



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee.*

G.R. No. 185386

- versus -

BERNABE ANESLAG, JR. ANDRADE,  
MENDA\* ANESLAG, JR. NECOLAY  
(acquitted), MAE ELARMO, JR.  
NECOLAY (acquitted), and  
JOCELYN CONCEPCION, JR. LAO,\*\*  
*Accused.*

Present:

CARPIO, *Chairperson,*  
BRION,  
DEL CASTILLO,  
PEREZ, *and*  
PERLAS-BERNABE, *JJ.*

BERNABE ANESLAG, JR. ANDRADE  
and JOCELYN CONCEPCION, JR.  
LAO.

*Accused-Appellants*

Promulgated:

NOV 21 2012 *HLR Cabalag/Infesto*

X-----

DECISION

DEL CASTILLO, J.:

In the prosecution of the crime of illegal sale of dangerous drugs, the prosecution must prove that the chain of custody rule was complied with.

This is an appeal from the August 27, 2008 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HLC No. 00172, which affirmed the May 7, 2005 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Iligan City, Branch 6 in Criminal Case No. 06-10093 finding appellants Bernabe Aneslag and Jocelyn Concepcion guilty of violating Republic Act (R.A.) No. 9165 (or the “Comprehensive Dangerous Drugs Act of 2002”). *Mdu*

\*Also spelled as Minda in some parts of the records

\*\*Also known as Jocelyn Concepcion Lao.

<sup>1</sup>CA-Roll, pp. 163-189; penned by Associate Justice Edgardo T. Lloren and concurred in by Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion

<sup>2</sup>Records, pp. 171-181; penned by Judge Valerio M. Salazar.

***Factual Antecedents***

On April 2, 2003, an Information<sup>3</sup> for illegal sale of methamphetamine hydrochloride (or *shabu*) was filed against Menda Aneslag (Menda), Mae Elarmo (Mae), appellant Bernabe Aneslag (Bernabe) and appellant Jocelyn Concepcion (Jocelyn) with the RTC of Iligan City, viz:

That on or about March 30, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, without any authority of law, did then and there willfully, unlawfully and feloniously sell and deliver six (6) plastic sachets containing approximately 240 grams of Methamphetamine Hydrochloride, a dangerous drug commonly known as Shabu.

Contrary to and in violation of Sec. 5 in relation with Sec. 26 of Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.<sup>4</sup>

The case was raffled to Branch 6 and docketed as Criminal Case No. 06-10093. On May 22, 2003, the accused were arraigned and all of them pleaded not guilty.<sup>5</sup> Thereafter, trial ensued.

***Version of the Prosecution***

The prosecution presented the testimonies of SPO2 George Salo (SPO2 Salo), SPO2 Edgardo Englatiera (SPO2 Englatiera) and P/Sr. Insp. Aileen Bernido (P/Sr. Insp. Bernido). The evidence for the prosecution, as summarized in the trial court's May 7, 2005 Decision, tends to establish the following:

In 2003, P/Supt. Rolando Abutay was the Regional Director of the PDEA based in Cagayan de Oro City. SPO2 Edgardo Englatierra was and still is the Team Leader of the PDEA in Iligan City. His members include SPO2 George Salo and SPO2 Diosdado Cabahug.

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<sup>3</sup> Id. at 1.

<sup>4</sup> Id.

<sup>5</sup> Id. at 39.

Three days prior to March 30, 2003, Supt. Abutay called by phone Officer Englatierra that there was an expected arrival of shabu in Iligan City and to watch Room 65 of the Patria Pension at Laya St., Iligan City.

In the early morning of March 30, 2003, Supt. Abutay arrived in Iligan City with his civilian asset (CA). He conducted a briefing at the PDEA office in Tipanoy, Iligan City. Present were Officers Englatierra, Salo, Cabahug and the CA. He informed [them] that there was going to be a “meet” at Room 65 of Patria Pension. He designated Officer George Salo and his CA to act as poseur buyers. He instructed Officer Salo and his C[A] to check-in at Room 65 of Patria Pension. He assigned himself and Officers Englatierra and Cabahug as the back-up team. He gave to Officer Salo two 500-peso bills to be used as part of the buy-bust money. They caused the two x x x 500-peso bills to be [photocopied] and authenticated at the Office of the City Prosecutor of Iligan City, Exh. A. Then they prepared a boodle money consisting of one genuine 500-peso bill on top, fake money at the middle and one genuine 500-peso bill at the bottom. After that Officer Salo and the CA went to the Patria Pension with the boodle money. They checked in at Rm 65 at about 11:00 a.m. The back-up team stayed at the office.

