



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 192913**

Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ*.

**JOEL REBOTAZO y ALEJANDRIA,**  
Accused-Appellant.

Promulgated:

**JUN 13 2013**

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**DECISION**

**SERENO, *CJ*:**

Before us is a Notice of Appeal<sup>1</sup> dated 9 September 2009 from the Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 00443. The CA affirmed the Decision<sup>3</sup> of the Regional Trial Court (RTC), Branch 30, Dumaguete City in Criminal Case Nos. 16394 and 16395, convicting appellant Joel Rebotazo y Alejandria of violating Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165) or the Comprehensive Dangerous Drugs Act of 2002.

As culled from the records, the prosecution's version is herein quoted:

On February 27, 2003, at around 3:00 in the afternoon, informant Orly Torremocha went to the National Bureau of Investigation (NBI) office in Dumaguete City to report that appellant was selling several

<sup>1</sup> CA rollo, pp. 119-121.

<sup>2</sup> Rollo, pp. 3-28; CA Decision dated 31 July 2009 penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Edgardo L. Delos Santos and Rodil V. Zalameda.

<sup>3</sup> CA rollo, pp. 10-18; RTC Decision dated 16 May 2006, penned by Judge Rafael Cresencio C. Tan, Jr.

sachets of shabu in his possession. The informant also told the NBI that he was going to meet with appellant later, as the latter was looking for a motorcycle to be used in looking for his missing wife.

Based on this information, the NBI planned a buy-bust operation and formed a buy-bust team, which was composed of: (1) NBI Agent Miguel Dungog; (2) Atty. Dominador Cimafranca; (3) Louie Diaz; and (4) Torremocha. For lack of personnel, Diaz, son of the NBI Dumaguete chief, volunteered to be the poseur-buyer. It was planned that appellant and Torremocha would pass by Shakey's Pizza Plaza in Rizal Boulevard on board a motorcycle. Diaz would then flag them down and discreetly ask where he could buy shabu.

After a briefing, at around 4:30 in the afternoon of the same day, the buy-bust team, with the exception of Torremocha, proceeded to Shakey's and positioned themselves in strategic locations to ensure that they can witness the entrapment. With the team was media representative Ivan Bandal.

As planned, appellant and Torremocha passed by Shakey's on board a motorcycle. Diaz flagged them down, and Torremocha introduced him to appellant. After a brief conversation, Diaz told appellant that he was interested in buying shabu and handed to him the ₱300 marked money. In exchange, appellant handed to Diaz a plastic sachet containing white crystalline substance.

Upon completing the transaction, Diaz executed the pre-arranged signal by removing his cap. Dungog and Cimafranca then rushed to Diaz and appellant's location and effected the latter's arrest. Appellant was subjected to a body search, and, in the process, voluntarily informed the NBI agents that he had another sachet of shabu inside one of his socks. Dungog recovered the said sachet, as well as some money from appellant's wallet, including the marked money given by Diaz. Dungog also marked the two (2) plastic sachets with the following initials: (1) NBI-DUMDO-02/20/03/REBOTASO/BB/01; and (2) NBI-DUMDO-02/20/03/REBOTASO/Pos/02. Photographs were also taken of appellant with the seized items. After being informed of his constitutional rights, appellant was brought to the NBI office.

At the NBI office, Dungog conducted an inventory of the seized items in the presence of appellant, media representative Maricar Aranas, and a representative from the Department of Justice. The NBI Dumaguete Chief likewise prepared a letter request for laboratory examination of the seized substance, which Dungog brought to the Philippine National Police Crime Laboratory, Negros Oriental Provincial Office.

Police Inspector Josephine L. Llena received the request and examined the specimen, which tested positive for Methamphetamine Hydrochloride. The results of the laboratory examination were embodied in Chemistry Report No. D-026-37.

Appellant also underwent a drug test, and tested positive for the presence of Methamphetamine Hydrochloride.<sup>4</sup> (Citations omitted)

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<sup>4</sup> Id. at 95-96; CA Decision, pp. 6-7.

