

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, VS. ROBERT UY y TING, ONG CHI SENG @ JACKIE ONG or ARCHIE, CO CHING KI @ CHAI ONG, TAN TY SIAO, GO SIAK PING, JAMES GO ONG @ WILLI...

G.R. No. 250307. February 21, 2023

Ponente: GESMUNDO, C.J.

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GESMUNDO, C.J.:

This is an Appeal[1] seeking to reverse and set aside the April 25, 2019 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08320, which affirmed with modification the June 30, 2014 Joint Judgment[3] of the Regional Trial Court of Valenzuela City, Branch 171 (RTC) in Criminal Case Nos. 1179-V-03 and 1180-V-03. The RTC found Robert Uy y Ting (accused-appellant) guilty beyond reasonable doubt of Violations of Section 5, in relation to Sec. 26(b), and of Sec. 11, Article II of Republic Act (R.A.) No. 9165.[4]

The Antecedents

In Criminal Case No. 1179-V-03,[5] accused-appellant, together with five other accused, namely Ong Chi Seng @ Jackie Ong or Archie (Jackie Ong), Co Ching Ki @ Chai Ong, Tan Ty Siao, Go Siak Ping, and James Go Ong @ William Gan or @ Willie Gan (Willie Gan), were charged with Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, as follows:

That on November 10, 2003, along Mac Arthur Highway, Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who all belong to a drug syndicate, and in fact, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and feloniously deliver, distribute and dispatch in transit or transport methamphetamine or methylamphetamine hydrochloride, known as "shabu" and with an approximate total weight of nine thousand three hundred eighty four point seven (9,384.7) grams without the corresponding license or authority of law.

Contrary to law.[6]

Meanwhile, in Criminal Case No. 1180-V-03,[7] accused-appellant, together with the aforementioned five other accused, were charged with Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, in the following manner:

That on November 11, 2003, or on dates prior thereto, at a warehouse at No. 6011 Benito Jao Street, Mapulang Lupa, Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who all belong to a drug syndicate, and in fact, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, and feloniously possess or have under their control methamphetamine or methylamphetamine hydrochloride, a dangerous drug, that is commonly known as "shabu" and with an approximate total weight of one hundred nineteen point zero eighty (119.080) kilograms and also chloromethamphetamine hydrochloride, a dangerous drug, and with an approximate total weight of one hundred eleven point two hundred (111.200) kilograms without the corresponding license or authority required by law.

Contrary to law.[8]

Upon arraignment on April 12, 2004, accused-appellant pleaded "not guilty"[9] to the charges against him. Meanwhile, on May 4, 2004, Willie Gan also pleaded "not guilty"[10] during his arraignment. The two criminal cases were consolidated and tried jointly.[11]

The CA summarized the evidence for the prosecution as follows:

The witnesses for the prosecution were P/Sr. Insp. Rainerio De Chavez (PSI De Chavez) and SPO2 Severino Busa (SPO2 Busa). PO2 Rogelio Rodriguez (PO2 Rodriguez) and Supt. Winnie Quidato (Supt. Quidato) also testified as corroborating witnesses. Rogelio Samorano (Samorano) testified for the prosecution that he was the owner of the subject warehouse which was rented out to Willie Gan.

PSI De Chavez testified that he was the team leader of the Anti--Illegal Drug Special Operation Task Force (AID-SOTF) of Camp Crame which jointly operated with the Bureau of Immigration (BI) led by Supt. Quidato on 10 November 2003, around 1:00 p.m. to implement the Mission Order (MO) against a certain Jackie Ong who was staying at Room 402 Oro Building, Sanchez Street, Binondo, Manila. PSI De Chavez alleged that prior to the implementation of the MO, his team conducted a surveillance operation against Jackie Ong sometime in October 2003 to verify if he was involved in illegal drugs. PSI De Chavez alleged that when they went to the place of Jackie Ong on 10 November 2003, he knocked on the door of the apartment and that Jackie Ong was the one who opened it. According to PSI De Chavez, Jackie Ong allowed them to enter the unit when they asked permission with the assistance of a Chinese interpreter, Mr. Ramon Yang, who they brought along. PSI De Chavez claimed that he noticed three (3) Chinese looking persons inside the room who, when asked to produce proper documents of their stay in the country, failed to do so. PSI De Chavez testified that Jackie Ong also was not able to produce the proper documents such that Jackie Ong and the three (3) Chinese nationals were brought to their office at Camp Crame for further investigation where the personal circumstances of the four (4) Chinese nationals were obtained.

PSI De Chavez further testified that when they informed the four (4) Chinese nationals that they would be deported to China for violating immigration laws, Co Ching Ki and Jackie Ong, through an interpreter, offered ten (10) kilos of shabu in exchange for their freedom. PSI De Chavez claimed that he hesitated but played along and later reported the matter to his superior, Supt. Federico E. Lasiste. PSI De Chavez alleged that he then gave his mobile phone to Co Ching Ki who, after several calls, told them that the ten (10) kilos of shabu were ready for pick-up and that a vehicle was needed to deliver them. PSI De Chavez averred that PSI Melchor Cantil offered his Mitsubishi Lancer with Plate No. PLH 673 and that they then proceeded to McDonald's along McArthur Highway, the designated pick-up area. PSI De Chavez, stated that they arrived there before 7:30 p.m. then parked the car before leaving the place.

PSI De Chavez claimed that after a few minutes, a man boarded the car and drove it. PSI De Chavez testified that they followed the car until it entered a warehouse in Mapulang Lupa, Valenzuela City. According to PSI De Chavez, he parked his vehicle 15 meters away from the said warehouse then waited for the car to come out. PSI De Chavez stated that the car proceeded to the pick-up area and PSI De Chavez approached the car because it did not park on the agreed upon spot. PSI De Chavez averred that he saw a box inside the car when its driver was about to get out. PSI De Chavez alleged that he instructed PO1 Richel Creer to get the box and when they opened it, five (5) plastic bags of white crystalline substance were inside the box. PSI De Chavez claimed that they arrested the driver of the car who later identified himself as Robert Uy. PSI De Chavez alleged that they went to the warehouse, secured and guarded the same and that the rest of the team returned to their office at Camp Crame with Robert Uy.

PO2 Rogelio Rodriguez testified that he was a [backup] of the team which conducted a test buy on 20 October 2003, around 10:00 a.m. against a certain Archie (Jackie Ong). PO2 Rodriguez claimed that during the said test buy, the informant and POI Creer met a Chinese looking man who handed something to the informant and then

immediately left. PO2 Rodriguez averred that they tried to apply for search warrants after the test buy and attempted to buy large amounts of shabu from Jackie Ong, but failed because their operation appeared to have been busted. PO2 Rodriguez alleged that they instead sought the assistance of the BI to check the legality of the stay of Jackie Ong in the country and deport him if warranted.

PO2 Rodriguez further testified that he was part of the team that went to Binondo, Manila on 10 November 2003, and the team that implemented another MO against Willie Gan on 26 December 2003 which resulted in the latter's arrest. PO2 Rodriguez claimed that he was also a member of the team that entrapped and arrested Robert Uy, and the group that served the search warrant on the warehouse in Mapulang Lupa, Valenzuela City.

For his part, Supt. Winnie Quidato testified that in 1998 he was a police officer assigned as Deputy Chief for Intelligence, and in 2002 was an Action Officer for Drugs and Counter-Terrorism of the BL He alleged that he was part of the team that went to Binondo, Manila on 10 November 2003 with Supt. Lasiste of the AID-SOTF to implement the MO against Jackie Ong where they also found the three (3) Chinese nationals. Supt. Quidato averred that they brought Jackie Ong and the Chinese nationals to the AID-SOTF Office when the said Chinese nationals failed to produce their immigration documents. Supt. Quidato claimed that he left the said office at 6:30 p.m. that day when the relatives of the Chinese nationals did not arrive to produce the said documents. Supt. Quidato alleged that on 11 November 2003, he was also at the Mapulang Lupa [sic] when the AID- SOTF implemented the search warrant on the warehouse which was witnessed by Commissioner Andrea D. Domingo, General Edgar B. Aglipay, the Chief of AID-SOTF, the team of SOCO and the Presidential Security Group who were waiting for the arrival of the President. Supt. Quidato added that he was also part of the team that implemented the other MO, dated 23 December 2003, against Willie Gan on 26 December 2003.

SPO2 Severino Busa for his part, testified that he used to be a police operative assigned at the [AID-SOTF] at Camp Crame, Quezon City from March 2003 to 2005. SPO2 Busa alleged that on 11 November 2003, around 8 o'clock a.m., he, PSI De Chavez, PO3 Josefino S. Callora, PO2 Creer, and Col. Nelson T. Yabut had a meeting with their chief, Supt. Lasiste, Jr., regarding the execution of the search warrant for the subject warehouse where he was designated as the seizing officer of the team. SPO2 Busa claimed that when they were dispatched they were able to reach the warehouse located at No. 6011 Benito Hao Street, Barangay Mapulang Lupa, Valenzuela City around 9:30 a.m. that same day. SPO2 Busa claimed that around 10:45 a.m., PSI De Chavez and PO2 Creer arrived with the search warrant after which, their team served the warrant and found shabu inside the warehouse. SPO2 Busa alleged that the said search was witnessed by barangay officials of Barangay Mapulang Lupa, some media reporters, the SOCO Operatives and that the accused were also present during the search. SPO2 Busa further alleged that the SOCO operatives itemized and listed the evidence recovered inside the warehouse and that he then prepared the Inventory Receipt and the Certificate of Orderly Search. According to SPO2 Busa, around 5:00 p.m., they returned to Camp Crame and turned over all the evidence with markings to SOCO.

For his part, Rogelio Samorano testified that he was the owner of the subject warehouse which he leased to Willie Gan. Samorano alleged that Robert Uy contacted him by phone and arranged a meeting to inspect the warehouse. Samorano claimed that a few days after he met Robert Uy and Willie Gan at the warehouse, the two became interested to rent the same for Php 130,000.00 a month. Samorano further alleged that when Robert Uy called again, they came to terms with the Php 130,000.00 rent then met Robert Uy and Willie Gan again at the warehouse where they talked about the terms and conditions of the lease. Samorano averred that he only learned the warehouse was raided when his brother told him about it.[12] (Emphases and citations omitted)

Meanwhile, the CA likewise summarized the evidence of the defense in the following manner:

On the other hand, the Judicial Affidavits of Robert Uy dated 9 January 2008 and 23 July 2012 were used during the hearing for his discharge as state witness and adopted as part of his direct testimony.

Robert Uy alleged that he was a businessman who owned the RFT Enterprises, a hardware and construction

supply store, located in Mabini St., Sangandaan, Caloocan City. Robert Uy claimed that he met Willie Gan sometime in 1999 through the latter's uncle Tia Ma, an electrical and construction materials supplier. Robert Uy averred that Willie Gan was introduced to him as a businessman who was engaged in school supplies and furnitures and that they later became good friends and business associates. According to Robert Uy, Willie Gan was not familiar with Metro Manila, so he was hired as his driver for Php 30,000.00 a month but on a part-time basis only. Robert Uy further testified that in January 2003, Willie Gan requested him to look for a warehouse in Valenzuela City and that he found one at No. 6011 Benito Jao St., Mapulang Lupa, Valenzuela City which was owned by Samorano. Robert Uy alleged that Samorano and Willie Gan met and talked about renting the warehouse and that they eventually agreed to rent the same for Php 130,000.00 per month. Robert Uy alleged that the warehouse was then turned over to Willie Gan and the latter had it repaired. Robert Uy alleged that Samorano visited the warehouse once and that no Chinese national except Willie Gan ever visited the same. Robert Uy stated that after the said repairs were finished in May, he noticed that a container van had delivered several furnitures and drums of soap labeled with "Bleaching Powder." Robert Uy alleged that Willie Gan instructed the driver of the said van and his helpers to leave the van inside the warehouse and fetch it the following day. Thereafter, according to Robert Uy, the furnitures and the drums were unloaded by several workers and that he then left the warehouse alone because Willie Gan had to sleep in the warehouse that night.

Robert Uy further testified that he drove Willie Gan from the latter's house to the warehouse and to other places like Pasig City and Malabon which became his routine. Robert Uy claimed that he never talked to the persons that Willie Gan visited nor heard their conversations. Robert Uy further averred that he did not see other Chinese nationals at the warehouse or at the places they visited in Metro Manila. Robert Uy then claimed that Willie Gan did not call or ask to be driven starting October 2003 up to 9 November 2003. Robert Uy averred that on 10 November 2003, around 6:00 p.m., Willie Gan instructed him by phone to meet up at McDonald's in South Supermarket along the MacArthur Highway. Robert Uy alleged [that] he arrived at the designated place between 7:30 and 8:30 p.m. Robert Uy averred that Willie Gan called again and told him about the red Mitsubishi Lancer car with the keys already on the ignition switch and was also told to drive the same to the warehouse.

Robert Uy alleged that he followed the instructions of Willie Gan and that when he arrived at the warehouse, Willie Gan was already at the gate with the box, and that Willy Gan boarded the car and placed the said box in the backseat. Robert Uy claimed that before they reached the Mercury Drug store, Willy Gan alighted then told him to proceed to the Mercury Drug store and leave the car there where someone would get it. Robert Uy claimed that after parking the car in front of Mercury Drug store, several police officers immediately accosted him. Robert Uy alleged that he asked them what his violation was but instead of getting an answer, he was told to board the said car. Robert Uy claimed that they went to the warehouse and kept watch outside the said warehouse. According to Robert Uy, they then boarded the car and then proceeded to Camp Crame where one of the police officers opened the compartment, brought out the box, and opened it. Robert Uy contended that he saw the box filled with five (5) big plastic bags containing white powder.

Robert Uy further testified that around 11:00 p.m., he was led to a room of the AID-SOTF at the second floor where he met the four (4) Chinese nationals for the first time whose names were only then revealed to him by the police officers.[13] (Citations omitted)

The RTC Ruling

Preliminarily, it must be stated that, in its January 20, 2011 Order,[14] the RTC dismissed the cases against Jackie Ong, Tan Ty Siao, and Go Siak Ping, on the basis of a demurrer to evidence. It held that there is no proof that the three accused participated in the bribe made by Co Ching Ki to Police Senior Inspector Rainerio De Chavez (PSI De Chavez) since the testimonial evidence only established that it was Co Ching Ki who spoke with PSI De Chavez about said offer. Further, the RTC found that the prosecution failed to establish conspiracy among the three accused and Co Ching Ki since it was only Co Ching Ki who facilitated the delivery of the 10 kilograms (kg.) of shabu. Finally, it declared that the documentary and testimonial evidence presented by the prosecution

utterly failed to link the confiscated evidence to said three accused.[15]

In its June 30, 2014 Joint Decision, the RTC found accused-appellant guilty beyond reasonable doubt of Violations of Sec. 5, in relation to Sec. 26(6), and of Sec. 11, Art. II of R.A. No. 9165. The RTC also convicted Willie Gan of Violation of Sec. 11 of the same law, while the rest of the accused were acquitted. The dispositive portion reads:

WHEREFORE, in view of the foregoing, in Crim. Case No. 1179- V-03, the Court finds the accused ROBBERY UY y TING GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5 in relation to Sec. 26 par. (b) of Article II of Republic Act No. 9165 and sentenced to suffer the penalty of Life Imprisonment and to pay a FINE in the amount of Five Hundred Thousand Pesos while the Court finds accused Willy Gan @ William Gan not guilty of said crime.

In Crim. Case No. 1180-V-03 the Court also finds the accused ROBERT UY y Ting and WILLY GAN@ WILLIAM GAN both GUILTY beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II of Republic Act No. 9165 and sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and EACH to pay a FINE in the amount of Three Hundred Thousand Pesos (P300,000.00).

Accused Robert Uy y Ting shall serve the penalty successively. He and Willy Gan @ William Gan shall be given full credit of their preventive imprisonment.

Meanwhile, the accused CO CHING KI is ACQUITTED on both cases due to insufficiency of evidence. Consequently, the Jail Warden of the Valenzuela City Jail is directed to release the person of Co Ching Ki unless he is being held for some other legal and lawful cause.

The Branch Clerk of Court is directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.

SO ORDERED.[16]

The RTC acquitted Co Ching Ki on the basis that there is no clear and direct evidence that he was ever in possession of any illegal drugs. It doubted the version of the prosecution that Jackie Ong and Co Ching Ki offered to bribe the police officers with 10 kg. of shabu.[17]

Meanwhile, the RTC convicted accused-appellant of both charges against him. It held that accused-appellant was caught in flagrante delicto. He had in his possession, particularly inside the compartment of the car he was driving, the box containing five plastic bags of white crystalline substance which weighed nearly 10 kg. and which, when tested, were positive for methylamphetamine hydrochloride. The RTC observed that accused-appellant actually delivered the box containing the subject plastic bags to the police officers. It emphasized that mere possession of a dangerous drug constitutes the crime punished by Sec. 11, Art. II of R.A. No. 9165. Further, accused-appellant admittedly transported the 10 kg. of shabu from the warehouse in Mapulang Lupa to the place where he was accosted by the police officers in Maysan Road, near Mercury Drug along McArthur Highway. Such act constitutes a violation of Sec. 5, Art. II of R.A. No. 9165.[18]

On the other hand, the RTC convicted Willie Gan of violating Sec. 11, Art. II of R.A. No. 9165 as the lessee of the warehouse where the 119.080 kg. of methylamphetamine hydrochloride, and the 111.200 kg. of chloromethamphetamine hydrochloride were seized. As lessee, Willie Gan had control over said warehouse. Nonetheless, the RTC absolved Willie Gan of the charge of violation of Sec. 5 since there was no corroborating evidence that he instructed accused-appellant to pick-up the illegal drugs from the warehouse. There was likewise no positive evidence identifying him as having alighted from the car on its way to McDonald's Valenzuela City.[19]

Unsatisfied, accused-appellant filed an appeal before the CA. Willie Gan did not assail the RTC Decision; instead, he filed a Notice of Non--Appeal[20] on October 24, 2014.

The CA Ruling

In its April 25, 2019 Decision, the CA affirmed the RTC ruling with modification as follows:

WHEREFORE, the Appeal is hereby DENIED. The Joint Decision dated 30 June 2014 is AFFIRMED with MODIFICATION that in Criminal Case No. 1180-V-03, the penalty of LIFE IMPRISONMENT AND A FINE OF TEN MILLION PESOS (Php10,000,000.00) are imposed against Robert Uy, the only appellant in these cases.

