

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EANNA O'COHLAIN, ACCUSED-APPELLANT.

G.R. No. 229071. December 10, 2018

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-229071/>

PERALTA, J.:

On appeal is the February 9, 2016 Decision[1] and July 21, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 36412, which affirmed the November 22, 2013 Decision[3] of the Regional Trial Court (RTC), Branch 13, Laoag City, in Criminal Case No. 15585-13, finding accused-appellant Eanna O'Cochlain (Eanna) guilty of violating Section 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

At the time of his arrest, Eanna was a 53-year old Irish national married to a Filipina and residing in Barangay Aring, Badoc, Ilocos Norte. In an Information[4] dated July 15, 2013, he was charged with illegal possession of marijuana, committed as follows:

That on or about [the] 14[th] day of July 2013 in the City of Laoag and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control: two (2) sticks of dried Marijuana Leaves, a dangerous drug, with an aggregate weight of 0.3824 grams, without any license or authority to possess, in violation of the aforesaid law.[5]

With the assistance of a counsel de parte and in the presence of a public prosecutor, Eanna pleaded "NOT GUILTY" in his arraignment.[6] He was allowed to post bail for his temporary liberty, but a hold departure order was issued to prevent him from leaving the Philippines and his passport was surrendered to the court for its custody in the course of the proceedings.[7]

Version of the Prosecution

Aside from the sworn statements of other intended witnesses,[8] the testimonies in open court of Security Screening Officer Dexter Suguitan (SSO Suguitan), Police Officer 3 Joel Javier (PO3 Javier), and PO1 Erald Terson (PO1 Terson) reveal as follows:

While on his break time around 7:00 p.m. on July 14, 2013, SSO Suguitan of the Department of Transportation - Office of Transportation Security (OTS), assigned at the initial security screening checkpoint of the Laoag City International Airport, was told by CAAP[9] Security and Intelligence Flor Tamayo (CSI Tamayo) that the parking space in front of the departure area smelled like marijuana ("agat sa marijuana"). He suspected that Eanna was the one who smoked the illegal drug, recounting that at around 6:35 p.m. he saw a certain male Caucasian at the parking area lighting something unrecognizable as he was covering it with his palm. CSI Tamayo observed that whenever he would suck what he seemed to be smoking, no visible vapor would come out from his mouth.

However, SSO Suguitan dismissed CSI Tamayo's story as he thought that it would be impossible for a passenger to smoke marijuana at the airport. After a while, he returned to his post at the initial check-in area. Meanwhile,

CSI Tamayo reported what he saw to PO2 Pancho Caole, Jr. (PO2 Caole, Jr.) and SSO Fidel Bal-ot (SSO Bal-ot), who were manning the final screening area.

Later on, SSO Bal-ot directed SSO Suguitan to proceed to the final security checkpoint.[10] The latter was instructed to conduct a pat down search on Eanna, who agreed. He was frisked while he raised his hands by stretching sideward to the level of his shoulders with palms open. When something was felt inside the pocket of his upper garment, he was asked to take it out. He then brought out a pack of Marlboro red from his left pocket, as well as a matchbox and another pack of Marlboro red from his right pocket. The pack of Marlboro red on his left hand contained cigarettes but the one on his right hand contained two (2) rolled sticks of what appeared to be dried marijuana leaves. SSO Suguitan knew it was marijuana because that was what CSI Tamayo earlier told him. He took the pack of Marlboro red containing the two rolled sticks of dried marijuana leaves and showed it to PO1 Peter Warner Manadao, Jr. (PO1 Manadao, Jr.) and other police personnel on duty. SSO Suguitan put them on the nearby screening table in front of Eanna and PO1 Manadao, Jr. The two rolled sticks of dried marijuana leaves were the only items placed thereon.

PO1 Udel Tubon[11] then called the attention of PO3 Javier, who was the investigator on duty of the Philippine National Police (PNP) - Aviation Security Group (ASG). PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, and SSO Bal-ot were at the final checkpoint when he arrived. They told him that marijuana was found in Eanna's pocket. SSO Suguitan turned over to PO3 Javier the pack of Marlboro red containing the two rolled sticks of dried marijuana leaves. PO3 Javier then placed them on a tray, together with Eanna's other belongings. As the area started to become crowded, the seized items were brought by PO3 Javier to the PNP-ASG office. He was accompanied by SSO Suguitan and Eanna.

Together with PO3 Javier at the PNP-ASG office were Police Superintendent Diosdado Apias (P/Supt. Apias), PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, SSO Bal-ot, and a certain SPO3 Domingo. While waiting for the arrival of the barangay officials, which took 15-20 minutes, the two rolled sticks of dried marijuana leaves were placed on the investigation table where everybody could look but not touch. Eanna was seated in front of the table, while the others guarded him. PO3 Javier then prepared the inventory. The two rolled sticks of dried marijuana leaves and other seized items were listed. The check-in baggage of Eanna was also inspected, but it only contained clothes and other personal belongings. The confiscation/inventory receipts were signed by PO3 Javier and SSO Suguitan, as well as two (2) officials of Barangay Araniw, Laoag City (Barangay Chairman Edilberto Bumanglag and Barangay Kagawad Benjamin Teodoro) and an ABS-CBN cameraman (Juanito Badua), who acted as witnesses. In their presence, as well as of Eanna, PO3 Javier marked the two rolled sticks of dried marijuana leaves as "EO-1" and "EO-2" and, thereafter, placed them inside a Ziploc re-sealable plastic bag. The guard of the PNP-ASG office, PO1 Terson, took pictures during the inventory and marking, while P/Supt. Apias prepared the requests for the medico-legal examination of Eanna and the laboratory examination of the two rolled sticks of dried marijuana leaves. The marking, physical inventory, and photographing were likewise witnessed by PO1 Manadao, Jr. and PO2 Caole, Jr., who executed a Joint Affidavit of Arrest with PO3 Javier.

Subsequently, Eanna was brought to the Governor Roque R. Ablan, Sr. Memorial Hospital for his medico-legal examination. PO3 Javier proceeded to the Ilocos Norte Provincial Crime Laboratory Office to submit the request for laboratory examination and the two rolled sticks of dried marijuana leaves. The request and the specimens were received by PO3 Padayao, the evidence custodian. Based on the qualitative examination conducted by Forensic Chemist Police Inspector Amiely Ann Luis Navarro (P/Insp. Navarro), which was reduced into writing, the specimens were found to be positive for the presence of marijuana.

Version of the Defense

At around 6:30 p.m. on July 14, 2013, Eanna was with his wife at the Laoag City International Airport for their Cebu Pacific flight bound for Manila. Since the x-ray machine operator at the initial security screening was not yet around, he left his wife in the line and smoked his pre-rolled tobacco and Marlboro cigarette outside, about 30 meters away. Ten minutes passed, he went back to the initial security checkpoint carrying his check-in and cabin luggage, camera bag, and some shopping bags. The airport police conducted a body search and examined his belongings. Afterwards, he proceeded to the final security check where he was inspected by a male "immigration officer" wearing a brown shirt. As a result, a red Marlboro cigarette pack, containing two pieces of rolled paper of flavored tobacco, was found in his possession.[12] It was shown to him while he was in front of his wife. The cigarette pack was then put on the desk, on top of one of his luggage. A camera bag (containing a Sony camera, connecting cables, headphones, an MP3 player, cigarette paper, and a pack of Marlboro) was also searched. The officer got some tiny grains after sticking his fingers into the bag. He showed them to Eanna and asked what they were. The latter replied that they were flavored tobacco, which he has been smoking for the past 30 years. Despite the claim, the officer directed an airport police to bring Eanna to the police station that was about 150 meters away.

Together with his wife, Eanna was escorted by about five to six airport police. At the PNP-ASG office, his camera bag and other luggage arrived approximately 20 minutes later. They were placed on top of the table and stayed there for 30-45 minutes before the police started to search the contents and catalog the items. Prior to the inventory of the seized items, Eanna and his wife repacked their luggage as the latter still proceeded with her scheduled flight. Thereafter, with the permission of PO3 Javier, Eanna went outside the office to smoke as he waited for his Batac-based Filipino relatives who arrived approximately after two hours. While smoking outside, he could not see what was happening, if any, to his luggage and camera bag.

The camera crew of ABS-CBN arrived at almost 11:00 p.m. An asset from the Philippine Drug Enforcement Agency (PDEA) called Badua and told him to come to the PNP-ASG office. He went with an off-duty security guard of ABS-CBN Laoag City. There, he was allowed to cover the incident, which became the basis of a television news report.

The sticks of the alleged marijuana were shown to Eanna thrice - once at the airport and twice at the police station. On the second instance, he was shown two thin rolled sticks that were placed on top of the table in front of him. On the third time, however, he saw a thin and a fat rolled sticks made of paper that were different from what he was using.

RTC Ruling

After trial, Eanna was convicted of the crime charged. The fallo of the November 22, 2013 Decision states:

WHEREFORE, accused Eanna O'Cochlain is hereby pronounced GUILTY beyond reasonable doubt of the charge of illegal possession of marijuana weighing 0.3824 gram and is therefore sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of THREE HUNDRED THOUSAND PESOS (P300,000.00).

The two sticks of marijuana subject hereof are confiscated, the same to be disposed in the manner that the law prescribes.

SO ORDERED.[13]

The search conducted on Eanna and his subsequent arrest were upheld. According to the RTC, the search upon his person was not unreasonable but was actually an exception to the proscription against warrantless searches and seizures. It was justified as it proceeded from a duty or right that was enforced in accordance with the aviation

rules and regulations to maintain peace, order and security at the airports. In fact, Eanna's plane ticket carried a proviso allowing airport authorities to check on his person and baggage pursuant to the requirement of Section 9 of R.A. No. 6235.[14] Moreover, another exception to the rule is consented warrantless search and seizure. In this case, Eanna agreed to the body pat down search that was requested by SSO Suguitan.

For the RTC, SSO Suguitan was a credible witness. It was observed that he was spontaneous in his testimony and that he appeared candid and truthful in his statements. There was nothing in his testimony or in the manner he testified that could arouse serious suspicion of lying. Some of his inconsistent statements, which the defense considered as irreconcilable, were insignificant and trivial as they do not impinge on any of the elements of the offense charged. Instead, the statements bolster SSO Suguitan's credibility as they were indicia of his unrehearsed testimony.

The RTC opined that Eanna's denial was not based on clear and convincing evidence; rather, it was bare and self-serving. His testimony was even fraught with incoherence and serious inconsistencies which he obviously committed as he desperately tried to show that what was taken from his possession was mere tobacco. Considering his flip-flopping testimony, his denial was not given credence and did not prevail over the credible testimony of SSO Suguitan and the unquestioned findings of the forensic chemist.

Finally, as to the chain of custody of the illegal drug seized, the RTC was satisfied that the prosecution was able to preserve the integrity and evidentiary value of the subject marijuana. It ruled:

In this case, the Court does not doubt a bit that the two sticks of marijuana presented in evidence are the same sticks of marijuana confiscated from the accused. There was not only compliance by the airport authorities of the requirements of Section 21 of the law and its implementing rules and regulations, there is a complete account of the complete chain of custody of the two sticks of marijuana that negates any doubt that their integrity and evidentiary value have been preserved. As it has been established by the prosecution, upon being informed of the arrest of the accused, after SSO Suguitan had confiscated the two [sticks] of marijuana from the accused, PO3 Joel Javier, the duty police investigator at the airport at [the] time who was at the ramp outside the departure terminal was called and when he arrived at the place where the accused was accosted and was informed of the arrest of the accused, he took custody of the two sticks of marijuana which were then on the screening desk or table and invited the accused to the office of the PNP-CAAP Aviation Security Group located within the premises of the airport not far from the departure terminal. There, PO3 Javier marked the two sticks of marijuana with E0-1 and E0-2. Upon the arrival of two Barangay officials, Barangay Chairman Edilberto Bumanglag and Kagawad Benjamin Teodoro of Barangay Araniw, Laoag City which has territorial jurisdiction over the airport, and a member of the media in the person of Juanito Badua, a cameraman of ABS-CBN, Laoag, PO3 Javier also conducted the required inventory not only of the two sticks of marijuana but the other belongings of the accused contained in his luggage. In the course of the inventory, PO1 Erald Terson, also a member of the PNP- Aviation Security Group, took pictures of the seized items as he was directed to do by their superior. Sometime later, as the accused was brought for medical examination, PO3 Javier was the one who brought the two sticks of marijuana together with the prepared letter request to the Ilocos Norte Provincial Crime Laboratory Office for examination. And to complete the chain, the prosecution established that at the said crime lab, the two sticks were received by PO3 Padayao who thereupon turned them over to the forensic chemist, Police Inspector Amiely Ann Navarro. As the Court takes judicial notice from the record of the case, the two sticks were finally submitted to court on July 19, 2013, received by the Branch Clerk of Court, Atty. Bernadette Espejo[,] who issued the corresponding Acknowledgment Receipt therefor.

