



Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

JENNIFER GA-A y CORONADO,
Accused,

AQUILA "PAYAT" ADOBAR,
Accused-Appellant.

G.R. No. 222559

Present:

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., JJ.

Promulgated:

06 JUN 2018

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DECISION

CAGUIOA, J.:

This is an Appeal¹ filed pursuant to Section 13, Rule 124 of the Rules of Court from the Decision² dated July 31, 2015 (assailed Decision) of the Court of Appeals, Twenty-Second (22nd) Division (CA) in CA-G.R. CR HC No. 01192-MIN. The assailed Decision affirmed *in toto* the Judgment³ dated July 25, 2013 rendered by the Regional Trial Court of Cagayan de Oro City, Branch 25 (trial court), in Criminal Case (CC) No. 2011-485, which found accused-appellant Aquila⁴ "Payat" Adobar (Adobar) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic

¹ Rollo, pp. 31-32.

² Id. at 3-30. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting, concurring.

³ CA rollo, pp. 36-45. Penned by Judge Arthur L. Abundiente.

⁴ Spelled as "Aquillo" and "Aquilo" in some parts of the Records.

Act No. (RA) 9165,⁵ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”⁶

The accusatory portion of the Information⁷ filed on June 1, 2011 against Adobar reads:

That on or about May 9, 2011[,] at about 11:00 in the morning, more or less, at 32nd Street, Ramonal Village, [Barangay] Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, dispense and give away any dangerous drugs, did then and there willfully, unlawfully and illegally sell, trade, dispense and give away to another one (1) heat-sealed transparent plastic sachet containing white crystalline substance, to PDEA Agent Naomie Siglos, who acted as poseur-buyer, which after a confirmatory test conducted by the PNP Crime Laboratory, said sachet is found positive of the presence of 0.03 grams of Methamphetamine Hydrochloride, a dangerous drug commonly known as shabu, in consideration of Five Hundred pesos (Php500.00) with Serial No. MR443620 which is recorded as marked money in a buy bust operation.

Contrary to and in Violation of Section 5 Article II of R.A. 9165.⁸

Adobar’s co-accused, Jennifer Ga-a y Coronado (Ga-a), was charged on May 12, 2011 in two (2) other separate Informations for violation of Sections 11⁹ and 15¹⁰, respectively, both of Article II of RA 9165. On

⁵ *SEC. 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. (Emphasis and italics in the original)

⁶ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, § 21 (2002).

⁷ Records (CC No. 2011-485), p. 3.

⁸ Id.

⁹ The accusatory portion of the Information dated May 11, 2011 reads:

That on or about May 9, 2011, at about 11:30 in the morning, more or less, at 32nd St. Ramonal Village, Barangay Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there[,] willfully, unlawfully and feloniously have in h[e]r possession, custody and control seventeen (17) pieces of heat-sealed transparent plastic sachet each containing Methamphetamine Hydrochloride (Shabu), [a] dangerous drug, accused knowing full well that [s]he is possessing x x x a dangerous drug, with a total net weight of 0.94 grams.

Contrary to [law] and in Violation of Section 11 Article II of RA No. 9165. Records (CC No. 2011-422), p. 3.

¹⁰ The accusatory portion of the Information dated May 11, 2011 reads:

That on or about May 9, 2011, at about 11:30 in the morning, more or less, at 32nd, St. Ramonal Village, Barangay Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [without being authorized by law,] did then and there[,] willfully, unlawfully and feloniously and criminally was found to be positive for the use of dangerous drug, after a confirmatory test.

September 27, 2011, she pleaded not guilty¹¹ to both offenses charged and trial as against her commenced.

Meanwhile, Adobar remained at large until he was apprehended *via* an alias warrant of arrest¹² on February 13, 2012.¹³ Upon his arraignment on April 2, 2012, Adobar entered a plea of “not guilty.”¹⁴

As the cases against both accused arose out of the same incident, the parties adopted in the present case (Criminal Case No. 2011-485) the testimonies of the witnesses already called to the stand in Criminal Case Nos. 2011-422 to 423 prior to Adobar’s arrest. Thereafter, joint trial on the three (3) cases continued as to the remaining witnesses for both prosecution and defense.¹⁵

The Facts

Version of the Prosecution:

The prosecution presented the following witnesses: Philippine Drug Enforcement Agency (PDEA) Agents 1) IO1 Naomie Siglos (IO1 Siglos); 2) IO3 Alex Tablate (IO3 Tablate); 3) IO1 Nestle Carin (IO1 Carin); 4) Police Chief Inspector (PCI) Erma Salvacion – Sampaga (PCI Sampaga); and 5) Punong Barangay Dometilo Acenas, Jr. (Punong Barangay Acenas).¹⁶

The prosecution dispensed with the testimony of PCI Sampaga, the forensic chemist,¹⁷ after the defense stipulated on certain matters.¹⁸

Contrary to [law] and in Violation of Section 15 Article II of RA No. 9165. Records (CC No. 2011-423), p. 3.

¹¹ CA *rollo*, p. 38.

¹² Records (CC No. 2011-485) p. 17.

¹³ Id. at 19.

¹⁴ Id. at 24.

¹⁵ CA *rollo*, p. 38.

¹⁶ *Rollo*, p 7.

¹⁷ CA *rollo*, p. 39.

¹⁸ Specifically:

1. That the witness is an expert witness being the forensic chemist of the PNP Crime Lab stationed at Camp Evangelista, Cagayan de Oro City[;]
2. That on May 9, 2011[,] she received a letter request for the laboratory examination of one heat-sealed transparent plastic sachet with markings “AMT-1 5/9/11” containing white crystalline substance and seventeen (17) heat-sealed transparent plastic sachets with markings “AMT-1 5/19/11 to AMT-17 5/9-11” containing white crystalline substance[;]
3. That she also received a letter request for the drug examination of the accused;
4. That she conducted [a] laboratory examination in accordance with the letter request[;]
5. That she reduced her findings into writing denominated as Chemistry Report No. D-156-2011 and Chemistry Report No. DTCRIM-160-2011[;]
6. That she brought with her today for identification and marking the specimens mentioned in the Chemistry Reports including the Chemistry Reports which are now marked by the prosecution. Records (CC No. 2011-423), p. 51.

