

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERALD TAMAYO CORDOVA AND MARCIAL DAYON EGUIISO, ACCUSED-APPELLANTS.

G.R. No. 231130. July 09, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This is an ordinary appeal[1] filed by accused-appellants Gerald Tamayo Cordova (Cordova) and Marcial Dayon Eguiso (Eguiso; collectively, accused-appellants) assailing the Decision[2] dated November 8, 2016 of the Court of Appeals (CA) in CA-G.R. CEB-CR. HC. No. 02093, which affirmed the Decision[3] dated May 18, 2015 of the Regional Trial Court of Bacolod City, Branch 47 (RTC) in Crim. Case Nos. 05-27806, 05-27807, and 05-27808, finding: (a) accused-appellants guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; and (b) Cordova guilty beyond reasonable doubt of violating Section 5 of the same Act.

The Facts

An Information[5] was filed before the RTC accusing Cordova of Illegal Sale of Dangerous Drugs, and two (2) Informations[6] charging Cordova and Eguiso of Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

Crim. Case No. 05-27806

That on or about the 8[th] day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Cordova)], not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver, give away to a poseur-buyer one (1) small heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.02 gram, in exchange for a price of P200.00 in marked money consisting of two (2) one hundred peso bills with Serial Nos. DK121965 and VP 387750, in violation of the aforementioned law.

Act contrary to law.[7]

Crim. Case No. 05-27807

That on or about the 8[th] day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Cordova)], not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control five (5) elongated heat-sealed transparent plastic packets each containing methylamphetamine hydrochloride or shabu with a total weight of 0.15 gram, in violation of the aforementioned law.

Act contrary to law.[8]

Crim. Case No. 05-27808

That on or about the 8[th] day of April 2005, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused [(Eguiso)], not being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) elongated heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.04 gram, in violation of the aforementioned law.

Act contrary to law.[9]

The prosecution alleged that in the afternoon of April 7, 2005, members of the City Anti-Illegal Drug-Special Operation Task Group (CAID-SOTG) of the Bacolod City Police Office received information that a certain Bobot Cordova was engaged in selling of illegal drugs and hosting pot sessions at the place rented by his sister in Purok Sigay, Barangay 2, Bacolod City. After surveillance, members of the CAID-SOTG decided to conduct a buy-bust operation at around 1:30 in the afternoon of April 8, 2005 with PO3[10] Charlie E. Sebastian (PO3 Sebastian) and the asset acting as poseur-buyers.[11]

On even date, PO3 Sebastian and the asset went to Cordova's place and were met at the door by Cordova, with Eguiso beside him holding an elongated plastic sachet containing a white crystalline substance. Cordova asked what they wanted and the asset introduced PO3 Sebastian as a buyer of shabu. Cordova asked how much they will buy and PO3 Sebastian answered that they want P200.00 worth of shabu. PO3 Sebastian then gave the marked money to Cordova, who then went to the kitchen and got something from the sole of his slippers. Cordova went back to PO3 Sebastian and handed him a plastic sachet containing suspected shabu.[12]

Thereafter, PO3 Sebastian made a missed call to his colleagues, who then rushed to the scene, and announced that they are police officers. Subsequently, PO3 Sebastian frisked Cordova, which yielded five (5) more elongated plastic sachets of suspected shabu, empty plastic sachets, and the marked money. The team further searched the kitchen and confiscated drug repacking paraphernalia. PO3 Sebastian also collected one (1) plastic sachet containing white crystalline substance after he conducted a body search on Eguiso.[13]

Accused-appellants were arrested and PO3 Sebastian marked his initials on the confiscated sachets and prepared an inventory of the seized items in their presence.[14] After the arrest, barangay officials were informed of the buy bust operation and went to the scene. Cordova and Eguiso were later brought to the barangay hall where PO3 Sebastian took photographs of the seized items and accused-appellants.[15] PO3 Sebastian took custody of the items and kept it in his locker at their office on April 8, 2005 since allegedly there was no evidence custodian in their police station, which hence, prompted him to deliver the same on April 11, 2005 where it was received at 11:10 a.m. by a non-uniformed personnel of the crime laboratory.[16] Police Senior Inspector Alexis Guinanao (PSI Guinanao) later confirmed that the plastic sachets submitted by PO3 Sebastian all yielded positive for methamphetamine hydrochloride,[17] a dangerous drug.[18]

