

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SAMUEL OBMIRANIS Y ORETA, APPELLANT.*G.R. No. 181492. December 16, 2008*

Ponente: TINGA, J.

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This is an appeal filed by Samuel Obmiranis y Oreta (appellant) who was charged with violation of Section 5 in relation to Section 26 of Republic Act (R.A.) No. 9165.[1] He was allegedly caught in a buy-bust operation by elements of the Manila Western Police District (MWPD) while offering to sell methylamphetamine hydrochloride, a dangerous drug locally known as shabu. The criminal information filed with the Regional Trial Court (RTC) of Manila, Branch 2[2] accused him as follows:

That on or about May 18, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly attempt to sell or offer for sale one (1) transparent plastic sachet containing TWO POINT EIGHT ZERO ZERO (2.800) grams of white crystalline substance known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.[3]

At the pre-trial, both the prosecution and the defense stipulated on the qualification of Forensic Chemist Elisa Reyes and, thus, both parties dispensed with her testimony. The prosecution further admitted that the forensic chemist who analyzed the seized the confiscated substance—which yielded positive for methylamphetamine hydrochloride content—did not have personal knowledge of the ultimate source of the drug.[4]

Appellant was brought to trial after having entered a negative plea.[5] The prosecution then proceeded to prove the charge against him through the lone testimony of police officer Jerry Velasco (Velasco). Velasco was the alleged leader of the raiding team that apprehended appellant on 18 May 2004 at the corner of G.Tuazon and Jhocson Streets in Sampaloc, Manila.[6]

The narrative woven by Velasco established the following facts: On 17 May 2004, Police Superintendent Marcelino Pedrozo (Pedrozo) of the MWPD organized a buy-bust team on the information of a confidential informant that the latter was able to place an order for half a "bulto" of shabu with appellant. Velasco was designated as the team leader and the poseur-buyer, with Police Officers Wilfredo Cinco, Edgardo Palabay, Roberto Benitez and one[7] confidential informant as members.[8] Pedrozo gave the team a marked 500-peso bill to be used as buy-bust money which was placed on top of a deck of boodle money. The team informed the Philippine Drug Enforcement Agency (PDEA) of the impending operation,[9] entered the same in the blotter[10] and proceeded to Bambang in G.Tuazon Street just before 12 a.m. of 18 May 2004—the appointed time and date that the confidential informant and appellant had agreed to meet. The informant joined Velasco in his car, and they awaited the arrival of appellant at the corner of G.Tuazon and Jhocson Streets.[11] At around 12:30 a.m., appellant on board a car arrived at the scene and seeing the informant he approached the latter. The informant

introduced Velasco to appellant and said that Velasco would like to buy one-half "bulto" of shabu. Velasco negotiated with appellant to lower the price but the latter refused. Velasco then insisted that he must first see the merchandise. Appellant went back to his car, took the item and brought it to Velasco. Velasco readily recognized the item as a plastic sachet containing a white crystalline substance. When appellant asked for payment, he seemed to have recognized Velasco's co-officer because he uttered the words, "May pulis yata." At that point, he was arrested just as he was trying to get back to his car.[12]

According to Velasco, he was the one who effected the arrest but it was Cinco who seized the plastic sachet from appellant. He further stated that immediately after the arrest, he and his team brought the seized item to the police headquarters and there, in his presence, Cinco marked the same with the initials "SOO." At the trial, he identified the plastic sachet as that seized from appellant as well as the marking made by Cinco on it. Furthermore, he admitted on cross-examination that there was no evidence custodian designated and that he could not remember if the seized item had been inventoried and photographed in the presence of the accused; that Cinco put the item in his pocket after the same was recovered and did not mark it on the spot and that the markings made on the buy-bust money had not been entered in the blotter.[13]

The chemistry report issued at the instance of Pedrozo and signed by Forensic Chemical Officer Maritess Mariano of the PNP Crime Laboratory revealed that the specimen supposedly seized from appellant yielded positive of methylamphetamine hydrochloride content.[14]