SO ORDERED.[21]

The CA rejected accused-appellant's contention that he was instigated to deliver the illegal drugs. It found that the arrest of accused-appellant was a result of an entrapment operation. It observed that prior to the alleged offer of Jackie Ong and Co Ching Ki of 10 kg. of shabu which led to the arrest of accused-appellant, he was unknown to the apprehending officers. Hence, the criminal intent could not have originated from the arresting officers which makes the operation against accused-appellant an entrapment instead of an instigation. It also held that regardless of whether the police officers provided the car to transport the illegal drugs, its use was only a means resorted to for the purpose of arresting the person who would execute the plan, who turned out to be accused-appellant. The CA also rejected accused-appellant's defense of lack of knowledge that the box contained shabu since the act of transporting shabu is *malum prohibitum*. The transportation thereof need not be accompanied by proof of criminal intent, motive, or knowledge.[22]

The CA further held that the evidence against accused-appellant is admissible. The arrest of accused-appellant was a valid warrantless arrest since he was caught in *flagrante delicto*. There is no dispute that accused-appellant boarded and drove the car from the agreed upon pick-up area until he reached and entered the warehouse in Mapulang Lupa, Valenzuela City. When accused-appellant went out of the warehouse, he returned to the pick-up area and parked there. At that point in time, the police officers had probable cause to believe that accused-appellant was transporting illegal drugs inside the car for delivery. The subsequent search on accused-appellant, which yielded the box, is a search incidental to a lawful arrest and did not require a warrant for its validity. Thus, the illegal drugs seized from accused-appellant are admissible in evidence.[23]

The CA declared that Sec. 5, Art. II of R.A. No. 9165 also covers the delivery of dangerous drugs. In said instance, proof that the transaction actually took place would be material, coupled with presentation in court of the *corpus delicti* as evidence, while the payment of consideration is insignificant. The CA observed that, in the instant case, accused-appellant did not deny delivering the shabu. Thus, it affirmed the conviction for violation of Sec. 5, Art. II of R.A. No. 9165.[24]

The CA also affirmed accused-appellant's conviction for violation of Sec. 11. It observed that the illegal drugs were seized from the warehouse by virtue of a search warrant, and after accused-appellant was already detained. The CA charged accused-appellant with knowledge of the contents of the warehouse since he drove the car to the warehouse. His easy access to the same, for the CA, shows his knowledge of the warehouse's contents. Also, accused-appellant confirmed that Willie Gan called him that evening despite having no contact for more or less a month. He followed Willie Gan's instructions despite the questionable circumstance where the key was left in the ignition port. Accused-appellant also admitted that Willie Gan was already waiting at the gate of the warehouse when he arrived there and that Willie Gan boarded the car and placed the box in the backseat. All these, for the CA, revealed the conspiracy between accused-appellant and Willie Gan. It also observed that accused-appellant is a businessman who owns a company engaged in hardware and construction supply. As such, it found it difficult to

believe that accused-appellant would serve as driver to Willie Gan for the measly sum of P30,000.00 per month unless he had more to gain from the relationship.[25]

Finally, the CA held that the integrity and evidentiary value of the seized items had been preserved. According to the appellate court, the chain of custody was unbroken. While there was no representative from the Department of Justice (DOJ), the same is not fatal. It stressed that the cases arose not as the result of a buy-bust operation, but were the legal and logical consequence of an offer from Co Ching Ki and Jackie Ong to provide 10 kg. of shabu to the arresting officers in exchange for their freedom. The arresting officers then had no sufficient time to secure the presence of the necessary witnesses and prepare the documents, otherwise their covers might have been busted.[26]

The CA modified the penalty for Criminal Case No. 1180-V-03 to life imprisonment, and the fine to P10,000,000.00 since the information for said criminal case charged accused-appellant with illegal possession of approximately 119.080 kg. of shabu and 111.200 kg. of chloromethamphetamine hydrochloride.[27]

Issues

Accused-appellant ascribes the following errors on the part of the CA:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, IN RELATION TO PARAGRAPH (B), SECTION 26 OF R.A. NO. 9165, DESPITE THE FACT [THAT] HE WAS MERELY INSTIGATED INTO CARRYING THE TEN [(10)] KILOGRAMS OF SHABU DURING THE 10 NOVEMBER 2013 INCIDENT.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTIONS 5, IN RELATION TO PARAGRAPH (B), SECTION 26 OF R.A. NO. 9165, AND SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 DESPITE THE FACT THAT THE PIECES OF EVIDENCE OBTAINED FROM THE 10 AND 11 NOVEMBER 2003 OPERATIONS ARE INADMISSIBLE FOR BEING FRUITS OF THE POISONOUS TREE.

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, ARTICLE II, IN RELATION TO SECTION 26 (PAR. B), OF REPUBLIC ACT NO. 9165 AS THE ELEMENTS FOR THE COMMISSION THEREOF ARE LACKING.

IV

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165 AS THE ELEMENTS FOR THE COMMISSION THEREOF ARE LACKING.

V

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED BY RULING THAT HE CONSPIRED WITH HIS FELLOW ACCUSED IN THE COMMISSION OF THE CRIMES CHARGED.

VI

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PNP AID-SOTF TO OBSERVE THE PROCEDURE PROVIDED FOR IN SECTION 21 OF R.A. NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

VII

THE COURT A OUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT THE CORPUS DELICTI WAS NOT ESTABLISHED WITH RESPECT TO THE 10 NOVEMBER 2003 SEARCH AND SEIZURE FOR FAILURE TO OBSERVE THE CHAIN OF CUSTODY.[28]

First, accused-appellant contends that he was instigated into committing the crime by the four Chinese nationals, Willie Gan, and the Philippine National Police Anti-Illegal Drugs Special Operations Task Force (PNP AID-SOTF). He makes much of the fact that the car used in the delivery of the 10 kg. of shabu was supplied by the police officers. Thus, the police officers facilitated, and even ensured, the transport of the alleged drugs. He insists that he had no participation whatsoever in the commission of the offense. Further, in relation to the box containing the 10 kg. of shabu, accused-appellant points out that it was Willie Gan who placed the prohibited items inside the vehicle and not him. Also, Jackie Ong denied having known or met accused-appellant prior to November 10, 2003. The criminal design originated from the minds of the agents of the State rather than that of accused-appellant.[29]

Second, accused-appellant insists that since he was a victim of instigation, his arrest was illegal. The concomitant search and seizure are likewise illegal and inadmissible in evidence. He argues that even if the police officers were tipped off by the four Chinese nationals, it would not render the arrest and attendant search and seizure valid. He contends that mere tips and even reliable information are not sufficient to justify a warrantless arrest since there must also be a commission of some over act. Further, the box containing the 10 kg. of shabu was opaque; the seized items were not in plain view. Since there is no basis for accused-appellant's arrest, the search and seizure were invalid and the evidence obtained cannot be used against him. Further, the evidence obtained during the November 11, 2003 operation are also inadmissible since the information gathered from accused-appellant after his illegal arrest was the basis for such operation.[30]

Third, accused-appellant insists that not all elements of violation of Sec. 5 are present. Since no sale occurred, there is also no delivery. Further, R.A. No. 9165 defines the term "deliver" as "any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration." [31] Accused-appellant claims that he never knew the contents of the box as it was Willie Gan who placed it there.[32]

Fourth, two of the elements of the crime of violation of Sec. 11 are absent. Accused-appellant points out that he was already in custody when the search warrant was served at the warehouse on November 11, 2003. It was impossible for him to have had actual possession of the drugs seized inside the warehouse. Further, he did not have constructive possession of the same. While he helped Willie Gan secure a lease over the warehouse, he did not have any idea that it was going to be used for illicit purposes. He also asserts that the operatives failed to comply with the proper procedure with respect to the specimens seized at the warehouse. Senior Police Officer 2 Severino Busa (SPO2 Busa) reportedly admitted that the operatives did not bother asking accused-appellant to sign the Receipt of Property Seized (Inventory Receipt).[33]

Fifth, conspiracy was also not established in the instant case. The mere fact that accused-appellant was Willie Gan's friend and driver is not enough to give rise to a presumption of conspiracy. Accused-appellant did not have intimate knowledge of the business dealings entered into by the latter.[34]

Sixth, the police officers failed to observe the procedure provided under Sec. 21 of R.A. No. 9165 and its Implementing Rules and Regulations (IRR). Accused-appellant points out that the police officers failed to take photographs of the 10 kg. of shabu allegedly seized from him on November 10, 2003. He also highlights the absence of representatives from the DOJ and the media, and any elected public official. Further, there is nothing in the records detailing the participation of the required individuals during the alleged seizure, marking, and inventory of the 10 kg. of shabu on November 10, 2003. The seized items were not immediately inventoried at the

nearest police station from the scene where accused-appellant was apprehended as they went all the way to Camp Crame. The same is also true for the seizure at the warehouse on November 11, 2003 since the police officers never asked accused-appellant to sign the Inventory Receipt. Hence, there is grave doubt as to the identity of the corpus delicti.[35]

Finally, the prosecution failed to establish every link in the chain of custody which renders the identity of the corpus delicti questionable. For the items seized during the November 10, 2003 incident, the prosecution failed to present Police Officer 1 Richel Creer[36] (PO1 Creer) despite him being the first to touch and open the box containing the five plastic bags of shabu equal to 10 kg. It was also PO1 Creer who delivered the same to the PNP Crime Laboratory. Further, the prosecution failed to present Insp. Abapo, the evidence custodian. With regard to the November 11, 2003 incident, PO2 Joseph Ursita (PO2 Ursita), the officer who received the seized specimens from SPO2 Busa, was not presented as witness by the prosecution. Further, PO3 Joseph Garciten, the evidence custodian, was also not presented as a witness.[37]

On the other hand, in its Brief for the Appellee[38] dated May 3, 2017, filed before the CA, the Office of the Solicitor General (OSG), on behalf of the People of the Philippines, argues that accused-appellant's guilt for the crimes of Violations of Sec. 5, in relation to Sec. 26(b), and of Sec. 11, Art. II of R.A. No. 9165 has been proven beyond reasonable doubt. The OSG asserts that accused-appellant is guilty of delivery or transportation of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165 because, as established by evidence and as admitted by accused-appellant, he delivered or transported the box containing five bags of shabu with a total weight of 10 kg. Accused-appellant was caught in flagrante delicto committing said crime. His defense that he did not know the contents of the box because it was Willie Gan who placed the same in the pick-up car is self-serving. Further, the OSG points out that accused-appellant's admission to PSI De Chavez that there are many illegal substances inside the warehouse belies his claim that he was not aware of the contents of the box. Mere possession of a prohibited drug constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of satisfactory evidence.[39]

The OSG also argues that the prosecution had established the unbroken chain of custody of the seized illegal drugs from the time the team led by PSI De Chavez recovered the five plastic bags containing shabu from accused-appellant and the illegal drugs from the warehouse until when they were brought for laboratory examination. It posits that accused-appellant failed to demonstrate any compelling reason to disturb the trial court's finding on the credibility of witnesses.[40] The OSG also rejects the claim of instigation. There is no truth to accused-appellant's claim that he was lured by the police officers into transporting the 10 kg. of shabu. In fact, prior to that incident, the police officers did not know who he was. The fact is that accused-appellant facilitated, delivered, or transported the 10 kg. of shabu on his own volition without any instigation or participation by the police officers.[41] Further, the OSG contends that there is no merit to accused-appellant's claim that the trial court erred in admitting the evidence of the prosecution because it was the result of an invalid warrantless arrest and search. To the contrary, the arrest and consequent search of the five bags are valid because accused-appellant was caught in flagrante delicto committing the offense of delivery or transportation of illegal drugs. Thus, the illegal drugs seized from accused-appellant are admissible in evidence.[42]

On a final note, the OSG asserts that the trial court erred in imposing the penalty of imprisonment from 12 years and 1 day, as minimum, and 14 years and 8 months, as maximum, and a fine amounting to P300,000.00 on accused-appellant for the crime of violating Sec. 11, Art. II of R.A. No. 9165. Since the illegal drugs recovered from the warehouse were more than the minimum 50 grams threshold set by law, life imprisonment and a fine of P500,000.00 should be imposed on accused-appellant.[43]

The Court's Ruling

The appeal is meritorious.

Preliminarily, it must be stated that the instant case arose out of two incidents - (a) the November 10, 2003 incident which involved accused-appellant allegedly transporting and delivering 10 kg. of shabu (Crim. Case No. 1179-V-03), and (b) the November 11, 2003 incident which involved the search conducted in the Mapulang Lupa warehouse (Crim. Case No. 1180-V-03). For the first incident, accused-appellant was charged with Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, while for the second incident, accused-appellant was charged with Violation of Sec. 11, Art. II of R.A. No. 9165.

After a review of the records, accused-appellant must be acquitted of both charges on the basis of reasonable doubt. The seizure of a significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the corpus delicti, operationalized through strict compliance with the requirements of Sec. 21 of R.A. No. 9165.

Crim. Case No. 1180-V-03
should be dismissed. The
prosecution failed to establish
that accused-appellant had
possession, whether actual or
constructive, over the items
seized from the warehouse or
over the warehouse itself.

To recall, the CA affirmed accused-appellant's conviction of Violation of Sec. 11 on the ground that accused-appellant had knowledge of the contents of the warehouse since he drove the car to the warehouse. This easy access, according to the CA, revealed accused-appellant's knowledge of the warehouse's contents.

The Court disagrees.

In *People v. Quijano*,^[44] the Court reiterated the well-established rule that:

For a successful prosecution of an offense for illegal possession of dangerous drugs, the prosecution must establish the following elements: (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. This crime is *mala prohibita*, as such, criminal intent is not an essential element. The prosecution, however, must prove that the accused had the intent to possess (*animus possidendi*). Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.^[45] (Emphases supplied)

In the instant case, the prosecution failed to prove the crucial element of possession. It failed to prove that accused-appellant had possession, either actual or constructive, of the items seized from the warehouse during the November 11, 2003 incident.

Accused-appellant could not have had actual possession of the items seized from the warehouse because he was already in custody of the police officers when the search of the warehouse was conducted on November 11, 2003. It was simply impossible for accused-appellant to have had actual possession of said drugs since he was already in custody.

Neither was there evidence that accused-appellant had constructive possession over the warehouse and, in turn, its

contents. It must be emphasized that the lessee of the warehouse was Willie Gan. The prosecution itself established the same through the testimony of Rogelio Samorano,[46] the prosecution witness. Samorano did not testify that accused-appellant was a co-lessee of the warehouse with Willie Gan. Thus, the one who had dominion and control over the warehouse was Willie Gan, as the lessee thereof.

The purported knowledge ascribed to accused-appellant by the CA cannot, and does not, equate to constructive possession. Although knowledge of the accused of the existence and character of the drugs in a certain place is an internal act, it may only be presumed from the fact that the dangerous drugs are in such place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.[47] To emphasize, the law requires that accused-appellant have dominion and control over the drugs or the place where the same were found for a finding of Violation of Sec. 11. This vital element is missing in the instant case.

On this score, accused-appellant must be acquitted of Violation of Sec. 11, Art. II of R.A. No. 9165.

The prosecution failed to
establish the corpus delicti in
both Crim. Case Nos. 1179-V-
03 and 1180-V-03.

In addition to the foregoing, the Court finds that accused-appellant must be acquitted of both charges against him for failure of the prosecution to establish the corpus delicti. There is lack of evidence that the arresting officers complied with the mandatory requirements of Sec. 21 of R.A. No. 9165.

At this juncture, the Court must address an obvious factor in the instant case. Criminal Case No. 1179-V-03, the charge of Violation of Sec. 5, in relation to Sec. 26(b), Art. II of R.A. No. 9165, involved 9,384.7 grams of shabu; while Criminal Case No. 1180-V-03, the charge of Illegal Possession of Dangerous Drugs under Sec. 11, Art. II of R.A. No. 9165, involved 119.080 kg. of shabu and 111.200 kg. of chloromethamphetamine hydrochloride. These are very significant or large quantities of dangerous drugs and, truly, their presence and seizure in our country, even back in 2003, raises serious concerns about the safety and security of the Filipino people.

In *People v. Lung Wai Tang*[48] (*Lung Wai Tang*), the Court stated that "[s]trict adherence to the procedural safeguards is required where the quantity of illegal drugs seized is small, since it is highly susceptible to planting, tampering, or alteration of evidence. On the other hand, large amounts of seized drugs are not as easily planted, tampered, or manipulated." [49]

Expounding further, *Lung Wai Tang* proposed that the threshold amounts set in the plea-bargaining framework should guide in determining whether the quantity of seized drugs are large or small. Where it is large, strong probative value should be given to the same:

Thus, in determining whether the quantity of seized drugs may be considered large or small, courts should be guided by the threshold amounts set in the [plea-bargaining] framework. If the amount of drugs seized precludes the availability of plea-bargaining, it shall be deemed a large amount and should be given strong probative value.

While seizure of bulk quantities of drugs will not excuse police officers from complying with the procedural requirements under the law, the strong evidentiary treatment should encourage law enforcement agencies to focus on large-scale drug operations instead of small-time street dealers.[50] (Emphasis supplied)

Nevertheless, it must be emphasized that *Lung Wai Tang* applied the old drugs law, R.A. No. 6425.[51] On the other hand, the present case involves the drugs law of R.A. No. 9165, prior to its amendment by R.A. No. 10640.[52]

In *People v. Bautista*,^[53] the Court emphasized the burden of the State to prove not only the elements of sale and possession of illegal drugs, but also the *corpus delicti*:

In drug-related prosecutions, the State bears the burden not only of proving the elements of the offenses of sale and possession of shabu under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime. "*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two (2) things, viz.: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result." The dangerous drug is itself the very *corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.^[54] (Emphases supplied; italics omitted)

The obligatory quality of proving the *corpus delicti* cannot be gainsaid and this obligatory quality is not diminished or affected when large or substantial amounts of dangerous drugs are involved. This is because the law itself, R.A. No. 9165, as amended, makes no distinction between large or small amounts of seized drugs in applying the procedural safeguards in Sec. 21. As the familiar legal maxim goes, where the law does not distinguish, we should not distinguish.

In the more recent case of *People v. Bateria*,^[55] which involved 48,565.683 grams of marijuana fruiting tops, the Court convicted the accused therein and found that the strict requirements of Sec. 21 of R.A. No. 9165 were complied with by the apprehending officers. Thus, the accused in said case was convicted because the *corpus delicti* was proven beyond reasonable doubt.

In the instant case, despite large or substantial amounts of dangerous drugs being involved, the Court must acquit accused-appellant due to the failure of the law enforcement agents to comply with the mandatory requirements of Sec. 21 of R.A. No. 9165.

R.A. No. 9165 provides for the custody and disposition of confiscated, seized, and/or surrendered drugs, thus:

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

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

Meanwhile, its IRR states:

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

(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 [noncompliance] 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[.]

Plainly, Sec. 21 of R.A. No. 9165 requires that three insulating witnesses — a representative from the media, a representative from the DOJ, and any elected public official — be present during the physical inventory and photograph of the seized items at the place of seizure or, if not practicable, at the nearest police station or at the nearest office of the apprehending officer/team.[56]

Aside from being present during the physical inventory and photograph of the seized items, the insulating witnesses must also sign and receive a copy of the inventory. As the Court observed in *People v. Casa*,[57] the requirement to sign the inventory extends only to the insulating witnesses and not to the accused. "Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses." [58]

Significantly, on August 7, 2014, R.A. No. 10640 amended R.A. No. 9165 and only required the presence of an elected public official and a representative of the National Prosecution Service or the media.[59] Nevertheless, since the incidents herein occurred on November 10 and 11, 2003, then the required three witnesses under R.A. No. 9165 should still be observed.[60]

For the required physical inventory and photography of the seized items during the November 10, 2003 incident, the testimony of PSI De Chavez is illuminating:

Fiscal Formaran to the witness:

Q:

How about Robert Uy and the carton box containing the five (5) plastic bags of white crystalline substance, what did you do about that?

The witness:

A.

After we reached Mapulang Lupa, after cordoning the area, we immediately proceeded to our office, Your Honor.

x x x x

Q.

