

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO SUPAT Y RADO ALIAS "ISOY", ACCUSED-APPELLANT.*G.R. No. 217027. June 06, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-217027/>**CAGUIOA, J:**

Before the Court is an ordinary appeal[1] filed by accused-appellant Narciso Supat y Radoc alias "Isoy" (Narciso) assailing the Decision[2] dated August 14, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05461, which affirmed the Decision[3] dated November 24, 2011 of the Regional Trial Court of San Pedro, Laguna, Branch 93 (RTC), in Crim. Case Nos. 5434-SPL and 5435-SPL, finding Narciso guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

Narciso was charged in two (2) separate Informations dated October 24, 2005, before the RTC, docketed as Crim. Case Nos. 5434-SPL and 5435-SPL. In Crim. Case No. 5434-SPL, Narciso was charged with the crime of illegal sale of dangerous drugs, the accusatory portion of the Information reading as follows:

That on or about October 8, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to a police poseur-buyer in consideration of one (1) piece one hundred peso bill, one (1) heat-sealed transparent plastic sachet of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu", a dangerous drug, weighing zero point three (0.03) gram.

CONTRARY TO LAW.[5]

In Crim. Case No. 5435-SPL, Narciso was charged with the crime of illegal possession of dangerous drugs. The Information there pertinently states:

That on or about October 8, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without authority of the law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, with a total weight of zero point seventy one (0.71) gram.

CONTRARY TO LAW.[6]

Upon his arraignment, Narciso pleaded not guilty to the foregoing charges.[7] During the pre-trial, the identity of Narciso and the jurisdiction of the trial court over his person were admitted.[8]

Version of the Prosecution

The Prosecution presented as witnesses PO3 Alexander Rivera y Amata (PO3 Rivera), SPO4 Melchor Dela Peña y Peruel (SPO4 Dela Peña) and SPO1 Alejandro Ame y Dimandal (SPO1 Ame). Their testimonies, as

summarized by the CA, are as follows:

On 8 October 2005, a civilian informant and a Barangay Tanod of San Antonio, San Pedro, Laguna arrived at the Municipal Police Station and reported to the Intelligence Section Chief [SPO4 Dela Peña] the illegal drug activities of [Narciso]. SPO4 [Dela] Peña immediately formed a team comprised of himself, [PO3 Rivera], [SPO1 Ame] and PO2 Rommel Bautista. The team conducted a surveillance operation at Holiday Hills, Narra Road, San Antonio, San Pedro, Laguna. The surveillance confirmed that [Narciso] was indeed involved in illegal drug activities. A briefing was conducted where PO3 Rivera was designated as the poseur-buyer for the buy-bust operation and was given a marked P100.00 bill to be used as buy-bust money. It was agreed that the pre-arranged signal would be the giving of a ring to SPO4 [Dela] Peña's mobile phone.

PO3 Rivera and the civilian informant proceeded to the house of [Narciso] while the rest of the team positioned themselves along Narra Road and waited for PO3 Rivera's call. The informant introduced PO3 Rivera to [Narciso] as a customer. PO3 Rivera handed the P100.00 marked bill to [Narciso], and the latter, in turn, handed PO3 Rivera a plastic sachet containing a white crystalline substance. After receiving the sachet, PO3 Rivera gave SPO4 [Dela] Peña's phone a ring. The rest of the team immediately entered [Narciso's] house and arrested [Narciso]. SPO1 Ame recovered from [Narciso] the buy-bust money and two (2) more sachets containing the same white crystalline substance after conducting a search on his person. The seized items were handed to SPO4 [Dela] Peña and were taken to the police station, together with [Narciso]. The sachet bought by PO3 Rivera from [Narciso] was marked by SPO4 [Dela] Peña as "NS-B", while the two (2) other sachets confiscated by SPO1 Ame from [Narciso's] possession were marked as "NS-P". An inventory of these seized items was conducted. Afterward[s], SPO4 [Dela] Peña transferred the custody of the seized sachets to the crime laboratory for examination. Forensic Chemist Police Senior Inspector (PSI) Donna Villa Hue[l]gas conducted the laboratory examination on the specimens delivered by SPO4 [Dela] Peña. The white crystalline substance contained in the seized plastic sachets was determined to be methamphetamine hydrochloride, also known as shabu.[9]

During the trial, Narciso admitted the existence and due execution of the following documents:

1. Laboratory Request for Examination dated October 8, 2005;
2. Chemistry Report No. D-1127-05;
3. Final Chemistry Report No. D-1127-05;
4. Chemistry Report Findings;
5. Conclusion; and
6. Name and signature of Donna Huelgas.[10]

