

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. MARVIN MADRONA OTICO, ACCUSED-APPELLANT.*G.R. No. 231133. June 06, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-231133/>**CAGUIOA, J:**

Before the Court is an appeal[1] under Section 13, Rule 124 of the 2000 Rules of Criminal Procedure assailing the Decision[2] dated October 26, 2016 (Decision) of the Court of Appeals[3](CA) in CA-G.R. CR-HC. No. 02129, denying the appeal and affirming in toto the Decision[4] of the Regional Trial Court, 7[th] Judicial Region, Branch 62 of Oslob, Cebu (RTC) in Criminal Case No. OS-11-680 which found accused-appellant Marvin Madrona Otico a.k.a. "Pare"[5] (Otico) guilty beyond reasonable doubt of the offense of illegal sale of dangerous drug in violation of Section 5, Article II (Section 5) of Republic Act No. (RA) 9165[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and imposed upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00).

The Charge Against the Accused

Otico was indicted for illegal sale of dangerous drug, defined and penalized under Section 5 of RA 9165. The Information reads:

That on the 22nd day of April, 2011 at about 10:30 o'clock in the morning, at Barangay Looc, Oslob, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute to a PNP agent acting as poseur buyer one (1) heat sealed transparent plastic pack of white crystalline substance, weighing 0.02 gram, in consideration of the sum of five hundred (P500.00) pesos consisting of one (1) five hundred peso bill, with serial number QD628746, used as buy bust money, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[7]

The Facts and Antecedent Proceedings

Otico pleaded not guilty during his arraignment.[8] Trial on the merits then ensued.

Version of the Prosecution

The CA Decision narrates the prosecution's version of the facts as follows:

On the strength of the report from their surveillance conducted around 1:00 o'clock in the afternoon on 21 April 2011, it was confirmed that a certain Marvin Madrona Otico, a.k.a. "Pare" [(Otico)] was engaged in the sale of illegal drugs or shabu in Barangay Looc, Oslob, Cebu. The Chief of Police of Oslob Police Station then called the attention of Police Officer 1 (PO1) Alan Villasurda, Police Officer 3 (PO3) Nelson Saquibal, and a civilian poseur-buyer to conduct a briefing for an entrapment operation.

During the said operational briefing, P03 Saquibal was designated as the team leader, a civilian agent was

assigned as the poseur-buyer, and PO1 Villasurda, as the immediate back-up. The poseur-buyer was given one (1) five hundred peso bill (Php 500.00) with serial number QD628746. PO3 Saquibal marked the bill with the suspect's initials, "MO," on both sides. Before proceeding with their planned buy-bust operation, the team coordinated with the Philippine Drug Enforcement Agency (PDEA) through IO1 Melisa Montesa via telephone call. The latter then issued a coordination control number. As soon [as] the briefing was done, a pre-operation report was prepared and faxed to PDEA and a coordination form was also prepared by PNP Oslob.

Around 8:00 o'clock in the morning on 22 April 2011, the team proceeded to the target area. The poseur-buyer went ahead while PO3 Saquibal and PO1 Villasurda followed on board their own motorcycle. They arrived at the area around 10:10 in the morning that same day and positioned themselves in a strategic location near a store. They stood about ten (10) meters away from the poseur-buyer, who was texting near the house of [Otico].

Around 10:30 in the morning, [Otico] arrived and approached the poseur-buyer. PO1 Villasurda saw the poseur-buyer give the money to [Otico], who, in exchange, handed to the latter a plastic sachet. Upon receiving the plastic sachet from [Otico], the poseur-buyer executed the pre-arranged signal by scratching his head, indicating that the transaction was completed.

When the signal was given, PO3 Saquibal immediately held [Otico] and announced his authority as a police officer while PO1 Villasurda took the plastic sachet from the poseur-buyer. [Otico] tried to evade arrest upon hearing that the two (2) were police officers, but to no avail.

As soon as [Otico] was subdued, and after verifying that the plastic sachet contained shabu, PO3 Saquibal arrested him for violation of Section 5, Article II of R.A. No. 9165, and informed him of his constitutional rights. PO3 Saquibal took from [Otico's] possession the buy-bust money and a cellphone. Subsequently, the buy-bust team proceeded to the PNP Oslob Police Station together with [Otico].

At the police station, PO1 Villasurda conducted an inventory of the seized items in the presence of [Otico] and Municipal Councilor Guillermo Zamora. The items were photographed by PO2 Nelson Mendaros and then marked by PO1 Villasurda. The seized plastic sachet was marked "MMO-1" and the marked money, "MMO-2," the initials referring to [Otico's] complete name, Marvin Madrona Otico. PO3 Saquibal then prepared the Certificate of Inventory, a spot report and a letter-request for laboratory examination. PO1 Villasurda personally delivered the request and the specimen to the PNP Crime Laboratory for laboratory examination.

The letter-request and the specimen were received by PO1 Pangatungan, who personally delivered the same to Police Senior Inspector Ryan Ace Mabilen Sala, the PNP Forensic Chemist of the PNP Crime Laboratory.

P/S Insp. Sala conducted a [qualitative] examination on the specimen, which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug under R.A. No. 9165. His findings and conclusion were indicated in his submitted Chemistry Report No. D-466-2011. The Chemistry Report, specimen and the letter request were all forwarded to PO2 Joseph Bocayan, the evidence custodian of the PNP Crime Laboratory.

