

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY DE VERA Y MEDINA, ACCUSED-APPELLANT.

G.R. No. 218914. July 30, 2018

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CAGUIOA, J:

This is an Appeal[1] filed pursuant to Section 13, Rule 124 of the Rules of Court from the Decision[2] dated September 30, 2014 (assailed Decision) of the Court of Appeals, Ninth (9[th]) Division (CA) in CA-G.R. CR-HC No. 06188. The assailed Decision affirmed in toto the Decision[3] dated April 10, 2013 rendered by the Regional Trial Court of Baguio City, Branch 61 (trial court), in Criminal Case (CC) Nos. 31846-R and 31847-R, which found accused-appellant Henry De Vera y Medina (De Vera) guilty beyond reasonable doubt of violation of Sections 5[4] and 11[5] of Article II of Republic Act No. (RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The accusatory portions of the two (2) Informations filed and consolidated before the trial court against De Vera read:

[Criminal Case No. 31846-R:]

That on or about the 24[th] day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver One (1) heat sealed transparent plastic sachet containing 0.61 gram of methamphetamine hydrochloride also known as 'SHABU[,] a dangerous drug, for Php5,000.00 to Albert Dolinta[,] Jr., a member of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG), Baguio City Police Office who acted as poseur buyer, knowing the same to be a dangerous drug, in violation of the aforementioned provision of law.[7]

[Criminal Case No. 31847-R:]

That on or about the 24[th] day of May 2011, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody: Three (3) heat sealed transparent plastic sachets, each containing 0.08 gram, 0.06 gram, and 0.06 gram, respectively, of methamphetamine hydrochloride also known as 'SHABU[,] a dangerous drug, without the corresponding license or prescription from the authorities concerned, in violation of the aforementioned provision of law.[8] (Emphasis in the original)

Upon his arraignment on June 27, 2011, De Vera entered a plea of "not guilty" to both offenses charged.[9] Trial on the merits, thereafter, was held.

The Facts

Version of the Prosecution:

The prosecution presented two (2) witnesses: SPO2 Albert Dolinta, Jr. (SPO2 Dolinta) and PO2 Marlon Charmino (PO2 Charmino),[10] who made the following narration of facts:

On May 24, 2011, at about 8:00 o'clock in the evening, a walk-in Confidential Informant (CI) went to the Office of the City Anti-Illegal Drugs Special Operations Task Group (CAIDSOTG) of the Baguio City Police Office and reported to SPO2 Dolinta that a certain Henry, who turned out to be De Vera, a drug pusher, offered to sell shabu worth P5,000.00.[11] Upon SPO2 Dolinta's instruction, the CI contacted Henry and told the latter that, the CI did not have enough money but that he would bring along another interested buyer.[12] They agreed to meet at around 11:30 p.m. along Upper Brookside, Baguio City.[13]

SPO2 Dolinta relayed the matter to the Chief of the Police, Police Senior Inspector Dino W. Cogasi (PSI Cogasi), who verified the information by interviewing the CI.[14] Thereafter, PSI Cogasi formed a buy-bust team composed of SPO2 Dolinta as poseur-buyer and team leader; PO2 Charmino as seizing officer; PO3 Jaime Abrera (PO3 Abrera) and PO1 Ramon Christopher Bueno (PO1 Bueno) as back-up officers.[15] They coordinated the impending buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) - Cordillera Administrative Region (CAR).[16]

After the final briefing at around 11:00 o'clock p.m., the buy-bust team proceeded to the Barangay Upper Brookside, Baguio City.[17] SPO2 Dolinta and the CI waited for De Vera near a waiting shed[18] while the rest of the team positioned themselves nearby discreetly.[19]

Upon arrival of De Vera at around 11:45 p.m., the CI introduced SPO2 Dolinta as the buyer he was referring to earlier in the phone call.[20] SPO2 Dolinta brought out the buy-bust money consisting of five (5) one thousand peso (P1,000.00) bills, which he counted in front of De Vera and then handed them to the latter.[21] De Vera, in turn, brought out a purse from his front pocket, opened the same and took out one (1) plastic sachet which contained white crystalline substance (drugs subject of sale).[22] After assessing the item as shabu, SPO2 Dolinta gave the pre-arranged signal by removing his cap, causing the back-up officers to respond to the scene and help in arresting De Vera.[23]

After introducing themselves to De Vera and informing him of his violations, SPO2 Dolinta marked the sachet of suspected drugs bought from De Vera by placing his initials, date and signature thereon.[24] Meanwhile, PO2 Charmino recovered the buy-bust money from De Vera which he handed to SPO2 Dolinta as the evidence custodian.[25] Upon frisking, PO2 Charmino likewise recovered from De Vera the purse containing three (3) more plastic sachets of suspected shabu (drugs subject of the possession case) and 42 pieces of transparent empty plastic sachets[26] which PO2 Charmino marked by putting his initials, date and signature thereon.[27] PO2 Abrera then stated to De Vera the latter's constitutional rights in the dialect he understood: Ilocano.[28]