Taking the stand, appellant boldly asserted that he was merely framed up by the buy-bust team, and strongly denied having transacted the alleged sale of shabu with Velasco and the confidential informant. He claimed that he was taken by Velasco and his team not on 18 May 2004 but rather on 17 May 2004 at 7:00 p.m. along Santa Teresita Street, Sampaloc, Manila;[15] that he was there to see his girlfriend who was residing in that area; that when he was arrested by two men in civilian clothes, he was not committing any crime; that he asked them why they were arresting him but neither of them gave an answer and instead one of them grabbed him by his shoulder and ushered him inside a police car; that once inside the car, one of the men pulled out a gun with which he hit his neck, kicked him and uttered, "Makulit ka ha, yuko!"; that he asked them why they were doing that to him when in fact he merely told them to park their car properly on the street; that they cuffed his hands at the back and the driver, Velasco, asked if he could give them P200,000.00; that he answered he did not have that much money; that they drove the car around and told him that if he could not give them the money then he must just find for them someone who sells drugs in large-scale ("Magturo ka ng nagbebenta ng droga, iyong malakihan ha!"); that because he said he did not know anyone who was into selling drugs, he was taken to the U.N. Avenue police headquarters; that he was not detained at the headquarters but rather, he was brought to the second floor where the two arresting officers demanded P50,000.00 from him; that the demand was then reduced to P30,000.00 in exchange for the mitigation of his case.[16] Olivia Ismael, another defense witness who introduced herself as a friend of appellant's girlfriend and who admitted having witnessed appellant's arrest, corroborated the material points of appellant's testimony.[17]

In its 23 February 2006 Decision, the RTC found appellant guilty beyond reasonable doubt of the offense charged. He was sentenced to suffer the penalty of life imprisonment, and to pay a P500,000.00 fine without subsidiary imprisonment as well as the costs.[18]

Appellant interposed an appeal with the Court of Appeals in which he reiterated that the prosecution was unable to establish his guilt beyond reasonable doubt in view of the failure to establish the chain of custody of the illegal drugs and that it was likewise unable to establish the consummation of the alleged sale of drugs.[19] For its part, the People, through the Office of the Solicitor General (OSG), posited that the fact that all the essential elements of a consummated sale of dangerous drug had not been completely shown was immaterial because the charge

involved a mere attempt or offer to sell which had been duly established by the prosecution.[20] It also maintained that the chain of custody of the seized shabu had been duly established because the requirements in taking custody of seized narcotics provided for in Dangerous Drugs Board Regulation No. 1, series of 2002[21] admit of liberal interpretation.[22]

In its 4 September 2007 Decision,[23] the Court of Appeals affirmed in toto the trial court's decision. Appellant's Notice of Appeal[24] was approved, and the records of the case were elevated to this Court. This Court's 24 March 2008 Resolution[25] allowed the parties to file their supplemental briefs, but only appellant complied; the OSG manifested instead that there was no need for its part to file a supplemental brief as the merits of the case had already been extensively discussed in its brief before the appellate court.[26]

The appeal has to be granted.

In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[27] It is therefore of prime importance that in these cases, the identity of the dangerous drug be likewise established beyond reasonable doubt.[28] In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[29]

Board Regulation No. 1, series of 2002 defines chain of custody as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction." As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[30] It would thus include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the same would admit 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. The same 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.[31] It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

The prosecution evidence in the case at bar, however, does not suffice to afford such assurance. Of all the people who came into direct contact with the sachet of shabu purportedly seized from appellant, only Velasco was able to observe the uniqueness thereof in court. Cinco, who, according to Velasco, took initial custody of the plastic sachet at the time of arrest and who allegedly marked the same with the initials "SOO" at the police station, was not even presented in court to directly observe the uniqueness of the specimen and, more importantly, to acknowledge the marking as his own. The same is true with respect to the laboratory personnel who could have but nevertheless failed to testify on the circumstances under which he received the specimen at the laboratory for analysis and testing, as well as on the conduct of the examination which was administered on the specimen and what he did with it at the time it was in his possession and custody. Aside from that, it was not reasonably explained why these same witnesses were not able to testify in court. While indeed the prosecution and the defense had stipulated on the qualification of the forensic chemist, dispensed with his testimony and admitted that

said forensic chemist had no personal knowledge of the ultimate source of the drug submitted for examination, nevertheless, these stipulations and admission pertain only to a certain Elisa G. Reyes and not to Forensic Chemical Officer Maritess Mariano who, based on the chemistry report, was the one who examined the contents of the plastic sachet at the crime laboratory.

