

and appellant into the Revo. The persons left were a female and a child who eventually drove the silver car.<sup>[22]</sup>

On cross-examination, the witness admitted that the relatives of her friend Im asked her to testify because the others who also saw the incident were afraid to do so.<sup>[23]</sup>

### ***Ruling of the RTC***

The RTC found that the police officers complied with all the requirements in conducting a buy-bust operation, and that their testimonies were spontaneous, straightforward and consistent on all material points. On the other hand, the RTC observed that the testimonies of defense witnesses do not jibe or are inconsistent with each other. It held that appellant's denial of the crime charged is a negative self-serving evidence and cannot prevail over the positive and straightforward testimonies of the witnesses for the prosecution who, being police officers, are presumed to have performed their duties in accordance with law, and who have no reason to fabricate the charges against the accused.

Convinced that appellant and his co-accused Imelda Solema had conspired in selling *shabu*, the RTC noted that it was the latter who called up the former about the offer of the poseur-buyer SPO1 Cariaso to buy *shabu*. Appellant thus brought the pack of *shabu* to be sold to SPO1 Cariaso, unaware of the entrapment plan of the police officers. As to their warrantless arrest, the RTC held that such arrest was legal since the accused were caught *in flagrante delicto* selling *shabu*, a dangerous drug, to a poseur-buyer who turned out to be a police officer, in a legitimate buy-bust operation.

Accordingly, the RTC rendered judgment as follows:

WHEREFORE, premises considered and finding the accused MARCO ALEJANDRO y PINEDA and IMELDA SOLEMA y GUTIERREZ GUILTY of violating Sec. 5 of the Comprehensive Dangerous Drugs Act of 2002 beyond reasonable doubt, they are sentenced to LIFE IMPRISONMENT and to suffer all the accessory penalties provided by law and to pay a fine of ONE MILLION PESOS (Php 1,000,000.00) each with subsidiary imprisonment in case of insolvency.

The Acting Branch Clerk of Court is directed to transmit the subject "*shabu*" contained in a transparent plastic sachet which was marked as Exhibit "J" to the Philippine Drug Enforcement Agency for proper disposition.

Accused MARCO ALEJANDRO y PINEDA is ordered committed to the National Bilibid Prisons and accused IMELDA SOLEMA y GUTIERREZ is ordered committed to the Philippine Correctional for Women until further orders.

The preventive imprisonment undergone by the accused shall be credited in their favor.

SO ORDERED.<sup>[24]</sup>

### ***Ruling of the CA***

By Decision dated November 11, 2011, the CA affirmed appellant's conviction. The CA rejected appellant's argument that there is no proof beyond reasonable doubt that a sale transaction of illegal drugs took place as there appeared to be no prior meeting or conversation between him and appellant, and hence they could not have agreed on a price certain for a specified weight of drugs to be sold. It stressed that from the prosecution's narration of facts, the basis of the meeting between the poseur-buyer and "Aida" was the arrangement made by

the CI for the sale of *shabu*; hence there was already an agreement for the sale of 100 grams of *shabu* for the amount of P360,000.00.

The CA was likewise convinced that the *corpus delicti* of the crime has been established. It held that the failure to strictly comply with the requirements of Section 21, Article II of R.A. No. 9165 does not necessarily render an accused's arrest illegal or the items seized from him inadmissible.

### **Our Ruling**

The appeal lacks merit.

Firmly established in our jurisprudence is the rule that in the prosecution for illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.<sup>[25]</sup>

What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>[26]</sup>

The above elements were satisfactorily established by the prosecution. Poseur-buyer SPO1 Cariaso identified appellant as the seller of *shabu*. While the police officers were initially unaware of the identity of appellant, as their CI had only informed them about appellant's co-accused, "Aida" (Imelda Solema) with whom the CI had set up a drug deal for 100 grams of *shabu* for the price of P360,000.00, appellant's presence at the buy-bust scene, and his act of delivering the *shabu* directly to SPO1 Cariaso clearly identified him as the seller who himself demanded and received the payment from SPO1 Cariaso after giving the *shabu* to the latter.