Now, at your office, what did you do in connection with the arrest of Robert Uy?

A.

After that we made the request for laboratory examination to determine the presence of methylamphetamine hydrochloride to the confiscated five (5) [plastic] bags of white crystalline substance, your Honor.

Q.

You are referring to the white crystalline substance recovered from Robert Uy?

A.

Yes, sir.

x x x x

Fiscal Formaran to witness:

Q.

Now, Mr. witness, if that carton box will be presented to you which you said you recovered from accused Robert Uy, if presented to you, can you still identify the same?

A.

Yes, your Honor.

Q.

And what is your identification on that carton box?

A.

I affixed my signature on that carton box, your Honor.

Q.

How about the plastic bags contained in that carton box?

A.

The same, your Honor, I affixed also my signature.[61]

The seizing officer was PO1 Creer.[62] However, PSI De Chavez was the one who "marked" the carton box and the five plastic bags. It is unclear when PSI De Chavez marked these items and if the marking was done in the presence of accused-appellant. Certainly, there is nary any allusion as to the presence of the three required witnesses during said marking. There is also no inventory receipt. While photographs of the carton box[63] and the five plastic bags of shabu[64] were offered in evidence, it is unclear if these photographs were taken at the place of seizure or, if not practicable,[65] at the nearest police station or at the nearest office of the apprehending officer/team. All told, the police officers did not even attempt to comply with the requirements of Sec. 21 of R.A. No. 9165 as to the physical inventory and photography of the seized items from the November 10, 2003 operation.

As to the November 11, 2003 incident, SPO2 Busa testified that the search was witnessed by barangay officials of Barangay Mapulang Lupa and some media reporters. Glaringly absent from the list of witnesses is the DOJ representative. SPO2 Busa also testified that it was the Scene of the Crime Operatives (SOCO) who itemized and listed the evidence recovered in the warehouse but it was he who allegedly prepared the Inventory Receipt.[66] Said alleged Inventory Receipt was not submitted in evidence by the prosecution. Further, the prosecution also failed to present photographs of the items seized during the November 11, 2003 operation. While photographs were indeed taken at the site of the operation, these photographs are merely of the warehouse gate,[67] exterior,[68] door,[69] the operatives while securing the specimens recovered inside the warehouse,[70] a general photo of the items found inside the warehouse,[71] and the operatives together with the items inside the

warehouse.[72] This hardly constitutes the required inventory and photography under Sec. 21 of R.A. No. 9165.

Based on the foregoing, it is clear that there was failure to strictly comply with the requisites of Sec. 21 of R.A. No. 9165 in both operations.

Admittedly, such failure to comply with the provisions of Sec. 21 may be excused provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[73] These requirements are cumulative, not alternative. Thus, in order to excuse failure to comply with the requirements of Sec. 21, there must be both justifiable reasons for such failure and proof that the integrity and evidentiary value of the evidence was maintained. It is not enough that only the second requisite is met. The prosecution must allege and prove the presence of a justifiable ground and then prove that the integrity and evidentiary value of the evidence were preserved.

The Court held in *People v. Lim*[74] (Lim) that:

It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s 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 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.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires: It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for [noncompliance]. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their [noncompliance], but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[75] (Emphases supplied; citations omitted)

Herein, the Court finds untenable the ground proffered by the prosecution to justify the absence of the three insulating witnesses during the November 10, 2003 operation and the absence of the DOJ representative during the November 11, 2003 operation.

For the November 10, 2003 operation, the prosecution argues that the police officers could not secure the presence of the insulating witnesses due to the urgency of the situation arising from Co Ching Ki and Jackie Ong's offer of 10 kg. of shabu in exchange for their freedom.[76] However, the Court fails to see the urgency cited by

the prosecution. The police officers had all the advantage, and held all of the cards so to speak, at that point. When they were informed by Co Ching Ki that the 10 kg. of shabu were ready for pick-up and that a vehicle was needed to deliver them, the police officers could have simultaneously secured the presence of the insulating witnesses while preparing the pick-up of the alleged drugs. The supposed urgency of the situation is not apparent to the Court.

As to the November 11, 2003 operation, it is glaring that the prosecution did not even offer any excuse for the absence of the DQJ representative. There is also no allegation that they attempted to secure the presence of the DOJ representative.

On the basis of the foregoing, the Court finds that there was noncompliance with the requirements of Sec. 21 and such failure cannot be excused. Thus, the corpus delicti of the seized items during both operations was not proven.

At this juncture, the Court deems proper to address a potential concern involving the effect of failure to comply with the strict requirements of Sec. 21. It is well-established that compliance with the requirements of Sec. 21 is mandatory and any failure to do so may only be excused upon (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[77]

Considering that both these requirements must concur for the Court to excuse noncompliance with Sec. 21, some sectors may fear that such rule engenders acquittal since the defense need only prove that the police officers failed to allege justifiable reasons for their failure to comply with Sec. 21.

This concern is more apparent than real.

The Court takes this opportunity to hark back to the guidelines set down in *Lim*, particularly on the requirement that the apprehending/seizing officers must state their compliance with Sec. 21 and, in case of non-observance, the justification for the same in their sworn statements/affidavits before the investigating fiscal. In case of failure to state the same, the investigating fiscal is mandated not to immediately file the case but to, instead, refer the same for further preliminary investigation:

[J]udicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1.

In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2.

In case of non-observance of the provision, the apprehending/seizing officers must state the justification or

explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3.

If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4.

If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[78] (Emphases and underscoring supplied)

In view of these guidelines set forth in *Lim*, it is evident that mere failure to provide justification for failure to comply with Sec. 21 will not immediately result in an acquittal. The investigating fiscal is empowered and, in fact, mandated, not to immediately file the case but to, instead, refer it for further preliminary investigation.

In addition to the failure to comply with the strict requirements of Sec. 21, the Court harbors serious concerns over the identity, integrity, and evidentiary value of the seized items. There are material gaps in the chain of custody of the seized items.

The identity, integrity, and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established. The links to be established in the chain of custody, as enumerated in *People v. Salvador*,^[79] are as follows:

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.^[80]

There are material gaps in all links of the chain of custody for the items seized from both the November 10 and November 11, 2003 operations.

The first link in the chain is the seizure and marking, if practicable, of the seized items by the apprehending officer. Marking of the seized items is crucial in proving the chain of custody because it serves to distinguish the marked evidence from the corpus of all other similarly related evidence from the time they are seized until they are disposed of at the end of the proceedings, thus, preventing switching, planting, or contamination of evidence.^[81]

In the November 10, 2003 operation, POI Creer was the seizing officer.^[82] However, the one who "marked" the carton box and the five plastic bags was PSI De Chavez. Clearly, possession over the seized items from the November 10, 2003 operation was transferred at some point from PO1 Creer to PSI De Chavez. However, there is no testimony on how the integrity and evidentiary value of the seized items were preserved when possession thereof was transferred. PO1 Creer, in fact, was never presented as a witness and, as such, there is likewise no evidence on how he kept and preserved the items seized. Further, there is no testimony on exactly how PSI De Chavez marked the items seized. From the very first instance, the identity of the seized items from the November

10, 2003 operation is questionable.

As to the November 11, 2003 operation, the prosecution never alleged that the items seized from the warehouse were marked. SPO2 Busa only testified that the SOCO itemized and listed the evidence recovered, but it was he who prepared the Inventory Receipt. Again, no such inventory receipt was presented. SPO2 Busa also failed to testify how he kept and preserved the evidentiary value of the seized items prior to turning over the same to PO2 Ursita. Once more, the identity of the seized items from the November 11, 2003 operation is dubious from the first instance.

The second link of the chain is the turnover of the illegal drugs seized by the apprehending officer to the investigating officer. The Court previously noted that "this is a necessary step in the chain of custody because it is the investigating officer who shall conduct the proper investigation and prepare the necessary documents for the developing criminal case. Certainly, the investigating officer must have possession of the illegal drugs to properly prepare the required documents."^[83]

For both the November 10 and November 11, 2003 operations, the investigating officer was not identified. As such, there is no testimony or evidence available as to the turnover of the seized items by the apprehending officer to such investigating officer. This is another material gap in the chain of custody which throws into question the identity of the seized items from both operations.

Similarly lacking is the third link in the chain. The third link is the turnover by the investigating officer of the illegal drugs to the forensic chemist for laboratory examination.

For the November 10, 2003 operation, it was allegedly POI Creer who delivered the seized items to the PNP Crime Laboratory. To reiterate, he was never presented in court as a witness. There is, thus, no testimony on how he kept and preserved the seized items from the November 10, 2003 operation. Similarly, PO2 Ursita, the one who received the confiscated items from the November 11, 2003 operation, did not testify. Thus, there is still no testimony on how the integrity and evidentiary value of the seized items from the November 11, 2003 operation were preserved. The third link in the chain is entirely missing for both operations.

Finally, there is also a gap in the fourth link of the chain of custody. The fourth link is the turnover and submission of the seized illegal drugs from the forensic chemist to the court.

For both the November 10 and November 11, 2003 operations, the evidence custodian of the items seized was not presented in court. For the November 10 operation, the evidence custodian was Insp. Abapo, while the evidence custodian for the November 11 operation was P03 Garciten. Despite being identified, they were not presented in court and there is also no other testimony establishing how they kept and preserved the integrity and evidentiary value of the seized items.

Accordingly, due to the egregious deficiencies in the observance of the rule on the chain of custody of the items seized from both the November 10 and November 11 operations, the Court cannot conclude that the identity, integrity, and evidentiary value of the seized items were preserved. Again, the large amount of dangerous drugs involved in the instant case does not excuse the failure to prove the identity, integrity, and evidentiary value of the seized items. There is reasonable doubt as to the corpus delicti. Accused-appellant must be acquitted of both charges on the basis of reasonable doubt.

On the applicability of this ruling to Willie Gan

To recall, Willie Gan was convicted by the RTC of Violation of Sec. 11, Art. II of R.A. No. 9165 and meted the

penalty of "twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and x x x to pay a FINE in the amount of Three Hundred Thousand Pesos ([P]300,000.00)."[84] He did not appeal this ruling and, by force of law, said conviction became final and executory against him.

Nonetheless, it is well-established that "an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties." [85]

Sec. 11, Rule 122 of the Revised Rules of Criminal Procedure [86] provides that a judgment shall not affect a non-appealing accused unless it is applicable and favorable to him:

Section 11. Effect of appeal by any of several accused. -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

The serious defects in the chain of custody of the items seized from the November 11, 2003 operation is equally applicable to accused-appellant and to Willie Gan. The evidence against accused-appellant and Willie Gan are inexplicably linked. [87] Thus, there is reasonable doubt as to the corpus delicti of the crime of Illegal Possession of Dangerous Drugs, defined and punishable under Sec. 11, Art. II of R.A. No. 9165, for which Willie Gan was convicted of. Despite his non-appeal, the acquittal in favor of accused-appellant must be applied to Willie Gan since it is applicable and favorable to him.

On a final note

It is truly regrettable that the Court must acquit accused-appellant in the instant case and extend such acquittal to Willie Gan.

The law enforcement agents and the prosecution must exercise more prudence and care in their compliance with the requirements of Sec. 21 of R.A. No. 9165.

The instant case reveals the law enforcement agents' complete ignorance of the requirements of Sec. 21 of R.A. No. 9165. The pieces of evidence submitted in the instant case, such as the photographs taken of the warehouse, demonstrate an utter lack of care in complying with the requirements of the law. Instead of taking a photograph of the items seized, the apprehending officers merely saw fit to take a photograph of the operatives securing the specimens recovered inside the warehouse [88] and the operatives together with the items inside the warehouse. [89] Furthermore, there is nary any allegation that they even attempted to secure the required insulating witnesses for the November 10, 2003 incident. This ignorance extends to the prosecution because the records are woefully bereft of any attempt on its part to even invoke justifiable circumstances to excuse the failure of the law enforcement agents to even attempt to comply with the mandatory requirements of Sec. 21 of R.A. No. 9165. The utter disregard for the law demonstrated by these actors is reprehensible.

Even more reprehensible is the error committed by the RTC in the penalty imposed upon Willie Gan and accused-appellant for Violation of Sec. 11, Art. II of R.A. No. 9165.

Sec. 11, Art. II of R.A. No. 9165 is clear in providing that the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00 is imposed where the shabu or other dangerous drugs possessed is 50 grams or more:

Section 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

x x x x

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Despite such clear language to impose the penalty of life imprisonment, the RTC imposed against Willie Gan a penalty of "twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and xx x to pay a FINE in the amount of Three Hundred Thousand Pesos ([P]300,000.00)."[90] Willie Gan evidently did not anymore appeal the RTC Decision because the lower penalty imposed was advantageous to him. Notably, the prosecution did not even question the insufficient penalty imposed against Willie Gan.

The Court also cannot help but observe that, despite this case initially involving five Chinese nationals (Jackie Ong, Co Ching Ki, Tan Ty Siao, Go Siak Ping, and Willie Gan) and accused-appellant, the sole Filipino, it ended with only accused-appellant and Willie Gan convicted by the RTC, with Willie Gan even meted a penalty far too lenient than that imposed by law. It bewilders the Court how the RTC could have acquitted Co Ching Ki and Jackie Ong, ratiocinating that their bribe to PSI De Chavez was not proven as a fact, and, in the same breath, convict accused-appellant whose participation in the events could have only arisen if the bribe, as recounted by PSI De Chavez, occurred. Further, it truly confounds the Court how the RTC could have imposed an erroneous penalty on Willie Gan and accused-appellant for Violation of Sec. 11, Art. II of R.A. No. 9165 when there is no room for confusion in the language of the law. Even the prosecution's failure to appeal the incorrect penalty imposed on Willie Gan astounds the Court. Truly, the acquittal in the instant case is ordained by the multiple errors, whether through negligence or misfeasance, committed by the prosecution, the defense, and the trial court.

The Court beseeches all actors[91] in the administration of criminal justice in Our jurisdiction to effectively carry out their respective duties and responsibilities, keeping in mind that any failure on their part will likely result in acquittal. Such is the burden imposed on these actors, ordained by the evidentiary value required in criminal cases: proof beyond reasonable doubt.

The Court emphasizes that the acquittal in the instant case is borne of the failure to prove beyond reasonable doubt the charges against accused- appellant and, in turn, against Willie Gan.

WHEREFORE, the appeal is GRANTED. The April 25, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08320 is REVERSED and SET ASIDE. Accused-appellant Robert Uy y Ting and accused James Go Ong @ William Gan or @ Willie Gan are hereby ACQUITTED of the charges against them for failure of the prosecution to prove their guilt beyond reasonable doubt.

The Director General of the Bureau of Corrections, Muntinlupa City is ORDERED to IMMEDIATELY RELEASE Robert Uy y Ting and Willie Gan from detention, unless they are being lawfully held in custody for any other reason, and to INFORM the Court of the action hereon within five days from receipt of this Decision.

Let a copy of this Decision be FURNISHED the Secretary of Justice, the Secretary of the Department of the Interior and Local Government, the Chief of the Philippine National Police, and the Director General of the Philippine Drug Enforcement Agency for their information, guidance, and appropriate action.

Let entry of judgment be issued immediately.

SO ORDERED.

Hernando, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, and Singh, JJ., concur.

Leonen, SAJ., M. Lopez, and Kho, Jr., JJ., see separate concurring opinion.

Caguioa, J., see concurring opinion.

Lazaro-Javier, J., I concur in its result. Please see separate opinion.

[*]Also referred to as "Co Chi Seng" in some parts of the RTC Decision (see CA rollo, p. 132).

[**] Also referred to as "Jacky Ong" in some parts of the RTC Decision (see CA rollo, p. 144).

[***] Also referred to as "Co Ching Seng" in some parts of the records (see RTC records [Crim. Case No. 1180-V-03], p. 13).

[****] Also referred to as "Willy Gan" or "Willie Gan" in some parts of the rollo.

[1] Rollo, pp. 30-33.

[2] Id. at 3-29; penned by Associate Justice Ronalda Roberto B. Martin and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon A. Cruz.

[3] CA rollo, pp. 129-163; penned by Presiding Judge Maria Nena J. Santos.

[4] Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." Effective: July 4, 2002.

[5] RTC records (Crim. Case No. 1179-V-03), pp. 83-85.

[6] Id. at 84.

[7] Id. at 86-88

[8] Id. at 87.

[9] Id. at 101-102.

[10] Id. at 132.

[11] Rollo, p. 5.

[12] Rollo, pp. 8-11.

[13] Rollo, pp. 11-13.

[14] RTC records (Criminal Case No. 1179-V-03), pp. 727-735.

[15] Id. at 731-735.

[16] CA rollo, pp. 162-163.

[17] Id. at 156-158.

[18] Id. at 158-159.

[19] Id. at 159-161.

- [20] RTC records (Crim. Case No. 1179-V-03), pp. 1043-1044.
- [21] Rollo, p. 28.
- [22] Id. at 16-18.
- [23] Id. at 18-19.
- [24] Id. at 19-20.
- [25] Id. at 20-21.
- [26] Id. at 26-27.
- [27] Id. at 28.
- [28] CA rollo, pp. 74-76.
- [29] Id. at 86-96.
- [30] Id. at 100-107.
- [31] Republic Act No. 9165, Art. II, Sec. 5(k).
- [32] CA rollo, p. 108.
- [33] Id. at 109-111; see also Exhibits "HH-1"-"HH-9," folder of exhibits, pp. 146-149.
- [34] Id. at 111-112.
- [35] Id. at 113-121.
- [36] Also referred to as "PO2 Creer" in some parts of the rollo (see rollo, p. 11).
- [37] CA rollo, pp. 121, 124-125.
- [38] Id. at 170-189.
- [39] Id. at 179-182.
- [40] Id. at 183-184.
- [41] Id. at 184-185.
- [42] Id. at 185-186.
- [43] Id. at 186.
- [44] G.R. No. 247558, February 19, 2020, 933 SCRA 348.
- [45] Id. at 358-359.
- [46] Also referred to as "Roger Samurano" in some parts of the records (see folder of exhibits, p. 120).
- [47] See *Estores v. People*, G.R. No. 192332, January 11, 2021.
- [48] G.R. No. 238517, November 27, 2019, 926 SCRA 271.
- [49] Id. at 287.
- [50] Id. at 289.

[51] Entitled "The Dangerous Drugs Act of 1972." Approved on March 30, 1972.

[52] 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." Effective: August 7, 2014.

[53] 682 Phil. 487 (2012).

[54] Id. at 499-500.

[55] G.R. No. 236259, September 16, 2020.

[56] *People v. Casa*, G.R. No. 254208, August 16, 2022.

[57] Id.

[58] Id.

[59] See Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640.

[60] The Court noted in *People v. Gutierrez* (842 Phil. 681, 690 [2018]) and *Matabilas v. People* (G.R. No. 243615, November 11, 2019, 925 SCRA 336, 346), that under Section 5 of R.A. No. 10640, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." R.A. No. 10640 was published on July 23, 2014 in *The Philippine Star* (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and *The Manila Bulletin* (Vol. 499, No. 23; World News section, p. 6). Thus, R.A. No. 10640 appears to have become effective on August 7, 2014.

[61] Rollo, pp. 23-25.

[62] Id. at 9.

[63] Exhibit "P-7," folder of exhibits, p. 89.

