

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. SEGUNDO BRICERO Y FERNANDEZ, ACCUSED-APPELLANT.*G.R. No. 218428. November 07, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-218428/>**CAGUIOA, J:**

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated May 30, 2014 of the Court of Appeals, Special Fourth Division (CA) in CA-G.R. CR-HC. No. 05594, which affirmed the Decision[3] dated April 11, 2012 rendered by the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. Q-08-150991, which found herein accused-appellant Segundo Bricero y Fernandez (Bricero) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended (RA 9165).

The Facts

An Information was filed against Bricero for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 17[th] day of February 2008 in Quezon City, accused without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broken (sic) in the said transaction, a dangerous drug, to wit: one (1) plastic sachet of white crystalline substance containing zero point twelve (0.12) gram of Methylamphetamine Hydrochloride, a dangerous drug.

Contrary to law.[4]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On February 17, 2008, a confidential informant came to the office of the District Anti-Illegal Drugs (DAID) in Camp Karingal, Quezon City, and reported to P/Insp. Medrano about the illegal drug activities of an alias Budoy or [Gudoy][5]. Having knowledge of the report, P/Insp. Medrano relayed the matter to their Commanding Officer, P/Supt. Nilo Pagtalunan, who thereafter formed a team for the conduct of a buy-bust operation headed by P/Insp. Medrano. Prosecution witness PO1 Teresita Reyes ["PO1 Reyes"] was designated as the poseur-buyer, while PO3 Ramos, PO1 Vargas, PO1 Jimenez and PO2 Joseph Ortiz ["PO2 Ortiz"] were assigned as back-up members. Thereafter, PO1 Vargas prepared the Pre-Operation Report in compliance with orders of P/Insp. Medrano.

The evidence on record shows that at past 4:00 o'clock in the afternoon of that same day, the team proceeded to the target area located at Ilagan Street, Brgy. Paltok, San Francisco Del Monte, Quezon City. It appears that PO1 Reyes, who acted as poseur-buyer, was accompanied by the confidential informant, who introduced her to appellant as a friend and a buyer of shabu. When appellant asked them "kukuha ba kayo? ", the latter expressed their desire to buy shabu and answered: "oo, pakuha ng tatlong daan". Appellant thereafter took out from his pocket and handed to PO1 Reyes a small plastic sachet containing a white crystalline substance, which turned

out to be methylamphetamine hydrochloride, or shabu, in exchange for three (3) One Hundred Peso bills (P100.00), or a total of Three Hundred Pesos (P300.00), earlier marked with her initial "TBR". At this juncture, PO1 Reyes executed the pre-arranged signal by rubbing her nose. Appellant was apprehended by PO2 Ortiz who rushed at the scene at the signal given by PO1 Reyes. Appellant was informed of his constitutional rights and was placed under arrest.

Inventory of the items were made at the place where they were confiscated and appellant was later turned over to the investigator for further questioning. Immediately thereafter, PO2 Ortiz personally brought the confiscated items (sic) to PNP Crime Laboratory for examination. The examination results showed that the sachet taken from the appellant contained 0.12 grams of white crystalline substance tested positive for methylamphetamine hydrochloride or shabu.[6]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

As expected, appellant denied possession and ownership of the sachet of shabu, contending that he saw them for the first time at the police station, where he was brought by the police officers. When asked about what PO1 Reyes and PO2 Ortiz testified in Court about his involvement to the case, appellant answered "That is what they are telling, sir." He alleged that he was inside his house at No. 17 Ilagan Street, Brgy. Paltok, San Francisco Del Monte, Quezon City in the afternoon of 17 February 2008, together with his wife and two children, sleeping. Suddenly, several persons from DAID, about 15 of them, entered the house. He was handcuffed by a police officer, whom he later learned to be PO2 Joseph Ortiz, who asked him if he was the one called alias "Bugoy". When PO2 Ortiz asked him if he was selling shabu, appellant answered in the negative. He was thereafter brought to DAID office in Project 2, Quezon City, where he was asked to call his employer "amo" to ask for help. When appellant answered that he had no employer, "tinuluyan nila ako" and PO2 Ortiz demanded money in the amount of Two Hundred Thousand Pesos (P200,000.00). Thereafter, appellant pleaded to PO2 Ortiz to forgive him not because he admitted that he was selling shabu as testified by PO1 Reyes, but because he was sick and was suffering from spinal ache.