Thereafter, the buy-bust team brought De Vera to the CAIDSOTG office where the inventory of the confiscated items was conducted in the presence of elected Barangay Official Rico W. Tibong, media representative from ABS-CBN, Meilen B. Pacio and Department of Justice (DOJ) representative, Prosecutor Ramsey Wynn Sudaypan.[29] Thereafter, with a request for qualitative examination signed by PSI Cogasi, SPO2 Dolinta and PO2 Charmino brought all four (4) seized drugs to the Regional Crime Laboratory Office, Camp Bado Dangwa (Crime Lab), for laboratory examination. The results yielded positive for methamphetamine hydrochloride.[30]

From the time of their seizure from De Vera to their submission to the Crime Lab, SPO2 Dolinta held custody of the drugs subject of sale and the buy-bust money while PO2 Charmino held custody of the drugs subject of the possession case and the 42 pieces of transparent plastic sachets.[31]

Version of the Defense:

The defense called De Vera to the stand, who narrated the following pertinent facts:

On May 24, 2011, De Vera was at a drinking session in his cousin's house in Tiptop, Pacdal until he left for home

at around 11:00 o'clock p.m. The driver of the taxi cab he took told him that they were taking a shorter route through Brookside. At the intersection of Rimando Road and Upper Brookside, the taxi cab was blocked by four (4) armed policemen who ordered De Vera to alight as they received information that he was in possession of shabu. De Vera was taken to a nearby waiting shed where he was frisked. When the policemen found nothing illegal on De Vera's person, they went inside the taxi cab and after less than two (2) minutes, came out with a brown coin purse which was shown to De Vera.

The policemen brought De Vera to the CAIDSOTG office where the contents of the coin purse, which turned out to be shabu, were shown to the latter. SPO2 Dolinta imputed ownership thereof to De Vera, despite the latter's denial. He was thereafter detained and eventually brought to Camp Dangwa where he was ordered to sign an unknown document. All this while, there were no representatives from the media and DOJ or an elected public official present.[32]

The Ruling of the trial court

In the Decision dated April 10, 2013, the trial court found De Vera guilty beyond reasonable doubt of the offenses charged as follows:

WHEREFORE, judgment is hereby rendered:

1. In Criminal Case No. 31846-R, finding the accused Henry De Vera GUILTY beyond reasonable doubt and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of P5,000,000.00; and,
2. In Criminal Case No. 31847-R, finding the accused Henry De Vera GUILTY beyond reasonable doubt and he is hereby sentenced to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine [of] P300,000.00[.]

SO ORDERED.[33]

The trial court ruled that the prosecution was able to discharge its burden to prove the guilt of De Vera for the separate crimes of sale and possession of illegal drugs. The presumption of regularity in the performance of duties of the buy-bust team far outweighed the presumption-of innocence of the accused, as the latter presumption was overturned by the evidence of the prosecution. Moreover, the accused's defense of denial is highly improbable and the defense failed to show ill-motives on the part of the buy-bust team so as to falsely impute upon De Vera the crimes charged.[34]

Moreover, the trial court ruled that the police officers conducted a legitimate buy-bust operation; hence, there was valid seizure of the drugs subject of sale and valid warrantless arrest. Consequently, the body search upon De Vera's person which yielded the drugs subject of the possession case after his arrest is, likewise, constitutionally sanctioned. Finally, the integrity of the corpus delicti of both crimes charged was preserved, the buy-bust team having complied with Sec. 21 of RA 9165.[35]

De Vera appealed to the CA via Notice of Appeal.[36] He filed his Brief[37] dated December 16, 2013, while the People, through the Office of the Solicitor General (OSG), filed its Brief[38] dated May 15, 2014. On June 25, 2014, De Vera filed a Manifestation[39] waiving his right to file a Reply Brief.

The Ruling of the CA

In the assailed Decision, the CA affirmed in toto the trial court's Decision, thereby disposing of the case as follows:

WHEREFORE, the trial court's Decision dated April 10, 2013 is AFFIRMED in toto.

SO ORDERED.[40] (*Emphasis and italics in the original*)

The CA held that the prosecution adequately proved all the elements of the crimes charged and that the prosecution's evidence sufficiently established an unbroken link in the chain of custody. On the issue of non-compliance by the buy-bust team with Sec. 21 of RA 9165, the CA pronounced that such does not necessarily render the arrest illegal or the items seized inadmissible as what is essential is that the integrity and the evidentiary value of the seized items are preserved.[41] Amidst the objections of the defense, the CA held that the identity and integrity of the seized drugs were proven by the prosecution.

Hence, this recourse.

In lieu of filing supplemental briefs, De Vera and the People filed separate Manifestations dated October 6, 2015[42] and October 15, 2015,[43] respectively, foregoing their right to file supplemental briefs and repleading the arguments raised in their Briefs filed before the CA.

Issue

The main issue for the Court's resolution is whether or not accused-appellant De Vera is guilty beyond reasonable doubt of the separate crimes of sale and possession of illegal drugs as defined and punished under Sec. 5 and Sec. 11, respectively, both under Article II of RA 9165.

The Court's Ruling

The Court finds for and accordingly acquits accused-appellant De Vera.

De Vera is charged with selling 0.61 gram, and possessing three (3) sachets of 0.08 gram, 0.06 gram, and 0.06 gram each of dangerous illegal drugs, in particular, Methamphetamine Hydrochloride colloquially known as shabu. At the outset, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, being the law in place at the time of the commission of the offense applies in this case.