At about 4:30 p.m., Supt. Abutay and Officers Englatierra and Cabahug left the PDEA office. They went directly to the Patria Pension and checked in at Rm 64 across the corridor from Rm 65. A little later, the CA entered Rm 64 and handed to them the key to Rm 65.

At about 7:00 p.m., Officer Salo and the CA were inside Rm 65. The CA received a call on his cellphone. After the call, the CA told Officer Salo that someone will check if they had the money. Several minutes later, they heard a knock at the door. They saw a woman they did not know but later learned that she was Mae Elarmo. They invited her inside. Upon entering the room, she asked if they had the money. Officer Salo showed to her the boodle money. She simply looked at the bundle and made a call with her cellphone. Sometime later, they heard another knock at the door. The CA opened the door and a man and a woman entered the room. The man asked where is the money. Officer Salo showed to him the bundle of money. He looked at the bundle and introduced himself as Bernabe Aneslag. The female companion did not say anything. They learned later that she was Minda Aneslag. After Bernabe Aneslag looked at the bundle of money, he made a call on his cellphone. A minute or two later, there was knock at the door. The CA opened the door. A woman, who was holding a Ferragamo bag colored red, Exh. F, entered the room. They learned later that her name is Jocelyn Concepcion y Lao. Bernabe told her to give the bag to Officer Salo. She handed it to Officer Salo, who received it. He opened the zipper and looked inside. He found two big packs and four smaller packs of shabu. Then Bernabe Aneslag asked for the money. Officer Salo handed to him the bundle of money. After Bernabe Aneslag received the money, the CA pressed his cellphone to give the signal to Supt. Abutay that the transaction was completed.

When Supt. Abutay received the signal, he said let’s go. They went out of Rm 64, opened the door to Rm 65 with the key and rushed in. They found inside the room Bernabe Aneslag, Minda Aneslag, Jocelyn Concepcion and Mae Elarmo. They introduced themselves as police officers, arrested them and informed them of their rights. Officer Englatierra took possession of the boodle money from Bernabe Aneslag while Officer Salo took possession of the red bag and the *shabu*. They brought them to Poll[i]ce Precinct No. 01 for recording

purposes and then took them to the PDEA office in Tipanoy, Iligan City. At the office, Officer Salo marked the two big bags as “GRS-1” and “GRS-2”. He also marked the four smaller packs as “GS-1, GS-2, GS-3 and GS-4” respectively. GRS or GS represent[s] his initials. Thereafter, a Request for Laboratory Examination was prepared, Exh. B. The following day, Officer Salo delivered the request and the six packs of shabu to the PNP Provincial Crime Laboratory at Tipanoy, Iligan City. The specimens were originally examined by P/Insp. Mary Leocy Jabonillo-Mag-abo, Forensic Chemical Officer of the said laboratory. After her examination, she delivered the specimens to the Office of the City Prosecutor. However, when this case was called for hearing on July 18, 2003, the court was informed that Insp. Mag-abo was not available because she was sent to the Philippine Public Safety College, Makati City to undergo training in Public Safety Advance Course for a period of four (4) months. To avoid further delay, the court issued an order directing the PDEA, Iligan City, to arrange for another laboratory examination of the specimens at the PNP Regional Crime Laboratory, Cagayan de Oro City, Exh. C. On July 21, 2003, Officer Salo retrieved the specimens from the Office of the City Prosecutor, Iligan City and signed a receipt therefor, Exh. B-2. On July 23, 2003, SPO2 Diosdado Cabahug of the PDEA, Iligan City handcarried the specimens, the Request for Laboratory Examination, Exh. B, the receipt signed by Officer Salo, Exh. B-2 and the Order of this court, Exh. C, to the PNP Regional Crime Laboratory, Camp Evangelista, Cagayan de Oro City. PO3 Paltinga, receiving clerk of the Regional Crime Laboratory, [received] the specimens and the documents, Exh. C-1. Officer Paltinga turned over the specimen and documents to P/Sr. Insp. Aileen Undag Bernido, Forensic Chemical Officer. Insp. Bernido immediately performed the required laboratory examination of the specimens in three steps, namely: the physical test, color or screening test and the confirmatory test.