Version of the Defense

On the other hand, the evidence for the defense was summarized by the CA as follows:

On 8 October 2005, at around 10:00 a.m., [Narciso] was at home watching television (TV) with his brother Christopher Supat and a neighbor named Violy. [Narciso] noticed five (5) men entering their compound and eventually their house. He recognized the faces of the two (2) men as the Barangay Tanods, and he learned later that the three (3) other men were police officers. Upon entering the house, the group arrested and handcuffed [Narciso]. His house was searched and when they found nothing, he was left inside the house handcuffed. After fifteen (15) to thirty (30) minutes, the police officers returned and showed him two (2) plastic sachets containing shabu allegedly recovered from his person. Thereafter, [Narciso] was brought to the police station.

To corroborate the foregoing account, the defense presented the testimony of Kurt Pilacan, who was twelve

(12) years old when the incident happened. [He testified that] [a]t around 1:00 p.m., he was also watching TV at the house of [Narciso], together with five or six children. While watching TV, he heard a gunshot and a group of five (5) men entered the house of [Narciso]. The latter was immediately handcuffed. The men searched the house and found a cellphone and pieces of jewelry. They left the house and upon their return, they showed to [Narciso] illegal drugs placed in a plastic sachet.[11]

The Ruling of the RTC

On November 24, 2011, the RTC rendered judgment[12] finding Narciso guilty beyond reasonable doubt for the crimes of (1) violation of Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00 and to pay the costs; and (2) violation of Section 11 of RA 9165, sentencing him to suffer an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and to pay a fine in the amount of P300,000.00.[13]

The trial court gave full credence to the testimony of the prosecution witnesses on the reason that, as police officers, they are presumed to have regularly performed their duties and official functions. The RTC held that there is no evidence to show that the police officers were motivated by any reason other than to accomplish their mission to curb drug abuse. The RTC further ruled that Narciso's denial is a feeble defense which cannot stand against the positive testimony of the prosecution witnesses and the presumption of regularity enjoyed by the arresting officers.[14]

Aggrieved, Narciso appealed[15] his case to the CA claiming that the identity of the seized drugs was not proven in violation of Section 21 of RA 9165. Narciso argued that the trial court failed to consider the following irregularities in the conduct of the buy-bust operation: (1) no inventory of the seized items was conducted in the presence of representatives from media, Department of Justice (DOJ), and elective official; and (2) no photographs of the seized items were taken.[16] Narciso further claimed that there were gaps in the chain of custody of the seized items because there was no information on what happened after the seized drugs were marked at the police station and the prosecution did not present the forensic chemist who examined the seized drugs.[17]

The Ruling of the CA

In the questioned Decision,[18] the CA affirmed Narciso's conviction. The CA held that, contrary to Narciso's claim, the prosecution was able to prove the corpus delicti of the crimes charged and all the other elements of illegal sale and illegal possession of drugs.[19] The CA found that the chain of custody of the seized drugs from the time they were recovered from Narciso until they were presented in court for verification was preserved;[20] and it is of no moment that the forensic chemist was not presented as witness because Narciso already admitted the existence and due execution of the specimens submitted for laboratory examination, the Request for Laboratory Examination, and the Final Chemistry Report No. D-1127-05.[21]

The CA further held that the failure of the apprehending police officers to comply with the procedural requirements of Section 21(1), Article II of RA 9165, is not fatal to the prosecution's cause, provided that the integrity and evidentiary value of the subject drugs were preserved, as in this case.[22] The CA also noted that the fact that the buy-bust team did not mark and photograph the seized drugs immediately after Narciso's arrest does not make the seizure and custody invalid or void because the implementing rules allow the marking, photographing and inventory of the seized items at the place of the operation or nearest police station, whichever is practicable.[23]

Moreover, the CA stressed that the defense never objected to the failure of the apprehending officers to strictly comply with the procedure in Section 21 of RA 9165; thus, whatever justifiable reasons the apprehending police

officers might have therefor will remain unknown.[24] Narciso bears the burden of showing that the evidence was tampered with to overcome the presumption of regularity of official functions.[25]

Undaunted, Narciso filed his Notice of Appeal[26] of the CA Decision on September 9, 2014.

On June 22, 2015, the Court issued a Resolution[27] requiring the parties to file their respective supplemental briefs within thirty (30) days from notice.

Narciso and the OSG filed their respective manifestations dated September 11, 2015 and September 23, 2015 stating that they will no longer file supplemental briefs.[28]

Issue

Whether or not Narciso's guilt for violation of Sections 5 and 11 of RA 9165, was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Narciso as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 and to establish the unbroken chain of custody of the seized drugs.

