

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNOLD MARTINEZ Y ANGELES, EDGAR DIZON Y FERRER, REZIN MARTINEZ Y CAROLINO, AND RAFAEL GONZALES Y CUNANAN, ACCUSED-APPELLANTS.

G.R. No. 191366. December 13, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the August 7, 2009 Decision[1] of the Court of Appeals (CA), in CA-G.R. HC-NO. 03269, which affirmed the February 13, 2008 Decision[2] of the Regional Trial Court, Branch 41, Dagupan City (RTC), in Criminal Case No. 2006-0525-D, finding the accused guilty of violating Section 13, in relation to Section 11, Article II of Republic Act No. 9165 for Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.

The Facts

The Information indicting the accused reads:

That on or about the 2[nd] day of September 2006, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ARNOLD MARTINEZ y ANGELES, EDGAR DIZON y FERRER, REZIN MARTINEZ y CAROLINO, ROLAND DORIA y DIAZ and RAFAEL GONZALES y CUNANAN, without authority of law, confederating together, acting jointly and helping one another, did then and there wilfully, unlawfully and criminally, sniff and possess dangerous drugs (shabu residues) contained in empty plastic sachets and rolled aluminum foil, during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) person[s].

Contrary to Section 13, Article II, R.A. 9165.[3]

Version of the Prosecution

As culled from the testimonies of prosecution witnesses, Police Officer 1 Bernard Azardon (PO1 Azardon), one of the apprehending officers, and Police Inspector Lady Ellen Maranion (P/Insp. Maranion), the forensic chemical officer, it appears that on September 2, 2006, at around 12:45 o'clock in the afternoon, PO1 Azardon was on duty at the Police Community Precinct II along Arellano Street, Dagupan City, when a concerned citizen entered the precinct and reported that a pot session was going on in the house of accused Rafael Gonzales (Gonzales) in Trinidad Subdivision, Dagupan City. Upon receipt of the report, PO1 Azardon, PO1 Alejandro Dela Cruz (PO1 Dela Cruz), and members of the Special Weapons and Tactics (SWAT) team hied to Trinidad Subdivision, Dagupan City. Upon inquiry from people in the area, the house of Gonzales was located.

As the police officers entered the gate of the house, they saw accused Orlando Doria (Doria) coming out of the side door and immediately arrested him. Inside the house, they saw accused Gonzales, Arnold Martinez (A. Martinez), Edgar Dizon (Dizon), and Rezin Martinez (R. Martinez) in a room. The four were surprised by the

presence of the police. In front of them were open plastic sachets (containing shabu residue), pieces of rolled used aluminum foil and pieces of used aluminum foil.

The accused were arrested and brought to the police precinct. The items found in the room were seized and turned over to the Pangasinan Provincial Police Crime Laboratory Officer, P/Insp. Maranion. The latter conducted a laboratory examination on the seized items and all 115 plastic sachets, 11 pieces of rolled used aluminum foil, and 27 of the 49 pieces of used aluminum foil tested positive for methamphetamine hydrochloride. The accused were subjected to a drug test and, except for Doria, they were found to be positive for methamphetamine hydrochloride.

Version of the Defense

The defense, through its witnesses, accused A. Martinez, Dizon, and R. Martinez, claimed that in the morning of September 2, 2006, the three of them were along Arellano Street in Trinidad Subdivision, Dagupan City, to meet with a certain Apper who bumped the passenger jeep of R. Martinez and who was to give the materials for the painting of said jeep. As they were going around the subdivision looking for Apper, they saw Gonzales in front of his house and asked him if he noticed a person pass by. While they were talking, Doria arrived. It was then that five to seven policemen emerged and apprehended them. They were handcuffed and brought to the police station in Perez, Dagupan City, where they were incarcerated and charged with sniffing shabu.

The Ruling of the RTC

The case against Doria was dismissed on a demurrer to evidence.

On February 13, 2008, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ARNOLD MARTINEZ y Angeles, EDGAR DIZON y Ferrer, REZIN MARTINEZ y Carolino, and RAFAEL GONZALES y Cunanan GUILTY beyond reasonable doubt of the crime of Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings defined and penalized under Section 13 in relation to Section 11, Article II of Republic Act 9165, and each of them is sentenced to suffer the penalty of life imprisonment and to pay the fine in the amount of P500,000.00, and to pay the cost of suit.

The subject items are hereby forfeited in favor of the government and to be disposed of in accordance with the law.

SO ORDERED.[4]

The RTC was of the view that the positive testimony of prosecution witness PO1 Azardon, without any showing of ill-motive on his part, prevailed over the defenses of denial and alibi put up by the accused. The accused were held to have been in constructive possession of the subject items. A conspiracy was also found present as there was a common purpose to possess the dangerous drug.