Significantly relative to the chain of custody and as would have equally done by the other concerned witnesses such as forensic chemist Police Inspector Navarro who issued her written chemistry reports of the qualitative examinations she conducted on the specimens, and PO3 Padayao, both of the crime lab, SSO Suguitan[,] who discovered the two sticks of marijuana[,] identified the same in open court, pointing in the process the

respective markings E0-1 and E0-2 that he witnessed to have been placed by the investigating police officer, PO3 Javier[,] which, after the inventory, the latter placed in a plastic bag (Ziploc). PO3 Javier himself also identified the two sticks of marijuana.

At this point, the Court is not oblivious of the fact that in his testimony SSO Suguitan initially claimed that he turned over the two sticks of marijuana to PO1 Manadao, Jr. But actually[,] as it can be clearly appreciated from the testimony of SSO Suguitan, the turn over that he said was merely the placing of the two sticks of marijuana on top of the table at the final screening area, in front of PO1 Manadao and the accused. In fact, as SSO Suguitan conoborated PO3 Javier, the two sticks of marijuana which were still on the screening desk were thereafter placed on a tray and PO3 Javier was the one who then actually took custody thereof as the accused was invited to the office of the PNP-CAAP Aviation Security Group. PO3 Javier himself, when he was asked by the defense if it was PO1 Manadao who turned over the specimens to him, categorically said, "No, sir, Mr. Dexter Suguitan."

Also, the Court cannot be amiss to point out that the two sticks of marijuana could not have been switched with another or contaminated while it was in the custody of PO3 Javier. While admitting that there were many things that they prepared while they were already in their office, he testified in effect that no such [thing] happened. The people there at the office were not examining the specimens, they were just looking and not holding it.

The Court at this point cannot but express its observation that PO3 Javier, just like SSO Suguitan, was equally credible. He was straightforward, consistent and candid in his testimony that it cannot in any way be considered suspect.[15]

Eanna moved to reconsider the RTC judgment, but it was denied; hence, a notice of appeal was filed.[16]

CA Ruling

Finding no cause to overturn the findings of fact and conclusions of law, the CA affirmed the assailed RTC Decision.

The CA affirmatively answered the issue of whether there was probable cause to justify the warrantless search of Eanna and the seizure of his belongings. It appreciated the prosecution's version that CSI Tamayo saw him smoking while out.side the departure area of the airport terminal. Although no smoke coming from his mouth was seen, CSJ Tamayo still smelled the scent of marijuana. Similar to the RTC ruling, the warrantless search and seizure was also valid because the search was conducted pursuant to a routine airport security procedure and Eanna voluntarily gave his consent thereto.

It was likewise held that all the elements of the crime of illegal possession of dangerous drug were satisfactorily established. First, Eanna was caught in possession and custody of two sticks of marijuana on July 14, 2013 at the Laoag City International Airport during the routine search conducted by the airport authorities. Second, he failed to prove that he was authorized by law to possess the same. And third, he freely and consciously possessed the illegal drug.

The CA downplayed the alleged varying testimonies of the prosecution witnesses. As the RTC opined, the inconsistencies raised by the defense were minor and trivial and could not affect the RTC's finding as to the credibility of the airport police officers.

Finally, anent the chain of custody rule, the CA regarded as specious Eanna's claim that the procedures set forth in Section 21 of R.A. No. 9165 were not followed. The testimony of SSO Suguitan was quoted and the ratiocination of the RTC was adopted to support the finding that the airport officials complied with the rule.

Eanna filed a motion for reconsideration, but it was denied on July 21, 2016.

Now before us, the Office of the Solicitor General manifested that it would no longer file a supplemental brief as it had exhaustively discussed the legal issues and arguments in its appeal brief before the CA.[17] On his part, Eanna filed a Supplemental Brief[18] to bolster his claim that there were gaps in the chain of custody of the alleged illegal drug seized. He argues that:

- PO3 Javier was not at the scene where Eanna was found in possession of the alleged illegal drug; thus, he had no personal knowledge of its possession by Eanna and its seizure by SSO Suguitan.
- It was not made clear by the prosecution that the two sticks of rolled paper allegedly containing marijuana were marked immediately upon confiscation.
- The drug evidence was rendered susceptible to alteration, tampering and swapping because the Ziploc where it was placed was not sealed by an adhesive tape or any means other than the natural, built-in re-sealable feature of the plastic bag.
- The presence of the marking "JEP" on the two rolled sticks of alleged marijuana could not be explained and the marking made thereon compromised their integrity and physical appearance.
- The presumption of regularity in the performance of official duty is unavailing because the police authorities deviated from the mandated procedure and offered no valid ground to show that their actuations were justified.

Our Ruling

The judgment of conviction is affirmed.

Airport screening search is a constitutionally reasonable administrative search.

The search and seizure of an illegal drug during a routine airport inspection made pursuant to the aviation security procedures has been sustained by this Court in a number of cases.[19] In the leading case of *People v. Johnson*,[20] we held:

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[21]

Thus, while the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is guaranteed by Section 2, Article III of the 1987 Constitution,[22] a routine security check being conducted in air[23] and sea[24] ports has been a recognized exception. This is in addition to a string of jurisprudence ruling that search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incidental to a lawful arrest; (2) search of a moving motor vehicle; (3) customs search; (4) seizure of evidence in "plain view"; (5) consented warrantless search; (6) "stop and frisk" search; and (7) exigent and emergency circumstance.[25]

Notably, Section 2, Article III of the Constitution was patterned after the Fourth Amendment to the Constitution of the United States of America.[26] Having been derived almost verbatim therefrom, the Court may turn to the pronouncements of the US Federal Supreme Court and State Appellate Courts, which are considered doctrinal in this jurisdiction.[27]

Like in our country, the circumstances under which a warrantless search, unsupported by probable cause, may be considered reasonable under the Fourth Amendment are very limited and that exceptions thereto are few specifically established and well delineated.[28] In a similar way, the government bears the burden of proving that a warrantless search was conducted pursuant to an established exception to the Fourth Amendment warrant requirement.[29]

US courts have permitted exceptions to the Fourth Amendment when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable" such as work-related searches of government employees' desks and offices, warrantless searches conducted by school officials of a student's property, government investigators conducting searches pursuant to a regulatory scheme when the searches meet "reasonable legislative or administrative standards," and a State's operation of a probation system.[30] The Fourth Amendment permits the warrantless search of "closely regulated" businesses; "special needs" cases such as schools, employment, and probation; and "checkpoint" searches such as airport screenings under the administrative search doctrine.[31]

Searches and seizures are ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.[32] However, because administrative searches primarily ensure public safety instead of detecting criminal wrongdoing, they do not require individual suspicion.[33] Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as "reasonable." [34] In particular, airport searches have received judicial sanction essentially because of the magnitude and pervasiveness of the danger to the public safety and the overriding concern has been the threat of death or serious bodily injury to members of the public posed by the introduction of inherently lethal weapons or bombs.[35]

Although the US Supreme Court has not specifically held that airport screening searches are constitutionally reasonable administrative searches, it has suggested that they qualify as such.[36] Airport security searches can be deemed lawful administrative searches because (1) these searches constitute relatively limited intrusions geared toward finding particular items (weapons, explosives, and incendiary devices) that pose grave danger to airplanes and air travelers; (2) the scrutiny of carry-on luggage is no more intrusive (in both its scope and intensity) than is necessary to achieve the legitimate aims of the screening process (that is, to ensure air travel safety); (3) airline passengers have advance notice that their carry-on luggage will be subjected to these security measures, thus giving passengers the opportunity to place their personal effects in checked luggage; (4) all passengers are subject to the same screening procedures; and (5) passengers are aware that they can avoid the screening process altogether by electing not to board the plane.[37] Moreover, abuse is unlikely because of its public nature.[38]

As a permissible administrative search, the scope of airport routine check is not limitless.[39] Airport screening procedures are conducted for two primary reasons: first, to prevent passengers from carrying weapons or explosives onto the aircraft; and second, to deter passengers from even attempting to do so.[40] The oft-cited case of *United States v. Davis*[41] sets the appropriate standards for evaluating airport screening searches as constitutionally reasonable administrative searches, thus:

[S]earches conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime, may be permissible under the Fourth Amendment though not supported by a showing of probable cause directed to a particular place or person to be searched.

As we have seen, screening searches of airline passengers are conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or explosives aboard aircraft, and thereby to prevent hijackings. The essential purpose of the scheme is not to detect weapons or explosives or to apprehend those who carry them, but to deter persons carrying such material from seeking to board at all.

Of course, routine airport screening searches will lead to discovery of contraband and apprehension of law violators. This practical consequence does not alter the essentially administrative nature of the screening process, however, or render the searches unconstitutional. x x x.

There is an obvious danger, nonetheless, that the screening of passengers and their carry-on luggage for weapons and explosives will be subverted into a general search for evidence of crime. If this occurs, the courts will exclude the evidence obtained.[42] (Citations omitted.)

The constitutional bounds of an airport administrative search require that the individual screener's actions be no more intrusive than necessary to determine the existence or absence of explosives that could result in harm to the passengers and aircraft.[43] The search cannot also serve unrelated law enforcement purposes as it effectively transforms a limited check for weapons and explosives into a general search for evidence of crime, substantially eroding the privacy rights of passengers who travel through the system.[44] As in other exceptions to the search warrant requirement, the screening program must not turn into a vehicle for warrantless searches for evidence of crime.[45] It is improper that the search be tainted by "general law enforcement objectives" such as uncovering contraband unrelated to that purpose or evidence of unrelated crimes or evidencing general criminal activity or a desire to detect "evidence of ordinary criminal wrongdoing." [46] In *United States v. \$124,570 US. Currency*, [47] the US Court of Appeals for the Ninth Circuit noted that the US Supreme Court has repeatedly emphasized the importance of keeping criminal investigatory motives from coloring administrative searches.[48]

Hence, an airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded; "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale." [49] Where an action is taken that cannot serve the administrative purpose, either because the threat necessitating the administrative search has been dismissed or because the action is simply unrelated to the administrative goal, the action clearly exceeds the scope of the permissible search.[50] To the extent that airport administrative searches are used for purposes other than screening luggage and passengers for weapons or explosives, they fall outside the rationale by which they have been approved as an exception to the warrant requirement, and the evidence obtained during such a search should be excluded.[51]

Furthermore, to be constitutionally permissible, warrantless and suspicionless airport screening searches must meet the Fourth Amendment standard of reasonableness.[52] "What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself." [53] There can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.[54] In other words, an administrative screening search must be as limited in its intrusiveness as is consistent with satisfaction of the administrative need that justifies it.[55] Specifically, the Court must balance an individual's right to be free of intrusion with "society's interest in safe air travel." [56] On this score, *Davis* again has provided a guidepost. There it was held that an airport security search is considered as reasonable if: (1) the search is no more extensive or intensive than necessary, in light of current technology, to satisfy the administrative need that justifies it, that is to detect the presence of weapons or explosives; (2) the search is confined in good faith to that purpose; and (3) a potential passenger may avoid the search by choosing not to fly.[57]

In *State v. Hanson*,^[58] the Intermediate Court of Appeals of Hawai'i believed in the soundness of the logic of the US Court of Appeals for the Fifth Circuit in *United States v. Skipwith*,^[59] which ruled:

Necessity alone, however, whether produced by danger or otherwise, does not in itself make all non-probable-cause searches reasonable. Reasonableness requires that the courts must weigh more than the necessity of the search in terms of possible harm to the public. The equation must also take into account the likelihood that the search procedure will be effective in averting the potential harm. On the opposite balance we must evaluate the degree and nature of intrusion into the privacy of the person and effects of the citizen which the search entails.