The prosecution made the following narration of facts:

On May 9, 2011, at about 10:00 o'clock in the morning, a team of PDEA Regional Office X agents, Cagayan de Oro City (collectively, buy-bust team), organized a buy-bust operation against Adobar and his live-in partner based on information from a Confidential Informant (CI), who came to said office that morning, and from the National Bureau of Investigation (NBI) National Drug Information System watchlist of drug personalities which included Adobar.¹⁹ In the meeting, assignments were made as follows: IO1 Siglos as poseur-buyer, IO3 Tablate as apprehending and investigating officer and the rest of the agents as back-up. IO1 Siglos was given a buy-bust money of one (1) piece of Five Hundred Pesos (₱500.00) bill.²⁰

After the briefing, the buy-bust team proceeded to the residence of Adobar at 32nd St., Ramonal Village, Camaman-an, Cagayan de Oro City in two (2) unmarked service vehicles.²¹ Upon arrival, at about 11:00 o'clock in the morning, they parked the vehicles about 20 to 30 meters away from Adobar's residence. IO1 Siglos and the CI alighted and walked towards Adobar's house, outside of which a man, identified by the CI as Adobar, was standing.

The CI introduced IO1 Siglos to Adobar as a friend who was interested to buy *shabu* (subject drugs). Adobar asked IO1 Siglos how much worth of *shabu* she wanted to buy and the latter answered ₱500.00, while handing the buy-bust money to Adobar. Upon receipt of the money, Adobar excused himself to get the "item" inside the house. In less than a minute,²² Adobar came back and handed to IO1 Siglos one heat-sealed transparent sachet containing white crystalline substance suspected to be *shabu*.²³ After examining the sachet, IO1 Siglos rubbed the back of her head, signaling her colleagues to respond to the scene.

Upon seeing the signal, IO3 Tablate, who earlier positioned himself about ten (10) meters away from the group of IO1 Siglos²⁴ and who witnessed the exchange between IO1 Siglos and Adobar,²⁵ alerted the rest of the team.²⁶ The team responded and rushed towards Adobar, with IO3 Tablate shouting "dapa, dapa[,] PDEA!"²⁷ Adobar ran inside his house and locked the front door behind him.²⁸ The buy-bust team forced open the

¹⁹ *Rollo*, pp. 7-8.

²⁰ Bearing serial numbers MR443620; duly recorded in the PDEA Blotter. Records (CC No. 2011-485) p. 6.

²¹ *CA rollo*, p. 39.

²² Records (CC No. 2011-485) p. 8.

²³ *Id.*

²⁴ Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 7.

²⁵ Records (CC No. 2011-485), p. 6.

²⁶ *Id.*

²⁷ *Id.* at 7.

²⁸ *Id.*

door, cleared the ground floor then proceeded to the second floor where they found a small window through which they suspected Adobar to have escaped.²⁹ The buy-bust money was not recovered.

In another room on the same floor,³⁰ IO3 Tablate found Ga-a. Near her were seventeen (17) pieces of transparent sachets containing suspected *shabu* together with other drug paraphernalia on top of a table.³¹ Upon inquiry, Ga-a introduced herself as Mecaella, the live-in partner of Adobar, and claimed that the *shabu* on the table were from Adobar.³²

Meanwhile, IO1 Siglos held custody of the subject drugs seized from Adobar until the same was turned over to IO3 Tablate for marking by the latter.

After “clearing” Adobar’s house, IO3 Tablate called for Camaman-an Punong Barangay Acenas, media representative Rondie Cabrejas of Magnum Radyo³³ (media representative) and an unidentified representative from the Department of Justice (DOJ).³⁴ Thereafter, the sachets of suspected *shabu*, including the subject drugs, were marked³⁵ with IO3 Tablate’s initials, “AMT.”³⁶ After the marking, IO3 Tablate proceeded with the inventory of the seized items (including the subject drugs) on the table where the seventeen (17) sachets were found,³⁷ and prepared the *Inventory of Seized Items/Confiscated Non-Drugs* (Inventory)³⁸ in the presence of Ga-a.³⁹ Photographs⁴⁰ of the seized drugs, the room where they were found and the accomplishment of the Inventory were then taken.⁴¹ It appears from the prosecution’s submissions that among the three (3) witnesses summoned, only Punong Barangay Acenas and the media representative arrived at Adobar’s house and witnessed⁴² and signed the Inventory.⁴³

The buy-bust team and Ga-a proceeded to the PDEA RO-10, with IO3 Tablate in possession of all seized items, including the subject drugs.⁴⁴ Upon arrival, IO3 Tablate prepared a request for the examination of the

²⁹ Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 10.

³⁰ Id. at 11.

³¹ Specifically: 1) two (2) packs of transparent empty sachets; 2) three (3) pieces of lighter; 3) one (1) piece of improvised tooter; 4) one (1) piece of aluminum foil strip. Records (CC No. 2011-423), p. 16.

³² Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 12.

³³ Records (CC No. 2011-423), p. 16.

³⁴ Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 12.

³⁵ Id.

³⁶ “AMT – A” for the subject drugs; “AMT – 1” to “AMT – 17” for the seventeen (17) sachets of *shabu* found inside the room with Ga-a. Records (CC No. 2011-423), p. 16.

³⁷ Records (CC No. 2011-485), p. 7.

³⁸ Records (CC No. 2011-423), p. 16.

³⁹ Direct Examination of IO3 Tablate, TSN, March 20, 2012, p. 21.

⁴⁰ Records (CC No. 2011-485) pp. 12-13.