In support of the case x x x, PO3 Saquibal and PO1 Villasurda executed a Joint Affidavit of Apprehension in connection with the arrest of [Otico].[9]

Version of the Defense

The CA Decision summarizes Otico's version, to wit:

In his testimony, [Otico] recounted that at around 10:30 in the morning on 22 April 2011, he was just buying a cellphone load at the store located near his house when he was apprehended by the police officers. When he inquired for the reason for his arrest, however, the police officers merely told him that he ask his questions at

the police station. He was handcuffed and brought to the police station.

[Otico] testified that when they arrived at the police station, he saw PO3 Saquibal enter another office and was already holding one (1) plastic sachet when he came out. Allegedly, PO3 Saquibal subsequently entered another room and had with him one (1) Five Hundred Peso bill when he emerged therefrom.

[Otico] further averred that since he did not admit ownership of the items which were brought and presented on the table by PO3 Saquibal, the latter yelled and told him not to lie.[10]

The RTC Ruling

After trial, the RTC rendered a Decision dated August 27, 2015, the dispositive portion of which reads:

WHEREFORE, premises considered, the court finds accused Marvin Otico GUILTY beyond reasonable doubt of the offense of Illegal Sale of Dangerous Drug in violation of Section 5, Article II of R.A. 9165 and imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00).

His period of preventive imprisonment shall be credited in his favor.

LET a mittimus issue committing him to Leyte Regional Prisons in Abuyog, Leyte.

The subject shabu shall be confiscated in accordance with the rules governing the same.

Costs against the accused.

SO ORDERED.[11]

Aggrieved, Otico filed a Notice of Appeal[12] dated August 28, 2015.

The CA Ruling

The CA denied Otico's appeal in a Decision dated October 26, 2016, the dispositive portion of which states:

WHEREFORE, the appeal is DENIED. The Decision of the Regional Trial Court, 7[th] Judicial Region, Branch 62 of Oslob, Cebu, in Criminal Case No. OS-11-680, is hereby AFFIRMED in toto.

SO ORDERED.[13]

Otico filed a Notice of Appeal[14] dated December 2, 2016. In the Court's Resolution[15] dated July 5, 2017, the parties were required to file their respective supplemental briefs. The People, through the Office of the Solicitor General, filed a "Manifestation & Motion"[16] dated September 27, 2017, wherein it was manifested that the People would no longer file a supplemental brief and, in lieu thereof, the Brief filed before the CA would be considered in the resolution of the present appeal. Otico, through the Public Attorney's Office-Regional Special and Appealed Cases Unit-Cebu, filed a "Manifestation (In Lieu of Supplemental Brief)"[17] dated October 25, 2017.

Issue

The issue is whether the CA erred in affirming the conviction of Otico for the offense of illegal sale of dangerous drug in violation of Section 5, RA 9165.

The Court's Ruling

Basic is the rule that, for a conviction of the crime of illegal sale of dangerous drugs to stand, the prosecution should have proven the following elements beyond reasonable doubt: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment. The prosecution has the onus

to prove beyond reasonable doubt that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the corpus delicti.[18]

This onus can be discharged by the prosecution only by clearly and adequately showing the details of the purported transaction, starting from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.[19] Thus, the manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense[20] or the constitutional rights of every citizen — to be presumed innocent and to be secure in their persons against unreasonable searches and seizures — are not unduly curtailed.

In this case, the prosecution's proof that the "transaction actually took place" consists of the "eyewitness" accounts of police officers PO1 Alan Villasurda (PO1 Villasurda) and PO3 Nelson Saquibal (PO3 Saquibal), neither of whom was the poseur-buyer, and who were admittedly 10 meters away from where the poseur-buyer allegedly transacted with Otico.[21] The civilian agent, who was assigned as the poseur-buyer,[22] was never presented as a witness.

While informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police,[23] and the non-presentation of the confidential informant is not fatal to the prosecution,[24] as where the testimony of the informant will merely be corroborative of the apprehending officers' eyewitness testimonies[25] so that there is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses,[26] their presentation is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers,[27] or there are reasons to believe that the arresting officers had motives to testify falsely against the accused,[28] or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction.[29]

Indeed, while the assistance of confidential informants or civilian agents is acknowledged to be invaluable, the Court is nevertheless aware of the pitfalls of the confidential informant system. The Court's observations in *People v. Doria*[30] are reiterated, viz.:

Though considered essential by the police in enforcing vice legislation, the confidential informant system breeds abominable abuse. Frequently, a person who accepts payment from the police in the apprehension of drug peddlers and gamblers also accept payment from these persons who deceive the police. The informant himself may be a drug addict, pickpocket, pimp, or other petty criminal. For whatever noble purpose it serves, the spectacle that government is secretly mated with the underworld and uses underworld characters to help maintain law and order is not an inspiring one.[31] Equally odious is the bitter reality of dealing with unscrupulous, corrupt and exploitative law enforcers. Like the informant, unscrupulous law enforcers' motivations are legion – harassment, extortion, vengeance, blackmail, or a desire to report an accomplishment to their superiors. This Court has taken judicial notice of this ugly reality in a number of cases[32] where we observed that it is a common *modus operandi* of corrupt law enforcers to prey on weak and hapless persons, particularly unsuspecting provincial hicks.[33] The use of shady underworld characters as informants, the relative ease with which illegal drugs may be planted in the hands or property of trusting and ignorant persons, and the imposed secrecy that inevitably shrouds all drug deals have compelled this Court to be extra-vigilant in deciding drug cases.[34] Criminal activity is such that stealth and strategy, although necessary weapons in the arsenal of the police officer, become as objectionable police methods as the coerced confession and the unlawful search. x x x[35] (Emphasis supplied)

To determine whether "the transaction actually took place," the "eyewitness" accounts of the two police officers have to be strictly scrutinized.