In view of these loopholes in the evidence adduced against appellant, it can be reasonably concluded that the prosecution was unable to establish the identity of the dangerous drug and in effect failed to obliterate the hypothesis of appellant's guiltlessness.

Be that as it may, although testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance. A unique characteristic of narcotic substances such as shabu is that they are not distinctive and are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.[32] And because they cannot be readily and properly distinguished visually from other substances of the same physical and/or chemical nature, they are susceptible to alteration, tampering, contamination,[33] substitution and exchange—[34] whether the alteration, tampering, contamination, substitution and exchange be inadvertent or otherwise not.[35] It is by reason of this distinctive quality that the condition of the exhibit at the time of testing and trial is critical.[36] Hence, in authenticating narcotic specimens, a standard more stringent than that applied to objects which are readily identifiable must be applied—a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or contaminated or tampered with.[37]

The Court certainly cannot reluctantly close its eyes to the possibility of substitution, alteration or contamination—whether intentional or unintentional—of narcotic substances at any of the links in the chain of custody thereof especially because practically such possibility is great where the item of real evidence is small and is similar in form to other substances to which people are familiar in their daily lives.[38] *Graham v. State*[39] in fact acknowledged this danger. In that case, a substance later shown to be heroin was excluded from the prosecution evidence because prior to examination, it was handled by two police officers who, however, did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession. The court in that case pointed out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It thus declared that the state must be able to show by records or testimony the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition.[40]

Reasonable safeguards are provided for in our drugs laws to protect the identity and integrity of narcotic substances and dangerous drugs seized and/or recovered from drug offenders. Section 21[41] of R.A. No. 9165 materially requires the apprehending team having initial custody and control of the drugs to, 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, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The same requirements are also found in Section 2[42] of its implementing rules[43] as well as in Section 2[44] of the Dangerous Drugs Board Regulation No. 1, series of 2002.[45]

These guidelines, however, were not shown to have been complied with by the members of the buy-bust team, and nothing on record suggests that they had extended reasonable efforts to comply with the statutory requirements in handling the evidence. Velasco, the leader of the raiding team, himself admitted that as soon as appellant was arrested, Cinco had taken custody of the plastic sachet of shabu, placed it in his pocket and brought

the same together with appellant to the police station. It was at the police station—and not at the place where the item was seized from appellant—where according to him (Velasco), Cinco had placed the initials "SOO" on the specimen. Velasco never even mentioned that the identifying mark on the specimen was placed in appellant's presence; he could not even remember whether or not the specimen had been properly inventoried and photographed at least in appellant's presence. Even more telling is the fact that, as elicited from Velasco himself during his cross-examination, no evidence custodian had been designated by the raiding team to safeguard the identity and integrity of the evidence supposedly seized from appellant.[46]

All these aforementioned flaws in the conduct of the post-seizure custody of the dangerous drug allegedly recovered from appellant, taken together with the failure of the key persons who handled the same to testify on the whereabouts of the exhibit before it was offered in evidence in court, militates against the prosecution's cause because it not only casts doubt on the identity of the corpus delicti but also tends to discredit, if not totally negate, the claim of regularity in the conduct of official police operation.