On the other hand, appellant's version is as follows:

The accused claimed that on February 27, 2003, one Orly Torremocha let him ride on his motorcycle and they went around the city. He knew this Orly Torremocha as he was his schoolmate at NOHS and has been his long time friend. After a while, they went to Shakey's at Rizal Boulevard as Torremocha invited the accused for snacks. They seated themselves outside of the main store, as there were also tables there for customers. They first ordered siopao but since there was none, they instead ordered pizza. While they waited for their order, this Torremocha was busy texting on his cell phone. After a while, a certain Louie Diaz came and handed money to Torremocha. The money was placed on the table. Torremocha then got a lighter and something that was lengthy which contained shabu. After cutting the lengthy something, Torremocha gave half of it to Diaz who then left. After about three [sic] minutes, NBI Agents Dungog and Cimafranca rushed and pointed something to him. The accused raised his hands, but remained seated. The NBI agents searched him but found nothing on him. The accused was arrested, but was not informed of his constitutional rights. The accused was brought to the NBI Office and was searched again. The agents did not recover anything from him as in the earlier search made on him. At the time of his arrest, the accused was wearing pants, a T-shirt and slippers only. The accused had no socks at that time. The accused was forced to sign a document known as Inventory of Dangerous Drugs dated February 20, 2003. The accused had no lawyer at that time. The accused complained to the inquest prosecutor that he was forced to sign a document without being explained [sic] as to what it was all about.<sup>5</sup>

Consequently, on 30 June 2003, two amended informations were filed against the appellant for violation of Sections 5 and 11, Article II of R.A. 9165. The two amended informations are quoted herein below:

In Criminal Case No. 16394:

That on or about the 27<sup>th</sup> day of February 2003, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there, wilfully, unlawfully and feloniously sell and deliver to one NBI poseur-buyer approximately 0.12 gram of Methamphetamine Hydrochloride, commonly called "shabu," a dangerous drug.

That the accused is positive for use of Methamphetamine as reflected in Chemistry Report No. CDT-018-07. [sic]

Contrary to Section 5, Article 2 of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002)."

In Criminal Case No. 16395:

That on or about the 27<sup>th</sup> day of February 2003, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable

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<sup>5</sup> Id. at 97; CA Decision, p. 8.

Court, the said accused, not being then authorized by law, did, then and there, wilfully, unlawfully and feloniously possess and keep approximately 0.07 gram of Methamphetamine Hydrochloride, commonly called “shabu,” a dangerous drug.

That the accused is positive for use of Methamphetamine as reflected in Chemistry Report No. CDT-018-03.

Contrary to Section 11, Article 2 of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002).”

After the case was raffled to the Regional Trial Court, Branch 30, Dumaguete City, appellant was arraigned, and he pleaded not guilty. The two cases were then consolidated and jointly tried.<sup>6</sup>

On 16 May 2006, the RTC rendered a Joint Judgment,<sup>7</sup> the dispositive portion of which is herein quoted:

**WHEREFORE**, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 16394, the accused Joel Rebotazo y Alejandria is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.12 gram of Methamphetamine or shabu in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The 0.12 gram of Methamphetamine or shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 16395, the accused Joel Rebotazo y Alejandria is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.07 gram of Methamphetamine or shabu in violation of Section 11, Article II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

The 0.07 gram of Methamphetamine or shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.

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<sup>6</sup> Id. at 10; RTC Decision, p. 1.

<sup>7</sup> Id. at 10-18.

In its ruling, the RTC gave more weight to the evidence presented by the prosecution. It relied on the testimony of Louie Diaz, the poseur-buyer who narrated how the illegal sale took place, presented in court the evidence of the *corpus delicti*, and positively identified appellant as the seller of the *shabu*.<sup>8</sup> It also gave credence to the testimony of the two police officers, Police Inspector Josephine S. Llana and National Bureau of Investigation (NBI) Agent Miguel Dungong, who were both “presumed to have acted regularly in the performance of their official functions, in the absence of clear and convincing proof to the contrary or that they are motivated by ill will.”<sup>9</sup>

Upon intermediate appellate review, the CA rendered a Decision<sup>10</sup> on 31 July 2009, to wit:

**WHEREFORE**, in the light of the foregoing, the joint judgment rendered by the Regional Trial Court of Negros Oriental, Branch 30 of Dumaguete City dated May 16, 2006 is hereby **AFFIRMED** *in toto*.

**SO ORDERED.**

In convicting appellant of the crimes charged, the CA affirmed the factual findings of the RTC<sup>11</sup> on the premise that witnesses Diaz and Dungog had clearly and convincingly established his guilt beyond reasonable doubt. The fact that the CA did not find any ill motive on the part of these witnesses to falsely implicate appellant<sup>12</sup> only bolstered his conviction.

Moreover, the factual discrepancies pointed out by appellant referred only to minor and insignificant details, which, “when viewed with the prosecution witnesses’ clear and straightforward testimonies, do not destroy the prosecution of the case.”<sup>13</sup> These discrepancies have in fact been clearly explained by the witnesses in their testimonies.

**ISSUE**

From the foregoing, the sole issue before us is whether or not the RTC and CA erred in finding the testimonial evidence of the prosecution witnesses sufficient to warrant appellant’s conviction for the crimes charged.

