

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. NOVA DE LEON Y WEVES, ACCUSED-APPELLANT.

G.R. No. 214472. November 28, 2018

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CAGUIOA, J:

Before the Court is an ordinary appeal[1] filed by accused-appellant Nova De Leon y Weves (accused-appellant De Leon) assailing the Decision[2] dated October 31, 2013 of the Court of Appeals, Sixth (6[th]) Division (CA), in CA-G.R. CR.-HC No. 05465, which affirmed the Decision[3] dated February 27, 2012 of the Regional Trial Court (RTC) of the City of Paranaque, Branch 259 in Criminal Case No. 09-0617, finding accused-appellant De Leon guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

An Information[5] was filed against accused-appellant De Leon for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 31[st] day of May, 2009, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport a one (1) heat-sealed transparent plastic sachet weighing 0.01 gram to Police Poseur Buyer SPO1 Luminog Lumabao, which contents of the said plastic sachet when tested was found positive to be Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Parañaque City

June 1, 2009[6]

When arraigned, accused-appellant De Leon entered a plea of not guilty to the charge.[7]

After pre-trial, the prosecution and defense admitted the following: (1) identity of the accused; (2) the jurisdiction of the trial court; (3) that PI Abraham Verde Tecson (PI Tecson) would testify on the fact that he was the one who conducted the examination on the specimen subject matter of this case; (4) that PI Tecson reduced his findings into Physical Science Report No. D-268-09S stating therein that the specimen he examined gave positive result for Methamphetamine Hydrochloride, and (5) that PI Tecson is not an eyewitness to the circumstances leading to the arrest of accused-appellant De Leon.[8]

Thereafter, trial on the merits ensued. The prosecution presented SPO1 Luminog Lumabao[9] (SPO1 Lumabao) and SPO1 Ricky Macaraeg (SPO1 Macaraeg). The defense, on the other hand, presented accused-appellant De Leon.[10] The prosecution's version of events as well as that of the defense was summarized by the RTC as follows:

FOR THE PROSECUTION

[SPO1 LUMABAO]

He testified that on May 31, 2009 at around 5:30 in the afternoon, an informant went to their office at the Station Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF) of the Parañaque City Police, and reported the illegal drug activities of a certain "Nova De Leon" along the area of Mayuga St., Brgy. Tambo, Parañaque City. The same was relayed to their chief, Col. Alfredo Valdez, who formed a team to conduct a buy bust operation against the suspect. He x x x was designated poseur buyer tasked to purchase Php 200.00 worth of shabu from the suspect, with SPO1 Ricky Macaraeg, PO2 Domingo Julaton, PO2 Elbert Ocampo and SPO2 Alberto Sanggalang as back-up operatives. After preparing the Pre-Operation and Coordination Form submitted to the PDEA, the team, with the informant, proceeded to the target area. Upon arrival, he x x x and the informant alighted first while the rest of the team discreetly followed. They spotted the suspect standing in an alley whom they approached. He x x x was introduced to the suspect as a bus driver in need of shabu. The suspect replied that she had some with her. He x x x handed the suspect the buy bust money and in turn, the suspect handed him a sachet of suspected shabu. At this juncture, he x x x then executed the pre-arranged signal of removing his cap to signal the rest of the team that the transaction had materialized. SPO1 Macaraeg rushed to their location and they effected the arrest of the accused. He x x x instructed the suspect to empty her pockets, to which SPO1 Macaraeg recovered the buy bust money, but they did not recover any more illegal drugs in her possession. They brought the suspect to the Barangay Hall of Tambo, Parañaque City and requested Tanod Melchor Alconaba to witness the preparation of the inventory. There, he x x x placed the markings "LL" on the recovered evidence in his custody, which stand for the initials of his name Luminog Lumabao and the date of arrest indicated as 05/31/09 and he likewise prepared the inventory of recovered/seized evidence, signed by Tanod Alconaba as witness. They identified the suspect as Nova De Leon y Weves whom he identified in court. At the Barangay Hall, pictures were taken of the accused and the recovered evidence, the inventory together with the Barangay Tanod. From the Barangay Hall, they proceeded to their office at Brgy. La Huerta, Parañaque City where the Booking Sheet and Arrest Report of the accused was prepared. Their investigator, PO2 Domingo Julaton, prepared a request for laboratory examination. He x x x brought the specimen to PNP Crime Laboratory for examination on the same date and the same later on tested positive for methamphetamine hydrochloride as shown in Physical Science Report No. D-268-09S. They executed a joint affidavit relative to the arrest of the accused. He identified the specimen subject of the sale (Exhibit "B-1"), the request of examination (Exhibit "A"), Physical Science Report No. D-268-09S (Exhibit "C"), the Joint Affidavit (Exhibit "D"), the Pre-Operation Report and Coordination Forms (Exhibits "E" and "F"), the pictures taken at the Barangay Hall (Exhibits "H" to "L"), the inventory (Exhibit "G"), the Spot Report (Exhibit "M") and the Booking Sheet of the accused (Exhibit "N").