In this case, Narciso was charged with illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. To sustain a conviction for illegal possession of dangerous drugs the following elements must be established: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[29] On the other hand, for a successful prosecution of the offense of illegal sale of drugs, the following elements must be proven: (1) the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.[30]

In both cases, the confiscated drug constitutes the very corpus delicti of the offense[31] and the fact of its existence is vital to sustain a judgment of conviction.[32] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[33] 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.[34]

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." [35]

In this regard, Section 21, Article II of RA 9165 lays down the procedures that the buy-bust team must strictly follow to preserve the identity and integrity of the confiscated drugs and/or paraphernalia:

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

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

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

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

The requirements of paragraph 1, Section 21, Article II of RA 9165.

RA 9165 was amended by RA 10640[36] which imposed less stringent requirements in the procedure. The amendment was approved on July 15, 2014. As the alleged crimes in this case were committed on October 8, 2005, the afore-quoted version of Section 21 is applicable.

Relevantly, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) filled in the details as to place of inventory and photographing of the seized items and added a saving clause in case of non-compliance with the requirements under justifiable grounds, thus:

SECTION 21. x x x

(a)

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

Parsed, the above provisions impose the following requirements in the manner of handling and inventory, time, witnesses, and of place after the arrest of the accused and seizure of the dangerous drugs:

1. The initial custody requirements must be done immediately after seizure or confiscation;
2. The physical inventory and photographing must be done in the presence of:
 - the accused or his representative or counsel;

- a representative from the media;
- a representative from the DOJ; and
- any elected public official.

3. The conduct of the physical inventory and photograph shall be done at the:

- place where the search warrant is served; or
- nearest police station; or
- nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

All the above requirements must be strictly complied with for a successful prosecution of the crimes of illegal sale and/or illegal possession of dangerous drugs under RA 9165. To be sure, case law states that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[37] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[38]

In the present case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug - which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

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

Section 21(1) of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. Further, the inventory must be done in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official, who 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. And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. This also means that the three required witnesses should already be physically present at the time of apprehension - 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. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

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 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 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.

Here, the buy-bust team utterly failed to comply with the foregoing requirements.

To start with, no photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and

integrity of the recovered items are preserved.

More importantly, there was no compliance with the three-witness rule. Based on the narrations of PO3 Rivera[39] and SPO4 Dela Peña,[40] not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from Narciso or during the inventory of the recovered drugs at the police station. Moreover, while the Certification of Inventory[41] dated October 8, 2005 shows the signature of a certain Arturo L. Hatulan, an elected official, the prosecution failed to present him as witness to testify thereon or to clarify whether he was also present at the time the drugs were allegedly recovered from Narciso. In any event, the buy-bust team still lacked two witnesses - representatives from the DOJ and media and offered no explanation as to their absence. Their submissions, in fact, do not indicate that they even exerted genuine effort to secure the presence of the required witnesses at the time of apprehension.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect and guard against the possibility of planting, contamination, or loss of the seized drug. 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. The pronouncement of the Court in *People v. Mendoza*,[42] is enlightening:

x x x Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 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 sachets of shabu that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[43] (Emphasis supplied)

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 buy-bust 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."

The saving clause does not apply to this case.

Following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[44] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[45] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[46]

In the present case, the prosecution failed to satisfy both requirements.

The prosecution failed to prove justifiable ground for non-compliance.

The first requirement for the saving clause to apply is for the prosecution to recognize the lapses in the prescribed procedures and then provide a suitable explanation for noncompliance.

Here, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three (3) witnesses at the place and time of seizure, or as to the failure to photograph the confiscated items immediately after seizure or during inventory in the presence of the insulating witnesses. It must be noted that the requirements under Section 21 are not unknown to the buy-bust team, who are presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.[47] They are dutybound to fully comply with the requirements thereof, and if their compliance is not full, they should at least have the readiness to explain the reason for the step or steps omitted from such compliance.[48]

Verily, it was error on the part of the CA to put the blame on the accused for the prosecution's failure to prove justifiable cause. The prosecution has the positive duty to prove compliance with the procedure set forth in Section 21 of RA 9165, and must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.[49] The existence of justifiable cause must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[50]

The prosecution failed to establish the chain of custody of the seized drugs.

In *People v. Alviz*,^[51] the Court held that the integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established.

Chain of custody is defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

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 use in court as evidence, and the final disposition[.] (Emphasis supplied)

In this case, gaps exist in the chain of custody of the seized items which creates reasonable doubt as to the identity and integrity thereof.