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<sup>8</sup> Id. at 14; RTC Decision, p. 5.

<sup>9</sup> Id. at 17; RTC Decision, p. 8.

<sup>10</sup> Id. at 90-115; CA Decision, p. 25

<sup>11</sup> Id. at 99; CA Decision, p. 10.

<sup>12</sup> Id. at 112; CA Decision, p. 23.

<sup>13</sup> Id. at 100-101; CA Decision, p. 11-12.

### THE COURT'S RULING

Appellant argues<sup>14</sup> that the RTC and CA erred in appreciating the factual evidence on record. In particular, he notes that the prosecution failed to establish the existence of the marked money supposedly recovered. When Prosecutor Escorial asked witness Diaz why the serial numbers the former read from a bunch of peso bills presented in evidence were not marked, Diaz was unable to answer.<sup>15</sup> Later in the proceedings, the prosecution managed to offer only two supposedly marked bills, but no explanation was offered as to why the third bill was missing.<sup>16</sup>

Appellant also harps on some factual discrepancies, to wit:

1. The Prosecution admitted that the inventory report does not contain the signature of any elected official (*Pls. see Pre-Trial Order*).
2. The prosecution admitted that in his affidavit, the arresting officer NBI Agent Miguel Dungog named **Ivan Bandal** as the media representative, while in the inventory report, the named media representative is **Maricar Aranas** (*Kindly see Pre-Trial Order*).
3. Prosecution admitted that the inventory report is dated **February 20, 2003**, seven (7) days before the date of the alleged incident, which is **February 27, 2003**.
4. The marking on Specimen "A" (evidence-shabu, prosecution's Exh. "D") bears the date "02/20/03" which is **February 20, 2003**, seven (7) days before the date of the alleged incident in question, **February 27, 2003** (*pls. see TSN November 7, 2005, p. 3*). The marking on Specimen "B" (evidence-shabu, prosecution's Exh. "E") bears the date "02/20/03" which is **February 20, 2003**, seven (7) days before the date of the alleged incident in question, which is **February 27, 2003** (*pls. see TSN November 7, 2005, p. 4*).<sup>17</sup>

In addition, he questions the failure of the prosecution to indicate the name of the person who affixed his signature to the inventory as a Department of Justice (DOJ) representative.<sup>18</sup>

Appellant further argues that no one from the prosecution testified on the manner in which the seized drugs were handled and the measures undertaken to preserve their integrity and evidentiary value.<sup>19</sup> Specifically, the prosecution "failed to account for the whereabouts of the seized drugs from the time the forensic chemist was done with examining the same, up to the time they were identified by her in court, as the said pieces of evidence appear to have been already in the court's custody when she testified."<sup>20</sup>

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<sup>14</sup> Id. at. 40-54; Brief for the Accused-Appellant, pp. 9-12. In our 6 December 2010 Resolution, this Court noted the Manifestation of accused-appellant that he is adopting his 13 December 2007 Brief for the Accused-Appellant filed with the CA, and his Supplemental Brief.

<sup>15</sup> Id. at 49; Appellant's Brief, p. 7.

<sup>16</sup> Id. at 50. Appellant's Brief, p. 8.

<sup>17</sup> Id. at 51; Appellant's Brief, p. 9.

<sup>18</sup> *Rollo*, p. 47; Supplemental Brief, p. 3.

<sup>19</sup> Id. at 46; Supplemental Brief, p. 2.

<sup>20</sup> Id.

Lastly, appellant questions the NBI's lack of coordination with the Philippine Drug Enforcement Agency (PDEA). Allegedly, the NBI failed to send a filled-out pre-coordination form by facsimile message, as required by R.A. 9165 and its implementing rules and regulations.<sup>21</sup> Because of this omission, appellant argues that the buy-bust operation should be considered unauthorized, and his subsequent arrest illegal. The evidence supposedly obtained thereby must be declared inadmissible.<sup>22</sup> Hence, the cases of drug-pushing and possession of prohibited drugs must fall together.<sup>23</sup>

On the part of the prosecution, the Office of the Solicitor General (OSG) insists that there is nothing in the law that requires the prosecution to present the marked money. The non-presentation does not create any hiatus in the evidence, provided that the prosecution adequately proves the sale.<sup>24</sup> Moreover, as against the straightforward and consistent testimonies of its witnesses, the supposed inconsistencies cited by appellant refer only to minor and insignificant details that do not destroy the prosecution's case.<sup>25</sup> On the lack of coordination with the Philippine Drug Enforcement Agency (PDEA), the OSG asserts that it does not violate appellant's constitutional right against illegal arrests, because there is nothing in R.A. 9165 that mandatorily requires coordination with the PDEA.<sup>26</sup>

## I

### **Buy-bust operations are legally sanctioned procedures, provided they are undertaken with due regard for constitutional and legal safeguards.**

At the outset, buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.<sup>27</sup> A buy-bust operation is one form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of committing an offense,<sup>28</sup> and must be undertaken with due regard for constitutional and legal safeguards.<sup>29</sup>

However, as we have observed in *People v. Garcia*,<sup>30</sup> while this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use

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<sup>21</sup> CA rollo, p. 52; Appellant's Brief, p. 10.