For a successful prosecution of a case for illegal sale of drugs, the following elements must be proven: (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. On the other hand, in prosecuting a case for illegal possession of drugs, the following elements must concur: (1) the accused is in possession of prohibited drugs; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[44]

The dangerous drug itself constitutes the corpus delicti of the offense of sale and/or possession of dangerous drugs.[45] It is important that the State establish, with moral certainty, the integrity and identity of the illicit drugs sold to be the same as those examined in the laboratory and subsequently presented in court as evidence.[46] This rigorous requirement, known under RA 9165 as the chain of custody,[47] performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[48]

By providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia, Sec. 21 of RA 9165 is a critical means to ensure the establishment of the chain of custody.[49] The same provides:

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 and italics in the original)

Filling in the details as to where the physical inventory and photographing of the seized items should be made is Sec. 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR), which reads:

(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; x x x (Emphasis supplied)

The same likewise provides for a saving clause in case of non-compliance with the requirements of RA 9165 and the IRR, thus:

x x x 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. x x x (Emphasis supplied)

The foregoing is echoed in Sec. 2(a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

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

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

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall be

given a copy thereof; Provided that the physical inventory and photograph shall be conducted at the place where the search 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 a seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x. (Emphasis supplied)

In sum, the applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous/illegal drugs:

- The initial custody requirements must be done immediately after seizure or confiscation;
- 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.
- The conduct of the physical inventory and photograph shall be done at the:
 - place where the search warrant is served; or
 - at the nearest police station; or
 - nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of corpus delicti, thus engendering the acquittal of an accused.[50]

However, such failure to comply is excused in cases where the following obtain: (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.[51] In these exceptional cases, the seizures and custody over the confiscated items "shall not be rendered void and invalid."

With the foregoing considered, the Court had thoroughly sifted the records of the case and is led to entertain reasonable doubts on the integrity and identity of the corpus delicti.

The buy-bust team failed to comply with the requirements of Sec. 21 of RA 9165, specifically, with the required inventory and photographing of the seized dangerous drugs in the presence of the the three (3) insulating witnesses and immediately after seizure and confiscation.

(i) Presence of the three (3) insulating witnesses

Sec. 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his 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."

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.[52]

Likewise, so they can be ready to witness these procedures, the three (3) mandatory witnesses — the elected public official and the DOJ and media representatives — must already be physically present at the time of and at or near the place of apprehension and seizure. This is a requirement that can be easily ensured or complied with in a buy-bust operation as this is, by its very nature, a planned activity. The presence of these witnesses was specifically mandated by substantive law precisely to guard against the rather pervasive police practice of planting evidence in anti-narcotics operations[53] — a practice that necessarily takes place at the point of seizure and confiscation. Hence, it is at this point that their presence is most crucial. As the Court had clearly illustrated:

x x x Without the insulating presence of the representative from the media or the [DOJ], 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. x x x[54] (*Italics in the original*)

In the present case, the buy-bust operation was arranged in advance with the police officers having been able to form an apprehending team, prepare the necessary paperwork and the buy-bust money, coordinate with PDEA and set-up the sale. With all this time spent preparing, the records show no attempt by the buy-bust team to secure the presence of the three (3) witnesses to be present at the time and place of the alleged confiscation of the drugs. Instead, what is evident from the records is that the witnesses' presence were only secured upon return of the buy-bust team to CAIDSOTG office, and during the inventory of the seized items therein, as testified to by SPO2 Dolinta, thus:

[PROSECUTOR MA. LOURDES SORIANO (PROS. SORIANO)]:

x x x x

Q

After that, what happened?

x xx x

A

Afterwards, PO2 Abrera stated to him his Constitutional Rights in Ilocano dialect which he understood. Afterwards, we brought the suspect to our office for the filing of the necessary charges against him.

x x x x

Q

When you arrive[d] at your office, what happened next?

x x x x

A

When we arrived at our office, we made the necessary documents. First is the Inventory of the evidence confiscated from the suspect. We called the representatives from the Barangay, Media and DOJ. We made the Inventory in our office.[55] (*Emphasis supplied*)

Clearly, not one of the mandatory witnesses was present during, and at the place of, the alleged confiscation of drugs — confirming, in fact, the testimony of De Vera. There being no witness to insulate against police abuses at the point of seizure, i.e., the first link in the chain of custody, it becomes futile to establish the rest of the links in

the chain. Doing so would simply be proving the chain of custody of, possibly, already planted drugs.

(ii) Physical Inventory and Photographing

The above-cited evidence of the Prosecution likewise points to another fatal lapse of the buy-bust team: its failure to conduct a physical inventory and photographing of the seized drugs immediately after and at the place of confiscation as required under Sec. 21. SPO2 Dolinta testified thus:

[ATTY. IMMANUEL AWISAN (ATTY. AWISAN)]:

x x x x

Q

And did you conduct an inventory of those items while you were still there at Upper Brookside, Baguio City?

A

No, Sir.

Q

There were also no photographs of those [seized] items?