[64] Exhibits "P-8," "P-9," "P-10," "P-11," and "P-12," id. at 90-94.

[65] *People v. Casa*, supra note 56.

[66] Rollo, p. 11.

[67] Exhibit "D," folder of exhibits, p. 32.

[68] Exhibit "D-1," id.

[69] Exhibit "D-2," id. at 33.

[70] Exhibit "N-18," id at 65.

[71] Exhibit "N-19," id. at 66.

[72] Exhibit "N-20," id. at 67.

[73] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019, 926 SCRA 613,640.

[74] 839 Phil. 598 (2018).

[75] Id. at 621-622.

[76] Rollo, p.9.

- [77] *People v. Asaytuno, Jr.*, supra note 73.
- [78] *People v. Lim*, supra note 74, at 624-625.
- [79] 726 Phil. 389 (2014).
- [80] *Id.* at 405.
- [81] *Tumabini v. People*, G.R. No. 224495, February 19, 2020, 933 SCRA 60, 95-96.
- [82] *Rollo*, p. 9.
- [83] *Tumabini v. People*, supra at 97.
- [84] *CA rollo*, pp. 162-163.
- [85] *People v. Artellero*, 395 Phil. 876, 889 (2000).
- [86] A.M. No. 00-5-03-SC. Effective: December 1, 2000.
- [87] See *People v. Artellero*, supra.
- [88] Exhibit "N-18," folder of exhibits. p. 65.
- [89] Exhibit "N-20," *id.* at 67.
- [90] *CA rollo*, pp. 162-163.
- [91] "Three (3) principal actors play an integral part in the administration of criminal justice in Our jurisdiction. These principal actors are the public prosecutor, the defense, and the trial court. The result of acquittal in the instant case was ordained by the actuations of these three principal actors." (*People v. Pagal*, G.R. No. 241257, September 29, 2020).

SEPARATE CONCURRING OPINION

LEONEN, SAJ.:

I concur.

I

We commence with the prosecution's version of events that led to the filing of the criminal charges.

According to Police Senior Inspector Rainerio De Chavez (PSINSP De Chavez), the team leader of the Anti-Illegal Drugs Special Operations Task Force (AID-SOTF) of Camp Crame, surveillance operations began against one Jackie Ong (Ong) in October 2003 to validate his involvement in illegal drugs. At around 1:00 p.m. on November 10, 2003, in coordination with the Bureau of Immigration led by Superintendent Winnie Quidato (Superintendent Quidato), they proceeded to Room 402 Oro Building, Sanchez Street, Binondo, Manila to execute the Mission Order against Ong. They brought along with them an interpreter named Ramon Yang.[1]

When PSINP De Chavez knocked on the door, Ong opened it. With the aid of the interpreter, they were allowed to enter the unit. Inside, PSI NP De Chavez noticed three other Chinese-looking individuals, later identified as Co Ching Ki, Tan Ty Siao, and Go Siak Ping,[2] whom they asked to show proper documentations of their stay in the country. When Ong and the Chinese nationals could not do so, the officers brought them to their office at Camp Crame for further investigation.[3]

Upon informing the Chinese nationals about their deportation for violation of immigration laws, Ong and Co Ching Ki offered 10 kilograms of shabu in exchange for their freedom. PSINP De Chavez allegedly played along and gave his number to Co Ching Ki.

After several phone calls, Co Ching Ki informed PSINP De Chavez that the 10 kilograms of shabu were ready for pick-up, but a vehicle was needed for delivery. PSINP Melchor Cantil offered his Mitsubishi Lancer.[4]

They arrived just before 7:30 p.m. at the designated pick-up area in McDonald's along McArthur Highway. They parked the Mitsubishi Lancer then left. After several minutes, a man boarded the car and drove it. They followed the car until it reached a warehouse in Mapulang Lupa, Valenzuela City, which was being leased by a certain Willie Gan (Gan). PSINP De Chavez parked his vehicle 15 meters away and waited for the car to proceed to the designated pick-up area.[5]

When the car did not park on the agreed spot, PSINP De Chavez approached it. As the driver was about to get out, he saw a box inside and instructed Police Officer I Richel Creer (PO1 Creer) to get it. Inside the box were five plastic bags of white crystalline substance. They apprehended the driver who was later identified as Robert Uy (Uy), then proceeded to the warehouse. After securing and guarding the perimeters, the rest of the team brought Uy to their station at Camp Crame.[6]

Police Officer II Rogelio Rodriguez (PO2 Rodriguez) testified that they conducted a test buy against Ong at around 10:00 a.m. on October 20, 2003, where he posted as back-up. The informant and PO1 Creer met a Chinese-looking man who handed the informant something then immediately left. After the test buy, they tried applying for a search warrant and attempted to buy a large quantity of shabu from Ong, to no avail. Since the operation seemed to have been busted, they instead asked help from the Bureau of Immigration to check the legality of Ong's stay in the country.[7]

Superintendent Quidato testified that he was part of the team that went to Binondo on November 10, 2003. He left the AID-SOTF office around 6:30 p.m. when the relatives of the Chinese nationals did not show up to bring the documents needed. On November 11, 2003, he was also in Mapulang Lupa when the search warrant was implemented and witnessed by Commissioner Andrea D. Domingo, General Edgar B. Aglipay, the chief of the AID-SOTF, the scene of the crime operatives, and the Presidential Security Group. He was also part of the team that implemented the Mission Order against Gan on December 26, 2003.[8]

Senior Police Officer II Severino Busa (SPO2 Busa) testified that at around 8 a.m. on November 11, 2003, together with PSINP De Chavez and the other officers, he was called by their chief, Superintendent Federico Lasiste, to discuss the execution of the search warrant, in which he was designated as the seizing officer. The team reached the warehouse at around 9:30 a.m. At around 10:45 a.m., PSINP De Chavez and PO1 Creer arrived with the search warrant. Their team served the warrant and found shabu inside the warehouse. The search was allegedly witnessed by barangay officials, some media reporters, the scene of the crime operatives, and Uy. While the operatives listed the evidence recovered, SPO2 Busa said that he prepared the Inventory Receipt and Certificate of Orderly Search. At around 5:00 p.m., the team returned to Camp Crame and turned over the marked evidence to the scene of the crime operatives.[9]

Rogelio Samorano (Samorano), the owner of the warehouse leased by Gan, testified that Uy called him to arrange an inspection of the warehouse. Uy and Gan became interested to rent it at PHP 130,000.00 per month. Samorano only discovered that the warehouse was raided when his brother told him about it.[10]

There are two incidents central to this case. First, on November 10, 2003, Uy was allegedly transporting and delivering[11] 9,384.7 grams of shabu. Hence, together with his co-accused Ong, Gan, Co Ching Ki, Tan Ty Siao,

and Go Siak Ping, Uy was charged with violation of Section 5[12] in relation to Section 26(b)[13] of Republic Act No. 9165 in Criminal Case No. 1179-V-03.[14]

Second, on November 11, 2003, a search was conducted at a warehouse in Mapulang Lupa,[15] which led to the confiscation of around 119.08 kilograms of shabu and 111.20 kilograms of chloromethamphetamine hydrochloride.[16] All the accused were charged with illegal possession of dangerous drugs under Section 11[17] of Republic Act No. 9165 in Criminal Case No. 1180-V-03.[18]

For his defense, Uy claimed to be a businessperson with a construction supply store in Caloocan City. He allegedly met Gan in 1999 through his uncle and was introduced to him as a businessperson engaged in school supplies and furniture. They eventually became friends and business associates. Since Gan was not familiar with Metro Manila, he hired him as his part-time driver for PHP 30,000.00 per month.[19]

In January 2003, he said that Gan asked him to look for a warehouse in Valenzuela City. When Samorano and Gan met, they agreed on the monthly rent of the warehouse. Gan had the warehouse repaired when it was later turned over to him.[20]

As a routine, he would allegedly drive Gan from the latter's house going to the warehouse, as well as to other places. From October 2003 to November 9, 2003, Gan did not contact him or engage his services. Nonetheless, at around 6:00 p.m. on November 10, 2003, Gan called to meet him at McDonald's along Mac Arthur Highway. When he reached the place from around 7:30 p.m. to 8:30 p.m., Gan contacted him about a red Mitsubishi Lancer with keys already on the ignition switch which he would be driving to the warehouse.[21]

Upon arriving at the warehouse, Gan was at the gate with a box. The latter boarded the car and placed the box in the backseat. He was allegedly directed to park the car in front of a Mercury Drug Store and leave it there because someone would be getting it. Gan alighted from the vehicle before reaching the drug store.

After parking the car, several police officers approached him. He asked them what he did wrong but instead of getting an answer, he was only told to board the said car. They proceeded to the warehouse and only kept watch outside. They then proceeded to Camp Crame where one of the police officers opened the compartment, brought out the box, and opened it. Inside the box were five big plastic bags with white powder. At around 11:00 p.m., he was allegedly led to a room on the second floor of the AID-SOTF office where he met the four Chinese nationals for the first time whose names he only came to know at that moment.[22]

On January 20, 2011, the Regional Trial Court issued an Order dismissing the case against Ong, Tan Ty Siao, and Go Siak Ping due to a demurrer to evidence. It found no proof that they participated in the bribe between Co Ching Ki and PSINP De Chavez. The prosecution also failed to prove that there was conspiracy among them and Co Ching Ki because only the latter facilitated the delivery of the shabu. The prosecution's documentary and testimonial evidence, as to the trial court, failed to establish a link between the seized evidence and the three accused.[23]

On June 30, 2014, the Regional Trial Court issued a Joint Decision convicting Uy of both charges. It held that Uy had been caught in flagrante delicto in possession of a box containing five plastic bags of methamphetamine hydrochloride, particularly inside the compartment of the car he was driving, that he actually delivered to the police officers.[24]

Meanwhile, the trial court convicted Gan, as the lessee of the warehouse, of possession of dangerous drugs but absolved him of the charge for violation of Section 5 absent supporting evidence that he directed Uy to pick up the illegal drugs from the warehouse.[25] Also, for doubting the prosecution's story on the bribery offered to the police officers, the trial court acquitted Co Ching Ki for lack of direct evidence that he was in possession of illegal

drugs and disposed the case in this wise:

WHEREFORE, in view of the foregoing, in Crim. Case No. 1179-V-03, the Court finds the accused ROBERT UY y TING GUILTY beyond reasonable doubt of the crime of Violation of Sec. 5 in relation to Section 26 par. (b) of Article II of Republic Act No. 9165 and sentenced to suffer the penalty of Life Imprisonment and to pay a FINE in the amount of Five Hundred Thousand Pesos while the Court finds accused Willy Gan @ William Gan not guilty of the said crime.

In Crim. Case No. 1180-V-03 the Court also finds the accused ROBERT UY y Ting and WILLY GAN@ WILLIAM GAN both GUILTY beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II of Republic Act No. 9165 and sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and EACH to pay a FINE in the amount of Three Hundred Thousand Pesos (P300,000.00).

Accused Robert Uy y Ting shall serve the penalty successively. He and Willy Gan @ William Gan shall be given full credit of their preventive imprisonment.

Meanwhile, the accused CO CHING KI is ACQUITTED on both cases due to insufficiency of evidence. Consequently, the Jail Warden of the Valenzuela City Jail is directed to release the person of Co Ching Ki unless he is being held for some other legal and lawful cause.

The Branch Clerk of Court is directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.

SO ORDERED.[26] (Emphasis supplied)

Only Uy appealed.[27]

On April 25, 2019, the Court of Appeals affirmed the conviction with modification on the penalty and fine imposed in Criminal Case No. 1180-V-03 due to the quantity of dangerous drugs involved.[28]

Thus, Uy appealed before this Court. The ponencia granted accused-appellant's appeal,[29] with which I agree.

The police officers' unjustified deviations with the chain of custody rule under Republic Act No. 9165 cast doubt on the identity of the confiscated dangerous drugs. Inevitably, the prosecution failed to establish the corpus delicti, which also results in their concomitant failure to prove the commission of the crimes charged under Republic Act No. 9165.

Perforce, accused-appellant's acquittal must follow[30] based on reasonable doubt.[31]

II

To give meaning to the following provision under Article III, Section 14(2) of the Constitution, we uphold the presumption of innocence in favor of the accused in resolving criminal cases:

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

As such, jurisprudence provides that conviction depends on the strength of the prosecution's evidence, not the weakness of the defense. Although not compelling "such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense

responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience." [32] Therefore, an accused's conviction is only warranted if guilt is proven beyond reasonable doubt. [33]

The State, in cases involving dangerous drugs, has the burden of not only establishing the elements of the offense, but also proving the corpus delicti or body of the crime. [34] In all prosecutions under Republic Act No. 9165, the dangerous drug constitutes the corpus delicti. Since its existence is vital for conviction, the identity of the dangerous drug should be proven beyond reasonable doubt. With this, the prosecution must account for each link in the chain of custody beginning from seizure until its presentation in court as evidence. Simply put, it should be ascertained with "unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from [them] in the first place." [35] Similarly, it must be proved that there was no break in the chain of custody. [36]

The chain of custody is the "duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court for destruction." [37] Each person who came in contact with the confiscated articles "is duty-bound to detail how it was cared for, safeguarded and preserved while in his or her control to prevent alteration or replacement while in custody. The guarantee of the integrity of the evidence to be used against an accused goes to the very heart of [their] fundamental rights." [38] The following are the crucial links that the prosecution ought to establish in the chain of custody:

[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. [39] (Citation omitted)

Republic Act No. 9165, as originally worded, [40] outlines the specific procedures to aid law enforcers in maintaining the integrity and evidentiary value of the confiscated articles from the accused. [41] Section 21 [42] of Republic Act No. 9165 requires that the articles be inventoried and photographed immediately after seizure and confiscation, in the presence of the accused, or their representative or counsel, a media representative, a representative from the Department of Justice, and an elected public official, all of whom are called to sign the inventory form and given copies. [43]

The phrase "immediately after seizure and confiscation" entails that the physical inventory and photographing of the dangerous drugs "be made immediately after or at the place of apprehension." [44] As provided in the Implementing Rules and Regulations [45] of the law, only in impracticable situations may the mandatory procedures "be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team." [46] This also means that the attendance of the three insulating witnesses should be at the time of apprehension [47] because it is at this moment that their presence is the most demanded to "believe any doubt as to the source, identity, and integrity of the seized drug." [48]

Here, the police officers failed to conform to Section 21 of Republic Act No. 9165 in both cases.

The prosecution's narration of events shows that it was PO1 Creer who seized the box from the Mitsubishi Lancer [49] on November 10, 2003; yet, from PSINP De Chavez's testimony, he was the one who marked the box and its contents. [50] As the ponencia points out, the time of marking and if it was done in the presence of accused-appellant and the insulating witnesses were not clear from the records. Aside from having no inventory receipt, the time when the box and the five plastic bags of shabu were photographed was similarly vague.

Pertinent to the November 11, 2003 operation, no representative from the Department of Justice witnessed the search conducted. While SPO2 Busa stated that he prepared the inventory receipt, it was not submitted as evidence. Likewise, no photographs of the articles confiscated in the warehouse were presented.[51]

Notably, even the saving clause in the Implementing Rules and Regulations cannot work in favor of the prosecution. Although noncompliance with Section 21 is not prejudicial to its cause "provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies depaiiure from the general rule." [52]

Here, the prosecution makes a frail attempt to justify its failure to secure the attendance of the witnesses, saying that the situation was urgent as Co Ching Ki and Ong had just offered 10 kilograms of shabu in exchange for their freedom.[53] Since the police officers were able to prepare the car needed to deliver the shabu, they could have just conveniently secured the presence of the insulating witnesses, which they failed to do.

The same goes for the search conducted on November 11, 2003, where no Department of Justice representative attended the search; yet, prior to the operation, the police officers were able to obtain a search warrant and plan its execution. Regrettably, aside from failing to comply with the procedures under the law, the police officers also did not bother explaining their nonconformity.[54]

Worse, the chain of custody of the dangerous drugs in both charges was replete with substantial gaps. The following elucidations in the ponencia as to the initial link are telling:

The first link in the chain is the seizure and marking, if practicable, of the seized items by the apprehending officer....

In the November 10, 2003 operation, PO1 Creer was the seizing officer. However, the one who "marked" the carton box and the five plastic bags was PSI[NP] De Chavez. Clearly, possession over the seized items from the November 10, 2003 operation was transferred at some point from PO1 Creer to PSI[NP] De Chavez. However, there is no testimony on how the integrity and evidentiary value of the seized items were preserved when possession thereof was transferred. PO1 Creer, in fact, was never presented as a witness and, as such, there is likewise no evidence on how he kept and preserved the items seized. Further, there is no testimony on exactly how PSI[NP] De Chavez marked the items seized. From the very first instance, the identity of the seized items from the November 10, 2003 operation is questionable.

As to the November 11, 2003 operation, the prosecution never alleged that the items seized from the warehouse were marked. SPO2 Busa only testified that the SOCO itemized and listed the evidence recovered, but it was he who prepared the Inventory Receipt. Again, no such inventory receipt was presented. SPO2 Busa also failed to testify how he kept and preserved the evidentiary value of the seized items prior to turning over the same to PO2 Ursita. Once more, the identity of the seized items from the November 11, 2003 operation is dubious from the first instance.[55] (Emphasis supplied)

Given that the first links in both charges were innately weak, an irreparable break in the chain exists.[56] Without the initial link, there can no longer be a chain of custody to speak of, making it unnecessary to discuss the other links.[57]

The procedure outlined under Section 21 of Republic Act No. 9165 "is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects." [58] "For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law." [59] Besides, strict compliance with Section 21 is warranted because "penal laws are strictly construed against the government[.] "[60]

Here, the unrecognized and unexplained deviations taint the identity of the corpus delicti. This Court, therefore, has no other option but to acquit accused-appellant. As explained in the ponencia, this acquittal also operates to favor Gan despite his non-appeal.[61]

III

Finally, I wish to highlight the glaring errors committed by the prosecution, the defense, and the trial court, which led to the judgment of acquittal in this case.[62] As pointed out in the ponencia:

The instant case reveals the law enforcement agents' complete ignorance of the requirements of Sec[tion] 21 of [Republic Act] No. 9165. The pieces of evidence submitted in the instant case, such as the photographs taken of the warehouse, demonstrate an utter lack of care in complying with the requirements of the law. Instead of taking a photograph of the items seized, the apprehending officers merely saw fit to take a photograph of the operatives securing the specimens recovered inside the warehouse and the operatives together with the items inside the warehouse. Further, there is nary any allegation that they even attempted to secure the required insulating witnesses for the November 10, 2003 incident. This ignorance extends to the prosecution because the records are woefully bereft of any attempt on its part to even invoke justifiable circumstances to excuse the failure of the law enforcement agents to even attempt to comply with the mandatory requirements of Sec[tion] 21 of [Republic Act] No. 9165. The utter disregard for the law demonstrated by these actors is reprehensible.

Even more reprehensible is the error committed by the [Regional Trial Court] in the penalty imposed upon Willie Gan and accused-appellant for Violation of Sec[tion] 11, Art[icle] 11 or [Republic Act] No. 9165.