⁴¹ Direct Examination of IO3 Tablate, TSN dated March 20, 2012, p. 15.

⁴² Records (CC No. 2011-423), p. 9.

⁴³ Id. at 16.

⁴⁴ Id.

seized items with the Regional Crime Laboratory Office 10 (crime lab)⁴⁵ and personally delivered said items thereto.⁴⁶

Version of the Defense

The defense called to the stand accused-appellant Adobar and accused Ga-a who narrated the following pertinent facts:

In the morning of May 9, 2011, Ga-a was alone cooking her lunch inside the house of Adobar where she was a tenant when she heard a loud pounding on the door.⁴⁷ Suddenly, about ten (10) armed persons entered the house. After introducing themselves as PDEA agents,⁴⁸ they proceeded to search the house⁴⁹ and destroyed Ga-a's belongings⁵⁰ while looking for a certain "Payat."⁵¹ Ga-a was likewise bodily searched by a woman.⁵² She was then invited to go to the PDEA office and as they were about to leave, the agents called for a barangay official.⁵³ Ga-a claimed that the evidence presented by the prosecution were "planted" by the PDEA agents.⁵⁴

Adobar, on the other hand, testified that on May 9, 2011, he went to Opol at 5:00 o'clock in the morning to buy fish for vending.⁵⁵ He then took the same to Abellanosa St., Cagayan de Oro City where he stayed until he went home at about 4:00 o'clock in the afternoon, when the fish were sold out.⁵⁶ When he arrived at his house, he noticed that the door was destroyed and the belongings inside were disarranged.⁵⁷ He was likewise informed by the neighbors that Ga-a was arrested by PDEA agents⁵⁸ but he did not think to report the incident to the police as he was unschooled.⁵⁹ On February 12, 2012, he was arrested while selling fish under the bridge in Abellanosa St.⁶⁰

The Ruling of the trial court

In the Judgment dated July 25, 2013, the trial court found Adobar guilty beyond reasonable doubt of the offense charged and imposed upon him the penalty of Life Imprisonment with a fine of Five Hundred Thousand Pesos (₱500,000.00).

⁴⁵ In accordance with standard protocol, the same was signed by Lt. Col. Layese (Ret). Id. at 13.

⁴⁶ Direct Examination of I03 Tablate, TSN, March 20, 2012, p. 14.

⁴⁷ Direct Examination of Ga-a, TSN, March 25, 2013, p. 14.

⁴⁸ *Rollo*, p. 11.

⁴⁹ Direct Examination of Ga-a, TSN, March 25, 2013, p. 6.

⁵⁰ Id. at 5.

⁵¹ Id.

⁵² Id.

⁵³ Id. at 7.

⁵⁴ Id. at 11.

⁵⁵ Direct Examination of Adobar, TSN, April 8, 2013, p. 5.

⁵⁶ Id. at 5-6.

⁵⁷ Id. at 6.

⁵⁸ Id. at 11.

⁵⁹ Id.

⁶⁰ Id. at 6-7.

In a two-paragraph discussion, the trial court held that under the circumstances, there was probable cause to arrest Adobar. As between his and the prosecution's conflicting versions of facts, the latter's was more believable. No discussion was made on the compliance by the PDEA team with the required procedures under relevant laws, rules and regulations particularly, Section 21, Article II of RA 9165, albeit such was raised as an issue by the defense.⁶¹

On the other hand, the trial court **acquitted accused Ga-a** in both Criminal Case Nos. 2011-422 and 2011-423, holding that the PDEA agents had no probable cause to search and arrest her. Moreover, the urine sample taken from Ga-a and the results of the chemical examination made thereon showing the same positive for Methamphetamine Hydrochloride are inadmissible in evidence, being fruits of the poisonous tree.⁶²

The *fallo* of the trial court Judgment reads:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Cases Nos. 2011-422 and 2011-423, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, JENNIFER C. GAA is hereby ACQUITTED of the offenses charged. The Warden of the BJMP having custody of JENNIFER C. GAA is hereby directed to immediately release her from detention unless she is accused of other crimes which will justify her continued incarceration.

2. In Criminal Case No. 2011-485, accused AQUILO ADOBAR a.k.a. "Payat" is GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of Life Imprisonment and to pay the Fine in the amount of Five Hundred Thousand Pesos [P500,000.00], without subsidiary penalty in case of non-payment of fine.

Let the penalty imposed on accused Adobar be a lesson and an example to all who have the criminal propensity, inclination and proclivity to commit the same forbidden act that crime does not pay, and that the pecuniary gain and benefit, as well as the perverse psychological well-being which one can derive from selling or manufacturing or trading drugs, or other illegal substance, or from using, or possessing, or just committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted and penalized to the full extent of the law.

SO ORDERED.⁶³ (Emphasis in the original)

⁶¹ *Comment/Opposition to Prosecution's Formal Offer of Exhibits* dated November 22, 2012, Records (CC No. 2011-485), pp. 67-68.

⁶² *CA rollo*, pp. 43-44.

⁶³ *Id.* at 45.

Adobar appealed to the CA via *Notice of Appeal*.⁶⁴ He filed his *Brief*⁶⁵ dated January 3, 2014, while the People, through the Office of the Solicitor General (OSG), filed its *Brief*⁶⁶ dated April 28, 2014. In a *Resolution*⁶⁷ dated June 18, 2014, the CA considered Adobar to have waived his right to file a Reply Brief.

The Ruling of the CA

In the assailed Decision, the CA affirmed *in toto* the trial court Judgment as follows:

IN VIEW OF THE FOREGOING, the appeal is hereby DENIED. The assailed Judgment dated July 25, 2013 of the Regional Trial Court, Branch 25, Cagayan de Oro City is hereby AFFIRMED *in toto*.⁶⁸

The CA held that the prosecution adequately proved all the elements of the crime. It held that the prosecution sufficiently established all the links in the chain of custody as to remove doubt on the integrity of the subject drugs.