A

No, Sir.[56] (Emphasis supplied)

Instead, these initial custody requirements were only made at about 1:30 a.m. or an hour and a half after the return of the buy-bust team to the CAIDSOTG office. Specifically on the inventory, SPO2 Dolinta testified:

ATTY. AWISAN:

x x x x

Q

What time did you reach the office after the arrest of Mr. Henry [D]e Vera?

A

I think we reached our office 12:00 midnight already.

Q

And what time was the inventory conducted?

A

At around I think 1:30 a.m. of May 25, 2011.[57] (Emphasis supplied)

This fact likewise appears in SPO2 Dolinta's Affidavit[58] dated May 25, 2011:

10. That while in the office we conducted the inventory with the presence of media representative from ABSCBN Meilen B. Pacio, Elected official RICO W. TIBONG and DOJ representative Prosecutor RAMSEY WYNN SUDAYPAN[.][59] (Emphasis supplied)

As to the photographing, a perusal of the photographs[60] reveals that they were, indeed, taken, not in Upper Brookside immediately after the confiscation,[61] but only when the buy-bust team returned to the CAIDSOTG

office and during the inventory.

Significantly, the photographs[62] submitted in evidence are, by themselves, defective as they were not of the seized illegal drugs. A cursory look at the three photographs shows only: a) a mug shot of the accused; and b) two of the alleged witnesses signing the Inventory Form.

Thus, no photographs at all of the drugs and drug paraphernalia alleged to have been confiscated from De Vera were presented. To emphasize, the photographs required by law to be taken are those of the articles confiscated during the buy-bust operation, particularly the seized illegal drugs,[63] consistent with the law's purpose to ensure that their integrity and identity are preserved.

The fact that the photographs are not of the seized illegal drugs is moreover reflected in the Receipt,[64] signed by the Clerk of the trial court, of the items submitted by SPO2 Dolinta, including the photographs, thus:

Received the following item(s) from SPO2 ALBERT E. DOLINTA, JR., PNP, Baguio City:

x x x x

- Three (3) pictures: one of the accused and the two witnesses to the inventory x x x[65] (Emphasis in the original)

In fine, the buy-bust team utterly failed to comply with the requirements of RA 9165 to perform a physical inventory and photographing of the seized illegal drugs immediately after, and at the place of, seizure and confiscation.

(iii) Presence of the accused during the marking, physical inventory and photographing of the seized items.

Apart from the three (3) insulating witnesses, Sec. 21 requires that the physical inventory and photographing of the confiscated drugs be likewise made in the presence of, "the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel."

As to marking, although Sec. 21 is silent thereon, consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.[66]

In the present case, the prosecution failed to adduce evidence concerning the presence of De Vera during the photographing, physical inventory and marking of the seized items. The prosecution's witnesses specifically mentioned the presence of the three (3) insulating witnesses during the inventory, detailed the immediate marking upon seizure of the seized drugs and pointed out the photographing during the inventory; however, no mention was made on whether De Vera or his representative or counsel witnessed these activities.

The presence of the accused during these initial custodial requirements cannot be brushed aside as a mere technicality,[67] as it is critical in protecting the chain of custody and preserving the integrity and identity of the corpus delicti. As such, the failure of the prosecution to prove that the accused or his representative or counsel witnessed the performance by the buy-bust team of these requirements is fatal. It is settled that the prosecution has the positive duty to prove compliance with Sec. 21[68] and such need not be raised as an issue by the defense.

All told, the prosecution utterly failed to establish its compliance with the straightforward mandate of Sec. 21 and related jurisprudence on buy-bust operations. It failed to secure the presence of the three (3) insulating witnesses, and conduct a physical inventory and photographing of the seized illegal drugs, immediately after, and at the place of, seizure and confiscation. Moreover, it failed to prove the presence of the accused in these initial custody requirements, as well as during the marking.

The prosecution failed to trigger the saving clause under the IRR of RA 9165. Its noncompliance with Sec. 21 cannot be excused; the identity and integrity of the corpus delicti are not preserved.

As a rule, strict compliance with the prescribed procedure under Sec. 21 is required.[69] The Court has, however, recognized that this may not always be possible under field conditions which are sometimes far from ideal; hence, the apprehending officers cannot at all times attend to the niceties of the procedure in the handling of confiscated evidence.[70] Thus, Sec. 21 (a), Article II of the IRR of RA 9165 provides for a saving clause,[71] requiring the satisfaction, by the prosecution, of a two-pronged requirement: first, to acknowledge and credibly justify the non-compliance with Sec. 21, and second, to show that the integrity and evidentiary value of the seized item were properly preserved.[72] The Court held in *Valencia v. People*: [73]

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided [was] a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[74]

On the first prong, it has been held that the prosecution must first acknowledge the lapses on the part of the apprehending officers and thereafter cite the justifiable grounds therefor,[75] which must be credible.[76] Breaches of the procedure contained in Sec. 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 would then have been compromised.[77]

If this two-pronged requirement obtains, the saving clause is triggered and the prosecution is then allowed to establish the identity of the corpus delicti despite the failure of the apprehending team to physically inventory and photograph the drugs at the place of arrest and/or to secure the presence of the required witnesses thereto.

In this case, the prosecution did not concede the evident lapses of the buy-bust team and, thus, failed to offer credible and justifiable grounds for these lapses. No explanation was advanced as to the failure to conduct the inventory and take photographs of the seized drugs immediately after confiscation and in the presence of the insulating witnesses and the accused.

