

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. EUTQUIO BAER @ “TIKYO,” ACCUSED-APPELLANT.*G.R. No. 228958. August 14, 2019*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-228958/>**CAGUIOA, J.:[*]**

Before the Court is an ordinary appeal[1] filed by accused-appellant Eutiquio Baer @ "Tikyo" (accused-appellant Baer), assailing the Decision[2] dated August 31, 2016 (assailed Decision) of the Court of Appeals-Cebu City Eighteenth Division (CA) in CA-G.R. CEB-CR. HC No. 01343, which affirmed the Decision[3] dated January 12, 2009 rendered by Branch 18, Regional Trial Court of Hilongos, Leyte, (RTC) in Criminal Case No. H-1176, titled *People of the Philippines v. Eutiquio Baer @ "Tikyo,"* finding accused-appellant Baer guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

While the RTC's Decision dated January 12, 2009 convicted accused-appellant Baer for violating Section 11, Article II of RA 9165, the RTC acquitted accused-appellant Baer for illegal sale of dangerous drugs under Section 5, Article II, of RA 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

In two separate Information, accused-appellant [Baer] was charged for violation of Sections 5 and 11 (illegal sale and possession of dangerous drugs, respectively), Article II of R.A. No. 9165. The Information respectively alleged:

Criminal Case No. H-1176

"That on or about the 3rd day of December 2002, at around 5:45 o'clock in the afternoon, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly have in his possession and control Seven (7) heat-sealed transparent plastic bags of Methamphetamine Hydrochloride locally known as "SHABU", a dangerous drug weighing 25.6 grams; One (1) small heat-sealed transparent plastic bag of Methamphetamine Hydrochloride weighing 1.6 grams and One Hundred Forty Two (142) decks of small heat sealed transparent plastic sachets of Methamphetamine Hydrochloride weighing 4.26 grams, with a total weight of 31.46 grams.

CONTRARY TO LAW."**Criminal Case No. H-1177**

"That on or about the 3rd day of December, 2002 at around 5:42 o'clock in the afternoon, in the Municipality of Bato, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did, then and there, willfully, unlawfully, knowingly and criminally

sell, dispense one (1) deck of Methamphetamine Hydrochloride locally known as "SHABU" a dangerous drug, placed inside a small heat-sealed transparent plastic sachet weighing .04 gram to a poseur buyer worth One Hundred Pesos (P100.00) with Serial No. EQ986769 used as mark money.

CONTRARY TO LAW."

During his arraignment on May 29, 2003, accused-appellant [Baer] entered a plea of not guilty. Accused-appellant [Baer] was detained at the Hilongos, Sub-Provincial Jail while the case was pending before the trial court. Pre-trial conference was conducted and a Pre-Trial Order was issued by the trial court on July 9, 2003.

Thereafter, trial ensued.

Evidence for the Prosecution

The evidence of the prosecution, taken together, presented the following relevant facts:

On December 3, 2002, at around 5:45 in the afternoon, SPO[1] Agustin dela Cruz [(dela Cruz)], SPO4 Alfredo Ortiz (Ortiz) and PO3 Eufrazio Tavera [(Tavera)], together with other members of the Provincial Anti-Narcotics Unit (PANU) and barangay officials Cerilo Gaviola [(Gaviola)] and Marcelo Estoque, went to Brgy. Iniguihan, Bato, Leyte to serve a search warrant against accused-appellant [Baer]. Upon arriving at accused-appellant [Baer]'s place, they saw accused-appellant [Baer] and introduced themselves as members of PANU. They told him that they will search his rented stall inside the public market by virtue of a search warrant, the contents of which they read to accused-appellant [Baer].

In the presence of the police officers and barangay officials, accused-appellant [Baer] admitted that there were prohibited drugs in his place. Thereafter he escorted the team to his bedroom, retrieved a locked steel box under his bed and gave it to the team. Since the steel box was locked, a member of the team obtained a key from Virgilio Notarte (Notarte), who was detained at the municipal building. When the box was opened, it was found to contain seven big plastic sachets and 142 sealed decks of suspected shabu. The police officers confiscated those articles and made an inventory of the seized items, signed by accused-appellant [Baer] and the witnesses to the search. A certification of search was also prepared.