On cross examination, appellant insisted that since he does not know the police officers who raided their house, nor have any transaction or argument with them prior to his arrest, there is no reason for them to file charges against him. Appellant added that he only told his wife about the money demanded from him by PO2 Ortiz and to no other person.[7]

Ruling of the RTC

In the assailed Decision[8] dated April 11, 2012, the RTC found Bricero guilty of the crime charged, convinced that the chain of custody of evidence was not broken and that the integrity and the evidentiary value of the seized items had been duly preserved. The dispositive portion of the Decision reads:

ACCORDINGLY, judgment is rendered finding the accused SEGUNDO BRICERO y FERNANDEZ GUILTY beyond reasonable doubt of violating Sec. 5 of R.A. 9165 (for drug pushing) as charged, and he is hereby sentenced to a jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00 to be held by the Court in trust for PDEA.

The sachet involved in this case is hereby ordered transmitted to PDEA thru DDB for disposal per R.A. 9165.

SO ORDERED.[9]

The RTC took against Bricero the latter's admission that he had asked for forgiveness from the police and told them to take pity on him.[10] It also ruled that the buy-bust team complied with RA 9165.[11] According to the RTC, the buy-bust team obtained a pre-operation and coordination report from PDEA before its operation, and

marked money was used to buy shabu from the accused, which marked money was seized from him.[12] The plastic sachet purchased was marked at the crime scene and an inventory thereof was made at the crime scene despite the being blocked by people as well as their shouting, and stone-throwing at the buy-bust team.[13] The fact that there was no representative from the Department of Justice (DOJ), media, nor there was an elected person at the crime scene is, according to the RTC, understandable for the buy-bust team too would have been exposed to unnecessary and unwanted risk.[14] Lastly, the PNP Crime Laboratory found the purchased substance positive for methylamphetamine hydrochloride or shabu.[15]

Aggrieved, Bricero appealed to the CA.

Ruling of the CA

In the assailed Decision[16] dated May 30, 2014, the CA affirmed Bricero's conviction. The dispositive portion of the decision reads:

WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 79 dated 11 April 2012 in Criminal Case No. Q-08-150991, finding Segundo Bricero y Fernandez guilty of sale of zero point twelve (0.12) gram of methylamphetamine hydrochloride or shabu, in violation of Section 5, Article II of Republic Act No. 9165, and sentencing him to life imprisonment with a fine of Five Hundred Thousand Pesos (P500,00.00), is AFFIRMED.

SO ORDERED. [17]

The CA held that the police officers conducted a valid buy-bust operation against Bricero.[18] It likewise ruled that the chain of custody of the seized substance was not broken and the drug seized from Bricero was properly identified before the trial court.[19] The prosecution clearly established that PO1 Reyes received the sachet of shabu from Bricero in the course of the buy-bust operation.[20] The subject specimen was marked in the same place where it was seized.[21] Also, the substance was inventoried in the presence of the police officers.[22] Thereafter, PO2 Ortiz personally turned over the item to the PNP Crime Laboratory for examination, while Forensic Chemist Bernardino M. Banac, Jr. tested the content of the marked sachet which turned out positive for methylamphetamine hydrochloride as stated in his Chemistry Report No. D-59-08 dated February 18, 2008.[23] Finally, during trial, the marked sachet was identified by PO1 Reyes and PO2 Ortiz as the same item confiscated from Bricero.[24] It thus ruled that the police officers complied with the proper procedure in the custody of the seized prohibited drugs.[25]

Hence, the instant appeal.