What we can fairly assume is that the Court of Appeals had overlooked the significance of these glaring details in the records of the case as it placed blind reliance right away on the credibility of Velasco's testimony and on the presumption of regularity and thereby it failed to properly account for the missing substantial links in the chain of custody of the evidence. In the same vein the liberality, suggested by the OSG relative to post-seizure custody of narcotics under paragraph 1 Section 2 of Board Regulation No. 1, can hardly be given merit precisely because the proviso in that section of the regulation requires that the integrity and the evidentiary value of the evidence be properly preserved by the apprehending officer/team in order that non-compliance with the post-seizure custody requirements be excused on justifiable grounds.[47]

It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing in the records is suggestive of the fact that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[48] There is indeed merit in the contention that where no ill motives to make false charges was successfully attributed to the members of the buy-bust team, the presumption prevails that said police operatives had regularly performed their duty, but the theory is correct only where there is no showing that the conduct of police duty was irregular. *People v. Dulay*[49] and *People v. Ganenas*[50] in fact both suggest that the presumption of regularity is disputed where there is deviation from the regular performance of duty. Suffice it to say at this point that the presumption of regularity in the conduct of police duty is merely just that—a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth.[51]

It must be emphasized at this juncture that what can reasonably be presumed based on the records of this case is that Velasco is aware of his duties and responsibilities as an agent of the government in its anti-narcotics campaign. A member of the anti-narcotics division of the police since 1997,[52] Velasco can be reasonably presumed to be adept in and mindful of the proper procedure in apprehending drug offenders, securing and taking custody of the evidence obtained in police operations such as this one and preserving the integrity of the evidence by protecting the chain of custody thereof.[53] However, for reasons as obvious as intimated above, even this presumption is unworthy of credit.

All told, in view of the deviation by the buy-bust team from the mandated conduct of taking post-seizure custody of the dangerous drug in this case, there is no way to presume that the members thereof had performed their duties regularly. Even granting that we must blindly rely on the credibility of Velasco's testimony, still, the prosecution

evidence would fall short of satisfying the quantum of evidence required to arrive at a finding of guilt beyond reasonable doubt inasmuch as the evidence chain failed to solidly connect appellant with the seized drug in a way that would establish that the specimen is one and the same as that seized in the first place and offered in court as evidence. The Court cannot indulge in the presumption of regularity of official duty if only to obliterate the obvious infirmity of the evidence advanced to support appellant's conviction. In *Mallillin v. People*,^[54] we categorically declared that the failure of the prosecution to offer in court the testimony of key witnesses for the basic purpose of establishing a sufficiently complete chain of custody of a specimen of shabu and the irregularity which characterized the handling of the evidence before the same was finally offered in court, materially conflict with every proposition as to the culpability of the accused. For the same plain but consequential reason, we will not hesitate to reverse the judgment of conviction in the present appeal.

One final word. In no uncertain terms must it be stressed that basic and elementary is the presupposition that the burden of proving the guilt of an accused rests on the prosecution which must draw strength from its own evidence and not from the weakness of the defense. The rule, in a constitutional system like ours, is invariable regardless of the reputation of the accused because the law presumes his innocence until the contrary is shown. In *dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.^[55]

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02158 affirming the judgment of conviction rendered by the Regional Trial Court of Manila, Branch 2, is REVERSED and SET ASIDE. Appellant Samuel Obmiranis y Oreta is ACQUITTED on reasonable doubt and is thus accordingly ordered released immediately from confinement, unless he is lawfully confined for another offense.

The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court his action hereon within five (5) days from receipt hereof.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1] THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[2] Presided by Judge Alejandro G. Bijasa.

[3] Information, records, p. 1.

[4] *Id.* at 17.

[5] *Id.* at 16.

[6] TSN, 8 September 2004, pp. 5-8.

[7] The 17 May 2004 Pre-operation Report/Coordination Sheet submitted to the Philippine Drug Enforcement Agency indicates that the team had two confidential informants. Records, p. 10.

[8] TSN, 8 September 2004, pp. 6-9.

[9] *Id.* at 9-10.

[10] *Id.* at 14.

[11] *Id.* at 14-15.

[12]Id. at 16-21.

[13] Id. at 21-22, 31-39.

[14] Records, p. 7.

[15] TSN, 30 January 2006, pp. 5-6.

[16]Id. at 7-13.