After the search, the team brought accused-appellant [Baer] and the seized items to the municipal building where the confiscated items were marked (the seven big plastic sachets were marked "AD ET-1" to "AD ET-7," the small plastic sachet was marked with "D-476-2002 AD ET 1" while the 142 decks of shabu were marked "C-1" to "C-142."). Thereafter, the seized items were forwarded to the PNP Crime Laboratory for qualitative examination. PSI Pinky Sayson Acog conducted a laboratory examination of the subject specimens and issued Chemistry Report No. D-476-2002, showing that the subject specimens tested positive for methamphetamine hydrochloride or shabu, a dangerous drug.

Evidence for the Defense

On the other hand, the testimonies of the defense witnesses, accused-appellant [Baer] and Raul Solante, presented a different version of the events.

In the afternoon of December 2, 2002, accused-appellant was standing near the door of his stall at the public market, watching a basketball game. While doing so, Notarte alias "Ondo" approached accused-appellant [Baer] and requested if Notarte could leave the steel box he was carrying at accused-appellant [Baer]'s stall. Accused-appellant [Baer] refused Notarte's request since they just knew each other. Nevertheless, Notarte placed the steel box on top of a table and departed. Because Notarte had already left, accused-appellant [Baer] brought the steel box inside his rented stall. He then left to go fishing with his employer. However, when he was about to cross the basketball court, several police officers approached him and asked if he was aware of the steel box left by Notarte. Accused-appellant [Baer] answered in the affirmative and escorted them to his place and surrendered the steel box. All the while, the police officers did not present any document or search

warrant to accused-appellant [Baer], nor inform him of the consequences of surrendering the steel box.

Because the steel box was locked, the police officers went to the municipal hall and obtained the key from Notarte. When the steel box was opened, it was found to contain several items that looked like "tawas." The police officers immediately listed the contents of the box, took a [one-hundred-peso] bill from accused-appellant [Baer] and placed it on the table. After the incident, accused-appellant [Baer] was brought to the municipal hall and placed inside a prison cell where Notarte was also detained.[5]

The Ruling of the RTC

On January 12, 2009, the RTC rendered its Decision convicting accused-appellant Baer for illegal possession of dangerous drugs under Section 11, Article II of RA 9165, while acquitting him of the charge of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of the foregoing, accused EUTIUQIO BAER is hereby found GUILTY in Violation of Sec. 11 ART. II R.A. 9165 (Possession of Dangerous Drug Under Criminal Case No. H-1176) Beyond Reasonable Doubt and hereby sentenced to suffer LIFE IMPRISONMENT and a fine of Four Hundred Thousand Pesos (P400,000.00). Cost against the accused.

For failure of the prosecution to prove the guilt of the accused beyond reasonable doubt in Criminal Case No. H-1177 accused EUTIUQIO BAER is hereby ACQUITTED.

In the service of his sentence accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[6]

Feeling aggrieved, accused-appellant Baer filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Baer. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is DENIED. The 12 January 2009 Decision of Branch 18 of the RTC of Hilongos, Leyte in Criminal Case No. H-1176 is AFFIRMED.

SO ORDERED.[7]

In sum, the CA held that since the steel box where the alleged drug specimens were supposedly retrieved was located in the rented stall belonging to accused-appellant Baer, the latter had constructive possession of the allegedly seized illegal drugs. Further, the CA found that the integrity and evidentiary value of the allegedly seized drug specimens were duly preserved by the prosecution.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting accused-appellant Baer for violating Section 11, Article II of RA 9165.

The Court's Ruling

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

Accused-appellant Baer was charged with the crime of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of RA 9165.

Illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[8]

The first element of illegal possession

of dangerous drugs is wanting; there

is no constructive possession of

illegal drugs on the part of accused-

appellant Baer.