On cross examination, he testified that the team arrived at the target area at around 7:25 in the evening. They spotted the accused standing in an alley. The transaction lasted for only about five (5) to ten (10) minutes. He placed markings on the recovered specimen at the Barangay Hall and not at the scene of arrest as it was raining at [that] time. There was no representative from the DOJ or media present during the inventory. He personally placed markings on the buy bust money but he was not able to include the buy bust money in the inventory at the time the pictures were taken.

On re-direct examination, he testified that there was no available representative from the media or the DOJ as it was raining hard at the time. He inadvertently failed to include the buy bust money in the inventory as he was focused on the sachet of shabu.

[SPO1 MACARAEG]

He testified that they arrested the accused on May 31, 2009 at around 7:25 in the evening at Mayuga St., Tambo, Parañaque City, in a buy bust operation. SPO1 Lumabao was the designated poseur buyer while he (Macaraeg) was an immediate back-up operative. He placed himself about 10 to 15 meters from where the

transaction was made and he could see the actuations made during the transaction. He rushed to SPO1 Lumabao's location after seeing the latter execute the pre-arranged signal of removing his cap to signal them that the transaction had materialized. When the rest of the team arrived, they introduced themselves as police officers and apprised the accused of her rights. SPO1 Lumabao was in custody of the sachet of shabu subject of the sale. He x x x instructed the accused to empty her pockets and was able to recover from her the buy bust money. SPO1 Lumabao placed markings on the shabu subject of the sale. They executed a joint affidavit relative to the arrest of the accused. SPO1 Lumabao prepared an inventory in the presence of Tanod Alconaba. Pictures were taken of the accused, the evidence recovered and during the inventory at the Brgy. Hall of Tambo.

On cross examination, he testified that he could only see the actuations but the conversation during the transaction was inaudible to him. He confirmed that the transaction had materialized after SPO1 Lumabao executed the pre-arranged signal or removing his cap.

x x x x

FOR THE DEFENSE

[Accused-appellant DE LEON] As appearing in her Judicial Affidavit (Exhibit "1"), the contents of which she affirmed in court, she testified that on June 02, 2009 at around 2:00 o'clock in the afternoon, she was at her house at Brgy. Tambo, Para[ñ]aque City. She heard someone knocking at the door, and when she opened it, a man suddenly entered and asked about the whereabouts of a certain "Bolaret Mayuga." She told the man that she did not know the person and he does not live there. She was forced to point to where Mayuga was and insisted that he live in the area. She was then brought to the Drug Enforcement Unit (DEU) where she was threatened that if she does not cooperate in pointing to the whereabouts of Mayuga, she would remain there. The police asked from her money in exchange for her liberty but she refused to give any as she did not do anything illegal. She was told that charges would be filed against her. She was incarcerated and was charged for violation of Section 5 of RA 9165. She denies the charge filed against her.

On cross examination, she testified that it was the first time she saw the men who arrested her. Prior to her arrest, she did not have any misunderstanding or untoward encounter with the policemen who arrested her.[11]

Ruling of the RTC

In its Decision[12] dated February 27, 2012, the RTC convicted accused-appellant De Leon of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered the court finds accused NOVA WEVES DE LEON in Criminal Case No. 09-0617 for Violation of Section 5, Article II of RA 9165, GUILTY beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php 500,000.00.

Further it appearing that the accused NOVA WEVES DE LEON is detained at the Para[ñ]aque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the Mittimus for the immediate transfer of said accused from the Para[ñ]aque City Jail to the Women's Correctional Facility, Mandaluyong City.

The specimen are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same with dispatch to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.[13]

The RTC gave full weight and credit to the version of events of the prosecution ruling that while the arresting officers failed to strictly comply with the requirements of Section 21 of RA 9165 relative to the preparation of the

inventory, there was substantial compliance with said law and the integrity of the drug seized from accused-appellant De Leon was preserved.[14]

Aggrieved, accused-appellant De Leon appealed to the CA.

Ruling of the CA

In the assailed Decision,[15] the CA sustained accused-appellant De Leon's conviction and held that the prosecution sufficiently discharged its burden of establishing the elements of illegal sale of dangerous drugs and proving accused-appellant De Leon's guilt beyond reasonable doubt.[16] The CA further held that in violation of RA 9165, credence is given to the prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner.[17] It also ruled that there is a valid justification for the arresting officers' non-compliance with the requirements of Section 21 of RA 9165;[18] and at any rate, the prosecution was able to adequately show the continuous and unbroken possession and subsequent transfer of the illegal drug from the time it was confiscated up to the time the marked plastic sachet of shabu was offered in court.[19] Thus, the failure of the police officers to make an inventory and to take a photograph of the seized drug as required under Section 21 of RA 9165, will not render accused-appellant De Leon's arrest and the item seized from her inadmissible.[20]

Hence, the instant appeal.[21]

Issue

Whether or not accused-appellant De Leon's guilt for violating Section 5, Article II of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant De Leon for failure of the prosecution to prove her guilt beyond reasonable doubt.