In undertaking our calculation of the weight to be accorded to these three factors in the case at bar - public necessity, efficacy of the search, and degree of intrusion - we need not reiterate what was said in *Moreno* about the dangers posed by air piracy; suffice it to say that there is a judicially-recognized necessity to insure that the potential harms of air piracy are foiled. The search procedures have every indicia of being the most efficacious that could be used. The group being screened is limited to persons with the immediate intention of boarding aircraft. Metal detectors, visual inspection, and rare but potential physical searches appear to this court to provide as much efficiency to the process as it could have.

On the other side of the judicial scales, the intrusion which the airport search imposes on the public is not insubstantial. It is inconvenient and annoying, in some cases it may be embarrassing, and at times it can be incriminating. There are several factors, however, which make this search less offensive to the searched person than similar searches in other contexts. One such factor is the almost complete absence of any stigma attached to being subjected to search at a known, designated airport search point. As one commentator has put it in the border search context, "individuals searched because of their membership in a morally neutral class have less cause to feel insulted" In addition, the offensiveness of the screening process is somewhat mitigated by the fact that the person to be searched must voluntarily come to and enter the search area. He has every opportunity to avoid the procedure by not entering the boarding area. Finally, the circumstances under which the airport search is conducted make it much less likely that abuses will occur. Unlike searches conducted on dark and lonely streets at night where often the officer and the subject are the only witnesses, these searches are made under supervision and not far from the scrutiny of the traveling public.

Moreover, the airlines, which have their representatives present, have a definite and substantial interest in assuring that their passengers are not unnecessarily harassed. The officers conducting the search under these circumstances are much more likely to be solicitous of the Fourth Amendment rights of the traveling public than in more isolated, unsupervised surroundings.

Our conclusion, after this tripartite weighing of the relevant factors, is that the standards for initiating a search of a person at the boarding gate should be no more stringent than those applied in border crossing situations. In the critical pre-boarding area where this search started, reasonableness does not require that officers search only those passengers who meet a profile or who manifest signs of nervousness or who otherwise appear suspicious. Such a requirement would have to assume that hijackers are readily identifiable or that they invariably possess certain traits. The number of lives placed at hazard by this criminal paranoia forbid taking such deadly chances. As Judge Friendly has stated:

Determination of what is reasonable requires a weighing of the harm against the need. When the object of the search is simply the detection of past crime, probable cause to arrest is generally the appropriate test When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, the danger alone meets the test of reasonableness, so long as the search is conducted in good faith for the purpose of preventing hijacking or like damage and with reasonable scope and the passenger has been given advance notice of his liability to such a search so that he can avoid it by choosing not to travel by air. (Citations omitted.)

According to *United States v. Aukai*,^[60] US case law had erroneously suggested that the reasonableness of

airport screening searches is dependent upon the passenger's consent, either ongoing consent or irrevocable implied consent. It opined:

The constitutionality of an airport screening search, however, does not depend on consent, see *Biswell*, 406 U.S. at 315, and requiring that a potential passenger be allowed to revoke consent to an ongoing airport security search makes little sense in a post-9/11 world. Such a rule would afford terrorists multiple opportunities to attempt to penetrate airport security by "electing not to fly" on the cusp of detection until a vulnerable portal is found. This rule would also allow terrorists a low-cost method of detecting systematic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks. Likewise, given that consent is not required, it makes little sense to predicate the reasonableness of an administrative airport screening search on an irrevocable implied consent theory. Rather, where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport. See *Biswell*, 406 U.S. at 315; 49 C.F.R. § 1540.107. Under current TSA regulations and procedures, that election occurs when a prospective passenger walks through the magnetometer or places items on the conveyor belt of the x-ray machine.[61] (Citation omitted.)

Currently, US courts are of the view that the constitutionality of a screening search does not depend on the passenger's consent once he enters the secured area of an airport. The requirement in *Davis*[62] of allowing passengers to avoid the search by electing not to fly does not extend to one who has already submitted his luggage for an x-ray scan.[63] If a potential passenger chooses to avoid a search, he must elect not to fly before placing his baggage on the x-ray machine's conveyor belt.[64] The right to abandon air travel must be exercised prior to commencing the screening procedures. Any other rule would allow potential hijackers to leave whenever detection seemed imminent and permit them to try again another day.[65]

The instant case does not qualify as a legitimate administrative search in an airport.

Similar to the mission of the Transportation Security Administration of the US Department of Homeland Security, the Office of Transportation Security under the Department of Transportation and its predecessors has been primarily[66] mandated to ensure civil aviation security.[67] To be precise, the OTS is tasked to implement Annex 17 of the ICAO Convention on aviation security which seeks to safeguard civil aviation and its facilities against acts of unlawful interference, which include but not limited to:

- unlawful seizure of aircraft,
- destruction of an aircraft in service,
- hostage-taking on board aircraft or on aerodromes,
- forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility,
- introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes,
- use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment,
- communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.[68]

Among others, the OTS has to enforce R.A. No. 6235 or the Anti-Hijacking Law.[69] It provides that an airline passenger and his hand-carried luggage are subject to search for, and seizure of, prohibited materials or substances

and that it is unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft, operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material.[70]

It is in the context of air safety-related justifications, therefore, that routine airport security searches and seizures are considered as permissible under Section 2, Article III of the Constitution.

In this case, what was seized from Eanna were two rolled sticks of dried marijuana leaves. Obviously, they are not explosive, flammable, corrosive or poisonous substances or materials, or dangerous elements or devices that may be used to commit hijacking or acts of terrorism. More importantly, the illegal drugs were discovered only during the final security checkpoint, after a pat down search was conducted by SSO Suguitan, who did not act based on personal knowledge but merely relied on an information given by CSI Tamayo that Eanna was possibly in possession of marijuana. In marked contrast, the illegal drugs confiscated from the accused in *Johnson* and the subsequent cases of *People v. Canton*,^[71] *People v. Suzuki*,^[72] *Sales v. People*,^[73] and *People v. Cadidia*,^[74] where incidentally uncovered during the initial security check, in the course of the routine airport screening, after the defendants were frisked and/or the alarm of the metal detector was triggered.

Airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. Unlike a routine search where a prohibited drug was found by chance, a search on the person of the passenger or on his personal belongings in a deliberate and conscious effort to discover an illegal drug is not authorized under the exception to the warrant and probable cause requirement.^[75] The Court is not empowered to suspend constitutional guarantees so that the government may more effectively wage a "war on drugs." If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime.^[76]

Nonetheless, there is a valid consented warrantless search in this case.

The constitutional immunity against unreasonable searches and seizures is a personal right which may be waived.^[77] A person may voluntarily consent to have government officials conduct a search or seizure that would otherwise be barred by the Constitution. Like the Fourth Amendment, Section 2, Article III of the Constitution does not proscribe voluntary cooperation.^[78]

Yet, a person's "consent to a [warrantless] search, in order to be voluntary, must be unequivocal, specific and intelligently given, [and] uncontaminated by any duress or coercion[.]"^[79] The question of whether a consent to a search was "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.^[80]

Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether [he] was in a public or a secluded location; (3) whether [he] objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence [will] be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting.^[81]

Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence.^[82] The government bears the burden of proving "consent."^[83] In the US, it has been held that when the government relies on the "consent" exception to the warrant requirement, two main issues must be litigated: did the defendant indeed consent, and did the defendant do so with the requisite voluntariness?^[84] Here, we have ruled that to constitute a waiver, it must first appear that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and, lastly, that said person had an actual intention to relinquish the

right.[85]

While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the sine qua non of effective consent.[86] On the other hand, lack of objection to the search and seizure is not tantamount to a waiver of constitutional right or a voluntary submission to the warrantless search and seizure.[87] Even when security agents obtain a passenger's express assent to a search, this assent ordinarily will not constitute a valid "consent" if the attendant circumstances will establish nothing more than acquiescence to apparent lawful authority.[88]

The Fourth Amendment inquiry of whether a reasonable person would have felt free to decline the officers' requests or otherwise terminate the encounter applies equally to police encounters that take place on trains, planes, and city streets.[89] "Consent" that is the product of official intimidation or harassment is not consent at all.[90]

In this case, the Court finds that there is a valid warrantless search based on express consent. When SSO Suguitan requested to conduct a pat down search on Eanna, the latter readily agreed. Record is devoid of any evidence that he manifested objection or hesitation on the body search. The request to frisk him was orally articulated to him in such language that left no room for doubt that he fully understood what was requested. Unperturbed, he verbally replied to the request demonstrating that he also understood the nature and consequences of the request. He voluntarily raised his hands by stretching sideward to the level of his shoulders with palms open. His affirmative reply and action cannot be viewed as merely an implied acquiescence or a passive conformity to an authority considering that SSO Suguitan is not even a police officer and cannot be said to have acted with a coercive or intimidating stance. Further, it is reasonable to assume that Eanna is an educated and intelligent man. He is a 53-year old working professional (claimed to be employed or attached to a drug addiction center) and a well-travelled man (said to have been in 22 different countries and spent hours in customs).[91] Indubitably, he knew, actually or constructively, his right against unreasonable searches or that he intentionally conceded the same. Having been obtained through a valid warrantless search, the sticks of marijuana are admissible in evidence against him. Corollarily, his subsequent arrest, although likewise without warrant, was justified since it was effected upon the discovery and recovery of an illegal drug in his person in flagrante delicto.

There is substantial compliance with the chain of custody rule.

At the time of the commission of the crime, the applicable law is R.A. No. 9165.[92] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as -

[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody [was] made in the course of safekeeping and use in court as evidence, and the final disposition.[93]

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[94] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be.[95] In a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be.[96] As regards the prosecution of illegal drugs, the well-established US federal evidentiary rule is when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either

been exchanged with another or been contaminated or tampered with.[97] This evidentiary rule was adopted in *Mallillin v. People*,^[98] where this Court also discussed how, ideally, the chain of custody of seized items should be established:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[99]

In the present case, the prosecution was able to prove, through the documentary and testimonial evidence, that the integrity and evidentiary value of the seized items were properly preserved in every step of the way.

Upon confiscation of the two rolled sticks of dried marijuana leaves from Eanna, SSO Suguitan put them on the nearby screening table in front of Eanna and PO1 Manadao, Jr. The sticks were the only items placed on the table.^[100] Thereafter, the seized items were turned-over by SSO Suguitan to PO3 Javier, who placed them on a tray together with the other belongings of Eanna.^[101] It must be emphasized that SSO Suguitan is an airport screening officer and not a police officer who is authorized to "arrest" or "apprehend"^[102] Eanna. Hence, he should not be considered as the "apprehending officer" who must immediately mark and conduct the physical inventory and photograph of the seized items conformably with Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations (IRR).

PO3 Javier was the only one in possession of the two rolled sticks of dried marijuana leaves from the time he took custody of the same at the airport up to the time he submitted the same to the crime laboratory office.^[103] At the PNP-ASG office, the confiscated illegal drug was marked, physically inventoried, and photographed in front of Eanna, with SSO Suguitan, a Barangay Chairman, a Barangay Kagawad, and an ABS-CBN cameraman as witnesses.^[104] Per Request for Laboratory Examination,^[105] the specimens were personally delivered by PO3 Javier to the Ilocos Norte Provincial Crime Laboratory Service where PO3 Padayao received them. Finally, based on the Chemistry Report^[106] of Police Inspector Navarro and the stipulation of facts^[107] agreed upon by the parties, the specimens tested positive for the presence of marijuana after a qualitative examination.