Appellant's arrival at the house of Imelda Solema at the appointed time of the sale transaction arranged the previous day by the CI, and with Imelda Solema informing SPO1 Cariaso that they should wait for appellant after SPO1 Cariaso asked for the *shabu*, were clear indications that they acted in coordination and conspiracy to effect the sale of *shabu* to a buyer brought by the CI and who turned out to be a police officer detailed with the PDEA. SPO1 Cariaso placed his initials and date of buy-bust on the plastic sachet containing white crystalline substance sold to him by appellant. After Forensic Chemical Officer Pol. Insp. Apostol, Jr. conducted a chemical analysis of the said specimen, the result yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. The same specimen was presented in court as evidence after it was properly identified by SPO1 Cariaso and Pol. Insp. Apostol, Jr. to be the same substance handed by appellant to SPO1 Cariaso and examined by Pol. Insp. Apostol, Jr.

SPO1 Platon corroborated the testimony of SPO1 Cariaso that they conducted a buy-bust operation as he positioned himself across the street 15 meters from the house of Imelda Solema. From his vantage, SPO1 Platon saw the following transpired: SPO1 Cariaso accompanied by the CI in front of the house of Imelda Solema; SPO1 Cariaso conversing with Imelda Solema; the subsequent arrival of appellant on board the Vios; appellant going inside the Revo where SPO1 Cariaso and Imelda Solema waited for him; appellant getting something from the Vios and returning to the Revo carrying the said item. Upon hearing the call from SPO1 Cariaso's cellphone, SPO1 Platon immediately proceeded to the scene and arrested Jenny del Rosario who was still inside the Vios. At that moment, SPO1 Cariaso had already arrested appellant and Imelda Solema, confiscated the transparent plastic sachet containing white crystalline substance and recovered the marked money from appellant.

Clearly, all the elements of the crime were established by both the oral and object evidence presented in court. It is settled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless, of course, there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties.<sup>[27]</sup> Since no proof of such ill-motive on the part of the PDEA buy-bust team was adduced by appellant, the RTC and CA did not err in giving full faith and credence to the prosecution's account of the buy-bust operation. This Court has repeatedly stressed that a buy-bust operation (which is a form of entrapment) is a valid means of arresting violators of R.A. No. 9165.<sup>[28]</sup>

Appellant assails the CA in not correctly interpreting the requirements set forth in Section 21, Article II of R.A. No. 9165 and its implementing rules and regulations. He harps on the failure to immediately mark the seized *shabu* at the scene of the incident and photograph the same, and the inventory of the confiscated items which was not shown to have been done in the presence of the accused. As to the absence of testimony by the investigator and the receiving employee of the PNP Regional Crime Laboratory, appellant argues this is fatal to the case of the prosecution. He thus contends that the chain of custody was broken in this case.

We sustain the CA's ruling on the chain of custody issue.

Under Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, "chain of custody" is defined as the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

Section 21, Article II of R.A. No. 9165 laid down the procedure for the custody and disposition of confiscated, seized or surrendered dangerous drugs.

*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;

x x x x

On the other hand, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 reads:

(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[.]** (Emphasis supplied.)

In this case, while SPO1 Cariaso testified that he immediately marked the transparent plastic sachet containing white crystalline substance sold to him by appellant, there was no statement as to whether such marking was made at the place of arrest. From the records it is clear that such marking was done upon reaching the PDEA office before its turnover to the investigator on duty. What is important is that the seized specimen never left the custody of SPO1 Cariaso as he was present throughout the physical inventory being conducted by the said investigator.