The People, in its Brief, insists that the buy-bust team substantially complied with the requirements of Sec. 21 as the marking was made at the place of arrest and the inventory was witnessed by a public officer and media and DOJ representatives.[78] Even granting that these constitute "substantial compliance"[79] of the law, the same will not salvage the case for the prosecution.

To reiterate, strict compliance — not just substantial compliance — is required of the mandatory provisions of Sec. 21.[80] The Court cannot absolve the failure of the buy-bust team to comply fully with Sec. 21 for its successful observance of only some of the law's provisions. Selective and partial compliance is tantamount to non-compliance which, as have been repeatedly emphasized, is fatal to establishing the corpus delicti. Then, unless excused by the saving clause, the acquittal of the accused must follow.

Too, the People, in attempting to excuse its lack of justification for the lapses, faults the defense in "never bothering] to question the police officers for the reasons" behind such lapses.[81] To emphasize, the prosecution has the duty to adduce evidence proving compliance by the buy-bust team with the prescribed procedures laid down by Sec. 21.[82] Corollary thereto is its positive duty, in case it fails to prove such compliance, to trigger the

saving clause. The accused's Constitutional right to be presumed innocent means that he can stay quiet and not do anything, and this will not be taken against him nor will this impact on his presumed innocence.[83]

At any rate, the records show that the defense had, indeed, been taking issue with the non-observance of Sec. 21 as early as in the trial court proceedings. In its Comment on the Formal Offer of Evidence by the Prosecution,[84] the defense objected to the admission of the Inventory as evidence for the prosecution, precisely on this ground, thus:

The accused objects to the admission of exhibit "C" (inventory of seized items) on the ground that the police officers failed to comply with [S]ection 21 Article II of R.A. 9165 relative to the handling and custody of drug evidences. The police officers failed to safeguard the integrity of the drug evidences. The inventory of the drug evidence and other seized items was not done immediately after the arrest but was only conducted after the lapse of a considerable period from the time the same were allegedly seized.[85] (Emphasis supplied)

The defense continued asserting this objection in its Brief filed with the CA, thus:

In the assailed decision, the trial court was convinced that the buy-bust team complied with Section 21, Article II of Republic Act No. 9165. The accused-appellant, however, maintains that there is no factual basis from which the trial court's finding can be derived.

x x x x

First, the prosecution witnesses claimed that the items seized were immediately marked upon confiscation. Nevertheless, it was not established beyond reasonable doubt whether the marking thereof was done in the presence of the accused-appellant, x x x

Second, the accused-appellant did not witness nor sign the inventory, x x x

Third, no photograph was taken during the actual confiscation of the items, x x x

The above enumerated points of noncompliance with the prescribed procedure would not invalidate the search and seizure of the items subject of this case, only if: (1) the noncompliance was based on justifiable grounds; and (2) the integrity of the items confiscated has been preserved. The problem is that the prosecution failed to satisfy the two (2) requirements.

No explanation was at all offered to justify these lapses and the integrity of the confiscated items had not been preserved. x x x (Additional emphasis supplied and italics in the original)[86]

Remarkably, even as the defense, in its Brief pointed out the failure of the prosecution to justify the buy-bust team's procedural lapses which would have made possible the application of the saving clause, the prosecution remained mum on the matter. It could have very well filed a Supplemental Brief with the Court expressing its justifications for the lapses;[87] however, it did not. Instead, the prosecution, in complete disregard of the defense's points, filed a Manifestation dispensing with the filing of a Supplemental Brief.[88]

Hence, because the prosecution neither acknowledged nor explained its non-compliance with Sec. 21, the first prong was not satisfied. This leads to the inevitable conclusion that the saving clause was not triggered. Accordingly, there is no longer any point in determining if the second prong had been satisfied - i.e., proving the integrity and evidentiary value of the seized illegal drugs.

Regardless, even if the Court allows proof of the second prong despite this blunder in proving the first, the case for the prosecution must still fail. The matters required by the second prong to be proven — the integrity and evidentiary value of the seized drugs — are heavily tainted because of the irregularities attending the chain of custody of the drugs and the suspicious points in the factual narration of the prosecution.

First, as the defense had pointed out, the request for qualitative examination (Request)[89] and the Inventory[90] show an aggregate weight of 1.32 grams of illegal drugs allegedly confiscated from De Vera.[91] This differs starkly from the figures in the Initial Laboratory Report[92] and Chemistry Report[93] which both show that the total weight of drugs submitted for examination was only 0.81 gram.[94] This means that the drugs subjected to examination was short by 0.51 gram or 39% less than what was declared to have been confiscated and inventoried by the buy-bust team.

In the case of *People v. Pornillos*,[95] the Court acquitted the accused therein on the sole basis that there was a wide discrepancy between the weight of the substance seized and the weight of the substance subjected to forensic tests, thus:

But the CA is in error in one important point. It said that the chain of custody of the seized drugs does not appear to be unbroken. But the PDEA report to the Provincial Prosecutor's Office, the booking sheet and arrest report, the Certificate of Inventory, and the laboratory examination request all put down the seized shabu as weighing 0.4 gram. The forensic chemist reported and testified, however, that the police actually submitted only 0.2204 gram of shabu for laboratory testing, short by 0.1796 gram from what the police inventoried.