Anent the alleged failure of the PDEA agents to comply with Section 21, Article II of RA 9165 as the media and DOJ representatives, respectively, were not presented to testify on the Inventory which they supposedly witnessed, the CA held that this lapse did not render the subject drugs seized inadmissible because the prosecution had duly shown that its integrity and evidentiary value were preserved. According to the CA, substantial adherence – not strict adherence – to the requirements of Section 21 suffices and the same was satisfied by the PDEA agents.

Hence, this recourse.

In lieu of filing supplemental briefs, Adobar and the People filed separate *Manifestations* dated July 4, 2016⁶⁹ and June 16, 2016,⁷⁰ respectively, foregoing their right to file supplemental briefs as they have exhausted their arguments in their respective *Briefs* filed before the CA.

Issue

The main question thrown to the Court for resolution is whether or not accused-appellant Adobar is guilty beyond reasonable doubt of sale of

⁶⁴ Id. at 11-12.

⁶⁵ Id. at 24-35.

⁶⁶ Id. at 52-66.

⁶⁷ Id. at 68.

⁶⁸ *Rollo*, p. 29.

⁶⁹ Id. at 44-45.

⁷⁰ Id. at 38-39.



illegal drugs as defined and punished under Section 5, Article II of RA 9165.

The Court's Ruling

The Appeal has merit.

Adobar is charged with selling 0.03 gram of dangerous illegal drugs, in particular, Methamphetamine Hydrochloride colloquially known as *shabu*. At the outset, RA 9165, otherwise known as the Comprehensive Dangerous Drugs Acts of 2002, being the law in place at the time of the commission of the offense and being more favorable to the accused than its successor, RA 10640,⁷¹ shall apply in this case.

Section 3(ii), Article I of RA 9165 defines "selling" as any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration. In the context of a buy-bust operation, its elements are 1) that the transaction or sale took place between the accused and the poseur buyer; and 2) that the dangerous

⁷¹ Promulgated on July 15, 2014 and entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165," Section 21 of RA 9165, as amended by RA 10640, currently reads:

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

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

"x x x

"(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification; (Emphasis and additional italics supplied)

drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.⁷²

Anent the latter element, proof beyond reasonable doubt must be adduced in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug.⁷³ It is important that the State establish with moral certainty the integrity and identity of the illicit drugs sold as the same as those examined in the laboratory and subsequently presented in court as evidence.⁷⁴ This rigorous requirement, known under RA 9165 as the chain of custody,⁷⁵ performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.⁷⁶

In turn, Section 21 of RA 9165 is a critical means to ensure the establishment of the chain of custody⁷⁷ by providing for the procedures to be followed in the seizure, custody and disposition of confiscated, seized and/or surrendered drugs and/or drug paraphernalia. Section 21 of RA 9165 provides:

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

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

⁷² *People v. Gonzales*, 708 Phil. 121, 127 (2013), citing *People v. Kamad*, 624 Phil. 289, 300 (2010).

⁷³ *People v. Cayas*, 789 Phil. 70, 76-77 (2016), citing *People v. Capuno*, 655 Phil. 226, 241 (2011).

⁷⁴ See *People v. Del Mundo*, G.R. No. 208095, September 20, 2017, p. 7, citing *People v. Gayoso*, G.R. No. 206590, March 27, 2017, p. 8 and *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

⁷⁵ The definition of "chain of custody" can be found in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements RA 9165, thus:

x x x "Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court [for] destruction. Such record of movements and custody of seized [item] shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

⁷⁶ *People v. Dahil*, 750 Phil. 212, 226 (2015).

⁷⁷ *Id.* at 227.

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

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; (Emphasis supplied and italics in the original)

Filling in the details as to where the physical inventory and photographing of the seized items should be made is Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) which reads:

- (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;** x x x (Emphasis supplied)

The same likewise provides for a saving clause in case of non-compliance with the requirements of RA 9165 and the IRR, thus:

x x x 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)

The foregoing is echoed in Section 2(a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

- (i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;
- (ii) a representative from the media;
- (iii) a representative from the Department of Justice; and,
- (iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x.

In sum, the applicable law mandates the following to be observed as regards the time, witnesses and proof of inventory in the custody of seized dangerous illegal drugs:

1. The initial custody requirements must be done **immediately after seizure or confiscation;**
2. The **physical inventory and photographing** must be done in the presence of:
 - a. **the accused or his representative or counsel;**
 - b. a representative from the **media;**
 - c. a representative from the **DOJ; and**
 - d. any **elected public official.**
3. The conduct of the physical inventory and photograph shall be done at the:
 - a. **place where the search warrant is served;** or
 - b. **at the nearest police station;** or
 - c. **nearest office of the apprehending officer/team,** whichever is practicable, in case of warrantless seizure.

In *People v. Dela Cruz*,⁷⁸ it was explained that compliance with the chain of custody requirement provided by Section 21 ensures the integrity of confiscated drugs and related paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the

⁷⁸ 744 Phil. 816, 829-830 (2014).



substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.

Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.⁷⁹

However, the law allows such non-compliance in **exceptional cases** where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.⁸⁰ In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.

Against the foregoing legal backdrop, the Court had exhaustively studied the records and is of the considered view that the integrity and identity of the *corpus delicti* are compromised.

The buy-bust team failed to comply with the requirements of Section 21 of RA 9165, particularly as to the presence of the three (3) witnesses immediately after seizure and confiscation of the illegal drugs.

In no uncertain words, Section 21 requires the apprehending team to “immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.”

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.⁸¹

⁷⁹ See id. at 830.

⁸⁰ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, § 21 (1).

⁸¹ See IRR, Art. II, Sec. 21(a).