Sec[tion] 11, Art[icle] II of [Republic Act] No. 9165 is clear in providing that the penalty of life imprisonment to death and a fine ranging from P500,000.00 to P10,000,000.00 is imposed where the shabu or other dangerous drugs possessed is 50 grams or more[.]

....

Despite such clear language to impose the penalty of life imprisonment, the [Regional Trial Court] imposed against Willie Gan a penalty of "twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and [...] to pay a FINE in the amount of Three Hundred Thousand Pesos ([P]300,000.00)." Willie Gan evidently did not anymore appeal the [Regional Trial Court] Decision because the lower penalty imposed was advantageous to him. Notably, the prosecution did not even question the insufficient penalty imposed against Willie Gan.

The Court also cannot help but observe that, despite this case initially involving five Chinese nationals (Jackie Ong, Co Ching Ki, Tan Ty Siew, Go Siak Ping, and Willie Gan) and accused-appellant, the sole Filipino, it ended with only accused-appellant and Willie Gan convicted by the [Regional Trial Court], with Willie Gan even meted a penalty far too lenient than that imposed by law. It bewilders the Court how the [Regional Trial Court] could have acquitted Co Ching Ki and Jackie Ong, ratiocinating that their bribe to PSI[NP] De Chavez was not proven as a fact, and, in the same breath, convict accused-appellant whose participation in the events could have only arisen if the bribe, as recounted by PSI[NP] De Chavez, occurred. Further, it truly confounds the Court how the [Regional Trial Court] could have imposed an erroneous penalty on Willie Gan and accused-appellant for Violation of Sec[tion] 11, Art[icle] II of [Republic Act] No. 9165 when there is no room for confusion in the language of the law. Even the prosecution's failure to appeal the incorrect penalty imposed on Willie Gan astounds the Court. Truly, the acquittal in the instant case is ordained by the multiple errors, whether through negligence or misfeasance, committed by the prosecution, the defense, and the trial court.[63] (Emphasis supplied, citations omitted)

An acquittal that is either directed by the trial or appellate court "is final, unappealable, and immediately executory upon its promulgation." [64] However, this fortified rule admits of an exception, which is "grave abuse of discretion that is strictly limited whenever there is a violation of the prosecution's right to due process such as

when it is denied the opportunity to present evidence or where the trial is sham or when there is a mistrial, rendering the judgment of acquittal void." [65]

In *Galman v. Sandiganbayan*, [66] this Court nullified the judgment of acquittal rendered by the Sandiganbayan in favor of all the accused in the murder of former Senator Benigno Aquino, Jr. and Rolando Galman. [67] This Court explained that double jeopardy does not set in because the proceeding conducted was a sham where "the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused." [68]

As in *Galman*, there was a mistrial in this case insofar as the pillars, essential to the administration of justice, [69] miserably fell short of the required diligence to fulfill their respective mandates.

The prosecutors do not represent "an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win every case but that justice be done." [70] They are, in all respects, servants of the law whose purpose is to ensure that the guilty shall not run free and the innocent shall not suffer. [71]

Fittingly, the prosecution should clearly provide the relevant facts before the court with meticulous attention to details in order to explain the "contradictions and [to] [seal] ... gaps in the evidence, with a view to erasing all doubt from the court's mind as to the accused's innocence or guilt." [72] Such is not the case here. With the failure of the law enforcers to strictly comply with Section 21, the prosecution must offer justifiable reasons and prove that despite nonconformity, the integrity and evidentiary value of the evidence remain. However, as pointed out in the ponencia, nothing in the records shows [73] that the prosecution attempted to do so. This runs counter to the enthusiasm and vigor expected of the prosecution in prosecuting a public action. Being "charged with the defense of the community aggrieved by a crime," [74] prosecutors must act as if they were the ones directly offended. [75]

The same holds true for the judge, who is expected to possess the utmost sense of responsibility in fulfilling the duty to guarantee a speedy and proper administration of justice at all times. Even though the resolution of a criminal case lies within the judge's exclusive competence and jurisdiction, their discretion is not unbridled and must be employed within reasonable constraints. [76] Here, it is absurd how the trial judge could have mistakenly imposed a lesser penalty despite the law being clear on the matter. Equally telling, the very persons who initiated the bribe from where the main charges emanated were conveniently acquitted at the onset of the proceedings.

We are to be reminded that for justice to abound, its scales should be balanced for both the accused vis-à-vis the State and the offended parties:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other. [77]
(Citation omitted)

An acquittal borne out of a mistrial is a void judgment, which has no legal effect. [78] Assailing a judgment of acquittal is only properly coursed through a petition for certiorari under Rule 65 of the Rules of Court. [79]

ACCORDINGLY, I vote to GRANT the appeal of accused-appellant Robert Uy y Ting.

[1] Ponencia, p. 3.

[2] Id. at 2.

[3] Id. at 3-4.

[4] Id. at 4.

[5] Id. at 4, 5.

[6] Id. at 4.

[7] Id.

[8] Id. at 5.

[9] Id.

[10] Id. at 5-6.

[11] Id. at 16.

[12] Republic Act No. 9165 (2002), sec. 5 states in part:

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

[13] Republic Act No. 9165 (2002), sec. 26 states in part:

SECTION 26. Attempt or Conspiracy. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

....

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical[.]

[14] Ponencia, p. 2.

[15] Id. at 16.

[16] Ponencia, p. 3.

[17] Section 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

....

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

....

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MOMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and

their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act[.]

[18] Ponencia, p. 3.

[19] Id. at 6.

[20] Id.

[21] Id.

[22] Id. at 6-7.

[23] Id. at 7.

[24] Id. at 8.

[25] Id. at 9.

[26] Id. at 8.

[27] Id. at 9.

[28] Id. at 11.

[29] Id. at 33.

[30] See *People v. Paz*, G.R. No. 233466, August 7, 2019 [Per J. Peralta, Third Division].

[31] Ponencia, p. 16.

[32] *People v. Ferrer*, 832 Phil. 527, 538-539 (2018) [Per J. Martires, Third Division].

[33] Id. at 539.

[34] *Luna v. People*, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division].

[35] *People v. Ferrer*, 832 Phil. 527, 540-541 (2018) [Per J. Martires, Third Division]. (Citation omitted)

[36] Id. at 541.

[37] *Luna v. People*, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division]. (Citation omitted)

[38] *Valdez v. People*, 563 Phil. 934, 954 (2007) [Per J. Tinga, Second Division].

[39] *People v. Ferrer*, 832 Phil. 527, 543-544 (2018) [Per J. Martires, Third Division].

[40] Since the pertinent incidents of this case occurred in November 10 and 11, 2003, we apply the provisions of Republic Act No. 9165 prior to its amendment by Republic Act No. 10640 in 2016. See also ponencia, p. 22.

[41] *People v. Ferrer*, 832 Phil. 527, 542(2018) [Per J. Martires, Third Division].

[42] Republic Act No. 9165 (2002), sec. 21 states in part:

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

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination[.] (Emphasis supplied)

[43] Luna v. People, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division].

[44] Id.

[45] Implementing Rules and Regulations, Republic Act No. 9165, sec. 21 (2002) states:

SECTION 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — ...

(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)

[46] Luna v. People, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division].

[47] Id.

[48] People v. Tomawis, 830 Phil. 385, 409 (2018) [Per J. Caguioa, Second Division].

[49] Ponencia, p. 4.

[50] Id. at 22.

[51] Id. at 23.

[52] People v. Paz, G.R. No. 233466, August 7, 2019 [Per J. Peralta, Third Division]. (Citation omitted)

[53] Ponencia, p. 25.

[54] Id.

[55] Id. at 28.

[56] See People v. Ferrer, 832 Phil. 527, 548 (2018) [Per J. Martires, Third Division].

[57] Id. at 549.

- [58] *People v. Tomawis*, 830 Phil. 385, 404 (2018) [Per J. Caguioa, Second Division].
- [59] *Id.* (Citation omitted)
- [60] See *People v. Ferrer*, 832 Phil. 527, 548 (2018) [Per J. Martires, Third Division].
- [61] Ponencia, p. 31.
- [62] *Id.* at 33.
- [63] *Id.*
- [64] *Cogasi v. People*, G.R. No. 249002, August 4, 2021 [Per J. Carandang, Third Division].
- [65] *Id.*
- [66] 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc].
- [67] *Id.* at 96.
- [68] *Id.* at 88.
- [69] Ponencia, p. 33.
- [70] *Dimatulac v. Villon*, 358 Phil. 328, 364 (1998) [Per J. Davide, Jr., First Division].
- [71] *Id.*
- [72] *Id.*
- [73] Ponencia, p. 31.
- [74] *Dimatulac v. Villon*, 358 Phil. 328, 364 (1998) [Per J. Davide, Jr., First Division].
- [75] *Id.* at 365.
- [76] *Id.*
- [77] *Id.*
- [78] See *Galman v. Sandiganhayan*, 228 Phil. 42, 89-90 (1986) [Per C.J. Teehankee, En Banc].
- [79] *Villareal v. Aliga*, 724 Phil. 47, 59 (2014) [Per J. Peralta, Third Division].

CONCURRING OPINION

CAGUIOA, J.:

The duty of the Court, as this democratic state's bastion of justice, to uphold the law and an accused's fundamental rights applies in each and every case. It is not dependent on extraneous factors such as the amount of dangerous drugs involved. I thus fully concur with the ponencia in acquitting the accused Robert Uy y Ting (Uy) from charges of violating Sections 5 and 11 of Republic Act (R.A.) No. 9165. There is nothing in the facts, or in the law, to support his conviction.

Brief review of the facts

Uy, a Filipino, along with five Chinese nationals, Ong Chi Seng^[1] @ Jackie^[2] Ong (Jackie Ong), Co Ching

Ki[3] @ Chai Ong (Chai Ong), Tan Ty Siao, Go Siak Ping, and James Go Ong @ William Gan or Willie[4] Gan (Gan) were all charged with violations of Sections 5 and 11 of R.A. No. 9165. The charge for Section 5 was for transporting almost 10 kilos of shabu, while the charge for Section 11 was for the rest of around 230 kilos of shabu confiscated at a warehouse.

The charges arose from an operation of the Anti-Illegal Drug Special Operation Task Force of Camp Crame, in coordination with the Bureau of Immigration, to execute a mission order against Jackie Ong. On the day of the operation, the police officers knocked on the door of Jackie Ong. Jackie Ong opened the door, and allegedly, he allowed the police officers to enter. The police officers noticed that there were three other Chinese nationals there, including Gan. The police officers asked them to produce documents evidencing their proper stay in the country, but the Chinese nationals were unable to provide any. When threatened with deportation, one of the nationals — Chai Ong — as well as Jackie Ong offered 10 kilos of shabu in exchange for their freedom. The police officers played along but still reported it to their superior. One of the police officers involved in the operation then gave his phone to Chai Ong who, after several calls, told them that the 10 kilos of shabu were ready for pickup and a vehicle was needed to deliver them. Another one of the police officers offered his own vehicle, a red Mitsubishi Lancer, for use for the said pick-up. They then proceeded to a McDonald's outlet along MacArthur Highway, where they left the car before leaving the place. After a few minutes, a man boarded the car and drove it. The other police officers followed the car until it entered a warehouse in Valenzuela. The police officers waited until the car came out of the warehouse and they followed it until it reached the previously agreed upon pick-up area. The police officers then approached the car and they noticed a box inside as the driver was about to get out. They then seized the box, opened it, and found five plastic bags of shabu inside. They thus arrested the driver of the vehicle, who was later on identified to be accused Uy. When Uy was already in custody, the police officers then applied for a search warrant which they obtained hours later, which allowed them to raid the warehouse where they got the rest of the shabu (around 230 kilos). The drugs seized from the warehouse became the basis for the charge of violating Section 11 of R.A. No. 9165. The owner of the warehouse testified for the prosecution, and he said that he leased the warehouse to Gan, but Uy helped in building communications between him and Gan.

For the defense, Uy argued that he was merely hired as Gan's driver because the latter was unfamiliar in Metro Manila. On the day of the incident, he claimed that he received a call from Gan to be at McDonald's MacArthur Highway where a red Mitsubishi Lancer would be and the keys would already be in the ignition switch. He was told to drive the same to the warehouse. Upon arriving at the warehouse, however, he was immediately accosted by police officers and brought to Camp Crame. He was brought to a room with four Chinese nationals he met for the first time.

Branch 171, Regional Trial Court of Valenzuela City (RTC) dismissed the cases against Jackie Ong and the three other Chinese nationals after they filed a demurrer to evidence. It held that there was no proof that they participated in the crimes charged. It, however, convicted Gan for violation of Section 11, and Uy for violation of Sections 5 and 11. Only Uy filed an appeal with the CA. The CA affirmed Uy's convictions. Thus, this case.

The ponencia acquits Uy for the following reasons:

1. For the Section 11 charge, there was no proof that Uy had actual or constructive possession of the drugs seized in the warehouse. It was not shown that Uy had control and dominion over the drugs or the place where they were found.
2. For both the Section 5 and Section 11 charges, the police officers failed to follow Section 21, thus casting doubt on the identity of the corpus delicti. The ponencia emphasizes that Section 21 is mandatory, regardless of the volume of the seized items. The instances of non-compliance in the case involving violation of Section 5 were: a) marking and inventory were done without the presence of any of the three required witnesses; b) there

was no Inventory Receipt; and c) the photographs of the boxes containing shabu were not clear in indicating if they were taken at the place of seizure or at the nearest police station. Meanwhile, in the Section 11 case: a) there was no Inventory Report; b) the photographs taken were merely: of the warehouse gate, exterior, and the door; of the operatives while securing the specimens recovered; a general photo of the items found inside the warehouse; and the operatives together with the items inside the warehouse. These, the ponencia holds, hardly constitute the required inventory and photography under Section 21.

3. Every other link — the second, third, and fourth — in the chain of custody was also broken.

Because the reasonable doubt affected the very corpus delicti of the offenses, the ponencia also extends the acquittal even to Gan who no longer appealed the RTC Decision. The ponencia notes, however, that the RTC clearly erred in its judgment of conviction, as it only imposed the penalty of 12 to 14 years of imprisonment, while the law clearly provided life imprisonment as penalty for illegal possession of dangerous drugs considering the volumes involved in this case.

The ponencia thus castigates the police officers for their non-compliance with Section 21, and the RTC judge for imposing the wrong penalty upon Gan. It states:

The Court also cannot help but observe that, despite this case initially involving five foreign nationals and [Uy], the sole Filipino, it ended with only [Uy] and [Gan] convicted by the RTC, with [Gan] even meted a penalty far too lenient than that imposed by law. It bewilders the Court how the RTC could have acquitted Co Ching Ki and Jackie Ong, ratiocinating I that their bribe to PSI De Chavez was not proven as fact, and, in the same breath, convict [Uy] whose participation in the events could have only arisen if the bribe, as recounted by PSI De Chavez, occurred. Further, it truly confounds the Court how the RTC could have imposed an erroneous penalty on [Gan] and [Uy] for violation of Sec. 11 of RA 9165 when there is no room for confusion in the language of the law. Even the prosecution's failure to appeal the incorrect penalty imposed on [Gan] astounds the Court. Truly, the acquittal in the instant case is ordained by the multiple errors, whether through negligence or misfeasance, committed by the prosecution, the defense, and the trial court.

The Court beseeches all actors in the administration of criminal justice in Our jurisdiction to effectively carry out their respective duties and responsibilities, keeping in mind that any failure on their part will likely result in acquittal. Such is the burden imposed on these actors, ordained by the evidentiary value required in criminal cases: proof beyond reasonable doubt.[5]

I fully concur with the acquittal and the reasons provided by the ponencia.

Uy did not have constructive
possession of the drugs
found in the warehouse

I agree with the ponencia that the prosecution failed to prove the element of possession. To recall, in acts mala prohibita like illegal possession of dangerous drugs, it is required that the accused must have intended to commit the act that is, by the very nature of things, the crime itself. Thus, in cases involving the illegal possession of dangerous drugs, the prosecution must prove that:

x x x (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the prohibited drug.[6]

At the core of these elements is the burden of the prosecution to prove the intent to possess the dangerous drug or animus possidendi.

Thus, the Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the

prosecution shows that the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his or her person, or that animus possidendi is shown to be present together with his or her possession or control of such article.[7]

Here, the prosecution utterly failed to show that Uy had possession, whether actual or constructive, of the items found at the warehouse, and that he had animus possidendi of the same. As pointed out by the ponencia, Uy was already in police custody when the search warrant was implemented at the warehouse, and therefore, Uy could not have had actual possession of the drugs found therein. There also could not be any constructive possession, as the lessee of the warehouse was Gan, not Uy. Apart from these, the prosecution was not able to establish anything that would establish any nexus between Uy, on the one hand, and the warehouse or the items found therein, on the other.

The chain-of-custody rule, as enunciated in Section 21, was violated in this case

As the Court has repeatedly discussed in previous cases, Section 21 of R.A. No. 9165 provides the specific procedure as to how the agents of the State ought to handle dangerous drugs to ensure a conviction of an accused person once brought to court. In relation to this, in the recently decided cases of *People v. Casa*[8] (*Casa*) and *Nisperos v. People*[9] (*Nisperos*), the *Comi en bane* stressed the importance of conducting an inventory of the seized items in the presence of the insulating witnesses "immediately after seizure and confiscation," bearing in mind that Section 21 and its requirements are meant to ensure the integrity of the seized item from the moment of seizure considering the susceptibility of the corpus delicti to being contaminated, or worse, planted.

In *Casa*, the Court *en banc* emphasized that the phrase "immediately after seizure or confiscation" in Section 21 means that "the inventory and taking of photographs generally must be conducted at the place of seizure." [10] The exception to this rule — meaning, the physical inventory and taking of photographs of the seized item are allowed to be conducted at the nearest police station or at the nearest office of the apprehending officer or team — is only when the police officers are able to provide justification that: (1) it was not practicable to conduct these at the place of seizure; or (2) the items seized are threatened by immediate or extreme danger at the place of seizure.[11] *Casa* is then complemented by *Nisperos* which underscored the importance of having the mandatory witnesses readily available at or near the place of apprehension to ensure that the inventory could be conducted "immediately after seizure or confiscation."

In this case, absolutely none of these requirements of Section 21 was complied with. The ponencia is thus correct in acquitting Uy from the charge in light of the serious doubts cast on the integrity of the corpus delicti. This remains true despite the fact that the amount of drugs involved in this case is not minuscule. Indeed, while the Court's strictness in imposing Section 21 was brought primarily by the ease by which planting, switching, and contamination could easily be done in drugs cases involving minute amounts and sachets, this does not mean that the requirements of the law would suddenly change simply because the danger being addressed was admittedly minimized by the amount involved in the present case.

I thus write this Concurring Opinion to commend the Court as it finally emphasizes the correct conclusion that its interpretation of the law must remain consistent regardless of the amount of dangerous drugs involved in a case. The requirements of the law are dictated by its letter, the legislative intent that animates the same, as well as the constitutional rights that are at play — and nothing else. Since the law does not distinguish between cases involving large amounts of dangerous drugs, on the one hand, and those which involve minuscule amounts, on the

other, then it is but appropriate to not make any undue distinction in the application of the law. I therefore express my full concurrence with the ponencia both as to the result and the disquisitions contained therein.

Based on these premises, I vote to GRANT the instant petition and REVERSE and SET ASIDE the Decision dated April 25, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 08320 finding accused-appellant Robert Uy y Ting guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165. Accused-appellant Uy is ACQUITTED.