The specimens contained in the Ziploc re-sealable plastic bag that were marked, tested, and presented in court were positively identified not only by PO3 Javier but also by SSO Suguitan as the same two rolled sticks of dried marijuana leaves seized from Eanna.^[108] Hence, it would be immaterial even if, as Eanna argues, PO3 Javier had no personal knowledge of their possession by Eanna and their seizure by SSO Suguitan.

Eanna contends that the two sticks of rolled paper allegedly containing marijuana were not marked immediately and were just laid bare on a table at the PNP-ASG office. According to him, the ABS-CBN video footage taken shortly before midnight, which Badua submitted and which was already edited following the news report format, showed that the two sticks were without markings at first and then with markings later on.

The Court notes that the compact disk showing the video of what transpired inside the PNP-ASG office does not contain the full footage that Badua had taken. It was already edited for purposes of news report.^[109] Assuming that there is truth to the allegation that the two sticks of marijuana were not immediately marked, such fact does not automatically result in an acquittal. As long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with Section 21 (1) of R.A. No. 9165 and its IRR may be excused. In several cases,^[110] we affirmed the conviction of the accused-appellant despite recognizing that the seized illegal drug

was not immediately marked at the place of arrest. Likewise, in *People v. Sic-open*,^[111] the Court sustained the conviction of the accused--appellant even if the physical inventory and photograph of the illegal drug were not immediately done at the place where it was confiscated. Here, the reason for the non-observance with the rule is justified. Immediate marking, physical inventory, and photograph of the confiscated drug cannot be done at the final checkpoint area because it started to become crowded by the constant comings and goings of departing passengers. The seized items were fittingly brought by PO3 Javier to the PNP-ASG office where it was made sure that the barangay officials and a media man were in attendance to witness the regularity of the entire proceedings.

The peculiar situation in airports calls for a different treatment in the application of Section 21 (1) of R.A. No. 9165 and its IRR. To require all the time the immediate marking, physical inventory, and photograph of the seized illegal drug will definitely have a domino effect on the entire airport operation no matter how brief the whole procedure was conducted. Stuck passengers will cause flight delays, resulting not just economic losses but security threats as well. Besides, to expect the immediate marking, physical inventory, and photograph of the dangerous drug at the place of arrest is to deny the reality that the persons^[112] required by law to witness the procedure are unavailable at the moment of arrest. Unlike in a buy-bust operation which is supposed to be pre-planned and already coordinated in order to ensure the instant presence of necessary witnesses, arrests and seizures in airports due to illegal drugs are almost always spontaneous and unanticipated.

In our view, the period of waiting for the arrival of the witnesses did not affect the integrity and evidentiary value of the subject illegal drug, on the following grounds:

First, the airport police ensured that only authorized personnel were inside the PNP-ASG office during the investigation. PO3 Javier claimed that he was with SPO3 Domingo, PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, SSO Bal-ot, and P/Supt. Apias.^[113] It was only the members of the PNP-ASG and of the Laoag City PNP, the media, and the two barangay officials who were allowed to stay inside the room.^[114] The defense counsel recognized that the PNP-ASG office has a limited space and not big in size, estimating it to be around three by four meters (although PO1 Terson approximated it to be five by seven meters).^[115]

Second, the airport police made sure that no one could touch the confiscated drug even if it was in full view of everyone. PO3 Javier testified that the two rolled sticks of dried marijuana leaves were placed on the investigation table where everybody could look but not hold.^[116] Eanna could also see any attempt to switch or alter the evidence as he was seated just in front of the table while the others guarded him.^[117] Interestingly, instead of being concerned at the time of the risk of substitution, he even requested to smoke so he was allowed to go out of the PNP-ASG office.^[118] Although the apprehending officers could have exercised a better judgment, they are under no obligation to explain why the accused was permitted to leave the office in order to smoke. Such fact should not be taken against them as the integrity and evidentiary value of the seized items are not automatically rendered infirmed. Certainly, we consider the totality of circumstances present in this case. Eanna's right to be presumed innocent until proven otherwise includes the constitutional right to enjoy his liberty, albeit in a restricted sense due to his arrest. He retains his (limited) freedom of movement during the course of the investigation. Likewise, it must be added that the natural tendency of an innocent person accused of committing a crime is not to rest easy by ensuring that the evidence being used against him is not altered, tampered or swapped. In this case, Eanna's resolve to smoke outside notwithstanding a pending concern either shows that he was adamant in his claim that what was confiscated from him were merely flavored tobacco or that he was already resigned to the fact that he was busted possessing marijuana. The Court cannot speculate or engage in guesswork.

And third, the plausibility of tampering with the evidence is nil as the airport police were preoccupied in accomplishing the necessary documentation relative to the arrest and seizure. PO3 Javier shared that while waiting for the arrival of the barangay officials, their group were busy preparing documents which mainly consist

of reports regarding the incident.[119] The trial court equally noted that "there were a lot of things they were doing like the preparation of the spot report that they [would] forward to Manila such that their Deputy Chief even helped them. It is precisely for [this] reason that the two sticks of marijuana [appear] to have been submitted to the crime lab only at 12:50 a.m. of the following day, July 15, 2013." [120]

It has been raised that the drug evidence should have been placed in a sealed container. Eanna asserts that the evidence was rendered susceptible to alteration, tampering and swapping because the Ziploc was not sealed by an adhesive tape or any means other than the natural, built-in re-sealable feature of the plastic bag. Contrary to his allegation, however, the specimens that were submitted to the RTC were actually placed in a big transparent re-sealable Hefty One Zip plastic bag sealed with a masking tape with markings.[121] Even if there is truth to his representation, the specimens contained in the Ziploc re-sealable plastic bag that were marked, tested, and presented in court were positively identified by SSO Suguitan and PO3 Javier, who both testified under oath, as the same two rolled sticks of dried marijuana leaves that were seized from Eanna. Raising a mere possibility is not enough. Eanna should have shown with particularity how the drug evidence was altered, tampered or swapped. The nature of illegal drugs as fungible things is not new to him. He is not a stranger to prohibited drugs, claiming to be familiar with marijuana since he is employed or attached to a drug addiction center and has been in 22 different countries and spent hours in customs.[122] As the RTC opined, he could have submitted for laboratory examination the tiny grains of dried leaves and seeds that were found in his camera bag in order to prove that the alleged sticks of marijuana seized from him were in fact flavored tobacco that he used to smoke all the time.[123]

The same reasoning as above can be said even if we are to admit that PO3 Padayao placed his own marking on the specimens he received from PO3 Javier and before he turned them over to the forensic chemist. A marking made on the corpus delicti itself is not automatically considered a form of contamination which irreversibly alters its physical state and compromises its integrity and evidentiary value.

Where a defendant identifies a defect in the chain of custody, the prosecution must introduce sufficient proof so that the judge could find that the item is in substantially the same condition as when it was seized, and may admit the item if there is a reasonable probability that it has not been changed in important respects.[124] However, there is a presumption of integrity of physical evidence absent a showing of bad faith, ill will, or tampering with the evidence.[125] Merely raising the possibility of tampering or misidentification is insufficient to render evidence inadmissible.[126] Absent some showing by the defendant that the evidence has been tampered with, it will not be presumed that those who had custody of it would do so.[127] Where there is no evidence indicating that tampering with the exhibits occurred, the courts presume that the public officers have discharged their duties properly.[128]

In this jurisdiction, it has been consistently held that considering that the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with, the defendant bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by the public officers and a presumption that the public officers properly discharge their duties.[129] *People v. Agulay*[130] in fact ruled that failure to comply with the procedure in Section 21 (a), Article II of the IRR of R.A No. 9165 does not bar the application of presumption of regularity in the performance of official duties. Thus:

The dissent agreed with accused-appellant's assertion that the police operatives failed to comply with the proper procedure in the custody of the seized drugs. It premised that non-compliance with the procedure in Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 creates an irregularity and overcomes the presumption of regularity accorded police authorities in the performance of their official duties. This assumption is without merit.

First, it must be made clear that in several cases decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.

Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21 (a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption. We held:

The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.[131] (Emphasis in the original)

People v. Daria, Jr.,[132] People v. Gratil,[133] and People v. Bala[134] have followed the Agulay ruling.

It is unfortunate that rigid obedience to procedure on the chain of custody creates a scenario wherein the safeguards supposedly set to shield the innocent are more often than not exploited by the guilty to escape rightful punishment.[135] The Court reiterates that while the procedure on the chain of custody should be perfect, in reality, it is almost always impossible to obtain an unbroken chain.[136] The chain of custody need not be perfect for the evidence to be admissible.[137] A complete chain of custody need not always be proved.[138] Thus, failure to strictly comply with Section 21 (1) of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible or render void and invalid such seizure.[139] The most important factor is the preservation of the integrity and evidentiary value of the seized item.[140]

Non-compliance with the requirements of the law is not automatically fatal to the prosecution's case and the accused may still be held guilty of the offense charged. This Court ratiocinated in People v. Del Monte:[141]

Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded [to] it by the courts. x x x

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight - evidentiary merit or probative value - to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[142] (Italics in the original.)

We restated in People v. Moner[143] 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. The saving clause under Section 21 (1) of R.A. No. 9165 recognizes that the credibility of the prosecution's witnesses and the admissibility of other evidence are well within the power of trial court judges to decide. The Court went on to state that under the doctrine of separation of powers, it is important to distinguish if a matter is a proper subject of the rules of evidence, which are promulgated by the Court pursuant to paragraph (5), Section 5, Article VIII of the 1987 Constitution, or if it is a subject of substantive law, which is passed by an act of Congress. Taking into account the distinction in criminal law that a substantive law declares what acts are crimes and prescribes the punishment for committing them while a procedural law provides or regulates the steps by which one who commits a crime is to be punished, it was concluded that the chain of custody rule is a matter of evidence and a

rule of procedure; therefore, it is the Court which has the last say regarding the appreciation of evidence.

Certainly, the chain of custody rule is a matter of evidence and a rule of procedure, it being ultimately anchored on the weight and admissibility of evidence which the courts have the exclusive prerogative to decide. Any missing link, gap, doubt, challenge, break, problem, defect or deficiency in the chain of custody goes to the weight of the evidence, not its admissibility.[144] Once admitted, the court evaluates it and, based thereon, may accept or disregard the evidence.[145] In *People v. Sipin*,[146] this Court, through the ponente, recently conveyed:

At this point, it is not amiss for the ponente to express his 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, the ponente agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* 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.

The ponente subscribes 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.

The ponente further submits 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. (Emphasis and italics in the original)

Strict compliance with the requirements of Section 21 (1) of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[147] Like what have been done in past cases, we must not look for the stringent step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused.[148] The identity of the confiscated drugs is preserved when the drug presented and offered as evidence in court is the exact same item seized from the accused at the

time of his arrest, while the preservation of the drug's integrity means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.[149]

To assess an allegedly faulty chain of custody, the court looks for ample corroborative evidence as to the evidence's acquisition and subsequent custody.[150] Before admitting or excluding real evidence, it must consider the nature of the evidence, and the surrounding circumstances, including presentation, custody and probability of tampering or alteration.[151] If, after considering these factors, it is determined that the evidence is substantially in the same condition as when the crime was committed, the evidence may be admitted.[152] The court need not rule out every possibility that the evidence underwent alteration; it needs only to find that the reasonable probability is that the evidence has not been altered in any material aspect.[153] Physical evidence is admissible when the possibilities of misidentification or alteration are eliminated, not absolutely, but as a matter of reasonable probability.[154] All that is required is that the evidence in question was the same as that involved in the offense and that it is substantially unchanged.[155]

Courts are reminded to tread carefully before giving full credit to the testimonies of those who conducted the illegal drug operations and must thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law and the rules.[156] In the performance of this function, among the evidentiary rules to apply are the following: test in measuring the value of a witness' testimony, appreciation of inculpatory facts, positive and negative evidence, one-witness rule, best evidence rule, suppression of evidence, presumption of regular performance of official duty, rules on circumstantial evidence and conspiracy, and (non) presentation of poseur buyer or marked money.[157]

WHEREFORE, premises considered, the February 9, 2016 Decision and the July 21, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36412, which affirmed the November 22, 2013 Decision of the Regional Trial Court, Branch 13, Laoag City, in Criminal Case No. 15585-13, finding accused-appellant Eanna O'Cochlain guilty for violation of Section 11, Article II of Republic Act No. 9165, are AFFIRMED.