Issue

Whether or not Bricero's guilt for violation of Section 5 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 Bricero as the prosecution admittedly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165, which thus results in its failure to prove his guilt beyond reasonable doubt.

Bricero was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, 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.[26]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the corpus delicti or the body of the crime. In drug cases, the dangerous drug itself is the very corpus delicti of the violation of the law.[27] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[28] the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[29] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[30]

In this connection, Section 21,[31] 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 follow to maintain the integrity of the confiscated drugs 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 DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with 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 of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[32]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witnesses, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

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. However, this is with the caveat that the prosecution still needs to 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.[33] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[34]

The buy-bust team failed to comply with the requirements of Section 21 of RA 9165.

In present case, the buy-bust team committed several 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 drug and, consequently, reasonable doubt as to the guilt of the accused. Moreover, none of the three required witnesses was present at the time of seizure and apprehension. As PO1 Reyes, the poseur-buyer, herself testified:

Q:

Now, Madam Witness, when you conducted your buy bust operation, who were with you, Madam witness?

A:

The informant, sir.

Q:

Aside from your informant, the rest of the team who are they?

A:

Insp. Medrano, PO3 Ramos, PO2 Ortiz, PO1 Vargas, PO1 Jimenez and myself, sir.

x x x x

Q:

I am showing to [you] Exhibit "F" on page 14 of the record, it appears it was signed and prepared in the presence of the witness, am I correct?

A:

Yes, sir.

Q:

You said that you are well aware of the requirement of the law, is that the proper procedure now that the preparation of your inventory should be witnessed by the police officer also?

A:

Yes, sir.

Q:

Now, Madam Witness, you said your team made coordination with PDEA before you proceeded to your buy bust operation?

A:

Yes, sir.

Q:

Now, after your buy bust operation did you as a member of the team coordinated with PDEA regarding the result of your operation?

A:

What I know, sir, is that after the operation, we send an after operation report to the PDEA.

Q:

The question is directed to you, Madam Witness, being the person who recovered the drug subject matter of this case allegedly did you, yourself, coordinated with PDEA?

A:

No, sir.

Q:

What did you do after you arrested the accused?

A:

We turned him over to the investigator, sir.[35] (Emphasis supplied).

The failure of the buy-bust team to comply with the requirements of Section 21 of RA 9165 is further bolstered by the testimony of PO2 Ortiz, likewise a member of the apprehending team:

Q:

You said that after the arrest of the accused you waited for Officer Jimenez at the site, why did you wait for him?

A:

Because he was outside, he was our driver of our vehicle.

Q:

Now, Mr. witness, Am I correct to say that you were the first person who actually recovered the buy-bust money from the accused?

A:

Yes, sir.

Q:

How about the drug, who recovered the drug?

A:

It was PO1 Reyes, sir.

Q:

My question is directed to you, being the first person who actually took custody of the confiscated buy-bust

money, did you prepare an inventory?

A:

Yes, sir.

Q:

You were the one who prepared the inventory?

A:

It was PO1 Jimenez who prepared the inventory, sir.

Q:

You are changing your answer?

A:

I made a mistake, sir.

Q:

How about Reyes who recovered the illegal drug, did she prepare an inventory in your presence?

A:

No, sir.

Q:

Why did you have to wait for Jimenez considering that he did not recover any contraband in connection with the case?

A:

We waited for Jimenez to write down the items that we recovered and after that, we signed.

Q:

In other words, the person who prepared the inventory was not the person who recovered the prohibited items?

A:

No, sir.

Q:

You said you arrested the accused now, immediately after the arrest of the accused did you coordinate with the

PDEA regarding the fact of arrest?

A:

No, sir.

x x x x

Q:

Under the law Mr. witness you should also take picture of the accused along with the recovered evidences at the site where the illegal drugs were recovered, did you take pictures of the accused?