Jurisprudence holds that possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[9]

In the instant case, it is not disputed whatsoever that the alleged seized drug specimens were not actually possessed by accused-appellant Baer. The transparent plastic bags and sealed decks allegedly containing shabu were not found on the person of accused-appellant Baer. As held by the CA, the drug specimens were considered to have been under the constructive possession of accused-appellant Baer.

Based on the evidence on record, the Court disagrees with the findings of the RTC and CA. The Court finds that the supposed drug specimens were NOT constructively possessed by accused-appellant Baer.

According to the testimony of the prosecution's witness, SPO1 dela Cruz, seven big sachets and 142 sealed decks of shabu were found inside the locked steel box retrieved from the place where the search warrant was executed.

On cross-examination, SPO1 dela Cruz readily admitted that when the authorities confronted accused-appellant Baer as to the locked steel box, accused-appellant Baer made it clear to the apprehending team that the said box was not his. He had no knowledge as to the contents of the steel box and was not capable of opening the said container because it was owned by one Ondo Notarte (Notarte).[10] The prosecution does not refute or contest that the steel box which allegedly contained the supposed confiscated drug specimen was owned by Notarte and not owned by accused-appellant Baer, and that the latter was not capable of opening the same.

In fact, much emphasis must be placed on the admitted fact that it was the members of the PANU who were able to open the steel box, considering that accused-appellant Baer did not own the container and that the latter had no ability to open it. The key that was used to open the steel box did not come from accused-appellant Baer. Strikingly, as testified under oath by SPO1 dela Cruz, the key that was used to open the steel box came from the

authorities and not accused-appellant Baer:

Q - Were you able to get the key of the steel box?

A - Eufrazio was ordered to get the key from the police station.

Q - Were you able to get the key?

A - Yes, when he came back bringing the key.

Q - Were you able to open the steel box?

A - Yes.

Q - Who open? (sic)

A - PANU members.[11]

Further, the prosecution's witness, Gaviola, who witnessed the search, testified under oath that the key used to open the steel box did not come from accused-appellant Baer, as it came from the authorities:

Q. Who handed the key [that was used to open the steel box]?

A. A Police Officer.[12]

In fact, as testified by another witness for the prosecution, PO3 Tavera, when the search was being conducted inside the rented stall, accused-appellant Baer was not even inside the same, creating even more doubt as to accused-appellant Baer's supposed control and dominion over the steel box:

Q. While the search was going on[,] where was Eutiquio Baer then?

A. He was outside the store.[13]

In the assailed Decision, the CA cites the cases of *People of the Philippines v. Torres*,^[14] *People of the Philippines v. Tira*,^[15] and *Abuan v. People of the Philippines*,^[16] holding that "[i]n all those cases, the accused were held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found."^[17] But what the CA failed to see was that in these cases, the drug specimens retrieved were readily accessible in the places under the control of the accused persons. The same cannot be said in instant case. The retrieved drug specimens, while allegedly found in the rented stall leased by accused-appellant Baer, was located in a locked and sealed receptacle that was not owned, controlled, and subject to the dominion of the accused-appellant.

Therefore, there is no doubt in the mind of the Court that accused-appellant Baer cannot be considered as having constructively possessed the receptacle where the allegedly confiscated drug specimens were found, considering the admitted fact that he does not own the steel box and absolutely had no control over its contents.

To reiterate, constructive possession exists only when the illegal drug is under the dominion and control of the

accused or when he has the right to exercise dominion and control over the place where it is found. The Court finds that the alleged drug specimens retrieved were not under the dominion and control of accused-appellant Baer. The container where such specimens were supposedly found, i.e., the steel box owned by Notarte, was likewise not under the dominion and control of accused-appellant Baer. Therefore, the Court finds that accused-appellant Baer did not constructively possess the supposed drug specimens retrieved by the authorities. On this point alone, the Court finds sufficient reason to acquit accused-appellant Baer on the crime charged.

There is reasonable doubt as to the

integrity and evidentiary value of the

seized drug specimen.