[17] TSN, 13 February 2006, pp. 3-7.

[18] Records, p. 80.

[19] CA rollo, pp. 38, 41.

[20] Id. at 67-70.

[21] Issued by the Dangerous Drugs Board and approved on 22 November 2002.

[22] CA rollo, p. 67.

[23] In CA-G.R. CR.-H.C. No. 02158. The Decision, rendered by the 18[th] Division of the Court of Appeals, was penned by Associate Justice Jose L. Sabio, Jr. and was concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal; id. at 79-96.

[24] Id. at 99-100.

[25] Rollo, pp. 23-24.

[26] Id. at 25-26.

[27] People v. Simbahon, G.R. No. 148668, 9 April 2003, 401 SCRA 94, 100; People v. Laxa, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 634.

[28] Mallillin v. People, G.R. No. 172953, 30 April 2008; People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70; People v. Simbahon, G.R. No. 132371, 9 April 2003, 401 SCRA 94, 100.

[29] AN ANALYTICAL APPROACH TO EVIDENCE, Ronald J. Allen, Richard B. Kuhns, by Little Brown & Co., U.S.A, 1989, p. 174.

[30]Mallillin v. People, G.R. No. 172953, 30 April 2008 citing United States v. Howard-Arias, 679 F.2d 363, 366 and United States v. Ricco, 52 F.3d 58.

[31] EVIDENCE OF LAW, Roger C. Park, David P. Leonard, Steven H. Goldberg, p. 507 (1998).

[32] Mallillin v. People, G.R. No. 172953, 30 April 2008.

[33] 29A AM JUR. 2D EVIDENCE §946.

[34] See Graham v. State, 255 N.E.2d, 652.

[35] Mallillin v. People, G.R. No. 172953, 30 April 2008.

[36] EVIDENCE LAW, Roger C. Park, David P. Leonard, Steven H. Goldberg, p. 507 (1998).

[37] Mallillin v. People, G.R. No. 172953, 30 April 2008.

[38] See *Graham v. State*, 255 N.E.2d, 652 and *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

[39] 255 N.E.2d, 652.

[40] *Graham v. State*, 255 N.E.2d 652, 655.

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

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender; Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel

within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

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

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[42] SEC. 21. x x x (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served, or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; provided further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[43] Approved on 30 August 2002 and became effective upon its publication in three (3) newspapers of general circulation and registration with the Office of the National Administrative Register.

[44] Section 2. Seizure or confiscation of drugs or controlled chemicals or laboratory equipment.

a. The apprehending team having initial custody and control of dangerous drugs or control chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physical inventory and photograph the same in the presence of:

- (i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;
- (ii) a representative from the media;
- (iii) a representative from the department of Justice; and
- (iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drug/equipment and who shall be given a copy thereof. Provided that the physical inventory and photograph shall be conducted at the place where the search was is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of a seizure without warrant; provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizure of and custody over said items.

b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team xxx.

[45] Adopted and approved on 22 November 2002 and became effective fifteen (15) days after its publication in

two (2) newspapers of general circulation and registration with the Office of the National Administrative Register.

[46] TSN, 8 September 2004, pp. 30-32.

[47] See note 44.

[48] JONES ON EVIDENCE, p. 94, citing *Arkansas R. Co. v. Chicago R.L. & P.R. Co.*, 274 U.S. 597, 71 L Ed 1221, 1224.

[49] G.R. No. 150624, 24 February 2004, 423 SCRA 652, 660.

[50] G.R. No. 141400, 6 September 2001, 364 SCRA 582, 595.

[51] *Mallillin v. People*, G.R. No. 172953, 30 April 2008; *People v. Ambrosio*, G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318 citing *People v. Tan*, 382 SCRA 419 (2002).

[52] TSN, 8 September 2004, p. 39.

[53] See *People v. Pedronan*, G.R. No. 148668, 17 June 2003, 404 SCRA 183.

[54] G.R. No. 172953, 30 April 2008.

[55] *Mallillin v. People*, G.R. No. 172953, 30 April 2008.

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