<sup>22</sup> Id. at 53; Appellant's Brief, p. 11.

<sup>23</sup> Id.

<sup>24</sup> Id. at 76; Plaintiff-Appellee's Brief, p. 7.

<sup>25</sup> Id. at 80; Plaintiff-Appellee's Brief, p. 11.

<sup>26</sup> Id. at 81; Plaintiff-Appellee's Brief, p. 12.

<sup>27</sup> *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

<sup>28</sup> *People v. Jocson*, G.R. No. 169875, 18 December 2007, 540 SCRA 585, 592.

<sup>29</sup> Id., citing *People v. Doria*, 361 Phil. 595 (1999). See also *People v. Abbu*, 317 Phil. 518 (1995); *People v. Tadepa*, 314 Phil. 231 (1995); *People v. Basilgo*, G.R. No. 107327, August 5, 1994, 235 SCRA 191.

<sup>30</sup> G.R. No. 173480, 25 February 2009, 580 SCRA 259.

as a tool for extortion. Thus, in *People v. Tan*,<sup>31</sup> courts have been exhorted to be extra vigilant in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Jurisprudence has consistently held that the procedural safeguards enunciated in Section 21 of R.A. 9165 must be strictly observed, among which are provided as follows:

**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;

x x x x

**Guided by the above-quoted provision, we find no cogent reason to overturn appellant's conviction.**

We affirm the appellant's conviction for the following reasons, in response to the claimed errors of the CA, as raised by the appellant.

***1. The marked money does not need to be presented in Court.***

We are not impressed by the alleged failure of the prosecution to present the marked money in Court.

The Court has been categorical in declaring that neither law nor jurisprudence requires the presentation of any money used in a buy-bust operation.<sup>32</sup> Failure to mark the money or to present it in evidence is not

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<sup>31</sup> 401 Phil. 259, 273 (2000), citing *People vs. Pagaura*, 334 Phil. 683 (1997).

<sup>32</sup> *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA 421, 442, citing *People v. Astudillo*, 440 Phil. 203, 224 (2002).



material, since failure to do so will not necessarily disprove the sale.<sup>33</sup> If at all, the marked money merely serves as corroborative evidence in proving appellant's guilt.<sup>34</sup> Stated differently, in prosecuting a case for the sale of dangerous drugs, the failure to present marked money does not create a hiatus in the evidence for the prosecution, as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.<sup>35</sup>

As stated in the records, the testimony of prosecution witness Louie Diaz sufficiently established the sale and identified the dangerous drug in court.<sup>36</sup>

DIRECT EXAMINATION BY PROS. E. ESCORIAL

x x x x

Q: Now can you remember any unusual incident that happened in the afternoon of February 27, 2003?

A: At 3:30 in the afternoon there was an informant who arrived.

x x x x

Q: And when this informant arrived in the Office of the NBI, Dumaguete City, what transpired next?

A: He had reported something regarding the drug pushing activity of Mr. Joel Rebotazo.

Q: To whom it was reported?

A: To my father who was a chief.

Q: And where were you when it was reported to your father?

A: I was at the office, sir, because that was my vacant.

Q: Vacant time?

A: Yes, sir.

Q: So what happened next when that informant informed your father about the transaction?

A: He forwarded it to his operative who was Miguel Dungog.

Q: And what happened next?

A: So we designed something for operation and we had our briefing. Since there was a lack of personnel at that time so I volunteered to be a poseur-buyer.

Q: Then after you volunteered as poseur buyer?

A: So we had a briefing.

Q: What was that briefing all about?

A: We are going to conduct a buy bust on Joel Rebotazo.

Q: What happened next during the briefing, there was a plan to conduct buy bust on Joel Rebotazo?

A: We proceeded to the Shakey's at the boulevard.

Q: Here in Dumaguete City?

A: Yes, sir.

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<sup>33</sup> *People v. Cueno*, 359 Phil. 151, 162 (1998), citing *People vs. Cuachon*, G.R. Nos. 106286-87, 1 December 1994, 238 SCRA 540. See also *People v. Pascual*, G.R. No. 88282, 6 May 1992, 208 SCRA 393; *People vs. Sanchez*, 255 Phil. 293 (1989).