PO1 Villasurda, the designated immediate back-up,[36] testified:

FISCAL MA. LUISA B. ONG: (To the Witness)

Q:

Mr. Witness, you mentioned that you designated a civilian poseur buyer, can you tell this Honorable Court the identity of this civilian poseur buyer?

A:

I cannot divulge his personal identity because he hides his personal identity.

Q:

If you can enlighten this Honorable Court what is the actuation of this civilian poseur buyer that indeed his identity should not be disclosed, Mr. Witness?

A:

As far as I know this civilian informant is a drug user.

Q:

What is the reason, Mr. Witness, that being a user you and your office tasked him being a poseur buyer?

A:

Considering that he is a drug user he will be given that prohibited drug if he is going to buy.

x x x x

Q:

What was the instruction given to the civilian poseur buyer during the planning when he tasked as poseur buyer?

A:

We gave him the marked buy-bust money and his only task was just to buy drugs.

x x x x

Q:

Where did you conduct your briefing, Mr. Witness?

A:

In the Police Station.

Q:

In what particular area of the Police Station?

A:

In the office of our Chief of Police.

x x x x

Q:

You mentioned, Mr. Witness, that after you have conducted the planning with the poseur buyer, how long this planning takes place?

A:

One hour more or less.

Q:

Per your planning and briefing, Mr. Witness, when did you undertake the buy-bust operation?

A:

We decided to conduct a buy-bust operation on the following day.

x x x x

Q:

And after that final briefing, Mr. Witness, what happened next?

A:

We proceeded to the area but we let the civilian poseur buyer went ahead to the area.

Q:

How did you proceed to the area including the civilian poseur buyer?

A:

We rode a motorcycle while the civilian poseur buyer rode also with his own motorcycle.

Q:

Meaning to say, that the civilian poseur went ahead to the area alone, Mr. Witness?

A:

Yes, ma'am.

Q:

How about you, Mr. Witness, who were with you on the motorcycle?

A:

I had no back rider because we rode in a separate motorcycle and PO3 Saquibal had his own motorcycle also.

x x x x

Q:

At around what time did you arrive at the area, Mr. Witness?

A:

We arrived at the area at about 10:10 o'clock in the morning.

Q:

You mentioned that you went to conduct a buy-bust operation in Looc, Oslob, Cebu, I would like to ask Mr. Witness, where in particular place of Looc, Oslob, Cebu did you stop?

A:

As far as I know the place is just beyond the boundary of barangay Lagunde and barangay Looc, Oslob, Cebu.

Q:

When you arrived there, Mr. Witness, where was the poseur buyer?

A:

The poseur buyer was [a]waiting the subject.

Q:

You mentioned that the poseur buyer was waiting for the subject, where in particular place did the poseur buyer waiting?

A:

In the highway near the house of the subject.

Q:

As you and PO3 Saquibal arrived in the area, what did you do?

A:

When we arrived at the said place we hide our motorcycles and after that we stayed behind a store.

Q:

How far was that store from where the poseur buyer was waiting?

A:

More or less ten (10) meters.

Q:

What can you see, Mr. Witness, from where you were standing near a store facing the poseur buyer?

A:

We could clearly see if there is somebody will approach the civilian poseur buyer.

Q:

Since you mentioned, Mr. Witness, that the poseur buyer was still waiting of the subject, you and Saquibal situated at around ten (10) meters where the poseur buyer was, how long did the waiting take, Mr. Witness, until somebody approached the poseur buyer?

A:

I could not recall anymore how long the poseur buyer waited until somebody approached him because he went ahead of us and when we arrived the poseur buyer was already there.

Q:

How about you, Mr. Witness, how long did you wait before any development happened?

A:

I think about 20 minutes because the transaction was made at about 10:30 in the morning and we arrived at the area about 10:10 in the morning.

Q:

Considering, Mr. Witness, that you were waiting from 10:10 in the morning and 20 minutes was almost over, what have you observed of the poseur buyer?

A:

I could not clearly see what the civilian poseur buyer did at that time what was I observed that he was just texting someone and the subject person arrived in the person of Marvin Otico.

Q:

Mr. Witness, since the subject, Marvin Otico, arrived around 10:30 in the morning did you able to see his face?

A:

Yes, ma'am.

x x x x

Q:

Have you noticed, Mr. Witness, when the accused approached the poseur buyer, what happened next?

A:

When the subject approached the civilian poseur buyer I saw them exchanging something; I saw the poseur buyer gave something to the subject and I also saw the subject getting something from his right pocket and

gave it to the civilian poseur buyer.