The Ruling of the CA

The CA ruled that there was sufficient evidence to support the findings of the RTC as to the constructive possession of the dangerous drugs by the accused. It further held that although the procedure regarding the custody and disposition of evidence prescribed by Section 21 of R.A. No. 9165 was not strictly complied with, the integrity and evidentiary value of the evidence were nonetheless safeguarded. The CA was of the view that the presumption of regularity in the performance of official duty was not sufficiently controverted by the accused.

Not in conformity, the accused now interposes this appeal before this Court praying for the reversal of the subject decision, presenting the following

Assignment of Errors

For accused Arnold Martinez, Edgar Dizon and Rezin Martinez

- The lower court erred in finding the accused-appellants to be having a pot session at the time of their arrest;
- The lower court erred in not seeing through the antics of the police to plant the shabu paraphernalia to justify the arrest of the accused-appellants without warrant;
- The lower court erred in not finding that the corpus delicti has not been sufficiently established;
- The lower court erred in not finding the uncorroborated testimony of PO1 Azardon insufficient to convict the accused-appellants of the crime charged;
- The lower court erred in not acquitting the accused-appellants.

For accused Rafael Gonzales

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED DRUG.

After an assiduous assessment of the evidentiary records, the Court finds that the prosecution failed to prove the guilt of the accused. The principal reasons are 1] that the evidence against the accused are inadmissible; and 2] that granting the same to be admissible, the chain of custody has not been duly established.

Illegal Arrest, Search and Seizure

Indeed, the accused is estopped from assailing the legality of his arrest if he fails to raise such issue before arraignment.[5] However, this waiver is limited only to the arrest. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. A waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.[6]

Although the admissibility of the evidence was not raised as in issue by the accused, it has been held that this Court has the power to correct any error, even if unassigned, if such is necessary in arriving at a just decision,[7] especially when the transcendental matter of life and liberty is at stake.[8] While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, they nevertheless must not be met at the expense of substantial justice. Time and again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. Technicalities should never be used to defeat substantive rights.[9] Thus, despite the procedural lapses of the accused, this Court shall rule on the admissibility of the evidence in the case at bench. The clear infringement of the accused's right to be protected against unreasonable searches and seizures cannot be ignored.

The State cannot, in a manner contrary to its constitutional guarantee, intrude into the persons of its citizens as well as into their houses, papers and effects.[10] Sec. 2, Art. III, of the 1987 Constitution provides:

Section 2. - The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

This constitutional guarantee, however, is not a blanket prohibition against all searches and seizures without warrant. Arrests and seizures in the following instances are allowed even in the absence of a warrant -- (i) warrantless search incidental to a lawful arrest;^[11] (ii) search of evidence in "plain view;" (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) stop and frisk; and (vii) exigent and emergency circumstances.^[12]

This case would appear to fall under either a warrantless search incidental to a lawful arrest or a plain view search, both of which require a lawful arrest in order to be considered valid exceptions to the constitutional guarantee. Rule 113 of the Revised Rules of Criminal Procedure provides for the circumstances under which a warrantless arrest is lawful. Thus:

Sec. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

A review of the facts reveal that the arrest of the accused was illegal and the subject items were confiscated as an incident thereof. According to the testimony of PO1 Azardon and his Joint Affidavit^[13] with PO1 Dela Cruz, they proceeded to, and entered, the house of accused Gonzales based solely on the report of a concerned citizen that a pot session was going on in said house, to wit:

Q:

I go back to the information referred to you by the informant, did he not tell you how many persons were actually conducting the pot session?

A:

Yes, sir.

Q:

When you went to the place of Rafael Gonzales, of course you were not armed with a search warrant, correct?

A:

None, sir.

Q:

Before the information was given to you by your alleged informant, you did not know personally Rafael Gonzales?

A:

I have not met [him] yet but I heard his name, sir.

Q:

When this informant told you that he was told that there was [an] ongoing pot session in the house of Rafael Gonzales, was this report to you placed in the police blotter before you proceeded to the house of Rafael Gonzales?

A:

I think it was no longer recorded, sir.

Q:

In other words, you did not even bother to get the personal data or identity of the person who told you that he was allegedly informed that there was an ongoing pot session in the house of Rafael Gonzales?

A:

What I know is that he is a jeepney driver of a downtown jeepney but he does not want to be identified because he was afraid, sir.

Q:

And likewise, he did not inform you who told him that there was an ongoing pot session in the house of Rafael Gonzales?

A:

No more, sir.

Q:

But upon receiving such report from that jeepney driver you immediately formed a group and went to the place of Rafael Gonzales?

A:

Yes, sir.

x x x

Q:

When you were at the open gate of the premises of Rafael Gonzales, you could not see what is happening inside the house of Rafael Gonzales?

A:

Yes, sir.

Q:

You did not also see the alleged paraphernalia as well as the plastic sachet of shabu on the table while you were outside the premises of the property of Rafael Gonzales?

x x x

Q:

Before they entered the premises they could not see the paraphernalia?

COURT:

Answer.

A:

Of course because they were inside the room, how could we see them, sir.