The first step, which is the physical test consists of the ocular inspection and weighing. When she received the specimens, they were inside a closed brown letter envelope, Exh. E-6. She wrote on the surface of the envelope the markings “D-419-03 AUB” representing the dangerous drugs number she assigned to it and her initials. Then she opened the envelope and found inside it two (2) big packs and four (4) smaller packs containing white crystalline substance. She found the packs were marked “GRS-1” and “GRS-2” for the two big packs and “GS-1”, “GS-2”, “GS-3” and “GS-4” respectively for the four small packs. Both ends of each pack were tape-sealed. She opened the packs and weighed the contents of each pack individually. The packs weighed as follows: GRS-1 = 96.4 grams, GRS-2 = 97.2 grams, GS-1, GS-2, GS-3 and GS-4 weighed 4.1 gamrs (sic) each. The total weight was 210 grams. After weighing each pack, she removed a representative sample and proceeded to the color test and confirmatory test. Thus, she followed the following procedure: First, she marked [the] surface of the pack already marked GRS-1 with the dangerous drugs number and her initials “D-419-03 AUB”. Then she opened it and weighed the contents. After that, she removed a representative sample. She returned the remaining contents into the original pack and resealed it with a masking tape. She wrote on the masking tape her identification mark “D-419-03 A1 AUB”. Then she proceeded to the color test by applying on the representative sample a Simons reagent. The results gave a blue color indicating the presence of methamphetamine hydrochloride or shabu. She continued with the confirmatory test using a Thin Layer Chromatography. The results confirmed the findings of the color or screening test. She followed exactly the same procedure for the succeeding packs. Each pack was accordingly given her own identification markings, as follows: GRS-2 was marked “D-419-03 A2 AUB”,

GS-1 was marked “D-419-03 A3 AUB”, GS-2 was marked “D-419-03 A4 AUB”, GS-3 was marked “D-419-03 A5 AUB” and GS-4 was marked “D-419-03 A6 AUB”. Each of the packs gave positive result for the presence of *shabu*. She prepared Chemistry Report No. D-419-03 (re-exam), Exh. “D” which embodies her findings and conclusion that “Specimens A1 to A6 contain Methamphetamine Hydrochloride, a dangerous drug”.<sup>6</sup>

### *Version of the Defense*

The defense presented the testimonies of Mae, appellant Bernabe and appellant Jocelyn. The evidence for the defense, as summarized in the trial court’s May 7, 2005 Decision, tends to establish the following:

Mae Elarmo is 20 years old, single, jobless and a resident of Alubijid, Misamis Oriental. She is a niece of co-accused Menda Aneslag. Accused Bernabe Aneslag is the husband of Menda. She calls him Uncle Boy. In March 2003, she resided with the spouses Aneslag at P-02 Buruun, Iligan City.

At about 7 to 7:30 p.m., March 30, 2003, Mae, Bernabe, Menda and Joy Lao aka Jocelyn Concepcion were having dinner at an ala carte restaurant somewhere in Iligan City. She could not pinpoint the exact location. They were having the (sic) dinner on the invitation of Joy Lao. During the dinner, her Uncle Boy instructed her to go to room 65 of Patria Pension and find out if a woman named Loren and a male companion were there. He gave her the fare. She rode on a PU car and went to Patria Pension. On arrival, she went directly to Rm 65. She knocked at the door and it was opened by the woman, named Loren. She asked me who are you. Mae replied Uncle Boy sent her. Loren invited her in and asked where was Uncle Boy. She replied she left him behind. Loren asked “Do you have the thing now?” Mae replied “What thing”. Loren said “You do not know” and Mae replied “No”. Loren had a male companion, who was about 30 years old, short, of white complexion, with a short haircut and of medium build. Loren was tall, white and also about 30 years old. About thirty minutes later, Bernabe Aneslag, Menda Aneslag and Joy Lao arrived at Rm 65. When they were already inside the room, the door was suddenly kicked open. Col. Abutay and companions entered. They pointed guns to them as Col. Abutay declared “Do not move, this is a buy-bust operation”. They handcuffed Mae, Bernabe, Menda and Joy and frisked them. They confiscated from Mae her wallet with ₱800.00, from Bernabe his watch and wallet, from Menda her cellphone, necklace and wallet and from Joy her money. At this time, Loren and her male companion already left. Then Col. Abutay called on his cellphone saying “Come here now”. A few minutes later, Officers Englatierra and Cabahug entered the room. They were taken downstairs and Mae saw George Salo for the first time at the front desk. They were taken on board a jeep driven by Officer Cabahug to the Police Precinct 01. After that, they were brought to the PDEA office in Cagayan de Oro City. The next day, they were taken back to Iligan City.

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<sup>6</sup> Id. at 171-174.

She denied that Officer George Salo was in Rm 65 with Loren. She denied the testimony of Officer Salo that the boodle money was shown to her. She also denied that her Uncle Boy counted the money. Finally, she declared that the owner of the shabu was Joy Lao.

Bernabe Aneslag is 52 years old, married and a resident of P-02 Buruun, Iligan City. Menda Aneslag is his wife. Mae Elarmo is the niece of Menda. He is the caretaker of the Videogram business of Jocelyn Concepcion Lao.