SO ORDERED.

Gesmundo, J. Reyes, Jr., and Hernando, JJ., concur.

Leonen, J., see separate dissenting opinion.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil Y. Zalameda and Pedro B. Corales concurring; rollo, pp. 3-26.

[2] CA rollo, p. 237.

[3] Records, pp. 116-133.

[4] Id. at 1-2.

[5] Id. at 1.

[6] Id. at 43-45.

[7] Id. at 31, 40, 44-45.

[8] The presentation of CSI Flor Tamayo as a witness for the prosecution was dispensed with after the parties stipulated that the affidavit he previously executed would be his direct testimony and admitted that he did not witness the search of the person of Eana and on his luggage (TSN, September 11, 2013, pp. 23-25). Likewise, PO3

John Edwin Padayao and Police Inspector Amiely Ann Luis Navarro were no longer presented as Witnesses after their proffered testimonies were admitted (TSN, August 20, 2013, pp. 2-3). The prosecution admitted that. PO3 Padayao and Police Inspector Navarro have no personal knowledge of the specific source of the specimens they received on July 15, 2013 (TSN, August 20, 2013, pp. 3-4).

[9] Civil Aviation Authority of the Philippines.

[10] Records, p. 6; TSN , August 20, 2013, p p. 54-55.

[I I] Also referred to as PO1 Judel Tugon (see TSN , September 11, 2013, p. 14).

[12] Eanna contended that it was actually one rolled paper containing flavored tobacco that was broken into two (TSN , October 2, 2013, pp. 36-38). There were two red Marlboro boxes, one almost full, containing 19 cigarettes, and the other one contained pre-rolled crushed tobacco (TSN, October 2, 2013, p. 19).

[13] Records, p. 133; CA rollo, pp. 70, 136.

[14] Section 9. Every ticket issued to a passenger by the airline or air carrier concerned shall contain among others the following condition printed thereon: "Holder hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft," which shall constitute a part of the contract between the passenger and the air carrier.

[15] Records. pp. 129-131; CA rollo, pp. 66-68, 132-134.

[16] Records. pp. 165-166.

[17] Rollo, pp. 54-57.

[18] Id. at 41-52.

[19] See *People v. Cadidia*, 719 Phil. 538 (2013); *Sales v. People*, 703 Phil. 133 (2013); *People v. Suzuki*, 460 Phil. 146 (2003); *People v. Canton*, 442 Phil. 743 (2002); and *People v. Johnson*, 401 Phil. 734 (2000).

[20] Id.

[21] *People v. Johnson*, id. at 743, as cited in *People v. Cadidia*, supra note 19, at 556; *Sales v. People*, supra note 19, at 140; *People v. Suzuki*, supra note 19, at 159-160; and *People v. Canton*, supra note 19, at 758-759. See also *Saluday v. People*, G.R. No. 215305, April 3, 2018; *People v. Gumilao*, G.R. No. 208755, October 5, 2016 (Resolution); and *Dela Cruz v. People*, 653 Phil. 653, 683 (2016).

[22] SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[23] *People v. Cadidia*, supra note 19; *Sales v. People*, supra note 19; *People v. Suzuki*, supra note 19; *People v. Canton*, supra note 19; and *People v. Johnson*, supra note 19.

[24] *People v. Gumilao*, supra note 21 ; and *Dela Cruz v. People*, supra note 21, at 683.

[25] See *Martinez v. People*, 703 Phil. 609, 617 (2013); *Luz v. People*, 683 Phil. 399, 411 (2012); *Valdez v. People*, 563 Phil. 934, 949 (2007); *People v. Chua Ho San*, 367 Phil. 703, 715-716 (1999); *People v. Doria*, 361 Phil. 595, 627-628 (1999); and *Malacat v. CA*, 347 Phil. 462, 479 (1997).

[26] *Saluday v. People*, supra note 21.

[27] *People v. Marti*, 271 Phil. 51, 57 (1991), as cited in *Pallo v. Chairperson Constantino-David, et al.*, 675 Phil. 225, 249 (2011).

[28] See *United States v. McCarty*, 648 F.3d 82.0 (2010); *Higerd v. State*, 54 So. 3d 513 (2010); *United States v. Fofana*, 620 F. Supp. 2d 857 (2009); and *United State v. Aukai*, 497 F.3d 955 (2007).

[29] *United States v. Oliver*, 686 F.2d 356, 371 (6[th] Cir. 1982); *Higerd v. State*, id.; and *United States v. Fofana*, id.

[30] *Griffin v. Wis.*, 483 U.S. 868 (1987). See also *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).

[31] *Corbett v. Transp. Sec. Admin.*, 767 F.3d 1171 (2014).

[32] *United States v. McCarty*, supra note 28, citing *United States v. Aukai*, supra note 28 (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32 [2000]).

[33] *Corbett v. Transp. Sec. Admin.*, supra note 31.

[34] See *United States v. McCarty*, supra note 28, citing *United States v. Aukai*, supra note 28 (quoting *Chandler v. Miller*, 520 U.S. 305 [1997]).

[35] *State v. Hanson*, 97 Haw. 77 (2001).

[36] *United States v. Aukai*, supra note 28, citing *City of Indianapolis v. Edmond*, supra note 32; *Chandler v. Miller*, supra note 34; and *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). See also *Corbett v. Tramp. Sec. Admin*, supra note 31; *United States v. McCarty*, 2011 U.S. App. LEXIS 18874 (2011) and supra note 28; and *Vanbrocklen v. United States*, 2009 U.S. Dist. LEXIS 24854 (2009).

[37] *Schaffer v. State*, 988 P.2d 610 (1999).

[38] *Corbell v. Transp. Sec. Admin.*, supra note 31.

[39] *United States v. Aukai*, supra note 28.

[40] *United States v. Marquez*, 410 F.3d 612 (2005), citing *United States v. Davis*, 482 F.2d 893 (1973).

[41] Id.

[42] See also *United States v. McCarty*, supra note 28; *Higerd v. State*, supra note 28; *United States v. Aukai*, supra note 28; and *United States v. Marquez*, supra note 40.

[43] *United States v. McCarty*, id., citing *United States v. \$124,570 U.S Currency*, 873 F.2d 1240 (1989).

[44] See *United Stat es v. \$124, 570 U.S Currency*, id.

[45] *State v. Salit*, 613 P.2d 245 (1980), citing *Terry v. Ohio*, 392 U.S. 1 (1968).

[46] See *United States v. Fofana*, supra note 28; *United States v. \$124,570 U.S. Currency*, supra note 43; and *State v. Salit*, id.

[47] Id., citing *Wyman v. James*, 400 U.S. 309 (1971); *Camara v. Municipal Court*, 387 U.S. 523 (1967); and *Abel v. United States*, 362 U.S. 217 (1960).

[48] See also *United States v. Huguenin*, 154 F.3d 547 (1998); and *Alexander v. City & County of San Francisco*, 29 F.3d 1355 (1994).

[49] *United States v. McCarty*, supra note 28, citing *United States v. \$ 124,570 U.S. Currency*, supra note 43. See also *Higerd v. State*, supra note 28; and *United States v. Fofana*, supra note 28.

[50] *United States v. McCarty*, id.

[51] *United States v. Fofana*, supra note 28.

[52] *United States v. Fofana*, id., citing *United States v. Davis*, supra note 40.

[53] *State v. Hanson*, supra note 35, citing *United States v. Pulido-Baquerizo*, 800 F.2d 899 (1986).

[54] *United States v. Davis*, supra note 40, citing *Camara v. Municipal Court*, supra note 47.

[55] *Bruce v. Beary*, 498 F.3d 1232 (2007), citing *United States v. Davis*, supra note 40. See also *Gilmore v. Gonzales*, 435 F.3d 1125 (2006).

[56] *United States v. Pulido-Baquerizo*, supra note 53. See also *Higerd v. State*, supra note 28; *United States v. Fofana*, supra note 28; *United States v. Marquez*, supra note 40; and *State v. Hanson*, supra note 35.

[57] See also *United States v. McCarty*, supra note 28; *Higerd v. State*, supra note 28; *United States v. Fofana*, supra note 28; *United States v. Aukai*, supra note 28; *Gilmore v. Gonzales*, supra note 55; *State v. Book*, 165 Ohio App. 3d 511 (2006); *United States v. Marquez*, supra note 40; *United States v. Pulido-Baquerizo*, supra note 53; and *United States v. Henry*, 615 F.2d 1223 (1980).

[58] Supra note 35.

[59] 482 F.2d 1272 (1973).

[60] Supra note 28. See *Arrahim v. Cho*, 2018 U.S. Dist. LEXIS 32708 (2018); and *Herrera v. Santa Fe Pub. Sch.*, 956 F. Supp. 2d 1191 (2013).

[61] *United States v. Aukai*, id., citing *United States v. Biswell*, 406 U.S. 311 (1972).

[62] According to *United States v. Davis*, supra note 40, "airport screening searches of the persons and immediate possessions of potential passengers for weapons and explosives are reasonable under the Fourth Amendment provided each prospective boarder retains the right to leave rather than submit to the search." It held that "as a matter of constitutional laws, a prospective passenger has a choice: he may submit to a search of his person and immediate possessions as a condition to boarding; or he may turn around and leave. If he chooses to proceed, that choice, whether viewed as a relinquishment of an option to leave or an election to submit to the search, is essentially a 'consent,' granting the government a license to do what it would otherwise be barred from doing by the Fourth Amendment." See also *Gilmore v. Gonzales*, supra note 55.

[63] *United States v. Pulido-Baquerizo*, supra note 53.

[64] *State v. Hanson*, supra note 35, citing *United States v. Pulido-Baquerizo*, id.

[65] See *United States v. Marquez*, supra note 40; and *State v. Hanson*, supra note 35.

[66] During the administration of then President Ferdinand E. Marcos, acts constituting dollar salting or dollar black marketing was declared illegal and was screened in airports (see Executive Order No. 934 dated February 13, 1984; Executive Order No. 953 dated May 4, 1984; Presidential Decree No. 1936 dated June 22, 1984; Letter of Instructions No. 1445 dated January 11, 1985; and Presidential Decree No. 2002 dated December 16, 1985). Likewise, due to the alarming increase in the number of overseas Filipino workers who have been enticed, duped, and subsequently recruited to act as drug couriers by international drug trafficking syndicates, former President

Gloria Macapagal-Arroyo created the Drug Couriers Task Force, which was an Inter-Agency Task Force composed of the PDEA as Chairman, the Department of Foreign Affairs as Co-Chairman, and the Department of Labor and Employment, Bureau of Immigration, Bureau of Customs, National Bureau of Investigation, Philippine Information Agency, Manila International Airport Authority and Philippine Tourism Authority as Members (see Administrative Order No. 279 dated February 8, 2010).

[67] Taking into account the series of aircraft hijackings which have threatened the airline industry and civil aviation, former President Ferdinand E. Marcos issued Letter of Instructions (LOI) No. 399 dated April 28, 1976. It constituted the National Action Committee on Anti-Hijacking (NACAH), under the Chairmanship of the Secretary of National Defense, to formulate plans for, coordinate, integrate, direct, control and supervise all measures aimed at preventing/suppressing any and all forms of hijacking; ensuring the safe and continuous operation of civil aviation; and handling all incidents of hijacking to include immediate and follow-up actions to be taken up to the termination or resolution thereof.

In the implementation of LOI No. 399, LOI No. 961, dated November 22, 1979, created the Aviation Security Command (AVSECOM) to be responsible for the protection of the airline industry to ensure its continued and uninterrupted operations. It was tasked to maintain peace and order within airport complexes and secure all airports against offensive and terroristic acts that threaten civil aviation. In the discharge of its responsibilities, the AVSECOM was directed to confine itself to its primary responsibility of security.