Q:

But still you entered the premises, only because a certain person who told you that he was informed by another person that there was an ongoing pot session going on inside the house of Rafael Gonzales?

A:

Yes, sir.

Q:

And that is the only reason why you barged in inside the house of Rafael Gonzales and you arrested the persons you saw?

A:

Yes, sir.[14]

Paragraph (c) of Rule 113 is clearly inapplicable to this case. Paragraphs (a) and (b), on the other hand, may be applicable and both require probable cause to be present in order for a warrantless arrest to be valid. Probable cause has been held to signify a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[15]

Although this Court has ruled in several dangerous drugs cases[16] that tipped information is sufficient probable cause to effect a warrantless search,[17] such rulings cannot be applied in the case at bench because said cases involve either a buy-bust operation or drugs in transit, basically, circumstances other than the sole tip of an informer as basis for the arrest. None of these drug cases involve police officers entering a house without warrant to effect arrest and seizure based solely on an informer's tip. The case of *People v. Bolasa*[18] is informative on this matter.

In *People v. Bolasa*, an anonymous caller tipped off the police that a man and a woman were repacking prohibited drugs at a certain house. The police immediately proceeded to the house of the suspects. They walked towards the house accompanied by their informer. When they reached the house, they peeped inside through a small window and saw a man and woman repacking marijuana. They then entered the house, introduced themselves as police officers, confiscated the drug paraphernalia, and arrested the suspects. This Court ruled:

The manner by which accused-appellants were apprehended does not fall under any of the above-enumerated categories. Perforce, their arrest is illegal. First, the arresting officers had no personal knowledge that at the time of their arrest, accused-appellants had just committed, were committing, or were about to commit a crime. Second, the arresting officers had no personal knowledge that a crime was committed nor did they have any reasonable ground to believe that accused-appellants committed it. Third, accused-appellants were not prisoners who have escaped from a penal establishment.

Neither can it be said that the objects were seized in plain view. First, there was no valid intrusion. As already discussed, accused-appellants were illegally arrested. Second, the evidence, i.e., the tea bags later on found to contain marijuana, was not inadvertently discovered. The police officers intentionally peeped first through the window before they saw and ascertained the activities of accused-appellants inside the room. In like manner, the search cannot be categorized as a search of a moving vehicle, a consented warrantless search, a customs search, or a stop and frisk; it cannot even fall under exigent and emergency circumstances, for the evidence at hand is bereft of any such showing.

On the contrary, it indicates that the apprehending officers should have conducted first a surveillance considering that the identities and address of the suspected culprits were already ascertained. After conducting the surveillance and determining the existence of probable cause for arresting accused-appellants, they should have secured a search warrant prior to effecting a valid arrest and seizure. The arrest being illegal *ab initio*, the accompanying search was likewise illegal. Every evidence thus obtained during the illegal search cannot be used against accused-appellants; hence, their acquittal must follow in faithful obeisance to the fundamental law.[19]

It has been held that personal knowledge of facts in arrests without warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when the suspicion, that the person to be arrested is probably guilty of committing an offense, is based on actual facts, that is, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. [20]

As to paragraph (a) of Section 5 of Rule 113, the arresting officers had no personal knowledge that at the time of the arrest, accused had just committed, were committing, or were about to commit a crime, as they had no probable cause to enter the house of accused Rafael Gonzales in order to arrest them. As to paragraph (b), the arresting officers had no personal knowledge of facts and circumstances that would lead them to believe that the accused had just committed an offense. As admitted in the testimony of PO1 Azardon, the tip originated from a concerned citizen who himself had no personal knowledge of the information that was reported to the police:

Q:

Mr. Witness, you claimed that the reason for apprehending all the accused was based on a tip-off by an informant?

A:

Yes, sir.

Q:

What exactly [did] that informant tell you?

A:

He told us that somebody told him that there was an ongoing pot session in the house of one of the accused Rafael Gonzales, sir.

Q:

You mean to say that it was not the informant himself to whom the information originated but from somebody else?

A:

That was what he told me, sir.

Q:

Because of that you proceeded to where the alleged pot session was going on? [No Answer]

Q:

Did you[r] informant particularly pinpointed [sic] to where the alleged pot session was going on?

A:

No more because he did not go with us, sir.

Q:

So you merely relied on what he said that something or a pot session was going on somewhere in Arellano but you don't know the exact place where the pot session was going on?

A:

Yes, sir.

Q:

And your informant has no personal knowledge as to the veracity of the alleged pot session because he claimed that he derived that information from somebody else?

A:

This is what he told us that somebody told him that there was an ongoing pot session, sir.

Q:

Despite of [sic] that information you proceeded to where?

A:

Trinidad Subdivision, sir.

x x x

Q:

Mr. Witness, did your informant named [sic] those included in the alleged pot session?

A:

No, sir.

Q:

That was, because your informant don't [sic] know physically what was really happening there?