In their defense, Cordova claimed that he was with his girlfriend and Eguiso in the house rented by his sister when suddenly armed persons entered the house without identifying themselves. Accused-appellants claimed not knowing the armed men except PO3 Rolando Malate. Accused-appellants were threatened that if any illegal item was found, a case for violation of Section 5, Article II of RA 9165 will be filed against them, and if they surrender the drug items, only a case for Section 11 of the same Act will be filed. When a body search on Cordova yielded nothing, accused-appellants were brought to the police station and detained. Between 4:00 to 5:00 p.m., the police took Cordova to the barangay hall where he was made to sign a document and his photograph taken. Cordova claimed that there were no representatives from the media and the DOJ when the inventory was conducted and that Eguiso was not present when the alleged inventory took place.[19]

The RTC Ruling

In a Decision[20] dated May 18, 2015, the RTC found Cordova liable for the crime of Illegal Sale of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of life imprisonment, as well as ordered him to pay a fine of P500,000.00. It also found Cordova and Eguiso guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, and accordingly, sentenced them each to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, as well as to each pay P300,000.00 as fine.[21]

The RTC ruled that the prosecution was able to establish all the elements of Illegal Sale of Dangerous Drugs as one (1) sachet of shabu was sold during the buy-bust operation. PO3 Sebastian positively identified and narrated in detail how Cordova handed the sachet of shabu to him, which was presented and duly identified in court. Moreover, the elements of Illegal Possession of Dangerous Drugs were also established as five (5) heat-sealed plastic sachets containing white crystalline substance were recovered from the person of Cordova, while one (1) elongated plastic sachet was recovered from the person of Eguiso.[22] On the other hand, the RTC did not give merit to Cordova and Eguiso's defense of denial and frame-up for being unsubstantiated. It also found sufficient the explanation with respect to the examination of the drugs after the 24 hour mandatory period.[23]

Aggrieved, accused-appellants appealed[24] to the CA. Pending appeal, Eguiso applied for and was granted bail.[25]

The CA Ruling

In a Decision[26] dated November 8, 2016, the CA affirmed the RTC's ruling.[27] It held that the prosecution, through the testimony of PO3 Sebastian, was able to prove that Cordova committed the crime of Illegal Sale of Dangerous Drugs. It also ruled that Cordova and Eguiso's unlawful possession of the sachets of shabu has been duly established.[28] Anent the custody of the seized items, the CA held that the absence of the representatives from the media and the DOJ are not fatal because the integrity and evidentiary value of the seized drugs were properly preserved, in accord with the requirements of Section 21 of RA 9165. On this score, the CA noted that there was an unbroken chain of custody despite the request for examination being made on April 8, 2005 and the drugs being forwarded on April 11, 2005 three days after.[29]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." [31]

Here, Cordova was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, while Eguiso was charged with the crime of Illegal Possession of Dangerous Drugs. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.[32] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs,

the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[33]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.[34]

Pertinently, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[35] Under the said section, prior to its amendment by RA 10640,[36] the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[37] In the case of *People v. Mendoza*,[38] the Court stressed that "[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody." [39]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[40] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[41] – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.[42] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[43] In *People v. Almorfe*,[44] the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.[45] Also, in *People v. De Guzman*,[46] it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[47]

After a judicious study of the case, the Court finds that the deviations from the prescribed chain of custody rule were unjustified, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Cordova and Eguiso.

First. As stated-above, Section 21, Article II of RA 9165 requires that the apprehending team shall immediately

after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of, among others, the accused or the person from whom the items were seized. However, as admitted by PO3 Sebastian, Eguiso, who is one of the accused-appellants, was not present during the required photography of the seized items as shown by his absence in the photos taken, viz.:

[Atty. Gene Sonota (Atty. Sonota)]: Can you explain why in Exhibit "L" only Gerarld [sic] Cordova was photographed? Where was Eguiso then?

[PO3 Sebastian]: Because at that time the main subject of our drug operation was Cordova and it just so happened that Eguiso was present in the residence of Bobot Cordova during said buy-bust operation. Maybe our office made an oversight in not including Eguiso in the picture.[48] (Emphasis supplied)

PO3 Sebastian accounted for Eguiso's absence by claiming that "maybe our office made an oversight x x x." Clearly, this plain – and worse, even tentative – excuse of oversight cannot be taken as a justifiable reason that would excuse non-compliance with the procedure set forth by law. "It is well-settled that the procedure in Section 21[, Article II] of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure so as to convince the Court that the failure to comply was reasonable under the given circumstances." [49]

Second. Records also fail to disclose that the other required witnesses, i.e., the representatives from the DOJ and the media, were present during the required inventory and photography of the seized items as required by law. As evinced by the Certification[50] signed by the barangay kagawads, the signatures of Eguiso, i.e., the other accused-appellant, as well as the representatives from the media and the DOJ attesting to the propriety of the police action are clearly missing therefrom.