In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof.** By the same intent of the law behind the mandate that the initial custody requirements be done “immediately after seizure and confiscation,” the aforesaid witnesses must already be physically present at the time of apprehension and seizure – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy-bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure,” this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs “immediately after seizure and confiscation.”**⁸²

The reason is simple, it is at the time of arrest or at the time of the drugs’ “seizure and confiscation” that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practice of planting evidence.**⁸³ In *People v. Mendoza*,⁸⁴ the Court ruled:

x x x Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x⁸⁵ (Italics in the original)

⁸² Emphasis supplied.

⁸³ As early as in the case of *People v. Cruz*, 301 Phil. 770, 774-775 (1994), the Court has taken judicial notice of the rather pervasive practice of planting evidence in anti-narcotics operations, holding that:

Be that as it may, the Court is also cognizant of the fact that the practice of planting evidence for extortion, as a means to compel one to divulge information or merely to harass witnesses is not uncommon. By the very nature of anti-narcotics operations, with the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. x x x

⁸⁴ 736 Phil. 749 (2014).

⁸⁵ Id. at 764.

In the present case, none of these three (3) witnesses under Section 21 were present at the time the subject drugs were allegedly confiscated from Adobar. Upon the other hand, only two (2) of the three (3) were summoned by the team and were actually present during the physical inventory and photographing of the seized items.

The testimony of Punong Barangay Acenas, which was, in fact, offered by the prosecution for the sole purpose of proving that he was present during the inventory and that he signed the inventory receipt,⁸⁶ supports the conclusion that he arrived only after the subject drugs were already confiscated, thus:

[ATTORNEY ECHANO:]

Q But, you will admit that [when] the PDEA went inside the house, you were not present?

A When I arrived at the area, all the agents were already in the second floor of the house.

Q **When did you receive the call from the PDEA agents?**

A **Immediately after the arrest [of Ga-a] and seizure.**

Q **How many minutes did it take you before you arrived?**

A **About 15 minutes from our residence, Sir.**

x x x x

[TRIAL COURT:]

Q In other words, Captain Acenas, when you arrived there, the accused [Ga-a] was already arrested?

A Yes, Your Honor.

Q The items were already on top of the aparador?

A Yes, Your Honor.

Q Was the Inventory already prepared ready for your signature or the Inventory was prepared when you were there already?

A **When I arrived, they started the Inventory, Your Honor.**⁸⁷ (Emphasis supplied)

To recall the prosecution's narrative, Ga-a was arrested after the buy-bust was made against Adobar, *i.e.*, after the subject drugs were taken

⁸⁶ Direct Examination of Punong Barangay Acenas, TSN, September 11, 2012, pp. 2-3.

⁸⁷ Id at 4-5.

from him by IO1 Siglos. Clearly, Punong Barangay Acenas was summoned only sometime **after** the attempted arrest of Adobar and the alleged confiscation of the subject drugs from his person. According to Punong Barangay Acenas, he arrived at the scene about fifteen (15) minutes from such call, when the agents were already settled on the second floor of Adobar's home, ready for inventory. This is confirmed by IO3 Tablate who testified that he phoned in the witnesses only after "clearing" the alleged crime scene, thus:

[PROSECUTOR VICENTE:]

x x x x

Q What did you do with the drugs on the table?

A **After clearing**, before I actually made the markings[,] **we called up the barangay captain or one of the members of the team, the barangay captain, member from the media and also the representative from the DOJ and upon their arrival it was the time when I actually made the markings to the evidence.**

x x x x

Q And then what else after marking, labelling the sachets of shabu and the paraphernalia, what happened next, Mr. Witness?

A **After the inventory was signed by the witnesses**, upon arrival of (*sic*) the office after the booking I also prepared a request for the crime lab and then I myself was the one who delivered the evidence to the crime lab.⁸⁸ (Emphasis supplied)

Notably, while IO3 Tablate testified that all three (3) insulating witnesses came, observed and signed the inventory, this testimony is contradicted by the records which reveal that only the signatures of Punong Barangay Acenas and the media representative actually appear on the inventory document.⁸⁹ In this regard it should also be noted that only Punong Barangay Acenas was presented in court to testify.

Other than the above quoted testimony of IO3 Tablate, no sign of the presence of the DOJ representative appears on record. In fact, the Affidavit⁹⁰ dated May 10, 2011 of IO3 Tablate belies the presence of a DOJ Representative even during the inventory, thus:

⁸⁸ Direct Examination of IO3 Tablate, TSN, March 20, 2012, pp. 12-14.

⁸⁹ Records (CC No. 2011-423), p. 16.

⁹⁰ Id at 8-9.

I, INTELLIGENCE OFFICER-3 ALEX M. TABLATE, x x x
do hereby depose and say:

x x x x

That **during the inventory** of the seized items/evidence recovered, which I, IO-3 TABLATE myself conducted in the very table itself where said items were found in plain view in the 2nd floor of the house of the suspects, **the same were witnessed by the Barangay Captain himself of Brgy. Camaman-an and by a representative from the media through Magnum Radio.**⁹¹ (Additional emphasis supplied)

To reiterate, the three (3) insulating witnesses must be present at the time of seizure of the drugs such that they must be at or near the intended place of arrest so they can be ready to witness the inventory and photographing of the seized items “immediately after seizure and confiscation.” These witnesses must sign the inventory and be given copies thereof. **In the present case, from the evidence of the prosecution itself, none of the witnesses were present during the seizure and confiscation of the subject drugs. Moreover,** only two (2) of them – the punong barangay and the media representative – witnessed the photographing and signed the inventory.

On this note, considering that at the point of seizure, *i.e.*, the first link in the “chain of custody,” irregularities were already attendant, it becomes futile to prove the the rest of the links in the chain. Simply put, since “planting” of the drugs was already made possible at the point of seizure because of the absence of all three (3) insulating witnesses, proving the chain after such point merely proves the chain of custody of planted drugs.

Adobar’s flight serves as a waiver of his right to be present during the initial custody requirements of Section 21 of RA 9165, but does not excuse compliance by the buy-bust team with the presence of the three (3) insulating witnesses therein.