A:

He was told by another person that there was an ongoing pot session there, sir.[21] [Emphasis supplied]

Neither can it be said that the subject items were seized in plain view. The elements of plainview are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; and, (d) "plain view" justified mere seizure of evidence without further search.[22]

The evidence was not inadvertently discovered as the police officers intentionally entered the house with no prior surveillance or investigation before they discovered the accused with the subject items. If the prior peeking of the police officers in Bolasa was held to be insufficient to constitute plain view, then more so should the warrantless search in this case be struck down. Neither can the search be considered as a search of a moving vehicle, a consented warrantless search, a customs search, a stop and frisk, or one under exigent and emergency circumstances.

The apprehending officers should have first conducted a surveillance considering that the identity and address of one of the accused were already ascertained. After conducting the surveillance and determining the existence of probable cause, then a search warrant should have been secured prior to effecting arrest and seizure. The arrest being illegal, the ensuing search as a result thereof is likewise illegal. Evidence procured on the occasion of an unreasonable search and seizure is deemed tainted for being the proverbial fruit of a poisonous tree and should be excluded.[23] The subject items seized during the illegal arrest are thus inadmissible. The drug, being the very corpus delicti of the crime of illegal possession of dangerous drugs, its inadmissibility thus precludes conviction, and calls for the acquittal of the accused.

As has been noted previously by this Court, some lawmen, prosecutors and judges have glossed over illegal searches and seizures in cases where law enforcers are able to present the alleged evidence of the crime, regardless of the methods by which they were obtained. This attitude tramples on constitutionally-guaranteed rights in the name of law enforcement. It is ironic that such enforcement of the law fosters the breakdown of our system of justice and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law.[24]

Chain of Custody

Even granting that the seized items are admissible as evidence, the acquittal of the accused would still be in order for failure of the apprehending officers to comply with the chain of custody requirement in dangerous drugs cases.

The accused contend that the identity of the seized drug was not established with moral certainty as the chain of custody appears to be questionable, the authorities having failed to comply with Sections 21 and 86 of R.A. No. 9165, and Dangerous Drug Board (DDB) Resolution No. 03, Series of 1979, as amended by Board Regulation No. 2, Series of 1990. They argue that there was no prior coordination with the Philippine Drug Enforcement Agency (PDEA), no inventory of the confiscated items conducted at the crime scene, no photograph of the items taken, no compliance with the rule requiring the accused to sign the inventory and to give them copies thereof, and no showing of how the items were handled from the time of confiscation up to the time of submission to the crime laboratory for testing. Therefore, the corpus delicti was not proven, thereby producing reasonable doubt as to their guilt. Thus, they assert that the presumption of innocence in their favor was not overcome by the presumption of regularity in the performance of official duty.

The essential requisites to establish illegal possession of dangerous drugs are: (i) the accused was in possession of the dangerous drug, (ii) such possession is not authorized by law, and (iii) the accused freely and consciously possessed the dangerous drug.[25] Additionally, this being a case for violation of Section 13 of R.A. No. 9165, an additional element of the crime is (iv) the possession of the dangerous drug must have occurred during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons.

The existence of the drug is the very corpus delicti of the crime of illegal possession of dangerous drugs and, thus, a condition sine qua non for conviction. In order to establish the existence of the drug, its chain of custody must be sufficiently established. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[26] *Malillin v. People* was the first in a growing number of cases to explain the importance of chain of custody in dangerous drugs cases, to wit:

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 into 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.[27]

Section 1(b) of DDB Regulation No. 1, Series of 2002,[28] defines chain of custody as follows:

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 were made in the course of safekeeping and used in court as evidence, and the final disposition;

Paragraph 1, Section 21, Article II of R.A. No. 9165, provides for safeguards for the protection of the identity and integrity of dangerous drugs seized, to wit:

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.

People v. Habana thoroughly discusses the proper procedure for the custody of seized or confiscated items in dangerous drugs cases in order to ensure their identity and integrity, as follows:

Usually, the police officer who seizes the suspected substance turns it over to a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the

substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.[29]

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further elaborates, and provides for, the possibility of non-compliance with the prescribed procedure:

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

Accordingly, non-compliance with the prescribed procedural requirements will not necessarily render the seizure and custody of the items void and invalid, provided that (i) there is a justifiable ground for such non-compliance, and (ii) the integrity and evidentiary value of the seized items are properly preserved. In this case, however, no justifiable ground is found availing, and it is apparent that there was a failure to properly preserve the integrity and evidentiary value of the seized items to ensure the identity of the corpus delicti from the time of seizure to the time of presentation in court. A review of the testimonies of the prosecution witnesses and the documentary records of the case reveals irreparably broken links in the chain of custody.