This Court has already ruled in several cases that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the guidelines, is not fatal. It does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of the accused.<sup>[29]</sup>

Records reveal that only the marked money was photographed at the PDEA office. The Certificate of Inventory, though not signed by the accused, was duly signed by team leader PCI Ablang, a representative from the media and a barangay councilor. We thus find substantial compliance with the requirements of Section 21 of R.A. No. 9165 and IRR.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible.<sup>[30]</sup> In the instant case, although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. No. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from appellant as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

In the case of *People v. Kamad*, the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *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.<sup>[32]</sup>

The *first* link in the chain of custody starts with the seizure of the transparent plastic sachet containing *shabu* during the buy-bust operation. Records show that from the time appellant handed to SPO1 Cariaso the said item, only SPO1 Cariaso was in possession of the same until it was brought to the PDEA office. SPO1 Cariaso himself marked the said sachet of *shabu* with his initials and date of buy-bust: “EXH A J.A.C. July 12, 2006.” While the marking was not immediately made at the crime scene, it does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.<sup>[33]</sup>

The *second* link is the turnover of the *shabu* at the PDEA office. SPO1 Cariaso testified that he turned over the seized plastic sachet containing *shabu* with his markings “EXH A J.A.C. July 12, 2006” to the investigator who proceeded with the inventory thereof, along with the marked money also confiscated from appellant. He was present next to the investigator while the latter was conducting the inventory.

The *third* link constitutes the delivery of the request for laboratory examination and the specimen to the PNP Regional Crime Laboratory. It was likewise SPO1 Cariaso who brought the said request and the specimen to the PNP Regional Crime Laboratory on the same day. He personally turned over the specimen marked “EXH A J.A.C. July 12, 2006” to the receiving clerk as evidenced by the stamp receipt on the said request bearing the time and date received as “10:25 PM July 12, 2006.”<sup>[34]</sup>

The *fourth* link seeks to establish that the specimen submitted for laboratory examination is the one presented in court. Forensic Chemical Officer Pol. Insp. Apostol, Jr. testified that the transparent plastic sachet containing white crystalline substance which was marked “EXH A J.A.C. July 12, 2006”, was given to him by the receiving clerk. Within twenty-four hours, he conducted the chemical analysis by taking a representative sample from the specimen, even explaining in detail the process of testing the specimen for *shabu*. He identified the specimen with markings “EXH. A J.A.C. July 12, 2006” presented as evidence in court (Exhibit “J”) as the same specimen he examined and which he found positive for methamphetamine hydrochloride or *shabu*.

The non-presentation as witnesses of other persons such as the investigator and the receiving clerk of the PNP Regional Crime Laboratory is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.<sup>[35]</sup> Further, there is nothing in R.A. No. 9165 or in its implementing rules, which requires each and every one who came into contact with the seized drugs to testify in court. “As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.”<sup>[36]</sup>

With the unbroken chain of custody duly established by the prosecution evidence, the CA did not err in giving the same full credence in contrast to the denial by appellant who failed to substantiate his allegation of frame-up and extortion. Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.<sup>[37]</sup> To

substantiate such defense, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit.<sup>[38]</sup> No such evidence was presented by appellant in this case. The CA even quoted in part the decision of the RTC which highlighted the irreconcilable inconsistencies in the testimonies of defense witnesses on what transpired during the buy-bust operation.

Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from P500,000.00 to 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. Hence, the RTC, as affirmed by the CA, correctly imposed the penalty of life imprisonment and a fine of P1,000,000.00.

**WHEREFORE**, the present appeal is **DISMISSED**. The Decision dated November 11, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03483 is hereby **AFFIRMED *in toto***.

With costs against the accused-appellant.

**SO ORDERED.**

*Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ.*, concur.

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[1] *Rollo*, pp. 49-69. Penned by Associate Justice Romeo F. Barza with Associate Justices Rosalinda Asuncion-Vicente and Edwin D. Sorongan concurring.

[2] Records, pp. 583-595. Penned by Presiding Judge Juanita T. Guerrero.