At about 6:00 p.m., March 30, 2003, Bernabe, Menda, and Mae were at Cocogroove, Iligan City. They walked towards the jeepney terminal for Buruun at Roxas Avenue in front of Jollibee in order to take a passenger jeepney for home. They walked along Quezon Avenue until they reached Roxas Avenue, then turned right along Roxas until they reached the terminal. They were about to board a passenger jeepney when Mae told Bernabe that Joy was there. Joy was at the opposite side of Roxas Avenue near the Dr. Uy Hospital. Bernabe told Mae to call Joy. Mae crossed the street and approached Joy. Then Joy and Mae crossed back and approached Bernabe and Menda. Joy invited them to dinner. They accepted. They walked to the JoArt Restaurant. They did not ride on a taxi. Joy was holding a red bag. While they were eating, Joy gave to Bernabe a piece of paper with the words Rm 65 Patria Pension and some names written on it. Joy asked Bernabe to send Mae to Patria Pension, find Rm 65 and look for the persons whose names were written on the piece of paper. He instructed Mae accordingly. Joy gave Mae the fare for a PU car. Mae left. About fifteen minutes later, Joy told them that they will follow Mae. They rode on a PU car for Patria Pension. On arrival, Bernabe, Menda and Joy went directly to Rm 65. Bernabe knocked at the door. A woman opened it. He entered followed by Menda and Joy. Bernabe saw Mae talking to a man he did not know. That man was not SPO2 George Salo. Barely a minute or two after they entered, the door was kicked open and Col. Abutay with two companions entered the room. Col. Abutay said this is a buy-bust. The companions of Col. Abutay frisked Bernabe, Menda, Joy and Mae and confiscated their personal belongings such as wallets, money, jewelry and celphones. Then SPO2 Englatierra and SPO2 Salo entered the room. They were handcuffed and brought to Police Precinct No. 01 where they made a list of the shabu. About an hour later, they were brought to Cagayan de Oro City and detained overnight at the PDEA office. The following morning, they were taken back to Iligan City. He declared that the man inside Rm 65 when they entered was not Office George Salo.

Accused Jocelyn Concepcion y Lao testified that she is Jocelyn Concepcion Lao. She is 38 years old, married, businesswoman and a resident of P-5A, Behind Village, Bgy. Ma. Cristina, Iligan City. She knows the spouses Bernabe and Menda Aneslag because they were former neighbors in Canawai, Iligan City. She operates Videogram machines and a Videoke Bar.

At about 7:00 p.m., March 30, 2003, she was standing along Roxas Avenue, Iligan City in front of Dr. Uy Hospital. She was waiting for transportation in order to go home. While waiting, a taxi stopped in front of her. Menda Aneslag called her from inside the taxi saying "Joy, where are you going?" She replied she was going home. Menda invited her to have dinner with them. She accepted and entered the taxi. Menda was with Bernabe Aneslag and Mae Elarmo. They proceeded on board the taxi to the JoArt Barbeque Restaurant nearby. They ordered dinner. While they were eating

Bernabe and Menda talked to each other. Bernabe told Menda to remain in the restaurant with Joy because he was going somewhere. Menda refused to remain behind. When Menda insisted on going out with Bernabe, the latter talked to Mae. Bernabe told Mae to go ahead to Patria Pension and proceed to Rm 65. After Mae left, they continued with their dinner. After several minutes, Bernabe received a text message and a voice call on his cellphone. When Bernabe received the message, he told Menda to stay behind with Joy because he will follow Mae. Menda refused to stay. She insisted to go with Bernabe. Joy paid for their dinner and the three of them rode on a taxi for Patria Pension. On arrival, Bernabe immediately alighted and left Menda and Joy inside the taxi. He entered Patria Pension. Menda immediately followed. Joy paid the taxi fare and also followed because the red bag of Menda was left behind. When she entered Patria Pension, she saw Bernabe and Menda going upstairs. She followed and caught up with them right at the door of Room 65. She noticed that Menda was angry and had an exchange of words with Bernabe because she suspected that Bernabe and Mae had a relationship. Bernabe knocked at the door. The door was opened and they entered. Then a woman closed the door. She saw a male person and Mae in the room. Just then, the door was forced open and Col. Abutay and companions entered. They introduced themselves as PDEA agents. Then the companions of Col. Abutay frisked them and took possession of the red bag she was holding as well as their personal belongings. Col. Abutay directed the man and woman to leave the room. After they left, Col. Abutay made a call on his cellphone. After the call, Officers Englatierra and Cabahug entered the room. They took them to the police station where Col. Abutay showed to her the red bag containing shabu. That night they were taken to Cagayan de Oro City. The next day, they were brought back to Iligan City.<sup>7</sup>