According to the apprehending police officers in their Joint Affidavit, the following were confiscated from the accused, to wit:

- a) Several pcs of used empty plastic sachets containing suspected shabu residues.
- b) Eight used (8) disposable lighters (two (2) pcs colored orange, two (2) pcs colored yellow, one (1) pc colored green & one (1) pc colored white).
- c) Several pcs of used rolled aluminum foil containing suspected shabu residues.
- d) Several pcs of used cut aluminum foil containing suspected shabu residues.
- e) One (1) pc glass tube containing suspected shabu residues.[30]

[Emphases supplied]

At the police station, the case, the accused, and the above-mentioned items were indorsed to Duty Investigator Senior Police Officer 1 Pedro Urbano, Jr. (SPO1 Urbano) for proper disposition.[31] A letter-request for laboratory examination was prepared by Police Superintendent Edgar Orduna Basbag for the following items:

- a) Pieces of used empty small plastic sachets with suspected shabu residues marked "DC&A-1."
- b) Pieces of used rolled and cut aluminum foil with suspected shabu residues marked "DC&A-2."
- c) Pieces of used cut aluminum foil with suspected shabu residues marked "DC&A-3." [32]

[Emphases supplied]

The letter-request and above-mentioned items were submitted to P/Insp. Maranion by SPO3 Froilan Esteban (SPO3 Esteban). Final Chemistry Report No. D-042-06L listed the specimens which were submitted for testing, to wit:

SPECIMENS SUBMITTED:

A - A1 to A115 - One Hundred fifteen (115) open transparent plastic sachet with tag each containing suspected shabu residue without markings.

B - B1 to B11 - Eleven (11) rolled used aluminum foil with tag each containing suspected shabu residue without markings.

C - C1 to C49 - Forty-nine (49) used aluminum foil with tag each containing suspected shabu residue without markings.[33]

[Emphases supplied]

Three days after the subject items were seized, or on September 5, 2006, a Confiscation Receipt was issued by PO1 Azardon and PO1 Dela Cruz, which reads:

DCPS AID SOTG 05 September 2006

CONFISCATION RECEIPT

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that on or about 12:45 noon of September 4, 2006, we together with our precinct supervisor, SPO4 Pedro Belen Jr., and SWAT members composed of SPO1 Marlon Decano, PO3 Manuel Garcia, PO2 Adriano Cepiroto and PO1 Aldrin Guarin apprehended the following names of persons of ARNOLD MARTINEZ Y ANGELES, 37 yrs old, married, jobless, a resident of Lucao Dist., this city; EDGAR DIZON Y FERRER, 36 yrs old, single, tricycle driver, a resident of 471 Lucao Dist., this city. REZIN MARTINEZ Y CAROLINO, 44 yrs old, married, jitney driver, a resident of Lucao District this city; ROLAND DORIA Y DIAZ, 39 yrs old, married, businessman, resident of Cabeldatan, Malasiqui, Pangasinan and RAFAEL GONZALES Y CUNANAN, 49 yrs old, separated, jobless and a resident of Trinidad Subd., Arellano-Bani this city.

Suspects were duly informed of their constitutional rights and were brought to Dagupan City Police Station, Perez Market Site Dagupan City and indorsed to Duty Desk Officer to record the incident and the sachet of suspected Shabu Paraphernalias were brought to PNP Crime Laboratory, Lingayen, Pangasinan for Laboratory Examination.

Seizing Officer:

(sgd.) (sgd.)

PO1 Bernard B Azardon PO1 Alejandro Dela Cruz

Affiant Affiant

Remarks:

Refused to SignedRefused to SignedRefused to SignedRefused to SignedRefused to Signed[34]

[Emphases supplied]

The 115 open transparent plastic sachets, 11 pieces of rolled used aluminum foil, and 27 (of the 49) pieces of used aluminum foil, all containing shabu residue, as identified in the Final Chemistry Report, were presented in court and marked as Exhibits "H" and series, "I" and series, and "J" and series, respectively. Said items were identified by PO1 Azardon and P/Insp. Maranion at the witness stand.[35]

The CA ruled that the integrity and evidentiary value of the subject items were properly preserved as there was sufficient evidence to prove that the items seized from the accused were the same ones forwarded to the crime laboratory for examination, as shown in the Confiscation Receipt and the letter-request for laboratory examination.

A review of the chain of custody indicates, however, that the CA is mistaken.

First, the apprehending team failed to comply with Section 21 of R.A. No. 9165. After seizure and confiscation of the subject items, no physical inventory was conducted in the presence of the accused, or their representative or counsel, a representative from the media and the DOJ, and any elected public official. Thus, no inventory was prepared, signed, and provided to the accused in the manner required by law. PO1 Azardon, in his testimony,[36] admitted that no photographs were taken. The only discernable reason proffered by him for the failure to comply with the prescribed procedure was that the situation happened so suddenly. Thus:

Q:

But upon receiving such report from that jeepney driver you immediately formed a group and went to the place of Rafael Gonzales?

A:

Yes, sir.

Q:

Such that you did not even inform the PDEA before you barged in that place of Rafael Gonzales?

A:

It was so suddenly, [sic] sir.

Q:

And that explains the reason why you were not able to have pictures taken, is that correct?