Even assuming arguendo that accused-appellant Baer constructively possessed the drug specimens, all the same, the Court acquits accused-appellant Baer because there is serious doubt in the mind of the Court with respect to the integrity and evidentiary value of the drug specimens retrieved.

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.[18] 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,[19] 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.[20] 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 required to make a finding of guilt.[21]

In this connection, Section 21, Article II of RA 9165,[22] the applicable law at the time of the commission of the alleged crimes, 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 Department of Justice (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 the possibility of abuse is great, given 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.[23]

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 witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[24] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the apprehending team considering that the operation was a planned activity. In fact, prior to the operation, the team was able to procure a search warrant. Verily, the authorities had more than enough time to gather and bring with them the said witnesses and ensure the strict observance of Section 21 of RA 9165.

In the instant case, it cannot be denied that the authorities seriously and, in a wholesale manner, swept aside the compulsory procedures mandated under Section 21 of RA 9165.

First and foremost, as factually found by the CA itself in the assailed Decision, the inventory and marking of the evidence allegedly retrieved were not done immediately after the seizure of the drug specimens. The CA found that there was "failure [on the part] of the police officers to immediately mark the prohibited drugs after they were seized from accused-appellant's rented stall[.]"[25] To stress once more, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation.

Second, the CA likewise factually found that the inventory was not conducted at or near the place of the apprehension, as required under Section 21 of RA 9165. The CA found that the "accused-appellant and the seized drugs were brought to the municipal building, where the inventory was prepared."[26] The CA attempted to justify this serious procedural flaw by holding that the conducting of the inventory in the public market would supposedly jeopardize the operation. Such excuse is a hollow one, considering that the prosecution does not even assert whatsoever that the holding of the inventory in the public market would pose any danger to the operations.

Further, even assuming for the sake of argument that the authorities were justified in holding the inventory elsewhere, to reiterate, the IRR of RA 9165 allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] As factually found by the CA, the inventory and marking were done in the municipal building and not in the nearest police station or the nearest office of the apprehending officer/team.

Third, the evidence on record readily reveals that the authorities did not photograph the evidence allegedly seized. The testimonies of the prosecution's witnesses are completely silent as to the photographing of the drug specimen. In fact, no photographs of the operation nor the drug specimens were offered into evidence.

Fourth, as provided by the evidence of the prosecution, the operation was conducted only "[i]n the presence of the police officers and barangay officials[.]"[28] It is not disputed that there were no representatives from the media and the DOJ to witness the operation. The prosecution failed to acknowledge and, more so, justify this clear infraction of the law.

Fifth, as acknowledged by the CA itself, the "Receipt of Confiscated Articles was also prepared, signed by the police officers and the barangay officials who witnessed the search. As regards accused-appellant's contention that he and his family members were not given a copy of the inventory receipt, We hold that no such requirement is provided in the law and the rules."[29] Such is a blatant and explicit disregard of Section 21 of RA 9165, which requires that the certificate of inventory should also be signed by the accused or his/her representative, and that

the latter be given a copy of the same. For the CA to say that such requirement is not provided in the law and in the rules is sheer ignorance of the law.

Sixth, as testified by SPO1 dela Cruz, he marked the confiscated sachets by inscribing only his initials, i.e., AD, and signature.

Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:[30]

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)

1. Buy-Bust Operation – [I]n the conduct of buy-bust operation, the following are the procedures to be observed:

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed;
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided[;]
- e. Use of necessary and reasonable force only in case of suspect's resistance[;]
- f.

If buy-bust money is dusted with ultra violet powder[,] make sure that suspect [get] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g.

In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h.

Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms' reach;

i.

After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k.

Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m.

The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;

n.

Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and

o.

Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[31]

While the aforementioned procedural rules pertain to buy-bust operations, as the integrity of the seized drug specimens must also be preserved in searches conducted with search warrants, the rule on proper marking should be similarly observed.

In the instant case, the date, time, and place of the operation were not indicated on the markings, in clear contravention of the PNP's own set of procedures. Simply stated, the marking of the evidence was irregularly done, to say the least.