The buy-bust team failed to comply with the requirements of Section 21.

In this case, accused-appellant De Leon was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. To sustain a conviction for illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[22]

In cases involving dangerous drugs, the confiscated drug constitutes the very corpus delicti of the offense[23] and the fact of its existence is vital to sustain a judgment of conviction.[24] It is essential, therefore, that the identity and integrity of the seized drugs must be established with moral certainty.[25] The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for.[26]

This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." [27]

In this connection, Section 21,[28] Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must strictly follow to preserve the integrity of the

confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three (3) required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items, which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.[29]

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three (3) required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three (3) witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Also, while it is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not ipso facto render the seizure and custody over the items void and invalid; the law requires the prosecution to still satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[30] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses;[31] without any justifiable explanation, the evidence of the corpus delicti is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

In the present case, the police officers failed to comply with the foregoing requirements.

First, while the IRR provides alternative places for the physical inventory and photographing of the seized drugs, whenever practicable, a barangay hall, is not one of them. In fact, the apprehending police officers failed to even acknowledge such procedural lapse and provide a reasonable explanation why they did not proceed to the nearest police station for the physical inventory and photographing of the illegal drug allegedly seized from accused-appellant De Leon.

Also, the illegal drug was not marked immediately upon seizure and confiscation. In *People v. Dahil*,[33] this Court held that:

x x x "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.[34] (Emphasis and underscoring supplied)

SPO1 Lumabao's explanation that he could not mark the plastic sachet recovered from accused-appellant De Leon at the place of apprehension because of the weather condition[35] is nothing but a flimsy excuse. It should not be hard for SPO1 Lumabao to immediately mark the seized item because only one (1) plastic sachet was recovered from accused-appellant De Leon and considering further that the buy-bust team was able to pull off the entire operation, which only took about ten (10) minutes,[36] under the same weather condition.

Second, the police officers failed to comply with the mandatory three (3)-witness rule. As SPO1 Lumabao, the poseur-buyer himself, testified, the marking, inventory and photographing of the seized drug were witnessed only by a Barangay Tanod:

Q:

Who were present at the Barangay Hall of Brgy. Tambo?

A:

The Team Leader Tanod Melchor Alconaba.

Q:

Now, what happened to the plastic sachet containing white crystalline substance?

A:

After the marking of the plastic sachet and the Barangay Tanod signing as witness, we proceeded to our office.

x x x x

Q:

Was there any DOJ representative present during the inventory?

A:

None, sir.

Q:

How about any media representative?

A:

None, sir.

Q:

How about any legal counsel for the accused?

A:

None, sir.[37]

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is

mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,^[38] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,^[39] without the insulating presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation".^[40] (Emphasis in the original)

Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the DOJ and media representatives. The Court finds SPO1 Lumabao's excuse that there were no available DOJ and media representatives because of the weather condition,^[41] insufficient and uncorroborated by evidence. It must be noted that the buy-bust team in this case had ample time to comply with the requirements established by law from the time they were informed of an alleged peddling of illegal drugs. Hence, they could have complied with the requirements of the law had they intended to. However, the police officers in this case did not exert even the slightest of efforts to secure the attendance of the DOJ and media representatives.

In *People v. Gamboa*,^[42] the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Mere statements that the witnesses are unavailable, without any showing of serious attempts to contact them, are unacceptable as justified grounds for non-compliance. Considering that buy-bust is a planned operation, "police officers are ordinarily given sufficient time x x x to prepare xxx and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165."^[43] They are therefore compelled "not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable."^[44]

Indeed, while it is laudable that the drug enforcement agencies exert relentless efforts in eradicating the

proliferation of prohibited drugs in the country, they must always be advised to do so within the bounds of the law.[45] Without the insulating presence of the representatives from the media and the DOJ during the seizure, marking and physical inventory of the sachet of shabu, the evils of switching, "planting" or contamination of the evidence again rear their ugly heads as to negate the integrity and credibility of the seized drug that is evidence herein of the corpus delicti.[46] Thus, accused-appellant De Leon must perforce be acquitted.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in performance of official duties.