A:

We were not able to take pictures, sir.

Q:

And did you not also prepare an inventory, why is it that you did not take picture and prepare an inventory for yourself?

A:

Because there were people blocking the Alley.

Q:

And would they prevent you in taking pictures?

A:

Yes, sir, because they were shouting and throwing stones.

Q:

Did you put that in your affidavit so that you could explain why you failed to comply the requisite requirement of Section 21 R.A. 9165? Did you state that in your affidavit?

A:

No, sir.

x x x x

Q:

Under the law the inventory should be signed by the representative of the accused or his lawyer or member of the Media or any elected official of the place where the accused was arrested, why is it that you did not apply the requirements of the law instead and allowed a member of the team a certain PO1 Leonardo Ramos to sign that inventory, why is that so?

A:

We did not ask any Media to sign because were not accompanied by any media.[36]

Section 21, paragraph 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 Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately present 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. In other words, the members of the buy-bust team have 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.

First, records show that the apprehending team did not conduct an inventory nor did it photograph the confiscated item in the presence of the accused-appellant or his representative or counsel, a representative from the media and the DOJ, and any elected public official. PO1 Reyes, the poseur buyer, merely testified that the subject specimen was marked and inventoried in the same place it was seized only in the presence of the police officers. They did not even state that they exerted earnest efforts to ensure the presence of the required witnesses. Neither did they explain the absence of the three required witnesses.

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*,^[37] 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 vs. Mendoza*^[38], 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 were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.[39]

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 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)

In this connection, the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court en banc unanimously held in the recent case of *People v. Lim*, [41]

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 was 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 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. [42] (Emphasis omitted, underscoring added)

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". In this case, none of the required witnesses was present during the apprehension of the accused-appellant and the preparation of the inventory. They did not even offer any explanation as to the absence of the required witnesses.

Second, the inventory was not prepared by the police officer who recovered the prohibited item. It was prepared by PO1 Jimenez who was not present at the time and place of apprehension as he was the designated driver of the team waiting in the car. He was merely called to go to the crime scene after the apprehension and seizure were already done. Clearly, the law requires that the marking and inventory of the seized drugs should be done by the apprehending officer himself or the poseur-buyer. In *People v. Gonzales*, [43] the Court explained that:

The first stage in the chain of custody rule 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 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.[44] (Emphasis and underscoring supplied)

Third, no photographs of the seized drug 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 drug 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. The explanation of the members of the buy-bust team, that the reason they could not take photographs was because there were people blocking the alley and throwing stones at them is hollow and not worthy of belief. Notably, the buy-bust team was composed of seven armed police officers. And if it was able to conduct the inventory at the place of apprehension, it could easily have also taken photographs at the same time. Moreover, the police officers were able to wait for PO1 Jimenez who came from his car to do the inventory, therefore there was no sense of urgency for them to leave the place of apprehension. Thus, the explanation of the members of the buy-bust team that there were people blocking the way and throwing stones at them deserves scant consideration. To the mind of the Court, this excuse is untrue and conjured up to cover the team's failure to follow the procedure set by law — assuming there was even a buy-bust that really happened.

Lastly, the prosecution did not even attempt to offer any justification for the failure of the apprehending team to follow the prescribed procedures in the handling of the seized drug. The prosecution also did not bother to explain how the subject specimen was safely turned over from PO1 Reyes to PO2 Ortiz. These failures certainly cast doubt on the corpus delicti of the offense. The police officers did not even coordinate with the PDEA after the apprehension of Bricero and seizure of the prohibited drug. The Court stresses that the justifiable grounds for non-compliance must be adequately explained; the Court cannot presume what these grounds are or that they even exist.

As the seized drug itself is the corpus delicti of the crime charged, it is of utmost importance that there be no doubt or uncertainty as to its 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 drug. 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.[45]

The saving clause does not apply to this case.