Pursuant to Executive Order (EO) No. 393 dated January 24, 1990, then President Corazon C. Aquino, reconstituted the NACAH and mandated it to formulate plans to coordinate, integrate, direct, control and supervise all measures aimed at preventing or suppressing all forms of hijacking or kidnapping involving civil aviation and airline industry operations; ensuring the safe and continuous operation of the airline industry and civil aviation; and handling all incidents of hijacking and all other offensive and terroristic activities. EO No. 452, dated April 5, 1991, further reconstituted the NACAH by designating the Secretary of the Interior and Local Government as its Chairman.

On May 18, 1995, former President Fidel V. Ramos issued EO No. 246, reconstituting and renaming the NACAH as the National Action Committee on Anti-Hijacking and Anti-Terrorism (NACAHT). In addition to the provisions of LOI No. 399 and EO No. 393, NACAHT was empowered to: (a) formulate plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing hijacking, other threats to civil aviation, and all other forms of terrorism with the end in view of protecting national interests, and (b) adopt measures geared towards the implementation of the following main objectives: (1) to effectively monitor the activities of suspected terrorists, and (2) to develop the capability of local law enforcement agencies to contain the threats of terrorism. The NACAHT was ordered to establish close coordination and cooperation with concerned agencies of countries which are vigorously opposing international terrorism and to enhance the intelligence and operational functions of concerned entities and authorities in dealing with crimes perpetrated by terrorists.

Under the administration of then President Joseph Ejercito Estrada, the NACAHT was reconstituted and renamed as the National Council for Civil Aviation Security (NCCAS). In addition to the provisions of LOI No. 399, EO No. 393, and EO No. 246, the NCCAS was tasked by EO No. 336, dated January 5, 2001, to (a) formulate plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing all terrorist threats to civil aviation especially hijacking, commandeering, sabotage of plane and airport facilities, violence directed against civil aviation personnel as well as the plane riding public and/or the citizens-at-large, and all other forms of terrorism with the end in view of protecting Philippine national interests, and (b) to develop and continue enhancing the level of operational effectiveness of local law enforcement agencies under jurisdiction and immediate supervision of the NCCAS.

On January 30, 2004, former President Gloria Macapagal-Arroyo issued EO No. 277 in view of the urgent need to safeguard civil aviation against acts of unlawful interference and the responsibility of the NCCAS for formulating plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing all terrorist threats to civil aviation. The executive order created an OTS under the Department of Transportation and Communication (DOTC), which shall be primarily responsible for the implementation of Annex 17 of the ICAO Convention on aviation security. Moreover, the NCCAS was reconstituted as the National Civil Aviation Security Committee (NCASC) under the Chairmanship of the DOTC Secretary. In addition to its existing functions, the NCASC shall be responsible for the implementation and maintenance of the National Civil Aviation Security Programme (NCASP) and shall:

- Define and allocate tasks and coordinate activities among the agencies of the government, airport authorities, aircraft operators and other entities concerned with, or responsible for, the implementation of various aspects of the NCASP;
- Coordinate security activities among the agencies of the government, airport authorities, aircraft operators and other entities concerned with, or responsible for, the implementation of various aspects of the NCASP;
- Define and allocate tasks for the implementation of the NCASP among the agencies of the government, airport authorities, aircraft operators and other concerned entities;
- Ensure that each airport serving international civil aviation shall establish and implement a written airport security programme appropriate to meet the requirements of the NCASP;
- Arrange for an authority at each airport serving international civil aviation to be responsible for coordinating the implementation of security controls;
- Arrange for the establishment of an airport security committee at each airport serving international civil aviation to assist the authority mentioned in paragraph (e) above, in the coordination of the implementation of security controls and procedures;
- Coordinate and collaborate with the Task Force for Security of Critical Infrastructure under the Cabinet Oversight Committee on International Security; and
- Perform such other functions as the President may direct.

Barely three months after, President Macapagal-Arroyo issued EO No. 311, on April 26, 2004. It took note of the recent international and domestic events reminding that the nation must constantly be vigilant to prevent weapons, explosives, other dangerous elements or devices, hazardous materials and cargoes, which may be used to commit an act of terrorism and the carriage or bearing of which is not authorized, from being introduced into and carried on board a public transport system. The OTS was designated as the single authority responsible for the security of the transportation systems of the country, including, but not limited to civil aviation, sea transport and maritime infrastructure, and land transportation, rail system and infrastructure. The OTS shall exercise the following powers and functions:

- Assume the functions of the NCASC enumerated in Section 4 of EO No. 277 as well as all other powers and functions of the NCASC subject, however, to Section 3 of the Executive Order;
- Exercise operational control and supervision over all units of law enforcement agencies and agency personnel providing security services in the transportation systems, except for motor vehicles in land transportation, jointly with the heads of the bureaus or agencies to which the units or personnel organically belong or are assigned;
- Exercise responsibility for transportation security operations including, but not limited to, security screening of

passengers, baggage and cargoes, and hiring, retention, training and testing of security screening personnel;

- In coordination with the appropriate agencies and/or instrumentalities of the government, formulate, develop, promulgate and implement comprehensive security plans, policies, measures, strategies and programs to ably and decisively deal with any threat to the security of transportation systems, and continually review, assess and upgrade such security plans, policies, measures, strategies and programs to improve and enhance transportation security and ensure the adequacy of these security measures;
- Examine and audit the performance of transportation security personnel, equipment and facilities, and, thereafter, establish, on a continuing basis, performance standards for such personnel, equipment and facilities, including for the training of personnel;
- Prepare a security manual/master plan or programme which shall prescribe the rules and regulations for the efficient and safe operation of all transportation systems, including standards for security screening procedures, prior screening or profiling of individuals for the issuance of security access passes, and determination of levels of security clearances for personnel of the OTS, the DOTC and its attached agencies, and other agencies of the government;
- Prescribe security and safety standards for all transportation systems in accordance with existing laws, rules, regulations and international conventions;
- Subject to the approval of the Secretary of the DOTC, issue Transportation Security Regulations/Rules and amend, rescind or revise such regulations or rules as may be necessary for the security of the transportation systems of the country;
- Enlist the assistance of any department, bureau, office, instrumentality, or government-owned or controlled corporation, to carry out its functions and mandate including, but not limited to, the use of their respective personnel, facilities and resources;
- Actively coordinate with law enforcement agencies in the investigation and prosecution of any illegal act or unlawful interference committed at or directed to any public transportation system;
- Perform such other functions necessary to effectively carry out the provisions of this Executive Order or as may be directed by the Secretary of the DOTC.

Under the same EO, the NCASC shall henceforth act as an advisory body to, and consultative forum for the DOTC Secretary in matters relative to civil aviation security. For this purpose, the NCASC was transferred to the DOTC and its composition was reconstituted. The OTS shall continue to serve as the Secretariat of the NCASC.

[68] See https://ext.eurocontrol.int/lexicon/index.php/Acts_of_unlawful_interference and <https://to70.com/unlawful-interference/>. (last accessed on December 5, 2018).

[69] Entitled "An Act Prohibiting Certain Acts inimical To Civil Aviation, And For Other Purposes," Approved on June 19, 1971.

[70] Section 5 of R.A. No. 6235 states:

SEC. 5. As used in this Act

(1) "Explosive" shall mean any substance, either solid or liquid, mixture or single compound, which by chemical reaction liberates heat and gas at high speed and causes tremendous pressure resulting in explosion. The term shall include but not limited to dynamites, firecrackers, blasting caps, black powders, bursters, percussions, cartridges and other explosive materials, except bullets for firearm.

(2) "Flammable" is any substance or material that is highly combustible and self-igniting by chemical reaction and shall include but not limited to acrolein, allene, aluminum diethyl monochloride, and other aluminum compounds, ammonium chlorate and other ammonium mixtures and other similar substances or materials.

(3) "Corrosive" is any substance or material, either liquid, solid or gaseous, which through chemical reaction wears away, impairs or consumes any object. It shall include but not limited to alkaline battery fluid packed with empty storage battery, allyl chloroformate, allyl trichlorosilane, ammonium dinitro-orthocresolate and other similar materials and substances.

(4) "Poisonous" is any substance or materials, except medicinal drug, either liquid, solid or gaseous, which through chemical reactions kills, injures or impairs a living organism or person, and shall include but not limited to allyl isothiocyanate, ammunition (chemical, non-explosive but containing Class A, B or poison), aniline oil, arsine, bromobenzyl cyanide, bromoacetone and other similar substances or materials.

[71] Supra note 19.

[72] Supra note 19.

[73] Supra note 19.

[74] Supra note 19.

[75] See State v. Salit, supra note 45.

[76] See Fla. v. Bostick, 501 U.S. 429 (1991).

[77] Valdez v. People, 563 Phil. 934, 950 (2007).

[78] See Fla. v. Bostick, supra note 76.

[79] Schaffer v. State, supra note 37. See also Luz v. People, supra note 25, at 411; and Valdez v. People, supra note 25, at 950.

[80] Schneckloth v. Bustamonte, 412 U.S. 218 (1973), as cited in United States v. Henry, supra note 57; and United States v. Davis, supra note 40. See also Luz v. People, supra note 25, at 411; and Valdez v. People, supra note 25, at 950.

[81] Luz v. People, id. at 411-412; and Valdez v. People, id. at 950.

[82] Luz v. People, id. at 411; and Valdez v. People, id.

[83] United States v. Henry, supra note 57; and United States v. Davis, supra note 40.

[84] Schaffer v. State, supra note 37, citing Schneckloth v. Bustamonte, supra note 80.

[85] People v. Chua Ho San, supra note 25, at 721.

[86] Schneckloth v. Bustamonte, supra note 80, as cited in United States v. Davis, supra note 40.

[87] Valdez v. People, supra note 25, at 951.

[88] See Schaffer v. State, supra note 37, and United States v. Miner, 484 F.2d 1075 (1973).

[89] Fla. v. Bostick, supra note 76.

[90] Id.

[91] TSN, October 2, 2013, pp. 20, 41.

[92] R.A. No. 9165 took effect on July 4, 2002 (see *People v. De la Cruz*, 591 Phil. 259, 272 [2008]). R.A. No. 10640 was approved on July 15, 2014, amending R.A. No. 9165.

[93] See *People v. Badilla*, 794 Phil. 263, 278 (2016); *People v. Arenas*, 791 Phil. 601, 610 (2016); and *Saraum v. People*, 779 Phil. 122, 132 (2016).

[94] *United States v. Rawlins*, 606 F.3d 73 (2010).

[95] *Id.*, as cited in *United States v. Mehmood*, 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion*, 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark*, 2012 U.S. Dist. LEXIS 95130 (2012).

[96] See *United States v. Rawlins*, *id.*, as cited in *United States v. Mark*, *id.*

[97] See *United States v. Cardenas*, 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis*, 632 F.3d 673 (2011); *United States v. Solis*, 55 F. Supp. 2d 1182 (1999); *United States v. Anderson*, 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg*, 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia*, 983 F.2d 1563 (1993); *United States v. Johnson*, 977 F.2d 1360 (1992); and *United States v. Clonts*, 966 F.2d 1366 (1992).

[98] 576 Phil. 576 (2008).

[99] *Id.* at 587, as cited in *People v. Tamaño*, G.R. No. 208643, December 5, 2016, 812 SCRA 203, 229; *People v. Badilla*, *supra* note 91, at 280; *Saraum v. People*, *supra* note 93, at 132-133; *People v. Dalawis*, 772 Phil. 406, 417-418 (2015); and *People v. Flores*, 765 Phil. 535, 541-542 (2015). It appears that Mallillin was erroneously cited as "*Lopez v. People*" in *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Denoman*, 612 Phil. 1165 (2009); *People v. Garcia*, 599 Phil. 416 (2009); *People v. Sanchez*, 590 Phil. 214 (2008); and *People v. Dela Cruz*, 589 Phil. 259 (2008).