### ***Regional Trial Court's Ruling***

On May 7, 2005, the RTC rendered a Decision finding appellants Bernabe and Jocelyn guilty of illegal sale of *shabu*, viz:

**WHEREFORE**, the court finds the accused BERNABE ANESLAG and JOCELYN CONCEPCION y Lao aka JOCELYN CONCOPCION (sic) LAO GUILTY beyond reasonable doubt as principals of violation of Section 5, Article II of R.A. No. 9165 and hereby imposes upon each of them the penalty of LIFE IMPRISONMENT and FINE of Five Hundred Thousand (Php 500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The court finds the accused Menda Aneslag and Mae Elarmo NOT GUILTY by reason of reasonable doubt.

The six (6) packs of shabu weighing 210 grams are confiscated in favor of the government to be disposed of pursuant to Sec. 21 of R.A. No. 9165.

The accused Bernabe Aneslag and Jocelyn Concepcion have been under preventive detention since April 1, 2003 until the present. The period of such

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<sup>7</sup> Id. at 174-176.

preventive detention shall be credited in full in favor of the accused in the service of their respective sentences.

The City Warden is directed to discharge from his custody the persons of Menda Aneslag and Mae Elarmo unless there are other legal grounds for their continued detention.

SO ORDERED.<sup>8</sup>

The trial court held that the prosecution was able to establish all the essential elements of the crime charged. The buyers were SPO2 Salo and the civilian asset while the sellers were appellants Bernabe and Jocelyn in the presence of Mae and Menda. The object of the transaction was six packs of *shabu*. After appellant Bernabe received the boodle money, appellant Jocelyn delivered the *shabu* contained in a red bag to SPO2 Salo. The six packs were tested positive for *shabu* as per the laboratory examination by the forensic chemist, P/Sr. Insp. Bernido.

The trial court found the testimonies of the appellants to be conflicting and a case of finger-pointing. In contrast, the version of the prosecution showed a logical, consistent and smooth flow of events leading to the arrest of appellants. Thus, the trial court held that the version of the prosecution was more credible. However, with respect to Mae and Menda, the trial court rendered a judgment of acquittal because it was not sufficiently established that the two were in conspiracy with the appellants. Reasonable doubt existed owing to the fact that Mae and Menda appeared to be merely a messenger and a companion, respectively, of appellant Bernabe.

### ***Court of Appeal's Ruling***

On August 27, 2008, the CA rendered the assailed Decision affirming the aforesaid judgment of conviction, viz:

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<sup>8</sup> Id. at 180-181.



WHEREFORE, the decision of the court *a quo* is hereby AFFIRMED *in toto*.<sup>9</sup>

In affirming the conviction of the appellants, the CA ruled that: (1) the purported inconsistencies between the testimonies of the prosecution witnesses are trivial and/or reconcilable, (2) the police operatives in the buy-bust operation did not need to secure a search warrant because the appellants were caught *in flagrante delicto*, (3) the use of fluorescent powder and fingerprinting are not indispensable in buy-bust operations, (4) the presentation of the marked money is, likewise, not indispensable in buy-bust operations, (5) the presentation of the confidential informant is not required, (6) the use of thin layer chromatography to ascertain the purity of the *shabu* is not necessary, (7) the case passes the chain of custody test because from the time of seizure up to the time of laboratory examination the *shabu* was in the possession of SPO2 Salo, and (8) the minor discrepancy in the weight of the *shabu* can be attributed to the weighing scale used by the police officers.

Hence, this appeal.

### **Issue**

Whether the CA gravely erred in convicting appellants of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt.<sup>10</sup>

### **Our Ruling**

We affirm the findings of the appellate court.

*The chain of custody rule was duly*

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<sup>9</sup> CA rollo, p. 189.

<sup>10</sup> Id at p. 88.

*complied with.*

Appellants argue that the prosecution failed to establish the chain of custody of the seized *shabu* and the identity of the substance subjected to laboratory examination. They claim that the Information alleged the sale of 240 grams of *shabu* while the trial court found that only 210 grams were sold, thus, a substantial 30-gram discrepancy existed. In addition, the police officers did not immediately mark the seized items and no certificate of inventory was prepared and no photographs taken in accordance with Section 2 of Dangerous Drugs Board Regulation No. 1.

We disagree.