A:

Yes, sir.[37]

[Emphasis supplied]

The Court does not find such to be a justifiable ground to excuse non-compliance. The suddenness of the situation

cannot justify non-compliance with the requirements. The police officers were not prevented from preparing an inventory and taking photographs. In fact, Section 21(a) of the IRR of R.A. No. 9165 provides specifically that in case of warrantless seizures, the inventory and photographs shall be done at the nearest police station or at the nearest office of the apprehending officer/team. Whatever effect the suddenness of the situation may have had should have dissipated by the time they reached the police station, as the suspects had already been arrested and the items seized. Moreover, it has been held that in case of warrantless seizures nothing prevents the apprehending officer from immediately conducting the physical inventory and photography of the items at their place of seizure, as it is more in keeping with the law's intent to preserve their integrity and evidentiary value.[38]

This Court has repeatedly reversed conviction in drug cases for failure to comply with Section 21 of R.A. No. 9165, resulting in the failure to properly preserve the integrity and evidentiary value of the seized items. Some cases are *People v. Garcia*,[39] *People v. Dela Cruz*,[40] *People v. Dela Cruz*,[41] *People v. Santos, Jr.*,[42] *People v. Nazareno*,[43] *People v. Orteza*,[44] *Zarraga v. People*,[45] and *People v. Kimura*.[46]

Second, the subject items were not properly marked. The case of *People v. Sanchez* is instructive on the requirement of marking, to wit:

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items - to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence - should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.

For greater specificity, "marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized. x x x Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody.[47] [Emphasis in the original]

Nowhere in the testimony of PO1 Azardon or in his Joint Affidavit with PO1 Dela Cruz does it appear that the subject items were at all marked. It was only in the letter-request for laboratory examination that the subject items were indicated to have been marked with "DC&A-1," "DC&A-2" and "DC&A-3." There is no showing, however, as to who made those markings and when they were made. Moreover, those purported markings were never mentioned when the subject items were identified by the prosecution witnesses when they took the stand.

The markings appear to pertain to a group of items, that is, empty plastic sachets, rolled and cut aluminium foil, and cut aluminium foil, but do not specifically pertain to any individual item in each group. Furthermore, it was only in the Chemistry Report[48] that the precise number of each type of item was indicated and enumerated. The Court notes that in all documents prior to said report, the subject items were never accurately quantified but only described as "pieces,"[49] "several pcs,"[50] and "shabu paraphernalias." [51] Strangely, the Chemistry Report indicates that all the subject items had "no markings," although each item was reported to have been marked by P/Insp. Maranion in the course of processing the subject items during laboratory examination and testing.[52] Doubt, therefore, arises as to the identity of the subject items. It cannot be determined with moral certainty that the subject items seized from the accused were the same ones subjected to the laboratory examination and presented in court.

This Court has acquitted the accused for the failure and irregularity in the marking of seized items in dangerous drugs cases, such as *Zarraga v. People*,^[53] *People v. Kimura*,^[54] and *People v. Laxa*.^[55]

Third, the Confiscation Receipt relied upon by the prosecution and the courts below gives rise to more uncertainty. Instead of being prepared on the day of the seizure of the items, it was prepared only three days after. More important, the receipt did not even indicate exactly what items were confiscated and their quantity. These are basic information that a confiscation receipt should provide. The only information contained in the Confiscation Receipt was the fact of arrest of the accused and the general description of the subject items as "the sachet of suspected Shabu paraphernalias were brought to the PNP Crime Laboratory." The receipt is made even more dubious by PO1 Azardon's admission in his testimony^[56] that he did not personally prepare the Confiscation Receipt and he did not know exactly who did so.

Fourth, according to the Certification^[57] issued by the Dagupan Police Station, the subject items were indorsed by PO1 Dela Cruz to Duty Investigator SPO1 Urbano for proper disposition. These were later turned over by SPO3 Esteban to P/Insp. Maranion. There is, however, no showing of how and when the subject items were transferred from SPO1 Urbano to SPO3 Esteban.

Fifth, P/Insp. Maranion appears to be the last person in the chain of custody. No witness testified on how the subject items were kept after they were tested prior to their presentation in court. This Court has highlighted similar shortcomings in *People v. Cervantes*,^[58] *People v. Garcia*,^[59] *People v. Sanchez*,^[60] and *Malillin v. People*.^[61]

More irregularities further darken the cloud as to the guilt of the accused. Contrary to PO1 Azardon's testimony^[62] that they were tipped off by a concerned citizen while at the police station, the Letter^[63] to the Executive Director of the DDB states that the apprehending officers were tipped off "while conducting monitoring/surveillance." Said letter also indicates, as does the Confiscation Receipt, that the arrest and seizure occurred on September 4, 2006, and not September 2, 2006, as alleged in the Information. It was also mentioned in the aforementioned Certification of the Dagupan Police and Joint Affidavit of the police officers that a glass tube suspected to contain shabu residue was also confiscated from the accused. Interestingly, no glass tube was submitted for laboratory examination.