The Court likewise finds the CA's reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[47] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[48] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[49] This Court, in *People v. Catalan*,^[50] had already warned the lower courts against this pitfall:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.^[51] (Emphasis supplied)

What further militates against according the police officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual,^[52] the conduct of buy-bust operations required the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

V. SPECIFIC RULES

x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:
 - a. Record time of jump-off in unit's logbook;
 - b. Alertness and security shall at all times be observed[;]
 - c. Actual and timely coordination with the nearest PNP territorial units must be made;
 - d. Area security and dragnet or pursuit operation must be provided[;]
 - e. Use of necessary and reasonable force only in case of suspect's resistance[;]
 - f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
 - g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
 - h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms['] reach;
 - i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
 - j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
 - k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
 - l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
 - m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;
 - n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
 - o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

Given the above police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.[53]

All told, the prosecution failed to prove the corpus delicti of the offense due to the police officers' unjustified deviations from the requirements of the law. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant De Leon.

The buy-bust operation was merely fabricated.

A buy-bust operation is a form of entrapment in which the violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[54] However, where there

really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.[55]

This is the situation in this case.

What puts in doubt the conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against accused-appellant De Leon was a mere pretense, a sham. To recall, the three (3) required witnesses were not present during the buy-bust operation when the alleged drug was seized from accused-appellant De Leon; hence, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. Also, the police officers unjustifiably failed to mark the seized drug at the place of arrest[56] and to inventory and photograph the same in the presence of the other statutory witnesses[57] which, again, are required under the law to prevent planting, switching and contamination of evidence. These circumstances lend credence to accused-appellant De Leon's testimony that a policeman merely knocked on the door of her house, asked about the whereabouts of a certain Bolaret Mayuga, and when she told him and his companions that she did not know the person they were looking for, she was brought to the police station, where the police officers asked money from her in exchange of liberty and was told that if she did not cooperate, she would remain incarcerated.[58]

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[59] This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Finally, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[60]

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated October 31, 2013 of the Court of Appeals, Sixth (6th) Division, in CA-G.R. CR.-HC No. 05465 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant NOVA DE LEON y WEVES is ACQUITTED of the crime charged on the ground of reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be sent to the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is ORDERED to REPORT to this Court within five (5) days from receipt of this Decision the action she has taken.

Further, the National Police Commission is hereby DIRECTED to CONDUCT AN INVESTIGATION on the police officers involved in the buy-bust operation conducted in this case.

Carpio (Chairperson), A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.
Perlas-Bernabe, J., on wellness leave.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

[1] See Notice of Appeal dated December 2, 2013; rollo, pp. 17-19.

[2] Rollo, pp. 2-16. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon concurring.

[3] Records, pp. 373-380. Penned by Assisting Judge Jansen R. Rodriguez.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

[5] Records, p. 1.

[6] Id.

[7] Rollo, p. 4.

[8] Id.

[9] Also spelled as "Lumibao" in some parts of the records.

[10] Rollo, p. 4.

[11] Records, pp. 374-376.

[12] Id. at 373-380.

[13] Id. at 379-380.

[14] Id. at 378; rollo, p. 8.

[15] Rollo, pp. 2-16.

[16] Id. at 10.

[17] Id. at 10-11.

[18] See id. at 14-15.

[19] Id. at 15.

[20] Id.

[21] Id. at 17-19.

[22] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[23] See *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[24] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[25] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, pp. 6 and 9.

[26] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[27] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544, citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[28] The said Section reads as follows:

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[.]

[29] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

[30] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[31] *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[33] 750 Phil. 212 (2015).

[34] *Id.* at 232.

[35] TSN, February 28, 2011, p. 18; records, p. 66.

[36] See *id.* at 39; *id.* at 87.

[37] *Id.* at 19, 46; *id.* at 67, 94.

[38] G.R. No. 228890, April 18, 2018.

[39] 736 Phil. 749 (2014).

[40] *People v. Tomawis*, *supra* note 38, at 11-12.

[41] TSN, February 28, 2011, p. 48; records, p. 96.

[42] G.R. No. 233702, June 20, 2018.

[43] *Id.* at 9.

[44] *Id.*

[45] See *People v. Ramos*, 791 Phil. 162, 175 (2016).

[46] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[47] See *id.* at 770.

[48] *Id.*

[49] *Id.*

[50] 699 Phil. 603 (2012).

[51] *Id.* at 621.

[52] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

[53] *People v. Supat*, G.R. No. 217027, June 6, 2018, pp. 18-19.

[54] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[55] *People v. Dela Cruz*, 666 Phil. 593, 605 (2011).

[56] TSN, February 28, 2011, pp. 43-44; records, pp. 90-91.

[57] *Id.* at 46-47; *id.* at 94-95.

[58] See Judicial Affidavit, records, pp. 326-327.

[59] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

[60] *People v. Otico*, G.R. No. 231133, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

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