Section 21(1), Article II of R.A. No. 9165 provides the procedure for the handling of seized or confiscated illegal 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; x x x

However, non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible.<sup>11</sup> What is essential is that the integrity and

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<sup>11</sup> *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused.<sup>12</sup> Thus, Section 21, Article II of the Implementing Rules of R.A. No. 9165 provides -

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 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.*** x x x (Emphasis supplied.)

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements R.A. No. 9165, defines the chain of custody —

b. “Chain of Custody” means 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 made in the course of safekeeping and use in court as evidence, and the final disposition.

In *Malillin v. People*,<sup>13</sup> we explained the rationale of the chain of custody rule in this wise -

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<sup>12</sup> Id. at 843.

<sup>13</sup> G.R. No. 172953, April 30, 2008, 553 SCRA 619.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. 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 no opportunity for someone not in the chain to have possession of the same.<sup>14</sup>

In the case at bar, while the procedure under Section 21(1), Article II of R.A. No. 9165 was not strictly complied with, we find that the integrity and the evidentiary value of the seized *shabu* was duly preserved consistent with the chain of custody rule. As correctly observed by the appellate court, from the time of the arrest of the appellants and the confiscation of the subject *shabu* packs until their turnover for laboratory examination, SPO2 Salo was in sole possession thereof. During his testimony, he identified the subject *shabu* packs and the markings that he had previously made thereon, *viz.*:

Q: And you said this backup team entered Room 65?

A: Yes sir.

Q: Once they were already in Rm. 65 what did you do?

A: They were the one's [sic] who arrested and informed them of their rights.

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<sup>14</sup> Id. at 631-633.

Q: After the accused were already apprised of their rights by your companions, what happened to the shabu subject of the case?

A: We brought the accused and the shabu to Police Station 1.

Q: Who was in possession of the *shabu*?

A: Me sir.

Q: From the time of the arrest until the time these people were brought to the Police Station?

A: It was me sir.

x x x x

Q: Were you able to bring all the accused and the specimens to the police station?

A: Yes sir at Police Station 1.

Q: When they were already at the police station 1, what did you do?

A: The blotter was made and we made an inventory of the shabu that was confiscated.

Q: Was there any Certificate of Inventory made?

A: We do not have a certificate of inventory but we do have logbook.

Q: Were there pictures taken at the time of the inventory?

ATTY. JAVIER:

Objection Your Honor leading.

COURT:

Witness may answer.

A: I cannot remember sir but we have brought with us a camera.

Q: After these persons were brought to the Police Station together with the specimens from the Police Station where did you proceed?

A: We proceeded to Tipanoy our office.

Q: From the police station 1 to your office at Camp Tomas Cabili, Tipanoy, Iligan City, who was in possession of the shabu?

A: It was me sir.

x x x x

Q: Upon arrival at Tipanoy being the possessor of these shabu, what did you do with the shabu?

A: I made a counter sign.

Q: I am showing to you again these six specimen contained in bigger and smaller packs, will you please point x x x to the court your counter sign which you said you placed on this specimen?

A: This GRS-1 sir.

Q: What does GRS mean?

A: George Rito Salo sir my initial.

PROS. ALBULARIO:

GRS-1 for the first pack of shabu, GRS-2 for the second bigger pack and GS-1 for the smaller packs.

Q: Are you telling this court that you gave x x x different markings to the big packs and different markings to the smaller packs?

A: Yes sir.

Q: What does GS-1 stands [sic] for?

A: George Salo sir

Q: How about GS-2?

A: The same sir also in GS-3 & GS-4.

Q: After placing these markings, what did you do with these specimens?

A: We delivered it to the crime laboratory located at Camp Tomas Cabili, Tipanoy, Iligan City.

Q: When you delivered the same specimen to the PNP Crime Laboratory at Camp Tomas Cabili, Tipanoy, Iligan City, who personally brought those shabu?

A: It was me sir.<sup>15</sup>

Subsequently, when this case was called for hearing, P/Sr. Insp. Mary Leocy Jabonillo Mag-abo (P/Sr. Insp. Mag-abo), the forensic chemist from the PNP Crime Laboratory of Iligan City who conducted the examination on the subject *shabu* packs, was unavailable because she had to undergo training in Makati City.<sup>16</sup> Thus, the trial court issued an order for the conduct of another examination on the subject *shabu* packs by a forensic chemist in Cagayan de Oro City in order to expedite the proceedings.<sup>17</sup> Consequently, the subject *shabu* packs were turned over to SPO2 Salo, as evidenced by an acknowledgement receipt,<sup>18</sup> and thereafter delivered to the PNP Crime Laboratory of Cagayan de Oro City where the said packs were received by PNCO PO3 Paltinca<sup>19</sup> who, in turn, forwarded the same to P/Sr. Insp. Bernido, the examiner assigned to this case.<sup>20</sup> The chemistry report<sup>21</sup> and testimony of P/Sr. Insp. Bernido corroborated the testimony of SPO2 Salo

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<sup>15</sup> TSN, February 2, 2004, pp. 27-31.