In sum, numerous lapses and irregularities in the chain of custody belie the prosecution's position that the integrity and evidentiary value of the subject items were properly preserved. The two documents specifically relied on by the CA, the Confiscation Receipt and the letter-request for laboratory examination, have been shown to be grossly insufficient in proving the identity of the corpus delicti. The corpus delicti in dangerous drugs cases constitutes the drug itself. This means that proof beyond reasonable doubt of the identity of the prohibited drug is essential before the accused can be found guilty.^[64]

Regarding the lack of prior coordination with the PDEA provided in Section 86 of R.A. No. 9165, in *People v. Sta. Maria*,^[65] this Court held that said section was silent as to the consequences of such failure, and said silence could not 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. Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigation and prosecution 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.

Let it be stressed that non-compliance with Section 21 of R.A. No. 9165 does not affect the admissibility of the evidence but only its weight.^[66] Thus, had the subject items in this case been admissible, their evidentiary merit and probative value would be insufficient to warrant conviction.

It may be true that where no ill motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. However, such presumption obtains only when there is no deviation from the regular performance of duty.[67] Where the official act in question is irregular on its face, the presumption of regularity cannot stand.

In this case, the official acts of the law enforcers were clearly shown and proven to be irregular. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.[68]

This Court once again takes note of the growing number of acquittals for dangerous drugs cases due to the failure of law enforcers to observe the proper arrest, search and seizure procedure under the law.[69] Some bona fide arrests and seizures in dangerous drugs cases result in the acquittal of the accused because drug enforcement operatives compromise the integrity and evidentiary worth of the seized items. It behooves this Court to remind law enforcement agencies to exert greater effort to apply the rules and procedures governing the custody, control, and handling of seized drugs.

It is recognized that strict compliance with the legal prescriptions of R.A. No. 9165 may not always be possible. Thus, as earlier stated, non-compliance therewith is not necessarily fatal. However, the lapses in procedure must be recognized, addressed and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.[70]

On a final note, this Court takes the opportunity to be instructive on Sec. 11[71] (Possession of Dangerous Drugs) and Sec. 15[72] (Use of Dangerous Drugs) of R.A. No. 9165, with regard to the charges that are filed by law enforcers. This Court notes the practice of law enforcers of filing charges under Sec. 11 in cases where the presence of dangerous drugs as basis for possession is only and solely in the form of residue, being subsumed under the last paragraph of Sec. 11. Although not incorrect, it would be more in keeping with the intent of the law to file charges under Sec. 15 instead in order to rehabilitate first time offenders of drug use, provided that there is a positive confirmatory test result as required under Sec. 15. The minimum penalty under the last paragraph of Sec. 11 for the possession of residue is imprisonment of twelve years and one day, while the penalty under Sec. 15 for first time offenders of drug use is a minimum of six months rehabilitation in a government center. To file charges under Sec. 11 on the basis of residue alone would frustrate the objective of the law to rehabilitate drug users and provide them with an opportunity to recover for a second chance at life.

In the case at bench, the presence of dangerous drugs was only in the form of residue on the drug paraphernalia, and the accused were found positive for use of dangerous drugs. Granting that the arrest was legal, the evidence obtained admissible, and the chain of custody intact, the law enforcers should have filed charges under Sec. 15, R.A. No. 9165 or for use of dangerous drugs and, if there was no residue at all, they should have been charged under Sec. 14[73] (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings). Sec. 14 provides that the maximum penalty under Sec. 12[74] (Possession of Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) shall be imposed on any person who shall possess any equipment, instrument, apparatus and other paraphernalia for dangerous drugs. Under Sec. 12, the maximum penalty is imprisonment of four years and a fine of P50,000.00. In fact, under the same section, the possession of such equipment, apparatus or other paraphernalia is prima facie evidence that the possessor has used a dangerous drug and shall be presumed to have violated Sec. 15.

In order to effectively fulfill the intent of the law to rehabilitate drug users, this Court thus calls on law enforcers and prosecutors in dangerous drugs cases to exercise proper discretion in filing charges when the presence of

dangerous drugs is only and solely in the form of residue and the confirmatory test required under Sec. 15 is positive for use of dangerous drugs. In such cases, to afford the accused a chance to be rehabilitated, the filing of charges for or involving possession of dangerous drugs should only be done when another separate quantity of dangerous drugs, other than mere residue, is found in the possession of the accused as provided for in Sec. 15.

WHEREFORE, the August 7, 2009 Decision of the Court of Appeals in CA-G.R. HC-NO. 03269 is REVERSED and SET ASIDE and another judgment entered ACQUITTING the accused and ordering their immediate release from detention, unless they are confined for any other lawful cause.

Let a copy of this decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five days from receipt of this decision the action he has taken. Copies shall also be furnished the Director-General, Philippine National Police, and the Director-General, Philippine Drugs Enforcement Agency, for their information and guidance.