First, the confiscated items were not marked immediately upon seizure. In *People v. Gonzales*,^[52] the Court explained that:

The first stage in the chain of custody is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[53] (Emphasis supplied)

Notably in this case, three (3) plastic sachets were recovered from Narciso: (1) sachet bought by PO3 Rivera and (2) sachets confiscated by PO3 Ame; but the markings were made not in the place of seizure and not by the police officer who recovered the seized drugs.

Second, SPO4 Dela Peña testified that he was the one who made the Request for Laboratory Examination.[54] However, the Request for Laboratory Examination dated October 8, 2005 was not subscribed by him but by Police Superintendent Sergio A. Dimandal.[55] Also, contrary to the findings of the trial court, SPO4 Dela Peña's testimony is not clear as to who actually delivered the drugs together with the request to the crime laboratory for forensic examination.[56]

Third, the Request for Laboratory Examination,[57] with its accompanying specimen, was received from a certain PO2 Corpus by a certain PO1 Legaspi R.B. on October 8, 2005 at 9:15 p.m.; but the records are bereft of any evidence as to how the seized items were passed on and placed in the hands of PO2 Corpus and PO1 Legaspi R.B., or how the integrity of said items was preserved while they remained in their custody. Moreover, no other testimony was offered to explain how the seized drugs were turned over to PSI Donna Villa Huelgas, the forensic chemist who conducted the examination.

Fourth, the Court does not see from the records the details on how the specimen was handled from the time it was submitted for laboratory examination up to time it was formally offered to the court. Forensic Chemist PSI Huelgas did not testify on how she handled the seized item during examination and before it was transferred to the court which testimony is required to ensure that there was no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession while in her custody. In this case, instead of the forensic chemist turning over the substance to the court and testifying, the parties merely stipulated on the existence and due execution of the Chemistry Report No. D-1127-05, Final Chemistry Report No. D-1127-05, Chemistry Report findings and conclusions, and the name and signature of PSI Huelgas. However, these stipulations do not prove how the drugs were handled by said chemist.

The Court's ruling in *People v. Sanchez*[58] (*Sanchez*) lends guidance. In *Sanchez*, the trial court dispensed with the testimony of the forensic chemist therein after the parties stipulated that "the items allegedly confiscated from the accused were submitted to the crime laboratory for examination and the findings were put into writing." [59] As a result, only the sole testimony of the poseur-buyer was presented to attest to the chain of custody of the seized items therein. The Court held:

x x x [The sole testimony presented by the prosecution] failed to disclose the identities of the desk officer and the investigator to whom the custody of the drugs was given, and how the latter handled these materials. No reference was ever made to the person who submitted the seized specimen to the PNP Crime Laboratory for examination. Likewise, no one testified on how the specimen was handled after the chemical analysis by the forensic chemist. While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession. To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) must have handled the drugs but evidence of how this was done, i.e., how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed - is absent from the evidence adduced during the trial. x x x

The recent case of *Lopez v. People* is particularly instructive on how we expect the chain of custody or "movement" of the seized evidence to be maintained and why this must be shown by evidence:

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.[60] (Emphasis supplied)

In turn, the importance of establishing the chain of custody in drugs cases was explained in *Mallillin v. People*[61]:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases - by accident or otherwise - in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[62]

As in *Sanchez*, the Court finds that while the parties indeed made the stipulations in question, such stipulations do not relate to or do not cover the specific manner by which the seized items were handled while in their possession. Further, they do not indicate how such items were subsequently turned over to the next responsible party.

As the seized drugs themselves are the corpus delicti of the crimes charged, it is of utmost importance that there be no doubt or uncertainty as to their identity and integrity. The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, 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.[63]

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

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[64] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[65]

Here, the reliance of the RTC and CA on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[66] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[67] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[68] This Court, in *People v. Catalan*,^[69] 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.[70] (Emphasis supplied)

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the apprehending 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,[71] the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

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)

The Court has ruled in *People v. Zheng Bai Hui*[72] that it will not presume to set an a priori basis on what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the 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.

All told, the prosecution failed to prove the corpus delicti of the offenses of sale and possession of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Narciso.

As a reminder, 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.[73]

WHEREFORE, premises considered, the Decision dated August 14, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05461 is REVERSED and SET ASIDE. Accused-appellant Narciso Supat y Radoc is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to 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 (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, and Reyes, Jr., JJ., concur.
Peralta, J., pls. see separate concurring opinion.

[1] CA rollo, pp. 95-97.

[2] Id. at 83-93. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles.

[3] Records (Crim. Case No. 5435-SPL), pp. 164-168. Penned by Judge Francisco Dizon Paño.

[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 (Crim. Case No. 5434-SPL), p. 1.