[1] Also referred to as "Co Chi Seng" in some parts of the record.

[2] Also spelled as "Jacky" in some parts of the record.

[3] Also referred to as "Co Ching Seng" in some parts of the record.

[4] Also referred to as "Willy Gan" in some parts of the record.

[5] Ponencia, pp. 32-33.

[6] *People v. Lacerna*, G.R. No. 109250, September 5, 1997, 278 SCRA 561, 579-580.

[7] *People v. Peñaflorida, Jr.*, G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.

[8] G.R. No. 254208, August 16, 2022, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68582>.

[9] G.R. No. 250927, November 29, 2022.

[10] *People v. Casa*, supra note 8.

[11] *Id.*

CONCURRENCE and DISSENT

LAZARO-JAVIER, J.:

The ponencia acquits appellant Robert Uy y Ting for failure of the prosecution to establish the elements of illegal possession of dangerous drugs,[1] and due to various lapses in the chain of custody.[2] According to the ponencia, the law makes no distinction between large or small amounts of seized drugs in applying the procedural safeguards in Section 21 of Republic Act No. 9165.[3]

I concur in the result, and in the finding that the elements of Section 11 charge were not established as regards appellant.

As it does, the ponencia aptly rules that appellant must be acquitted of the Section 11 charge due to the prosecution's failure to establish the elements of the offense.[4] As appellant correctly points out, it was impossible for him to possess—either actually or constructively—the drugs seized from the Mapulang Lupa warehouse leased by his employer, Willie Gan. He emphasizes that when the drugs were seized, he was already in the custody of law enforcement operatives.[5]

Actual possession entails immediate possession and control.[6] On the other hand, there is constructive possession when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[7] Exclusive possession or control is not necessary. An accused cannot

avoid conviction even if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[8]

Control is defined as the power or authority "to manage, direct, superintend, restrict, regulate, govern, administer, or oversee"[9] while dominion pertains to "the right [to] property and the right of possession or use." [10] Certainly, appellant who was employed as Willie Gan's driver, had no such control or dominion over the warehouse. Hence, possession of the drugs in the warehouse can be ascribed only to Willie Gan, the lessee of the property, and not to appellant.

With due respect, however, I have reservations on the ponencia's general declaration that "[the] significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the corpus delicti, operationalized through strict compliance with the requirements of Section 21 of Republic Act No. 9165." [11]

For me, this pronouncement would set back the drug campaign of the government and detract from the call made by this Court [12] to prosecute the proverbial big fish, instead of the small fry. Drug syndicates, cartels, smugglers, and other big-time drug players would indubitably be emboldened by a pronouncement that regardless of the quantity of drugs seized, law enforcement officers would still have to strictly comply with chain of custody requirements.

This means that regardless of the amount of drugs involved, the rules of the game would remain unchanged. The requirement of strict compliance with the chain custody rule generally observed in the case of "small fry" would also be accorded to the "big fish." Thus, even if drug suppliers choose to deal with one kilogram or one ton or ten tons, every small slip-up on the part of law enforcement would certainly inure to their benefit. In such a scenario, the reward (i.e., the potential profit from drug-dealing) would definitely outweigh the risks (i.e., imprisonment and fine).

While the Court should not, in any way, condone poorly or irregularly conducted drug operations, it is equally true that the Court should not, through its dispositions, create an environment conducive to the proliferation of large-scale drug players.

It bears stress that the purpose of Section 21 of Republic Act No. 9165, as amended, is to protect an accused from malicious imputation of guilt by abusive police officers, [13] through substitution, planting, tampering, and switching of drug evidence. [14] More, the Court expounded that Section 21 must be strictly complied with in cases involving miniscule amounts of drugs since they are, by their fungible nature, susceptible to substitution, planting, tampering, and switching. [15]

Therefore, every application of Section 21 must proceed from a two--tiered analysis. The first tier concerns itself with the applicability of the chain of custody rule. Has the accused put forth a substantiated claim that his or her prosecution was precipitated by a malicious imputation of guilt by abusive police officers? The second tier then determines the degree of application. Are the drugs involved of such a miniscule or negligible quantity such that they are easily substituted, planted, switched, or tampered and hence would require a strict application of Section 21?

On the first tier, *People v. O'Cochlain* [16] is in point:

Where a defendant identifies a defect in the chain of custody, the prosecution must introduce sufficient proof so that the judge could find that the item is in substantially the same condition as when it was seized, and may admit the item if there is a reasonable probability that it has not been changed in important respects. However, there is a presumption of integrity of physical evidence absent a showing of bad faith, ill will, or tampering with the evidence. Merely raising the possibility of tampering or misidentification is insufficient to render evidence inadmissible. Absent some showing by the defendant that the evidence has been tampered with, it

will not be presumed that those who had custody of it would do so. Where there is no evidence indicating that tampering with the exhibits occurred, the courts presume that the public officers have discharged their duties properly.

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

As regards the second tier, we ruled in *Mallillin v. People*:^[17]

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering without regard to whether the same is advertent or otherwise not dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible. (Emphases supplied)

Too, Senior Associate Justice Marvic MVF Leonen astutely remarked in *Palencia v. People*^[18] that there is an inversely proportional relationship between the quantity of illegal drugs involved and the possibility of tampering or switching—the smaller the amounts of narcotics seized, the higher the probability of tampering and switching will be.^[19]

Based on the two-tiered analysis, it is submitted that Section 21 is inapplicable to this case. Further, even if Section 21 were to be applied, it need not be applied in the same degree reserved for cases involving miniscule amounts of drugs.

First. There is no clear and convincing proof that law enforcement operatives had reason to falsely charge appellant or plant large quantities of illegal drugs against him. As ordained in *O'Cochlain*, the law enforcement operatives who conducted the operation against appellant are presumed to have conducted said operation regularly. In the homonymous *People v. Uy*,^[20] which involved 250.36 grams of shabu, the Court stressed, viz.:

No arresting officer would plant such huge quantity of shabu mentioned in the information if only [to] incriminate an individual who was not shown to be of good financial standing and business importance.

If only to show and serve that purpose, a small quantity would be more than sufficient enough and the victim goes to jail just the same. In this case the approximate street value of the shabu confiscated is more or less Two

Hundred Thousand (P200,000.00) Pesos. The possibility of the arresting officer to raise-up that much amount if only to frame-up is quite a remote probability, lest the difficulty and enormous risk of obtaining such kind and quantity of a regulated drug. Furthermore, there was no showing that the arresting officers attempted to extort money or anything of value.

Suppose that the street value of shabu had remained unchanged from the year 2000. This means that one gram would approximately be worth PHP798.84[21] and that the 9.38 kilograms seized from appellant in this case had a street value of PHP7,493,119.20.[22]

It is highly incredible that law enforcement operatives would have invested a princely sum to procure several kilograms of shabu, when a smaller quantity would suffice to convict appellant.[23] Further, it would have been riskier and more difficult to transport and plant blocks of drugs, compared to small sachets thereof. Thus, Section 21 need not be applied in this case, since the evil sought to be avoided by the chain of custody rule (i.e., malicious imputation of guilt through substitution, planting, tampering, and switching of drug evidence), has not been shown to exist. To stress, when several kilograms of illegal drug are involved, as here, the volume of seized drugs far outweighs, if not totally negates, the possibility for planting, switching, tampering by law enforcement operatives.

Second. Certainly, 9.38 kilograms of shabu cannot be considered miniscule by any stretch of the imagination. Hence, Section 21 need not be stringently complied with. The ponencia, however, rules otherwise[24] and acquits appellant due to the law enforcement operatives' "complete ignorance" of the requirements of Section 21.[25] The ponencia adds that although non-compliance with Section 21 may be justified under the Implementing Rules and Regulations (IRR) of Republic Act No. 9165[26] the prosecution failed to justify said non-compliance.[27]

Indeed, the IRR of Republic Act No. 9165[28] contains a saving clause, which may be availed of when the prosecution is able to show that: (a) the noncompliance was justifiable, and (b) that the integrity and evidentiary value of the seized drugs was preserved.[29] The prosecution must explain why the requirements of Section 21 were not strictly complied with, and prove the justifiable grounds for noncompliance during trial.[30]

Aside from explanation offered for the absence of the necessary witnesses during the November 10, 2003 incident,[31] it does not appear from the ponencia that the prosecution attempted to justify the other alleged lapses in the chain of custody. To my mind, however, the large quantity of illegal drugs seized from appellant constitutes the explanation itself. To reiterate, the sheer volume of drugs seized speaks heavily against any allegation of planting, tampering, substitution or switching. Large quantities of illegal drugs, as discussed above, cannot be presumed to have been planted, substituted, or altered in the absence of any clear and convincing evidence. Stated differently, when large quantities of drugs are discovered, the only logical conclusion is that they are where they are not by any fault or machination attributable to our law enforcement operatives, but because some other person or persons (i.e., the accused) caused them to be there.

Appellant must be
acquitted of the
Section 5 charge

Even if the discussion in the ponencia regarding strict compliance with the chain of custody rule is omitted, the appellant may still be acquitted of violation of Section 5, in relation to Section 26(b) of Republic Act No. 9165. Section 5 of said law provides:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos

(P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In turn, Section 26(b) states:

Section 26. Attempt or Conspiracy. - Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x

The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery.[32] The offense may be committed even without consideration.[33]

Here, the first and third elements are absent because appellant was unable to pass possession of the dangerous drug to another. As found by the Court of Appeals:

PSI De Chavez testified that they followed the car until it entered a warehouse in Mapulang Lupa, Valenzuela City. According to PSI De Chavez, he parked his vehicle 15 meters away from said warehouse then waited for the car to come out. PSI De Chavez stated that the car proceeded to the pick-up area and PSI De Chavez approached the car because it did not park on the agreed upon spot. PSI De Chavez averred that he saw a box inside the car when its driver was about to get out. PSI De Chavez alleged that he instructed PO1 Richel Creer to get the box and when they opened it, five (5) plastic bags of white crystalline substance were inside the box. PSI De Chavez claimed that they arrested the driver of the car who later identified himself as Robert Uy.

Thus, before any delivery could be made-if such delivery was indeed the intent of appellant-the apprehending officers already intercepted him. Without the overt act of delivery or any other evidence showing his state of mind (i.e., his alleged intent to deliver the drugs), the Court cannot simply presume that he had intended to deliver the seized drugs to the law enforcement operatives. More, whether he delivered the drugs knowingly could not be resolved because no such delivery was made.

Implications

If we are to unreservedly accept the rule espoused by the majority, it is highly probable that the trend observed in O'Cochlain would continue, viz.:

It is unfortunate that rigid obedience to procedure on the chain of custody creates a scenario wherein the safeguards supposedly set to shield the innocent are more often than not exploited by the guilty to escape rightful punishment.

Big-time drug players would be able to weaponize Section 21 to defeat prosecutions under Republic Act No. 9165. Instead of being brought to justice, they would be allowed to roam free. Untethered. Without fear.

Worse, requiring strict compliance with Section 21 despite the large quantities of drugs involved would probably result in acquittals at the first instance. Trial judges may be tempted to invoke this case as precedent and acquit persons caught with large quantities of drugs solely based on the blanket declaration that Section 21 should be strictly applied to all cases, and nothing else. And since a judgment of acquittal is immediately final and executory, the prosecution would be barred from appealing lest the constitutional prohibition against double

jeopardy be violated.[34] At that point, the only remedy would be a petition for certiorari under Rule 65, but only on extremely limited grounds, namely: (a) whenever there is a violation of the prosecution's right to due process, such as when it is denied the opportunity to present evidence; (b) where the trial is a sham; or (c) when there is a mistrial, rendering the judgment of acquittal void.[35] In effect, drug convictions, which have not been the easiest to secure, would be placed even further away from the grasp of the prosecution.

Further, we might be opening the doors to drug syndicates, and cartels conniving with members of the criminal justice system, (e.g., the prosecution, and law enforcement operatives, among others) to ensure that every case involving their nefarious business interests is tainted with slight violations of the chain of custody rule. As a safeguard though, the ponencia harks back to *People v. Lim*[36] which empowers an investigating fiscal to conduct further preliminary investigation to elicit the reasons and justifications for the noncompliance of law enforcement with Section 21. This would supposedly "weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases." As such, failure to provide a justification for noncompliance with Section 21 will not immediately result in an acquittal.

In my view, *Lim* does not directly address the issue that requiring strict compliance with Section 21, regardless of the amount of drugs involved, would lead to acquittals. Indeed, it is not guaranteed that all investigating fiscals would avail of the power granted to them under *Lim*. Whether they advertently or inadvertently fail to do so, then the drug case would be doomed at the outset, and the large-scale purveyor of drugs would go scot-free. This is a stark example of how the criminal justice system can be abused. Investigating fiscals could be manipulated by big-time drug dealers to ignore *Lim* and proceed with a weak case.

In all, we cannot breed an environment which allows every small misstep on the part of law enforcement and members of the criminal justice system to be overblown and ultimately result in acquittals. The chances of catching the big fish, slim as they already are, would further be reduced or even eliminated.

A final word

Surely, at some point, persons in possession of enormous quantities of illegal drugs must be held to account for they are differently situated than those who are accosted with only miniscule amounts of illegal drugs.

The rule is that like cases must be decided alike.[37] Conversely, when cases exhibit different circumstances and factual milieus, they need not be decided in the same way. In drug cases, when there is a substantial discrepancy between the amounts of drugs involved, the Court is not obligated to employ the chain of custody rule with the same stringency as in cases of minuscule amounts. After all, the difference between 0.015 grams of illegal drugs and 100 kilograms, is like night and day. Although they may share the same molecular composition, the similarity ends there as the evils which Section 21 of Republic Act No. 9165 seeks to guard against, become more and more negligible once the quantity of drugs involved increases. Therefore, substantial compliance must be deemed sufficient, as long as the elements of the drug offense charged are proven beyond reasonable doubt.

Too, it should be stressed that the chain of custody is an evidentiary rule that chiefly pertains to the weight of evidence—a matter which the courts have exclusive prerogative to decide.[38]

x x x Any missing link, gap, doubt, challenge, break, problem, defect or deficiency in the chain of custody goes to the weight of the evidence, not its admissibility. Once admitted, the court evaluates it and, based thereon may accept or disregard the evidence. Strict compliance with the requirements of Section 21 (1) of R.A. No. 9165 may not always be possible under field conditions; the police operate under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. Like what have been done in past cases, we must not look for the stringent step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the

integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused. The identity of the confiscated drugs is preserved when the drug presented and offered as evidence in court is the exact same item seized from the accused at the time of his arrest, while the preservation of the drug's integrity means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.[39] (Emphases supplied; citations omitted)

As such, law enforcement operatives should be given sufficient leeway in the conduct of operations involving large quantities of illegal drugs. In this light, the Court must desist from issuing a general declaration that in all drug cases, even those which involve large amounts of illegal drugs, the chain of custody rule must be strictly complied with. Our courts should instead be directed to calibrate the degree of compliance with the chain of custody rule on a case-by-case basis, taking into consideration the quantity of the drugs involved and the unique circumstances faced by law enforcement operatives.

All told, I vote to ACQUIT appellant not on the basis of noncompliance with the chain of custody rule, but only because of the prosecution's failure to establish the elements of the offenses charged.

[1] Ponencia, pp. 16-17.

[2] Id. at 18-32. .

[3] Id. at 19.

[4] Id. at 17.

[5] *People v. Trinidad*, 742 Phil. 347 (2014) (Per J. Perez, First Division).

[6] Id. at 357.

[7] Id.

[8] Id. at 357-358.

[9] *Black's Law Dictionary*, p. 399 (4th Ed).

[10] Id. at 574 (4th Ed).

[11] Ponencia, p. 16.

[12] *People v. Holgado*, 741 Phil.78 (2014) [Per J. Leanen, Third Division].

[13] See *People v. Jimenez*, G.R. No. 251576 (Notice), June 21, 2021; *People v. Lorenzo*, G.R. No. 233108 (Notice), May 12, 2021; *People v. Dimaano*, 780 Phil. 586, 605 (2016).

[14] See *People v. Gonzales*, 708 Phil. 121 (2013) [Per J. Bersamin, First Division].

[15] See *Mallillin v. People*, 576 Phil. 576, 587-588 (2008) [Per J. Tinga, Second Division]; See also *People v. Holgado*, *supra*.

[16] 845 Phil. 150, 201-202(2018) [Per J. Peralta, Third Division].

[17] *Supra* note 15; See also *People v. Holgado*, *supra*, at 92.

[18] 940 Phil. 525 (2020) [Per J. Leonen, Third Division].

[19] Id. at 560.

[20] 392 Phil. 773, 795 (2000) [Per J. Kapunan, First Division].

[21] `PHP200,000 ÷ Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman"; mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} 250.36grams = PHP798.84/gram.`

[22] 9,380grams x PHP798.84 = PHP7,493, 119.2

[23] *People v. Uy*, *supra*.

[24] Ponencia, pp.19-20.

[25] *Id.* at 29.

[26] IRR of Republic Act No. 9165, Section 21(a).

[27] Ponencia, pp. 24-26.

[28] IRR of Republic Act No. 9165, Section 21(a), xxx 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 property preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] x x x

[29] See *People v. Acub*, 853 Phil. 171, 185 (2019) [Per J. Leonen, Third Division].

[30] *Id.* citing *People v. Almorfe*, 631 Phil. 51 (2010) [Per J. Carpio Morales, First Division] and *People v. De Guzman*, 630 Phil. 637 (2010) [Per J. Nachura, Third Division].

[31] Ponencia, pp. 25-26.

[32] *People v. Romero* G.R. No. 248785 (Notice), October 7, 2020 citing *People v. Maongco*, 720 Phil. 488, 502 (2013) [Per J. Leonardo-De Castro, First Division].

[33] *Id.*

[34] *Garcia v. Garcia*, G.R. No. 223426 (Notice), June 14, 2021 citing *Gomez v. People*, G.R. No. 216824, November 10, 2020 [Per J. Gesmundo, En Banc].

[35] *Id.*

[36] 839 Phil. 598 (2018) [Per J. Peralta, En Banc].

[37] *Villena v. Spouses Chavez*, 460 Phil. 818, 820 (2003) [Per J. Panganiban, Third Division].

[38] See *People v. O'Cochlain*, *supra*, at 205.

[39] *Id.* at 205, 207-208.

SEPARATE CONCURRING OPINION

LOPEZ, M., J.:

The application and legal consequences of the exacting requirements of the chain of custody rule are not dependent on the quantity and quality of the confiscated dangerous drugs but are contingent on the nature and gravity of the procedural lapses on the part of the law enforcement agencies. The courts must sift through between minor deviations and gross disregard of the rule.

The ponencia reversed the conviction of accused-appellant Robert Uy y Ting (accused-appellant) for the crimes of illegal delivery and Illegal possession of dangerous drugs for failure of the prosecution to prove the identity of the corpus delicti consisting of 128,4647 kilograms aggregate weight of methamphetamine hydrochloride and 111.200 kilograms of chloromethamphetamine hydrochloride. Specifically, the ponencia pointed out that "[t]he seizure of a significant or large amount of dangerous drugs does not detract from the obligatory nature of proving the corpus delicti, operationalized through strict compliance with the requirements of Sec. 21 of R.A. No. 9165." [1] Here, there is no evidence that the law enforcers complied with the mandatory requirements of law. There are material gaps in all links of the chain of custody. Moreover, the prosecution failed to present justifiable reasons for non-compliance and to preserve the integrity and evidentiary value of the seized items.