[100] TSN, August 20, 2013, pp. 20-21; TSN, September 4, 2013, p. 7.

[101] *Id.* at 21-22.

[102] "Arrest" or "apprehend" should be understood in its traditional terminology. It contemplates one which "eventuate in a trip to the station house and prosecution for crime" and not merely "whenever a police officer accosts an individual and restrains his freedom to walk away." "An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows." (See *Terry v. Ohio*, 392 U.S. 1 [1968]).

[103] TSN, September 11, 2013, pp. 5-6.

[104] TSN, September 4, 2013, p. 13.

[105] Records, p. 24.

[106] *Id.* at 25.

[107] TSN, August 20, 2013, pp. 2-3.

[108] *Id.* at 30-31; TSN, September 11, 2013, pp. 3-4.

[109] TSN, September 27, 2013, p. 11.

[110] See *People v. Guillergan*, 797 Phil. 775 (2016); *People v. Asislo*, 778 Phil. 509 (2016); *People v. Yuble*, 731 Phil. 650 (2014); *People v. Ladip*, 729 Phil. 495 (2014); *People v. Macala*, G.R. No. 203123, March 24, 2014 (First Division); *People v. Amadeo*, G.R. No. 199099, June 5, 2013 (First Division); *People v. Brainer*, 697 Phil. 171 (2012); *People v. Bautista*, 682 Phil. 487 (2012); *People v. Mondejar*, 675 Phil. 91 (2011); *People v. Politico, et al.*, 647 Phil. 728 (2010); *People v. Resurreccion*, 618 Phil. 520 (2009); and *People v. Rivera*, 590 Phil. 894 (2008).

[111] 795 Phil. 859 (2016), citing *People v. Asislo*, *supra* note 110; *People v. Mammad, et al.*, 769 Phil. 782 (2015); *Miclat, Jr. v. People*, 672 Phil. 191 (2011); and *People v. Felipe*, 663 Phil. 132 (2011).

[112] Under the original provision of Section 21 (1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. As amended by R.A. No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/ her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Lim*, G.R. No. 231989, September 4, 2018; *People v. Sipin*, G.R. No. 224290, June 11, 2018; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, G.R. No. 226481, April 18, 2018).

[113] TSN, September 11, 2013, pp. 17-18.

[114] TSN, September 17, 2013, pp. 15-16.

[115] *Id* at 14-15.

[116] TSN, September 11, 2013, pp. 18-20.

[117] *Id.* at 21-23.

[118] *Id* at 21.

[119] *Id* at 19.

[120] Records, pp. 131-132.

[121] *Id.* at 26.

[122] TSN, October 2, 2013, pp. 20, 41.

[123] See Records, p. 131.

[124] See *United States v. Osuna-Alvarez*, 614 Fed. Appx. 353 (2015), citing *United States v. Matta-Ballesteros*, 71 F.3d 754 (1995).

[125] *United States v. Johnson*, 688 F.3d 494 (2012), citing *United States v. Robinson*, 617 F.3d 984 (2010).

[126] *United States v. Granderson*, 651 Fed. Appx. 373 (2016); *United States v. Williams*, 640 Fed. Appx. 492 (2016); and *United States v. Allen*, 619 F.3d 518 (2010).

[127] See *United States v. Cardenas*, *supra* note 97.

[128] *United States v. Mehmood*, *supra* note 95, citing *United States v. Allen*, *supra* note 126.

[129] *People v. Miranda*, 560 Phil. 795, 810 (2007), as cited in *People v. Dela Cruz*, supra note 99, at 524-525; *People v. Ando, et al.*, 793 Phil. 791, 800 (2016); *People v. Ygot*, 790 Phil. 236, 247 (2016); *People v. Domingo*, 786 Phil. 246, 255 (2016); *People v. Akmad, et al.*, 773 Phil. 581, 591 (2015); *People v. Baticolon*, 762 Phil. 468, 482 (2015); *People v. Dela Peña, et al.*, 754 Phil. 323, 344 (2015); *People v. Tapugay*, 753 Phil. 570, 581 (2015); *People v. De la Trinidad*, 742 Phil. 347, 360 (2014); *People v. Ortega*, 738 Phil. 393, 403-404 (2014); *People v. Yable*, supra note 110, at 660-661; *People v. Octavio, et al.*, 708 Phil. 184, 195-196 (2013); *People v. De Mesa, et al.*, 638 Phil. 245, 254 (2010); *Balarbar v. People*, 632 Phil. 295, 299 (2010); *People v. Hernandez, et al.*, 607 Phil. 617, 640 (2009); *People v. Macatingag*, 596 Phil. 376, 392 (2009); and *People v. Agulay*, 588 Phil. 247, 302 (2008).

[130] *Id.*

[131] *Id.* at 299-300, citing *People v. De los Reyes*, 299 Phil. 460, 470-471 (1994). See also *People v. Naelga*, 615 Phil. 539, 559 (2009).

[132] 615 Phil. 744, 757-758 (2009).

[133] 667 Phil. 681, 696-697 (2011).

[134] 741 Phil. 254, 266 (2014).

[135] See *People v. Moner*, G.R. No. 202206, March 5, 2018.

[136] *People v. Tamaño*, supra note 99, at 229; *People v. Badilla*, supra note 93, at 280; *Saraum v. People*, supra note 93, at 133; and *People v. Asislo*, supra note 110, at 517.

[137] *United States v. Johnson*, supra note 125; *United States v. Yeley-Davis*, supra note 97; and *United States v. Cardenas*, supra note 97.

[138] *United States v. Mitchell*, 816 F.3d 865 (2016); and *United States v. Rawlins*, supra note 94.

[139] *People v. Tamaño*, supra note 99, at 229; *People v. Badilla*, supra note 93, at 280; *Saraum v. People*, supra note 93, at 133; *People v. Asislo*, supra note 110, at 517; *People v. Dalawis*, supra note 99, at 416; and *People v. Flores*, supra note 99, at 540-542.

[140] *People v. Tamaño*, *id.* at 229; *People v. Badilla*, *id.* at 280; and *People v. Asislo*, *id.* at 517.

[141] 575 Phil. 576 (2008).

[142] *Id.* at 586-587, as reiterated in *People v. Moner*, supra note 135; *People v. Calvelo*, G.R. No. 223526, December 6, 2017; *People v. Tripoli*, G.R. No. 207001, June 7, 2017; *Saraum v. People*, supra note 93, at 133; *People v. Mercado*, 755 Phil. 863, 879 (2015); *People v. Steve, et al.*, 740 Phil. 727, 739-740 (2014); *People v. Gamata*, 735 Phil. 688, 700-701 (2014); *People v. Ladip*, supra note 110, at 517; *People v. Cardenas*, 685 Phil. 205, 221 (2012); *People v. Soriaga*, 660 Phil. 600, 606-607 (2011); *People v. Domado*, 635 Phil. 74, 93-94 (2010); *Zalameda v. People*, 614 Phil. 710, 741-742 (2009); and *People v. Macatingag*, supra note 129, at 392-393.

[143] Supra note 135.

[144] *United States v. Mehmood*, supra note 95; *United States v. Wilson*, 720 Fed. Appx. 209 (2018); *United States v. Arnold*, 696 Fed. Appx. 903 (2017); *United States v. Marrero*, 2016 U.S. App. LEXIS 4570 (2016); *United States v. Mitchell*, supra note 138; *United States v. Granderson*, supra note 126; *United States v. Hemphill*, 642 Fed. Appx. 448 (2016); *United States v. Williams*, supra note 126; *United States v. Perez*, 625 Fed. Appx. 919

(2015); *United States v. Osuna-Alvarez*, supra note 124; *United States v. Johnson*, supra note 125; *United States v. Yeley-Davis*, supra note 97; *United States v. Allen*, supra note 126; *United States v. Rawlins*, supra note 94; *United States v. Mejia*, 597 F.3d 1329 (2010); and *United States v. Cardenas*, supra note 97.

[145] See *United States v. Wilson*, supra note 144; *United States v. Arnold*, supra note 144; *United States v. Yeley-Davis*, supra note 97; and *United States v. Cardenas*, supra note 97.

[146] Supra note 112.

[147] *People v. Sanchez*, supra note 99.

[148] See *People v. Domado*, supra note 142, at 93, as cited in *People v. Calvelo*, supra note 142; *People v. Mercado*, supra note 142, at 879; *People v. Steve, et al.*, supra note 142, at 739; *People v. Alcala*, 739 Phil. 189, 201 (2014); *People v. Ladip*, supra note 110, at 516-517; and *People v. Soriaga*, supra note 142, at 606.

[149] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

[150] *United States v. Mitchell*, supra note 138.

[151] *United States v. Cardenas*, supra note 97.

[152] *Id.*

[153] *Id.*

[154] *United States v. Mehmood*, supra note 95; *United States v. Mitchell*, supra note 138; *United States v. Williams*, supra note 126; *United States v. Johnson*, supra note 125; *United States v. Allen*, supra note 126; *United States v. Mejia*, supra note 144; and *United States v. Stewart*, 104 F.3d 1377 (1997).

[155] *United States v. Johnson*, *id.*

[156] See *People v. Umipang*, 686 Phil. 1024, 1037 (2012).

[157] NITAFAN, DAVID G., *Annotations on the Dangerous Drugs Act*, First Edition (1995), Central Professional Books, Inc., pp. 135-146.

DISSENTING OPINION

LEONEN, J.:

This Court resolves the Appeal filed by Eanna O'Cochlain (O'Cochlain) from the February 9, 2016 Decision and July 21, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36412. The Court of Appeals affirmed the November 22, 2013 Decision of the Regional Trial Court, which found O'Cochlain guilty beyond reasonable doubt of possession of illegal drugs under Article II, Section 11 of Republic Act No. 9165,[1] or the Comprehensive Dangerous Drugs Act of 2002.

The majority finds that: (1) there was a valid warrantless search conducted on O'Cochlain under airpmi security measures; and (2) there was no violation of Article II, Section 21 of Republic Act No. 9165 concerning the custody and disposition of confiscated, seized, or surrendered dangerous drugs.

I dissent to the findings of the majority.

I

Conducting inspections of persons and their effects under routine airport security procedures do not trigger the constitutional right against unreasonable searches and seizures,[2] as they arise from a reduced expectation of privacy.[3] In *Saluday v. People*: [4]

To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.[5]

Nonetheless, for an inspection of passengers and their belongings under routine security procedures to be a valid reasonable search, certain conditions must be met.[6] In *Saluday*:

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. First, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. Second, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. Third, as to the purpose of the search, it must be confined to ensuring public safety. Fourth, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.[7]

If the conditions are not met, then an initially reasonable search will be unreasonable.

The purpose of the search must be confined to ensuring public safety. This Court has recognized that increasing concerns over terrorism and other imminent threats to life warrant additional safety measures in public places, including the implementation of security procedures, inspections, and searches.[8]

However, if there is no imminent threat to life, there must be probable cause that a crime is being, or has been committed to make the search reasonable. In *Dela Cruz v. People*: [9]

The presentation of petitioner's bag for x-ray scanning was voluntary. Petitioner had the choice of whether to present the bag or not. He had the option not to travel if he did not want his bag scanned or inspected. X-ray machine scanning and actual inspection upon showing of probable cause that a crime is being or has been committed are part of reasonable security regulations to safeguard the passengers passing through ports or terminals. Probable cause is:

reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.

It is not too burdensome to be considered as an affront to an ordinary person's right to travel if weighed against the safety of all passengers and the security in the port facility.[10] (Emphasis supplied, citation omitted)

This Court has, in several instances, upheld the validity of searches under routine security procedures, resulting in

convictions for possession of illegal items because there had been probable cause.

In *People v. Johnson*,^[11] during a routine frisking of departing passengers at the Ninoy Aquino International Airport, the duty frisker felt something hard on the accused's abdominal area. This aroused the suspicion of the duty frisker, who doubted the accused's explanation that she was wearing two (2) panty girdles. A subsequent search of the accused found methamphetamine hydrochloride (shabu) hidden on the accused's abdomen.