Apart from the three (3) insulating witnesses, Section 21 requires that the physical inventory and photographing of the seized drugs by the apprehending team immediately after confiscation and seizure be likewise made in the presence of, **“the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel.”**⁹²

⁹¹ Id.

⁹² Emphasis supplied.

The question arises: what if the person from whom the drugs were seized escaped? This obtains in the present case. From the prosecution's narration, Adobar successfully evaded arrest despite the efforts of the buy-bust team to apprehend him.⁹³ He remained at large until his subsequent apprehension on February 13, 2012 *via* an alias warrant of arrest.

If the story of the prosecution is to be believed, the escape of accused Adobar serves as a waiver of his right to be present during the physical inventory and photographing of the drugs allegedly seized from him. The prosecution cannot be burdened by the accused's escape **provided that reasonable efforts were made to apprehend him**, as what appears in the present case. The buy-bust team cannot be reasonably expected to secure the presence of the accused's representative or counsel at the time of confiscation and during the buy-bust operation, considering the clandestine nature of such operations. In the same vein, after such escape, it should be difficult, if not impossible, for the buy-bust team to find a counsel or representative for the accused before the initial custody requirements which Section 21 mandates to be performed "immediately after" the confiscation.

As such, the prosecution is excused from complying with the requirement of Section 21 as to the presence of the accused during the initial custody requirements, *i.e.*, physical inventory and photographing of the seized drugs. However, it is not excused as to the presence of the three (3) insulating witnesses, *i.e.*, the DOJ and media representative and elected public official. The buy-bust team must still secure the presence of these insulating witnesses, and the prosecution must still prove such presence, not only during the inventory and photographing but likewise at the time of and at or near the intended place of confiscation and seizure of the subject drugs.

In the same vein, the buy-bust team need not secure the presence of the accused during the marking of the seized drugs as his escape serves as a waiver of his right to witness the same. As will be extensively discussed below, although Section 21 is silent as to the matter of marking of seized drugs, jurisprudence⁹⁴ teaches that consistency with the chain of custody rule requires the same to be done in the presence of the accused.

The prosecution failed to trigger the saving clause under the IRR of RA 9165. Its noncompliance with Section 21 cannot be excused; the identity of the corpus delicti is not established.

⁹³ Direct Examination of IO3 Tablate, TSN, March 20, 2012, pp. 18-19.

⁹⁴ See *People v. Beran*, 724 Phil. 788 (2014) where the Court held that the marking shall be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.



To be sure, strict compliance with the prescribed procedure under Section 21 is required as a rule.⁹⁵ The exception to this rule is found in the saving clause under Section 21 (a), Article II of the IRR of RA 9165⁹⁶ which requires the following: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team.⁹⁷

If these two (2) requisites are present and the saving clause is successfully triggered, the confiscated items shall not be rendered void and invalid. This allows the prosecution to establish the identity of the *corpus delicti* despite failure of the apprehending team to physically inventory and photograph the drugs at the place of arrest and/or to have the DOJ and media representative and elected public official witness the same.

On the first element, it has been emphasized that the prosecution must first recognize any lapses on the part of the apprehending officers and thereafter explain the cited justifiable grounds.⁹⁸ Moreover, the justifiable explanation given must be credible.⁹⁹ Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.¹⁰⁰

Hence, to successfully trigger the saving clause, the prosecution must satisfy its two-pronged requirement: first, acknowledge and credibly justify the non-compliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved. The Court held in *Valencia v. People*:¹⁰¹

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the

⁹⁵ *People v. Cayas*, supra note 73, at 79; *People v. Havana*, 776 Phil. 462, 475 (2016).

⁹⁶ States:

x x x **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)

⁹⁷ COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, § 21 (1).

⁹⁸ *People v. Cayas*, supra note 73, at 80.

⁹⁹ *People v. Barte*, G.R. No. 179749, March 1, 2017.

¹⁰⁰ Id.; see *People v. Sumili*, 753 Phil. 342, 352 (2015).

¹⁰¹ 725 Phil. 268 (2014).

requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.¹⁰²

In this case, the prosecution did not acknowledge the lapses, much less offer a credible and justifiable ground for the failure of the buy-bust team to comply with Section 21. No explanation was advanced as to why none of the insulating witnesses was present at the time of seizure and confiscation of the subject illegal drugs. Neither do the records show any justification as to why no DOJ representative was secured to witness the photographing and physical inventory of the seized drugs. Worse, the prosecution did not even concede such lapses. The affidavit of IO3 Tablate shows the indifference of the prosecution on its failure to comply with Section 21, thus:

That IO-1 SIGLOS turned over to me, IO-3 TABLATE the one (1) piece of heat-sealed transparent sachet containing white crystalline substance also suspected to be shabu, which was the subject of the buy-bust earlier transacted.

That during the inventory of the seized items/evidence recovered, which I, IO-3 TABLATE myself conducted in the very table itself where said items were found in plain view in the 2nd floor of the house of the suspects, the same were witnessed by the Barangay Captain himself of Brgy. Camaman-an and by a representative from the media through Magnum Radio.

That at the PDEA Regional Office– 10, the arrested female suspect formally identified herself as **Jennifer C. Ga-a**, 22 years old, single and a resident of Ramonal Village, Brgy. Camaman-an, Cagayan de Oro City while the other suspect who was able to elude arrest despite earnest effort to apprehend him was formally identified as **Aquilo Adobar**, 48 years old, married and a resident of the same barangay. The latter suspect is a target-listed personality as per PDEA National Drugs Information System (NDIS).¹⁰³ (Emphasis in the original)

Hence, considering the prosecution neither acknowledged nor explained its noncompliance with Section 21, the first prong was not satisfied, thus leading to the inevitable conclusion that the saving clause was not triggered. Accordingly, there is no point anymore in determining if the second prong had been satisfied – *i.e.*, proving the integrity and evidentiary value of the seized illegal drugs.