<sup>34</sup> *People v. Gonzaga*, G.R. No. 184952, 11 October 2010, 632 SCRA 551, 572.

<sup>35</sup> *Supra* note 32, at 441-442.

<sup>36</sup> TSN, 25 October 2005, pp. 3-12.

- Q: What boulevard is that?  
A: Boulevard, sir.  
Q: Rizal boulevard near?  
A: Near Bethel.  
Q: And did you arrive thereat?  
A: 4:30, sir, after the briefing, sir, we arrived there at 4:30 already.  
Q: And what happened at the Rizal boulevard near the Shakey's or at the Shakey's?  
A: At the Shakeys. So the plan was for the informant and Joel Rebotazo to accompany him. And then they were having a conversation at the Shakey's and I pretended to be a buyer.  
Q: And since you pretended to be the buyer, was there any conversation made between you as the buyer with the accused Joel Rebotazo?  
A: Yes, sir.  
Q: Can you tell the Honorable Court what was that conversation?  
A: I bought drug from him worth P300. Our bridge was the informant because the informant and him know each other and me, I was just a buyer.  
Q: What happened when you informed the accused Joel Rebotazo of your desire to buy shabu?  
A: As I bought from him in the amount of Three hundred, he also gave me an exchange of the amount that I gave.

x x x x

- Q: So after you informed the accused Joel Rebotazo of your desire to buy shabu, this Joel Rebotazo acceded to your proposal?  
A: Yes.  
Q: And since he acceded to your proposal to buy shabu, what transpired next?  
A: That's it. I gave him three hundred and the shabu that is also worth [P]300 he also gave it to me.  
Q: What particular hand?  
A: Right hand, Your Honor.  
Q: That you tendered that money?  
A: Yes, Your Honor.  
Q: What about Joel Rebotazo, what particular hand of Joel Rebotazo?  
A: The same, Your Honor.  
Q: The same what?  
A: Right hand.  
Q: So after there was an exchange of money made by you and the receiving of the shabu from Joel Rebotazo, what happened next?  
A: When I gave the money, he also gave me the stuff, the shabu. I gave a go signal to the operatives.  
Q: What signal were you talking about?  
A: Since I was wearing a hat at that time, sir, our agreed signal with the operatives is for me to take off.  
Q: And were you able to take off your hat?  
A: Yes, sir.  
Q: What happened after you took off your hat?  
A: They already assaulted. They apprehended Joel Rebotazo.  
Q: Who approached both of you?  
A: Miguel Dungog and Doming Cimafranca, the operatives.  
Q: By the way, if this Joel Rebotazo is inside this courtroom, will you be able to identify him?

- A: Yes, sir.  
Q: Kindly point to us?  
A: There (witness is pointing to the person wearing orange t-shirt who when asked as to his name answered Joel Rebotazo).  
Q: Now if that shabu will be shown to you, will you be able to identify that shabu?  
A: Yes, sir.  
Q: There are two (2) of this shabu in front of you, kindly go over these two (2) sachets of shabu, identify the same and tell the Honorable Court what particular sachet of shabu was the one that was the subject of the buy bust transaction?  
A: This is the one (witness is handling over the plastic which contained the sachet).

x x x x

- Q: There is another sachet of shabu aside from the one that you have just identified, what is this shabu all about?  
A: Actually this was placed in a bigger sachet and it was being divided into two (2), this one (witness is touching the other plastic container). It was left on the accused.  
Q: Where was it? Do you know where was it recovered?  
A: He inserted it in his socks.

This testimony was sufficiently corroborated by witness Miguel Dungog:<sup>37</sup>

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

x x x x

- Q: Can you remember where you were in the afternoon of February 27, 2003?  
A: We were at the Rizal Boulevard conducting buy bust operation.  
Q: When you say "we," who were your companions in conducting a buy bust operation?  
A: Dominador Cimafranca and other assets of the NBI.  
Q: Such as?  
A: Louie Diaz and also a media representative, Ivan Bandal.  
Q: And considering that you were there at the Rizal Boulevard particularly at the Shakey's Pizza Plaza, what transpired thereat at the time?  
A: We conducted the buy bust operation, using Louie Diaz as the poseur-buyer. We successfully conducted the buy bust operation against Joel Rebotazo.  
Q: Who is this Louie Diaz?  
A: He is the son of our former chief in Dumaguete City.  
Q: Where were you when this Louie Diaz conducted the buy bust?  
A: I was in the vicinity, I was at a seeing distance.  
Q: When you say you were in the vicinity, how far were you?  
A: About four or five meters away, Sir.  
Q: When you say you are at a seeing distance, was it clear at that time?