In *People v. Canton*,^[12] the accused passing through the metal detector at the Ninoy Aquino International Airport triggered a beeping sound. The accused was then frisked, and shabu was discovered on her body.

Similarly, in *People v. Suzuki*,^[13] the activation of a metal detector at the Bacolod Airport Terminal pre-departure area prompted officers from the Police Aviation Security Command to inspect the accused's body and the package he was carrying. A search of the package revealed marijuana.

In *Sales v. People*,^[14] an Aviation Security Group on-duty member had suspicions over the accused, who had a slight bulge in his short pants pocket, but refused to show what it was. When the accused finally revealed the item, it turned out to be two (2) rolled sticks of marijuana.

In *People v. Cadidia*,^[15] during a routine frisking at the Manila Domestic Airport Terminal I, the on-duty frisker noticed an unusual thickness around the accused's buttocks area. Unconvinced by the accused's explanation, the on-duty frisker conducted a more stringent body search that yielded sachets of shabu.

In *Dela Cruz v. People*,^[16] when the accused placed his bag on the x-ray scanning machine for inspection at the Cebu Domestic Port, the operator-on-duty saw what appeared to be three (3) firearms in the bag. This alerted the port personnel, who conducted a manual inspection of the bag and discovered three (3) revolvers and four (4) live ammunitions, without proper documents.

In *Saluday v. People*,^[17] during a checkpoint inspection of a bus near the Tefasco Wharf, an army task force member noticed that one (1) small bag was heavy for its size, with the bag's owner acting suspiciously outside. A search of the bag revealed firearms and explosives.

Here, it is undisputed that there was no imminent threat to life that warranted the search of the accused. He passed through routine airport security procedures at the Laoag City International Airport. At the final security check, he went through a pat-down search conducted by Security Screening Officer Dexter Suguitan (Suguitan), upon which two (2) cigarette packs were found in his possession. One (1) pack contained hand-rolled cigarette sticks. The accused explained that this was hand-rolled tobacco, but Suguitan stated that he knew the sticks had dried marijuana leaves.^[18]

Unlike in *Sales*,^[19] the accused here did not act suspiciously during the routine inspection to believe that he was committing, or had committed an offense. No metal detectors or x-ray machines were triggered, and the pat-down of the accused did not yield any suspicious materials apart from hand-rolled cigarettes.

Notably, Suguitan claimed that he knew the sticks were marijuana because Security and Intelligence Flor Tamayo, of the Civil Aviation Authority of the Philippines, had earlier told him that he saw a Caucasian man smoking at the parking space in front of the airport departure area. The area smelled like marijuana, even though no smoke came out of the man's mouth.^[20] Suguitan himself did not know of any suspicious activities of the accused that would have warranted his conclusion that the accused's hand-rolled cigarettes contained marijuana.

To emphasize, probable cause that a crime is or has been committed requires "reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged."^[21] The mere possession of hand-rolled cigarettes is not by itself

suspicious. Likewise, hearsay tips or secondhand knowledge of allegedly suspicious behavior cannot be a ground to believe that a person is committing or has committed a crime. For a valid finding of probable cause, law enforcers and their agents must have, based on observation, personally known the facts of the commission of a crime.[22]

II

For the majority, the integrity of the evidence is presumed to be preserved unless there is bad faith, ill will, or proof of tampering, to which the defendant has the burden of showing. This is to overcome a presumption of regularity in the public officers' handling of the exhibits, and the presumption that the public officers properly discharged their duties.[23]

However, the presumption of regularity must yield to the constitutional presumption of innocence[24] and requirement of proof beyond reasonable doubt.[25]

The general rule remains that there must be strict compliance with Section 21[26] of Republic Act No. 9165,[27] due to the characteristics of illegal drugs as not readily identifiable, and vulnerable "to tampering, alteration, or substitution by accident or otherwise." [28] The prosecution's failure to show compliance with the mandatory procedures in Section 21 of Republic Act No. 9165 creates reasonable doubt on the very corpus delicti of the offense charged.[29] Noncompliance is a ground for the accused's acquittal.[30]

Searches and seizures of drugs found under routine security procedures must still comply with Section 21 of Republic Act No. 9165. Neither the express text of the provision nor its implementing rules and regulations carve out an exception for airport searches. This Court has consistently evaluated the integrity of dangerous drugs seized during such searches, as well as the preservation of the chain of custody, against the mandatory requirements of Section 21.[31]

Despite the majority's citation of United States jurisprudence on the establishment of chain of custody on a rational basis,[32] this Court has consistently held that the illegal drug's identity must be proved with moral certainty, "established with the same degree of certitude as that needed to sustain a guilty verdict." [33] The four (4) links in the chain of custody of the confiscated item must be established:

Thus, the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[34] (Citation omitted)

The presumption of regularity of performance of official duty only arises when it can be shown that the apprehending officer followed the requirements in Section 21 of Republic Act No. 9165, or met the conditions for the saving clause in the Implementing Rules and Regulations of Republic Act No. 9165.[35] As to the latter:

All the above requirements must be complied with for a successful prosecution for the crime of illegal sale and possession of drugs under Sections 5 and 11 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the apprehending officers. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizure and custody over the confiscated items shall not be rendered void and invalid.[36] (Citation omitted)

Here, several deviations from the procedures in Section 21 of Republic Act No. 9165 cast in doubt the links in the chain of custody of the seized items. First, Suguitan made no immediate marking, physical inventory, and photograph of the seized items.[37] Instead, the seized items were merely placed on a screening table at the final checkpoint area.[38] Second, there was no immediate turnover of the seized items from Suguitan to Police Officer 3 Joel Javier, the investigator on duty for the Philippine National Police-Airport Security Group.[39] Moreover, it was Javier, instead of Suguitan, who marked the seized items with "EO-1" and "EO-2," and inventoried them in the presence of two (2) barangay officials and a member of the media.[40]

Justifying these deviations, the majority pointed out that the apprehending officers could not have observed the rule due to the crowded final checkpoint area. This made it necessary for the seized items to be brought to the Philippine National Police-Airport Security Group office. The delay in the inventory, marking, and even turnover of the seized items to the forensic laboratory were all justified as the apprehending officers' preoccupation with accomplishing the necessary documentation for the arrest and seizure.[41]

However, the integrity of the items' initial seizure and marking, and their turnover have already been put in doubt. No explanation was made as to why Suguitan did not immediately turn over the seized items to Javier, despite allegedly being present when Javier arrived. Why the seized items were merely placed on a table at the final checkpoint area, a public space that the majority noted was crowded with departing passengers, instead of being immediately marked by Suguitan under Section 21 of Republic Act No. 9165, was also inadequately explained.

The accused leaving to smoke,[42] while the seized items remained in the Philippine National Police-Airport Security Group office, does not mitigate the noncompliance of the apprehending officers with the requirements of Section 21 of Republic Act No. 9165. It should have been the apprehending officers who were made to explain why the accused was permitted to leave the office, even if the inventory and turnover of the seized items had not been completed.

Considering the doubts raised not only on why the officers here failed to strictly comply with Section 21 of Republic Act No. 9165, but also on the integrity of the chain of custody over the seized items, the presumption of regularity must be negated.[43] In *Mallillin v. People*: [44]

Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the Court of Appeals on the presumption of regularity in the conduct of police duty is manifestly misplaced. The presumption of regularity is merely just that - a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown. In *dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[45] (Emphasis supplied, citations omitted)

The doubts on the existence of probable cause for the search and seizure of the confiscated drugs, and the noncompliance with the mandatory requirements in Section 21 of Republic Act No. 9165 should be resolved in favor of the accused.

ACCORDINGLY, I vote to ACQUIT respondent Eanna O'Cochlain of possession of illegal drugs under Article II, Section 11 of Republic Act No. 9165. He should be released from detention, unless he is held for some other offense.

[1] Republic Act No. 9165 (2002), art. II, sec. 11 states:

SECTION 11. Possession of Dangerous Drugs. - . . .

. . . .

(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.

[2] CONST. art. III, sec. 2 states:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[3] *People v. Johnson*, 401 Phil. 734 (2000) [Per J. Mendoza, Second Division].

[4] *Saluday v. People*, G.R. No. 215305, April 3, 2018, [Per J. Carpio, En Banc].

[5] *Id.* at 14.

[6] *Id.* 15.

[7] *Id.*

[8] *People v. Johnson*, 401 Phil. 734 (2000) [Per J. Mendoza, Second Division]; *People v. Suzuki*, 460 Phil. 146 (2003) [Per J. Sandoval-Gutierrez, En Banc].

[9] 776 Phil. 653 (2016) [Per J. Leonen, Second Division].

[10] *Id.* at 684-685.

[11] 401 Phil. 734 (2000) [Per J. Mendoza, Second Division].

[12] 442 Phil. 743 (2002) [Per C.J. Davide, Jr., First Division].

[13] 460 Phil. 146 (2003) [Per J. Sandoval-Gutierrez, En Banc].

[14] 703 Phil. 133 (2013) [Per J. Villarama, Jr., First Division].

[15] 719 Phil. 538 (2013) [Per J. Perez, Second Division].

[16] 776 Phil. 653 (2016) [Per J. Leonen, Second Division].

[17] G.R. No. 215305, April 3, 2018 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/215305.pdf>> [Per J. Carpio, En Banc].

[18] Ponencia, p. 3.

[19] 703 Phil. 133 (2013) [Per J. Villarama, Jr., First Division].

[20] Ponencia, pp. 2-3.

[21] *Dela Cruz v. People*, 776 Phil. 653, 684 (2016) [Per J. Leonen, Second Division], citing *People v. Mariacos*, 635 Phil. 315, 329 (2010) [Per J. Nachura, Second Division].

[22] *Veridiano v. People*, G.R. No. 200370, June 7, 2017, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/200370.pdf>> [Per J. Leonen, Second Division].

[23] Ponencia, p. 30.

[24] CONST. art. III, sec. 14(2) states:

SECTION 14. . . .

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[25] *People v. Holgado, et al.*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division]; *People v. Ramos*, 791 Phil. 162 (2016) [Per J. Brion, Second Division].

[26] Republic Act No. 9165 (2002), sec. 21 states:

SECTION 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;

(4)

After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provider, further, That a representative sample, duly weighed and recorded is retained;

(5)

The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6)

The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy--two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7)

After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in comt, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8)

Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused

and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[27] *People v. Cayas*, 789 Phil. 70 (2016) [Per J. Brion, Second Division].

[28] *Id.* at 79. See also *People v. Andrada*, G.R. No. 232299, June 20, 2018 [Per J. Peralta, Second Division].

[29] *People v. Callejo*, G.R. No. 227427, June 6, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/227427.pdf>> [Per J. Caguioa, Second Division].

[30] *People v. Holgado, et al.*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[31] *Sales v. People*, 703 Phil. 133 (2013) [Per J. Villarama, Jr., First Division]; *People v. Cadidia*, 719 Phil. 538 (2013) [Per J. Perez, Second Division].

[32] Ponencia, p. 11.

[33] *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division]. See also *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division]; *People v. Baga*, 649 Phil. 232 (2010) [Per J. Velasco, Jr., First Division]; *People v. Climaco*, 687 Phil. 593 (2012) [Per J. Carpio, Second Division]; *People v. Balibay, et al.*, 742 Phil. 746 (2014) [Per J. Perez, First Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf>> [Per J. Leonen, Third Division].

[34] *People v. Nandi*, 639 Phil. 134, 144-145 (2010) [Per J. Mendoza, Second Division].

[35] *People v. Ramirez*, G.R. No. 225690, January 17, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/225690.pdf>> [Per J. Martires, Third Division].

[36] *People v. Callejo*, G.R. No. 227427, June 6, 2018 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/227427.pdf>> 9-10 [Per J. Caguioa, Second Division].

[37] Ponencia, pp. 3-4.

[38] *Id.*

[39] *Id.*

[40] *Id.* at 4.

[41] *Id.* at 26-28.

[42] *Id.* at 28.

[43] *People v. Holgado, et al.*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[44] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

[45] *Id.* at 593.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.