To be sure, from the records, outside the non-compliance with Section 21, the integrity and evidentiary value of the seized illegal drugs are heavily tainted. The second prong, even if the Court allows proof of such despite failure to prove the first prong, seems difficult if not

¹⁰² Id. at 286.

¹⁰³ Records (CC No. 2011-423), p. 9.

impossible to establish in light of the serious irregularities in the transfer of custody of the seized illegal drugs.

Proving the second prong of the saving clause - the integrity of the seized illegal drugs - despite non-compliance with Section 21 requires establishing the four links in the chain of custody: First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.¹⁰⁴

In the present case, there was failure to mark the seized illegal drugs *immediately* after confiscation due to the palpable gap between the confiscation of the drugs to its subsequent marking which the prosecution utterly failed to explain.

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. In *People v. Beran*,¹⁰⁵ the Court held that while the matter of marking of the seized illegal drugs in warrantless seizures is not expressly specified in Section 21, **consistency with the chain of custody rule requires that such marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation**, to wit:

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of “marking” of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the “chain of custody” rule requires that the “marking” of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence—should be done **(1) in the presence of the apprehended violator (2) immediately upon confiscation**. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft. x x x¹⁰⁶ (Emphasis in the original)

It is vital that the seized contrabands are immediately marked because succeeding handlers of the specimens will use the markings as reference. The Court has held:

¹⁰⁴ *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

¹⁰⁵ *Supra* note 94, at 788.

¹⁰⁶ *Id.* at 819-820.

Crucial in proving [the] chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus it is **vital that the seized contraband[s] are immediately marked** because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating[,] switching, “planting,” or contamination of evidence.

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution.¹⁰⁷ (Additional emphasis supplied)

In the present case, a considerable period of time intervened between the confiscation of the subject drugs and its subsequent marking — which was unaccounted for by the prosecution. This gaping hiatus is brought about by the failure of the poseur buyer, IO1 Siglos, to credibly account for her whereabouts and the handling of the subject drugs from the time she confiscated the same from Adobar to the time she turned it over to IO3 Tablate for marking. The marked inconsistencies in her testimonies taken on April 23, 2012 and November 6, 2012 fail the test of credibility.

On April 23, 2012, IO1 Siglos testified that when her colleagues responded to the scene, she inspected the area with them and then, without much delay, followed IO3 Tablate upstairs for the marking, thus:

[PROSECUTOR VICENTE:]

x x x x

Q And then after you made that pre-arranged signal of rubbing your back head, what happened?

A After a few minutes[,] the back up team rushed up.

Q What happened next?

A **And then when they arrived we checked the area and then after we checked the area I followed them and then I went up stairs to give the buy-bust evidence to the arresting officer, Sir.**

x x x x

¹⁰⁷ *People v. Umipang*, 686, Phil. 1024, 1049-1050 (2012).

Q You said that after you touched your head the arresting officer arrived, and then Tablate went upstairs?

A Yes, Sir.

Q **How many minutes after Tablate went upstairs, how many minutes you followed Tablate?**

A **About 3-4 minutes, Sir**¹⁰⁸ (Emphasis supplied)

This is in contrast to her testimony on November 6, 2012 where she stated under oath that when the back-up team arrived, she proceeded to the team's service vehicle, about 10-15 meters away, and therein waited for a considerable time while the back-up team chased after Adobar and searched the premises. She only went back to the house and handed the subject drugs to IO3 Tablate when it was time for the physical inventory, thus:

[PROSECUTOR VICENTE:]

x x x x

Q After you rubbed the back part of your head, what happened next?

A I noticed that the operatives rushed up to the area, Sir.

x x x x

Q So[,] when the operatives arrived, what did Aquillo (*sic*) Adobar do?

A He went upstairs, Sir.

Q He run?

A Yes, Sir.

Q And he was chased by the operatives?

A Yes, Sir.

x x x x

Q What did you do?

A **I went outside going to our service vehicle, Sir.**

Q **How far was the service vehicle parked from the house?**

A **More or less 10-15 meters, Sir.**

¹⁰⁸ Direct Examination of IO1 Siglos, TSN, April 23, 2012, pp. 6-8.

x x x x

Q Why you did not go with them when they chased the accused?

A Because my tasked (*sic*) is only a [poseur] buyer, Sir.

Q You said that the accused handed to you the sachet of shabu, what did you do with it?

A I handed to the arresting officer, IO3 Tablate during the inventory, Sir.

Q **But you said you went to the vehicle?**

A **Yes, Sir.**

Q **You waited there?**

A **Yes, Sir.**

Q **And then, when did your team conduct an inventory?**

A **After the searched (*sic*), Sir.**

Q **So[,] after you went to the vehicle, you went back to the house?**

A **Yes, Sir.**¹⁰⁹ (Emphasis supplied)

The significance of this contradiction in IO1 Siglos' testimony cannot be overemphasized. Being the first custodian in the chain and having held onto the then unmarked seized drugs for a considerable lapse of time, IO1 Siglos must clearly and convincingly account for her handling and care of the subject drugs before turning them over to IO3 Tablate for marking. In this, she failed, thus, effectively creating an obvious but unexplained break in the chain. Hence, assuming that the illegal drugs which went into the chain are actually the same drugs seized from Adobar's person, *i.e.*, assuming the same were not planted at the point of seizure, there remains that great possibility of switching while the same were in IO1 Siglos' custody.

The foregoing conflicting narrations, seemingly trivial when viewed in isolation, cast very serious doubts on the veracity of the prosecution's overall narrative when juxtaposed against the procedural lapses of the buy-bust team and its abject failure to justify said lapses.

Courts must be extra vigilant in trying drugs cases.

¹⁰⁹ Id., TSN, November 6, 2012, pp. 7-10.

Unfortunately, the CA and the trial court glossed over these obvious irregularities which attended the present buy-bust operation and the resulting confiscation of the subject drugs.