In *People v. Aneslag*, the Information alleged that the accused sold 240 grams of shabu but the forensic test showed that the drugs weighed only 230 grams, short by 10 grams. The prosecution offered a sound explanation for the 4.16% loss. The trial court ordered two separate tests of the subject shabu packs. As a consequence the two chemists took out separate samples from each of the seized packs of shabu, resulting in the weight loss.

Here, however, the percentage of loss was not that small. The content of the sachet was inventoried at 0.4 gram but yielded only 0.2204 gram during the laboratory test, short by 0.1796 gram. It suffered a loss of 45% or nearly half of the original weight. The prosecution has three theories: only two chemists served the entire region giving rise to possible error; the police and the crime laboratory used different weighing scales; and the failure of the laboratory to take into account the weight of the sachet container. But these are mere speculations since none of those involved was willing to admit having committed weighing error. Speculations cannot overcome the concrete evidence that what was seized was not what was forensically tested. This implies tampering with the prosecution evidence. The Court cannot affirm the conviction of *Pornillos* on compromised evidence.[96] (Emphasis and underscoring supplied)

In the present case, similar to *Pornillos*, the pieces of evidence submitted reveal a significant discrepancy of 39% between the weight of the drugs allegedly confiscated from De Vera and those subjected to examination by the forensic chemist. In dismissing this irregularity, the CA accepted the prosecution's explanation that the quantity of the seized items as indicated in the Request and Inventory are "approximate" weights only, not "true" weights.[97] Likewise, the seized drugs were marked anyway, hence, switching, planting or contamination thereof was obviated.[98]

The Court takes exception to the CA's conclusions. The dismissive explanation of the prosecution does not remove the doubts created on the identity of the drugs seized and examined. The weight discrepancy is rather significant and apart from the nomenclature used in the Request and Inventory which refers only to approximate weights, no other explanation was advanced. In the case of *People v. Aneslag*,[99] the prosecution went to great lengths to explain the 12.5% variance between the weight of the seized drugs as alleged in the Information (240 grams) and that as determined by the forensic chemist (210 grams). This explanation was, thus, duly noted and given credence and weight by the Court.

Moreover, the fact that there was marking at the point of seizure does not work to excuse irregularities attending the rest of the links in the chain of custody. At any rate, as had been previously discussed, the marking itself of the

seized drugs was erroneous for not having been witnessed by the accused.

Second, under the circumstances, well-taken is the defense's point that the significantly insufficient consideration for the allegedly sold drugs renders doubtful the legitimacy of the buy-bust sale. Team leader and poseur-buyer SPO2 Dolinta stated that the buy-bust money used to buy the 0.62 gram of shabu sold and seized was only P5,000.00.[100] On the other hand, SPO2 Dolinta likewise testified that based on his experience, one (1) gram of shabu costs P15,000.00 and P5,000 should be able to buy more or less 0.40 gram only.[101] This begs the question: why would De Vera sell 0.61 gram of shabu to SPO2 Dolinta, a complete stranger, for P5,000.00, when its market value was approximately P9,150.00 or P4,150.00 more than what it was sold for. No special circumstance was disclosed for this transaction to warrant the huge discount of 45%.

The CA was correct that under Sec. 5 of RA 9165, the payment of any consideration is immaterial as the distribution is, in itself, a punishable offense. However, the issue of insufficient consideration in the present case is raised not so much as an element of the crime but goes into the very credibility of the prosecution's story of a buy-bust activity. In plain terms, it belies and shows the prosecution's narration of a legitimate buy-bust sale in the manner that it presented to be a complete concoction.

Courts must apply strictly the requirements of Sec. 21. The presumption of regularity in the performance of official duties cannot apply where there is a clear violation of Sec. 21. In such cases, the innocence of the accused, as presumed, must be upheld.

Unfortunately, the CA and the trial court glossed over these obvious irregularities which attended the present buy-bust operation and the confiscation and handling of the subject drugs.

The CA excused the buy-bust team's lapses, ruling that what is essential is that the integrity and evidentiary value of the seized items are preserved.[102] In other words, the CA excused the failure of the buy-bust team to comply with Sec. 21 on the basis of the second prong of the saving clause (that the integrity and evidentiary value of the subject drugs are established) but ignoring altogether the first prong (absence of justifiable reasons for the procedural lapses).

The CA assumes a mistaken understanding of Sec. 21. The procedure enshrined in Sec. 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.[103] Substantive law requires strict observance of these procedural safeguards.[104] Sec. 21's initial custody requirements must be strictly observed. Failure in this renders the confiscated items illegal unless the two-pronged requirement of the saving clause is satisfied.

The People[105] and the trial court,[106] in maintaining the legality of the seizure, invoked the presumption of regularity in the performance of the police officers' duties. This is misplaced. Considering the procedural lapses the buy-bust team committed in handling the confiscated drugs and the dubious chain of its custody, a presumption of regularity cannot arise in the present case. This was settled in *People v. Kamad*,[107] where the Court held:

x x x A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.[108] (Emphasis and underscoring supplied)

Hence, there is no such presumption that may arise in the present case. Contrary to the trial court's categorical

declaration, the presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt and overcome his presumed innocence.[109]

This burden of the prosecution does not change even if the accused's defense is weak and uncorroborated. Such weakness does not add strength to the prosecution's case as the evidence for the prosecution must stand or fall on its own weight. It is settled that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.[110]

Based on the foregoing and following the Court's precedents as discussed above, the Court is left with no alternative except to reverse De Vera's conviction.