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<sup>37</sup> TSN, 8 November 2004, pp. 3-7.

A: Yes, and we arranged signals.

x x x x

Q: But what have you observed between the two?

A: We observed that there was an exchange and then the signal was given that the sale was completed.

Q: What was the exchange which you mentioned? Can you describe to us what particular hand of Louie Diaz was extended to accused Joel Rebotazo?

A: His right hand but another thing was given also in exchange from Joel Rebotazo.

Q: Did you see what was given by Louie Diaz to Joel Rebotazo?

A: No, Sir.

Q: What about the thing that you saw in the extended hand of Joel Rebotazo given to Louie Diaz?

A: I have not seen the thing given by Joel Rebotazo to Louie Diaz. It was Louie Diaz who personally received the item, Sir.

Q: After the transaction you said there was a signal?

A: Yes, Sir, there was a signal.

Q: What was the signal?

A: Taking off the cap of Louie Diaz, Sir.

Q: Are you telling this Honorable Court that Louie Diaz was wearing a cap?

A: Yes, Sir, he was wearing a cap.

Q: What kind of cap?

A: A baseball cap.

Q: Then after the signal what happened next?

A: I immediately went to them and told Joel Rebotazo to freeze and stay calm, that we are NBI and this is a buy bust operation.

Q: Who told Joel Rebotazo?

A: Me, Sir.

Q: In other words you effected the arrest?

A: Yes, Sir, I effected the arrest and after I told him that, a frisked [sic] was made on his body and then he voluntarily told me that another pocket [sic] was in his sock.

Evidently, there is no need to present the marked money in court, because the prosecution has satisfactorily shown how the illegal sale took place and positively identified the packets of shabu, subjects of this case.

***2. The prosecution has sufficiently established the chain of custody.***

Appellant also argues that no one from the prosecution testified on the manner in which the seized drugs were handled and the measures undertaken to preserve their integrity and evidentiary value.<sup>38</sup> Specifically, the prosecution “failed to account for the whereabouts of the seized drugs from the time the forensic chemist was done with examining the same, up to the time they were identified by her in court, as the said pieces of evidence appear to have been already in the court’s custody when she testified.”<sup>39</sup>

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<sup>38</sup> *Rollo*, p. 46; Supplemental Brief, p. 2.

<sup>39</sup> *Id.*

We have held that as a mode of authenticating evidence, the chain-of-custody rule requires that the presentation of the seized prohibited drugs as an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.<sup>40</sup> This would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next link in the chain.<sup>41</sup>

An examination of the records would reveal that the prosecution has sufficiently established the chain of custody in this case. The testimonies of Miguel Dungog and Josephine S. Llena, forensic chemist of the PNP Crime Laboratory, reveal that although the chain was not narrated step-by-step, the accountability for each transfer of the seized drugs was proven. Witness Dungog testified on this matter, to wit:<sup>42</sup>

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

x x x x

Q: In other words you effected the arrest?

A: Yes, Sir, I effected the arrest and after I told him that, a frisked [sic] was made on his body and the he voluntarily told me that another pocket was in his sock.

x x x x

Q: When you effected the arrest what happened next?

A: The two (2) sachets of shabu were marked as 1 and 2 and the subject Joel Rebotazo was taken to the NBI office for proper inventory taking and other standard procedures done in the NBI office.

Q: You made these markings on the sachets at the crime scene?

A: Yes, Sir.

x x x x

Q: In the sachet are markings. Can you identify what are these markings and who made those writings?

A: NBI-DUMDO-02/20/03/REBOTAZO/BB/01

Q: Who made those markings?

A: Myself, Sir.

Q: And what is the meaning of that marking?

A: BB/01 is the product of the buy bust.

x x x x

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<sup>40</sup> *Cacao v. People*, G.R. No. 180870, 22 January 2010, 610 SCRA 636, 650, citing *People v. Gutierrez*, G.R. No. 177777, 4 December 2009, 607 SCRA 377, 392.

<sup>41</sup> *Id.*

<sup>42</sup> TSN, 8 November 2004, pp. 7-20.

- Q: Kindly proceed to the other sachet.  
A: NBI-DUMDO-02/20/03/REBOTAZO/POS/02  
Q: Who made that marking.  
A: Me, Sir, [ sic]  
Q: And what is the meaning of that?  
A: POS/02 is the one recovered in his possession, Sir.

x x x x

- Q: You also mentioned that you have issued a receipt at the NBI office?  
A: Yes, Sir.  
Q: Attached to the records of the case, found on page 19 is an inventory of dangerous drugs which is already marked as Exhibit "E" for the prosecution. Kindly go over this and identify the same.  
A: This is the same inventory of dangerous drugs we made at the NBI office.

x x x x

- Q: You also said awhile ago that you were the officer who submitted the letter request to the PNP crime laboratory together with the confiscated drugs, for examination?  
A: Yes, Sir.

x x x x

- Q: There is a signature at the bottom portion along with the word, "Delivered by" and followed by a handwritten name Miguel L. Dungog. Whose signature is this?  
A: This is my signature, Sir.