It is apparent from the foregoing that virtually every procedural requirement mandated under Section 21 of RA 9165 was violated by the authorities in the instant case. Hence, how the CA can hold that the integrity and evidentiary value of the seized drug specimens were duly preserved by the prosecution is totally beyond comprehension.

The Court must again stress that the procedural requirements laid down in Section 21 of RA 9165 is mandatory, and that the law imposes these requirements to serve an essential purpose. In *People v. Tomawis*,^[32] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

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*^[33], 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 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 subject sachet that were evidence of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.^[34]

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".[35] (Emphasis in the original)

Regrettably, both the RTC and CA seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[36] This presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt,[37] by proving each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[38] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that this burden of proof never shifts. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, always has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[39]

We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.[40] (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

Concededly, 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.[41] In this case, the prosecution neither recognized, much less tried to justify, the police officers' deviation from the procedure contained in Section 21, RA 9165.

Breaches of the procedure outlined 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 would have been compromised.[42] As the Court explained in

People v. Reyes:[43]

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.[44] (Emphasis supplied)

In *People v. Umipang*,[45] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not per se render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the barangay chairperson or any member of the barangay council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21 (1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21 (1) of R.A. 9165, or that there was a justifiable ground for failing to do so.[46] (Emphasis and underscoring supplied)

It must be emphasized that Section 21 RA 9165 and its IRR apply both to buy-bust operations and searches with or without warrant.

The third element of illegal

possession of dangerous drugs is also

absent.

Lastly, the Court finds that the third element of the crime of illegal possession under Section 11 of RA 9165 is also wanting. The third element requires that the accused freely and consciously possesses the illegal drug.

In the instant case, accused-appellant Baer testified under oath that he was approached by Notarte, who brought with him a steel box, and that the latter requested accused-appellant Baer to allow Notarte to leave his steel box at the former's rented stall in the public market. Accused-appellant Baer further testified that he refused Notarte's request, but the latter left the steel box anyway on top of the table of accused-appellant Baer's rented stall.

Because Notarte had already left, accused-appellant Baer decided to bring the steel box inside his stall so that it would not get lost. The Court notes that this testimony was duly corroborated by another witness of the defense, Raul Solante (Solante), who testified that he saw Notarte, who brought with him the steel box and asked permission from them to leave the said box with accused-appellant Baer. Solante corroborated accused-appellant Baer's testimony that Notarte hurriedly left the steel box with accused-appellant Baer because the latter refused to accept the same upon request from Notarte. Considering that criminal cases are heavily construed in favor of the accused, the RTC and CA committed a serious error in simply brushing aside the corroborated testimony of accused-appellant Baer.

Strikingly, even the RTC itself, in its evaluation of the evidence on record, found that the owner of the steel box was Notarte and not accused-appellant Baer.[47] Further, to emphasize once more, the evidence on record establish without any doubt that accused-appellant Baer had no knowledge whatsoever as to the contents of the steel box and was not capable of opening the same as he was not the owner of the container and had no access whatsoever to the key of the steel box.

Therefore, the Court is convinced that accused-appellant Baer did not freely and consciously possess illegal drugs. At most, he consciously, but hesitantly, possessed Notarte's steel box, the contents of which he had no knowledge, control, and access to whatsoever. But clearly, the evidence on record does not lead to the conclusion that accused-appellant Baer freely and consciously possessed shabu.

In sum, the Court acquits accused-appellant Baer of the offense of illegal possession of dangerous drugs under Section 11 of RA 9165 because the prosecution seriously failed to establish the existence of the elements of the crime charged and failed to preserve the integrity and evidentiary value of the evidence supposedly seized during the operation.

As a final note, despite the blatant and wholesale disregard of the mandatory requirements provided under RA 9165, the RTC, as affirmed by the CA, haphazardly convicted accused-appellant Baer. The dire consequences of the RTC and CA's blunder in the instant case cannot be overstated — the incarceration of an innocent man for almost 17 years. While the Court now reverses this grave injustice by ordering the immediate release of the accused-appellant, there is truth in the time-honored precept that justice delayed is justice denied.