[3] *Rollo*, pp. 71-72.

[4] Records, p. 1.

[5] Id. at 127-132.

[6] Id. at 584.

[7] TSN, August 4, 2006, pp. 5-7 (records pp. 188-190); TSN, October 25, 2006, pp. 4-5 (id. at 412-413).

[8] Records, pp. 18-20.

[9] TSN, August 4, 2006, pp. 7-16, 63 (id. at 190-199, 246); TSN, October 25, 2006, pp. 5-11 (id. at 413-419).

[10] Id. at 8-9, 14-17 (id. at 191-192, 197-200); id. at 9-12 (id. at 417-420).

[11] Id. at 17-23 (id. at 200-206).

[12] Id. at 23-32 (id. at 206-215); id. at 13-14 (id. at 421-422).

[13] Id. at 30, 33-36 (id. at 213, 216-219); id. at 14-17 (id. at 422-425); TSN, August 10, 2006, pp. 20-22 (id. at 287-289).

[14] Id. at 36-46 (id. at 219-229); id. at 18-22 (id. at 426-430); id. at 22-25 (id. at 289-292); TSN, August 3, 2006, pp. 35-41 (id. at 169-175); records, pp. 333-334.

[15] Records, pp. 327-344.

[16] TSN, November 30, 2006, pp. 3-8 (id. at 472-477).

[17] Id. at 9-18 (id. at 478-487).

[18] Id. at 19-21 (id. at 488-490).

[19] TSN, February 28, 2007, pp. 7-10, 12-13 (id. at 502-505, 507-508).

[20] TSN, May 3, 2007, pp. 4-9 (id. at 518-523).

[21] Id. at 17-18 (id. at 531-532).

[22] TSN, August 30, 2007, pp. 5-11 (id. at 552-558).

[23] Id. at 19-20 (id. at 566-567).

[24] Records, p. 595.

[25] *People v. Salcena*, G.R. No. 192261, November 16, 2011, 660 SCRA 349, 358, citing *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[26] *People v. Mantalaba*, G.R. No. 186227, July 20, 2011, 654 SCRA 188, 198.

[27] *People v. De Guzman*, 564 Phil. 282, 293 (2007); *People v. Jocson*, 565 Phil. 303, 308 (2007).

[28] *People v. Sevilla*, 607 Phil. 267, 270 (2009); *People v. De Guzman*, id. at 292; *Ching v. People*, 590 Phil. 725, 747 (2008).

[29] *People v. Brainer*, G.R. No. 188571, October 10, 2012, 683 SCRA 505, 525, citing *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 337; See also *People v. Rivera*, 590 Phil. 894, 913 (2008); *People v. Rosialda*, G.R. No. 188330, August 25, 2010, 629 SCRA 507, 520-521; and *People v. Llamado*, 600 Phil. 591, 599 (2009).

[30] *People v. Hambora*, G.R. No. 198701, December 10, 2012, 687 SCRA 653, 661, citing *People v. Cardenas*, G.R. No. 190342, March 21, 2012, 668 SCRA 827, 836-837.

[31] G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[32] *People v. Salcena*, supra note 25, at 367.

[33] *People v. Mantawil*, G.R. No. 188319, June 8, 2011, 651 SCRA 642, 657, citing *People v. Morales*, G.R. No. 188608, February 9, 2011, 642 SCRA 612, 623.

[34] Records, p. 330.

[35] See *People v. Angkob*, G.R. No. 191062, September 19, 2012, 681 SCRA 414, 427, citing *People v. Padua*, G.R. No. 174097, July 21, 2010, 625 SCRA 220, 235 further citing *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.

[36] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 595, citing *People v. Hernandez*, 607 Phil. 617, 640 (2009).

[37] *People v. Del Monte*, 575 Phil. 576, 588 (2008).

[38] *People v. Capalad*, 602 Phil. 1083, 1094 (2009).