On the other hand, witness Llena testified as follows:<sup>43</sup>

DIRECT EXAMINATION CONDUCTED BY PROS. ESCORIAL

x x x x

- Q: Police Inspector Josephine S. Llena, since [sic] when did you receive this letter request together with the specimen submitted in relation to this case together with the seized items?  
A: The letter request which came from the Chief of the NBI stationed here in Dumaguete City together with the specimen subject in this case were received in our office on February 28, 2003 at 9:20 in the morning.

x x x x

- Q: Now, after you received this letter request for laboratory examination together with the 2 sachets of shabu in relation to these cases, what did you do with them?  
A: The specimen were subjected into [sic] physical and chemical examination.

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<sup>43</sup> TSN, 10 December 2003, pp. 2-4.

The prosecution of cases involving illegal drugs depends largely on the credibility of the police officers who conducted the buy-bust operation.<sup>44</sup> Credence is usually given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.<sup>45</sup> Failure to impute ill motive on the part of the police officers who conducted the buy-bust operation<sup>46</sup> will only sustain the conviction of the accused.

***3. Minor inconsistencies, when referring only to minor details and which are fully explained, do not destroy the prosecution's case.***

The supposed factual discrepancies in the prosecution's evidence do not hold water. The rule on material inconsistencies has been enunciated by this Court several times. In *People v. Arcega*,<sup>47</sup> we have held that "[b]y and large, the 'material inconsistencies' asserted by the accused-appellant which allegedly create grave doubts are, on the contrary, too minor, trivial and inconsequential to affect the credibility of the prosecution witnesses, the inconsistencies having been fully and sufficiently explained during trial by the witnesses themselves, and their explanations having been accepted by the Trial Court. Besides, it has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony."

On this score, we agree with the findings of the CA that the prosecution has sufficiently explained the factual discrepancies.

*First*, on the lack of signature of an elected official and the failure to indicate the name of the person who affixed his signature as DOJ representative in the inventory report, jurisprudence has maintained that "[n]on-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."<sup>48</sup>

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<sup>44</sup> *People v. Lapasaran*, G.R. No. 198820, 10 December 2012.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> G.R. No. 96319, 31 March 1992, 207 SCRA 681, 687.

<sup>48</sup> *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 842-846.

It appears from the records that the NBI tried to contact *barangay* officials to attend the inventory-taking, but none arrived.<sup>49</sup> Such effort on the part of the NBI agents and the consequent failure of said elected officials to appear should be considered sufficient justifiable ground so as to excuse the prosecution from complying with this particular requirement. As to the question of the identity of the DOJ representative, witness Dungog clarified the same in his cross-examination, thus:<sup>50</sup>

- Q: That at the time of the signing of the Inventory of Drugs, you were not able to identify the DOJ Representative?  
A: Yes.  
Q: And you cannot remember his face or his name?  
A: I think it was Michael Fabe.  
Q: Are you sure of that?  
A: I am sure that it is Michael Fabe.  
Q: But during the time of the cross-examination, do you admit that you did not remember him at that time?  
A: I had a hard time to recall [sic].

Considering that the integrity of the seized drugs has been maintained, and that the drugs were immediately marked for proper identification, the absence of an elected official during the inventory-taking should not be deemed fatal to the prosecution's case.<sup>51</sup>

*Second*, the alleged confusion in the identity of the media representatives was thoroughly explained by witness Dungog in the following manner:<sup>52</sup>

- Q: You mentioned a while ago that Ivan Bandal was present during the buy-bust?  
A: Yes, Sir.  
Q: Was he able to sign in the inventory?  
A: No, Sir.  
Q: Why?  
A: During the conduct of the buy bust operation, he was called by his office at Silliman University, so he was not around in the actual buy bust. He was around in the initial plan and going to the [s]ite.

During the cross-examination, he further stated:<sup>53</sup>

- Q: But specifically you mentioned a media practitioner?  
A: Yes, Sir.  
Q: Ivan Bandal?  
A: Yes, Sir.  
Q: But as you stated he was no longer present during the actual buy bust?  
A: Yes, Sir.

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<sup>49</sup> TSN, 27 June 2005, p. 5.

<sup>50</sup> Id. at 3-4.