Section 21 of the IRR of RA 9165 provides that "noncompliance of 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 and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[46] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the corpus delicti had been compromised.[47] As the

Court explained in *People v. Reyes*:^[48]

Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the corpus delicti. With the chain of custody having been compromised, the accused deserves acquittal.^[49] (Emphasis supplied)

Here, none of the requirements for the saving clause to be triggered is present:

First, 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 witnesses at the place and time of seizure, or as to the failure to photograph the confiscated item 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 is presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.^[50] It is duty bound to fully comply with the requirements thereof, and if its compliance is not full, it should at least have the readiness to explain the reason for the step or steps omitted from such compliance.^[51]

Second, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the procedure laid down in Section 21 of RA 9165. It did not even explain why the three required witnesses were not present during the buy-bust operation.

The integrity and evidentiary value of the corpus delicti have thus been compromised. In light of this, Bricero must perforce be acquitted.

The buy-bust operation was merely fabricated by the police officers.

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.^[52] However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.^[53]

This is the situation in the instant case.

Generally, non-compliance with Sections 21 and 86 of RA 9165 does not mean that no buy-bust operation against Bricero ever took place.^[54] But where there are other pieces of evidence putting in doubt the conduct of the buy-bust operation, these irregularities take on more significance which are, well nigh, fatal to the prosecution.^[55]

Putting in doubt the conduct of the buy-bust operation are the uncontroverted testimonies of PO1 Reyes and PO2 Ortiz, which gave credence to Bricero's denial and frame-up theory. The Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.^[56] This Court has been issuing cautionary warnings to trial courts to exercise extra vigilance in trying

drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[57]

The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[58] Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it very plausible or true. We are of the view that Bricero's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt,[59] as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that Bricero sold the seized shabu. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.[60]

In the case at bar, given the circumstances surrounding the case, the Court gives credence to the testimony of accused-appellant Bricero that the policemen merely entered his house; handcuffed him and asked him if he is alias "Bugoy;" and thereafter immediately took him to the police station.[61] The fact that the buy-bust operation was merely fabricated is bolstered even more by the following circumstances: First, the buy-bust team did not coordinate with the PDEA before or after the alleged buy-bust operation.[62] This is a standard operating procedure for every buy-bust operation, which every policemen should know. Second, there were no witnesses to the buy-bust operation, apprehension, and preparation of the inventory of the seized item aside from the policemen members of the buy-bust team themselves. Hence, there are no unbiased witnesses who can testify as to the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. Third, the unjustified failure of the arresting officers to mark the seized item at the place of arrest and to inventory and photograph the same in the presence of the other statutory witnesses lends credence to the defense of frame-up by Bricero.

Thus, taking into consideration the defense of denial by Bricero, in light of the testimonies of PO1 Reyes and PO2 Ortiz, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on. The prosecution's story is like a sieve full of holes.

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.[63] 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.[64]

Here, the reliance by the 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.[65] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[66] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[67]

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,[68] the conduct of buy-bust operations requires the following:

Anti-Drug Operational Procedures

Chapter V. Specific Rules

x x x x

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

- Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:
- Record time of jump-off in unit's logbook;
- Alertness and security shall at all times be observed:
- Actual and timely coordination with the nearest PNP territorial units must be made;
- Area security and dragnet or pursuit operation must be provided:
- Use of necessary and reasonable force only in case of suspect's resistance:
- If buy-bust money is dusted with ultra violet powder make sure that suspect gel hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- 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;
- 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;
- After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
- 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;
- 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
- 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.[69] (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*[70] that it will not presume to set an a priori basis 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 item according to the procedures in their own operations manual.

A review of the facts of the case negates this presumption of regularity in the performance of official duties

supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team showed glaring gaps in the chain of custody which cast doubt on whether the dangerous drug allegedly seized from Bricero was the same drug brought to the crime laboratory and eventually offered in court as evidence.