I concur with these findings.

Section 21 of Republic Act (RA) No. 9165 [2] outlined the rule on chain of custody which refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The record of movements and custody of the seized items shall include the identity and signature of the person who held temporary custody of the seized items, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. The purpose is to authenticate the evidence as exactly the evidence confiscated from the accused that has not been substituted or altered up to its appearance in court. [3] The chain of custody rule applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant, thus:

A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation. Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant.

x x x x

Based on verba legis, [Section] 21 of [RA] No. 9165, as amended, operates as long as there is seizure and confiscation of drugs. It does not distinguish between warrantless seizure of the drugs in a buy-bust operation and in the implementation of a search warrant. Accordingly, in every situation where there is a seizure and confiscation of drugs, the presence of the accused, or his/her representative or counsel, a representative from the media and the [Department of Justice (DOJ)], and any elected public official, is required during the physical inventory and taking of photographs of the seized drugs, because they shall be required to sign the copies of the inventory and be given a copy thereof. [4] (Emphasis supplied)

Corollarily, an unbroken chain of custody of the illegal drugs must be established through the following linkages: first, the seizure and immediate marking of the illegal drugs recovered from the accused by the apprehending officer; second, the turnover of the seized items by the apprehending officer to the investigating officer; third, the investigating officer's transmittal of the illegal drugs to the forensic chemist for laboratory examination; and fourth, the submission of the marked illegal drugs from the forensic chemist to the court. [5] The prosecution bears the burden of showing that the dangerous drugs seized from the accused are uncompromised as several officers

directly handled or had temporary custody of the items. The Implementing Rules and Regulations (IRR) of Section 21(a) of RA No. 9165 offers flexibility in the chain of custody rule such "that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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[.]" Later, RA No. 10640[6] amended Section 21 of RA No. 9165 and expressly incorporated the saving clause as part of the law which ensures that not every case of non-compliance with the chain of custody rule will permanently prejudice the prosecution of drug offenses. Yet, the prosecution must recognize the procedural lapses and establish as facts the justifiable ground for non-compliance and proof of preservation of the integrity and evidentiary value of the seized items. The courts cannot presume what these grounds are or that they even exist.[7]

On this point, the Court reiterates that the stringent application of Section 21 of RA No. 9165 was not meant to thwart the legitimate efforts of the law enforcers. The procedural lapses in the chain of custody rules are not ipso facto fatal to the prosecution's case so long as the integrity and evidentiary value of the seized items have been preserved. The courts must thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law,[8] viz.:

Though we have recognized that "[m]inor deviations from the procedures under (RA No.) 9165 would not automatically exonerate an accused," we have also declared that "when there is gross disregard of the procedural safeguards prescribed in the substantive law ([RA No.] 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence." We then ruled that such doubt "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." Accordingly, "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."

x x x x

We reiterate that [RA No.] 9165 has a strict mandate for the arresting officers to comply with the afore-quoted procedural safeguards. We further note that, before the saving clause provided under it can be invoked, Section 21 (a) of the IRR requires the prosecution to prove the twin conditions of (a) existence of justifiable grounds and (b) preservation of the integrity and the evidentiary value of the seized items.[9] (Emphasis supplied)

Indeed, a survey of jurisprudence reveals that the Court did not hesitate to acquit the accused given the gravity of the procedural lapses on the part of the law enforcement agencies regardless of the large quantity of the confiscated dangerous drugs. In *Amida v. People*,[10] petitioner was charged with illegal sale of 4.00 kilograms of cocaine but was acquitted because the marking and inventory of the seized items were conducted in a resort which was not the nearest police station or the nearest office of the apprehending officer or team contemplated by the law. The Court likewise rejected the explanation of the law enforcers that they were unfamiliar with the place of arrest and that it was a rebel-infested area. The numerical superiority of the buy-bust team negates the unfounded fear of rebel attack. Furthermore, the prosecution did not offer in evidence the chain of custody report and the turnover of the confiscated evidence report which are essential to confirm how the seized items passed from one person to another. In *People v. Enad*,[11] the accused was charged with illegal sale of 2,722.00 grams of dried marijuana. The Court acquitted the accused because the prosecution utterly failed to prove the identity of the person who actually marked the seized drugs. There was also no evidence that the marking happened in the presence of the accused. The prosecution was even unsure who between the two police officers turned over the items to the investigating officer. The identities of the desk officer and investigator who allegedly delivered the

items to the forensic chemist remained unknown. The seized drugs were not photographed and the law enforcers failed to secure the attendance of a representative from the DOJ during the inventory. In *People v. Yusop*,^[12] the accused was charged with illegal transportation of 1,481.46 grams of shabu but was likewise acquitted due to the absence of a DOJ representative during the inventory and photography of the seized drugs. There was no effort at all on the part of the prosecution to explain the non-compliance or to show that earnest efforts were in fact exerted to secure the presence of the insulating witness. In *People v. Sitco*,^[13] the accused was charged with illegal possession of 887.01 grams of marijuana and 235.84 grams of shabu but was acquitted because of a number of disturbing questions as to the identity and custody of the confiscated drugs. It was unclear who conducted the inventory of the seized items. There were no details as to who received the specimens and brought them to the forensic chemist. Likewise, there is uncertainty as to who took custody of the specimens before they were presented in court. The missing links in the chain of custody raised doubt as to the identity and evidential value of the dangerous drugs.

In *People v. Ramos*,^[14] the accused was charged with illegal sale of 47.3752 grams of shabu. The Court acquitted the accused because the physical inventory and photograph of the seized items were conducted in the regional office and not at the place of the buy-bust operation. The alleged commotion at the crime scene was insufficient justification for non-compliance given the failure of the prosecution to expound how the incident threatened the safety of the operatives. The prosecution likewise did not explain the absence of the DOJ representative as one of the insulating witnesses. In *People v. De Guzman*,^[15] the accused was charged with illegal possession of 41.47 grams of marijuana but was acquitted because the testimonies of the law enforcers were silent on the details regarding the handling and disposition of the seized items. The police officers failed to disclose the identity of the person/s who had custody and possession of the confiscated items after their seizure, or that they themselves had retained custody of the drugs from the place of arrest until they reached the police station. Moreover, the identities of the persons who turned over the items to the forensic chemist and who had custody of the specimens after examination and before presentation in court were unknown. Lastly, the crime laboratory turned over the custody of the seized items to an unnamed person at the prosecutor's office before they were submitted in evidence to the trial court. The Court noted that prosecutor's office is not a part of the chain of custody and has no business in the handling of dangerous drugs. In *People v. Lumaya*,^[16] the accused was charged with illegal possession of 20.44 grams of shabu but was acquitted because of the inconsistency in the number of confiscated sachets. The Information and inventory report indicated 11 sachets which is less than the 18 sachets shown in the photographs. However, the prosecution did not explain the disparity. The Court cautioned that the discrepancy, if left unaccounted for, clearly renders suspect the integrity and evidentiary value of the seized drugs. It would not only be difficult to determine the actual identity of the drugs for which the accused was charged but the numerical variance would also arouse suspicions of planting and/or switching the evidence. Also, the police officers did not mark the sachets at the place of confiscation and offered no justification for the deviation.

On the other hand, in *People v. Vastine*,^[17] the Court convicted the accused regardless of the large quantity of the confiscated dangerous drugs. The Court noted the minor deviation and held that the prosecution offered a justifiable ground for non-compliance and proof of preservation of the integrity and evidentiary value of the seized items. In that case, the accused was charged with illegal sale of 2,000.71 grams of cocaine. The police officers recognized the procedural lapse and explained that they could not secure the attendance of the DOJ representative despite earnest efforts due to the time-sensitive nature of the buy-bust operation. The authorities immediately conducted the entrapment after the illegal transaction was reported to their office. More importantly, the prosecution established all the links in the chain of custody with the presence of the other two insulating witnesses, thus:

In this case, the police officers recognized the absence of a representative from the DOJ, and provided the explanation that despite earnest efforts, they failed to secure the latter's presence. Moreover this Court recognizes the time-sensitive nature of the buy-bust operation in this case. The information about the transaction was known on 31 July 2011, and the buy-bust operation was conducted on 01 August 2011.

In this line, it should be considered that the presence of the witnesses from the DOJ, media, and from public elective office was intended to protect against the possibility of planting, contamination, or loss of the seized drug. Apart from the absence of a witness from the DOJ the prosecution established the requirements of the chain of custody rule with the presence of the other two insulating witnesses required under Sec.21.[18]

In *People v. Lacson*,^[19] the Court convicted the accused of illegal transportation of 4,540.1 grams of shabu and ruled that the law enforcers exemplarily showed how strict compliance with the requirements of Section 21 of RA No. 9165 could easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other. In that case, the law enforcers ensured that the marking, inventory, and photography took place immediately after the arrest of the accused and seizure of the dangerous drugs. The items were then turned over to the forensic chemist who issued the report within 24 hours after receipt of the request. Thereafter, the illegal drugs were presented before the trial court. Inarguably, all the links in the chain of custody were duly established which left no doubt as to the integrity and evidentiary value of the seized dangerous drugs, to wit:

The apprehending team in this case, through ample preparation, was able to comply with the requirements of Section 21, Article II of [RA No.] 9165, which, to stress, ensures that the corpus delicti remains untampered.

xx x

x x x x

As exemplified in this case, which is decided prior to [RA No.] 10640, the apprehending officers were able to meet the requirements mandated by law in spite of them having barely 24 hours to plan the entrapment operation. Particularly commendable is the fact that they ensured the presence of the three insulating witnesses who witnessed the marking of the seized prohibited drugs and other seized items, the preparation of the corresponding inventories, and the taking of the photographs. Noteworthy also is the fact that the marking, preparation of the inventory, and taking of the photographs of the seized drugs and items took place immediately after the arrest and seizure. Thereafter, the seized prohibited drugs were turned over by [Intelligence Officer 2] Alarde to Chemist Arcos within 24 hours, and the latter came up with her report within 24 hours after receipt of the request. Without question, therefore, all the links in the chain of custody in this case were duly established which leaves no doubt as to the integrity and evidentiary value of the seized prohibited drugs which were later on presented before the trial court.

This case is therefore an exemplar of how strict compliance with the requirements of Section 21, Article II of [RA No.] 9165 can easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other.^[20] (Emphasis and italics supplied)

In this case, the law enforcers exhibited gross lapses in the chain of custody despite large quantities of confiscated drugs involved. Notably, accused-appellant was charged with illegal delivery of 128.4647 kilograms of shabu and illegal possession of 111.200 kilograms of chloromethamphetamine hydrochloride. As regards the alleged illegal delivery of dangerous drugs, it was unclear when the law officers marked the seized items and if the marking was done in the presence of accused-appellant and the three insulating witnesses. There was also no inventory receipt and the photographs were unclear if they were taken at the place of seizure, or if not practicable, at the nearest police station or the nearest office of the apprehending team. As to the alleged illegal possession of dangerous drugs, the prosecution did not explain the absence of the DOJ representative as one of the insulating witnesses. The inventory receipt and photographs of the seized items were not submitted in evidence. More telling

are the material gaps in the chain of custody rule in both cases. As discussed above, there are serious irregularities in the first link concerning the marking, inventory, and photography of the seized items. With respect to the second link, the investigating officer was unidentified and there was no available testimony as to the turnover of the seized items from the apprehending officer to the investigating officer. The prosecution also did not present details of the third link as to how the investigating officer delivered the specimens to the forensic chemist. Lastly, there is a gap in the fourth link absent any account how the specimens were kept until they were presented to the trial court. Worse, the prosecution miserably failed to establish the presence of justifiable grounds and prove that the integrity and evidentiary value of the seized items were preserved. Taken together, the errors of the law enforcers and the prosecution can hardly be considered as simple procedural lapses as they amounted to a systematic and deliberate disregard of the safeguards drawn by law. Hence, accused-appellant must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody which in turn gave reasonable doubt on the authenticity of the evidence presented in court.[21]

To end, let this case be a powerful constant reminder that the provisions of Section 21 of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very corpus delicti of the crime. The history of liberty has largely been the history of the observance of procedural safeguards.[22] The Judiciary as stalwart protector of the Constitution must ensure that these safeguards are strictly carried out.

FOR THESE REASONS, I vote to GRANT the appeal.

[1] Ponencia, p. 16.

[2] 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.

[3] See Philippine National Police Standard Operating Procedure No. 2012-004, entitled "STANDARD OPERATING PROCEDURE ON RECOVERED PERSONAL EFFECTS OF VICTIMS." approved on December 6, 2012.

[4] Tumabini v. People, G.R. No. 224495, February 19, 2020, 933 SCRA 60, 77-78 [Per J. Gesmundo, Third Division].

[5] People v. Bugtong, 826 Phil. 628, 638-639(2013) [Per J. Del Castillo, First Division]; and People v. Enad, 780 Phil. 346. 358-359 (2016) [Per J. Peralta, Third Division].

[6] 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.

[7] People v. Sitco, 634 Phil. 627, 642-643 (2010) [Per J. Velasco, Jr., Third Division]; People v. De Guzman, 630 Phil. 637, 648-649 (2010) [Per J. Nachura, Third Division]; and People v. Denoman, 612 Phil. 1165, 1175-1176 (2009) [Per J. Brion, Second Division].

[8] People v. Umipang, 686 Phil. 1024, 1037 (2012); and People v. Ulama, 678 Phil. 861, 876-877 (2011) [Per J. Leonardo-De Castro, First Division].

[9] *People v. Ancheta*, 687 Phil. 569, 580-581 (2012) [Per J. Sereno, Second Division]; citations omitted.

[10] G.R. No. 254489, January 11, 2021 [Notice, Second Division].

[11] *Supra* note 5.

[12] G.R. No. 224587, July 28, 2020, 94 SCRA 346 [Per J. Reyes, Jr., First Division].

[13] *Supra* note 7.

[14] G.R. No. 236455, February 19, 2020, 933 SCRA 291 [Per C.J. Peralta, First Division].

[15] 825 Phil. 43 (2018) [Per J. Del Castillo, First Division].

[16] 827 Phil. 473 (2018) [Per J. Perlas-Bernabe, Second Division].

[17] G.R. No. 258328, November 29, 2022, <https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

[18] *Id.*

[19] G.R. No. 229055, July 15, 2020, 943 SCRA 195 [Per J. Caguioa, First Division].

[20] *Id.* at 212-216.

[21] *People v. Bautista*, 82 Phil. 487, 499-500 (2012) [Per J. Bersamin, First Division].

[22] *Mc Nabb v. United States*, 318 U.S. 332 (1943) [Per J. Frankfurter].

<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

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<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

SEPARATE CONCURRING OPINION <https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy/> [Per J. Zalameda, First Division].

KHO, JR. J.:

I concur in the result.

Accused-appellant Robert Uy y Ting (Uy), who was hired as driver by co-accused Willie Gan (Gan), should be acquitted in both: (i) Criminal Case No.1179-V-03 for Illegal Transportation of Dangerous Drugs, as defined and penalized under Section 5 in relation to Section 26 (b) of Republic Act No. (RA) 9165; and (ii) Criminal Case No. 1180-V-03 for Illegal Possession of Dangerous Drugs, as defined and penalized under Section 11, Article II of RA 9165.

By force of legal fiction, Uy's co-accused in Criminal Case No. 1180-V-03 — particularly, Gan, the lessee of the warehouse where the 119.080 kilograms of methamphetamine hydrochloride and the 111.200 kilograms of chloromethamphetamine hydrochloride were seized — must regrettably be acquitted for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 in accordance with Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure.

In this regard, I write this Opinion to explain the reasons behind my concurrence with the ponencia in the acquittal of Uy and Gan.

With respect to Uy, it is my considered view that he should be acquitted of the foregoing crimes charged on the grounds that: first, the elements of the crimes charged were not established beyond reasonable doubt; and second, the prosecution miserably failed to prove that the integrity and evidentiary value of the corpus delicti of the foregoing cases have been adequately preserved.

As to Gan, who did not appeal his conviction by the trial court that imposed a penalty on him that is substantially lower than what the law clearly provides for illegal possession of large amount of dangerous drugs, the acquittal of his co-accused Uy on the latter ground would benefit him.

I.

In every criminal conviction, the prosecution is required to prove two (2) things beyond reasonable doubt: first, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and second, the fact that the accused was the perpetrator of the crime.[1]

Under Section 2, Rule 133 of the Rules on Evidence, "[p]roof 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."

In *Macayan, Jr. v. People*,[2] the Court, through Associate Justice Marvic M.V.F. Leonen (now Senior Associate Justice), reiterated that the requirement of proving an accused's guilt by proof beyond reasonable doubt in criminal cases is rooted on the presumption of innocence accorded to all by no less than the Constitution, to wit:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[3]

Relatedly, in *People v. Claro*,[4] the Court, through Associate Justice (and eventual Chief Justice) Lucas P.

Bersamin, elucidated on what constitutes "reasonable doubt", as follows:

[Reasonable doubt] is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.[5] (Emphases in the original)

Guided by the foregoing, I am of the view that the prosecution failed to establish by proof beyond reasonable doubt the elements of the crimes charged in both Criminal Case No.1179-V-03 and Criminal Case No.1180-V-03, which thus, necessitates the acquittal of Uy in both crimes.

In Criminal Case No. 1179-V-03, the
Prosecution Failed to Establish
Beyond Reasonable Doubt the Fact
that Uy was Transporting Illegal
Drugs.

"The essential element of [Illegal Transportation of Dangerous Drugs] is the movement of the dangerous drugs from one (1) place to another. To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drugs exists."[6]

In this regard, jurisprudence provides that "the very act of transporting [dangerous drugs] is malum prohibitum punishable under RA 9165,"[7] and as such, "the fact of transportation [of dangerous drugs] need not be accompanied by proof of [the accused's] criminal intent, motive, or knowledge of the contents thereof[8] and that "proof of ownership and intent are not essential elements of the crime of [Illegal Transportation of Dangerous Drugs]."[9]

The foregoing notwithstanding, there are cases wherein the Court has clarified that: first, an uncorroborated claim of an accused of lack of knowledge that he/she had dangerous drugs in his possession is insufficient; and second, to warrant an acquittal, the accused must show that his/her act of transporting the package containing dangerous drugs inside the vehicle was done without the intent to possess, i.e., without knowledge that what he/she possessed was a dangerous drug.[10]

In this regard, in *People v. Quijano*,[11] the Court, through Associate Justice Amy C. Lazaro-Javier, expounded on animus possidendi, to wit:

Animus possidendi is a state of mind. It is determined on a case--to-case basis taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances. It must be inferred from the attendant events in each particular case. A mere unfounded assertion of the accused that he or she did not know that he or she had possession of the illegal drug is insufficient. Animus possidendi is then presumed because he or she was thereby shown to have performed an act that the law prohibited and penalized. Possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an

accused in the absence of a satisfactory explanation. Consequently, the burden of evidence is shifted to the accused to explain the absence of knowledge or animus possidendi.