[6] Records (Crim. Case No. 5435-SPL), p. 1.

[7] Id. at 21.

[8] Id. at 38.

[9] CA rollo, pp. 85-86.

[10] Id. at 86.

[11] Id. at 86-87.

[12] Supra note 3.

[13] Id. at 168.

[14] Id. at 167.

[15] Id. at 170.

[16] CA rollo, p. 45.

[17] Id. at 42-43.

[18] Supra note 2.

[19] Id. at 88-89.

[20] Id. at 89.

[21] Id. at 91.

[22] Id. at 90.

[23] Id.

[24] Id. at 91.

[25] Id. at 91-92.

[26] Id. at 95-97.

[27] Rollo, pp. 17-18.

[28] Id. at 21-25, 26-32.

[29] People v. Paz, G.R. No. 229512, January 31, 2018, p. 7.

[30] People v. Bartolini, 791 Phil. 626, 633-634 (2016).

[31] People v. Sagana, G.R. No. 208471, August 2, 2017, p. 8.

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

[33] See People v. Alvaro, G.R. No. 225596, January 10, 2018, p. 6.

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

[35] People v. Saragena, G.R. No. 210677, August 23, 2017, p. 7.

[36] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

[37] Gamboa v. People, 799 Phil. 584, 597 (2016), citing People v. Umipang, 686 Phil. 1024, 1038-1039 (2012).

[38] Id.

[39] See TSN, March 17, 2008, pp. 3-4.

[40] See TSN, February 17, 2009, pp. 9-15.

[41] Exh. records (Crim. Case No. 5434-SPL), p. 16.

[42] 736 Phil. 749 (2014).

[43] Id. at 764.

[44] RA 9165, Sec. 21(1) as implemented by its IRR.

[45] People v. Beran, 724 Phil. 788, 822 (2014).

[46] People v. Reyes, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536.

[47] People v. Geronimo, G.R. No. 180447, August 23, 2017, p. 8.

[48] Id.

[49] People v. Ramos, G.R. No. 233744, February 28, 2018, pp. 9-10.

[50] People v. Mamangon, G.R. No. 229102, January 29, 2018, p. 7, citing People v. De Guzman, 630 Phil. 637, 649 (2010).

[51] 703 Phil. 58, 73 (2013).

[52] 708 Phil. 121 (2013).

[53] Id. at 130-131.

[54] TSN, February 17, 2009, p. 13.

- [55] Exh. "C," records (Crim. Case No. 5434-SPL), p. 14.
- [56] See TSN, February 17, 2009, pp. 13-14.
- [57] Exh. "C," records (Crim. Case No. 5434-SPL), p. 14.
- [58] 590 Phil. 214 (2008).
- [59] Id. at 225.
- [60] Id. at 237-238.
- [61] 576 Phil. 576 (2008).
- [62] Id. at 588-589.
- [63] *People v. Gonzales*, supra note 52, at 123.
- [64] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."
- [65] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).
- [66] See *People v. Mendoza*, supra note 42, at 770.
- [67] Id.
- [68] See *People v. Catalan*, 699 Phil. 603, 621 (2012).
- [69] Id.
- [70] Id. at 621.
- [71] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.
- [72] 393 Phil. 68, 133 (2000).
- [73] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

SEPARATE CONCURRING OPINION

PERALTA, J.:

I concur with the ponencia in acquitting accused-appellant Narciso Supat y Radoc of the charges of illegal sale and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. No. 9165),^[1] respectively. Indeed, the prosecution failed to prove the corpus delicti of the said offenses due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody and handling of the seized drugs. I also agree that despite the non-observance requirement under Section 21^[2] of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to (1) why no photographs of the seized drugs were taken at the place of the seizure or at the police station where the inventory was conducted; and (2) why not one of the three witnesses required under the said provision was present at the time the plastic sachets were seized from accused-appellant or during the inventory of the recovered drugs at the police station. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

(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.

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts." [5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected barangay officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law." [6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and ensure [its] standard implementation. [7] Senator Sotto explained why the said provision should be amended:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

x x x x

Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as

the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crimes charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media, and (b) the DOJ, and; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." [9]

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[11] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125[13] of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures

undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

I further submit that the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165, to wit:

Section 29. Criminal Liability for Planting of Evidence. - Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 32. Liability to a Person Violating Any Regulation Issued by the Board. - 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 found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

[1] "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"

[2] 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;

[3] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

[4] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 349-350.

[9] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[11] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[12] *Id.*

[13] Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, their equivalent.

[14] *People v. Ramirez*, *supra* note 3.

[15] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[16] G.R. No. 202206, March 5, 2018.

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