<sup>16</sup> Records, p. 105.

<sup>17</sup> Id.

<sup>18</sup> Id. at 104.

<sup>19</sup> TSN, July 31, 2003, p. 11.

<sup>20</sup> Id. at 13.

<sup>21</sup> Records, p. 106.

relative to the markings the latter made on the packs of *shabu* (i.e., GRS-1 and GRS-2 for the bigger packs, and GS-1, GS-2, GS-3, and GS-4 for the smaller packs)<sup>22</sup> as well as the number and size of the *shabu* packs (i.e., two big packs and four smaller packs).<sup>23</sup> P/Sr. Insp. Bernido identified the *shabu* packs in court as well as the separate markings she made thereon; she further testified that the six packs tested positive for *shabu*.

Based on the foregoing, we find that the chain of custody rule was complied with. The prosecution's evidence sufficiently established an unbroken link in the chain of custody which precluded the alteration, substitution or tampering of the subject *shabu* packs.

Anent appellants' claim that the total weight of the *shabu* packs as alleged in the Information, i.e., 240 grams,<sup>24</sup> varies substantially from the total weight as determined by the forensic chemist, i.e., 210 grams, we find the same insufficient to overcome the previous finding that the integrity and evidentiary value of the confiscated *shabu* was duly preserved. As noted by the appellate court, there are a host of possible reasons for the variance such as the difference in the accuracy of the weighing scales used by the police operatives vis-à-vis the forensic chemist. We also note that: (1) as previously narrated, the subject *shabu* packs were twice tested by two different forensic chemists in order to expedite the proceedings as per the order of the trial court so that representative samples of the *shabu* were taken from the aforesaid packs by the first forensic chemist (P/Sr. Insp. Mag-abo) which could have affected the total weight as determined by the second forensic chemist (P/Sr. Insp. Bernido), and (2) P/Sr. Insp. Bernido testified that when she weighed each pack of *shabu*, the same was done without the packaging material thereof<sup>25</sup> which could have, likewise, affected the total weight of the *shabu*.

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<sup>22</sup> TSN, July 31, 2003, p. 14.

<sup>23</sup> Id. at 19-23.

<sup>24</sup> Records, p. 1.

<sup>25</sup> TSN, July 31, 2003, p. 43.

Appellants further advert to the alleged inconsistent, conflicting and incredible testimonies of the prosecution witnesses. According to appellants, SPO2 Salo testified that appellant Jocelyn handed to him (SPO2 Salo) a red bag containing six packs of *shabu* while SPO2 Englatiera testified that the said bag was in front of Mae and that SPO2 Salo told him (SPO2 Englatiera) that the bag was taken from Mae. Furthermore, the prosecution witnesses testified that SPO2 Salo and the civilian asset were inside Room 65 while police officers Abutay, Englatiera and Cabahug were in Room 64. However, paragraph 4 of the joint affidavit executed by police officers Salo, Englatiera and Cabahug before the city prosecutor stated that they were posted facing the area where the transaction is to be conducted and had a clear view of the operation.

The contention is untenable.

We have examined the testimonies of the prosecution witnesses and we find that the alleged inconsistencies are minor or trivial which serve to strengthen, rather than destroy, the credibility of the said witnesses as they erase doubts that the said testimonies had been coached or rehearsed.<sup>26</sup>

Anent the matter of who was holding the red bag containing the *shabu* before it was confiscated by the police operatives, the trial court found more credible the testimony of SPO2 Salo that the said bag was given to him (SPO2 Salo) by appellant Jocelyn after he paid for the *shabu* with boodle money. We cannot fault the trial court for making this finding because SPO2 Salo was the one present during the buying transaction. SPO2 Englatiera arrived only after the pre-arranged signal (as to the completion of the sale of the *shabu*) was given to him, along with the other members of the backup team, who then entered the room and arrested the appellants. SPO2 Englatiera's testimony, therefore, on this matter is hearsay.

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<sup>26</sup> *People v. Diaz*, 331 Phil. 240, 251-252 (1996).