In fact, there is dearth of evidence to show that the police officers even attempted to contact and secure these witnesses, notwithstanding the fact that buy-bust operations are usually planned out ahead of time. Neither did the police officers provide any explanation for their non-compliance, such as a threat to their safety and security or the time and distance which the other witnesses would have had to consider.[51]

Finally. It appears that the chain of custody of the seized items was actually tainted by irregular circumstances. In particular, records[52] show that the time of apprehension on April 8, 2005 was at 1:50 p.m. As disclosed by PO3 Sebastian during trial, the said items were not delivered to the crime laboratory immediately because there was no chemist present in the afternoon of April 8, 2005, a Friday, viz.:

[Atty. Sonota]: You will agree with me that after the recovery of the items on April 8, 2005, it was only on April 11, 2005, or three days after, that the items were presented to the forensic chemical officer for examination of the specimens?

[PO3 Sebastian]: Yes, sir.[53]

[Prosecutor Gwendolyn Tiu]: Please tell us the reason why it took you 3 days to deliver the specimen to the laboratory?

[PO3 Sebastian]: It took us 3 days to submit the said specimen to the PNP Crime Laboratory because on the day of operation that was April 8, it was Friday afternoon and after the recovery we immediately made a request to the PNP Crime Laboratory in which after forwarding the said specimen to the said office, there was no chemist present at that particular time and it was only on Monday morning that the chemist was present, April 11, 2005.[54]

Based on the testimony of PSI Guinanao, there was an agreement between the crime laboratory and the police

drug unit with respect to the procedure on apprehensions made on Fridays to Sundays:

[Atty. Sonota]: In short, if the apprehension happens on a Friday and Saturdays and Sundays, according to you, your office was close [sic] supposing on Monday is an official holiday this specimen cannot be delivered to your office?

[PSI Guinanao]: We have an agreement with the apprehending officers especially the DEU that if ever there are apprehensions on Friday we give them our cellphone number so that they can reach us and we can open our office.

[Atty. Sonota]: In short, for 3 days the specimen which was allegedly confiscated on April 8, 2005 remained in the possession of the apprehending officer up to the time April 11, 2005 when it was delivered to your office?

[PSI Guinanao]: That is right, sir.[55]

However, this agreement was not followed by the police officers. Instead, the items seized from Cordova and Eguiso were merely stored in the locker of PO3 Sebastian.[56] The request for laboratory examination was only received at 11:10 a.m. of April 11, 2005 by a certain non-uniformed personnel by the name of Edwin Albarico.[57] Thus, three (3) days had already passed since the items were seized from accused-appellants, during which they were merely stored in PO3 Sebastian's locker. To note, the prosecution failed to explain what security measures were employed to ensure that the integrity and evidentiary value of the items seized would not be compromised during the interim.

In *People v. Abetong*,[58] the Court acquitted the accused therein considering, among others, the failure of the police officers to explain the delay in the delivery of the drugs to the chemist. It was held that "[w]hile the delay in itself is not fatal to the prosecution's case as it may be excused based on a justifiable ground, it exposes the items seized to a higher probability of being handled by even more personnel and, consequently, to a higher risk of tampering or alteration,"[59] as in this case.

Accordingly, the plurality of the breaches of procedure committed by the police officers, which were glaringly unjustified by the State, militate against a finding of guilt beyond reasonable doubt against the accused-appellants, as the integrity and evidentiary value of the corpus delicti had been compromised.[60] As such, the Court finds accused-appellants' acquittal in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.[61]

In *People v. Miranda*,[62] prosecutors were strongly reminded that "they have the positive duty to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the corpus delicti and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the

procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."^[63]

WHEREFORE, the appeal is GRANTED. The Decision dated November 8, 2016 of the Court of Appeals in CA-G.R. CEB-CR. HC. No. 02093 is hereby REVERSED and SET ASIDE. Accordingly, accused-appellants Gerald Tamayo Cordova and Marcial Dayon Eguiso are ACQUITTED of the crimes charged.

The Director of the Bureau of Corrections is ordered to cause the immediate release of Gerald Tamayo Cordova, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, (Chairperson), Caguioa, and Reyes, Jr., JJ., concur.

Peralta, J., pls. see separate concurring opinion.

[1] See Notice of Appeal dated November 23, 2016; rollo, pp. 20-21.

[2] Id. at 4-19. Penned by Associate Justice Germano Francisco D. Legaspi with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap concurring.

[3] CA rollo, pp. 69-82. Penned by Judge Therese Blanche A. Bolunia.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Records (Criminal Case No. 05-27806), pp. 1-2.

[6] Records (Criminal Case No. 05-27807), pp. 1-2 and records (Criminal Case No. 05-27808), pp. 1-2.

[7] Records (Criminal Case No. 05-27806), p. 1.

[8] Records (Criminal Case No. 05-27807), p. 1.