<sup>51</sup> See *People v. Musa*, G.R. No. 199735, 24 October 2012; *Imson v. People*, G.R. No. 193003, 13 July 2011, 653 SCRA 826.

<sup>52</sup> TSN, 8 November 2004, p. 16.

<sup>53</sup> Id. at pp. 25-26.



- Q: And when you conducted therefore, the actual buy bust operation there was no representative from the media?
- A: None, Sir.
- Q: And thereafter, after the buy bust operation you effected the arrest, you seized the objects and you went to the NBI office, correct?
- A: Yes, Sir.
- Q: And it was the time you conducted the inventory, right?
- A: The formal inventory, right?
- Q: And it was at this time that a media [sic] was present, and was represented by another personality Aranas?
- A: Yes, Sir.
- Q: The name?
- A: Maricar Aranas.
- Q: Present as representative of the media who was not present during the actual buy bust operation?
- A: Yes, Sir.

*Third*, on the discrepancy between the inventory report and the actual incident, including the markings on Specimen “A” and Specimen “B,” the discrepancy was also explained by Dungog, as follows:<sup>54</sup>

- Q: Now on the second page of your affidavit, particularly on paragraph 5 it reads... “Hereunder is an inventory of dangerous drugs confiscated from the possession of Joel Rebotazo, to wit: one heat sealed transparent plastic pack if white crystalline granules believed to be shabu marked as NBI-DUMDO-02/20/03/REBOTAZO/BB/01; No. 2, one heat sealed transparent plastic pack of white crystalline granules believed to be shabu marked as NBI-DUMDO-02/20/03/REBOTAZO/POS/02. What is the meaning of this NBI-DUMDO-02/20/03?
- A: That corresponds to the date but in that case, there was an inadvertence because we were thinking that it was February 20 at that time. Nobody noticed. We noticed the inadvertence on February 28, the following day.
- Q: You did not correct that?
- A: I have corrected that in my affidavit, Sir.

## II

### **The NBI’s lack of coordination with the PDEA cannot exculpate the appellant.**

The NBI’s lack of coordination with the PDEA cannot be given weight or credence. Section 86 of R.A. 9165 reads:

SEC. 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That

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<sup>54</sup> Id. at 10-11.

such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

In *People v. Sta. Maria*,<sup>55</sup> we have held thus:

**Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.**

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the “lead agency” in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, “shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act.” We find much logic in the Solicitor General’s interpretation that it is only appropriate that drugs cases being handled by other law enforcement

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<sup>55</sup> 545 Phil. 520, 531-532 (2007).

authorities be transferred or referred to the PDEA as the “lead agency” in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, i.e., the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. (Emphasis and underscoring supplied)

In other words, the lack of coordination with the PDEA cannot in and of itself exculpate appellant. For as long as the mandatory requirements of R.A. 9165 have been complied with, the buy-bust operation remains legal, and appellant’s conviction shall be upheld.

### III


#### **The “fruit of the poisonous tree” doctrine cannot apply in the face of a valid buy-bust operation.**

Given the circumstances above, appellant’s arrest cannot be considered illegal. Time and again, we have ruled that the arrest of the accused *in flagrante* during a buy-bust operation is justified under Rule 113, Section 5(a) of the Rules of Court.<sup>56</sup> From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.<sup>57</sup>

As we held in *People v. Marcelino*,<sup>58</sup> the illegal drug seized was not the “fruit of the poisonous tree,” as the defense would have this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Section 13 of the Rules of Court.<sup>59</sup> Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was not needed to conduct it.<sup>60</sup>

**WHEREFORE**, the appeal is hereby **DISMISSED**. The assailed Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 00443 dated 31 July 2009 is hereby **AFFIRMED**.

**SO ORDERED.**



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

<sup>56</sup> *People v. Villamin*, G.R. No. 175590, 9 February 2010, 612 SCRA 91, 108.

<sup>57</sup> *Id.*

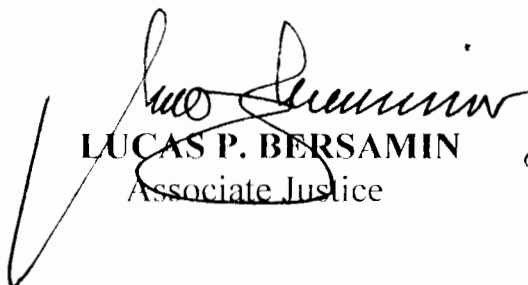
<sup>58</sup> G.R. No. 189278, 26 July 2010, 625 SCRA 632.

<sup>59</sup> *Id.* at 640.

<sup>60</sup> *Id.*

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

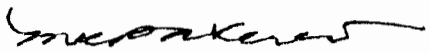
  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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