Anent appellants' claim of inconsistency between the joint affidavit executed by the police officers, namely, Salo, Englatiera and Cabahug vis-à-vis the testimonies of police officers Salo and Englatiera in open court, we find the same to be misleading because appellants quoted only a portion of the said affidavit. An examination of the whole joint affidavit reveals that the same is consistent with the testimonies of police officers Salo and Englatiera in open court. Specifically, the joint affidavit states that "while in the area[,] we (referring to Salo, Englatiera, Cabahug) posted ourselves fronting the place of [the] buying transaction [where] we had a clear view of the progress of the operation."<sup>27</sup> However, the succeeding paragraphs of the joint affidavit narrated the ensuing events as well as the individual roles of SPO2 Salo and the confidential agent, as poseur buyers, and police officers Englatiera and Cabahug, as part of the backup team, which is consistent with the testimonies of police officers Salo and Englatiera in open court.<sup>28</sup>

Finally, appellants contend that appellant Bernabe was not subjected to ultra-violet powder examination or finger printing casting doubt as to whether he was the one who allegedly received and counted the boodle money. They also question the reliability of the Thin Layer Chromatography used by the forensic chemist in determining the presence of *shabu* in the six packs seized from appellants. Moreover, appellants argue that the police officers should have first secured a search warrant given that they conducted a surveillance of the place three days prior to the buy-bust operation.

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<sup>27</sup> Records, p. 2.

<sup>28</sup> The Joint Affidavit pertinently stated:

That I[,] SPO2 GEORGE R[.] SALO[,] was tasked as a poseur buyer, while the other acted as back-up, that I together with our Confidential Agent check-in [sic] room 65 of the aforementioned place, having transaction with a certain woman identified as MAE. The transaction was [sic] took place inside the said room to buy *SHABU* worth 282,000.00 on March 30, 2003 more or less 7:00 P.M. As the transaction went to [sic] SPO2 GEORGE R[.] SALO presented to MAE th[e] boodle money worth 282,000.00 of which only 1,000.00 is the real money while the rest are boodle money[.] [A]fter checking the money[,] MAE called her companion using cellphone in [sic] which minutes later two persons arrived in above-mentioned identified only [as] Bernabe and Menda. The two checking the money again and one of them called another companion using cellphone. Few minutes leater [sic] a woman identified only as Joy arrived at Room 65 bringing her red bag with suspected *SHABU* place[d] inside the said place [sic]. (Id.)

The contentions are, likewise, untenable.

Neither law nor jurisprudence requires that the police must apply fluorescent powder to the buy-bust money to prove the commission of the offense.<sup>29</sup> The same holds true for the conduct of finger print examination on the money used in the buy-bust operation. What is crucial is that the prosecution proves, as in this case, the delivery of the prohibited drugs to the poseur-buyer and the presentation of the confiscated drugs before the court.<sup>30</sup>

Anent the claim that the Thin Layer Chromatography used by the forensic chemist in determining the presence of *shabu* in the six packs is unreliable, we find the same to be unsubstantiated. Except for their bare allegation, the defense did not present clear and convincing evidence to prove that the findings of the forensic chemist were erroneous.

Lastly, anent appellants' contention that the police operatives should have first secured a search warrant, we agree with the observation of the trial court that it would have been impracticable to secure such a search warrant because appellants were not residing in the agreed meeting place (*i.e.*, Room 65 of Patria Pension) at the time of the surveillance. The surveillance was conducted for the mere purpose of determining the respective roles and positions of the police operatives in anticipation of the buying transaction which was to happen there three days later. More important, in a buy-bust operation, the police operatives are not required to secure a search warrant because the violator is caught *in flagrante delicto* and the police officers, in the course of the operation, are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.<sup>31</sup>

All in all, we find that the prosecution was able to prove beyond reasonable

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<sup>29</sup> *People v. So*, 421 Phil. 929, 943 (2001).

<sup>30</sup> *Id.*

<sup>31</sup> *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

doubt the elements of the crime of illegal sale of *shabu*: (1) the identity of the buyer and seller, the object and consideration; and (2) the delivery of the drug sold and its payment.<sup>32</sup> Hence, the conviction of appellants was proper.

**WHEREFORE**, the appeal is **DISMISSED**. The August 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00172 is **AFFIRMED**.

No costs.

**SO ORDERED.**

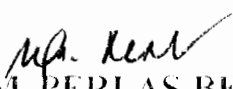
  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

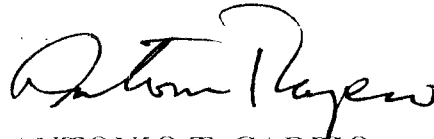
  
**ARTURO D. BRION**  
*Associate Justice*

  
**JOSE PORTUGAL BEREZ**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

**ATTESTATION**

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

**ANTONIO T. CARPIO***Associate Justice**Chairperson***CERTIFICATION**

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

**MARIA LOURDES P. A. SERENO***Chief Justice*