[9] Records (Criminal Case No. 05-27808), p. 1.

[10] "SPO1" in some parts of the records.

[11] See rollo, p. 6; and CA rollo, pp. 71-72.

[12] See rollo, p. 6-7; and CA rollo, pp. 72.

[13] See rollo, p. 7; and CA rollo, pp. 72-73.

[14] See TSN, March 21, 2011, p. 12.

[15] Based on the records, the photographs marked as Exhibits "L" and "M" show that the barangay officials were with Cordova and the items seized from the latter were taken at the barangay hall during the signing of the certification by the barangay officials, while the photographs marked as Exhibits "N" and "O" show that the solo picture of accused-appellants were taken later at the police station. See rollo, p. 8; and records (Crim. Case No 05-27806), p. 237.

[16] See TSN, October 9, 2008, p. 4.

[17] See Chemistry Report Nos. D-141-2005 and D-142-2005; records (Crim. Case No. 05-27806), pp. 9 and 11, respectively.

[18] See rollo, p. 8; and CA rollo, p. 75.

[19] See rollo, pp. 9-10; and CA rollo, pp. 76-78.

[20] CA rollo, pp. 69-82.

[21] Id. at 81-82.

[22] See id. 79-80.

[23] See id. at 80-81.

[24] See Notice of Appeal dated June 15, 2015; records (Crim. Case No. 05-27806), pp. 283-284.

[25] See Order dated June 19, 2015; id. at 335.

[26] Rollo, pp. 4-19.

[27] Id. at 18.

[28] See id. at 11-12.

[29] See id. at 16-18.

[30] See *People v. Dahil*, 150 Phil. 212, 225 (2015).

[31] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[32] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[33] *People v. Bio*, 753 Phil. 730, 736 (2015).

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

[35] *People v. Sumili*, supra note 32, at 349-350.

[36] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[37] See Section 21 (1) and (2), Article II of RA 9165.

[38] 736 Phil. 749 (2014).

[39] Id. at 764; emphases and underscoring supplied.

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

[41] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

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

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x"

[42] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[43] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[44] 631 Phil. 51 (2010).

[45] *Id.* at 60.

[46] 630 Phil. 637 (2010):

[47] *Id.* at 649.

[48] TSN, October 11, 2010, p. 5.

[49] See *People v. Manansala*, G.R. No. 229092, February 21, 2018.

[50] Dated April 8, 2005. Records (Crim. Case No. 05-27806), p. 12.

[51] See *People v. Ceralde*, *supra* note 42.

[52] See Request for Laboratory Examination dated April 8, 2005; records (Crim. Case No. 05-27806), p. 232.

[53] TSN, October 11, 2010, p. 11.

[54] TSN, March 21, 2011, p. 22.

[55] TSN, October 9, 2008, p. 21.

[56] See CA rollo, pp. 74-75.

[57] TSN, October 9, 2008, p. 4.

[58] 735 Phil. 476 (2014).

[59] *Id.* at 488.

[60] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

[61] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[62] See G.R. No. 229671, January 31, 2018.

[63] See *id.*

SEPARATE CONCURRING OPINION

PERALTA, J.:

I concur with the ponencia in acquitting accused-appellants Gerald Tamayo Cordova and Marcial Dayon Eguiso of the charges of illegal sale and illegal possession of dangerous drugs or violation of Sections 5 and 11, Article II of Republic Act No. (R.A. No.) 9165,[1] respectively. The ponencia duly noted that appellant Eguiso was not present during the required photography of the seized items as shown by his absence in the photos taken, and that it was only three (3) days after the seizure of the suspected drugs that they were submitted for laboratory examination sans showing of measures to preserve their integrity and evidentiary value. Moreover, no justifiable reason was proffered by the prosecution as to the non-observance of Section 21[2] of R.A. No. 9165 despite the fact that the records failed to show that the representatives from the Department of Justice (DOJ) and the media were present during the requisite inventory and photography of the items seized from appellants. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

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

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

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts." [5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed

that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in the remote areas. For another there were instances where elected barangay officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law." [6]

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

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

x x x x

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

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

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

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

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a

way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[11] Its strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule to prevent incidents of planting, tampering or alteration of evidence.[12] Here, the prosecution failed to discharge its burden.

With respect to the presence of all the required witnesses under Section 21 of R.A. No. 9165, the prosecution never alleged and proved any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125[13] of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellants' conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

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

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

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

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

Section 32. Liability to a Person Violating Any Regulation Issued by the Board. – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

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

[1] "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES"

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

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

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

[4]"AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002" Approved on July 15, 2014.

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

[6] *Id.*

[7] *Id.*

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

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

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

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

[12] *Id.*

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

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

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

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

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