The Regional Trial Court, Branch 41, Dagupan City, is directed to turn over the seized items to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 2-14. Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justice Magdangal M. De Leon and Associate Justice Japar B. Dimaampao, concurring.

[2] Records, pp. 140-145. Penned by Judge Emma M. Torio.

[3] Id. at 1.

[4] Id. at 145.

[5] *People v. Palma*, G.R. No. 189279, March 9, 2010.

[6] *People v. Racho*, G.R. No. 186529, August 3, 2010.

[7] *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, 431 Phil 11, 22 (2002).

[8] *People v. Bodoso*, 446 Phil. 838, 849-850 (2003).

[9] *San Luis v. Rojas*, G.R. No. 159127, March 3, 2008, 547 SCRA 345, 357-358.

[10] *People v. Siton*, G.R. No. 169364, September 18, 2009, 600 SCRA 476, 493.

[11] Rules of Court, Rule 126, Sec. 13.

[12] *People v. Bolasa*, 378 Phil. 1073, 1078-1079 (1999).

[13] Exhibit "E," folder of exhibits, p. 11.

[14] TSN, February 23, 2007, pp. 10-16.

[15] *People v. Ayangao*, 471 Phil. 379, 388 (2004).

[16] Id., *People v. Valdez*, 363 Phil. 481 (1999); *People v. Montilla*, 349 Phil. 640 (1998).

[17] Id.

[18] Supra note 13.

[19] Supra note 13.

[20] *People v. Doria*, 361 Phil. 595, 632 (1999).

[21] TSN, February 23, 2007, pp. 3-5.

[22] Supra note 13.

[23] *People v. Valdez*, 395 Phil. 206, 218 (2000).

[24] *People v. Racho*, G.R. No. 186529, August 3, 2010; citing *People v. Nuevas*, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 484-485.

[25] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390-391.

[26] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 274.

[27] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[28] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

[29] G.R. No. 188900, March 5, 2010.

[30] Exhibit "E," folder of exhibits, p. 11.

[31] Exhibit "G," folder of exhibits, p. 13.

[32] Exhibit "A," folder of exhibits, p. 6.

[33] Exhibit "D," folder of exhibits, p. 10.

[34] Exhibit "F," folder of exhibits, p. 12.

[35] TSN, February 9, 2007, p. 6; and TSN, January 22, 2007, pp. 10-12.

[36] TSN, February 23, 2007, p. 7.

[37] TSN, February 23, 2007, p. 12.

[38] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 218.

[39] Supra note 27.

[40] G.R. No. 177222, October 29, 2008, 570 SCRA 273.

[41] G.R. No. 181545, October 8, 2008, 568 SCRA 273.

[42] G.R. No. 175593, October 17, 2007, 536 SCRA 489.

[43] G.R. No. 174771, September 11, 2007, 532 SCRA 630.

[44] G.R. No. 173051, July 31, 2007, 528 SCRA 750.

[45] G.R. No. 162064, March 14, 2006, 484 SCRA 639.

- [46] 471 Phil. 895 (2004).
- [47] Supra note 38.
- [48] Exhibit "C," folder of exhibits, p. 9; Exhibit "D," folder of exhibits, p. 10.
- [49] Exhibit "A," folder of exhibits, p. 6.
- [50] Exhibit "E," folder of exhibits, p. 11; Exhibit "G," folder of exhibits, p. 13.
- [51] Exhibit "B," folder of exhibits, p. 7; Exhibit "F," folder of exhibits, p. 12.
- [52] TSN, January 22, 2007, pp. 10-12.
- [53] Supra note 46.
- [54] Supra note 47.
- [55] 414 Phil. 156 (2001).
- [56] TSN, February 9, 2007, p. 7; TSN, February 23, 2007, pp. 6-7.
- [57] Exhibit "G," folder of exhibits, p. 13.
- [58] G.R. No. 181494, March 17, 2009, 581 SCRA 762.
- [59] Supra note 27.
- [60] Supra note 39.
- [61] Supra note 28.
- [62] TSN, February 9, 2007, p. 4.
- [63] Exhibit "B," folder of exhibits, p. 7.
- [64] People v. Cacao, G.R. No. 180870, January 22, 2010, 610 SCRA 636, 651.
- [65] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 631-632.
- [66] People v. Del Monte, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 637.
- [67] People v. Obmiranis, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 156-157.
- [68] People v. Peralta, G.R. No. 173477, February 26, 2010.
- [69] People v. Cervantes, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 784-785, citing People v. Garcia, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 277-278.
- [70] Id. at 785.
- [71] Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
- (1) 10 grams or more of opium;
 - (2) 10 grams or more of morphine;
 - (3) 10 grams or more of heroin;

- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[72] Section 15. Use of Dangerous Drugs. - A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

[73] Section 14. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings. - The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or

introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.

[74] Section 12. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs. - The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

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