Q:

As per observation, Mr. Witness, who made the handing first?

A:

It was the poseur buyer handed first the money.

Q:

What happened next?

A:

The subject also handed something to the poseur buyer.

Q:

Mr. Witness, what money did the poseur buyer handed to the subject?

A:

The marked money that we gave to him.

Q:

I would like to ask, Mr. Witness, when was this marked money handed to the civilian poseur buyer?

A:

At the police station during our briefing.

Q:

In which briefing, Mr. Witness, on April 21 or on April 22, 2011?

A:

On April 22, 2011.

Q:

As what you have observed, Mr. Witness, that after exchanging of the money and the items by the poseur buyer and the accused, what happened next?

A:

As we agreed in our briefing the poseur buyer scratched his head when the transaction was consummated.[37]
(Emphasis supplied)

On cross-examination, PO1 Villasurda confirmed:

[ATTY. PAOLO CRISPINO C. SUCALIT (to the witness)]

Q:

You mentioned that during your briefing you secured the services of the civilian poseur buyer, am I correct?

A:

Yes, sir.

Q:

And is this civilian poseur buyer your civilian asset of the PNP?

A:

Yes, sir.

x x x x

Q:

He is only an asset of the PNP Oslob station, am I correct or used by other station?

A:

I think he is only the civilian asset of the PNP Oslob station.

Q:

Is he under the payroll of the PNP Oslob?

A:

No, sir.

Q:

And since you answered that he is a civilian asset could you please tell the Honorable court who is his handler?

A:

I do not know his handler but as far as I know he is a friend of Police Officer Saquibal and I only came across his identity in this operation.

x x x x

Q:

Was he a male or a female?

A:

He is a male but I cannot divulge the name.

x x x x

Q:

By the way, how far were you from the poseur buyer?

A:

10 meters away from the poseur buyer.

Q:

Based on where you are sitting will you please point the reference where the poseur buyer was standing at the time?

A:

From where I am sitting up to the wall where there is a painting hung which is about 15 meters.

Q:

So based on that distance 10 to 15 meters were you able to see what transpired between the accused and your civilian poseur buyer?

A:

We saw them exchanging something but we do not know what item they were exchanging.

Q:

You mentioned that this poseur buyer of yours is a known drug user here in Oslob, am I correct?

A:

According to Officer Saquibal he is a user.

Q:

You will agree with me that since he is a known drug user from time to time he has in his possession the shabu?

A:

I am not sure if he has a shabu or not.

Q:

So you are not sure, but what you are sure is that he is a known user?

A:

Yes, that is according to PO3 Saquibal.

Q:

As what you have said you are not sure that from time to time he has a shabu?

A:

Maybe he does not have a shabu because he only buy if he is going to use.[38] (Emphasis supplied)

On the other hand, PO3 Saquibal testified as follows:

FISCAL MA. LUISA B. ONG: (To the Witness)

x x x x

Q:

Who was this civilian asset that you are referring to, Mr. Witness?

A:

I am afraid, ma'am, I could not tell and I could not reveal his name in open court.

Q:

If you could not reveal his name in open court, Mr. Witness, what can you tell about this civilian asset who you do utilize him as a civilian asset, Mr. Witness?

A:

He is a drug user of course and he is a regular customer of the subject person.

Q:

How were you able to identify this civilian asset, Mr. Witness?

A:

He was a friend, he was my long asset.[39]

x x x x

Q:

Mr. Witness, the last thing that you have mentioned during your last testimony that you were situating yourselves, you and Police Officer Villasurda ten (10) meters away from the poseur buyer; at what place, Mr.

Witness

A:

Barangay Looc, Oslob, Cebu specifically in the store owned by Rene Figue.

x x x x

Q:

How did they make the transaction, Mr. Witness, between Marvin and the poseur buyer?

A:

Our poseur buyer handed Marvin Madrona Otico the Five Hundred Peso bill buy-bust money to Marvin Otico.

Q:

And after handing over the Five Hundred Peso bill, Mr. Witness, to Marvin Otico, what happened next?

A:

In exchanged, the subject person Marvin Otico gave the plastic sachet containing white crystalline substance to our poseur buyer.

Q:

Meaning to say, Mr. Witness, you can see that happening ten (10) meters away from the poseur buyer?

A:

Yes, ma'am.

Q:

And after Marvin Otico handed the plastic sachet containing white granules, Mr. Witness, to the poseur buyer, what happened next?

A:

Our poseur buyer then as what has been agreed; he made his hand signal by scratching his head.[40]

Atty. Leo E. Sarvida (to the witness)

x x x x

Q:

Which part of the Figuez's store where you hiding during that time at the back, at the front, at the right, at the left which side?

A:

If you are heading to Cebu City facing the store, we hide ourselves at the right portion of the store covered by a very huge refrigerator.

Q:

When you were hiding during that time you cannot actually hear what was talking about the accused and the poseur buyer, is that correct?

A:

We can hear but just a little, we cannot exactly hear.

Q:

Because of the distance where you hide, is that correct?

A:

We can hear something but we cannot exactly hear clearly it was ten (10) meters from us.

Q:

You did not hear that poseur buyer buy shabu from the accused, is that correct?

A:

It was already programmed.

Q:

I was asking if you have knowledge Officer Saquibal, you did not hear actually the accused saying that he was selling shabu?