Therefore, the Court sternly reminds the trial and appellate courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.

The Court likewise exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. To the mind of the Court, the procedure outlined in Section 21 is straightforward. 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.[48]

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of

democracy.[49]

Nevertheless, by thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. A battle waged against illegal drugs that resorts to short cuts and tramples on the rights of the people is not a war on drugs; it is a war against the people.

The sacred and indelible right to presumption of innocence enshrined under our Constitution, fortified further under statutory law, should not be sacrificed on the altar of expediency. Otherwise, by choosing convenience over the rule of law, the nation loses its very soul. This desecration of the rule of law is impermissible.

WHEREFORE, in view of the foregoing, the appeal is hereby GRANTED. The Decision dated August 31, 2016 of the Court of Appeals-Cebu City in CA-G.R. CEB-CR. HC No. 01343 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellant Eutiquio Baer @ "Tikyo" 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 Leyte Regional Prison, Abuyog, Leyte, 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.

Further, let a copy of this Decision be furnished the Chief of the Philippine National Police and the Provincial Director of the Philippine National Police, Leyte. The Philippine National Police is ORDERED to CONDUCT AN INVESTIGATION on the blatant violation of Section 21 of RA 9165 and other violations of the law committed by the authorities, as well as other similar incidents, and REPORT to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.

J. Reyes, Jr., Lazaro-Javier, and Zalameda, JJ., concur.
Carpio, (Chairperson), J., on official leave.

[*] Designated Acting Chairperson per Special Order No. 2688 dated July 30, 2019.

[1] See Notice of Appeal dated September 23, 2016, CA rollo, pp. 177-179.

[2] Rollo, pp. 4-14. Penned by then CA Associate Justice Germano Francisco D. Legaspi with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.

[3] CA rollo, pp. 41-50 Penned by Presiding Judge Ephrem S. Abando.

[4] Titled "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," approved on June 7, 2002.

[5] Rollo, pp. 4-8; emphasis in the original.

[6] CA rollo, p. 50.

[7] Rollo, p. 13.

- [8] *People v. Fernandez*, G.R. No. 198875 (Notice), June 4, 2014.
- [9] *People v. Lagman*, 593 Phil. 617, 625 (2008), citing *People v. Tira*, 474 Phil. 152 (2004).
- [10] Transcript and Stenographic Notes (TSN) dated November 12, 2003, pp. 11-12.
- [11] *Id.* at 12.
- [12] TSN dated January 17, 2006, p. 15; underscoring supplied.
- [13] TSN dated June 1, 2005, p. 21.
- [14] 533 Phil. 227 (2006).
- [15] 474 Phil. 152 (2004).
- [16] 536 Phil. 672 (2006).
- [17] Rollo, p. 11.
- [18] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).
- [19] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).
- [20] *People v. Guzon*, *supra* note 18 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).
- [21] *People v. Guzon*, *id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).
- [22] 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[.]

- [23] *People v. Santos*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).
- [24] IRR of RA 9165, Art. II, Sec. 21 (a).
- [25] Rollo, p. 12.
- [26] *Id.*
- [27] IRR of RA 9165, Art. II, Sec. 21 (a).
- [28] Rollo, p. 6.
- [29] *Id.* at 12.
- [30] 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.

[31] Id.; emphasis and underscoring supplied.

[32] G.R. No. 228890, April 18, 2018, accessed at .

[33] 736 Phil. 749 (2014).

[34] Id. at 764.

[35] Supra note 32.

[36] CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[37] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

[38] People v. Belocura, 693 Phil. 476, 503-504 (2012).

[39] 745 Phil. 237 (2014).

[40] Id. at 250-251.

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

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

[43] 797 Phil. 671 (2006).

[44] Id. at 690.

[45] 686 Phil. 1024 (2012).

[46] Id. at 1052-1053.

[47] CA rollo, p. 49.

[48] See People v. Jugo, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

[49] CONSTITUTION, Art. II, Sec. 5.

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