Evidence to be given credence must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. The issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. There is no test to the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[12] (Emphasis supplied)

In criminal cases where animus possidendi is an issue, the same must likewise be established by proof beyond reasonable doubt. To reiterate, it is settled that "[i]n this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit." [13]

In this case, it is well to note the following circumstances which led to Uy's arrest, which in turn, resulted in the filing of Criminal Case No. 1179-V-03 against him:

<<https://sc.judiciary.gov.ph/cases/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy-y-jalameda>>[per=j.j. first division].

1.

Uy was hired by Gan as a mere part-time driver;

2.

While he helped Gan to look for a warehouse to lease, he was not a co-lessee thereto and there is no showing that he was privy to the dealings that Gan engaged in insofar as the operations of the warehouse is concerned, as evinced by his claims that he never visited nor heard the conversations that Gan had with the latter's associates;

3.

The only knowledge that he has with the operations of the warehouse is that he saw a container van deliver several furniture and drums of soap labeled with "Bleaching Powder";

4.

He had not driven for Gan from October 2003 to November 9, 2003;

5.

On November 10, 2003, when Gan suddenly contacted him to go to McDonald's in South Supermarket along McArthur Highway in Valenzuela City, to retrieve the red Mitsubishi Lancer car provided to him, and drive it to the warehouse, Uy presumably did so in accordance with his duties as part-time driver;

6.

At the warehouse, Gan loaded a box in the backseat and rode in the car with him;

7.

Gan instructed Uy to drop him off at a nearby Mercury Drug Store and bring the car back to McDonald's; and

8.

Upon arrival at McDonald's, the apprehending officers proceeded to arrest him and he even questioned them as to the reason/s for his arrest.[14]

The totality of these circumstances shows that Uy had no knowledge — and hence, absence of *animus possidendi* — that the contents of the box that Gan had put in the backseat indeed contained dangerous drugs. It could very well be that Uy, as a part-time driver whom his employer had not contacted for a while, was just eager to follow the latter's instructions, not knowing that to do so would lead to his arrest.

In this relation, the equipoise rule provides that "where inculpatory facts and circumstances are capable of two [(2)] or more interpretations, one of which is consistent with the innocence of the accused and the other consistent with his[her] guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction." [15]

Thus, in view of the reasonable doubt as to the existence of *animus possidendi* taking into consideration the applicability of the equipoise rule, Uy must be acquitted in Criminal Case No. 1179-V-03 for Illegal Transport of Dangerous Drugs.

In Criminal Case No. 1180-V-03, the
Prosecution Failed to Establish All
the Elements of the Crime Charged.

The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (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.[16]

In this regard, case law instructs that "[p]ossession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. Constructive possession, on the other hand, exists when the drug is under the dominion and control of the accused or when the latter has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his or her right to exercise control and dominion over the place where the contraband is located, is shared with another.[17]

Here, the ponencia correctly pointed out that the prosecution failed to prove the crucial element of possession with respect to Uy, either actual or constructive, considering that:

<<https://sc.judiciary.gov.ph/258328-people-of-the-philippines-vs-jose-vastine-y-gibson-jimmy-j-zalameda>, first division].

1.

there is no actual possession as Uy was already in police custody when the warehouse containing dangerous

drugs was searched on November 11, 2003; and

2.

there is likewise no constructive possession, considering that Uy was neither the owner nor the lessee of such warehouse.[18]

As such, Uy's acquittal in Criminal Case No. 1180-V-03 is proper as well.

The Prosecution Failed to Establish
that the Integrity and Evidentiary
Value of the Corpus Delicti in
Criminal Case No. 1180-V-03 were
Properly Preserved.

To sustain a conviction for violations of RA 9165, it is of utmost importance to establish with moral certainty the identity of the confiscated drug. To remove any doubt or uncertainty on the identity and integrity of the seized drug, it must be shown that the substance recovered from the accused is the same substance offered and identified in court.[19] Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[20]

Under ordinary circumstances, the prosecution must show an unbroken chain of custody over the dangerous drugs seized. 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 corpus delicti.[21] Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.[22] Currently, the chain of custody rule for illegal drug cases is found in Section 21, Article II of RA 9165 with the other links supplied by jurisprudence.

However, under exceptional circumstances—particularly, in instances where the illegal drugs seized are of a considerable volume—the integrity and evidentiary value of the confiscated drugs may be proven by evidence other than through the chain of custody rule.

In this regard, I find it fitting to reiterate my views in my Opinions in both *People v. Casa (Casa)*[23] and *People v. Nisperos (Nisperos)*,[24] the relevant portions of which identically read:

The Second Proviso in Section 21 of RA 9165 as amended by Section 1 of RA 10640, states:
"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 and custody over said items."

In *People v. Luna*, the Court provided for two (2) requisites before the prosecution can invoke the Second Proviso in order not to render void and invalid the seizure and custody of the confiscated drugs, to wit:

1.

The existence of "justifiable grounds" allowing departure from the rule on strict interpretation; and

2.

The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

Under the first requisite, before the prosecution can invoke the Saving Clause in order to allow departure from the strict interpretation of the chain of custody rule in illegal drugs cases, the apprehending officer/team should recognize the deviations or lapses made in the chain of custody and that they are able to justify the same before the trial court.

In this connection, I most respectfully submit that the trial court should consider the justifications offered by the apprehending officer/team and evaluate them in the light of the actual circumstances attendant from the time of seizure of the drugs up to the presentation of the same in court as evidence.

One of the circumstances that the trial court should consider whether the chain of custody rule should be strictly construed against the prosecution is the weight and/or amount of the illegal drugs seized from the accused.

As early as in *Mallillin v. People* (Mallillin), which involved "two (2) plastic sachets of methamphetamine hydrochloride [or] 'shabu' with an aggregate weight of 0.0743 gram, and four empty sachets containing 'shabu' residue x x x," the Court explained the rationale why strict compliance of the chain of custody rule is being required in relation to the weight and/or amount of the illegal drug seized, to wit:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

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

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham v. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was

excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.(emphases and underscoring supplied)

Pursuant to Mallillin's instructions, the Court has consistently ruled in a catena of cases that trial courts should exercise strict or heightened scrutiny when minuscule amounts of illegal drugs are presented into evidence, which I fully agree with. This is because in instances when minuscule amounts of illegal drugs are involved, the probability of tampering, alteration, substitution, exchange or switching of the illegal drugs is at its highest — the very evil sought to be prevented by the chain of custody rule. As explained by the Court in *People v. Olarte*, "[n]arcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule." This provides the rationale of the chain of custody rule.

On the other hand, if the illegal drugs offered as evidence involve large amounts of illegal drugs, I respectfully submit that the trial court should judiciously determine, based on the evidence of the prosecution and the circumstances of each case, whether there is a high probability of tampering, alteration, substitution, exchange or switching of the same.

In the event the trial court is fully satisfied that the probability of tampering, alteration, substitution, exchange or switching of the large amount of illegal drugs offered in evidence is highly unlikely, which is a question of fact, I respectfully submit that strict compliance of the four (4) links in the chain of custody rule should be dispensed with, as the rationale for its application disappears

In this instance, the justifiable ground referred to in the first requisite of the Saving Clause will now consist of the large amount of illegal drugs itself, considering that, as proven by the prosecution to the full satisfaction of the trial court, the same could not have been tampered, altered, substituted, exchanged or switched. The continued application of strict compliance of the four (4) links in the chain of custody rule when large amounts of illegal drugs are involved goes against the intent and purpose of RA 9165, as amended.

Notwithstanding my submission that the required strict observance of the chain of custody rule should be dispensed with if the trial court is satisfied that the probability of tampering, alteration, substitution, exchange or switching of the large amount of illegal drugs offered in evidence is highly unlikely, I submit that the second requisite of the Saving Clause — that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team — must nevertheless still be proven and established by the prosecution

beyond reasonable doubt as proof of corpus delicti by credible evidence other than through the strict application of the chain of custody rule to justify the conviction of the accused and the severe penalties to be imposed upon the accused under RA 9165, as amended.

x x x x

3. The Saving Clause - in case of any lapse or deviation from the chain of custody rule:

a. The prosecution must acknowledge the lapse or deviation and present a justification therefor. If the deviation is justified and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the justified deviation shall not render void and invalid such seizures and custody over said items.

b. In cases involving large amount or volume of illegal drugs, the trial court should judiciously determine, based on the evidence of the prosecution, whether there is a high probability of tampering, alteration, substitution, exchange or switching of the same. If the trial court determines that the probability of tampering, alteration, substitution, exchange or switching of the drugs offered in evidence is highly unlikely, which is a question of fact, the required strict compliance of the four (4) links in the chain of custody rule should be dispensed with. However, the second requisite of the Saving Clause — that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team — must still be established by the prosecution as proof of corpus delicti by credible evidence other than through the strict application of the chain of custody rule.[25] (Emphases, italics, and underscoring in the original)

Thus, while I agree with the ponencia that the "x x x law itself, R.A. No. 9165, as amended, makes no distinction between large or small amounts of seized drugs in applying the procedural safeguards in Sec. 21,"[26] jurisprudence, as I previously cited and explained in my Opinions in Casa and Nisperos, clearly provided that when only minuscule amounts of illegal drugs are involved, trial courts should exercise strict or heightened scrutiny — meaning, the trial courts should require full compliance with the chain of custody rule. On the other hand, if large amounts of illegal drugs are involved, I respectfully reiterate my arguments in Casa and Nisperos that the rationale for the application of the chain of custody disappears.

To reiterate, the Saving Clause under Section 21, Article II of RA 9165 as amended by Section 1 of RA 10640 may be invoked if both of the following requisites concur: (1) the existence of "justifiable grounds" allowing the departure from the rule on strict interpretation; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[27]

Applying my views in Casa and Nisperos to the instant case, the justifiable ground referred to in the first requisite of the Saving Clause is the colossal volume of dangerous drugs recovered in Criminal Case No. 1180-V-03. To be sure, Criminal Case No. 1180-V-03 involves 119.080 kilograms of methamphetamine hydrochloride or shabu and 111.200 kilograms of chloromethamphetamine hydrochloride. There is no doubt that the illegal drugs involved are colossal. Considering its colossal volume, it is highly unlikely that the illegal drugs seized could have been tampered, altered, substituted, exchanged or switched.

As regards the second requisite, it is well to reiterate that per guideline 3b as may be gleaned above, in cases that involve a large amount of drugs — as in this case — the trial court is tasked to determine whether the probability of tampering, alteration, substitution, exchange or switching of the seized drugs is highly unlikely. As stated earlier, it is highly unlikely that the large volume of drugs involved in this case could have been tampered, altered, substituted, exchanged, or switched. Thus, and as stated earlier, the four (4) links of the chain of custody should be dispensed with, as the justification for its strict compliance disappears.

To avoid any misunderstanding, the non-applicability of the chain of custody rule to large amount of illegal drugs

does not necessarily mean that the prosecution is already excused in proving the existence of the illegal drugs itself — the corpus delicti. In compliance with the second requisite of the Saving Clause — in order to establish the corpus delicti — the integrity and evidentiary value of the seized drugs must still be established by the prosecution by credible evidence, which can be done by evidence other than through the strict application of the chain of custody rule.

In this case, it is noted that there is no such determination made by the trial court. However, such lack of determination should not preclude the prosecution from establishing the integrity and evidentiary value of the seized drugs in Criminal Case No. 1180-V-03 for the simple reason that at the time these cases were being tried, there was yet no proper guidelines on this. Nevertheless, it is posited that even if the prosecution is allowed to prove the integrity and evidentiary value of the seized drugs by credible evidence other than through the strict application of the chain of custody rule, the records of the case show that the prosecution still failed to prove the same.

As regards the November 11, 2003 incident subject of Criminal Case No. 1180-V-03, the prosecution alleged that SOCO[28] operatives made an itemized report of the purported drugs seized from the warehouse; and that the raiding team took various photographs during the actual raid of said warehouse. However, and as aptly noted by the ponencia, not only did the prosecution fail to present as evidence such report of the SOCO operatives, the photographs themselves do not even clearly show the purported seized drugs. Verily, outside of the testimonies of the police officers who conducted the raid, there is nothing that would prove that the purported drugs seized from the warehouse raid are the same drugs that were presented to the trial court.[29] Again, this militates against a finding of preservation of the integrity and evidentiary value of the illegal drugs seized that is required for the applicability of the second requisite of the Saving Clause. As such, Uy's acquittal in Criminal Case No. 1180-V-03 must ensue.

III.

Uy's Acquittal in Criminal Case No.
1180-V-03 Should be Extended to his
Co-Accused, Gan.

It is recognized that Uy's acquittal in Criminal Case No. 1180-V-03 will necessarily raise questions as to whether the Court may extend such acquittal insofar as his co-accused therein, i.e., Gan, is concerned.

Regrettably, I answer in the affirmative.

Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure reads:

Section 11. Effect of appeal by any of several accused -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. (Underscoring supplied)

Case law instructs that for this provision to apply, the evidence against and conviction of the accused who appealed and the accused who did not must be inextricably linked.[30]

As may be gleaned above, Uy's acquittal in Criminal Case No. 1180-V-03 rests on two (2) grounds, namely: (a) the prosecution failed to prove all the elements of the crime charged; and (b) the prosecution failed to prove that the integrity and evidentiary value of the corpus delicti of the crime charged had been preserved.

As regards the first ground, the same is not applicable to Gan. To reiterate, this ground essentially states that Uy should be acquitted, considering that: (a) there is no actual possession as Uy was already in police custody when

the warehouse containing dangerous drugs was raided on November 11, 2003; and (b) there is likewise no constructive possession, considering that Uy was neither the owner nor the lessee of such warehouse. In contrast, the evidence against Gan is that he is the actual lessee of the warehouse where the dangerous drugs were found, and hence, actual and/or constructive possession of such drugs may be validly attributed to him.

However, the second ground for Uy's acquittal is applicable to Gan, considering that there is only one corpus delicti involved in Criminal Case No. 1180-V-03, particularly, the purported drugs seized from the warehouse raid. Notwithstanding the earlier conviction of Gan by final judgment for illegal possession of illegal drugs as the lessee of the warehouse where the illegal drugs were seized, Uy's acquittal on this ground operates to extend such acquittal insofar as Gan is concerned as well, pursuant to Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure. Otherwise stated, Gan should also be acquitted in Criminal Case No. 1180-V-03.

IV.

On a final note, I fully share the frustration of the ponencia on the final outcome of these cases — the acquittal of all the accused — particularly since the charges against all the accused before the trial court involved large amount of illegal drugs.

The stark ignorance of arresting and/or investigating officers to perform the basic evidence gathering work to establish the corpus delicti; the failure of the prosecution to perform its minimum prosecutorial duties — undeniably, the prosecution dropped the ball in handling these cases, particularly when the prosecution did nothing to appeal the patently erroneous penalty imposed by the trial court on Gan, and finally, the trial court, in imposing a penalty of imprisonment against Gan of merely 12 years and 1 day as minimum to 14 years and 8 months as maximum and a fine when the law clearly provides a penalty of life imprisonment are truly appalling.

It appears that there is an unseen hand manipulating the pillars of our criminal justice system. Let us cry for our beloved country.

ACCORDINGLY, I VOTE to ACQUIT: (a) Robert Uy y Ting in Criminal Case No. 1179-V-03; and (b) Robe1t Uy y Ting and James Go Ong @ William Gan @ Willie Gan in Criminal Case No. 1180-V-03.

[1] See *Franco v. People*, 780 Phil. 36 (2016) [Per J. Reyes, Third Division], citing *People v. Santos*, 388 Phil. 993, 1004 (2000) [Per J. Gonzaga-Reyes, Third Division].

[2] 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

[3] *Id.*, citing *Boac, et al. v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[4] 808 Phil. 455 (2017) [Per J. Bersamin, Third Division].

[5] *Id.*, citations omitted.

[6] *People v. Bateria*, G.R. No. 236259, September 16, 2020 [Per J. Lazaro-Javier, First Division]; citations omitted.

[7] *Id.*

[8] *Id.*, citing *People v. Marilla*, 726 Phil. 244,252 (2014) [Per J. Perez, Second Division].

[9] *Id.*, citing *People v. Noah*, G.R. No. 228880, March 6, 2019 [Per J. Leonen, Third Division].

[10] See *People v. Del Mundo*, 418 Phil. 740 (2001) [Per J. Ynares-Santiago, First Division] and *People v. Baludda*, 376 Phil. 614 (1999) [Per J. Purisima, Third Division].

[11] G.R. No. 247558, February 19, 2020 [Per J. Lazaro-Javier, First Division].

[12] Id.

[13] *People v. Lumikid*, G.R. No. 242695, June 23, 2020 [Per C.J. Peralta, First Division], citing *Aliling v. People*, 833 Phil. 146 (2018) [Per J. Caguioa, Second Division].

[14] See ponencia, pp. 3-7.

[15] *People v. Floresta*, G.R. No. 239032, June 17, 2019 [Per J. Perlas-Bernabe, Second Division].

[16] *People v. Rivera*, G.R. No. 252886, March 15, 2021 [Per J. Perlas-Bernabe, Second Division], citing *People v. De Dios*, G.R. No. 243664, January 22, 2020 [Per J. Perlas-Bernabe, Second Division].

[17] *People v. Quijano*, supra note 11, citing *People v. Tira*, 474 Phil. 152, 173-174 (2004) [Per J. Callejo, Sr., En Banc]. See also ponencia, pp. 16-17.

[18] See ponencia, pp. 16-17.

[19] See *People v. Del Rosario*, G.R. No. 235658, June 22, 2020 [Per J. Gesmundo, Third Division].

[20] See *People v. Gamboa*, 833 Phil. 1055 (2018) [Per J. Perlas-Bernabe, Second Division], citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012) [Per J. Sereno, Second Division].

[21] See *People v. Alvaro*, 823 Phil. 444 (2018) [Per J. Perlas-Bernabe, Second Division], citing *People v. Viterbo*, 739 Phil. 593 (2014) [Per J. Perlas-Bernabe, Second Division].

[22] See *People v. Del Rosario*, supra.

[23] G.R. No. 254208, August 16, 2022 [Per CJ Gesmundo; En Banc].

[24] G.R. No. 250927, November 29, 2022 [Per J. Rosario, En Banc].

[25] See my Concurring and Dissenting Opinions in *People v. Casa* (G.R. No. 254208, August 16, 2022) and *People v. Nisperos* G.R. No.250927, November 29, 2022).

[26] Ponencia, pp. 19-20.

[27] See *People v. Luna*, 828 Phil. 671 (2018) [Per J. Caguioa, Second Division]; citations omitted.

[28] "S.O.C.O.: Scene of the Crime Operatives" was an investigative docudrama television program based on real life police investigations undertaken by forensic experts. <<https://www.facebook.com/SOCOt看>> (last accessed March 8, 2023)

[29] See ponencia, pp. 23-24.

[30] See *People v. Fulgado*, G.R. No. 246193, February 19, 2020 [Per J.J. Reyes, Jr., First Division]; *People v. Lumaya*, 827 Phil. 473 (2018) [Per J. Perlas-Bernabe, Second Division]; *People v. Valdez*, 703 Phil. 519 [Per J. Bersamin, Special First Division] (Resolution); *People v. Rodriguez*, 395 Phil. 876 (2000) [Per J. Quisumbing, Second Division].

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