A:

No need for us to hear.

Q:

Just answer the question "yes" or "no", you hear or you did not hear?

A:

We did not hear.[41]

Given the foregoing testimonies of the two police officers, was the prosecution able to prove beyond reasonable doubt that the illegal sale of shabu between the unidentified civilian agent and Otico took place?

Section 2, Rule 133 of the Rules of Court provides:

SEC. 2. Proof beyond reasonable doubt. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Both police officers, PO1 Villasurda and PO3 Saquibal, had testified that they were 10 meters away from Otico and the purported civilian agent, who acted as the poseur-buyer. PO1 Villasurda saw them "exchanging

something" with the poseur-buyer handing "first the money" and "the subject also hand[ing] something to the poseur buyer." [42] PO3 Saquibal saw that the "poseur buyer handed [to] x x x Otico the Five Hundred Peso bill buy-bust money" and "[i]n exchanged (sic), x x x Otico gave the plastic sachet containing white crystalline substance to [the] poseur buyer." [43]

The version of PO3 Saquibal is incredible. Given the distance of 10 meters, it is unbelievable that a very small or tiny plastic sachet [44] can be seen being handed from one person to another. To be able to see the "white crystalline substance" with a weight of 0.02 gram inside such tiny plastic sachet is utterly impossible, unless one has "bionic eyes" or x-ray vision. Also, PO3 Saquibal's testimony wherein he was able to identify from 10 meters that the P500-bill, which the civilian asset allegedly handed to Otico, was the same one previously marked at the police station means that he was able to either read the serial number of the bill or see the marking "MO" thereon. Of course, that is again impossible.

PO1 Villasurda's version that he saw the handing of "money" from the civilian asset to Otico is too tentative given the fact that he used "something" as his initial description. Also, the use of the word "something" in describing what Otico handed to the civilian agent creates reasonable doubt because the description is equivocal.

The acquittal of Otico is warranted on the ground that the evidence presented by the prosecution to prove that the illegal sale of dangerous drug really took place falls terribly short of the quantum of proof beyond reasonable doubt.

In addition, the identity of the dangerous drug that Otico allegedly sold to the civilian agent is uncertain.

Nowhere is the weight of the plastic sachet containing the shabu, which was the object of the illegal sale, mentioned in the testimonies of police officers PO1 Villasurda and PO3 Saquibal. In their Affidavit of Apprehension [45] dated April 25, 2011, the weight of the "One (1) small longitudinal (sic) size transparent plastic sachet containing white crystalline granules 'Marked MMO-1' believed to be SHABU" [46] is not specified. In the Spot Report dated "22 April 02, 2011" (Exh. "H" [47]) the "WEIGHT/VOLUME/QUANTITY" column is left blank. In the Certification dated "25 APRIL 2011" (Exh. J" [48]), the dangerous drug is described as "one (1) small longitudinal size transparent plastic sachet of white crystalline granules believed to be 'shabu'" without mention of its weight. The Certificate of Inventory dated "April 22, 2011" (Exh. "K" [49]) describes the dangerous drug as "[o]ne (1) small longitudinal size heat sealed transparent plastic sachet of white crystalline granules believed to be 'SHABU' marked MMO-1" without mention of its weight. In the Memorandum [50] dated April 22, 2011 from the Chief of Police, Oslob Police Station for the Chief PNP Regional Crime Laboratory Office (Attention: Chief Forensic Chemist) concerning the request for laboratory examination of "One (1) small longitudinal size transparent plastic sachet of white crystalline granules believed to be 'shabu' Marked MMO-1," the weight thereof is not indicated. It is only in Chemistry Report No. D-466-2011 [51] issued by the PNP Regional Crime Laboratory Office 7 at Camp Sotero Cabahug, Cebu City where the weight is included in the description of the specimen submitted, to wit: "A - One (1) staple-sealed transparent plastic sachet containing: A-1 One (1) heat-sealed transparent plastic sachet with attached markings 'MMO-1 4-22-11' with signature containing 0.02 gram white crystalline substance. xxx"

In the PNP [52] Manual on Anti-Illegal Drugs Operation and Investigation (PNP Manual), approved by the National Police Commission in its Resolution No. 2010-094 on February 26, 2010, which provides for the standard rules to be followed by PNP members and units engaged in the enforcement of RA 9165 in support of the Philippine Drug Enforcement Agency (PDEA), [53] part of the handling of drug evidence is "the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165." [54]

Given the failure to indicate the weight of the shabu in the documents required to be accomplished in the handling of the drug evidence starting from recovery of the shabu from the civilian agent to the request for laboratory examination to prove the regularity of the buy-bust operation and preserve the integrity of the recovered shabu, and to comply with the requirement in the PNP Manual on the weighing thereof, the object of the illegal sale has clearly not been proven beyond reasonable doubt. There is thus reasonable doubt that the alleged shabu, which was recovered from the civilian agent and bought by the latter from Otico, might not be the same one that was delivered to the PNP Regional Crime Laboratory Office 7 for examination.

Furthermore, there are serious lapses in the police officers' compliance with Section 21, Article II of RA 9165[55] and its Implementing Rules and Regulations.