The prosecution utterly failed to establish the corpus delicti of the crimes due to the serious lapses in observing Sec. 21 of R.A. 9165 and the concomitant failure to trigger the saving clause. The prosecution did not recognize and justify credibly its procedural lapses and failed to prove the integrity and evidentiary value of the seized drugs. De Vera's innocence, as presumed and protected by the Constitution, must stand in light of the reasonable doubt on his guilt. His acquittal must forthwith issue.

To conclude, the Court emphasizes the following primordial points: the prosecution is duty-bound to prove, beyond reasonable doubt, each and every element of the crime charged. In illegal drugs cases, this includes proving faithful compliance with Sec. 21 of RA 9165, this being fundamental to establishing the element of corpus delicti. In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Sec. 21.[111]

As no less than the liberty of an accused is at stake, appellate courts, the Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Sec. 21 and if not, if the same is justified under the circumstances. This, regardless if issues thereon were ever raised or threshed out in the lower court/s, consistent with the doctrine that appeal in criminal cases throws the whole case open for review and the appellate court must correct errors in the appealed judgment whether they are assigned or not.[112] If, from such full examination of the records, there appears unjustified failure to comply with Sec. 21, it becomes the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[113]

WHEREFORE, premises considered, the Decision dated September 30, 2014 of the CA in CA-G.R. CR-HC No. 06188 is REVERSED and SET ASIDE. Accused-appellant Henry De Vera y Medina 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 Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The Superintendent of New Bilibid Prison is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies 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 A. Reyes, Jr., JJ., concur.
Peralta, J., Please read separate concurring opinion.

[1] Rollo, pp. 23-24.

[2] *Id.* at 2-22. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. concurring.

[3] CA rollo, pp. 54-63. Penned by Presiding Judge Antonio C. Reyes.

[4] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[5] SEC. 11. Possession of Dangerous Drugs. — The penalty of x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x regardless of the degree of purity thereof:

x x x x

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

[6] 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).

[7] Records, p. 1

[8] *Id.* at 15. The Information mistakenly cited Sec. 12, Article II of RA 9165 instead of Sec. 11 as clearly intended from the body.

[9] *Id.* at 33.

[10] Referred to as "PO3 Charmino" in some parts of the records.

[11] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 6.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 7-8.

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

[16] *Id.* at 10.

[17] *Id.* at 11-12.

[18] *Id.* at 12-13.

[19] Records, p. 4.

- [20] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 14.
- [21] Id.
- [22] Records, p. 4.
- [23] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 15.
- [24] Records, p. 4.
- [25] Id. at 5.
- [26] Direct Examination of PO3 Charmino, TSN, June 6, 2012, p. 14.
- [27] Records, p. 5.
- [28] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 18.
- [29] Records, p. 4.
- [30] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, p. 22.
- [31] Id. at 21.
- [32] Direct Examination of De Vera, TSN, February 18, 2013, pp. 6-22.
- [33] CA rollo, p. 63.
- [34] Id. at 58.
- [35] Id. at 57-63.
- [36] Records, pp. 182-183.
- [37] CA rollo, pp. 38-52.
- [38] Id. at 77-94.
- [39] Id. at 95-96.
- [40] Rollo, p. 21.
- [41] Id. at 11.
- [42] Id. at 30-34.
- [43] Id. at 37-41.
- [44] *People v. Casacop*, 778 Phil. 369, 375 (2016).
- [45] See *People v. Abetong*, 735 Phil. 476, 490 (2014); *Valencia v. People*, 725 Phil. 268, 277 (2014).
- [46] See *People v. Del Mundo*, G.R. No. 208095, September 20, 2017, p. 7, citing *People v. Gayoso*, G.R. No. 206590, March 27, 2017, p. 8; *People v. Lorenzo*, 633 Phil. 393, 403 (2010).
- [47] The definition of "chain of custody" can be found in Sec. 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, thus:

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 [to] destruction. Such record of movements and custody of seized [items] shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

[48] *People v. Dahil*, 750 Phil. 212, 226 (2015).

[49] *Id.* at 227.

[50] *People v. Dela Cruz*, 744 Phil. 816, 830 (2014).

[51] Comprehensive Dangerous Drugs Act of 2002, as amended by RA 10640, Sec. 21 (l).

[52] See IRR, Article II, Sec. 21 (a).

[53] As early as in the case of *People v. Cruz*, 310 Phil. 770, 774-775 (1994), the Court has taken judicial notice of the rather pervasive practice of planting evidence in anti-narcotics operations, holding that:

Be that as it may, the Court is also cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses is not uncommon. By the very nature of anti-narcotics operations, with 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. x x x

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

[55] Direct Examination of SPO2 Dolinta, TSN, May 7, 2012, pp. 17-19.

[56] Re-Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 23.

[57] *Id.* at 26.

[58] Records, p. 4.