The CA, while seemingly recognizing the lapses in observing Section 21,¹¹⁰ simply dismissed the same “because it was shown by the prosecution that the integrity and evidentiary value of the specimens were properly preserved by the buy-bust team.”¹¹¹ In other words, the CA excused the failure of the buy-bust team to comply with Section 21 on the basis of the second prong of the saving clause (that the integrity and evidentiary value of the subject drugs are established) **but ignoring altogether the first prong (absence of justifiable reasons for the procedural lapses)**. The CA justifies its decision to excuse this non-observance of Section 21 by ruling that only substantial adherence thereto is required.¹¹²

This position taken by the CA is mistaken. To reiterate, the procedure enshrined in Section 21 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality.¹¹³ Substantive law requires strict observance of these procedural safeguards.¹¹⁴ Courts, in resolving drugs cases must keep in mind this mandate and the peculiar nature of buy-bust operations being susceptible to police abuse as discussed by the Court, thus:

x x x a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion. In *People v. Tan*, this Court itself recognized that “*by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.* x x x¹¹⁵ (Italics in the original)

For this, the Court has instructed lower courts to exercise extra vigilance in trying drugs cases “lest an innocent person be made to suffer the unusually severe penalties for drug offenses.”¹¹⁶ The presumption that regular duty was performed by the arresting officers simply cannot prevail over the presumption of innocence granted to the accused by the Constitution. It is thus incumbent upon the prosecution to prove that the accused is indeed guilty beyond reasonable doubt.¹¹⁷

¹¹⁰ *Rollo*, p. 26.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See *People v. Umipang*, supra note 107, at 1038.

¹¹⁴ *Id.* at 1033.

¹¹⁵ *People v. Garcia*, 599 Phil. 416, 427 (2009).

¹¹⁶ *Valdez v. People*, 563 Phil. 934, 956 (2007).

¹¹⁷ *People v. Pagaura*, 334 Phil. 683, 690 (1997).

At this point, it is well to emphasize that this case involves a meager 0.03 gram of *shabu*. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs as they can be readily planted and tampered with.¹¹⁸ Consistent with this, in *People v. Segundo*¹¹⁹ involving the same amount of drugs as the case at hand (0.03 gram), the Court emphasized the extra caution that law enforcers must observe in preserving the integrity of small amounts of seized drugs, thus:

To sum, “[l]aw enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia.” Thus, “[t]his is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.”

Although the miniscule quantity of confiscated illicit drugs is solely by itself not a reason for acquittal, this instance accentuates the importance of conformity to Section 21 that the law enforcers in this case miserably failed to do so. If initially there were already significant lapses on the marking, inventory, and photographing of the alleged seized items, a doubt on the integrity of the *corpus delicti* concomitantly exists. x x x¹²⁰ (Emphasis supplied)

Adobar’s defense of denial is concededly weak and uncorroborated. This weakness, however, does not add strength to the prosecution’s case as the evidence for the prosecution must stand or fall on its own weight. Well-entrenched in jurisprudence is the rule that the conviction of an accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.¹²¹

Based on the foregoing and following the Court’s precedents as discussed above, the Court is constrained to reverse Adobar’s conviction.

The prosecution failed to prove the *corpus delicti* of the crime due to the serious lapses in observing Section 21 of RA 9165 and the concomitant failure to trigger the saving clause. Anent the latter point, the prosecution utterly failed to acknowledge and credibly justify its procedural lapses and was unable to prove the integrity and evidentiary value of the seized drugs. Adobar’s innocence, as presumed and protected by the Constitution, must stand in light of the reasonable doubt on his guilt.

To conclude, the Court issues anew a reminder: The prosecution arm of the government has the duty to prove, beyond reasonable doubt, each and every element of the crime charged. In illegal drugs cases, this includes proving faithful compliance with Section 21 of RA 9165, being

¹¹⁸ *People v. Arposeple*, G.R. No. 205787, November 22, 2017, p. 22.

¹¹⁹ G.R. No. 205614, July 26, 2017.

¹²⁰ *Id.* at 22.

¹²¹ *Macayan, Jr. v. People*, 756 Phil. 202, 214 (2015).


fundamental to establishing the element of *corpus delicti*. **In the course of proving such compliance before the trial courts, prosecutors must have the initiative to not only acknowledge, but also justify, any perceived deviations from the procedural requirements of Section 21.**¹²²

As no less than the liberty of an accused is at stake, appellate courts, this Court included, must, in turn, sift the records to determine if, indeed, the apprehending team observed Section 21 and if not, if the same is justified under the circumstances. This, regardless if issues thereon were ever raised or threshed out in the lower court/s, consistent with the doctrine that appeal in criminal cases throws the whole case open for review and the appellate court must correct errors in the appealed judgment whether they are assigned or not.¹²³ If, from such full examination of the records, there appears unjustified failure to comply with Section 21, it becomes the appellate court's bounded duty to acquit the accused, and perforce, overturn a conviction.¹²⁴

WHEREFORE, premises considered, the Decision dated July 31, 2015 of the CA in CA-G.R. CR HC No. 01192-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Aquila "Payat" Adobar is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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

SO ORDERED.

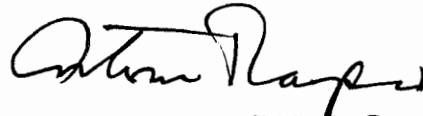

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹²² See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

¹²³ *People v. Dahil*, supra note 76, at 225.

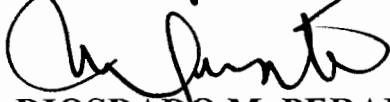
¹²⁴ See *People v. Jugo*, supra note 122.

WE CONCUR:

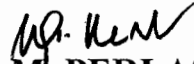


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

Plz. see separate concurring opinion



DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296, The
Judiciary Act of 1948, as amended)