Section 21, which embodies the procedure to be followed by a buy- bust team in the seizure, custody, handling and disposition of confiscated illegal drugs and/or paraphernalia, states in part:

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

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

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR), which added provisos to Section 21(1) of RA 9165 regarding the place of inventory and allowable deviation from the strict observance of the statutory requirements under justifiable grounds, provides:

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:

(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[.] (Emphasis supplied)

Strict observance of the requirements under Section 21 of RA 9165 and the IRR is enjoined under the PNP Manual.

Section 13, Rule II on General Rules and Procedures of the PNP Manual provides:

Section 13. Handling, Custody and Disposition of Drug Evidence

- a. In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.
- b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.
- c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

x x x x

A - Drug Evidence

- a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/ inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:
 - The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.
 - A representative from the media.
 - A representative from the Department of Justice; and
 - Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

xxxx

- c. In warrantless seizures like buy-bust operations, the inventory and the taking of photographs should be done at the nearest police station or office of the apprehending officer or team. However, the apprehending authority is not precluded from conducting the inventory at the place where the drugs were seized.
- d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non- observance of prescribed procedures and "must prove that the integrity and evidentiary value of the seized items are not tainted."
- e. All the dangerous drugs and/or CPECs shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled. The items weighed in their gross weight, if already determined, should be noted on the inventory and chain of custody forms, or evidence vouchers.
- f. Within the same period, the seizing/inventory officer shall prepare a list of inventory receipt of confiscation/seizure to include but not limited to the following:
 - Time, date and place of occurrence/seizure.
 - Identity of person/s arrested.

- Identity of the seizing officer and all persons present.
- Circumstances in which seizure took place.
- Description of a vehicle, vessel, place or person searched where the substance was found.
- Description of packaging, seals and other identifying features.
- Description of quantity, volume and units and the measurement method employed.
- Description of the substance found.
- Description of any preliminary identification test (test kit) used and results.

Under Rule III on Specific Rules and Procedures of the PNP Manual, the seizing officer, during the Buy-Bust Phase, shall, after seizure and taking initial custody of the dangerous drugs:

f. x x x conduct the actual physical inventory, place markings and photograph the evidence in the place of operation 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;
- A representative from the Department of Justice; and
- Any elected public official (at least Brgy Kagawad) who shall sign, and shall be given copies of the inventory.

(Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items.)[56]

In warrantless searches and seizures, like buy-bust operations, the PNP Manual further provides:

g. In warrantless searches and seizures like buy-bust operations, the inventory and taking of photographs shall be made where the evidence or items were confiscated to properly preserve the integrity and evidentiary value of the evidence. In case of failure to do so, the conduct of inventory may be made at the nearest police station or office of the apprehending officer or team, however, they must execute a written explanation to justify non-compliance of the prescribed rules on inventory under Section 21, RA 9165. Thereafter, the arresting/seizing officer shall turn-over the arrested suspects as well as the seized articles or items of evidence to the Investigator-On-Case who shall be required to issue an acknowledgement receipt of the turnover.[57]

The failure of the police officers to comply with Section 21 of RA 9165 and its IRR as well as the PNP Manual, afore-quoted, is without question, and evident from the following statements of PO1 Villasurda and PO3 Saquibal in their testimonies.

PO1 Villasurda testified as follows:

[FISCAL MA. LUISA B. ONG: (To the Witness)]

Q

After frisking and after recovering the buy bust money and the cellphone what happened next?

A

PO3 Saquibal informed of his constitutional rights being an accused.

x x x x

Q

So you mean to say, Mr. Witness that after frisking and retrieving those items and also informing him of his arrest you immediately handcuffed him and brought him to the police station, correct?

A

Yes, ma'am.

Q

What happened Mr. Witness when you arrived at the police station, Mr. Witness?

A

We made the photographing and the inventory of the said evidences.

Q

Who lead the conduct of the inventory, Mr. Witness?

A

PO3 Saquibal.

Q

And who were present in that inventory, Mr. Witness?

A

While the photographing and the inventory of the evidences were made Municipal Councilor Guillermo Zamora was present.

Q

How about you Mr. Witness where were you?

A

I was also present and I was the one who marked the evidences.

x x x x

Q

You mentioned that aside from the inventory and making of the spot report, Mr. Witness there was also a

picture taking, Mr. Witness, who took the pictures, Mr. Witness?

A

I could not recall the name of the person who took the pictures but he was the companion of the Municipal Councilor.[58]

PO3 Saquibal's version is as follows:

FISCAL MA. LUISA B. ONG: (To the Witness)

Q:

After that, Mr. Witness, when you reached the police station in Oslob, what happened or transpired then?

A:

We immediately made an inventory.

Q:

Who were present during the conduct of the inventory, Mr. Witness?

A:

I myself, PO1 Allan Villasurda, the accused and the SB member.

Q:

Do you have any proof, Mr. Witness, that indeed the inventory was conducted during that time?

A:

Yes, ma'am, we have the certificate of inventory and the pictures.

x x x x

Q:

You mentioned also that there were pictures taken, Mr. Witness x x x

x x x x

Q:

I would like to ask, Mr. Witness, who took these pictures, Mr. Witness?