[59] *Id.*

[60] Showing, in the background, what appear to be office tables and a poster of the PNP attached to the wall. Records, p. 43.

[61] Re-Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 23.

[62] Records, p. 43.

[63] See Sec. 21 of RA 9165.

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[.] (Emphasis supplied)

[64] Records, p. 38.

[65] Id.

[66] *People v. Beran*, 724 Phil. 788 (2014).

[67] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 141.

[68] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

[69] *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475 (2016).

[70] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[71] x x x 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)

[72] See id.

[73] *Supra* note 45.

[74] Id. at 286.

[75] *People v. Cayas*, *supra* note 69, at 80.

[76] *People v. Barte*, G.R. No. 179749, March 1, 2017, 819 SCRA 10.

[77] Id.; see also *People v. Sumili*, 753 Phil. 342, 352 (2015).

[78] CA rollo, p. 88.

[79] Id.

[80] *People v. Cayas*, *supra* note 69; *People v. Havana*, *supra* note 69.

[81] CA rollo, p. 89.

[82] *People v. Kamad*, 624 Phil. 289, 301 (2010), citing *People v. Garcia*, 599 Phil. 416, 427 (2009).

[83] *People v. Galvez*, 548 Phil. 436, 470 (2007), citing *People v. Saavedra*, 233 Phil. 622, 647 (1987).

[84] Records, pp. 137-138.

[85] Id. at 137.

[86] CA rollo, pp. 48-50.

[87] On August 12, 2015, the Court resolved, among others, to notify the parties that they may file their respective supplemental briefs within thirty (30) days from such notice. Rollo, p. 28.

[88] Rollo, p. 37.

[89] Records, p. 6.

[90] Id. at 7.

[91] Id. at 6-7. The following table appear in both the Request and the Inventory:

MARKING/S**QUANTITY****DESCRIPTION****EXH-A**

"AED"

05/24/2011

W/ signature

Approximately zero point sixty (0.60) gram of suspected white crystalline substance suspected to be "shabu" for buy-bust.

One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "AED" 05/24/2011 and signature for identification purposes.

EXH-B-1

"MNC"

05/24/2011

W/ signature

Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession.

One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes.

EXH-B-2

"MNC"

05/24/2011

W/ signature

Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession.

One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes.

EXH-B-3

"MNC"

05/24/2011

W/ signature

Approximately zero point twenty four (0.24) gram each sachet of suspected white crystalline substance suspected to be "shabu" for possession.

One (1) piece of small heat sealed transparent plastic sachet containing white crystalline substance suspected to be "Shabu" marked with "MNC" 05/24/2011 and signature for identification purposes.

[92] Id. at 8.

[93] Id. at 42.

[94] Id. at 8, 42. The following appear in both the Laboratory Report and Chemistry Report:

SPECIMEN/S SUBMITTED:

1 - Four (4) heat sealed transparent plastic sachets, each containing white crystalline substance with the following markings and recorded net weights:

A = [EXH-A AED 05/24/2011 and signature] = 0.61 gram

B = [EXH B-1 MNC 05/24/2011 and signature] = 0.08 gram

C = [EXH B-2 MNC 05/24/2011 and signature] = 0.06 gram

D = [EXH B-3 MNC 05/24/2011 and signature] = 0.06 gram (Emphasis in the original)

[95] 718 Phil. 675 (2013).

[96] Id. at 678-679.

[97] CA rollo, p. 86.

[98] Rollo, p. 19.

[99] 699 Phil. 146, 166-167 (2012).

[100] Records, p. 4.

[101] Cross Examination of SPO2 Dolinta, TSN, May 8, 2012, p. 12.

[102] Rollo, p. 11.

[103] See People v. Umipang, 686 Phil. 1024, 1038 (2012).

[104] Id. at 1033.

[105] CA rollo, p. 92.

[106] Id. at 58.

[107] Supra note 82.

[108] Id. at 311.

[109] People v. Pagaura, 334 Phil. 683, 690 (1997).

[110] Macayan, Jr. v. People, 756 Phil. 202, 214 (2015).

[111] See People v. Jugo, supra note 68.

[112] *People v. Dahil*, supra note 48, at 225.

[113] See *People v. Jugo*, supra note 68.

SEPARATE CONCURRING OPINION

PERALTA, J.:

I concur with the ponencia in acquitting accused-appellant Henry De Vera y Medina 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. (R.A. No.) 9165,[1] respectively. The ponencia duly noted that the records show no attempt by the buy-bust team to secure the presence of the three (3) witnesses required to be present at the time and place of the alleged confiscation of the dangerous drugs, namely: the public elected official, the Department of Justice representative and the media representative. I also agree with the ponencia in stressing that the prosecution did not concede the evident lapses of the buy-bust team, and no explanation was advanced as to the failure to conduct the inventory and take photographs of the seized drugs immediately after confiscation and in the presence of the insulating witnesses and the accused. Nevertheless, I would like to elaborate on important matters relative to Section 21[2] 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] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved 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 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[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.

Also, it is not amiss to emphasize that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved, applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (Terry search), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.

Meanwhile, 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. (Emphasis ours)

[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" Approved on July 15, 2014.

[5] Senate Journal, Session No. 80, 16[th] Congress, 1[st] 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, or 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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