One final point, the RTC's reliance on the so-called admission of Bricero because of his plea for forgiveness from the police as a basis for his conviction is misplaced. A review of the transcript of records would reveal that he asked for forgiveness after PO2 Ortiz demanded for money from him. It was then that he asked them to take pity on him as he is only a painter and could not pay.[71] When asked why he pleaded for forgiveness, he explained that it was only because he was sick and was suffering from spinal ache.[72] Evidently, his plea for forgiveness was not because he was guilty of the crime charged, but because he could not accede to the brazen demand of PO2 Ortiz for money. In fact, it should be the police officers who should ask for forgiveness for their act of extortion from an innocent man.

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 Implementing Rules and Regulations, which is Decision 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, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated May 30, 2014 of the Court of Appeals, Special Fourth Division in CA-G.R. CR-HC. No. 05594 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant SEGUNDO BRICERO y FERNANDEZ is ACQUITTED of the crime charged on the ground of reasonable doubt, and is ORDERED IMMEDIATELY RELEASED from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa 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 he has taken.

SO ORDERED.

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

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

[1] See Notice of Appeal dated June 25, 2014; rollo, p. 9.

[2] Id. at 2-8. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Amelita G. Tolentino and Danton Q. Bueser concurring.

[3] CA rollo, pp. 31-34. Penned by Acting Judge Jaime N. Salazar, Jr.

[4] Id. at 2.

[5] Also "Bugoy" in some parts of the record.

[6] Id. at 3-4.

[7] Id. at 4-5.

[8] Supra note 3.

[9] CA rollo, pp. 34.

[10] Id. at 33.

[11] Id. at 34.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Supra note 2.

[17] Rollo, pp. 7-8.

[18] Id. at 6.

[19] Id.

[20] Id.

[21] Id. at 6-7.

[22] Id. at 7.

[23] Id.

[24] Id.

[25] Id.

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

[27] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

[28] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[29] *People v. Guzon*, supra note 27 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

[30] Id., citing *People v. Remigio*, 700 Phil. 452 (2012).

[31] 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[.]

[32] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[33] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-625.

[34] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *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).

[35] TSN dated January 29, 2010, pp. 15-18.

[36] TSN dated August 17, 2009, pp. 16-20.

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

[38] 736 Phil. 749 (2014).

[39] *Id.* at 764.

[40] *Supra* note 40 at 11-12.

[41] G.R. No. 231989, September 4, 2018.

[42] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[43] 708 Phil. 121 (2013).

[44] *Id.* at 130-131.

[45] *Id.* at 123.

[46] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[47] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[48] 797 Phil. 671 (2016).

[49] *Id.* at 690.

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

[51] *Id.*

[52] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 533 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[53] See *People v. Dela Cruz*, 666 Phil. 593, 604-605 (2011).

[54] *People v. Naquita*, 582 Phil. 422, 440 (2008).

- [55] *People v. Dela Cruz*, *supra* note 56 at 610.
- [56] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).
- [57] *Sales v. People*, 602 Phil. 1047, 1053 (2009).
- [58] *People v. Steve*, 740 Phil. 727, 741 (2014).
- [59] *People v. Mejia*, 612 Phil. 668, 687 (2009).
- [60] *Dizon v. People*, 524 Phil. 126, 146 (2006), citing *People v. Fronda*, 384 Phil. 732, 743-744 (2000).
- [61] TSN dated June 25, 2010, p. 4.
- [62] TSN dated January 29, 2010, p. 18.
- [63] CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx."
- [64] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).
- [65] *People v. Mendoza*, 736 Phil. 749, 769 (2014)
- [66] *Id.* at 770.
- [67] *People v. Catalan*, 669 Phil. 603, 621 (2012).
- [68] Philippine National Police Drug Enforcement Manual, PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.
- [69] *Id.*
- [70] 393 Phil. 68, 133 (2000).
- [71] TSN dated June 25, 2010, p. 7.
- [72] *Id.*
- [73] See *People v. Jugo*, *supra* note 34.

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