A:

It was PO2 Nelson Mendaros.[59]

In the Certificate of Inventory[60] dated April 22, 2011, in the spaces for the witnesses at the bottom, only the name and signature of Guillermo Rodriguez Zamora, as the "Elected Official," appear. The spaces for the representatives from the media and DOJ are blank. With respect to Otico, there is a note: "Refused to Sign." The Certificate of Inventory reflects PO3 Saquibal as the Team Leader and the one who prepared the same.

In fine, the following flaws or defects in the strict observance by the police officers of Section 21 of RA 9165 and its IRR are apparent:

1. The inventory and photograph taking were not done immediately after seizure and confiscation in the place of operation.
2. Except for the elected official, the required witnesses were not present during the inventory and photograph taking. Only one of the three third-party witnesses was present.
3. The police officers did not present justifiable grounds for their non-compliance with the required procedure and proof that the integrity and the evidentiary value of the seized items were properly preserved by them.

In *People v. Umipang*,[61] the Court stressed that:

x x x the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. In *People v. Coreche*,[62] we explained thus:

The concern with narrowing the window of opportunity for tampering with evidence found legislative expression in Section 21 (1) of RA 9165 on the inventory of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the time, witnesses, and proof of inventory by imposing on the apprehending team having initial custody and control of the drugs the duty to "immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof." (Emphasis supplied.)

Consequently, in a line of cases,[63] we have laid emphasis on the importance of complying with the prescribed procedure. Stringent compliance is justified under the rule that penal laws shall be construed strictly against the government and liberally in favor of the accused.[64] Otherwise, "the procedure set out in the law will be mere lip service." [65]

x x x x

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted.[66] This is especially true when the lapses in procedure were "recognized and explained in terms of [] justifiable grounds." [67] There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." [68] However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.[69] This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.[70] As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[71]

As the Court explained in *People v. Mendoza*,^[72] the deliberate taking of the identifying steps, which include marking, physical inventory and photographing of the contraband, immediately upon seizure by the police officer concerned, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances before the insulating presence of the three third-party witnesses is aimed at preserving an unbroken chain of custody and obviating 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).^[73] The failure to do so will negate the integrity and credibility of the seizure and confiscation of the dangerous drug that is evidence of the corpus delicti, and adversely affected the trustworthiness of the incrimination of the accused.^[74]

In this case, the lapses noted above are far from being minor. They are major deviations from the statutorily mandated procedure and there was no attempt whatsoever by the prosecution, through the testimonies of the police officers, to explain why an honest-to-goodness compliance with Section 21 of RA 9165 and its IRR, as well as the PNP Manual, was unavailable under the circumstances obtaining during the buy-bust operation.

Given the unexplained major procedural lapses, the indefiniteness of the substantiation of the elements of illegal drug sale under Section 5 of RA 9165, and the questionable identification of the sachet of shabu, which is the purported object of the illegal sale, the Court is compelled to acquit Otico for the failure of the prosecution to prove his guilt beyond reasonable doubt. The presumption of innocence in favor of Otico stands.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the corpus delicti. To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with. In the presentation of evidence to prove compliance herewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.^[75]

WHEREFORE, premises considered, the Decision dated October 26, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 02129 is REVERSED and SET ASIDE. Accused-appellant Marvin Madrona Otico is hereby ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

SO ORDERED.

Carpio,[*] Perlas-Bernabe, and Reyes, Jr., JJ., concur.

Peralta, J., please see separate concurring opinion.

[*] Senior Associate Justice (Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended)

[1] Rollo, pp. 24-26.

[2] Id. at 4-23. Penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras concurring.

[3] Nineteenth Division.

[4] Records, pp. 113-118. Penned by Presiding Judge James Stewart Ramon E. Himalaloan.

[5] Rollo, p. 5.

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

[7] Records, p. 1.

[8] Rollo, p. 5.

[9] Id. at 7-10.

[10] Id. at 10.

[11] Records, p. 118.

[12] Id. at 123.

[13] Rollo, p. 23.

[14] Id. at 24-26.

[15] Id. at 29-30.

[16] Id. at 37-40.

[17] Id. at 41-44.

[18] *People v. Montevirgen*, 723 Phil. 534, 542 (2013); *People v. Blanco*, 716 Phil. 408, 414 (2013).

[19] *People v. Doria*, 361 Phil. 595, 621 (1999), citing *People v. Tadepa*, 314 Phil. 231, 235 (1995) and *People v. Crisostomo*, 294 Phil. 501, 507 (1993).

[20] Id.

[21] See rollo, p. 8.

[22] Id. at 7.

[23] *People v. Doria*, supra note 19, at 622, citing *People v. Gireng*, 311 Phil. 12, 21 (1995); *People v. Nicolas*, 311 Phil. 79, 87 (1995) and *People v. Marcelo*, 295 Phil. 26, 43 (1993).

[24] Id.

[25] Id., citing *People v. Lucero*, 299 Phil. 1, 9 (1994); *People v. Tranca*, 305 Phil. 492, 501-502 (1994); *People v. Solon*, 314 Phil. 495, 504 (1995); *People v. Abbu*, 317 Phil. 518, 524 (1995).

[26] Id., citing *People v. Solon*, id.; *People v. Co*, 315 Phil. 829 (1995).

[27] Id., citing *People v. Ale*, 229 Phil. 81 (1986).

[28] *Id.*, citing *People v. Sillo*, 288 Phil. 841 (1992).

[29] *Id.*, citing *People v. Sahagun*, 261 Phil. 200 (1990); *People v. Libag*, 263 Phil. 662, 671-672 (1990) and *People v. Ramos*, 264 Phil. 554, 565-566 (1990).

[30] *Supra* note 19.

[31] *Id.* at 619, citing Richard C. Donnelly, "Judicial Control of Informants, Spies, Stool Pigeons and Agent Provocateurs," *The Yale Law Journal*, Vol. 60: 1091, 1094 (1951).

[32] *Id.*, citing *People v. Simon*, 304 Phil. 725, 744 (1994); *People v. Cruz*, 301 Phil. 770, 774-775 (1994); *People v. Crisostomo*, *supra* note 19, at 506; *People v. Fernando*, 229 Phil. 177, 184 (1986) and *People v. Ale*, *supra* note 27, at 87-88.

[33] *Id.*, citing *People v. Simon*, *id.*

[34] *Id.* at 619-620, citing *People v. Cruz*, *supra* note 32; *People v. Salcedo*, 272-A Phil. 310, 319-320; *People v. William*, 285 Phil. 396, 402 and *People v. Ale*, *supra* note 27, at 87-88.

[35] *Id.* at 620.

[36] *Rollo*, p. 7.

[37] TSN, August 2, 2011, pp. 11-23.

[38] TSN, December 6, 2011, pp. 12-13, 19-21.

[39] TSN, November 27, 2012, pp. 6-7.

[40] TSN, January 15, 2013, pp. 4-6.

[41] TSN, July 18, 2013, pp. 6-7.

[42] TSN, August 2, 2011, p. 22.

[43] TSN, January 15, 2013, pp. 5-6.

[44] See photograph of Otico and witnesses with the P500-bill marked money, confiscated cellphone and plastic sachet, Exh. "L-2," wherein the plastic sachet is so tiny; records, p. 14.

[45] Exh. "D," records, pp. 3-4.

[46] *Id.* at 4.

[47] *Id.* at 10.

[48] *Id.* at 12.

[49] *Id.* at 13.

[50] Exh. "A," *id.* at 125.

[51] Exh. "C," *id.* at 126.

[52] Philippine National Police, thru Anti-Illegal Drugs Special Operations Task Force (AIDSOTF).

[53] PNP Manual on Anti-Illegal Drugs Operation and Investigation, Rule I, Sec. 2.

[54] *Id.*, Rule II, Sec. 13(b).

[55] Sec. 21 of RA 9165 was subsequently amended by RA 10640, "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," which was approved on July 15, 2014. Based on the Information, the alleged violation of RA 9165 occurred on April 22, 2011. Thus, the original RA 9165 is applicable in this case.

[56] PNP Manual, Rule III, Sec. 19(B)(f).

[57] *Id.*, Rule III, Sec. 19(B)(g).

[58] TSN, September 27, 2011, pp. 7-10.

[59] TSN, January 15, 2013, pp. 13-14.

[60] Exh. "K," records, p. 13.

[61] 686 Phil. 1024 (2012).

[62] 612 Phil. 1238, 1246 (2009).

[63] *People v. Garcia*, 599 Phil. 416, 430 (2009); citations omitted.

[64] *People v. Umipang*, *supra* note 61, at 1038-1039, citing *People v. Garcia*, *id.* at 430; citation omitted.

[65] *Id.* at 1039, citing *People v. Martin*, 675 Phil. 877, 890 (2011).

[66] *Id.* at 1053, citing *People v. Ulama*, 678 Phil. 861, 876-877 (2011).

[67] *Id.*, citing *People v. Martin*, *supra* note 65, at 890.

[68] *Id.*, citing *People v. Martin*, *id.*

[69] *Id.* at 1053-1054, citing *People v. Garcia*, *supra* note 63, at 436.

[70] *Id.* at 1054, citing *People v. Garcia*, *id.* at 436-437.

[71] *Id.*, citing *People v. Garcia*, *id.*

[72] 736 Phil. 749 (2014).

[73] *Id.* at 761-764.

[74] *Id.* at 764.

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

SEPARATE CONCURRING OPINION

PERALTA, J.:

I concur with the ponencia in acquitting accused-appellant Marvin Madrona Otico of the charge of illegal sale of dangerous drugs, or violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165),^[1] respectively. I agree that the prosecution failed to prove appellant's guilt beyond reasonable doubt, because the "eyewitness" accounts of the two police officers, who were admittedly ten (10) meters away from the place where the civilian

agent/poseur-buyer and the appellant traded the 0.02 gram of suspected shabu and the P500.00 buy-bust money, are incredible. Moreover, the prosecution failed to provide justifiable grounds for the police officers' non-observance of the three-witness rule under Section 21[2] of R.A. No. 9165, i.e., except for the elected public official, the representatives from the media and the Department of Justice were not present during the inventory photograph taking of the seized items. At any rate, 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 corners of the Philippines, especially in the remote areas. For another there were instances where elected barangay officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law." [6]

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

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

x x x x

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

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

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

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crime 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] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for 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 were 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 appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

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

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

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

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

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

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

[1] "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS

AMENDED, PROVIDING FUNDS THEREFOR. AND FOR OTHER PURPOSES"

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

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

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

[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."

[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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